



**Federal Communications Commission  
Washington, D.C. 20554**

October 13, 2020

***In Reply Refer to:***  
1800B3-SS

Triangle Access Broadcasting, Inc.  
c/o Mr. Steven L. White  
7813 Highlandview Circle  
Raleigh, NC 27613

Hope Christian Church of Marlton, Inc.  
c/o Matthew H. McCormick, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
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Arlington, VA 22209

In re: **W241AO, Wye Mills, MD**  
**Hope Christian Church of Marlton, Inc.**  
FRN: 0008003261  
Facility ID: 154276  
File No. 0000073651 (Lead Application)

**W252BR, Edgemere, MD**  
Facility ID: 154302

**W248AO, Baltimore, MD**  
Facility ID: 154229

**W295CJ, Chestertown, MD**  
Facility ID: 141573

**W284BE, Havre de Grace, MD**  
Facility ID: 146400

**W272BJ, Fairlee, MD**  
Facility ID: 154196

**W285EJ, White Marsh, MD**  
Facility ID: 154214

**W291BA, Baltimore, MD**  
Facility ID: 141926

**W260BM, Annapolis, MD**  
Facility ID: 154359

## Application for Renewal of Licenses

### Informal Objection

Dear Counsel and Objector:

We have before us: (1) the twice-amended application (Application) for renewal of licenses of the referenced FM translator stations (Stations) filed by Hope Christian Church of Marlton, Inc. (Hope); (2) a September 25, 2019, Informal Objection (Objection)<sup>1</sup> to the Application filed by Triangle Access Broadcasting, Inc. (Triangle); and (3) related responsive pleadings.<sup>2</sup> For the reasons set forth below, we grant the Objection in part and deny it in all other respects, and we intend to grant the Application upon the payment of certain application fees, as discussed below.

**Background.** Hope timely filed the pending Application on May 30, 2019, and amended it on July 2, 2019, to notify the staff that Station W272BJ, Fairlee, Maryland, had gone silent. On August 30, 2019, Hope again amended the Application to include period of silence exhibits for Stations W241AO, Wye Mills, and W252BR, Edgemere, Maryland, and to notify the staff that Station W272BJ had resumed operations.

In its Objection, Triangle argues that the Application should be dismissed and that the licenses for the Stations should be cancelled because Hope has not paid the required regulatory fees for the Stations and that no application processing fee was paid for the Application itself.<sup>3</sup> Specifically, Triangle asserts that the Commission requires application fees for, among other things, initial construction permits and license renewals for FM translator stations.<sup>4</sup> Triangle maintains that Hope certified in its Application that it is exempt from such application fees by incorrectly claiming that it is a noncommercial educational (NCE) station licensee.<sup>5</sup> As evidence, Triangle submits that the Stations listed in the Application all are authorized to retransmit commercial primary stations. Thus, Triangle states that each translator Station is commercial, and an application fee is due for each Station's license to be renewed.<sup>6</sup> In addition, Triangle claims that neither Hope, nor any entity on its behalf, has ever paid any application fees for the Stations despite their being operated for commercial purposes.<sup>7</sup>

Triangle also alleges that although nonprofit entities, such as Hope, are exempt from paying regulatory fees for their licenses, Hope is using the Stations for an unrelated commercial business purpose contrary to Hope's nonprofit status as a church. Specifically, Triangle alleges for-profit entities are compensating Hope for retransmitting their commercial programming and that the for-profit entities are attributable as owners under section 73.3555 of the FCC's rules (Rules) thereby disqualifying the Stations

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<sup>1</sup> Pleading No. 0000082103 (filed Sept. 25, 2019).

<sup>2</sup> On October 15, 2019, Hope filed an Opposition to Informal Objection (Opposition) (Pleading No. 0000086495 (filed Oct. 15, 2019)), to which Triangle replied on October 16, 2019 (Reply) (Pleading No. 0000086784).

<sup>3</sup> Objection at 3.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*; see also Objection at Exhs. A and B.

from being exempt from regulatory fees.<sup>8</sup> Finally, Triangle argues that the Rules are clearly intended to exempt *bona fide* NCE stations from paying fees while subjecting commercial stations to fees and that Hope should be treated as other NCE entities which must pay application and regulatory fees for similar translator station commercial uses.<sup>9</sup>

In its Opposition, Hope argues that section 1.1116(c) of the Rules clearly states that application fees shall not be required for “[a]pplicants, permittees or licensees of noncommercial educational (NCE) broadcast stations [such as Hope].”<sup>10</sup> In addition, Hope argues that the Commission has never rejected any of its applications nor charged Hope application fees based on the primary stations its translator Stations carry.<sup>11</sup> Further, Hope asserts that section 1.1162(c) of the Rules specifically states that no regulatory fees shall be required for “[a]pplicants and permittees [such as Hope] who qualify as nonprofit entities.”<sup>12</sup> Finally, Hope claims that its Application complies with the Rules and is consistent with the regular practice of the Commission exempting NCE entities from paying application and regulatory fees and that Triangle has cited no rule or policy to the contrary.<sup>13</sup>

In its Reply, Triangle withdrew its challenge to the renewal of W248AO, Baltimore, Maryland because it determined that W248AO is retransmitting Hope’s NCE programming.<sup>14</sup> Regarding the other Stations, however, Triangle argues that section 1.1116(c) does not apply to them because Hope’s FM translator stations are rebroadcasting commercial stations and commercial programming.<sup>15</sup> In addition, Triangle asserts that the “Instructions for FCC Form 349” clearly state that noncommercial stations are exempt from application fees provided that “the proposed facility will be operated noncommercially.”<sup>16</sup> Also, Triangle claims that section 501(3)(c) of the IRS Code requires that a nonprofit entity, such as Hope, must be “organized and operated exclusively for religious, charitable, [. . .] or educational purposes” and that these precepts are incorporated by section 1.1162(c) of the Rules.<sup>17</sup> Next, Triangle claims that the staff likely never rejected a Hope application, not because it condoned Hope’s practice, but rather because the staff relied on Hope’s certifications that Hope would be rebroadcasting NCE programming.<sup>18</sup> Finally, Triangle argues that the cited Rules and the staff’s practice of collecting fees from the similarly-situated PAR require that its Objection be granted and the Application be dismissed.<sup>19</sup>

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<sup>8</sup> *Id.* 2-3; *see also* 47 CFR § 73.3555 at Note 2.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> Opposition at 1-2. Hope notes that it is licensee of NCE Stations WRSM(FM), Rising Sun, Maryland; WVBV(FM), Medford Lakes, WWFP(FM), Brigantine, and WZBL(FM), Barnegat, all in New Jersey; and WZWG(FM), West Grove, Pennsylvania. Opposition at 2, n.2. *See also* 47 CFR § 1.1116(c).

<sup>11</sup> Opposition at 2.

<sup>12</sup> *Id.*; *see also* 47 CFR § 1.1162(c). Hope notes that as a church, under 26 U.S.C. § 501 of the Internal Revenue Service (IRS) Code, Hope is tax exempt. Opposition at 2.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> Reply at 1.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.*, citing “Instructions for FCC Form 349” at Section I, Part C, Item 3.

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 3-4.

**Discussion.** Pursuant to Section 309(e) of the Communications Act of 1934, as amended (Act), petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with section 309(k) of the Act, which governs our evaluation of an application for license renewal.<sup>20</sup> Specifically, section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.<sup>21</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>22</sup>

*Application Filing Fees.* We find no merit in Hope’s response that it is exempt from paying application filing fees here. Section 1.1116 of the Rules specifies that no fee shall be required for “noncommercial educational (NCE) broadcast stations” in the FM service.<sup>23</sup> To determine whether a translator is classified as an NCE station or not, we look to whether its primary station is NCE or commercial.<sup>24</sup> Other than W248AO, all the remaining Stations are broadcasting the programming of a commercial station and thus operate as commercial translators: (i) W241AO first rebroadcast Hope’s NCE station (WVBV(FM)) but began rebroadcasting the signal of a commercial radio station (WCTR(AM)) in 2012, prior to filing the Application; (ii) W252BR first rebroadcast WVBV(FM) but began rebroadcasting WNAV(AM) and now WWIN-FM (both commercial radio stations); (iii) W295CJ first rebroadcast WVBV(FM) but began rebroadcasting WSJO-FM and now WCTR(FM) (both commercial radio stations); (iv) W284BE first rebroadcast WVBV(FM) in 2008, but is now rebroadcasting commercial station WHGM(AM); (v) W272BJ first rebroadcast NCE station WGTS(FM) in 2007, but is now rebroadcasting commercial station WOLB(AM); (vi) W285EJ first rebroadcast WVBV(FM) in 2008, but is now rebroadcasting commercial station WWMX(FM); (vii) W291BA first rebroadcast NCE station WGTS(FM) in 2007, but is now rebroadcasting commercial station WLIF-FM; and (viii) W260BM first rebroadcast NCE station WGTS(FM) in 2007, but is now rebroadcasting commercial station WNAV(AM). Hope therefore should have paid application filing fees for each Station other than W248AO when it filed the Application. The Application should have been dismissed

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<sup>20</sup> 47 U.S.C. §309(k).

<sup>21</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>22</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>23</sup> 47 CFR § 1.1116.

