



Federal Communications Commission
Washington, D.C. 20554

June 25, 2015

In Reply Refer to:
1800B3-ATS

David A. O'Connor, Esq.
Kelly Donohue, Esq.
Wilkinson Barker Knauer, LLP
2300 N Street, N.W., Suite 700
Washington, DC 20037

Dr. Gene Wisniewski
World Radio Link, Inc.
160 Gooding Street W.
Twin Falls, ID 83301

In re: Ministerio Centro Familiar – Everett,
WA
New LPFM, Edmonds, Washington
Facility ID No. 195517
File No. BNPL-20131115ACC

**Informal Objection and
Petition for Reconsideration**

Dear Counsel and Dr. Wisniewski:

We have before us: 1) the Petition for Reconsideration (“Petition”) filed by Ministerio Centro Familiar – Everett, WA (“Ministerio”), seeking reinstatement of its application for a construction permit for a new LPFM station at Edmonds, Washington (“Application”); and 2) the Informal Objection to the Application (“Objection”) filed by Seattle FCC License Sub, LLC (“SLS”), licensee of Station KRWM(FM), Bremerton, Washington. For the reasons set forth below, we grant the Petition in part, deny it in part, and grant the Objection.¹

Background. Ministerio filed the Application during the October 2013 LPFM filing window, proposing to serve Edmonds, Washington. The Bureau determined that the Application and the application of Fulcrum Community Communications² were mutually exclusive and identified them as LPFM MX Group 297.³ On February 4, 2014, Ministerio filed an amendment that identified a new transmitter site, requested a second-adjacent waiver with regard to KRWM, and resolved the Application’s mutual exclusivity (“Amendment”).⁴ The Bureau accepted the Application for filing on February 5, 2014.⁵

¹ The Objection was filed on March 12, 2014. Ministerio filed an Opposition (“Ministerio Opposition”) on November 3, 2014. SLS filed a Reply on November 19, 2014. The Petition was filed on May 6, 2015. SLS filed an Opposition (“SLS Opposition”) on May 21, 2015.

² File No. BNPL-20131104AAD.

³ *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period; CDDBS Is Now Accepting Form 318 Amendments*, Public Notice, 28 FCC Rcd 16713 (MB 2013).

⁴ See Amendment at Section VI, Question 3 (identifying Antenna Structure Registration Number 1055670 as site of proposed transmitter (“Tower”).

⁵ *Broadcast Applications*, Public Notice, Report No. 28173 (MB Feb. 10, 2014) (“Acceptance Public Notice”).

In the Objection, SLS argues that the Application should be dismissed because Ministerio did not have reasonable assurance of site availability at the Tower at time it filed the Amendment. It states that the Tower is registered to Crown Communication LLC (“Crown”), and that Crown has no record of having been contacted by Ministerio regarding use of the Tower.⁶ The Objection includes: 1) an email from Crown’s representative, Christine Verre, to SLS’s counsel, in which Verre states “[if] someone from Ministerio had contacted [Crown], they would have spoken to [Scott Hanson],” and 2) an email from Hanson in which he states “I’m not showing any active application on [the Tower]; nor do I have any record of an email exchange re: this tower with [Ministerio].”⁷

SLS also argues that although the Amendment “presents all of the data for a second-adjacent channel waiver,” the Amendment certified that it satisfied all of the spacing requirement of Section 73.807 of the Commission’s Rules (“Rules”) and did not explicitly request a second-adjacent waiver.⁸ Finally, SLS notes that “were [Ministerio] to construct its LPFM station, it would face the substantial risk of being forced to shut down” should any KRWM listener file an interference complaint.⁹

In its Opposition, Ministerio provides a series of emails which it says shows its representatives obtained Crown’s permission to use the Tower.¹⁰ The Emails show that: 1) on January 27, 2014, and January 28, 2014, Gene Wisniewski (Ministerio’s engineer) contacted Manuel Ling, asking if Ling could obtain reasonable assurance for the Tower from Crown; 2) on January 28, 2014, Ling emailed Christine Verre at Crown asking if the Tower was available; 3) on January 31, 2014, Verre informed Ling and Wisniewski that they would need to contact Crown’s account executive, Scott Hanson; and 4) on January 31, 2014, Jerry Luxembourg from Tower and Leasing Acquisitions emailed Wisniewski and informed him that the Tower was managed by Crown, that it had space available, and that Crown is “in the business of leasing space on their towers, so if they have the space and you meet their requirements they would want to talk with about leasing space on any of their towers.”¹¹ Finally, Ministerio provides a letter from Crown to World Radio Link, Inc. (“WRL”)¹² dated February 10, 2003, in which Crown states that its “tower-site owning affiliates are willing to license space at their wireless telecommunications tower sites to [WRL] and it’s [sic] clients for the purpose of locating and operating its equipment thereon.”¹³

