



Federal Communications Commission
Washington, D.C. 20554

May 23, 2022

In Reply Refer To:
1800B3-KN

Woof Boom Radio Muncie License LLC
c/o John C Trent, Esq.
Putbrese, Hunsaker and Trent, PC
200 South Church Street
Woodstock, VA 22664
FCCMAN3@SHENTEL.NET

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

In re: W223CZ, Muncie, IN
Facility ID No. 201636
Application File No. 0000152693

License to Cover

Informal Objection

Dear Counsel and Objector:

We have before us the application of Woof Boom Radio Muncie License LLC (Applicant) for license to cover for FM translator station W223CZ, Muncie, Indiana (Application).¹ We also have before us the informal objection of Triangle Access Broadcasting, Inc., (Triangle) to the Application (Objection), and related pleadings.² For the reasons set forth below, we grant the Objection in part, deny it in all other respects, and give the licensee 30 days to provide a technical need showing for its overlapping translator stations.

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.³ Specifically, Triangle asserts that W223CZ would overlap with 90.7% of the area served by W275AJ, the Applicant's

¹ Application of Woof Boom Radio Muncie License LLC for License to Cover, Application File No. 0000152693 (filed Jul. 14, 2021) (Application).

² Informal Objection of Triangle, Pleading File No. 0000154302 (filed Jul. 28, 2021) (Objection); Supplement of Triangle, Pleading File No. 0000159017 (filed Sep. 10, 2021) (Supplement). The Applicant did not respond to Triangle's filings.

³ 47 CFR § 74.1232(b).

licensed translator station that also rebroadcasts the signal of WXFN(AM).⁴ Triangle states that the Applicant has not demonstrated a technical need for the same-area translators as required by section 74.1232(b).⁵ Triangle suggests that the Bureau deny the Application unless the Applicant demonstrates technical need.⁶ Triangle also claims that the Applicant wrongly certified on previous applications that the proposal complies with section 74.1232 of the rules,⁷ and suggests that we should therefore consider the W223CZ construction permit to be expired as of July 16, 2021.⁸

In the Supplement, Triangle states that the Applicant changed the primary station for W275AJ to WLBC-FM (HD2).⁹ However, Triangle claims that the Application still violates the rules, because WLBC-FM (HD2) simulcasts WXFN(AM), and therefore, the same programming would be broadcast on W275AJ and W223CZ without a showing of technical need.¹⁰ Triangle also argues that the Applicant violated section 1.17 of the rules by not disclosing this information on the Application.¹¹

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].”¹² 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.¹³ After reviewing the record, we grant the Objection in part.

We agree with Triangle’s assertion that a showing of technical need is required for W223CZ under section 74.1232(b).¹⁴ In relevant part, the rule 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.”¹⁵ The Commission has interpreted section

⁴ Objection at 1. The Facility ID for WXFN(AM) is 17601.

⁵ Objection at 2; *see* 47 CFR § 74.1232(b) (“More 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.”).

⁶ Objection at 2.

⁷ *Id.*; *see* Application File No. 0000140314.

⁸ *Id.*

⁹ Supplement at 1 & Exh. 1 (W275AJ Primary Change Notification Letter).

¹⁰ Supplement at 2.

¹¹ *Id.*

¹² 47 U.S.C. § 309(d)(1).

¹³ *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).

¹⁴ Objection at 2.

¹⁵ 47 CFR § 74.1232(b).

74.1232(b) to require a technical need showing only when the same party proposes to own more than one translator rebroadcasting the same signal to substantially the same area.¹⁶ Here, the two translators propose to retransmit the signal of the same primary station.¹⁷ The fact that W275AJ retransmits the signal of WLBC-FM (HD2), whereas W223CZ would retransmit the signal of WXFN(AM), is irrelevant because both translator stations ultimately rebroadcast the same WXFN(AM) signal.¹⁸ Therefore, a showing of technical need is required under the rule. Accordingly, we grant the Objection to the extent that it alleges that the Application would violate section 74.1232(b) of the rules, and instruct the Applicant to submit a technical need showing for the overlapping translators, or to change the primary station of one of the translators to a different signal, within 30 days.

However, we reject Triangle's argument that we should find that the W223CZ construction permit expired because the Applicant erroneously certified on a previous application that its proposal complies with section 74.1232 of the rules.¹⁹ Triangle's argument is effectively an untimely request to reconsider our grant of the permit.²⁰ Because Triangle failed to raise this argument while the W223CZ construction permit application was pending, it is now barred from doing so.²¹ Therefore, we deny the Objection in this regard. Nevertheless, we caution Applicant to be attentive to its application certifications in the future, because a false statement, even absent an intent to deceive, may constitute an actionable violation of section 1.17 of the rules.²²

Because Triangle has raised a substantial and material question of fact that grant of the Application is inconsistent with the Act,²³ we grant the Objection in part and deny it in all other respects. Furthermore, we hold the Application in abeyance and instruct the Applicant to submit a technical need

¹⁶ *Coe W. Ramsey, Esq. Steven L White*, 32 FCC Rcd 10105, 10111 (MB 2017) (citing *FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7222-23 (1990)).

¹⁷ W275AJ retransmits the signal of WLBC-FM (HD2) (Facility ID No. 17602), which simulcasts the signal of WXFN(AM) (Facility ID No. 17601); likewise, W223CZ would also rebroadcast the signal of WXFN(AM).

¹⁸ *Cf. Coe W. Ramsey, Esq.*, 32 FCC Rcd at 10111 (holding that a showing of technical need is not necessary where (a) two overlapping translators rebroadcast different digital subchannels of the same primary station because each had a different signal, and where (b) the same programming was rebroadcast on a translator station, a full-service AM station, and the HD2 channel of a full-service FM station which all overlap). Unlike *Coe W. Ramsey*, the Applicant here proposes to rebroadcast the same WXFN(AM) signal on both overlapping translators.

¹⁹ See Objection at 2.

²⁰ 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 . . ."). The date of public notice of the Commission's grant of the W223CZ construction permit application was April 6, 2021. *Broadcast Actions*, Public Notice, Report No. PN-2-210406-01, at 7 (MB Apr. 6, 2021). Triangle filed the Objection on July 28, 2021, more than 30 days after the date of public notice of the grant of the permit.

²¹ See 47 CFR § 1.106(b)(1) ("If the petition is filed by a person who is not a party to the proceeding, it shall . . . show good reason why it was not possible for him to participate in the earlier stages of the proceeding.").

²² See, e.g., *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).

²³ 47 U.S.C. § 309(d).

showing or change the primary station of one of the translators within 30 days.

Conclusion/Actions. Accordingly, IT IS ORDERED that the Informal Objection filed by Triangle Access Broadcasting, Inc., on July 28, 2021 (Pleading File No. 0000154302), IS GRANTED in part and otherwise DENIED.

IT IS FURTHER ORDERED, that the Application (Application File No. 0000152693) of Woof Boom Radio Muncie License LLC for a license to cover a construction permit for FM translator station W223CZ, Muncie, Indiana, BE HELD IN ABEYANCE.

Sincerely,

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau