



Federal Communications Commission  
Washington, D.C. 20554

February 20, 2014

DA 14-226

In Reply Refer To:  
1800B3-PPD

Mr. Christopher Maxwell  
Synergy Project, Inc.  
1520 Porter Street  
Richmond, VA 23224

In Re: **Application for Construction Permit  
for a Low Power Broadcast FM  
Station**

New-LP, Richmond, VA  
Facility ID Number: 197068  
Synergy Project, Inc.  
File Number: BNPL-20131114AOI

Dear Mr. Maxwell:

This letter concerns Synergy Project, Inc.'s ("Synergy") Form 318 application for a construction permit for a low power broadcast FM ("LPFM") station in Richmond, VA, File No. BNPL-20131114AOI ("LPFM Application"). The LPFM Application was "accepted for filing" on November 25, 2013. For the reasons discussed below, we find that the LPFM application was inadvertently accepted for filing and dismiss it.

**Background.** Synergy timely filed the LPFM Application on November 14, 2013.<sup>1</sup> The LPFM Application was accepted for filing as a singleton on November 25, 2013.<sup>2</sup>

The LPFM Application included a "Statement of Pledge of Divestiture," which states that Synergy "has three applications for Full Power that have been DISMISSED...."<sup>3</sup> However, Synergy currently has an application for review pending for the dismissed application for Montpelier, VA, File No. BNPED-20071016AIY ("NCE Application").<sup>4</sup>

**Discussion.** The Commission's rules ("Rules") prohibit the filing of inconsistent applications.<sup>5</sup> An application is inconsistent with another pending application when grant of both would result in a

<sup>1</sup> See *Media Bureau Extends Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 15763 (2013).

<sup>2</sup> See *Broadcast Applications*, Public Notice, Report No. 28125 (November 29, 2013).

<sup>3</sup> See Application for Construction Permit for a Low Power FM Broadcast Station, BNPL-20131114AOI, Attachment 5, *citing* File Nos. BNPED-20071016AIY (Montpelier, VA), BNPED-20071016AJB (Chester, VA), and BNPED-20071019AYH (Chester, VA).

<sup>4</sup> Synergy did not appeal the dismissal of File Nos. BNPED-20071016AJB and BNPED-20071019AYH.

<sup>5</sup> 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.").

violation of the Commission's multiple ownership rules.<sup>6</sup> Section 73.860 of the Rules prohibits a party from owning an attributable interest in both an LPFM station and a full-power broadcast station.<sup>7</sup>

The Commission has previously determined that when an applicant appeals the dismissal of an application, that application is treated as "pending and undecided" for purposes of the inconsistent application rule.<sup>8</sup> Thus, the NCE Application remains "pending and undecided."

Grant of both the LPFM Application and the NCE Application would give Synergy an attributable interest in an LPFM station and a full-power NCE broadcast station, in violation of the Commission's cross-ownership prohibition.<sup>9</sup> Thus, the filing of the LPFM Application resulted in the violation of the inconsistent application rule.

We note that Synergy's LPFM Application includes a divestiture pledge for the NCE Application. However, the Commission has previously determined that a "pledge to subsequently dismiss a pending application conditioned on the future grant of another application does nothing to avoid" the violation of the inconsistent application rule.<sup>10</sup> Thus, the divestiture pledge in this case was ineffective in preventing the violation.<sup>11</sup>

**Conclusion/Action.** Accordingly, IT IS ORDERED that the LPFM Application (File No. BNPL-20131114AOI) IS DISMISSED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>6</sup> See *Treasure Coast Media, Inc.*, 7 FCC Rcd 5533 (1992).

<sup>7</sup> 47 C.F.R. § 73.860(a).

<sup>8</sup> *Premier Broadcasting, Inc.*, 7 FCC Rcd 867 (1992) (returned application "was properly considered 'pending and undecided' for purposes of the inconsistent application rules" because applicant had on file a petition for reconsideration for the returned application). See also, *Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations (Lancaster, Pickerington, and Westerville, Ohio)*, 21 FCC Rcd 1504, 1505 (2006) ("Under Section 73.3518 of the rules, we cannot consider the subsequent inconsistent and conflicting... application in this proceeding until final disposition of the [applicant's] Petition for Reconsideration.")

<sup>9</sup> See 47 C.F.R. § 73.860(a).

<sup>10</sup> *Treasure Coast Media*, 7 FCC Rcd at 5534.

<sup>11</sup> We also note that a violation of the inconsistent application rule cannot be cured through a post-hoc amendment. See *Big Wyoming Broadcasting Corp.*, 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). Accordingly, a dismissal of the application for review would not result in reinstatement of the LPFM Application.