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In Reply Refer to:
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God's Property Mennonite Fellowship Church
c/o Ryan Simmons
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(sent by electronic email to godspertycanton@gmail.com)

City of Canton, Texas
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In re: **God's Property Mennonite Fellowship Church, Inc.**
New LPFM Station, Canton, TX
Facility ID No. 788325
Application File No. 232284

Informal Objection

Dear Applicant and Objector:

We have before us an application (Application) filed by God's Property Mennonite Fellowship Church, Inc. (GPMFC) for a construction permit for a new low power FM (LPFM) station at Canton, Texas (Station).¹ Also before us are an Informal Objection (Objection) filed on February 28, 2024, by the City of Canton, Texas (City) and related pleadings.² For the reasons set forth below, we grant the Objection, and dismiss the Application.

Background. GPMFC filed the Application. during an LPFM filing window opened by the Commission in December 2023. GPMFC proposed to locate the Station's antenna on an antenna tower

¹ Application File No. 232284 (filed Dec. 11, 2023) (Application). GPMFC amended the Application on March 26, 2024. See Application File No. 232284 (as amended March 26, 2024) (Amended Application).

² Pleading File No. 239978 (Objection). On February 28, 2024, God's Property Mennonite Church (GPMC) filed an Opposition to the Objection (GPMFC Opposition). Pleading File No. 240006. The City replied to the Opposition on February 29, 2024 (Reply). Pleading File No. 240090. Subsequently, on March 10, 2024, the Texas Mennonite Conference (TMC)—which counts Applicant as a member—filed an Opposition. Pleading File No. 240633 (TMC Opposition).

located at 673 W College Street, Canton, Texas 75103 (Property).³ GPMFC indicated that it had obtained reasonable assurance of the availability of the Station’s proposed antenna site from the tower owner, which GPMFC listed as Houston Mennonite Fellowship Church (HMFC).⁴

The City then filed the Objection. Therein, the City asserts that GPMFC did not have reasonable assurance of the availability of the Station’s proposed antenna site.⁵ In support of its assertion the City notes that GPMFC did not contact Arise Church of Canton (Arise), the owner of the Property, and that an injunction prevents anyone from occupying or using the Property.⁶

GPMFC opposed the Objection, arguing it is moot and procedurally defective.⁷ GPMFC disputes the City’s allegation that it lacks reasonable assurance. GPMFC asserts that God’s Property Ministries (GPM)—not Arise—owns the Station’s proposed antenna site,⁸ and states that it has “been promised reasonable site assurance.”⁹ Finally, GPMFC addresses the injunction discussed by the City, arguing that “the current occupancy status of a church building is not a relevant factor, under FCC rules, for consideration in the qualification for or granting of a construction permit to building an LPFM radio station.”¹⁰

³ According to the Application, the tower was located at 32° 33’ 18.0” North, 095°52’ 32.09 West (NAD83). Application at Antenna Location Data, Coordinates (NAD 83).

⁴ *Id.* at Technical Certifications, Reasonable Site Assurance.

⁵ Objection at 2. The Objection also alleges that statements and certifications made by GPMFC in the Application were incorrect, and that Barney Joe Donalson may be an undisclosed real-party-in-interest to the Application. *Id.* at 2-4. Because we find that GPMFC lacked reasonable assurance of the availability of Station’s proposed antenna site and dismiss the Application, we do not consider these allegations herein.

⁶ *Id.* at 2.

⁷ GPMFC Opposition at 1. The GPMFC Opposition is written on letterhead for GPMC rather than GPMFC, and is listed in the Commission’s Licensing and Management System (LMS) as filed by GPMC. Both the letterhead and LMS indicate that GPMC has an address of 673 W. College, a phone number of 281.301.5565 and an email of godspertycanton@gmail.com. This is the same contact information given for GPMFC in the Application (and the Amended Application). See Application at Applicant Information; Amended Application at Applicant Information. Additionally, the GPMFC Opposition is signed by John Robbins, who the Amended Application lists as a director of GPMFC. See Amended Application at Parties to the Application. Given these facts, we conclude that GPMC is another name used by GPMFC.

⁸ GPMFC Opposition at 2. According to GPMFC, GPM—an entity owned by Barney Joe Donalson, Bishop, TMC—purchased the property out of foreclosure. *Id.* at 2. GPMFC attaches a copy of a Deed In Lieu of Foreclosure that was filed and recorded in the Official Public Records of Van Zandt County, Texas, on October 30, 2023. *Id.* at Attachs. In that deed, HMFC purports to deed “all of the land improvements located at 673 West College” to Quest Trust Company. GPMFC also attaches a copy of a Texas General Warranty Deed that was filed and recorded in the Official Public Records of Van Zandt County, Texas, on January 24, 2024. *Id.* In this deed, Quest Trust Company purports to transfer “all of the real property and improvements lying, being and situated at 673 West College Street” to GPM.

