

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

In the Matter of)	
)	
La Casa Dominicana de Hazleton, Inc.)	
)	
Application for a New LPFM Station at Hazleton, Pennsylvania)	File No. BNPL-20131114BBX Facility ID No. 195125

MEMORANDUM OPINION AND ORDER

Adopted: April 12, 2016

Released: April 14, 2016

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

1. The Commission has before it the Application for Review (AFR) filed by La Casa Dominicana de Hazleton, Inc. (Casa), on December 28, 2015. Casa seeks review of a Media Bureau (Bureau) decision¹ that dismissed its above-captioned application for a construction permit for a new LPFM station at Hazleton, Pennsylvania (Application) on the basis that Casa had undergone a prohibited major of change of control in violation of Section 73.871(c)(3) of the FCC rules (Rules).²

2. The Application as originally filed identified a board of seven members: Victor Perez, Robert Arias, Alejandrina de Leon, Fernando Diaz, Andrea Peña, Esmeralda Santiago, and Carlos Moldan, each with 14.3 percent of the board's votes.³ On August 19, 2014, Casa submitted a letter (August 2014 Letter) to the Bureau in which it stated that Arias, Moldan and Diaz had been removed from its board, and that its new board consisted of the remaining original members Perez, de Leon, Peña, Santiago, and new members Bryan Melendez, Melania Castillo, and Iris Marte.⁴ However, no amendment to the Application was filed to reflect this change in the Casa board, nor did the August 2014 Letter identify the addresses or voting shares of the new board members, or provide updated certifications concerning the legal qualifications of the revised board.⁵ As will be explained in further detail below, in September of 2014 Casa again reconstituted its board by adding several new members, again without amending the Application as required by Section 1.65. On November 6, 2014, the Bureau granted the Application and issued Casa a construction permit (Permit) for its proposed LPFM station. Because Casa had not amended the Application to reflect either the board changes referred to in the August 2014 Letter or those that occurred in September 2014, the Bureau granted the Application based on the understanding that the board had remained unchanged from the seven members specified in the Application then on file.⁶

3. On February 13, 2015, the Bureau received a letter (February 2015 Letter) signed by Casa board members of record at the Commission Arias, Moldan, Diaz, and Peña, in which they stated

¹ *La Casa Dominica de Hazleton, Inc.*, Letter Order (MB Nov. 24, 2015) (*Second Casa Letter*); Letter Order (MB July 27, 2015) (*First Casa Letter*).

² 47 CFR § 73.871(c)(3); *see Second Casa Letter* at 2.

³ Application at Section II, Question 3.a.

⁴ August 2014 Letter at 1.

⁵ Casa was required to amend the Application to report these changes and provide all required information to the Bureau. *See* 47 CFR § 1.65(a).

⁶ *See First Casa Letter* at 3 and 47 CFR § 1.65.

that—as the majority of the board—they were requesting that the Permit be rescinded.⁷ On the basis of this letter, the Bureau considered the Permit surrendered.⁸ Casa filed a Petition for Reconsideration (Petition) of this action on March 19, 2015, to seek reinstatement of the Permit and submitted a copy of the August 2014 Letter to show that three of the four board members that had signed the February 2015 Letter had been dismissed from the board and did not have authority to surrender Casa’s Permit.⁹

4. The Bureau granted the Petition in part on the basis that Arias, Moldan, Diaz and Peña were not in fact the “majority of the board” as they had claimed in the February 2015 Letter and thus were not authorized to surrender the Permit.¹⁰ However, the Bureau declined to reinstate the Permit due to Casa’s failure to have amended its Application to provide updated directors’ names, addresses, voting interests, and legal qualifications.¹¹ The Bureau instead returned the Application to pending status so that Casa could provide such an amendment.¹²

