

January 20, 2021

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

Via LMS Electronic Filing System

Re: Motion to Strike and/or Supplemental Response to
“Petition to Deny,” Pleading File No. 0000129714
In re LMS File No. 0000127253, W216BE, Buxton, North Carolina

Dear Ms. Dortch:

This supplemental response is filed pursuant to 47 C.F.R. §§ 1.41, 1.45, and 73.3587, and—if necessary—requests a waiver of §§ 1.939, 73.3584, and any other relevant rule that would restrict its filing. Through this filing, WUNC Public Radio, LLC (“WUNC” or the “Licensee”) responds to the reply pleading (the “Reply”)¹ filed by Triangle Access Broadcasting, Inc. (“Triangle”) on January 4, 2021, in this matter. This filing simultaneously supplements WUNC’s prior opposition² (the “Opposition”) to Triangle’s underlying pleading filed December 15, 2020 (the “Initial Pleading”).³ Triangle’s Initial Pleading opposes WUNC’s now-withdrawn November 25, 2020, Application for Minor Modification of Licensed Facility for W216BE, Buxton, North Carolina (the “Application”).⁴

I. Motion to Strike and/or Request for Leave to File

Because Triangle’s Reply raises new arguments not set forth in its Initial Pleading and not raised in WUNC’s Opposition, Triangle’s new arguments should be stricken.⁵ Triangle’s Initial Pleading requested only that the “Bureau . . . DENY the application,” and WUNC therefore limited its Opposition to that issue. Triangle’s Reply now, for the first time, requests that the

¹ Pleading File No. 0000130442.

² Pleading File No. 0000130078.

³ Pleading File No. 0000129714.

⁴ LMS File No. 0000127253.

⁵ See 47 C.F.R. § 1.45(c) (“The reply shall be limited to matters raised in the oppositions . . .”).

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Media Bureau “address Triangle’s complaints” in some other fashion.⁶ Triangle’s additional request for relief is outside the scope of the Initial Pleading and the Opposition, and should therefore be stricken.

In the alternative, WUNC respectfully files this supplemental response to address the new content raised in Triangle’s Reply. As explained more fully in WUNC’s Opposition, Triangle lacked standing to file its Initial Pleading such that it should be dismissed, or—at best—limited to consideration as an informal objection.⁷ Accordingly, no specific pleading timeline governs the filing of this supplemental response.⁸ At minimum, as a matter of fairness, WUNC should have the opportunity to address the Reply’s new tactic through this supplemental response. Should the Commission deem it necessary for the Licensee to request leave to submit this supplemental response, then the Licensee hereby respectfully requests and moves that this supplemental response be accepted and considered because the factual information contained herein is directly relevant to Triangle’s new request set forth in its Reply.

II. W216BE’s Signal Delivery Method Complies with the Signal Delivery Rules

By this submission, the Licensee wishes to make clear that W216BE has been rebroadcasting WUNC’s co-owned station WURI, Manteo, NC (Facility ID 91803), and has been doing so via terrestrial means—namely data-path signal delivery—since December 2019.⁹ A declaration attesting to the same, by WUNC’s Director of IT and Engineering, Graham Youngblood, is attached to this letter pleading.

Contemporaneously with this filing, the Licensee is taking the appropriate steps to correctly associate WURI as W216BE’s primary station in the Commission’s database. Then, WUNC plans to submit another application for a CP to modify W216BE—an application which will specify the correct primary station, the correct signal delivery method, and make certain corrections to the technical portion of the application as compared to the version originally filed in LMS File No. 0000127253.¹⁰

⁶ See Reply, at 2.

⁷ See Opposition, at 1–2 & n.11.

⁸ See 47 C.F.R. § 73.3587 (rule governing “informal objections” explaining that “[t]he limitation on pleadings and time for filing pleadings provided for in § 1.45 of the rules shall not be applicable to any objections duly filed under this section”).

⁹ W216BE is a noncommercial educational FM translator station that operates on reserved channel 216. Data-path signal delivery from WUNC’s co-owned noncommercial educational station WURI is therefore permissible. See 47 C.F.R. § 74.1231(b).

¹⁰ We respectfully submit that the inaccuracies in the initial W216BE modification application (which, as noted above, has already been voluntarily withdrawn) are out of character for the Licensee.

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By my signature below, I certify that I have effected service of this letter pleading on Triangle today, January 20, 2021, by transmitting a copy of the same to the email and mailing address listed in the "cc" line below.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

A handwritten signature in purple ink, appearing to read "S. Hartzell". The signature is stylized and written in a cursive-like font.

Stephen Hartzell
Counsel to WUNC Public Radio, LLC

cc: Triangle Access Broadcasting
Steven L. White, Director
steven@triaccess.org
7813 Highlandview Cir.
Raleigh, NC 27613

DECLARATION OF GRAHAM YOUNGBLOOD

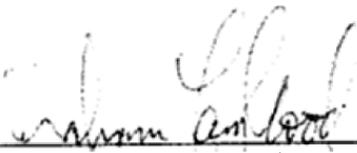
I, Graham Youngblood, hereby declare as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration. I am the Director of IT and Engineering for WUNC Public Radio, LLC, Licensee of FM Translator W216BE (the "FM Translator").

2. My signature below indicates that: I have reviewed the foregoing supplemental response letter setting forth the signal delivery history and status of W216BE, I am familiar with its contents, and, to the best of my knowledge, information, and belief, I hereby verify the truth and accuracy of the facts contained therein.

The undersigned certifies under penalty of perjury that the foregoing is true, complete, and correct to the best of his personal knowledge.

This, the 19th day of January, 2021.

By:  _____
Graham Youngblood
Director of IT and Engineering
WUNC Public Radio, LLC