



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
1800B3-HOD

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In Re: **Razorcake/Gorsky Press, Inc.**
New LPFM Station, Pasadena, CA
Facility ID No. 195577
File No. BNPL-20131114AXZ

**Informal Objection
Petition to Deny
Waiver Requests**

Dear Sirs:

We have before us the above-referenced application (Application) filed by Razorcake/Gorsky Press, Inc. (Razorcake) for a new low power FM (LPFM) station at Pasadena, California. The Application was filed during the 2013 LPFM filing window and was included in LPFM MX Group 58 along with three other applications for new LPFM stations. Also before us are pleadings filed by Educational Media Foundation (EMF) opposing the Application.¹ Finally, we have before us a Joint Request for Approval of Settlement filed by Razorcake and the three other applicants from LPFM MX

¹ EMF filed a Request for Clarification of LPFM Second-Adjacent Channel Waiver Interference Standard (Objection) on May 23, 2014. Promethus Radio Project and REC Networks each opposed the Objection. Promethus Radio Project's Response to Educational Media Foundation's Request for Clarification of Second-Adjacent Channel Waiver Interference Standard (dated June 3, 2014) (Promethus Opposition); REC Networks, Opposition to Educational Media Foundation (dated July 14 2014). EMF replied to the Promethus Opposition. EMF, Reply to Opposition to Request for Clarification of LPFM Second-Adjacent Channel Waiver Interference Standard (dated June 17, 2014). Subsequently, EMF filed a Consolidated Petition to Deny (Petition) on August 8, 2014. Razorcake opposed the Petition and EMF filed a reply. Razorcake, Opposition to Consolidated Petition to Deny (dated August 28, 2014) (Razorcake Opposition); EMF, Reply to Opposition to Consolidated Petition to Deny (dated Sept. 17, 2014).

Group 58.² For the reasons set forth herein, we find no merit to and deny EMF's pleadings, approve the settlement and grant the Application.

Background. Razorcake submitted the Application during the most recent LPFM filing window. We determined the Application was mutually exclusive with three other applications and designated all four of these applications LPFM MX Group 58.³ The Commission subsequently conducted a point hearing and determined that Razorcake and the other three applicants in LPFM MX Group 58 were tied. Accordingly, it identified the four applicants as the tentative selectees for that group.⁴

EMF objected to the Application both prior to and after its designation as one of the tentative selectees in LPFM MX Group 58.⁵ EMF is the licensee of KYLA(FM), Fountain Valley, California, which is co-channel to Razorcake's proposed LPFM station. EMF urges us to dismiss the Application, which includes a request for waiver of the second-adjacent channel spacing requirements set forth in Section 73.807 of the Commission's rules (Rules) (second-adjacent waiver).⁶ According to EMF, the proposed LPFM station will cause interference to KYLA(FM) and thus does not satisfy the standard for second-adjacent waivers. EMF also asserts that Razorcake failed to demonstrate that it is a local applicant as required under Section 73.853(b) of the Rules.⁷

Razorcake and the other three tentative selectees in LPFM MX Group 58 have entered into a Settlement Agreement. The Settlement Agreement contemplates grant of the Application after dismissal of the applications filed by the other three tentative selectees in LPFM MX Group 58. We dismissed these other three applications on September 24, 2014,⁸ but did not grant the Application at that time. Below, we consider EMF's pleadings, the Settlement Agreement and the Application, including the second-adjacent waiver request that accompanied it.

Discussion. *Waiver of the Second-Adjacent Channel Spacing Requirements.* Section 3(b)(2)(A) of the Local Community Radio Act of 2010 (LCRA) requires an LPFM applicant seeking a second-adjacent waiver to demonstrate that its proposed LPFM facilities "will not result in interference to any authorized radio service."⁹ Razorcake submitted an engineering exhibit along with its waiver request. The exhibit purports to demonstrate that the proposed LPFM station will not cause interference to any FM stations operating on second-adjacent channels.

² Razorcake *et al.*, Joint Request for Approval of Settlement (dated June 26, 2014).

