



Federal Communications Commission
Washington, D.C. 20554

June 28, 2021

In Reply Refer To:
1800B3-KN

Robert L. Hunnicutt
c/o David G. O'Neil, Esq.
Rini O'Neil, P.C.
1200 New Hampshire Avenue, NW
Suite 600
Washington, DC 20036

Edgewater Broadcasting, Inc.
c/o John C. Trent, Esq.
Putbresi Hunsaker & Trent, P.C.
200 S. Church Street
Woodstock, VA 22661

Triangle Access Broadcasting, Inc.
c/o Steven L. White
7813 Highlandview Cir
Raleigh, NC 27613-4109

**In re: W279BY, Augusta-Richmond
County, GA**
Facility ID No. 151444
File No. 0000083597

W255AS, Augusta, GA
Facility ID No. 151894
File No. 0000091894

Renewal of License

Informal Objection

Dear Applicants and Objector:

We have before us the amended application of Robert L. Hunnicutt for renewal of license for FM translator station W279BY, Augusta-Richmond County, Georgia (Hunnicutt Application)¹, and the application of Edgewater Broadcasting, Inc., (Edgewater) for renewal of license for FM translator station

¹ Application of Hunnicutt for Renewal of License, Application File No. 0000083597 (filed Oct. 2, 2019); Amended Application of Hunnicutt for Renewal of License, Application File No. 0000083597 (filed Oct. 7, 2019) (Hunnicutt Application).

W255AS, Augusta, Georgia (Edgewater Application).² We also have before us the informal objection of Triangle Access Broadcasting, Inc., (Triangle) to the above-referenced applications (Objection),³ and related pleadings.⁴ For the reasons set forth below, we dismiss the Objection in part and deny the Objection in all other respects. Further, we grant the Edgewater Application, and we assess Hunnicutt a 25 percent penalty for failing to pay the Application's filing fee.

Background. On October 2, 2019, Hunnicutt timely filed the Hunnicutt Application in which he claimed an exemption from FCC application fees.⁵ On October 7, 2019, Hunnicutt amended the application to state that he was exempt from FCC application fees because W279BY is an FM translator that rebroadcasts WKZK(AM), North Augusta, South Carolina,⁶ which Hunnicutt claimed was a “non-profit AM station.”⁷ Edgewater timely filed the pending Edgewater Application on November 29, 2019.⁸

In the Objection, Triangle asserts that the applications violate the licensing requirements for same-area translators in section 74.1232(b) of the Commission’s rules.⁹ Specifically, Triangle asserts that nearly all of the W255AS service area overlaps with the area served by W279BY and that the applicants have not demonstrated a technical need for the same-area translators as required by section 74.1232(b).¹⁰ Triangle also claims that Hunnicutt and Edgewater have an “established business relationship”¹¹ and therefore should be treated as the same applicant for purposes of the rule.¹² Triangle asserts that Hunnicutt and Edgewater should not be allowed to operate translators that retransmit the same programming in the same area absent a showing of technical need, which Triangle asserts that the applicants have not provided.¹³

Triangle further asserts that both applications for renewal should be denied because the applicants failed to pay required application and/or regulatory fees.¹⁴ Triangle states that Hunnicutt cannot claim to

² Application of Edgewater for Renewal of License, Application File No. 0000091894 (filed Nov. 29, 2019) (Edgewater Application).

³ Informal Objection of Triangle, Pleading File No. 0000106411 (filed Feb. 21, 2020) (Objection).

⁴ Joint Opposition of Hunnicutt and Edgewater to Objection, Pleading File No. 0000107201 (filed Mar. 5, 2020) (Joint Opposition).

⁵ See *supra* note 1.

⁶ Gospel Radio, Inc. is the licensee of WKZK. See FCC, Licensing and Management System, <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityDetails.html?facilityId=24696> (last visited May 27, 2021).

⁷ See Application File No. 0000083597, as amended on October 7, 2019.

⁸ See *supra* note 2.

⁹ 47 CFR § 74.1232(b).

¹⁰ Objection at 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.”).

¹¹ Specifically, Triangle states that Edgewater sold W279BY to Hunnicutt and that both W279BY and W255AS retransmit the signal of primary station WKZK(AM), North Augusta, South Carolina. Objection at 2.

¹² 47 CFR § 74.1232(b).

¹³ Objection at 2.

¹⁴ *Id.* at 2-3.

be a nonprofit exempt from both application and regulatory fees because “[i]ndividuals cannot be nonprofit applicants.”¹⁵ In addition, Triangle asserts that WKZK, the primary station of W279BY, is a commercial station¹⁶ and therefore Hunnicutt does not meet the criteria for claiming the regulatory fee-exemption for nonprofit entities or the application and regulatory fee-exemptions for noncommercial educational (NCE) broadcast stations.¹⁷ Similarly, Triangle asserts that Edgewater cannot claim the nonprofit exemption from paying regulatory fees for W255AS because it also rebroadcasts WKZK, a commercial station.¹⁸

In the Joint Opposition, Hunnicutt and Edgewater argue that section 74.1232(b) does not require a technical need showing in this case, because the translators in question are not licensed to the same applicant.¹⁹ In response to Triangle’s assertions that the applicants inappropriately claimed to be fee-exempt as nonprofits, Hunnicutt explains that he filed the Hunnicutt Application without the assistance of counsel and mistakenly believed that he was exempt from paying the application fee.²⁰ However, he claims that he did not intend to deceive the Commission and that he plans to pay the application fee.²¹ With regard to regulatory fees, Edgewater asserts that it has been a tax-exempt entity for more than 16 years and that any questions about its tax-exempt status should be raised with the Internal Revenue Service rather than the Commission.²² Hunnicutt did not respond to Triangle’s assertions that he wrongly claimed to be exempt from paying regulatory fees.

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.²³ 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.²⁴ If, however, the

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ 47 CFR § 73.503.

¹⁸ Objection at 2-3 (citing 26 U.S.C. § 501(c)(3)). According to Triangle, as of February 17, 2020, 39 (or 76%) of Edgewater’s 51 broadcast licenses are commercial stations—all but one of them FM translator stations—and therefore Edgewater can no longer faithfully claim that it is a nonprofit entity. *Id.* Triangle urges the Bureau to require updated verification of Edgewater’s nonprofit status. *Id.* Triangle does not allege nonpayment of the application filing fee by Edgewater.

¹⁹ Joint Opposition at 2.

²⁰ *Id.* at 3.

²¹ *Id.* Hunnicutt paid the filing fee on March 26, 2020.

²² *Id.*

²³ 47 U.S.C. § 309(k).

²⁴ *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).

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.”²⁵

Technical Need Showing. We agree with Edgewater and Hunnicutt that section 74.1232(b) does not require a technical need showing for the translators because they are licensed to different applicants.²⁶ Triangle’s claim that Hunnicutt and Edgewater should be considered the same applicant because Hunnicutt purchased W279BY from Edgewater is a misunderstanding of the rule. The sale of a station by one party to another does not demonstrate by itself that the two parties are the same. Edgewater and Hunnicutt state that W255AS and W279BY are separately owned translator stations, and Triangle has not provided any information to the contrary.²⁷ Therefore, we reject Triangle’s argument and conclude that a showing of technical need is not required for the translators.

Filing Fee for Hunnicutt Application. Under section 8 of the Act, and section 1.1104 of the rules, the Commission is required to assess and collect application fees to recover the costs of processing applications for media services.²⁸ Hunnicutt has acknowledged that he submitted the Hunnicutt Application without the requisite filing fee, claims he mistakenly believed that he was exempt from paying the fee, and has in fact paid the required filing fee.²⁹ We therefore dismiss the Objection as moot to the extent it opposes grant of the application on that basis.

Section 1.1118 of the rules sets forth the procedures for processing applications submitted without required fees.³⁰ Specifically, if the defective fee is discovered within 30 days of filing, the application is dismissed and can be re-filed with a new filing date.³¹ If the application is inadvertently forwarded to Commission staff for substantive review and the discrepancy is not discovered until after 30 calendar days from receipt of the filing, the filer is billed the fee amount due plus a 25 percent penalty.³² Here, the Application was inadvertently forwarded to Commission staff for substantive review without the requisite filing fee. As 30 days have elapsed from the date the Application was submitted with no fee,

²⁵ *Id.* §§ 309(k)(2), 309(k)(3).

²⁶ *Carolina Radio Grp.*, 34 FCC Rcd 11181, 11182 (2019) (“The Commission’s ‘technical need’ rule comes into play ‘only when the same party proposes to own more than one translator rebroadcasting the same signal and serving substantially the same area.’”) (citing *Amendment of Part 74 of the Commission’s Rules Concerning FM Translator Stations, Report and Order*, 5 FCC Rcd 7212, 7222, para. 75 (1990)); see also *COE W. Ramsey, Esq.*, 32 FCC Rcd 10105, 10111 (2017).

²⁷ Joint Opposition at 2; Objection at 2.

²⁸ 47 U.S.C. 158; 47 CFR § 1.1104.

²⁹ Joint Opposition at 3.

³⁰ 47 CFR § 1.1118.

³¹ *Id.* § 1.1118(a).

³² *Id.* § 1.1118(b) (“Applications or filings accompanied by insufficient fees or no fees, ... that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill. Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission.”).

we could bill Hunnicutt retroactively and impose the 25 percent penalty.³³ Because Hunnicutt paid his renewal filing fee on March 26, 2020,³⁴ we will only require him to pay the 25 percent penalty for his deficient filing.

Regulatory Fees for Hunnicutt and Edgewater. 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.³⁵ 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.³⁶ 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.³⁷ Thus, this exemption is predicated solely on the entity's status as a qualified nonprofit entity.³⁸

We have confirmed that Edgewater 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 Edgewater Application.³⁹ Because nonprofit entities are exempt from regulatory fees,⁴⁰ we conclude that Edgewater's reliance on

³³ See *Id.* § 1.1118(b); *Leon F. Petterson*, Letter, 22 FCC Rcd 14021 (MB 2007) (after 30 days, recourse when application is submitted without appropriate filing fee is to bill the applicant retroactively for a 25 percent penalty).

