

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.20554

In Re Application of:

SONORA SIERRA HERITAGE FOUNDATION	)	
for License to Cover Construction Permit	)	File No. 0000090560
KJCN (FM-Ed), Sutter Creek, CA	)	
Facility ID 185149	)	

To: Chief, Audio Division, Media Bureau

INFORMAL OBJECTION

Blue Mountain Players (“Players”), licensee of KCYF-FM, Sutter Creek, CA, by its attorney, here notes its informal objection to the license to cover submitted by Sonora Sierra Heritage Foundation (“Sonora”) on November 20, 2019, and referenced above.<sup>1</sup> The constructed facilities were supposed to be as set forth in the minor modification to construction permit, No. 0000087425, granted on October 28, 2019. The crux of our objection is the fact that the specified facility was not constructed. This is based on a site visit by an experienced telecommunications consulting engineer on December 2, 2019, ascertaining that that no 40-foot pole, or any mounting structure, and no transmitting facility were seen at the authorized location or anywhere within 75 feet of that location, see Engineering Statement attached.

Additionally, the engineering site visit established that the observed transmitted signal was far too weak to be consistent with the proposed 1.3 kw effective radiated

---

<sup>1</sup> Players and Sonora are mandated time sharers on a single channel.

power. The license application specifically asks: “Does the operating transmitter power output produce the authorized effective radiated power?” The applicant responded, Yes. The application form further asks for confirmation that: “The facility was constructed as authorized in the underlying construction permit or in compliance with 47 C.F.R. Section 73.1690?” The response was: Yes.

There would appear to be only two possibilities. Either the station was constructed to specification, and shortly thereafter was almost completely dismantled and replaced by a much smaller facility at a different location. Or it never was constructed in conformity with the authorization in the first place. Either way the license application must be denied, and the authorization forfeited.

As set forth in the Engineering Statement, stated as being from personal knowledge and sworn to under penalty of perjury, Michael D. Brown visited the applicant's authorized site, accompanied by KCYF's engineer, Steve Michaelson. They determined the coordinates of the location they visited using a Garmin GPSmap device, and confirmed them with an iPhone 8 Maps application. At the location they found a wooden cabin, but no 40-foot pole or other tower structure, no antenna, and no coax. They took panoramic photos from the site, which are included in the exhibit.

The engineers observed a very weak carrier with no modulation in the immediate area of the listed coordinates. At close distances the car radio signal was overtaken for more than 50 per cent of the time by station KZSZ, transmitting from 176 km away.

The station was inaudible anywhere in Sutter Creek, the community of license, which is entirely encompassed, or supposedly encompassed, by the authorized 70 dBu contour. Later, upon Longley-Rice analysis, assuming the transmitter was located at 1.6 km northwest of the authorized point, the declarant determined that KJCN should have had 53 times the signal of KZSZ and would have easily blanketed the other station. The Engineering Statement concluded that the station could not possibly be operating with the permitted facilities.

The Engineering Statement also belies the affirmative certification that the facility was constructed “in compliance with all special operating conditions, terms, and obligations described in the construction permit.” The listed antenna implies a peak RF exposure in excess of that permitted for General Population/Uncontrolled environments, which would be problematic at the cabin location if anything had been constructed there. This also renders the environmental certification of “no significant action” under Section 1.1306 of the Rules be be incorrect. Because two inconsistent numbers were given for the site elevation, both as to AGL and as to HAAT, it cannot be determined what was proposed but, apparently, not done. The stated calculations for Maximum ERP and for maximum rated input power also contained errors.

Analysis. Under Section 319(d) of the Communications Act, a construction permit will be automatically forfeited if the station is not ready for operation within the specified time or within such further time as the Commission may allow, unless

prevented by causes not under the control of the grantee.” Implementing the statute, Section 73.3598(e) of the rules provides that any construction permit “for which construction has not been completed and for which an application for license has not been filed shall be automatically forfeited upon expiration without any further affirmative action by the Commission.” Commission precedent makes clear that construction of unauthorized facilities does not override automatic forfeiture of a permit pursuant to Section 73.3598(e), *see Great Lakes Community Broadcasting, Inc.*, 24 FCC Rcd 8239, 8245 (MB, 2009).

The Engineering Statement, based on a site visit on December 2, establishes that, as of that date, no monopole or transmitter existed at the authorized site. While it appears that a very weak signal was emanating from a tiny transmitter somewhere in the area, it did not remotely approach the combination of authorized elevation and authorized power output. Further, assuming generously that the facility was constructed in its entirety and in compliance by November 20, and then dismantled, removed and placed elsewhere at some time before December 3, such *de minimus* operation would not indicate a station that is “ready for operation,” and would not meet the terms of U.S.C. Section 319(d). “It is axiomatic that at the time the station files a license application and obtains [program test authority] that they have done so with the full intention of operating as such,” *Pathfinder Communications Corp.*, 18 FCC Rcd 9272 at 9279

(2003). Also see *Anthony T. Lapore, et al.*, Letter, 27 FCC Rcd 13214, 13219 (MB 2012).

Conclusion. The Engineering Statement conclusively demonstrates that station KJCN as of December 2 was not constructed in accordance with its permit and was not ready for operation. The application for license submitted on November 20 sought licensing for what was nothing more than a non-conforming shadow. As such, several of the sworn representations in the application were not consistent with fact. The construction permit has expired by operation of law and the Commission must hold that it is forfeited, *KCIY (FM), Helendale, CA*, 30 FCC Rcd 4898 (MB, 2015).

Respectfully submitted,

  
Michael Couzens,  
*Attorney for Blue Mountain Players*

Michael Couzens Law Office  
6536 Telegraph Avenue, Suite B201  
Oakland, CA 94609

Tel. (510) 658-7654  
[cuz@well.com](mailto:cuz@well.com)

December 7, 2019.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Informal Objection were served on December 7, 2019, by First Class Mail, with postage fully pre-paid, to the following:

Albert R. Shuldiner, Chief  
Audio Division, Media Bureau  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington, D.C. 20554

Nora Coryell  
Sonora Sierra Heritage Foundation  
P.O. Box 181  
Jackson, CA 95642

Dated: December 7, 2019

By:   
Michael Couzens