

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

14 June 2019

Application of)
)
Carolina Radio Group, Inc.) FCC File No.
For FM Translator License) BLFT-20190425AAW
Facility ID 143608)
Call Sign W225DF)

To: The Secretary
Attn: Media Bureau, Audio Division

REPLY TO OPPOSITION

Triangle Access Broadcasting, Inc. (“Triangle”) hereby replies to Carolina Radio Group, Inc.'s (“CRG”) June 10, 2019, Opposition To Petition For Reconsideration (“Opposition”) of Triangle's May 28, 2019, Petition For Reconsideration (“Petition”). Triangle filed the Petition in response to the Media Bureau's May 1, 2019, grant of the above-captioned application (“Application”) for an FM translator license for facility ID 143608 (“Translator”) to cover construction permit BNPFT-20180723AAW (the “Permit”).

I. The grant of the Application should not follow automatically from the issuance of the Permit.

CRG raised as an initial matter that Section 319(c) gives the Application significant protection.¹ Although license applications are typically automatic, Triangle's observations of unforeseeable unauthorized and non-licenseable operation meet the high standard to demonstrate that operation of the Translator is against the public interest, and reconsideration is the first opportunity to bring the issues to the Bureau's attention. It was unforeseeable that W225DF's programming would change to match

¹ Opposition, at 1-2. See also 47 U.S.C. § 319.

the programming of a colocated translator with 96% overlap. It was also unforeseeable that the Translator would transmit programming other than what was authorized.

II. Granting the license before the Permit was final prejudices Triangle.

Triangle believes the Bureau should have withheld processing of the licensing Application because the Translator could still be constructed and operated in the same manner as a licensed station while the Application remained pending. There would be no impact or burden. Triangle agrees with CRG that no specific rule prevents the processing, but it disagrees that the argument has no merit.² A policy of granting licenses covering non-final permits creates the potential of an additional level of rescission and subjects the parties of an underlying permit under review to participate in two proceedings with the same substantive arguments. The entire licensing proceeding could also be moot, and the resources spent processing it would be wasted. Instead, an encumbered license application that remains pending affords the permittee the same opportunity to build and operate at its own peril. The policy prefers “potential impact” over “no impact.”

Triangle incorporated its substantive argument, a licensing issue, from its Petition For Consideration in the Permit's proceeding in order to protect its right to participate at licensing, give the Bureau an opportunity to pass, and since Triangle could not insert itself as a party to the licensing proceeding before grant, establish Triangle as a party to be able to seek judicial review. It is true that Triangle requests the same substantive argument to be considered in two separate pleadings, however there is only “one bite” of the apple as the argument only needs to be considered once. The grant of the Application, particularly the grant being expeditious, disadvantages Triangle from availing all of the review opportunities normally afforded an objector.

² Opposition, at 2-1.

III. Triangle's claim that W225DF not operating as authorized is very sound.

Triangle believes that CRG's counsel is not aware of the dynamic operational status of the Translator and therefore has reached an unfounded conclusion.³ Triangle stands by the facts that it presented in the Petition.⁴

When W225DF began operation shortly after it filed its license application, it was broadcasting the classic country format and station identifications of “WQDR” (facility ID 61698, at that time WQDR(AM)⁵). WQDR-FM(HD3) continued to simulcast facility ID 21630, WPTF(AM), identified by Triangle from both the station ID and its news/talk format. This was the same programming described in the application for the underlying Permit in BNPFT-20180723AAW's “Exhibit 16”. Thus, W225DF must have been rebroadcasting WQDR(AM) instead of its authorized WQDR-FM(HD3). CRG's implication that W225DF has always been rebroadcasting WQDR-FM(HD3) is inaccurate.⁶

Only on June 4, 2019, (after the Petition was filed but before the Opposition was filed) did WQDR-FM(HD3) switch to simulcasting WPLW(AM), coincident with the call sign change of that station and a change of W254AS's (facility ID 143226) primary from WQDR-FM(HD3) to WPTF. At that time the Translator was “returned” to its authorized primary. The Translator transmitted an unauthorized primary for over a month.

IV. Because W225DF is rebroadcasting the same programming as WQDR(AM), it is same-area⁷ to W262CZ even though the signals originate from different primary stations.

³ Opposition, at 2-2.

⁴ Petition, at 2-2.

⁵ The call sign of this facility changed from WQDR(AM) on June 4, 2019, to WPLW(AM). Triangle will identify the facility as WQDR(AM) for operation prior to June 4, 2019, and WPLW(AM) for dates after the change. All references to WPLW(AM) refer to facility 61698 and never to an FM station, facility ID 22322, that changed its call sign from WPLW to WPLW-FM on May 28, 2019.

⁶ Opposition, at 2-2.

⁷ “Same-area” refers to translators that overlap by more than 50% thereby implicating 47 C.F.R. § 74.1232(b).

Despite being the addressee of a letter that concludes “that the technical need rule applies only when the ‘same programming’ or ‘same signal’ (emphasis added) is implicated,”⁸ CRG's counsel brazenly argues⁹ that W225DF and W262CZ are not same-area because, although they are the same programming, WQDR-FM-HD3 and WQDR are different signals. The Bureau has addressed this question, and CRG has presented no evidence that the answer should be any different now.

V. The outstanding construction permit to move W262CZ is of no consequence.

Unauthorized operation is prohibited at all times, save for specific emergencies furthering the safety of life and property.¹⁰ CRG has made no such showing. Further, there is never a guarantee that a permitted facility will ever be constructed. W262CZ's move is essentially an uncoordinated contingent application.¹¹ The license Application should be returned or dismissed.

Conclusion

CRG is operating a same-area translator. For the reasons presented in the Petition and above, the Bureau should grant the Petition.

Respectfully Submitted,



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8 *Coe W. Ramsey, Esq.*, Letter, 32 FCC Rcd 10105 (2017), at 10111-3.

9 Opposition, at 2-2.

10 See 47 C.F.R. § 73.1250.

11 See 47 C.F.R. § 73.3517.

Certification of Steven L. White

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

By: [Electronically Signed]_____
Steven L. White

Dated: June 14, 2019

Certificate of Service

I, Steven L. White, certify that a true and correct copy of the foregoing Petition For Reconsideration was sent, this 14th day of June, 2019, by first-class, postage paid mail to the following:

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By:



Steven L. White