

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC

9 September 2020

In re Applications of	)
	)
EDUCATIONAL MEDIA FOUNDATION	) FRN 0004121000
	)
For Renewals of Licenses	) FCC Group File No. 0000113365
Group Call Sign W240CG, Webberville, MI	) Group Facility ID 148765
	)
For Renewals of Licenses	) FCC Group File No. 0000113368
Group Call Sign W224CD, Parma, OH	) Group Facility ID 142417

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

**INFORMAL OBJECTION**

Triangle Access Broadcasting, Inc. (“Triangle”), pursuant to 47 C.F.R. §73.3587, objects to full grants of the above-referenced application groups. On May 7, 2020, Education Media Foundation (“EMF”) submitted the referenced applications (the “Applications”) that seeks station license renewals for a total of 12 FM translators. Triangle objects to renewal grants for the following 5 FM translators (“the Translators”) included in the Applications: W262BD (Facility ID 148783, Member File No. 0000113367); W225AM (Facility ID 139036, Member File No. 0000113369); W264BW (Facility ID 139210, Member File No. 0000113372); W292CO (Facility ID 138872, Member File No. 0000113377); and W266CJ (Facility ID 144180, Member File No. 0000113379). These translators

operate to the benefit of commercial, for-profit entities while EMF is claiming exemptions from paying regulatory fees.<sup>1</sup>

### **I. W269BS Relicensing**

As an initial matter, Triangle notes that the “0000113368” application includes an FM translator W269BS rebroadcasting WGAR-FM. Six days before EMF submitted its renewal Applications, file number 0000112969 was granted that changed the call sign of facility ID 142423 to W215CM. This reserved-band facility rebroadcasts KLOV. Although the renewal application is inaccurate, Triangle has no objection to the renewal of facility ID 142423 as W215CM rebroadcasting KLOV as an out-of-area translator.

### **II. Availed Fee Exemptions Require NCE Performance**

The Bureau requires regulatory fees to be paid annually for broadcast stations.<sup>2</sup> Certain nonprofit entities and noncommercial radio stations are exempt from paying these fees.<sup>3</sup> Since all noncommercial radio stations must in fact be owned by nonprofits,<sup>4</sup> and also because there must certainly be a purpose that the explicit NCE condition was codified in Section 1.1162(e), the only reasonable interpretation of the exemptions is that commercial stations in the FM service are not exempted from regulatory fees solely because they are owned by nonprofits. Otherwise, the system of funding the Commission's regulatory activities would be imperiled as commercial operators could just operate their holdings under leases back from nonprofit entities, including their own nonprofit subsidiaries, to abuse a narrow reading of the rules.

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1 Triangle has filed a similar Informal Objection against an EMF application. See Pleading File No. 0000107516

2 47 C.F.R. § 1.1151.

3 47 C.F.R. § 1.1162(c), (e) (“Section 1.1162”).

4 47 C.F.R. § 73.503(a).

The Translators have been operating as commercial stations<sup>5</sup> and therefore have not qualified for regulatory fee exemptions during the preceding license term. W262BD rebroadcasts WWSJ (AM) owned by commercial Kingdom Builders of Larlen LLC. W225AM rebroadcasts WSPD (AM) owned by Citicasters Licenses, Inc. (“Citicasters”). Both W264BW and W292CO rebroadcast the HD2 digital subchannel of WEBN (FM) also owned by Citicasters. W266CJ rebroadcasts the analog signal of WGAR-FM, again owned by Citicasters. Importantly, not only are the primary stations owned by commercial entities resulting in the translators themselves being commercial, but the programming being retransmitted is not NCE in nature. The programming being broadcast over the Translators includes promotional advertising and even political message distribution forbidden on nonprofit-owned facilities.

Notably, the stations are also not being operated in “commercial white areas” whereby a charitable purpose could potentially be justified if the third-party programming being relayed was nonpolitical and EMF was not being compensated for its service by a single benefiting party. The commercial nature and intent of the translators is incontrovertible.

Triangle has analyzed regulatory and application fee records obtained from an FOIA request<sup>6</sup> and was unable to locate any records indicating that EMF has ever paid a regulatory fee for its stations. Neither has another entity paid a regulatory fee on EMF's behalf in the time period analyzed. Therefore, EMF has been required to operate its translators as NCE stations. The Bureau should deny to renewal for stations that have been availed of regulatory fees but do not provide NCE programming.

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<sup>5</sup> 47 C.F.R. § 74.1201(b).

<sup>6</sup> FOIA Control No. FCC-2019-000364. “This is a request for records related to 47 CFR Part 74 FM Translators that have paid fees in years 2013 through 2018 (or beginning in later years immediately accessible in current FCC databases) such as would be applicable for commercial FM translators (translators where the primary is a commercial station, see 47 CFR 74.1201(b)). The records of interest are those for payment type codes (PTC) 1368, 1468, 1568, 1668, 1768 or 1868 (per-license regulatory fees for FM Translators) in Fee Filer, and for payments made with Form 159/Form 159C with fee codes MEF (for FM Translator new license) or MDF (for FM Translator license assignment or transfer of control).”

### III. Nonprofits Cannot Operate Competitive Commercial Stations

EMF's ongoing business of leasing its translator to a commercial entity clearly falls outside the umbrella of Section 501(c)(3)<sup>7</sup> exemptions. Section 501(c)(3) nonprofit entities are “organized and operated exclusively for religious, charitable, [...] or educational purposes” (emphasis added).<sup>8</sup> While nonprofits may engage in limited unrelated business activities, a trade or business is related to exempt purposes “only when the conduct of the business activities has causal relationship to achieving exempt purposes (other than through the production of income). The causal relationship must be substantial.”<sup>9</sup> Just as nonprofits must pay taxes on income from unrelated business operations,<sup>10</sup> regulatory fees must apply for facilities that are not substantially related to a charitable, educational or other purpose that is the basis for an organization's nonprofit status. EMF's claim of a nonprofit exemption for the unrelated business activity of leasing its translators is, and has been, improper.

Undoubtedly, EMF's corporate nonprofit determination stems from its Articles of Incorporation, the most recent 2015 amendment and restatement attached as Exhibit A, which states at Article 6 that “[EMF] is organized and operated exclusively for religious, charitable, and educational purposes ... within the meaning of section 501(c)(3) of the Internal Revenue Code ... .” EMF is ineligible by its own charter to purpose its facilities as commercial translators “for sale.” Thus, the Bureau cannot rely on EMF's nonprofit determination to classify it as a nonprofit organization while EMF operates commercial translators.

At best, EMF has leeway to engage in some insubstantial unrelated business activities when it is similarly treated as a commercial entity. However, competitors should not subsidize EMF and its

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<sup>7</sup> 26 U.S.C. § 501(c)(3) (“Section 501(c)(3)”).

<sup>8</sup> *Id.*

<sup>9</sup> Internal Revenue Service (2019). “Substantially related.” Retrieved from <https://www.irs.gov/charities-non-profits/substantially-related>. See 26 U.S.C. § 513(a).

<sup>10</sup> U.S. Dept. of the Treasury, Internal Revenue Service. *Publication 598 (Rev. February 2019): Tax on Unrelated Business Income of Exempt Organizations*. Washington: GPO, 2019. Print, at Chapter 3.

commercial clients through payment of redistributed regulatory fees that would have been collected from the commercial entities that benefits from commercial broadcast licenses. A proper view is that a business relationship creates an attribution and control to which the Section 501(c)(3) regulatory fee exemption does not attach because, by definition, a nonprofit charitable organization cannot operate the commercial station.

