

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

3 June 2020

Application of)
)
CHARISMA RADIO CORP.) FRN 0004310801
For Renewals of Licenses) FCC File No. 0000079564
For Renewals of Licenses Amendment) FCC File No. 0000098703
Lead Call Sign WHLC, Highlands, NC) Facility ID 10351

To: Marlene H. Dortch, Secretary
Federal Communications Commission
Attn: Media Bureau, Audio Division

REPLY TO OPPOSITION

Triangle Access Broadcasting, Inc. (“Triangle”), hereby replies to Charisma Radio Corp.’s (“Charisma”) April 29, 2020, Opposition to Informal Objection¹ (“Opposition”) of Triangle’s Informal Objection² (“Objection”) filed October 11, 2019. Triangle objected to a full renewal grant because W239CB (Facility ID 142620), W249CY (Facility ID 142647), W255CR (Facility ID 142796), W287CD (Facility ID 142798), and W293BX (Facility ID 81530) were same area translators³ in Charisma’s first application for renewals of licenses, FCC file no. 0000079564. Triangle also objected that W293BX could not effectively serve the purpose of a translator to improve the signal quality compared to the primary station it was translating. Finally, Triangle raised a concern with certifications that led to the translator authorizations. Contemporaneously with its Opposition Charisma tendered FCC file no. 0000098703 to amend its application for renewals of licenses (“amended application”).

¹ FCC LMS Pleading File No. 0000112876.
² FCC LMS Pleading File No. 0000086316.
³ 47 C.F.R. § 74.1232(b) (“Section 74.1232(b”).

In opposition, Charisma states that Triangle's claims are “either currently factually erroneous or not based in Commission law existing at the time of previous FCC actions.”⁴ Triangle disagrees.

W239CB, W249CY, W287CD, AND W293BX ARE STILL SAME-AREA TRANSLATORS

Charisma claims that it has now conformed its FM translators.⁵ Although Charisma was granted a modification of construction permit specifying WHZT as the W293BX primary,⁶ W293BX currently continues to operate as a same-area translator retransmitting WHLC. W293BX has neither been taken silent, nor has it licensed a modified facility. Until either of these actions has been taken, the Opposition's declaration that Triangle's claim is “currently factually erroneous” is premature. The translators cannot be renewed while the amended application reflects that W293BX, W239CB, W287CD, and W249CY are licensed and operating as same-area translators.

Regarding W255CR, now carrying WFSC (Franklin, NC), Triangle recognizes that this facility is now removed from the same-area group. Triangle withdraws its same-area objection to W255CR's renewal, but concerns over earlier same-area certifications involving W255CR remain.

SECTION 74.1231(a) IS A STANDARD TO DETERMINE PUBLIC INTEREST, CONVENIENCE AND NECESSITY

In opposition to Triangle's complaint that “W293BX cannot serve a purpose to supplement service to areas where direct reception of WHLC is unsatisfactory due to distance or intervening terrain barriers,”⁷ Charisma paints that Section 74.1231(a)⁸ of the Commission's rules is not restrictive, but instead only aspirational.⁹ While this may be true as to direct enforcement of the rule, the stated purpose provides a standard against which the “public interest, convenience and necessity”¹⁰ of an FM

4 Opposition, at ¶ 1.

5 id., at ¶ 5.

6 FCC LMS File No. 0000105985.

7 Objection, at 2.

8 47 C.F.R. § 74.1231(a) (“Section 74.1231(a”).

9 Opposition, at ¶ 6.

10 47 U.S.C. § 309(k)

translator can be evaluated. Triangle has raised a *prima facie* argument that W293BX is useless to benefit any listeners by broadcasting the same program from the same site at a lower power. Charisma has not refuted the claim. Triangle agrees that W293BX could be licensed, under current rules, from the same site of the primary if it had a different purpose, for example if the purpose was to convert digital signals to analog signals such that improving reception (signal strength) was not an objective. Yet, reauthorizing W293BX's current operation does not serve the public interest, convenience and necessity.

APPLICATION CERTIFICATIONS WERE UNJUSTIFIABLY INACCURATE

To explain why applications that failed to accurately disclose interests in other translators were habitually filed, Charisma artfully explains that the 50% overlap threshold used to classify translators as substantially overlapped was not published until after the grants of its FM translator applications. Charisma asserts that such a lack of guidance excuses its ignorance of the rules.¹¹ Yet, Charisma never addresses why it did not believe overlaps as high as 99% would not be considered “substantial” under any reasonable interpretation of the application question. The assertion is baseless.

The only sanctioned method to predict coverage of an FM station is detailed in 47 C.F.R. § 73.313. In order to conclude that its “FM translators would not be serving substantially the same area because of the surrounding mountainous region and terrain-blocked FM signal paths,”¹² Charisma would have to had completed the same requisite studies for making the prescribed technical need demonstrations, demonstrations that have consistently been required since the operation of the FM translators has been permitted.¹³ A review of the Opposition's contents, with attention to what has been omitted, leaves Charisma's justification for its failure to identify its same-area translators as unmoving.

