



Federal Communications Commission
Washington, D.C. 20554

October 5, 2021

In Reply Refer to:
1800B3-HOD

Ms. Patsy A. Worcester
846 Underwood Ave.
Marion, OH 43302

In re: **Marion Make Music, Inc.**
WDIF-LP, Marion, Ohio
Facility ID No. 132319

Dear Madam:

We have before us the complaint (Complaint) you filed with the Commission on November, 26, 2019.¹ The Complaint makes a number of allegations regarding Marion Makes Music, its Station, WDIF-LP, Marion, Ohio (Station), and Spencer Phelps (Phelps) (the former President of MMM and the Station's current General Manager). Specifically, the Complaint asserts that (1) MMM has misused funds,² (2) MMM failed to pay back taxes,³ (3) there was a conflict of interest issue related to Phelps' service as MMM's President at the same time as he held the role of General Manager for the Station,⁴ (4) Phelps had a physical altercation with another individual,⁵ (5) Phelps uses social media and the Station to slander other people,⁶ (6) the Station uses calls to action in its underwriting announcements,⁷ (7) Phelps has broken several laws on a state and federal level,⁸ and (8) the assumption of control of MMM and the Station by Phelps (and others) in 2016 was illegitimate.⁹ For the reasons set forth below, we dismiss the Complaint.

At the outset, we dismiss the allegations that MMM and Phelps have engaged in non-FCC misconduct as outside the scope of Commission review. Although the Commission will consider non-FCC misconduct in determining whether an applicant has the requisite character to hold a Commission license, the scope of such review is limited.¹⁰ Specifically, for non-FCC misconduct, the Commission generally considers only adjudicated misconduct involving (1) fraudulent statements to government agencies; (2) certain criminal convictions; and (3) violations of broadcast-related anti-competitive and

¹ Letter from Patsy Worcester to FCC (rec'd Nov. 26, 2019) (Complaint).

² *Id.* at paras. 1, 3, 10.

³ *Id.* at para. 3.

⁴ *Id.* at paras. 2, 7, 9.

⁵ *Id.* at para. 11.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at paras. 4, 6, 8.

¹⁰ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order, and Policy Statement, Gen. Docket No. 81-50, 102 FCC 2d 1179, 1189-91, paras. 21-23 (1986).

antitrust statutes.¹¹ The record before us here contains no evidence that any of the alleged non-FCC misconduct has been adjudicated.¹² It also lacks any evidence that the claimed misconduct falls into one of the three categories of non-FCC misconduct that the Commission considers, and does not identify any specific laws or regulations that have been violated or any pending proceeding in which any claimed misconduct is being adjudicated.

In terms of the alleged FCC-related misconduct, we find that the Complaint fails to make a *prima facie* case that MMM violated the laws governing underwriting announcements, or that the transfer of control of MMM and the Station to Phelps (along with others) in 2016 was illegitimate. While the Complaint correctly notes that LPFM stations like the Station are prohibited from broadcasting underwriting announcements that include calls to action,¹³ it fails to provide any details regarding specific underwriting announcements aired by the Station that contained calls to action. It is well established that general and conclusory statements alone cannot make out a *prima facie* case.¹⁴ In addition, with respect to the transfer of control of MMM in 2016, even if we assume that all of the supporting facts in the Complaint are true, we still cannot conclude that the transfer of control violated the Communications Act of 1934, as amended, or any Commission rule.¹⁵ Accordingly, we also dismiss the allegations of FCC misconduct by MMM and Phelps.

¹¹ *Id.* at 1191-1203, paras. 31-44.

¹² The Commission has acknowledged that, in some instances, there may be “non[-]broadcast misconduct so egregious as to shock the conscience and invoke almost universal disapprobation” and such misconduct “might, of its own nature, constitute *prima facie* evidence that [a licensee or applicant] lacks the traits of reliability and/or truthfulness necessary to be a licensee, and might be a matter of Commission concern even prior to adjudication by another body.” *Id.* at 1205, n.60. However, the non-FCC misconduct alleged by Worcester does not fall into this category.

¹³ *Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines*, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, *Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827, 827-828 (1992); *Hispanic Broadcast System, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 2411, 2415, para. 9 (EB 2005), *aff'd with reduced forfeiture*, Forfeiture Order, 20 FCC Rcd 12008 (EB 2005); *Xavier University*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4920-21, paras. 3, 6 (1990).

¹⁴ *North Idaho Broad. Co.*, Memorandum Opinion and Order, 8 FCC Rcd 1637, 1638, para. 8 (1993) (allegations which “consist of ultimate, conclusory facts or more general allegations on information and belief, supported by general affidavits . . . are not sufficient” to establish a *prima facie* case) (quoting *Gencom v. FCC*, 832 F.2d 171, n.11 (D.C. Cir. 1987) (*Gencom*)).

¹⁵ *Gencom*, 832 F.2d at 181.

Ordering Clause. For the reasons discussed above, IT IS ORDERED that the complaint that you filed on November 26, 2019, regarding WDIF-LP, Marion, Ohio, and Marion Makes Music, Inc., IS DISMISSED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: Marion Makes Music (by email to info@trublues97.5.com)