

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

In re Applications of

IHM Licenses, LLC and  
Piedmont Communications, Inc.  
For Consent to Assignment of Construction  
Permit for W288ED, Charlottesville, VA

File No. 0000162971  
Facility ID No. 148345

-and-

Piedmont Communications, Inc. and  
IHM Licenses LLC  
For Consent to Assignment of License of  
W262CC, Tallahassee, FL

File No. 0000163260  
Facility ID No. 148289

To: Office of the Secretary  
Attn: Chief, Audio Division, Media Bureau

**OPPOSITION TO PETITION TO DENY**

Piedmont Communications, Inc. (“Piedmont”), licensee and proposed assignor of FM translator station W262CC, Tallahassee, Florida (Facility ID 148289) and proposed assignee of the construction permit for FM Translator W288ED, Charlottesville, Virginia (Facility ID No. 148289), pursuant to 47 C.F.R. §§ 73.3584 and 1.45, respectfully submits this Opposition to the Petition to Deny (“Petition”) dated November 5, 2021, by Tidewater Communications, LLC (“Tidewater” or “Saga”<sup>1</sup>), licensee of approximately 15 full-power AM and FM radio stations in Virginia and more than 100 stations nationwide.<sup>2</sup>

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<sup>1</sup> Saga Communications, Inc.—via Saga Broadcasting, LLC—is Tidewater’s ultimate corporate parent. *See* LMS File No. 0000102167.

<sup>2</sup> *See Saga Communications, Inc. Reports 3rd Quarter 2021 Results*, Press Release, <https://ir.sagacom.com/news-market-data/news/news-details/2021/Saga-Communications-Inc.-Reports-3rd-Quarter-2021-Results/default.aspx> (Nov. 4, 2021 9:00 AM ET).

Saga’s Petition argues the FCC should deny or dismiss two pending assignment applications—one seeking consent for Piedmont to assign to IHM Licenses, LLC (“IHM”) the license for FM Translator W262CC (the “Tallahassee Application”), and one seeking FCC consent for IHM to assign to Piedmont the construction permit (“CP”) for FM Translator W288ED (the “Charlottesville Application”). The Petition advances two arguments in support of its request for the FCC to deny or dismiss the applications: (1) that Piedmont engaged in “blatant misrepresentation” to the FCC by ticking the “N/A” box in response to the FCC Form 2100, Schedule 314 application question regarding Piedmont’s “Other Authorizations;” and (2) for W288ED only, that Piedmont will be unable to construct the facilities currently specified in the construction permit. Both arguments lack merit, and the Commission should therefore swiftly dismiss Saga’s Petition. Indeed, given the March 28, 2022, construction deadline for the CP<sup>3</sup> that is the subject of the Charlottesville Application, Piedmont respectfully urges that Saga’s meritless Petition be considered and dismissed as soon as possible.

As to Saga’s first argument, the Petition misapprehends either the scope of the Tallahassee and Charlottesville applications or the applicable application question. Both applications were filed on FCC Form 2100, Schedule 314, the instructions to which unambiguously provide on pages 9 and 16 that: “For a transaction involving only the assignment of a permit or license for an FM or TV translator station . . . (i.e., does not include any full-service station), the assignee [and assignor] should select ‘N/A’ in response to th[e] [Other Authorizations] question.”<sup>4</sup> It is difficult to imagine clearer direction from the Commission with respect to how the FCC expects applicants

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<sup>3</sup> See BNPFT-20130821ABF (granted March 28, 2019).

<sup>4</sup> See, e.g., Federal Communications Commission, *Instructions—Form 2100, Schedule 314 – Application for Consent to Assignment of Broadcast Station Construction Permit or License*, available at <https://www.fcc.gov/sites/default/files/2100-314-instructions.pdf>.

to respond to a question on an application. Accordingly, Piedmont did not make a “blatant misrepresentation” to the FCC, but instead merely followed the Commission’s written instructions, given that both the Charlottesville and Tallahassee Applications contemplate only the assignment of a permit or license for an FM translator station. The Petition’s argument as to this issue should therefore be rejected.

