



Federal Communications Commission
Washington, D.C. 20554

December 15, 2016

In Reply Refer to:
1800B3-ATS

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 North 21st Road
Arlington, VA 22201

Ms. Michelle Bradley
REC Networks
11541 Riverton Wharf Road
Mardela Springs, MD 21837

Mr. Jeff Shaw
Common Frequency, Inc.
P.O. Box 4301
Davis, CA 95616

In re: South Boise Hispanic Education Family
Foundation
New LPFM, Boise, ID
Facility ID No. 197572
File No. BNPL-20131115AOY

Informal Objection and Petition to Deny

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

We have before us the above-referenced application (Application) filed by South Boise Hispanic Education Family Foundation (SBHEFF) for a construction permit for a new LPFM station at Boise, Idaho. We also have before us the Informal Objection to the Application filed by REC (REC Objection), the Supplement to the REC Objection (Supplement), and the Petition to Deny the Application filed by Common Frequency (CF Petition).¹ For the reasons set forth below, we deny the REC Objection, deny the CF Petition, 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 CF Petition was filed on January 9, 2014. The Supplement was filed on February 29, 2016. SBHEFF filed an Opposition on October 24, 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 Order, 1800B3-ATS (MB Sep. 19, 2016). REC filed an Application for Review of these decisions, which the

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

In the Supplement, REC argues that the address provided in an amendment to the Application filed on April 2, 2014 (April 2014 Amendment) as both SBHEFF's mailing address and the address of its board members is apparently that of a Davinci Executive Suites, which provides virtual and private offices, and argues that "unless SBHEFF can provide evidence to the contrary," this location fails to meet the requirements of either a headquarters or residences for SBHEFF's board members.⁷ REC thus argues that SBHEFF has failed to meet the eligibility requirements of Section 73.853(b) of the FCC's Rules (Rules).⁸

The CF Petition was filed against 63 applications that identified Guel as their engineer. It raises arguments similar to those raised in the REC Objection: that the applications "use[s] the boiler-plate forms, uniform descriptions of purpose and uniform purpose of entity throughout" and all identify Guel as their registered agent and provide his contact information.⁹ CF also argues that the non-profit status of the applicants—including SBHEFF—"is sham" because their Articles allow "any director [to] be compensated for proselytizing or *for almost any other activity*."¹⁰ CF also opines that it is questionable whether any of the applicants have obtained reasonable assurance of site availability at the towers identified in their applications.¹¹

SBHEFF filed another amendment to the Application on October 24, 2016 (October 2016 Amendment), in which it identified new mailing addresses for SBHEFF and its directors.¹² In the Opposition, SBHEFF argues that "[f]or the past two and one-half years, SBHEFF has leased an actual office at this office complex (located at 801 W. Main St., Boise, Idaho) and that office serves as its headquarters. REC has provided no evidence that this office is either non-existent or inadequate."¹³

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 Supplement at 1-2. *See also* April 2014 Amendment at Section I, Question I and Section II, Question 3 (identifying 801 W Main St Suite 100 as SBHEFF's mailing address and the address of its board members). In support of this argument, REC provides a screen shot of Davinci's page on Facebook and link to Davinci's own webpage.

⁸ *Id.* at 1-2 (citing 47 CFR § 73.853(b)).

⁹ CF Petition at 2-4.

¹⁰ *Id.* at 4 (emphasis in original).

¹¹ *Id.* at 5.

¹² October 2016 Amendment at Section I, Question I and Section II, Question 3.

¹³ Opposition at 5.

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended (Act),¹⁴ 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.¹⁵

We reject the arguments that the Application should be dismissed because of its similarities to other applications filed by Guel as a consultant. REC and CF have failed to show that SBHEFF 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.¹⁶ 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,¹⁷ 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 likewise reject CF’s argument that SBHEFF’s non-profit status “is sham.” CF has made no showing that SBHEFF was improperly incorporated or are otherwise not recognized by the State of Texas.¹⁸

We also reject REC’s argument that we should dismiss the Application for failure to comply with Idaho’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.”¹⁹ Additionally, we reject REC’s argument that the 801 Main Street office does not qualify as a headquarters. REC’s argument is completely speculative and REC provides no evidence for this argument save for a screenshot from Facebook and a link to Davinci’s website, which is insufficient to mean the requirements of Section 309(d).²⁰

¹⁴ 47 U.S.C. § 309(d).

¹⁵ 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).

¹⁶ *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, SBHEFF has amended the Application to provide a revised and unique educational narrative.

¹⁷ *Eternal Word Television Network, Inc.*, Letter Order, 24 FCC Rcd 4691, 4692 (MB 2009).

¹⁸ *Compare Malibu FM Emergency and Cmty. Broad., Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 7705 (2015) (affirming dismissal of LPFM applicant that had not completed incorporation process with State of California at the time it filed its application); *Robert Lund*, Letter Order, 30 FCC Rcd 14367 (MB 2015) (affirming dismissal of LPFM applications where Oregon Department of Justice determined applicants were not properly incorporated).

¹⁹ *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).

²⁰ *Secret Communications, II, LLC*, Memorandum Opinion and Order, 18 FCC Rcd 9139, 9148-49, para. 24 (2003) (“allegations based on internet website idiom are speculative and inadequate to raise a substantial and material question of fact”).

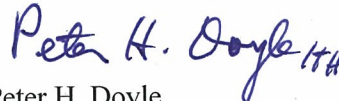
Finally, we give no weight to CF's argument that SBHEFF may have lacked site availability. This argument is entirely based on speculation, and CF does not actually argue that SBHEFF lacked site availability, nor does CF provide documentation to support its argument.²¹ Accordingly, we will deny the REC Objection and the CF 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 South Boise Hispanic Education Family Foundation.

IT IS FURTHER ORDERED that the Petition to Deny filed on January 9, 2014, by Common Frequency IS DENIED with respect to South Boise Hispanic Education Family Foundation.

IT IS FURTHER ORDERED that the application of South Boise Hispanic Education Family Foundation (File No. BNPL-20131115AOY) for a construction permit for a new LPFM station at Boise, Idaho IS GRANTED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized monogram or initials.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mr. Antonio Cesar Guel
2605 Hyacinth Drive
Mesquite, TX 75181

Mr. Esteban Recio
South Boise Hispanic Education Family Foundation
1105 2nd Street South, Suite 100
Nampa, ID 835651

²¹ See 47 U.S.C. § 309(d).