

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

In the Matter of )
Community Radio of Decorah, ) File No. BNPL-20131106AUX
Postville and Northeast Iowa ) Facility ID No. 195240
For a Construction Permit for New Low-Power FM )
Broadcast Station KCOD-LP, Decorah, Iowa )

MEMORANDUM OPINION AND ORDER

Adopted: October 26, 2016

Released: November 2, 2016

By the Commission: Commissioner Pai concurring and issuing a statement.

I. INTRODUCTION AND BACKGROUND

1. In this Memorandum Opinion and Order we deny the Application for Review (AFR) jointly filed January 16, 2015, by Wennes Communications Stations, Inc., and Decorah Broadcasting, Inc., respectively the licensees of commercial radio stations KVIK and KDEC/KDEC-FM in Decorah, Iowa (Petitioners), and affirm grant of the construction permit for low-power FM (LPFM) broadcast station KCOD-LP, Decorah, Iowa, to Community Radio of Decorah, Postville and Northeast Iowa (Community Radio).1 However, we further direct the Media Bureau (Bureau) to initiate investigative and enforcement proceedings against Community Radio for an apparent violation of Section 1.17(a)(2) of our rules.2

2. Community Radio filed the above-captioned application for an LPFM construction permit on November 6, 2013 (Application). The Application was certified by James Glesne (Glesne), who was listed as one of three "general partners" of Community Radio, a nonprofit Iowa corporation incorporated on June 13, 2008. Included in the Application was a certification that no party to the Application held an attributable interest in any other broadcast station or other media subject to the LPFM broadcast cross-ownership restrictions set forth in Section 73.860(a) of our rules.3 The Application was not mutually exclusive with any other applications, and no petitions to deny or informal objections were filed against it. Accordingly, the Bureau granted the Application on March 19, 2014.4

3. Less than two weeks before that grant, on March 7, 2014, the Postville Chamber of Commerce (Chamber) filed an ownership report (FCC Form 323-E) for its noncommercial educational

1 The original construction permit for KCOD-LP was granted on March 19, 2014, and expired on September 19, 2015. The construction permit was reinstated and extended at Community Radio's request, pursuant to 47 CFR § 73.3598(a), with a new expiration date of March 19, 2017. See E-mail from James Glesne, Community Radio, to James Bradshaw, Deputy Chief, Audio Division, Media Bureau, FCC (Dec. 17, 2015, 3:35 p.m.); Broadcast Applications, Public Notice, Report No. 28650, at 12 (MB Jan. 12, 2016) (also reinstating AFR, which had previously been dismissed as moot upon expiration of the KCOD-LP construction permit).

2 47 CFR § 1.17(a)(2).

3 47 CFR § 73.860(a). The certification is found in Section II, Question 5(b) of the Application.

4 See Broadcast Actions, Public Notice, Report No. 48202 (MB Mar. 24, 2014).

broadcast station KPVL(FM), Postville, Iowa.<sup>5</sup> Among other things, the KPVL(FM) ownership report disclosed that Glesne was a member-at-large of Chamber's governing board, also disclosing Glesne's interest in Community Radio's LPFM Application. Accordingly, on April 16, 2014, Petitioners filed a petition for reconsideration, seeking rescission of the Bureau's grant of the KCOD-LP construction permit. In their petition for reconsideration, Petitioners identified a number of errors and omissions in Community Radio's Application, including the applicant's alleged violation of Section 73.860(a) and Community Radio's apparent misrepresentation, in the Application, of its compliance with that rule.<sup>6</sup>

4. The Bureau denied reconsideration,<sup>7</sup> finding that Petitioners did not show good reason why they could not have participated earlier in the proceeding, as the KPVL Ownership Report disclosing Glesne's position with Chamber was filed before the Application was granted, and the other alleged defects in the Application were known before the Application was granted. While recognizing that Community Radio did not comply with Section 73.860(a) at the time it filed the Application, the Bureau stated that it was a violation that could be cured, noting that Community Radio had responded that Glesne had resigned his position on Chamber's board in April 2014.<sup>8</sup> The Bureau also admonished Community Radio for making an apparent negligent false certification in the Application, in violation of Section 1.17(a)(2) of our rules.<sup>9</sup> Petitioners timely filed the AFR on January 16, 2015, focusing on Community Radio's apparent misrepresentation of its principal Glesne's connection with Chamber.

## II. DISCUSSION

5. As a preliminary matter, we address the expiration and reinstatement of Community Radio's construction permit, as set forth in note 1, above. For an LPFM permittee to receive an 18-month extension of its original construction period, it must do two things: file for an extension that contains a showing of good cause, and file that extension request prior to expiration of the original construction permit.<sup>10</sup> In this case, Community Radio sought extension, by e-mail, three months after its original construction permit had expired, containing only the most minimal good cause showing.<sup>11</sup> We acknowledge that, in the interest of adding to the diversity of broadcast voices and recognizing the lack of experience of certain LPFM permittees, the Bureau has been lenient with LPFM applicants, and has extended the construction permits of other LPFM permittees even after their original permits have expired.<sup>12</sup> Given this practice, and the totality of the facts present here,<sup>13</sup> we decline to single out

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<sup>5</sup> File No. BOA-20140307AAY (KPVL Ownership Report). Postville is located approximately 20 miles from Decorah.

<sup>6</sup> Petitioners also complained that Community Radio failed to submit its articles of incorporation; failed to show that it was an educational organization and to describe its educational program and how the station would advance that program; omitted the addresses and total assets of each principal; and falsely certified that it correctly answered each question in the application. Petition for Reconsideration at 8-9. With its September 12, 2014, Response to the petition, Community Radio submitted a copy of its articles and provided the home addresses of its principals. It also indicated that it had included a description of its planned educational program at Exhibit 2 to its Application.

<sup>7</sup> *Community Radio of Decorah, Postville and Northeast Iowa and Jerrold Miller, Esq.*, Letter Decision, Ref. No. 1800B3-ATS (MB Dec. 17, 2014) (*Staff Decision*).

<sup>8</sup> *Staff Decision* at 2.

<sup>9</sup> *Id.* at 4-5. Section 1.17(a)(2) states that no person shall, in any written statement of fact, provide material factual information that is incorrect or omit material information necessary to prevent such a statement from being incorrect or misleading without a reasonable basis for believing that such statement is correct and not misleading.

<sup>10</sup> 47 CFR § 73.3598(a).

<sup>11</sup> E-mail from James Glesne, Community Radio, to James Bradshaw, Deputy Chief, Audio Division, Media Bureau, FCC (Dec. 17, 2015, 3:35 p.m.).

<sup>12</sup> *See, e.g.*, File No. BNPL-20131114BTY (KSCF-LP), permit reinstated and extended 47 days after cancellation; File No. BNPL-20131113AXY (KAXY-LP), permit reinstated and extended 28 days after cancellation.

Community Radio for rescission of the grant of its construction permit extension. However, and by way of giving notice to future LPFM applicants, we direct the Bureau henceforth to require LPFM applicants to adhere strictly to our rules regarding extension of initial LPFM construction permits.

6. We agree with the Bureau that, with regard to Petitioners' allegations concerning various documents and other information allegedly omitted from the Application, Petitioners failed to demonstrate that they could not have filed a petition to deny or informal objection to the Application raising these matters before the Application was granted, in violation of Section 1.106(b)(1) of our rules.<sup>14</sup> Accordingly, we agree that the Bureau's dismissal of the Petition was appropriate. We agree with Petitioners, however, that as to Community Radio's failure to disclose in the Application Glesne's then-current involvement with Chamber, Petitioners' failure to file an objection to grant of the Application during the less than two weeks between Chamber's filing of the KPVL Ownership Report, in which Glesne's connection with Chamber was disclosed, and grant of the Application was not dilatory.

7. Nonetheless, we agree with the Bureau that a violation of the cross-ownership restrictions at this stage of the application process is not fatal to Community Radio's Application. Section 73.860(a) states that "*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 . . .*"<sup>15</sup> Section 73.860(d) provides, in pertinent part, that "*a party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest.*"<sup>16</sup> Consistent with these provisions, the staff routinely attaches divestiture conditions to LPFM construction permits, advising permittees that any of their or their interest holders' attributable interests in non-LPFM media must be divested before license grant. As Community Radio has not yet applied for its license, we need not disturb its construction permit. As stated above, ordinarily the Bureau would have included a divestiture condition in Community Radio's construction permit, had its application disclosed Glesne's membership in Chamber. As Glesne has now divested his attributable interest in Chamber, we see no reason to modify the KCOD-LP permit to add such a condition. However, because Community Radio's Application did not disclose Glesne's other broadcast interest, we order Community Radio to attach to its license application a certification, executed by one of its principals under penalty of perjury, that all parties to the application, including Glesne, are in compliance with the cross-ownership limits set forth in Section 73.860 of our rules.

8. Although we find no reason to rescind the grant of or dismiss the Application as Petitioners insist, we do revisit the issue of Community Radio's false certification regarding Glesne's attributable interest in Chamber. We are concerned because (a) the Application was prepared and signed by Glesne himself, who presumably knew of his membership on Chamber's board; (b) in Community Radio's responses to the petition for reconsideration (made only after a Bureau request for such a

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<sup>13</sup> We note that the Commission generally does not require a broadcast permittee to construct its authorized station while the grant of its permit "is the subject of administrative or judicial review." See 47 CFR § 73.3598(b)(2). This policy, which provides grounds for tolling the construction period, is particularly appropriate for LPFM permittees, as these commonly face resource challenges in attempting to establish their stations. Accordingly, although Community Radio did not formally seek tolling of the KCOD-LP construction period, it would not be appropriate for us to penalize it for its failure to construct while the Petitioners' continued opposition to the Application cast doubt on the authorization's viability. Instead, we believe it in the public interest to allow Community Radio to expedite new LPFM service to the people of Decorah by completing construction of KCOD-LP.

<sup>14</sup> 47 CFR 1.106(b)(1).

<sup>15</sup> *Id.* § 73.860(a) (emphasis added).

<sup>16</sup> *Id.* § 73.860(d). See also FCC Form 318, Instructions to Section II, Question 5(b) ("If the applicant (or any party to the application) has an attributable interest in a broadcast station or other media outlet that is prohibited under the Commission's cross-ownership rule, the applicant (or the party to the application) must divest the interest prior to the commencement of operations of the LPFM station.").

response), Glesne variously represented that he submitted his resignation from Chamber's board on December 31, 2013, and then that he had submitted a back-dated resignation from Chamber's board at its April 2014 meeting; and (c) the responses provided by Glesne and Community were not, as directed by the Bureau, made under penalty of perjury.<sup>17</sup> Additionally, Glesne signed Community Radio's September 12, 2014, Response to the Petition, in which he repeated the statement that he resigned from Chamber's board on December 31, 2013, without noting that the resignation was back-dated, and waved off Petitioners' allegations regarding his inclusion in the KPVL Ownership Report and Website as issues "to take up with KPVL and not with Community [Radio]."<sup>18</sup> Taken together, Community Radio's responses demonstrate not only a tendency to ignore staff direction and respond in an inconsistent manner, but more importantly to provide a false certification made by Glesne, whose attributable interest in another radio station caused the certification's falsity, as well as Glesne's choice to deflect allegations regarding his commonality of interest rather than to explain them.<sup>19</sup> Under these circumstances, we believe that the Bureau's admonishment of Community Radio was an inadequate sanction that could be misconstrued by Community Radio or other LPFM applicants as reflecting a Commission tolerance for what is, at best, careless preparation of applications, and violations of our rules and directives. We therefore direct the Bureau to commence further investigation of Community Radio, including but not limited to a further letter of inquiry, designed to determine the appropriate enforcement proceedings for Community Radio's apparent violation of Section 1.17(a)(2) of our rules.

### III. ORDERING CLAUSES

9. For the foregoing reasons and pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(g) of the Commission's rules,<sup>20</sup> IT IS ORDERED that the Application for Review filed by Wennes Communications Stations, Inc., and Decorah Broadcasting, Inc., IS DENIED. IT IS FURTHER ORDERED that Community Radio of Decorah, Postville and Northeast Iowa MUST FILE, with its application for license for station KCOD-LP, Decorah, Iowa, a certification under penalty of perjury that it, and all parties to the application, comply with Section 73.860 of the Commission's rules.<sup>21</sup> IT IS FURTHER ORDERED that the Media Bureau shall commence further investigative and enforcement proceedings of Community Radio of Decorah, Postville and Northeast Iowa's apparent violation of Section 1.17(a)(2) of the Commission's rules.<sup>22</sup>

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>17</sup> See Letter of Inquiry from Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, to Community Radio of Decorah, Postville and Northeast Iowa at 2, Ref. No. 1800B3-ATS (MB Nov. 6, 2014) (on file in BNPL-20131106AUX).

