



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
1800B3-IB

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In re: **KFXY-LP, Mesa, AZ**
Facility ID No. 192016
File Nos. BLL-20170710AAT
BPL-20170911ADI
BTCL-20171004AAB
BPL-20180117ACV
BLSTA-20171213AAB
Petition for Reconsideration
Informal Objections

Dear Messrs. Greig, Neely, and Novin:

The Audio Division, Media Bureau (Bureau) has before it: (1) the above-referenced applications by San Tan Educational Media (STEM), licensee of Low Power FM (LPFM) station KFXY-LP, Mesa, Arizona (Station), which is currently silent;¹ (2) a petition for reconsideration from 1TV.com (1TV), licensee of KBSZ(AM), Apache Junction, Arizona; (3) an objection from Len Novin (Novin), owner of the Station's licensed transmitter site (Novin Site); and (4) related pleadings. For the reasons stated below, we dismiss or deny each of the applications, and declare the Station's underlying authorization void for failure to meet a condition.

BACKGROUND

STEM has been licensed to operate the Station since June 2015. In February 2017, STEM received a permit (February Permit)² to relocate the Station's facilities to the Novin Site. In July 2017, STEM filed an unopposed application for a license to cover its construction at the Novin Site, which the Bureau promptly granted.³ 1TV filed

¹ See File Nos. BLSTA-20171121AAA (granted Dec. 13, 2017) (granting Special Temporary Authority (STA) to remain silent, with reported silence beginning Nov. 19, 2017); BLSTA-20171213AAB (filed Dec. 13, 2017) (citing additional difficulties, including site loss, preventing return to the air); BLESTA-20180514ACA (granted June 14, 2018) (extending silence authority).

² See File No. BPL-20170206ACD (granted Feb. 16, 2017).

³ See File No. BLL-20170710AAT (filed July 10, 2017 and granted July 14, 2017) (License Application).

a petition for reconsideration of the grant.⁴ 1TV's sister company, Rocket Radio Corporation (Rocket), was at that time the licensee of FM translator station K256DB, Globe, Arizona (Translator), which was licensed on the same channel as the Station and had a pending application to move its facilities closer to those of the Station.⁵ STEM currently has four contested applications pending before the Bureau: the License Application (grant of which is not yet final), First Modification Application, Transfer Application, and Second Modification Application,⁶ each opposed by 1TV and/or Novin.⁷ The primary issues raised against STEM are whether it built and operated unauthorized facilities; transferred control to a new board without Commission approval; and remains qualified to hold an LPFM authorization. STEM also has pending an uncontested application to extend the Station's authority to remain silent.

DISCUSSION

1TV and Novin urge the Bureau to deny the STEM Applications and to find STEM unqualified to hold an LPFM authorization. They allege that STEM transferred control without Commission consent, to an individual, in violation of a required three-year holding period.⁸ They also argue that STEM lacks candor and operated the Station with unauthorized facilities, essentially as a "pirate" station.⁹ STEM disputes the allegations and characterizes 1TV and Novin's filings as retaliatory pleadings seeking to eliminate competition and/or to settle personal disputes.¹⁰

Procedural Issues. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises facts not known or existing at the time of the petitioner's last opportunity to present them.¹¹ The petitioner must be a party to the proceeding or someone whose interests are

⁴ See 1TV Petition for Reconsideration (Aug. 9, 2017) (1TV Reconsideration Petition). 1TV has also filed supplemental pleadings, urging the Bureau to require the Station to cease operating. See 1TV Petition for Order to Immediate Cease Unauthorized Broadcast Operation (Aug. 25, 2017) (Cessation Petition); 1TV Petition to Find STEM Unqualified to Hold a Broadcast Authorization (Oct. 5, 2017).

