



Federal Communications Commission
Washington, D.C. 20554

December 15, 2016

In Reply Refer to:
1800B3-IB

Clarence P. Landry, Jr., Chairman,
His Sanctuary Ministries USA International, Inc.
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KHSX-LP, Houston, TX
Facility ID No. 193530
File No. BNPL-20131113BQN
Petition for Reconsideration

Dear Messrs. Landry and Southmayd:

We have before us: 1) a Petition for Reconsideration by Houston Christian Broadcasters, Inc. (HCBI) of a Media Bureau (Bureau) grant of additional time for His Sanctuary Ministries USA International, Inc. (Sanctuary) to construct unbuilt Low Power FM (LPFM) station KHSX-LP, Houston, TX;¹ 2) Sanctuary's Opposition;² and 3) HCBI's Reply.³ For the reasons set forth below, we deny the Petition.

Background. The Commission provides LPFM permittees with 18 months to construct, half of the three-year period given to permittees of other broadcast stations, because it expected that LPFM stations would be simpler to construct.⁴ The Commission subsequently acknowledged, however, that it had been overly optimistic and that many LPFM permittees were experiencing difficulties requiring more time.⁵ Accordingly, the Commission amended its rules to establish that an LPFM permittee unable to complete construction within the original 18 months may, upon a showing of good cause, apply for an 18-

¹ See HCBI, Petition for Reconsideration and Request for Termination of Construction Permit at 1 (filed Sept. 7, 2016) (Petition). HCBI alleges that it has standing as a party in interest because it is the licensee of FM translator station K268CW, Houston, TX, which operates on the same channel and within the same community as KHSX-LP. *Id.* at 2. HCBI did not participate earlier, but notes that the Bureau did not issue any public notice of the extension request or its grant. *Id.* at 3, n.4. We will consider HCBI's Petition because it has adequately shown how its interests are affected and why it did not participate earlier. See 47 CFR § 1.106(b)(1).

² Sanctuary, Opposition to Petition for Reconsideration (dated Sept. 13, 2016) (Opposition).

³ HCBI, Reply (filed Sept. 28, 2016).

⁴ See 47 CFR § 73.3598(a); *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2278, para. 187 (2000) (subsequent history omitted).

⁵ See *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21927-28, para. 38 (2007) (subsequent history omitted) (*LPFM Third Report*).

month extension and thereby “bump-up” its total construction period to the three years received by other broadcasters.⁶

In the instant proceeding, the Bureau granted the KHSX-LP construction permit for an 18-month term expiring August 2, 2016. On July 28, 2016, Sanctuary requested the 18-month LPFM “bump-up” because the owner of its construction site, Crown Castle GT Company, LLC (Crown), “rescinded the tower site lease and as a result, the lease has to be re-negotiated which will require additional time.”⁷ The Bureau granted the Extension Request shortly thereafter, without letter, by updating its database to reflect a new construction deadline of February 2, 2018.

HCBI seeks reconsideration of the extension.⁸ It provides an unsworn declaration from Crown’s Vice President-Legal (Gambino Declaration) stating that Crown has no record of entering into a lease with Sanctuary.⁹ HCBI argues that the extension was unwarranted because Sanctuary: (1) never had a lease that could be rescinded as claimed; (2) never had reasonable assurance of site availability; and (3) failed to construct for reasons within its own control.¹⁰

Sanctuary devotes its Opposition to refuting HCBI’s reasonable assurance allegation. Sanctuary supplies a memo dated six days prior to Sanctuary’s original construction permit application in which Scott Montgomery, an Account Executive for Crown, confirms details of his discussion with Sanctuary about a potential tower lease, including an assurance that “We can handle the install for this”¹¹ Sanctuary also submits two e-mails written about 16 months later, on which Sanctuary was copied. In the first, Michael Augustus (who provides no title) asks Montgomery if there is a solution that would allow him to proceed pursuant to a November 1, 2013 “Reasonable Assurance Letter” from a Crown employee who had indicated that “we would be willing to enter into a lease of tower space subject to final determination of a rental rate.”¹² In a responsive message, Montgomery advises that the tower has since reached capacity due to another tenant’s upgrade of existing equipment and that “anything added to the tower would result in a mod cost.”¹³

HCBI replies that Sanctuary’s Opposition shows that Sanctuary was responsible for the delay because it knew that the tower was unavailable in March 2015, shortly after permit grant, but did nothing at that time.¹⁴ HCBI contends that Sanctuary, thus, has not met the standard for additional time, which

⁶ *Id.* at 21928, para. 40; 47 CFR § 73.3598(a).

⁷ Letter from John C. Trent, Esq., Counsel to Sanctuary, at 1 (filed July 28, 2016) (Extension Request). Sanctuary also stated that it was still in the process of raising funds to purchase equipment. *Id.*

⁸ Petition at 3.

⁹ Declaration of Monica Gambino, Vice President-Legal, Crown (August 16, 2016) (Petition, Exh. D).

¹⁰ Petition at 3-4. HCBI alleges that Sanctuary misrepresented its reasons for not constructing. *Id.* at 3-4. It suggests that Sanctuary’s failure to construct was, instead, due to “inaction, omissions . . . misfeasance, and lack of qualifications.” Reply at 4.

