



Federal Communications Commission
Washington, D.C. 20554

May 13, 2019

In Reply Refer To:
1800B3-HOD

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**In re: Radio License Holdings, LLC and
Educational Media Foundation**

WPLJ(FM), New York, NY
Facility ID 73877
BALH-20190213AAU, BMLED-
20190222AAE

WYAY(FM), Gainesville, GA
Facility ID 48727
BALH-20190213AAV, BMLED-
20190214AAQ

WRQX(FM), Washington, DC
Facility ID 73252
BALH-20190213AAW, BMLED-
20190214AAS

**Petition to Deny and Informal
Objections**

Dear Counsel and Petitioner:

We have before us applications (Assignment Applications) for consent to assign the licenses for WPLJ(FM), New York, NY, WYAY(FM), Gainesville, GA, and WRQX(FM), Washington, DC (collectively, Stations), from Radio License Holdings, LLC (RLH), to Educational Media Foundation (EMF). Also before us are contingent applications (Modification Applications) filed by EMF to convert the Stations from commercial to noncommercial

educational (NCE). Finally, before us are petitions to deny¹ and informal objections² filed against the applications for consent to assign and to modify the license for WYAY(FM) (respectively, WYAY Assignment Application and WYAY Modification Application). As discussed below, we deny the petitions to deny and informal objections, and grant the Assignment and Modification Applications.

Background. RLH and EMF filed the Assignment Applications on February 13, 2019. Shortly thereafter, EMF filed the Modification Applications, which are “contingent upon the grant and consummation” of the Assignment Applications. The Assignment and Modification Applications are part of a larger transaction involving the sale to EMF of six stations licensed to subsidiaries of Cumulus Media Inc.³

Christina Wellman (Wellman) filed petitions to deny the WYAY Assignment Application and the WYAY Modification Application, and three individuals filed informal objections to the WYAY Modification Application. In their pleadings, Wellman and the three objectors argue that the talk radio format currently broadcast on WYAY(FM) should be preserved.⁴ Wellman and two of the objectors also assert that EMF’s proposal to operate an NCE station on a non-reserved frequency violates Commission rules.⁵ Wellman further alleges that “the public inspection files for the Georgia EMF stations” are incomplete,⁶ EMF will not deliver programming that serves the

¹ Formal Petition to Deny of Christina Wellman, File No. BALH-20190213AAU (filed Mar. 28, 2019) (Wellman Assignment Petition); Formal Petition to Deny of Christina Wellman, File No. BMLED-20190214AAQ (filed Mar. 25, 2019) (First Wellman Modification Petition); Formal Petition to Deny of Christina Wellman, File No. BMLED-20190214AAQ (filed Mar. 28, 2019) (Second Wellman Modification Petition).

² See Informal Objection of Dawn Ann Miller, File No. BMLED-20190214AAQ (filed Mar. 22, 2019) (Miller Objection); Informal Objection of David Young, File No. BMLED-20190214AAQ (filed Mar. 22, 2019) (Young Objection); Informal Objection of Larry Nelson, File No. BALH-20190213AAU (filed Mar. 28, 2019) (Nelson Assignment Objection); Informal Objection of Larry Nelson, File No. BMLED-20190214AAQ (filed Mar. 25, 2019) (First Nelson Modification Objection); Informal Objection of Larry Nelson, File No. BMLED-20190214AAQ (filed Mar. 28, 2019) (Second Nelson Modification Objection). The text of the Miller Objection states it is “filed by Christina Wellman” but the pleading is signed by Dawn Ann Miller (Miller). Accordingly, we treat the pleading as having been filed by Miller.

³ The other stations involved are KFFG(FM), Los Altos, California, WZAT(FM), Tybee Island, Georgia, and WXTL(FM), Syracuse, New York. We have before us applications for consent to assign the licenses for these stations from other subsidiaries of Cumulus Media Inc. to EMF. See File Nos. BALH-20190213ABG (application to assign license for KFFG(FM) from Radio License Holding SRC LLC to EMF); -20190213ABA (application to assign license for WZAT(FM), from Cumulus Licensing LLC to EMF); -20190213ABB (application to assign license for WXTL(FM) from Radio License Holding CBC, LLC, to EMF). We also have before us contingent applications to convert these stations from commercial to NCE status. See File Nos. BMLED-20190214AAR (KFFG(FM)); -20190214AAT (WZAT(FM)); -20190214AAU (WXTL(FM)). All of these applications are unopposed. Concurrent with the adoption of this letter order, we are granting them by public notice.

