



Federal Communications Commission
Washington, D.C. 20554

May 18, 2022

In Reply Refer To:
1800B3-KN

GAB LLC and Claro Communications LTD
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In re: K254AZ, Alice, TX
Facility ID No. 154842
Application File No. 0000141057

K269HD, Alice, TX
Facility ID No. 202667
Application File No. 0000150122

Renewal of License

License to Cover

Dear Counsel and Objector:

We have before us the application of GAB LLC (GAB) for renewal of license for FM translator station K254AZ, Alice, TX (GAB Application),¹ and the application of Claro Communications Ltd. (Claro) for license to cover for FM translator station K269HD, Alice, TX (Claro Application).² We also have before us an informal objection to the applications (Objection), filed by Triangle Access Broadcasting, Inc. (Triangle) on June 25, 2021,³ and related pleadings.⁴ For the reasons set forth below, we grant the Objection in part and deny it in all other respects, grant the Claro Application, and hold the GAB Application in abeyance.

¹ Application of GAB for Renewal of License, Application File No. 0000141057 (filed Mar. 25, 2021) (GAB Application).

² Application of Claro for License to Cover, Application File No. 0000150122 (filed June 14, 2021) (Claro Application)

³ Informal Objection of Triangle, Pleading File No. 0000151050 (filed June 25, 2021) (Objection).

⁴ Opposition of GAB and Claro, Pleading File No. 0000156028 (filed Aug. 4, 2021) (Opposition).

Background. GAB filed the GAB Application on March 25, 2021, and Claro filed the Claro Application on June 14, 2021. On June 25, 2021, Triangle filed the Objection.

In the Objection, Triangle argues that the applications violate the licensing requirements for same-area translators in section 74.1232(b) of the Commission's rules.⁵ Specifically, Triangle asserts that K254AZ overlaps with 100% of the area to be served by K269HD,⁶ and as such, a technical need showing is required before same-area translators can be licensed to rebroadcast a common primary station, KOPY(AM), Alice, TX.⁷ Triangle also asserts that GAB and Claro are under the common control of Gerald Benavides (Benavides).⁸ Triangle argues that we cannot grant both applications as filed, and suggests that we consider K269HD as "not ready for operation" until the primary station for K254AZ is changed.⁹ Alternatively, Triangle suggests that we dismiss the Claro Application and hold the GAB Application until we can confirm that it would not conflict with another pending application.¹⁰

The applicants filed the Opposition on August 4, 2021. The applicants confirm that GAB and Claro have overlapping ownership by Benavides,¹¹ that the translators are located at the same site, and that they both currently rebroadcast KOPY.¹² However, the applicants state that GAB intends to change the primary station being rebroadcast by K254AZ to KROB(AM), Robstown, TX.¹³ The applicants suggest that we grant the GAB Application with the condition that K254AZ cannot continue rebroadcasting KOPY, and require GAB to apply within 30 days of the grant of the renewal for a modification of the K254AZ license to specify KROB as the new primary station.¹⁴ While the applicants accept that the applications cannot be granted as filed, they request that we dismiss the Objection and grant the applications with the conditions described above.¹⁵

⁵ Objection at 1; 47 CFR § 74.1232(b). Although Triangle actually alleges a violation of section 73.1232(b), we believe it means section 74.1232(b) and will treat it as such.

⁶ *Id.* at 2. Triangle states that both FM translator facilities are authorized at identical site coordinates with non-directional antennas. *Id.*

⁷ *Id.* KOPY has Facility ID number 983.

⁸ *Id.* According to Triangle, Benavides signed the 2013 license renewal application for K254AZ and the 2018 amended application for the underlying K269HD construction permit. *See* File Nos. BRFT-20130401ADA, BNPFT-20180508AAL. Triangle argues that Claro wrongly certified on the 2018 application that it had no interest in an application or an authorization for an FM translator station that serves substantially the same area and rebroadcasts the same signal as the proposed FM translator, in violation of section 1.17 of the rules. *Id.*; *see* File No. BNPFT-20180508AAL, Section III, Question 14.

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ Opposition at 2. According to the applicants, GAB is a limited liability company that is co-owned by Benavides and his former spouse, and Claro is a limited partnership, the general partner of which is Benavides. *Id.*

¹² *Id.*

¹³ *Id.* KROB has Facility ID number 65167.

¹⁴ *Id.* The applicants state that Claro intends to rebroadcast KOPY on K269HD as stated on the Claro Application, and as such, no changes are required to that application. *Id.*

¹⁵ *Id.* at 3.

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 application would be prima facie inconsistent with [the public interest].”¹⁶ 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.¹⁷ After reviewing the record, we grant the Objection to the extent it requests that we grant only one of the applications as filed, and deny it in all other respects.