¹¹ Memo from Scott Montgomery, Account Executive, Crown at 1 (dated Nov. 7, 2013) (Opposition, Exh. A) (Montgomery Memo).

¹² E-mail from Michael Augustus to Scott Montgomery, Account Executive, Crown (Mar. 31, 2015, 13:15 CST) (Opposition, Exh. A) (Augustus E-mail).

¹³ E-mail from Scott Montgomery, Account Executive, Crown to Michael Augustus (Mar. 31, 2015, 13:43 CST) (Opposition, Exh. A).

¹⁴ Reply at 2.

HCBI argues is only appropriate when “rare and exceptional circumstances” beyond the permittee’s control prevent construction.¹⁵

Discussion. Reconsideration is appropriate when a petitioner demonstrates new facts or an error in the original decision.¹⁶ Currently at issue is whether the Bureau would have extended the KHSX-LP permit had it known of HCBI’s new allegations, *i.e.*, that Sanctuary never had a lease and knew of tower problems soon after grant. We would have granted the extension even with that new information and, thus, find no error.

The standard for receipt of an 18-month LPFM construction period “bump-up” is not, as HCBI claims, rare and exceptional circumstances beyond the applicant’s control. The “rare and exceptional” standard applies when a permittee requests a rule waiver to recoup a specific amount of time lost to a major encumbrance.¹⁷ In contrast, the 18-month LPFM bump-up is granted on a lesser showing, without any waiver, and is not limited to time lost. The rules provide a uniform 18-month extension, solely for LPFM permittees, based on demonstration of “good cause.”¹⁸ In this manner, if an LPFM permittee experiences issues making construction more difficult than the Commission envisioned when it adopted the 18-month LPFM construction period, that permittee can receive the same three years afforded to other broadcasters. “Good cause,” unlike “rare and exceptional circumstances,” can be shown even if the delays are not entirely beyond a permittee’s control. For example, the Commission specified that the “good cause” standard would be met by an LPFM permittee whose own inexperience results in difficulties locating a suitable transmitter site, raising sufficient funds, or obtaining zoning,¹⁹ none of which would warrant additional time under the stricter standard applied to permittees that have already received three years to construct.

We reject HCBI’s allegations that Sanctuary misrepresented its reasons for non-construction and that its actual reasons fall short of good cause. The Gambino Declaration’s claim that Sanctuary lacked a lease is non-decisional because the Commission has consistently held that a binding lease is not required prior to grant, and that mandating otherwise would require substantial, unnecessary expenditures.²⁰ The Commission simply requires that there has been, at the time of application, a “meeting of the minds resulting in some firm understanding as to the site’s availability.”²¹ Sanctuary worded its extension request inartfully by referring to a “lease” that was “rescinded” when, in actuality, there was a post-grant change in the tower owner’s willingness/ability to lease. However, the differences between these sets of

¹⁵ *Id.* at 3, citing 1998 *Biennial Regulatory Review—Streamlining of Mass Media Application, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17541, para. 42 (1999).

¹⁶ See 47 CFR § 1.106.

¹⁷ Specifically, the “rare and exceptional” standard is used when a permittee—LPFM or non-LPFM—seeks a waiver of 47 CFR § 73.3598(a) claiming to have lost time due to an impediment not mentioned in the rules but comparable in scope to natural disasters and litigation for which 47 CFR § 73.3598(b) provides tolling treatment.

¹⁸ 47 CFR § 73.3598(a).

¹⁹ *LPFM Third Report*, 22 FCC Rcd at 21927-28, paras. 38-40.

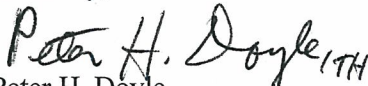
²⁰ See *Alden Comm’ns Corp.*, Memorandum Opinion and Order, 3 FCC Rcd 3937, 3938, para. 8 (1988) and cases cited therein. See generally, *Los Angeles Social Justice Radio Project*, Memorandum Opinion and Order, 31 FCC Rcd 7506, 7507, para. 3 (2016) (claim of reasonable assurance based on landowner’s assurance that parcel would be available in the event of LPFM permit grant).

²¹ *Genesee Comm’crs., Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595, 3595, para. 4 (1988). Reasonable assurance is satisfied by “[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated.” *Elijah Broad. Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351, para. 10 (1990).

circumstances is not significant under the "good cause" standard because, either way, Sanctuary experienced difficulties at a site for which it originally had assurance. The materials attached to the Opposition reflect that Sanctuary contacted the tower owner prior to specifying the site; that the owner set forth general terms upon which it would be amenable to a lease with Sanctuary including power settings, cabinet use, and installation fees; and that the owner's willingness to lease was subject to financial negotiations at a later date. Despite this reasonable assurance, the tower became unavailable on the terms previously discussed because an existing tenant expanded into the space that Sanctuary would have used and no space remains on the tower as presently constructed. These circumstances are sufficient to provide good cause for an 18-month LPFM "bump-up" extension.

Conclusion/Actions. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration of Houston Christian Broadcasters, Inc. IS DENIED.

Sincerely,


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