

ORIGINAL

RECEIVED

2016 AUG 23 A 10: 23

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of:

Educational Media Foundation

Minor Change in Licensed Facility
W290AS, Bainbridge, Georgia

)
)
)
)
)
)

File No. BPFT-20160129AVQ

Facility ID No. 139418

Accepted / Filed

AUG 22 2016

To: The Office of the Secretary
Attn: Chief, Media Bureau (Audio Division)

Federal Communications Commission
Office of the Secretary

REQUEST FOR DISMISSAL OF PETITION FOR RECONSIDERATION AS MOOT

Educational Media Foundation, Inc. ("EMF") files this Request for Dismissal of the Petition for Reconsideration ("RTN Petition") filed by Radio Training Network, Inc. ("RTN"). RTN claims that the above-referenced construction permit granted to W290AS (the "Construction Permit") should not have been granted as the facilities set out in that permit will interfere with numerous listeners' reception of RTN's station WVFJ-FM, Greenville, Georgia. Thus, RTN asks that the grant of the Construction Permit be rescinded and the application for that Construction Permit dismissed. However, on July 28, 2016, EMF filed an application to modify the channel specified in the Construction Permit to resolve any issue of interference to be caused to listeners of WVFJ.¹ As, on the new channel, the translator will not cause any interference to WVFJ, the RTN Petition will be moot and can be dismissed.

¹ See FCC File Number BMPFT-20160728AFT (the "Modification Application"). On August 15, 2016, the Modification Application was dismissed by the Audio Division Staff as being a second application for the same station using the 250-mile waiver provisions of the AM Revitalization Order. For the reasons set forth below and in a separate Petition for Reconsideration, EMF is

EMF filed the Modification Application specifically to modify its Construction Permit to address the issues raised by RTN. Specifically, EMF is proposing to relocate to an existing tower site in Marietta, Georgia (ASR 1047389) on Channel 223D. The modification of the Construction Permit, filed to resolve the interference issues raised by RTN, is an acceptable amendment allowable under the special rules that apply during the 250-mile waiver window for filing applications for translators to rebroadcast AM stations, the window in which the Construction Permit was granted.²

In a recent letter decision, *Letter to Marnie Sarver, et. al.*, (Ref. 1800B#-ATS), released October 22, 2014, the Commission determined that the submission of a curative amendment to a translator application so as to resolve an interference issue was acceptable for purposes of processing efficiency. If the application had been dismissed, the applicant would have been allowed to specify the facilities set out in its amendment by filing a petition for reconsideration of the dismissal and an amendment seeking acceptance of the application *nunc pro tunc*. Not requiring the extra steps of a dismissal of the pending application and the filing of a petition for reconsideration seeking a *nunc pro tunc* acceptance of the amended application was seen as being an administratively efficient way of processing the amendment – an accommodation to which the petitioner in that case did not object. There is no reason that this Modification Application should be treated any differently, as the grant of the RTN Petition would similarly give rise to the ability of EMF to file an amendment proposing the facilities set forth in the

simultaneously requesting reconsideration of the dismissal of the Modification Application (“EMF’s Petition for Reconsideration”).

² The Modification Application was only filed as a “modification” rather than as an “amendment,” as the Construction Permit had already been granted. However, it is in reality an amendment, as the application is still “pending” given the Petition for Reconsideration. *See, e.g.*, Section 1.65(a) of the Rules, “an application is ‘pending’ before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or review by any Court.”

Modification Application and asking that the application be accepted *nunc pro tunc* to resolve the perceived issue.

Moreover, as set out in more detail in EMF's Petition for Reconsideration, under the rules of this 250-mile waiver window, the modified application would be acceptable *nunc pro tunc* as if it had been the original application, as channel changes such as that proposed in the amendment can be made during this window. Under the rules of the window any channel change is a minor amendment.³ The Public Notice outlining the rules for this window specifically encourages engineering solutions to resolve mutually exclusive applications. There is no reason that allowing an engineering amendment like the one proposed in the Modification Application should not be accepted where it seeks to resolve a potentially disqualifying alleged defect in the initial application – i.e. the allegations that the facilities specified in the initial Construction Permit would create prohibited interference to identified listeners of RTN's stations outside of the station's protected contour – listeners that could not have been anticipated by EMF before the filing of its initial application any more than could a translator applicant anticipate the filing of a mutually exclusive applicant.

Good cause exists to grant the modification application to resolve the engineering issues raised by RTN as the grant will not prejudice any party. It does not conflict with any pending

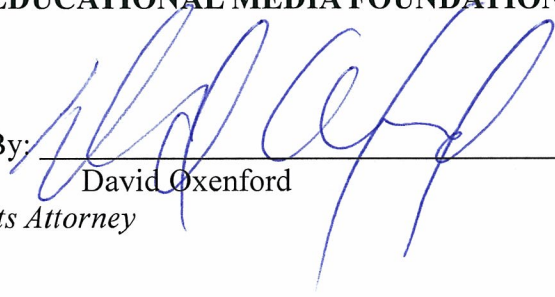
³ In fact, the FCC specifically states, in the Public Notice's Question and Answer section, that "amendments to move to any rule-complaint channel will be accepted." Pursuant to that statement, the FCC has accepted and granted applications amended to non-adjacent channels during this window in order to resolve technical issues. *See, e.g. Application of Salem Media of Massachusetts for W254BR* (Facility ID 145583), File Number BPFT-20160129AXJ (amended from channel 291 to channel 262); *Application of Gois Broadcasting Boston LLC for W234AL* (Facility ID 139030), File Number BPFT-20160129AXE (amended from channel 255 to channel 236). EMF should similarly be able to amend this application to resolve a technical issue while the application is still technically pending at the FCC.

application or cause impermissible interference to any radio station, including any RTN full-power radio station.

For the reasons set forth above, the modification application should be granted, and the RTN Petition for Reconsideration dismissed as moot.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

By: 

David Oxenford
Its Attorney

Wilkinson Barker Knauer, LLP
1800 M Street, N.W., Suite 800N
Washington, D.C. 20036
(202) 783-4141

Dated: August 22, 2016

CERTIFICATE OF SERVICE

I, Rhea Lytle, hereby certify that this 22nd day of August, 2016, I sent via First Class US mail, postage prepaid, a copy of the foregoing **REQUEST FOR DISMISSAL OF PETITION FOR RECONSIDERATION AS MOOT** to the following:

James D. Bradshaw, Deputy Chief*
Audio Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Larry Hannif-Ali*
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

A. Wray Fitch, Esq.
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102-3807

By: 
Rhea Lytle

*Via Email