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In re: **Gila River Telecommunications, Inc.**
NEW(LP), Stotonic, Arizona
Facility ID No. 788540
Application File No. 0000233086

NEW(LP), Blackwater, Arizona
Facility ID No. 788539
Application File No. 0000233084

NEW(LP), Komatke, Arizona
Facility ID No. 788541
Application File No. 0000233082

Informal Objection
Requests for Waivers

Dear Counsel and Objector:

We have before us the above-referenced applications (Applications) for construction permits for new Low Power FM (LPFM) stations at Stotonic, Arizona;¹ Blackwater, Arizona;² and Komatke, Arizona,³ filed December 15, 2023, by Gila River Telecommunications, Inc. (GRTI). GRTI, in each of the Applications, requests waivers of the Commission's rules. Also before us is the Informal Objection (Objection) filed by Rocket Radio Corp. (Rocket) against GRTI's Komatke, Arizona, Application

¹ Application File No. 0000233086.

² Application File No. 0000233084.

³ Application File No. 0000233082.

(Komatke Application). For the reasons set forth below, we grant the Objection in part, deny the requests for waiver of section 73.860(a) of the rules,⁴ and dismiss the Applications.

Background. On December 15, 2023, GRTI filed the above-captioned Applications for public safety LPFM stations in the 2023 new Low-Power FM (LPFM) filing window.⁵ GRTI describes itself as “an instrumentality” of the Gila River Indian Community (GRIC), that is “wholly owned” by GRIC, and that “transfers profits directly to the Community per GRIC Council Resolution GR-85-12 and then applies to the Community Council for funding for all capital project requirements.”⁶

In each of the three Applications, GRTI selected the eligibility option that it was applying as a “[s]tate or local government or non-government entity that proposes a noncommercial public safety radio service to protect the safety of life, health or property.”⁷ In so doing, GRTI avails itself of section 73.855(c) (ownership limits) of the rules, which states that not-for-profit organizations and governmental entities with a public safety purpose may file for and be granted “multiple licenses” if one of the multiple applications is submitted as a priority application (in this case, the Stotonic, Arizona, Application), and the remaining non-priority applications are not subject to mutually exclusive challenges, which the Komatke and Blackwater, Arizona, applications are not.⁸ In contrast, non-public safety LPFM applicants are generally limited to only one LPFM license plus two FM translator stations rebroadcasting that LPFM station, except that federally recognized Native American Tribes are allowed two LPFM licenses and two FM translator stations for each LPFM station, or a total of six licenses.⁹ Furthermore, under section 73.860 (cross-ownership),¹⁰ no entity may be granted an LPFM license if that grant will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions. In other words, an LPFM licensee is generally limited to owning only the maximum number of LPFM stations and FM translators to rebroadcast the LPFM programming, and no other broadcast stations.

GRTI seeks the same three waivers for each of the three Applications. One waiver for each application concerns second-adjacent short-spacing, the technical parameters of which differ for each application. The second waiver concerns GRTI’s status as a government-owned entity that is not a government in and of itself. The third and, for our purposes, most important request seeks waiver of the cross-ownership prohibition of section 73.860, which precludes grant of an LPFM application to any party if such grant will result in the same party holding an attributable interest in any other non-LPFM

⁴ 47 CFR § 73.860(a).

⁵ See generally *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, 38 FCC Rcd 6660 (MB 2023) (*LPFM Procedures Public Notice*). 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, 38 FCC Rcd 9589 (MB 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, 38 FCC Rcd 11882 (MB 2023).

⁶ Comprehensive Exhibit to Komatke Application (Comprehensive Exhibit) at 12.

⁷ See the “Legal Certifications – Eligibility Certification” section of each Application.

⁸ 47 CFR § 73.855(c).

⁹ See *id.* § 73.855(a)-(b);

¹⁰ *Id.* § 73.860.

station. GRTI is currently the licensee of four Low-Power Television (LPTV) stations: KGRX-LD;¹¹ KGRQ-LD;¹² KGRF-LD;¹³ and KGRY-LD.¹⁴ In none of the three LPFM Applications does GRTI pledge to divest these four LPTV licenses before commencing operations of the LPFM stations for which it applied.

On November 22, 2024, Rocket Radio Corp. (Rocket) filed an Informal Objection to the Komatke Application.¹⁵ In broad terms, Rocket objects to or disputes: GRTI's cross-ownership waiver requests; GRTI's status as a local "government" that can hold a license as a public safety LPFM station; whether the service to be provided qualifies as "public safety;" GRTI's non-profit status; and whether the signatory to the application was an elected or appointed government official. Rocket does not address the second-adjacent short-spacing waiver requests. GRTI has not filed an Opposition to the Informal Objection. As discussed below, we find that Rocket is correct that GRTI does not qualify for a waiver of the cross-ownership prohibition in section 73.860 of the rules, and moreover that GRTI's status as a for-profit entity operating commercial LPTV stations precludes its being granted a license for any LPFM station. On these bases, we grant the Informal Objection in part and dismiss the Applications.