<sup>18</sup> Response to Petition for Reconsideration filed by Community, Sept. 12, 2014, at 1. Given that KPVL's Ownership Report was submitted in March 2014 and Glesne says that he submitted his back-dated resignation letter in April 2014, it is difficult to understand how Glesne could blame KPVL for including him in its Ownership Report.

<sup>19</sup> Even assuming that Glesne's resignation from Chamber's board became effective December 31, 2013, he was indisputably a member of that board on November 6, 2013, when he certified and filed the Application representing that no such interests existed.

<sup>20</sup> 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(g).

<sup>21</sup> *Id.* § 73.860.

<sup>22</sup> *Id.* § 1.17(a)(2).

**CONCURRING STATEMENT  
OF COMMISSIONER AJIT PAI**

Re: *Community Radio of Decorah, Postville and Northeast Iowa, for a Construction Permit for New Low-Power FM Broadcast Station KCOD-LP, Decorah, Iowa, File No. BPNL-20131106AUX, Facility ID No. 195240.*

Honest mistakes happen. But so do intentional misrepresentations. And the tribulations of Community Radio prove the latter point.

When seeking an LPFM construction permit, Community Radio certified in November 2013 that no party to its application held an attributable interest in any non-LPFM broadcast station. That was not accurate. James Glesne, the individual who certified Community Radio's application, was serving on the board of a non-LPFM broadcast station, KPVL(FM) in Postville, Iowa, at the time he made the November 2013 certification.

The Petitioners in this case are Iowa commercial radio station licensees seeking to have Community Radio's construction permit rescinded. They pointed out that, in an ownership report submitted to the FCC in March 2014, KPVL had listed Glesne as a member at large of its governing board. Community Radio's response was extremely troubling. In a pleading signed by Glesne, Community Radio claimed that "Glesne submitted his resignation from the Board of Directors of KPVL Radio on December 31<sup>st</sup>, 2013, so that he would be in compliance with the regulation." Accordingly, Community Radio went on to point the finger of blame at KPVL: "If KPVL's website and ownership report showed otherwise, that is an issue to take up with KPVL and not with Community."

Here's the problem. The record shows that Glesne didn't resign from KPVL's board in December 2013. Rather, it appears as though he submitted his resignation in April 2014, and back-dated the letter to December 31, 2013.<sup>1</sup>

Moreover, the Media Bureau specifically directed Community Radio to make its response to Petitioner's allegations under penalty of perjury. It is troubling (and perhaps telling) that it failed to do so.

Given the facts set forth above, I'm inclined to believe that Community Radio's misrepresentations to the Commission have been intentional, not inadvertent. The Commission should take such apparent misconduct by prospective license holders very seriously, and I therefore would have been willing to support designating this matter for a hearing to determine whether Community Radio possesses the character and qualifications to hold an LPFM license. But I'm glad that the Commission is at least directing the Media Bureau to commence enforcement proceedings against Community Radio for its apparent violation of our rules. We must send a strong and clear message that those holding and seeking to hold FCC licenses must be honest and forthright with the Commission.

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<sup>1</sup> Now, perhaps one could argue that Glesne honestly believed that by back-dating his April 2014 resignation letter, he really resigned in December 2013. But what about the claim that KPVL's inclusion of Glesne in its March 2014 ownership report is "an issue to take up with KPVL"? It appears impossible to defend this statement as anything other than an attempt to mislead the Commission. KPVL obviously listed Glesne in its ownership report because he was still serving on the station's board at the time it was submitted. Remember that Glesne did not submit his back-dated resignation letter until the next month. The Commission should not countenance the Costanza Conjecture under these (or any, for that matter) circumstances. See "The Beard," Season 6, Episode 15 (Feb. 9, 1995) (George Costanza advises Jerry Seinfeld, "Just remember: It's not a lie if you believe it."), available at [https://www.youtube.com/watch?v=vn\\_PsJs10LQ](https://www.youtube.com/watch?v=vn_PsJs10LQ).