



Federal Communications Commission
Washington, D.C. 20554

December 15, 2016

In Reply Refer to:
1800B3-ATS

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Mr. Harry Marroquin
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In re: West Bakersfield Hispanic Education
Family Foundation
New LPFM, Bakersfield, CA
Facility ID No. 197633
File No. BNPL-20131115ATT

**Informal Objection and
Petition to Deny**

Dear Counsel, Ms. Bradley, and Mr. Marroquin:

We have before us the above-referenced application (Application) filed by West Bakersfield Hispanic Education Family Foundation (WBHEFF) for a construction permit for a new LPFM station at Bakersfield, California. We also have before us the Informal Objection to the Application filed by REC (REC Objection) and the "Petition to Dismiss" the Application filed by Pentecostal Church of God, I.M. 10RCPA (PCGIM Petition).¹ For the reasons set forth below, we deny the REC Objection, treat the PCGIM Petition as an informal objection and deny it, and grant the Application.

Background. The Application was filed during the 2013 LPFM filing window and identified Antonio Cesar Guel (Guel) as the certifying engineer.² The REC Objection was filed against 245 applications filed during the window for which Guel served as the certifying engineer. REC argues that all 245 of these applications—including the Application that is subject to this letter—were not filed by the applicants themselves but rather by Guel and Hispanic Christian Community Network, Inc., the licensee of several LPTV stations and of which Guel is the President.³ REC notes that the applications contain

¹ The REC Objection was filed on December 2, 2013. The PCGIM Petition was filed on April 2, 2015. WBHEFF filed an Opposition on November 30, 2016.

² Application at Section VI, Preparer's Certification.

³ REC Objection at 1. The Bureau has separately denied the REC Objection with regard to 36 of these applications. See *Little Rock Hispanic Education Family Foundation*, Letter Order, 1800B3-ATS (MB Aug. 23, 2016); *North San Antonio Community Radio*, Letter Order, 1800B3-ATS (MB Aug. 24, 2016); *North Tampa Community Radio*, Letter

identical educational statements that do not reference the local community.⁴ REC also notes that certain applications were filed sequentially in alphabetical order, that all the applications provided Guel's telephone number and e-mail address, and that all the applicants were incorporated in Texas within several days of each other, even though not all of the applicants are based in Texas.⁵ Finally, REC argues that some states where the applicants propose to operate have restrictions on non-profits incorporated in other states operating within the state.⁶

On January 31, 2014, WBHEFF filed an amendment (First Amendment) in which it changed the organization's address to 100 W Columbus Street, Suite 300, Bakersfield, California, and the address for all three of its directors to 14717 Henderson Avenue, Bakersfield, California.⁷

PCGIM argues that the Application should be dismissed because WBHEFF is "one and the same" as Manantial de Vida Eterna, Inc. (Manantial), which is the licensee of Station K262BP, Conner, California.⁸ PCGIM argues that the Columbus Street address provided in the First Amendment is the same address as Manantial's studio and offices, and that the Henderson Avenue address is the same address as Manantial's owners, Juan and Elena Hernandez.⁹ Finally, Manantial suggests that WBHEFF's proposed station will cause interference to its own station, KRHM-LP, Bakersfield, California.¹⁰

On November 30, 2016, WBHEFF filed an amendment (Second Amendment) in which it identified a new address for the organization and its board members, and provided a revised educational narrative.¹¹ In the Opposition, WBHEFF states the Second Amendment provides the current address for the organization and its board members, and that addresses previously provided in the Application were incorrect.¹² WBHEFF further states that PCGIM has provided no evidence other than speculation about WBHEFF's relationship with Manantial.¹³ WBHEFF provides a declaration from Elena Hernandez, President of Manantial, who states that she has no relationship with WBHEFF aside from also using Guel as its engineer, and that she was asked by Guel if WBHEFF could use Manantial's studio as a

Order, 1800B3-ATS (MB Sep. 19, 2016). REC filed an Application for Review of these decisions, which the Commission dismissed because REC did not have standing to file it. *See Little Rock Hispanic Education Family Foundation*, Memorandum Opinion and Order, FCC 16-176 (Dec. 15, 2016).

⁴ *Id.* at 2. The educational statements are included as Exhibit 2 in each application.

⁵ *Id.* at 3.

⁶ *Id.* at 3. The REC Objection also raises specific allegations about certain applications not subject to this letter. REC Objection at 3-4.

⁷ First Amendment at Section I, Question 1, and Section II, Question 3.

⁸ PCGIM Petition at 1. Commission records confirm that K262BP is licensed to Manantial. PCGIM also states that Manantial has "leased" Station KAFY(AM), Bakersfield, California, but provides no evidence to support this argument. *Id.* at 2. KAFY is licensed to La Favorita Radio Network, Inc. *See* File Nos. BAL-20090225ADF; BR-20130730AQM.

