

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

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In re Application of)
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Portland Russian Media Center,)
)
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Applicant,)
)
)

For an Original LPFM Construction Permit)
(Form 301))
)
_____)

File No. BNPL-20131113AED

Facility ID No. 193303

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To: The Media Bureau

**PETITION TO DENY OF
THE REED INSTITUTE**

By: Alan Korn, Esq.
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Its Attorney

August 8, 2014

The Reed Institute (“Petitioner”), by its attorney, submits this petition This Petition to Deny against the application by Portland Russian Media Center (“PRMC”) shown in the caption (BNPL-20131113AED; Facility ID 193303).

Petitioner and PRMC are the only two tentative selectees in Group No. No. 282, Memorandum Opinion and Order released on July 9, 2014. See *Commission Identifies Tentative Selectees In 79 Groups Of Mutually Exclusive Applications Filed In The LPFM Window; Announces A 30-Day Petition To Deny Period And A 90-Day Period To File Voluntary Time-Share Proposals And Major Change Amendments*, FCC 14-96 (released July 9, 2014) (“Selection Order”), Exhibit A at lines 250-252. Petitioner has standing to file this Petition because it is mutually exclusive (BNPL-20131104ATH, Facility ID 193599). This Petition is filed pursuant to 47 U.S.C. Section 309(d) and Section 73.7004(b) of the Commission's Rules and Regulations.

Petitioner contends the application should be dismissed on the basis that PRMC cannot provide reasonable assurance of access to its proposed antenna site. Coordinates provided in the PRMC application identify the antenna as located on the premises of Glenfair Elementary School, a public school located in Portland, Oregon and a member of the Reynolds School District. However, the Reynolds School District has been unable to confirm that PRMC has permission to use the Glenfair Elementary School premises to locate its proposed transmitter.

ANALYSIS

I. PRMC LACKS REASONABLE ACCESS TO THE PROPOSED ANTENNA SITE IDENTIFIED IN ITS APPLICATION

An applicant seeking a new broadcast facility must, in good faith, possess ‘reasonable assurance’ of a transmitter site at the time it files its application. *Port Huron Family Radio, Inc.*, Decision, 66 RR 2d 545 (1989); *Radio Delaware, Inc.* Memorandum Opinion and Order, 67 RR2d 358 (1989). While some latitude is afforded such reasonable assurance, the Commission requires at least a “meeting of the minds” resulting in some firm understanding as to the site’s availability. *Genesee*

Communications, Inc., Memorandum and Order, 3 FCC Rcd 3595 (1988). The reasonable assurance standard satisfied by “[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated[.]” *Elijah Broadcasting Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351 (1990).

More recently, in a Memorandum Opinion and Order dated March 24, 2010, the Media Bureau ruled that NCE applicants Les Seraphim lacked reasonable assurance with respect to a tower space that petitioner claimed was full, without room for additional antenna. In the Matter of Les Seraphim and Mana’o Radio, DA 10-491 (March 23, 2010).¹ Citing on tower owner’s email stating “I cannot guarantee space for your proposed project at any given time, It is only a possibility at this time”, the Media Bureau found no meeting of the minds resulting in a firm understanding of the proposed site’s availability. Because “a mere possibility that the site will be available is not sufficient,” the Media Bureau dismissed the Les Seraphim application which had been tentatively selected to receive a permit for a new NCE station. Accordingly, something more than a mere possibility of the availability of the site is necessary.

Here, PRMC is also unable to provide reasonable assurance to use the proposed transmitter site at Glenfair Elementary School in Portland, Oregon. As set forth in the attached Declaration of Josie Aris, neither the Superintendent’s Office nor the Operations Department of the Reynolds School District in Fairview, Oregon is aware of any proposed broadcast antenna to be located on the premises of Glenfair Elementary School.

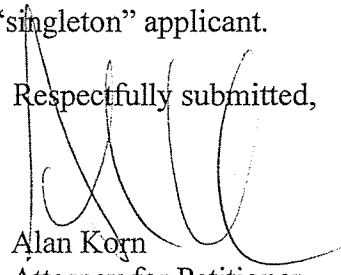
Because PRMC cannot establish reasonable assurance with respect to its proposed transmitter site, the Media Bureau must dismiss its application for a permit to construct a LPFM station, with Petitioner entitled to the award of a Construction Permit as a “singleton” applicant.

¹. See https://apps.fcc.gov/edocs_public/attachmatch/DA-10-491A1.pdf

CONCLUSION

For the above reasons, Petitioner respectfully requests that the Commission reverse PRMC's tentative selection as a co-equal time share with Petitioner's application. Because PRMC lacks reasonable assurance as to its proposed transmitter site, the application must be dismissed. For this reason, Petitioner is the prevailing party and entitled to the award of a Construction Permit as a "singleton" applicant.

Respectfully submitted,



Alan Korn
Attorney for Petitioner

DECLARATION OF JOSIE ARIS

I, Josie Aris, declare as follows:

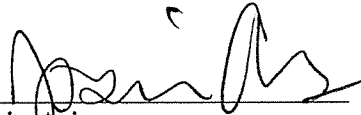
1. I currently reside in the city of Walnut Creek, California. This declaration is submitted in support of the Petition to Deny of The Reed Institute against Portland Russian Media Center, BNPL-20131113AED; Facility ID 193303 ("COT")

2. On August 6, 2014, I telephoned the Reynolds School District Superintendent's Office and spoke with Connie Philibert, executive assistant to the Superintendent. During our conversation I asked who I should speak with about a proposed broadcast transmitter at Glenfair Elementary School. Ms. Philibert indicated she knew nothing about it, and said if anybody would know, it would be the School District's Operations Department.

3. On August 6, 2014, I then spoke by telephone with Chris Houck of the Operations Department of the Reynolds School District in Fairview, Oregon. During that telephone conversation, Ms. Houck indicated she was unaware of any proposed broadcast antenna to be located on the premises of Glenfair Elementary School.

I hereby state under penalty of perjury that the foregoing is true and correct.

Executed on August 8, 2014



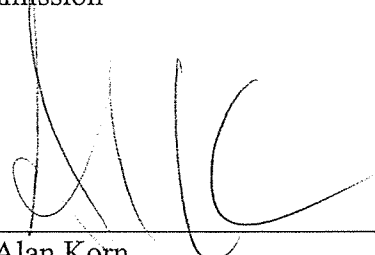
Josie Aris

CERTIFICATE OF SERVICE

On August 8, 2014, the above PETITION TO DENY was served by United States
Mail, postage prepaid, to the following:

Donald E. Martin, P.C.
P.O. Box 8433
Falls Church, VA 22041

Peter Doyle, Chief
Audio Division, Media Bureau
Federal Communications Commission
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Washington, D.C. 20554



Alan Korn