³⁴ See 47 CFR § 1.1104(4)(c) (requiring FM translators to pay a \$70.00 fee for license renewal applications).

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

³⁶ *Id.* § 159; 47 CFR § 1.1162(c).

³⁷ 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.”).

³⁸ *Id.* § 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); *Documentation of Nonprofit Exemption from Regulatory Fees*, Public Notice, 13 FCC Rcd 744 (1998) (providing that “Nonprofit entities are exempt from paying FCC annual regulatory fees if they claim nonprofit status under Section 501(c)(3) of the Internal Revenue Code (IRS), 26 U.S.C. §501 or are certified, or otherwise authorized, as a nonprofit entity by a state or other governmental authority.”). See, e.g., *Assessment & Collection of Regulatory Fees for Fiscal Year 2005*, Report and Order, 20 FCC Rcd 12259, 12266 (2005) (“A University owns a commercial facility whose profits are used to support the University and/or its programs. If the facility is licensed to the University directly, or to an exempt subsidiary of the University, it is exempt from regulatory fees. If, however, the license is held by a for-profit subsidiary, regulatory fees are owed, even though the University is an exempt entity. A state pension fund is the majority owner of a for-profit commercial broadcasting firm. The facilities licensed to the for-profit broadcasting firm would be subject to regulatory fees, even though it is owned by an exempt agency.”).

³⁹ Edgewater has submitted a letter of determination from the IRS indicating that Edgewater was tax-exempt as of February 2004 and that its status had not changed as of January 2009. Opposition, Attach., 501(c)(3) Exemption Determination Edgewater Broadcasting, Inc. See also IRS, Charities and Non-Profits, <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search> (last visited Mar. 31, 2021) (displaying tax exempt status for “Edgewater Broadcasting Inc.”).

⁴⁰ 47 CFR § 1.1162(c).

the nonprofit regulatory fee exemption under section 1.1162(c) of the rules is appropriate.⁴¹ Triangle has not provided any support for its assertion that Edgewater is not a nonprofit entity that is exempt from regulatory fees. We also reject Triangle's argument that an entity requesting an exemption under section 1.1162(c) must also meet the criteria of section 1.1162(e). Triangle provides no authority for this argument, and as discussed, Edgewater has demonstrated that it meets the requirements of section 1.1162(c), which is all that is required to obtain exemption from regulatory fees.

By contrast, Hunnicutt is an individual and therefore by definition is not a nonprofit entity exempt from regulatory fees. Because he is an individual operating W279BY as a commercial translator, Hunnicutt may not claim the regulatory fee exemption for NCE licensees under section 1.1162(e) of the rules, either.⁴² However, we find that Hunnicutt's total FY 2020 regulatory fees owed for all his stations⁴³ was under the *de minimis* threshold and therefore he is exempt from paying FY 2020 regulatory fees.⁴⁴

Renewal of License. We have reviewed the Hunnicutt and Edgewater Applications in accordance with section 309(k) of the Act,⁴⁵ and we find that the translators served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Edgewater Application. We will also grant the Hunnicutt Application by separate action upon payment of the 25 percent penalty charge so long as there are no other issues that would preclude grant of the application.

Conclusion/Actions. Accordingly, IT IS ORDERED that the Informal Objection filed by Triangle Access Broadcasting, Inc., on February 21, 2020, IS DISMISSED in part and IS DENIED in all other respects.

IT IS FURTHER ORDERED that, pursuant to section 1.1118(b) of the Commission's rules, Robert L. Hunnicutt will be assessed a penalty charge equal to 25 percent of the filing fee for his application to renew the license of W279BY, Augusta-Richmond County, Georgia (Application File No. 0000083597). Accordingly, he will be billed a total of \$17.50 under separate cover.

⁴¹ 47 CFR § 1.1162(c). Edgewater does not claim (nor is it qualified to claim) the NCE regulatory fee exemption. See 47 CFR § 1.1162(e) (No regulatory fee shall be required for "[a]pplicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.305 of this chapter.").

⁴² 47 CFR § 1.1162(e).

⁴³ Hunnicutt is the licensee of stations WAAU-LP and W279BY. See FCC, Licensing and Management System, <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityDetails.html?facilityId=66884> (last visited May 27, 2021); FCC, Licensing and Management System, <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicFacilityDetails.html?facilityId=151444> (last visited May 27, 2021).

⁴⁴ See 47 U.S.C. § 159(e)(2); *Regulatory Fee Exemptions for FY 2020*, Public Notice, DA 20-1089 (OMD 2019).

⁴⁵ 47 U.S.C. § 309(k)(1).

IT IS FURTHER ORDERED that the application for renewal of license of W279BY, Augusta-Richmond County, Georgia (Application File No. 0000083597) REMAINS PENDING until the aforementioned penalty charge is paid.

IT IS FURTHER ORDERED that the application for renewal of license of W255AS, Augusta, Georgia (Application File No. 0000091894), is GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division