



Federal Communications Commission
Washington, D.C. 20554

January 16, 2009

DA 09-57

In Reply Refer To:

1800B3-SS

Released: January 16, 2009

Ithaca Community Radio, Inc.
P.O. Box 6782
Ithaca, NY 14851

Mr. Ray Smith
P.O. Box 221
Montour Falls, NY 14865

Re: **NEW(FM), Odessa, NY**
Facility ID No. 172825
BNPED-20071018AFY

Informal Objection

Dear Applicant and Mr. Smith:

We have before us the above-captioned application of Ithaca Community Radio, Inc. (“ICR”) for a construction permit for a new noncommercial educational (“NCE”) FM station to serve Odessa, New York (the “Application”). We also have before us a two-page letter received June 30, 2008, opposing the Application, filed by Ray Smith (“Smith”), which will be treated as an Informal Objection (the “Smith Objection”) in accordance with Section 73.3587 of the Commission’s Rules (the “Rules”).¹ ICR filed an Opposition to the Smith Objection on August 1, 2008. For the reasons set forth below, we dismiss the Smith Objection and grant the Application.

Background/Discussion. On October 18, 2007, ICR tendered its Application for a new NCE-FM station on Channel 210 at Odessa, New York. On June 30, 2008, an individual identifying himself as “Ray Smith,” filed an unsigned letter objecting to the Application, making numerous allegations.² On August 1, 2008, counsel for ICR filed a declaration made under penalty of perjury dated July 31, 2008, provided to her by Smith stating that he “did not submit or authorize the submission of the letter, and [he asks] that the letter be dismissed.”³ Pursuant to Sections 1.52 and 73.3587 of Rules, the original copy of

¹ 47 C.F.R. § 73.3587.

² For example, “Ray Smith” claims that ICR is not “local;” ICR did not run the newspaper notice required by Section 73.3580 of the Rules; and ICR is using its FM translator station to raise funds for its proposed community radio station as well as its translator station beyond the costs related to installation, operation and maintenance of the translator, in violation of the Rules.

³ See Opposition at Attachment 2. In addition, Smith states that he has “neither been paid nor promised any consideration for submitting this declaration.” *Id.* Section 73.3588 of the Rules states that when an objection or a petition to deny is withdrawn, a statement on consideration is required. Because we are dismissing the Smith Objection for not being signed, Smith’s consideration statement is moot and does not factor into our decision here, nor has it in prior similar decisions.

(continued . . .)

informal objections “shall” be signed.⁴ Accordingly, we also dismiss the unsigned Smith Objection as procedurally defective.⁵

Conclusion/Actions. Based on the record before us, we conclude that ICR is qualified to hold an NCE-FM authorization and grant of the Application would serve the public interest, convenience and necessity. The terms of the grant will be made part of the authorization issued to this applicant.

Accordingly, IT IS ORDERED that the unsigned Informal Objection filed by Ray Smith against the application of Ithaca Community Radio, Inc., IS DISMISSED.

IT IS FURTHER ORDERED, that the application of Ithaca Community Radio, Inc. (File No. BNPED-20071018AFY) for a new noncommercial educational FM station at Odessa, New York, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Melodie A. Virtue, Esq.

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⁴ 47 C.F.R. §§ 1.52 (“The original of all petitions, motions, pleadings, briefs, and other documents filed by any part shall be signed . . .”), 73.3587 (“ . . . [informal] objections . . . shall be signed.”).

⁵ See *Letter to Joseph Isabel*, 22 FCC Rcd 18630 (MB 2007) (objector did not sign informal objection, rendering it procedurally defective under 47 C.F.R. §§ 1.52, 73.3587). Even if we were to consider “Ray Smith’s” objections, we would reject them. In the Smith Objection, “Ray Smith” argues that ICR did not file any public notice in any newspapers of its proposal. ICR, however, provides for the record a sworn affidavit indicating that it did file public notice in the Elmira (NY) Star-Gazette. “Smith” also argues that ICR is using its FM translator station (W201CD, Lansing, NY) to raise funds for its proposed community radio station as well as its translator station beyond the costs related to installation, operation and maintenance of the translator, in violation of Section 74.1231(g) of the Rules. ICR provides for the record a board member’s declaration, made under penalty of perjury, stating that ICR does not violate the Rules in any of its fundraising activities on its translator station. “Smith’s” general and unsupported allegations alone do not warrant further inquiry. We reject these arguments on the basis of lack of evidence. See *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested); see also *Letter to William L. Zawila, Esq. and Sandra Soho*, Ref. No. 1800B3 (MMB rel. Feb. 4, 1999) (staff denied informal objection due to lack of evidence); and *Texas Educational Broadcasting Co-Operative, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 13038, 13045 (MB 2007) (unsupported allegation adequately rebutted by licensee submission supported by affidavit from station employee with responsibility for that matter).