

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In re the Applications of:)	
)	
University of Wyoming)	
)	
For New Reserved Channel NCE Broadcast Station)	File No. 0000167729
Facility ID 762743 in Kemmerer, Wyoming)	
)	
For New Reserved Channel NCE Broadcast Station)	File No. 0000167730
Facility ID 762746 in Kemmerer, Wyoming)	

To: Office of Secretary
Attention: Media Bureau, Audio Division

OPPOSITION TO INFORMAL OBJECTION

The University of Wyoming (“UW”), applicant for two new noncommercial educational FM stations in Kemmerer, Wyoming (Facility ID Nos. 762743 and 762746), by its counsel, opposes the Informal Objection filed by Triangle Access Broadcasting, Inc. (“Triangle”), against UW’s applications in LMS File Nos. 0000167729 and 0000167730 (the “Kemmerer Applications”).

The Informal Objection mischaracterizes the applicable Commission rule and precedent and thus provides no basis for dismissal of the Kemmerer Applications. In addition, the harms that Triangle alleges would result from the processing of multiple applications in the NCE window are not relevant to consideration of the Kemmerer Applications.

I. Background

The University of Wyoming is a public institution of higher education that has been in existence since 1887. UW operates Wyoming Public Radio (“WPR”), the statewide public radio network, which was founded in 1966. WPR stations follow four formats: the flagship news format that includes syndicated programming from National Public Radio, Public Radio Exchange, Native Voice One, and American Public Media; “Wyoming Sounds,” a music format featuring acoustic, folk, rock, blues, soul, reggae, and world music with a focus on Wyoming and other regional musicians; “Classical Wyoming,” a classical music format; and the jazz music format broadcast by KUWL(FM) in Laramie.

Kemmerer, Wyoming, is the county seat of Lincoln County, Wyoming, and, with a population of 2,656 as of the 2010 Census, is the largest city in the county.¹ Today, just one full-power broadcast station is licensed to Kemmerer, 240-watt AM station KMER (Facility ID No. 10335).²

As a statewide network, part of WPR’s mission is to serve as many Wyomingites as it can. As a result, WPR stations often reach listeners that do not receive substantial broadcast service from commercial operators or other noncommercial entities. Indeed, WPR filed ten applications in the recent window for applications for new noncommercial FM stations (the “NCE Window”),³ including the two Kemmerer Applications. Shortly after the NCE Window

¹ U.S. Census Bureau; Census 2010, Summary File 1.

² The city also is served by FM translator K223DD, granted to KMER’s licensee as part of the AM Revitalization proceeding, and television translator K24GT-D (Facility ID No. 128712), which rebroadcasts Wyoming PBS programming.

³ Public Notice, Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window; Limited Application Filing Freeze to Commence on October 5, 2021, DA 21-885 (rel. Jul. 23, 2021).

closed, five of the ten WPR applications were accepted for filing as “singletons,” including the two Kemmerer Applications. No other entity filed an application requesting facilities that would be licensed to Kemmerer. Upon grant of the Kemmerer Applications, UW intends to promptly build the facilities they describe and to then serve Kemmerer listeners with two distinct signals: the facility on 89.3 MHz would broadcast the main Wyoming Public Radio news format and the facility on 91.1 MHz would broadcast Wyoming Sounds.

On December 6, Triangle filed its Informal Objection against the Kemmerer Applications. In its brief filing, Triangle argued that UW “has submitted alternate technical proposals in violation of the Commission’s longstanding Multiple Applications Rule . . .”⁴ This rule, Triangle claims, is “applicable to all broadcast stations.”⁵ Triangle also claimed that the filing of multiple applications would disadvantage other applicants with applications that were mutually exclusive to the multiple applications.⁶ It appears that Triangle has filed substantially identical Informal Objections against any group of applications filed in the NCE Window by an applicant specifying the same community of license in more than one application.⁷

⁴ Informal Objection at 1.

⁵ *Id.*

⁶ *Id.* at 2.

⁷ See Public Notice, Pleadings, Report No. PN-3-211208-01 (rel. Dec. 8, 2021). Triangle’s filing of “blanket” informal objections provides a separate basis for the denial, or dismissal without consideration, of the Informal Objection and the other objections filed by Triangle against applications filed in the NCE Window: lack of standing. See, e.g., *New Life Community Temple of Faith, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 648, 652-53 (2019) (the Commission disfavours and, thus, dismisses “blanket” informal objections which are not “limited to individualized, specific allegations that grant of the application would harm the public interest and that the persons seeking relief would be injured by adverse Commission action, that the alleged injury would be caused by such action, and that favorable action would redress the alleged injury.”)

Triangle's Informal Objection should be dismissed and the Kemmerer Applications granted because, contrary to Triangle's assertions and as set forth herein, the Multiple Applications Rule is not applicable to noncommercial broadcasters. Moreover, the harms that Triangle alleges would result from the processing of multiple applications do not apply here, as there are no applications filed that are mutually exclusive with the Kemmerer Applications.

II. The Multiple Applications Rule Is Not Applicable to Noncommercial Applications Such as the Kemmerer Applications.

As the Commission explained nearly three decades ago, the Multiple Applications Rule is not applicable to applications for noncommercial educational stations. In *Open Media Corporation*,⁸ the Commission denied an Application for Review which argued, among other things, that the filing of a joint application for an NCE station on Channel 213 by two parties that each held mutually exclusive applications to serve the same community from Channel 202 violated the Multiple Applications Rule.⁹ The Commission explained that due to the applicants' noncommercial status, there was no violation of the Multiple Applications Rule:

As noted, Section 73.3555(f) of the Commission's Rules provides that the multiple ownership rules do not apply to NCE-FM stations. Accordingly, it is clear that both NIU and REBF may each have more than one noncommercial educational station in the Rockford market. With respect to the alleged violation of Section 73.3517 of the Commission's Rules, there are no contingent applications. If either NIU or REBF had filed individually for Channel 213, the application could have been granted. The only reason that neither the NIU nor REBF application for Channel 202 could have been granted was because they were mutually exclusive with one another for that channel. Thus, there is no violation of Section 73.3517. Furthermore, the purpose of Section 73.3518 "is to avoid the waste of Commission resources, prejudice to other applicants, and delay of service which arises when the Commission must process applications by the same person or entity." *Valley Broadcasting Co.*, 58 RR 2d 945, 948(1985). It is

⁸ *Open Media Corporation*, Memorandum Opinion and Order, 8 FCC Rcd 4070 (1993)

⁹ Pursuant to an agreement, "should the joint application for Channel 213 pass a cut-off list unopposed, [one party] would withdraw from [the] joint applic[ation], and [the other] would request the dismissal of its application for Channel 202." *Id.*, 8 FCC Rcd at 4073.

designed to prevent the filing of multiple applications “not all of which can be granted.” *Id.* Since we have before us NCE-FM applications, all of which may be granted, Section 73.3518 is simply inapplicable. **Nor is there any violation of Section 73.3520 of our Rules. Rule 73.3520 is premised on there being a limit to the number of stations which may be owned by any one licensee in the same community. However, since the multiple ownership rules do not apply to NCE-FM operations, neither NIU nor REBF is precluded from owning and operating more than one NCE-FM facility in the market. Thus, it follows that each may have more than one application pending at the same time for a given market.** Accordingly, the proposals of NIU and REBF do not violate Sections 73.3517, 73.3518 and 73.3520 of our Rules.¹⁰

Here, as in *Open Media Corporation*, as a noncommercial licensee there is no limit under the Commission’s rules on the number of broadcast stations that UW may own and operate to serve Kemmerer (or any other community). Thus, as the Commission concluded in *Open Media Corporation*, there is no violation of the Multiple Applications Rule and both of the Kemmerer Applications can (and should) be granted without delay.

III. Triangle’s Policy Arguments for Enforcement of the Multiple Applications Rule Are Not Relevant to the Kemmerer Applications.

In its Informal Objection, Triangle argues that the Multiple Applications Rule should be enforced against the Kemmerer Applications because “[m]ultiple applications create advantages for applicants who have had proposals determined to be mutually exclusive with other applicants who are blocked from submitting alternate proposals.”¹¹ Triangle also states that the Multiple Applications Rule should be enforced against the Kemmerer Applications because multiple applications “also interfere with the Commission’s goals of competition and diversity because, for example, in the case that alternate proposals fall into separate MX groups, then diversity tie

¹⁰ *Id.*

¹¹ Informal Objection at 2.

breaker points would fall similarly to the same applicant because they represent a snapshot at application filing.”¹²

Neither consideration Triangle mentioned is relevant here. Simply put, both Kemmerer Applications are “singletons” – *i.e.*, they are not mutually exclusive with any other applications. The only result of application of the Multiple Applications Rule in this case would be to deny the people of Kemmerer new noncommercial service, as no other applicant stands ready to serve Kemmerer with an alternate proposal upon dismissal of one of UW’s applications.

Moreover, application of the Multiple Applications Rule is not necessary in any event to protect Triangle’s policy goals. The Commission, in designing the procedures applicable to the NCE Window, put in place a different mechanism to safeguard against applicants attempting to “game the system” with multiple applications: a ten-application limit.¹³ In the Public Notice announcing this limit, the Commission explained that a similar limit in the 2007 filing window “helped foster the goals of localism and diversity . . . while also restricting the number of speculative or mutually exclusive applications.”¹⁴ The limit, the Commission stated, “forced applicants with a large number of potential applications to concentrate on proposals and markets where they had legitimate service plans.”¹⁵ With the ten-application limit in place, the Multiple Applications Rule is not just inapplicable, it also is unnecessary.

¹² *Id.*

¹³ Public Notice, FCC Adopts 10-Application Limit for NCE FM New Stations in Upcoming 2021 Filing Window, 36 FCC Rcd 7754 (2021).

¹⁴ *Id.*, 36 FCC Rcd at 7754.

¹⁵ *Id.*, 36 FCC Rcd at 7758.

IV. Conclusion.

Pursuant to established Commission precedent, the Multiple Applications Rule is not applicable to applications for noncommercial educational stations. As there were no other applicants to serve Kemmerer, Triangle does not set forth any policy interests that would be served by dismissal of one of the Kemmerer Applications. Indeed, as described above, the Kemmerer Applications are not speculative or an attempt to game the Commission's procedures: UW filed them in good faith based on concrete plans to build the facilities they describe and to place them into service quickly to bring two new audio formats to Kemmerer residents. Were it not for Triangle's Informal Objection, UW might already hold construction permits for these facilities. Therefore, UW respectfully requests that Triangle's Informal Objection be denied and the Kemmerer Applications be granted without delay.¹⁶

Respectfully submitted,

THE UNIVERSITY OF WYOMING

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December 22, 2021

¹⁶ If the Commission determines that, contrary to its holding in *Open Media Corporation*, the Multiple Applications Rule is applicable to the Kemmerer Applications, UW respectfully requests a waiver of the Multiple Applications Rule for the reasons set forth herein.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Opposition to Informal Objection" was served this 22nd day of December, 2021, by first class United States mail, postage prepaid, upon the following:

Steven L. White
Director, Triangle Access Broadcasting, Inc.
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Derek Teslik