5. Casa submitted a responsive amendment on August 25, 2015 (August 2015 Amendment). That amendment did not specify the revised, seven-member board named in the August 2014 Letter but instead identified yet a different board of fourteen members, presenting a 79 percent change from the members of the original board.¹³ In the *Second Casa Letter*, the Bureau dismissed Casa’s Application, holding that the August 2015 Amendment specified a major change in Casa’s board, in violation of the Rules.¹⁴ In the AFR, Casa states that it “was experimenting [sic] internal issues within its board” and it “took a vote in August 2014 to promote the change and expulsion of certain members [Arias, Diaz, and Moldan] who were the cause of these issues.”¹⁵ Casa further explains that Arias was expelled from the Casa board, which led to Arias submitting the February 2015 Letter.¹⁶

⁷ February 2015 Letter at 1-2. In the letter, Arias, Moldan, Diaz and Peña accused Perez of mismanaging Casa, and also alleged that Perez had criminal records in both New Jersey and the Dominican Republic.

⁸ See *Broadcast Actions*, Public Notice, Report No. 48431 (MB Feb. 23, 2015) (“CP cancelled and callsign deleted 2/18/2015 per applicant’s request – no letter sent.”).

⁹ See Petition at 1-2.

¹⁰ *First Casa Letter* at 3.

¹¹ *Id.* at 3.

¹² The Bureau also instructed Casa to respond to the allegations raised in the February 2015 Letter that Perez held a criminal record in New Jersey and the Dominican Republic. Casa denied these allegations and provided records from Pennsylvania purporting to show that Perez had no criminal record in that state. Letter from Abraham J. Cepeda, Esq., to Peter H. Doyle, Chief, Audio Division, Media Bureau (Aug. 28, 2015). In the AFR, Casa also provided records from Passaic County in New Jersey and the Dominican Republic indicating that Perez has no criminal records in those jurisdictions. AFR at Attach. J, K, and L. However, because the Bureau did not base its dismissal of the Application on Perez’s alleged record, we need not address this issue further.

¹³ August 2015 Amendment at Section II, Question 3.a. The new board retained Perez, de Leon, and Santiago, from the original Application, and Marte, Melendez and Castillo from the August 2014 Letter. The August 2015 Amendment identified eight new board members that were not disclosed in either the Application or the August 2014 Letter: Pablo Diaz, Altigracia Perez, Ashley Perez, Ingrid Martinez, Julian Pena, Yulissa Abreu, Carlos Disla, and Jose Arteiry. Although Casa does not state when these board members took office, the record shows that Casa held a meeting to expand its board from seven to thirteen members on September 2, 2014, while the Application was still pending. See AFR at Attach. A-1 and Attach. G.

¹⁴ *Second Casa Letter* at 2, citing 47 CFR § 73.871(c)(3).

¹⁵ AFR at 2.

¹⁶ *Id.* at 3.

6. We uphold the Bureau's determination in the *Second Casa Letter* that this major change in control of Casa is a fatal defect.¹⁷ Only 21 percent of the board's votes remain with original parties to the Application (Perez, de Leon, and Santiago). This constitutes a violation of Section 73.871(c)(3) because more than 50 percent of the control of Casa has changed to individuals who were not original parties to the Application.¹⁸ Moreover, this was not a gradual change in the board, but rather a sudden addition of new members, allegedly as a result of a conflict within the organization.¹⁹

7. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Sections 1.115(c) and (g) of the FCC rules,²⁰ the Application for Review filed by La Casa Dominica de Hazleton, Inc., on December 28, 2015, IS DISMISSED, to the extent that it relies on questions of fact or law upon which the Media Bureau has been afforded no opportunity to pass, and is otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁷ See, e.g., *The KBOO Foundation*, Memorandum Opinion and Order, FCC 16-10 (Feb. 2, 2016) (dismissing NCE application where applicant had undergone a greater than 50 percent change in control in less than a year).

¹⁸ 47 CFR § 73.871(c)(3) ("Minor amendments are limited to . . . [c]hanges in ownership where the original party or parties to an application retain more than a 50 percent ownership interest in the application as originally filed". See also *Creation of Low Power Radio Service*, Second Report and Order, 16 FCC Rcd 8026, 8029, para. 7 (2001) (prohibition of major change in ownership is "consistent with the prohibition on the transfer of LPFM station construction permits and licenses" in 47 CFR § 73.865(d)).

¹⁹ *Compare Center for Community Arts, Inc.* Memorandum Opinion and Order, 20 FCC Rcd 11164, 11165, para. 3 (2005) (waiving Section 73.871(c)(3) because the changes in the applicant's board "occurred gradually, not as an outgrowth of any party's desire to gain control over a pending radio station application"). In its AFR, Casa indicates that it was "expecting that our counselor would explain all of the details about what exactly motivated the change in our board in the Dominican House. Despite our claims, he didn't. We now take this opportunity to demonstrate step by step the reasons why we had to change our board. . . ." In addition, for the first time, it claims that the *Second Casa Letter* "affects our civil rights" and is an unconstitutional infringement on its rights of association. AFR at 2. To the extent that the AFR presents such arguments for the first time, matters on which the Bureau has been afforded no opportunity to pass, we dismiss the AFR pursuant to Section 1.115(c) of the Rules, 47 CFR § 1.115(c). As a separate and independent ground for our action, regardless of Casa's claimed justification for the post-filing window replacement of over 50 percent of its directors, for the reasons noted above, our rules mandate the dismissal of its Application.

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

**CONCURRING STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *La Casa Dominicana de Hazleton, Inc., Application for New LPFM Station at Hazleton, Pennsylvania*, File No.: BNPL-20131114BBX, Facility ID No. 195125.

In voting to concur with this Order which upholds the Media Bureau's dismissal of La Casa Dominicana de Hazleton, Inc.'s application, I do not dispute the fact that the company failed to follow Commission rules when it underwent a major change of control. At the same time, I am sympathetic to the internal challenges facing the organization made evident in its August 2015 amended application, where only three of the fourteen directors had a prior history of being party to the original application.

I am also cognizant of the Commission's goal in establishing LPFM radio service as a way to serve local and/or underrepresented groups within communities, without some of the financial commitments that exist when establishing a full-power station. With this in mind, La Casa's application for a new LPFM station represented an opportunity to enhance viewpoint diversity that is so desperately needed in our country.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *La Casa Dominicana de Hazleton, Inc., Application for New LPFM Station at Hazleton, Pennsylvania*, File No.: BNPL-20131114BBX, Facility ID No. 195125.

I agree with the Commission that the Applicant underwent a prohibited major change of control in violation of section 73.871(c)(3) of the Commission's rules.¹ Specifically, the Applicant's new fourteen-member board included only three members of its original board as a result of internal conflict and the expulsion of certain members. Thus, the original board members retained far less than a majority ownership interest (21.4%) in the organization while its LPFM application was pending with the Commission.

Earlier this year, I expressed concern about our rule requiring dismissal of a nonprofit organization's radio station application when a majority of a board's membership changes hands.² Board members, who are generally volunteers leading busy lives, decide to resign for a variety of reasons or their terms expire. And if such routine turnover results in the majority of a board's membership changing while an organization has an application pending with the Commission, that application should not be dismissed. After all, it is not the Commission's job to micromanage the day-to-day governance of nonprofit organizations.

Here, however, the change in the Applicant's board membership was not the result of routine turnover. And when there are such substantial changes to the board as the result of a battle for control of the organization, I believe that dismissing an applicant's permit is not only mandated by the Commission's rules, it is also the correct policy outcome.

¹ 47 C.F.R. § 73.871(c)(3).

² See *NCE October 2007 Window MX Group 543 in re Application of the KBOO Foundation for a New NCE(FM) Station, Chehalis, Washington*, Facility ID No. 173822, File No. BNPED-20071019ARU, Memorandum Opinion and Order, FCC 16-10, at 4 (Feb. 2, 2016) (Statement of Commissioner Ajit Pai).