#### **IV. Political Campaign Intervention by a Nonprofit Organization**

Triangle is particularly concerned that EMF's facilities are being used for prohibited political intervention. A review of the WGAR-FM online political file reveals that in May, 2018, WGAR-FM ran third-party advertising for a group "Women Vote Smart" outside the scope of reasonable access that aired on EMF's W266CJ. The "Issue\_Advertising\_-\_Women\_Vote\_Smart" file uploaded into the 2018, Federal, US House section of the online political file indicates that the matter communicated on May 4, 2018, was "We're Women for Trump and Christina Hagen [sic] for Congress." Christina Hagan was a legally qualified candidate for U.S. House Ohio District 16 for the May 8, 2018, primary election.

Also appearing in the WGAR-FM political file, in 2018, Non-Candidate Issue Ads are several submissions for "A Stronger Ohio," "Growth and Opportunity PAC," and "Freedom for All PAC" that demonstrate third-party advertising aired to support or attack legally qualified candidates in the 2018 primary and general elections.

A review of the WSPD (AM) political file indicates that the Republican Senate Campaign Committee, Ohio House Republican Org, Economic Prosperity Project, and Buckeye Battle PAC advertised in 2018 during the primary and general election seasons to support or attack legally qualified candidates. These ads would also have run on EMF's W225AM translator.

A review of WSPD programming reveals programming the EMF W225AM translator that also run afoul of rules against political intervention by nonprofits. For example, on the August 23, 2017, airing of The Sean Hannity Show, host Hannity endorsed legally qualified U.S. Senate candidate Kelli Ward. On his January 17, 2018, radio show, Hannity endorsed Ron DeSantis for Florida governor after DeSantis declared his candidacy on January 5.

IRS regulations are clear that a charitable nonprofit will lose its tax-exempt status for engaging in political campaign activity, and EMF has crossed that line. EMF's failure to keep its facilities from participating in the distribution of messages on behalf of or in opposition of candidates for elective public office while claiming benefits as a public charity leave absolutely no doubt that its Translators have not served the public interest, convenience and necessity during the preceding license term. Neither EMF nor the Bureau can allow EMF's commercial translator business to continue.

For the foregoing reasons, the Bureau should allow the licenses for W262BD, W225AM, W264BW, W292CO, and W266CJ to expire. Alternatively, these licenses should only be renewed upon further evidence, such as an IRS private letter ruling, that EMF's activities have been found permissible. As an additional alternative, the licenses should only be renewed after EMF has ceased its commercial activities, forfeited its commercial earnings (including the benefits it has received through evaded annual regulatory fees during the preceding license period), and begun bona fide noncommercial operation of facilities that is legally qualified to own.

Respectfully Submitted,



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

7813 Highlandview Cir  
Raleigh, NC 27613-4109

Exhibit A

Certificate of Amendment of Articles of Incorporation for Educational Media Foundation

Retrieved September 8, 2020, from <https://businesssearch.sos.ca.gov>

A0773650

1047550

CERTIFICATE OF AMENDMENT  
OF ARTICLES OF INCORPORATION  
FOR EDUCATIONAL MEDIA FOUNDATION  
(C1047550)

FILED <sup>cc</sup>  
Secretary of State JM  
State of California

1pc AUG 10 2015

The undersigned, Mike Novak and D. Kevin Blair certify that:

1. They are the President and Secretary, respectively, of Educational Media Foundation, a corporation organized and existing under the California Nonprofit Religious Corporation Law.
2. The Articles of Incorporation ("Articles") of this corporation are amended and restated as follows:

**ARTICLE 1: Name.** The name of the corporation is Educational Media Foundation hereinafter referred to as "the Corporation."

**ARTICLE 2: Duration.** The period of its duration is perpetual.

**ARTICLE 3: Religious Corporation.** This Corporation is a religious corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Religious Corporation Law primarily for religious purposes. The Corporation is also organized for educational and charitable purposes as set forth below in Article 4 and 6.

**ARTICLE 4: Purposes.** The specific purpose of the Corporation is to provide, in person and via radio and other media, religious and educational programming of benefit to the general public and other activities, and to engage in all other lawful activities permitted under the California Nonprofit Religious Corporation Law.

**ARTICLE 5: Membership.** The Corporation shall not have members.

**ARTICLE 6: Irrevocable Dedication.** The Corporation is organized and operated exclusively for religious, charitable, and educational purposes meeting the requirement of Revenue and Taxation Code section 214, subdivision (j) and within the meaning of section 501(c)(3) of the Internal Revenue Code ("Code") of 1986 or a related section of a successor statute. The property of this Corporation is irrevocably dedicated to religious, charitable, and educational purposes meeting the requirement of Revenue and Taxation Code section 214, subdivision (j). No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its members, directors, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth in these Articles. No substantial part of the activities of the Corporation shall be for the carrying on of propaganda, or otherwise attempting to influence legislation. The Corporation shall not participate in, or intervene in (including the publishing, or distribution of statements) any political campaign on behalf of any candidate for public office.

Notwithstanding any other provision of these Articles, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal

income tax under Section 501(c)(3) of the Code or by a corporation to which contributions are deductible under Section 170 of the Code.

In the event the Corporation is found to be in any one year a "private foundation" as defined by Section 509 (a) of the Code, it shall be (1) required to distribute its income for such taxable year at such time and in such manner as not to subject the Corporation to taxation under Section 4942 of the Code; (2) prohibited from any act of "self-dealing" as defined in Section 4941(d) of the Code; (3) prohibited from retaining any "excess business holdings" as defined by Section 4943(c) of the Code; (4) prohibited from making any investments in such manner as to subject the Corporation to taxation under Section 4944 of the Code; and (5) prohibited from making any taxable expenditure as defined in Section 4945(d) of the Code.

**ARTICLE 7: Dissolution.** Upon dissolution or winding up of the Corporation, all assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation shall be distributed to an organization organized and operated exclusively for religious, charitable, and educational purposes meeting the requirements of Revenue and Taxation Code section 214, subdivision (j) for one or more exempt purposes within the meaning of Section 501(c)(3) of the Code as determined by the Board of Directors. Any such assets not so disposed of shall be disposed of exclusively for such exempt purposes by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located.

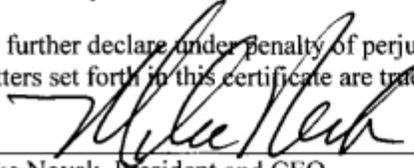
**ARTICLE 8: Limitation on Liability.** To the fullest extent permitted by the California Nonprofit Religious Corporation Law, as now in effect or as may hereafter be amended, no director or officer of the Corporation shall be personally liable for damages in any proceeding brought by or in the right of the Corporation, or in connection with any claim, action, suit, or proceeding to which he or she may be or is made a party by reason of being or having been an officer or director of the Corporation, provided, however, that such relief from liability shall not apply in any instance where such relief is inconsistent with any provision applicable to corporations described in Section 501(c)(3) of the Code.

**ARTICLE 9: Appointment of Directors.** The manner in which the directors of the Corporation shall be elected shall be as further set forth in the Bylaws of the Corporation.

3. The foregoing amendment and restatement of the Articles of Incorporation was duly approved by the Board of Directors at a regularly called meeting, which was held on May 31, 2015.

4. The Corporation has no members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

  
\_\_\_\_\_  
Mike Novak, President and CEO

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
D. Kevin Blair, Secretary

8/5/15  
\_\_\_\_\_  
Date

## **Certification of Steven L. White**

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

By: [Electronically Signed] \_\_\_\_\_  
Steven L. White

Dated: September 9, 2020

## Certificate of Service

I, Steven L. White, certify that a true and correct copy of the foregoing Informal Objection was sent, this 9th day of September, 2020, by first-class, postage paid mail to the following:

Devona Porter (Licensee)  
Educational Media Foundation  
5700 West Oaks Blvd  
Rocklin, CA 95765-3719

Mary O'Connor (Counsel to Licensee)  
Wilkinson Barker Knauer, LLP  
1800 M St NW Ste 800N  
Washington, DC 20036-5850

By:   
\_\_\_\_\_  
Steven L. White