



Federal Communications Commission
Washington, D.C. 20554

June 3, 2019

In Reply Refer to:
1800B3-DB

Mountain Community Translators, LLC
c/o Victor A. Michael, Jr.
87 Jasper Lake Road
Loveland, CO 80537

Rocket Radio, Inc.
c/o John L. Low, Jr.
4501 Broadway
Miami, AZ 85539

In re: K271BN, Estes Park, CO
Mountain Community Translators, LLC
Facility ID No. 142146

File No. BALFT-20181227AAY

Application for Assignment of License
Informal Objection

Dear Counsel:

We have before us an application (Application) for consent to assign the license for K271BN, Estes Park, Colorado from Mountain Community Translators, LLC (Mountain),¹ to Greeley Broadcasting Corporation (Greeley). Also before us is an Informal Objection (Objection) filed against the Application by Rocket Radio, Inc. (Rocket)² and an Opposition to the Objection (Opposition).³ For the reasons set forth below, we deny the Objection and grant the Application.

Background. Mountain filed the Application on December 27, 2018⁴ and the staff accepted it for filing on December 28, 2018.⁵

In its Objection, Rocket claims that Victor A. Michael, Jr., owner of Mountain and Kona Coast Radio, LLC (Kona Coast), failed to provide accurate information in several informal objections he filed in various proceedings involving Rocket's FM and AM stations located in Claypool, Globe, and Tuba City,

¹ Mountain is the licensee of FM Translator station K271BN, Estes Park, Colorado on Channel 271 (102.1 MHz).

² Informal Objection of Rocket Radio, Inc., File No. BALFT-20181227AAY (filed Jan. 31, 2019).

³ Opposition to Informal Objection filed by Mountain Community Translators, LLC, File No. BALFT-20181227AAY (filed Feb. 19, 2019).

⁴ See License No. BALFT-20181227AAY.

⁵ See *Broadcast Applications*, Public Notice, Report No. 29394 (rel. Jan 2, 2019).

Arizona.⁶ Rocket argues that in each of the proceedings, Mr. Michael misrepresented his business relationship with Rocket's president, John L. Low, Jr., either by stating that he "does not currently have, or ever had, any business relationship with [Mr.] Low"⁷ or by failing to disclose the existence of the business relationship altogether.⁸ Rocket argues that, due to this "blatant lack of candor, misrepresentation, and abuse of process," the Commission must review Mr. Michael's qualifications to be a licensee before taking action on any applications that he filed on behalf of Mountain and Kona Coast.⁹

In its Opposition, Mountain states that Rocket fails to demonstrate a direct interest in the outcome of the Application as Rocket is headquartered in Arizona, hundreds of miles from the translator at issue and does not own any broadcast facilities in the state of Colorado.¹⁰ Mountain maintains that Rocket's only basis for its filing is that Mr. Michael allegedly made false statements to the Commission in other proceedings unrelated to the Application at issue.¹¹ Mountain states that there was never a business relationship between Mr. Michael and Mr. Low and that Rocket fails to provide any evidence, such as a signed business agreement, to support its allegation.¹² According to Mountain, the emails attached to Rocket's Objection do not support its assertion that the two men had a business relationship or engaged in any business negotiations.¹³

Additionally, Mountain argues that Rocket's Objection makes no sense and does not even correctly state its clear objection to the Application and should be summarily dismissed.¹⁴ Finally, Mountain states that, at its core, Rocket is asserting a breach of contract claim that should be resolved in the courts.¹⁵

Discussion. Section 309(d)(1) of the Communications Act of 1934, as amended, 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]."¹⁶ Informal objections, like petitions to deny, also must allege properly supported facts that, if true, would establish a substantial and

⁶ See Objection at 2-3, 5. On June 26, 2017, Kona Coast filed Informal Objections to Rocket's application to upgrade KIKO-FM, Claypool, Arizona (File No. BPH20170620ABH) and the KIKO-FM covering license application (File No. BLH-20181121AAM). Kona Coast also filed Informal Objections to Rocket's applications to modify K256DB, Globe, Arizona (License No. BPFT-20170710ABF) and K246CH, Tuba City, Arizona (License No. BPFT-20180625ABP) on June 8, 2018 and June 28, 2018, respectively.

⁷ Objection at 2, Attachments 1-2.

⁸ Objection at 5, Attachments A-Y (containing several emails from 2006-2007 and one email from July 2018 to show that Mr. Michael did, in fact, have a business relationship with Mr. Low).

⁹ *Id.* at 5.

¹⁰ See Opposition at 1.

¹¹ *Id.* at 2. Mountain states that Rocket repeats the same allegations of a past and existing contractual business relationship between Mr. Low and Mr. Michael in at least four other proceedings and it appears that Rocket intends to obstruct any and all Michael filings, which constitutes an abuse of Commission processes. *Id.* at 2, 5-6, 7.

¹² See *id.* at 3, 5.

¹³ *Id.* at 3-4. See also *supra*, n.8.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 5.

¹⁶ 47 U.S.C. § 309(d)(1).

material question of fact that grant of the application would be inconsistent with the public interest.¹⁷ When reviewing these filings, the Commission is not required to resolve, through a hearing, issues which the Commission finds are neither "substantial" nor "material,"¹⁸ regardless of whether the facts involved are in dispute.¹⁹

In this case, Rocket's Objection does not contest the merits of the Application. Rather, Rocket asserts that Mr. Michael attempted to use FCC proceedings to attack a business associate (i.e., Mr. Low),²⁰ and attempted to deceive the Commission by not disclosing the existence of a business relationship with Mr. Low.²¹ We find that whether these men have some sort of business relationship such that Mr. Michael should have disclosed it in Commission filings opposing Mr. Low's applications is neither substantial nor material and that further inquiry is not warranted prior to rendering a determination on the Application. Mr. Lowe's claim that Mr. Michael misrepresented facts to the Commission²² or lacked candor in his objections to other Low applications therefore requires no further discussion. To the extent these allegations arise from a contract dispute between the parties, we defer those claims to the appropriate court for resolution as it is neither within the jurisdiction nor the expertise of this agency to address whether any breach of contract has occurred.²³

Conclusion/Actions. In light of the above discussion, we dismiss the Objection. Additionally, we have reviewed the Application and find that Mountain is qualified to assign, and Greeley is qualified to hold, the license for Station K271BN and that grant of the Application is consistent with the public interest, convenience, and necessity.

¹⁷ 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) (*WWOR-TV, Inc. Order*); *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).

¹⁸ A "substantial" question of fact is one in which "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 397 (D.C. Cir. 1985). A "material" fact is one in which the Commission finds relevant in making its public interest determination. *Stone v. FCC*, 466 F.2d 316, 323 n.18 (D.C. Cir. 1972), citing H.R. Rep. No. 1800, 86th Cong., 2d Sess. 12 (1960).

¹⁹ *Stone v. FCC*, 466 F.2d at 323.

²⁰ Objection at 2.

²¹ *Id.* at 2-3.

²² A misrepresentation is a false statement of fact or false certification made with intent to deceive the Commission. *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129 (1983); *San Francisco Unified Sch. Dist.*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, nn.40-41 (2004) (subsequent history omitted). Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification) and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive. *Leflore Broad. Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *American Int'l Dev., Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816, n.39 (1981) (subsequent history omitted). In a case where all of the allegations are a matter of public record on file with the Commission, there is no logical basis to infer a motive to deceive unless there is other probative evidence of intent to deceive. *KAXT, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 9638, 9646, para. 16 and n.69 (2017).

²³ *Milford Broadcasting Co.*, Hearing Designation Order, 8 FCC Rcd 680, para. 2 (MB 1993) (private disputes are beyond the Commission's jurisdiction and must be resolved in a local court of competent jurisdiction); *Centel Corp., et al.*, Memorandum Opinion and Order, 8 FCC Rcd 1829, 1831, para. 10 (CCB 1993) (the Commission is not the proper forum for the resolution of private contractual disputes).

ACCORDINGLY, IT IS ORDERED, that the Informal Objection filed by Rocket Radio, Inc. on January 31, 2019, IS DENIED.

IT IS FURTHER ORDERED, that the application for consent to assign the license of K271BN, Estes Park, CO (File No. BALFT-20181227AAY), filed by Mountain Community Translators, LLC, IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read "Albert Shuldiner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Albert Shuldiner
Chief
Audio Division
Media Bureau