⁹ PCGIM Petition at 1.

¹⁰ *Id.* at 1-2. PCGIM also argues that Manantial has engaged in violations of the FCC's Rules (Rules). PCGIM Petition at 2, *citing Juan Alberto Ayala*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16033 (MB 2012). However, that order was issued before the license for K262BP was assigned from Juan Alberto Ayala to Manantial. *See* File No. BALFT-20130606ABM.

¹¹ Second Amendment at Section I, Question 1; Section II, Question 3; and Exh. 2.

¹² Opposition at 5-6.

¹³ *Id.* at 6.

headquarters.¹⁴ Hernandez further states that she is not acquainted with any of WBHEF's board members.¹⁵

Discussion. Because it was filed well after the 30-day period for petitions to deny had elapsed,¹⁶ we will treat the PCGIM Petition as an informal objection.¹⁷ Pursuant to Section 309(d) of the Communications Act of 1934, as amended (Act),¹⁸ petitions to deny and informal objections 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.¹⁹

We reject the arguments that the Application should be dismissed because of its similarities to other applications filed by Guel as a consultant. REC has failed to show that the WBHEFF has any actual affiliation with any other applicants beyond similar names, nor has it demonstrated that the applicants are commonly controlled. Similarities in applications do not demonstrate common control of the applications.²⁰ Additionally, the common contact representative identified in the applications—Guel—is an engineering consultant. We have previously noted that it is common for multiple applicants to have the same engineering consultant,²¹ and many applicants will list their counsel or engineering consultants as their contact representatives. We also reject REC's argument involving the sequential nature of the filing of the applications or the applicants' incorporation in Texas. These matters are attributable to the applicants' utilization of a common consultant and present no violation of any Commission rule or policy.

We also reject REC's argument that we should dismiss the Application for failure to comply with California's foreign corporation rule. The Commission generally will not deny an application for a broadcast facility based on a licensee's or permittee's non-compliance with state corporate law "when no challenge has been made in the State Courts and the determination is one that is more appropriately a matter of state resolution."²²

¹⁴ *Id.* at Attach. 3.

¹⁵ *Id.*

¹⁶ The Application was accepted for filing on February 3, 2014. *See Broadcast Actions*, Public Notice, Report No. 28171 (MB Feb. 6, 2014). Petitions to Deny were due 30 days after, on March 5, 2014. *See* 47 U.S.C. § 309(d); 47 CFR § 73.3584(a).

¹⁷ *See Fisher Radio Regional Group, Inc.*, Letter Order, 22 FCC Rcd 6912 (MB 2007) (treating untimely petition to deny as an informal objection).

¹⁸ 47 U.S.C. § 309(d).

¹⁹ *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²⁰ *Mt. Zion Educ. Assoc.*, Letter Order, 25 FCC Rcd 15088, 15091-92 (MB 2010) (similarities in applications prepared by a third-party—such as being filed the same day, using the same engineer, having similar exhibits—do not demonstrate common control of applicants). Additionally, WBHEFF has amended the Application to provide a unique educational narrative.

²¹ *Eternal Word Television Network, Inc.*, Letter Order, 24 FCC Rcd 4691, 4692 (MB 2009).

²² *Abundant Life, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4972, 4974, para. 8 (2001); *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17855, para. 10 (1997).

The Second Amendment renders PCGIM's argument that WBHEFF and Manantial are "one and the same" moot because WBHEFF is no longer headquartered at Manantial's offices. PCGIM has provided no evidence to substantiate its claim that the two entities are commonly controlled or to counter the declaration of Elena Hernandez. Finally, Manantial provides no support for its argument that WBHEFF's proposed station will interfere with KRHM-LP. We have reviewed the Application and find that WBHEFF's proposed station is fully spaced to KRHM-LP and therefore complies with the Rules.²³ Accordingly, we will deny the REC Objection and the PCGIM Petition, and grant the Application.

Conclusion/Action. Accordingly IT IS ORDERED that the Informal Objection filed on December 2, 2013, by REC Networks IS DENIED with respect to West Bakersfield Hispanic Education Family Foundation.

IT IS FURTHER ORDERED that the Petition Deny filed on April 2, 2015, by Pentecostal Church of God, I.M. 10RPCA IS DENIED.

IT IS FURTHER ORDERED that the application of West Bakersfield Hispanic Education Family Foundation for a construction permit for a new LPFM station at Bakersfield, California (File No. BNPL-20131115ATT) IS GRANTED.

Sincerely,

Handwritten signature of Peter H. Doyle in blue ink.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mr. Antonio Cesar Guel
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²³ See *Calvary Chapel of Redlands*, Letter Order, DA 16-1319 (MB Nov. 28, 2016) (rejecting interference complaint where LPFM stations were fully spaced and rule compliant).