

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Received & Inspected
OCT 31 2014
FCC Mail Room

In re Application of)	
)	
APPALACHIAN MEDIA OUTREACH)	File No. BALL-20140916ABX
)	
and)	
)	
SOUTHEASTERN KENTUCKY ECO)	
RESEARCH)	
)	
For Assignment of License of Low Power)	
FM Radio Station WJJA-LP, East)	
Bernstadt, KY (FIN: 133924))	

To: The Secretary
 Chief, Audio Division, Media Bureau

PETITION TO DENY

Saylor Broadcasting, Inc. (“Saylor” or “Petitioner”), by its attorneys and pursuant to Section 309(d) of the Communications Act of 1934, as amended, 47 USC § 309(d) (the “Act”) and Section 73.3584 of the Commission’s Rules, 47 CFR § 73.3584, hereby requests that the Commission deny the above-referenced application for assignment of the license for Low Power FM (“LPFM”) station WJJA-LP (the “Application”).¹ For the reasons stated herein, there are significant questions as to licensee Appalachian Media Outreach’s (“Appalachian”) basic qualifications to hold an LPFM license; the above-referenced application should be designated for hearing on the issue of Appalachian’s basic qualifications. In support hereof, the following is respectfully shown:

¹ The Application was accepted for filing by Public Notice, Report No. 28328 (rel. September 19, 2014). The thirtieth day from that Public Notice, October 19, 2014, was a Sunday. This Petition, filed the next business day, is timely. See 47 CFR § 1.4(j).

I. Background and Statement of Interest.

Saylor is the licensee of WRVK(AM), Mount Vernon, KY (FIN: 14732). WRVK's community of license is approximately 30 miles from East Bernstadt, KY, WJJA-LP's community of license, and only a few miles from Renfro Valley, KY, the community of license of Appalachian's LPFM station WKUR-LP (FIN: 195838). All in of the subject stations are part of the Lexington, KY market. Appalachian's two LPFM stations thus compete for listeners within WRVK's service area. As demonstrated herein, Appalachian is selling advertising time, and broadcasting advertisements on its LPFM stations; it is thus engaged in direct economic competition with Saylor for advertisers. As a competitor, Saylor has standing to file this Petition.

In or around late August 2014, a new station began operating on 94.9 MHz in the Mount Vernon-Renfro Valley area. *See* Declaration of Charles Saylor, attached hereto as Exhibit One. A review of the Commission's CDBS database indicates that a construction permit was issued to Appalachian for that frequency, under call sign WKUR-LP, although no application for a covering license has yet been filed. A local newspaper article, a copy of which is attached hereto as Exhibit Two, announces the commencement of a new country music station, WKUR, on 94.9 MHz, and indicates that listeners can also hear WKUR on 104.9 MHz. According to CDBS, translator on 104.9 MHz, W283AN in Mount Vernon, KY, is licensed to Joshua Kesler, and is authorized to rebroadcast WJJA-LP. The article attached as Exhibit Two identifies a Mr. Joshua Kesler as a principal of WKUR; Appalachian's application for the WKUR construction permit identifies a Mr. Joseph B. Kesler as its President. *See* File No. BNPL - 20131112AJG. On about a half-dozen occasions, Saylor's president has listened to Appalachian's stations, generally for

around an hour. *See Exhibit One*. On those occasions, Mr. Saylor has heard 30-second spots for various businesses, which were indistinguishable from the kind of commercial advertising spots that air on WRVK. *Id.*

II. Appalachian is Providing a Commercial Service, and is Therefore Not Qualified to Hold an LPFM License.

It has long been established that, before the Commission can grant its consent to the transfer or assignment of a license, “the licensee must be shown to be qualified to hold the license.” *See RKO General, Inc.*, 82 FCC 2d 291, ¶ 19 (1980), *citing Jefferson Radio Co. v. FCC*, 340 F. 2d 781, 783 (D.C. Cir. 1964). Based on the facts of this case, the Commission cannot make such a finding - Appalachian is operating as a commercial venture, in violation of the statutory and rule provisions applicable to LPFM licenses.

