



Federal Communications Commission
Washington, D.C. 20554

January 28, 2020

In Reply Refer to:
1800B3-TH

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Blue Ridge Free Media
c/o Michael W. Richards, Esq.
P.O. Box 5842
Takoma Park, MD 20913

Air Mix Virginia
c/o Donald E. Martin, P.C.
P.O. Box 8433
Falls Church, VA 22041

Promise Land Communications
c/o Aaron P. Shainis, Esq. &
Lee J. Peltzman, Esq.
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1850 M Street, N.W.
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Washington, DC 20036

Genesis Communications, Inc.
c/o Cary S. Tepper, Esq.
Tepper Law Firm, LLC
4900 Auburn Ave., Suite 100
Bethesda, MD 20814-2632

In re: Blue Ridge Free Media
WXRK-LP, Charlottesville, VA
Facility ID 192547

Air Mix Virginia
WVAI-LP, Charlottesville, VA
Facility ID 193001

Promise Land Communications
WPVC-LP, Charlottesville, VA
Facility ID 192897

Genesis Communications, Inc.
WREN-LP, Charlottesville, VA
Facility ID No. 194996

Letter of Inquiry – Response Required

Dear Counsel:

We are currently evaluating a Consolidated Petition to Deny (Petition) filed regarding the license renewal applications (Renewal Applications) of low power FM (LPFM) stations Blue Ridge Free Media, Air Mix Virginia, Promise Land Communications, and Genesis Communications, Inc. (individually, Licensee, and collectively, Licensees). The Petition was filed on September 3, 2019 by Tidewater Communications, LLC (Tidewater).¹ Oppositions to the Consolidated Petition to Deny (Oppositions) were filed by each of the four Licensees² followed by a Consolidated Reply to Oppositions to Consolidated Petition to Deny (Reply).³ In order to evaluate the arguments raised, we request the additional information described below.

Background. The Media Bureau (Bureau) is investigating potential statutory and rule violations of Section 399B of the Communications Act of 1934, as amended (Act), and sections 73.503 and 73.801 of the FCC's Rules (Rules) related to underwriting for LPFM stations. The Bureau is also investigating issues regarding the *de facto* control over each of the Stations (as defined herein), and related instances of potential misrepresentation and/or lack of candor in connection with the Renewal Applications or in other submissions by Licensees to the Commission.

The Underwriting Laws (as defined herein) prohibit LPFM stations from broadcasting advertisements.⁴ Although contributors of funds to LPFM stations may receive on-air acknowledgments of their support, such acknowledgments may be for identification purposes only and must not promote the contributors' businesses, products, or services.⁵ Such announcements must not contain calls to action, comparative or qualitative descriptions, inducements to buy, sell, rent, or lease, or price information.⁶ The Petition alleged, among other potential violations, that one or more of the Licensees broadcast prohibited advertisements on one or more of the stations that are the subject of the Renewal Applications.⁷

Specifically, the Bureau is investigating (a) the existence and nature of all agreements among two or more of the Licensees, including but not limited to an operating or management agreement among the Licensees, (b) whether the Licensees have broadcast advertisements in violation of the Underwriting Laws, (c) who has *de facto* control over each of the Stations; and (d) the validity of information provided in, and certifications made in, the Renewal Applications and each Licensee's prior applications filed with

¹ Tidewater filed the Petition to Deny on September 3, 2019. Tidewater's Petition includes allegations against Gateway Media, Inc. (Gateway). On October 25, 2019, Gateway filed a request to withdraw the license renewal application for WKMZ-LP, Ruckersville, VA.

² Blue Ridge Free Media, Inc. Opposition filed September 27, 2019; Genesis Communications, Inc.; Promise Land Communications; and Air Mix Virginia Oppositions filed October 25, 2019.

³ Tidewater Communications, LLC Consolidated Reply to Oppositions to Consolidated Petition to Deny filed November 14, 2019.

⁴ *Id.* at (b)(2).

⁵ See Noncommercial Educational Broadcasting Service; Clarification of Underwriting Guidelines, 51 Fed. Reg. 21800 (June 16, 1986), *republished*, Commission Policy Concerning the Noncommercial Nature of Educational Broad. Stations, Public Notice, 7 FCC Rcd 827 (1992).

⁶ See *id.*; *Xavier Univ.*, Memorandum Opinion and Order, 5 FCC Rcd 4920, 4921, para. 6 (1990), *citing* 1986 Public Notice, 7 FCC Rcd at 827.

⁷ Petition, Attachments 5-8, Announcement Transcripts of WXRK-LP, WVAI-LP, WPVC-LP, and WREN-LP.

the FCC.⁸ We direct the Licensees, pursuant to sections 4(i), 4(j), 308(b) and 403 of the Act, 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403, to provide responses to the following inquiries, within thirty (30) calendar days from the date of this letter. The Licensees may supplement their responses with additional relevant information pursuant to sections 1.17 and 1.88 of the Rules.⁹

Accordingly, the Licensees are directed to submit, within thirty (30) days of the date of this letter, truthful and complete responses to the following inquiries, with a copy served on each entity listed as receiving a copy of this letter. We will dismiss any Licensee's Renewal Application pursuant to section 73.3568 of the Rules¹⁰ unless we receive a complete response to this letter from that Licensee within 30 calendar days of the date of this letter.

Instructions

If any Licensee requests that any information or Documents, as defined herein, responsive to this letter be treated in a confidential manner, the Licensee shall submit, along with such information or Documents a request for confidential treatment which complies with the requirements of section 0.459 of the Rules,¹¹ including the standards of specificity set forth therein. Accordingly, "blanket" requests for confidentiality of a large set of Documents are unacceptable. Pursuant to section 0.459(c), the Bureau will not consider requests that do not comply with the requirements of section 0.459.

If any Licensee withholds any information or Documents under claim of privilege, they shall submit, together with any claim of privilege, a schedule of the items withheld that states, individually as to each such item, the numbered inquiry to which each item responds and the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific ground(s) for claiming that the item is privileged.

Each requested Document (including photographs), as defined herein, shall be submitted in its entirety, even if only a portion of that Document is responsive to an inquiry made herein, unless the Document is a recording or transcript, in which case it should be provided only for the period of time of the broadcast specified in the pertinent inquiry herein. The Document shall not be edited, cut, or expunged, and shall include all appendices, tables, or other attachments, and all other Documents referred to in the Document or attachments. All written materials necessary to understand any Document responsive to these inquiries must also be submitted.

If a Document responsive to any inquiry made herein existed but is no longer available, or if a Licensee is unable for any reason to produce a Document responsive to any inquiry, the Licensee shall identify each such Document by author, recipient, date, title, and specific subject matter, and explain fully why the Document is no longer available or why the Licensee is otherwise unable to produce it.

With respect only to Documents responsive to the specific inquiries made herein and any other Documents relevant to those inquiries, the Licensees are directed to retain the originals of those Documents for twelve (12) months from the date of this letter unless the Licensees are directed or informed by the Bureau in writing to retain such Documents for some shorter or longer period of time.

⁸ See 47 CFR §§ 73.855 and 73.860; 47 U.S.C. § 399b.

⁹ 47 CFR §§ 1.17, 1.88.

¹⁰ 47 CFR § 73.3568.

¹¹ 47 CFR § 0.459.

The specific inquiries made herein are continuing in nature. Each Licensee is required to produce in the future all Documents and information that are responsive to the inquiries made herein but not initially produced at the time, date and place specified herein. In this regard, each Licensee must supplement its response (a) if the Licensee learns that, in some material respect, the Documents and information initially disclosed were incomplete or incorrect or (b) if additional responsive Documents or information are acquired by or become known to the Licensee after the initial production. The requirement to update the record will continue for twelve (12) months from the date of this letter unless the Stations are directed or informed by the Bureau in writing that the Stations' obligation to update the record will continue for some shorter or longer period of time.

For each Document or statement submitted in response to the inquiries below, the Licensee shall indicate, by number, to which inquiry it is responsive and identify the person(s) from whose files the Document was retrieved. If any Document is not dated, the Licensee shall state the date on which it was prepared. If any Document does not identify its author(s) or recipient(s), state, if known, the name(s) of the author(s) or recipient(s). Each Licensee must identify with reasonable specificity all Documents provided in response to these inquiries.

Unless otherwise indicated, the period of time covered by these inquiries is January 1, 2013, to the present.

Definitions

For purposes of this letter, in addition to the terms defined elsewhere in this letter, the following definitions apply:

The word "any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any." Additionally, the word "or" shall be construed to include the word "and," and the word "and" shall be construed to include the word "or." The word "each" shall be construed to include the word "every," and the word "every" shall be construed to include the word "each."

"Advertisements" shall mean programming material broadcast "in exchange for any remuneration" and intended to "promote any service, facility, or product" offered by for-profit entities, as defined and used in 47 U.S.C. § 399b and 47 CFR § 73.503.

"Announcements" shall mean messages, or substantially similar messages, as identified in Attachments 5-8 to the Petition.

"*De Facto Control*" shall mean the power to dominate the management of the business affairs of a licensee or applicant,¹² particularly the ability to determine the policies governing personnel, programming, and finances.¹³

¹² *WGPR, Inc. & CBS, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142, para. 11 (1995) ("The touchstone of control, in short, is not divining who executes the station's programming, personnel and finance responsibilities, but who establishes policies governing the three areas and exercises ultimate control."); cf. 47 CFR § 1.2105(a)(4)(i) (noting that, in the auction context, examples of *de facto* control include constituting or appointing 50% or more of the board of directors or management committee; having authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the entity; or playing an integral role in management decisions).

¹³ *Id.*

“Document(s)” and “Documentation” shall mean the complete original (or in lieu thereof, exact copies of the original) and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any taped, recorded, transcribed, written, typed, printed, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated, or made, including but not limited to any broadcast, radio or television program, advertisement, book, pamphlet, periodical, contract, correspondence, letter, facsimile, e-mail, file, invoice, memorandum, note, text message, report, record, handwritten note, working paper, routing slip, chart, graph, photograph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minutes, marketing plan, research paper, preliminary drafts, or versions of all of the above, and computer material (print-outs, drives, disks and such codes or instructions as will transform such computer materials into easily understandable form).

“FCC” or “Commission” means the Federal Communications Commission.

“Licensee” (individually) and “Licensees” (collectively) shall mean Blue Ridge Free Media, Air Mix Virginia, Promise Land Communications, and Genesis Communications, Inc., and any predecessor-in-interest, affiliate, parent company, wholly or partially owned subsidiary, other affiliated company or business, and all owners, including but not limited to, partners or principals and receivers, and all directors, officers, employees, or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter.

“LPFM” means low power FM radio.

“Renewal Application” shall mean the pending license renewal applications of Blue Ridge Free Media (FCC file no. 0000072621), Air Mix Virginia (FCC file no. 0000073441, Promise Land Communications (FCC file no. 0000073463, and Genesis Communications, Inc. (FCC file no. 0000072618), including any amendments submitted to the FCC as of the date of this letter by or on behalf of the Stations.

“Station(s)” shall mean WXRK-LP, WVAI-LP, WPVC-LP, and WREN-LP, Charlottesville, VA.

“Underwriting Laws” shall mean section 399b of the Act, sections 73.503(d) and 73.801 of the Rules related to underwriting requirements for LPFM stations, and the decisions and orders of the Commission interpreting these provisions.

Inquiries: Documents and Information to Be Provided

We direct you, pursuant to sections 4(i), 4(j), 308(b) and 403 of the Act, 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403, to respond to the following inquiries, *within thirty (30) calendar days* from the date of this letter:

1. Provide all Documentation of or relating to any agreement, oral or written, between or among two or more of the Licensees or their representatives (past or present) to apply for or obtain one or more LPFM authorizations. If any agreement is or was oral, its substance should be reduced to writing and produced with all other Documentation.
2. Provide all Documentation of interactions or communications between or among any of the Licensees or their representatives (past or present) and Gateway Media, Inc. or its

representatives (past or present), involving any oral or written agreements or understandings, programming, personnel, finances, or any broadcast operational or pre-operational matter. If any agreement or understanding is or was oral, its substance should be reduced to writing and produced with all other Documentation.

3. Provide all Documentation of or relating to any agreement, oral or written, between or among two or more of the Licensees or their representatives (past or present) to share or cooperate with respect to personnel, contractors, consultants, real estate or interests in real estate, equipment, office supplies, software, copyrights or other intellectual property, contracts, programming or rights to programming, programming formats, sponsorships or advertising arrangements or agreements, or financial records or accounts. If any agreement is or was oral, its substance should be reduced to writing and produced with all other Documentation.
4. Provide a joint narrative describing fully the planning for and the establishment of the Virginia Limited Liability Company Operating Agreement for Radio Coop, LLC. Provide the full name and address of each person identified as being involved in any of the matters addressed in the narrative. If any Licensee believes the joint narrative is incomplete or incorrect, it should provide an individual narrative explaining why it believes the joint narrative is incomplete or incorrect.
5. Provide a full, unredacted copy of the operating agreement in its entirety, including any referenced attachments, exhibits, amendments or addenda.
6. Provide all financial Documentation for each Licensee from six months prior to obtaining the license for its Station to the present. Include a showing of payments by or on behalf of each Licensee for that time period, including invoices, bills, checks written or received, credit card charges, wire transfers, or deposits of funds relating to such operation.
7. Identify all joint accounts or contracts shared by any Licensee with any of the other Licensees, including but not limited to banking, assets, and real property (including any interest in real property, such as a lease or tenancy).
8. State who paid for the following costs for each Licensee: (a) engineering services provided by William A. Culpepper; (b) payments to Central Telephone Company, LLC or any affiliated entity; (c) utilities; (d) broadcast equipment; (e) personnel costs; and (f) programming costs (other than personnel). If more than one person and/or entity has paid these costs, specify the time periods and specific costs associated with each person and/or entity.
9. State whether any individual or entity other than the Licensee has disbursed funds to or on behalf of any Station other than the Licensee's Station. Identify the payor, the date, the amount and the purpose of each such payment and provide all Documentation relating to each such payment.
10. Provide a narrative describing fully the nature and dates of any interaction Michael Friend had with any Station (other than WXRK-LP) concerning a Management Agreement, or other contact pertaining to any Station (other than WXRK-LP), including but not limited to (a) telephone calls or text messages, (b) e-mails, and (c) in-person meetings. Provide copies of all Documentation of each such communication.

