



Federal Communications Commission
Washington, D.C. 20554

May 01, 2017

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In re: Application for Consent to Assignment of License
WUMD(FM), North Dartmouth, MA
Facility ID No. 163899
File No. BALED-20170104AAT

Petition to Deny/Informal Objections

Gentlemen:

We have before us the referenced application (Application) seeking consent to the assignment of license of noncommercial educational (NCE) Station WUMD(FM), North Dartmouth, Massachusetts (Station) from the University of Massachusetts (UM) to Rhode Island Public Radio, Inc. (RIPR). Also

before us are: 1) a Petition to Deny (Petition) filed on February 8, 2017, by Adam Lawrence (Lawrence or Petitioner); and 2) Informal Objections filed by John Nanian on January 17, 2017 (Nanian Objection); John Castellucci on February 7, 2017, (Castellucci Objection); and Joseph E. Ingoldsby on March 2, 2017, (Ingoldsby Objection);¹ and 3) an Opposition to Petition to Deny filed on February 21, 2017, by RIPR (Opposition).² For the reasons discussed below, we will deny the Petition and the Objections and grant the Application.

Background. Currently, RIPR holds noncommercial educational radio station licenses for Rhode Island, WRNI(AM), Providence, Rhode Island, and WRNI-FM, Narragansett, Rhode Island.³ RIPR also has programming retransmission agreements with two NCE radio stations that are licensed to other entities: WELH(FM), Providence, Rhode Island, and WCVY(FM), Coventry, Rhode Island.⁴ On January 4, 2017, UM and RIPR jointly filed the Application, which was accepted for filing in a January 9, 2017, *Public Notice*.⁵

In the Petition, Lawrence, a Station employee and an area listener, contends that grant of the Application will result in the diminishment of the Station's diverse local program content as RIPR, on its stations, broadcasts "almost entirely" syndicated programming. Petitioner also alleges that RIPR plans to discontinue the Station's "reading of newspapers, periodicals, books and local calendars to the vision-impaired community."⁶ Lawrence further claims that UM's plan to offer the Station's programming content as an online-only service is an inadequate replacement for the Station's FM service to certain older and low-income listeners because many are unfamiliar with the "technology associated with online listening . . . [or] not able to afford the connectivity or equipment to do so."⁷

In addition, the Objections raise arguments concerning prospective changes in the Station's programming content and the potential community impact of a non-local licensee. The Nanian Objection argues that:

- the community will lose the Station's diverse local programming.
- there are two "underutilized" FM stations, WDOM(FM), Providence, Rhode Island, licensed to Providence College, and WQRI(FM), Bristol, Rhode Island, licensed to Roger Williams University, that RIPR could acquire instead of the Station.⁸

The Castellucci Objection opines that:

¹ Collectively, the Nanian Objection, Castellucci Objection, and Ingoldsby Objection will be referred to as the Objections.

² RIPR reports that Massachusetts State Representative Antonio Cabral submitted a letter (Cabral Letter) to the FCC's Chairman requesting an administrative hearing due to "similar programming concerns" raised by the Objections. *See* Opposition at 1 note 1. RIPR does not provide a copy of the Cabral Letter and we are unable to locate it.

³ *See* Application, Exhibit 16.

⁴ *Id.*, Exhibit 18.

⁵ *See Broadcast Actions*, Public Notice, Report No. 28897 (Jan. 9, 2017).

⁶ Petition at 2.

⁷ *Id.* at 3.

⁸ The Nanian Objection also states that although RIPR has offered UM students internships at its two stations, the students "will have to travel 15-20 minutes, across state lines." Nanian Objection at 2.

- the community will be deprived “of the unique news and music programming that WUMD currently offers.”⁹
- RIPR “broadcasts not only on its assigned frequency of 102.7 FM, but also on two additional frequencies owned by local schools”¹⁰
- approval of the Application will result in “the redundancy of the news and talk shows already being offered at no fewer than three spots on the FM dial.”¹¹

The Ingoldsby Objection argues that:

- the “secretive and non-deliberative” sale of the Station violates the public interest because the announcement of the proposed assignment was only after the parties had executed their agreement, and made during UM’s winter recess, and failed to state “how to comment to the FCC, nor any mention of the deadlines.”¹²
- “[t]he sale will bring a standardization of programming and a repetition of viewpoints already available”¹³
- RIPR is “an out-of state corporation with little interest in community programming.”¹⁴

In Opposition, RIPR asserts that the Petition and Objections must be denied because “the Commission does not regulate program formats, nor does it take potential format changes into consideration in reviewing license applications.”¹⁵ Moreover, RIPR opines, this is particularly so with respect to NCE stations.¹⁶ Finally, RIPR pledges to continue the Station’s reading service for the visually impaired.¹⁷

Discussion. Section 310(d) of the Communications Act of 1934, as amended (the Act),¹⁸ requires the Commission to make a determination as to whether the proposed transfer or assignment of a broadcast license would be in the public interest. Petitions to deny and informal objections must contain adequate and specific factual allegations that, if true, would establish a substantial and material question of fact that grant of the Application would be inconsistent with the public interest, convenience, and necessity.¹⁹

Petitioner and the Objectors essentially argue that the Application should be denied because it may lead to a change in the Station’s programming content. While the Bureau appreciates that the Station’s programming has attracted a devoted listenership, it is a well-settled policy that the Commission

⁹ Castellucci Objection at 1-2.

