



Federal Communications Commission  
Washington, D.C. 20554

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**DA 17-1176**

*In Reply Refer to:*

1800B3-IB

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In re: NEW-LP, Fort Worth, TX  
Facility ID No. 193837  
Fort Worth Hispanic Community Church  
File No. BNPL-20131112AFX

NEW-LP, Wichita Falls, TX  
Facility ID No. 195685  
Casa Al Imigrante De Wichita Falls  
File No. BNPL-20131114APH

**Petition for Reconsideration**

Dear Counsel:

We have before us a Petition for Reconsideration filed jointly by two Texas organizations, Fort Worth Hispanic Community Church (FWHCC) and Casa al Imigrante de Wichita Falls (Casa) (collectively, Applicants).<sup>1</sup> Each seeks reconsideration of the same Media Bureau (Bureau) *Decision*<sup>2</sup> that dismissed its respective application for a permit to construct a new low power FM (LPFM) station.<sup>3</sup> For the reasons set forth below, we deny the Petition.

**Background.** Each of the Applicants filed its application during a 2013 LPFM filing window and identified Antonio Cesar Guel (Guel) of Hispanic Christian Community Network, Inc. (HCCN), as its consultant and certifying engineer.<sup>4</sup> The Bureau initiated an investigation in February 2014,<sup>5</sup> because

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<sup>1</sup> FWHCC and Casa Petition for Reconsideration (filed June 16, 2014) (Petition). The Petition was originally filed jointly by eleven applicants, of which only FWHCC and Casa remain.

<sup>2</sup> *Antonio Cesar Guel*, Letter, 29 FCC Rcd 5264 (MB 2014) (*Decision*).

<sup>3</sup> FWHCC and Casa, respectively, sought to serve the communities of Fort Worth and Wichita Falls. *See* File No. BNPL-20131112AFX (filed Nov. 12, 2013) (FWHCC Application); File No. BNPL-20131114APH (filed Nov. 14, 2013) (Casa Application) (collectively, Applications).

<sup>4</sup> *See* Applications at Section VI, Preparer's Certification. Each applicant is a non-stock corporation whose control lies with its board of directors. Each of the Applications was a "singleton," *i.e.*, was not in technical conflict with any other application.

<sup>5</sup> *See* Letter of Inquiry to Guel from Peter H. Doyle, Chief, Audio Division, Media Bureau (MB Feb. 21, 2014) (LOI).

shared irregularities in numerous Guel-prepared applications suggested potential violations and/or misrepresentations.<sup>6</sup> The LOI sought detailed identifying information from many such applicants, including FWHCC and Casa, in order to determine the authenticity of the applicants and parties.<sup>7</sup> The LOI requested information for the board members of each applicant “as originally filed.”<sup>8</sup> In March 2014, shortly after issuance of the LOI, FWHCC and Casa each amended its application to reflect a new board composition which differed substantially from that originally reported. In April 2014, each filed a separate response to the LOI, supplying information for its newly amended board, but not for the board as comprised at the time of its original application. Each of the Applicants said that HCCN had provided wrong names and addresses in about half of HCCN-prepared applications, including its own, because the small HCCN staff, working under pressure for large numbers of customers, confused applicant information while working from the same lists.<sup>9</sup> FWHCC stated that it was amending its application to reflect the replacement of one of its three directors and to make “corrections” to names and address information in order to match that on documents it was providing in response to the LOI.<sup>10</sup> Casa similarly stated that it was amending its application to replace one director and to make “corrections” to the names and addresses of its other two directors.<sup>11</sup> Casa further stated that its amendment removed Guel’s personal e-mail address and phone number from the Casa Application.

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<sup>6</sup> For example, the staff determined that many applicants listed addresses with which they were not associated and that distinct organizations listed the same telephone numbers. *See* LOI at 2-3. Casa’s mailing address, that of its main studio, and address listed for each of its original principals, 1402 N. Beverly Dr., Wichita Falls, was that of the Boys and Girls Clubs of Wichita Falls. FWHCC’s mailing address, that of its main studio, and address listed for each of its original principals, 3755 South Freeway, Fort Worth, was that of Iglesia Pentecostes Cristo Vive. The telephone number listed for FWHCC was that of Guel.

