



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer To:
1800B3-KN

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In re: W288ED, Charlottesville, VA
Facility ID No. 148345
File No. 0000162971

W262CC, Tallahassee, FL
Facility ID No. 148289
File No. 0000163260

**Application for Assignment of
Authorization**

Dear Applicants and Objector:

We have before us the amended application (Charlottesville Application) for consent to assign the construction permit of FM translator station W288ED from iHM Licenses, LLC, dba iHeartMedia

(iHeartMedia), to Piedmont Communications, Inc. (Piedmont),¹ and the amended application (Tallahassee Application) for consent to assign the license of FM translator station W262CC from Piedmont to iHeartMedia.² We also have before us a petition to deny the applications (Petition) filed by Tidewater Communications, LLC (Tidewater),³ and related pleadings.⁴ For the reasons set forth below, we deny the Petition and grant the applications.

Background. In the Petition, Tidewater states that it has standing to file a petition to deny because it is a broadcast licensee in the Charlottesville, VA, market and will suffer listener and advertising losses if the applications are granted.⁵ Tidewater claims that both of the applications contain false certifications because Piedmont responded to the “Other Authorizations” question with “N/A,”⁶ which Tidewater claims is materially incorrect because Piedmont is the licensee of four other full-power radio stations.⁷ Tidewater also argues that we must deny the Charlottesville Application because Piedmont does not have reasonable assurance of the availability of the transmitter site specified on the construction permit.⁸ Finally, Tidewater states that the 1 mV/m contour of W288ED is outside of the 1 mV/m contour of the primary station that W288ED would rebroadcast,⁹ in violation of section 74.1232(d),¹⁰ and that the primary station also operates on channel 288, co-channel with W288ED, which would likely cause self-interference.¹¹ Tidewater requests that we deny the applications.

Piedmont filed the Opposition on November 18, 2021. In response to Tidewater’s argument that Piedmont wrongly responded to the “Other Authorizations” question with “N/A,” Piedmont states that it followed the instructions for FCC Form 2100, Schedule 314, for transactions involving only the assignment of a permit or license for an FM translator station.¹² Replying to Tidewater’s argument that

¹ Application of iHeartMedia and Piedmont for Assignment of License, Application File No. 0000162971 (filed Oct. 6, 2021) (Charlottesville Application). The Charlottesville Application was amended on November 24, 2021, and again on March 25, 2022. The parties amended the application to change the primary station of W288ED, and to attach a copy a rebroadcast agreement. *Id.*

² Application of iHeartMedia and Piedmont for Assignment of License, Application File No. 0000163260 (filed Oct. 6, 2021) (Tallahassee Application). The Tallahassee Application was also amended on March 25, 2022, to attach a copy of the broadcast agreement. *Id.*; *see supra* note 1.

³ Petition of Tidewater to Deny, Pleading File No. 0000166605 (filed Nov. 5, 2021) (Petition).

⁴ Opposition of Piedmont, Pleading File No. 0000169640 (filed Nov. 18, 2021) (Opposition).

⁵ Petition at 1. Tidewater states that it is the licensee of six full-power radio stations and two FM translator stations in the Charlottesville, VA, market. *Id.*

⁶ The question states “[p]lease upload an attachment detailing the call signs, locations, and facility identifiers of all other broadcast stations in which Assignee or any party to the application has an attributable interest.” Piedmont responded “N/A.” *See* Charlottesville Application at 3; Tallahassee Application at 3.

⁷ Petition at 3; 47 CFR § 1.17.

⁸ *Id.* at 5. The construction permit specifies a tower with Antenna Structure Registration (ASR) number 1064938, which Tidewater states is registered to SBA GC Towers, Inc. *Id.*; *see* File No. BNPFT-20130821ABF.

⁹ *Id.* at 6. The primary station specified for W288ED was WOJL(FM), Facility ID No. 41899. *See* Charlottesville Application.

¹⁰ 47 CFR § 74.1232(d).

¹¹ Petition at 6.

¹² Opposition at 2-3.

Piedmont lacks reasonable site assurance to construct the Charlottesville Application as specified, Piedmont states that Tidewater cannot legally speak on behalf of the tower site owner and therefore fails to demonstrate that there is no reasonable site assurance on the tower specified for W288ED.¹³ Further, Piedmont states that any alleged co-channel interference that would result from the construction of the W288ED facilities is unrelated to the Charlottesville Application, which is for an assignment of license, and should have been raised prior to the grant of the underlying construction permit.¹⁴ According to Piedmont, it is improper for Tidewater to use the Charlottesville Application to collaterally attack W288ED's long-ago granted construction permit.¹⁵ Additionally, Piedmont states that it and iHeartMedia have found a new site for W288ED, have obtained reasonable site assurance at the new site, and intend to amend the Charlottesville Application accordingly to remedy any possible technical issues for the station.¹⁶

Piedmont and iHeartMedia amended the Charlottesville Application on November 24, 2021, to identify WVCV(AM)¹⁷ as the new primary station for W288ED.¹⁸

