

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

In the Matter of)	
)	
Application for International Broadcast)	File No:
Construction Permit)	IHF-C/P-20201228-00010
)	

SECOND INFORMAL OBJECTION AND REPLY TO OPPOSITION

This second informal objection (“Second Objection”) and reply to Opposition is filed pursuant to §73.3587 of Commission Rules, by Shortwave Solutions LLC (“Petitioner”) regarding an Application for International Broadcast Construction Permit (“Application”) by DPA Mac LLC (“DPA”).

BACKGROUND AND RELATED FILINGS

Raft Technologies (“Raft”), an Israeli corporation, provides low-latency data transmission services between US and international financial centers in London, Frankfurt and Tokyo to financial industry clients^{1 2 3}.

3DB Communication Inc (“3DB”), a Delaware corporation under common “alien” ownership with Raft⁴, holds a “Part 5” License (“Experimental License”) with a callsign WI2XXG, authorizing operation in accordance with § 5.3(h) of the Commission’s Rules: “testing of equipment in connection with production or regulatory approval of such equipment”.

¹ <http://www.raft-tech.com>

² See, e.g. “Raft Technologies Speeds Trading”, available at <https://www.marketsmedia.com/raft-technologies-speeds-trading/>

³ As in First Objection, Petitioner acknowledges providing services in the same industry

⁴ Common ownership with Raft is documented in First Objection, Exhibit 2A-2C

The Commission advised 3DB on 03/22/2019⁵, 04/04/2019⁶ and 06/24/2019⁷ that the “market trial” underlying the experimental license will not be renewed.

On 03/08/2021, 3DB filed an application for renewal, 0152-EX-CR-2021. The application was dismissed (without prejudice) on 03/10/2021: “You are advised that the Commission is unable to grant your application for the facilities requested. The application is cancelled at the request of the applicant.”⁸

On 03/26/2021, 3DB filed an application for renewal 0188-EX-CR-2021. Unlike every previous application by 3DB, the exhibit in support of this application for renewal did not contain a request for confidentiality under § 0.459(b). As justification for seeking renewal of an application that was dismissed two weeks prior, 3DB noted that its affiliate “DPA Mac” was seeking a construction permit for an International Broadcast Station under Rules Part 73 Subpart F - the “Application” in these proceedings.

Petitioner has filed an Informal Objection (“First Objection”) on 4/22/2021. DPA filed an Opposition on 5/3/2021. This Objection (“Second Objection”) is filed as a reply to the Opposition.

1) The Opposition Raises More Questions Than It Answers

In its Opposition, DPA summarily dismisses First Objection as “nitpicking”, and proclaims it is “an attempt to delay the processing of its application”. However, three months after DPA received the draft of the First Objection, DPA did not take an opportunity⁹ to correct blatant mistakes, nor submit missing exhibits, nor address the arguments on merits raised in the First Objection. Instead, DPA doubles down on all of its assertions, and proposes to address the defects *after* the Commission’s acceptance of its application.

As will be fully described below, the Opposition raises more questions about basic eligibility qualifications than it answers. DPA continues to make clearly false allegations about the Petitioner, and demonstrates lack of understanding of basic technical principles. On the question of technical viability of proposed service, DPA cursorily dismisses the parameters used in Shortwave’s simulation as “unfounded and destined to fail” - without stating any reason, or

⁵ File No 0025-EX-CM-2019, grant conditions

⁶ File No 0171-EX-CR-2019, dismissal letter of 04/04/2019

⁷ File No 0281-EX-CR-2019, grant conditions

⁸ Available at: <https://apps.fcc.gov/els/GetAtt.html?id=269229&x=>.

⁹ DPA purported to file an “Amended Application”, visible (without any contents) on MyIBFS as File No: IHF-C/P-20201228-00011 (showing filed date of 12/28/2020, and “Status Date” of 04/28/2021). It is unclear when, or under what authority the purported “amendment” was filed. FCC staff has confirmed that this filing was accepted in error.

supplying alternatives. The proffered “propagation charts” and pictures of “signal reception” are meaningless, as they lack any technical details other than description of “receive antenna” that is clearly inappropriate for evaluation. DPA maintains that the missing transmit “antenna pattern” exhibits clearly required by the Rules and Form 309 are “proprietary”. The Opposition offers a generic claim of “arm’s length commercial agreement” in response to the extensive evidence of “de facto” control by Raft Technologies. Worse yet, the Opposition describes the alien-controlled 3DB as its “affiliate” - twice.

2) DPA’s Proposed Use Does Not Constitute “Broadcasting” Per § 73.701

DPA fundamentally misunderstands that the proposed auxiliary service is simply neither permitted by Commission rules nor authorized by Commission precedent: “DPA Mac fails to see how waiver of Section 73.701(a) is necessary. Section 73.701(a) simply defines ‘international broadcast station.’”¹⁰

That citation, at least, is correct - and its definition requires that “the transmissions of which are *intended to be received directly by the general public* in foreign countries.” (emphases added). This conforms to the FCC’s authorizing statute, which defines broadcasting as “dissemination of radio communications *intended to be received by the public...*”¹¹ 47 U.S.C. § 153(7) (emphasis added).

DPA’s proposed use is clearly not a “broadcast” because DPA’s own application concedes that the proposed use is not intended for the general public, *viz.*: “low latency digital data transmissions *to private investors*”^{12 13} and “low latency digital data transmission service *to investment and commercial banks, proprietary trading companies, and security exchanges, among others*”¹⁴ (internal quotes removed, emphases added). These specialized private entities are not “the general public.”¹⁵

In addition to the statutory requirement of being intended for the general public, the Commission added three additional “indicia of broadcast” in the *Subscription Video* proceeding: (i) non-proprietary decoder, (ii) no encryption, and (iii) no contractual relationship between the

¹⁰ Opposition at 2

¹¹ FCC has allowed certain non-broadcast use of broadcast frequencies, further described below.

¹² Application Narrative at 3,5

¹³ The assertion of providing services to “private investors ...” is false. In fact, these services are provided by Raft or its affiliates, as can be seen from the diagram below, and further discussed in the “lack of candor” section of this Objection.

¹⁴ Application Narrative at 13

¹⁵ See, e.g., *Scroggin Company Bank*, 1 F.C.C. 194 (1935), *Bremer Broadcasting Co.*, 2 F.C.C. 79 (1935)

transmitter and intended recipient.¹⁶ Each of these further confirms that DPA’s proposed use is not a broadcast.

As affirmed by the D.C. Circuit over 30 years ago, the FCC was well within its statutory authority to add these indicia to its methodology for determining what qualifies as a broadcast,¹⁷ and the Commission has applied the *Subscription Video* indicia in all subsequent proceedings permitting certain non-broadcast use of broadcast frequencies^{18 19 20 21 22}. Notably, for the “International Broadcast” (“Part 73 Subpart F”) service at issue here, no such rule-making to permit any *non-broadcast use* has occurred, nor even been proposed.

In this case, as shown in DPA’s own diagram from page 5 of its Narrative, and in a more detailed diagram²³ from Raft Technologies²⁴ shown below, the “data transmissions” are intended to be received only by the specialized equipment of DPA’s so-called “affiliates”—who then will decode the signal and provide it to the end users, all of whom comprise their clients (“private investors/banks”). This is not a broadcaster transmitting, to the general public, information of interest to the general public that can be received with off-the-shelf equipment. In fact, none of that applies to DPA’s proposed use.

Rather than a broadcaster transmitting to the general public, DPA’s equipment will be used to transmit encoded data to its “affiliates” for reception in London, Frankfurt, and Tokyo. These “affiliates” will need to use a proprietary decoder (“Raft’s IP” per the diagram below) to process the received data so that it can be forwarded to Raft’s clients. Thus, even if the content *were* of interest to the general public (and it is not), DPA has taken steps to protect the transmitted content as if it were a trade secret (or otherwise confidential or proprietary) and *thus deny it to the general public*. DPA repeatedly states that all the information related to “data transmission” is “confidential and proprietary”—it surely is, but that admission voids any claims of being a “broadcast” under the *Subscription Video* indicia.

¹⁶ Report and Order, *Subscription Video*, 2 F.C.C.Rcd. 1001 (1987)

¹⁷ *National Ass’n for Better Broad. v. F.C.C.*, 849 F.2d 665 (D.C. Cir. 1988)

¹⁸ *Satellite Digital Audio (SDARS)* FCC 01-335

¹⁹ *Direct Broadcast Satellite (DBS)* FCC 18-157, FCC 06-120

²⁰ *Digital Television (DTV)* FCC 17-158

²¹ *Digital Audio Broadcasting (DAB)* FCC 07-33

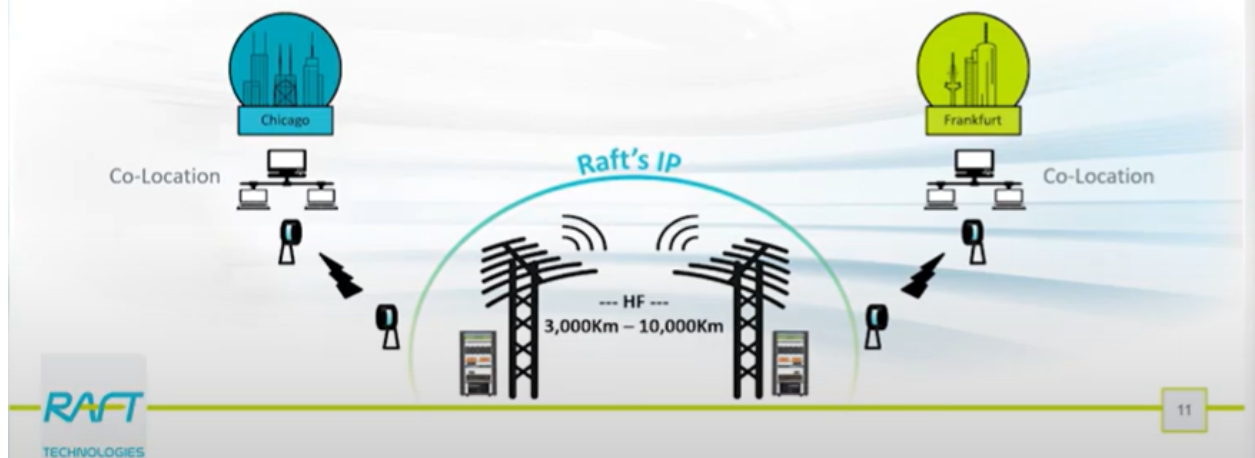
²² *Multipoint Distribution Service (MDS)* FCC 98-70

²³ Haim Ben-Ami, CEO of Raft Technologies, at Trading Show NYC, 9/25/2019, archived at <https://www.youtube.com/watch?v=NXAMTsQKvwU&t=587>

²⁴ Relationships between DPA, Raft, and 3DB are extensively detailed in First Objection at 10, 11.

Raft Technologies – System structure

Raft developed a full end-to-end system solution, based on its proprietary HF Radio and Modem.



Furthermore, Raft services are between specific fixed points: As explicitly stated by the CEO of Raft, “we sell service from colocation to colocation. Our customers simply connect to our switch.”²⁵ This is the exact opposite of broadcast as it is the literal definition of “private carrier”²⁶ in “Fixed Service.”²⁷

The definition of “broadcasting” is well-settled, and the opposite of DPA’s proposed use in essentially every way. Proposing instead to operate by transmitting directly to the affiliates is the very opposite of the statutory definition of “broadcasting” and the FCC’s implementing regulations thereof.²⁸ Absent a request for waiver not found here, this admission of a non-broadcast service warrants at least dismissal (if not denial) without consideration of anything else in DPA’s application.

3) DPA Has Failed To Show How Its Proposed Use Would Be Technically Feasible

DPA’s application proposes “FM-quality” broadcasting while using power levels 25x less than those prescribed by § 73.751(c) as the *minimum* appropriate for international broadcast, as

²⁵ Trading Show NYC, 9/25/2019, archived at <https://www.youtube.com/watch?v=NXAMTsQKvwU&t=587>

²⁶ See, e.g., § 90.7 and § 101.3: “provide communications service to other private services on a commercial basis”

²⁷ See § 2.1(c): Fixed Service: A radiocommunication service between specified fixed points.

²⁸ *Nat’l Ass’n for Better Broadcasting v. FCC*, 849 F.2d 665, 668-69 (D.C. Cir. 1988)

identified by multiple international broadcasters.²⁹ DPA's proposal thus makes an extraordinary claim, which would indeed revolutionize broadcasting if it were true. But it isn't, as it cannot possibly be. DRM broadcasting protocol is standardized; for standards-compliant broadcaster the only things that will affect propagation are amplifier power and transmit antenna patterns—just as would be the case for an analog broadcast, there is no “proprietary” technology that DPA could use to substitute for grossly inadequate power: DPA's proposed amplifier power is 25x less than the regulatory requirement, and DPA refuses to provide required engineering data (including antenna patterns) for the commercially-available antenna it proposes to use. What is missing is how (or even if) this underpowered system with its undisclosed antenna would actually work at a mere 4% of the minimum required broadcast power.

