



Federal Communications Commission
Washington, D.C. 20554

May 28, 2021

In Reply Refer To:
1800B3-KN

Shanks Broadcasting, LLC, and Edgewater Broadcasting, Inc.
c/o John C. Trent, Esq.
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Steven L. White
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In re: W290BD, Montezuma, Georgia
Facility ID No. 153357
Application File No. 0000088288

W258AP, Macon, Georgia
Facility ID No. 152366
Application File No. 0000091905

Renewal of License

Informal Objection

Dear Applicants and Objector:

We have before us the amended application of Shanks Broadcasting, LLC (Shanks) for renewal of license for FM translator station W290BD, Montezuma, Georgia (Shanks Application)¹ and the application of Edgewater Broadcasting, Inc. (Edgewater) for renewal of license for FM translator station W258AP, Macon, Georgia (Edgewater Application).² We also have before us an informal objection (Objection)³ to the Shanks and Edgewater Applications, filed by Triangle Access Broadcasting, Inc.,

¹ Application of Shanks for Renewal of License, Application File No. 0000088288 (filed Nov. 7, 2019); Amended Application of Shanks for Renewal of License, Application File No. 0000088288 (filed Jan. 4, 2021) (Shanks Application).

² Application of Edgewater for Renewal of License, Application File No. 0000091905 (filed Nov. 29, 2019) (Edgewater Application).

³ Informal Objection of Triangle, Pleading File No. 0000105520 (filed Feb. 6, 2020).

(Triangle) on February 6, 2020, and related pleadings.⁴ For the reasons set forth below, we dismiss in part and otherwise deny the Objection. Further, we grant the Shanks and Edgewater Applications.

Background. Shanks timely filed the Shanks Application on November 7, 2019, and amended it on January 4, 2021, to change the primary station identified for W290BD. Edgewater timely filed the Edgewater Application on November 29, 2019.⁵

In the Objection, Triangle asserts that the applications violate section 74.1232(b) of the Commission's rules because 94% of the W290BD service area is common with the area served by W258AP.⁶ Triangle further asserts that both translator stations retransmit the signal of the same primary station, WBML(AM), Warner Robbins, Georgia (facility ID number 67210).⁷ Triangle suggests that the Commission request that Shanks and Edgewater each provide a copy of the written permission it received from the licensee of WBML to rebroadcast the station and renew only the translator that first received such permission.⁸ Alternatively, Triangle suggests that the Commission could inquire of the licensee of WBML, WRWR-AM Radio LLC, which translator it prefers to rebroadcast WBML.⁹ As a third option, Triangle states that the Commission could grant only the Shanks Application, because Triangle claims that Edgewater has erroneously claimed a regulatory fee exemption.¹⁰

In the Supplement, Triangle alleges that the translators do not rebroadcast WBML as indicated on the renewal applications.¹¹ Triangle asserts that WBML is a classic hits music format but that the translators each air a commercial sports/talk format, which Triangle asserts is WRWR-HD2, a digital subchannel of WRWR(FM), Cochran, Georgia.¹²

In the Joint Opposition, Shanks and Edgewater state that Shanks' translator, W290BD, no longer rebroadcasts WBML and that the translator now rebroadcasts WXKO(AM), Fort Valley, Georgia (facility

⁴ Supplement of Triangle to Informal Objection, Pleading File No. 0000105859 (filed Feb. 11, 2020) (Supplement); Joint Opposition of Shanks and Edgewater to Informal Objection, Pleading File No. 0000106189 (filed Feb. 18, 2020) (Joint Opposition); Reply of Triangle to Joint Opposition, Pleading File No. 0000106594 (filed Feb. 25, 2020) (Reply).

⁵ See 47 CFR §§ 73.1020(a), 73.3539(a) (providing that license renewal applications for radio stations located in Georgia are due by December 2, 2019).

⁶ Triangle claims that Edgewater's unbuilt construction permit to relocate the facilities of W258AP would still result in an overlap of 50.4% between the service areas of W290BD and W258AP after the proposed relocation. Objection at 1-2; see 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.").

⁷ Objection at 1-2.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Supplement at 1.

¹² *Id.* Praise 107.5 FM Radio LLC is the licensee of WRWR. See FCC, Licensing and Management System, <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityDetails.html?facilityId=26626> (last visited May 26, 2021).

ID number 41988), also licensed to Shanks.¹³ Therefore, Shanks and Edgewater assert that there is no violation of section 74.1232(b).¹⁴

In the Reply, Triangle accepts that there is no violation of section 74.1232(b) since W290BD currently retransmits WXKO.¹⁵ However, Triangle submits that the Shanks Application cannot be granted because the application contains erroneous information about the primary station of W290BD.¹⁶ Triangle states that the Shanks Application should be amended to reflect that W290BD retransmits WXKO, and the public should be given an opportunity to review a substantially correct application.¹⁷ Regarding the Edgewater Application, Triangle reiterates its belief that W258AP is rebroadcasting a digital subchannel of WRWR, which does not match the primary station identified on the application.¹⁸ Triangle asserts that the Edgewater Application should also be amended to reflect that WRWR is the true primary station that W258AP retransmits.¹⁹ Triangle also argues that Edgewater cannot claim the regulatory-fee exemption for nonprofits because more than 75% of Edgewater's stations, including W258AP, rebroadcast commercial primary stations, according to Triangle.²⁰

Discussion. Pursuant to section 309(d)(1) of the Communications Act of 1934, as amended (Act), petitions to deny and informal objections 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, which governs our evaluation of an application for license renewal.²¹ Section 309(k)(1) provides that we are to 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 rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.²² 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.”²³

Rebroadcast Status. We agree with Triangle's assertion that the Shanks Application should

¹³ Joint Opposition at 1. Edgewater and Shanks submit a copy of the station search details from CDBS Public Access showing WXKO as W290BD's primary station. *Id.*, CDBS Attachment.

¹⁴ *Id.* at 1.

¹⁵ Reply at 1.

¹⁶ *Id.* at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ 47 U.S.C. § 309(k).

²² *Id.* § 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 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

²³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

reflect that W290BD rebroadcasts WXKO.²⁴ However, Shanks amended the Shanks Application on January 4, 2021, to identify WXKO as the primary station for W290BD,²⁵ and that is now reflected in our records.²⁶ We therefore dismiss the Objection as moot to the extent it opposes grant of the Shanks Application.

We reject Triangle's assertion that the Edgewater Application does not correctly identify the primary station for W258AP and that the application therefore needs to be amended. The Edgewater Application identifies WBML as the primary station for W258AP, which is consistent with our records.²⁷ Accordingly, we deny the Objection to the extent that it raises objections based on W258AP's primary station.

Edgewater's Regulatory Fees. We find no merit in Triangle's claims regarding Edgewater's reliance on the nonprofit regulatory fee exemption. Under section 9 of the Act, and section 1.1153 of the rules, the Commission is required to assess and collect regulatory fees to recover the costs of certain regulatory activities.²⁸ Section 159(e)(1)(A) of the Act and section 1.1162(c) of the rules provide a general regulatory fee exemption for nonprofit entities.²⁹ The nonprofit exemption is available only 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.³⁰ Thus, this exemption is predicated solely on the entity's status as a qualified nonprofit entity.³¹ We have verified that Edgewater is designated as a nonprofit corporation by the Internal Revenue Service, and was recognized as such at the time it filed the Edgewater Application.³² Because

²⁴ Reply at 2.

²⁵ See Application File No. 0000088288, as amended on January 4, 2021.

²⁶ See FCC, Licensing and Management System, <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityDetails.html?facilityId=153357> (last visited May 26, 2021).

²⁷ See FCC, Licensing and Management System, <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityDetails.html?facilityId=152366> (last visited May 26, 2021).

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

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

³⁰ 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.”).

³¹ 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).

³² See IRS, Charities and Non-Profits, <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search> (last visited March 11, 2021) (displaying tax exempt status for “Edgewater Broadcasting Inc.”). Given this determination, we will not address any challenges to its nonprofit status at this time, as the Commission generally defers to the Internal Revenue Service on such matters.

nonprofit entities are exempt from regulatory fees,³³ we conclude that Edgewater's reliance on the nonprofit regulatory fee exemption for W258AP is appropriate.

Conclusions/Actions. Accordingly, IT IS ORDERED that the Informal Objection filed by Triangle Access Broadcasting, Inc., on February 6, 2020 (Pleading File No. 0000105520), IS DISMISSED IN PART AND OTHERWISE DENIED.

IT IS FURTHER ORDERED that the application for renewal of license of W290BD, Montezuma, Georgia (Application File No. 0000088288) and the application for renewal of license of W258AP, Macon, Georgia (Application File No. 0000091905) ARE GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

³³ 47 CFR § 1.1162(c); see *Livingston W. Fulton Licensee of WSRA(AM)*, 2019 WL 5558886 (OHMSV Oct. 28, 2019).