

Exhibit A

Mr. Steven L. White and Cary S. Tepper, Esq., Letter, 1800B3-AR, FCC File No. 0000075276 (MB, March 26, 2020)

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Federal Communications Commission
Washington, D.C. 20554
March 26, 2020

In Reply Refer To:
1800B3-AR

Mr. Steven L. White
Director, Triangle Access
Broadcasting, Inc.
7813 Highlandview Cir.
Raleigh, NC 27613-4109

Cary S. Tepper, Esq.
Tepper Law Firm, LLC
4900 Auburn Ave. Suite 100
Bethesda, MD 20814-2632

In re: W217AX, Harrisburg, NC
Facility ID No. 88242
File No. 0000075276
Informal Objection

Dear Mr. White and Counsel:

We have before us the referenced application for renewal of license (Application) filed on July 1, 2019, by Positive Alternative Radio, Inc. (PAR, or Licensee) for FM translator station W217AX (Station), Harrisburg, North Carolina. Also before us is an Informal Objection (Objection) filed on October 14, 2019 by Triangle Access Broadcasting, Inc. (Triangle).¹ For the reasons set forth below, we instruct Licensee to amend the Application to specify a rule-compliant primary station and in the meantime defer any other action in this proceeding.

Background. In the Objection, Triangle alleges that Station is a commercial translator because it retransmits the signal of a commercial primary station (WEND-HD3, or WEND), but it is improperly operating on Channel 217, which is reserved for noncommercial educational (NCE) stations. Triangle argues that the Station's license cannot be renewed.²

In its Opposition, PAR counters that: 1) the current license for the Station was granted with WEND as its primary station in a 2014 license application;³ 2) PAR was transparent regarding its primary

¹ Licensee filed an Opposition to Informal Objection of Triangle on October 17, 2019. Triangle filed a Reply to Opposition on October 18, 2019.

² Objection at 1.

³ Objection at 2; License Application File No. BLFT-20140411AAB.

station in the application process;⁴ and 3) the broadcast content is genuinely noncommercial, educational, and instructional in nature and serves the needs of the Harrisburg, North Carolina community.⁵

In its Reply, Triangle argues that: 1) if WEND-HD3 is the primary station for W217AX, then WEND-HD3 must be considered noncommercial in every other aspect;⁶ 2) a translator inherits its commercial or noncommercial designation from the primary being retransmitted, and WEND is a commercial station;⁷ and 3) WEND is owned by a commercial entity that both benefits from, and is limited by Commission restrictions that apply to commercial stations, further demonstrating its commercial status.⁸

Discussion. Under section 309(k) of the Communications Act of 1934, as amended (Act), the Commission shall grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's rules (Rules); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁹ Under section 309(k) of the Act, we will deny an application for renewal of a broadcast station license only if we find, after notice and an opportunity for a hearing, that the station has failed to serve the public interest, convenience and necessity, committed a serious violation of the Act or rules, or committed a series of violations that constitute a pattern of abuse.¹⁰

Informal objections to license renewal applications, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with section 309(k) of the Act.¹¹ Informal objections must also contain adequate and specific factual allegations sufficient to warrant the relief requested.¹²

⁴ Objection at 2.

⁵ *Id.* at 2-3.

⁶ Reply at 2.

⁷ *Id.*

⁸ *Id.* at 2-3.

⁹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

¹⁰ *See In the Matter of Pacifica Found., Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 13566, 13566-67 (2016).

¹¹ 47 U.S.C. § 309(d)-(e). *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (D.C. Cir. Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 R.R.2d 862, 864, para. 6 (1986) (*Area Christian*) (stating informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹² *See Area Christian*, 60 R.R.2d at 864, para. 6; *WFBM, Inc.*, Memorandum Opinion and Order, 47 FCC 2d 1267, 1268, para. 3 (1974).

Section 73.503 of the Rules states that a noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization.¹³ Additionally, section 74.1201(c) defines an NCE FM translator as an FM broadcast translator station which rebroadcasts the signals of a noncommercial educational AM or FM radio broadcast station.¹⁴ FM NCE stations may be authorized on 88.1 MHz to 91.9 MHz, corresponding to Channels 201 through 220 (sometimes referred to as the "reserved band").¹⁵ No commercial operation is permitted on these frequencies. Specifically, noncommercial educational FM translators may be authorized on any frequency, while FM translators rebroadcasting commercial stations may only do so on frequencies from 92.1 MHz to 107.9 MHz (Channels 221 to 300).¹⁶

Based on review of the applications on file with the Commission for WEND, we find that WEND, both in its analog operation and in its digital operation, is a commercial radio station. WEND is owned by a commercial entity,¹⁷ pays application fees required for commercial stations,¹⁸ and on its pending license renewal application, certified compliance with non-discrimination related advertising requirements applicable to commercial applicants.¹⁹ Licensee provides no support for the proposition that a commercial radio station may be classified as non-commercial in a digital operation such as WEND-HD3.

We find that grant of Licensee's application, as filed, would violate sections 73.501(a), 74.1201(c), and 74.1202(b)(2) of the Rules by authorizing a commercial FM translator to broadcast on reserved band Channel 217, because its primary station is commercial.²⁰ Upon review of the allegations in the Objection, we find that Triangle presents certain specific factual allegations that establish a substantial and material question of fact that grant of the application, as filed, would be inconsistent with the public interest. We will require Licensee to amend its application and to submit a notice pursuant to section 74.1284(b) of the Rules to specify an NCE primary station as the Station's programming source. In the meantime, we will not take further action in this proceeding.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that Positive Alternative Radio, Inc. amend its Application for renewal of license for station W217AX, Harrisburg, North Carolina (File No. 0000075276) within thirty (30) days of the release date of this Letter, to specify operation using a new primary station, in compliance with 47 CFR §§ 73.501(a), 74.1201(c), and 74.1202(b)(2).

IT IS FURTHER ORDERED that pursuant to 47 CFR § 74.1284(b), Positive Alternative Radio, Inc., within thirty (30) days of the release date of this Letter, must notify the Commission of the call letters of each station W217AX rebroadcasts and the Licensee shall certify that written consent has been received from the licensee of the station whose programs are retransmitted.

¹³ See 47 CFR § 73.503(a).

¹⁴ See 47 CFR § 74.1201(c).

¹⁵ See 47 CFR §§ 73.501(a); 74.1202(b)(2).

¹⁶ *Id.*

¹⁷ Capstar TX, LLC.

¹⁸ See 47 CFR § 1.1104.

¹⁹ WEND Renewal of License Application, File No. 0000095560.

²⁰ See 47 CFR §§ 73.501(a), 74.1201(c), and 74.1202(b)(2).

IT IS FURTHER ORDERED that if Positive Alternative Radio, Inc. does not take the actions ordered herein within thirty (30) days of the release date of this Letter, the Application of Positive Alternative Radio, Inc., WILL BE DISMISSED pursuant to 47 CFR § 73.3568.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau