



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
1800B3-ATS

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In re: The Community Advisory Coalition of
Ventura County
New LPFM, Oxnard, California
Facility ID No. 195126
BNPL-20131113AKO

Petition to Deny

Dear Counsel:

We have before us: 1) the application of The Community Advisory Coalition of Ventura County for a construction permit for a new LPFM station at Oxnard, California (“Community Application”); and 2) the Petition to Deny (“Petition”) the Community Application filed by La Iglesia Cristiana de Oxnard (“Iglesia”).¹ For the reasons set forth below, we treat the Petition as an informal objection, deny it and grant the Community Application.

Background. Community filed the Community Application during the 2013 LPFM filing window. The Media Bureau (“Bureau”) determined that the Community Application and the applications filed by Iglesia, Centro Evangelico Emmanuel, Inc. (“Centro”), and County of Ventura (“Ventura”) were mutually exclusive and identified them as LPFM MX Group 45.² On July 9, 2014, the Commission identified the Community Application as the tentative selectee of LPFM MX Group 45 and began a 30-day period for filing petitions to deny against the application, and 90-day periods in which the applicants could file major change amendments in order to resolve their mutual exclusivities.³

In the Application, Community identified six board members: Byron K. Ward, Don Montgomery, Vernell Davis, Alonzo McCowan, Vincent Stewart, and John R. Hatcher III.⁴ Community answered “Yes” to Section II, Question 7 of FCC Form 318, which asks applicants to certify that:

¹ The Petition was filed on August 18, 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; Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments* Public Notice, 29 FCC Rcd 8665 (2014) (“*July Public Notice*”). Iglesia, Centro, and Ventura all filed amendments that resulted in their respective applications becoming singletons.

⁴ Application at Section II, Question 3.a.

no adverse finding has been made and no adverse final action has been taken by any court . . . as to the applicant, [or] any party to this application . . . in a civil or criminal proceeding brought under the provisions of any law related to the following: any felony; mass media related antitrust or unfair competition; fraudulent statements to another governmental unit; or discrimination.⁵

In the Petition, Iglesia argues that Community lacks the character qualifications to hold a Commission license because Alonzo McCowan is a convicted felon.⁶ Specifically, Iglesia states that McCowan pleaded guilty to three felony charges in 2011.⁷ Iglesia argues that Community falsely certified “Yes” to Section II, Question 7 in the Community Application because the members of Community’s board should have known about McCowan’s conviction from the local press coverage.⁸ Accordingly, Iglesia requests the dismissal of the Community Application.

Community did not file an opposition to the Petition within the 10-day period provided by Section 1.45 of the Commission’s Rules (“Rules”).⁹ On May 8, 2015, the Bureau sent a Letter of Inquiry (“LOI”) to Community instructing it to respond to the allegations raised in the Petition and to provide a list of its board members both at the time of the filing of the Application and as of the date of its response to the LOI.¹⁰

Community submitted a response to the LOI on July 21, 2015 (“Response”). In the Response, Community states that its “Board members were generally aware that McCowan had experienced legal troubles in the past, but were unaware of its exact technical nature.”¹¹ Moreover, Community states that McCowan resigned from its board on August 20, 2014, two days after the filing of the Petition.¹² Finally, Community explains that its board members “who examined the [Community] Application closely read

⁵ Application at Section II, Question 7.

⁶ Petition at 1.

⁷ *Id.* at 2-5 (charges of theft of real property from an elder, money laundering, and grand theft).

⁸ *Id.* at 5-8

⁹ 47 C.F.R. § 1.45(b).

¹⁰ *The Community Advisory Coalition of Ventura County*, Letter, 1800B3-ATS (MB May 8, 2015).

¹¹ Response at 6. *See also* Response at Exhibit 3, Declaration of Byron K. Ward (“I had known of [McCowan] prior to 2010 and had heard something about his legal troubles, but I had not followed them closer in the media. . . . it was my understanding that his legal difficulties were behind him.”); Response at Exhibit 4, Declaration of Donald W. Montgomery (“I had read in the press about [McCowan]’s legal troubles and understood that some kind of plea deal had been made. . . . it was my belief that his legal difficulties were behind him.”); Response at Exhibit 5, Declaration of Vernell J. Davis (“I had read about [McCowan]’s legal troubles in the newspapers but understood that they were behind him by the time he joined the Board in 2013.”); Response at Exhibit 6, Declaration of John R. Hatcher III (“I became aware of [McCowan]’s legal troubles when he approached me to ask for assistance in his defense. It was my understanding that [McCowan]’s legal troubles were over by the time he joined the Board, in July 2013”); Response at Exhibit 7, Declaration of Vincent R. Stewart (“I heard about [McCowan]’s legal troubles at the time they began in 2009, but because of my relationship to local law enforcement I did not follow them and never discussed them [McCowan]. It was, however, my understanding that [McCowan]’s legal troubles were behind him when he joined the Board in July 2013.”).

¹² Response at 7. The Response includes a letter from McCowan, dated August 20, 2014, in which he resigns his position on Community’s board. *See* Response at Exhibit 11. The Response further indicates that – aside from McCowan – two of its original Board members – Davis and Hatcher – have been replaced. *See* Response at Exhibit 1 and Exhibit 2. On August 3, 2015, Community filed an amendment to the Application to reflect the new composition of the Board.

its Question 7 in Section as inquiring as to felony convictions involving the classes of offences listed immediately thereafter (i.e., mass media, antitrust, unfair competition, fraud on government units, or discrimination)” and “were not aware that they were certifying to a lack of any felony conviction and in several cases did not understand the Application to be asking about felony convictions at all.”¹³

Discussion. The *July Public Notice*, released on July 9, 2014, stated that it was beginning a “30-day period from release of the Public Notice for the filing of petitions to deny.”¹⁴ Accordingly, a petition to deny the Community Application would have been due on Friday, August 8, 2014. The Petition was filed ten days afterwards. We will thus treat it as an informal objection. Pursuant to Section 309(d) of the Communications Act of 1934, as amended, 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.¹⁵

The question of whether McCowan’s criminal record reflects on Community’s character to hold a Commission license is moot because he has resigned from Community’s board.¹⁶ However, we will admonish Community for making a false certification in the Community Application. Section 1.17(a)(2) of the Rules provides that no person may provide, in written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”¹⁷ Thus, even in the absence of an intent to deceive, a false statement provided without a reasonable basis for believing that the statement is correct and not misleading constitutes an actionable violation of Section 1.17 of the Rules.¹⁸

Although several board members argue that they misunderstood Section II, Question 7, a plain reading of the question reveals that an applicant must disclose *any* felony convictions.¹⁹ Moreover, the board members were aware of McCowan’s legal history, but failed to conduct a basic inquiry into whether it was relevant to the Community Application. Accordingly, Community falsely certified that no adverse finding had been made to any party to the Application. However, the record does not show that Community intended to deceive the Commission, but rather that Community was inexperienced with

¹³ Response at 4, 7. The Declarations of Ward, Montgomery, Davis, Hatcher, and Stewart all contains similar statements that the declarants were not aware that Section II, Question 7 required disclosures of *all* felonies.

¹⁴ *July Public Notice*, 29 FCC Rcd at 8669.

¹⁵ 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).

¹⁶ *See, e.g., Wings Communications, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 5171, 5175 (MB 2014) (issue of whether licensee’s sole-shareholder’s felony convictions reflected on licensee’s character to hold a Commission license became moot when licensee agreed to donate license to nonprofit organization for no consideration).

¹⁷ 47 C.F.R. § 1.17(a)(2).

¹⁸ *See Amendment of Section 1.17*, 18 FCC Rcd 4016, 4017(2003) (stating that the revision to Section 1.17 of the Rules is intended to “prohibit incorrect statements of omissions that are the results of negligence, as well as an intent to deceive”).

¹⁹ Application at Section II, Question 7.

FCC Form 318 and was careless in preparing it. Consequently, we will admonish Community for making a false certification in violation of Section 1.17(a)(2) of the Rules.²⁰

Conclusion. Accordingly, IT IS ORDERED the Petition to Deny filed by La Iglesia Cristiana de Oxnard on August 18, 2014, treated as an Informal Objection, IS DENIED.

IT IS FURTHER ORDERED that The Community Advocacy Coalition of Ventura Country is hereby ADMONISHED for its violation of 47 C.F.R. § 1.17(a)(2) of the Commission's Rules.

IT IS FURTHER ORDERED that the application of The Community Advisory Coalition of Ventura County (BNPL-20131113AKO) for a new LPFM station at Oxnard, California, IS GRANTED.

Sincerely,

Handwritten signature of Peter H. Doyle in blue ink.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mr. Byron K. Ward
The Community Advisory Coalition of Ventura County
450 N. K Street, Room 213
P.O. Box 5383
Oxnard, CA 93031

²⁰ See, e.g., *White Park Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 3549, 3568-69 (MB 2009) (admonishing applicant for false certifications in violation of Section 1.17(a)(2)).