⁵ 1TV and Rocket have the same sole shareholder. STEM characterizes 1TV's filings as retaliatory for STEM's opposition to Rocket's July 2017 application to modify the Translator, based on alleged interference that the Translator might cause to the Station. STEM Opposition (filed Sept. 5, 2017) at 1. The Bureau has, by separate action, found that Rocket's license for the Translator expired as a matter of law, deleted its call sign, and dismissed STEM's objection as moot. See Letter to John Low, President, Rocket/1TV (MB June 20, 2018). STEM requested additional time to file its Opposition and 1TV opposed the extension request. We grant the request for additional time.

⁶ In response to issues that 1TV raised against the License Application, STEM filed applications to modify and to transfer control of the station. See File No. BPL-20170911ADI (filed Sept. 11, 2017) (First Modification Application); File No. BTCL-20171004AAB (filed Oct. 4, 2017) (Transfer Application). Following eviction from the Novin Site, STEM filed another modification application. See File No. BPL-20180117ACV (Second Modification Application) (filed Jan. 17, 2018). We will refer to the STEM License, First Modification, Transfer, and Second Modification Applications collectively as the STEM Applications.

⁷ See 1TV Reconsideration Petition (against License Application); 1TV Cessation Petition; 1TV Informal Objection (filed Sept. 19, 2017 against First Modification Application) (September Objection); 1TV Informal Objection (filed Oct. 16, 2017 against Transfer Application) (Transfer Objection); Novin Informal Objection (filed Mar. 20, 2018 against Second Modification Application and raising arguments against other STEM Applications) (Novin Objection). See also Novin Reply to Opposition (filed May 2, 2018 and objecting to the STEM Applications).

⁸ See 1TV Reconsideration Petition at 3-4, 7-8; 1TV Cessation Petition at 3; 1TV Transfer Objection at 1-5; Novin Objection at 1-8, 12; 47 CFR § 73.865(c).

⁹ Cessation Petition at 1-3; Novin Objection at 3, 5.

¹⁰ See, e.g., STEM Reply to 1TV Opposition to First Modification Application (Oct. 18, 2017) at 1-2, citing *Percy Squire, Esq.*, Letter, 24 FCC Rcd 10669, 10673 (MB 2009) (STEM Reply). STEM also alleges that Novin works at KBSZ(AM) and is, therefore, biased. STEM Opposition to Novin Objection, Exh. D (filed Apr. 9, 2018) (STEM Novin Opposition). STEM bases that allegation on a Facebook page for "Morning BS with Len Novin on The Bull 1340/102.9." *Id.* The Commission generally does not consider Facebook information as evidence because it is hearsay. Moreover, the alleged broadcasts of the Novin show on 1340 kHz (AM) and 102.9 MHz (FM) do not support the allegation that Novin works at KBSZ(AM) or at the Translator, each of which is licensed to operate on a different frequency.

¹¹ See 47 CFR § 1.106(c)(1).

adversely affected by the decision.¹² Non-parties must explain their interests and show why it was not possible to participate earlier.¹³

1TV seeks reconsideration of the License Application grant although it was not a party to the underlying proceeding. As required of non-parties, 1TV explains that it could not participate earlier because the Bureau granted the License Application only four days after filing, and claims an interest in the proceeding because the Station and KBSZ(AM) serve overlapping areas and compete for listeners.¹⁴ We find that 1TV has standing to seek reconsideration based on its status as a competitor and has shown that the rapid grant of the License Application precluded it from participating earlier in this proceeding.¹⁵

Transfer of Control. The Communications Act of 1934, as amended (Act) and Commission's rules (Rules) provide that an LPFM authorization may not be assigned or transferred without Commission consent, and specific restrictions preclude certain types of transactions.¹⁶ The Rules require LPFM licensees to operate for a three-year holding period prior to any such transfer, thereby deterring speculation in the LPFM service and ensuring that the public will receive benefits which were the basis for the license grant.¹⁷ LPFM licensees are often volunteer organizations that experience turnover of governing board members, so the Commission permits gradual, non-majority changes in LPFM board composition without prior approval. After expiration of the holding period, LPFM licensees can request approval of sudden, majority board changes in a simplified manner by filing FCC Form 316 (a "short form").¹⁸ Our review of such applications ensures compliance with anti-trafficking safeguards and confirms the licensee's continued eligibility.