³ *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period*, Public Notice, 28 FCC Rcd 16713 (MB 2013). The other applications were filed by Side Street Projects (File No. BNPL-20131114BCF), Newtown Pasadena Foundation (File No. BNPL-20131114BAB), and Light Bringer Project (File No. BNPL-20131114BAZ).

⁴ *Commission Identifies Tentative Selectees in 79 Groups of Mutually Exclusive Applications Filed in the LPFM Window*, Public Notice, 29 FCC Rcd 8665 (2014).

⁵ In its pleadings, EMF objected not only to the Application but to each of the applications in LPFM MX Group 58. 47 CFR § 73.807.

⁷ 47 CFR § 73.853(b).

⁸ *Broadcast Actions*, Public Notice, Report No. 48334 (MB Sept. 29, 2014). Given our dismissal of these applications, we find those portions of the EMF pleadings directed at them to be moot, *see supra* note 5, and do not consider them.

⁹ Pub. L. No. 111-371, 124 Stat. 4072 (2011).

EMF claims that the exhibit is “patently defective” because it fails to demonstrate that the proposed LPFM station will not cause co-channel interference to its station, KYLA(FM).¹⁰ To reach this conclusion, though, EMF construes Section 3(b)(2)(A) of the LCRA as requiring that an LPFM applicant seeking a second-adjacent waiver demonstrate that its proposed LPFM station “will not cause interference to any radio station, not just those operating on second-adjacent channels.”¹¹ We cannot agree with EMF’s reading of the second-adjacent waiver standard in the statute.

First, when the Commission created the LPFM service, it chose to use spacing requirements to “preserve the integrity and technical excellence of existing FM radio service.”¹² It stated that “[t]he extent of interference protection from LPFM stations to existing FM, LPFM and FM translator and booster service generally will be that afforded by minimum station separation requirements” and noted that “[t]hese were designed to provide the same degree of interference protection that full-service stations provide each other.”¹³ The LCRA did not alter the co- or first-adjacent channel spacing requirements. Second, while the LCRA authorized the Commission to waive the second-adjacent spacing requirements in some circumstances, it prohibited the Commission from waiving the co- or first-adjacent channel spacing requirements.¹⁴ Third, we find that the better, more reasonable way to construe “any authorized radio service” is to treat this language as a requirement that a waiver showing addresses all radio services, *i.e.*, all full-power, translator, booster and LPFM stations. Put another way, Section 3(b)(2)(A) requires an LPFM applicant seeking a second-adjacent waiver to demonstrate that grant of the waiver will not cause interference to any FM station in any service that operates on a second-adjacent channel to the proposed LPFM station. It does not require such an applicant to demonstrate that its proposed LPFM station—which must comply with the co- and first-adjacent channel spacing requirements—will not cause any interference to stations operating on co- or first-adjacent channels.

Our reading of Section 3(b)(2)(A) is consistent with the Commission’s construction of other sections of LCRA in which the applicability is uncertain. For instance, the Commission interpreted Sections 7(1) through (5) of the LCRA to apply only to third-adjacent channel interference.¹⁵ It did so despite the fact that “Congress did not specify the type of interference to which these provisions apply.”¹⁶ The Commission relied on the fact that, in each of the provisions at issue, Congress referred specifically to LPFM stations on third-adjacent channels or LPFM stations that do not satisfy the third-adjacent channel spacing requirements.¹⁷ Thus, it found these references “reflected] a focus on LPFM stations causing interference to stations located on third-adjacent channels.”¹⁸ Here, Section 3(b)(2)(A) is focused solely on proposed LPFM facilities that do not satisfy the second-adjacent channel spacing requirements.

¹⁰ Petition at 4-6.

¹¹ Objection at 1, 2-5; Petition at 3-4.

¹² *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2233-34 paras. 70-71 (2000) (“*LPFM Report and Order*”). In fact, the Commission incorporated a 20 km “buffer” into these requirements. *Id.* at 2234 para. 71.