Technical Need Showing. We agree with Triangle that the applications cannot be granted as filed without a technical need showing. 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.”¹⁸ It is a “spectrum efficiency rule based on [the Commission’s] experience that parties rarely need such multiple translators.”¹⁹ Applicants for authority to construct or make changes to an FM translator station must certify that they do not have “any interest in an application or an authorization for an FM translator station that serves substantially the same area and rebroadcasts the same signal as the proposed FM translator station.”²⁰

Here, Triangle alleges, and the applicants confirm, that GAB and Claro are commonly controlled by Benavides,²¹ that K254AZ and K269HD serve substantially the same area,²² and that both translators currently rebroadcast KOPY.²³ Accordingly, section 74.1232(b) requires a technical need showing before we can grant both applications. However, the applicants state that GAB intends to change the primary station for K254AZ to KROB.²⁴ Accordingly, we instruct GAB to change the primary station for

¹⁶ 47 U.S.C. § 309(d)(1).

¹⁷ 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).

¹⁸ 47 CFR § 74.1232(b).

¹⁹ *Creation of a Low Power Radio Service*, MB Docket No. 07-172, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364, 3392, para. 59 (2012); see also *Rocket Radio Corporation*, 2020 WL 5810068 (MB 2020).

²⁰ FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, Section III, Item 14 (Multiple Translators). See also Instructions for FCC Form 349, Instructions for Section III — Preparer’s Certification And Engineering Data, Section III-A Engineering, Section B Additional Questions, Item 14: Multiple Translators.

²¹ Objection at 2; Opposition at 2. According to the applicants, GAB is a limited liability company that is co-owned by Benavides and his former spouse, and Claro is a limited partnership, the sole general partner of which is Benavides.

²² Triangle states that the translator facilities are authorized at identical site coordinates with non-directional antennas, and as such, the service area of K254AZ overlaps 100% with the service area of K269HD. Objection at 2. The applicants confirm that the translators are “co-located.” Opposition at 2.

²³ Opposition at 2.

²⁴ *Id.*

K254AZ to bring the translator into compliance with section 74.1232(b) and to amend the GAB Application to reflect this change.

False Certification. Based on the findings above, we agree with Triangle that Claro wrongly certified on the 2018 construction permit application for K269HD that it had no interest in an application or an authorization for an FM translator station that serves substantially the same area and rebroadcasts the same signal as the proposed FM translator.²⁵ We note that grant of that application is now final.²⁶ Nevertheless, we admonish Claro for that violation, and we caution it to be attentive to its application certifications in the future, because a false statement, even absent an intent to deceive, may constitute actionable violation of section 1.17 of the rules.²⁷

Conclusions/Actions. Based on our review of the GAB Application and related pleadings, we find no evidence of serious violations of the Act or the Commission's rules, nor do we find evidence of other violations which, taken together, constitute a pattern of abuse. Further, we find that K254AZ has served the public interest, convenience, and necessity during the subject license term. We will therefore grant the GAB Application by separate action upon amendment of the primary station as discussed herein if there are no issues other than those discussed above that would preclude grant of the GAB Application. Additionally, we grant the Claro Application for license to cover translator station K269HD.

Accordingly, IT IS ORDERED that the informal objection filed by Triangle Access Broadcasting, Inc. on June 25, 2021, (Pleading File No. 0000151050) IS GRANTED IN PART to the extent it requests that we grant only one of the applications as filed, AND OTHERWISE DENIED.

IT IS FURTHER ORDERED that the application for license to cover for K269HD, Alice, TX (Application File No. 0000150122) IS GRANTED.

²⁵ Objection at 2.

²⁶ The construction permit application was granted on June 22, 2018, and public notice of the grant was given on June 27, 2018. See File No. BNPFT-20180508AAL (granted Jun. 22, 2018); *Broadcast Actions*, Public Notice, Report No. 49266, at 21 (MB Jun. 27, 2018). Accordingly, the period for filing petitions for reconsideration expired on July 28, 2018. See 47 CFR § 1.106(f) ("The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action...").

²⁷ 47 CFR § 1.17; see also *San Francisco Unified School District For Renewal of License for Station KALW(FM)*, *San Francisco, California*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13337 (2002) (license renewal application designated for evidentiary hearing on false certification issue); *Rancho Palos Verdes Broadcasters, Inc.*, 18 FCC Rcd 5043 (MB 2003) (\$20,000 Notice of Apparent Liability issued for violation of section 73.1015 for false certification that application would result in compliance with rule requiring provision of city grade signal to community of license).

IT IS FURTHER ORDERED that the application for renewal of license of K254AZ, Alice, TX (Application File No. 0000141057) IS HELD IN ABEYANCE until the application is amended to bring the translator into compliance with section 74.1232(b) of the Commission's rules, 47 CFR § 74.1232(b).

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau