



Federal Communications Commission
Washington, D.C. 20554

May 28, 2021

In Reply Refer to:
1800B3-SDW

Educational Media Foundation
c/o Mary O'Connor, Esq.
Wilkinson Barker Knauer, LLP
1800 M Street, N.W., Suite 800N
Washington, DC 20036
Moconnor@wbklaw.com

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

In re: Educational Media Foundation

W224CD, Parma, OH (Lead)
Facility ID No. 142417
File No. 0000113368

W225AM, Toledo, Ohio
Facility ID No. 139036

W264BW, Norwood, Ohio
Facility ID No. 139210

W292CO, Middletown, Ohio
Facility ID No. 138872

W266CJ, Beachwood, Ohio
Facility ID No. 144180

W240CG, Webberville, MI (Lead)
Facility ID No. 148765
File No. 0000113365

W262BD, Dimondale, Michigan
Facility ID No. 148783

**Applications for Renewal of License
Informal Objection**

Dear Applicant, Counsel, and Objector:

We have before us the above-referenced applications for renewal of licenses (Applications) filed by Educational Media Foundation (EMF) for FM translator stations W225AM, Toledo, Ohio, W264BW, Norwood, Ohio, W292CO, Middletown, Ohio, W266CJ, Beachwood, Ohio, and W262BD, Dimondale, Michigan (Translators).¹ Also before us is an Informal Objection (Objection) filed by Triangle Access Broadcasting, Inc. (Triangle) and related pleadings.² For the reasons set forth below, we deny the Objection.

Background. W225AM is licensed to rebroadcast WSPD(AM), Toledo, Ohio, W264BW and W292CO are licensed to rebroadcast WEBN(FM), Cincinnati, Ohio, and W266CJ is licensed to rebroadcast WGAR(FM), Cleveland, Ohio. The primary stations, WSPD(AM), WEBN(FM) and WGAR(FM), are each licensed to IHM Licenses, LLC. (IHM). W262BD is licensed to rebroadcast WWSJ(AM), St. Johns, Michigan, which is licensed to Kingdom Builders of Larlen, LLC. (KBL). EMF timely filed the Applications on May 7, 2020.

In the Objection, Triangle alleges that EMF improperly submitted its Application for the Translators without paying regulatory fees, and that EMF has never paid required regulatory fees for the Translators.³ First, Triangle argues that EMF does not qualify for the regulatory fee exemptions available to licensees of noncommercial educational (NCE) stations because the Translators “have been operating as commercial stations.”⁴ Specifically, Triangle alleges that W262BD retransmits WWSJ(AM), a commercial station owned by a commercial entity, KBL.⁵ Triangle alleges that W225AM retransmits WSPD(AM), that W264BW and W292CO retransmit WEBN(FM), and that W266CJ retransmits WGAR(FM), which are all owned by Citicasters Licenses, Inc. (Citicasters), a commercial entity, and that the Translators retransmit commercial programming from these primary stations.⁶ Second, Triangle argues that EMF may not claim the nonprofit regulatory fee exemption because it uses the Translators for a commercial purpose contrary to the religious, charitable, or educational mandates of Section 501(c)(3)

¹ The lead renewal application for FM translator station W224CD includes FM translator stations W225AM, W264BW, W292CO, W266CJ, and other translator stations. Application File No. 0000113368 (filed May 7, 2020). The lead renewal application for FM translator station W240CG includes FM translator station W262BD and other translator stations. Application File No. 0000113365 (filed May 7, 2020).

² Triangle filed an identical Objection against the lead renewal applications for FM translator station W224CD and W240CD. Pleading File Nos. 0000121384 and 0000121385 (each filed Sept. 9, 2020). Triangle specifies, however, that its Objection is limited to the renewal of W225AM, W264BW, W292CO, W266CJ, and W240CD, and that it does not object to the renewal of other stations that are covered by the Applications. Triangle highlights that the lead renewal application for W224CD includes an incorrect call sign for W269BS (Facility ID 142423) but states that it does not object to the renewal of that station. EMF filed an identical Opposition to each of Triangle’s Objections. Pleading File Nos. 0000122873 and 0000122877 (each filed Sept. 29, 2020).

³ Objection at 3.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* Objection at 1-2. The Objection notes that WSPD(AM), WEBN(FM), and WGAR(FM) are licensed to Citicasters. Citicasters, however, has changed its name to IHM Licenses, LLC. Accordingly, the primary stations, WSPD(AM), WEBN(FM) and WGAR(FM), are each licensed to IHM Licenses, LLC.

of the Internal Revenue Code⁷ and contrary to its Articles of Incorporation.⁸ Triangle argues that the Bureau, therefore, cannot “rely on EMF’s nonprofit determination to classify it as a nonprofit organization.”⁹ Third, Triangle alleges that EMF’s “business relationship creates an attribution and control” that prevents EMF from claiming nonprofit status.¹⁰ Finally, Triangle argues that the Translators have aired prohibited promotional and political advertisements.¹¹ Accordingly, Triangle urges the Commission to allow the Translators’ licenses to expire, or alternatively, to renew the licenses only upon a showing from the Internal Revenue Service (IRS) that EMF’s activities are permissible, or a showing that EMF will operate noncommercially and forfeit its commercial earnings.¹²

In its Opposition, EMF counters that, pursuant to section 159(e)(1)(A) of the Communications Act of 1934, as amended (Act) and section 1.1162(c) of the Commission’s rules (Rules), it is exempt from paying regulatory fees because it is a qualified nonprofit, tax-exempt entity under section 501 of the Internal Revenue Code.¹³ EMF argues that it qualifies for the regulatory fee exemption regardless of whether its stations operate commercially or noncommercially.¹⁴ EMF further argues that “any violation of IRS regulations is not within” the Commission’s jurisdiction.¹⁵ EMF urges the Commission to deny the Objection and grant the Application.

Discussion. Under section 309(k) of the 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 violations which, taken together, constitute a pattern of abuse.¹⁶ 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.”¹⁷

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

⁷ *Id.* at 4 (citing 26 U.S.C § 501(c)(3)).

⁸ *Id.*, Exh. A (providing a copy of EMF’s Articles of Incorporation).

⁹ *Id.*

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² *Id.* at 6.

¹³ Opposition at 2 (citing 26 U.S.C § 159(e)(1)(A); 47 CFR § 1.1162(c)).

¹⁴ *Id.*

¹⁵ *Id.* at 3. EMF also argues that the Objection was filed “over three months after the due date for the filing of the Applications.” *Id.* at 2. Because informal objections may be filed at any time prior to grant of the subject application, we find no merit to EMF’s argument related to the timing of Triangle’s Objection. *See* 47 CFR § 73.3587.

¹⁶ 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).

¹⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

grant of the application would be *prima facie* inconsistent with section 309(k) of the Act.¹⁸ Informal objections must also contain adequate and specific factual allegations sufficient to warrant the relief requested.¹⁹

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.²⁰ 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.²¹ To determine whether a translator is classified as an NCE station or not, we look to whether its primary station is NCE or commercial.²² The Applications indicate that W225AM is licensed to rebroadcast WSPD(AM), that W264BW and W292CO are licensed to rebroadcast WEBN(FM), that W266CJ is licensed to rebroadcast WGAR(FM), and that W262BD is licensed to rebroadcast WWSJ(AM). Each such primary station is a commercial station owned by a commercial entity.²³ We find that the Translators operate as commercial translators and are 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.²⁴ That exemption is available to those licensees who have established their nonprofit 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.²⁵ This exemption is predicated solely on the entity's status as a qualified nonprofit entity.²⁶ 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 Applications.²⁷ Because nonprofit

¹⁸ 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).

¹⁹ *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).

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

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

²² 47 CFR § 74.1201(b), (c).

²³ The primary stations, WSPD(AM), WEBN(FM), and WGAR(FM) are licensed to IHM. WWSJ(AM) is licensed to KBL.

²⁴ 47 CFR § 1.1162(c).

²⁵ 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.”).

²⁶ 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).

²⁷ *See IRS, Charities and Non-Profits*, <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search> (last visited May 10, 2021) (displaying tax exempt status for “Educational Media Foundation” in Rocklin, California).

entities are exempt from regulatory fees,²⁸ we conclude that EMF is not required to pay regulatory fees for the Translators.

Moreover, Triangle's argument that EMF's business relationships create an attribution that precludes EMF from use of the nonprofit exemption is unsupported. Triangle does not allege any facts establishing that any entity has any attributable interest in EMF.²⁹ We thus reject the Triangle's argument that EMF's business relationships create an attributable interest which would require payment of regulatory fees.

Finally, Triangle's argument that the Translators may not air advertising—including political advertising—is incorrect. As discussed above, the Translators are commercial stations and thus the limitations applicable to NCE stations related to promotional and political advertising are inapplicable here.³⁰ Moreover, the determination of whether EMF is prohibited from airing promotional or political advertising under section 501(C)(3) is a determination to be made by the IRS, not the Commission.

We have reviewed the Applications in accordance with section 309(k) of the Act,³¹ and we find that the Translators served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Applications.

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**.

IT IS FURTHER ORDERED that, the applications for renewal of licenses of FM translator stations W225AM, Toledo, Ohio, Facility ID No. 139036, W264BW, Norwood, Ohio, Facility ID No. 139210, W292CO, Middletown, Ohio, Facility ID No. 138872, W266CJ, Beachwood, Ohio, Facility ID No. 144180 (each filed under Application File No. 0000113368), and W262BD, Dimondale, Michigan, Facility ID No. 148783 (Application File No. 0000113365), **ARE GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁸ 47 CFR § 1.1162(c).

²⁹ See 47 CFR § 73.3555, Note 2.

³⁰ 47 U.S.C. § 399b (prohibiting NCE stations from broadcasting promotional advertisements, including political advertisements).

³¹ 47 U.S.C. § 309(k)(1).