¹³ *LPFM Report and Order*, 15 FCC Rcd at 2231 para. 64.

¹⁴ LCRA, § 3(b)(1) (“The Federal Communications Commission shall not amend its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation requirements in effect on the date of enhancement of this Act between – (A) low power FM stations; and (B) full-service FM stations.”).

¹⁵ *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15436 para. 95 (2012) (“*Sixth Report and Order*”).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Accordingly, it is reasonable to conclude that Congress intended that applicants seeking a second-adjacent waiver only demonstrate that their proposed LPFM facilities would not interfere with the signals of any stations operating on second-adjacent channels.¹⁹

In interpreting the LCRA, the Commission also rejected the view that Sections 7(1) and 7(3) could apply to the same LPFM station.²⁰ In doing so, the Commission noted that this would expose an LPFM station subject to the interference protection and remediation regime set forth in Section 7(1) “to different and conflicting interference protection and remediation obligations.”²¹ A similar issue would arise were we to adopt EMF’s reading of Section 3(b)(2)(A) of the LCRA. If an LPFM station satisfied the third-adjacent channel spacing requirements but operated pursuant to a second-adjacent waiver, under Section 3(b)(2)(B)(ii) of the LCRA, it would be required to “eliminate” all third-adjacent channel interference but under Section 7(3) of the LCRA it would merely need to “address” such interference. The Commission further found it was reasonable to conclude that “Congress intended to impose more stringent interference protection and remediation obligations on LPFM stations that are located nearest to full-service FM stations and, therefore, have a greater potential to cause interference.”²² According to the Commission, “[t]he LCRA provides greater flexibility by eliminating third-adjacent channel spacing requirements for LPFM stations, but counterbalances that flexibility with a prohibition on LPFM stations that would be short-spaced under such requirements causing any actual interference to other stations.”²³ This same logic applies to Section 3(b)(2) of the LCRA and supports our conclusion that Section 3(b)(2) of the LCRA applies to second-adjacent channel interference only. Nothing in the record supports the view that there is a technical justification for using a second-adjacent waiver as a trigger for greater co- or first-adjacent channel protections.

We acknowledge the Commission did not directly speak to the question of whether Section 3(b)(2) of the LCRA addresses only second-adjacent channel interference.²⁴ However, the Commission did include language in the order implementing the LCRA that lends additional support to our finding here. For instance, the Commission explained that, while applicants for second-adjacent waivers have the flexibility to propose a lower power level, antenna polarization and/or a directional antenna pattern, this

¹⁹ In its decision implementing the LCRA, the Commission did not directly address the question of whether an applicant seeking a second-adjacent waiver must show that its proposed LPFM facilities will not cause interference to any station or just second-adjacent channel stations. The Commission did, however, imply that the showing would be limited to second-adjacent channel stations. For instance, it “instruct[ed] the Media Bureau to identify specifically all potentially affected second-adjacent channel stations in the public notice that accepts for filing an application for an LPFM station that includes a request for a second-adjacent waiver.” *Sixth Report and Order*, 27 FCC Rcd at 15430 para. 79.

²⁰ Sections 7(1) and 7(3) set forth interference protection and remediation obligations that LPFM stations have with respect to third-adjacent channel stations. Section 7(1) applies to “low-power FM stations licensed at locations that do not satisfy the third-adjacent channel spacing requirements . . .” LCRA, § 7(1). It requires such LPFM stations to “eliminate” any actual interference that their operations cause to the signal of any authorized station in areas where that station’s signal is regularly used. *Id.* Section 7(3) applies to “[LPFM] stations on third-adjacent channels.” LCRA, § 7(3). It requires only that LPFM stations “address” complaints of interference within an affected station’s protected contour. *Id.*

²¹ *Sixth Report and Order*, 27 FCC Rcd at 15434 para. 88.

²² *Id.* at 15434 para. 89.

²³ *Id.* at 15434-35 para. 89.

²⁴ We note, however, that the Small Entity Compliance Guide for Low Power FM does address this question. It states that “[a]n LPFM licensee operating pursuant to a second-adjacent waiver must eliminate any *second-adjacent channel interference* caused by its operations.” *Small Entity Compliance Guide, Low Power FM*, DA 13-49 (rel. Jan. 28, 2013)

flexibility “extends only to waiver applicants seeking to demonstrate that their proposed operations will not result in any *second-adjacent channel* interference.”²⁵ Similarly, the Commission determined that it would “permit waiver applicants to show that ‘no actual interference will occur’ due to ‘lack of population’ and will allow waiver applicants to use an undesired/desired signal strength ratio methodology to define areas of potential interference when proposing to operate near another station *operating on a second-adjacent channel*.”²⁶ Likewise, the Commission required the Media Bureau to identify “all potentially affected *second-adjacent channel* stations in the public notice that accepts for filing an application for an LPFM station that includes a request for a second-adjacent waiver.”²⁷

Finally, we note that, in implementing the LCRA, the Commission did not consider whether the limited co- and first-adjacent channel interference protection rights afforded to full service FM stations under Section 73.809(a) are in conflict with the remediation requirements set forth in Section 3(b)(2)(B)(ii). Had the Commission shared EMF’s view of Section 3(b)(2) of the LCRA, it would have revised Section 73.809(a) to provide different co- and first-adjacent channel interference protection rights where an LPFM station was operating pursuant to a second-adjacent channel waiver.

Because we find that the LCRA did not alter the interference protection regime for stations operating on co- and first-adjacent channels and that an LPFM applicant seeking a second-adjacent waiver need not demonstrate that its proposed facilities will not interfere with co- or first-adjacent channel stations,²⁸ we do not consider the engineering reports that EMF proffered regarding co-channel interference.²⁹ All Razorcake must show in relation to KYLA(FM) is that its proposed LPFM station satisfies the spacing requirements set forth in Section 73.807. We have confirmed that this is the case. In addition, we have reviewed the engineering exhibit included with Razorcake’s waiver request and conclude that its proposed LPFM station will not cause interference to any FM station operating on a second-adjacent channel to their proposed LPFM stations. Accordingly, we will waive the second-adjacent channel spacing requirements.³⁰

Finally, we reject EMF’s argument that the framework for handling interference complaints set forth in Section 3(b)(2)(B) of the LCRA—and Section 73.807(e)(2) of the Rules, which implements that section of the LCRA—apply not just to complaints of second-adjacent channel interference but to

²⁵ *Sixth Report and Order* at 15430 para. 80 (emphasis added).

²⁶ *Id.*, at 15429 para. 78 (emphasis added).

²⁷ *Id.* at 15430 para. 79 (emphasis added).

²⁸ We note that our reading of Section 3(b)(2) of the LCRA is consistent with the requirements set forth in Section 5 that the Commission ensure that “FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.” LCRA, § 5. Equal in status does not mean subject to identical interference protection and remediation requirements. Indeed, the LCRA itself establishes different remediation standards between FM translators and LPFM and even between classes of LPFM stations. Where Congress intended to impose identical requirements upon FM translators and LPFM stations, it specifically did so in the text of the LCRA. *See* LCRA, § 7(1) (requiring that LPFM stations that do not satisfy the third-adjacent spacing requirements provide “the same interference protections that FM translator stations and FM booster stations are required to provide as set forth in section 74.1203” of the Rules). Further, we note that LPFM stations retain the singularly defining attribute of secondary stations, *i.e.*, they have no protection against subsequently proposed or authorized full service FM facilities.

²⁹ Objection at Exh. A.

³⁰ We note that EMF also appears to argue that waiver of the second-adjacent channel spacing requirements is not justified under the Commission’s general waiver standard. Petition at 5-6. Because we find waiver is justified under the statutory waiver standard set forth in Section 3(b)(2)(A) of the LCRA, we need not address this issue.

complaints of co- and first-adjacent channel interference.³¹ As noted above, Section 3(b)(2) of the LCRA is focused on stations that do not satisfy the second-adjacent channel spacing requirements and thus are more likely to cause second-adjacent channel interference to other stations. It does not alter the interference protections for co- and first-adjacent channel stations nor does it alter the Commission's previous holding that "LPFM stations will not be required to eliminate interference caused to FM stations by their lawful operations."³²

Razorcake's Local Status. Section 73.853(b) of the Rules mandates that only local organizations may apply for and hold LPFM authorizations.³³ Razorcake certified that it qualifies as a local organization because it is physically headquartered within 10 miles of the proposed site for the transmitting antenna. EMF disputes this certification, noting that Razorcake specified a post office box as its address in the first section of the Application.³⁴ In response, Razorcake points to an exhibit to the Application, which included the organization's headquarters address, and submits a declaration that further elaborates on the existence and location of the organization's headquarters and the distance between that headquarters address and the site of the proposed LPFM station's transmitter.³⁵ We find no merit to EMF's allegation and determine that Razorcake does qualify as a local organization and thus is eligible to apply for and hold the LPFM authorization it seeks.

Settlement Agreement. Having found no merit to EMF's arguments, we turn now to the Settlement Agreement entered into by Razorcake and the other three applicants included in LPFM MX Group 58. We note at the outset that, as required, the Settlement Agreement "proposes the grant of at least one technically acceptable application within a group of mutually exclusive applications" and does not "create any new application conflicts"³⁶ We also find that the Settlement Agreement complies fully with Section 311(c) of the Act and Sections 73.872(e) and 73.3525 of the Rules, which govern settlement agreements among mutually exclusive LPFM applicants.³⁷ We conclude that grant of the Joint Request would serve the public interest. It would enable grant of the Application and, as a result, expedite the provision of new LPFM service to Pasadena, California. Moreover, grant is consistent with our statement that we "will process any settlement ... which results in our ability to grant at least one singleton application."³⁸

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that the Request for Clarification of LPFM Second-Adjacent Channel Waiver Interference Standard, and Petition to Deny filed by Educational Media Foundation on May 23, and August 8, 2014, respectively, ARE DENIED.

³¹ Petition at 6-7.

³² *LPFM Report and Order*, 15 FCC Rcd at 2231 para. 64.

³³ 47 CFR § 73.853(b).

³⁴ Petition at 7.

³⁵ Razorcake Opposition at 9 and Decl. of Todd Taylor. *See also* Application at Exh. 10.

³⁶ *Media Bureau Provides Further Guidance on the Processing of Form 318 Applications Filed in the LPFM Window*, Public Notice, 28 FCC Rcd 16366, 16367-68 (MB 2013) (*Processing Notice*).

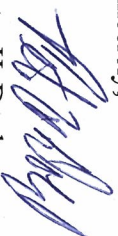
³⁷ 47 U.S.C. § 311(c); 47 C.F.R. §§ 73.872(e), 73.3525. Specifically, each of the dismissing applicants in LPFM MX Group 58 has certified that they did not file their applications for the purpose of reaching or carrying out a settlement. In addition, the Settlement Agreement specifies that "[n]o consideration is requested by dismissed applicants." Finally, each of the declarations also states that the agreement will serve the public interest by expediting the inauguration of new noncommercial LPFM service to the community of Pasadena, California, and by conserving the Commission's resources.

³⁸ *Processing Notice*, 28 FCC Rcd at 16367 n.2.

IT IS FURTHER ORDERED that the Joint Request for Approval of Settlement filed by Razorcake/Gorsky Press, Inc., Side Street Projects, Newton Pasadena Foundation, and Light Bringer Project IS GRANTED and the Settlement Agreement IS APPROVED pursuant to Section 73.872(e) of the Commission's Rules.³⁹

IT IS FURTHER ORDERED that the application for a new LPFM station at Pasadena, California, filed by Razorcake/Gorsky Press, Inc. (File No. BNPL-20131114AXZ) IS GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

³⁹ 47 CFR § 73.872(e).