Turning to Saga’s second argument—which is wholly unsupported by citation to any legal authority—the Petition’s assertions are overstated. Saga is legally unable to speak for the actual owner (SBA Communications) of the tower site specified in the construction permit for W288ED, and Saga therefore fails to successfully demonstrate that there is no space whatsoever on that tower to accommodate the construction of W288ED. To the contrary, Piedmont’s communications with SBA Communications have indicated that there are slots available to accommodate the channel 288 translator, even if they are not at the same height specified in the current CP.<sup>5</sup> Further, any alleged co-channel interference that would result from the construction of the facilities currently permitted for W288ED are not the result of the Charlottesville Application—any such potential interference would have necessarily been presented at the time the W288ED construction permit application was submitted, reviewed by Commission Staff, and granted,<sup>6</sup> given that Piedmont has not sought to modify WOJL’s facilities (and IHM Licenses has not sought to modify W288ED’s permit) since that time. It is improper as a procedural matter for Saga to now belatedly use the Charlottesville Application as a means to collaterally attack W288ED’s long-ago granted

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<sup>5</sup> Tellingly, Saga has cited no authority whatsoever that it is grounds for dismissal or denial of an assignment application when the construction specifications identified in a CP subject to the assignment will need to be modified in order to effectuate construction. Piedmont observes that it is commonplace for construction specs to be modified for an unconstructed facility following the closing of a CP assignment.

<sup>6</sup> See CDBS File No. BNPRF-20130821ABF.

construction permit. *See, e.g., In re Bernard Dallas, LLC, Assignor & Acm Dallas V LLC, Assignee & Acm Dallas V LLC, Assignor, & Hammond Broad., LLC, Assignee*, Memorandum Opinion and Order, 31 FCC Rcd 11107, 11108 (2016) (“We note that the Bureau’s grant nearly ten years ago of the [relevant] Applications is final and no longer appealable. As a result, the doctrine of collateral estoppel bars . . . relitigating any issues resolved during consideration of those applications.”); *Mark Lipp, Esq., Mr. Dennis King, Mr. Michael David & Mr. David Carus*, Letter Decision, 26 FCC Rcd 11138, 11141 & n.31 (2011); *see also* Petition at 5–6 (citing no legal authority in support of its arguments).

Nonetheless, IHM and Piedmont have been in communication and a mutually agreeable site for the modification of the W288ED CP has been found and is being specified by IHM in a modification application filed today.<sup>7</sup> Reasonable site assurance for the subject site specified in the mutually agreeable site modification has been obtained, and IHM and Piedmont believe the modification application is in technical compliance with the Commission’s rules. Piedmont further intends to amend the Charlottesville Application accordingly given that modification application filed today. Accordingly, to the extent the technical issue raised in Saga’s Petition stands as an impediment to the grant of the Charlottesville Application (which it does not), such impediment has been remedied through the above-described modification filing.<sup>8</sup>

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<sup>7</sup> *See* LMS File No. 0000169568.

<sup>8</sup> IHM has specifically authorized Piedmont to make the foregoing representations in the instant pleading.

## **CONCLUSION**

For the foregoing reasons, the Petition should be denied and the Charlottesville and Tallahassee Applications should be granted.

Dated: November 18, 2021

Respectfully submitted,

**PIEDMONT COMMUNICATIONS, INC.**

A handwritten signature in blue ink, appearing to read 'Patrick Cross', is written over a horizontal line.

Patrick Cross  
Stephen Hartzell

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*Its Attorneys*

CERTIFICATE OF SERVICE

I hereby certify that on the 18<sup>th</sup> day of November, 2021, a copy of the foregoing **Opposition to Petition to Deny** and its accompanying Declaration and Exhibit were served by first-class, postage prepaid U.S. mail and email on the following:

Gary S. Smithwick & Mark B. Denbo  
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(Service via email only)

This the 18th day of November, 2021.



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Patrick Cross

## **DECLARATION OF KEVIN DALTON**

I, Kevin Dalton, hereby declare as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration. I am the General Manager of Piedmont Communications, Inc., licensee and proposed assignor of FM translator station W262CC, Tallahassee, Florida (Facility ID 148289) and proposed assignee of the construction permit for FM Translator W288ED, Charlottesville, Virginia.

2. My signature below indicates that: I have reviewed the foregoing Opposition to the Petition to Deny filed by Tidewater Communications, LLC, that 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, including those related to the proposed modification site for the W288ED CP.

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

This, the 18th day of November, 2021.

By:

  
Kevin Dalton  
General Manager  
Piedmont Communications, Inc.