



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

January 15, 2015

In Reply Refer To:
1800B3-ATS

Ms. Jodi Reynhout
Nueva Esperanza, Inc.
4261 North 5th Street
Philadelphia, PA 19140

Mr. Anthony Jackson
The Social Justice Law Project of the Philadelphia NAACP, Inc.
1619 Cecil B. Moore Avenue
Philadelphia, PA 19121

Aaron Mackey, Esq.
Andrew Jay Schwartzman, Esq.
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W., Suite 312
Washington, DC 20001

Ms. Barbara Hogue
Historic Germantown Preserved
5501 Germantown Avenue
Philadelphia, PA 19144

Mr. Robert Willbowe
South Philadelphia Rainbow Committee
1260 S. Newkirk Street
Philadelphia, PA 19146

In re: LPFM MX Group 304

NAACP Social Justice Law Project
New LPFM, Philadelphia, Pennsylvania
Facility ID Number: 195646
File Number: BNPL-20131112BWB

Nueva Esperanza, Inc.
New LPFM, Philadelphia, Pennsylvania
Facility ID Number: 193022
File Number: BNPL-20131113BLG

G-Town Radio
New LPFM, Philadelphia, Pennsylvania
Facility ID Number: 192746
File Number: BNPL-20131114AKY

Germantown United Community
Development Corporation
New LPFM, Philadelphia, Pennsylvania

Facility ID Number: 195118
File Number: BNPL-20131114AMB

Germantown Life Enrichment Center
New LPFM, Philadelphia, Pennsylvania
Facility ID Number: 195802
File Number: BNPL-20131114AMR

Historic Germantown Preserved
New LPFM, Philadelphia, Pennsylvania
Facility ID Number: 196209
File Number: BNPL-20131114ANP

South Philadelphia Rainbow Committee
New LPFM, Philadelphia, Pennsylvania
Facility ID Number: 196383
File Number: BNPL-20131114BLI

Petitions to Deny

Dear Ms. Reynhout, Mr. Jackson, Ms. Hogue, Mr. Willbowe, and Counsel:

We have before us: 1) the above-referenced applications of G-Town Radio (“G-Town”), Germantown United Community Development Corporation (“Germantown United”), Germantown Life Enrichment Center (“Germantown Life”), and Historic Germantown Preserved (“Historic Germantown”) (collectively, “Germantown Applicants”) for new LPFM stations at Philadelphia, Pennsylvania (collectively, “Germantown Applications”); 2) two Petitions to Deny (“Petitions”) filed by Nueva Esperanza, Inc. (“Nueva Esperanza”) and NAACP Social Justice Law Project (“SJLP”) against the Germantown Applications;¹ 3) the respective applications of Nueva Esperanza, SJLP, and South Philadelphia Rainbow Committee (“South Philadelphia”) for new LPFM stations at Philadelphia, Pennsylvania; and 4) a time-share agreement jointly filed by G-Town, Germantown United, Germantown Life, and South Philadelphia (“Agreement”). For the reasons set forth below, we: 1) deny the Petitions; 2) approve the Agreement; 3) grant the applications of G-Town, Germantown United, Germantown Life, and South Philadelphia; and 4) dismiss the applications of Historic Germantown, Nueva Esperanza, and SJLP.

Background. The above-referenced applications were filed during the October 2013 LPFM filing window. The Bureau determined that the seven applications were mutually exclusive and identified them as LPFM MX Group 304.² On September 5, 2014, the Bureau identified all seven applications as tentative selectees of LPFM MX Group 304 on a time-share basis, began a 30-day period for filing petitions to deny against both applications, and began 90-day periods in which the applicants could file time-share agreements or major change amendments in order to resolve their mutual exclusivities.³

¹ Nueva Esperanza and SJLP filed their respective petitions to deny on October 6, 2014. Because the petitions are almost identical, we will consider them jointly. The Germantown Applicants filed an Opposition on October 20, 2014. The Petitioners filed a Reply on October 28, 2014.

² *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period; CDBS Is Now Accepting Form 318 Amendments*, Public Notice, 28 FCC Rcd 16713 (MB 2013).

³ *Commission Identifies Tentative Selectees in 111 Groups of Mutually Exclusive Applications Filed in the LPFM Window; Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments*, Public Notice, 29 FCC Rcd 10847 (2014) (“September Public Notice”).

In the Petitions, Petitioners argue that the Germantown Applications should be denied because G-Town “explicitly directed the other three parties to file their applications so that these multiple applications could then be combined for [G-Town’s] benefit” and thus violated the prohibition on filing multiple applications.⁴ In support of this allegation, Petitioners provides a declaration from Anthony Jackson, Executive Director of SJLP, which states that G-Town Radio’s representative, Jim Bear, indicated to him that he was not interested in negotiating a time-share agreement with any applicants other than the Germantown Applicants.⁵ Jackson further states that he “engaged in conversations with the directors of [Historic Germantown and Germantown Life] in which it was acknowledge that they originally submitted [their applications] at the direction of G-Town Radio and [Baer].”⁶ Jackson further alleges that these applicants only submitted their applications because of Baer and always intended to file a time-share agreement.⁷

Petitioners also note that the Germantown Applications contain information showing collaboration among the Germantown Applicants.⁸ All of the Germantown Applications were prepared by the same engineering consultant and contain identical engineering information, including the proposed transmitter site. Additionally, all of the Germantown Applications specify the same studio location, which is the current studio location used by G-Town for its Internet radio operation.⁹

Petitioners also argue that various parties to the Germantown Applications hold interests in other Germantown Applicants which they failed to disclose.¹⁰ Specifically, they allege that: 1) Yvonne Haskins, a member of the Germantown United board, and Harold Haskins, a member of the Historic Germantown board, are married and their interests are attributable; 2) Dennis Pickeral, president of Historic Germantown, is listed as a board member of Germantown United on that organization’s website; 3) Yomi Awodesu, a member of the Germantown United board, is employed by Germantown Life as a “Program Director;” 4) Barbara Hogue, a board member of Germantown United, is the contact representative for Historic Germantown; and 5) Kenneth Weinstein, a board member of G-Town, is the employer of Stan Smith, a board member of Germantown United.¹¹

The Opposition argues that the Germantown Applicants have not violated any of the Commission’s Rules (“Rules”) in applying with the intention of aggregating their points and that such a practice was in fact approved by the Commission.¹² The Opposition further argues that it is permissible to share both a main studio and transmitter site.¹³ The Opposition argues that no party identified by the Petitioners held an attributable interest in any other LPFM application at the time of filing, and provides declarations from Yvonne Haskins, Harold Haskins, Pickeral, Awodesu, Hogue, and Weinstein in support

⁴ Petitions at 1, *citing* 47 C.F.R. § 73.3520.

⁵ Petitions at Declaration of Anthony Jackson.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

⁹ The contact information for the studio site in each of the Germantown Applications is (215) 609-4301, G-Town’s current studio phone number, and info@gtownradio.com.

¹⁰ Petitions at 2.

¹¹ *Id.*

¹² Opposition at 6, *citing* <http://www.fcc.gov/blog/low-power-fm-application-window-fast-approaching>.

¹³ *Id.* at 7-8.

of this assertion.¹⁴ Finally, the Opposition argues that because there have been no violations of the Rules or failure to disclose required information, the Germantown Applicants did not engage in any misrepresentation or lack of candor.¹⁵

In the Reply, the Petitioners argue that the Commission in fact warned applicants not to attempt to file applications with the understanding of reaching a subsequent time-share agreement.¹⁶ They further allege that the Germantown Applicants have admitted that they coordinated their applications, thus demonstrating that they are in violation of the multiple applications rule.¹⁷ Finally, Petitioners allege that the Germantown Applicants have failed to show that the Haskins' interests should not be attributable to each other, and that the failure to disclose this relationship and the pre-existing agreement to pursue a time-share agreement indicates a lack of candor by the Germantown Applicants.¹⁸

After the filings of the Petitions and Opposition, on December 4, 2015, G-Town Radio, Germantown United, Germantown Life, and South Philadelphia filed a time-share agreement, aggregating their points for a total of 20 points.¹⁹ On December 5, 2014, Nueva Esperanza and NAACP filed their own time-share agreement, aggregating their points for a total of 10 points. Historic Germantown did not join either of the time-share groups and remains with 5 points.

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended, petitions to deny must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.²⁰ Petitioners have not met this burden.

Multiple Application Rule. The Petitioners have not demonstrated that the Germantown Applicants violated any Rules in coordinating their applications with the intention of filing a joint time-share agreement or that the applications were filed for the benefit of G-Town. Contrary to Petitioners' assertion, a September 30, 2013 post on the Commission's Blog in fact specifically approved of such agreements.²¹ We also find Jackson's declaration unpersuasive. It contains hearsay²² and its veracity is

¹⁴ Opposition at 8-11.

¹⁵ *Id.* at 11.

¹⁶ Reply at 2, *citing* <http://www.fcc.gov/blog/low-power-fm-application-window-fast-approaching>.

¹⁷ *Id.* at 4-6.

¹⁸ *Id.* at 6.

¹⁹ The *September Public Notice* explained that tentative selectees may file time-share agreements to aggregate their points and break ties. *See September Public Notice*, 29 FCC Rcd at 10850. *See also* 47 C.F.R. § 73.872(c).

²⁰ 47 U.S.C. § 309(d).

²¹ “[O]rganizations in a community could apply separately – for the same or different frequency – knowing that they may decide later to aggregate points so they can negotiate a time-share agreement if the Commission determines that they are tied with the highest point total in the same mutually exclusive group.” *See* <http://www.fcc.gov/blog/low-power-fm-application-window-fast-approaching>. Petitioner's selective quotation from the Commission's Blog ignores that coordinated applications from multiple applicants were prohibited only in cases where there is a “**a prior understanding that the groups will later share time or ownership with each other if just one applicant succeeds in getting a construction permit.**” Here, all four of the Germantown Applicants have been identified as tentative selectees and are thus potentially eligible for construction permits. Additionally, we remind both Petitioners and the Germantown Applicants that it is well established that informal staff advice is not authoritative and is relied on by applicants at their own risk. *See, e.g., Malkan FM Associates v. FCC*, 935 F.2d 1313, 1319 (D.C. Cir. 1991) (“A person relying on informal advice given by the Commission staff does so at their own risk.”); *State of Oregon*, Memorandum Opinion and Order, 11 FCC Rcd 1843, 1844 (1996) (“... informal advice is not binding”).

questionable because Jackson is a party to SJLP's application.²³ Additionally, it does not disclose which Historic Germantown or Germantown Life board members Jackson allegedly spoke with, nor does it provide sufficient context to indicate that Baer or G-Town have ever exercised *de facto* control over any of the other Germantown Applicants or their applications.²⁴ Moreover, there is no Rule prohibiting LPFM applicants from filing separate applications with the goal of arriving at a timeshare agreement, provided that each applicant remains under separate control and intends to construct and operate the proposed station if its application is granted. We note that each of the Germantown Applicants has an independent corporate history and independent board, with no indicia that any of the Germantown Applicants was established as a "front" for another entity. In addition, Historic Germantown did not participate in the Agreement, whereas South Philadelphia – which is not among the Germantown Applicants – did participate.²⁵ Finally, the Agreement provides all parties airtime, including 60 hours per week to South Philadelphia. This strongly suggests independent decision-making rather than common control of the Germantown Applicants as a group.

Common Studio and Transmitter Site. Petitioners allege the Germantown Applicants' specification of a common main studio and transmitter site indicate that their applications were filed for the benefit of G-town and that they did not intend to operate their own stations. However, there is no rule prohibiting applicants from sharing a studio or transmitter site. Accordingly, we consider this relevant but not sufficient, in itself, to indicate *de facto* control of the Germantown Application by G-Town.²⁶

Attributable Interests. The Rules prohibit the filing of inconsistent applications.²⁷ An application is inconsistent with another pending application when grant of both would result in a violation of the Commission's multiple ownership rules.²⁸ Section 73.855(a) of the Rules prohibits a party from having an attributable interest in more than one LPFM station.²⁹ Accordingly, the Germantown Applications would have been inconsistent if an officer or director of one of the Germantown Applicants held an

²² The Commission has found accounts of conversations with third parties to be inadmissible hearsay. *See, e.g., Living Proof, Inc. Big Pine, California*, Letter, 24 FCC Rcd 2382, 2385, n.29 (MB 2009) (declining to credit hearsay statements of third party). The weight to be accorded to a hearsay statement depends on its truthfulness, reasonableness, and credibility (*Johnson v. United States*, 628 F.2d 187, 190-191 (D.C. Cir. 1980)).

²³ *See, e.g., Excellence in Education Network*, Memorandum Opinion and Order, 8 FCC Rcd 6269, 6272 n.9 (1993) ("an affidavit of a party attesting to another person's assertions ... is hearsay and as such has no probative value under Section 309(d) [of the Communications Act]").

²⁴ *Compare Edwin L. Edwards, Sr.*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22248 (2001), *aff'd sub nom. Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539 (D.C. Cir. 2003) ("[W]e find that Kelley and Rainbow have set forth specific allegations of fact sufficient to show that certain of the current transactions in this proceeding have resulted in Sinclair exercising *de facto* control over Glencairn in violation of Section 310(d) of the Communications Act.").

²⁵ *See* Agreement at 2.

²⁶ In assessing the locus of control, the Commission examines who establishes an entity's basic operating policies with respect to programming, personnel, and finances. *See WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142-46 (1995), *vacated on other grounds sub nom. Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998); *Choctaw Broadcasting Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 8534, 8538-39 (1997). Shared facilities do not necessarily indicate an abdication of control to the entity that owns or leases the facilities.

²⁷ 47 C.F.R. § 73.3518 ("While an application is pending and undecided, no subsequent inconsistent or conflicting application may be filed by or on behalf of or for the benefit of the same applicant, successor or assignee.").

²⁸ *See Treasure Coast Media, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 5533 (1992).

²⁹ 47 C.F.R. § 73.855(a).

attributable interest in any other Germantown Applicant. A violation of the inconsistent application rule cannot be cured through a post-hoc amendment.³⁰

Yvonne and Harold Haskins. The Commission eliminated the presumption of common control of spousal interests in broadcast stations in 1992.³¹ Moreover, there is no requirement that parties to an application identify every family member with an interest in another broadcast entity.³² Finally, Yvonne Haskins' declaration attests that she is not involved in Historic Germantown, and Harold Haskins' declaration attests that he is not involved in Germantown United.³³ We thus find that the Haskins' interests in their respective organizations were not required to be disclosed, nor are they attributable to any other LPFM applicant.

Dennis Pickeral. Although Pickeral is currently a member of the boards of both Historic Germantown and Germantown United, he states that he was not a member of the Germantown United board until March 2014, after the filing of the Germantown Applications, and that he subsequently agreed to recuse himself from any matters relating to Historic Germantown's application pursuant to Section 73.858(a).³⁴ We do not need to determine whether Pickeral's joining the Germantown United board after the submission of the Germantown Application created a violation of the inconsistent application rule. The remedy for such a violation is to dismiss the latter-filed application and we are dismissing the later-filed application of Historic Germantown on other grounds.³⁵ However, Germantown United did not amend its application to reflect the change in its board until October 31, 2014, 8 months after Pickeral joined its board. We remind Germantown United of its obligation under Section 1.65(a) of the Rules to ensure that continuing accuracy of its application.³⁶

Yomi Awodesu. Awodesu is employed as a "Program Director" with Germantown United and is identified as a board member of Germantown Life. The attribution rules do not provided that mere employment with an applicant, permittee or licensee results in an attribution of ownership interest. We thus reject Petitioner's argument that Awodesu's employment creates an attributable interest.

³⁰ See *Big Wyoming Broadcasting Corp.*, Memorandum Opinion and Order, 2 FCC Rcd 3493 (1987) ("The graveman of the rule violation... was the filing of the inconsistent application itself and such a violation can never be cured by subsequent amendment because the act of filing cannot be undone.") (emphasis added). See also *Jersey Shore Broadcasting Corp. v. FCC*, 37 F. 3d 1531, 1537 (D.C. Cir. 1994) (applicant cannot cure a violation of the inconsistent application rule by amendment).

³¹ See *Clarification of Commission's Policies Regarding Spousal Attributions*, Policy Statement, 7 FCC Rcd 1920 (1992).

³² Applicants for new LPFM stations are only required to identify family members with interest in other media if that family member would have a significant role in the operation of the proposed LPFM station. See Worksheet for FCC Form 318, Worksheet #1a – Family Relationships.

³³ Opposition at Declaration of Yvonne Haskins and Declaration of Harold Haskins.

³⁴ Opposition at 9 and Declaration of Dennis Pickeral. See also 47 C.F.R. § 73.858(a) ("A director of an entity that holds an LPFM license will not have such interest treated as attributable if such director also holds an attributable interest in a broadcast license or other media entity but recuses himself or herself from any matters affecting the LPFM station.").

