

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

2015 JAN 30 A 9:13

In the Matter of	)	
	)	
Public Media of New England, Inc.	)	File No.: BNPL-20131113AKZ
	)	
Application for New Low Power FM	)	Facility Id: 193811
Station at Haverhill, Massachusetts	)	<b>Accepted / Filed</b>

To: The Secretary

JAN 29 2015

Attn: The Commission

Federal Communications Commission  
Office of the Secretary

**OPPOSITION TO  
APPLICATION FOR REVIEW**

Public Media of New England, Inc. (“Public Media”), by its attorneys and pursuant to Section 1.115 of the Commission’s rules, hereby submits this Opposition to the Application for Review filed by Boston Radio Association (the “Association”) on January 14, 2015, with regard to Public Media’s above-captioned application for construction permit for a new Low-Power FM (LPFM) station to serve Haverhill, Massachusetts (the “Application”).<sup>1</sup>

The Application for Review must be dismissed for several reasons. First, the Association failed to serve a copy of the Application for Review on Public Media or its counsel. Public Media became aware of the Application for Review on January 25, 2015, during a routine check of the FCC’s database. Further, the Association lacks standing to submit the Application for Review. In particular, the Association has failed to show how the grant of Public Media’s Application adversely affects the Association. Moreover, the Association fails to verify the assertions set forth in the Application for Review.

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<sup>1</sup> The Application for Review was submitted on January 14, 2015. Pursuant to Section 1.115(f) of the Commission’s rules, Public Media is afforded 15 days to submit its Opposition. Therefore, this Opposition is timely filed.

Finally, even if each of the above-stated procedural errors is ignored, the Association's factual basis for its Application for Review is simply incorrect. Public Media is not a pirate radio operator and the facility it currently operates is in full compliance with Part 15 of the Commission's rules. Other than merely repeating the arguments presented below, the Association has utterly failed to provide any evidence that Public Media is operating its Part 15 AM station in violation of the Commission's rules, and that Public Media is ineligible to hold a LPFM license.

### **DISCUSSION**

Section 1.115(f) of the Commission's rules requires that an application for review be served upon the parties to the proceeding. Apparently, the Application for Review was submitted through the Consolidated Database System (CDBS) on January 14, 2015. The Application for Review did not contain a certificate of service and neither Public Media nor its counsel received a service copy. The failure to serve Public Media is a fatal error and must result in the dismissal of the Application for Review.<sup>2</sup>

In addition, the Association failed to show how it would be "aggrieved" by grant of the Application. The Commission's rules require a party filing an application for review to "demonstrate a direct causal link between the challenged action and the alleged injury to the applicant, and show that the injury would be prevented or redressed by the relief requested."<sup>3</sup> The Application for Review does not meet this standard. Other than alleging (incorrectly) that Public Media is a pirate radio operator, the Association fails to demonstrate how Public Media's

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<sup>2</sup> See *Frontline Wireless*, 24 FCC Rcd 14,899 (2009) and *Thomas K. Kurian*, 22 FCC Rcd 20970 (2007). See also *D & I Electronics, Inc.*, Order, 16 FCC Rcd 15243, 15249 ¶5 (WTB PSPWD 2001).

<sup>3</sup> *Applications of WINV, Inc. and WGUL-FM, Inc. for Renewal and Assignment of License of WINV(AM), Inverness, Florida*, Memorandum Opinion and Order, 14 FCC Rcd 2032, 2033 (1998).

actions have caused any injury to the Association.<sup>4</sup> In the absence of any evidence of any injury caused by the grant of the Application, the Association's Application for Review must be dismissed.<sup>5</sup>

Moreover, the Application for Review failed to comply with Section 1.52 of the Commission's rules. The party signing the Application for Review was "Peter D'Acosta." Because Mr. D'Acosta does not indicate that he is the attorney for the Association, the Association was required to "verify the document." In this context, then, the Association was required to affirmatively state that the facts presented in the Application for Review are "accurate to the best of the principal's knowledge."<sup>6</sup> No such verification was provided and "Mr. D'Acosta" did not provide any basis for concluding he is an attorney for the Association. Therefore, the Application for Review must be dismissed.

Finally, even if the Commission were to ignore all these procedural infirmities, the underlying premise for the Application for Review is patently false. Public Media is not a pirate radio operator. The Application for Review merely restates (almost word for word) the Association's "proof" that Public Media has been operating an illegal AM station. Public Media has already provided more than sufficient evidence to establish that its Part 15 AM radio station

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<sup>4</sup> The Association also recklessly claims that the Audio Division Chief has been involved in an "extensive pattern of misconduct, conspiracy, corruption and violation of Federal Communication rules and laws." It also raises claims against entities (REC Networks, Nexus Broadcast, LLC, Smithwick & Belenduik, P.C.) that are not parties to the instant proceeding or in any way involved with the Application. In the absence of any evidence presented by the Association to support these irresponsible claims, they must be rejected.

<sup>5</sup> See *Hanford FM Radio*, 11 FCC Rcd 8509, 8511 (1996); See also *Clarke Broadcasting Corp.*, 11 FCC Rcd 3057 (1996)

<sup>6</sup> See *Water Mill and Noyack, New York*, 23 FCC Rcd 12,790 (2008). See also *In re Applications for Review of Denial of Motions for Reconsideration of Waiver Requests of Construction Period*, 15 FCC Rcd 11,354 (2000).

complies with the Commission's rules. No new evidence supporting the Association's claim was presented in the Application for Review.

In fact, the only "new" argument presented by the Association is that the Media Bureau "failed to provide a[n] order of dismissal" relating to the Association's Informal Objection.<sup>7</sup> However, the Media Bureau is not obligated to issue a published decision in response to the submission of an Informal Objection.<sup>8</sup> In light of the Association's clearly erroneous conclusion that Public Media has been operating a pirate radio station, the Media Bureau properly exercised its discretion in granting the Application without issuing a decision. Therefore the Application for Review must be dismissed.

One additional point: Public Media will mail a copy of this Opposition to the address stated and the Association's filings with the Commission. However, all prior mailings to that address have been returned to undersigned counsel by way of U.S. Postal Service as undeliverable. A representative of Public Media went to the building and found no indication of a "Boston Radio Association" or a Peter D'Acosta in the building or on the building directory. As pointed out previously in this proceeding, Public Media has undertaken extensive research and found no indication that a "Boston Radio Association" exists or even that there is a person named "Peter D'Acosta" in New England. Public Media believes that the entire series of filings with the Commission by "Boston Radio Association" are fraudulent.

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<sup>7</sup> *Application for Review*, pg. 2.

<sup>8</sup> *Declaratory Ruling*, Opinion, DA 15-108, rel. Jan. 26, 2015 ("The Commission has discretion whether or not to consider informal objections."). *See also Touchtel Corporation*, Opinion, DA 14-1891 (2014) and *DIRECTV Enterprises, LLC*, Opinion, 25 FCC Rcd 440, ¶ 5 (2010) (whether informal objections "are reviewed on the merits... is a matter of discretion.").


## CONCLUSION

Boston Radio Association failed to comply with the Commission's procedural rules when submitting the Application for Review and failed to demonstrate that it has standing to object to the grant of Public Media's application. Moreover, the Association failed to present any evidence that Public Media's fully-compliant Part 15 AM radio station should be treated as a "pirate" radio station. Simply put, the Application for Review fails both on procedural and factual grounds to support its requested action.

Therefore, Public Media respectfully requests that the Commission dismiss the Association's Application for Review.

Respectfully submitted,

**PUBLIC MEDIA OF  
NEW ENGLAND, INC.**

By:   
Howard M. Liberman  
Lee G. Petro  
**DRINKER BIDDLE & REATH LLP**  
1500 K Street N.W., Suite 1100  
Washington, DC 20005-1209  
(202) 842-8800  
(202) 842-8465 (fax)

Its Attorneys

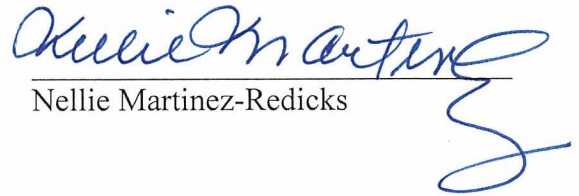
January 29, 2015

**CERTIFICATE OF SERVICE**

I, Nellie Martinez-Redicks, a Secretary with Drinker Biddle & Reath, LLP, hereby certify that on this 29th day of January 29, 2015, I caused a copy of the foregoing **Opposition to Application for Review** to be served by first-class mail, postage prepaid to the following:

Peter D'Acosta  
Boston Radio Association  
421 Merrimack Street  
Methuen, MA 01844

By:

  
Nellie Martinez-Redicks