



Federal Communications Commission
Washington, D.C. 20554

March 13, 2015

In Reply Refer To:
1800B3-ATS

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Mr. Chris McMinn
City of Truth
P.O. Box 2705
Santa Rosa, CA 95405

In re: City of Truth
New LPFM, Santa Rosa, California
Facility ID Number: 197133
File Number: BNPL-20131114ATP

Ya-Ka-Ama Indian Education & Development
New LPFM, Santa Rosa, California
Facility ID Number: 195570
File Number: BNPL-20131113AXJ

Petition to Deny

Dear Counsel and Mr. McMinn:

We have before us: 1) the application of City of Truth ("City") for a new LPFM station at Santa Rosa, California ("City Application"); 2) a Petition to Deny to the City Application ("Petition") filed by Ya-Ka-Ama Indian Education & Development ("YKA"); and 3) the application of YKA for a new LPFM station at Santa Rosa, California ("YKA Application").¹ For the reasons set forth below, we deny the Petition and grant the City Application and the YKA Application.

Background. City and YKA filed their respective applications during the October 2013 LPFM filing window. The Media Bureau ("Bureau") determined that the two applications were mutually exclusive and identified them as LPFM MX Group 51.² On July 19, 2014, the Commission issued a Public Notice in which it identified the City Application and the YKA Application as the tentative selectees of LPFM MX Group 51, began a 30-day period for filing petitions to deny against the applications, and began 90-day periods in which both applicants could submit a time-share agreement or file major change amendments to their applications to resolve their mutual exclusivities.³

In the Petition, YKA argues that the City Application should be dismissed because: 1) City has not provided documentation showing that it is recognized as a nonprofit entity, and City not recognized as

¹ YKA filed the Petition on August 8, 2014. City filed an Opposition on September 29, 2014. YKA filed a Reply on September 29, 2014.

² *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period; CDBS Is Now Accepting Form 318 Amendments*, Public Notice, 28 FCC Rcd 16713 (MB 2013).

³ *Commission Identifies Tentative Selectees in 79 Groups of Mutually Exclusive Applications filed in the LPFM Window*, Public Notice, 29 FCC Rcd 8665 (2014) ("September Public Notice").

a 501(c)(3) entity by the Internal Revenue Service (“IRS”);⁴ 2) City’s divestiture statement does not disclose that its President, Chris McMinn, is a director of One Ministries, Inc. (“One Ministries”) and does not identify every broadcast interest held by One Ministries;⁵ 3) City does not “sufficiently identify any programming intended to advance its educational objective;”⁶ and 4) City’s failure to “document its nonprofit status,” “sufficiently identify programming intended to promote its educational objective,” and “failure to divulge Mr. McMinn’s role as Director of One Ministries, Inc., or proffer a full divest pledge, raises serious questions regarding the stability, integrity and character of City.”⁷

In the Opposition, City argues that: 1) the Petition is defective because it is not supported by an affidavit or declaration of a party with personal knowledge of the facts alleged, but only by a declaration signed by YKA’s counsel, Alan Korn;⁸ 2) it is not required to demonstrate that it is recognized by the IRS as a 501(c)(3) entity and is a nonprofit entity under California law;⁹ 3) the Divestiture Statement should be read as including all interests held by One Ministries;¹⁰ 4) its Educational Program is sufficient and that its religious nature is protected by the First Amendment to the United States Constitution;¹¹ and 5) that it cannot be found to lack character qualifications to hold an LPFM license based on nothing more than a possible misunderstanding of the Commission’s requirements for LPFM applicants.¹²

In the Reply, YKA argues that: 1) the Opposition should be disregarded because it is untimely and not supported by an affidavit or signed declaration;¹³ 2) the burden was on City to identify all of the interests One Ministries holds;¹⁴ 3) City has still failed to provide documentation demonstrating its nonprofit status;¹⁵ and 4) City’s religious nature does not exempt it from being required to provide a detailed description of its proposed programming.¹⁶

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended, petitions to deny must provide properly supported allegations of fact that, if true, would establish a

⁴ Petition at 1-2. City provided a printout from the California Secretary of State which indicates that City is an active corporation in the state, but does state whether City is recognized as a nonprofit entity. *See* City Application at Attachment 10.

