



Federal Communications Commission
Washington, D.C. 20554

April 6, 2021

DA 21-392
In Reply Refer to:
1800B3-AR
Released April 6, 2021

Educational Media Foundation
c/o Mary N. O'Connor
Wilkinson Barker Knauer, LLP
1800 N Street, N.W., Suite 800N
Washington, D.C. 20036
MOCONNOR@WBKLAW.COM

Steven L. White
Director, Triangle Access Broadcasting, Inc.
7813 Highlandview Cir.
Raleigh, NC 27613-4109
steven@triaccess.org

In re: Educational Media Foundation
W241AI, Gorgas, AL
Facility ID No. 156276
Application File No. 0000088941

W271BN, Birmingham, AL
Facility Id No. 148321
Application File No. 0000088941

W293CM, Graysville, AL
Facility Id No. 156380
Application File No. 0000088941

**Application for Renewal of License
Informal Objection**

Dear Applicant, Counsel, and Objector:

We have before us the referenced application for renewal of license (Application) filed by Educational Media Foundation (EMF) for FM translator stations W241AI, Gorgas, Alabama; W271BN, Birmingham, Alabama; and W293CM, Graysville, Alabama. Also before us is an Informal Objection (Objection) filed by Triangle Access Broadcasting, Inc. (Triangle), which only objects to the renewal of the license of station W293CM (Translator).¹ For the reasons set forth below, we deny the Objection and grant the Application.

¹ Pleading File No. 0000107516 (filed Mar. 9, 2020). Triangle does not object to grant of the license renewals of stations W241AI or W271BN. See Objection at 1. EMF filed an Opposition on April 20, 2020. Pleading File No. 0000112387 (filed Apr. 20, 2020) (Opposition).

Background. The Translator is licensed to rebroadcast WERC-FM, Hoover, Alabama, which is licensed to IHM Licenses, LLC (IHM).² EMF timely filed the Application on November 12, 2019.

In the Objection, Triangle alleges that EMF has not paid required application and regulatory fees for the Translator.³ Triangle also alleges that the Translator is airing commercial advertisements, which are not permitted under noncommercial educational (NCE) authorizations.⁴ Specifically, Triangle alleges that the Translator retransmits WERC-FM, a commercial station owned by IHM.⁵ Triangle argues that because the Translator is a commercial translator, EMF improperly claimed an NCE exemption on prior applications and has not paid application fees since 2014.⁶ Triangle also maintains that EMF does not qualify for application or regulatory fee exemptions based on its nonprofit status because it uses the Translator for a commercial purpose contrary to the religious, charitable, or educational mandates of section 501(c)(3) of the Internal Revenue Code, and contrary to its Articles of Incorporation.⁷ Accordingly, Triangle argues the Commission should allow the Translator's license to expire, or renew the license with appropriate conditions.⁸

In the Opposition, EMF argues that the Application should be granted because Triangle raises no issues related to the public interest standard for renewal.⁹ EMF contends that it paid the required application fees and is exempt from paying regulatory fees because it is a 501(c)(3) nonprofit entity.¹⁰ EMF also counters that any allegations regarding prior application fees are irrelevant and further, neither Triangle, nor any other entity, ever filed a petition to deny or petition for reconsideration against past applications prior to the Commission's final action.¹¹ Lastly, EMF maintains that while prior applications do not provide grounds for action against this application, it is willing to pay any previously-required application fees.¹²

Discussion. Under section 309(k) of the Communications Act of 1934, as amended (Act), the Commission shall grant the renewal application 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 (Rules); and (3) there have been no other

² When the Application was filed, the name of the licensee of Station WERC-FM was Capstar TX, LLC, which subsequently changed its name to IHM Licenses, LLC.

³ Objection at 1.

⁴ *Id.*

⁵ *Id.* at 1-2.

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ Opposition at 1.

¹⁰ *Id.* at 1-2.

¹¹ *Id.* at 2-3.

¹² *Id.* at 3.

violations which, taken together, constitute a pattern of abuse.¹³ 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.”¹⁴

Informal objections to license renewal applications, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with section 309(k) of the Act.¹⁵ Informal objections must also contain adequate and specific factual allegations sufficient to warrant the relief requested.¹⁶

Application Fees. Section 8 of the Act and section 1.1104 of the Rules require that the Commission assess and collect application fees to recover the costs of processing applications for media services.¹⁷ EMF has not claimed any exemption from the application fees and paid the required application fees for the Translator when it filed the Application. Accordingly, EMF has complied with the Rules regarding application fees for this Application.

Regulatory Fees. Section 9 of the Act and section 1.1153 of the Rules require the Commission to assess and collect regulatory fees to recover the costs of certain regulatory activities.¹⁸ The Rules provide certain exceptions to the regulatory fee requirement. Section 1.1162(e) of the Rules exempts licensees of NCE broadcast stations from the requirement to pay regulatory fee.¹⁹

To determine whether a translator is classified as an NCE station or not, we look to whether its primary station is NCE or commercial.²⁰ The Application indicates that the Translator rebroadcasts WERC-FM, which is a commercial station owned by a commercial entity. We find that the Translator operates as a commercial translator and is not entitled to claim the NCE exemption. However, section 1.1162(c) of the Rules provides a separate exemption based on the nonprofit status of the licensee rather than the station.²¹ That exemption is available to those licensees who have established their nonprofit

¹³ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

¹⁴ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

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

¹⁶ *See Area Christian*, 60 R.R.2d at 864, para. 6; *WFBM, Inc.*, Memorandum Opinion and Order, 47 FCC 2d 1267, 1268, para. 3 (1974).

¹⁷ 47 U.S.C. 158; 47 CFR § 1.1104(4)(c) (requiring FM translators to pay a \$70.00 fee for license renewal applications).

¹⁸ 47 U.S.C. § 159(a); 47 CFR §§ 1.1151-1.1167.

¹⁹ 47 U.S.C. § 159; 47 CFR § 1.1162(c).

²⁰ 47 CFR § 74.1201(b), (c).

²¹ 47 CFR § 1.1162(c).

status under section 501 of the Internal Revenue Code or to those licensees with certification as a nonprofit entity by state or other governmental authority.²² This exemption is predicated solely on the entity's status as a qualified nonprofit entity.²³ We have confirmed that EMF is recognized as a nonprofit organization under section 501 of the Internal Revenue Code and was recognized as such at the time it filed the Application.²⁴ Because nonprofit entities are exempt from regulatory fees,²⁵ we conclude that EMF is not required to pay regulatory fees for the Translator.

We further reject Triangle's argument that EMF's operation of a commercial translator might affect its status as a nonprofit entity with the IRS or violate its Articles of Incorporation. The Commission generally defers to the IRS on whether a licensee is complying with the Internal Revenue Code. The issue of whether EMF's ownership of a commercial translator violates its Articles of Incorporation is a matter of state law, and the Commission will not consider issues of a licensee's compliance with the requirement of state corporate law unless a challenge to an applicant's corporate status has been made in state court.²⁶

Finally, Triangle's notes that the Translator airs commercial advertising.²⁷ As discussed above, the Translator is a commercial station and thus the section 399b prohibition against advertising—which applies only to noncommercial stations—is inapplicable here.

Renewal of License. We have reviewed the Application in accordance with section 309(k) of the Act,²⁸ and we find that the translators served the public interest, convenience, and necessity during the subject license term. Accordingly, we will 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 March 9, 2020, **IS DENIED**.

²² 47 CFR § 1.1162(c) (No regulatory fee shall be required for “[a]pplicants and permittees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as: “an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. 501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority.”).

²³ 47 CFR § 1.1162(c)(1) (“Any permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee *based upon its status as a nonprofit entity*, as described above, shall file with the Secretary of the Commission (Attn: Managing Director) written documentation establishing the basis for its exemption”) (emphasis added); *Delmarva Educational Association*, Letter Order, DA 21-288, 2021 WL 926345, at *3 (MB Mar. 11, 2021).

²⁴ See IRS, Charities and Non-Profits, <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search> (last visited Mar. 30, 2021) (displaying tax exempt status for “Educational Media Foundation”).

²⁵ 47 CFR § 1.1162(c).

²⁶ See *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17855, para. 10 (1997) (citing *North American Broadcasting Co., Inc.*, 15 FCC 2d 979 (1969)).

²⁷ Objection at 1. See 47 U.S.C. § 399b.

²⁸ 47 U.S.C. § 309(k)(1).

IT IS FURTHER ORDERED that, Educational Media Foundation's application for renewal of licenses of FM translators W241AI, Gorgas, Alabama; W271BN, Birmingham, Alabama; and W293CM, Graysville, Alabama (File No. 0000088941), **IS GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau