



Federal Communications Commission
Washington, D.C. 20554

September 17, 2014

In Reply Refer to:
1800B3-ATS

Mr. Gregory D'Elia
Rooftop Productions
5315 21st Avenue SW
Seattle, WA 98106

In re: Rooftop Productions
New LPFM, Seattle, WA
Facility ID No. 197136
File No. BNPL-20131114AJR

Petition for Reconsideration

Dear Mr. D'Elia:

We have before us the Petition for Reconsideration ("Petition") filed by Rooftop Production ("Rooftop") seeking reconsideration of a Media Bureau ("Bureau") letter dismissing its application ("Application") for a new LPFM station at Seattle, Washington.¹ For the reasons set forth below, we deny the Petition.²

Background. Rooftop filed the Application during the October 2013 LPFM Filing Window, proposing to serve Seattle, Washington, on Channel 206. The Bureau dismissed the Application on December 4, 2013, because it failed to comply with the minimum spacing requirements of Section 73.807(a)(1) of the Commission's Rules ("Rules") with regards to first-adjacent station KMIH(FM), Mercer Island, Washington; second-adjacent station KNHC(FM), Seattle, Washington; and co-channel translator station K206CJ, Issaquah, Washington.³

Rooftop filed the Petition on January 2, 2014, seeking reinstatement of the Application. Rooftop explains that it mistakenly entered the incorrect coordinates for its proposed site into Section VI, Question 2 of the Application, but that the antenna identified by its Antenna Structure Registration ("ASR") Number in Section VI, Question 3, corresponds to a site that is compliant with Section 73.807.⁴ Rooftop argues that the Bureau has allowed other LPFM applicants to correct typographical errors in their applications that resulted in violations of Section 73.807(a)(1).⁵

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not

¹ See *Letter to Rooftop Productions, from James D. Bradshaw*, Ref 1800B3 (MB Dec. 4, 2013) ("*Dismissal Letter*"). See also *Broadcast Actions*, Public Notice, Report No. 48131 (MB Dec. 9, 2013).

² We also have an Informal Objection ("Objection") to the Application filed by Bob Casserid on January 30, 2014. Because we are denying the Petition and not reinstating the Application, we will dismiss the Objection as moot.

³ *Dismissal Letter* at 1. See also 47 C.F.R. § 73.807(a)(1) and (c). The *Dismissal Letter* further states that the Application was dismissed without opportunity to amend pursuant to Section 73.870(c) of the Rules. See 47 C.F.R. 73.870(c) ("[A]pplications . . . the fail to meet the 73.807 minimum distance separations . . . will be dismissed without any opportunity to amend such applications.").

⁴ Petition at 1.

⁵ *Id.* at 2, citing *Pike Place Market Preservation and Development Authority*, File No. BNPL-20131114AUD ("*Pike Place*").

known or existing at the time of the petitioner's last opportunity to present such matters.⁶ Rooftop has not met this burden.

Initially, Petitioner's reliance on the staff action in *Pike Place* is misplaced. The staff action in *Pike Place* occurred via Public Notice and did not include a written decision. Such a decision does not constitute binding precedent.⁷

Moreover, if we were to analyze the Application based on the coordinates corresponding to the identified ASR, we find that the Application would still violate Sections 73.807(a)(1) and (c) with regards to KMIH, KNCH and K206CJ. Specifically, the required separation for KMIH is 56 kilometers, whereas the separation proposed is 14 kilometers;⁸ the required separation for KNCH is 73 kilometers, whereas the separation proposed is 23 kilometers; and the required separation for K206CJ is 39 kilometers, whereas the separation proposed is 32.2 kilometers.

Section 73.870(c) of the Rules provides that an LPFM application will be dismissed without opportunity to amend if, as of the closing date of the LPFM filing window (in this case, November 15, 2013), the application fails to meet the minimum distance separation requirements of Section 73.807 for existing applications and facilities.⁹ LPFM applicants were advised that a failure to comply with the spacing rules – including filing a second-adjacent channel waiver request where applicable – would result in dismissal of the application without an opportunity to amend.¹⁰ The Application, as of the close of the LPFM filing window, failed to comply with Section 73.807(a)(1) and (c) with regards to KMIH, KNCH, and K206J, and failed to request a second-adjacent channel waiver with regards to KNCH. The Application will thus not be reinstated.

Conclusion/Actions. Accordingly, for the reasons set forth above, IT IS ORDERED THAT the Petition for Reconsideration filed on January 2, 2014, by Rooftop Productions, IS DENIED.

⁶ See 47 C.F.R. § 1.106(c), (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

⁷ See 47 C.F.R. § 0.445(e). See also *Educational Media Foundation*, Letter, 28 FCC Rcd 14913, 14914 n.8 (actions taken by public notice do not constitute binding precedent).

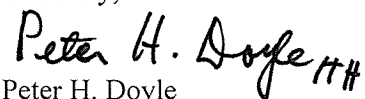
⁸ KMIH is a “grandfathered” superpowered Reserved Band Class D Station, and is accordingly entitled to the same spacing protection as a Class A Station. See 47 C.F.R. § 73.807, Note to paragraphs (a) and (b). The *Dismissal Letter* incorrectly stated that the required spacing was 13 kilometers.

⁹ 47 C.F.R. § 73.870(c) (“Applications subject to [Section 73.870(b)] that fail to meet the § 73.807 minimum distance separations with respect to all applications and facilities in existence as the date of the pertinent public notice in [Section 73.870(b)] other than to LPFM station facilities proposed in applications filed in the same window, will be dismissed without any opportunity to amend such applications.”).

¹⁰ See *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15 – October 29, 2013 Low Power Filing Window*, Public Notice, 28 FCC Rcd 8854, 8856 (MB 2013) (“Following the close of the window, the Commission staff will return and/or dismiss applications and amendments not submitted in accordance with the procedures described in this Public Notice. No curative amendments for such applications and amendments will be accepted after the close of the window. . . . An applicant should consider using a consulting engineer or a party familiar with the LPFM technical rules to determine the technical acceptability of its application, particularly if the applicant is requesting a second-adjacent channel spacing waiver.”); see also 47 C.F.R. § 73.870(c).

IT IS FURTHER ORDERED that the Informal Objection filed on January 30, 2014, by Bob Casserd IS DISMISSED, as moot.

Sincerely,

A handwritten signature in black ink that reads "Peter H. Doyle" followed by two hash marks. The signature is written in a cursive, slightly slanted style.

Peter H. Doyle
Chief, Audio Division
Media Bureau