



**Federal Communications Commission  
Washington, D.C. 20554**

April 10, 2015

*In Reply Refer To:*  
1800B3-ATS

Mr. Robert Bowers  
Living Free in Christ Church, Inc.  
200 Grove Boulevard  
Merritt Island, FL 32953

Mr. Wade Gordon  
113 Highland Street  
Cocoa, FL 32922

Mr. Bryan Moore  
East Coast Christian Center, Inc.  
670 N. Courtenay Parkway  
Merritt Island, FL 32953

Mr. James R. Rucker  
Rockledge Church of Christ  
2390 S Fiske Boulevard  
Rockledge, FL 32956

In re: LPFM MX Group 85

East Coast Christian Center, Inc.  
New LPFM, Merritt Island, Florida  
Facility ID Number: 194024  
File Number: BNPL-20131113AUL

Rockledge Church of Christ  
New LPFM, Largo, Florida  
Facility ID Number: 194798  
File Number: BNPL-20131104AAK

**Informal Objections**

Dear Messrs. Bowers, Gordon, Moore, and Rucker:

We have before us: 1) the applications of East Coast Christian Center, Inc. ("East Coast") and Rockledge Church of Christ ("Rockledge") for construction permits for new LPFM stations at Merritt Island, Florida, and Rockledge, Florida ("East Coast Application" and "Rockledge Application," respectively); and 2) three Informal Objections to the East Coast Application filed by Living Free in Christ Church, Inc. ("Living Free") and Wade Gordon ("Gordon") ("Living Free Objection," "First Gordon Objection," and "Second Gordon Objection," respectively).<sup>1</sup> For the reasons set for below, we deny the Living Free Objection, the First Gordon Objection, and the Second Gordon Objection, and begin a 30-day period for East Coast and Rockledge to file a time-share agreement.

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<sup>1</sup> The Living Free Objection was filed on January 30, 2015. The First Gordon Objection was filed on March 20, 2015. The First Gordon Objection is identical to the Living Free Objection. The Second Gordon Objection was filed on March 23, 2015. East Coast filed an Opposition on March 30, 2015.

**Background.** East Coast and Rockledge filed their respective applications during the October 2013 LPFM filing window. The Media Bureau (“Bureau”) determined that the East Coast Application, the Rockledge Application, and three others applications were mutually exclusive and identified them as LPFM MX Group 85.<sup>2</sup> On December 23, 2014, the Commission issued a Public Notice in which it identified all five applications as the tentative selectees of LPFM MX Group 85 on a time-share basis, began a 30-day period for filing petitions to deny against the applications, and began 90-day periods in which all applicants could file major change amendments to their applications to resolve their mutual exclusivities.<sup>3</sup> The other applicants in LPFM MX Group 85 filed amendments to become singletons during this period, which resulted in the East Coast Application and the Rockledge Application being the only remaining mutually exclusive applications in this group.

The Living Free Objection and the First Gordon Objection both allege that for the past three years East Coast has broadcasted Christmas music on 89.7 FM during the Christmas season without a license.<sup>4</sup> The objections allege that East Coast advertised this broadcast on a sign outside their church and signs located around the community.<sup>5</sup> The objections further allege that the broadcasts could be heard at least 3 miles away.<sup>6</sup> The Second Gordon Objection describes a meeting that took place on March 19, 2015, in which Gordon states that Raymond Goolsby, a member of East Coast’s board, “started calling [him] names” and “said he was going to ruin [Gordon] and take away [his] work with [Living Free].”<sup>7</sup> Gordon also states that he was fired from Living Free after the meeting.<sup>8</sup>

In the Opposition, East Coast indicates that it used a “micropower-transmitting device [that] was permitted for unlicensed operation. The coverage of the signal was such that it was not intended to leave the church property.”<sup>9</sup> East Coast further notes that the Living Free Objection and First Gordon Objection do not provide any details about the transmissions allegedly heard 3 miles from its church, and that during the Christmas season many stations play similar music.<sup>10</sup> East Coast also states that Gordon filed the Living Free Objection, but was not authorized by Living Free to do so. Finally, East Coast states that the meeting Gordon described was called by East Coast and Living Free to request that Gordon retract the Living Free Objection and surrender control of Living Free’s account with the Commission’s electronic database, CDBS.<sup>11</sup>

**Discussion.** Pursuant to Section 309(d) of the Communications Act, as amended (“Act”), informal objections, like petitions to deny, must provide properly supported allegations of fact that, if

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<sup>2</sup> *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).

<sup>3</sup> *Commission Identifies Tentative Selectees in 96 Groups of Mutually Exclusive Applications filed in the LPFM Window*, Public Notice, 29 FCC Rcd 16408 (2014).

<sup>4</sup> Living Free Objection and First Gordon Objection at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Second Gordon Objection at 1.

<sup>8</sup> *Id.*

<sup>9</sup> Opposition at 1-2.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 5.

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>

Section 632(a)(1)(B) of the Making Appropriations for the Government of the District of Columbia for Fiscal Year 2001 Act provides that the Commission must “prohibit any applicant from obtaining a low power FM license if the applicant has engaged in any manner in the unlicensed operation of any station in violation of Section 301 [of the Act].”<sup>13</sup> We find that the Living Free Objection and the First Gordon Objection fail to demonstrate that East Coast engaged in such conduct. It is apparent that East Coast was broadcasting its Christmas music pursuant to Part 15 of the Commission’s Rules (“Rules”), which permits certain unlicensed broadcasting.<sup>14</sup> The Commission has held that such operations do not render an applicant ineligible to hold an LPFM license.<sup>15</sup> Additionally, the accounts of transmissions being heard outside of the East Coast property are hearsay, and the objections provide no support for these allegations.<sup>16</sup> We will thus deny both the Living Free Objection and the First Gordon Objection.

