

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

In the Matter of)
US Pro Descubierta)
Application for a New LPFM Station at) File No. BNPL-20131021ABI
Seffner, Florida) Facility ID No. 193467

MEMORANDUM OPINION AND ORDER

Adopted: April 26, 2016

Released: April 27, 2016

By the Commission:

1. The Commission has before it the Application for Review (AFR) filed by US Pro Descubierta (USPD) on November 30, 2015. USPD seeks review of a Media Bureau (Bureau) decision that affirmed the dismissal of its application for a construction permit for a new LPFM station at Seffner, Florida (Application).1 Although the Bureau initially dismissed the Application because an amendment filed on February 26, 2014 (February Amendment) resulted in a spacing violation under Section 73.807 of the FCC’s rules (Rules),2 the Bureau subsequently determined that the Application was also defective because, among other things, a prior USPD post-application filing window amendment, filed on January 31, 2014 (January Amendment), had disclosed a prohibited change of more than 50 percent of USPD’s board of directors, in violation of Section 73.871(c)(3) of the Rules.3

2. The Application was one of three applications filed in the 2013 LPFM filing window in which Frank Greer was listed as a board member, in violation of the FCC rule that prohibits the filing of inconsistent broadcast applications.4 The January Amendment was filed shortly after the Bureau

1 US Pro Descubierta, Letter Order (MB Oct. 29, 2015) (dismissing petition for reconsideration filed by USPD on July 21, 2015 (July 2015 Petition), as repetitious, and finding that the Application was an inconsistent application because USPD had a common board member with two other LPFM applicants from the 2013 LPFM filing window); US Pro Descubierta, Letter Order (MB June 24, 2015) (dismissing petition for reconsideration filed by USPD on April 9, 2015 (April 2015 Petition), as repetitious and as untimely); US Pro Descubierta, Letter Order (MB Feb. 3, 2015) (Second Reconsideration Decision) (denying petitions for reconsideration filed by USPD on November 3, 2014); US Pro Descubierta, Letter Order (MB Oct. 9, 2014) (First Reconsideration Decision) (denying petition for reconsideration filed by USPD on March 24, 2014, and finding that USPD was not eligible to hold an LPFM license because its corporate status with the Commonwealth of Massachusetts had lapsed several years prior to the filing of the Application); US Pro Descubierta, Letter Order (MB Feb. 28, 2014) (Dismissal Letter).

2 47 CFR § 73.807; Dismissal Letter at 1 (February Amendment resulted in a violation of Section 73.807 and curative amendment could not be filed pursuant to Section 73.870(c)). See 47 CFR § 73.870(c).

3 47 CFR § 73.871(c)(3); First Reconsideration Decision at 3 (application could not be reinstated because January Amendment reported a 100 percent change in control of USPD’s board). See also Second Reconsideration Decision at 3 (affirming dismissal of Application for violation of Section 73.871(c)(3)).

4 47 CFR § 73.3518; Hispanic Broad. Inst., Inc., Memorandum Opinion and Order, 30 FCC Rcd 10560, 10562, para. 4 (2015) (HBI Order) (affirming dismissal of application for a construction permit for a new LPFM station filed by Hispanic Broadcasting Institute, Inc. because it was an inconsistent application). Because the USPD Application was the first of the three Frank Greer applications to be filed, it was not subject to immediate dismissal pursuant to the inconsistent application rule (Section 73.3518). See Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15 - October 29, 2013 Low Power FM Filing Window, Public Notice, 28 FCC Rcd 8854, 8856-57 (MB 2013) (“For applicants subject to the one application filing (continued....)”).

dismissed one of those applications—that of Hispanic Broadcasting Institute, Inc.—pursuant to that rule.⁵ USPD’s January Amendment specified an entirely new USPD board of directors, in violation of Section 73.871(c)(3).⁶ We uphold the Bureau’s determination that this major change in control of USPD constituted a fatal application defect.⁷ To the extent that the AFR raises issues regarding other parties’ applications, we need not address them here because the only relevant issue before us is whether it was appropriate to dismiss the USPD Application for the violation of Section 73.871(c)(3), and we hold that it was.⁸

3. ACCORDINGLY, IT IS ORDERED that the Application for Review filed by US Pro Descubierta on November 30, 2015, IS DENIED pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(g) of the FCC rules.⁹

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

(Continued from previous page) _____

limit, a second application filed by such an applicant in this window would be treated as a “conflicting” application subject to dismissal under Section 73.3518.”).

⁵ See *Broadcast Actions*, Public Notice, Report No. 48138 (MB Dec. 18, 2013) (“Dismissed 12/13/2013 per DA 13-1385. Applicant has a common board member (Frank Greer) with another LPFM application filed in the window. No letter sent.”).

⁶ See note 3 *supra*. As discussed in the *First Reconsideration Decision*, the Application originally identified USPD’s board as consisting of Frank Greer, Paula Perez, and Rolando Padron, each with 33 percent of the board’s votes. Application at Section II, Question 3. The January Amendment removed Frank Greer, Paula Perez, and Rolando Padron as board members, and identified Paula Greer and Isidora Acosta as the new board members, each with 33 percent of the board’s votes. January Amendment at Section II, Question 3. The January Amendment did not identify who holds the remaining 33 percent of the board’s votes.

⁷ See, e.g., *Fatima Response, Inc.*, Letter Order, 21 FCC Rcd 11711 (MB 2006) (dismissing application for new noncommercial educational station where applicant had experienced major changes in board composition), *recon. denied*, Letter Order, 22 FCC Rcd 8402 (MB 2007). Cf. *Ctr. for Cmty. Arts, Inc.*, Memorandum Opinion and Order, 20 FCC Rcd 11164, 11165, para. 3 (2005) (waiving Section 73.871(c)(3) where LPFM applicant’s major board change was gradual and took place over a period of four years).

⁸ See 47 CFR § 73.3566(a). USPD additionally alleges misconduct by the Bureau staff in failing to reinstate the Application after USPD filed corrective technical amendments, subsequent to the January Amendment, to address the spacing violation identified in the *Dismissal Letter*, and for failing to acknowledge a certificate from the Secretary of the Commonwealth of Massachusetts showing that USPD had been reinstated as a valid corporation. AFR at 10-11. HBI raised a similar allegation of staff misconduct, which the Commission dismissed as unsupported. See *HBI Order*, 30 FCC Rcd at 10562-63, para. 3. We likewise find that USPD’s claims of staff misconduct here are unsupported. Because the January Amendment rendered the Application fatally defective due to the major change in USPD’s board of directors, USPD’s other arguments involve issues which are moot because the Application was correctly dismissed for the violation of Section 73.871(c)(3).

⁹ 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(g).