



Federal Communications Commission
Washington, D.C. 20554

May 7, 2021

In Reply Refer to:
1800B3-DB

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In re: WTRJ-FM, Orange Park, FL
Facility ID No. 47425
Application File No. 0000094418

W266CX, Fruit Cove, FL
Facility ID No. 147954
Application File No. 0000094419

W262AG, Jacksonville, FL
Facility ID No. 81215
Application File No. 0000094421

W247CF, Orange Park, FL
Facility ID No. 139259
Application File No. 0000094420

W300CU, Jacksonville, FL
Facility ID No. 49965
Application File No. 0000094422

**Application for Renewal of License
Informal Objection**

Dear Applicant, Counsel and Objector:

We have before us the referenced application for renewal of license (Application) filed by Delmarva Educational Association (Delmarva) for WTRJ-FM, Orange Park, Florida, and FM translator stations W266CX, Fruit Cove, Florida; W262AG, Jacksonville, Florida; W247CF, Orange Park, Florida; and W300CU, Jacksonville, Florida.¹ Also before us is an Informal Objection (Objection) to the Application filed by Triangle Access Broadcasting, Inc. (Triangle).² For the reasons set forth below, we grant in part and otherwise deny the Objection, and assess Delmarva a 25 percent penalty for failing to pay the Application's filing fees.

Background. Translator stations W262AG and W266CX are authorized to retransmit WBOB(AM), Jacksonville, Florida, which is licensed to Chesapeake-Portsmouth Broadcasting Corporation (CP Broadcasting). Translator stations W247CF and W300CU are authorized to retransmit WKSL(FM), Jacksonville, Florida, which is licensed to Clear Channel Broadcasting Licenses, Inc. (Clear Channel), a subsidiary of iHeartMedia, Inc. (iHeart). Delmarva timely filed the Application on October 1, 2019.³

In the Objection, Triangle alleges that Delmarva has avoided paying required application and regulatory fees by improperly claiming noncommercial educational (NCE) and nonprofit exemptions.⁴ Specifically, Triangle argues that Delmarva is not entitled to claim the NCE exemption for application and regulatory fees because WBOB(AM) and WKSL(FM) are commercial stations, and thus, the Translators are operating as commercial stations.⁵ Triangle also argues that Delmarva does not qualify for the nonprofit regulatory fee exemption because (1) the Translators' operations are not substantially related to a religious, charitable, or educational purpose; and (2) iHeart and CP Broadcasting, both commercial entities, supply commercial programming to the Translators which, Triangle argues, gives iHeart and CP Broadcasting an attributable ownership interest in Delmarva.⁶ The Objection maintains that it was unable to locate records evidencing that Delmarva has ever paid any regulatory fees.⁷

¹ See Application File No. 0000094418.

² Triangle filed the Objection on December 16, 2019 (Pleading File No. 0000093519). Delmarva filed an Opposition to Triangle's Objection on December 31, 2019 (Opposition) (Pleading File No. 0000094456). Triangle filed a Reply to the Opposition on January 7, 2020 (Reply) (Pleading File No. 0000095667). Triangle objects to the license renewals for FM translator stations W262AG, W247CF, and W266CX (collectively, Translators); it does not challenge the license renewals for lead station WTRJ-FM and FM translator station W300CU.

³ See Application File No. 0000083357. The staff accepted the Application for filing on October 1, 2019. Delmarva then filed an Amended Application on December 30, 2019, containing certifications of compliance with sections 73.3526 and 73.3555 of the Commission's rules (Rules). See Application File No. 0000094418 (filed Dec. 30, 2019).

⁴ See Objection at 1-2.

⁵ *Id.* at 1-3.

⁶ *Id.* at 3-4. Triangle states that if Delmarva receives consideration from iHeart for W262AG's retransmission of WJBT(FM) and W247CF's retransmission of WKSL, then it should pay regulatory fees due to iHeart's attributable business interest. *Id.* at 3. Regarding W266CX, Triangle maintains that Delmarva's connection to CP Broadcasting is even more direct because Nancy A. Epperson, Delmarva's President, controls 100 percent of CP Broadcasting. *Id.* at 4.

⁷ *Id.* at 4.

Accordingly, Triangle urges us to dismiss the Application for failure to pay required fees and cancel the Translators' licenses unless the delinquency is resolved.⁸

In its Opposition, Delmarva counters that its failure to pay the Application's filing fee was inadvertent. Delmarva states that it has remitted payment and that Triangle's argument related to its deficient application fee is now moot.⁹ Delmarva also counters that, pursuant to section 1.1162(c) of the Commission's rules (Rules), it is exempt from paying regulatory fees because it is a qualified nonprofit, tax-exempt entity under section 501 of the Internal Revenue Code.¹⁰ Delmarva argues that the Commission's nonprofit exemption applies to nonprofit licensees "regardless of whether their stations operate" commercially.¹¹ Delmarva urges the Commission to deny the Objection and grant the Application.

In its Reply, Triangle argues that Delmarva's operation of commercial translators during the license term after claiming fee exemptions is reviewable at renewal.¹² Triangle further argues that while Delmarva technically may be exempt from paying regulatory fees because of a general nonprofit determination, its connections to commercial entities must be considered, especially its relationship to CP Broadcasting through Nancy A. Epperson (Epperson).¹³ Triangle maintains that by ignoring attributable interests, every commercial entity could choose to have its commercial licenses held by nonprofit subsidiaries exempted from regulatory fees, which would deprive the Commission of the entire portion of its budget comprised of statutorily collected regulatory fees.¹⁴

Discussion. Under section 309(k) of the Communications Act of 1934, as amended (Act), the Commission shall 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.¹⁵ 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."¹⁶

Informal objections to license renewal applications, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that

⁸ See *id.* at 5.

⁹ Opposition at 1-2, Exhibit A (providing a copy of receipts demonstrating payment of the Stations' license renewal filing fees).

¹⁰ Opposition at 2-3. (citing 26 U.S.C. § 501(c)(3)).

¹¹ *Id.* at 2-3.

¹² Reply at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 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*, Order, 11 FCC Rcd 6363 (1996).

¹⁶ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

grant of the application would be *prima facie* inconsistent with section 309(k) of the Act.¹⁷ Informal objections must also contain adequate and specific factual allegations sufficient to warrant the relief requested.¹⁸ For the reasons set forth below, we find that Triangle has not met this burden.

Filing Fees. Under section 8 of the Act, and section 1.1104 of the Rules, the Commission is required to assess and collect application fees to recover the costs of processing applications for media services.¹⁹ Delmarva has acknowledged that it submitted the Application without the requisite filing fees, claims that such omission was inadvertent, and has in fact paid the required filing fee.²⁰ We therefore dismiss the Objection as moot to the extent it opposes grant of the Application on that basis.

Section 1.1118 of the Rules sets forth the procedures for processing applications submitted without required fees.²¹ Specifically, if the defective fee is discovered within 30 days of filing, the application is dismissed and can be re-filed with a new filing date.²² If the application is inadvertently forwarded to Commission staff for substantive review and the discrepancy is not discovered until after 30 calendar days from receipt of the filing, the filer is billed the fee amount due plus a 25 percent penalty.²³ Here, the Application was inadvertently forwarded to Commission staff for substantive review without the requisite filing fee. As 30 days have elapsed from the date the Application was submitted with no fee, we could bill Delmarva retroactively for the fee and impose the 25 percent penalty.²⁴ Because Delmarva paid its renewal filing fee on December 24, 2019,²⁵ we will only require it to pay the 25 percent penalty for its deficient filing.

Nonprofit Regulatory Fee Exemption. Under section 9 of the Act, and section 1.1153 of the Rules, the Commission is required to assess and collect regulatory fees to recover the costs of certain

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

¹⁸ See *Area Christian*, 60 R.R.2d at 864, para. 6; *WFBM, Inc.*, Memorandum Opinion and Order, 47 FCC 2d 1267, 1268, para. 3 (1974).

¹⁹ 47 U.S.C. 158; 47 CFR § 1.1104.

²⁰ Opposition at 1.

²¹ 47 CFR § 1.1118.

²² 47 CFR § 1.1118(a).

²³ 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. Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission.”).

²⁴ See 47 CFR § 1.1118(b); *Leon F. Petterson*, Letter, 22 FCC Rcd 14021 (MB 2007) (after 30 days, recourse when application is submitted without appropriate filing fee is to bill the applicant retroactively for a 25 percent penalty).

²⁵ See 47 CFR § 1.1104(4)(c) (requiring FM translators to pay a \$70.00 fee for license renewal applications); Opposition at 2, Exhibit A.

regulatory activities.²⁶ Section 159(e)(1)(A) of the Act and section 1.1162(c) of the Rules provide a general regulatory fee exemption for nonprofit entities.²⁷ The nonprofit exemption is available only to those licensees who have established their nonprofit status under section 501 of the Internal Revenue Code or to those licensees with certification as a nonprofit entity by state or other governmental authority.²⁸ Thus, this exemption is predicated solely on the entity's status as a qualified nonprofit entity.²⁹

We have confirmed that Delmarva is recognized as a nonprofit organization under section 501 of the Internal Revenue Code, and was recognized as such at the time it filed the Application.³⁰ Because nonprofit entities are exempt from regulatory fees,³¹ we conclude that Delmarva's reliance on the nonprofit regulatory fee exemption for the Translators is appropriate.³² We reject Triangle's argument that an entity requesting an exemption under section 1.1162(c) must also meet the criteria of section 1.1162(e). Triangle provides no authority for this argument, and as discussed, Delmarva has demonstrated that it meets the requirements of section 1.1162(c), which is all that is required to obtain exemption from regulatory fees. Finally, Triangle does not explain how, under the criteria of Note 2 to section 73.3555 of the Rules, CP Broadcasting and iHeart would have an attributable interest in the

²⁶ 47 U.S.C. § 159(a); 47 CFR §§ 1.1151-1.1167.

²⁷ 47 U.S.C. § 159; 47 CFR § 1.1162(c).

²⁸ 47 CFR § 1.1162(c) (No regulatory fee shall be required for “[a]pplicants and permittees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as: “an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. 501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority.”).

²⁹ 47 CFR § 1.1162(c)(1) (“Any permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee *based upon its status as a nonprofit entity*, as described above, shall file with the Secretary of the Commission (Attn: Managing Director) written documentation establishing the basis for its exemption”) (emphasis added); *Documentation of Nonprofit Exemption from Regulatory Fees*, Public Notice, 13 FCC Rcd 744 (1998) (providing that “Nonprofit entities are exempt from paying FCC annual regulatory fees if they claim nonprofit status under Section 501(c)(3) of the Internal Revenue Code (IRS), 26 U.S.C. §501 or are certified, or otherwise authorized, as a nonprofit entity by a state or other governmental authority.”). *See, e.g., Assessment & Collection of Regulatory Fees for Fiscal Year 2005*, Report and Order, 20 FCC Rcd 12259, 12266 (2005) (“A University owns a commercial facility whose profits are used to support the University and/or its programs. If the facility is licensed to the University directly, or to an exempt subsidiary of the University, it is exempt from regulatory fees. If, however, the license is held by a for-profit subsidiary, regulatory fees are owed, even though the University is an exempt entity. A state pension fund is the majority owner of a for-profit commercial broadcasting firm. The facilities licensed to the for-profit broadcasting firm would be subject to regulatory fees, even though it is owned by an exempt agency.”).

³⁰ *See* IRS, Charities and Non-Profits, <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search> (last visited Mar. 12, 2021) (displaying tax exempt status for “Delmarva Education Association”). Given this determination, we will not address any challenges to its nonprofit status at this time, as the Commission generally defers to the Internal Revenue Service on such matters.

³¹ 47 CFR § 1.1162(c).

³² *Id.* Delmarva does not claim (nor is it qualified to claim) the NCE regulatory fee exemption. *See* 47 CFR § 1.1162(e) (No regulatory fee shall be required for “[a]pplicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.305 of this chapter.”).

Translators.³³ We therefore reject the argument that CP Broadcasting and iHeart have an attributable interest in the Translators which would require payment of regulatory fees.³⁴

Renewal of License. We have reviewed the Application in accordance with section 309(k) of the Act,³⁵ and find that the Translators served the public interest, convenience, and necessity during the subject license term.³⁶ We will therefore grant the Application by separate action upon payment of the 25 percent penalty charge so long as there are no other issues that would preclude grant of the Application.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the Informal Objection filed by Triangle Access Broadcasting, Inc. on December 16, 2019, IS GRANTED IN PART AND OTHERWISE DENIED.

IT IS FURTHER ORDERED that the applications to renew the licenses of WTRJ-FM, Orange Park, Florida (Application File No. 0000094418), and FM translator station W300CU, Jacksonville, Florida (Application File No. 0000094422), filed by Delmarva Educational Association on October 1, 2019, ARE GRANTED.

IT IS FURTHER ORDERED that, pursuant to section 1.1118(b) of the Commission's rules, Delmarva Educational Association will be assessed a penalty charge equal to 25 percent of the filing fee for its applications to renew the licenses of FM translator stations W266CX, Fruit Cove, Florida (Application File No. 0000094419); W262AG, Jacksonville, Florida (Application File No. 0000094421); and W247CF, Orange Park, Florida (Application File No. 0000094420). Accordingly, it will be billed a total of \$52.50 under separate cover.

IT IS FURTHER ORDERED that, the applications to renew the licenses of FM translator stations W266CX, Fruit Cove, Florida (Application File No. 0000094419); W262AG, Jacksonville, Florida (Application File No. 0000094421); and W247CF, Orange Park, Florida (Application File No. 0000094420) ARE HELD IN ABEYANCE until the aforementioned application filing fees are paid in full.

Sincerely,

Albert Shuldiner
Chief
Audio Division
Media Bureau

³³ See 47 CFR § 73.3555, Note 2.

³⁴ We also reject Triangle's argument that Epperson's connection to CP Broadcasting must be considered when determining whether Delmarva owes regulatory fees for FM translator station W266CX. Triangle provides no evidence that Delmarva is not an organization duly qualified as a nonprofit, tax-exempt entity. See 47 CFR § 1.1162(c).

³⁵ 47 U.S.C. § 309(k)(1).

³⁶ See *supra* n.2.