<sup>24</sup> As a result, a licensee may be exempt from paying filing fees with respect to one translator but required to pay filing fees with respect to another. Indeed, a licensee may be required to pay application filing fees for a translator at one time but not at another. This will occur, for instance, if a translator is rebroadcasting the signal of a commercial station at the time the licensee files an application but has begun rebroadcasting an NCE station prior to the filing of another application related to that translator, or *vice versa*. *See Alaska Educational Radio System, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 6758 n.34 (MB 2018).

immediately after filing for nonpayment of the required application fees.<sup>25</sup> Because it has been more than 30 calendar days since the Application was filed, however, we will bill Hope retroactively for the application filing fees for each Station (except for W248AO which airs NCE programming) and, due to the ongoing pandemic, we will not impose the 25 percent late payment penalty provided for in the Rules.<sup>26</sup>

*Regulatory Fees.* Section 1.1162(c) of the Rules exempts from payment of annual regulatory fees those entities possessing nonprofit status under section 501 IRS Code certification as a nonprofit entity by a state or other governmental authority, or other documentation that nonprofit status has been approved by a state or other governmental authority.<sup>27</sup> We have verified that Hope has been the Stations' licensee since 2003, and also have confirmed that Hope is a nonprofit corporation and has operated as such since 1998. Because nonprofit entities are exempt from regulatory fees, we conclude that the alleged delinquent regulatory fees identified by Triangle are inapplicable.<sup>28</sup> Furthermore, Triangle's claim that the commercial primary station licensees have an attributable interest in the Stations and therefore the Stations owe regulatory fees is a misreading of Note 2 to section 73.3555 of the Rules;<sup>29</sup> therefore, further discussion of this issue is unwarranted.

**Conclusion/Actions.** Accordingly, IT IS ORDERED that the Informal Objection filed by Triangle Access Broadcasting, Inc., on September 25, 2019, IS GRANTED in part, and IS DENIED in all other respects.

IT IS FURTHER ORDERED, pursuant to section 1.1118(b) of the Rules, that Hope Christian Church of Marlton, Inc., will be assessed the filing fee for its application to renew the license of W241AO, Wye Mills, Maryland. Therefore, it will be billed a total of \$70.00 under separate cover.

IT IS FURTHER ORDERED, pursuant to section 1.1118(b) of the Rules, that Hope Christian Church of Marlton, Inc., will be assessed the filing fee for its application to renew the license of W252BR, Edgemere, Maryland. Therefore, it will be billed a total of \$70.00 under separate cover.

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<sup>25</sup> 47 CFR § 1.1118(a) ("Filings subject to fees and accompanied by defective fee submissions will be dismissed . . . where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.").

<sup>26</sup> 47 CFR § 1.1118(b) ("Applications or filings accompanied by insufficient fees or no fees . . . that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill."). *See also Chaparral Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 13017, 13019-20, paras. 8-9 (2009).

<sup>27</sup> 47 CFR § 1.1162(c)(1).

<sup>28</sup> 47 CFR § 1.1162(c) (specifying that no regulatory fee shall be required for "[a]pplicants and permittees who qualify as nonprofit entities"); *see also, e.g., Livingston W. Fulton*, Order, 2019 WL 5558886, DA 19-1108 (MB/OMD 2019) (Agape Life Ministries, Inc. a nonprofit corporation, is exempt from regulatory fees).

<sup>29</sup> *See* 47 CFR § 73.3555, Note 2 ("In applying the provisions of this section . . . any *voting stock interest* amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee . . . will be cognizable." (emphasis supplied)). Here, compensation paid to Hope from its primary-station licensees for retransmitting their commercial programming does not equate to these licensees having voting rights in the Stations, and therefore, they have no cognizable interest in the Stations.

IT IS FURTHER ORDERED, pursuant to section 1.1118(b) of the Rules, that Hope Christian Church of Marlton, Inc., will be assessed the filing fee for its application to renew the license of W295CJ, Chestertown, Maryland. Therefore, it will be billed a total of \$70.00 under separate cover.

IT IS FURTHER ORDERED, pursuant to section 1.1118(b) of the Rules, that Hope Christian Church of Marlton, Inc., will be assessed the filing fee for its application to renew the license of W284BE, Havre de Grace, Maryland. Therefore, it will be billed a total of \$70.00 under separate cover.

IT IS FURTHER ORDERED, pursuant to section 1.1118(b) of the Rules, that Hope Christian Church of Marlton, Inc., will be assessed the filing fee for its application to renew the license of W272BJ, Fairlee, Maryland. Therefore, it will be billed a total of \$70.00 under separate cover.

IT IS FURTHER ORDERED, pursuant to section 1.1118(b) of the Rules, that Hope Christian Church of Marlton, Inc., will be assessed the filing fee for its application to renew the license of W285EJ, White Marsh, Maryland. Therefore, it will be billed a total of \$70.00 under separate cover.

IT IS FURTHER ORDERED, pursuant to section 1.1118(b) of the Rules, that Hope Christian Church of Marlton, Inc., will be assessed the filing fee for its application to renew the license of W291BA, Baltimore, Maryland. Therefore, it will be billed a total of \$70.00 under separate cover.

IT IS FURTHER ORDERED, pursuant to section 1.1118(b) of the Rules, that Hope Christian Church of Marlton, Inc., will be assessed the filing fee for its application to renew the license of W260BM, Annapolis, Maryland. Therefore, it will be billed a total of \$70.00 under separate cover.

IT IS FURTHER ORDERED that, the application for renewal of licenses of the referenced FM translator stations (Lead Application File No, 0000073651), REMAINS PENDING until the aforementioned application fees are paid.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau