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Washington, D.C. 20554

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La Iglesia de Dios Pentecostes, Inc.
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In re: **La Iglesia de Dios Pentecostes, Inc.**
New LPFM, Columbus, IN
Facility ID No. 778273
Application File No. 0000231806

Informal Objection

Dear Applicant and Objector:

We have before us the application filed by La Iglesia de Dios Pentecostes, Inc. (Iglesia) for a construction permit for a new low power FM (LPFM) station at Columbus, Indiana (Application).¹ We also have before us an Informal Objection filed by Columbus Community Radio Corporation (CCRC), seeking dismissal of the Application (Objection),² and an Opposition filed by Iglesia in response to the Objection (Opposition).³ For the reasons set forth below, we deny the Objection and grant the Application.

Background. Iglesia filed the Application during the 2023 LPFM Filing Window.⁴ As is required for all applications for a new LPFM construction permit, Iglesia certified in its Application that neither it nor any party to the Application “has engaged in any manner, individually or with other persons, groups, organizations, or other entities, in the unlicensed operation of any station in violation of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. Section 301.”⁵

¹ Application File No. 0000231806.

² Pleading File No. 0000237103 (filed Jan. 29, 2024). CCRC refiled the same information in a second Informal Objection on February 1, 2024. Pleading File No. 0000237974.

³ Pleading File No. 0000238288 (filed Feb. 5, 2024).

⁴ *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

⁵ See Application at Legal Certifications Section, Unlicensed Operation Question.

In its Objection, CCRC argues that Rafael Gonzalez (Gonzalez), a party to the Application,⁶ was “shut down by the FCC’s Chicago Field Office for unlicensed FM broadcasting,” and that Iglesia lacked candor to the Commission when it certified in the Application that Gonzalez had never engaged in any manner in the unlicensed operation of a radio station.⁷ The Objection includes the text of a May 2, 2014, Notice of Unlicensed Operation (NOUO) addressed to Gonzalez.⁸ The NOUO specifies that on April 3, 2014, an agent from the Chicago Office of the Commission’s Enforcement Bureau (EB) “confirmed by direction finding techniques that radio signals on frequency 93.5 MHz were emanating from [Gonzalez’s] residence in Columbus, Indiana. The Commission’s records show that no license was issued for operation of a broadcast station on 93.5 MHz at this location in Columbus, Indiana.”⁹

In the Opposition, Gonzalez confirms that in April 2014, an agent from the Commission’s Chicago Field Office visited his church in Columbus, Indiana, to investigate unlicensed broadcasting on 93.5 MHz.¹⁰ Gonzalez acknowledges that he showed the agent a transmitter that was operating without authorization, but asserts the transmitter was owned and operated by a visitor named Sergio Ramos, not by Gonzalez.¹¹ Gonzalez explains that when the agent instructed him to turn off the transmitter, he did, and Ramos removed the transmitter the following day.¹² Gonzalez suggests that he was “gullible and naïve.”¹³ Gonzalez further argues that because the NOUO states “you are hereby warned,” and “[n]o one was ever Cited or Fined [sic],” he “was not guilty of radio piracy.”¹⁴ CCRC did not file a Reply to the Opposition.

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),¹⁵ petitions to deny and informal objections 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.¹⁶

Section 632(a)(1)(B) of the Making Appropriations for the Government of the District of Columbia for Fiscal Year 2001 Act provides that the Commission must “prohibit any applicant from obtaining a low power FM license if the applicant has engaged in any manner in the unlicensed operation

⁶ See Application at Parties to the Application.

⁷ See Objection at 1.

⁸ See Objection at 1-2 (quoting *Rafael Gonzalez*, Notice of Unlicensed Operation (Enf. Bur. Chicago Office, May 2, 2014) (available at <https://docs.fcc.gov/public/attachments/DOC-327586A1.pdf>)).

⁹ See NOUO at 1.

¹⁰ See Opposition at 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* Gonzalez also argues that because Iglesia itself was only founded in 2023, as noted in a document provided in the Objection, the NOUO thus predates its establishment and concerned another entity. Because we resolve the Objection on other grounds, we do not address this argument.

¹⁵ 47 U.S.C. § 309(d).

¹⁶ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

of any station in violation of Section 301 [of the Act].”¹⁷ Section 73.854 of the Commission’s rules and FCC Form 2100, Schedule 318 implement this mandate by requiring an LPFM applicant to certify under penalty of perjury that neither the applicant, *nor any party to the application*, has engaged in any manner in unlicensed operation of any station.¹⁸ Furthermore, if an application is dismissed pursuant to section 73.854, the applicant is barred from seeking *nunc pro tunc* reinstatement of the application and/or changing its directors to resolve the basic qualification issues.¹⁹ There is no requirement that an administrative agency make a formal finding that a party to an application has engaged in unlicensed operation of a radio station.²⁰ Whether the Commission exercises its prosecutorial discretion to not conduct forfeiture proceedings does not settle the question of an applicant’s eligibility to hold an LPFM license.²¹

The Objection, which relies entirely on the NOUO, does not conclusively establish that Gonzalez engaged in the unlicensed operation of a broadcast station in violation of section 301 of the Act.²² Iglesia explained in its Opposition that Sergio Ramos, not Gonzalez, operated the unlicensed radio station in question. CCRC did not refute Iglesia’s explanation and offered no evidence that Gonzalez himself engaged in the operation of an unlicensed radio station. Therefore, we cannot conclude that Gonzalez violated section 301 of the Act. Because we find that there is insufficient evidence to establish a substantial and material question of fact whether Gonzalez engaged in the operation of an unlicensed radio station, we conclude Iglesia is not barred from obtaining an LPFM license. Accordingly, we deny

¹⁷ See Pub. L. No. 106-553, 114 Stat. 2762 (2000) (Appropriations Act), amended by Pub. L. No. 111-371, 124 Stat. 4072 (2011). See also 47 CFR § 73.854 (implementing the Appropriations Act); *Ruggiero v. FCC*, 278 F.3d 1323 (D.C. Cir. 2002), *rev’d en banc*, 317 F.3d 239 (D.C. Cir. 2003) (holding that the Appropriations Act provision barring anyone who had ever operated an unlicensed radio station from obtaining an LPFM license was reasonably tailored to satisfy a substantial governmental interest in ensuring that those who are granted such licenses comply with broadcasting regulations, and did not violate the First Amendment or the equal protection guarantee of the Fifth Amendment).

¹⁸ See *Creation of a Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026, 8030, para. 11 (2001) (*Second Report and Order*); 47 CFR § 73.854; FCC Schedule 318, Legal Certifications Section, Unlicensed Operations Question.

¹⁹ See 47 CFR § 73.854

²⁰ See *Second Report and Order*, 16 FCC Rcd 8026, 8030, para.11 (2001) (“We note that the statutory language is not limited to applicants and licensees that have been found to have engaged in unauthorized operations by the Commission. Accordingly, an applicant will be ineligible to hold an LPFM license if it has engaged in unlicensed operation regardless of whether the Commission has made a specific finding that the party has engaged in such conduct.”). See also *WKMJ Radio Live The People Station, Inc.*, Letter Order, 30 FCC Rcd 7427,7429 (MB 2015) (*WKMJ Letter*), *rev. denied*, Memorandum Opinion and Order, 30 FCC Rcd 13779, *recon. dismissed*, Memorandum Opinion and Order, 31 FCC Rcd 4306 (2016).

²¹ See *WKMJ Letter Order*, 30 FCC Rcd at 7429 (MB 2015) (*Dennis Kelly, Esq.*) (denying reconsideration of a decision dismissing an LPFM application where a party to the application had received a NOUO but the Commission had not engaged in forfeiture proceedings against the party). See also 47 U.S.C. § 503; *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (“[A]n agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”).

²² Compare *WKMJ Letter Order*, 30 FCC Rcd at 7428-29 (dismissing an application for a new LPFM station where a local police case report and a notice of unauthorized operations issued by FCC field agents showed that applicant’s CEO and 50 percent voting shareholder, Kervenson Joseph, was observed by police officers and FCC field agents actually operating an unlicensed radio station). See also *Kervenson Joseph*, Notice of Unlicensed Operation (Enf. Bur. Tampa Office, December 19, 2013) (Joseph was “present at and allowed an inspection of the unlicensed station when it was on the air,” and “voluntarily relinquished the station transmitter to [FCC field] agents.”).

the Objection, and grant the Application.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objections filed on January 29, 2024 (Pleading File No. 0000237103) and February 1, 2024 (Pleading No. 0000237974) by Columbus Community Radio Corporation **ARE DENIED**.

IT IS FURTHER ORDERED that the application of La Iglesia de Dios Pentecostes, Inc. for a construction permit for a new low power FM station at Columbus, Indiana (Application File No. 0000231806) **IS GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):
John Owen Broomall (johnbroomall@yahoo.com)
(Legal Representative for La Iglesia de Dios Pentecostes, Inc.)