



Federal Communications Commission
Washington, D.C. 20554

September 17, 2014

In Reply Refer To:
1800B3-PPD

Mr. Ronald L. Kocher
36 Faith Lane
Palm Coast, FL 32137

Mr. Jeffrey D. Southmayd
Hammock Educational and
Environmental Community Services
4 Ocean Ridge Boulevard South
Palm Coast, FL 32137

In Re: **Application for Construction Permit
for a Low Power FM Broadcast
Station**

New-LP, Palm Coast, FL
Facility ID Number: 197699
Hammock Educational and
Environmental Community Services
File Number: BNPL-20131115AUQ

Informal Objection

Dear Messrs. Kocher and Southmayd:

We have before us Mr. Kocher's December 23, 2013, Informal Objection ("Objection") against the Hammock Educational and Environmental Community Services ("Hammock") application for a new low power FM broadcast ("LPFM") station in Palm Coast, Florida ("LPFM Application"). Hammock filed a "Comment on 'Informal Objection'" ("Opposition") on January 8, 2014. For the reasons set forth below, we deny the Objection and grant the LPFM Application.

Background. Hammock timely filed the LPFM Application on November 15, 2013, prior to close of the LPFM window.¹ The LPFM Application was accepted for filing as a singleton on November 25, 2013.²

The Objection states that Hammock falsely certified it is in compliance with the Commission's multiple and cross-ownership rules because Hammock is currently the licensee of NCE FM station

¹ See *Media Bureau Extends Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 15763 (2013).

² Public Notice regarding the acceptance of Hammock's application was given on November 29, 2013. See *Broadcast Applications*, Public Notice, Report No. 28125 (November 29, 2013).

WNSS, Palm Coast, Florida.³ Mr. Kocher states also that Hammock has falsely claimed the diversity comparative point, due to Hammock's current ownership of WNSS.⁴ Although Mr. Kocher acknowledges that Hammock has stated in the LPFM Application that it intends to divest its interest in WNSS prior to the commencement of operations of the LPFM station, Mr. Kocher believes "this does not justify [the] false certification."⁵ Thus, according to Mr. Kocher, the LPFM Application contains misrepresentations.⁶

According to Hammock, it accurately certified it was not in violation of the multiple ownership prohibition because it does not own any other LPFM asset, thus grant of the LPFM Application would not cause a violation of Section 73.855.⁷ Moreover, Hammock states it accurately certified it was not in violation of the cross-ownership prohibition because the Commission's rules ("Rules") allow a LPFM applicant to divest its broadcast interest prior to the commencement of the LPFM station's operations, and it made such a divestiture statement.⁸ Finally, Hammock states it correctly claimed a comparative point for diversity because it pledged to divest WNSS, which Hammock believes renders WNSS non-attributable.⁹

Discussion. Informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended, ("Act")¹⁰ 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, necessity, and convenience.¹¹ For the reasons discussed below, Mr. Kocher has failed to satisfy this threshold.

Hammock does not have an attributable interest in any other LPFM station or application, thus it correctly certified that it was in compliance with the multiple ownership rule.¹² Next, the instructions for FCC Form 318 state that a LPFM applicant holding an interest in another broadcast station may promise to divest that station to come into compliance with the cross-ownership rule.¹³ However, the applicant should respond "no" to the certification as to whether the applicant complies with the cross-ownership

³ Objection at 1. *See also*, 47 C.F.R. § 73.855 (generally, prohibiting an attributable interest in more than one LPFM authorization) and 47 C.F.R. § 73.860 (generally, prohibiting an attributable interest in both an LPFM station and any other non-LPFM broadcast station).

⁴ *Id.* *See also*, 47 C.F.R. § 73.872(b)(5) (allowing a LPFM applicant to claim a comparative point for not holding an attributable interest in another broadcast station).

⁵ *Id.*

⁶ *Id.*

⁷ Opposition at 3 *citing* 47 C.F.R. § 73.855.

⁸ *Id.* at 4 *citing* 47 C.F.R. § 73.860.

⁹ *Id.* at 5.

¹⁰ 47 U.S.C. § 309(e).

¹¹ *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *affirmed sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) ("informal objections . . . must . . . contain adequate and specific factual allegations sufficient to warrant the relief requested").

¹² *See* 47 C.F.R. § 73.855.

¹³ Instructions for FCC Form 318 at 6, *citing* 47 C.F.R. § 73.860.

rule and provide an exhibit stating the applicant's intent to divest.¹⁴ Hammock did not follow those instructions because it answered "yes" and provided an exhibit with a divestiture commitment.

Mr. Kocher, however, does not present any evidence that is sufficient to raise a substantial and material question as to whether Hammock intended to deceive the Commission by making a false certification. An intent to deceive is a necessary component of a finding of misrepresentation.¹⁵ There is no evidence that Hammock knowingly violated the Form 318 instruction by falsely certifying that the LPFM Application complied with Section 73.860. To the contrary, Hammock did disclose its ownership of WNSS in the LPFM Application. We conclude that this argument is without merit.

Finally, the Commission has previously determined that an applicant can qualify for a diversity comparative point if it submits a divestiture statement in the LPFM application.¹⁶ Hammock followed this procedure and, therefore, correctly claimed the comparative point for diversity.¹⁷ Our grant of the LPFM Application will contain our standard divestiture condition to ensure that WNSS is divested before Hammock commences operations with the LPFM station.

Conclusion. Accordingly, IT IS ORDERED that the Objection IS DENIED. IT IS FURTHER ORDERED that the Application (File No. BNPL-20131115AUQ) IS GRANTED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁴ See *id.*

¹⁵ See *Liberty Productions, A Limited Partnership*, 16 FCC Rcd 12061, 12079-80 (2001) (in determining the merits of a false certification issue, substantial evidence of an intent to deceive is necessary to support a finding of misrepresentation or otherwise raise a question as to an applicant's basic qualifications); *Georgia Public Telecommunications Commission*, 7 FCC Rcd 2942 (Rev. Bd. 1992), *review denied*, 7 FCC Rcd 7996 (1992) (disqualification for false certification not warranted unless the applicant intended to deceive the Commission).

¹⁶ *Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator*, Sixth Order on Reconsideration, 28 FCC Rcd 14489, 14492, n. 26 (MB 2013).

¹⁷ We note that the LPFM Application is a singleton, thus no comparative points were used to accept the application for filing.