



Federal Communications Commission  
Washington, D.C. 20554

September 23, 2020

*In Reply Refer To:*  
1800B3-DB

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In re: Station KFBA-LP, Bakersfield, CA  
Facility ID No. 196038  
File No. BLL-20190823ABK

**Informal Objection**

Counsel and Ms. Bradley,

We have before us the referenced application (Application) filed by Bakersfield Hispanic Education Family Foundation (BHEFF) for a license to cover a construction permit for station KFBA-LP (Station), Bakersfield, California.<sup>1</sup> Also before us is an Informal Objection (Objection) filed by REC Networks (REC) and related responsive pleadings.<sup>2</sup> For the reasons set forth below, we dismiss the Objection and grant the Application.

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<sup>1</sup> See File No. BLL-20190823ABK (filed Aug. 26, 2019). The Application was accepted for filing on August 26, 2019. See *Broadcast Applications*, Public Notice, Report No. 29560 (MB Aug. 28, 2019). The Station is authorized to broadcast on channel 285 (104.9 MHz).

<sup>2</sup> Informal Objection, REC Networks, File No. BLL-20190823ABK (filed Aug. 27, 2019); Supplement to Informal Objection, REC Networks, File No. BLL-20190823ABK (filed Aug. 30, 2019) (Supplement); Supplement to Informal Objection, REC Networks, File No. BLL-20190823ABK (filed Sept. 5, 2019); Supplement to Informal Objection, REC Networks, File No. BLL-20190823ABK (filed Sept. 16, 2019); Supplement to Informal Objection,

**Background.** In the Objection, REC states that the Application should be dismissed, and the construction permit forfeited, because the Station was not constructed as described in the construction permit.<sup>3</sup> REC argues that Bakersfield never constructed the facilities at the original construction permit site, but instead filed a modification application one day before the permit was set to expire.<sup>4</sup> REC maintains that, based on information it received from a qualified engineer, the specified tower structure could not be seen at the facility's modified construction permit coordinates.<sup>5</sup> REC attaches photographs to support this allegation.<sup>6</sup> REC argues that a letter of inquiry should be issued to confirm, among other things, that the facilities have been constructed as described in the underlying construction permit.<sup>7</sup>

In its Opposition, BHEFF states that the Station was constructed before the permit expiration date and therefore complies with section 73.3598 of the Commission's rules (Rules).<sup>8</sup> BHEFF explains that due to errors discovered in the original license to cover application, it modified its construction permit and moved the tower to a different location near the original construction permit site.<sup>9</sup> BHEFF maintains that the Station has been constructed at the modified construction permit site and is operating at least 8 hours a day.<sup>10</sup> BHEFF attaches photographs to support its assertion.<sup>11</sup> Additionally, BHEFF argues that REC provides no evidence justifying a denial of the Application but rather uses the Objection as a vehicle to continue its crusade against Hispanic low-power FM operators utilizing the services of Cesar Guel (Guel).<sup>12</sup> BHEFF asserts that it controls the Station's operation and staffing and is not affiliated with Guel in any way.<sup>13</sup>

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REC Networks, File No. BLL-20190823ABK (filed Sept. 24, 2019); Opposition to Informal Objection, Bakersfield Hispanic Education Family Foundation, File No. BLL-20190823ABK (filed Nov. 7, 2019).

<sup>3</sup> Objection at 2.

<sup>4</sup> Supplement at 1.

<sup>5</sup> *Id.* at 1, Attachment 1(providing statement of engineer, Rusty Burchfield).

<sup>6</sup> *Id.* at Attachment 1.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> Opposition at 2. *See also* 47 CFR § 73.3598 (“[e]ach original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed.”).

<sup>9</sup> *Id.* at 2-3. BHEFF explains that it originally applied for a low-power FM construction permit on November 14, 2013, which was granted on August 23, 2016, with an expiration date of August 23, 2019. *See* File No. BNPL-20131114AQA (filed Dec. 5, 2013). BHEFF filed an application for a license to cover the construction permit site on August 20, 2019, but voluntarily withdrew the application on August 22, 2019, after discovering that it constructed facilities at the wrong site. *See* File No. BLL-20190820AAW (filed Aug. 21, 2019). The same day, BHEFF filed an application to modify the original construction permit specifications. *See* File No. BMPL-20190822AAP (filed Aug. 22, 2019).

<sup>10</sup> *Id.* at 3, Attachment 1.

<sup>11</sup> *Id.* at Attachment 1.

<sup>12</sup> *Id.* at 4. BHEFF states that the photographs provided by REC to support its arguments are from the wrong site; Mr. Burchfield's statement is not made under penalty of perjury; and the supplements filed on September 5, 16, and 24, 2019, in support of REC's Objection are not relevant to the Application at issue.

<sup>13</sup> *Id.* at 5.

**Discussion.** Section 309(d)(1) of the Communications Act of 1934, as amended (Act), authorizes any party in interest to file a petition to deny any application as long as the petition “contain[s] specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with [the public interest].”<sup>14</sup> Informal objections, like petitions to deny, also must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.<sup>15</sup> After reviewing the record, we find that REC has failed to meet this burden.

Section 319(c) of the Act<sup>16</sup> imposes a stringent standard on challenges to license applications. So long as “all the terms, conditions, and obligations set forth in the application and permit have been fully met,” a permittee is entitled, as an applicant for a license to cover a construction permit, to a high degree of protection and a presumption that the public interest determination made during the underlying construction permit proceedings continues in effect unless circumstances have arisen that would make operation of the station against the public interest.<sup>17</sup> The Commission traditionally is reluctant to designate license applications for hearing in these circumstances and, in most instances, considers the grant of such application to follow almost automatically from the issuance of a construction permit and the completion of construction in accordance therewith.<sup>18</sup>

Here, after discovering errors in its original license to cover application, BHEFF amended its construction permit application, requesting and receiving authorization to construct facilities at an alternative site.<sup>19</sup> BHEFF constructed these facilities in accordance with the terms of its authorization and has kept the facilities intact and operable after construction.

REC has failed to raise any specific violations pertaining to the construction of the authorized facilities. Furthermore, in its response, BHEFF has provided photographic evidence and a declaration, under penalty of perjury, from Manuel Del Rosario attesting to the Station’s timely construction and operation.<sup>20</sup> REC has not responded to these assertions. We therefore see no basis for granting REC’s Objection, which rests solely on unsupported allegations that BHEFF’s facilities have not been constructed. Because REC has not raised any substantial or material questions of fact and has otherwise failed to demonstrate how grant of the Application would make operation of the Station inconsistent with the public interest, we dismiss the Objection.

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<sup>14</sup> 47 U.S.C. § 309(d)(1).

<sup>15</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must also contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>16</sup> 47 U.S.C. § 319(c).

<sup>17</sup> *Id.* (requiring the Commission to issue a license where a construction permit has been granted and it appears that the terms of such permit have been met, and “that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest...”).

<sup>18</sup> See, e.g., *Meyer Broadcasting Company*, Memorandum Opinion and Order, 65 FCC 2d 438, 441 (1977).

<sup>19</sup> See BNPL-20131114AQA (filed Dec. 5, 2013) (original application for construction permit); File No. BMPL-20190822AAP (filed Aug. 22, 2019) (modifying Permit No. BNPL-20131114AQA).

<sup>20</sup> Opposition at Attachment 1.

**Conclusion/Action.** For the reasons stated above, IT IS ORDERED that the Informal Objection filed by REC Networks on August 27, 2019, IS DISMISSED and the application for a license to cover filed by Bakersfield Hispanic Education Family Foundation (File No. BLL-20190823ABK) IS GRANTED.

Sincerely,

Nazifa Sawez  
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