Ministerio further argues that Exhibit 11 to the Amendment references and shows compliance with Section 73.807(e)(1),¹⁴ which deals with second-adjacent waiver requests, and states that it “assumed a person of average intelligence would deduce Exhibit 11 was requesting ‘Waiver of the second-adjacent channel separations’ even though the waiver was not ‘explicitly’ requested.”¹⁵ Ministerio also argues that the *Acceptance Public Notice* shows that the Bureau understood that a second-adjacent channel waiver

⁶ Objection at 2.

⁷ *Id.* at Attachment A.

⁸ *Id.* at 2-3. *See also* Application at Section VI, Question 8.a.

⁹ Objection at 3.

¹⁰ Ministerio Opposition at Exhibit 1A (“Emails”).

¹¹ *Id.*

¹² WRL is apparently Wisniewski’s employer. *See* Opposition at 4.

¹³ Ministerio Opposition at Exhibit 1B (“Crown Letter”).

¹⁴ 47 C.F.R. § 73.807(e)(1) (“*Waiver of the second-adjacent channel separations*”).

¹⁵ *Id.* at 2.

had been requested.¹⁶ Finally, Ministerio notes that it stated in its technical exhibit that it was aware that its proposed LPFM station would be forced to cease operations if it caused interference.¹⁷

In the Reply, SLS argues that the Emails show that Ling contacted Verre, but do not show that he contacted Hanson, and that Verre's email to Ling "lacks an even basic meeting of the minds."¹⁸ SLS further argues that the Crown Letter should be disregarded because it is 10 years old and specifically states that it "is not a legally enforceable agreement nor an offer."¹⁹

In the Petition, Ministerio states that its corporate status with the State of Washington has been restored and that the Application should be reinstated.²⁰ SLS responds that Ministerio "has not provided any evidence that its corporate status was active all times after filing the Application and prior to restoring its status at some point after the [*Dismissal Letter*] was issued."²¹

Discussion. Petition. 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 additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.²² Ministerio has met this burden and we will grant the Petition in part.

We have previously found an applicant for a full-service noncommercial educational ("NCE") construction permit that had allowed its corporate status to lapse was still eligible for an NCE license because it had been reinstated by the state where it was incorporated and that reinstatement was given retroactive recognition by the state to the time the applicant was dissolved.²³ Here, Ministerio's corporate status has been reinstated *nunc pro tunc* by the SOS and its good standing has been retroactively restored because the Revised Code of Washington provides that "[r]einstatement may relate back to the date of lapse or dissolution."²⁴ Thus, any gap in Ministerio's legal corporate existence has been erased.²⁵ Accordingly, Ministerio has satisfied the eligibility requirements of the LPFM service.²⁶ We will thus

¹⁶ *Id.* at 3, citing *Acceptance Public Notice* ("Requests waiver pursuant to Section 73.807(e)(1) with respect to KRWM(FM) and KNDD(FM).").

¹⁷ Ministerio Opposition at 3, citing Application at Exhibit 11 ("Let it be noted that should any actual real world interference occur, the applicant acknowledges that it will promptly suspend operation of this LP-FM in accordance with 47 C.F.R. § 73.807(e)(1)(ii).").

¹⁸ Reply at 2-3.

¹⁹ *Id.* at 3.

²⁰ Petition at 1. The Petition includes a printout from the Washington Secretary of State ("SOS") website indicating that Ministerio is now listed as an "Active" nonprofit entity.

²¹ SLS Opposition at 2. SLS also notes that the Objection was not addressed in the *Dismissal Letter* and remains pending. *Id.* at 2-3.

²² See 47 C.F.R. § 1.106(c), (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

²³ See *New Bohemia Group, Inc.*, Letter, 24 FCC Rcd 1357 (MB 2009) (finding that corporate dissolution was without effect because status was reinstated *nunc pro tunc*).

²⁴ Wash. Rev. Code § 24.03.303 (2015).

²⁵ In general, the Commission will not consider issues of a licensee's compliance with the requirements of state corporate law unless a challenge to an applicant's corporate status has been made in state court. See *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17855 (1997) (citing *North American Broadcasting, Inc.*, 15 FCC 2d 979 (1969)). Here, no such challenge has been made.

²⁶ 47 C.F.R. § 73.853(a). See also *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205,

grant the Petition to the extent that it argues that Ministerio's corporate status has been retroactively restored with the State of Washington. However, as discussed below, we will not reinstate the Application because Ministerio lacked reasonable assurance of site availability at the time it filed the Amendment.

Objection. Pursuant to Section 309(d) of the Communications Act of 1934, as amended, informal objections, like 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.²⁷ SLS has met this burden and we will grant the Objection.

An applicant seeking a new broadcast facility must, in good faith, possess "reasonable assurance" of a transmitter site at the time it files its application.²⁸ It is well established that the specification of a transmitter site in an application is an implied representation that the applicant has obtained reasonable assurance that the site will be available.²⁹ While some latitude is afforded such "reasonable assurance," there must be, at a minimum, a "meeting of the minds resulting in some firm understanding as to the site's availability."³⁰ A mere possibility that the site will be available is not sufficient.³¹

We find that Ministerio has failed to demonstrate that it had reasonable assurance of site availability at the time it filed the Amendment. The Emails establish that Ling contacted Crown and was told to speak with an account executive. At no point did Verre indicate that Crown had space on the Tower that it was willing to offer to Ministerio. Thus, the Emails at most indicate that Ministerio's representative contacted Crown about an available space, but do not show that Crown indicated that space was available on the Tower or agreed to allow Ministerio to use space on the Tower. Similarly, Luxembourger's email does not demonstrate that Crown was willing to lease space on the Tower to Ministerio; Luxembourger is not an employee of Crown and his email was speculative at best. Additionally, we reject Ministerio's reliance on the Crown Letter. This letter predates the Application by over 10 years, and does not specifically indicate that Crown was willing to allow Ministerio to use the Tower for the proposed station. Because Ministerio has not satisfied our requirement that an applicant

2213 (2000) ("having decided to establish LPFM as a noncommercial service, we will require that LPFM licensees comply with the eligibility requirements of [47 U.S.C. § 397(6)(A)].").

²⁷ 47 U.S.C. § 309(d); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

²⁸ *Les Seraphim and Mana'o Radio*, Memorandum Opinion and Order, 25 FCC Rcd 2785, 2787 (MB 2010).

²⁹ See, e.g., *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427 (1974) ("*Wallace*") ("Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary.").

³⁰ *Genesee Communications, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 3595 (1988). The applicant need not own the proposed site and may even work out the final details for a lease sometime in the future. The "reasonable assurance" standard is satisfied by "[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated . . ." *Elijah Broadcasting Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351 (1990).

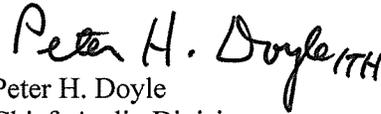
³¹ See *Wallace*, 49 FCC 2d at 1425. The Commission does not require (and has never required) non-commercial educational ("NCE") broadcast applicants to certify the availability of the transmitter site in its application procedures. See, e.g., *Carnegie-Mellon Student Government Corp.*, Hearing Designation Order, 7 FCC Rcd 3914, 3914 (MB 1992). Nonetheless, when an NCE applicant proposes a site, it must do so with reasonable assurance in good faith that the site will be available. See, e.g., *Midland Educational Broadcasting Foundation*, Hearing Designation Order, 4 FCC Rcd 5207 (MB 1989) (holding that applicant for an NCE FM station had reasonable assurance of site availability because it paid for a lease option on the proposed transmitter site).

have reasonable assurance of site availability at the time of filing the Amendment, we will grant the Objection and affirm our dismissal of the Application.³²

Conclusion/Actions. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed on May 6, 2015, by Ministerio Centro Familiar – Everett, WA, IS GRANTED in part and IS DENIED in all other respects.

IT IS FURTHER ORDERED, that the Informal Objection filed on March 12, 2014, by Seattle FCC License Sub, LLC, IS GRANTED.

Sincerely,

Handwritten signature of Peter H. Doyle in black ink.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Ministerio Centro Familiar – Everett, WA
2201 Wetmore Ave.
Everett, WA 98201

³² Although we need not address SLS' remaining arguments, we would reject them if we did. As Ministerio notes, the staff was able to discern that Exhibit 11 to the Application was a second-adjacent waiver request and stated so in the *Acceptance Public Notice*. Additionally, Ministerio acknowledged in the Amendment that it would have to cease operations should its LPFM station cause interference to KRWM.