



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

July 31, 2006

DA 06-1552

In reply refer to:

1800B3-CLR

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Broadcast Company of the Americas, LLC
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1000 Potomac Street, 5th Floor
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In re: Philip J. Plank
KSSB(FM), Calipatria, CA
Facility ID No. 52469
File No. BALH-20051208ADX

Gentlemen:

This is in regard to the above-referenced application (the "Application") to assign the license of KSSB(FM), Calipatria, California, from Philip J. Plank to Lazer Broadcasting Corporation ("Lazer"). Broadcast Company of the Americas, LLC ("BCA") filed a Petition to Deny (the "Petition") the application on January 13, 2006.¹ For the reasons stated below, we deny the Petition and grant the Application.

In its Petition, BCA states that it is in the business of providing programming over Mexican stations pursuant to Section 325 of the Communications Act of 1934, as amended (the "Act").² It

¹ Lazer filed an Opposition to Petition to Deny on January 20, 2006, and BCA filed a Reply to Opposition to Petition to Deny on February 1, 2006.

² 47 U.S.C. § 325. Section 325(c) of the Act states:

No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having power output of sufficient intensity and/or being so located geographically that its

contends that Lazer and another entity, Emmis Communications Corporation (“Emmis”),³ abused Commission processes in a proceeding involving Section 325 applications filed by BCA to deliver programming to the Class B and Class C1 facilities of station XHBCE-FM, located in Matamoros Jaramillo, Baja California, Mexico, and Municipio de Tecate, Baja California, Mexico, respectively. BCA alleges “willful misrepresentation, lack of candor and abuse of the Commission’s process” by Lazer in opposing BCA’s applications, which renders Lazer unqualified to be a Commission licensee.

In the petition to deny BCA’s Section 325 applications, Lazer alleged that the licensee of XHBCE-FM had constructed facilities that had not been coordinated with the United States and that XHBCE-FM’s Class B facility was not constructed at the appropriate location. That petition further stated that the antenna of XHBCE-FM’s Class C1 facility was improperly pointed to place its major lobe to the northwest, that it was operating when it should not have been, and that it was causing interference to Lazer’s station KXRS(FM), Hemet, California.

BCA claims, however, that Lazer’s pleadings in the Section 325 proceeding were “rife with misrepresentations” and motivated by a desire to inflict “as much injury as it could” upon BCA, which “outbid Lazer for the rights to provide programming over XHBCE-FM.” Although BCA admits that XHBCE-FM’s Class B facility was constructed “a few hundred feet” from the authorized site, it asserts that Lazer sought to mislead the Commission into believing that it was constructed more than 2.5 kilometers away by “playing games” with the name for the Class B site.⁴ BCA also argues that Lazer sought to mislead the Commission when it claimed that XHBCE-FM had commenced operations prematurely at its Class C1 facility and that the station’s antenna was improperly oriented. Therefore, BCA argues that the Application should be dismissed.⁵

Lazer responds that it raised legitimate questions about the location and construction of the station’s facilities based on the photos of its own and BCA’s consultants, as well as the drawings of the antenna’s manufacturer. It also stands by its assertion that a consultant detected unauthorized operations. Finally, Lazer denies that it bid against BCA for the program rights on XHBCE-FM.

We will not address any of the factual issues related to the Section 325 proceeding. Those were resolved by the International Bureau, which issued BCA an authorization to deliver programming to the

emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefore.

Section 325 applications are handled by the Commission’s International Bureau. This letter does not represent a ruling or comment on the merits of BCA’s Section 325 applications.

³ Emmis is not a party to this proceeding.

⁴ BCA states that the Mexican name for the location of the station’s facilities is different than the name used by the Commission.

⁵ Lazer argues that BCA lacks standing to file the Petition. BCA has not made a showing that it has standing, but instead has only alleged that it is an “aggrieved party” because of Lazer’s role in the Section 325 proceeding. However, because the allegations in BCA’s petition go to the issue of Lazer’s character and its basic qualifications to be a licensee, we have considered the matters raised in its pleadings.

Class C1 facility of XHBCE-FM.⁶ The only issue before us is whether Lazer's actions in the Section 325 proceeding constitute an abuse of process and whether, therefore, Lazer lacks the requisite character to be a Commission licensee in connection with its proposed acquisition of KSSB.

In its Order on *Character Qualifications*, the Commission defined "abuse of process" as "serious willful misconduct that directly threatens the integrity of the Commission's licensing processes."⁷ An example of such misconduct is the filing of a "strike petition," which is the essence of what BCA has alleged that Lazer did in the Section 325 proceeding. In determining whether a pleading is a strike petition, the Commission considers several factors: (1) statements by the petitioner's principals or officers admitting the obstructive purpose; (2) the withholding of information relevant to disposition of the issues raised; (3) the absence of any reasonable basis for the allegations raised in the petition; (4) economic motivation indicating a delaying purpose; and (5) other conduct by the petitioner.⁸ In this case, these factors have not been demonstrated. In fact, BCA has admitted that Lazer's allegation that the XHBCE-FM Class B facility transmitter was not constructed at the appropriate location was true. Furthermore, all of the statements made by Lazer that BCA claims are either false or misleading appear, based on the record in this proceeding, to have been the subject of legitimate dispute. Accordingly, we find that BCA has not demonstrated in this proceeding that Lazer has abused the Commission's processes or that it lacks the requisite character to be a Commission licensee, and we accordingly deny BCA's Petition. Furthermore, we find that grant of the Application would be in the public interest.

ACCORDINGLY, IT IS ORDERED THAT the Petition to Deny filed by Broadcast Company of the Americas, LLC IS DENIED. FURTHERMORE, the application to assign the license of KSSB(FM), Calipatria, California, File No. BALH-20051208ADX, from Philip J. Plank to Lazer Broadcasting Corporation is GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁶ See *Broadcast Company of the Americas, LLC*, Order and Authorization, 37 Communications Reg. (P & F) 1144 (IB 2006) (DA 06-473). The Order also dismissed as moot BCA's request to deliver programming to the Class B facility of XHBCE-FM.

⁷ *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986).

⁸ See *Radio Carrollton*, 69 FCC 2d 1138, 1150 (1978), *clarified*, 69 FCC 2d 424 (1978), *recon. denied*, 72 FCC 2d 264 (1979), *aff'd sub nom., Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. October 15, 1980), *cert. denied*, 450 U.S. 1041 (1981).