



Federal Communications Commission
Washington, D.C. 20554

March 30, 2021

In Reply Refer to: 1800B3-HOD

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Shawn Craft
The Marion Education Exchange
1366 Montego Drive
Marion, OH 43302

In re: **The Marion Education Exchange**
WWGH-LP, Marion, Ohio
Facility ID No. 193826
File No. 0000115702

Letter of Inquiry

Dear Licensee:

This letter concerns the The Marion Education Exchange's (MEE) response (Second LOI Response)¹ to a letter of inquiry dated February 26, 2021 (Second LOI), which sought additional information regarding the composition of MEE's board.² As discussed below, we request that MEE provide additional information, and clarify certain statements made in the Second LOI Response.

Background. On May 9, 2019, MEE and Marion Midget Football (MMF)—the former licensee of WWGH-LP, Marion, Ohio (Station)—filed an application for Commission consent to the *pro forma* assignment of the Station's license from MMF to MEE (Assignment Application).³ Therein, MEE indicated that “[t]here are no changes in the board members, only the name of the licensee.” MEE listed Patti Worcester (Worcester), Martha Maniaci (Maniaci), Mary Ann Stolarczyk (Stolarczyk), Betty Compton (Compton), and Marge Hazalett (Hazalett) as its board members, and indicated each had 20 percent voting rights.⁴ We granted the unopposed Assignment Application on May 21, 2019.⁵

On May 28, 2019, MEE filed a pro forma transfer of control application (Transfer Application).⁶ MEE filed the Transfer Application because “Patti Worcester has decided to retire

¹ Response of The Marion Education Exchange, File No. 0000115702 (rec'd Mar. 10, 2021).

² Letter from Albert Shuldiner, Chief, Audio Division, to Shawn Craft, The Marion Education Exchange, File No. 0000115702 (dated Feb. 26, 2020).

³ File No. BALL-20190509AAH (Assignment Application).

⁴ *Id.*, Exh. 12.

⁵ *Broadcast Actions*, Public Notice, Report No. 49494, at 4 (MB May 24, 2019).

⁶ File No. BTCL-20190528AAN.

and voluntarily transfers her position to Shawn Craft.”⁷ MEE indicated that “the paperwork is filed.” We granted the unopposed Transfer Application on July 11, 2019.⁸

On June 6, 2020, MEE filed the Renewal Application. Spencer Phelps (Phelps) then filed an Informal Objection. Therein, Phelps alleged that MEE had misrepresented its board composition to the FCC in the Assignment Application,⁹ and that MEE had made false statements in the Transfer Application.¹⁰

On December 8, 2020, we sent a letter of inquiry (First LOI) to MEE.¹¹ The First LOI requested that MEE provide a narrative statement that listed all individuals that had served on its board, and indicated the dates on which each listed individual had served on the MEE board. We also directed MEE to provide a list of all individuals who had served as officers or directors of MEE, indicate the specific position(s) held by each individual, and the dates on which that person had held the position(s). MEE also was directed to submit copies of all corporate materials related to its board composition, or the appointment, resignation or termination of MEE officers or directors. Finally, MEE was instructed to provide a supporting affidavit or declaration under penalty of perjury.

MEE submitted a response to the First LOI (First LOI Response) on February 16, 2021.¹² MEE stated that its board consisted of Shawn Craft (Craft), Linda Sims (Sims), Glenn Coble (Coble), and Terry Tackett (Tackett), each of whom had sat on the MEE board from “2019-Present.” MEE indicated that Shawn Craft also had been its President from “2019-Present.” MEE stated that “[s]everal of the board members that left [MMF] in 2019 became ill and have since passed away such as . . . Maniaci, and . . . Hazalett.” MEE explained that “there [sic] positions were filled with members who knew the radio station and have had its best interests and that of the community at heart.” MEE did not include any documentation, or a supporting affidavit, or declaration.

Phelps submitted a reply (First LOI Reply), which argued MEE had not submitted all of the information that we requested in the First LOI.¹³ He also repeated his allegations that MEE has made misrepresentations to the Commission, and asserted that MEE had made additional false statements in the First LOI Response.

On February 26, 2021, we sent the Second LOI. Therein, we directed MEE to provide information missing from the First LOI Response, to provide documentation, and to provide a supporting affidavit or declaration. Specifically, we directed MEE to identify all individuals who

⁷ *Id.*, Exh. 5. According to the information provided to the Commission in the Assignment Application, Worcester held only 20 percent voting rights in MEE. Accordingly, even after Worcester retired from the board, control of the Station was still held by individuals previously approved by the FCC, and no transfer of control application was required.

⁸ *Broadcast Actions*, Public Notice, Report No. 49592, at 1 (MB July 16, 2019).

⁹ Informal Objection of Spencer Phelps, Pleading File No. 0000115702, at 4 (filed July 22, 2020).

¹⁰ *Id.*

¹¹ Letter from Albert Shuldiner, Chief, Audio Division, to Shawn Craft, Marion Education Exchange, File No. 0000115702 (dated Dec.8, 2020).