Shortwave identified these technical deficiencies in its First Objection. DPA's Opposition does not offer an adequate response to these concerns, seeking instead to handwave them away when it bears the burden of proof:

In its informal objection, Shortwave purports to show that DPA Mac's proposed transmitter power levels are insufficient to provide adequate service, but its analysis makes unfounded, unjustified assumptions that skew the results. For example, Shortwave runs simulations on the Voice of America Coverage Analysis Program (“VOACAP”) that relies on a 55 dB signal-to-noise ratio (“SNR”) and 500 watt output power. The assumed SNR is extremely large and the output power is extremely low – a combination that guarantees failure and is not realistic. Shortwave provides no reason for selecting these unrealistic, destined-to-fail parameters.³⁰

Shortwave's First Objection³¹ explains in great detail the selection of parameters used in its simulations, which demonstrate that DPA's proposed “broadcast” cannot function as claimed based on the information it provides. In fact, Shortwave has bent over backwards to charitably interpret DPA's proposal, presuming minimal “rural” man-made atmospheric noise levels,³² and even extending the benefit of the doubt for antenna patterns by using their maximum published value³³ despite DPA having neglected to provide the required exhibit. Further, in Attachment 1 to the First Objection, Shortwave has provided exhaustive details for *every* parameter used in its simulation (coordinates of transmit/receive sites, power levels, required SNR in dB/Hz, and

²⁹ See, e.g., ET Docket No. 04-139, comments of *National Association of Shortwave Broadcasters* at 4 and *International Broadcasting Bureau* at 2

³⁰ Opposition at 4

³¹ First Objection, at 6-7

³² In the target area, only 15-23% of the population live in rural areas. See, e.g. *World Bank, Rural Population (% of Total Population) - European Union*, available at <https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=EU>

³³ Actual antenna gain decreases at lower frequencies, and at low elevation angles. See *ITU-R Rec BS.705-1 (1995)*

expected atmospheric noise), and thus its analysis can easily be duplicated and validated. By contrast, DPA makes cursory efforts to handwave and question the simulation as “unrealistic, destined-to-fail,” when DPA bears the burden of proof, by preponderance of evidence, of showing the parameters used in its “*innovative low-power broadcast*” will satisfy “public interest, convenience, and necessity.” Merely disputing Shortwave’s analysis in general terms, without even trying to rebut it, cannot carry that burden.

To the extent necessary to explain the derivation of the parameters of Shortwave’s simulation that were questioned by DPA, these are addressed explicitly below:

- Shortwave’s First Objection directly explains the 55 dB/Hz SNR requirement: 14.6dB is the *absolute minimum* channel SNR for long-haul HF propagation channels. As noted in First Objection’s n. 16, this requirement is specified by *ITU-R Rec BS.1615-2 (12/2020), Appendix 2 to Annex 1, page 9, Table 10, “HF propagation”, “Channel Mode 5”*.

As the channel is 10 kHz (or 40 dB*Hz) wide, the *SNR per Hertz* equivalent is 54.6 dB/Hz, essentially matching the 55 dB/Hz used in Shortwave’s VOACAP simulations.

Notably, “VOACAP HFBC” uses an *even higher* SNR for DRM broadcast: 60 dB/Hz

- Similarly, the 500W power used for the simulation is derived in the First Objection. The amplifier power of 2000W proposed by DPA is the “peak envelope power”. DRM modulation has “peak-to-average” power ratio (PAPR, or the “crest factor”) of 10dB³⁴ (10:1), which, using state-of-the-art techniques (not claimed by DPA, but credited in Shortwave’s simulation to give the benefit of doubt to DPA), can be reduced to 6dB (4:1).

But rather than actually engage with the technical concerns that were demonstrated in exhaustive detail, the purported simulation graphs submitted on pages 8-9 of DPA’s Opposition are facially deficient in the required technical details and thus woefully inadequate to rebut Shortwave’s simulation. They are simply lacking key pieces of data needed to confirm their accuracy, containing absolutely no information about locations, power levels or antennas used, SNR requirements, etc.³⁵ This is not even sufficient proof of ability to broadcast anything, let alone the extraordinary proof required for these extraordinary claims of “FM-quality” broadcast using power level 4% that of the minimum required for *any* broadcast.

³⁴ “The value of 10 dB is a result of the crest factor, which is a DRM system parameter.”, ITU-R Rec. BS.1514-2 (2011/03), page 26

³⁵ The only reference data shown by DPA on charts is the “wavelength” (between 10 and 80 meters) - and the supplied charts include propagation at wavelengths of 10m, 12m, 15m (three outer rings) and 60m and 80m (two inner rings) - which do not correspond to requested broadcast bands.

The pictures provided by DPA purporting to depict an actual reception of signal³⁶ cannot be credited—the proffered evidence of two-bar signal strength at one location at one point in time is not evidence of usable coverage even at that specific location, much less at the entire target area. DPA does not identify the location of the test,³⁷ nor whether 64-QAM modulation was used (required for the claimed “FM-quality”). Moreover, DPA admits to using a “Buddipole” antenna - which is not the “whip” antenna prescribed for propagation planning purposes.

DPA claims that “Shortwave provides no reason for selecting these unrealistic, destined-to-fail parameters.” In fact, the *very parameters* questioned by DPA do match (or are more favorable to DPA than) the *default settings* for “VOACAP Online for HF Broadcasting” (Voacap OHFBC),³⁸ an online application related to “VOACAP Online” that DPA used to provide charts on pages 6-7 of its Response to the First Opposition. For example, VOACAP OHFBC uses following settings by default:

- Minimum SNR of 60 dB/Hz for DRM (above 55 dB/Hz used in Shortwave’s simulations)
- Use of “SWWHIP.VOA” as a reference receiver antenna

It is inconceivable that DPA was unaware of “VOACAP OHFBC”, featured on the VOACAP Online webpage, while using VOACAP Online to prepare its reply.

It appears that either DPA lacks technical knowledge necessary to operate this broadcast station, or lacked reasonable basis in believing its material statements are correct.

4) The Reference Receive Antenna For Broadcast Planning Purposes Is Prescribed By International Standards And Treaties

DPA states in its Opposition: “Shortwave relied on an isotropic antenna featuring a gain of 0 dBi. Every off-the-shelf antenna – like the Buddipole – has a gain of at least 5 dBi.”³⁹ This claim is false, and betrays the lack of even “amateur-level” knowledge of shortwave antenna characteristics.

The First Objection’s Exhibit 2 clearly shows that the calculations were performed using “SWWHIP.VOA” antenna (“shortwave whip”)—which is not an “isotropic antenna.” The “whip”

³⁶ Opposition at 5

³⁷ As noted in First Objection (at page 4 and in Exhibit 3), in its own words, DPA uses an “extraordinarily low-noise” site in the UK for reception of its point-to-point signal - such site cannot be representative of an average broadcast listener location.

³⁸ <https://www.voacap.com/hfbc/>, linked directly on <http://www.voacap.com>

³⁹ Opposition at 7

is the antenna prescribed by ITU-R Rec. BS.705-1⁴⁰ for evaluation of broadcasting in HF bands. Not only BS.705 is an ITU-R recommendation, unlike other recommendations, its use is explicitly prescribed by *eight* consecutive WRC Resolutions 535,⁴¹ viz., “Information needed for the application of Article S12^[42] of the Radio Regulations.” These are not merely suggestions for best practices, as are certain other ITU-R recommendations. Rather, WRC Resolution 535 and, by reference, BS.705, are effectively mandates governing international planning & coordination of Broadcasting Service; they constitute “Final Acts” of WRC, and having been duly ratified by the Senate, have “international treaty” status.

Furthermore, the shortwave whip is the antenna used as the reference receiving antenna for broadcasting performance evaluation in NTIA “Best Practices” handbook “*Antenna Models For Electromagnetic Compatibility Analyses*”⁴³: “For system planning and antenna performance evaluation of the HF AM audio systems, the recommended receiving antenna reference radiation pattern [is] in Rec. ITU-R BS.705-1.” Thus, as DPA had to be aware, the shortwave whip is the only receive antenna appropriate for “propagation planning.” Yet it did not utilize a shortwave whip in its own performance evaluation.

DPA claimed that: “Every off-the-shelf antenna – like the Buddipole – has a gain of at least 5 dBi.” This is clearly wrong as a technical matter, as the gain of the above-mentioned “shortwave whip” reference antenna is actually 0 dBi.⁴⁴ ⁴⁵ Also, as can be clearly seen from the Buddipole-authorized field guide, the Buddipole antenna’s gain is actually below the claimed 5 dBi for multiple configurations.⁴⁶

Further, DPA fundamentally misunderstands the distinction between “antenna gain” and “antenna pattern”: the “gain” is just a single data point of the whole picture: it describes the peak point of the antenna pattern. For propagation planning purposes, it is important to know the full pattern, particularly *elevation*—indeed, that is the entire reason for the existence of the BS.705 standard — as actual gain is determined not by the “peak” of the pattern, but by the point corresponding to the “takeoff angle” (or, “elevation”) and azimuth. The “takeoff angle” depends mainly the length of the path. For ionospheric paths over 4000 miles, such as, for proposed transmission from Chicago to Europe, the “takeoff angles” are very low: for transmission from

⁴⁰ Annex 2, “*HF transmitting and receiving antenna characteristics and diagrams*”, ITU-R Rec BS.705-1 (1995), available at: https://www.itu.int/dms_pubrec/itu-r/rec/bs/R-REC-BS.705-1-199510-!!!PDF-E.pdf

⁴¹ WRC-97, WRC-00, WRC-03, WRC-07, WRC-12, WRC-15, WRC-15, WRC-19.

⁴² “Seasonal Planning of the HF Bands Allocated to the Broadcasting Service Between 5900 kHz and 26100 kHz”, Article 12, ITU-R Radio Regulations

⁴³ Section 5.4.1.2 “*Antenna Models For Electromagnetic Compatibility Analyses*”, NTIA TM-13-489, available at: https://www.ntia.doc.gov/files/ntia/publications/antenna_models_report_tm-13-489.pdf

⁴⁴ ITU-R Rec. BS.705-1, Annex 2

⁴⁵ 5 dBi minimum gain is only applicable to an antenna of certain minimum dimensions, at a certain minimum height, tuned to a specific frequency. This is not the case for HF receiving antennas.

⁴⁶ B. Scott Andersen, “*Buddipole in the field*”, available at <https://lib.store.yahoo.net/lib/buddipole/buddipoleinthefield2.pdf> at 57-71

Chicago to Europe, the takeoff angles vary between 3 and 17 degrees, with the median at 7 degrees.⁴⁷ At this median takeoff angle, the reference BS.705-1 *and* the proffered Buddipole⁴⁸ have gain of *negative* 4 dBi⁴⁹ ⁵⁰ or less.

DPA states: “Shortwave attempts to evaluate the quality of the signal despite the DRM standard’s failure to define the quality of the audio.”⁵¹ This, too, is incorrect. The DRM standards do describe in exhaustive detail the necessary modulation parameters and SNR required to reach various levels of “audio quality,” for example:

- The DRM system includes a number of digital modulation modes to enable the transmission operator to select a mode with a degree of robustness best suited to the expected propagation.⁵²
- To achieve a sufficiently high quality of service for a DRM digital audio service, a BER of about 1E-4 is needed.⁵³
- Comparison of DRM30 coverage and quality with a representative AM transmission, having a daytime service area of 75 to 90 km (specified SNR = 26 dB and 30% modulation), shows that DRM30 transmissions running at half the power of the AM transmission typically can deliver subjective audio quality matching “VHF FM stereo” over an area ~4 times larger than in the AM mode (distances of 120 to 180 km) using the 64QAM(3) mode or quality close to VHF FM over an area ~9 times larger (distances of 220 to 260 km) using the 64QAM(0) mode.⁵⁴

The blatantly incorrect technical claims of minimal antenna gain, the use of clearly inappropriate reference “receiver antenna”, and lack of understanding of the International standards suggest that DPA is not technically qualified to operate an International Broadcast station.

5) DPA’s Failure To Provide The Required Transmitting Antenna Patterns Warrants At Least Dismissal

⁴⁷ See, e.g. *American Radio Relay League, “Antenna Heights and Communications Effectiveness”* (1999), available at <https://www.arrl.org/files/file/antplnr.pdf> at 9-11

⁴⁸ Buddipole gain at frequencies of 14 Mhz and below, see “*Buddipole in the field*”, *supra*.

⁴⁹ *ITU-R Rec. BS.705-1*, Figure 90

⁵⁰ Same negative gain figures apply to the Buddipole antenna used by DPA. See “*Buddipole in the Field*”, *supra*.

⁵¹ Opposition at 7

⁵² *BS.1514-2* at 26

⁵³ *BS.1615-1* at 3

⁵⁴ *BS.2384-0* at 18

DPA states: “Furthermore, Shortwave cannot run its analysis using DPA Mac’s technical parameters, which remain proprietary commercial information and the public disclosure of which would result in competitive harm to DPA Mac.”

Again, DPA is incorrect: the only technical parameter that is necessary for analysis is the transmit antenna radiation patterns. As explained *supra*, the antenna patterns are *critical* to evaluation of HF propagation over long paths. These patterns are a required exhibit of Form 309 (Section V, Box 7(b): “applicants for international broadcasting stations should submit all pertinent data regarding antenna characteristics in accordance with the requirements of the International Telecommunications Union’s Radio Regulations” and Box 7(d), requiring “complete engineering data”). Moreover, to perform international coordination, antenna patterns are *required* to be public, by WRC Resolutions 535 “Information needed for the application of Article S12 of the Radio Regulations”, as described above.

This required information is missing from DPA’s application, and thus warrants at least dismissal.

6) The Proposed Low-Power Service Will Not Provide “Public Utility And Convenience,” And Data Transmission Cannot Satisfy This Burden

DPA states: “Shortwave’s contention ... fails to acknowledge how the potential loss of service abroad is material to the Commission’s analysis.”⁵⁵ This is a puzzling claim, particularly when it is DPA who bears the burden of proof, by preponderance of evidence, that “the public interest, convenience and necessity will be served through the operation of the proposed station.”⁵⁶

If, during international coordination, DPA’s signal is not protected because its signal strength is too low to qualify for protection, thereby resulting in loss of advice abroad, that would certainly be material to “public utility and convenience.” Alternatively, if FCC staff were to insist on protection of inadequate DPA signal during international coordination, and force other broadcasters not to use that frequency, it would defeat the “maximizing use of spectrum” argument offered by DPA.

DPA cannot simultaneously argue the required “public utility and convenience” and “maximizing use of spectrum,” because the two arguments contradict each other.

Extraordinary claims of “low-power FM-quality broadcast” require extraordinary evidence. But none was provided. DPA mentions that its “low-power” service is “innovative” seven times in

⁵⁵ Opposition at 7-8

⁵⁶ Application Narrative at 2, 14

its narrative, and six times in its opposition brief. The quantity of this claim cannot make up for its lack of quality; repetition of this talisman does not make it true.

To be clear, the proposed auxiliary “low-latency data transmission” use is a *point-to-point* service by DPA’s own admission, and so there can be no *broadcast* “innovation” created. For broadcast services where Commission permitted non-broadcast “auxiliary” or “subsidiary” transmissions, it had stated that such transmissions cannot satisfy any “public interest” obligations, *e.g.*, §73.127 and § 73.295 both explicitly provide: “The permittee or licensee must establish that the broadcast operation is in the public interest wholly apart from the subsidiary communications services provided.” DPA has failed to establish any public interest in any broadcast operation.

DPA repeatedly claims that its “low power” service minimizes “harmful interference”⁵⁷. However, it provides no evidence whatsoever other than “3DB’s operations pursuant to its experimental license have received no complaints of harmful Interference”. This is clearly insufficient: *absence of evidence* of interference is not *evidence of absence* of interference. Furthermore, 3DB did not operate in “broadcast” bands. In the “fixed” bands, all other “experimental” and almost all “land mobile” licensees do operate on “secondary”, “non-interference” basis, and thus could not complain about possible “interference”. The interference caused would be mainly felt in other countries and nearly impossible to identify and communicate to 3DB as a “complaint” - due to the lack of the “callsign” in 3DB’s transmissions, worldwide propagation and complexity of HF “direction-finding” . Aforementioned ITU-R broadcasting regulations discuss in great detail the proper procedures for technical analysis to quantify possible interference, and 3DB failed to provide *any* evidence required to carry its burden of proof.

7) The Requested Bandwidth And Modulation Are “Patently Not In Accordance” With § 73.758 And With International Radio Regulation Treaties

As noted in First Objection, DPA requested 58 kHz bandwidth for its transmission,⁵⁸ far more than the 10 kHz bandwidth authorized for DRM broadcasting by § 73.758.⁵⁹ This is explained by DPA’s plan to use spectrum adjacent to its frequency assignment for transmission of data using a proprietary modulation: “DPA Mac intends to provide ... investment data from points within the United States to locations outside the United States **carried over a channel immediately adjacent to the HF broadcasts.**”⁶⁰ (emphasis added).

⁵⁷ Application Narrative at 13, 17-20. Opposition at 8

⁵⁸ Form 309, Section V, Box 2. Repeated in Application Narrative at 1

⁵⁹ DPA did not request a waiver of § 73.758

⁶⁰ Application Narrative at 3

It appears that DPA's request for 58 kHz bandwidth is composed of 10 kHz necessary for the DRM broadcast, plus 48 kHz more for the data.

This "adjacent channel data transmission" is patently not in accordance with § 73.758, nor with international treaties governing broadcasting. Quite plainly, the Commission only authorizes 10 kHz bandwidth and only permits DRM-modulated transmissions. Similarly, the relevant ITU treaties do not permit proprietary modulations in broadcasting bands: "Other modulation techniques recommended by ITU-R shall be permitted in place of double-sideband or single-sideband emissions."⁶¹ There is no evidence that ITU-R has recommended such "adjacent channel data transmission".

8) DPA Lacked Candor In Falsely Certifying Compliance With Modulation And Bandwidth Requirements Of § 73.758

DPA addresses this apparent violation of § 73.758 as follows:⁶²

"Meanwhile, the argument that DPA Mac failed to properly certify compliance with Sections 73.753 and 73.758 amounts to nitpicking.... The Shortwave's [*sic.*] argument about candor with respect to Section 73.758 is ultimately vague, Shortwave appears to suggest that information regarding emissions designators and requested center frequencies violated the Commission's candor requirement.

Notably, in its Opposition, DPA neither denies nor takes an opportunity to correct the request for 58 kHz bandwidth.

In its application, DPA explicitly certified its compliance with § 73.758 (footnotes removed, emphasis added):

Its spacing for digitally modulated emissions in the applicable frequencies will be 10 kHz, satisfying Section 73.758(b)(1). Its digitally modulated emissions **will share the same spectrum**, in accordance with the permission granted by Section 73.758(b)(2). For its over-the-air audio broadcast, DPA Mac's full, digitally modulated emission will have a 10 kHz bandwidth, with center frequency at one of the 5 kHz center frequencies, satisfying Section 73.758(c)(1).

Pointing out that DPA has not requested a waiver and falsely certified compliance with § 73.758 while contradicting another section of its application is not "nitpicking" nor "an ultimately vague

⁶¹ *ITU-R Radio Regulations*, Article 12.7

⁶² Opposition at 10

argument about candor.” It is DPA’s obligation to be forthright at all times, not Shortwave’s to police DPA’s timing or raising of these troubling issues.

For avoidance of doubt, it appears that DPA falsely certified that:

- (i) it “will share the same spectrum”, contradicting its plans to use adjacent channel spectrum
- (ii) that its “spacing for digitally modulated emissions in the applicable frequencies will be 10 kHz”, contradicting its request for 58 kHz bandwidth.

9) The Claimed “Maximizing Use of Spectrum” Is Voided By The Excessive Bandwidth, And Requested Waiver Of § 73.702(j)

DPA claims: “DPA Mac’s innovative lower-power technology advances each of the Commission’s goals for high frequency broadcasting by maximizing use of the spectrum, minimizing potential harmful interference to other broadcasters, and ensuring DPA Mac can render service”⁶³ and “DPA Mac’s innovative, functionally integrated service can operate efficiently at low power in small amounts spectrum [sic] allocated to IHF broadcasting.”⁶⁴

DPA requests waiver of § 73.702(j)⁶⁵:

At the same time, DPA Mac’s lower power transmissions are more susceptible to disruption from atmospheric changes and other source of interference than traditional high-power transmissions are [sic]. To overcome these challenges without raising power, DPA Mac may need to use more than one frequency at any given time to maintain a continuous, uninterrupted connection to listeners.

Indeed, the Commission aims to maximize use of spectrum, and the amount of spectrum allocated to IHF broadcasting is limited. However, DPA’s proposed use is highly inefficient: DPA’s request for 58 kHz bandwidth is nearly *six* times higher than authorized by § 73.758.

Such use would consume a large fraction of *worldwide* spectrum allocated to broadcasting by ITU. DPA requested a total of 464 kHz⁶⁶ out of 4090 kHz allocated by ITU *worldwide* to broadcasting.⁶⁷ To allow a single broadcaster to use over 10% of *worldwide* HFBC broadcasting spectrum is the exact opposite of “maximizing use of spectrum” claimed as a rationale for DPA’s

⁶³ Opposition at 8

⁶⁴ Application Narrative at 19

⁶⁵ Application Narrative at 19

⁶⁶ Application Narrative at 13

⁶⁷ See, e.g. <https://www.itu.int/en/ITU-R/terrestrial/broadcast/Pages/Bands.aspx>

application. In fact, in the 7 MHz broadcasting band, DPA's request of 58 kHz constitutes 58% of *total* available spectrum for broadcasting allocated by ITU to Region 2 (The Americas).⁶⁸

The requested waivers of § 73.702(j) and § 73.702(m) to use "more than one frequency at any given time," if granted, would mean that DPA would use *at least* 116 kHz of spectrum. That is, each hour of operation by DPA would consume 12 of the 10 kHz "frequency-hours" contemplated by the Commission's rules, which also limit total use by *all* IHF broadcasters to 100 "frequency-hours" per day.⁶⁹ Therefore, operation by DPA for even 9 hours daily would consume all of the "frequency-hours" made available by the Commission, leaving none for any other broadcaster. This cannot be seen as being in the "public interest".

10) DPA's Application Is Not "Substantially Complete"

The First Objection⁷⁰ noted the deficiency of DPA's missing antenna patterns, and an incorrect list of "all known radio stations" required by Form 309, Section V, Box 4.2.

The Commission does indeed distinguish "minor defects as to completeness"⁷¹ from "major defects" requiring dismissal. DPA ignores that broadcast applications must still be "substantially complete", and defines "minor defect" as "which does not render the application unacceptable for filing because it is not essential to the processing of the application."⁷²

In the instant case, the missing antenna patterns are absolutely essential to processing of the application - as discussed above, they are required for international coordination, and to demonstrate international coverage provided to justify "public convenience and necessity." As such, their omission cannot be mere "minor defects" because without them, DPA's application is not "substantially complete."

DPA argues:⁷³

Meanwhile, the argument that DPA Mac failed to properly certify compliance with Sections 73.753 and 73.758 amounts to nitpicking. For example, Shortwave

⁶⁸ DPA repeatedly notes its request for a waiver of § 2.106 footnote US136(b)(2) to use 7.3-7.4 Mhz band. This waiver is unnecessary, as the entirety of this band is already allocated to Broadcast Service. DPA misreads footnote US136, it is only applicable to non-broadcast services originally licensed prior to 2009.

⁶⁹ § 73.702(m)

⁷⁰ First Objection at 9

⁷¹ § 73.3564(a): "In the case of minor defects as to completeness, a deficiency letter will be issued and the applicant will be required to supply the missing or corrective information"

⁷² See, e.g., *Utica Telephone Company*, 5 FCC Rcd 9, DA 90-638

⁷³ Opposition at 10

states that the application “lists four antennas on Form 309” but “only shows two” in supporting Exhibit 11

As noted above, the antenna patterns are required to process the application. Based on the face of application, it is unclear which of these two (or four) antennas DPA proposes to use for broadcasting. Instead of providing required information and correcting the “fatal defect,” DPA seeks to dismiss the notification of its facial deficiency as “nitpicking”⁷⁴.

11) The Commission Does Not Have Discretion To Accept An Application That Is “Patently Not In Accordance” With Rules, And Such Acceptance Would Be Futile

DPA argues⁷⁵ that the language of § 1.934 (“Commission may dismiss without prejudice an application that it finds to be defective”) shows that “[t]he provisions’ separate use of the words “may” and “satisfactory” demonstrate the Commission’s wide discretion in processing an IHF application.” In its footnote 26, DPA appears to argue that because Shortwave acknowledged that “*DPA may be able to address multiple deficiencies,*” the application should be accepted for filing.

While Shortwave agrees that under § 1.934, the FCC may indeed exercise its discretion and accept a defective application for filing, it is puzzling *why* the FCC should do so when doing so would be futile.

Notably, § 73.3566(a), applicable to all *broadcast* services, states [emphasis added]: “Applications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, **will** be considered defective and **will not** be accepted for filing or if inadvertently accepted for filing **will be** dismissed. Requests for waiver **shall** show the nature of the waiver or exception desired and **shall** set forth the reasons in support thereof.” Applying DPA’s own argument, the use of words “will,” “will not,” and “shall” demonstrate lack of discretion for acceptance of applications for *broadcast* services that are “patently not in accordance” with the Rules.

As noted *supra*, the Application is “patently not in accordance” with the Rules:

- i) The proposed “point-to-point” auxiliary use is not authorized under “Subpart F”
- ii) The requested 58 kHz bandwidth and modulation is not authorized

DPA states that it would “more exhaustively address Shortwave’s concerns in the comment cycle”⁷⁶ and “Should the Commission have questions about the application, DPA Mac would be happy to speak with staff or file supplementary material” post-acceptance, but provides no

⁷⁴ Noting DPA’s lack of compliance with the “public notice” provisions of § 73.3580(c)(1)(ii), on the other hand, *would* be nitpicking.

⁷⁵ Opposition at 8-9

⁷⁶ Opposition at 1

reason or authority to delay addressing the concerns about the deficiencies in its application. Notably, three months after DPA first received the draft of the First Objection⁷⁷, DPA chose not to supplement the application.

12) DPA Makes Clearly False Statements In Its Response, Lacking Reasonable Basis

Puzzlingly, DPA continues to make clearly false statements. DPA stated: “*Shortwave Solutions has also filed an objection to similar applications seeking authority to operate in the United Kingdom, **which has been rejected.***”⁷⁸ (emphasis added). This is simply and demonstrably untrue, as is clear from the online status of said application, directly linked in the First Objection. To put this matter to rest, Shortwave requested a comment from the planning officer, which unambiguously states “*For the avoidance of doubt, your objection **has not been rejected.***” (emphasis in original). That email correspondence is included as Exhibit 1.

It is unclear why DPA included this facially false argument in its Opposition without having undertaken the straightforward step to verify it beforehand. Most certainly, DPA could not have had reasonable basis to make that argument, in apparent violation of § 1.17(a)(2).

