

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Application of)

ALABAMA MEDIA, LLC)

For Construction Permit)
FM Translator W299BX,)
Dothan, AL)

File No. BPFT-20161026ABO

For Special Temporary Authority)
FM Translator W299BX)
Dothan, AL)

File No. BSTA-20161027AAY

Facility ID No. 141166

To: Secretary

Attn: Chief, Audio Division, Media Bureau

OPPOSITION TO INFORMAL OBJECTION

Alabama Media, LLC ("Alabama Media"), by its attorneys, hereby submits this Opposition to Informal Objection in response to the Informal Objection (the "Objection") filed by WOOF, Inc. ("WOOF") in the above-captioned matter.

Introduction and Background

Alabama Media is the licensee of four commercial FM radio stations in the Dothan, Alabama market, as well as the licensee of FM translator W299BX, Dothan, Alabama, FIN 141166 (the "Translator"), which rebroadcasts the signal of WCNF(AM), Dothan, Alabama. WCNF is owned by Alarado Media, LLC ("Alarado Media"). In 2013, Alabama Media commenced efforts to relocate three of its four full power FM stations to a common tower site in Dothan, Alabama. This relocation required construction of a new tower from which two of the full-power stations would be able to serve a larger area. The new tower will also provide a home for other broadcast radio and telecommunications facilities.

As this effort progressed, Alabama Media also decided to relocate the Translator, for which it received a license in 2015, to the new site. Alabama Media filed applications with the Commission to move the facilities of the three full-power stations to the new tower site, which applications were granted.¹ At the same time, Alabama Media pursued myriad other governmental permits and approvals for the construction of the new tower, including FAA, environmental, historical, tribal and municipal approvals.

As should be self-evident, the construction of the tower and relocation of station facilities, a process which ultimately took nearly three years to implement, represented a considerable financial and administrative burden for a small broadcaster with limited resources.² But it was one which Alabama Media was willing to undertake to better serve the community of Dothan and the surrounding area. However, during the course of this project, Alabama Media inadvertently failed to file a modification application to relocate the Translator to the new tower site.

The Translator commenced broadcasting from the new site on or about September 10, 2016. At that time Alabama Media did not realize that it did not have Commission authorization for the Translator to operate from the new site. It became aware of this only when an FCC inspector performed an inspection of the station on October 24, 2016.³

¹ WECB(FM) BPH-20150612AAH; WESP(FM) BPH-20150612AAJ; and WJRL-FM BPH-20130508ABB. An application for license to cover has been filed for each of those construction permits.

² The cost of complying with federal and municipal permitting processes alone was approximately \$50,000.

³ The inspector was Agent Patel. According to the Objection, WOOF filed a Request for Enforcement with the Commission's Enforcement Bureau on September 28, 2016. However, WOOF did not provide Alabama Media or its counsel with a copy of that filing, nor did WOOF take any steps to notify Alabama Media that the Translator's operations were not in compliance with Commission rules.

In order to rectify the unauthorized operation, on October 26, 2016, Alabama Media filed the above-captioned application for a construction permit (the “CP Application”),⁴ and the following day filed a request for special temporary authority to operate the Translator from the new site (the “STA Request”).⁵ On November 9, 2016, the CP Application was granted, and on that same day Alabama Media filed an application for a license to cover.⁶ Subsequently, the grant of the construction permit was rescinded by the Commission.

A. The Unauthorized Operation of the Translator was Inadvertent and Only a Brief Period Elapsed Before the Appropriate Filings Were Made.

This is not a situation where a scofflaw operator is running, as WOOF claims, a “pirate radio operation.”⁷ Alabama Media’s non-compliance was wholly inadvertent, and it took prompt remedial steps once it became aware of such non-compliance. Alabama Media acknowledges that inadvertence and the implementation of remedial measures do not constitute a defense to failure to comply with the Commission’s Rules, and regrets its failure to timely obtain Commission authorization to relocate the Translator. However, the period between when the Translator began operating from the new site, and when Alabama Media filed the CP Application and the STA Request, amounted to less than seven weeks. In previous cases, the Commission has taken into account the duration of unauthorized operation in determining the appropriate penalty.⁸ The brief period of non-compliance in this case should mitigate any penalty the Commission may impose.

