



Federal Communications Commission
Washington, D.C. 20554

January 25, 2022

In Reply Refer To:
1800B3-KN

Radio by Grace, Inc. dba Edgewater Broadcasting Inc.
c/o John C. Trent
200 South Church Street
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FCCman3@shentel.net

Triangle Access Broadcasting, Inc.
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In re: **K284CV, Whitefish, Montana**
Facility ID No. 141979
Application File No. 0000119404

Informal Objection

Dear Counsel and Objector,

We have before us the amended application (Application) filed by Radio by Grace, Inc., doing business as Edgewater Broadcasting Inc. (RBG) for a license to cover a construction permit for FM translator station K284CV (Station), Whitefish, Montana.¹ We also have before us an informal objection (Objection) filed against the Application by Triangle Access Broadcasting, Inc. (Triangle),² and related pleadings.³ For the reasons set forth below we deny the Objection and grant the Application.

Background. In the Objection, Triangle argues that the Application violates the licensing requirements for same-area translators in section 74.1232(b) of the Commission's rules.⁴ Specifically, Triangle asserts that K284CV overlaps with 92% of the area served by K278BI and as such, "a technical need showing is required before multiple translators rebroadcasting common KIBG programming can be

¹ Amended Application of RBG for License to Cover, Application File No. 0000119404 (filed Aug. 5, 2020) (Application). RBG filed the original Application on July 31, 2020, and amended it "to adjust the TPO and attach the spurious emission exhibit in compliance with the special operating condition." The Station is authorized to operate on channel 284.

² Informal Objection of Triangle, Pleading File No. 0000120255 (filed Aug. 7, 2020) (Objection).

³ Opposition of RBG, Pleading File No. 0000120848 (filed Aug. 27, 2020) (Opposition); Reply of Triangle, Pleading File No. 0000121086 (filed Sep. 2, 2020) (Reply).

⁴ Objection at 1; 47 CFR § 74.1232(b).

simultaneously licensed.”⁵ Triangle states that in the Application, RBG changed the Station’s primary station from KKMT⁶ to KIBG,⁷ thereby bringing a change in circumstance that would make operation of the Station contrary to the public interest.⁸ Finally, Triangle claims that the Station’s license may have automatically expired because it was silent from August 1, 2019 until August 1, 2020.⁹ Triangle asks us to deny the Application and cancel the license unless RBG can demonstrate a technical need for multiple translators.¹⁰

RBG filed the Opposition on August 27, 2020. RBG argues that section 74.1232(b) of the rules does not preclude grant of the Application because the overlapping translators are not commonly owned by RBG.¹¹ In reply to Triangle’s assertion that the Station’s license may have automatically expired, RBG states that it returned the Station to air on July 31, 2020.¹² Since the Station had until August 1, 2020 to resume operations, RBG states that we must reject Triangle’s argument.¹³ RBG requests that we dismiss the Objection and grant the Application.¹⁴

On September 2, 2020, Triangle filed the Reply. Triangle states that the Application violates section 74.1232(b) because RBG is the licensee of 68 other FM translator stations, and therefore Station is “an additional translator owned by RBG which is not uniquely rebroadcasting KIBG.”¹⁵ Regarding Station’s operational status, Triangle states that even if Station resumed operation on July 31, 2020, its license may still have expired because its transmission was not authorized.¹⁶ Triangle asks that we cancel Station’s license and deny the Application.

Discussion. Section 309(d)(1) of the Communications Act of 1934, as amended (Act), authorizes any party in interest to file a petition to deny any application as long as the petition “contain[s] specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the

⁵ *Id.*

⁶ Facility ID No. 2205. Triangle states that KKMT was the primary station listed on both the underlying construction permit and an assignment application. *See* File Nos. BPFT-20181231AAG and BALFT-20200302AAA.

⁷ Facility ID No. 83460.

⁸ *Id.* at 2. Triangle claims that although grant of a station license traditionally follows automatically from the issuance of a construction permit, we should deny the Application because the construction facility does not match the authorization specifying KKMT as the primary station and the Application proposes to violate section 74.1232(b).

⁹ *Id.*; 47 U.S.C. § 312(g).

¹⁰ *Id.*

¹¹ Opposition at 2. RBG states that K278BI is licensed to Anderson Radio Broadcasting, Inc. *Id.*

¹² *See Id.* Exh. 3, Resumption Notice at 11-12 (Resumption Notice).

¹³ Opposition at 2.

¹⁴ *Id.* at 3.

¹⁵ Reply at 2. Triangle suggests that Anderson Radio Broadcasting, Inc. also violated the rule by giving permission to RBG to rebroadcast KIBG. *Id.* at 3.

¹⁶ *Id.* at 4.

application would be prima facie inconsistent with [the public interest].”¹⁷ Informal objections, like petitions to deny, also must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.¹⁸ After reviewing the record, we find that Triangle has failed to meet this burden.

Technical Need Showing. We agree with RBG that section 74.1232(b) does not require a technical need showing for the Station because the overlapping translators are licensed to different applicants/licensees.¹⁹ Section 74.1232(b) states that “[m]ore 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.”²⁰ We have previously concluded that the technical need rule only applies when “the same party proposes to own more than one translator rebroadcasting the same signal and serving substantially the same area.”²¹ Triangle does not cite to any Commission decisions applying the rule to translator stations licensed to different licensees or non-overlapping translator stations licensed to a common party, as proposed by it.²² Therefore, we reject Triangle’s argument and conclude that a showing of technical need is not required for us to grant the Application.

Operational Status. We also reject Triangle’s argument that the Station’s license has automatically expired.²³ Section 312(g) provides that if a broadcast station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license to promote equity and fairness.²⁴ Moreover, Commission precedent makes it clear that returning a station to the air with unauthorized facilities does not override this “automatic forfeiture” provision of our rules.²⁵

¹⁷ 47 U.S.C. § 309(d)(1).

¹⁸ See 47 U.S.C. § 309(d)(2); see also, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must also contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁹ Opposition at 2. K278BI is currently licensed to Anderson Radio Broadcasting, Inc.

²⁰ 47 CFR § 74.1232(b).

²¹ *Carolina Radio Grp.*, 34 FCC Rcd 11181, 11182 (2019) (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).

²² Reply at 1-3.

²³ Objection at 2; Reply at 4.

²⁴ 47 U.S.C. § 312(g).

²⁵ see *Great Lakes Community Broadcasting, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239, 8244-47 (MB 2009) (finding that “construction with unauthorized facilities does not override the ‘automatic forfeiture’ provision in our Rules”) (citing *Eagle Broadcasting Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009) (affirming Commission’s determination that station’s broadcast license had expired pursuant to section 312(g) of the Act, due to its failure to broadcast at its authorized facilities for one year) and *A-O Broadcasting Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008) (affirming staff decision that station’s license had expired as a matter of law due to the station’s failure to broadcast at its authorized facilities for one year)).

Here, Triangle states that the Station went silent on August 1, 2019,²⁶ and both Triangle and RBG note that the Station's license would have expired if it did not return to the air by August 1, 2020.²⁷ However, RBG states that the Station resumed transmission of a broadcast signal on July 31, 2020, as evidenced by a Resumption Notice filed with the Commission.²⁸ While we agree with Triangle that unauthorized operation would not override automatic expiration under the Act, Triangle does not allege that RBG operated Station with unauthorized facilities.²⁹ Therefore, based on our review of the record as a whole, Triangle fails to present specific factual allegations to establish a substantial and material question of fact that K284CV's license has automatically expired under section 312(g) of the Act.

Conclusion/Actions. For these reasons, IT IS ORDERED, that the Informal Objection filed by Triangle Broadcasting Inc. on August 8, 2020, IS DENIED.

IT IS FURTHER ORDERED, that the Application (Application File No. 0000119404) of Radio by Grace, Inc. dba Edgewater Broadcasting Inc. for a license to cover a construction permit for FM translator station K284CV, Whitefish, Montana, IS GRANTED.

Sincerely,

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

²⁶ Objection at 2. RBG confirms that Station went silent on August 1, 2019. *See* Resumption Notice at 11.

²⁷ Objection at 2, Opposition at 2.

²⁸ Resumption Notice at 11-12.

²⁹ We also reject Triangle's argument that Station's transmission was unauthorized because the "Bureau often issues authorizations with special operating conditions or restrictions when it is aware that same-area translators are being proposed during the permitting stage" because, as discussed above, RBG did not propose a same-area translator station. *See supra* note 19; Reply at 4.