



Federal Communications Commission  
Washington, D.C. 20554

May 27, 2015

*In Reply Refer to:*  
1800B3-HOD

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In Re: **Queen Cities Broadcasting LLC and  
Educational Media Foundation**  
KMCQ(FM), Covington, WA  
Facility ID No. 41861  
File No. BALH-20150226ABI

**Application for Assignment of License  
Request for Waiver of Main Studio Rule  
Petition to Deny**

**Educational Media Foundation**  
KMCQ(FM), Covington, WA  
Facility ID No. 41861  
File No. BMLH-20150303AAL

**Application to Modify License**

Dear Counsel and Mr. Resler:

We have before us an application ("Assignment Application") seeking approval for the proposed assignment of the license for Station KMCQ(FM), Covington, Washington ("Station"), from Queen Cities Broadcasting LLC to Educational Media Foundation ("EMF"). William Resler ("Resler") filed a Petition to Deny ("Petition") the Assignment Application on April 3, 2015.<sup>1</sup> Also before us is an unopposed application ("License Modification Application") filed by EMF for modification of the Station's license to operate as a noncommercial educational ("NCE") station,<sup>2</sup> and a main studio waiver request to operate

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<sup>1</sup> EMF filed an Opposition to Petition to Deny ("Opposition") on April 10, 2015. Resler filed a Response to Opposition to Petition to Deny ("Reply") on April 24, 2015.

<sup>2</sup> 47 C.F.R. § 73.1690(c)(9).

the Station as a satellite of another EMF NCE station, KLVR(FM), Middletown, California.<sup>3</sup> For the reasons stated below, we deny the Petition, and grant both the Assignment Application and the License Modification Application.

**Background.** Queen Cities and EMF filed the Assignment Application on February 26, 2015. Therein, EMF stated its intention to file an application to modify the Station's license to specify operation as a NCE station. EMF also included a main studio waiver request related to the relocation of the Station's main studio to the main studio of its co-owned station KLVR(FM), Middletown, California. Shortly thereafter, on March 3, 2015, EMF filed the License Modification Application, which cross-references its main studio waiver request.

Resler filed the Petition on April 3, 2015. Resler urges us to deny the Assignment Application because EMF will change the Station's format and may be unable to serve its community during an emergency.<sup>4</sup> He also seeks denial of the main studio waiver request. He questions whether the Station – operating as a satellite of KLVR(FM) – can fulfill its local service obligation.<sup>5</sup> Resler also makes general criticisms of the main studio waiver process and argues that it is time for the Commission to “re-tool” that process.<sup>6</sup>

**Discussion. Assignment Application.** In assessing the merits of a petition to deny under Section 309(d) of the Communications of 1934, as amended,<sup>7</sup> we first determine whether the petitioner makes specific allegations of fact that, if true, would demonstrate that grant of the application would be *prima facie* inconsistent with the public interest.<sup>8</sup> If the Commission determines that the petitioner has satisfied the threshold determination, it proceeds to determine whether, on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice, the petitioner has presented a “substantial and material question of fact” to warrant further inquiry.<sup>9</sup> Using this standard, we consider Resler's allegations.

Resler requests that we deny the Assignment Application because EMF proposes to change the Station's format.<sup>10</sup> It is well-settled policy, however, that the Commission does not scrutinize or regulate programming, nor does it take potential changes in programming formats into consideration in reviewing assignment applications.<sup>11</sup> Accordingly, we will not further consider this format-based argument. Nor

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<sup>3</sup> A “satellite” station meets all of the Commission's technical rules. However, it originates no programming and instead rebroadcasts the parent station's programming. *See Amendment of Multiple Ownership Rules*, Memorandum Opinion and Order, 3 R.R.2d 1554, 1562 ¶ 18 (1964).

<sup>4</sup> Petition at 1-2, 5.

<sup>5</sup> *Id.* at 2-3.

<sup>6</sup> *Id.* at 4-5.

<sup>7</sup> 47 U.S.C. § 309(d).

<sup>8</sup> *See Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). The Commission determines whether a petitioner has met this threshold inquiry in a manner similar to a trial judge's consideration of a motion for directed verdict: “if all the supporting facts alleged in the affidavits were true, could a reasonable fact finder conclude that the ultimate fact in dispute had been established.” *Edwin L. Edwards*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22248 ¶ 18 (2001), *citing Gencom Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987) (“*Gencom*”).

<sup>9</sup> *Gencom*, 832 F.2d at 181. *See also* 47 U.S.C. § 309(d)(2).

<sup>10</sup> Petition at 1-2.

<sup>11</sup> *See Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC2d

can Resler make a *prima facie* case through general allegations regarding increased “concentration of religious broadcasting,” decreased “competition and diversity of viewpoints available to the public,” harms to localism, EMF’s qualifications to be a NCE broadcaster or the Station’s ability to fulfill its “EAS role.”<sup>12</sup> Allegations that consist “of ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits ... are not sufficient” to establish a *prima facie* case.<sup>13</sup> Lastly, to the extent that Resler asks us to consider whether another purchaser could be found,<sup>14</sup> we note that we are not authorized to deny a proposed assignment based on the comparative service that a party other than the proposed assignee might provide to the public.<sup>15</sup> We find that Resler has not made a *prima facie* case that grant of the Assignment Application would be inconsistent with the public interest.

**License Modification Application.** A licensee may apply to convert a radio station from commercial to noncommercial educational status using a modification of license application, provided that it demonstrates that it is a qualified educational organization under Section 73.503(a) of the rules<sup>16</sup> and that the station will be used to advance its educational program.<sup>17</sup> In the License Modification Application, EMF submits the required certifications.<sup>18</sup> Therefore, we approve EMF’s request to operate the Station as an NCE station and grant the License Modification Application. This grant will become effective upon the filing with the Commission of a notice that Queen Cities and EMF have consummated the assignment of the Station’s license to EMF.

**Main Studio Waiver.** The Commission will waive the main studio rule<sup>19</sup> where good cause exists to do so and where the proposed studio location “would be consistent with the operation of the station in the public interest.”<sup>20</sup> The Commission has recognized that NCE stations, which are statutorily prohibited from selling advertising, can benefit from centralized operations because they generally have fewer resources available to them.<sup>21</sup> Given this, the Commission has found good cause exists to waive the

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858, 865-66 ¶ 21 (1976), *recon. denied*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev’d sub nom.*, *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev’d*, 450 U.S. 582 (1981). Resler, himself, appears to acknowledge this. Reply at 1 (stating that Resler does not “wish the FCC to dictate local programming at the expense of the First Amendment”) and 2 (“I don’t support any governmental interference regarding EMF’s format choice ....”).

<sup>12</sup> See Petition at 1, 2 and 5.

<sup>13</sup> See also *North Idaho Broadcasting Co.*, 8 FCC Rcd 1637, 1638 ¶ 8 (1993), *citing and quoting Gencom Inc.*, 832 F.2d at 180 n.11.

<sup>14</sup> Petition at 2; Reply at 2.

<sup>15</sup> See 47 U.S.C. § 310(d) (in acting on a proposed assignment, Commission may not consider whether the public interest will be served by assignment of license to a person other than the proposed assignee).

<sup>16</sup> 47 C.F.R. § 73.503(a).

<sup>17</sup> 47 C.F.R. § 73.1690(c)(9).

<sup>18</sup> License Modification Application, Exh. 31 (stating that the Commission has previously found that EMF qualifies as a noncommercial educational organization under File No. BLED-19920806KA).

<sup>19</sup> A station’s main studio must be located either (1) within a station’s principal community contour; (2) within the contour of any other broadcast station licensed to its community; or (3) within 25 miles of the center of its community. 47 C.F.R. § 73.1125(a).

<sup>20</sup> 47 C.F.R. § 73.1125(b)(2).

<sup>21</sup> *Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691 (1998), *recon. granted in part*, 14 FCC Rcd 11113 (1999); *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC

main studio location requirement where satellite operations are proposed.<sup>22</sup> A satellite NCE station must demonstrate, however, that it will meet its local service obligations to satisfy the Section 73.1125 public interest standard.

Resler questions whether the Station will meet its local service obligations and observes that EMF is not “financially distressed.”<sup>23</sup> In response, EMF states it has committed to specific measures adequate to meet its local service obligations.<sup>24</sup> EMF points out that we previously found these same measures to be “adequate to meet its public service obligation.”<sup>25</sup> In addition, EMF notes that, while the Commission has based main studio waivers on the limited funding of NCE stations, “this does not mean that licensees receiving waivers must be in abject poverty.”<sup>26</sup> Accordingly, we conclude that there is good cause to waive Section 73.1125(a) of the rules to allow EMF to collocate the Station’s main studio with co-owned station KLVR(FM).<sup>27</sup> We grant EMF’s waiver request effective upon the filing with the Commission of a notice that Queen Cities and EMF have consummated the assignment of the Station’s license to EMF.

Finally, to the extent that Resler seeks changes to the Commission’s main studio waiver policy, we find that this adjudication is not the appropriate venue for consideration of such changes. It has “long been Commission practice to make decisions that alter fundamental components of broadly applicable regulatory schemes in the context of rule making proceedings, not adjudications.”<sup>28</sup>

**Conclusion/Actions.** We find that Resler has not raised a substantial and material question of fact warranting further inquiry regarding the Assignment Application. We further find that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED that the Petition to Deny filed by William Resler on April 3, 2015, IS DENIED, and the application for approval to assign the license for KMCQ(FM), Covington, Washington (File No. BALH-20150226AB1) from Queen Cities Broadcasting LLC to Educational Media Foundation IS GRANTED.

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Rcd 5024, 5027 ¶ 30 (1988); *Board of Visitors of James Madison University*, Hearing Designation Order, 8 FCC Rcd 1751, 1752 ¶ 5 (MMB 1993).

<sup>22</sup> *Id.* See also, e.g., *American Family Association*, Hearing Designation Order, 12 FCC Rcd 15128, 15128 ¶ 2 (MMB 1997).

<sup>23</sup> Petition at 2-3; Reply at 2.

<sup>24</sup> Specifically, EMF has pledged that it will: (1) operate a toll-free number that permits residents of Covington to contact Station staff without long-distance charges; (2) establish a local public affairs representative in the community of Covington who will conduct, at least on a quarterly basis, interviews and surveys of local community leaders and other residents to ascertain the interests, concerns, and needs of Covington listeners; (3) regularly address the recurrent issues, problems, and needs of Covington residents through the Station’s news and public affairs programming; and (4) maintain a public inspection file for the Station at the main studio of its parent station, station KLVR(FM), Middletown, California, making reasonable accommodation to listeners wishing to examine the file’s contents. Assignment Application, Exh. 18.

<sup>25</sup> Opposition at n.10, citing *Aaron P. Shainis, Esq.*, Letter, 28 FCC Rcd 126, 135 (MB 2013).

<sup>26</sup> See *Letter to Emily French from Peter H. Doyle, Chief, Audio Division, Media Bureau* (dated Dec. 18, 2014) (“*French Letter*”). To the extent that Resler asks us to examine EMF’s balance sheets, Reply at 2, we have never granted or denied a main studio waiver based on the size of an NCE broadcaster’s endowment or budget. See *French Letter* at 5.

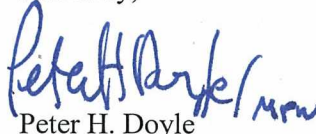
<sup>27</sup> We remind EMF that, notwithstanding grant of the waiver requested here, the Station’s public file must contain the quarterly issues and programs lists required by 47 C.F.R. § 73.3527(e)(8).

<sup>28</sup> See, e.g., *Media General Communications, Inc. and MG Broadcasting, LLC, as E.A.T.*, Memorandum Opinion and Order, 21 FCC Rcd 7669 (2006); *Infinity Holdings Corp. of Orlando*, Opinion, 11 FCC Rcd 17813 (1996).

IT IS FURTHER ORDERED that, effective upon filing of a notice of consummation with the Commission regarding the assignment of the license for KMCQ(FM), Covington, Washington, from Queen Cities Broadcasting LLC to Educational Media Foundation, the application to modify the license for KMCQ(FM) (File No. BMLH-20150303AAL) filed by Educational Media Foundation on March 3, 2015, IS GRANTED.

Finally, IT IS ORDERED that, effective upon filing of a notice of consummation with the Commission regarding the assignment of the license for KMCQ(FM), Covington, Washington, from Queen Cities Broadcasting LLC to Educational Media Foundation, the request for waiver of Section 73.1125(a) of the Commission's rules, 47 C.F.R. § 73.1125(a), filed by Educational Media Foundation on February 26, 2015, IS GRANTED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter H. Doyle", with a stylized flourish at the end.

Peter H. Doyle  
Chief, Audio Division  
Media Bureau