



Federal Communications Commission  
Washington, D.C. 20554

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*In Reply Refer to:*  
1800B3-ATS

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In re: Christian Radio Network  
New LPFM, Rockford, Illinois  
Facility ID No. 193836  
File No. BNPL-20131113BFF

**Petition to Deny**

Dear Counsel:

We have before us: 1) the application of Christian Radio Network (“CRN”) for a new LPFM station at Rockford, Illinois (“Application”); and 2) the Petition to Deny the Application (“Joint Petition”) filed by Maverick Media Of Rockford License LLC (“Maverick”) and Mid-Way Radio (“Mid-Way”) (collectively, “Joint Petitioners”). For the reasons set forth below, we treat the Joint Petition as an informal objection, grant it, and dismiss the CRN Application.<sup>1</sup>

**Background.** CRN filed the Application during the October 2013 LPFM filing window, proposing to serve Rockford, Illinois on Channel 278.<sup>2</sup> The Media Bureau (“Bureau”) determined that the application was not mutually exclusive with any other application filed during that window, accepted it for filing on December 5, 2013, and gave Public Notice of this action December 11, 2013.<sup>3</sup>

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<sup>1</sup> The Joint Petition was filed on January 10, 2014. In addition to the Joint Petition, we have an Informal Objection filed by REC Networks (“REC”) on December 12, 2013, and a Petition to Deny filed by Common Frequency, Inc., (“CF”) on January 9, 2014. CRN filed a Consolidated Opposition on February 7, 2014 (“Opposition”). REC filed a Reply on February 13, 2014, and the Joint Petitioners filed a Reply on February 21, 2014. Because we are dismissing the Application based on the Joint Petition, we need not address the pleadings filed by REC and CF.

<sup>2</sup> The Application included a second-adjacent waiver request with regard to Station WGFB(FM), Rockton, Illinois. At the time the Petition was filed, WGFB was licensed to Maverick and an application to assign the station’s license to Mid-Way was pending. See File No. BAL-20130426AAI.

<sup>3</sup> See *Broadcast Actions*, Public Notice, Report No. 28132 (MB Dec. 10, 2013). Although the Public Notice is dated December 10, 2013, it was not issued by the Bureau until December 11, 2013, because the Commission was closed on December 10 due to inclement weather. Any petition was thus due 30 days from December 11, 2013, which would have been January 10, 2014. The Joint Petition is thus timely.

In the Joint Petition, the Joint Petitioners argue that the Application should be dismissed because CRN lacked reasonable assurance of site availability at the time it was filed. Specifically, they state that the tower identified in the Application<sup>4</sup> is owned by Global Towers, LLC (“Global”) through American Towers, LLC (“American”), and that American’s representative, Samantha Griffin, has indicated that CRN never contacted American about using the tower site.<sup>5</sup>

In the Opposition, CRN provides a declaration signed by its engineer, Antonio Cesar Guel (“Guel Declaration”), who states that in October 2013 he spoke with Darryl Snyder at Global and was told there was space available on the tower.<sup>6</sup> Guel further indicates that he was unable to reach Snyder in January 2014, but that instead he spoke with Ken Hall at American, who informed him that the tower space was available.<sup>7</sup> In the Reply, the Joint Petitioners note that the Guel Declaration contains hearsay and is not from a disinterested third-party.<sup>8</sup> They also argue that the Hall Email does not establish that Global gave CRN permission to use the site before it filed the Application.<sup>9</sup>

**Discussion. Procedural.** We initially find that the Joint Petition does not meet the requirements for a petition to deny as set forth in Section 309(d) of the Communications Act of 1934, as amended (“Act”), because it is not accompanied by an affidavit supporting its factual allegations.<sup>10</sup> We will therefore consider the Joint Petition as an informal objection under Section 73.3587 of the Commission’s Rules.<sup>11</sup> Pursuant to Section 309(d) of the Act, informal objections, like 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.<sup>12</sup>

*Site Availability.* 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.<sup>13</sup> It is well established that the specification of a transmitter site in an application is an implied representation that the applicant has obtained reasonable assurance that the site will be available.<sup>14</sup> While some latitude is afforded such “reasonable assurance,” there must be, at a minimum, a “meeting of the minds resulting in some firm

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<sup>4</sup> See Application at Section IV, Question 3 (specifying ASR# 1013171).

<sup>5</sup> Joint Petition at 2 and Attachment B (“Griffin Email”).

<sup>6</sup> Opposition at Attachment 2. A copy of an email from Hall is included with the Guel Declaration (“Hall Email”).

<sup>7</sup> *Id.*

<sup>8</sup> Reply at 2-3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> 47 U.S.C. § 309(d)(1) (“The petition shall contain 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 subsection (a) of this section.... Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.”).

<sup>11</sup> See 47 C.F.R. § 73.3587.

<sup>12</sup> 47 U.S.C. § 309(d); *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); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

<sup>13</sup> *Les Seraphim and Mana’o Radio*, Memorandum Opinion and Order, 25 FCC Rcd 2785, 2787 (MB 2010).

<sup>14</sup> See, e.g., *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974) (“*Wallace*”) (“Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary.”).


understanding as to the site's availability."<sup>15</sup> A mere possibility that the site will be available is not sufficient.<sup>16</sup>

We find that CRN has failed to demonstrate that it had reasonable assurance of site availability at the time it filed the Application. The Griffin Email establishes that CRN did not contact Global prior to filing the Application. The Guel Declaration contains hearsay<sup>17</sup> and its veracity is questionable because Guel is CRN's engineer.<sup>18</sup> Moreover, the Hall Email only indicates that CRN obtained permission to use the tower *after* the filing of the Joint Petition, but not at the time of filing. This does not satisfy our requirement that an applicant have reasonable assurance of site availability at the time of filing. Accordingly, we will dismiss the Application.

**Conclusion/Actions.** Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition to Deny filed by Maverick Media Of Rock License LLC and Mid-Way Radio on January 10, 2014, treated as an informal objection, IS GRANTED.

IT IS FURTHER ORDERED, that the application of Christian Radio Network (BNPL-20131113BFF) for a new LPFM station at Rockford, Illinois, IS DISMISSED.

Sincerely,

  
Peter H. Doyle  
Chief, Audio Division  
Media Bureau

Cc: Christian Radio Network  
REC Networks  
Common Frequency, Inc.  
Maverick Media of Rockford License, LLC  
Mid-Way Radio, Inc.

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<sup>15</sup> *Genesee Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595 (1988). The applicant need not own the proposed site and may even work out the final details for a lease sometime in the future. The "reasonable assurance" standard is 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).

<sup>16</sup> *See Wallace*, 49 FCC 2d at 1425. The Commission does not require (and has never required) non-commercial educational ("NCE") broadcast applicants to certify the availability of the transmitter site in its application procedures. *See, e.g., Carnegie-Mellon Student Government Corp.*, Hearing Designation Order, 7 FCC Rcd 3914, 3914 (MB 1992). Nonetheless, when an NCE applicant proposes a site, it must do so with reasonable assurance in good faith that the site will be available. *See, e.g., Midland Educational Broadcasting Foundation*, Hearing Designation Order, 4 FCC Rcd 5207 (MB 1989) (holding that applicant for an NCE FM station had reasonable assurance of site availability because it paid for a lease option on the proposed transmitter site).

<sup>17</sup> The Commission has found accounts of conversations with third parties to be inadmissible hearsay. *See, e.g., Living Proof, Inc. Big Pine, California*, Letter, 24 FCC Rcd 2382, 2385, n.29 (MB 2009) (declining to credit hearsay statements of third party). The weight to be accorded to a hearsay statement depends on its truthfulness, reasonableness, and credibility. *See Johnson v. United States*, 628 F.2d 187, 190-191 (D.C. Cir. 1980).

<sup>18</sup> *See, e.g., Iglesia Jesucristo Es Mi Refugio, Inc.*, Memorandum Opinion Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16310, 16319 (MB 2010) (petitioner's engineering consultant's hearsay statement, uncorroborated by independent documentation, should be given little weight because he was not a disinterested witness); *Second Samoan Congregation Church*, Letter, 23 FCC Rcd 16630, 16636 (MB 2008) (applicant's counsel's statements should be given little weight because he is not a disinterested witness).