⁴ File No. BPFT-20161026ABO.

⁵ File No. BSTA-20161027AAY.

⁶ File No. BLFT-20161109ABT

⁷ Objection at 1.

⁸ See, e.g., *Applications of Pinebrook Corporation for Renewal of License for Station WINW(AM), Canton, Ohio*, (Media Bureau, DA 16-1248, released November 4, 2016)(Licensee assessed a forfeiture of \$10,000, the base forfeiture amount under Section 1.80 of the Commission’s Rules, for unauthorized operation which spanned more than six years); *Media Associates, Inc.*, 26 FCC Rcd 3703 (Media Bureau 2011)(Licensee assessed forfeiture of \$7,000 for unauthorized operation of more than a

It is also clear that the operation of the Translator from the new site poses no air navigation or interference hazard. Applications to move three of Alabama Media's full-power FM stations to the same tower have been granted and the addition of the Translator facilities does not increase the height of the tower or significantly change the tower site facilities. In fact, the CP Application was granted, albeit later rescinded pending action on the Objection, so presumably there is no legal or technical reason why the Translator cannot operate with the modified facilities, which are located only about two miles from the licensed site. To Alabama Media's knowledge, no party has experienced any interference from the Translator's operations, and no party other than WOOF has objected to them. The Commission has taken the absence of air navigation hazards and interference into account in determining appropriate penalties for unauthorized operation, and in this case those factors weigh in favor of Alabama Media.⁹

B. The Brief Period During Which the Translator was Originating Programming Did Not Constitute a Material Violation of Commission Rules.

While the translator was technically originating programming for a period of several days between approximately September 10 and September 18, 2016, this was similarly a brief and inadvertent instance of non-compliance. The intent of Alabama Media and Alarado Media, the WCNF licensee, was to co-ordinate in order to turn both stations on at the same time. However, technical problems caused delay in the returning WCNF to service. During this period of time, unaware that such action would violate Commission rules and knowing that WCNF would return to service in a matter of days, Alabama Media continued with the plan to turn on the Translator,

year); *Schweitzer Media, Inc.*, 26 FCC Rcd 10336 (Media Bureau 2011)(Licensee assessed forfeiture of \$7,000 for unauthorized operation for more than a year); *Multicultural Radio Broadcasting, Inc.*, 15 FCC Rcd 20630 (2000)(Taking into account the duration of the violation—nearly a year—in determining amount of the forfeiture).

⁹ See, e.g., *Multicultural Radio Broadcasting, Inc.* at ¶15; *Rasa Communications Corp.*, 11 FCC Rcd 13243 (Media Bureau 1995).

airing the sports-oriented programming which would have been aired by WCNF, so that such programming could be delivered to listeners as soon as possible.

The Commission has explained that the prohibition on the origination of programming by FM translators is based upon (i) a balancing of the promotion of program diversity with enhancing the incentives for efficient broadcast station development, and (ii) a balancing of efforts to improve local service with the technical degradation of the overall broadcasting system that could result from a proliferation of translator stations.¹⁰ In this case, there was no prospect that an adverse impact on the incentives for efficient broadcast station development, or a degradation of the broadcasting system, would result from the several days during which the Translator aired programming while Alarado Media was working to bring WCNF back on the air. While that fact does not excuse the instance of non-compliance, it is useful to keep in mind that any violation, in addition to having been quite short in duration, also did not undermine the core principals underlying the Commission's Rules.

C. WOOF Fails to Raise any Substantial and Material Issue of Fact as to Alabama Media's Candor Before the Commission.

WOOF bases its assertions of lack of candor on two exceedingly slender reeds. First, WOOF asserts that Alabama Media lacked candor because it did not mention in the CP Application that the new Translator facilities had been inadvertently constructed.¹¹ However, as WOOF acknowledges, in the STA Request filed the very next day Alabama Media informed the Commission in no uncertain terms that the facilities had been constructed at the new site and that the CP Application had been filed.¹² Rather than constituting lack of candor, the STA Request

¹⁰ *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212 (1990), at ¶48.

¹¹ Objection at 6.

¹² The STA Request stated the following: "The licensee undertook to obtain FCC construction permits (each a "CP") to move to the new tower all of its facilities, which consist of three full-power FM radio

demonstrates that Alabama Media was entirely candid regarding the construction of the Translator at the new site. Moreover, Alabama Media assumed that the Commission was already well aware of the non-compliance issue since it was a Commission inspector who had alerted Alabama Media to the issue just two days before the CP Application was filed.

Second, WOOF asserts that in the CP Application Alabama Media falsely certified that neither it nor other parties to the application had an interest in or connection with WCNF. WOOF asserts that the certification was false because James Ricky Carter, the principal of Alarado Media, is employed by Alabama Media.¹³ That certification was made in response to Item II.3.a of the CP Application which seeks to determine whether the translator licensee has any interest in or connection with the primary station licensee. Alabama Media believes that the proper response was to certify that it had no such interest or connection because the fact that James Ricky Carter is an employee of Alabama Media should not constitute an interest or connection on the part of Alabama Media in WCNF.¹⁴ In any event, even if the correct response to Item II.3.a were "No," it would make no difference because the correct response to Item II.3.b, certifying that the Translator is a "fill-in," is clearly "Yes." Because the Translator is a fill-in, the prohibitions under Section 74.1232(d) of the Commission's Rules do not apply.

Finally, WOOF's suggestion that Alabama Media somehow has violated the Commission's multiple ownership rules by operating an FM translator has no basis in law or in

stations and the Translator. It obtained construction permits for all of them but the Translator through inadvertent oversight. Believing that it had received appropriate authority for all of the facilities, the licensee at great expense has completed moving the translator, and nearly completed moving the three FM stations, to the new tower. Once the licensee learned of the Translator oversight, it immediately prepared and filed a CP application for authority to move the Translator to the new tower."

¹³ Objection at 6-7.

¹⁴ The list of "interested and connected parties" in Section 74.1232(d) of the Commission's Rules, which includes employees, is inapposite as that rule applies only to situations where the translator's coverage contour extends beyond the protected contour of the primary station. 47 C.F.R. 74.1232(d). Out of an abundance of caution, however, Alabama Media will amend the CP Application to change the certification and to add an exhibit to the CP Application disclosing Mr. Carter's employment relationship with Alabama Media.

fact.¹⁵ WOOF calls for a far reaching investigation of the alleged concentration of ownership among Alabama Media, Alarado Media and Gulf South Communications, Inc. ("Gulf South"), but raises no issue of fact regarding the legality of those parties' broadcast ownership interests.¹⁶ In fact, they are in full compliance with the Commission's rules. Contrary to WOOF's assertion that the Translator represents Alabama Media's impermissible "fifth" FM station in the market, the Commission's multiple ownership rules place no restrictions upon the number of FM translators a party can own in a market.¹⁷ The multiple ownership rules would, in fact, permit Alabama Media to acquire WCNF, a fact which further undercuts WOOF's assertions regarding impermissible market concentration by Alabama Media in the Dothan market.

WOOF's efforts to draw Gulf South into this matter are similarly unpersuasive. WOOF apparently asserts that the Commission should investigate the relationship between Alabama Media and Gulf South because the sole member of Alabama Media, Robert Holladay, is the brother of the sole shareholder of Gulf South, Clay Holladay.¹⁸ However, WOOF proffers no

¹⁵ Objection at 7.

¹⁶ It is ironic that WOOF attempts to wrap itself in the flag of promoting competition when its motive appears to be to restrain competition. WOOF, the only sports format station in the Dothan market other than WCNF, had the ESPN programming contract until the Summer of 2016. Alabama Media understands that WOOF's failure to perform under that contract led ESPN to move the programming to WCNF. In any event, WOOF lost the ESPN programming and WCNF got it. WOOF now attempts to "compete" not by providing better service, but by trying to stifle WCNF by cutting off its FM translator platform. The Commission has recognized that FM translators used by AM stations to rebroadcast their signals on a fill-in basis have provided significant service improvements. *Revitalization of the AM Radio Service*, 30 FCC Rcd 12145 at ¶8 (2015). Such translators enable AM stations, particularly Class D stations such as WCNF, to compete more effectively by, among other things, providing a viable nighttime signal.

¹⁷ See, e.g., *Implementation of Section 309(j) of the Communications Act; Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, 14 FCC Rcd 8724 at ¶64 ("Given the secondary status, limited coverage areas and restricted power of LPTV and translator stations, no limit has ever been placed on the number of these stations that any person or entity may own.")

¹⁸ See Objection at 7.

evidence whatsoever that would raise any issue of fact as to an impermissible relationship between Alabama Media and Gulf South.¹⁹

D. The Translator has Complied with the Commission's Rules Regarding Station Identification.

WOOF asserts that on September 14, 2016 the Translator broadcast a station identification which did not include the Translator's call sign.²⁰ Included with this Opposition is a compact disc containing a recording of the station identification announcement broadcast over the Translator since it commenced operations at the new site on or about September 10, 2016. That announcement contains the Translator call letters, and is broadcast three times daily in compliance with Commission's rules (*i.e.*, at approximately 7:59:30 a.m.; 12:59:30 p.m.; and 4:58:30 p.m.) To the best knowledge of Alabama Media it has made these regular station identification announcements in accordance with the Commission's rules since the Translator went on the air at the new site, and it is unclear to Alabama Media what Mr. Holderfield heard or recorded.

E. Conclusion.

Alabama Media takes its responsibilities as a Commission licensee seriously, and regrets its failure to obtain Commission authorization to relocate the Translator at the new site. It asks that the Commission take into account that this was an oversight made by a small rural

¹⁹ In fact, Leigh Simpson Thomas, who controls directly or through a trust 100% of the voting stock of WOOF, Inc., has attempted unsuccessfully on previous occasions to raise substantially the same allegations regarding control of the Dothan market by, and collusion among members of, the Holladay family. See, *Letter in Re WLDA(FM), et. al., dated October 24, 2012 from Peter H. Doyle to David D. Oxenford, et. al.*, 27 FCC Rcd 13363; *Letter in Re WBBK-FM, et. al., dated October 24, 2012 from Peter H. Doyle to David D. Oxenford, et. al.*, 27 FCC Rcd 13357. WOOF offered no facts to support such allegations then, and offers none now. Moreover, the Commission found in a separate proceeding that where the two brothers controlled radio stations in the same local market, such stations were operated independently of each other. *Letter dated May 1, 2008 from Peter H. Doyle to David D. Oxenford, et. al.*, 23 FCC Rcd 7117.

²⁰ Objection at 8-9. The assertion is supported by the declaration of Mr. Michael Holderfield.

broadcaster implementing a complex relocation of facilities, which involved four stations and multiple governmental compliance issues, in order to better serve the public. In addition, the period between when the Translator went on the air and the CP Application was filed was only about seven weeks long. Indeed, once the construction permit was granted and the application for a license to cover was filed, the Translator was in fact operating lawfully under automatic program test authority and it was only the later rescission of the construction permit by the Commission that caused the Translator to once again be operating without authorization.

Alabama Media respectfully requests that the Bureau promptly grant the STA Request, which seeks special temporary authorization for the current facilities, and which facilities have already been reviewed and approved by the Commission from a technical perspective in connection with the initial grant of the CP Application. Such grant will return the Translator to authorized operation and would be without prejudice to any enforcement action the Commission may decide to pursue. Alabama Media further requests that the Bureau deny the Objection and grant the CP Application.

Respectfully submitted,

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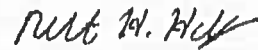
November 29, 2016

Declaration

Robert H. Holladay hereby declares as follows:

1. I am the sole member of Alabama Media, LLC, holder of the Federal Communications Commission license for FM radio broadcast translator station W299BX (FIN 141166).
2. This Declaration is being provided in support of the Opposition to Informal Objection to which it is appended.
3. I have reviewed such Opposition to Informal Objection, and all statements of fact therein are true and correct to the best of my information and belief.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



Robert H. Holladay

November 28, 2016

CERTIFICATE OF SERVICE

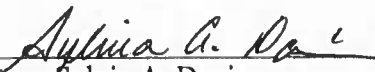
I, Sylvia A. Davis, hereby certify that on this 29th day of November, 2016, a copy of the foregoing Opposition to Informal Objection was served on the following parties by first-class mail, postage pre-paid (except as otherwise indicated below):

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