¹¹ Opposition, at ¶¶ 4, 10-14, 19.

¹² *id.*, Attachment B at ¶ 3.

¹³ *FM Translator and Booster Stations*, Report and Order, 20 RR.2d 1538, ¶ 5 (1970).

Charisma's ignorance of the rules is caused by its own lack of diligence. Charisma includes no descriptions of efforts to obtain further guidance over a question for which it did not have sufficient knowledge. Charisma does not explain why it was acceptable to substitute intuition for a 47 C.F.R. § 73.313 contour determination. Charisma, even now, has provided no vindicating technical need showing. Whereas an ignorance of the rules is not an acceptable excuse to mitigate consequence,¹⁴ the Bureau should consider how Charisma's actions to file inaccurate applications during the preceding license term affect renewals of the pertinent translators.

FUTURE DIGITAL OPERATION IS NOT A CURE AND IS MOTIVE TO WAREHOUSE

An intent to eventually carry digital subchannels on WHLC whereby W293BX could retransmit different programming¹⁵ does not change the fact that four facilities currently operate as same-area translators and cannot be licensed. Charisma has had years, even since the Bureau stated its 50% overlap metric in 2017, to conform its translators to the rules. Charisma's professed intention to eventually add digital subcarriers to WHLC can be viewed as motive for Charisma to warehouse spectrum.

THE OBJECTION LIES AGAINST A RENEWAL APPLICATION, NOT AGAINST ANY UNDERLYING AUTHORIZATIONS

Finally, Charisma argues that Triangle's objections are somehow petitions for reconsideration of earlier authorizations.¹⁶ Triangle is not challenging earlier applications. The authorizations from those applications have run their term beyond expiration, and Triangle is requesting no action to be taken on

14 See, e.g., *Emery Tel.*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859 (1998) (by issuing forfeitures for apparently inadvertent violations, the Commission “impels licensees to be more familiar with the applicable rules in structuring future conduct”), *recons. dismissed in part and denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999); *Lakewood Broad. Serv., Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438 (1972)(denying a mitigation claim based on a licensee’s assertion of unfamiliarity with station identification requirements, reasoning that “[i]f ignorance of [the Rules] were accepted as an excuse, we would be encouraging licensees to know as little as possible”); *Southern California*, 6 FCC Rcd at 4387 (finding that “inadvertence...is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

15 Opposition, at ¶ 8.

16 *id.*, at ¶¶ 7, 14-17.

any earlier applications. Triangle is participating in a renewal proceeding that requires the Commission consider (1) whether the station has served the public interest, convenience, and necessity; (2) there have been no serious violations by the licensee; and (3) there have no other violations of the Act or the Commission's Rules, which, taken together, would constitute a pattern of abuse.¹⁷ Actions occurring during the prior license term are being appropriately raised relevant to the pending renewal.

In the Opposition at paragraph 16, Charisma offers an earlier decision¹⁸ in defense of a perceived collateral attack on underlying construction permits. Charisma's interpretation of *Bennett* is flawed. Besides the substantial differences between an informal objection lying against an application for renewal of a station license and a petition for consideration lying against a new construction permit, it is notable that in *Bennett* the Bureau admonished a licensee that made a false Section 74.1232(b) certification. That licensee, once its error was discovered, promptly (within 30 days) cured its application before any same-area transmissions actually occurred. Here, false certifications have been repeated, and although Triangle filed its Objection on October 11, 2019, Charisma continues to operate unlicensable translators over 7 months later. *Bennett* demonstrates that the Bureau can take notice of a licensee's prior violations, and, unless moot due to continued application defects specifying same-area translators being sufficient reason to grant the Objection, such violations are relevant to this renewal proceeding.

CONCLUSION

Charisma's amended application demonstrates that Charisma continues to operate same-area translators. The Bureau cannot reauthorize them. Now that W255CR is no longer part of a same-area scheme, Triangle withdraws its same-area objection to its renewal. Triangle continues to believe that only one of the remaining same-area translators should be renewed, and that W293BX should not be

¹⁷ *id.* 10.

¹⁸ *John Jason Bennett* (K255BE, Tulsa, OK), 20 FCC Rcd. 17193 (MB 2005) ("*Bennett*")

selected for renewal since it continues to provide no service benefit relative to the primary it is retransmitting. The Bureau should give Charisma 30 days to cure its renewal application to specify non-duplicating, useful translators, and it should act to not renew any remaining same-area or useless translators that remain at that time. Finally, the Bureau should consider the licensee's pattern of inaccurately certifying its applications before granting renewals.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Steven L. White", with a long, sweeping horizontal line extending to the right.

Steven L. White

Director; *Triangle Access Broadcasting, Inc.*

7813 Highlandview Cir
Raleigh, NC 27613-4109