

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re Application of)
)
DPA Mac LLC) IBFS File No. IHF-C/P-20201228-00010
)
For Construction Permit to Build International)
High Frequency Broadcast Station)

To: International Bureau

**OPPOSITION TO SECOND INFORMAL OBJECTION
AND REPLY TO OPPOSITION**

DPA Mac LLC (“DPA Mac”) files this Opposition in response to the Second Informal Objection and Reply to Opposition (“Second Informal Objection”) filed by Shortwave Solutions LLC (“Shortwave”) in the above-captioned IBFS file number.¹ While Shortwave’s Second Informal Objection purports to highlight new issues,² it mostly repurposes irrelevant procedural and legal arguments that Shortwave made in its initial Informal Objection.³ Where Shortwave raises new issues, it advances specious claims about the technical merits of DPA Mac’s application that seek to cloud an exhaustively documented application and response. Finally, Shortwave’s technical analysis is based on guesswork and incomplete information. As a competitor, Shortwave is not entitled to DPA Mac’s commercially sensitive information, and the application process is not an excuse for Shortwave to obtain this type of information, either.

¹ See Second Informal Objection and Reply to Opposition of Shortwave Solutions LLC, IHF-C/P-20201228-00010 (July 19, 2021) (“Second Informal Objection”).

² See *id.* at 2 (“As will be fully described below, the Opposition raises more questions about basic eligibility qualifications than it answers.”).

³ See Informal Objection of Shortwave Solutions LLC, IHF-C/P-20201228-00010 (Apr. 22, 2021) (“Informal Objection”).

DPA Mac’s application is complete. It complies with the Commission’s rules, and where waivers are needed, DPA Mac has requested them. As DPA Mac said in its first Opposition, Shortwave’s effort “to foreclose competition in the ‘transoceanic connections’ in which Shortwave specializes or require the disclosure of information regarding DPA Mac’s commercially sensitive, innovative, proprietary technology” has no basis in the Commission’s rules or policies.⁴ Placing DPA Mac’s application on public notice will provide a meaningful opportunity for all parties, including market rivals such as Shortwave, to comment on the merits of DPA Mac’s proposed service. Continuing to entertain Shortwave’s informal objections not only frustrates timely disposition of Commission business, but also denies DPA Mac equal treatment under the law.⁵

I. SHORTWAVE’S SECOND INFORMAL OBJECTION LARGELY RECYCLES ARGUMENTS THAT WARRANT NO ADDITIONAL CONSIDERATION.

In the Second Informal Objection, Shortwave recycles arguments made in its Informal Objection regarding: (1) the alleged incompleteness of DPA Mac’s application,⁶ including DPA Mac’s alleged failure to demonstrate that the proposed service is technically feasible;⁷ (2) DPA Mac’s purported lack of candor;⁸ and (3) speculation about DPA Mac’s operations and oversight.⁹

⁴ Opposition to Informal Objection, IHF-C/P-20201228-00010, at 2 (May 3, 2021) (“First Opposition”).

⁵ See IBFS File Nos. IHF-C/P-20170417-00002 (indicating that Turms Tech’s application was placed on public notice two weeks after filing, while DPA Mac’s awaits public notice nearly seven months after filing).

⁶ See Informal Objection at 9; Second Informal Objection at 15-16.

⁷ See Informal Objection at 1; Second Informal Objection at 5-8, 11-12, 12-13.

⁸ See Informal Objection at 1; Second Informal Objection at 13-14, 17.

⁹ See Informal Objection at 1, 10-12; Second Informal Objection at 17-18, 18-20, 20-21.

The repetition in Shortwave’s informal filings prior to public notice underscores Shortwave’s interest in obtaining competitively sensitive information, delaying the Commission’s processing of a competitor’s application, or both. Shortwave has taken a similar approach with other applicants or permittees seeking to provide a combination of broadcast and data services, including Turms Tech LLC (“Turms Tech”) and Parable Broadcasting Company.¹⁰ Indeed, with respect to Turms Tech’s application for a construction permit, Shortwave argued that the application was “defective” more than three years *after* the Commission *granted* it.¹¹ Shortwave’s latest gambit to delay investment and innovation in the international high frequency radio spectrum should not distract the Bureau from its public interest obligation “to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”¹²

Where, as here, applications are substantially complete, the Bureau places them on public notice so it can review the application as well as any comments from the public, examine the facts in a transparent manner, and render a decision on the merits. DPA Mac’s application is no exception. Its application is complete, clear, and meritorious. If the Bureau ultimately finds defects in the submission provided, then the Bureau can address any issues by either requiring the applicant to cure them or, alternatively, denying the application.

¹⁰ See Informal Objection of Shortwave Solutions LLC, IBFS File Nos. IHF-C/P-20170417-00002, IHF-LIC-20200710-00002 (Sept. 3, 2020) (“Turms Tech Informal Objection”), Informal Objection of Shortwave Solutions LLC, IBFS File No. IHF-C/P-20200427-00001 (Aug. 28, 2020).

¹¹ Turms Tech Informal Objection at 1 (arguing that a construction permit granted by the FCC on August 15, 2017, was “defective” in a filing dated September 3, 2020).

¹² 47 U.S.C. § 151.

II. SHORTWAVE'S NEW ARGUMENT REGARDING THE COMMISSION'S LACK OF DISCRETION TO PROCESS DPA MAC'S APPLICATION IS UNAVAILING.

Though it rehashes a large number of arguments made in the Informal Objection,¹³ Shortwave supplements the litany of ostensible defects in DPA Mac's exhaustively documented application by citing Section 73.3566(a)¹⁴ of the Commission's rules for the proposition that the Commission may not accept applications "patently not in accordance" with the Commission's rules.¹⁵

Shortwave's latest argument only underscores how bereft of substance its informal objections are. As noted in response to Shortwave's first round of complaints, DPA Mac "has shared the information . . . required by the FCC Form 309, including internal block diagrams and plans, and included Exhibit 1 to provide additional context for its proposed service."¹⁶ DPA Mac has also requested waiver of the provisions necessary to operate its proposed service.¹⁷ Accordingly, the DPA Mac application is complete and by no means so "patently not in accordance" with the rules as to rob the Bureau of discretion to allow public notice.¹⁸

While Shortwave's claims come nowhere near to demonstrating a patently defective application, the determination of whether or not an application is patently defective rests with the Commission, not a competitor lobbying allegations in informal objections prior to public notice.

¹³ See *supra* Section I.

¹⁴ 47 C.F.R. § 73.3566(a).

¹⁵ See Second Informal Objection at 16-17 ("[T]he use of words 'will,' 'will not,' and 'shall' [in Section 73.3566(a)] demonstrate lack of discretion for acceptance of applications for *broadcast* services that are 'patently not in accordance' with the Rules.").

¹⁶ First Opposition at 10.

¹⁷ See, e.g., *id.* at Section I.A.

¹⁸ 47 C.F.R. § 73.3566(a).

For example, the first sentence of Section 73.3566(a) states that “[a]pplications 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.”¹⁹ The clause “determined to be” establishes the *Commission’s* authority to evaluate whether an application is “patently not in accordance” with its rules and thus requires dismissal. This authority does not vest in an applicant’s competitor. Shortwave’s suggestion that the Commission lacks authority to accept DPA Mac’s application because Shortwave says so flies in the face of both the Commission’s rules on application processing as well as basic fairness to an applicant seeking review on the merits of its proposal.

Engaging in a perpetual call and response with a competitor seeking sensitive information, regulatory delay, or both is counter-productive and costly for all parties involved. Congress adopted the Administrative Procedure Act (“APA”) to stop precisely this kind of behavior. Congress adopted the APA to ensure “administrative policies affecting individual rights and obligations be promulgated pursuant to certain stated procedures so as to avoid the inherently arbitrary nature of unpublished ad hoc determinations.”²⁰ DPA Mac has amply demonstrated compliance with the Commission’s rules. Placing DPA Mac’s application on public notice without delay will advance the public interest in transparency and fairness.

¹⁹ 47 C.F.R. § 73.3566(a).

²⁰ *Morton v. Ruiz*, 415 U.S. 199, 232 (1974).

III. THE APPLICATION PROCESS IS NOT AN EXCUSE FOR SHORTWAVE TO OBTAIN COMMERCIALY SENSITIVE INFORMATION FROM A COMPETITOR.

As previously discussed, DPA Mac has tested and evaluated its proposed service through the experimental operations of 3DB Communication Inc. (“3DB”).²¹ Positive results from 3DB’s tests demonstrated the proposed service’s technical viability and prompted DPA Mac to file an application for a commercial license of the technology 3DB developed,²² precisely as 3DB had suggested would occur.²³

As shown in their numerous filings with the Commission, both DPA Mac and 3DB have provided the FCC with extensive evidence of their operations. 3DB has successfully transmitted signals from its licensed location in the United States to locations in London, Frankfurt, and Tokyo. At those locations, 3DB relied on a basic, off-the-shelf antenna as well as a commonplace DRM receiver that can be purchased by anyone for less than US\$500 to receive and decode those signals.²⁴ The Commission’s rules do not require 3DB or DPA Mac to disclose detailed schematics and performance criteria for the benefit of a technical rival such as Shortwave. DPA Mac has provided the information required by the Commission’s rules; therefore, placing DPA Mac’s application on public notice will allow for a timely, transparent, merits-based review of the company’s application.

²¹ See DPA Mac LLC Public Interest Statement and Waiver Request, ECFS Inbox 73.702, at 3 (Dec. 28, 2020) (“DPA Mac Public Interest Statement”); see also Call Sign WI2XXG.

²² DPA Mac Public Interest Statement at 4.

²³ See ELS File No. 0281-EX-CR-2019, Ex. 1, App. A at 4 (“3DB or a successor company will seek an international broadcast service license for use of the HF spectrum once its market trial and technical analyses are complete.”).

²⁴ See Tecsun Radios Australia, Q-3061 DRM Shortwave Radio, *available at* <https://bit.ly/3iKZO6a> (last visited July 26, 2021) (showing the list price for the receiver used by 3DB as AU\$500, which is approximately US\$367 at today’s exchange rate).

IV. CONCLUSION

Shortwave's Second Informal Objection fails to raise any issues that warrant further delay in placing DPA Mac's application on public notice. Shortwave not only rehashes previously addressed arguments, but also twists the meaning of the Commission's rules to suggest that the FCC lacks discretion to process applications in a timely, equitable manner. Pursuant to its experimental authorization, 3DB has successfully received DRM transmissions in London, Frankfurt, and Tokyo using commercial, off-the-shelf equipment, and these technical innovations form the basis of DPA Mac's application for a commercial license.

Allowing an application to receive public scrutiny represents the beginning, not the end, of administrative review. DPA Mac looks forward to public review of its application and to working with the Commission to resolve any questions the FCC or the public may have.

Respectfully Submitted,

/s/ Trey Hanbury

Trey Hanbury
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20004
(202) 637-5534
tre.hanbury@hoganlovells.com

July 27, 2021

Counsel to DPA Mac LLC