



Federal Communications Commission
Washington, D.C. 20554
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In Reply Refer To:
1800B3-JM

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In re: W231BI, Utica, NY
Facility ID No. 144592
File No. BALFT-20160727ABM

Application for Assignment of License
Informal Objection

Dear Counsel:

We have before us the above-referenced application ("Assignment Application") seeking approval for the proposed assignment of the license for FM Translator Station W231BI, Utica, New York ("Translator"), from Radio One of Boston Licenses, LLC ("Radio One") to Beasley Media Group, LLC ("Beasley"). Also before us is an Informal Objection ("Objection"), filed August 9, 2016, by Sun Broadcasting, Inc. ("Sun") and an Opposition to that Objection ("Opposition"), filed August 25, 2016, jointly, by Beasley and Radio One. For the reasons stated below, we deny the Objection and grant the Application.

Background. On January 27, 2016, Radio One filed an application to acquire the Translator from Educational Media Foundation.¹ In conjunction with its assignment application, Radio One filed a modification application to relocate the Translator facilities from Utica, New York to Boston, Massachusetts² and rebroadcast Radio One's Class D AM Station WILD during the January 29, 2016-July 28, 2016 filing window designated for FM translator rebroadcasting Class C or D AM stations ("Phase

¹ File No. BALFT-20160127AEI. The staff granted that application on March 10, 2016, and the parties consummated the transaction on June 15, 2016.

² File No. BPFT-20160129AQU ("Phase One Modification Application").

One”) in the *AM Revitalization Order* (“*AMR Order*”).³

On April 22, 2016, the staff granted the *Phase One Modification Application*. Subsequently, on July 27, 2016, the first day of the July 29-October 31, 2016, filing window open to all AM station classes (“Phase Two”), Radio One and Beasley filed the Assignment Application, and Beasley filed an application to relocate the Translator and modify its facilities to rebroadcast Beasley’s Class B AM station WRCA, Watertown, Massachusetts.⁴ In the Phase Two Modification Application, Beasley included a Radio One request for cancellation of its then outstanding construction permit upon grant of Beasley’s application.⁵ The staff granted the Phase Two Application and cancelled Radio One’s permit on September 13, 2016.⁶

On August 9, 2016, Sun filed an Objection to the Assignment Application. In the Objection, Sun notes the Translator was not eligible for modification to rebroadcast Station WRCA(AM) during the Phase One filing window, a problem Radio One and Beasley seek to “circumvent” by filing the Assignment Application and asking the Commission to simultaneously grant Beasley’s modification application and cancel Radio One’s construction permit for the Translator.⁷ Sun further argues that assignment of the Translator to Beasley contravenes the “anti-trafficking” condition imposed on all window applications which requires the FM translator station to rebroadcast the specified AM station for at least four years.⁸ It also accuses Radio One of gaming the *AMR Order* by “flipping” the Phase One authorization to Beasley for the purpose of pursuing a proposal that could only be filed in the Phase Two window.⁹ It argues that because Radio One acquired the Translator on the basis of the representations made in its Phase One Modification Application it should be held to the commitments in that application.¹⁰ Further, Sun argues that grant of the Application would eliminate an FM translator service rebroadcasting minority-owned Station WILD(AM) -- reducing competition and diversity in the Boston radio market without yielding commensurate positive effects in the proposed market. Sun argues this arrangement would be contrary to the Section 307(b) allocation preferences it claims are embodied in the *AMR Order*’s separate filing windows for translator stations rebroadcasting different classes of AM stations.¹¹

Beasley and Radio One jointly filed an Opposition on August 25, 2016, arguing there was no circumvention of the Act’s requirements. They explain that Radio One made a business decision not to relocate the Translator.¹² However, they state, Beasley determined that Station WRCA(AM) could benefit from a fill-in translator. It therefore entered into a purchase agreement with Radio One for the Translator and filed the implementing Phase Two Modification Application.¹³ They further argue the anti-trafficking provisions do not apply because upon grant of Beasley’s application, Radio One’s

³ *Revitalization of the AM Radio Service*, First Report and Order, 30 FCC Rcd 12145 (2015) (“*AMR Order*”).

⁴ BPFT-20160729AGE (“Phase Two Modification Application”).

⁵ Phase Two Modification Application, Exhibit 1.

⁶ Public Notice, Report No. 48821 “Broadcast Actions” (Released Sept. 9, 2016).

⁷ Sun Informal Objection at 3.

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 5, citing 47 U.S.C. §307(b).

¹² Opposition at 4.

¹³ *Id.*

construction permit was canceled and the conditions voided.¹⁴ Additionally, Beasley and Radio One claim that the localism policies underlying Section 307(b) and competition and diversity concerns have no bearing on FM translator licensing decisions, specifically because the *AMR Order* neither directly nor indirectly mentions Section 307(b), and Section 74.1232(b) of the Commission's rules exclude translators as FM stations for the purposes of applying Section 73.3555 of the Commission's rules.¹⁵

Discussion. Under Section 309(d) of the Communications Act of 1934, as amended,¹⁶ informal objections, like petitions to deny, 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.¹⁷ Sun has not met this burden.

The facts as alleged are insufficient to support a finding that the Assignment Application circumvents the *AMR Order*'s two-phase filing window policies. As stated in the Bureau's Second *Public Notice*, "an AM station may be listed as the primary station on only one application filed in one (but not both) of the modification windows."¹⁸ Both Radio One and Beasley's applications were filed within their respective modification window and list different primary AM stations. Accordingly, we find that the applications are consistent with the *AMR Order* filing procedures.

We also find that the Assignment Application does not contravene the anti-trafficking condition that window-modified FM translators rebroadcast the specified AM station for four years, exclusive of silent periods.¹⁹ This obligation is triggered "with the initiation of on-air service at the new location."²⁰ It is uncontested that Radio One neither relocated the Translator pursuant to the Phase One Modification Application nor commenced on-air services in Boston. For that reason, we find the *AMR Order*'s anti-trafficking provisions would not preclude granting the Assignment Application. Accordingly, we reject Sun's charges that Radio One is attempting to "flip" the authorization it required through the Phase One *AMR Order* filing window and that Radio One should be held to the commitments in its Phase One Modification Application.

We also find that Section 307(b) of the Act, and competition and diversity considerations do not preclude granting Beasley's Application. Nowhere in the *AMR Order*, related rulemaking procedures, or subsequent public notices is Section 307(b) referenced as a consideration in evaluating FM Translator relocation applications filed during the *AMR Order* translator modification filing windows. Although the Commission directed the Media Bureau to open the Phase One window for Class C and D AM stations because those stations, due to their limited power or lack of protected nighttime service, would benefit most from the acquisition of a cross-service translator,²¹ any AM station's participation, regardless of station class, supports the objectives of promoting localism, diversity, and competition for AM

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 3; See 47 CFR §74.1232(b); see also 47 CFR §73.3555.

¹⁶ 47 U.S.C. § 309(d).

¹⁷ 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), *reh'g denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁸ *Media Bureau Announces Filing Dates and Procedures for AM Station Filing Window for FM Translator Modifications*, Public Notice, 30 FCC Rcd 14690 (MB 2015) (*Second Public Notice*); see also *First Public Notice*, 30 FCC Rcd at 11602.

¹⁹ *AMR Order*, 30 FCC Rcd at 12153, para. 16; *First Public Notice*, 30 FCC Rcd at 11602.

²⁰ *AMR Order*, 30 FCC Rcd at 12153, para. 16; *First Public Notice*, 30 FCC Rcd at 11602.

²¹ *AMR Order*, 30 FCC Rcd at 12152, para. 15.

broadcasters. Finally, we reject Sun's argument that the public interest would be better served by requiring Radio One to use the Translator to rebroadcast Station WILD(AM). The Commission is expressly prohibited from considering any other potential licensee when acting on an assignment application.²²

Conclusion/Actions. Considering all the evidence before us, as discussed above, Sun has raised no substantial and material question of fact that merits further inquiry regarding the Assignment Application. Further, we have examined the Assignment Application and find Radio One qualified to assign, and Beasley qualified to hold, the Translator license. We therefore find that grant of the Assignment Application is in the public interest.

Accordingly, IT IS ORDERED that the August 9, 2016, Sun Broadcasting, Inc. Objection IS DENIED, and the application (File No. BALFT-20160727ABM), for Commission consent to assignment of the license of FM Translator Station W231BI, Utica, New York, From Radio One of Boston Licenses, LLC to Beasley Media Group, LLC, IS GRANTED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter H. Doyle", is written over the typed name.

Peter H. Doyle
Chief, Audio Division
Media Bureau

²² See 47 U.S.C. § 310(d).