



Federal Communications Commission  
Washington, D.C. 20554

May 29, 2015

*In Reply Refer To:*  
1800B3-KV

Harry F. Cole, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1300 N. 17<sup>th</sup> Street – 11<sup>th</sup> Floor  
Arlington, VA 22209

John C. Trent, Esq.  
Putbrese, Hunsaker & Trent, P.C.  
200 South Church Street  
Woodstock, VA 22664

Aaron P. Shainis, Esq.  
Shainis & Peltzman, Chartered  
1850 M. Street, N.W. – Suite 240  
Washington, D.C. 20036

In re: FM Translator Station W292DV, New York, NY  
Facility ID No. 155888

File No. BALFT-20141215AAY

**Informal Objection**

Dear Counsel:

We have before us the referenced application for Commission consent to the assignment of the license ("Application") for FM Translator Station W292DV ("the Station"), New York, New York, from Apple 107.1, Inc. ("Apple") to Big Apple Broadcasting, LLC ("Big Apple").<sup>1</sup> Also before us is a January 15, 2015, "Petition to Deny and/or for Other Relief" ("Objection") filed by Press Communications, LLC ("Press"), licensee of Station WKMK(FM), Eatontown, New Jersey.<sup>2</sup> For the reasons discussed below, we will deny the Objection and grant the Application.

**Background.** The Station is currently licensed to operate on Channel 292 (106.3 MHz) from a location at 4 Times Square in Manhattan (the "Times Square Site") with an effective radiated power ("ERP") of 99 watts and an antenna height above average terrain of 271 meters.<sup>3</sup> During program test operations at the Times Square Site, which commenced on May 6, 2011, the staff determined that the

---

<sup>1</sup> Collectively, Big Apple and Apple will be referred to as "the parties."

<sup>2</sup> Also before us are: 1) Big Apple's "Opposition to Petition to Deny and/or for Other Relief" ("Big Apple Opposition") which CDBS incorrectly lists as filed on February 2, 2015, but is dated-stamped January 28, 2015; 2) Apple's unopposed "Motion for Extension of Time" filed on January 28, 2015, ("Apple Extension Request"); 3) Apple's "Opposition to Petition to Deny and/or for Other Relief" ("Apple Opposition") filed on February 4, 2015; and 4) Press's February 18, 2015, "Consolidated Reply to Oppositions" ("Reply").

<sup>3</sup> See BLFT-20110503AEA (the "Manhattan License Application"), granted May 18, 2011.

Station would cause interference to Press Station WKMK(FM), Eatontown, New Jersey, which also operates on Channel 292. The staff ordered the Station to cease operations on May 12, 2011, pending a resolution of the interference issue.<sup>4</sup>

Shortly thereafter, on June 1, 2011, Apple filed an initial request for special temporary authorization to remain silent request, indicating that it had “suspended operation following complaints of interference.”<sup>5</sup> It subsequently undertook a series of facility modifications – interspersed with technical and additional silent STA requests – to resolve the interference problem with WKMK(FM).<sup>6</sup> The Station currently operates with an ERP of four watts from a location in Long Island City, New York, pursuant to STA granted on November 14, 2013.<sup>7</sup>

On December 15, 2014, the parties filed the Application. The initial filing included the “Assignment Agreement,” but omitted “Attachment B,” which detailed the broadcast assets to be transferred along with the Station license. On February 3, 2015, in response to a staff request, the parties amended the Application to include Attachment B.

In its Objection, Press argues<sup>8</sup> first that the purchase price for the station, \$3.5 million, raises “obvious questions” in view of the fact that it currently operates with four watts of power and has no permanently authorized, currently usable facilities.<sup>9</sup> It also argues that that the Application grant should be subject to the condition that the Station may not operate from its licensed site at the Times Square Site due to past interference caused to WKMK(FM).<sup>10</sup> It alleges that “[a] Big Apple representative has informally advised a Press representative that Big Apple’s intent is, indeed, to use the Times Square site, possibly with the 99 watts currently specified in the Translator’s license.”<sup>11</sup> Press opines that it has “already demonstrated -- both in 2011 and 2012 – that WKMK has regular listeners in multiple locations [that would be impacted by use of the Times Square Site and] virtually *any* proposal to use the Times

---

<sup>4</sup> See *Email from James Bradshaw*, May 12, 2011 (“Due to significant continuing interference complaints . . . being received by WKMK, we are ordering W292DV to immediately CEASE OPERATION.”) (“May 2011 Order”) (capitalization in original).

