

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

In re Application of)	
)	
Educational Media Foundation)	File No. 0000156050
)	
For the Assignment of Licensed FM Station WVIG)	
Seelyville, Indiana from DLC Media, Inc, to)	Facility ID No. 66296
Educational Media Foundation)	

To: Chief, Audio Division, Media Bureau

OPPOSITION TO INFORMAL OBJECTION

Educational Media Foundation (“EMF”), proposed assignee of FM station WVIG, Seelyville, Indiana (Facility ID 66296) (the “Station”), by its attorneys, hereby files this Opposition to the Informal Objection (“Informal Objection”) filed on October 7, 2021 by Franklin Rush (“Rush”) against the above-captioned application (the “Application”). The Informal Objection objects to the assignment of the license for the Station to EMF. As set forth below, this objection must be promptly dismissed as it raises no issue requiring review by the Commission in the context of the pending Application. The Informal Objection merely suggests that EMF programming will not meet what Rush believes to be the interests of the community, and it complains about general FCC policies. Neither of these grounds provides any reason to deny the Application. As the Informal Objection raises no issue that is properly considered in connection with the processing of this Application, it must be dismissed, and the Application granted.

On August 4, 2021, EMF and DCL Media, Inc. (“DCL”) filed the Application to assign WVIG from DCL to EMF. EMF included all of the required showings in the Application necessary for the application to be granted and did not request any waivers. Mr. Rush filed what can best be described as an Informal Objection as it was filed after the statutory period for filing petitions to deny the application.¹

The Informal Objection included concerns about whether EMF would provide specific local programming elements that Mr. Rush believes are necessary to benefit the residents in the service area. The FCC has long held that the First Amendment and Section 326 of the Communications Act prohibit the FCC from interfering with freedom of expression in broadcasting.² Because the FCC cannot dictate to licensees what programming they air, each individual radio and TV station licensee generally has discretion to select what its station broadcasts and to otherwise determine how it can best serve its community of license. The Commission routinely dismisses challenges to applications based on considerations of the programming that will be aired after a sale. The Commission cannot get into considerations of programming that would be aired by some hypothetical operator would better than that to be aired by the proposed assignee.³ That precedent should not be disturbed in this case.

¹ The Application appeared on Public Notice on August 6, 2021, and Mr. Rush uploaded his objection on October 7, 2021. FCC, Public Notice Applications, Report No. PN-1-21080601, at 30 (Aug. 6, 2021); *see also* 47 C.F.R § 73.3584(a).

² *KLFF-FM, San Luis Obispo, CA, Application for License*, Letter, 23 FCC Rcd 10202, 10208 (MB 2008).

³ *See, e.g.*, Letter to Bryce A Palchick et al., from Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, Assignment of WDUQ(FM), Pittsburgh, PA, File No. BALED-20110505ACD et al., at 3 (Aug. 4, 2011) (“it is well-settled policy that the Commission does not scrutinize or regulate programming, nor does it take potential changes in programming formats into consideration in reviewing assignment applications”); *Michael Lazarus et al.*, Letter, 26 FCC Rcd 5966, 5968 (MB 2011).

While Mr. Rush acknowledged that EMF is free to choose its programming, he claims to not be concerned with the selection of the songs being played, but instead by what is said between the songs. But that time between the songs is just part of the programming of the station, and the Commission has left the decisions as to what that programming should be up to the judgment of the licensee. “Licensees are responsible for selecting their entertainment programming, as well as programs concerning local issues, news, public affairs, religion, sports events, and other subjects.”⁴ The Commission has maintained the right of the station licensee to select the content of broadcast material. It has stated “that the fulfillment of the public interest requires the free exercise of his [the licensee’s] independent judgment.”⁵

The Informal Objection also takes issue with the FCC’s decision to abolish any requirement for a main studio. But that decision has already been made and cannot affect the evaluation of this application.

All that being said, EMF takes seriously its public service obligations. EMF regularly assesses the programming needs of the communities that it serves and maintains the ability to break into national programming to provide local and regional inserts when it determines that the public interest would be served by such information. EMF has been serving the public interest on its broadcast stations throughout the country for years and intends to fully continue that service on station WVIG.

Mr. Rush’s effort to raise cognizable issues against the Application has failed. EMF is entitled to choose its programming and does so with an ever-present focus on serving the public

⁴ FCC, Media, Documents, Reports and Surveys, The Public and Broadcasting, <https://www.fcc.gov/media/radio/public-and-broadcasting> (last visited Nov. 2, 2021).

⁵ *Report and Statement of Policy Res: Commission en banc Programming Inquiry*, Public Notice, 44 F.C.C. 2303, 2309 (1960).

interest. EMF respectfully requests that the Audio Division promptly deny the Informal Objection and grant the Application.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

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Date: November 3, 2021

CERTIFICATE OF SERVICE

I, Karla E. Huffstickler, a paralegal with the law firm of Wilkinson Barker Knauer, LLP, hereby certify that on this 3rd day of November 2021, I served copies of the foregoing “**OPPOSITION TO INFORMAL OBJECTION**” on the following via first-class United States mail, postage prepaid:

Mr. Franklin Rush
1580 East Hook Drive
Terre Haute, IN 47802

/s/ Karla E. Huffstickler

Karla E. Huffstickler