⁹ *Id.* at 2.

¹⁰ *Id.*

The City replied, disputing GPMFC's claims that the Objection is moot and procedurally defective.¹¹ The City also repeats its argument that GPMFC did not demonstrate that it has reasonable assurance of the availability of the Station's proposed antenna site.¹²

Texas Mennonite Conference (TMC)—which is an applicant for a new LPFM station at Waco, Texas—then filed a pleading intended to respond to allegations the City made about it and its Bishop, Barney Joe Donalson.¹³ Like GPMFC, TMC asserts that GPM purchased the Property out of foreclosure on January 2, 2024, and that GPM gave GPMFC “reasonable assurance they can place an antenna and other radio equipment on the property.”¹⁴

On March 26, 2024, GPMFC amended the Application. Among other things, GPMFC specified a new antenna location and antenna data,¹⁵ explaining that the City had objected to its proposed use of an existing tower at the Property and thus it now proposes to mount the Station's antenna “at the top of a 50-year-old pine tree.”¹⁶ GPMFC also amended the Application to reflect changes to its board of directors,¹⁷ and changed its reasonable site assurance certification to indicate that assurance had been provided by Richard Grega, an authorized representative of the tower owner.

Discussion. Procedural Issues. We reject GPMFC's argument that the Objection should be dismissed as moot. GPMFC argues the Objection is moot because we “already granted the subject application.”¹⁸ However, GPMFC ignores the fact that we rescinded that grant.¹⁹ Because we returned the Application to pending status, the Objection is not moot.

We also reject GPMFC's argument that the Objection is procedurally defective because it was late-filed, and was not served on GPMFC.²⁰ GPMFC cites to section 25.154 of the Commission's rules.²¹

¹¹ Reply at 1-2.

¹² *Id.* at 2. The City also notes that the GPMFC Opposition was filed by GPMC, and was signed by John Robbins as a board member of God's Property Mennonite, and argues it is unclear if the Opposition was filed by GPMFC or another entity. *Id.* As discussed *supra* note 7, the evidence indicates that the GPMFC Opposition was filed by GPMFC.

¹³ TMC Opposition at 1-2. TMC refers to GPMFC by a number of different names: GPMFC, God's Property Mennonite and God's Property Mennonite Fellowship. *See id.* at 1, 2.

¹⁴ *Id.* at 2. TMC also argues that the City lacks standing. *Id.* at 2. Since standing is not necessary to file an informal objection, we do not consider this argument further here. *See, e.g., Chapin Enters., LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4252, para. 7 (2014); *Michael Radio Co., LLC*, Letter Order, DA 24-10 (MB Jan. 4, 2024).

¹⁵ Amended Application at Antenna Location Data, Coordinates (NAD83). The amendment specifies geographic coordinates of 32° 33' 18.16" North, 095° 52' 21.1" West (NAD83).

¹⁶ *Id.* at Attach. (Amendment Attachment – Letter to Bradshaw) (Amendment Attachment). Like the GPMFC Opposition, the Amendment Attachment is written on letterhead for GPMC, not GPMFC. As discussed *supra* note 7, we conclude that GPMC and GPMFC are one and the same.

¹⁷ According to GPMFC, its leadership changes every 90 days. *See* Amendment Attachment. As of April 1, 2024, GPMFC's board members were Richard Grega, Cheryl Besser, Vince Dudik, and John Robbins.

¹⁸ GPMFC Opposition at 1.

¹⁹ *Actions*, Public Notice, Report No. PN-2-240216-01, at 4 (MB Feb. 16, 2024).

²⁰ GPMFC Opposition at 1.

²¹ *Id.*, citing 47 CFR § 25.154.

However, that section concerns pleadings opposing applications for authorizations to provide common carrier satellite communications services, not broadcast services. The rule governing informal objections to broadcast applications is section 73.3587.²² The only requirements applicable to informal objections are those set forth in section 73.3587 of the Rules. That section requires that informal objections be made in writing, signed, and submitted prior to any action by the Commission on the challenged application.²³ The Objection satisfies each of these requirements.

Reasonable Site Assurance. An LPFM applicant must have reasonable assurance that its specified site will be available for the construction and operation of its proposed facilities at the time it files its application.²⁴ While the Commission affords some latitude regarding reasonable assurance, there must, at a minimum, be a “meeting of the minds resulting in some firm understanding as to the site’s availability.”²⁵ A mere possibility that the site will be available is not sufficient.²⁶ Instead, there must be “[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”²⁷

Based upon the record before us, we find that GPMFC had not obtained reasonable assurance of the availability of the Station’s proposed antenna site when it filed the Application. In the Application, GPMFC stated that it obtained reasonable assurance from HMFC, which GPMFC identified as the tower owner.²⁸ HMFC—operating under its former name New Beginnings Fellowship Church of Houston, Texas—did purchase the Property in 2017,²⁹ and a tower structure apparently is located on that property.³⁰ However, the property records for Van Zandt County, Texas—the County in which the Property is

²² 47 CFR § 73.3587.

²³ It does not require that an informal objection be served on an applicant. *See Windy City Broad., LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 3541, 3543, para. 8 (MB 2022) (informal objections need not be served on licensee or licensee’s counsel). Moreover, the Objection was timely because it was filed before FCC action on the Application. *Compare Center for Int’l Media Action*, Letter Order, 33 FCC Rcd 5394, 5395, n.10 and accompanying text (MB 2018).

²⁴ *See William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427, paras. 6–7 (1974) (*Wallace*); *South Florida Broad. Co.*, Memorandum Opinion and Order, 99 FCC 2d 840, 842, para. 3 (1984) (*South Florida*).

²⁵ *NCE MX Group 337A*, Letter Order, 26 FCC Rcd 6020, 6024 (MB 2011).

²⁶ *Wallace*, 49 FCC 2d at 1427, para. 6.

²⁷ *Elijah Broad. Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351, para. 10 (1990). *See also Amendment of Sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*, Report and Order, 58 Rad. Reg. 2d (P & F) 776, para. 22 (1985) (“Commission requirements will be satisfied when an applicant has contacted the property owner or owner’s agent and has obtained reasonable assurance in good faith that the proposed site will be available for the intended purpose”); *Wallace*, 49 FCC 2d at 1427, para. 6 (1974) (“Some indication from the property owner that he is favorably disposed to making an arrangement is necessary.”).

²⁸ Application at Technical Certifications, Reasonable Site Assurance.

²⁹ Van Zandt County records indicate that Arise still owns the property. *See* Appraisal District, Property Search (Property ID No. R000000243), Property Deed History, <https://esearch.vzcad.org/Property/View/R000000243?year=2024&ownerId=GMNI20220423092022577> (last visited June 11, 2024).

³⁰ Objection at 4 (referencing tower located at Property).

located—show that Arise acquired the Property in 2020.³¹ Accordingly, GPMFC should have obtained reasonable assurance from Arise, not HMFC.

We further find that the Station’s proposed antenna site was not available for the construction and operation of the Station at the time GPMFC filed the Application. The record indicates that the Property is subject to a Stipulated Permanent Injunction and Final Judgment (Injunction) issued by the District Court of Van Zandt County, Texas (District Court) on July 26, 2020.³² The Injunction prohibits all occupancy, use, and maintenance of the Property—which is defined to include both the land and the structure located at the Property—until violations of city ordinances, and health and safety regulations have been addressed and remedied.³³ The City states that the Injunction “remains in effect,”³⁴ and GPMFC has not disputed this.³⁵ Given the Injunction has been in place since July 26, 2020, we find that, at the time GPMFC filed the Application, no entity could have provided reasonable assurance that the Property was legally available for construction and operation of an LPM station.³⁶

We acknowledge that the District Court of Van Zandt County, Texas could lift the injunction if the violations noted therein are addressed and remedied. However, we do not believe that the Property can be considered legally available until the injunction has been lifted. We consider the situation here to be akin to those involving express conditions placed on an applicant’s access to the site, which were not met or were unlikely to be met. As the Commission has explained, an applicant cannot “glossily claim” that it has reasonable assurance of site availability in such circumstances.³⁷ While here it is the District

³¹ *Id.* Even if, as GPMFC asserts in the Amendment Attachment, GPM now owns the Property and has provided reasonable assurance to GPMFC, this would not alter our finding that GPMFC lacked reasonable assurance at the time it filed the Application. Further, because GPMFC lacked reasonable assurance when it filed the Application, it cannot amend the Application to cure the defect. See *Christopher Falletti*, Memorandum Opinion and Order, 30 FCC Rcd 827, 828-29, paras. 5-7 (2015) (explaining the Commission’s historical fatal defect approach to site availability for an applicant’s initial transmitter site). Finally, we note that, according to GPMFC, GPM is a sole proprietorship owned by Barney Joe Donalson. GPMFC Opposition at 2. Thus, it is unclear how Richard Grega—who is listed in the Amended Application as having provided reasonable assurance—could have done so. Amended Application at Technical Certifications, Reasonable Site Assurance.

³² GPMFC Opposition at Exh. B.

³³ *Id.* at Exh. B, pp. 5-6. The Injunction goes so far as to require the owner of the Property to “prevent anyone from entering or using” the Property. *Id.* at Exh. B, pp. 6-7.

³⁴ Objection at 2.

³⁵ GPMFC does argue that “the current occupancy status of a church building” is not a relevant factor. GPMFC Opposition at 2. However, that argument ignores the fact that the injunction prevents use of both the land and structures located at the Property.

³⁶ See *Pinckneyville, Illinois*, Report and Order, 47 FCC 2d 887, 890, para. 7 (1974) (discussing the issue of site availability as involving whether a specific site is “legally available”).

³⁷ *South Florida*, 99 FCC 2d at 846, para. 8 (Rev. Bd. 1984) (“[W]here the site owner expressly conditions access to the site and those conditions are not met or unlikely to be met, it cannot be glossily claimed that one has ‘reasonable access’ of the site nonetheless.”). See also *Logos Broad. Corp.*, Letter Order, 23 FCC Rcd 10202, 10206-10207 (MB 2008), citing *Cuban-American Ltd.*, Decision, 2 FCC Rcd 3264, 3266, para. 13 (Rev. Bd. 1987) (where a site owner establishes conditions precedent to negotiating a lease, the applicant cannot ignore the conditions and still claim reasonable assurance); *Lee Optical and Associated Cos. Retirement and Pension Fund Trust*, Decision, 2 FCC Rcd 5480, 5486, para. 24 (Rev. Bd. 1987) (finding applicant’s reasonable assurance claim “evaporate[d] totally” because applicant was required to obtain “the consent of the proposed antenna site’s exclusive rooftop lessee” and did not either sublease from the lessee or obtain a contract waiver from the lessee); *Chicagoland TV Co.*, Memorandum Opinion and Order, 5 FCC 2d 154, 155-156, para. 4 (Rev. Bd. 1966) (designating site availability

Court—rather than a site owner—imposing the conditions, that does not change the fact that no one can access the Property until the conditions set forth in the Injunction have been satisfied. Put another way, there was (and is) only a possibility that the site will be available to GPMFC. It is well established that “a mere possibility that the site will be available is not sufficient” to establish reasonable assurance of site availability.³⁸

In sum, we find that GPMFC did not have reasonable assurance of the availability of the Station’s proposed antenna site when it filed the Application. This site availability defect is non-curable.³⁹ Thus, we will dismiss the Application without an opportunity to amend.⁴⁰

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the informal objection filed by the City of Canton, Texas on February 28, 2024, **IS GRANTED**, and the application for a new low power FM station at Canton, Texas (Application File No. 232284) **IS DISMISSED WITH PREJUDICE**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

issue where availability of proposed antenna site was “conditioned upon” completion of another building, the current occupant of the proposed antenna site’s move to that other building; and Commission approval of the relocation of the current occupant to that building); *Springfield Telecasting Co.*, Memorandum Opinion and Order, 45 FCC 1710, para. 7 (Rev. Bd. 1964) (designating site availability issue and noting letter from site owner’s agent indicating studio and transmitter site were available “subject to conditions including prior sale, satisfactory agreement and conclusion of arrangements within 12 months”).

³⁸ See, e.g., *Wallace*, 49 FCC 2d at 1427, para. 6. See also *Family Broad., Inc.*, Decision, 11 FCC Rcd 3052, 3053-54, para. 12 (Rev. Bd. 1996) (where tower owner’s agent requests formal written proposal from applicant, and does not “say yes or . . . no,” “permission to use the site was not unambiguously given.”); *El Camino Broad. Corp.*, Memorandum Opinion and Order, 12 FCC 2d 25, 26, para. 5 (Rev. Bd. 1968) (“[T]he mere fact that the property owner has indicated that he would discuss the possibility of a lease at some future date does not . . . provide . . . assurance. . .”).

³⁹ See *Able Radio Corp.*, Letter Order, 26 FCC Rcd 16161, 16163 (MB 2011); *Radio Delaware, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8630, 8631, paras. 9-11 (Rev. Bd. 1989).

⁴⁰ *Id.*