



Federal Communications Commission
Washington, D.C. 20554

January 27, 2022

In Reply Refer To:
1800B3-KN

Edgewater Broadcasting, Inc.
c/o John C. Trent
200 South Church Street
Woodstock, VA 22664
FCCman3@shentel.net

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

In re: **K289CF, Kalispell, Montana**
Facility ID No. 155031
Application File No. 0000119401

Informal Objection

Dear Counsel and Objector,

We have before us the amended application (Application) filed by Edgewater Broadcasting, Inc. (Edgewater) for a license to cover a construction permit for FM translator station K289CF (Station), Kalispell, 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 K289CF overlaps with 100% of the area served by K224DV and 94% of the area served by K255CH, and as such, "a technical need showing is required before multiple translators

¹ Amended Application of Edgewater for License to Cover, Application File No. 0000119401 (filed Aug. 5, 2020) (Application). Edgewater 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 289.

² Informal Objection of Triangle, Pleading File No. 0000120264 (filed Aug. 8, 2020) (Objection).

³ Opposition of Edgewater, Pleading File No. 0000120842 (filed Aug. 27, 2020) (Opposition); Reply of Triangle, Pleading File No. 0000121085 (filed Sep. 2, 2020) (Reply).

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

rebroadcasting common KLKM programming can be simultaneously licensed.”⁵ Triangle states that in the Application, Edgewater changed the Station’s primary station from KKMT⁶ to KLKM,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 Edgewater can demonstrate a technical need for multiple translators.¹⁰

Edgewater filed the Opposition on August 27, 2020. Edgewater 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 Edgewater.¹¹ In reply to Triangle’s assertion that the Station’s license may have automatically expired, Edgewater states that it returned the Station to air on July 31, 2020.¹² Since the Station had until August 1, 2020 to resume operations, Edgewater states that we must reject Triangle’s argument.¹³ Edgewater 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 it would turn K224DV and K255CH, both licensed to Educational Media Foundation, into same-area translators,¹⁵ and because Edgewater is the licensee of 28 other FM translator stations.¹⁶ 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.¹⁷ 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-20181231AAH and BALFT-20200302AAD.

⁷ Facility ID No. 89617.

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 constructed facility does not match the authorization specifying KKMT as the primary station and the Application proposes to violate 47 CFR § 74.1232(b).

⁹ *Id.*; 47 U.S.C. § 312(g).

¹⁰ *Id.*

¹¹ Opposition at 2. Edgewater states that K224DV and K255CH are licensed to Educational Media Foundation. *Id.*

¹² *See Id.* Exh. 2, Resumption Notice at 10-11 (Resumption Notice).

¹³ Opposition at 2.

¹⁴ *Id.* at 3.

¹⁵ Reply at 1-3. Triangle suggests that Educational Media Foundation must also demonstrate technical need for these translators which are both rebroadcasting KLKM.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 4.

application would be prima facie inconsistent with [the public interest].”¹⁸ 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.¹⁹ After reviewing the record, we find that Triangle has failed to meet this burden.

Technical Need Showing. We agree with Edgewater that section 74.1232(b) does not require a technical need showing for the Station because the overlapping translators are licensed to different applicants/licenses.²⁰ 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.”²¹ 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.”²² 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.²³ 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.²⁴ 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.²⁵ 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.²⁶

¹⁸ 47 U.S.C. § 309(d)(1).

¹⁹ 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).

²⁰ Opposition at 2. K224DV is currently licensed to Educational Media Foundation, and K225CH is currently licensed to KD Radio, Inc. Since K224DV and K225CH are not commonly owned translator stations either, we need not address Triangle’s argument that Educational Media Foundation must also demonstrate technical need under the rule. See *supra* note 15.

²¹ 47 CFR § 74.1232(b).

²² *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).

²³ Reply at 1-3.

²⁴ Objection at 2; Reply at 4.

²⁵ 47 U.S.C. § 312(g).

²⁶ 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.*,

Here, Triangle states that the Station went silent on August 1, 2019,²⁷ and both Triangle and Edgewater note that the Station's license would have expired if it did not return to the air by August 1, 2020.²⁸ However, Edgewater states that the Station resumed transmission of a broadcast signal on July 31, 2020, as evidenced by a Resumption Notice filed with the Commission.²⁹ While we agree with Triangle that unauthorized operation would not override automatic expiration under the Act, Triangle does not allege that Edgewater operated Station with unauthorized facilities.³⁰ 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 K289CF'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. 0000119401) of Edgewater Broadcasting Inc. for a license to cover a construction permit for FM translator station K289CF, Kalispell, Montana, IS GRANTED.

Sincerely,

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

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)).

²⁷ Objection at 2. Edgewater confirms that Station went silent on August 1, 2019. *See* Resumption Notice at 10.

²⁸ Objection at 2, Opposition at 2.

²⁹ Resumption Notice at 10-11.

³⁰ 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, Edgewater did not propose a same-area translator station. *See supra* note 20; Reply at 4.