



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

August 24, 2020

In Reply Refer to:
1800B3-DB

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In re: WJFP, Fort Pierce, FL
Facility ID No. 5488
File No. 0000098418

W296AW, Mangonia Park, FL
Facility ID No. 82621

W278CN, Eatonville, FL
Facility ID No. 146555

W260CL, Cocoa, FL
Facility ID No. 146519

W234BI, Cocoa, FL
Facility ID No. 156428

Renewal of License
Informal Objection

Counsel and Objector:

We have before us the referenced application (Application) filed by Black Media Works, Inc. (BMW) for the renewal of licenses for FM translator stations W296AW, W278CN, W260CL, and W234BI.¹ Also before us is an Informal Objection (Objection) filed against the Application by Triangle

¹ See File No. 0000098418 (filed Jan. 21, 2020) (Application). The Application amended the initial renewal applications for the translator stations, which BMW filed on September 20, 2019. File No. 0000081802 (filed Sept. 20, 2019). BMW is the licensee of FM translator stations W296AW, Mangonia Park, FL; W278CN, Eatonville, FL; W260CL, Cocoa, FL; and W234BI, Cocoa, FL.

Access Broadcasting, Inc. (Triangle) and related responsive pleadings.² For the reasons set forth below, we deny the Objection and grant the Application.

Background. BMW filed the initial renewal application on September 20, 2019,³ and filed the Application which amended the initial renewal application on January 21, 2020.⁴

In its Objection, Triangle asserts that the Application violates section 74.1232(b) of the Commission's Rules (Rules) because 76 percent of station W234BI's service area is common with the areas served by station W260CL and another station, W264AS (Facility ID No. 144128), owned by National Christian Network.⁵ Triangle maintains that all three translator stations rebroadcast the signal of WWBC(AM) but Triangle is not aware that a technical need has ever been demonstrated to justify what it asserts are same-area translators.⁶ Triangle argues that BMW should be held accountable for this alleged failure and that the W234BI license should be allowed to expire.⁷ Alternatively, Triangle states that BMW could amend its Application to demonstrate a technical need for W234BI, withdraw its renewal application for W260CL, or change the primary stations of the translators such that W234BI would be licensable with less than 50 percent of its service area common to other stations rebroadcasting the same programming.⁸ As a procedural matter, Triangle argues that the Application was tendered without payment of the appropriate filing fees for W278CN and W296AW and that the Application should not be processed until such fees have been paid.⁹

In its Opposition, BMW contends that the Objection is time-barred as the stations at issue have been licensed for three years.¹⁰ BMW also states that Triangle is incorrect about the overlap analysis and provides no quantitative figures supporting its contention.¹¹ BMW claims that W260CL overlaps

² Informal Objection, Triangle Access Broadcasting, Inc. (filed Jan. 3, 2020); Opposition to Informal Objection, Black Media Works, Inc. (filed Jan. 17, 2020) (Opposition); Reply to Opposition, Triangle Access Broadcasting, Inc. (filed Jan. 17, 2020) (Reply); and Supplement, Black Media Works, Inc. (Jan. 24, 2020) (Supplement). Although the Commission's rules do not provide for the filing of supplements to oppositions, we will consider the January 24, 2020 supplement. 47 CFR § 73.3587 ("Before FCC action on any application for an instrument of authorization, any person may file informal objections to the grant. Such objections may be submitted in letter form (without extra copies) and shall be signed. The limitations on pleadings and time for filing pleadings provided for in § 1.45 of the rules shall not be applicable to any objections duly filed under this section.").

³ See Application. The staff accepted the Application for filing on September 20, 2019. See *Broadcast Applications*, Public Notice, Report No. PN-1-190924-01 (rel. Sept. 24, 2019).

⁴ See Application (containing a certification of compliance with section 73.3555 of the Commission's Rules). See *Broadcast Applications*, Public Notice, Report No. PN-1-200122-01 (rel. Jan. 22, 2020) (acknowledging receipt of the Application); 47 CFR § 73.3555 (containing rules governing local radio ownership, local television multiple ownership, radio-television cross-ownership, newspaper-broadcast cross-ownership, and national television multiple ownership).

⁵ Objection at 1. See also 47 CFR § 74.1232(b) ("More than one FM translator may be licensed to the same applicant, whether or not such translators serve substantially the same area, upon an appropriate showing of technical need for such stations.").

⁶ Objection at 1.

⁷ *Id.* at 2.

⁸ *Id.* at 2.

⁹ *Id.* at 2.

¹⁰ Opposition at 2.

¹¹ *Id.* at 2.

W234BI by less than 50 percent and W264AS overlaps W234BI by 32 percent. Therefore, BMW asserts that the overlap areas are in compliance with section 74.1234(b) of the Rules.¹² Regarding the application fees, BMW states that it submitted the appropriate fees for stations W278CN and W296AW rather than contest the issue.¹³

In its Reply, Triangle argues that BMW certified during the preceding license term that it did not have same-area translators, and therefore, Triangle should be allowed to object to the Application.¹⁴ Additionally, Triangle argues that BMW relied on overlaps between each pair of translators when evaluating for same-area translators, whereas Triangle included overlaps between all translators transmitting the same programming.¹⁵ Triangle argues that section 74.1232(b) of the Rules does not restrict an analysis to just two translators when justifying the need for a same-area translator.¹⁶ Rather, Triangle claims that the goal of section 74.1232(b) is to consider and account for all sources of the same programming.¹⁷ Regarding the payment of filing fees, Triangle states that BMW has removed concerns over fees being paid for stations W260CL and W234BI but asserts for the first time that BMW has not demonstrated that it paid such fees for stations W278CN or W296AW.¹⁸ Triangle asserts that the Media Bureau (Bureau) should either withhold grant of the renewal applications of stations W278CN and W296AW until fees have been paid, or it should dismiss the Applications.¹⁹ Triangle maintains that the same-area translator license for station W234BI also should not be renewed.²⁰

In its Supplement, BMW states that the overlap between stations W260CL and W234BI is in a different area than the overlap between stations W264AS and W234BI.²¹ BMW argues that these three translators do not overlap substantially the same area nor do they all overlap any common area.²² BMW further argues that Triangle misconstrues the rule when stating, without supporting case law, that there can be more than two translators involved in an overlap area.²³ BMW asks the Bureau to uphold its previous determination that the overlap areas comply with section 74.1232(b) of the Rules.²⁴ Regarding the outstanding application fees, BMW states again that it submitted the appropriate fees rather than contest the issue.²⁵

¹² *Id.* at 1-2 and Exhibit 1 (displaying “Multiple Translator Service Contour Showing” (Showing) included with BMW application for W260CL filed on January 29, 2016). According to BMW, Bureau staff reviewed the Showing in 2016 and issued a permit for W260CL on April 25, 2016. Opposition at 2.

¹³ *Id.* at 2.

¹⁴ Reply at 2.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 3.

²¹ Supplement at 1.

²² *Id.* at 1-2 (arguing that Triangle concedes the W260CL-W234BI overlap and the W264AS-W234BI overlap are less than 50 percent).

²³ *Id.* at 2.

²⁴ *Id.* at 2.

²⁵ *Id.* at 2; Exhibit 2 (showing copies of payment receipts).

Discussion. Section 309(d)(1) of the Communications Act of 1934, as amended, authorizes any party in interest to file a petition to deny a license renewal application and any other application to which section 309(b) of the Act applies as long as the petition “contain[s] specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with [the public interest].”²⁶ Informal objections, like petitions to deny, also must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.²⁷

In this instance, we find that Triangle’s Objection is not time-barred, as BMW asserts, because it was filed before the Commission acted on the Application.²⁸ However, for the reasons discussed below, we deny the Objection.

In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.²⁹ Section 309(k)(1) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission’s Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.³⁰ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”³¹

Triangle’s primary objection to the instant Application is that BMW failed to include a showing of technical need, in violation of section 74.1232(b) of the Rules, which requires such a showing for multiple translators licensed to the same applicant and serving substantially the same area.³² Section 74.1232(b) is a “spectrum efficiency rule based on our experience that parties rarely need such multiple translators.”³³ In relevant part, it provides that “[m]ore than one FM translator may be licensed to the same applicant, whether or not such translators serve substantially the same area, upon an appropriate showing of technical need for such additional stations.”³⁴ Contrary to Triangle’s argument, the Commission has interpreted section 74.1232(b) to require a technical need showing only when the same

²⁶ 47 U.S.C. § 309(d)(1).

²⁷ See 47 U.S.C. § 309(d)(2); see also, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993) (*WWOR-TV, Inc. Order*); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (*Area Christian Television*) (informal objections, like petitions to deny, must also contain adequate and specific factual allegations sufficient to warrant the relief requested).

²⁸ 47 CFR § 73.3587 (providing that informal objections may be filed any time “before Commission action on any application for an instrument of authorization”) (emphasis added).

²⁹ 47 U.S.C. § 309(k).

³⁰ 47 U.S.C. § 309(k)(1).

³¹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

³² Objection at 1, citing 47 CFR § 74.1232(b).

³³ *Creation of a Low Power Radio Service*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3392, para. 59 (2012).

³⁴ 47 CFR § 74.1232(b).

party proposes to own more than one translator rebroadcasting the same signal and serving substantially the same area.³⁵ “Substantially the same area” is generally applied by Bureau engineering staff as a more than 50 percent overlap in the subject translators’ 60 dBμ signal contours.³⁶ In this instance, the 60 dBμ contours of BMW’s licensed translator stations W260CL and W234BI, which rebroadcast the same programming, overlap by less than 50 percent.³⁷ A technical need showing is not required here because the translators do not provide the same programming to “substantially the same area.” We therefore reject the arguments raised in Triangle’s Objection concerning this issue. Moreover, because we have confirmed that BMW has paid the appropriate filing fees for stations W278CN and W296AW, we reject Triangle’s assertion that we should withhold grant of the Application due to unpaid application filing fees.

Based on our review of the Application and the related pleadings, we find that BMW has met the standard set forth in section 309(k) of the Act with respect to the stations at issue during the license term under review. Accordingly, we grant the Application.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the Informal Objection filed by Triangle Access Broadcasting, Inc. on January 3, 2020, IS DENIED.

IT IS FURTHER ORDERED that the Application filed by Black Media Works, Inc. for the license renewal of FM translator stations W296AW, Mangonia Park, Florida, W278CN, Eatonville, Florida, W260CL, Cocoa, Florida, and W234BI, Cocoa, Florida IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

³⁵ *FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7222-23 (1990) (*Translator Order*). For purposes of this rule, “technical need” refers to the “quality of the signal received and not to the programming content, format, or transmission needs of an area.” Note to 47 CFR § 74.1232(b). *See also FM Translator and Booster Stations*, Report and Order, 20 R.R.2d 1538, para. 5 (1970) (stating that a showing of technical need is required only where the same programming would be provided to substantially the same area or “where the question of need is raised by a party in interest who objects to grant of the application and makes a *prima facie* showing of the lack of need for the proposed new FM translator”). Here, Triangle relies on its claim that the FM translators at issue will provide the same programming to substantially the same area. It does not contend that it made a *prima facie* showing of a lack of need for the FM translators at issue.

³⁶ *See Creation of Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15419, n.106 (2012) (clarifying that the technical need rule is triggered by applications proposing “substantial contour overlap”).

³⁷ *See Application*.