



Federal Communications Commission
Washington, D.C. 20554

December 16, 2016

In Reply Refer to:
1800B3-ATS

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In re: Mobile Hispanic Education Family Foundation
New LPFM, Mobile, AL
Facility ID No. 196075
File No. BNPL-20131114AOA

Informal Objection and Petition to Deny

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

We have before us the above-referenced applications (Application) filed by Mobile Hispanic Education Family Foundation (MHEFF) for a construction permit for new LPFM station at Mobile, Alabama. We also have before us the Informal Objection to the Applications filed by REC (REC Objection), the Supplement to the REC Objection (REC Supplement), and the Petition to Deny 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 all identified Antonio Cesar Guel (Guel) as the certifying engineer.² The REC Objection was filed against 245 applications for which Guel served as the certifying engineer. REC argues that all 245 of these applications—including the Application—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 identical educational statements that do

¹ The REC Objection was filed on December 2, 2013. The Supplement was filed on March 24, 2016. The CF Petition was filed on January 9, 2014. MHEFF filed an Opposition on October 5, 2016.

² Applications 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 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).

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 its supplement, REC argues that the address identified in the Application—311 Cleveland Street—does not currently exist in Mobile, and in fact Cleveland Street was renamed Tunstall Street in 1985.⁷ REC further states that 311 Tunstall Street is the address of Stone Street Baptist Church, and believes that neither MHEFF nor its directors were ever located at that address.⁸ REC thus argues that MHEFF has failed to meet the eligibility requirements of Section 73.853(b) of the FCC's Rules (Rules).⁹

The CF Objection 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 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.¹⁰ CF also argues that the applicants' non-profit status "is sham" because their Articles of Incorporation allow "any director [to] be compensated for proselytizing or *for almost any other activity*."¹¹ CF also opines that it is questionable whether the applicants have obtained reasonable assurance of site availability at the towers identified in their applications.¹²

On October 5, 2016, MHEFF filed an amendment to the Application (October Amendment) in which it identified a new mailing address and addresses for its board members.¹³ In the Opposition, the MHEFF argues that the October Amendment resolves the issues raised in the REC Supplement.¹⁴

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended (Act),¹⁵ 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.¹⁶

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 REC Supplement at 1. *See also* Application at Section I, Question 1 and Section II, Question 3.

⁸ *Id.*

⁹ *Id.* (citing 47 CFR § 73.853(b)).

¹⁰ CF Petition at 2-4.

¹¹ *Id.* at 4.

¹² *Id.* at 5.

¹³ October Amendment at Section I, Question 1, and Section II, Question 3.

¹⁴ Opposition at 5.

¹⁵ 47 U.S.C. § 309(d).

¹⁶ *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

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 MHEFF 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.¹⁷ 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,¹⁸ 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 MHEFF’s non-profit status “is sham.” CF has made no showing that MHEFF was improperly incorporated or are otherwise not recognized by the State of Texas.¹⁹

We also reject REC’s argument that we should dismiss the Application for failure to comply with Alabama’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.”²⁰ Additionally, because MHEFF has amended the Application to identify a new mailing address and address for its board members, we find the issues raised in the Supplement to be moot.

Finally, we give no weight to CF’s argument that MHEFF may have lacked site availability. This argument is entirely based on speculation, and CF does not actually argue that MHEFF 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 Mobile 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 Mobile Hispanic Education Family Foundation.

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).

¹⁷ *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, MHEFF has amended the Application to provide a unique educational narrative.

¹⁸ *Eternal Word Television Network, Inc.*, Letter Order, 24 FCC Rcd 4691, 4692 (MB 2009).

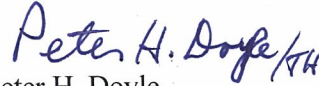
¹⁹ *Compare Malibu FM Emergency and Cmty. Broad., Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 7705 (2015) (affirming dismissal of LPFM applicant that had not completed incorporation process with State of California at the time it filed its application); *Robert Lund*, Letter Order, 30 FCC Rcd 14367 (MB 2015) (affirming dismissal of LPFM applications where Oregon Department of Justice determined applicants were not properly incorporated).

²⁰ *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).

²¹ See 47 U.S.C. § 309(d).

IT IS FURTHER ORDERED that the application of Mobile Hispanic Education Family Foundation (File No. BNPL-20131114AOA) for a construction permit for a new LPFM station at Mobile, Alabama IS GRANTED.

Sincerely,

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

Peter H. Doyle
Chief, Audio Division
Media Bureau

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