

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WKMJ Radio Live the People Station, Inc.)	File No. BNPL-20131107AAI
)	Facility ID No. 194483
Application for a Construction Permit for a New)	
LPFM Station at Pinellas Park, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: November 17, 2015

Released: November 18, 2015

By the Commission:

1. We have before us the Application for Review (“AFR”) filed by WKMJ Radio Live The People Station, Inc. (“WKMJ”) seeking Commission review of a Media Bureau (“Bureau”) decision¹ that denied reconsideration of the dismissal of its captioned application for a construction permit for a new LPFM station at Pinellas Park, Florida (“Application”). The Bureau dismissed the Application² on the grounds that WKJM was not eligible to hold an LPFM license because its CEO and 50 percent voting shareholder, Kervenson Joseph (“Joseph”),³ had engaged in unlicensed operation of a radio station in violation of Section 301 of the Communication Act of 1934, as amended (“Act”).⁴

2. In the AFR, as in the Petition, WKMJ does not dispute the factual findings of the *Staff Decision* and *Reconsideration Decision*, but argues that the Bureau made a procedural error in relying on a case report obtained from the Pinellas Park Police Department (“Case Report”) and a Notice of Unlicensed Operation (“NOUO”) issued by the Enforcement Bureau (“EB”), both of which document engaging in unlicensed radio broadcasting on November 15, 2013, when two EB field agents, accompanied by a Pinellas Park Police officer, inspected the facility in Joseph’s presence.⁵ WKMJ also

¹ *WKMJ Radio Live The People Station, Inc.*, Letter, 30 FCC Rcd 7427 (MB 2015) (“*Reconsideration Decision*”) (denying Petition for Reconsideration (“Petition”) filed by WKMJ).

² See *LPFM MX Group 108*, Letter, 1800B3-ATS (MB Mar. 16, 2015) (“*Staff Decision*”).

³ See Application, Section II, Question 3(a) (“Parties to the Application”). Although this portion of the Application identifies Joseph as “Joseph Kervenson”, all other references to him in the Application are as “Kervenson Joseph.” See Application Section I, Question 2 (“Contact Representative”); Section V (“Certification”); and Attachment 2 (article of incorporation). A review of various public records confirms that “Kervenson Joseph” is the correct name.

⁴ 47 U.S.C. § 301. 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 of any station in violation of Section 301 [of the Act].” See Pub. L. No. 106-553, 114 Stat. 2762 (2000). See also 47 C.F.R. §73.854, *Ruggiero v. FCC*, 278 F.3d 1323 (D.C. Cir. 2002), *rev'd en banc*, 317 F.3d 239 (D.C. Cir. 2003).

⁵ See Case Report and NOUO. WKMJ also maintains that the Bureau erred in relying on informal objections to the Application filed by The Moody Bible Institute of Chicago (“Moody Objection”) and by Palm Harbor Radio Inc. “without requesting a response from [it].” AFR at 6. The Bureau did not rely on those filings to support its dismissal of the Application; in its *Staff Decision*, it dismissed them as moot. The Moody Objection contains a certificate of service indicating that a copy was sent to WKMJ. See Moody Objection at 22. WKMJ was free to respond to them, but failed to do so. The Bureau was not obligated to solicit WKMJ’s responses.

maintains that it was not afforded an opportunity to respond to these allegations, in violation of its due process rights.⁶

3. In fact, Joseph and WKMJ were provided numerous opportunities to respond to the allegations of Joseph's unlicensed operation. As noted in the *Reconsideration Decision*, the NOUO, which was sent to Joseph, expressly asked him to "respond with any evidence that you have authority to operate granted by the FCC," which he failed to do.⁷ Further, the Case Report of Joseph's arrest was appended to the *Staff Decision*, and WKMJ also failed to respond to it either in its Petition or in its AFR.⁸ The EB NOUO's finding that Joseph's operation appeared to be unlicensed and in violation of Section 301 of the Act, coupled with his failure to provide any evidence that he had Commission authority to so operate, was sufficient to warrant the dismissal of the Application. As noted by the Bureau in the *Staff Decision*⁹ and the *Reconsideration Decision*,¹⁰ no formal Commission determination of illegal operation is necessary to disqualify a LPFM applicant: "an applicant will be ineligible to hold an LPFM license regardless of whether the Commission has made a specific finding that a party has engaged in such conduct."¹¹ Thus we affirm the Bureau's dismissal of the Application based on its reliance on the Case Report and the NOUO.¹² For the reasons discussed herein and in the Bureau's *Staff Decision* and *Reconsideration Decision*, the fact of that illegal operation is of decisional significance here, as it disqualifies WKMJ and Joseph, by statute, from holding a LPFM authorization.

4. ACCORDINGLY, IT IS ORDERED that the Application for Review filed by WKMJ Radio Live The People Station, Inc., on August 21, 2015, IS DENIED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(g) of the Commission's Rules.¹³

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶ AFR at 4-6.

⁷ EB found that, because Commission's records showed that no license for Joseph's operation had been issued, "this station is operating in violation of 47 U.S.C. § 301." It noted that he was present at and allowed the inspection when the unlicensed station was on the air and voluntarily relinquished the station transmitter to the EB agents. NOUO at 1.

⁸ See *Reconsideration Decision*, n. 13.

⁹ *Staff Decision*, n.11.

¹⁰ *Reconsideration Decision*, n.17.

¹¹ *Citing Creation of a Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026, 8030 (2001).

¹² The Commission typically takes official notice of government documents that are accessible to the public. See *Citadel Broadcasting Company, Memorandum Opinion and Order*, 22 FCC Rcd 7083, 7094 ¶21 (2007) (taking official notice of public records from the New York Attorney General).

¹³ 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(g).