³⁵ See *Media Bureau Announces Availability for the Revised FCC Form 318 and the Filing Procedures for October 15 – October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8856-57 (MB 2013) ("For applicants subject to the one application filing limit, a second application filed by such an applicant in this window would be treated as a "conflicting" application subject to dismissal under Section 73.3518.").

³⁶ 47 C.F.R. § 1.65(a).

Barbara Hogue. Barbara Hogue is a member of the Germantown United Board of Directors and, at the time the Germantown Applications were filed, was employed by Historic Germantown as “Executive Director.” Hogue states that in her capacity as Executive Director, she was neither an officer nor board member.³⁷ Accordingly, we find that her employment with Historic Germantown did not result in an attributable interest in that organization.³⁸

Kenneth Weinstein. Petitioners allege that Weinstein’s interest in G-Town should be attributed to Germantown United because Weinstein employs Stan Smith, a board member of Germantown United. However, the Germantown Applicants have demonstrated that Weinstein is not in fact Smith’s employer.³⁹ Moreover, even if Weinstein *were* Smith’s employer, the attribution rules would not require Weinstein’s interest in G-Town being attributed to Germantown United.

Character Allegations. Petitioners have failed to show that the Germantown Applicants violated any Rules or improperly coordinated the submission of their applications. Moreover, the Germantown Applicants were not required to disclose any relationships that did not result in attributable interests. We thus reject the Petitioners argument that the Germantown Applicants have demonstrated a lack of fitness of character to hold an LPFM license. We will thus deny the Petitions.

Time-Share Agreement. As a result of the Agreement, G-Town, Germantown Life, Germantown United, and South Philadelphia have an aggregated 20 comparative points, thus breaking the seven-way tie in LPFM MX Group 304 in those applicants’ favor. We have reviewed the Agreement and find that it meets the requirements of Section 73.872(c).⁴⁰ Accordingly, we will grant the Agreement and its respective applications, and dismiss the mutually exclusive applications filed by Nueva Esperanza, SJLP, and Historic Germantown.

Conclusion. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petitions to Deny filed by Nueva Esperanza, Inc., and NAACP Social Justice Law Project on October 6, 2014, ARE DENIED.

IT IS FURTHER ORDERED, that the time-share agreement filed on December 4, 2014, by G-Town Radio, Germantown Life Enrichment Center, Germantown United Community Development Corporation, and South Philadelphia Rainbow Committee IS APPROVED pursuant to 47 C.F.R. § 73.850(c)(1).

IT IS FURTHER ORDERED, that the application of NAACP Social Justice Law Project (BNPL-20131112BWB) for a new LPFM station at Philadelphia, Pennsylvania, IS DISMISSED.

IT IS FURTHER ORDERED, that the application of Nueva Esperanza, Inc. (BNPL-20131113BLG) for a new LPFM station at Philadelphia, Pennsylvania, IS DISMISSED.

IT IS FURTHER ORDERED, that the application of Historic Germantown Preserved (BNPL-20131114ANP) for a new LPFM station at Philadelphia, Pennsylvania, IS DISMISSED.

³⁷ Opposition at 10 and Declaration of Barbara Hogue.

³⁸ Moreover, even if Hogue were an officer or director, the remedy would be the dismissal of the application of Historic Germantown, which we are dismissing on other grounds. *See* n.35 *supra*, and related text.

³⁹ Opposition at 11 and Declaration of Kenneth Weinstein. Specifically, Weinstein states that he has no professional relationship with Smith and that there is another “Kenneth Weinstein” residing in the area, who does in fact employ Smith.

⁴⁰ *See* 47 C.F.R. § 73.872(c).


IT IS FURTHER ORDERED, that the application of G-Town Radio (BNPL-20131114AKY) for a new LPFM station at Philadelphia, Pennsylvania, IS GRANTED.

IT IS FURTHER ORDERED, that the application of Germantown Life Enrichment Center (BNPL-20131114AMR) for a new LPFM station at Philadelphia, Pennsylvania, IS GRANTED.

IT IS FURTHER ORDERED, that the application of Germantown United Community Development Corporation (BNPL-20131114AMB) for a new LPFM station at Philadelphia, Pennsylvania, IS GRANTED.

IT IS FURTHER ORDERED, that the application of South Philadelphia Rainbow Committee (BNPL-20131114BLI) for a new LPFM station at Philadelphia, Pennsylvania, IS GRANTED.

Sincerely,


Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: G-Town Radio
Germantown United Community Development Corporation
Germantown Life Enrichment Center