

Before the
Federal Communications Commission
Washington, DC 20554

In re Application of:)
)
NORFOLK COMMUNITY RADIO) **File No. BLL-20190823ABH**
) **Facility No. 194526**
For License to Cover)
LPFM Broadcast Station WIGK-LP,
Norfolk, Virginia

Filed With: **Office of the Secretary**
Directed to: **Chief, Audio Division, Media Bureau**

OPPOSITION TO INFORMAL OBJECTION

Norfolk Community Radio, permittee of Station WIGK-LP, Norfolk, Virginia hereby submits its Opposition to the Informal Objection filed by REC Networks (“REC”) on August 27, 2019, respect to the license to cover filed by NCR on August 27, 2019 (the “License Application”). With respect thereto, the following is stated¹:

NCR applied for its permit for a new low-power FM station nearly seven years ago, on November 12, 2013. Following lengthy delays due to an unfounded opposition to the permit filed by REC Radio Networks, the application was finally granted on August 23, 2016, with an expiration date of August 23, 2019. An application for license to cover the facility was timely filed on August 23, 2019. REC filed its Objection, based upon information concerning another unrelated applicant. REC Objection at 2-3.² On September 16, 2019, REC filed a Supplement

¹ This pleading is being filed in response to the Commission’s Letter of Inquiry issued on September 22, 2020. Insofar as the limitations on pleadings and time for filing pleadings provided for in §1.45 of the rules shall not be applicable to any objections duly filed under Section 73.3587 of the Commission’s rules, this Opposition is timely filed.

² REC attempts to link filings made by other unrelated applicants in its efforts to oppose the North Tampa application, *i.e.*, San Pedro Hispanic Community Radio; Bakersfield Hispanic Education Family Foundation; South Lawton Hispanic Education Family Foundation; Pittsburgh Community Radio; and South Omaha Hispanic Education Family Foundation. REC Objection at 2 n.2. None of the activities of those applications in any manner involve the construction or operation of NCR.

which included a statement from Joseph M. Davis stating that he visited the site on “September 9, 2019,” and no equipment was seen at the site. Objection, Attachment A.

The REC Objection is based upon an incomplete set of facts. As the License Application recites, Station WIGK-LP was constructed on prior to August 23, 2019, prior to the expiration date of the permit. Therefore, NCR fully complied with the requirements of Section 73.3598 of the Commission’s Rules. 47 C.F.R. § 73.3598. In filing its Objection, REC is attempting to capitalize on technical difficulties suffered by NCR following construction of its facility, which resulted in it being off the air since September 27, 2019. As Saul Cruz, who assisted in the construction of the station, states:

I am witness that on August 22, 2019, Norfolk Community Radio went on the air with its low-Power FM radio license WIGK-LP 95.3 F.M.(Facility ID: 194526) in the city of Norfolk, VA. There was a tower structure built for the radio station’s antenna to be mounted on top. A photo of the original construction is attached. Once the radio license went on the air, we had locals in the area sign audience reports stating that the radio license had gone on the air and had been heard. Those reports also are attached.

However, not long after the radio license had gone on air, there were defects and issues with the tower structure as well as the equipment. The issues were related with the connection of the coaxial cable to the antenna as well as with the tower structure that was weak and could not sustain the antenna. Therefore, the tower structure as well as the equipment were taken off the property and the station went off the air on August 27, 2019, yet hoping to resolve the issue immediately and return on the air.

The equipment and structure were sent back to the state of New York where they could be well kept and revised with engineers. That has delayed the resumption of operations. In addition, there has been confusion with the property owners concerning the presence of our radio stations and the property which we have been able to clarify.

Attachment 1. Attached to the Declaration is a photograph showing the NCR antenna from the original construction. A request for issuance of a Special Temporary Authorization (“STA”) to notify the FCC of the silence was filed on October 4, 2019. File No. BLSTA-20191004AAS.³

As consultant Paul Joshua Kost states:

³ The STA request was dismissed due to the fact that WIGK-LP is not yet a licensed station.

WIGK-LP went on the air on August 22, 2019 on the designated location granted by the FCC. I consulted and helped the organization with guidance on what certain equipment to use for the radio license, from which provider to purchase it from, as well as getting the equipment shipped to Norfolk Community Radio's facilities to be installed on the tower site. Thereafter, when there were issues with the transmission equipment and the antenna's connections which caused for WIGK-LP to go off the air, I helped to obtain a facility in Long Island, New York where the equipment could be safely kept and inspected for repair until it could be sent back to Norfolk Community Radio to be used by WIGK-LP.

Attachment 2.

Therefore, since the station was timely constructed, the fact that Station WIGK-LP had operational difficulties following the filing of its license to cover should not be disqualifying, and NCR complied with Section 73.3598 of the Commission's Rules. 47 C.F.R. § 73.3598. Also, it should come as no surprise that the station was silent on "September 8, 2019" (*i.e.*, the date Mr. Davis visited the site), since the equipment already was removed for repair on that date. The original construction was for a permanent operation. Permission for the site, a structure that was intended to be permanent, etc., all permit a conclusion that the timely construction be determined to be not of a "temporary" nature.⁴ *Cf.*, Letter Decision, *Rainbow Heights Neighborhood Association and Crime Watch*, File No. 20190805AAC (June 2, 2020).

The REC Objection itself was a part of a mass filing by REC against a series of applicants it unsuccessfully filed against at the construction permit stage. All REC recited in its original Informal Objection is its concerns about an unrelated applicant (Bakersfield Hispanic Education Family Foundation) with respect to an application that voluntarily was dismissed by that applicant, and based upon that case, requested that Notices of Inquiry be issued in other cases. REC Objection at 1-2. The REC Supplement dated September 16, 2019 merely establishes that NCR is off the air during the time its equipment was being repaired. The

⁴ Additional details concerning the construction will be filed in a Supplement to this Opposition, shortly.

“Informal Objection and Supplement” dated September 25, 2019 deals exclusively with an unrelated applicant, North Tampa Community Radio.

Section 310(d) of the Communications Act requires the Commission to determine whether the proposed assignment of a broadcast license would be in the public interest. 47 U.S.C. § 310(d). While Section 309(d) of the Communications Act permits the filing of petitions to deny an assignment application, in order to have a cognizable petition to deny a petitioner must submit “specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent” with the public interest, convenience, and necessity served by granting the application. 47 U.S.C. § 309(d). In other words, petitions to deny must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.⁵

As is evident, REC is attempting this Informal Objection as a vehicle to continue REC’s crusade against Hispanic LPFM operators that utilized the services of a particular engineer (Antonio Cesar Guel) and which included the misguided belief that all such applicants were somehow “affiliated” with Mr. Guel. In denying REC’s earlier allegations, the Bureau stated:

REC and CF have failed to show that the Applicants have any actual affiliation beyond similar names, nor have they demonstrated that they are commonly controlled. Similarities in applications do not demonstrate common control of the applications. Additionally, the common contact representative identified in the Applications—Guel—is an engineering consultant. We have previously noted that it is common for multiple applicants to have the same engineering consultant, and many applicants will list their counsel or engineering consultants as their contact representatives. We also reject REC’s argument involving the sequential nature of the filing of the Applications or the Applicants’ incorporation in Texas. These matters are attributable to the Applicants’ utilization of a common consultant and present no violation of any Commission rule or policy.

⁵ 47 U.S.C. § 309(d). *See, e.g.,* *WWOR-TV, Inc.*, 6 FCC Rcd 193, 197, n.10 (1190), *aff’d sub nom. Garden State Broadcasting, L.P. v. FCC*, 996 F.2d 386 (DC Cir. 1993); *Area Christian Television, Inc.*, 60 R.R.2d 862, 864 ¶ 6 (1986).

Letter Decision, In re Little Rock Hispanic Education Family Foundation, et al., File No. BNPL-20131114AQI, et al. (August 23, 2019) (footnote omitted). That determination is final. *North Little Rock Hispanic Education Family Foundation, et al.*, 31 FCC Rcd 13762 (2016). This affiliation with Mr. Guel also was rejected as valid basis for REC petition in recent other determinations.⁶

The LPFM service was established to provide a relatively low-cost means for local members of communities to provide service to their communities. *Creation of a Low-Power Radio Service*, 14 FCC Rcd 2471, ¶ 1 (1999). REC's tactic of mass-filing against applicants; appealing the denial of its pleadings; asking for the issuance of "notices of inquiries" against unrelated applicants⁷; filing frivolous petitions completed unsupported by facts, etc., is doing nothing less than unfairly penalizing those applicants by forcing them to spend money for legal and engineering fees far beyond those ever anticipated by the Commission. In short, REC is

⁶ As with the other cases, NCR and Station WIGK-LP is in no manner affiliated with Mr. Guel; it is not run or controlled by Mr. Guel; Mr. Guel provides no programming to the station; Mr. Guel receives no financial benefits from the operation of the station; and Mr. Guel is not involved in the operation of the station, including the staffing of the station. The operation of Station WIGK-LP is entirely under the control of Norfolk Community Radio.

⁷ Specifically, REC states:

REC is asking that a *Letter of Inquiry* be initiated on all pending applications for which REC can object to. In that *Letter of Inquiry*, it needs to be determined that the parties who are actual people and that they consented to being a board member of the organization (including a *requirement* of notarized statements and identity documents), statements from site owners that sites have been constructed and even independent third party reports from either a state broadcasters association, Society of Broadcast Engineers chapter or if feasible, through monitoring by the field Enforcement Bureau that these stations were actually constructed.