¹² Petition for Reconsideration of The Marion Education Exchange, File No. BLL-20140616AEW (rec’d Feb. 16, 2021). While this pleading was captioned a petition for reconsideration, MEE also intended it to serve as its response to the First LOI.

¹³ Informal Objection of Spencer Phelps, File No. BLL-20140616AEW (rec’d Feb. 17, 2021).

had served as officers and directors of MEE and state the position(s) each person held, and the dates on which the person held the position(s). We also required MEE to submit copies of all corporate materials that related to or included information regarding MEE's board composition, or the appointment, resignation, or termination of MEE officers or directors. Finally, we directed MEE to provide additional information related to the statement made in the Assignment Application that "[t]here are no changes in the board members, only the name of the licensee."¹⁴ We noted that, based on the information provided in the First LOI Response, it appeared that the information provided in the Assignment Application regarding MEE's board composition was false.

MEE submitted a response to the Second LOI on March 10, 2021. Phelps submitted a reply (Second LOI Reply) on March 15, 2021.¹⁵

Request for Further Information. We have reviewed the Second LOI Response and Second LOI Reply. We conclude that MEE still has not provided some of the information requested in the First and Second LOIs. Further, some of MEE's statements require clarification. Accordingly, we hereby direct MEE to provide the information and documentation discussed below within fifteen (15) calendar days (*i.e.*, no later than **April 14, 2021**).

- *MEE Board.* MEE shall list each individual who has served on, or currently serves on the MEE board. MEE shall provide the date (including the month, day, and year) on which each such individual became a member of the MEE board, and, where applicable, the date (including the month, day, and year) on which each such individual resigned or was otherwise removed from the MEE board. MEE shall provide this information for the time period beginning April 29, 2019,¹⁶ and ending on the present date.

MEE shall submit a narrative statement indicating how and when its initial board was appointed, elected or otherwise installed, and how and when any changes to the MEE board were effected. MEE should provide copies of any corporate governance materials (*e.g.*, amended articles of incorporation or bylaws) that establish the process governing appointment, election, or installation of MEE board members. MEE should also provide copies of any meeting minutes, emails or other documentation related to the formation of its initial board, and/or any subsequent changes to the MEE board.

- *MEE Officers.* MEE shall list each person who has served, or currently serves as an MEE officer. MEE shall provide the date (including month, day, and year) on which each such individual became an officer of MEE, and, where applicable, the date (including month, day, and year) on which each such individual resigned or was otherwise removed from office. MEE shall provide this information for the time period beginning April 29, 2019, and ending on the present date.¹⁷

¹⁴ File No. BALL-20190509AAH.

¹⁵ Response of Spencer Phelps, File No. 0000115702 (rec'd Mar. 11, 2021).

¹⁶ In its earlier responses, MEE has not stated the exact date of its incorporation. However, it did submit a copy of its Initial Articles of Incorporation, which are dated April 29, 2019, and were filed with the State of Ohio. Thus, we focus on the time period between April 29, 2019, and the present.

¹⁷ In responding to this particular request for information about MEE's officers, MEE shall, among other things, address whether Tammy Brammer or Scott Spears are or were officers of MEE. If either was or is an officer of MEE, MEE shall provide the information noted herein. MEE also shall ensure that its

In addition, MEE shall indicate whether—and on what dates (including month, day, and year)—any MEE officer was also serving as an officer of MMF. If a person serves or served as both an officer of MEE and an officer of MMF, MEE shall provide that person’s name, and indicate the specific offices held at MEE and MMF, and the dates (including month, day, and year) on which the person has held or held each office.

MEE shall also explain how its officers are appointed, elected or otherwise installed, and how changes in MEE officers are effected. MEE should provide copies of any corporate governance materials (*e.g.*, amended articles of incorporation or bylaws) that establish the processes used in appointing, electing or installing officers. MEE should also provide any meeting minutes, emails or other documentation related to either the initial appointment, election, or installation of its officers, or any subsequent changes its officers.

- *May 29, 2019, Meeting.*
 - *Participants.* MEE shall provide a narrative statement that identifies all persons who participated in the May 29, 2019, meeting mentioned in the Second LOI Response. We note that MEE has stated Craft, Sims, Coble, and Tackett were present.

Discussion and Outcome. MEE has stated that, on May 29, 2019, a meeting was held by Craft, Sims, Coble, and Tackett. MEE reports that, “[d]uring this meeting[,] looking at the health, and age of board members who were coming over from [MMF][,] it was decided that [] Craft would serve as President, [] Sims would serve as secretary, and [] Coble and [] Tackett would serve as board members to give the station full oversight.”

MEE later states: “As the month went on the health conditions of the board members were looked at by the incorporators, and the past board members themselves.” According to MEE, one of the past board members was “facing dementia,” one was “facing recovery from a heart attack,” and one was facing a recurrence of cancer. MEE indicates that, “[w]hen the May 29th board meeting was held all of those concerns were addressd, and that is how the new board was formed.”

If the May 29, 2019, meeting involved only Craft, Sims, Coble and Tackett, MEE must provide a narrative statement explaining how the meeting it describes constituted an MEE board meeting. The narrative statement also should address whether the decision to replace MEE board members, and/or the decision to make Craft and Sims MEE officers was voted upon by those holding voting rights in MEE on that date. Finally, the narrative statement should explain why the Transfer Application was filed on May 28, 2019, if—as MEE states in its Second LOI Response—Worcester’s successor on the MEE board was not chosen until May 29, 2019.

MEE indicates that “[a]ll of the board members listed on May 9th were in favor of the transfer” and notes that “[t]hey stayed in touch with the station as long as their health

response indicates the exact date (including month, day, and year) on which Shawn Craft became President of MEE in May 2019.

permitted.” MEE states that “[t]hose board members” were Worcester, Maniaci, Stolarzyk, and Hazalett. MEE is directed to clarify whether “all of the board members” refers to MMF board members or MEE board members. MEE is also directed to explain why Compton—who is listed as an MMF and MEE board member in the Assignment Application—is not included in its list of “[t]hose board members.”¹⁸

- *Lack of Documentation.* MEE must explain why it can provide no meeting minutes, emails or other documentation to support the statements made in the First and Second LOI Responses. Among other things, MEE must explain why the Transfer Application indicated that paperwork regarding the transfer of Worcester’s board seat to Craft had been filed, but MEE has not provided a copy of such paperwork to the Commission. MEE must also explain why there are no meeting minutes and other papers given that non-profit corporations are required by the State of Ohio to “keep correct and complete books and records of account, together with minutes of the proceedings of its incorporators, members, directors, and committees of the directors or members.”¹⁹
- *Transfer of Control of MEE Board.* If a majority of the board members of MEE were indeed replaced on May 29, 2019, MEE shall submit a narrative statement explaining why no *pro forma* transfer of control application was filed with the Commission.²⁰
- *Supporting Affidavit or Declaration.* MEE shall provide an affidavit or declaration made under penalty of perjury, signed and dated by an authorized representative of MEE, with personal knowledge of the information and materials being submitted to the FCC. The affidavit or declaration must verify the truth and accuracy of the information provided to the FCC, and must state that all responsive information within MEE’s possession, custody, control or knowledge has been provided to the FCC.²¹

We remind MEE to submit its response to this third letter of inquiry to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, and serve a copy of the response by email on Tom Hutton, tom.hutton@fcc.gov, Heather Dixon, heather.dixon@fcc.gov, and Spencer Phelps spencer.phelps@yahoo.com. We advise Mr. Phelps that he may reply to MEE’s response to this letter within fifteen (15) calendar days from the date he is served by email with the response.

In addition, please note that should MEE fail to respond (or fail to fully respond) within the time period specified, we will dismiss its application to renew the Station’s license pursuant to

¹⁸ We note that, among other things, MEE shall indicate whether Compton was an MEE board member on May 29, 2019. MEE indicated in the Second LOI Response that “[a]ll of the board members listed on May 9th were in favor of the transfer” and stated that “[t]hese board members were [] Worcester, [] Maniaci, [] Stolarzyk, & [] Hazalett.” MEE does not mention Compton. However, Compton was listed as an MEE board member in the Assignment Application.

¹⁹ Ohio Rev. Code, § 1702.15.

²⁰ We note that section 73.865(d) of the Commission’s rules requires that “[s]udden majority board changes shall be submitted as a pro forma ownership change within 30 days of the change or final event that caused the LPFM permittee or licensee to exceed the 50 percent threshold.” 47 CFR § 73.865(d).

²¹ Additional affidavits and declarations may be required if the authorized representative of MEE is relying on the personal knowledge of another individual, rather than his or her own knowledge. This is explained in greater detail in the First LOI.

Section 73.3568 of the Rules.²² We remind MEE that a failure to respond (or failure to fully respond or failure to timely respond) to this third request for information also may subject it to financial penalties.²³ We remind MEE and Phelps that this is a restricted proceeding, and thus that *ex parte* presentations are prohibited.²⁴ Finally, we note that, while MEE is not required to engage the assistance of counsel, given the difficulty MEE has experienced in responding fully to our letters of inquiry, such action may be advisable.

Sincerely,

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: Spencer Phelps, by email to spencer.phelps@yahoo.com

²² 47 CFR § 73.3568.

²³ See 47 CFR § 1.80 (specifying a base forfeiture of \$4,000 for failure to respond to Commission communications).

²⁴ *Id.* § 1.1200 *et seq.* Both MEE and Phelps were previously admonished for violating the Commission's *ex parte* rules. Despite these admonishments, an MEE employee made further written *ex parte* presentations to a Commission employee. We hereby notify MEE that, if it, its board members, officers or employees make additional prohibited *ex parte* presentations, we will refer all of the prohibited *ex parte* presentations to the Office of the General Counsel. See *id.* § 1.1212.

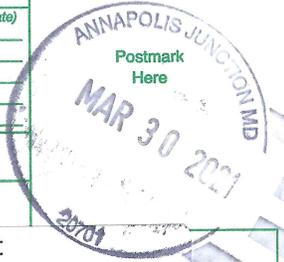
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