



**Federal Communications Commission
Washington, D.C. 20554**

October 29, 2020

In Reply Refer to:
1800B3-SS

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In re: **KTWL(FM), Todd Mission, TX**
Roy E. Henderson
Facility ID No. 21204
File No. BALH-20200630AAI

Application for Assignment of License

Petition to Deny

Dear Counsel:

We have before us: (1) a twice-amended application (Application) for consent to assign the license of Station KTWL(FM), Todd Mission, Texas (Station),¹ from Roy E. Henderson (Henderson), to SDK Franco, LLC (SDK); (2) an August 4, 2020, Petition to Deny (Petition) the Application filed by Centro Cristiano de Vida Eterna (Centro),² and (3) related responsive pleadings.³ For the reasons set forth below, we deny the Petition and grant the Application.

¹ The Station is on Channel 287 (105.3 MHz).

² Hector Guevara is principal of Centro and former husband of SDK officer Sara Franco, and father of SDK officers Karen Sara Guevara and Daniel Guevara. .

³ On August 19, 2020, SDK filed an Opposition to Petition to Deny (Opposition). Also, on August 19, 2020, Centro file a Supplement to Petition to Deny (Supplement). On August 28, 2020, SDK filed an Opposition to the Supplement (Supplement Opposition). Also, on August 28, 2020, Centro filed a Reply to the Opposition (Reply).

Background. SDK and Henderson (Parties) filed the Application on June 30, 2020, and the Media Bureau (Bureau) staff accepted it for filing on July 2, 2020.⁴ On August 4, 2020, Centro filed its Petition. On August 11, 2020, the Parties amended the Application to update officers' addresses; to list the controlling interest of officer Daniel Guevara in low power FM station (LPMF) KCDE-LP, Houston, Texas; to declare his request to surrender its license; and to remove Daniel Guevara as an officer of SDK.⁵ On August 19, 2020, Centro filed its Supplement. On August 31, 2020, upon Daniel Guevara's surrendering of KCDE-LP's license to the Commission, the Parties again amended the Application to reinstate Daniel Guevara's interest in SDK as listed in the Application, as originally filed.⁶

In its Petition, Centro argues that the Application should be dismissed because the transaction is in violation of sections 73.858, 73.3555 and 73.860 of the FCC's rules (Rules).⁷ Specifically, Centro alleges that Daniel Guevara holds an "attributable interest" in LPMF station KCDE-LP and that section 73.860 of the Rules prohibits an LPMF licensee from holding an attributable interest in any other non-LPMF broadcast station such as the Application proposes here.⁸

In its Opposition, SDK argues that Centro's principal Hector Guevara listed his son Daniel Guevara as a "strawman" licensee of KCDE-LP without Daniel Guevara's knowledge or consent, while Hector Guevara actually controls and programs KCDE-LP.⁹ SDK asserts that Daniel Guevara became aware of his LPMF license after his parents' divorce and that he attempted to assign KCDE-LP only to withdraw the assignment application when Hector Guevara filed a petition to deny it.¹⁰ Consequently, SDK asserts that it filed the August 11th amendment to remove Daniel Guevara as a member of SDK and that Daniel Guevara is surrendering KCDE-LP's license, as Hector Guevara will not relinquish his *de facto* control of KCDE-LP.¹¹ Finally, in light of these actions, SDK argues that the staff dismiss the Petition as moot.¹²

In its Supplement, Centro argues that: (1) as of August 18, 2020, the Texas Secretary of State business organizations' database continues to list Daniel Guevara as a member of SDK; (2) the August 11th amendment increases Karen Guevara's voting rights from 40 percent to 95 percent, thus effectuating a transfer of control necessitating a "Major Change Amendment," pursuant to section 73.3578(b) of the Rules;¹³ (3) Karen Guevara's 95 percent control of SDK also necessitates that it also file transfer of control applications for its two other FCC licenses, FM translator stations K287BQ and K223CW, both at Houston, Texas, which it has not;¹⁴ and (4) the listed names and addresses in the amended Application differ from those provided to the Texas Secretary of State.¹⁵

⁴ See *Broadcast Applications*, Public Notice, Report No. 29774 (rel. Jul. 7, 2020).

⁵ See Application, as amended on August 11, 2020, at Exh. 1; see also Opposition at Attachments 1 and 2.

⁶ See Application, as amended August 31, 2020, at Exh. 1.

⁷ Petition at 2; see also 47 CFR §§ 73.858; 73.3555; 73.860.

⁸ *Id.*

⁹ Opposition at 3.

¹⁰ *Id.*

¹¹ *Id.* at 3-4; see also n.5, *supra*.

¹² *Id.* at 4.

¹³ See 47 CFR § 73.3578(b).

¹⁴ Centro notes that SDK's acquisition of the translator stations occurred when Daniel Guevara still had a 40 percent interest in SDK; thus, this acquisition was in violation of section 73.860 (party holding LPMF license may not hold

In its Supplement Opposition, SDK claims, *inter alia*, that Hector Guevara has assembled an empire of LPFM stations through shell corporations, and SDK reiterates that this is how Daniel Guevara, without his knowledge, became licensee of KCDE-LP.¹⁶ Moreover, SDK claims that this proceeding is due to the bitter divorce case between Hector Guevara and Sara Franco.¹⁷ Finally, SDK states that the Application will be amended as needed regarding name and address typos and also amended to show that Karen Guevara and Daniel Guevara will now each hold 40 percent of the voting rights, while Sara Franco will hold 20 percent.¹⁸ Accordingly, SDK argues that the Petition and Supplement should be dismissed as moot.¹⁹

In its Reply, Centro acknowledges that the August 31st amendment to the Application cures the deficiencies that Centro highlighted in its Petition and Supplement. However, Centro argues that SDK and its counsel have misrepresented themselves before the Commission in various proceedings, including here, when SDK claims that Daniel Guevara did not know that he was licensee of an LPFM station.²⁰ Specifically, Centro argues that: (1) Daniel Guevara filed an application for consent to assign the license of KCDE-LP on June 9, 2020,²¹ well before the Application's June 30, 2020, filing date and that there was no mention of Daniel Guevara's interest in KCDE-LP in the Application, as originally filed; (2) SDK also misrepresented itself in the Asset Purchase Agreement to assignor Henderson when it certified that SDK was a qualified assignee;²² and (3) SDK made false and misleading statements to the Commission concerning the FM translators awarded to SDK in the Guevara divorce proceeding.²³ Centro therefore asserts that the Application should not be granted until the Commission conducts an investigation into SDK's conduct here and in the FM translator proceedings.²⁴

Discussion. Section 310(d) of the Communications Act of 1934, as amended (Act),²⁵ requires the Commission to make a determination whether the proposed transfer or assignment of a broadcast license would be in the public interest. Section 309(d)(1) of the 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]."²⁶ Petitions to deny, like informal objections, also must allege

an attributable interest in any other non-LPFM broadcast station, including any FM translator). *See* Supplement at note 2.

¹⁵ Supplement at 1-4. For instance, Centro notes that Karen Sarah Guevara's name is actually "Karen Sara Guevara" and that Sara Guevara changed her name to "Sara Franco" after her divorce from Hector Guevara. *Id.* at 4.

¹⁶ Supplement Opposition at 2. *See also, e.g., Letter to Antonio Cesar Guel*, DA 14-670 (MB rel. May 16, 2014), dismissing numerous Centro applications for construction permits for new LPFM stations. *Id.* at Attachment 2

¹⁷ *Id.*

¹⁸ *Id.* at 3. *See also* Application, as amended August 31, 2020.

¹⁹ *Id.*

²⁰ Reply at 1-2.

²¹ *See* File No. BALED-20200610AAL.

²² Reply at 2-3.

²³ *Id.* at 4-7.

²⁴ *Id.* at 8.

²⁵ 47 U.S.C. § 310(d).

²⁶ 47 U.S.C. § 309(d)(1).

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.²⁷

Initially, we agree with Centro's interpretation of section 73.860(a) of the Rules. Section 73.860(a) prohibits a party from holding an attributable interest in an LPFM station and a non-LPFM broadcast station.²⁸ The record indicates that Daniel Guevara surrendered the license of KCDE-LP to the Commission on August 18, 2020, and that SDK's certification in the Application, as amended on August 31, 2020, that it is fully compliant with FCC rules and policies demands no further review. In addition, the August 31st amendment returned the voting rights of the three SDK members to the percentages as listed in the Application, as originally filed; thus, further discussion of Centro's allegation of the need for a major amendment here, is unwarranted. Moreover, regarding any current or future court proceedings among the Guevara family, we note that Commission grant of an assignment or transfer of control application merely finds that the parties are qualified under, and the proposed transaction does not violate, the Act, or the FCC's rules and policies. As such, it is permissive only and does not prejudice any relief to which the parties may ultimately be entitled.²⁹ Concerning Centro's allegations of SDK misconduct regarding SDK's FM translator stations, we note that our action here on SDK's proposed acquisition of the Station is taken without prejudice to whatever action, if any, the Bureau may take in proceedings involving SDK's other broadcast licenses.³⁰

Finally, Centro alleges that SDK has misrepresented itself and shown lack of candor before the Commission in this proceeding. Based on the foregoing discussion, it is apparent that SDK did not disclose the attributable interest of one of its members in an LPFM station at the time it filed the Application. Thus, SDK's representation in the Application, as originally filed, that it was fully compliant with all FCC rules and policies was untrue. The Commission relies on licensees to provide truthful and accurate information in order to carry out its mission. When issuing a license, we must be assured of the accuracy of the licensee's representations. In fact, the Commission expanded the scope of section 1.17 of the Rules,³¹ with respect to investigations and adjudications, to prohibit "written and oral statements of fact that are intentionally incorrect or misleading and written statements that are made

²⁷ See 47 U.S.C. § 309(d)(2); see also, 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* (Sep. 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).

²⁸ Section 73.860(a) states, in pertinent part:

. . . no license for an LPFM station shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in *any other non-LPFM broadcast station*, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions. (emphasis added).

²⁹ See *George R. Bosari, Jr., Esq.*, Letter Order, 24 FCC Rcd 11814, 11814 (MB 2009).

³⁰ See *CBS Radio Stations, Inc. (Assignor) and Entercom Memphis License, Inc. (Assignee)*, Memorandum Opinion and Order, 22 FCC Rcd 20058, 20065, para. 14 (2007) ("Our action here regarding Entercom's proposed acquisition of the Stations is taken without prejudice to whatever enforcement or other action, if any, . . . the Media Bureau, and/or the Commission may take in those other proceedings.").

³¹ 47 CFR § 1.17.

without a reasonable basis for believing the statement is correct and not misleading.”³² Misrepresentation involves false statements made with an intent to deceive.³³ Lack of candor involves concealment, evasion, or other failure to be fully forthcoming, accompanied by an intent to deceive.³⁴ Because SDK corrected its misrepresentation—albeit after the filing of Centro’s Petition—by swiftly amending the Application, we will admonish SDK for its brief false certification.³⁵ We note that generally we will not find actionable a lack of candor when the allegedly concealed fact has been supplied and is a matter of Commission record.³⁶ We caution SDK to exercise diligence in ascertaining the accuracy of its statements made to the Commission, because “a false statement, even absent an intent to deceive, may constitute an actionable violation of section 1.17 of the Rules.”³⁷

Conclusion/Actions. In light of the above discussion, we deny the Petition. Additionally, we have reviewed the Application, as amended on August 31, 2020, and find that Henderson is qualified to assign, and SDK is qualified to hold, the license for Station KTWL(FM) and that grant of the Application is consistent with the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, that the Petition to Deny filed by Centro Cristiano de Vida Eterna on August 4, 2020, IS DENIED.

IT IS FURTHER ORDERED, that pursuant to section 1.17 of the Rules, SDK Franco, LLC, IS HEREBY ADMONISHED for its false certification of compliance with FCC’s rules and policies, specifically, section 73.860 of the Rules.

IT IS FURTHER ORDERED, that the application for consent to assign the license of KTWL(FM), Todd Mission, Texas (File No. BALH-20200630AAI), filed by SDK Franco, LLC, IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

³² *In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016 (2003).

³³ *See Fox River Broadcasting, Inc.*, Order, 93 FCC 2d 127, 129, para. 6 (1983).

³⁴ *Id.*

³⁵ *See e.g., Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688, 13692, para. 14 (MB 2006) (licensee admonished for false public file certification).

³⁶ *See, e.g., Valley Broadcasting*, 4 FCC Rcd 2611, 2614-15, para. 19 (Rev. Bd. 1989) (subsequent report filed with the Commission reinforces finding of lack of intent to deceive).

³⁷ *See John Jason Bennett et al.*, Letter Order, 20 FCC Rcd 17193 (MB 2005), *citing San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13337, para. 23 (2002).