



Federal Communications Commission
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In Reply Refer to:
1800B3-SS

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Ms. Cynthia D. Cormack
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Re: KDEB(AM), Estes Park, CO
Facility ID No. 67483
File No. BAL-20111109AFN

Application for Assignment of License

Petition for Reconsideration

Dear Counsel, Messrs. Merkel and Engel, & Ms. Cormack:

This letter refers to the referenced application (the "Application") for Commission consent to the assignment of the license of station KDEB(AM), Estes Park, Colorado, (the "Station")¹ from WP Broadcasting of Colorado, LLC ("WP") to Kona Coast Radio, LLC ("KCR").² For the reasons set forth below, we treat the Objection as a Petition for Reconsideration (the "Petition") of the grant of the Application and deny it.

¹ Formerly KRBR(AM).

² The sole member of KCR is Victor A. Michael, Jr. ("Michael").

Background. On November 9, 2011, WP filed the Application, seeking Commission consent to the assignment of the Station's license to KCR. The staff granted the unopposed Application on December 29, 2012.³ However, prior to grant of the Application, on December 21, 2011, former Station employees Timothy Merkel, Steven Engel, and Cynthia Cormack (the "Employees") filed the Objection to "License Renewal Application File Number 20111109AFN." Employees inaccurately referenced the Application as a "Renewal" application and addressed their Objection to the Commission's Consumer and Governmental Affairs Bureau; the Media Bureau staff was unaware of the pleading and did not consider it prior to granting the Application eight days later.

In the Objection, Employees question whether new Station owner Michael has the character qualifications to be a Commission licensee because he has a "tendency to own but not operate radio stations across the US."⁴ Specifically, Employees claim that Michael already owns non-operating station KFCY(FM) (currently KHIH(FM)) in Estes Park⁵ and that he also "owns at least 27 stations under 4 different corporate names, and only 4 of these stations is (sic) actually operating."⁶ In addition, they contend that the eight stations Michael owns in Colorado are for sale.⁷ Employees also allege that Michael exercised undue influence over WP by taking the Station silent.⁸ Finally, Employees argue that the Station is the only commercial radio station operating in and serving the Estes Valley which is at the base of Rocky Mountain National Park and 22 miles from any other incorporated town; they claim that "it is essential that local residents and visitors receive live, regular weather reports and announcements of forest and road conditions and closures" from the Station, and they express concern that Michael will not meet these needs when he acquires the Station.⁹

Discussion. As noted above, the staff, having no knowledge of the Objection, granted the Application eight days after the Objection was filed. Because the staff did not consider the arguments made in the Objection prior to granting the Application, we will treat Employees' Objection as a Petition for Reconsideration and consider those arguments herein.¹⁰

In the Petition, Employees question Michael's fitness to be licensee of the Station, citing in support only postings from a "Radio-Info.com" internet discussion board impugning Michael's

³ See *Broadcast Actions*, Public Notice, Report No. 47646 (rel. Jan.4, 2012). The parties consummated the transaction on January 1, 2012.

⁴ Objection at 1, 3.

⁵ Effective January 29, 2012, stations KHIH(FM), Hugo, Colorado, and KFCY(FM), Estes Park, Colorado, switched call signs. Michael is sole owner of station KFCY(FM), Hugo, Colorado, and has a 33.33 percent interest in silent station KHIH(FM), Estes Park, Colorado.

⁶ Objection at 4. The Employees do not list the 27 stations which it claims Michael owns or those which allegedly are off the air.

⁷ *Id.* The Employees do not indicate which of Michael's stations allegedly are for sale, and it is unclear what relevance this allegation has regarding Michael's qualifications to be licensee of the Station.

⁸ *Id.* at 1 ("the new owner opted to shut us down immediately without notice") and 2 (Michael "direct[ed] a shutdown" of the Station).

⁹ *Id.*

¹⁰ See, e.g., *Richard F. Swift, Esq., and Alan Stuart Graf, Esq.*, Letter, 24 FCC Rcd 12426, 12427 (MB 2009) (timely objection not brought to staff's attention prior to application grant treated as a petition for reconsideration).


character.¹¹ These opinions by Radio-Info.com subscribers do not constitute probative evidence regarding Michael's character qualifications to be licensee of the Station.¹²

Similarly, Employees' allegations that Michael took the station off the air are too vague, conclusory, and unsupported to be actionable. Moreover, Employees acknowledge, even though they allege undue influence by Michael,¹³ that it was WP, and not Michael, that first took the Station off the air pursuant to an STA granted in December 2011.¹⁴ With respect to Employees' claim that Michael "owns but does not run" radio stations, again those conclusory allegations are completely unsupported and require no further discussion.

Regarding Employees' claim that the public safety of residents and visitors to Estes Park is at risk due to Michaels taking the Station silent,¹⁵ Employees are incorrect when they argue that Estes Park is without any other radio service in the event of an emergency. Two AM stations provide 5 mV/m daytime coverage over the entire KDEB(AM) 5 mV/m daytime contour -- KCOL(AM), Wellington and KKZN(AM), Thornton, Colorado. Moreover, KCOL(AM), KKZN(AM), and KLTT(AM), Commerce City, Colorado, provide 5 mV/m daytime coverage over 100 percent of Estes Park. Employees submit no evidence that such stations could not convey vital public safety information to their Estes Park listeners if so requested by local authorities in an emergency. We therefore find unpersuasive Employees' claim that grant of the Application should be denied because the Station is silent and no other stations are currently serving the community.

Conclusion/Actions. Accordingly, in light of the above discussion, IT IS ORDERED that the December 21, 2011, Informal Objection filed by Timothy Merkel, Steven Engel, and Cynthia Cormack, treated herein as a Petition for Reconsideration, IS DENIED.

Sincerely,


Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: WP Broadcasting of Colorado, LLC
Kona Coast Radio, LLC

¹¹ Petition at 3 and at Attachments.

¹² See, e.g., *Aspen FM, Inc.*, Order, 6 FCC Rcd 1602, 1603 (1991) (documentary evidence is more probative and entitled to more evidentiary weight than subjective opinion).

¹³ Petition at 2.

¹⁴ WP indicated in its request for authority to remain silent that it "had no choice but to take the Station silent" due to deteriorating economic conditions making it difficult to operate a stand-alone AM station. See File No. BLSTA-2011114BAJ, Exhibit 1.

¹⁵ Petition at 2-3.