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In re: **Application of San Marcos Voice and San Marcos Texas Community Radio Association to Assign the Construction Permit for KZSM-LP, San Marcos, TX**
File No. BAPL-20150209ABL
Facility ID No. 193620

Dear Counsel:

We have before us an application (“Application”) to assign the construction permit for unbuilt low power FM (“LPFM”) station KZSM-LP, San Marcos, Texas (“Station”), from the San Marcos Voice (“SMV”) to the San Marcos Texas Community Radio Association. As discussed below, we dismiss the Application.

Background. SMV applied for a construction permit for the Station during an LPFM filing window that the Commission opened in 2013.¹ We granted SMV’s application on January 24, 2014.² Shortly thereafter, on May 19, 2014, SMV determined that it would not construct the Station and resolved to assign the Station’s “license” to another entity.³ On February 9, 2015, SMV, together with SMTXCRA, filed an application to assign the Station’s construction permit to SMTXCRA. Recognizing that Section 73.865(d) of the Commission’s rules prohibits the assignment of construction permits for LPFM stations,⁴ SMV and SMTXCRA request a waiver of that provision. They indicate that the “community has really been engaged with the effort to create a LPFM station” and state that grant of the Application would ensure that “the community of San Marcos, Texas will not miss out on this once in a lifetime opportunity.” They also argue that grant of the Application would be consistent with the public interest.

¹ File No. BNPL-20131114ABR.

² *Broadcast Actions*, Public Notice, Report No. 48165 (MB Jan. 29, 2014).

³ See File No. BAPL-20150209, Exh. 13.

⁴ 47 C.F.R. § 73.865(d) (“No party may assign or transfer an LPFM construction permit at any time.”)

Discussion. The Commission's Rules may be waived only for good cause shown.⁵ The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate”⁶ and must support its waiver request with a compelling showing.⁷ Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.⁸

We find that SMV and SMTXCRA have failed to meet the burden for grant of a waiver request. They have failed to identify any special circumstances that would warrant a deviation from the general prohibition on assigning or transferring LPFM construction permits. While we are pleased to learn that the community is behind the effort to establish an LPFM station in San Marcos and that the applicants do not wish to waste the opportunity to construct an LPFM station serving the community, we cannot find that these factors distinguish the situation here from the situations of many other communities and LPFM permittees. Accordingly, we will not waive Section 73.853(d) of the Rules. This, in turn, means that the Application is barred by Section 73.853(d) and must be dismissed.

Conclusion/Action. Accordingly, for the reasons set forth above, IT IS ORDERED that the application to assign the construction permit for KZSM-LP, San Marcos, Texas (File No. BAPL-20150209ABL), from the San Marcos Voice to the San Marcos Texas Community Radio Association IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁵ 47 C.F.R. § 1.3.

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

⁷ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090, 7094 ¶ 9 (1999), *citing Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 ¶ 5 (1974).

⁸ *NetworkIP LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).