

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

28 July 2020

In re Application of)
)
WAY-FM MEDIA , INC.) FRN 0004995288
)
For Renewal of License) FCC File No. 0000110702
Call Sign W210CD, Hendersonville, TN) Facility ID 64258
)
For Renewal of License) FCC File No. 0000110713
Lead Call Sign WJWA, Evansville, IN) Lead Facility ID 69106

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

REPLY TO OPPOSITION

Triangle Access Broadcasting, Inc. (“Triangle”) hereby replies to Way Media, Inc.'s (“Way”) July 21, 2020, Opposition to Informal Objection.¹ On July 7, 2020, Triangle Access Broadcasting, Inc. (“Triangle”) filed an Informal Objection² asserting that Way's W210CD and W220DV translators cannot be renewed because they are commercial translators on channels reserved for noncommercial stations.

In the Opposition, Way presents that it fully disclosed in its applications for the translators the intent to retransmit noncommercial education programming of commercial stations and that it relied on prior actions granting similar arrangements, characterizing those actions as “decisions” and “policy.” Way characterizes a recent decision as a policy change and justification for the current operations of

¹ LMS Pleading File No. 0000118185 (“Opposition”).

² LMS Pleading File No. 0000117243.

the translators to be grandfathered.³ Triangle does not oppose a hard look at Way's request for relief, yet Triangle believes that because the rules defining a commercial translator and the permissible frequency assignments existed when Way tendered its applications, and for reasons explained below, that grandfathering *ad infinitum* current operations is unwarranted. In reply to Way's Opposition:

1. As to the notion that the 2012 grants of Way's applications were “decisions” and those actions established “policy,” Triangle counters that none of the authorizing applications⁴ directly put forward that primary stations were commercial. The applications listed primary stations by call sign and facility ID, but they did not call staff's attention to the proposed operations' variances to the rules and request a waiver to operate with those variances. The circumstances do not support a conclusion that there was ever any policy to license commercial FM translators in the reserved band when the programming was noncommercial educational in nature.

2. The W220DV Application and W210CD Application each offered that “the licensing of this reserved band translator to repeat [an HD carrier] onto a fill-in translator signal has been established by Commission processing staff.”⁵ This statement refers just as much to using translators to retransmit digital subchannels as towards establishing that commercial primaries can feed reserved-band translators under certain conditions. The language does not support that any decision was reached or that any policy was established for noncommercially programmed commercial digital subchannels to be translated into the reserved band.

3. The W210CA Application uses similar language as above, but it adds specific references to support that the ability to repeat an HD carrier onto a fill-in, reserved-band translator had been

3 Opposition, at page 1, #1 and *Mr. Steven L. White and Cary S. Tepper, Esq.*, Letter, 1800B3-AR, FCC File No. 0000075276 (MB, March 26, 2020).

4 BPFT-20120925ADN (“W210CD Application”), BPFT-20120504ABN (“W220DV Application”), and BPFT-20120313ABK (“W210CA Application”).

5 See W220DV Application at Exhibits 5, 10. See W210CD Application at Exhibit 3.

established.⁶ For the same reason just discussed, the references provide no foundation. Neither BPFT-20110204AGD nor BPFT-20100719AFL disclosed that their new primary stations were commercial stations, and neither included a request to waive the rules. Although Way may have thought its proposals were permitted when it submitted applications in good faith, it was never reliably established (and was established in the Opposition) that noncommercially programmed digital subchannels of commercial stations could ever be translated into the reserved band. Thus, there is no old rule or policy to grandfather, and Way's claim is reduced to a simple ignorance of the rules that cannot be countenanced.

4. In further support of a request for grandfathered operation, Way states that it became obligated under long term agreements that cannot be easily terminated.⁷ If Way entered into long-term leases for digital subchannels, especially leases that traverse renewal periods, then it did such business accepting the risks of binding itself to such long-term leases. While it is unfortunate that the entire desired savings from long-term leases may not be realized, Way has not established that having to break leases after the translators' substantial times in service is a unique and unusual circumstance that supports being granted a waiver, and much less an indefinite waiver.

Notably, Way has provided no digital channel lease details, and copies of the leases are not available in the primary stations' online public inspection files to support the claim. Lease details would likely reveal that, even though the programming itself is NCE in nature, consideration in excess of the costs incidental to program production and broadcast is being received by the primary stations' licensees.⁸ If a primary is being operated outside the spirit and material requirements of noncommercial broadcasting, then grandfathering to treat the signal as noncommercial is unjustified.

6 See W210CA Application at Exhibit 4.

7 Opposition, at page 3, #4-5.

8 See 47 CFR § 73.503(c).

Even when limiting consideration to the specific signals being retransmitted into the reserved band, the primaries seem to fail the test of operating noncommercially due to profiting from a lease.

5. Way proffers that the public is not served by the loss of noncommercial educational programming.⁹ While Birmingham, Alabama; Hendersonville, Tennessee; and Evansville, Indiana are not underserved, Triangle agrees that cancellations of the licenses are not the best outcomes. However, Way has an alternative to grandfathering to specify its own noncommercial stations in conjunction with simple modifications to meet maximum-ERP¹⁰ that do not result in a total loss of service. Triangle also would not oppose relief through a one-time, short-term renewal that would give Way more time to modify or assign its noncompliant translators.

The Bureau cannot condone operation that clearly opposes its rules. Triangle asks that the Bureau GRANT the Informal Objection to remediate, by using either a previously applied remedy or a short-term renewal that establishes a deadline, that commercial translators are operating in the reserved band.

Respectfully Submitted,



Steven L. White
Director; *Triangle Access Broadcasting, Inc.*

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⁹ Opposition, at page 3, #4.

¹⁰ See 47 CFR § 74.1235(b).

Certification of Steven L. White

I, Steven L. White, declare under penalty of perjury that I have reviewed the foregoing Reply To Opposition and, to the best of my knowledge, the facts set forth therein are true and correct.

By: 

Steven L. White

Dated: July 28, 2020

Certificate of Service

I, Steven L. White, certify that a true and correct copy of the foregoing Reply To Opposition was sent, this 28th day of July, 2020, by first-class, postage paid mail to the following:

WAY-FM Media, Inc. (Licensee)
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By: 

Steven L. White