

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

22 September 2017

Application of and Interference by)
)
Eastern Airwaves, LLC) FCC File No.
For FM Translator License) BLFT-20161220AAZ
Facility ID 156763)
Call Sign W228CZ)
)
Interference by)
)
Eastern Airwaves, LLC) FCC File No.
FM Translator License) BLFT-20170126AAN
Facility ID 156986)
Call Sign W228CV)

To: The Secretary
Attn: Media Bureau, Audio Division

REPLY TO SECOND OPPOSITION AND RESPONSE

Triangle Access Broadcasting, Inc. (“Triangle”) is filing this Reply to Eastern Airwaves, LLC’s (“Eastern”) September 11, 2017 “Opposition To Supplement To Petition For Reconsideration And Response To Interference Complaint” (“Second Opposition”).

Eastern’s raises a concern that Triangle’s Second Supplement¹ is an attempt to supplement its Petition for Reconsideration² and should not be considered.³ Triangle has simply pointed out a changed circumstance and clarified what impact this has with regards to issues already raised in its First Reply.⁴

1 Supplement and Interference Complaint filed August 28, 2017 (“Second Supplement”)
2. Petition for Reconsideration filed January 31, 2017 (“Petition for Reconsideration”)
3. Second Opposition, at 1-2
4 Reply to Opposition filed February 21, 2017 (“First Reply”)

No new arguments are raised. The form of a supplement is only an alignment with available CDBS filing types.

It is axiomatic that the new fact that being brought to light could be raised in a later appeal if not considered now.⁵ The improved efficiency of considering true and proper facts in this pleading is a matter of public interest, so much so that Triangle is confounded as to why Eastern itself did not itself offer a notification of the new programming source at the time that it effected the change while knowing that W228CZ was the subject of a Petition for Reconsideration where this detail was acutely relevant.

Eastern bases its objection to considering the Second Supplement by virtue of the rules for petitions of consideration in non-rulemaking proceedings,⁶ stating that the Supplement is procedurally defective.⁷ As the Petition for Reconsideration pertains to an instrument of authorization⁸ granted without hearing, by that rule action was also due within 90 days of filing.⁹ Section 1.106 does not contemplate any procedure after 90 days. With the procedures of Section 1.106 seemingly already waived by virtue of the still-outstanding original Petition, all of the parties are in ungoverned territory. The parties should all be more flexible in arriving at a proper decision.

Eastern also claims that Triangle's filing is substantively defective on the premise that 27.3% overlap of W284CP with W228CZ's 60 dBu contour is not "substantial" without showing relevant evidence to justify a higher threshold.¹⁰ Even on area alone, 27.3% overlap is "substantial" as a quantity. Plainly, the term "substantial" does not infer even a majority. Indeed, if W284CP did not overlap into the W228CZ contour by this 27.3%, then Triangle's interference received would be

⁵ See 47 C.F.R. § 1.115(b)(2)(iv)

⁶ See 47 C.F.R. § 1.106 ("Section 1.106")

⁷ Second Opposition, at 1-2.

⁸ See 47 C.F.R. § 73.1230. The language of the rule, "[t]he station license and any other instrument of station authorization" clearly associates that the license granted by the subject application is indeed an instrument of authorization.

⁹ See 47 C.F.R. § 1.106(j)

¹⁰ Second Opposition, at 2-1.

reduced.¹¹ In the instant matter, even disregarding population information absent in Eastern's limited area-only showing, the overlap that is present is of considerable importance.

Regarding the applicability of Eastern's attempts to justify its alleged impermissible *de facto* FM station, the three cases Eastern cites¹² lack merit in that they are not comparable to the facts of the current subject:

(1) [Overlap between W243DK and W257CS] Interestingly, BPFT-20160128BBY acknowledges Section 74.1232¹³ to call attention to the Bureau for a proper review and to additionally raise awareness for potential objectors. Also, both W243DK and W257CS remain unbuilt and covering licenses have not been sought. It remains unclear as to whether there will be programming overlap that could trigger an objection.

(2) [Overlap between W232CH and W270AW] Here, translator ownership is not common to the primary's. Also, there have been no objections to shape an interpretation of "substantial" beyond a presumption (and not a finding) that the overlap isn't substantial.

(3) [Overlap between W256AH and W300CE, and Between and Among W299AP, W255AM, W216BN, and W254BV] Again, translator ownership is not common to the primary's, and no objections were filed. In this case, however, Triangle does believe that a similar situation to Eastern's exists where these authorizations could (if not "should") have been contested. It is Triangle's opinion that this "wrong" does not justify Eastern's translators as it only serves to inhibit fair access to FM spectrum.

Finally, regarding the interference complaint by Doug Cannon,¹⁴ Triangle offers that the correct address is in fact "Wilder Street." Related to this complaint, the "May contact" boxes represent, as

11 Petition for Reconsideration, at Exhibit B; and First Reply, at Exhibit A.

12 Second Opposition, at 2-1.

13 See 47 C.F.R. § 74.1232 ("Section 74.1232")

14 Second Supplement, at Exhibit B

described above the contact information spaces, preferences rather than barriers. If no particular contact method is preferred over another, then it is perfectly reasonable for none of the “May contact” boxes to be marked. Mr. Cannon’s form contains a pledge to cooperate. Triangle stipulates that Mr. Cannon’s complaint is indeed a *bona fide* interference complaint and that Eastern should attempt to contact this listener through every available means. As Triangle has no affiliation with Mr. Cannon and is simply forwarding a received complaint, should he not respond to *bona fide* attempts to make contact then Triangle would be satisfied that this complaint need not be pursued further.

III. Conclusion

As Triangle’s Second Supplement is solely a mechanism to keep the Bureau updated with accurate information, it is in the public interest that it is considered to the extent that it is not making new requests nor presenting new arguments or evidence.

Triangle also appreciates Eastern’s attempts to address the complaints of actual interference to WRLY-LP.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Steven L. White", with a long, sweeping horizontal line extending to the right.

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

7813 Highlandview Cir
Raleigh, NC 27613-4109

Certification of Steven L. White

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

By: [Electronically Signed]____
Steven L. White

Dated: September 22, 2017

Certificate of Service

I, Steven L. White, certify that a true and correct copy of the foregoing Supplement and Interference Complaint was sent, this 22nd day of September, 2017, by first-class, postage paid mail to the following:

Eastern Airwaves, LLC (Licensee)
3012 Highwoods Blvd Ste 201
Raleigh, NC 27604-1031

Brooks, Pierce et al. (Counsel to Licensee)
Coe W. Ramsey
PO Box 1800
Raleigh, NC 27602-1800

By:



Steven L. White