Discussion. Pursuant to section 309(d) of the Communications Act,¹⁶ 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.¹⁷ We find that Rocket has met this burden with regard to the Komatke Application and, by extension, to the other two Applications.

As noted above, GRTI seeks waivers of several rules. While Rocket does not challenge GRTI's short-spacing waiver request, it does lodge a number of arguments against the remaining waiver requests. For purposes of this discussion, we focus on GRTI's status as a for-profit entity and its request for waiver of section 73.860(a), the cross-ownership prohibition.

Generally, the Commission's rules may be waived for good cause shown.¹⁸ When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances that warrant such action.¹⁹ The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a

¹¹ Gila River Indian Community, Arizona, Facility ID No. 187703.

¹² Gila River Indian Community, Arizona, Facility ID No. 187708.

¹³ Gila River Indian Community, Arizona, Facility ID No. 187709.

¹⁴ Gila River Indian Community, Arizona, Facility ID No. 187710.

¹⁵ Pleading File No. 0000258423.

¹⁶ 47 U.S.C. § 309(d).

¹⁷ 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).

¹⁸ 47 CFR § 1.3.

¹⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, para. 2 (D.C. Cir. 1969) (*WAIT Radio*).

high hurdle even at the starting gate²⁰ and must support its waiver request with a compelling showing.²¹ Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.²² We find that GRTI has failed to meet this burden with regard to the cross-ownership prohibition. The mere fact that an applicant already holds attributable interests in other broadcast media does not, without more, constitute “special circumstances.” Moreover, waiving section 73.860(a) of the rules to allow an applicant to own both commercial LPTV licenses and licenses in the noncommercial-only LPFM service could set a precedent potentially opening the door to incursion of for-profit broadcasters into what the Commission clearly established as a noncommercial service, with stations licensed only to nonprofit entities.²³

GRTI argues in its waiver request that “the Commission has previously signaled” that it is willing to consider a Tribal Nation applicant’s requests for waiver of the cross-ownership prohibition if it can demonstrate that waiver would not be contrary to LPFM goals, and would advance the Commission’s longstanding goal of expanding service to Tribal lands and members or is otherwise in the public interest.²⁴ GRTI lists the factors it believes qualify it for such a waiver, including the fact that its four LPTV stations provide educational and entertainment programming, whereas the LPFM stations would be limited to provision of emergency information; the fact that television and radio stations typically have been considered different services addressing different needs, and thus are not considered competitors, hence our rules allowing ownership of both radio and television stations in the same market; the fact that the Gila River reservation is large, mostly rural, and subject to a wide variety of adverse conditions including floods and wildfires, and that the addition of emergency-service LPFM stations will help to keep residents informed; and the fact that GRTI is uniquely situated to provide such information services to the Gila River reservation.²⁵

FCC Form 2100, Schedule 318, allows the applicant to set forth its LPFM eligibility in one of three categories: (1) Nonprofit educational institution or organization; (2) Tribe or Tribal organization; or (3) State or local government or non-government entity that proposes a noncommercial public safety radio service to protect the safety of life, health or property.²⁶ GRTI sought eligibility for each LPFM station authorization and applied under the third category.²⁷ All applicants applying as a state or local government or non-government entity and proposing to provide a noncommercial public safety radio

²⁰ *WAIT Radio*, 418 F.2d at 1157, para. 2.

²¹ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090, 7094, para. 9 (1999).

²² *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

²³ *Creation of Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2212, para. 15 (2000) (*Report and Order*).

²⁴ Comprehensive Exhibit to Komatke Application at 10 (Comprehensive Exhibit) (citing *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15458, para. 157 (2012) (*Sixth R&O*)).

²⁵ Comprehensive Exhibit at 10-11. Rocket also points out that GRTI’s proposed LPFM stations are located in the well-served Phoenix, Arizona, market, and that GRTI does not indicate whether the existing Phoenix market radio stations are not already broadcasting emergency weather information to the Gila River tribal lands, or to the highways traversing those lands. Objection at 9.

²⁶ FCC Form 2100, Schedule 318, Legal Certifications - Eligibility Certifications.

²⁷ GRTI also stated in an exhibit to the Applications that it is a Tribal organization 100% owned by GRIC. Comprehensive Exhibit at 7, 12.

service, were on notice that “[i]n order to qualify, an applicant must not be organized for profit.”²⁸ In the context of public safety radio services, the nonprofit requirement is statutory.²⁹

Moreover, in the *Procedures Public Notice*, the Bureau stated that “[a]pplicants that are non-government entities – incorporated or unincorporated – must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.”³⁰ GRTI failed to address or provide any documentation establishing its nonprofit status as a public safety radio applicant. Rather than address (and comply with) the requirements germane to a public safety radio service, GRTI incongruously relies on language from the *Sixth R&O* where the Commission, in expanding the LPFM numerical ownership limits for federally recognized Native American Tribes, indicated that it would consider suitable rule waivers for Tribes. Notably, the Commission emphasized that a Tribal applicant may seek a rule waiver if, among other things, it “can demonstrate that a waiver would advance our LPFM goals.”³¹ One of the Commission’s bedrock goals in establishing the LPFM service was to provide a local noncommercial radio service.³² As discussed below, evidence from both the Applications and other Commission applications establishes that GRTI is organized for profit, and thus it impermissibly seeks to apply for a station in a clearly established noncommercial service, in which stations are licensed only to nonprofit entities. GRTI further requests a rule waiver that would allow a for-profit applicant that owns commercial broadcast stations to simultaneously operate broadcast stations in the explicitly noncommercial LPFM service. We find that this would not advance the Commission’s LPFM goals, and thus that GRTI’s reliance on the *Sixth R&O* is misplaced.

Further, if the Commission had determined that the differing nature of the programming between LPTV stations and LPFM stations were significant enough to allow cross-ownership between such stations, it would not have specifically listed the LPTV service in section 73.860(a) as among those in which an LPFM applicant could not hold an attributable interest.³³ Additionally, public safety LPFM licenses are not excepted from the cross-ownership limitations. “We emphasize, however, that we will not exempt these licenses from the cross-ownership restrictions . . . and will therefore require TIS licensees or other public safety or transportation licensees, to return their existing licenses upon the initiation of LPFM service.”³⁴

Even if we were to consider waiving the cross-ownership prohibition, we would not do so where, as here, the applicant’s other attributable media interests are in for-profit media. Between the Commission’s establishment of LPFM as a noncommercial service,³⁵ and the prohibition on cross-

²⁸ *LPFM Procedures Public Notice*, 38 FCC Rcd at 6666 and n.33 (“In order to qualify, an applicant must not be organized for profit, must use the proposed LPFM station for public safety radio services to protect the safety of life, health, or property, and the services must not be made commercially available to the public. 47 U.S.C. § 309(j)(2)(A)”).

²⁹ 47 U.S.C. § 309(j)(2)(A).

³⁰ See *LPFM Procedures Public Notice*, 38 FCC Rcd at 6666 n.33.

³¹ *Sixth R&O*, 27 FCC Rcd at 15458, para. 157.

³² See also 47 CFR § 73.853(a).

³³ 47 CFR § 73.860(a) (“Except as provided in paragraphs (b), (c), and (d) of this section, no license shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions.” (emphasis added)).

³⁴ *Report and Order*, 15 FCC Rcd at 2215, para. 23.

³⁵ See *id.*, 15 FCC Rcd at 2213, para. 17.

ownership of interests in other media with LPFM licenses,³⁶ it is clear that the Commission did not intend for the LPFM service to be an adjunct to co-owned commercial media services. It is equally clear, however, that GRTI's LPTV stations are licensed and operated as commercial stations. For example, GRTI filed a consolidated Commercial Broadcast Stations Biennial Ownership Report (FCC Form 323) for all four LPTV stations.³⁷ In Section 4 – Nature of Respondent, GRTI lists itself as a “For-profit corporation.”³⁸ Additionally, GRTI has not claimed exemption from filing fees in its most recent renewal applications for stations KGRQ-LD,³⁹ KGRX-LD,⁴⁰ KGRF-LD,⁴¹ and KGRY-LD.⁴² Thus, GRTI's LPTV stations claim commercial operating status. Finally, in the Comprehensive Exhibit to the Komatke Application, while describing its status as an instrumentality of GRIC's Tribal government, GRTI claims that it “transfers profits directly to the Community per GRIC Council Resolution GR-85-12 and then applies to the Community Council for funding for all capital project requirements.”⁴³ This statement constitutes a further acknowledgement that GRTI is a for-profit entity.

Given our conclusion that GRTI is a for-profit entity, that we cannot grant the requested cross-ownership waiver, and the fact that GRTI has not pledged to divest itself of its LPTV stations in the event its LPFM Applications are granted, we dismiss the Applications. As GRTI's for-profit status is fatal to the Applications, even were we to grant the remaining waiver requests we could not process the Applications. We thus find no reason to address Rocket's other objections to the waiver requests. We therefore dismiss GRTI's remaining waiver requests as moot, and dismiss Rocket's remaining arguments against those waiver requests as moot.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed by Rocket Radio Corp. on November 22, 2024, Pleading File No. 0000258423, **IS GRANTED IN PART**. The Applications for new LPFM stations at Stotonic, Blackwater, and Komatke, Arizona, Application File Nos. 0000233084, 0000233086, and 0000233082, **ARE DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: Michelle Bradley, CBT

³⁶ 47 CFR § 73.860(a).

³⁷ See, e.g., Commercial Broadcast Stations Biennial Ownership Report (FCC Form 323), File No. 0000230779 (Dec. 1, 2023).

³⁸ *Id.* Section 4. See also Objection at 4.

³⁹ Application File No. 0000194379.

⁴⁰ Application File No. 0000194377.

⁴¹ Application File No. 0000194376.

⁴² Application File No. 0000194378.

⁴³ Comprehensive Exhibit at 12.