<sup>7</sup> LOI at 5. The information requested was also relevant to determining the validity of each applicant’s certifications, and its compliance with LPFM ownership and application limits. *Id.*

<sup>8</sup> LOI at 2-3. The LOI requested that the Applicants “provide answers that address the ... Applications as originally filed, even if the questions use the present tense rather than the past tense.” *Id.* Applicants were, for example, to “[p]rovide a signed and dated affidavit or sworn declaration from each board member listed in the Application (1) affirming his or her membership and positional interest in the Applicant, and (2) providing his or her identity, as shown in a copy of that board member’s driver’s license or other state-issued form of identification attached to such affidavit or declaration, and his or her current personal telephone number.” LOI at 5. The LOI further stated that “failure to respond within the time period specified may result in the dismissal of the subject application for failure to respond to official correspondence pursuant to Section 73.3568 of the Rules.” *Id.* at 9. The Bureau could have dismissed the Applications on that basis as well because the Applicants never submitted information for the original parties to the Applications.

<sup>9</sup> FWHCC and Casa Responses (filed Apr. 3, 2014) at Quest. 9(a).

<sup>10</sup> *See* FWHCC Response at Quest. 9(b). The principals listed in the FWHCC Application and initial corporate filings with the state were Zeus Alvarez, Pedro Fuentes, and Marisa Vasquez. FWHCC Application at Section II, Quest. 3.a (as filed Nov. 12, 2013 and amended Jan. 20, 2014); FWHCC Certificate of Formation Nonprofit Corporation, Texas File No. 801856790, Article 3 (filed with Texas Sec’y of State, Nov. 26, 2013 and included with the FWHCC Application). FWHCC’s revised principals were Carlos Alvarez, Arturo Velazquez, and Paula Pfister Velazquez. FWHCC Application at Section II, Quest. 3.a (as amended Mar. 11, 2014). Zeus Alvarez certified to the truth of the statements in the original FWHCC Application and FWHCC’s January 2014 amendment. Carlos Alvarez certified FWHCC’s March 2014 amendment.

<sup>11</sup> *See* Casa Response at Quest. 9(b). The principals listed in the Casa Application and Casa’s initial corporate filings with the state were Rosa Gonzales, Joe Gonzales, and Jose Gonzales. Casa Application at Section II, Quest. 3.a.; Casa Certificate of Formation Nonprofit Corporation, Texas File No. 801875282, Article 3 (filed with Texas Sec’y of State, Oct. 31, 2013 and included with the Casa Application). Casa’s amended principals were Delia Gonzales, Pilar Gonzales, and Nicolasa Coronado Torres. Rosa Gonzales certified to the truth of the statements in the original Casa Application. Delia Gonzales replaced her as certifying principal. Casa Application at Section IV.

The Bureau determined that Casa and FWHCC's March 2014 amendments reflected impermissible major changes because Commission rules (Rules) require an applicant's original parties to retain more than a 50 percent ownership interest in the application.<sup>12</sup> In particular, although each applicant claimed to have replaced only one of its board members, the names of all of its board members were changed in the amendments. The Bureau, therefore, dismissed the Applications.<sup>13</sup> The Applicants now argue that the Bureau erred in rejecting their respective major amendments and seek reinstatement of their applications based on further amendments that they believe would cure the problem because "the applications are being prosecuted by persons who were original parties to the application."<sup>14</sup>

**Discussion.** Under Sections 1.106 of the Rules, the Bureau will consider a petition for reconsideration only when the petitioner shows a material error in the original order, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.<sup>15</sup> The Applicants allege that the Bureau erred by dismissing their LPFM applications pursuant to standards which pertain only to full power stations.<sup>16</sup> Specifically, they contend that the Bureau improperly relied on *Fatima*,<sup>17</sup> a case in which the Commission dismissed an NCE FM application pursuant to Section 73.3573 after a major governing board change.<sup>18</sup> The Applicants argue that the LPFM processing rule, Section 73.871, provides merely for "return" of unauthorized amendments without consideration.<sup>19</sup> The Applicants equate Section 73.871's language with an NCE FM policy followed in *Golden Shores*,<sup>20</sup> not to accept inadvertent major change amendments that would result in dismissal.

The Bureau did not, as the Applicants suggest, confuse LPFM and full service NCE FM application processing procedures, which are very similar but not identical. An LPFM applicant can make "minor" changes at any time, but a "major" change outside of a filing window will result in

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<sup>12</sup> See 47 CFR § 73.871(c)(3).

<sup>13</sup> *Decision*, 29 FCC Rcd at 5273. The Bureau also noted an additional basis for dismissal, *i.e.*, that FWHCC and Casa did not have reasonable assurance of the availability of their proposed transmitter sites at the time of application. *Id.* at 5268-69 (FWHCC), 5271-72 (Casa). The Petition disputes those findings. See Petition at 5-14, Attach. 1. We need not reach that matter given our affirmation of the dismissals based on major ownership changes.

