



Federal Communications Commission
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In Reply Refer to:
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In re: **Cesar Chavez Foundation and
Educational Media Foundation**
KUFW(FM), Woodlake, CA
Facility ID No. 21210
File No. BALED-20160815ABK

**Educational Media Foundation and
Cesar Chavez Foundation**
KVPW(FM), Kingsburg, CA
Facility ID No. 18860
File No. BALED-20160815ABJ

Dear Counsel:

We have before us applications (Assignment Applications) for consent to a station swap in which Cesar Chavez Foundation (CCF) proposes to exchange KUFW(FM), its noncommercial educational (NCE) FM station licensed to Woodlake, California, for KNPW(FM), Educational Media Foundation's FM station licensed to Kingsburg, California. Gerawan Farming Inc. (Gerawan) and David Hawe (Hawe) filed Petitions to Deny (Petitions) the Assignment Applications on September 19, 2016.¹ For the reasons set forth below, we dismiss the Petitions as petitions to deny, deny them as informal objections, and grant the Assignment Applications.

Background. The station swap proposed by CCF and EMF would bring CCF into compliance with the terms of a Consent Decree it entered into with the Media Bureau (Bureau) in 2016.² The consent decree resolved a Bureau investigation into violations at KUFW(FM) of the law and rules governing underwriting announcements. These violations were brought to the Bureau's attention by Gerawan and Hawe in a petition to deny (Renewal Petition) CCF's application (Renewal Application) to renew

¹ CCF filed an Opposition to Petitions to Deny on September 30, 2016, and Gerawan and Hawe filed a Reply on October 17, 2016.

² *Cesar Chavez Foundation*, Order, 31 FCC Rcd 7578, 7578 n.3 and Consent Decree, para. 13 (MB 2016) (*Order*).

KUFW(FM)'s license.³ As part of the Consent Decree, CCF agreed to cease NCE operations in the Woodlake, California area, either by divesting KUFW(FM) or by swapping it for another non-reserved band station in the area.⁴

On August 15, 2016, CCF and EMF filed the Assignment Applications. They noted that, while EMF operates KVPW(FM) as an NCE station, the station is licensed to the non-reserved portion of the FM band and CCF would operate it as a commercial station.⁵ Gerawan and Hawe then timely filed the Petitions, which are virtually identical. Therein, they argue that "CCF is unfit to hold a[n] FCC license and falsely certified ... that it is not a party to a pending broadcast application in which character issues have been raised."⁶ Gerawan and Hawe request that we deny the Assignment Applications.⁷

Discussion. Standing. Section 309(d)(1) of the Act restricts to "parties in interest" entities that may file a petition to deny a proposed assignment.⁸ It also requires that petitions to deny "contain specific allegations of fact sufficient to show that the petitioner is a party in interest" and that those allegations be "supported by affidavit of a person or persons with personal knowledge thereof."⁹ Under the Commission's long-established case law on standing, a petitioner to deny a broadcast radio application may be granted standing if the petitioner is: (1) a competitor in the market suffering signal interference; (2) a competitor in the market suffering economic harm; or (3) a resident of the station's service area or listens to the station regularly and such listening is not the result of transient contacts with the station.¹⁰ We find that Gerawan and Hawe have failed to establish that they have standing to contest the applications. Specifically, they have failed to allege specific facts supported by affidavit demonstrating that they fall into one of the three categories enumerated above. Accordingly, we dismiss the pleadings as petitions to deny. We will, however, treat them as informal objections pursuant to Section 73.3587 of the Rules.¹¹

Character Qualifications. We reject Gerawan's and Hawe's argument that CCF made misrepresentations to the Commission in the Applications. A misrepresentation is a false statement of fact or false certification made with intent to deceive the Commission.¹² Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification) and can also be inferred

³ Petition to Deny at 10-11 (filed Oct. 31, 2013).

⁴ Order at 7578, n.3, and Consent Decree, para. 13.

⁵ File No. BALED-20160815ABJ at Exh. 12. CCF later filed an application to convert KVPW(FM) from an NCE to a commercial station upon consummation of the station swap. File No. BMPL-20180525AAE.