<sup>5</sup> See also File No. BLSTA-20110601AAX. The staff granted this STA request on August 29, 2011, and it was to expire on February 25, 2012. Apple filed an STA extension request on February 15, 2012. See File No. BLESTA-20120215ABF. The staff granted the extension request, which was to expire on May 13, 2012. See *Letter to Lauren A. Colby from Lisa A. Scanlan*, Ref 1800B3-VM (MB Mar. 8, 2012).

<sup>6</sup> Apple’s Station history following grant of the Manhattan License Application is detailed in *Apple 107.1, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15722, 15723-26 (MB 2013) (the “*Apple Order*”) and need not be repeated in detail here.

<sup>7</sup> See BLSTA-20130320ABV, granted in the *Apple Order*, 28 FCC Rcd at 15730. Apple currently has on file a timely request for extension of the STA (File No. BESTA-20140423ABF) and an application for modification of the Station’s facilities to specify permanent operation from that location (File No. BPFT-20140328ACS).

<sup>8</sup> Press also contends that the Application should be denied because it lacked Attachment B, which it claims is required to settle questions raised by the Station’s \$3.5 million dollar purchase price for what, Press claims, are “meager assets.” Objection at 5. In light of the parties’ submission of Exhibit B on February 15, 2015, this issue is now moot.

<sup>9</sup> Objection at 5.

<sup>10</sup> The Station has also filed other modification applications to address interference issues with WKMK(FM) that were unsuccessful. See *Apple 107.1, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd. 15722 (MB 2013) (“*Apple Order*”).

<sup>11</sup> Objection at 7, note 6.

Square site – even at dramatically reduced power or with extreme directionalization – would run afoul of the proscription of Section 74.1204(f).<sup>12</sup>

In Opposition, Big Apple characterizes the Objection as “unadulterated speculation, conjecture, innuendo and surmise.”<sup>13</sup> Big Apple claims that it is irrelevant that Press does not think the Station is worth the purchase price because “Apple is a willing seller and Big Apple is a willing Buyer. No more is required.”<sup>14</sup> Big Apple also declares that Press’s request for conditions on the Station’s license should be rejected because “this is not the forum to litigate what Press speculates could occur in the future.”<sup>15</sup>

In its opposition, Apple claims that the Objection is meritless and procedurally deficient. First, Apple alleges that Press lacks standing because only a party in interest may file a petition to deny which must contain specific allegations of fact supported by an affidavit of a person with personal knowledge. Here, Apple asserts, the Objection “is supported by nothing more than the conjecture and unfounded suspicions of its counsel.”<sup>16</sup> Regarding the Station’s purchase price, Apple argues that Commission policy is well-settled that profit *per se* is not objectionable unless there are indications of trafficking. As for Press’s concerns that in the future the Station will be moved to a site that may cause interference to WKMK(FM), Apple opines that “[a]ny future modification of W292DV would be subject to public notice and comment, along with the review of the Commission’s staff . . . .”<sup>17</sup>

In Reply, Press reiterates its arguments that the Station’s purchase price is “astronomical,” and that Big Apple intends to operate the Station at the Times Square Site which would harm WKMK(FM). Press also contends that it has standing to file its Objection because it “has reason to believe that, if the application is granted, Big Apple will attempt to operate the translator in a way which has been demonstrated to cause interference to Station WKMK . . . .”<sup>18</sup>

**Discussion. Procedural Issue.** Initially, we note that the Objection filed by Press is styled as a petition to deny, but does not provide an affidavit to support any allegations of fact, as required by Section 309(d)(1) of the Communications Act of 1934, as amended (the “Act”).<sup>19</sup> Given this procedural defect, the petition to deny must be dismissed. We will, however, treat it as an informal objection pursuant to Section 73.3587 of the Commission’s Rules (the “Rules”).<sup>20</sup>

---

<sup>12</sup> *Id.* at 8, referencing 47 C.F.R. § 74.1204(f), which prohibits the acceptance of an FM translator application proposing a 1 mV/m (60 dBμ) contour that would overlap a populated area already receiving a regularly used, off-the-air signal of any authorized, *inter alia*, co-channel broadcast station and grant of the authorization will result in interference to the reception of such signal. Press goes so far as to suggest that “rescission of the [Station’s] authorization to operate from 4 Times Square – or anywhere else on Manhattan, for that matter – would be appropriate.” Press does not address how the facts here dovetail with the revocation provisions in 47 U.S.C. § 312(a), and we reject this outlandish claim.

<sup>13</sup> Big Apple Opposition at 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 6.

<sup>16</sup> Apple Opposition at 2.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> Reply at 3, note 3.

<sup>19</sup> See 47 U.S.C. § 309(d)(1).

<sup>20</sup> See 47 C.F.R. § 73.3587.

*Substantive Issues.* Section 310(d) of the Act<sup>21</sup> requires the Commission to make a determination whether the proposed assignment of the Station's license to Big Apple would be in the public interest. Pursuant to Section 309(e) of the Act,<sup>22</sup> informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact calling for further inquiry regarding whether grant of the Application would be *prima facie* inconsistent with Section 309(a) of the Act.<sup>23</sup> This section provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters of which we may officially take notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the applicant fails to meet that standard, the Commission may deny the application after notice and opportunity for a hearing under Section 309(e) of the Act.

Purchase Price. We reject as meritless Press's arguments that the Application should be denied because the Station's "purchase price raises obvious questions."<sup>24</sup> Press provides no legal precedent for its apparent proposition that the purchase price for the Station raises a substantial and material question of fact simply because it is in Press' opinion too high, and we are aware of none. We reject as mere speculation and innuendo Press' claims that, because: (1) the purchase price "vastly exceeds" the value of the assets being purchased; and (2) the authorization "by its very nature effectively precludes the licensee from making a profit," there is "more going on here than meets the eye."<sup>25</sup> It is longstanding Commission policy that "profit *per se* in an assignment of licensed broadcast properties has never been held to be contrary to the public interest."<sup>26</sup> Indeed as Press acknowledges "the Commission does not customarily question such things."<sup>27</sup> Here, we have reviewed the parties' agreement, including Attachment B to the assignment agreement, and find that they comport with the Act and the Commission's rules and that no further consideration of that agreement, including the specified purchase price, is warranted.

Prospective Interference Arguments. We further find Press's allegations of possible interference that may be caused to WKMK(FM) if the Station proposes, at some date in the future, to modify its technical facilities to be speculative and beyond the scope of review for this Application.

The Rules regarding FM translator stations restrict such stations to operate strictly on a secondary basis and limit their permissible service. Section 74.1203(a)(3) states that an FM translator station will not be permitted to continue to operate if it causes any actual radio signal interference to the direct reception by the public of the off-the-air signals of any authorized broadcast station.<sup>28</sup> Actual interference is based on listener complaints indicating that the signal that the complainant regularly receives is being impaired by the signal radiated by the FM translator station. Section 74.1203(b) states that, if the

---

<sup>21</sup> 47 U.S.C. § 310(d).

<sup>22</sup> 47 U.S.C. § 309(e).

<sup>23</sup> *Id.* § 309(a). 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* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>24</sup> Objection at 5.

<sup>25</sup> Reply at 2.

<sup>26</sup> See *WDCU(FM)*, Letter, 12 FCC Rcd 15242, 15244 (MMB 1997), citing *Robert E. Sewell*, Memorandum Opinion and Order, 19 FCC 2d, 872, 874 (1969).

<sup>27</sup> Reply at 2.

<sup>28</sup> 47 C.F.R. § 73.1203(a)(3).

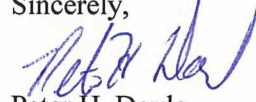
interference cannot be properly eliminated by the application of suitable techniques, the operation of the offending FM translator station shall be suspended and shall not be resumed until the interference has been eliminated.<sup>29</sup> The staff has already demonstrated its willingness to order the Station to cease operations in light of legitimate interference complaints. Accordingly, although we will not withhold action on the Application based on the interference complaints of a licensee and listeners in a market other than the Station's, we reiterate that, under Section 74.1203(a), should the Station cause actual interference to WKMK(FM) or any other full-service station, from the Times Square Site or any other location, it will be required to eliminate the interference or cease operation.

**Conclusion/Actions.** Based on our review of the Application and pleadings, we find that Press has failed to raise a substantial and material question of fact that merits further inquiry regarding the Application. We further find that Apple 107.1, Inc. is fully qualified to assign, and Big Apple Broadcasting, LLC is fully qualified to hold, the Station license and that grant of the Application will serve the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, that the Petition to Deny filed by Press Communications, LLC, IS DISMISSED and, when treated as an Informal Objection, IS DENIED.

IT IS FURTHER ORDERED, that the application for consent to assign the license for FM Translator Station W292DV, New York, New York (File No. BALFT-20141215AAY), from Apple 107.1, Inc. to Big Apple Broadcasting, LLC, IS GRANTED.

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

---

<sup>29</sup> 47 C.F.R. § 73.1203(b).