<sup>14</sup> See Petition at 16. FWHCC's further amendment reflects that "Carlos ('Zeus') Alvarez," who it claims is an original party, has become FWHCC's sole director with 100% voting control. See FWHCC Application at Section II, Quest. 3.a, Ex. 1 (as amended Jun. 23, 2014). As for Casa, its further amendment states that "an original member of the organization now controls 100% of the voting rights." See Casa Application at Ex. 1 (as amended June 23, 2014). Casa does not identify that member. We note that Casa's further amendment inconsistently discloses that parties whose names did not appear on the original application, Delia Gonzales and Pilar Gonzales, each have a 50% voting interest. *Id.* at Section II, Quest. 3.a.

<sup>15</sup> 47 CFR § 1.106(c), (d). See *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (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).

<sup>16</sup> See Petition at 14-15.

<sup>17</sup> See *Fatima Response, Inc.*, Letter, 21 FCC Rcd 11711 (MB 2006), *recon. denied*, 22 FCC Rcd 8402 (MB 2007) (*Fatima*).

<sup>18</sup> See Petition at 14-15; 47 CFR § 73.3573(b)(3). Section 73.3573 provides that NCE applications on the reserved FM band are renumbered following major changes. For window-filed NCE FM applications, renumbering results in dismissal because it reflects a later filing date outside of the window. The Applicants correctly observe that there is no corresponding renumbering language for LPFM applications. See Petition at 14-15.

<sup>19</sup> Petition at 15, citing 47 CFR § 73.871(d) ("Unauthorized or untimely amendments are subject to return by the FCC's staff without consideration").

<sup>20</sup> See *Golden Shores Broad., Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 4743, 4744, para. 8 (1987) (*Golden Shores*).

dismissal.<sup>21</sup> As noted earlier, Section 73.871(c)(3) classifies an LPFM ownership change as “major” if the original parties to the application do not retain an ownership interest exceeding 50 percent.<sup>22</sup> The Bureau correctly cited *Fatima*, an NCE FM case, as additional support for its practice of dismissing broadcast applications following major ownership changes.<sup>23</sup> The Commission has affirmed the Bureau’s similar dismissal of LPFM applications pursuant to Section 73.871 following major ownership changes.<sup>24</sup> To the extent that the Applicants attempt to distinguish LPFM and NCE FM procedures based on language in Section 73.871(d) that unauthorized LPFM amendments “are subject to return,” identical language appears in Section 73.3522(b) for NCE FM applications.<sup>25</sup> The language does not, for either service, require the Commission to ignore fatal major changes.<sup>26</sup> The Applicant’s belief otherwise relies on a practice, followed in *Golden Shores*, to return so-called “suicide amendments.” That practice has never been applied in an LPFM context<sup>27</sup> but, rather, was associated with full service comparative hearing

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<sup>21</sup> See 47 CFR § 73.871(a), (c). See, e.g., *Cocoa Minority Educ. Media Ass’n*, Memorandum Opinion and Order, 30 FCC Rcd 14889, 14890, para. 3, n.12 (2015) (*Cocoa*).

<sup>22</sup> 47 CFR § 73.871(c)(3).

<sup>23</sup> *Decision*, 29 FCC Rcd at 5267, n.13. The Applicant’s suggestion that the Bureau confused NCE FM and LPFM requirements is misplaced given that the *Decision* specifically acknowledged that *Fatima* involved an NCE FM application, cited LPFM rules numerous times, and did not cite any rule pertaining only to the NCE FM service. *Id.* at nn. 12, 13, 21, 28, 35, 48, 55.

<sup>24</sup> See, e.g., *US Pro Descubierta*, Memorandum Opinion and Order, 31 FCC Rcd 4304, 4305, para. 2 (2016) (*USPD*) (absent a waiver of 47 CFR § 73.871(c)(3), a major change in an LPFM applicant's board of directors is fatal); *La Casa Dominicana de Hazleton*, Memorandum Opinion and Order, 31 FCC Rcd 4236, 4238, para. 6 (2016) (*LCDH*) (LPFM applicant’s amendment reflecting a 79 percent change in board was a fatal defect); *Cocoa*, 30 FCC Rcd at 14890, para. 3 (LPFM applicant that disclosed the identity of only one of several board members would undergo prohibited major change if it attempted to correct the problem).

<sup>25</sup> See 47 CFR § 73.3522(b).

<sup>26</sup> See *supra*, note 24. The circumstances that might lead to return of a faulty LPFM amendment, without dismissal of the underlying application, are significantly different than the changes made in Applicants’ amendments. See, e.g., *Media Bureau Provides Further Guidance on the Processing of Form 318 Applications Filed in the LPFM Window*, Public Notice, 28 FCC Rcd 16366, 16368 (MB 2013) (Commission would accept certain LPFM major amendments in window opened for that purpose but would return any such amendment that would create a new conflict rather than, as intended, to resolve a mutually exclusive group).

<sup>27</sup> See *Iglesia Jesucristo Es Mi Refugio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd. 16310, 16315, paras. 14-15 (MB 2010) (rejecting argument that had NCE FM applicant filed an amendment to disclose major ownership change, the Bureau would have returned it as a “suicide amendment,” with an opportunity to correct); *Moody Bible of Chicago*, Letter, 22 FCC Rcd 11116, 11117-18 (MB 2007) (declining to consider whether disclosure of major ownership change in NCE FM applicant would have been a “suicide amendment” where Commission had directed the Bureau to waive the major change prohibition for certain pre-2007 NCE applicants, and applicant which had experienced gradual changes over 16 years met the waiver criteria).

procedures that ended in the 1990's prior to creation of the LPFM service.<sup>28</sup> Accordingly, dismissal of the Applications was consistent with current LPFM policy.<sup>29</sup>

We further reject the Applicants' claim that we must reinstate their Applications *nunc pro tunc* in view of further amendments filed in June 2014, allegedly "curing" the ownership defects.<sup>30</sup> The Applicants claim that such amendments show that "the applications are being prosecuted by persons who were original parties to the application."<sup>31</sup> The Commission generally allows timely curative amendments

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<sup>28</sup> The main impact of the *Golden Shores* policy against "suicide amendments" was to provide for pre-designation return of fatal amendments to NCE FM applications so that the applications could proceed to a traditional hearing in their pre-amendment form. See *Benny L. Bee, Jr.*, Hearing Designation Order, 5 FCC Rcd. 1280, 1281, para. 5 (1990). The provision was invoked most frequently for fatal technical amendments, but also followed for major ownership changes. See, e.g., *St. Croix Wireless Co.*, Hearing Designation Order, 2 FCC Rcd 4447 (MB 1987) (return of amendment reporting that 50-percent General Partner of NCE FM applicant was no longer a party); *Yu-Hay Kong*, Hearing Designation Order, 5 FCC Rcd 312 (MB 1990) (return of amendment where principal would not retain more than 50% ownership). The practice was replaced, for NCE FM applications, by the "renumbering" provisions of Section 73.3573(b)(3) which, as the Applicants note, are not applicable to LPFM applications. 47 CFR § 73.3573(b)(3). See *supra*, note 18.

<sup>29</sup> We note that several of the current Commissioners have questioned whether major but "routine" board changes in nonprofit organizations should continue to require the dismissal of window-filed applications. See, e.g., *LCDH*, 31 FCC Rcd at 4239-40 (Separate Statements of Commissioners Clyburn and Pai); *KBOO Found.*, Memorandum Opinion and Order, 31 FCC Rcd 1358, 1362-63 (Separate Statements of Commissioners Pai and O'Rielly). However, no Commissioner has questioned continued use of the current Rules in non-routine situations, such as when board changes are tied to a "hostile takeover," a dramatic change in an organization's mission or character, or otherwise constitute a non-routine break in continuity of control. See *LCDH*, 31 FCC Rcd at 4240 (Statement of Commissioner Pai) (ownership change to LPFM applicant following "battle for control"). The Bureau classifies the Applicants' ownership changes as "non-routine." The Applicants made major changes suddenly, only a few months after their original filings, in direct response to an investigation into the potential non-existence of originally-named parties. Even if the "corrections" were attempts to redress significant errors by a consultant that were not corrected by the certifying principals, the Commission has not excused such errors. See *Belo Broad. Corp.*, Decision, 68 FCC 2d 1479, 1486, para. 21 (1978) (applicant that submitted erroneous information cannot escape consequences by blaming attorney).

<sup>30</sup> See Petition at 2, 14-16.

<sup>31</sup> Petition at 16. Casa does not explain how control is with the original parties. Neither party to Casa's amended ownership section was listed as a party to the original application. See *supra*, note 14. If Casa is suggesting that Rosa and Jose Gonzales are the same as Delia and Pilar Gonzales, it has not shown so, especially given that Rosa Gonzalez certified to the accuracy of the original application which included her name. The allegedly *corrected* name of Pilar Gonzalez may also be incorrect, as this individual signs his name as Gonzales Pilar, Jr., *i.e.*, with Gonzales as a first name, rather than Pilar (a feminine name) as a first name. See FWHCC Response, Declaration, General Contract for Services, Texas Driver License. Similarly, evidence is lacking for FWHCC's suggestion that original director Zeus Alvarez and current director Carlos Alvarez are the same person and known as Carlos "Zeus" Alvarez. Zeus Alvarez, 801 W. Kellis St., Fort Worth, TX certified to the accuracy of FWHCC's original Application and January 2014 amendment. Carlos Alvarez, 320 Sierra Way, Cedar Hill, TX certified to the accuracy of FWHCC's March 2014 amendment. FWHCC submits a driver's license and utility bill for Carlos Alvarez at the Sierra Way address but no supporting documentation for Zeus Alvarez. The Bureau's search of public records indicates that Carlos Alvarez has been associated with the Sierra Way address for at least ten years, but not that he has ever been associated with the W. Kellis St. address or used the name "Zeus." Information elsewhere in FWHCC's submissions reflects that the W. Kellis St. location is the house of a church member, Segundo Flores, and would serve as FWHCC's broadcast studio. FWHCC Response, Quest. 4(f), 8(a), Attachments. FWHCC further contends that a current director, Paula Pfister Velazquez, also at the Sierra Way address, has been involved with FWHCC since its beginnings. FWHCC Response, Attachments. If FWHCC is suggesting that Paula Pfister Velazquez (whose name it sometimes spells as Velasquez) is the same person as Marisa

except where such a cure is precluded by a specific rule or by clearly established policy.<sup>32</sup> Section 73.871(a) establishes that only “minor” amendments may be filed outside of LPFM filing windows.<sup>33</sup> The Applicants’ major amendments, filed outside of any filing window, are thus unacceptable.<sup>34</sup> The curative amendments in the cases upon which the Applicants rely were all minor amendments and those cases are, thus, inapposite.<sup>35</sup> Moreover, the major changes that the Applicants seek to correct do not involve matters predicted or proposed to occur in the future if the application is granted but, rather, reflect a major change in control of FWHCC and Casa that has already occurred and the further amendments that the Applicants tendered are, thus, additional major amendments.<sup>36</sup>

**Conclusion/Action.** Accordingly, the Petition for Reconsideration filed jointly by Fort Worth Hispanic Community Church (File No. BNPL-20131112AFX) and Casa Al Migrante De Wichita Falls (File No. BNPL 20131112ATV) on June 16, 2014, IS DENIED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Antonio Cesar Guel

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Vasquez, 309 E. Fogg St., Fort Worth, listed on its earlier application, it has provided no supporting evidence such as documentation of a legal name change.

<sup>32</sup> See *Los Angeles Social Justice Project*, Memorandum Opinion and Order, 31 FCC Rcd 7506, 7509, para. 7, n.27 (2016) (accepting LPFM amendment filed within announced period for settlements and amendments), citing *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR2d 776 (1984) (as subsequently published in the Federal Register, 49 Fed. Reg. 47331, 47332 (Dec. 3, 1984)); *Gary S. Smithwick, Esq.*, Public Notice, 28 FCC Rcd 15494 (MB 2013) (reconsideration granted when the applicant submits “a relatively minor curative amendment” within 30 days).

<sup>33</sup> See 47 CFR § 73.871(a).

<sup>34</sup> See *USPD*, 31 FCC Rcd at 4304-05, para. 2 (absent a waiver of 47 CFR § 73.871(c)(3), a major change in an LPFM applicant's board of directors is a fatal defect).

<sup>35</sup> Petition at 15-16, citing *Harry C. Martin, Esq.*, Letter, 20 FCC Rcd 12357, 12360 (MB 2005) (curative minor amendment to LPFM application permitted); *James River Broad. v. FCC*, 399 F.2d 581 (*per curiam*, D.C. Cir. 1968) (correction of “minor infraction” in AM application permitted before hearing designation); *Donald E. Martin, Esq.*, Letter, 27 FCC Rcd 12149, 12125, n.23 (MB 2012) (amendment to NCE FM application permitted pursuant to 47 CFR § 73.3522(b)(2), which specifies that amendments must be minor); *Geoffrey Bentley, Esq.*, Letter, 27 FCC Rcd 13377, 13379 (MB 2012) (amendment to NCE FM application was minor where it reflected that original party with a minority interest acquired a majority interest). Compare *Urbanmedia One*, Order on Recon., 32 FCC Rcd 5264, 5266, para. 3 (2017) (LPFM major site change amendment permitted during settlement window could not be undone by major change outside of window seeking to return to original site).

<sup>36</sup> See *Big Wyoming Broad. Corp.*, Memorandum Opinion and Order, 2 FCC Rcd 3493, 3493, para.6 (1987) (amendment cannot cure violation which has already occurred).