



Federal Communications Commission
Washington, D.C. 20554

August 25, 2014

In Reply Refer to:
1800B3-SS

Mr. Michael Papadopoulos
5370 NW Lawrence Ave.
Corvallis, OR 97330

KBOO Foundation
c/o John Crigler, Esq.
Garvey Schubert Barer
1000 Potomac St., N.W., 5th Floor
Washington, DC 20007

In Re: **KBOO(FM), Portland, Oregon**
Facility ID No. 65755
File No. BTCED-20131029AFK

KBLU-FM, Pilot Rock, Oregon
Facility ID No. 173820
File No. BTCED-20131029AFL

K220HR, Hood River, Oregon
Facility ID No. 33677
File No. BTCFT-20131029AFM

K242AX, The Dalles, Oregon
Facility ID No. 147659
File No. BTCFT-20131029AFN

K264AA, Corvallis, Oregon
Facility ID No. 65756
File No. BTCFT-20131029AFO

K282BH, Philomath, Oregon
Facility ID No. 149626
File No. BTCFT-20131029AFP

(NEW) NCE FM, Chehalis, Washington
Facility ID No. 173822
File No. BTCED-20131029AFQ

**Applications for Transfer of Control of
Licenses and Construction Permit**

Informal Objection

Dear Counsel and Mr. Papadopoulos:

We have before us the referenced applications (the “Applications”) seeking Commission consent to the proposed transfer of control of: (1) licenses of noncommercial educational (“NCE”) Oregon Stations KBOO(FM), Portland; KBLU-FM, Pilot Rock; (2) FM translator Stations K220HR, Hood River; K242AX, The Dalles; K264AA, Corvallis; K282BH, Philomath; and (3) the construction permit for an NCE FM station at Chehalis, Washington (the “Stations”). The Applications seek to transfer control of the licensee/permittee, KBOO Foundation (the “Foundation”) to new board members (the “Board”). On February 3, 2014, Board member Michael Papadopoulos (“Papadopoulos”) filed an Informal Objection (the “Objection”)¹ to both the Applications and the Board’s most recent biennial ownership report.² For the reasons set forth below, we dismiss in part and otherwise deny the Objection and grant the Applications.

Background. The Foundation is a nonprofit corporation incorporated in the State of Oregon, comprised of a twelve-person Board -- each serving a three-year term -- and several thousand members. In the Applications, the Foundation discloses that seven Board members are being replaced.³ Papadopoulos, a serving Board member who is not being replaced, objects to the grant of the Applications, arguing that the Foundation has for the past two decades failed to properly report to the Commission the Foundation’s structure as a membership organization and that the Foundation’s governing documents do not vest control of the Foundation in the Board.⁴ He argues that the Commission should approve the individual members of the Foundation, not its Board, because the Foundation’s bylaws state that “each of the listed members is entitled to one vote on each matter voted on by the member at a Membership Meeting . . . [and] [v]oting control of . . . [the Foundation] rests on the members’ right to overrule an act of the . . . [B]oard.”⁵ Moreover, he alleges that the Oregon Revised Statutes confer control of the Foundation on all of its members.⁶ Finally, Papadopoulos argues that the Board’s addresses were incorrectly filed; *i.e.*, the Applications, as well as the Ownership Report, do not list the Board members’ residential addresses.⁷ Papadopoulos therefore requests that the Commission require the Foundation to submit curative amendments to correct these deficiencies before acting on the Applications.

In its Opposition, the Foundation asserts that its filings are accurate and were properly filed in compliance with Oregon law and the Foundation’s bylaws. It argues that Papadopoulos has

¹ On April 14, 2014, the Foundation filed an Opposition to the Objection. To the extent that Papadopoulos “objects” to the ownership report, we will dismiss the Objection. There is no procedure in the Commission’s Rules (“Rules”) for objecting to a report, as opposed to an application.

² See File No. BOA-20130920ABZ (the “Ownership Report”).

³ See Applications at Exhibit 6.

⁴ Objection at 2.

⁵ *Id.* at 4. Papadopoulos cites the bylaws’ Article V, Sections 7 (“A quorum shall consist of five percent of the members of the corporation. No business may be transacted unless a quorum is present.”) and 8 (“Each member shall be entitled to one vote on each matter voted on by members, not exercisable by proxy. An organization or business which is a member may designate a person to vote on its behalf. A majority vote is required to take action unless a greater proportion is required [by statute or the Foundation’s bylaws].”).

⁶ *Id.* Papadopoulos cites Oregon Revised Statutes Chapter 65, generally, but he does not cite a specific section of that chapter.

⁷ *Id.* at 9, referencing the Ownership Report.

misinterpreted Article VI, Section 1,⁸ of the Foundation's bylaws and that the Foundation is, in fact, controlled by the Board. It also states that the instructions in current FCC Forms 315 and 323-E do not specify that residential addresses for board members must be listed.⁹

Discussion. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act"), informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.¹⁰ For the reasons discussed below, Papadopoulos does not carry this burden.

With respect to Papadopoulos' contention that the Foundation provided incorrect information to the Commission by certifying in the Applications that the Board, rather than Foundation's full membership, controls the Stations, it is generally inappropriate for the Commission to analyze or interpret the Oregon Revised Statutes as to where "control" of the licensee vests.¹¹ We conduct our analysis by reviewing the evidence in the available record in conjunction with the Commission's policies and regulations.¹² With regard to membership organizations, such as the Foundation here, the Commission has not formally adopted standards for what constitutes a change in "control" of a non-stock NCE entity that would require prior Commission approval on a long-form FCC Form 315.¹³ Nevertheless, the *Transfers NOI* has provided the Commission with helpful guidance in the past,¹⁴ and we believe it will prove instructive in addressing Papadopoulos' contentions here.

In the *Transfers NOI*, the Commission proposed, in most respects, to treat membership organization licensees in the same manner as stock corporations. Although in one situation voting power is acquired through the purchase of stock, and in the other, voting is acquired through membership or in other ways, both types of organizations appear to be largely equivalent in terms of overall structure and

⁸ Article VI, Section 1, of the Foundation's bylaws state: "All corporate powers shall be exercised by, or under the authority of, and the affairs of the corporation managed under the direction of, the Board of Directors." See Opposition at 1.

⁹ *Id.* at 1, 2. The Board acknowledges that, "to avoid the stalking of board members," the Foundation in recent years has used its corporate address (20 S.E. Eighth Avenue, Portland, OR 97214) for Board members except where specifically required by the Commission's application, and it indicates that it has amended the Ownership Report to add Papadopoulos' residence address.

¹⁰ 47 U.S.C. § 309(e); see also, 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), *reh'g denied* (1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹¹ See *Ely Radio, LLC*, Order on Review, 28 FCC Rcd 5950, 5952-54 (2009) (agreeing with Enforcement Bureau that the Bureau is not proper body to interpret Nevada law, Commission finds Bureau properly conducted its own analysis of the evidence based on the record and Commission's policies and regulations); *WFCL(FM), Nashville, Tennessee*, Letter, 29 FCC Rcd 2869, 2876 (MB 2014) ("*WFCL*") (where question was scope of board's power as bestowed in corporate charter, staff did not analyze or interpret state law but left matter to local court of appropriate jurisdiction).

¹² *Id.*

¹³ See *WFCL*, 29 FCC Rcd at 2876, citing *Transfers of Control of Certain Licensed Non-Stock Entities*, Notice of Inquiry, 4 FCC Rcd 3403, 3405 (1989) ("*Transfers NOI*").

¹⁴ See, e.g., *Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 6763, 6771 (2005) ("[W]e believe this notice of inquiry may provide helpful guidance in establishing the process by which the Commission will consider transfers of control . . .").

function as they relate to control. Each has a body of voters holding ultimate control over the organization, insofar as such voting body elects a smaller governing body which is responsible for establishing and articulating organizational policy between elections.¹⁵ If anything, the Commission noted, the governing board of a membership organization may be more autonomous than a corporate board of directors, because individual members may be limited to a single vote, and the entity may have no proxy mechanism.¹⁶ Accordingly, it may be inherently more difficult to marshal power on the member level than it is on the stockholder level.¹⁷

Although we have not formally adopted standards for what constitutes a change in control of a non-stock NCE entity, Papadopoulos has not provided any evidence that undercuts the Foundation's position, supported by Article VI, Section 1 of the Foundation's bylaws, that "[a]ll corporate powers shall be exercised by, or under the authority of, and the affairs of the corporation managed under the direction of, the Board of Directors." On the contrary, the bylaw provisions quoted by Papadopoulos merely reference membership voting provisions such as when a quorum is present and that each member is entitled to one vote. These provisions do not appear to address "control" of the Foundation.¹⁸ Accordingly, we accept the Foundation's explanation that the Board's membership changes are "in compliance with Oregon law and with the KBOO Foundation Bylaws,"¹⁹ and that the affairs of the Foundation throughout the period in question, have been managed by the Board under the governance mechanisms detailed in its bylaws.²⁰ In light of these showings, there is no basis for finding that the Applications have been filed with incomplete or incorrect information concerning organizational control.

Concerning Papadopoulos' objection to the Applications because they fail to specify the residential addresses of each Board member,²¹ Papadopoulos has failed to demonstrate how this omission is decisionally significant to this proceeding. Section II, item 4 (regarding the transferors) and Section IV, item 6 (regarding the transferees) in FCC Form 315 only require that the "name and address" of the parties to the application be listed. Conversely, we note that Section II, item 8 in FCC Form 340 specifically requests the "residence . . . address" of board members.²² In light of an explicit pronouncement that a proposed transferee must supply the residential address of all listed principals, we find that the Foundation's interpretation of the instructions provided in its Applications to be reasonable.

Regarding the Foundation's most recent ownership report, however, Papadopoulos is correct that Section 73.3615(a)(3)(i)(A) of the Rules specifically requires that ownership reports include the

¹⁵ See *Transfers NOI*, 4 FCC Rcd at 3405.

¹⁶ There is no such proxy mechanism for the Foundation's members here. See the Foundation's bylaws, Article V, Section 8, quoted in n.5, *supra*.

¹⁷ See *Transfers NOI*, 4 FCC Rcd at 3405 n.29.

¹⁸ Although Papadopoulos indicates that "[c]ontrol of a particular board decision rests either on the ability of the members to vote to overrule or veto a board decision, or on the ability of members to vote the removal of members of a board or of the entire board," he cites to no provision in the Foundation's bylaws specifically addressing either of those matters. See *Objection* at 4.

¹⁹ *Opposition* at 1.

²⁰ See *id.*

²¹ *Objection* at 7, 9.

²² See *Board of Regents, State of Florida*, Hearing Designation Order, 9 FCC Rcd 4049 (MMB 1994) (FCC Form 340 requires that applicant specify residence address of board members); see also FCC Form 340 at Section II, item 6(a).

“residence” of “every . . . member of an association.”²³ We will therefore require that the Foundation amend the Ownership Report (File No. BOA-20130920ABZ) to provide the residential addresses of each member of the Board.²⁴ If the Foundation fails to submit such an amendment within 10 business days of this letter, we will set aside our grant of the Applications pursuant to Section 73.113(a) of the Rules.²⁵

Conclusion/Actions. We find that Papadopoulos has failed to raise a substantial and material question of fact warranting further inquiry regarding this matter. Based on our review of the Applications, we conclude that the proposed transactions comply with the Act and all Commission rules and policies and that its grant would further the public interest, convenience, and necessity. Accordingly, IT IS ORDERED, that the Informal Objection, filed by Michael Papadopoulos, IS DISMISSED in regard to Papadopoulos’ objection to the Foundation’s FCC Form 323-E, and IS DENIED in all other respects.

IT IS FURTHER ORDERED, that the application for consent to transfer control of the licenses of Stations KBOO(FM), Portland (File No. BTCED-20131029AFK); KBLU-FM, Pilot Rock (File No. BTCED-20131029AFL); K220HR, Hood River (File No. BTCFT-20131029AFM); K242AX, The Dalles (File No. BTCFT-20131029AFN); K264AA, Corvallis (File No. BTCFT-20131029AFO); K282BH, Philomath (File No. BTCFT-20131029AFP), all in Oregon, and the application for consent to transfer control of the construction permit for a new NCE FM station at Chehalis, Washington (File No. BTCED-20131029AFQ) from the old board members of KBOO Foundation to the new board members of KBOO Foundation, ARE GRANTED.

IT IS FURTHER ORDERED, that KBOO Foundation file an amendment as described above to its most recent FCC Form 323-E (File No. BOA-20130920ABZ) within 10 days of the release of this action.

Sincerely,

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

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: KBOO Foundation

²³ 47 C.F.R. § 73.3615(a)(3)(i)(A).

²⁴ See FCC Form 323, Section 1, Item 6.f. (Amendment to a Previously Filed Ownership Report). We also direct that the ownership report filed by the Board subsequent to consummation of the transfer of control approved here (see 47 C.F.R. § 73.3615(c)), as well as all subsequent ownership reports, contain the residence addresses for each Board member.

²⁵ 47 C.F.R. § 1.113(a). See *John Crigler, Esq.*, Letter, DA 14-1164, 29 FCC Rcd ____ (MB rel. Aug. 11, 2014) (reconsideration grant conditioned on applicant action on related matter within 10 business days).