Attached hereto as Exhibit Three are materials provided by Appalachian in connection with WKUR-LP. The clear import of those materials is the offering of the sale of advertising time on WKUR-LP. Moreover, the President of Saylor has listened to WKUR, as well as WJJA and the 104.9 MHz translator, and has heard advertisements for a number of local advertisers. *See Exhibit One*. The spots heard by Mr. Saylor were not the type of underwriter announcements typically carried by public broadcasters, but were indistinguishable from the types of advertising spots carried on commercial radio stations. *Id.* In particular, a number of the announcements included content, such as qualitative statements, which are indicative of commercial advertisements rather than NCE underwriting announcements. *Id. See e.g., Educational Community Radio, Inc.*, 28 FCC Rcd. 5283, ¶¶ 8-9 (2013)

Eligibility for LPFM licenses is strictly limited. *See* 47 CFR 73.853(a). Only nonprofit educational organizations, entities providing public safety radio services, and entities which are majority owned and controlled by qualified Tribes. *Id.* Although Appalachian represents that it

is a 501(c)(3), that is not sufficient. Nonprofit organizations are only eligible to hold LPFM licenses “upon a showing that the proposed station will be used for the advancement of an educational program[.]” 47 CFR § 73.853(a)(1). The Commission has stressed that LPFM is a noncommercial educational (“NCE”) service, and that applicants and licenses in the service must conform to the requirements of Section 397(6) of the Act. 47 USC § 397(6); *see e.g., Hope Radio of Rolla, Inc.*, 28 FCC Rcd 07754, ¶ 2 (2013). As Appalachian’s own public statements and materials demonstrate, it is operating at least one of its LPFM stations as a commercial country music radio station. *See Exhibit Two* and *Exhibit Three*. Moreover, both of Appalachian’s LPFM stations have in fact broadcast announcements that are no different than the advertisements carried on local commercial stations. *See Exhibit One*.

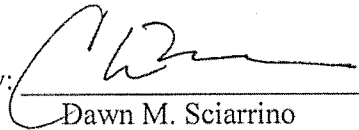
The Commission has strictly enforced the requirement that parties who would hold LPFM licenses be legitimate non-profit entities or public agencies, even refusing LPFM licenses to entities that had simply not yet had the appropriate corporate paperwork completed. *See e.g., Hope Radio of Rolla, Inc., supra; Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, 28 FCC Rcd 13390, ¶¶ 10-11 (2013). A licensee who violates the basic requirements of NCE service should not fare better simply because it observed the corporate formalities.

Conclusion.

For all the foregoing reasons, Saylor respectfully requests that the above-captioned application for assignment of LPFM station WJJA-LP be denied or designated for hearing, and, if the Commission finds that Appalachian is not qualified to hold LPFM licenses, that appropriate further action be taken with respect to stations WJJA-LP and WKUR-LP.

Respectfully submitted,

SAYLOR BROADCASTING, INC.

By: 
Dawn M. Sciarrino
Christine McLaughlin

Its attorneys

SCIARRINO & SHUBERT, PLLC
5425 Tree Line Drive
Centreville, VA 20120
Tel.: (202) 375-9166

DATE: October 20, 2014

EXHIBIT ONE

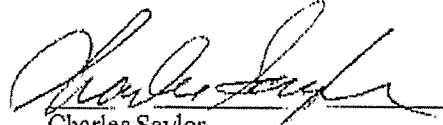
DECLARATION OF CHARLES SAYLOR

I, Charles Saylor, declare under penalty of perjury as follows:

1. I am over the age of 18 and competent to be a witness.
2. I am the president of Saylor Broadcasting, Inc., licensee of Station WRVK(AM), Mount Vernon, KY (FIN: 14732). WRVK operates in the same larger radio market as Appalachian Media Outreach's stations, WJJA-LP, East Bernstadt, KY (FIN: 133924) and WKUR-LP, Renfro Valley, KY (FIN:). Mount Vernon and Renfro Valley are only a few miles apart; East Bernstadt is approximately 25 miles from Mount Vernon.
3. I have listened to a station on 94.9 MHz in Renfro Valley, Kentucky, which to the best of my knowledge and belief is WKUR-LP. I have also heard the same programming on 104.9 MHz, which to the best of my knowledge and belief is translator station W283AN, Mount Vernon, KY. Based upon an article in the local newspaper, as well as familiarity with the local area, it is my understanding that the same persons own or control the translator as own WKUR-LP. To the best of my recollection, the station on 94.9 MHz commenced operations sometime around late August of this year.
4. I have listened to these stations on approximately six occasions, usually for about an hour at a time. I have listened to these stations at various times of the day and night. The station on 94.9 MHz identified itself as "Country Classic Music" and instructed listeners to listen to 104.9 as well.
5. I have also listened to 98.5 MHz, which is the frequency assigned to WJJA-LP. Although I did not hear the call sign, but did hear the identification: "This is 98.5, your Gospel station with translator 104.9 in Mount Vernon-Renfro Valley Kentucky." When I have listened to 104.9 MHz in or around the Mount Vernon area, it has been broadcasting a country music format, which appears to be the same as carried on 94.9 MHz.
6. On the occasions that I listened to 94.9 MHz and 104.9 MHz, the programming appears to be a country music format. I have heard nothing that indicates an educational component. On all of the stations, I have heard what sounded like advertisements for local businesses. These announcements have generally been 30-second spots, several at each break. On 98.5 MHz, the businesses advertised included Foodland supermarkets, House Rawlings Funeral Home, and the Kentucky Farm Bureau. On 94.9 MHz/104.9 MHz, the businesses included Don Franklin - Somerset Car Sales, a Renfro Valley Entertainment venue and Nticing Treasures Mall and Café. The content of these spots has not been similar to underwriting announcements typically carried on public radio stations, but have been virtually indistinguishable from the kind of ads my commercial station carries. For example, a spot for a Renfro Valley entertainment venue gave information about upcoming shows, including dates and the performers' names. A 30-second spot for Nticing Treasures Mall and Café included prices for food and for other items available for sale. Likewise, I recall the spot for Foodland describing it as having "the best meats and vegetables" in the area, while the spot for the car dealership touted its selection of "new and used cars" and described the dealership as the place to find "the right car to fit your needs."

7. I have reviewed the foregoing Petition to Deny, and all statements of fact made therein and in this Declaration are true and correct to the best of my knowledge, information and belief.

DATE: 10/20/2014



Charles Saylor

EXHIBIT TWO

New FM radio station set to launch in September

By: Doug Pinder

A new FM radio station is scheduled to go on the air next month in Rockcastle and several other surrounding counties.

WKUR 94.9 FM "Your Country Road" is a 24/7 country music radio station that will cover Rockcastle County and the surrounding counties of Jackson, Laurel, Pulaski and Madison. The station's playlist will include both modern country and classic country music.

Josh and Destiny Kester of East Bernstadt are the owners and operators of the new radio station. Josh Kester said he and his wife saw a need to create a radio station that covers all types of country music ranging from the music genre's beginning in the early 1900s until now.

"We wanted to create a station where people didn't have to hear the same old songs that gets played over and over," Kester said. "On our station you may hear Jake Owen and then Merle Haggard. It will be a great country music mix instead of just having only modern country or only classic country."

The station also has a

translator station 104.9 FM that people can tune in to whenever they don't receive 94.9 on their radio. Kester said they also plan on obtaining more translator stations in the future to broaden the station's coverage area.

"104.9 FM will benefit anyone in the northern parts of our coverage area such as Madison and northern Rockcastle counties. So if people are traveling from London to Berea on I-75 and 94.9 suddenly has a lot of static, they can tune into 104.9 and hear us just fine," Kester said. "People around the world can also go online at www.wkurfm.com and listen to us or they can also purchase a ROKU box and view our live studio stream."

The radio station will also feature other radio programming such as sports, news, morning shows, etc. He said they have hired some local DJs who grew up in the area including Micah "Tank" Owens, Dan Bladthaler, Avery "Slim" Bradshaw and many more.

"We will have some good programming that will also include sports coverage of local college teams where

athletes from our coverage area are currently playing," Kester said. "We will have news, weather, music requests, morning shows, talk shows and several other specifically targeted shows for people who are interested in a variety of different things. Once we are up and running people can check out programming list on our website or social media to find shows that peak their interests."

Kester said that they are also looking to give back to the communities of their station's coverage area and give local artists a chance to perform live on the radio.

"My wife Destiny is always looking for ways we can help others with things like backpack clubs, food drives, donation benefits, scholarship opportunities and several other different programs. We have a huge passion for wanting to help people and just simply touch the hearts of as many people as we can," Kester said. "We also want to give local artists a chance to shine by performing live on our studio stage. That way people can listen in and also hear mu-

(Cont. to A10)



Rockcastle County, and several other surrounding counties, will have a new FM station to listen to next month. WKUR 94.9 FM "Your Country Road" is a 24/7 country music station that will include songs from artists of both modern country and classic country music. Shown above is local DJ Micah "Tank" Owens getting things ready at the DJ's booth. Shown below is the station's owners Josh and Destiny Kester organizing the main office of the radio station in the "Village" at the Renfro Valley Entertainment Center in Mt. Vernon. A ribbon cutting ceremony and open house is set for this Friday at 3 p.m. The event will be held at the Village in Renfro Valley and will be held in conjunction with the Front Porch Restaurant. Everyone is invited to attend the event.



Of Country Music Today

Contact us at: mvsignal@windstream.net

Call

(Cont. from front)

sic from local artists they know and love."

The love for radio and broadcasting came at an early age for Kesler who said his parents own and operate the TV station WOBZ-TV 9 in London. He said the experience he gained in his family's business has helped him in owning and operating his own radio station.

"I've always had a fascination for radio and I have been around broadcasting since I was running around in diapers. Overall, I have gained around fifteen years experience in broadcasting through helping my family," Kesler said. "I have learned how to handle all the day to day operations by seeing how my parents handled their business. I have learned from some amazing teachers as my dad has been in the business for over forty years."

Kesler went on to say that their main goal for the radio station is to benefit the communities they serve and play all different types of country music.

"Local support and growth are our main focuses. Our main passion is helping others through anything we can do and by also offering the largest variety of country music possible," Kesler said. "We want to forever leave a mark on the areas we cover at our station. We want our station to be what people love and love listening to on the radio."

The Keslers also recently announced the date and time of their ribbon cutting ceremony and open house at the station's headquarters in the "Village" at the Renfro Valley Entertainment Center this Friday at 3 p.m. The event will be held in conjunction with The Front Porch restaurant that is also located in the Village at Renfro Valley. Everyone is invite to attend the free event.

EXHIBIT THREE



RIBBON CUTTING / OPEN HOUSE
AUGUST 29TH @ 3PM

LOCATED IN THE RENFRO
VALLEY SHOPPING VILLAGE

ALSO JOIN US FOR THE RIBBON CUTTING OF

FRONT PORCH

ON-AIR SPECIAL!
FRIENDS OF THE VALLEY MONTHLY
SPECIAL! Mon-Sat 6pm-midnight

- Thirty (30) 30 sec spots One (1) per day
\$100 a month
- Thirty (30) 60 sec spots One (1) per day
\$150 a month

*prices are subject to change, but we will honor
this price for loyal monthly promotions.

Online banner ad on WKURFM.COM

- \$50 a month

or

ONLINE SPECIAL!

- \$300 for the year

Donations

Part of our profits will go to Appalachian Media Outreach. A 501 c 3 non profit organization dedicated, To preserve the heritage of Appalachia through music and media, and to educate the youth on modern production methods to ensure the future generations access to Kentucky's historic culture.

We will provide food, clothing, and whatever's needed to the less fortunate in our area.

Goals to help the community

- Offer scholarship opportunities
- Back pack club (providing children with summer meals for school)
 - Food drives
- Community Christmas (provide children and less fortunate with gifts)

Contact info

If you would like to talk to us about sponsorships
and advertising, please contact;

Josh Kesler: 606-231-0505

or

Destiny Kesler: 606-259-2969



Station Info

We're Your station on I-75! Locally owned and operated, WKUR-FM broadcasts LIVE from the heart of Renfro Valley, Ky

WITH AN ESTIMATED REACH OF OVER 100,000 LISTENERS! We also, stream worldwide on our website www.wkurfm.com & ROKU players via 20 million potential listeners.

Artists we play

~~We play new country hits, and classic country favorites such as; Luke Bryan, Blake Shelton, Jake Owen, Keith Urban, Carrie Underwood, Miranda Lambert, Kacey Musgraves, Florida Georgia Line, Sundry Best, George Strait, Loretta Lynn, Merle Haggard, Hank Williams, Willie Nelson, Lefty Frizzell, Buck Owens, Kitty Wells, Don Williams, Ernest Tubb, Patsy Cline, Tammy~~

~~Wynette, Charlie Daniels, Alabama, Garth
Brooks, and all your favorites!
We will also give any local/regional band a
chance to promote their music on air!~~

Sponsorships

On-Air Mon-Sat 6am-9am & 3pm-6pm

- 30 sec spot \$6 a spot
- 60 sec spot \$7 a spot

On-Air Mon-Sat 10am-3pm

- 30 sec spot \$5 a spot
- 60 sec spot \$6 a spot

On-Air Mon-Sat 6pm-midnight and All Day Sunday!

- 30 sec spot \$4 a spot
- 60 sec spot \$5 a spot

**FRIENDS OF THE VALLEY MONTHLY
SPECIAL! Mon-Sat 6am-9am & 3pm-6pm**

- Ninety (90) 30 sec spots Three (3) per day
\$500 a month
- Ninety (90) 60 sec spots Three (3) per day
\$600 a month

*prices are subject to change, but we will honor
this price for loyal monthly promotions.

ON-AIR SPECIAL!

**FRIENDS OF THE VALLEY MONTHLY
SPECIAL! Mon-Sat 10am-3pm**

- Sixty (60) 30 sec spots Two (2) per day \$250
a month
- Sixty (60) 60 sec spots Two (2) per day \$350
a month

*prices are subject to change, but we will honor
this price for loyal monthly promotions.

0.0352



CERTIFICATE OF SERVICE

I, Christine McLaughlin, hereby certify that on this 20th day of October, 2014, a copy of the foregoing Petition to Deny was sent via First Class Mail, postage prepaid, to the following:

Peter H. Doyle, Chief *
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Christine McLaughlin

* Denotes delivery by email.