⁴ Wellman Assignment Petition at 2-3; First Wellman Modification Petition at 2-3; Second Wellman Modification Petition at 2-3; Miller Objection, at 1-2; Young Objection, at 1-2; Nelson Assignment Objection, at 1-3; First Nelson Modification Objection, at 1; Second Nelson Modification Objection, at 1-3.

⁵ Wellman Assignment Petition at 1; First Wellman Modification Petition at 1; Second Wellman Modification Petition at 1; Miller Objection at 1; Young Objection at 1.

⁶ Wellman Assignment Petition at 1; First Wellman Modification Petition at 1; Second Wellman Modification Petition at 1.

“local needs of the majority public,”⁷ EMF will exceed the Commission’s multiple ownership limits,⁸ and there is an ongoing Copyright Review Board audit of EMF’s royalty payments.⁹

EMF filed a single response to the petitions to deny and informal objections. We consider the petitions to deny, informal objections and EMF’s response below.

Discussion. The Commission applies a two-step analysis when evaluating a petition to deny or informal objection under the public interest standard.¹⁰ First, the Commission must determine whether the petition (or objection) contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.¹¹ If the petition (or objection) meets this threshold requirement, the Commission must determine “whether the totality of the evidence raises a substantial and material question of fact justifying further inquiry.”¹² If no such question is raised, the Commission will deny the petition (or objection) and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity.

Public Inspection Files. Wellman alleges that the public inspection files for unspecified Georgia stations currently licensed to EMF are missing issues/programs lists in violation of Section 73.3527(e)(8) of the Commission’s rules (Rules).¹³ This allegation is irrelevant to our analysis here. The Commission does not presume that “misconduct at one station is necessarily predictive of the operation of the licensee’s other stations.”¹⁴ In any event, even if the allegation was relevant, Wellman offers no specific allegations of fact, such as the call signs of the EMF stations or the number and/or dates of the missing lists.

Multiple Ownership. Wellman asserts that, if it acquires WYAY, EMF will exceed the limits set forth in Section 73.3555 of the Rules.¹⁵ As EMF points out, though, these limits do not apply to NCE stations.¹⁶

⁷ Wellman Assignment Petition at 2; First Wellman Modification Petition at 1-2; Second Wellman Modification Petition at 2.

⁸ Wellman Assignment Petition at 2; First Wellman Modification Petition at 2; Second Wellman Modification Petition at 2.

⁹ First Wellman Modification Petition at 7.

¹⁰ See *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (*Astroline*); *Cumulus Licensing, Corp. (Assignor) and Clear Channel Broadcasting Licenses, Inc. (Assignee)*, Order, 16 FCC Rcd 1052, 1054 n.5 (2001); *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990).

¹¹ See *Astroline*, 857 F.2d at 1561.

¹² 47 U.S.C. § 309(d)(2).

¹³ Wellman Assignment Petition at 1; First Wellman Modification Petition at 1; Second Wellman Modification Petition at 1. See also 47 CFR § 73.3527(e)(8).

¹⁴ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1223, para. 92 (1986) (subsequent history omitted) (*Character Policy Statement*).

¹⁵ Wellman Assignment Petition at 2; First Wellman Modification Petition at 2; Second Wellman Modification Petition at 2.

¹⁶ 47 CFR § 73.3555(f) (“The ownership limits of this section are not applicable to noncommercial

Conversion to NCE Status. Wellman and two of the informal objectors allege that EMF cannot convert WYAY(FM) from commercial to NCE status because it operates on a frequency in the non-reserved portion of the FM band.¹⁷ In fact, Section 73.1690(c)(9) of the Rules permits the licensee of a commercial FM station to propose to change from commercial to NCE simply by modifying their permit or license.¹⁸ The WYAY Modification Application complies with that Rule and will be granted.

Programming. Along with the three objectors, Wellman decries the fact that EMF will change WYAY(FM)'s format from talk radio to religious programming.¹⁹ While the Commission appreciates that the Station's programming has attracted a devoted listenership, it is well-settled that the Commission does not scrutinize or regulate programming, nor does it take potential changes in programming formats into consideration in reviewing assignment applications. In 1976, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Communications Act of 1934, as amended, would not benefit the public, would deter innovation, and would impose substantial administrative burdens on the Commission.²⁰ The Supreme Court of the United States has upheld this policy and the Commission's determinations that "the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . ." and a change in programming is not a material factor that should be considered by the Commission in ruling on applications for license transfer.²¹

Wellman also implies that EMF will not "air programming that is responsive to the needs and problems of [the Station's] local community of license," and asserts that EMF programs its stations "with very little regard to local needs of the majority public."²² We reject this argument.²³ Religious programming, such as that offered by EMF, is one of the types of programming that a station can "use to meet its local public service obligations."²⁴ In any event,

educational FM and noncommercial educational TV stations.). See also Opposition at 5.

¹⁷ Wellman Assignment Petition at 1; First Wellman Modification Petition at 1; Second Wellman Modification Petition at 1; Miller Objection at 1; Young Objection at 1.

¹⁸ 47 CFR § 73.1690(c)(9).

¹⁹ Wellman Assignment Petition at 2-3; First Wellman Modification Petition at 2-3; Second Wellman Modification Petition at 2-3; Miller Objection at 1-2; Young Objection at 1-2; Nelson Assignment Objection at 1-3; First Nelson Modification Objection at 1; Second Nelson Modification Objection at 1-3.

²⁰ See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC2d 858, 845-66, paras. 18-21 (1976), *recon. denied*, Memorandum Opinion and Order, 66 FCC2d 78 (1977), *rev'd sub nom.*, *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev'd*, *FCC v. WNCN Listener's Guild*, 450 U.S. 582 (1981) (*WNCN*).

²¹ *WNCN*, 450 U.S. at 585.

²² Wellman Assignment Petition at 2; First Wellman Modification Petition at 1-2; Second Wellman Modification Petition at 1-2.

²³ We also reject Wellman's speculative claim that EMF will not operate the Station in the public interest because there are "no persons of color" serving on the EMF Board of Directors or working as DJs for its two programming networks. *Id.*

²⁴ See *Deregulation of Radio*, Report and Order, 84 FCC 2d 968, 982-83, para. 34 (1981), *on recon.* Memorandum Opinion and Order, 87 FCC 2d 797 (1981), *remanded on other grounds sub nom.*, *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983); *Eagle Broad. Co.*,

it is well-established that the Commission “will not take adverse action on a[n] . . . application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.”²⁵

Character Issues. In the Assignment and Modification Applications, EMF indicates that it is or was a party to broadcast applications “where character issues were left unresolved or were resolved adversely against it” and is a party to pending broadcast applications “in which character issues have been raised.” In an exhibit included with each of these applications, EMF cites four applications for new FM translators filed, which were subject to petitions to deny that alleged character issues.²⁶ We find EMF did not need to disclose these applications as they were no longer pending and did not involve unresolved character issues.²⁷ The same is true of a fifth application for a new FM translator cited in the exhibit.²⁸ In fact, in issuing a decision regarding that application, the Media Bureau noted that it found no evidence that EMF had made misrepresentations.²⁹ Finally, we note that Willman references a royalty audit being conducted by SoundExchange under authority granted to them by the Copyright Royalty Board.³⁰ This audit is ongoing and thus not relevant to our consideration of EMF’s character qualifications.³¹ Accordingly, we find that there is no substantial or material question of fact regarding EMF’s character qualifications.

Conclusion/Ordering Clauses. Having reviewed the applications, pleadings, and other facts before us, we conclude that neither Willman nor the informal objectors have raised a

Memorandum Opinion and Order, 23 FCC Rcd 18440, 18445, para. 11 (2008).

