



**Federal Communications Commission
Washington, D.C. 20554**

March 10, 2016

In Reply Refer to:
1800B3-JDB

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In re: **Eastern Airwaves, LLC**
W228CZ, Cary, North Carolina
File No. BMPFT-20141124ADG
Facility ID No. 156763

Petition for Reconsideration

Dear Counsel:

We have before us the Petition for Reconsideration (Petition) filed on January 20, 2015,¹ by Triangle Access Broadcasting, Inc. (Triangle), seeking reconsideration of the grant of the above-referenced application (Modification Application) of Eastern Airwaves, LLC (Eastern Airwaves) for a minor modification to its construction permit for FM translator station W228CZ, Cary, North Carolina (Station) (previously W227CU).² We also have an Opposition to the Petition filed by Eastern Airwaves on February 2, 2015 (Opposition), and a Reply to the Opposition filed by Triangle on February 12, 2015 (Reply). For the reasons discussed below, we dismiss the Petition.

Background. On October 6, 2014, Juan Alberto Ayala (Ayala) filed an application for consent to assign the Station license to Eastern Airwaves (Assignment Application).³ On November 24, 2014, as agreed to by the parties, Ayala filed the Modification Application.⁴ In the Modification Application, Ayala sought to modify its original construction permit⁵ to provide fill-in translator service for primary station WQDR-FM, Raleigh, North Carolina (WQDR-FM), licensed to Carolina Media Group, Inc., which is under common ownership and control with Eastern Airwaves.⁶ The Modification Application also specified a new translator site, channel change, increased power, and a new directional antenna.⁷ No petition to deny or informal objection was filed against either Application. The Assignment Application

¹ Triangle filed a "Supplement" to its Petition on January 28, 2015 (Supplement).

² On December 31, 2014, the original applicant, Juan Alberto Ayala (Ayala), consummated an assignment of the Station license to Eastern Airwaves.

³ See File No. BAPFT-20141006ABM (with the Modification Application, the Applications).

⁴ See Assignment Application, Exh. 4 (Asset Purchase Agreement) at 4.

⁵ File No. BNPFT-20130828AFO.

⁶ Opposition at 2-3 ("Donald J. Curtis owns and controls 100 percent of each company").

⁷ Application, Exh. 13 at 4.

was granted on December 3, 2014, and the Modification Application was granted on December 22, 2014. The parties reported the assignment as consummated on December 31, 2014. On January 20, 2015, Triangle filed the Petition.

In the Petition, Triangle argues that the Modification Application should not have been granted because, prior to December 31, 2014, the Station was not co-owned with primary station WQDR-FM and therefore not eligible for the maximum effective radiated power (MERP) of 250 watts set out in Section 74.1235(a) of the Commission's Rules.⁸ However, in light of Eastern Airwaves' Opposition, Triangle withdraws this objection.⁹ Triangle's remaining claim is that at the time the assignment was consummated, the new licensee, Eastern Airwaves, had failed to demonstrate a technical need for more than one translator station.¹⁰ In response, Eastern Airwaves points out that its other FM translators for WQDR-FM either have no substantial contour overlap with the Station (W284CP) or no contour overlap with the Station whatsoever (W228CV and W284CD).¹¹

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises facts not known or existing at the time of the petitioner's last opportunity to present them.¹² A petitioner who is not a party to the proceeding must state with particularity the manner in which its interests are adversely affected by the action taken and show good reason why it was not possible to participate in the earlier stages of the proceeding.¹³ Triangle has failed to meet this burden.

Triangle has not shown good reason why it was not possible for it to participate earlier in this proceeding.¹⁴ While the Commission has accorded standing to petitioners who failed to file pre-grant objections when prompt staff action "effectively preclude[d] participation during the initial consideration of an application,"¹⁵ that is not the case here. The Modification Application went on public notice as accepted for filing on November 25, 2014.¹⁶ Triangle did not file until January 20, 2015, nearly two months later, for the asserted reason that it "simply needed more [time] to review and file objections."¹⁷ In particular, Triangle argues that the "convoluted scheme to modify the Translator after filing for assignment" made it "impossible to object to assignment or modification without prognostication and extraordinary effort."¹⁸ We disagree. Triangle's two objections are based on information that is readily obtained directly from the Applications—namely, that the Station and WQDR-FM were not co-owned at the time the Applications were filed and would be co-owned post-transaction. Triangle was not

⁸ Petition at 2; 47 CFR § 74.1235(a) (Section 74.1235(a)).

⁹ Reply at 2.

¹⁰ Supplement at 2 (citing 47 CFR § 74.1232(b)). Eastern Airwaves is the licensee of three additional FM translators authorized to rebroadcast WQDR-FM: W228CV, W284CD, and W284CP.

¹¹ Opposition at 8.

¹² See 47 CFR § 1.106(c)(1) (Section 1.106(c)(1)); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

¹³ 47 CFR § 1.106(b)(1) (Section 1.106(b)(1)).

¹⁴ Because we dismiss the Petition on this ground, we do not reach the additional issue of whether Triangle has demonstrated that it was harmed by the grant of the Modification Application.

¹⁵ See, e.g., *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854 (1997) (considering petition for reconsideration without pre-grant objection when application granted only five days after public notice of its acceptance).

¹⁶ *Broadcast Applications*, Public Notice, Report No. 28375 (Nov. 28, 2014).

¹⁷ Reply at 5.

¹⁸ Reply at 6.

permitted, under Section 1.106(b)(1), to delay participation until after grant of the Applications merely because it apparently had difficulty understanding the nature of the proposals therein. For these reasons, we will dismiss the Petition.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that the Petition for Reconsideration filed on January 20, 2015, by Triangle Access Broadcasting, Inc. IS DISMISSED.

Sincerely,

James D. Bradshaw
Deputy Chief
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Media Bureau