11. State whether Michael Friend has entered into any contracts, signed any Document and/or acted as spokesperson or representative on behalf of any of the Licensees (other than Blue Ridge Free Media) or Stations (other than WXRK-LP). If so, provide a copy of each such Document executed by Michael Friend and describe fully each situation in which he has acted as a signatory, spokesperson, or representative.
12. Indicate what programming associated with any Station, if any, has been under the control or agreement of individuals or entities associated with other Stations. Provide all Documentation of or relating to discussions between or among Licensees (or their representatives, past or present) about how to program any Station or organize the Stations' program formats. Additionally, provide a narrative describing fully the roles of the following people in those decisions:
 - a. Michael Friend
 - b. Jonathan G. Hall
 - c. Others acting on behalf of a Station

If any agreement is or was oral, its substance should be reduced to writing.

13. State whether any of the following individuals were involved in locating the tower site where the Stations broadcast:
 - a. Michael Friend
 - b. Jonathan G. Hall
 - c. Others acting on behalf of one of the above-named individuals.

In connection with this question, provide a narrative describing fully the person's function/role and all Documents in which the person is named or is a signatory in connection with any matter related to the site contract. For "others" responsive to this question, provide name, address, title, profession, company, and the name of the individual who hired them for this purpose.

14. Describe fully any business relationships or involvement in any of the Stations' operations, management, or programming for the following individuals, whether directly or through any entity. Provide all Documentation relating to such relationship or involvement. Any narrative of the relationship should be reduced to writing and produced with all other Documentation.
 - a. Any representative of Gateway Media, Inc.
 - b. Jonathan G. Hall
 - c. Michael Friend (other than with respect to WXRK-LP)

15. State whether any Licensee broadcast the Announcements over any of the Stations. If so, for each such Announcement aired:
 - a. Specify all date(s) on and time(s) at which the Announcement was aired. Produce copies of all Documents (and a narrative response explaining such Documents) that discuss, reproduce, summarize, or otherwise relate to the Announcements.
 - b. Identify each underwriter of the Announcement, if any, and identify each person that requested that any Licensee broadcast the Announcement.

- c. Specify the terms of any agreement(s) between any Licensee and any person requesting that a Licensee broadcast the Announcement. Produce all Documents (and a narrative response explaining such Documents) that discuss, memorialize, reproduce, or summarize any agreement(s) between Licensee and any person requesting that the Announcement be broadcast.
 - d. State whether the person requesting that the Announcement be aired provided, or promised to provide, Licensees, their employees (including, without limitation, officers, managers, and programming personnel), or contractors any form of consideration¹⁴ in exchange for the broadcast of the Announcements.
 - i. If so, describe the value, nature, form, and extent of such Consideration. Produce all Documents (and a narrative response explaining such Documents) that discuss, memorialize, reproduce, or summarize this exchange, and any Documents reflecting any contractual and financial arrangements with such person and such person's non-profit status, if any.
 - e. State whether the person requesting that the Announcement be aired is a general contributor or supporter of any Station or Licensee, or is instead a sponsor or underwriter of a specific program or both, and, if a sponsor or underwriter of a specific program, specify this program.
 - f. State whether the person requesting that the Announcement be aired was incorporated, operated, or conducted business on a not-for-profit status, whether determined or claimed under federal or state law, and specify the facts supporting your response.
 - g. Confirm or deny the accuracy of the commercial announcements transcribed in Attachments 5-8 of Tidewater's Petition.
 - i. If such transcripts are not accurate, please describe any inaccuracies and provide corrected versions of each Announcement. Insofar as the Announcement or any parts thereof are incomplete, provide a complete transcription thereof.
 - h. Provide a copy of each Announcement in a format that is playable using Microsoft Windows Media Player on a compact disc (CD-R) labeled with the Station's call sign, program name, Announcement name, title, and/or identification code; and broadcast date and time.
16. Describe any past and current policies for accepting or soliciting donations Licensees have employed or currently employ relating to the Underwriting Laws, including but not limited to those for accepting donations, airing donor and underwriting announcements, and/or ensuring compliance with the Underwriting Laws and the sponsorship identification requirements set forth in sections 317 of the Act and section 73.1212 of the Rules, including compliance therewith.
- a. Produce all Documents (and a narrative response explaining such Documents) that discuss, memorialize, summarize, or provide guidance as to such policies or procedures or otherwise support the response to this inquiry.
17. Provide Documentation for each Licensee of payments made to or received from Experience Media, LLC.

¹⁴ Compensation or remuneration may not necessarily be financial, but also includes other forms of consideration, including barter/broker arrangements and the exchange of goods or services. *See, e.g., Fuqua Communications, Inc.*, Notice of Apparent Liability, 30 FCC 2d 94, 97 (1971) (licensee's provision of free advertising for disc jockeys' private business ventures in exchange for more favorable terms constituted consideration to the licensee).

18. Describe the roles, if any, of the following entities, representatives of listed entities, or individuals in discussing, pricing, negotiating, approving, and/or implementing the terms of a marketing agreement or other contract with Experience Media, LLC:

- a. Blue Ridge Free Media
- b. Air Mix Virginia
- c. Promise Land Communications
- d. Genesis Communications, Inc.
- e. Michael Friend
- f. Jonathan G. Hall
- g. Others acting on behalf of one of the above-named.

In connection with this question, provide a narrative of the person's function/role and all Documents in which the person is named or is a signatory in connection with any matter related to the contract.

Instructions

The Stations' responses to Questions 1-18 must be supported by **notarized** affidavits or declarations attesting that the responses are complete and accurate, signed either by representatives of each Station, or by one or more persons with personal knowledge of the response. In addition to the affidavits or declarations above, we direct the Stations to support their responses to these inquiries with a **notarized** affidavit or declaration under penalty of perjury, signed and dated by one of their directors, verifying the truth and accuracy of the information therein and that all of the information and Documentation specified by this letter which are in the possession, custody, control or knowledge of the Stations (including all parties to the Applications) have been produced. If multiple board members or representatives contribute to the responses, in addition to such general affidavit or declaration of a Station director, the Stations must provide separate affidavits or declarations of each such individual with personal knowledge that identify clearly to which responses the affiant or declarant with such personal knowledge is attesting. All such declarations shall be **notarized**. To knowingly and willfully make any false statement or conceal any material fact in reply to this letter is punishable by fine or imprisonment.¹⁵ Failure to respond appropriately to this letter may constitute a violation of the Act and the Rules.¹⁶

The Stations shall direct their letter responses, if any, by messenger or hand delivery, to the attention of Tom Hutton, Audio Division, Media Bureau, Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. If sent by mail, the response should be sent to the attention of Tom Hutton, Audio Division, Media Bureau, 445 12th Street, S.W., Room 2-A262, Washington, DC 20554. An electronic courtesy copy may be sent to tom.hutton@fcc.gov. Additionally, copies must be served by U.S. Mail on **Tidewater Communications, LLC at the address provided below. Tidewater Communications, LLC will have an opportunity to submit comments within fifteen days of the Stations' filing of the responses, with a copy to be served by U.S. Mail on the Stations and their counsel, where applicable.**

Any requests for an extension of time in which to respond to this letter must be: 1) filed

¹⁵ See 18 U.S.C. § 1001; see also 47 CFR § 1.17.

¹⁶ See *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, n.36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (EB 2004); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (EB 2003).

prior to the thirty-day deadline for filing a response; 2) supported by a notarized affidavit or declaration from a party to the Renewal Application; and 3) served on Tidewater Communications, LLC, at the address provided below.

Conclusion

Failure to respond in full within the time period specified shall result in dismissal of the subject application for failure to respond to official correspondence pursuant to Sections 73.801 and 73.3568 of the Rules.¹⁷

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: Tidewater Communications, LLC
c/o Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, DC 20016

¹⁷ 47 CFR §§ 73.801, 73.3568.