

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

In the Matter of)	
)	
Public Media of New England, Inc.)	File No. BNPL-20131113AKZ
)	Facility ID No. 193811
Application for a New LPFM Station at)	
Haverhill, Massachusetts)	

MEMORANDUM OPINION AND ORDER

Adopted: December 16, 2015

Released: December 17, 2015

By the Commission:

1. The Commission has before it a pleading titled “Petition for Review (“Pirate”) [sic] Radio Public Media of New England, Inc.’s Construction Permit” (“AFR”) filed by Boston Radio Association (“BRA”).¹ The AFR seeks review of the Media Bureau’s grant² of the application of Public Media of New England, Inc. (“Public Media”), for a construction permit for a new LPFM station at Haverhill, Massachusetts (“Public Media Application”).

2. The Public Media Application was filed during the 2013 LPFM filing window. The Commission identified the Public Media Application and the application filed by St. Patrick Parish Lawrence Educational Radio Association (“St. Patrick”)³ as LPFM MX Group 240. On September 5, 2014, the Commission issued a Public Notice in which it identified those two applications as the tentative selectees of LPFM MX Group 240 on a time-share basis; accepted both applications for filing; and began a 30-day period for filing petitions to deny.⁴ Public Media filed a Petition to Deny the St. Patrick Application on October 3, 2014, and on October 6, 2014, St. Patrick filed a Petition to Deny the Public Media Application. On October 22, 2014, BRA filed an Informal Objection (“Objection”) to the Public Media Application.⁵

3. On December 8, 2014, Public Media and St. Patrick filed a settlement agreement (“Agreement”) which proposed to resolve their applications’ mutual exclusivity and withdraw their respective petitions to deny. On January 9, 2015, the Bureau approved the Agreement, dismissed the two petitions to deny and granted both the Public Media Application and the St. Patrick Application.⁶

¹ The AFR was electronically filed on January 14, 2015, as an Application for Review and is addressed to the Commission. As *such*, we will treat it as such pursuant to Section 1.115 of the Commission’s Rules (“Rules”). Public Media filed an Opposition to the AFR on January 29, 2015 (“AFR Opposition”).

² See *Broadcast Actions*, Public Notice, Report No. 48405 (MB Jan. 14, 2015) (“Petition to Deny and all related pleadings dismissed 1/9/2015 per settlement agreement - no letter sent”) (“*Grant Public Notice*”).

³ File No. BNPL-20131114BJW (“St. Patrick Application”).

⁴ *Commission Identifies Tentative Selectees in 111 Groups of Mutually Exclusive Applications Filed in the LPFM Window; Announces a 30-Day Petition to Deny Period and a 90-Day Period to File Voluntary Time-Share Proposals and Major Change Amendments*, Public Notice, 29 FCC Rcd 10847 (2014) (“*September Public Notice*”).

⁵ Public Media filed an Opposition to the Objection on November 10, 2014. BRA filed a Reply on November 20, 2014. Public Media filed a Response on December 11, 2014.

⁶ See *Grant Public Notice*.

However, the Bureau inadvertently failed to address the merits of BRA's pending Objection. BRA timely filed the AFR and on April 27, 2015, filed a Petition to Deny ("Petition") the Public Media Application.

4. In the AFR, BRA raises the same argument that it did in the Objection – that Public Media is ineligible to hold an LPFM license because its principals operate Station WHAV, an unlicensed radio station, in violation of Section 301 of the Communications Act of 1934, as amended ("Act").⁷ Public Media responds that the AFR should be dismissed because: 1) BRA did not serve the AFR on Public Media;⁸ 2) BRA lacks standing to file an AFR,⁹ and 3) BRA did not properly verify the AFR, which was signed by its President, Peter D'Acosta, but lacked a statement that the facts alleged in it are accurate to the best of his knowledge.¹⁰ Public Media further notes that the AFR merely restates the arguments raised in the Objection and reiterates, as it indicated in its Opposition to the Objection,¹¹ that WHAV¹² "operates in full compliance with Part 15 of the Commission's rules."¹³ BRA has not established any facts to the contrary. The Petition raises the same arguments as the Objection and the AFR, but also alleges that the Bureau granted the Public Media Application "without given [sic] opportunity to public to file 30 days [sic] petition to deny during the acceptance of filing."¹⁴

5. Under Section 1.115(a) of the Rules and Section 5 of the Act, an applicant for review must be a "person aggrieved" by an action taken pursuant to delegated authority.¹⁵ To show that it is "aggrieved" by an action, an applicant for review must demonstrate a direct causal link between the challenged action and the alleged injury to the applicant, and show that the injury would be prevented or redressed by the relief requested.¹⁶ In the broadcast regulatory context, standing is generally shown in one of three ways: (1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station's service area or regular listener of the station.¹⁷ BRA has not even attempted to show how it is aggrieved by the grant of the Public Media Application. Accordingly, we will dismiss the AFR because BRA lacks standing to file it.¹⁸

⁷ AFR at 1, *citing* 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* *Ruggiero v. FCC*, 278 F.3d 1323 (D.C. Cir. 2002), *rev'd en banc*, 317 F.3d 239 (D.C. Cir. 2003).

⁸ AFR Opposition at 2, *citing* 47 C.F.R. § 1.115(f).

⁹ AFR Opposition at 2-3.

¹⁰ *Id.* at 3, *citing* 47 C.F.R. § 1.52.

¹¹ Opposition to Objection at 2.

¹² Although Public Media's LPFM operation has chosen the call sign WHAV-LP, there is no AM station licensed as WHAV. We will refer herein to WHAV as an unlicensed Part 15 and online station.

¹³ AFR Opposition at 2. Public Media also states that all mailings it has sent to BRA have been returned, and that its representative went to the address BRA provided in its pleadings, but was unable to locate BRA or Mr. D'Acosta at that address. *Id.* at 4.

¹⁴ Petition at 2.

¹⁵ 47 U.S.C. § 155(c)(4); 47 C.F.R. § 1.115(a) ("Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission . . . Any application for review which fails to make an adequate showing in this respect will be dismissed.")

¹⁶ *See, e.g., Applications of AT&T Inc. and Deutsche Telecom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 27 FCC Rcd 4423, 4425 (2012); *Applications of WINV, Inc. and WGUL-FM, Inc. for Renewal and Assignment of License of WINV(AM), Inverness, Florida*, Memorandum Opinion and Order, 14 FCC Rcd 2032, 2033 (1998).

¹⁷ *See Applications of Clarke Broad. Corp.*, Memorandum Opinion and Order, 11 FCC Rcd 3057 (1996) (holding that where there is no nexus between the challenged application and an applicant for review, the applicant is not

(continued....)

6. We likewise find the Petition defective. The Petition was filed after the grant of the Public Media Application and we will therefore treat it as a Petition for Reconsideration.¹⁹ Section 405(a) of the Act and Section 1.106(f) of the Rules require any petition for reconsideration to be filed within thirty days of the date upon which the Bureau gives public notice of the decision.²⁰ The Commission generally lacks the authority to extend or waive the statutory 30-day filing period for petitions for reconsideration.²¹ In this case, the action in question is the *Grant Public Notice* announcing the grant of the Public Media Application, which was issued on January 14, 2015.²² Any petition for reconsideration of the *Grant Public Notice*, therefore, was due on February 13, 2015. BRA, however, did not file the Petition until April 27, 2015, over two months after the filing deadline. We reject BRA's argument that it was not afforded a 30-day period in which to file a petition to deny. As noted above, the *September Public Notice* afforded parties 30 days to file petitions to deny the Public Media Application.²³ Accordingly, we will dismiss the Petition as untimely.²⁴

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“aggrieved” for purposes of 47 C.F.R. § 1.115(a)); *Chet-5 Broad., L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 (1999) (“[W]e will accord party-in-interest status to a petitioner who demonstrates either residence in the station's service area or that the petitioner listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with the station”); *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1000-1006 (D.C. Cir. 1966) (expanding standing from traditional categories of electrical interference or economic injury to station listeners).

¹⁸ See, e.g., *Chapin Enter., LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250 (2014) (dismissing application for review filed by objector that did not demonstrate he was aggrieved by Bureau action). Because we are dismissing the AFR on this basis, we need not address Public Media's arguments that the AFR was not served or verified.

¹⁹ See, e.g., *White River Broad. Corp.*, Letter, 22 FCC Rcd 5071 (MB 2007) (petition to deny filed after grant of application treated as a petition for reconsideration). Additionally, the Petition was filed well after the 30-day period for filing petitions to deny the Public Media Application had elapsed, was not served on Public Media, and is not accompanied by an affidavit. See 47 U.S.C. § 309(d)(1) (petitions to deny must be “be supported by affidavit of a person or persons with personal knowledge” of the factual allegations made in the petition). Thus, even if the Petition had been filed before the grant of the Public Media Application, we would treat it as an informal objection. See *KTRU(FM)*, Letter, 26 FCC Rcd 5966 (MB 2011), and *Farm and Home Broad. Co.*, Letter, 24 FCC Rcd 11814 (MB 2009) (procedurally defective petitions to deny treated as informal objections); see also 47 C.F.R. § 73.3587 (informal objections may be filed any time prior to Commission action on the corresponding application).

²⁰ 47 U.S.C. § 405(a), 47 C.F.R. § 1.106(f).

²¹ See *Reuters Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986) (express statutory limitations barred the Commission from acting on a petition for reconsideration that was filed after the due date).

²² 47 C.F.R. § 1.4(b)(4) (“If the full text of an action document is not to be released by the Commission, but a descriptive document entitled “Public Notice” describing the action is released, the date on which the descriptive “Public Notice” is released.”)

²³ See note 4 *supra* and accompanying text. See also *September Public Notice*, 29 FCC Rcd at 10851. The discussion above shows that both Public Media and St. Patrick filed timely petitions to deny based on the *September Public Notice*.

²⁴ See *Virgin Islands Tel. Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) (upholding the Commission's refusal to entertain a petition for reconsideration where the petition had been filed one day late, and extenuating circumstances did not prohibit the petitioner from filing within the prescribed time limits). See also *Pueblo Radio Broad. Serv.*, Memorandum Opinion and Order, 6 FCC Rcd 1416 (1991) (dismissing petition for reconsideration that was filed one day late); *Metromedia, Inc.*, Memorandum Opinion and Order, 56 FCC 2d 909 (1975) (same); *Panola Broad. Co.*, Memorandum Opinion and Order, 68 FCC 2d 533 (1978) (same).

7. As a separate and independent basis for affirming the grant of the Public Media Application, we reject BRA's allegations raised in the Objection, the AFR, and the Petition that Public Media is ineligible to hold an LPFM license due to the illegal operation of a radio station by its principals. Pursuant to Section 309(d) of the Act, informal objections, like petitions to deny, 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.²⁵ BRA had failed to demonstrate that any party to the Public Media Application engaged in unlicensed operation of a radio station in violation of Section 301 of the Act. BRA's allegations are not based on any personal knowledge of unlicensed broadcasting by Public Media's principals, but instead are based entirely on printouts from various Internet websites.²⁶ We have previously held that newspaper articles and claims based on Internet websites are insufficient to demonstrate a substantial and material question of fact.²⁷ Although WHAV is not a licensed AM broadcast station, Public Media has stated that the operation of the station was in compliance with Part 15 of the Rules, which permit certain low power operations.²⁸ BRA has not established to the contrary. The Commission has held that such operations do not render an applicant ineligible to hold an LPFM license.²⁹ We will thus deny the Objection, and would deny the AFR and Petition on this basis if these pleadings were not dismissed.

8. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,³⁰ and Section 1.115(a) of the Commission's Rules,³¹ the Application for Review filed by Boston Radio Association, on October 8, 2014, IS DISMISSED.

²⁵ 47 U.S.C. § 309(d); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

²⁶ Objection at Exhibits 1-9. BRA also provides a link to a video uploaded by WHAV to YouTube which show pictures of WHAV's transmission equipment. Reply at 1, *citing* <http://www.youtube.com/watch?v=MVSBN1LsFEc>. The Reply provides, as Exhibit 3, stills from this video which BRA claims "shows clearly all evidences [sic] about what type of transmitter used [sic] in its illegal broadcasting. Public Media . . . use of a 1000 Watts transmitter (one kilowatts) [sic]." Reply at 1.

²⁷ *See Pikes Peak Broad. Co.*, Memorandum Opinion and Order and Notice of Apparent Liability, 12 FCC Rcd 4626, 4630 (1997) (a newspaper article is not an acceptable substitute for the requirement of Section 309(d) of the Act that allegations in a petition to deny be supported by the affidavit of a person with personal knowledge of the facts alleged); *Secret Comm'n II, LLC and Clear Channel Broad Licenses, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 9139, 9149 (2003) ("allegations based on internet website idiom are speculative and inadequate to raise a substantial and material question of fact")

²⁸ *See* Opposition to Objection at 2; AFR Opposition at 2-3. *See also* 47 C.F.R. §§ 15.209, 15.219, and 15.221; *Permitted Forms of Low Power Broadcast Operation*, Public Notice, Mimeo No. 14089 (July 24, 1991); OET Bulletin No. 63, "Understanding the FCC Part 15 Regulations for Low Power, Non-Licensed Transmitters" (Feb. 1996). Section 15.219 permits operation of an unlicensed 100-milliwatt AM transmitter on a secondary, non-interfering basis, provided that the total length of the transmission line, antenna and ground lead does not exceed three meters. Public Media notes that WHAV uses a Hamilton Rangemaster transmitter, which is authorized by the Commission for Part 15 operations. Opposition at 2, Statement of Timothy J. Coco, and Exhibit A.

²⁹ *Casa de Oracion Getsemani*, Memorandum Opinion and Order, 23 FCC Rcd 4118, 4125 (2008).

³⁰ 47 U.S.C. § 155(c)(5).

³¹ 47 C.F.R. § 1.115(a).

9. IT IS FURTHER ORDERED that Boston Radio Association's Informal Objection filed on October 22, 2014, IS DENIED, and, pursuant to Section 405(a) of the Communications Act and Section 1.106(f) of the Rules,³² its Petition to Deny filed on April 27, 2015, treated as a petition for reconsideration, IS DISMISSED as untimely.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³² 47 U.S.C. § 405(a), 47 C.F.R. § 1.106(f).