We likewise find the Second Gordon Objection without merit. Gordon does not describe any civil or criminal misconduct, or any violations of the Act, the Rules, or Commission policies. Accordingly, we find that the Second Gordon Objection fails to present a substantial and material question of fact with respect to the qualifications of East Coast.<sup>17</sup> We will thus deny the Second Gordon Objection.

*Involuntary Time-sharing.* The *September Public Notice* provided 90 days for the remaining tentative selectees in LPFM MX Group 85 to reach a voluntary time-sharing agreement.<sup>18</sup> Because East Coast and Rockledge have not filed an acceptable agreement, we will grant the applications pursuant to the involuntary time-sharing procedures set forth in Section 73.872(d).<sup>19</sup>

We first identify which of the two remaining tied applicants that have been local<sup>20</sup> for the longest uninterrupted periods of time.<sup>21</sup> Rockledge has been established since 1980 and East Coast since 1985.<sup>22</sup> The

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<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> See Pub. L. No. 106-553, 114 Stat. 2762 (2000) (“Appropriations Act”). See also *Ruggiero v. FCC*, 278 F.3d 1323 (D.C. Cir. 2002), *rev'd en banc*, 317 F.3d 239 (D.C. Cir. 2003).

<sup>14</sup> See *Permitted Forms of Low Power Broadcast Operation*, Public Notice, Mimeo No. 14089 (July 24, 2001)

<sup>15</sup> *Casa de Oracion Getsemani*, Letter, 23 FCC Rcd 4118, 4125 (2008).

<sup>16</sup> Declarations that rely on hearsay are inadequate to support an informal objection. See, e.g., *Excellence in Education Network*, Memorandum Opinion and Order, 8 FCC Rcd 6269, 6272 n.9 (1993) (“an affidavit of a party attesting to another person's assertions . . . is hearsay and as such has no probative value under Section 309(d)”).

<sup>17</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, Report and Order and Policy Statement, 102 FCC 2d 1205 (1986) (*subsequent history omitted*).

<sup>18</sup> *September Public Notice*, 29 FCC Rcd at 8668. See also 47 C.F.R. § 73.872(c).

<sup>19</sup> 47 C.F.R. § 73.872(d); 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).

<sup>20</sup> See 47 C.F.R. § 73.853(b).

<sup>21</sup> 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).

Commission will thus, subject to a complete regulatory review, simultaneously grant the applications, assigning an equal number of hours per week to operate the proposed station to the two remaining applicants in LPFM MX Group 85 by first assigning hours to Rockledge and then to East Coast.

To clarify, we are providing the applicants thirty (30) days to simultaneously and confidentially submit their preferred time slots. Each applicant must certify that it did not collude with any other applicant in submitting its preference. We will use the information provided by the applicants to assign time slots, per the Rules.<sup>23</sup> 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 23, below. Any confidential requests for preferred time slots must be emailed to: gary.loehrs@fcc.gov and james.bradshaw@fcc.gov.<sup>24</sup> Failure to designate a preferred time slot, failure to designate a time slot provided by the Rules, or failure to certify under penalty of perjury that the applicant did not collude with another other applicant in submitting its preference, will result in the Bureau selecting a time slot for the applicant.

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.<sup>25</sup>

*Interlocutory Appeals.* Finally, we remind the parties that a petition for reconsideration of this letter as it pertains to the East Coast Application or the Rockledge Application would be procedurally improper. Section 1.106(a)(1) of the Rules specifically prohibits petitions for reconsideration of interlocutory actions.<sup>26</sup> This letter takes no action on the East Coast Application or the Rockledge Application and is therefore an interlocutory action with regard to those applications.<sup>27</sup> Accordingly, while those applications remain pending, we will dismiss any petition for reconsideration filed with respect to this letter.<sup>28</sup>

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<sup>22</sup> See Rockledge Application at Section IV, Question 1 and Attachment 10; East Coast Application at Section IV, Question 1 and Attachment 10.

<sup>23</sup> 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. If there are conflicting preferences, the Bureau will apply the provisions of 47 C.F.R. § 73.872(d)(2).

<sup>24</sup> Any such email may not contain additional information that would violate the Commission's *ex parte* rules, §§ 1.1200 *et seq.*

<sup>25</sup> 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.

<sup>26</sup> 47 C.F.R. § 1.106(a)(1) (prohibiting petitions for reconsideration of interlocutory actions).

<sup>27</sup> 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).

<sup>28</sup> See *Patrick J. Vaughn, Esq.*, Letter, 22 FCC Rcd 11165 (MB 2007) (dismissing petition for reconsideration filed against interlocutory order).

**Conclusion.** Accordingly, IT IS ORDERED the Informal Objection filed by Living Free in Christ Church, Inc., on January 30, 2015, and the Informal Objections filed by Wayne Gordon on March 20, 2015, and March 23, 2015, ARE DENIED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by the initials "HH".

Peter H. Doyle  
Chief, Audio Division  
Media Bureau