²⁵ See *Clear Channel Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 1421, 1431, n. 57 (2008), citing *WGBH Educ. Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 para. 4 (1978).

²⁶ See File Nos. BPFT-970911TH; BPFT-971003TF; BPFT-970206TB; BNPFT-200307811AAK.

²⁷ The requirement to disclose an “unresolved” character issue “is not triggered by the mere allegation of a character issue against an applicant in another proceeding but where ‘such allegations are determined to have merit and designated for hearing.’” *KAXT, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 9638, 9642, para. 16 (2017); *Greater Muskegon Broad., Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15464, 15472, para. 22 (1996). Here, three of the applications (File Nos. BPFT-971003TF; BPFT-970206TB; BNPFT-200307811AAK) were dismissed at EMF’s request. See Broadcast Actions, Public Notice, Report No. 44202 (MMB Mar. 20, 1998) (File No. BPFT-971003TF); Broadcast Actions, Public Notice, Report No. 44052 (MMB Aug. 11, 1997) (File No. BPFT-970206RTB); Broadcast Actions, Public Notice, Report No. 45599 (MB Oct. 27, 2003) (File No. BNPFT-20030811AAK) The fourth (File No. BPFT-970911TH) was mutually exclusive (MX) with another application and was dismissed when EMF was not designated the tentative selectee for that MX group. See *Comparative Consideration of Five Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational Reserved Band FM Translators*, Memorandum Opinion and Order, 29 FCC Rcd 9070, 9074, para. 9, 9077, para. 20 (2014).

²⁸ See File No. BPFT-19990125TB.

²⁹ *Educational Media Foundation*, File No. BPFT-19990125TB, Letter Order, at 2 (MMB Nov. 27, 2000).

³⁰ First Willman Modification Petition at 7.

³¹ *Character Policy Statement*, 102 FCC 2d at 1205-06, para. 48 (1986) (Commission does not consider adjudicated claims of non-Commission misconduct). Even if the copyright proceeding were resolved adversely to EMF, Willman fails to show that such an adverse determination would implicate EMF’s qualifications under the *Character Policy Statement*.

substantial and material question of fact warranting further inquiry. We further find that EMF is qualified to hold the Stations' licenses and that grant of the Assignment Applications and the Modification Applications is consistent with the public interest, convenience, and necessity.

Accordingly, **IT IS ORDERED** that the petitions to deny filed by Christina Wellman on March 25, and 28, 2019, ARE DENIED.

IT IS FURTHER ORDERED that the informal objections filed by Dawn Ann Miller and David Young on March 22, 2019, and the Informal Objections filed by Larry Nelson on March 25, and 28, 2019, ARE DENIED.

IT IS FURTHER ORDERED that the applications for consent to assign the licenses of WPLJ(FM), New York, NY (File No. BALH-20190213AAU), WYAY(FM), Gainesville, GA (File No. BALH-20190213AAV), and WRQX(FM), Washington, DC (File No. BALH-20190213AAW), filed by Radio License Holdings, LLC, and Educational Media Foundation **ARE GRANTED**.

IT IS FURTHER ORDERED that grant of the application for consent to assign the license of WRQX(FM) (BALH-20190213AAW) filed by Radio License Holdings, LLC, and Educational Media Foundation **IS SUBJECT TO THE CONDITION** that the transaction be consummated by June 1, 2019. If consummation does not occur prior to June 1, 2019, the transaction may not be consummated until after the license for WRQX(FM) has been renewed.

Finally, **IT IS ORDERED** that the applications filed by Educational Media Foundation to convert stations WPLJ(FM) (BMLED-20190222AAE), WYAY(FM) (BMLED-20190214AAQ), and WRQX(FM) (BMLED-20190214AAS) from commercial to noncommercial educational status **ARE GRANTED**, effective upon consummation of the assignments authorized herein. In order to facilitate this grant, the parties should notify Karen Workeman by e-mail at Karen.Workeman@fcc.gov or by phone at (202)418-2700 of the consummation.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: Ms. Dawn Ann Miller
Mr. Larry Nelson
Mr. David Young