

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of:)
)
Reach For The Top, Inc.) BLL-20171010AAE
KTPC-LP, Venice, California)
Facility ID # 195799)
)

REPLY

1. REC Networks (“REC”) files this *Reply* to the *Opposition* filed on October 27, 2017 by Reach For The Top (“RFTT”) (“*Opposition*”) related to the above captioned license application.

I. RFTT ADMITS TO FALSE CERTIFICATION AND MAY HAVE ENGAGED IN MISREPRESENTATION AND LACK OF CANDOR

2. In the *Supplement* filed by REC on October 12, 2017 (“*Supplement*”), we had pointed out that an antenna structure was constructed that was at approximately 20 feet (6 meters) above ground level.¹ This is despite the underlying construction permit authorizing operation at 24 meters (78.7 feet) above ground level (RCAGL).² REC had included photographs of the antenna structure to demonstrate this non-compliance with the terms of the construction permit.³

3. In its *Opposition*, RFTT states that the photographs were from “before we completed our final antenna hight [sic] adjustments.”⁴

4. On Form 319, Section III, question 2, the applicant is required to certify that the facility was constructed as authorized in the underlying construction permit for which a yes or no answer

¹ - Supplement at 6.

² - See BMPL-20160422AAF (granted April 25, 2016).

³ - Supplement at Appendix F.

⁴ - Opposition at 1.

is required and if “no” is answered, an explanation as an exhibit must be given. RFTT answered this question as “yes” thus *certifying* that the facility was constructed as authorized in the underlying construction permit. By certifying “yes” on this question, it means that construction has been completed *in accordance with the construction permit*. The license application is filed *after* all “final adjustments” are made, not before. In an effort to beat the original construction permit deadline, RFTT built an unauthorized and unsafe facility and falsely certifying the parameters of the site, including the radiation center and overall height.

5. *False certification.* – Section 1.17(a)(2) of the FCC rules provides that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for behaving that any such material factual statement is correct and is not misleading.”⁵ In the instant case, RFTT had acknowledged that the photographs in the *Supplement*, which were taken following the filing of the License to Cover application were from before RFTT completed their “height adjustment”.

6. *Unauthorized operation.* – Section 73.1745(a) of the FCC rules states that no broadcast station shall operate at times, or with modes of power, other than those specified and made part of the license.⁶ By admitting that they filed a license application prior to adjusting their height, RFTT engaged in unauthorized operations in violation of Section 73.1745(a). RFTT attempts to discount this by claiming that forms were filed without the consent of RFTT’s CEO Ivonne Guzman.⁷ We do note that since the filing of the original construction permit application during the 2013 LPFM filing window, the “technical parameters” have not changed.⁸ The Commission’s

⁵ - See 47 C.F.R. §1.17(a)(2).

⁶ - See 47 C.F.R. §73.1745(a).

⁷ - Opposition at 1.

⁸ - Following the 2013 LPFM filing window, RFTT’s application was declared mutually exclusive (MX) with six other applicants (“MX Group #40”). In an effort to resolve MX Group #40 REC worked with *The Los Angeles Social Justice Radio Project* (Facility ID #196949), a non-tentative selectee to break out of MX Group #40 and become singleton. That application was eventually granted. REC also negotiated a point aggregation time-share agreement between RFTT and *Strategic International Ministries* (Facility ID # 197314) (“SIM”) thus resulting in an agreement that gave both RFTT and SIM 10 points in order to

policy on this issue is that applicants and licensees are responsible for keeping themselves informed of the status of their filings and are responsible for the actions their representatives take on their behalf.⁹

7. Observations from second site visit. – Following the filing of RFTT’s *Opposition* where they have stated that had completed a “height adjustment”, members of the Southern California broadcast engineering community acting at the request of REC had revisited the KTPC-LP site and had observed that the antenna height has been increased.¹⁰ While we cannot verify that the radiation center is now at 24 meters RCAGL, it has been significantly increased.¹¹ We will further discuss the new antenna installation in this pleading.

8. In the instant case, RFTT was under deadline pressure to complete construction of their underlying construction permit which could not be further extended or tolled. In order to get the application in under the deadline, RFTT engaged in construction at a lower height and commenced operation. This means that RFTT has engaged in unauthorized operation between

win the group (“2014 Agreement”). Since both SIM and RFTT were more than 24 km apart, a request was put into the Commission to permit SIM to operate unlimited hours (as opposed to a negotiated 12-hour time-share) once the grant of the original construction permit was finalized. During this period of time, REC and SIM was negotiating with William Floyd (“Floyd”) who claimed to represent RFTT. While REC did answer some questions from Floyd and review some alternate sites (knowing that the station could likely not be built at the current Sunset Avenue location), REC did not file any applications on behalf of RFTT to modify facilities. We note that Floyd is a listed board member on the original Form 318 application and did sign some of the applications. Overall, RFTT’s affairs have been handled by Todd Ulrick and Common Frequency. REC does note that without the 2014 Agreement, it was possible that RFTT would have either been dismissed due to a different aggregation agreement or subject to a three-way involuntary time share.

⁹ - See, e.g., *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 para. 21 (1984) (issuing forfeiture to licensee for rule violations caused by its attorney’s actions and noting that ignorance of attorney’s actions was no excuse because “licensee here needed only to exercise better judgment and closer supervision of their counsel”).

¹⁰ - The site visit was conducted on November 4, 2017 at approximately 9:45 AM Pacific Daylight Time.

¹¹ - Observations from the field estimate the overall height to be approximately 16 meters above ground level. The station was also monitored and it was observed that the station was identifying solely as “Venice Radio” and did not include any legal identification in accordance with 47 C.F.R. §73.1201(a).

sometime between October 9, 2017 and as late as November 3 when the reconstructed antenna structure was discovered.¹²

9. Misrepresentation and lack of candor. – The Commission relies on truthfulness as a key element of character qualifications necessary to operate a broadcast station in the public interest.¹³ Misrepresentation is a false statement of fact made with intent to deceive.¹⁴ Lack of candor is concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive.¹⁵ Intent to deceive can be inferred when one has a clear motive to deceive.¹⁶ In the instant case, RFTT was faced with a deadline, which if not met would have resulted in the permanent cancellation of the construction permit and the overall ability for RFTT to be a licensed LPFM broadcast station. This can be seen that RFTT definitely had a motive to file a license application in order to beat the 3-year deadline. Since the facility was not built under the terms of the underlying construction permit, the act of RFTT answering Section III, question 2 on Form 319 as “yes”, they have clearly made a false certification under the pressure of a deadline which constitutes intent thus indicating misrepresentation and lack of candor.¹⁷

¹² - The actual filing of Form 319 took place over the weekend prior to October 10 as evidenced by the filing of the *Informal Objection* by REC time stamped in CDBS on October 10, 2017 at 1:07AM Eastern Daylight Time. REC immediately filed the *Informal Objection* in this proceeding to call attention to the proposed operation at 50 watts effective radiated power (ERP) and the claim of 50 watts transmitter power output (TPO) while utilizing a single bay Shively 6812 circularly polarized antenna which based solely on the fact that a single-bay Shively 6812 would introduce more than 3 dBu of loss at the antenna, it would not physically possible to operate at 50 watts TPO to result in 50 watts ERP.

¹³ - See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1210-11, paras. 56-62 (1986).

¹⁴ - See *Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129, para 6 (1983).

¹⁵ - *Id.*

¹⁶ - See, e.g., *RKO Gen., Inc.*, Decision, 4 FCC Rcd 4679, 4684, para 29 (Rev. Bd. 1989).

¹⁷ - See also *E-String Wireless*, 31 FCC Rcd 133 (MB, 2016) (“E-String”). In *E-String*, the applicant admitted that an antenna orientation was incorrect and that it was subsequently remedied (*E-String* at 11.). Because this was a case of where the station was already licensed and there was no deadline pressure, the Commission made a finding of a false certification but not misrepresentation/lack of candor. (*Id.*) In contrast, the instant case does have the pressure of a deadline of the original construction permit and thus a stronger motive to misrepresent themselves before the Commission.

II. CONSTRUCTED FACILITY CONTINUES TO CAUSE SECOND-ADJACENT CHANNEL INTERFERENCE WITH KKLA-FM.

10. As noted in our *Supplement*, even if RFTT was to construct at the at the authorized RCAGL, the use of a single-bay Shively 6812b circular-polarized antenna would be insufficient to assure that the 118.2 dBu interfering contour required to protect KKLA-FM will not reach any point of an occupied structure.¹⁸ Despite the height adjustment, RFTT is continuing to utilize the single-bay Shively 6812b circularly polarized antenna, which at its authorized height would cause harmful interference to KKLA-FM under Section 73.807(e)(2) of the Rules.

III. ANTENNA CONSTRUCTION PUTS PUBLIC SAFETY AT RISK

11. The antenna was constructed in a densely populated residential neighborhood using telescoping “push-up” poles that supported with an extensive guy-wire system. Section 12.24(W)(49) of the Los Angeles Municipal Code requires a Conditional Use Permit (CUP) prior to the construction of any broadcast antenna structure within any zone other than certain manufacturing zones. This would mean that RFTT would need to be required to obtain permission from the City of Los Angeles to construct the facility. Because of the setback requirements that are normally in building codes, it is very unlikely that a CUP would ever be granted for broadcast operations from this location.¹⁹

¹⁸ - See *Supplement* at 5 and Appendix C.

¹⁹ - See also *Peace and Justice Network of San Joaquin County*, BSTA-20170907ABT (dismissed October 19, 2017), e-mail from Dale Bickel retained in CDBS system. (“This site is in a densely peopled [sic] residential neighborhood. On the basis of the information provided, we are not persuaded that KBCC can operate a radio station safely from this location. And it appears unlikely that KBCC can secure the necessary local building permits and permissions to erect a 22.7 [meter] (74 foot) supporting structure at this location...”).

IV. CONCLUSION

13. In an effort to “beat the buzzer” under the pressure of an original construction permit deadline, RFTT knowingly constructed a facility not consistent with the facility authorized on their construction permit and deceived the Commission in an effort to “save the license” by certifying that the facility was built in accordance with the underlying construction permit and that the false certification is supported by the applicant’s own admission that the Form 319 contained a false certification. The “revised” facility was constructed with a single-bay antenna which, even at the authorized height, would cause second-adjacent channel interference to listeners and potential listeners of KKLA-FM, Los Angeles. Finally, we are deeply concerned from a public safety perspective that the current antenna structure constitutes a fall hazard and would not likely be granted a conditional use permit as constructed.

14. For the reasons preceding, it is REC’s position that at the construction deadline, RFTT has engaged in unauthorized operations and that their antenna height was not raised until a time after the expiration of the underlying construction permit. In this case, the license application should be dismissed and the underlying construction permit be allowed to expire. Despite the expiration of the RFTT construction permit, we are deeply concerned that there is another granted construction permit specifying this same exact facility. This exact facility is constructed in a manner that jeopardizes public safety. While that construction permit grant is finalized and cannot be directly challenged, REC hopes the Commission can take any action necessary in accordance to law, regulations and/or Commission policy to prevent any use of this specific facility.

Respectfully submitted,

/S/

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Founder

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CC: Ivonne Guzman, CEO, Reach For The Top, Inc. (served via e-mail)