⁵ *Id.* at 2-3. *See also* City Application at Exhibit 5 (stating “Chris McMinn has served as the treasurer of One Ministries, Inc., which has other broadcast interests in including non-commercial FM station KORB in Hopland, CA. Chris will divest of such interest prior to the commencement of operations of this proposed LPFM station.”) (“Divestiture Statement”).

⁶ Petition at 3. *See also* City Application at Exhibit 2 (“Educational Program”).

⁷ Petition at 4-5.

⁸ Opposition at 1.

⁹ *Id.*

¹⁰ Opposition at 2.

¹¹ *Id.* at 2. *See also* U.S. CONST. amend. I.

¹² Opposition at 2.

¹³ Reply at 1-2.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.¹⁷ We find that the Petition fails to meet this burden.

Eligibility. The Commission's Rules ("Rules") provide that an LPFM station may be licensed to a nonprofit educational organization for the advancement of an educational program.¹⁸ An applicant "must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation. Applicants that fail to provide these materials are subject to dismissal."¹⁹ As YKA notes, only the California State Franchise Tax Board ("FTB") may make a determination whether a California corporation is recognized as a nonprofit entity.²⁰ The staff has reviewed the records of the FTB, which indicate that City is recognized by the FTB as a nonprofit entity.²¹ Accordingly, we find no merit in YKA's argument.²²

Divestiture Pledge. Section 73.860(d) of the Rules provides that "a party with an attributable interest in a broadcast station must divest such interest prior to commencement of operations of the LPFM station in which the also holds an interest."²³ The Instructions to FCC Form 318 state that such a party must "submit an explanatory exhibit identifying the broadcast station or other media outlet in which the applicant (or the party to the application) holds an attributable interest and setting forth the applicant's (or party's) intention to divest such interest."²⁴ We find that the Divestiture Statement: 1) identified McMinn's attributable interest in One Ministries and its "other broadcast interests" and 2) demonstrated that McMinn will divest himself of his interest in One Ministries.²⁵ Moreover, we will condition the grant of the City Application on McMinn's divestment of those interests pursuant to Section 73.860(d).

Educational Statement. We reject YKA's subjective determination that the Educational Program is inadequate. YKA cites no authority indicating what constitutes an acceptable narrative, and fails to show that the City Application does not satisfy Section 73.503 of the Rules.²⁶

¹⁷ 47 U.S.C. § 309(d). We reject City's assertion that the Petition is invalid because it is only supported by a declaration from YKA's counsel, Alan Korn, and not by an affidavit or declaration "of a party with personal knowledge of the facts alleged." Section 309(d)(1) does not specifically make such a requirement. 47 U.S.C. § 309(d)(1) ("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.")

¹⁸ 47 C.F.R. § 73.853(a). *See also* *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213 (2000) ("having decided to establish LPFM as a noncommercial service, we will require that LPFM licensees comply with the eligibility requirements of [47 U.S.C. § 397(6)(A)].").

¹⁹ Instructions to FCC Form 318, Section II, Question 2, Subsection 2(a).

²⁰ Petition at 2.

²¹ https://www.ftb.ca.gov/businesses/Exempt_organizations/Entity_list.shtml.

²² We reject YKA's argument that City should be found ineligible to hold an LPFM license because it is not recognized by the IRS as a 501(c)(3) tax-exempt entity. The Commission has never required IRS recognition as a tax-exempt organization for any noncommercial or LPFM applicant, and YKA cites no authority to support its position. *See* 47 C.F.R. § 73.801, incorporating by reference certain other rules, including 47 C.F.R. § 73.503.

²³ 47 C.F.R. § 73.860(d).

²⁴ Instructions to FCC Form 318, Question 5(b).

²⁵ *See* Divestiture Statement. The statement indicated that One Ministries held multiple broadcast interests. Moreover, as YKA has helpfully demonstrated, a full listing of One Ministries' broadcasting interests is easily accessible. *See* File Nos. BOA-20130729ABL, BOA-20131030AAL, and BOS-20140627ABX. The ownership reports are available at https://licensing.fcc.gov/prod/cdbs/pubacc/prod/own_search.htm.

²⁶ *See* 47 C.F.R. § 73.801, incorporating by reference certain other rules, including 47 C.F.R. § 73.503.

Character Allegations. YKA has failed to show that City violated any Rules or made any misrepresentations in the City Application. We thus reject YKA's argument that City has demonstrated a lack of fitness of character to hold an LPFM license. Accordingly, we will deny the Petition.

Involuntary Time-sharing. The *September Public Notice* provided City and YKA 90 days in which to reach a voluntary time-sharing agreement.²⁷ Because they have not filed such an agreement, we will grant their applications pursuant to the involuntary time-sharing procedures set forth in Section 73.872(d).²⁸

Accordingly, subject to a complete regulatory review, we intend to simultaneously grant the applications, assigning an equal number of hours per week to operate the proposed station to each applicant.²⁹ We will determine the hours assigned to each applicant by first assigning hours to the applicant that has been local for the longest uninterrupted period of time,³⁰ then assigning hours to the applicant that has been local for the next longest uninterrupted period of time. YKA has been established since 1971, while City has been established since 1989.³¹ YKA thus is the longest established applicant.

To clarify, we are providing the applicants thirty (30) days to simultaneously and confidentially submit their preferred time slots. We will use the information provided by the applicants to assign time slots, per the Rules.³² During this 30 day period, we will continue to entertain voluntary time-sharing arrangements. Applicants that are unable or unwilling to submit voluntary time-sharing arrangements and that instead choose to CONFIDENTIALLY submit their preferred time slots MUST select one of the time slots described in note 32, below.

Action on the applications will be deferred for thirty days from the date of this letter to permit the applicants to respond. Any time-share agreements must be submitted in writing, as an amendment to one or more of the applications (with a copy to the email addresses listed below), signed by each applicant, and satisfy the following requirements: (1) the agreement must include all applicants captioned on this letter; (2) the proposal must specify the proposed hours of operation of each time-share proponent; (3) the proposal must not include simultaneous operation of the time-share proponents; and (4) each time-share proponent must propose to operate for at least 10 hours per week.³³ Any confidential requests for preferred time slots must be emailed to: gary.loehrs@fcc.gov and james.bradshaw@fcc.gov.³⁴ Failure to designate a preferred time slot, or failure to designate a time slot provided by the rules, will result in the staff selecting a time slot for the applicant.

²⁷ *September Public Notice*, 29 FCC Rcd at 8668. See also 47 C.F.R. § 73.872(c).

²⁸ 47 C.F.R. § 73.872(d).

²⁹ 47 C.F.R. § 73.872(d)(2); see also Instructions to FCC Form 318, Section IV at 9; *Creation of a Low Power Radio Service, Fifth Order on Reconsideration and Sixth Report and Order*, 27 FCC Rcd 15402, 15475 (2012).

³⁰ 47 C.F.R. § 73.853(b), FCC Form 318, Section IV, Question 1 (requiring applicants to provide the date on which the applicant qualified as local).

³¹ YKA Application at Attachment 10 and City Application at Attachment 10.

³² 47 C.F.R. § 73.872(d)(2). Here, where there are only two tied, grantable applications, the applicants must select between the following 12-hour time slots: 3 a.m.-2:59 p.m., or 3 p.m.-2:59 a.m.


³³ 47 C.F.R. § 73.872(c)(1)(i) – (iii). The agreement can only be modified if all of the parties submit a written agreement, signed by each party, to the Commission, Attention: Audio Division, prior to the change.

³⁴ Any such email may not contain additional information that would violate the Commission's *ex parte* rules, §§ 1.1200 *et seq.*

Interlocutory Appeals. Finally, we remind the applicants that a petition for reconsideration of this letter would be procedurally improper. Section 1.106(a)(1) of the Rules specifically prohibits petitions for reconsideration of interlocutory actions.³⁵ This letter takes no action on either the City Application or the YKA Application and is therefore an interlocutory action.³⁶ Accordingly, while those applications remain pending, we will dismiss any petition for reconsideration filed with respect to this letter.³⁷

Conclusion. Accordingly, IT IS ORDERED that the Petition to Deny filed on August 8, 2014, by Ya-Ka-Ama Indian Education & Development IS DENIED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" with a stylized flourish at the end.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Ya-Ka-Ama Indian Education & Development

³⁵ 47 C.F.R. §1.106(a)(1) (prohibiting petitions for reconsideration of interlocutory actions).

³⁶ See *Bennett v. Spear*, 520 US 154, 178 (1977) (holding an agency's action is final and reviewable only if, *inter alia*, it "mark[s] the 'consummation' of the agency's decision making process - it must not be of a merely tentative or interlocutory nature.") (internal quotes and cites omitted).

³⁷ See *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007) (dismissing petition for reconsideration filed against interlocutory order).