13) DPA Does Not Address The “Indirect Control” And “Real Party-in-Interest”⁷⁹ Issue

In the First Objection, Shortwave alleged *indirect* control of DPA by Raft Technologies in violation of 47 U.S.C. 310(b), supported by extensive evidence, by Raft (and its affiliates’) public filings, as well as Raft’s own website and public statements of Raft executives.⁸⁰

DPA’s sole response is (footnotes removed):

DPA Mac, a U.S.-based entity, and Raft Technologies, an Israeli corporation in good standing, have entered into arm’s length commercial agreements, including a technical and service advisory agreement, as permitted under Commission precedent. Both parties have observed and continue to observe these commercial agreements. Separately owned and operated, Raft Technologies has no investment

⁷⁷ Petitioner provided DPA with the draft of First Objection on 4/17/2021

⁷⁸ Opposition, n. 6

⁷⁹ The Commission stated: “The phrase “real party-in-interest” is used in connection with pending applications, while “de facto control” is used in connection with a licensed station. In either case, the pertinent concern is whether someone other than the named applicant or licensee is in control. “ *In Re Brasher*, 15 FCC Rcd 16326 (2000).

⁸⁰ First Objection at 10-12

interest in DPA Mac, and DPA Mac has no investment interest in Raft Technologies.⁸¹

But DPA’s statement addresses only issues of *direct* control that Shortwave did not raise; it is non-responsive to, and fails to rebut, the issues raised in the First Opposition concerning foreign “indirect control.”

In response to the First Objection, DPA has failed to identify any *possible* source of broadcasting or transmission revenue other than Raft.⁸² DPA did not dispute that 3DB is alien-controlled. DPA did not refute that it is a “successor” of said alien-controlled 3DB - in fact, the Opposition *twice* refers to 3DB as an “affiliate”⁸³. DPA provides no explanation why its proposed equipment, antennas, and location are identical to those of alien-controlled 3DB.

Even beyond DPA’s ineffective efforts to rebut Raft’s *de facto* control, events subsequent to the filing of DPA’s Opposition add further questions on the nature of their relationship. On May 17, 2021, alien-controlled⁸⁴ 3DB filed an Experimental Application⁸⁵ that listed identical location, and identical equipment to that set forth in DPA’s application. Revealingly, in response to the question “Will applicant be owner and operator of the station?” 3DB answered “YES”.

If, as of 5/17/2021, 3DB still owned the station and the equipment, it is unclear how DPA and Raft could have engaged in the claimed “technical and service advisory agreement” as of the filing of the Broadcast Application 6 months earlier, without either DPA *nor* Raft owning any of the equipment necessary to operate the station. It is also unclear how could DPA be “financially qualified” to operate as required by the Rules.

The constantly-shifting ownership and control of the tangible and intangible assets for the same proposed uses between clearly-related companies whose filings variously refer to each other as “affiliates” or “successors” suggests, if not a lack of candor, at least efforts to play three-card monte with the entities involved to obscure precisely who is doing what. And it is not Shortwave who must resolve these concerns, but DPA—and it has failed to do so.

14) DPA Cannot Possibly Operate Independently, And Thus Is Indirectly Controlled By “Alien” Raft/3DB

⁸¹ Opposition at 11

⁸² Indeed, as the broadcast is “commercial-free”, DPA has no other sources of revenue other than “transmission services” provided by Raft, and thus is wholly financially dependent on Raft for revenue. (See Application Narrative at 1 and 13).

⁸³ Opposition at 3, 5

⁸⁴ First Objection, exhibit 2B

⁸⁵ ELS File No: 0094-EX-CM-2021

Even assuming, *arguendo*, that despite ample evidence to the contrary above, that the arrangement between DPA and Raft is truly “arm’s length” as claimed, the *de facto* control⁸⁶ would still be present in this case.

Relationships between Licensees and third parties *traditionally* take the form of “Local Marketing Agreement” (LMA), where “licensee offers its airtime to a third party in exchange for programming and compensation. In return, the third-party programmer supplies programming and sells commercial announcements to support its bloc of programming.”⁸⁷ Whether such an agreement amounts to “de facto” control is a question that the Commission decides quite often, and the well-developed case law dates back to the 1950s.

For broadcasters⁸⁸, as correctly cited by DPA, the seminal case is *WGPR*.⁸⁹ DPA correctly cites⁹⁰:

The touchstone of control ... is not divining who executes the station’s programming, personnel and finance responsibilities, but who establishes policies governing the three areas and exercises ultimate control.

However, the Commission continues as follows (emphasis added):⁹¹

Thus, we require that licensees must maintain their own bank accounts, pay the salaries of their own employees, and remain responsible for their own obligations to programmers, utility companies, and other operational matters. **In other words, the licensee should be ready and able to operate independently from the broker at any time it believes the arrangement does not fulfill its public interest responsibilities.**

Here, DPA proposes to operate a broadcast station “commercial-free”, subsidized solely by revenue derived from the ancillary data transmission services - indeed, a very unique business model. Unfortunately, and unlike any “Local Marketing Agreement” upheld in *WGPR*, the *other* unique part of DPA’s proposal is that these services and associated revenue are inextricably tied to Raft.

⁸⁶ The Commission stated: “The phrase “real party-in-interest” is used in connection with pending applications, while “de facto control” is used in connection with a licensed station. In either case, the pertinent concern is whether someone other than the named applicant or licensee is in control. “ *In Re Brasher*, 15 FCC Rcd 16326 (2000).

⁸⁷ See *WGPR* at 8141

⁸⁸ As the actual “business” of DPA is a proposed point-to-point operation, the six-part standard of *Intermountain Microwave*, 12 FCC 2d 559 may be more appropriate. Regardless, the outcome will be the same.

⁸⁹ See *Application of WGPR, Inc. and CBS, Inc. for Assignment of License of WGPR-TV, Detroit, Michigan*, Memorandum Opinion and Order, 10 FCC Rcd 8140 (1995)

⁹⁰ Opposition, n. 37

⁹¹ See *WGPR* at 8145

The Commission’s well-settled prongs of “programming, personnel and finance” relate to *readiness* of independent operation. However, “short-term” *readiness* is subject to “long-term” *ability*. Although not yet in evidence, DPA may indeed demonstrate that it can continue to produce (or source) “commercial-free” broadcast programming—*subject to* ongoing funding from “data revenues”. These revenues are supported by assets that DPA does not have: The same exact equipment (antennas and amplifiers) at the same location were claimed by 3DB as their own assets. But even if DPA was to replace this equipment, it *still* could not generate any revenue, as Raft owns the required intangible assets: the patented technology⁹² and customer relationships.

The issue here is not that 100% of DPA’s revenues come from Raft, it is that their “revenues” *can only* come from Raft: DPA does not provide “low-latency services”—Raft does. Raft maintains the Network Operation Center, and controls the patented “Intellectual Property” underlying said “low-latency service.”

Not being “able to operate independently” underlies the “control” here. If a licensee cannot *possibly* operate independently without a third party, it is implicitly under control of said third party—and the questions of “programming, personnel and finance” are not relevant. If Raft were to breach its agreements with DPA, or to fail commercially, DPA could not continue to maintain the claimed “public interest” justification of “low-power international high frequency (IHF) broadcasting service that supports data transmissions to foreign destinations”⁹³—unlike any “Local Marketing Agreement”.

The Commission certainly can (and should) use its authority under § 73.3613 to request the “arm’s length commercial agreements” executed between Raft and DPA. However, nothing in these agreements could possibly rebut the control, as *no arm’s length agreement could provide sufficient distance from a Siamese twin*.

15) DPA Had A Motive To Conceal Relationship With Raft, and Lacked Candor By Concealing Such Relationship

Commission has stated that “regulatory sin embedded in [a real party in interest] issue is the failure to disclose the true ‘owners,’ information the Commission must have for a panoply of

⁹² Raft’s financial advisor stated: “The Company uses its **patented technology** to transmit and receive signals using airwaves ...” (emphasis added), available at <https://www.rblt.com/news/rosenblatt-helps-raft-technologies-a-pioneering-low-latency-network-provider-secure-investment-to-drive-its-next-phase-of-growth>

⁹³ Application Narrative at 1

administrative purposes; e.g., multiple ownership rules, character concerns, **alien ownership limitations**, and ultimate responsibility for overall FCC license obligations”⁹⁴ (emphasis added)

As such, it appears that DPA misled the Commission by misrepresenting or concealing the following facts material to the issue of “control”.

i) DPA falsely claimed to provide “low-latency digital transmission service to private investors, including small- and medium sized firms”.⁹⁵ In fact, DPA does not provide such services to these parties - Raft does. DPA’s only “client” is Raft - in fact, it is the only *possible* client.

ii) DPA failed to disclose that it does not own the underlying technology nor Intellectual Property, and completely depends on foreign-controlled Raft.

As discussed in the “Background” section above, 3DB was on notice that its “Experimental License” will not be renewed without an “International Broadcast” application. Both 3DB and Raft are foreign companies, precluded by § 310(b) to hold a broadcast license directly.^{96 97} In order to continue its existence, not only did Raft have a motive, but also demonstrates a *prima facie* question of fact as to *intent* to circumvent the “foreign ownership” rules: as Commission has held “a real party in interest issue, by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed.”⁹⁸

The assets claimed by DPA currently belong to foreign companies, as shown by the evidence above: The technology, customer contracts and relationships are owned by Raft, and the physical plant is claimed by 3DB. The Commission may further find that DPA’s existence in light of the proposed relationships between DPA and 3DB/Raft lacks economic substance, i.e., *is a sham*.

⁹⁴ *Lowrey Communications, L.P., Decision*, 7 FCC Rcd 7139, 7147 (Rev. Bd. 1992) aff’d, *Memorandum Opinion and Order*, 8 FCC Rcd 6721(1993), vacated and remanded per curiam, No. 93-1690, 1994 WL 475076 (D.C. Cir. 1994).

⁹⁵ Application Narrative at 3

⁹⁶ Without a request for a waiver, or petition for declaratory ruling - neither of which were filed.

⁹⁷ The foreign control of 3DB is established in First Objection, Exhibit 2A-2C

⁹⁸ *In the Matter of Maritime Communications/ Land Mobile, LLC, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, 26 FCC Rcd 6520, 6534–6535 par. 36 (2011) (citing *Fenwick Island Broadcast Corp. & Leonard P. Berger, Decision*, 7 FCC Rcd 2978, 2979 (Rev. Bd. 1992))

SUMMARY

The Application and requested waivers are in violation of the following:

- i. Patently not in compliance with the Rules, in violation of § 73.3566(a), as described in Sections 2 and 7 of this Objection
- ii. Not substantially complete, in violation of § 73.3564, as described in Sections 5 and 10 of this Objection
- iii. Not in public interest, in violation of § 73.731(a)(5), as described in Sections 7 and 8 of this Objection

Furthermore, DPA as the Applicant is:

- iv. Not technically qualified, in violation of § 73.731(a)(4), as described in Sections 3 and 4 of this Objection
- v. Is indirectly controlled by a corporation organized under the laws of a foreign country, in violation of 47 U.S.C. § 310(b)(4), as described in Sections 13 and 14 of this Objection
- vi. Provided material factual information that is incorrect without a reasonable basis, in violation of § 1.17(a)(2), as described in Sections 3 and 12 of this Objection
- vii. Lacked candor by intentionally providing or omitting material factual information, in violation of § 1.17(a)(1), as described in Section 15 of this Objection

It is therefore clear that the Application cannot be accepted for filing, much less granted.

Furthermore, the *prima facie* case of “lack of candor” by DPA is established. If the Application is dismissed, Commission should use the precedent in *Sinclair*⁹⁹ to proceed with Letter of Inquiry as “material questions remain because the real party-in-interest issue in this case includes a potential element of misrepresentation or lack of candor that may suggest granting other, related applications by the same party would not be in the public interest”.

Respectfully submitted,

/s/

Alex Pilosov
Shortwave Solutions LLC
(917) 407-8664
alex@shortwave-solutions.com

⁹⁹ *Sinclair Broadcast Group, Inc., Hearing Designation Order*, 33 FCC Rcd 6840 (2018)

EXHIBIT 1

PL/20/0163/FA

4 messages

Alex Pilosov <alex@acresearchinc.com>

Wed, May 12, 2021 at 7:00 AM

To: "Planning Mailbox: Planning" <planning.csb@buckinghamshire.gov.uk>

Hello,

I'd like to inquire regarding the status of application PL/20/0163/FA (Erection of temporary digital data receiver mast with microwave dish and supporting shelter cabin. (Retrospective)).

I've filed an objection to this application on 19 Aug 2020. In a different legal proceeding, the applicant (Ratesu) claimed that my objection to this application has been rejected. Can you confirm the status of this application - as the Planning website shows the application still in the "Registered" state, and the application has not been decided as of yet.

Best regards,
-alex

Alex Pilosov <alex@acresearchinc.com>

Wed, May 19, 2021 at 9:09 AM

To: "Planning Mailbox: Planning" <planning.csb@buckinghamshire.gov.uk>

Hello,

I've not received a response to this email after 5 business days, and chasing this question. To clarify, two questions regarding PL/20/0163/FA:

- 1) Is this application still pending?
- 2) Was my objection (filed on 19 Aug 2020) "rejected" in any way?

Thank you!

[Quoted text hidden]

Wed, May 19, 2021 at 10:05 AM

To: alex@acresearchinc.com <alex@acresearchinc.com>

Dear Mr Pilosov,

I write with reference to the above and your e-mail below. Please accept my apologies for the delay in response. This application is still pending consideration, unfortunately in recent times we have had a high workload and delays to some applications. I am currently working through a number of such cases including this one. The application will be determined as soon as able.

For the avoidance of doubt, your objection **has not** been rejected. It is received, and the contents must be considered by the planning officer when writing the report on this application. This will remain the case even though there has been a long delay on the application process.

I trust this information is of assistance.

Yours sincerely,


Senior Planning Officer - Enforcement

Planning Growth & Sustainability Directorate

Buckinghamshire Council

planning.enforcement.csb@buckinghamshire.gov.uk

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