¹⁰ *Id.* at 1.

¹¹ *Id.* Castellucci states that, rather than acquire the Station, RIPR should instead upgrade its station’s transmitter equipment.

¹² Ingoldsby Objection at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Opposition at 2.

¹⁶ *Id.* (citing *KUSF(FM), San Francisco, CA*, Letter Decision, (MB Jun. 7, 2012) (*KUSF(FM)*).

¹⁷ *Id.* at 4.

¹⁸ 47 U.S.C. § 310(d).

¹⁹ See 47 U.S.C. §§ 309(d)(1), 309(e). See also *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

does not scrutinize or regulate programming, nor does it take potential changes in programming formats into consideration in reviewing assignment applications.²⁰ In 1976, the Commission issued a *Policy Statement* in which it concluded that review of program formats was not required by the Act and that such review would not benefit the public, would deter innovation, and would impose substantial administrative burdens on the Commission.²¹ The Supreme Court of the United States has upheld this policy.²² In doing so, the Court accepted the Commission's findings that "the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . ." ²³ and that a change in programming is not a material factor that should be considered by the Commission in ruling on applications for license transfer. This is particularly true with regard to the programming decisions of NCE broadcast stations. "[T]he Commission historically 'has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming.'" ²⁴ Moreover, it appears that some of the Station's programming will continue to be available. In particular, RIPR states that it plans to continue broadcasting the Station's reading service to the visually-impaired.

We also find the remaining arguments against the Application to be meritless. Specifically, the Objectors allege that RIPR's status as a non-local organization may potentially harm the community, but present no evidence that RIPR will not serve the residents of North Dartmouth. Next, we reject Nanian's suggestion that RIPR acquire instead the "underutilized" WDOM(FM) and/or WQRI(FM). The Commission may only review the transaction as set forth by the parties in the Application, not whether some other hypothetical transaction would better serve the public interest.²⁵ Finally, there is no record evidence to support the Ingoldsby Objection's allegation that the proposed assignment of the Station has been a "secretive and non-deliberative" process. The Application containing the proposed assignment was announced as accepted for filing in January 9, 2017, *Public Notice*,²⁶ is available in its entirety to the public, online via the Bureau's consolidated database and in person at the Commission's Records Information Center, and UM certified that it has or it will comply with the local public notice requirements of Section 73.3580 of the FCC's rules.²⁷ The FCC's Rules set forth a statutory period for the filing of petitions or objections to the proposed assignment which Petitioner and the Objectors have participated in. Indeed the Ingoldsby Objection is being reviewed herein as part of that statutory process.

²⁰ See, e.g., *KCOH(AM), Houston, Texas*, Letter Decision, 28 FCC Rcd 1009, 1010 (MB 2013); and *Coosa Valley News, Inc.*, Letter Decision, 23 FCC Rcd 9146, 9150 (MB 2008).

²¹ See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC2d 858, 865-66 (1976), *recon. denied*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev'd sub nom.*, *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev'd*, 450 U.S. 582 (1981).

²² *FCC v. WNCN Listener's Guild*, 450 U.S. 582, 585 (1981).

²³ *Id.*

²⁴ *KUSF(FM)* at 2, quoting *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 FCC 2d 716, 732, para. 36 (1981). See also *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401, para. 7 (MB 1993) (licensees have broad discretion over programming decisions).

²⁵ See, e.g., 47 U.S.C. § 310(d) (the Commission may not consider whether the public interest, convenience and necessity might be served by assignment or transfer of the license to an entity other than the proposed assignee or transferee). See also *MG-TV Broad. Co. v. FCC*, 408 F.2d 1257, 1264 (D.C. Cir. 1968).

²⁶ See *supra* note 5.

²⁷ Application, Section II, Item 7.

Therefore, we find that Petitioner and the Objectors have failed to raise a substantial and material question of fact warranting further inquiry. We further find that UM is fully qualified to assign, and RIPR is fully qualified to own, an NCE station and that grant of the Application will serve the public interest, convenience, and necessity.

Conclusion/Actions. Accordingly, IT IS ORDERED, that the PETITION TO DENY filed on February 8, 2017, by Adam Lawrence IS DENIED.

IT IS FURTHER ORDERED THAT the INFORMAL OBJECTIONs filed on John Nanian on January 17, 2017; John Castellucci on February 7, 2017; and Joseph E. Ingoldsby on March 2, 2017, ARE DENIED.

IT IS FURTHER ORDERED THAT the application for consent to the assignment of license of Station WUMD(FM), North Dartmouth, Massachusetts from the university of Massachusetts to Rhode Island Public Radio, Inc. (File No. BALED-20170104AAT) IS GRANTED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle". The signature is written in a cursive style with a large initial "P".

Peter H. Doyle
Chief, Audio Division
Media Bureau