

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Application of

DELMARVA EDUCATIONAL FOUNDATION

*For Modification of Construction Permit for
Station W221DC, Dary, North Carolina*

To: **Office of the Secretary**
Attn: **Chief, Audio Division, Media Bureau**

)
)
) **File No. BNPFT-20130814ACE**
) **Facility No. 146901**

Accepted/Files

JAN 14 2016

**Federal Communications Commission
Office of the Secretary**

PETITION FOR RESCISSION OF CONSTRUCTION PERMIT

Northstar Broadcasting Corporation ("Northstar"), licensee of WRSV(FM), Elm City, North Carolina, by its attorney, hereby submits its Petition requesting rescission of the construction permit issued to Delmarva Educational Association ("Delmarva"), File No. BNPFT-20130814ACE (the "Permit"). With respect thereto, the following is stated:

Delmarva's Permit should be rescinded insofar as it is in violation of Commission rules and policies. On August 14, 2013, Delmarva filed its application (the "CP Application") for a new FM translator on Channel 221. The CP Application designated as the transmitter site for the proposed facility ASR 1016459 (the "Tower"), and designated Station WDUR(AM) as the primary station for the facility. At the time of application, both WDUR(AM) and the Tower were owned by Triangle Sports Broadcasters, LLC. The current owner of Station WDUR(AM) and the Tower is Arohi Media LLC. The Delmarva CP Application was granted on November 26, 2013. At the time the CP Application was granted, it was continuing to designate the WDUR Tower as its proposed transmitter location, and designate Station WDUR as the FM translator's primary station.

That grant of the CP Application by the Commission was in error and should be rescinded insofar as at no time during the pendency of the CP Application or thereafter did Delmarva ever have reasonable assurance of the availability of its proposed transmitter site, and at no time during the pendency of the CP Application or thereafter did Delmarva ever have permission to designate WDUR as the primary station for W221DC.

The owner of Station WDUR at the time the CP Application was filed was contacted, and he states as follows:

I am a Member of Triangle Sports Broadcasters, LLC, the former owner of Station WDUR(AM), Durham, North Carolina. Through Triangle Sports Broadcasters, I owned the station with my wife, Katherine Zarzour, from June 23, 2013 through June 12, 2014.

* * * *

At no time did I, nor any other party associated with Triangle Sports Broadcasters, LLC, provide any assurances to or enter into any agreement with Delmarva Educational Association (or any other party associated with Delmarva Educational Association) for the use of my tower as the transmitter site for an FM translator station...

Attachment 1.

Insofar as the currently outstanding Permit *continues* to specify the Tower identified as ASR 1016459, the *current* owner of the Tower (*i.e.*, the current owner of Station WDUR) also has been contacted, and states:

I am President and sole owner of Arohi Media, LLC. Arohi Media LLC is licensee of Station WDUR, Durham, North Carolina. Arohi Media LLC has owned Station WDUR(AM) since June 12, 2014. Arohi Media LLC also since that time has been owner of the tower used by the station, ASR 1016459. I am told that an organization called Delmarva Educational Association currently has a construction permit for a new FM translator on Channel 221, and that it has designated my tower as its translator's transmitter site.

At no time did I, nor any other party associated with Arohi Media LLC provide any assurances to or enter into any agreement with Delmarva Educational Association (or any other party associated with Delmarva Educational Association) for the use of my tower as the transmitter site for an FM translator station. Delmarva is designating the tower as its proposed transmitter site without my company's permission.

Attachment 2.

Therefore, it is evident that “reasonable assurance” of the availability of the WDUR transmitter site never existed at the time Delmarva filed its application, and fails to exist to this day.

Delmarva suffers from similar shortfalls with respect to the proper designation of a Primary Station to be rebroadcast on the translator. The FCC Form 349 for FM Translator requires the designation of a qualified AM or FM primary station – without such designation, an application FM Translator cannot be granted. The FCC Form 349 specifically states:

For applicants proposing translator rebroadcasts that are not the licensee of the primary station, the applicant certifies that written authority has been obtained from the licensee of the station whose programs are being retransmitted. **If no, this application is not acceptable for filing.**

FCC Form 349, Section II, Question 5. In its original long-form application for construction permit (BNPFT-20130814ACE), Delmarva responded “yes” to this requested certification, and in Section III of its application, designated Station WDUR as the primary station. That certification was FALSE. As seen in the attached Declaration, the owner of Triangle Sports Broadcasters, who was owner of WDUR at the time the Delmarva long-form application was filed, has been contacted, and states:

Through Triangle Sports Broadcasters, I owned the station with my wife, Katherine Zarzour, from June 23, 2013 through June 12, 2014.

* * * *

At no time did I, nor any other party associated with Triangle Sports Broadcasters, LLC ... provide authorization for Station WDUR to be designated as the primary station for the proposed translator.

Attachment 1.

An FM Translator application requires the designation of a valid transmitter site. In order to have a valid transmitter site, it is well established that an applicant must have “reasonable assurance” of a transmitter site. An applicant seeking a new broadcast facility must, in good

faith, possess "reasonable assurance" of a transmitter site at the time it files its application. *Les Seraphim and Mana'o Radio*, 25 FCC Rcd 2785, 2787 (MB 2010). It is well established that the specification of a transmitter site in an application is an implied representation that the applicant has obtained reasonable assurance that the site will be available. See, e.g., *William F. Wallace and Anne K. Wallace*, 49 FCC 2d 1424, 1427 (1974) ("*Wallace*") ("Some indication by the property owner that he is favorably disposed toward making an arrangement is necessary"). While some latitude is afforded such "reasonable assurance," there must be, at a minimum, a "meeting of the minds resulting in some firm understanding as to the site's availability." A mere possibility that the site will be available is not sufficient. The "reasonable assurance" standard is only satisfied by "[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated" *Elijah Broadcasting Corp.*, 5 FCC Rcd 5350, 5351 (1990). The FCC Form 349 also requires not only the specification of a primary station, but also requires a certification that written authority has been obtained for rebroadcast of that station. FCC Form 349, Sections II and III.

From the forgoing facts and policy, two conclusions are undeniably true: (1) at no time during the pendency of the Delmarva FM Translator CP Application did Delmarva ever have authority, written or otherwise, sufficient to allow it to designate Station WDUR as the primary station for its proposed FM Translator; (2) at no time during the pendency of the Delmarva FM Translator CP Application or thereafter did Delmarva ever have reasonable assurance of site availability at the transmitter site specified in its current construction permit. Therefore, the Delmarva CP Application should never have been granted and the issued Permit was and

remains invalid insofar as, to this day, Delmarva is incapable of construction of the Permit at its currently designated location.

Delmarva is perpetrating a fraud on the Commission. As a place-holder, it apparently designated a tower and primary station totally without permission, hoping that it could be granted a Permit that can then, only later, be modified (File No. BMPFT-20150901ACL) and sold (File No. BAPFT-20150901ACK). This is an abuse of the Commission's processes and policies that should not be countenanced, and the only sensible remedy is for the Commission to rescind, in its entirety, the current permit, thereby opening the frequency for legitimate users in its upcoming Modification Windows in 2016 and/or AM-Only FM Translator Applications Windows in 2017.

For all the forgoing reasons, it is respectfully requested that this Petition be granted, and the Permit, File No. BNPFT-20130814ACE, be rescinded.

WHEREFORE, it is requested that this Petition for Rescission of Construction Permit Time be granted.

Respectfully submitted,

**NORTHSTAR BROADCASTING
CORPORATION**

By: ____/Dan J. Alpert/
Dan J. Alpert

Its Attorney

*The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201
703-243-8690*

January 14, 2016

Attachment 1

DECLARATION

I, Robert Zarzour, hereby state as follows: 1. I am a Member of Triangle Sports Broadcasters, LLC, the former owner of Station WDUR(AM), Durham, North Carolina. Through Triangle Sports Broadcasters, I owned the station with my wife, Katherine Zarzour, from June 23, 2013 through June 12, 2014. The current owner of Station WDUR(AM), I believe, is Arohi Media LLC.

2. I am told that on August 14, 2013, an organization called Delmarva Educational Association filed an application for a new FM translator on Channel 221, and designated in the FM translator application that the tower that I owned at that time (ASR 1016459) would be used as the transmitter site for the FM translator station. It also is my understanding that the FM translator application designated Station WDUR as the proposed primary station for the FM translator, and that it therefore proposed to rebroadcast WDUR(AM) with the FM translator. Finally, it also is my understanding that a construction permit for that facility, designating my tower and designating WDUR as the station to be rebroadcast on the FM translator, was eventually granted by the FCC.

3. At no time did I, nor any other party associated with Triangle Sports Broadcasters, LLC, provide any assurances to or enter into any agreement with Delmarva Educational Association (or any other party associated with Delmarva Educational Association) for the use of my tower as the transmitter site for an FM translator station, and at no time did I provide authorization for Station WDUR to be designated as the primary station for the proposed translator.

I declare under penalty of perjury that the forgoing is true and correct.

Robert Zarzour

October 13, 2015

Robert H. Zarzour M.D.

Attachment 2

DECLARATION

I, Ravi Cherukuri, hereby state as follows:

1. I am President and sole owner of Arohi Media, LLC. Arohi Media LLC is licensee of Station WDUR, Durham, North Carolina. Arohi Media LLC has owned Station WDUR(AM) since June 12, 2014. Arohi Media LLC also since that time has been owner of the tower used by the station, ASR 1016459. I am told that an organization called Delmarva Educational Association currently has a construction permit for a new FM translator on Channel 221, and that it has designated my tower as its translator's transmitter site.
2. At no time did I, nor any other party associated with Arohi Media LLC provide any assurances to or enter into any agreement with Delmarva Educational Association (or any other party associated with Delmarva Educational Association) for the use of my tower as the transmitter site for an FM translator station. Delmarva is designating the tower as its proposed transmitter site without my company's permission.

I declare under penalty of perjury that the forgoing is true and correct.



Ravi Cherukuri

December 2, 2015

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that the forgoing "Petition for Rescission of Construction Permit" is being served by E-Mail and First Class Mail to the following:

Davina Sashkin, Esq.
Fletcher Heald & Hildreth, PLC
1300 N. 17th St.
11th Floor
Arlington, VA 22209

_____/Dan J. Alpert/_____
Dan J. Alpert