STEM does not dispute that it replaced its entire governing board by January 2016 (or earlier), that the change was not of the gradual type permitted without prior approval, and that it did not seek Commission approval until it filed the Transfer Application almost two years later.¹⁹ STEM's current President, Ryan Greig (Greig) acknowledges that an

¹² See 47 U.S.C. § 405(a); 47 CFR § 1.106(b)(1). In the broadcast regulatory context, standing is generally shown in one of three ways: (1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station's service area or regular listener of the station. See, e.g., *Entercom License, LLC*, Hearing Designation Order, 31 FCC Rcd 12196, 12205 (2016); *Melodie Virtue, Esq.*, Letter Decision, 30 FCC Rcd 6045 (MB 2015). The Commission has held that noncommercial and commercial licensees in the same market are competitors for the purposes of administrative standing. See, e.g., *Hammock Environmental and Educational Community Services*, Letter Decision, 25 FCC Rcd 12804, 12805 n.5 (MB 2010).

¹³ See 47 CFR § 1.106(b)(1).

¹⁴ *Id.*; 1TV Reconsideration Petition at 2.

¹⁵ See *Coe W. Ramsey*, Letter Decision, 32 FCC Rcd 10105, 10109-10 (MB 2017).

¹⁶ 47 U.S.C. § 310(d); 47 CFR § 73.865(c).

¹⁷ See 47 CFR § 73.865(c); *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21920, para. 17 (2007).

¹⁸ See 47 CFR § 73.865(e).

¹⁹ See Transfer Application at Exh. 1 (acknowledging a "sudden change of more than 50 percent" which STEM believed permissible under 47 CFR § 73.865(e)); see also 1TV Transfer Objection at 2-4; 1TV Reconsideration Petition at 3-4, 7-8; Novin Objection at 4, 7. The board members listed on STEM's 2013 application for its original FCC construction permit are Christopher Shon White, CEO and five Directors: Kailee White; Rebecca Gristanty; Savannah White; Shonna White; and Lynda Breid. See File No. BNPL-20131017AAJ (filed Oct. 17, 2013). On January 11, 2016 STEM notified the Arizona Corporation Commission (ACC) of the following board changes: (1) removal on an unspecified date of officers/directors Christopher Shon White, Kailee White, Rebecca Gristanty, Shonna White, and Len Novin; and (2) addition effective January 1, 2016, of Ryan Greig, CEO/President and Jeff Allen, Vice President. See STEM Form CO17.001, Officer/Director/Shareholder Change (filed with ACC Jan. 11, 2016 and attached to 1TV's September and Transfer Objections). STEM's next report to ACC, filed on February 28, 2017, stated that its board was comprised of Ryan Grieg, CEO; Jeff Allen, Vice President (each taking office January 11, 2016); and Directors Len Novin, and Carrie Ribeiro (each taking office February 27, 2017). See STEM Form AR0046, Corporation Annual Report (filed with ACC Feb. 27, 2017 and attached to 1TV's September Objection); Novin Objection at 4. Novin contends that STEM's board information is inaccurate with respect to himself. He states that although he was an on-air host, fundraiser, and landlord for the Station, he was never a STEM director and considers STEM's use of his name on filings with the ACC to be "identity fraud," through which STEM seeks to benefit from Novin's business relationships. See Novin Objection at 4-6, 8, 10; STEM Opposition to Novin Objection (filed Apr. 10, 2018) at 1. We find this matter immaterial because there was a sudden

unapproved change occurred, argues that it was “an honest transfer mistake,”²⁰ and now seeks our approval *nunc pro tunc*. He explains that STEM’s original President “White and his family moved out of Arizona for a period of time and transferred the station to me, Ryan Greig, a volunteer at the time.”²¹ He further states that everyone remaining at the station was a volunteer who believed that Commission approval was unnecessary because “more than half of the volunteers were staying.”²² 1TV and Novin argue that the Bureau should not approve the transfer because the Station: (1) is without authority to prosecute applications on behalf of the previously approved licensee; (2) was transferred to an individual (Greig) rather than to an LPFM-eligible non-profit organization; (3) failed to satisfy the three-year holding period; (4) has not provided dates when the old board left, to show that the transfer was not of a mere construction permit; and/or (5) lacks candor by allegedly attempting to hide the transfer.²³

If we assume, *arguendo*, that any contested allegation can be resolved in STEM’s favor, we nevertheless could not approve this transfer because it occurred, indisputably, no more than seven months after grant of the Station’s license, in violation of the three-year holding period.²⁴ When the Commission granted STEM’s initial license on June 2, 2015, it included a condition that the license was “[s]ubject to . . . all regulations . . . made by this Commission.”²⁵ The holding period is within the scope of that condition.²⁶ STEM accepted the permit as conditioned. Nevertheless, STEM underwent its major change in control approximately January 1, 2016; filed the Transfer Application on October 4, 2017; and has been off-air since November 19, 2017. None of these facts is contested. Thus, the three-year, on-air LPFM holding period was in effect when STEM went through its wholesale change of control and *still* is in effect due to the Station’s silence. STEM provides no basis for, and has not requested, a waiver of this basic LPFM requirement.²⁷ Because STEM did not complete the required holding period necessary for an LPFM transfer, we will dismiss the Transfer Application. However, this transfer has already occurred, the old board has essentially abandoned the station, and the new board has been in control for a considerable time. Accordingly, consistent with Commission practice, and affirmed by reviewing

transfer of control regardless of whether STEM incorrectly included Novin’s name in filings with the ACC. STEM has mentioned Novin in Commission applications only once (on the Transfer Application) and, consistent with Novin’s claim, stated that Novin would have a zero interest both before and after the proposed transfer.

²⁰ See STEM Opposition to 1TV September Objection (Oct. 18, 2017) at 2.

²¹ STEM Opposition at 2.

²² Transfer Application at Exh. 1.

²³ See 1TV Transfer Objection at 1-9. Novin Objection at 2, 4, 7; 47 CFR §§ 1.17(a)(2) (truthful and accurate statements), 73.853 (LPFM eligibility), 73.865(c) (holding period); 73.865(d) (LPFM construction permits cannot be transferred at any time). The alleged lack of candor with respect to the transfer is based primarily on STEM’s submission of several applications under the signature of Christopher Shon White (White) as President (which 1TV characterizes as “forgeries”), making it appear as if White remained in control although he had left the organization. See 1TV Reconsideration Petition at 7, 9. STEM responds that there was no intent to mislead the Commission and that its technical consultant, who prepared and filed the applications on STEM’s behalf, included White’s name in the certification because she was unaware that White was no longer President. STEM Opposition at 2.

²⁴ See 47 CFR § 73.865(d). Such a violation would be fatal even if we assume *arguendo* that: (1) White and other outgoing directors did not move out of the area and abdicate/transfer control until January 2016, when the station had more than a mere construction permit; (2) STEM’s request for *nunc pro tunc* treatment could solve the late-filing of the Transfer Application and provide authority for filing by the current board; (3) STEM, while responsible for erroneous certifications by its consultant, was merely careless and had no intent to deceive; and (4) Greig’s statement that the station was transferred “to me” (STEM Opposition at 3) reflects a transfer of the role of President and not of the license to Greig as an individual.

²⁵ See FCC File No. BLL-20150527ACT.

²⁶ See 47 CFR § 73.865(c).

²⁷ STEM, in a different context, argues that it would not be in the public interest to eliminate the Station, which “already serves the community” with local programming. STEM Reply at 2. Assuming *arguendo* that the Station provided excellent local programming to its community prior to its silence, that would not be a sufficient basis to waive the three-year holding period. See *Larry Boyd Mock*, Letter Decision, 30 FCC Rcd 1976 (MB 2015) (community support of LPFM efforts provided no special circumstances for waiver of the prohibition on assigning an LPFM construction permit under 47 CFR § 73.865(d)). Compare *Broadcast Actions*, Public Notice, Rep. No. 48307 (Aug. 20, 2014) (waiving the Section 73.865(c) holding period for WVQC-LP, Cincinnati, Ohio because it had operated three years on-air if one counted the period of program test authority prior to license grant).

courts, we also declare the Station's authorization null and void for failure to meet a basic condition of the permit grant.²⁸ Therefore, we delete the Station's call sign and operating authority. That action moots each of the other STEM Applications, which we dismiss herein. Because we are denying or dismissing each of the STEM Applications, we need not address other allegations raised against them.

Ordering Clauses. Accordingly, IT IS ORDERED that the Informal Objection of 1TV.com with respect to the application of San Tan Educational Media to transfer control of KFXV-LP, Mesa, AZ (File No. BTCL-20171004AAB) IS GRANTED to the extent discussed herein AND DISMISSED AS MOOT in all other respects. IT IS FURTHER ORDERED that the application for transfer of control (File No. BTCL-20171004AAB) IS DISMISSED, that the application for authority to remain silent (File No. BLSTA-20171213AAB) IS DISMISSED AS MOOT, that the underlying authorization of KFXV-LP IS CANCELLED for failure to satisfy the holding period mandated by 47 CFR § 73.865(c), and that call letters KFXV-LP ARE DELETED.

IT IS FURTHER ORDERED that the August 9, 2017 Petition for Reconsideration filed by 1TV.com with respect to the application of San Tan Educational Media to license facilities constructed for KFXV-LP, Mesa, AZ (File No. BLL-20170710AAT) IS GRANTED. IT IS FURTHER ORDERED that the July 14, 2017 grant of that KFXV-LP license application IS RESCINDED and that the application IS DENIED.

IT IS FURTHER ORDERED that the applications of San Tan Educational Media to modify KFXV-LP (File Nos. BPL-20170911ADI, BPL-20180117ACV) and the respective Informal Objections to those application filed by 1TV.com and Len Novin on September 19, 2017 and March 20, 2018 ARE DISMISSED AS MOOT.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁸ See *Peninsula Comm. Corp.*, Memorandum Opinion and Order and Order to Show Cause, 16 FCC Rcd 11364, 11369, para. 13 (2001), *aff'd per curiam sub nom. Peninsula Comm., Inc. v. FCC*, 55 Fed. Appx. 1, 2 (D.C. Cir. 2003) (where license renewal and license assignment grants for FM translators were conditioned upon consummation of the assignment, Commission was justified in rescinding the conditional grants and terminating the license when licensee failed to satisfy the condition); *Advanced Comm. Corp.*, Memorandum Opinion and Order, 11 FCC Rcd 3399, 3405, para. 8 (1995), *aff'd sub nom. Advanced Comm. Corp. v. FCC*, 84 F.3d 1452 (D.C. Cir. 1996), *cert. denied*, 519 U.S. 1071 (1997) (subsequent history omitted) (where direct satellite permittee failed to satisfy permit condition, permit declared void, channel reverted back to the public, and assignment application dismissed). See also *P&R Temmer*, 743 F.2d 918, 928 (D.C. Cir. 1984) (termination of wireless license for failure to meet license condition does not require a hearing); *Jeffrey D. Southmayd, Esq.*, Letter Decision, 32 FCC Rcd 6786, 6789 (MB 2017) (conditionally granting applications to renew and assign FM translator licenses and stating that failure to meet conditions would result in cancellation of the authorizations).