REC Objection at 3-4. The Commission's Rules require a *prima facie* case be presented prior to the initiation of such a proceeding. REC is outrageously asking the Commission to initiate proceeding where no case has been presentation containing even a scintilla of evidence of "real party in interest" violations, that sites have not been constructed, that stations are operating improperly, etc. If REC is requesting a change in the Commission's requirements, then it is free to initiate a rule making proceeding to establish such a rule of policy. *WIOO(AM)*, 23 FCC Rcd 9362, 9365 (MB 2008), ("[t]o the extent that [a petitioner] believes that a different processing rule would better serve the public interest, it should file a petition for rulemaking"). Absent that, however, REC is doing nothing less than asking the FCC to violate its own rules and policies, and to discriminate against a given set of applicants, simply to placate REC's unproven "suspicions." REC repeatedly speaks of "hemorrhaging of abuse of Commission resources," "warehousing" spectrum, "fraud," "tycoonism," and "speculators." REC Informal Objection filed against North Odessa Hispanic Education Family Foundation et al. (File No. BLL-20190822ABM) at 3. Significantly, REC does not point to a single instance where such activity has been proven against LPFM permittees.

engaging in an abuse of the Commission's processes in a misguided attempt to attack certain LPFM applicants.

Station WIGK-LP will be operating⁸ and will serve the Norfolk community, as intended by the Commission's LPFM rules. For this reason, the Informal Objections filed by REC Networks should be denied.

WHEREFORE, it is respectfully requested that the Informal Objection filed by REC Networks be denied, and the application for license to cover filed by Norfolk Community Radio be granted.

Respectfully submitted,

NORFOLK COMMUNITY RADIO

By: _____/Dan J. Alpert/_____
Dan J. Alpert

Its Attorney

*The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201
703-243-8690*

October 19, 2020

CERTIFICATE OF SERVICE

I hereby certify that the forgoing document is being sent by First Class Mail to the following:

Michelle Bradley
REC Networks
11541 Riverton Wharf Rd.
Mardela Springs, MD 21837

_____/Dan J. Alpert_____
Dan J. Alpert

⁸ A minor modification application being filed to move the Station back to its originally approved transmitter site. A grant of that application will allow WIGK-LP to resume service expeditiously.

Attachment 1

November 7, 2019

I, Saul Cruz, hereby state under penalty of perjury, as follows:

I am witness that on August 22, 2019, Norfolk Community Radio went on the air with its low-Power FM radio license WIGK-LP 95.3 F.M.(Facility ID: 194526) in the city of Norfolk, VA. There was a tower structure built for the radio station's antenna to be mounted on top. A photo of the original construction is attached. Once the radio license went on the air, we had locals in the area sign audience reports stating that the radio license had gone on the air and had been heard. Those reports also are attached.

However, not long after the radio license had gone on air, there were defects and issues with the tower structure as well as the equipment. The issues were related with the connection of the coaxial cable to the antenna as well as with the tower structure that was weak and could not sustain the antenna. Therefore, the tower structure as well as the equipment were taken off the property and the station went off the air on August 27, 2019, yet hoping to resolve the issue immediately and return on the air.

The equipment and structure were sent back to the state of New York where they could be well kept and revised with engineers. That has delayed the resumption of operations. In addition, there has been confusion with the property owners concerning the presence of our radio stations and the property which we have been able to clarify.

Thus we expect that we will be able to be back on the property as well as back on the air with the radio station, WIGK-LP 95.3 F.M sometime next week.



Saul Cruz



08/22/19
2:15 PM

Attachment 2

DECLARATION

I, Paul Joshua Kost as a consultant to Norfolk Community Radio helped this organization's Low-Power radio license, WIGK-LP 95.3 FM in Norfolk, VA to go on the air. Thus, WIGK-LP went on the air on August 22, 2019 on the designated location granted by the FCC. I consulted and helped the organization with guidance on what certain equipment to use for the radio license, from which provider to purchase it from, as well as getting the equipment shipped to Norfolk Community Radio's facilities to be installed on the tower site. Thereafter, when there were issues with the transmission equipment and the antenna's connections which caused for WIGK-LP to go off the air, I helped to obtain a facility in Long Island, New York where the equipment could be safely kept and inspected for repair until it could be sent back to Norfolk Community Radio to be used by WIGK-LP.

WIGK-LP plans to move back to its previous and original proposed site in order to go back on the air as soon as possible.

I declare under penalty of perjury the forgoing is true and correct.

Attentively,

A handwritten signature in black ink, appearing to read "Paul Joshua Kost", with a stylized flourish at the end.

Paul Joshua Kost

October 14, 2020