Discussion. Procedural Matters. Section 309(d)(1) of the Communications Act of 1934, as amended (Act),¹⁹ 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].” These allegations of fact, except for those of which official notice may be taken, must be supported by an affidavit or declaration under penalty of perjury of someone with personal knowledge of the facts alleged. Under the Commission’s long-established case law on standing, a petitioner to deny a broadcast radio application may be granted standing if the petitioner: (1) is a competitor in the market suffering signal interference; (2) is a competitor in the market suffering economic harm; or (3) is a resident of the station’s service area or listens to the station regularly and such listening is not the result of transient contacts with the station.²⁰

Tidewater asserts standing as the licensee of six full-power radio stations and two FM translator stations in the Charlottesville, VA, market that will “suffer listener and advertising losses that would harm Tidewater from an economic perspective” if we grant the assignment applications.²¹ Because we deny the

¹³ *Id.* at 3. Piedmont states that its communications with SBA Communications, the owner of the tower, indicate that there is space available to accommodate the channel 288 translator, even if they are not at the same height specified in the current construction permit. *Id.*

¹⁴ *Id.*; see File No. BNPRF-20130821ABF.

¹⁵ *Id.*

¹⁶ *Id.* at 4.

¹⁷ Facility ID No. 54873.

¹⁸ Amended Application of iHeartMedia and Piedmont for Assignment of License, Application File No. 0000162971 (filed Nov. 24, 2021). iHeartMedia also filed a minor modification application, identifying ASR number 1017221 as the new antenna location for W288ED. See File No. 0000169568.

¹⁹ 47 U.S.C. § 309(d)(1).

²⁰ Melodie Virtue, *Esq.*, 30 FCC Rcd 6045, 6049 (MB 2015).

²¹ Petition at 2. Tidewater argues that because the applications are “inextricably linked,” the Petition should be considered against both applications. However, if we decide that Tidewater does not have standing in Tallahassee, Tidewater requests that we treat the Petition as a petition to deny the Charlottesville Application, and as an informal

Petition on the merits, we do not need to address this argument.

Substantive Matters. Section 310(d) of the Act requires the Commission to decide whether the proposed transfer or assignment of a broadcast license would be in the public interest.²² Pursuant to sections 309(d) and (e) of the Act,²³ petitions to deny must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact calling for further inquiry regarding whether grant of the assignment application would be *prima facie* inconsistent with section 309(a) of the Act.²⁴ This section provides that we are to grant an application if, upon consideration of the application and pleadings and such other matters of which we may officially take notice, we find that the public interest, convenience, and necessity will be served by granting of such application. If, however, the applicant 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.

We find no merit to Tidewater’s assertion that the applications contain false certifications from Piedmont. The instructions to FCC Form 2100, Schedule 314, state that for transactions involving only the assignment of a permit or license for an FM or TV translator station or a low-power TV (LPTV) station, the assignor and assignee each should select “N/A” in response to the other authorizations question.²⁵ Because each application is for consent to assign only the license for an FM translator station, we agree with Piedmont that it rightfully responded “N/A” to the “Other Authorizations” question on the applications. Therefore, we need not consider this issue any further.

We also reject Tidewater’s remaining arguments against the Charlottesville Application. Tidewater’s arguments that Piedmont lacked reasonable assurance of site availability, that the 1 mV/m contour of W288ED is outside of the 1 mV/m contour of WOJL(FM), and that WOJL(FM) may not serve as W288ED’s primary station are moot because the applicants amended the Charlottesville Application to identify a new primary station and new tower site for the translator.²⁶ Therefore, we find that the petitioner has not raised a substantial and material question of fact that grant of the applications would be inconsistent with the standard set forth in section 309 of the Act, to which we are bound,²⁷ and we deny the Petition.

We further find that Piedmont and iHeartMedia are qualified as assignees and that grant of the applications is consistent with the public interest, convenience, and necessity.²⁸ Accordingly, we grant

objection against the Tallahassee Application. *Id.* Piedmont and iHeartMedia do not challenge Tidewater’s standing as a party in interest.

²² 47 U.S.C. § 310(d).

²³ *Id.* § 309(d)-(e).

²⁴ *Id.* § 309(a); see *Mayor Maurice A. Brown et al.*, 24 FCC Rcd 7632, 7634 (MB 2009).

²⁵ Instructions to FCC Form 2100, Schedule 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License, at 9, 16 (Feb. 2022), <https://www.fcc.gov/sites/default/files/2100-314-instructions.pdf>.

²⁶ See Charlottesville Application. Additionally, iHeartMedia filed a modification application identifying a new tower site for W288ED, which was granted on December 2, 2021. See File No. 0000169568. The new tower site is ASR Number 1017221. *Id.*

²⁷ 47 U.S.C. § 309(e).

²⁸ *Id.* § 309(a).

the applications.

Conclusion/Actions. Accordingly, IT IS ORDERED that the petition to deny filed by Tidewater Communications, LLC on November 5, 2021, (Pleading File No. 0000166605) IS DENIED.

IT IS FURTHER ORDERED that the application for assignment of license of FM translator station W262CC from to Piedmont Communications, Inc. to iHM Licenses, LLC dba iHeartMedia (Application File No. 0000163260) and the application for assignment of construction permit of FM translator W288ED from iHM Licenses, LLC dba iHeartMedia to Piedmont Communications, Inc. (Application File No. 0000162971) ARE GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau