



Federal Communications Commission  
Washington, D.C. 20554

February 16, 2012

*In Reply Refer to:*  
1800B3-KV

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In Re: **WDDE(FM), Dover, DE**  
**Salisbury University Foundation, Inc.**  
Facility ID No. 175387  
File Nos.: BAPED-20110525ADY  
BLED-20110812ACN

**Petitions to Deny/Informal Objections**

Dear Counsel and Mr. Snyder:

We have before us: (1) an application for Commission consent to the assignment of the construction permit for the noncommercial education ("NCE") FM station WDDE(FM), Dover, Delaware, from Salisbury University Foundation, Inc. ("Salisbury") to Delaware First Media Corporation ("Delaware First"), as amended;<sup>1</sup> and (2) an application for covering license for WDDE(FM).<sup>2</sup> Also before us are the following: (3) a "Petition to Deny; Informal Objection" to the Assignment Application

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<sup>1</sup> File No. BAPED-20110525ADY ("Assignment Application").

<sup>2</sup> File No. BLED-20110812ACN ("License Application").

("Assignment Objection") filed by Richard Snyder ("Snyder") on June 10, 2011;<sup>3</sup> (4) a "Petition for Extraordinary Relief/Expedited Action Requested" ("Joint Petition") filed by Salisbury and Delaware First on August 3, 2011 ("Joint Petition"); and (5) a "Petition to Deny; Petition for Reconsideration; Informal Objection" to the License Application ("License Objection") filed by Snyder on August 15, 2011.<sup>4</sup>

For the reasons set forth below, we deny the Objections filed by Snyder, dismiss the Joint Petition as moot, grant the License Application, and grant the Assignment Application.

**Background.** On October 22, 2007, Salisbury applied for an NCE construction permit during the 2007 NCE filing window.<sup>5</sup> On August 14, 2008, Bureau selected Salisbury's application for grant in NCE MX Group 48<sup>6</sup> based on a "fair distribution" preference under Section 307(b) of the Communications Act of 1934, as amended (the "Act").<sup>7</sup> The Construction Permit required completion of the facilities by 3:00 a.m. local time on August 14, 2011. On May 25, 2011, Salisbury filed the Assignment Application to assign the Construction Permit to Delaware First. In the Assignment Application, Delaware First stated that it was an eligible entity<sup>8</sup> and sought an additional 18 months from consummation of the assignment to construct WDDE(FM).<sup>9</sup>

On June 10, 2011, Snyder filed the Assignment Objection, arguing first that the Assignment Application is impermissible because, pursuant to Section 73.7005(c) of the Rules,<sup>10</sup> Salisbury is required to hold the permit for four years. Next, Snyder contends that Delaware First is not qualified, as set forth at Section 73.503,<sup>11</sup> to hold an NCE permit as an educational organization because it has not met "any

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<sup>3</sup> The Assignment Objection was date stamped as received on June 10, 2011; Snyder, however, resubmitted the pleading on June 27, 2011, and July 14, 2011, due to an erroneous belief that it had been lost. Also, on July 14, 2011, Snyder filed an "Amended Filing: Petition to Deny; Informal Objection" ("Amended Assignment Objection"). On June 20, 2011, both Salisbury and Delaware First filed oppositions to the Assignment Objection. On July 18, 2011, Snyder filed a "Response to Objection" ("Response"). On August 9, 2011, Snyder opposed the Joint Petition with a "Response to Petition."

<sup>4</sup> Collectively, the Assignment Objection and the License Objection will be referred to as "the Objections."

<sup>5</sup> File No. BNPED-20071022AWJ ("Construction Permit").

<sup>6</sup> See *Threshold Fair Distribution Analysis of 32 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified New Noncommercial Educational FM Stations*, 23 FCC Rcd 10213, 10217 (MB 2008) ("Fair Distribution Order").

<sup>7</sup> 47 U.S.C. § 307(b). An NCE FM applicant is eligible to receive a Section 307(b) preference if it would provide a first or second reserved band channel NCE aural service to at least ten percent of the population (in the aggregate), within the proposed station's service area; provided that the population served is at least 2,000 people. See 47 C.F.R. § 73.7002(b).

<sup>8</sup> Generally, "eligible entities" were defined to include all entities that qualify as small businesses under the standards of the Small Business Administration for industry groupings based on revenue. See *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13810-12 (2003).

<sup>9</sup> See Exhibit 19, Assignment Application. See also 47 C.F.R. § 73.3598(a); see also *In the Matter of Promoting Diversification of Ownership in the Broadcast Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (2008) ("Diversity Order").

<sup>10</sup> 47 C.F.R. § 73.7005(c).

<sup>11</sup> 47 C.F.R. § 73.503.

accreditation standards . . . .”<sup>12</sup> Additionally, Snyder argues that Delaware First is not an “eligible entity” because it is not a small business<sup>13</sup> due to its “affiliations” with the University of Delaware and Delmarva Public Broadcasting. Snyder, therefore, asks that Salisbury’s frequency be awarded to another NCE MX Group 48 applicant or held for future use. On July 14, 2011, Snyder submitted an Amended Assignment Objection, arguing that the Construction Permit is subject to the four-year holding period because Section 73.7005(c) of the Rules excludes only permits granted on a non-comparative basis. Here, Snyder argues, the Construction Permit was awarded on a comparative basis since both the fair distribution analysis and the points system are comparative methods.<sup>14</sup>

On June 20, 2011, both Salisbury and Delaware First filed responses to the Assignment Objection. Specifically, Salisbury contends that the four-year holding period applies only to NCE authorizations awarded via a points determination.<sup>15</sup> Salisbury notes that the WDDE(FM) permit was not awarded due to points, but rather after a Section 307(b) analysis. Additionally, Delaware First procedurally challenges Snyder’s standing by observing that Snyder’s mailing address in Rehoboth, Delaware<sup>16</sup> is outside of WDDE(FM)’s service area in Dover, Delaware.<sup>17</sup> Substantively, Delaware First argues that it qualifies to hold an NCE license because it is a non-profit educational entity with an educational purpose. Moreover, Delaware First asserts that it is an eligible entity because neither University of Delaware nor Delmarva Public Broadcasting has the ability to control or influence it.

On July 18, 2011, Snyder filed a “Response to Objection” (“Response”),<sup>18</sup> citing the recent United States Court of Appeals for the Third Circuit decision vacating the Commission’s eligible entity definition and remanding those provisions of the *Diversity Order* to the Commission.<sup>19</sup> In light of the suspension of the Commission’s eligible entity provisions, Snyder argues that the Assignment Application should be dismissed because Delaware First “is not/nor will be an ‘eligible entity.’”<sup>20</sup>

On August 2, 2011, Salisbury filed an application for minor modification of the Construction Permit, which the staff granted on August 3, 2011.<sup>21</sup> Also on August 3, 2011, Salisbury and Delaware First filed the Joint Petition requesting that the Commission grant the Assignment Application and add 18 months to the Construction Permit’s expiration because they had “acted in good faith reliance on a rule

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<sup>12</sup> Assignment Objection at 2.

<sup>13</sup> See 47 C.F.R. § 73.3598(a).

<sup>14</sup> Amended Assignment Objection at 2.

<sup>15</sup> Salisbury “Opposition to Petition to Deny” (“Salisbury Opposition”) at 2 .

<sup>16</sup> In the original Assignment Objection, Snyder listed his mailing address as a P.O. Box in Rehoboth, Delaware. Subsequently, in the Amended Assignment Objection filed on June 27, 2011, and all succeeding pleadings Snyder listed his address as a P.O. Box in Davidsonville, Maryland.

<sup>17</sup> Delaware First “Opposition to Petition to Deny” (“Delaware First Opposition”) at 2 note 5.

<sup>18</sup> Snyder states that the Response addresses only the Salisbury Objection because, notwithstanding Salisbury’s and Delaware First’s Certificates of Service, he was not served by either Salisbury or Delaware First and was able to obtain only the Salisbury Objection.

<sup>19</sup> *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3rd Cir. 2011) (“*Prometheus*”).

<sup>20</sup> Response at 3.

<sup>21</sup> File No. BMPED-20110802AAZ. Specifically, Salisbury sought a waiver of Section 73.1125 of the Rules to operate WDDE(FM) as a “satellite” of the commonly owned NCE-FM Station WSDL, Ocean City, Maryland, with the main studio located in Salisbury, Maryland. *Public Notice* of the grant was issued on August 8, 2011. *Broadcast Actions*, Report No. 47545 (rel. Aug. 8, 2011). The “satellite” main studio rule waiver does not attach to Delaware First’s ownership and operation of the Station.

[Section 73.3598(a)] that an appellate court struck down . . . .”<sup>22</sup> On August 9, 2011, Snyder filed a “Response to Petition” opposing the Joint Petition due to the *Prometheus* decision.

On August 12, 2011, two days before the Construction Permit’s expiration, Salisbury filed the License Application. On August 15, 2011, Snyder filed the License Objection, arguing that Salisbury failed to construct and that the permit expired on August 14, 2011.<sup>23</sup> Snyder claims that construction was not complete because an August 14, 2011, visit revealed that “the satellite receivers were not even there.”<sup>24</sup> On November 17, 2011, Commission staff sent a letter of inquiry requesting that Salisbury respond to Snyder’s allegations.<sup>25</sup> On December 16, 2011, Salisbury replied to the *LOI* with a declaration under penalty of perjury from Bruce D. Blanchard, Director of Engineering for Salisbury (“Blanchard Declaration”), attesting to completion of construction on August 12, 2011, along with other documentary evidence.<sup>26</sup>

**Discussion. License Application.** Snyder’s License Objection is judged under the stringent standard of Section 319(c) of the Act.<sup>27</sup> Under Section 319(c), Salisbury is entitled to a presumption that the Section 309 public interest determination made in granting the Construction Permit continues in effect unless “extraordinary circumstances”<sup>28</sup> have arisen that would make operation of the Station against the public interest.<sup>29</sup> Snyder’s challenge fails to meet this standard.

Construction of WDDE(FM). Snyder argues that the Construction Permit expired on its August 14, 2011, deadline due to Salisbury’s alleged failure to construct. Specifically, Snyder provides the following report regarding his visit to the WDDE(FM) site on August 14, 2011, at 9:00 AM and discovering the following:

[The] ‘caretaker’ of the property stated that some workers had been at the tower from about Tuesday to Friday . . . . He said that nothing was done after that. I [Snyder] asked him if he knew anything about the satellite receivers which would be needed . . . to use the tower as a radio station. He agreed that there were no satellite receivers either connected or lying on the property or anywhere nearby. I personally noted that there were several cables inside the locked fence, which had not been connected, and were simply lying on the paved area beneath the tower . . . .

What is clear from my personal visit and corroborated by the caretaker, was that although perhaps some initial steps had been taken to try to ‘activate’ the tower for the purposes

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<sup>22</sup> Joint Petition at 5.

<sup>23</sup> Snyder also seeks to deny the granted Minor Modification Application due to the alleged expiration of the Construction Permit.

<sup>24</sup> License Application Objection at 2- 3 (emphasis original). Snyder also included two undated, black and white photocopied pictures purportedly of the WDDE(FM) tower site.

<sup>25</sup> See *Letter to Salisbury University Foundation, Inc. from Peter H. Doyle, Chief, Audio Division, Media Bureau* (Nov. 17, 2011) (“*LOP*”).

<sup>26</sup> *Letter to Peter H. Doyle, Chief, Audio Division, Media Bureau* (Dec. 16, 2011) (“*LOI Response*”).

<sup>27</sup> 47 U.S.C. § 319(c).

<sup>28</sup> See *Whidbey Broadcasting Service, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8726, 8727 (1989).

<sup>29</sup> See *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40 (1977).

of the actual filing of a license to cover, the process was *totally incomplete* . . . the satellite receivers were not even there.<sup>30</sup>

We find this contention to be meritless. Snyder appears to base his construction assertions solely on whether the WDDE(FM) transmitter site had satellite receivers present. According to Salisbury, however, “when WDDE began broadcasting it operated as a satellite station of WSCL, Salisbury, Maryland, which was received over-the-air at station WDDE(FM)’s transmitter site by means of an FM antenna mounted on the roof of the transmitter building. There was absolutely no need for a satellite . . . in order for station WDDE(FM) to commence and continue operations . . . .”<sup>31</sup> Notably, as Salisbury observes, Snyder does not state that he was unable to listen to WDDE(FM) while at the site. Additionally, Salisbury includes documentation in support of its claim that the Station was constructed prior to the permit expiration date.<sup>32</sup> Therefore, we find that Snyder has not produced probative evidence that Salisbury has failed to timely construct Station WDDE(FM) and has not demonstrated the “extraordinary circumstances” required by Section 319(c) of the Act.

*Assignment Application. Procedural Matter: Standing.* Section 310(d) of the Act<sup>33</sup> requires the Commission to determine whether the proposed assignment of a broadcast license is in the public interest. Pursuant to Section 309(d)(1) of the Act,<sup>34</sup> any party in interest may file a petition to deny an application. A party has standing to file a petition to deny if grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.<sup>35</sup> The Commission also accords party-in-interest status to a petitioner who demonstrates either that he resides in the service area of the station that is the subject of the petition or that he listens to the station regularly and that such listening is not the result of transient contacts with the station.<sup>36</sup> In order to file a petition to deny, the petitioner must provide an affidavit or declaration that establishes such standing.<sup>37</sup> Here, Snyder did not provide an affidavit or declaration alleging a specific injury, or attempt to establish residence status as a basis for standing.<sup>38</sup> Therefore, we find that Snyder lacks standing.

We will, however, treat Snyder’s pleadings as informal objections pursuant to Section 73.3587<sup>39</sup> of the Rules. Informal objections must provide properly supported allegations of fact that, if true, would

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<sup>30</sup> License Objection at 2- 3. Snyder also included two undated, black and white photocopied picture of purportedly the WDDE(FM) tower site.

<sup>31</sup> *LOI Response* at 2.

<sup>32</sup> Specifically, Salisbury includes: (1) the Blanchard Declaration which details the construction process; (2) a list of all the equipment installed by August 12, 2011; (3) a photograph of the equipment in the transmitter building; and (4) a copy of the August 12, 2011, station log noting that WDDE(FM) began broadcasting at 14:00 hours.

<sup>33</sup> 47 U.S.C. § 310(d).

<sup>34</sup> 47 U.S.C. § 309(d)(1).

<sup>35</sup> See, e.g., *In re Conn-2 RSA Partnership*, Memorandum Opinion and Order, 9 FCC Rcd 3295, 3297 (1994) (injury cannot be hypothetical, but rather fairly traceable to whether the Commission decides to grant the license).

<sup>36</sup> See e.g., *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999).

<sup>37</sup> See *Tabback Broadcasting Company*, Memorandum Opinion and Order, 15 FCC Rcd 11899, 11900 n.3 (2000).

<sup>38</sup> See e.g. *Riverside Youth & Rehabilitation D/B/A Riverside Ministries*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd. 10360, 10363 (MB 2008) and *K Licensee, Inc.*, Letter, 23 FCC Rcd. 7824 (MB 2008).

<sup>39</sup> 47 C.F.R. § 73.3587.

establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.<sup>40</sup> We find Snyder has failed to meet this standard.

Eligible Entity/Joint Petition. When the Assignment Application was filed, Delaware First sought to qualify as an eligible entity with additional time to construct as then provided in Section 73.3598(a) of the Rules.<sup>41</sup> On July 7, 2011, however, the Commission's eligible entity definition was vacated and remanded for Commission review in *Prometheus*.<sup>42</sup> Pending such review, the Bureau has suspended application of the eligible entity rule provisions and policies in all contexts.<sup>43</sup> Subsequently, on August 3, 2011, in the Joint Petition, Salisbury and Delaware First sought an extension of the Construction Permit's expiration date arguing that they were entitled to a waiver of the construction deadline because "they relied on the eligible entity provision . . . ."<sup>44</sup> Shortly thereafter Salisbury filed the License Application certifying that it had completed construction. The Joint Petition therefore is moot and we will dismiss it.

Substantive Matters. Delaware First's Qualifications. Snyder first argues that Delaware First is not qualified to hold an NCE(FM) permit because it is not accredited and therefore, cannot be considered an educational organization. We disagree. Pursuant to Section 73.503 of the Rules an NCE applicant must be: (a) a government or public educational agency, board or institution; (b) a private, nonprofit educational organization; or (c) a nonprofit entity with a demonstrated educational purpose.<sup>45</sup> Accreditation is considered, but is not determinative, in determining whether an applicant qualifies as an educational organization.<sup>46</sup> Additionally, beyond showing that it is, in fact, a nonprofit educational organization, an applicant applying as a non-profit entity must specifically show: (i) that it has an educational objective; and (ii) how its programming will further that objective.<sup>47</sup> The requirement that NCE licensees provide programming that advances an educational objective may be satisfied by a variety of programs, including, but not limited to, "instructional programs, programming selected by students, bible study, cultural programming, in-depth news coverage, and children's programs such as Sesame Street that entertain as they teach."<sup>48</sup>

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<sup>40</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 10 (1990), *aff'd sub nom.* Garden State Broadcasting, L.P. v. FCC, 996 F.2d 386 (D.C.Cir. 1993), *rehearing denied* (Sep. 10, 1993); see also *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) ("*Area Christian*").

<sup>41</sup> At that time, an eligible entity acquiring an "issued and outstanding" construction permit for a new unbuilt broadcast station had either the time remaining on the construction permit or 18 months from the consummation of the assignment or transfer of control, whichever was longer, within which to complete construction and file a license application.

<sup>42</sup> See *Prometheus*, 652 F.3d at 472.

<sup>43</sup> See *Media Bureau Provides Notice of Suspension of Eligible Entity Rule Changes and Guidance on the Assignment of Broadcast Station Construction Permits to Eligible Entities*, Public Notice, DA 11-1232, 26 FCC Rcd 10370 (MB Jul. 25, 2011).

<sup>44</sup> Joint Petition at 4.

<sup>45</sup> 47 U.S.C. § 73.503(a). See also Appendix A to *Eligibility for Noncommercial Educational FM and TV Broadcast Station Licenses*, Notice of Inquiry, FCC 77-382, 43 Fed. Reg. 30842 30844 (1978) (processing guidelines for institutional and organizational applicants for noncommercial educational licenses).

<sup>46</sup> 47 C.F.R. § 73.503(a)(2).

<sup>47</sup> See, e.g., *Denny and Marge Hazen Industries, Inc.*, Letter, 23 FCC Rcd 11579, 11581 (MB 2008); *Music Ministries, Inc.*, Hearing Designation Order, 9 FCC Rcd 3628 (MMB 1994).

<sup>48</sup> *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167, 21169 (1998).

Here, Delaware First's Certificate of Incorporation provides "that it shall be operated exclusively for charitable, scientific, literary and educational purposes . . . ."<sup>49</sup> As for its educational purpose, Delaware First submitted an exhibit pledging to educate the public "by sponsoring live public meetings, forums, debates and generating extensive interaction among [the public]. . . ."<sup>50</sup> Lastly, Delaware First also included examples of its proposed educational programming.<sup>51</sup> In view of the extensive record, we find that Delaware First is qualified to hold an NCE(FM) permit under 73.503(a) of the Rules.

**Holding Period.** Finally, we reject Snyder's erroneous assertion that the WDDE(FM) authorization is subject to a four-year holding period. Rather, the Rules stipulate that "NCE stations awarded by use of the point system in § 73.7003 shall be subject to a holding period."<sup>52</sup> Moreover, the Commission explicitly stated that "a four year holding period will apply to applicants selected through a point system. We do not adopt a holding period . . . for licensees receiving no such points (such as non-mutually exclusive applicants, or licenses awarded through settlement), or for permits awarded through decisive Section 307(b) preferences."<sup>53</sup> Here, Salisbury was awarded the Construction Permit through a Section 307(b) preference, not a points determination.<sup>54</sup> The holding period therefore is not applicable.

**Conclusion/Actions.** Based on the evidence presented in the record, we find that Snyder has failed either to show "extraordinary circumstances" which would make operation of the Station against the public interest or to raise a substantial and material question of fact warranting further inquiry regarding the Assignment Application. Specifically, we find that the Station was timely constructed in accordance with all terms, conditions and obligations set forth in the authorization and that there is no cause or circumstance arising since the grant of the Construction Permit that would make the operation of the Station contrary to the public interest. Additionally, we further find Delaware First to be fully qualified to be the licensee of NCE(FM) Station WDDE(FM) and that grant of the Application will further the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED that the June 10, 2011, Petition to Deny; Informal Objection, as amended, filed by Richard Snyder IS DENIED.

IT IS FURTHER ORDERED that the August 3, 2011 Petition for Extraordinary Relief/Expedited Action Requested jointly filed by Salisbury University Foundation, Inc. and Delaware First Media Corporation IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED that the August 15, 2011, Petition to Deny; Petition for Reconsideration; Informal Objection filed by Richard Snyder IS DENIED.

IT IS FURTHER ORDERED that the application for a license to cover for noncommercial educational FM station WDDE(FM), Dover, Delaware (File No. BLED-20110812ACN) IS GRANTED.

IT IS FURTHER ORDERED that the Application (File No. BAPED-20110525ADY), as

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<sup>49</sup> See Exhibit 1, Attachment 2, Delaware First Opposition.

<sup>50</sup> See "Educational Objective and Programming Statement," Exhibit 11 at 1, Assignment Application.

<sup>51</sup> *Id.* at 2. These include material from NPR, American Public Media, Public Radio International, BBC, and local sports, politics and specials.

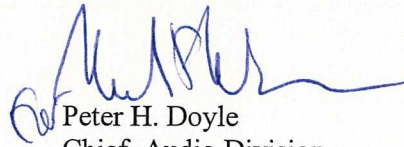
<sup>52</sup> 47 C.F.R. § 73.7005(a).

<sup>53</sup> See, e.g., *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7425-26 (2000), *clarified and aff'd on recon.* 16 FCC Rcd 5074 (2001).

<sup>54</sup> See *Fair Distribution Order*, 23 FCC Rcd at 10217.

amended, for consent to assign the permit for the noncommercial educational FM station WDDE(FM),  
Dover, Delaware, from Salisbury University Foundation, Inc. to Delaware First Media Corporation IS  
GRANTED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter H. Doyle", with a stylized flourish at the end.

Peter H. Doyle  
Chief, Audio Division  
Media Bureau