



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
1800B3-ATS

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In re: South Miami Hispanic Community Radio
New LPFM, Miami, FL
Facility ID No. 194287
File No. BNPL-20131112BEE

Informal Objection

Dear Counsel and Ms. Bradley:

We have before us the referenced application filed by South Miami Hispanic Community Radio (SMHCR) for a construction permit for a new LPFM station at Miami, Florida (SMHCR Application). We also have before us the Informal Objection to the SMHCR Application filed by REC (REC Objection) and the Supplement to the REC Objection (Supplement).¹ For the reasons set forth below, we dismiss the SMHCR Application.

Background. The SMHCR Application was filed during the 2013 LPFM filing window and identified Antonio Cesar Guel (Guel) as the certifying engineer.² The SMHCR Application as originally filed provided an address of 2501 SW 6th Street, Miami, Florida, for the organization, and identified a three-person board consisting of Pedro de la Rosa, Sergio Jimenez, and Laura de la Rosa, each of whom listed his or her address as 2501 SW 6th Street, Miami, Florida.³ This address and these three individuals were also identified in the corporate documents submitted to the Texas Secretary of State (TSOS)⁴ on October 20, 2013.⁵

¹ The REC Objection was filed on December 2, 2013, and the Supplement was filed on January 19, 2016. The Supplement also addresses the application filed by North Miami Hispanic Community Radio (NMHCR). File No. BNPL-20131112AHC (NMHCR Application). SMHCR filed a pleading styled as a "Reply", which we will treat as an opposition, on September 1, 2016 (First Opposition), and an "Opposition to Informal Objection and Supplement" on January 12, 2017 (Second Opposition).

² SMHCR Application at Section VI, Preparer's Certification.

³ *Id.* at Section I, Question 1, and Section II, Question 3.a.

⁴ Documents filed by SMHCR with the TSOS are accessible at <http://www.sos.state.tx.us/corp/sosda/index.shtml>.

⁵ SMHCR Application at Attach.2.

The SMHCR Application was amended on January 31, 2014 (First SMHCR Amendment), to identify a new address for the organization and both of the de la Rosas—100 Sunrise Drive, #17, Key Biscayne, Florida—and to move the proposed transmitter site for the LPFM station, resulting in the SMHCR Application becoming a singleton.⁶ The SMHCR Application was again amended on February 26, 2014 (Second SMHCR Amendment), to remove Pedro de la Rosa from SMHCR's board and to add Oscar Lopez to the board, also at the Sunrise Drive address.⁷

On December 31, 2014, SMHCR submitted to the TSOS an annual report listing Oscar Lopez, Sergio Jimenez, and Laura de La Rosa as the directors of SMHCR.⁸ On December 15, 2015, SMHCR filed a Statement of Change of Registered Office/Agent which identified Dirla Saunig as its new registered agent.⁹ On December 22, 2015, SMHCR filed another amendment to its application (Third SMHCR Amendment) that provided a revised educational narrative.¹⁰ On December 31, 2015, SMHCR filed an annual report with the TSOS again listing Oscar Lopez, Sergio Jimenez, and Laura de La Rosa as the directors of SMHCR.¹¹

In the Supplement, REC argues that based on its interview with “the representative of [SMHCR], it turns out that the true party in interest may be Ministerios Internacional Yo Soy, Inc. [(Yo Soy)]”¹² which was established in the State of Florida in January of 2014.¹³ REC further states that it was informed Yo Soy currently broadcasts over a local FM station and wants its own radio station.¹⁴ REC concedes that its conversation with this representative is hearsay, but argues that information in public records is sufficient to establish a connection between SMHCR, NMHCR, and Yo Soy.¹⁵

Specifically, REC notes that two directors of Yo Soy—Oscar Lopez and Belkis Aurelia Perez¹⁶—are board members of SMHCR and NMHCR, respectively, and that the address for Perez in the NMHCR Application, as amended on April 15, 2014, the address for Lopez in the Second SMHCR Amendment, and the address in Yo Soy's corporate documents are all the same (i.e., the Sunrise Drive address).¹⁷ REC also notes that each applicant amended its application to identify the same transmitter site at Brickell Place Condos, and questions whether either had reasonable assurance of site availability at that site.¹⁸

⁶ First SMHCR Amendment at Section I, Question 1; Section II, Question 3.a; and Section VI, Question 2.

⁷ Second SMHCR Amendment at Section II, Question 3.a.

⁸ Public Information Report, Document No. 573491590001 (2014 Annual Report).

⁹ Change of Registered Agent/Office, Document No. 645243530002

¹⁰ Third SMHCR Amendment at Exh. 2. The Bureau staff assisted Lopez with filing this amendment solely for the purpose of including the revised narrative. The staff did not inquire whether additional information in the SMHCR Application remained accurate.

¹¹ Public Information Report, Document No. 711289042141 (2015 Annual Report).

¹² The records for Yo Soy are available at the website of the Florida Department of State, <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName>.

¹³ Supplement at 1. The Supplement does not identify by the name the representative of SMHCR.

¹⁴ *Id.*

¹⁵ *Id.* at n.2.

¹⁶ Perez was not an original board member of NMHCR. She was added to the organization's board of directors in an amendment filed on April 15, 2014.

¹⁷ Supplement at 2.

¹⁸ *Id.* at 4.

REC argues that these events suggest that Guel filed the two applications with the intention of selling the facilities to Yo Soy.¹⁹

In its Opposition, SMHCR provides an affidavit signed by Oscar Lopez in which he states that Yo Soy and SMHCR are “separate organizations with distinct purposes, missions, organizational structures, and corporate governance.”²⁰ Lopez further states the person contacted by REC was the registered agent for SMHCR, Dirla Sauneg, that she is not and never has been a director of SMHCR, and thus has limited knowledge of the organization, and also notes that English is not her native language.²¹

SMHCR filed an additional amendment on September 1, 2016 (Fourth SMHCR Amendment), which included a time-share agreement between NMHCR and SMHCR and also proposed amending the SMHCR Application to operate on Channel 276—the same channel as NMHCR—instead of Channel 280.²² The Fourth SMHCR Amendment also provided copies of the December 2015 filing made with the TSOS identifying Sauneg as the registered agent for SMHCR and listing Lopez, Laura de la Rosa, and Sergio Jimenez as SMHCR’s directors and officers.²³ The staff denied this amendment and rejected the time-share agreement because the proposed operation on Channel 276 did not comply with Section 73.807 of the FCC’s Rules (Rules).²⁴ In the Second Opposition, SMHCR reiterates that it is wholly independent of Yo Soy.²⁵

On March 7, 2017, the Bureau issued a Letter of Inquiry (*LOI*) to NMHCR and SMHCR, instructing each applicant to provide documentation regarding its respective board members, mailing address, and headquarters.²⁶ On April 4, 2017, counsel for SMHCR requested an extension of time until May 3, 2017, in which to respond to the *LOI*.²⁷

Lopez, on behalf of SMHCR, submitted a response to the *LOI* on April 12, 2017, in the form of an affidavit signed by him (*LOI* Affidavit).²⁸ Lopez states that in November of 2013, he learned that the LPFM filing window was open, but determined that the cost of obtaining a license would exceed his budget.²⁹ He states that “[t]ime passe[d]” and he subsequently spoke to Hector Guevara, a pastor in Houston, Texas, and was told to contact Guel.³⁰ Lopez further states that Guel “never offered me the sale of any license . . . He just told me to give him a donation of \$3,000 . . . and he also told me that he would

¹⁹ *Id.*

²⁰ First Opposition at Attach. 1 (Opposition Affidavit).

²¹ *Id.*

²² Fourth SMHCR Amendment at Attach. 1 and Attach. 11.

²³ *Id.* at Attach. 2.

²⁴ 47 CFR § 73.807; see *Broadcast Actions*, Public Notice, Report No. 28814 (MB Sep. 7, 2016) (“Amendment of 09/01/2016 denied. Operation on channel 276L1 violates 73.807 to BPH-20150129AEX.”).

²⁵ Second Opposition at 5-7.

²⁶ Letter of Inquiry from Peter H. Doyle, Chief, Audio Division, Media Bureau to Dan J. Alpert, Esq., and Edward A. Maldonado, Esq. (Mar. 7, 2017). The *LOI* was also sent to counsels for SMHCR via e-mail. Email from Alexander T. Sanjenis, Esq., to Dan J. Alpert, Esq., and Edward A. Maldonado, Esq. (Mar. 7, 2017 11:30 EST).

²⁷ Email from Dan J. Alpert, Esq., to Alexander T. Sanjenis, Esq. (Apr. 4, 2017 9:57 EDT).

²⁸ The *LOI* Affidavit was filed by Lopez directly with the Commission.

²⁹ *LOI* Affidavit at 1, para. 1.

³⁰ *Id.*

help me with the [corporation] that the FCC required for such processing”³¹ Lopez states that he started “I am” ministry (i.e., Yo Soy) in January of 2014, and that this church never intended to acquire an LPFM license; rather, he is merely president of both Yo Soy and SMHCR.³²

Lopez explains that Belkis Aurelia Perez of NMHCR is his mother, and that he told Guel that he (Lopez) and Perez should be listed as the officers of SMHCR.³³ Lopez states that when he looked at the SMHCR Application, he “found out [it] listed other people whom I do not know, and that they were accidentally processed by the office of Cesar Guel, and Belkis Perez name appeared in a second application. For this reason I ask that please disregard the [NMHCR Application]. Only take into account the [SMHCR Application].”³⁴

The Affidavit provides the following documentation: 1) Lopez’s Florida Driver License, listing an address of 100 Sunrise Drive, Apt. 17, Key Biscayne, FL; 2) utility bills from Florida Power and Light, confirming his residence at 100 Sunrise Drive from August 2013, until October, 2014; 3) a copy of Lopez’s 2014 tax returns, which again state that he resides at 100 Sunrise Drive; and 4) a statement from Lopez that his current address is 9600 SW 8th Street, Suite 29, Miami, FL 33174, and that he has resided there since September 2014.³⁵

On May 1, 2017, NMHCR requested the dismissal of its application.³⁶ Counsel for SMHCR again requested an extension of time, until June 2, 2017, in which to respond.³⁷ Although the Lopez Affidavit was partially responsive to the *LOI*, no additional response to the *LOI* was ever received from counsel.

The *LOI* indicated that REC would be afforded an opportunity to file a response to any submission from SMHCR and NMHCR.³⁸ REC filed a Reply to the Affidavit on June 8, 2017 (REC Response). REC notes that although Lopez does not state when he contacted Guel, SMHCR was incorporated in October of 2013, well before Lopez learned of the LPFM filing window in November of 2013, and thus the *LOI* Affidavit confirms that Lopez was not an original member of SMHCR.³⁹ REC

³¹ *Id.* at 2, para. 1.

³² *Id.*

³³ *Id.*, para. 3.

³⁴ *Id.*

³⁵ *Id.* at 9. Lopez also states in his affidavit that he resides at 100 Sunrise Drive. *Id.* at 2, para. 2. Lopez does not provide any explanation for the discrepancy that he claimed in the *LOI* Affidavit to reside at both 100 Sunrise Drive and 9600 SW 8th Street. Based on the property records of Miami Dade County, the latter address is apparently a commercial building. See Pedro J. Garcia, Miami-Dade Property Appraiser, <http://www.miamidade.gov/propertysearch/#/> (last visited June 29, 2017).

³⁶ Email from Dan J. Alpert, Esq., to Alexander T. Sanjenis, Esq. (May 1, 2017 17:47 EDT). See also *Broadcast Actions*, Public Notice, Report No. 48978 (MB May 4, 2017).

³⁷ Email from Dan J. Alpert to Alexander T. Sanjenis, Esq. (May 16, 2017 9:52 EDT).

³⁸ *LOI* at 4. The *LOI* Affidavit did not indicate that a copy had been served on REC. Accordingly, the Bureau forwarded a copy of the *LOI* Affidavit to REC. Email from Alexander T. Sanjenis, Esq., to Michelle Bradley, REC Networks (June 7, 2017 11:59 EDT).

³⁹ REC Response at 2. REC also states that the Commission should investigate several other applications for new LPFM station construction permits that identified Guel as their consulting engineer and were granted by the Bureau, and possibly revoke those permits pursuant to Section 312(a)(1) of the Communications Act of 1934, as amended. *Id.* See also 47 U.S.C. § 312(a)(1). *Id.* A list of these applications is provided as Appendix B to the REC Response.

further notes that the alleged original members of SMHCR are unknown to Lopez and have never been shown to exist.⁴⁰

Discussion. The Rules state that after the close of the pertinent filing window, an applicant for an LPFM construction permit can only make “[c]hanges in ownership where the original party or parties to an application retain more than 50 percent ownership interest in the application as originally filed.”⁴¹ Thus, a fifty percent change in the governing board of a LPFM applicant is considered a “major change” and results in the dismissal of the application, and the Commission has affirmed the dismissal of LPFM construction permit applications where the applicant has undergone a major change in ownership in violation of Section 73.871(c)(3).⁴² We find that SMHCR has undergone a prohibited major change and will dismiss the SMHCR Application.

Lopez states that he first became aware of the 2013 LPFM filing window in November of 2013, and vaguely states that “timed passe[d]” after that before he contacted Guel regarding applying for an LPFM station. However, as noted in the REC Response, Guel filed the incorporation documents for SMHCR in October 2013, in which Lopez does not appear, well before Lopez contacted him. We thus reject Lopez’s suggestion that these original putative board members were “accidentally processed” by Guel. Moreover, this timeline proves that Lopez was not an original board member of SMHCR, and only became involved in the organization at some point after the filing of the SMHCR Application and the close of the filing window.

Because Lopez is not an original member of SMHCR, we turn to the question of whether any of the claimed original members of SMHCR—Pedro de la Rosa, Sergio Jimenez, and Laura de la Rosa—retain any control over the organization. All three names appear on SMHCR’s corporate filings, which predate Lopez’s contact with Guel, and thus these individuals, and not Lopez, were claimed as the true original board members of SMHCR. However, none of these individuals have demonstrated that they are currently involved with SMHCR. Lopez himself has stated he does not know them, and none of these persons have submitted a response to the *LOI*.⁴³ Because no original member of SMHCR currently holds any control over the organization, SMHCR has undergone a prohibited major change in ownership and the SMHCR Application must thus be dismissed.

⁴⁰ REC Response at 2-3.

⁴¹ 47 CFR § 73.871(c)(3).

⁴² See *La Casa Dominica de Hazleton, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 4236 (2016) (*Casa Dominicana*); *US Pro Descubierta*, Memorandum Opinion and Order, 31 FCC Rcd 4304 (2016). See also *Creation of Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026, 8029, para. 7 (2001) (prohibition of major change in ownership is “consistent with the prohibition on the transfer of LPFM station construction permits and licenses” in 47 CFR § 73.865(d)).

⁴³ The *LOI* requested that SMHCR provided documentation regarding these board members. SMHCR has not provided this documentation, nor has it provided an explanation why this documentation is unavailable. This failure to comply with the *LOI* is a separate and independent basis for dismissing the SMHCR Application. See 47 CFR §§ 73.3568(a) (“failure to respond to official correspondence or request for additional information, will be cause for dismissal.”), 73.801 (making Section 73.3568 applicable to LPFM applicants). See also *LPFM MX Group 37*, Memorandum Opinion and Order, 31 FCC Rcd 7512, 7517, para. 12 (2016) (dismissing LPFM construction permit application for failure to provide information requested in a letter of inquiry); *Innovative Women’s Media Ass’n v. FCC*, 16 F.3d 1287, 1289 (D.C. Cir. 1994) (citing *The Dunlin Group*, Memorandum Opinion and Order, 6 FCC Rcd 4642, 4644, para. 9 (Rev. Bd. 1991) (among the valid grounds for dismissing an application pursuant to Section 73.3568(a) is open defiance of an order to produce a witness)).

Additionally, we will admonish Lopez for making false certifications in violation of Section 1.17(a)(2) of the Rules. That Rule states that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”⁴⁴ In 2003, the Commission expanded the scope of Section 1.17 to include written statements that are made without a reasonable basis for believing the statement is correct and not misleading. It explained that this requirement was intended to clarify the obligations of persons dealing with the Commission, ensure that they exercise due diligence in preparing written submissions, and enhance the effectiveness of the Commission’s enforcement efforts.⁴⁵ Thus, even in the absence of an intent to deceive, a false statement provided without a reasonable basis for believing that the statement is correct and not misleading constitutes an actionable violation of Section 1.17 of the Rules.⁴⁶

Parties must “use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.”⁴⁷

The record clearly shows that Lopez has provided contradictory information to the Commission. For example, in the First Opposition, Lopez clearly states in his affidavit that there are *multiple* members of the SMHCR board.⁴⁸ However, in the LOI Affidavit, he states that he does not know any of the other directors identified in the SMHCR Application, and no other directors have ever been identified by SMHCR in either filings with the Commission or the TSOS.⁴⁹ And while he claims to not know Laura de la Rosa or Sergio Jimenez, Lopez identified both as directors and officers of SMHCR in two separate filings made with the TSOS⁵⁰ as well as the Second SMHCR Amendment and the Fourth SMHCR Amendment, both of which were signed by Lopez.⁵¹

Additionally, despite Lopez’s claim in the LOI Affidavit that Perez was incorrectly listed as a director of NMHCR,⁵² the Timeshare Agreement, filed in September of 2016, was signed by Lopez as the

⁴⁴ 47 CFR § 1.17(a)(2).

⁴⁵ See *Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021, para. 10 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004) (*Amendment of Section 1.17*).

⁴⁶ See *Amendment of Section 1.17*, 18 FCC Rcd at 4017, para. 4 (stating that the revision to Section 1.17 of the Rules is intended to “prohibit incorrect statements of omissions that are the results of negligence, as well as an intent to deceive”).

⁴⁷ *Id.* at 4021, para. 12.

⁴⁸ First Opposition at 1, para. 1 (“[SMHCR], by and through unanimous vote of its **Directors**”) (emphasis added); *id.* at para.4 (“[SMHCR], by and through unanimous vote of its **Directors**”) (emphasis added); *id.* at para. 6 (“To date, neither [SMHCR] nor its **Directors**”).

⁴⁹ LOI Affidavit at 2, para.3

⁵⁰ See, e.g., Fourth SMHCR Amendment at Attach.2; 2014 Annual Report; and 2015 Annual Report.

⁵¹ Second SMHCR Amendment at Section II, Question 3.a. and Fourth SMHCR Amendment at Section II, Question 3.a. (identifying Laura de la Rosa and Sergio Jimenez as board members of SMHCR).

⁵² LOI Affidavit at 2, para. 3.

representative of SMHCR and by Perez as representative of NMHCR.⁵³ Lopez made no attempt to correct this supposed error until the Bureau issued the *LOI*, over *three years* after the NMHCR Application was amended to list Perez as an NMHCR board member, and in fact Lopez has still not submitted an amendment to the SMHCR Application to list Perez as a board member of SMHCR. Thus, Lopez was fully aware that he and Perez were listed as officers of separate applicants as recently as September of 2016, when he prosecuted *both* applications.

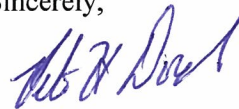
Although there is insufficient evidence in the record to conclude that Lopez's provision of incorrect material factual information was intentional in violation of Section 1.17(a)(1) of the Rules,⁵⁴ we find that Lopez apparently willfully violated Section 1.17(a)(2) of the Rules by providing material factual information that was incorrect without a reasonable basis for believing that the information was correct and not misleading, *i.e.*, false submissions as to the claimed involvement of Laura de la Rosa and Sergio Jimenez in SMHCR and the claimed involvement of Lopez's mother, Perez, in NMHCR. Accordingly, we admonish Lopez for this violation.

Finally, we will not entertain REC's request to revisit the applications listed in the REC Response. REC is essentially seeking reconsideration of the grant of those applications, which are long final,⁵⁵ and the Commission has held that REC lacks standing to challenge those grants.⁵⁶ Moreover, in contrast to this proceeding, where REC provided specific information about potential violations of the Rules, REC has presented no specific facts regarding those individual applications that would warrant further investigation pursuant to Section 312(a)(1).

Conclusion/Action. Accordingly IT IS ORDERED the application of South Miami Hispanic Community Radio (File No. BNPL-20131112BEE) for a construction permit for a new LPFM station at Miami, Florida, IS DISMISSED.

IT IS FURTHER ORDERED that Oscar Lopez is hereby ADMONISHED for his violation of 47 CFR § 1.17(a)(2) of the Commission's Rules.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mr. Antonio Cesar Guel
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⁵³ Fourth SMCHR Amendment at Attach. 1.

⁵⁴ 47 CFR § 1.17(a)(1).

⁵⁵ *Davina Sashkin, Esq.*, Letter Order, 27 FCC Rcd 2920, 2922 (MB 2012) ("Accepting such pleadings as a means to reopen long-final Commission actions would undercut the goals of administrative efficiency and finality that underlie the statutory limits on seeking reconsideration as well as fundamental fairness to the litigants involved.").

⁵⁶ *Little Rock Hispanic Educ. Family Foundation* [sic], Memorandum Opinion and Order, 31 FCC Rcd 13762 (2016).

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