⁶ Petitions at 1, 3-4.

⁷ Alternatively, they request that we hold the applications in abeyance until the Commission acts upon their application for review of the Bureau's renewal of CCF's license for KUFW(FM). Petitions at 1, 4. The Commission dismissed in part and otherwise denied the application for review on April 17, 2018. *Cesar Chavez Foundation*, Memorandum Opinion and Order, FCC 18-48 (rel. April 18, 2018) (*MOO*).

⁸ 47 U.S.C. § 309(d)(1).

⁹ *Id.*

¹⁰ See *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 (1999); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994, 1000-1006 (1966) (expanding standing from traditional categories of electrical interference or economic injury to station listeners).

¹¹ 47 C.F.R. § 73.3587.

¹² *Fox River Broadcasting, Inc.*, Order, 93 F.C.C.2d 127, 129 (1983); *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 nn.40-41 (2004) (subsequent history omitted).

when the surrounding circumstances clearly show the existence of intent to deceive.¹³ We agree that, in the Assignment Applications,¹⁴ CCF should have indicated—but did not indicate—that it was a party to a “pending broadcast application in which character issues have been raised,” because, in the Renewal Petition, Gerawan and Hawe specifically alleged that CCF made a misrepresentation.¹⁵ We cannot, however, find that CCF intended to deceive the Commission when it incorrectly certified that it was not a party to such an application. While Gerawan and Hawe argue that this was not a “mistake or oversight,”¹⁶ they offer no evidence related to such intent. Further, CCF and EMF included a copy of the Consent Decree as an attachment to one of the Assignment Applications. In any event, the Bureau ultimately determined—and the Commission affirmed—that nothing in the record of the renewal proceeding “creates a substantial and material question of fact whether CCF possesses the basic qualification to be a Commission licensee.”¹⁷

Conclusion/Actions. We find that Gerawan and Hawe have not raised any substantial and material questions of fact warranting further inquiry in the context of these Applications. We further find that grant of the Applications is consistent with the public interest, convenience and necessity, particularly because it will effectuate one of the requirements of the Consent Decree and will ensure that CCF ceases operating an NCE FM station in the Woodlake, California area. Accordingly, IT IS ORDERED, that the Petitions to Deny filed by Gerawan Farming Inc. and David Hawe on September 19, 2016, ARE DISMISSED, and, when considered as informal objections, ARE DENIED. IT IS FURTHER ORDERED that the application for approval to assign the license for KUFW(FM), Woodlake, California (BALED-20160815ABK) from Cesar Chavez Foundation to Educational Media Foundation IS GRANTED. Likewise, IT IS ORDERED that the application for approval to assign the license for KPNW(FM), Kingsburg, California (BALED-20160815ABJ) from Educational Media Foundation to Cesar Chavez Foundation IS GRANTED.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

¹³ *Leflore Broadcasting, Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *American International Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

¹⁴ KUFW(FM) Assignment Application, Section II, Item 5(b); KVPW(FM) Assignment Application, Section III, Item 7(b).

¹⁵ Petitions at 3. In the Petitions, Gerawan and Hawe also appear to assert that, because the Renewal Petition contained allegations of underwriting violations at KUFW(FM), it raised “character issues.” Petitions at 3-4, *citing Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement 102 FCC 2d 1179, para. 56 (1986). However, Gerawan and Hawe do not specifically claim that these alleged violations put at issue CCF’s basic qualifications. In these circumstances, although CCF was required to disclose the specific misrepresentation allegation made in the Renewal Petition, it was not required to disclose the underwriting allegations made therein in its response to Section II, Item 5(b) in KUFW(FM) Assignment Application or Section III, Item 7(b) of the KVPW(FM) Assignment Application.

¹⁶ Petitions at 4.

¹⁷ *Order*, 31 FCC Rcd at 7579 para. 3, *aff'd in relevant part, MOO*, FCC 18-48, at para. 10, *recon. denied*, Cesar Chavez Foundation, Memorandum Opinion and Order, FCC 19-16 (2019).