



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

July 17, 2018

In Reply Refer To:
1800B3

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**In re: WSHA(FM), Raleigh, NC
Facility ID No. 60028**

File No. BALED-20180427ABF *et seq.*
Application for Assignment of Licenses

Informal Objections

Dear Dr. Elkins, Mr. Elliott, and Counsel:

We have before us: (1) the referenced applications (Applications) seeking Commission consent to the assignment of the license for Station WSHA(FM), Raleigh, North Carolina, and three associated FM translator stations¹ (collectively, Stations) from Shaw University (Shaw) to Educational Media Foundation (EMF); and (2) Informal Objections to the Applications filed by members of the Station Community Advisory Board (CAB)² on May 19, 2018 (CAB Objection), and by Norman Elliot (Elliott)

¹ W271BT, Rocky Mount, North Carolina, Facility ID No. 156751, BALFT-20180427ABG; W280EP, Lumberton, North Carolina, Facility ID No. 156774, BALFT-20180427ABH; and W272DD, Fayetteville, North Carolina, Facility ID No. 156766, FALFT-20180427ABI.

² Mr. Tom Nevlud, Ms. Janet Howard, Mr. David E. Sanders, and Mr. Alfred Lovell.

on June 4, 2018 (Elliott Objection).³ For the reasons sent forth below, we deny the Objections and grant the Applications.

Background. Shaw and EMF filed the Applications on April 27, 2018. In the CAB Objection, the CAB members indicate that they were not consulted prior to the announcement of the sale, and they object to Shaw's decision to sell the Station as "not in the best interests of the University or the Raleigh community."⁴ CAB notes that Shaw is a historically black university, the first in the southern United States, the first to admit women, and the first to have its own radio station. Although acknowledging that Shaw is having a hard time financially, they claim that the short-sighted decision to sell the station will remove a public resource and has not been adequately assessed.⁵ The CAB members argue the sale to EMF would create a monopoly by EMF of Contemporary Christian programming in Raleigh⁶ and that EMF will not provide the underserved minority community of Raleigh with the benefits that WSHA(FM) currently provides.⁷ They state that the programming offered by WSHA(FM) is historically and culturally important to local African-American legacy and that once WSHA(FM) is gone, there will be no station in the Raleigh area to provide it.⁸

In his Objection, Mr. Elliott states that the Station has served Shaw students and the Raleigh community for decades, and EMF does not have the instructional requirements to provide guidance to students who come to Shaw to learn and enhance communication knowledge. He argues that EMF's conservative format will exacerbate the media's historical failure to report adequately on the causes and consequences of civil disorders and on the underlying problems of race relations.

Discussion. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act"),⁹ 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 Section 309(a) of the Act.¹⁰

Section 310(d) of the Act charges the Commission with determining whether the grant of a license assignment application will serve "the public interest, convenience and necessity . . ."¹¹ With regard to the assignment of NCE radio stations in the reserved band, such as the radio station at issue

³ We also have before us an objection to the Applications from a "T. Hall" at a Washington, DC address that was not properly filed electronically or through the Commission's Office of the Secretary but was instead sent by facsimile on June 14, 2018, to then Commissioner Clyburn and Audio Division Chief Albert Shuldiner. That document raises arguments very similar to those raised by CAB and Elliott. It will not receive separate treatment herein.

⁴ CAB Objection at 1.

⁵ *Id.* at 2.

⁶ CAB observes that EMF operates several FM translators in the area, W2323CH, Raleigh, and W270AW, Sanford, North Carolina

⁷ *Id.*

⁸ *Id.* at 3.

⁹ 47 U.S.C. § 309(e).

¹⁰ 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).

¹¹ 47 U.S.C. § 310(d).

here, the Commission first must ascertain whether the proposed buyer has demonstrated its eligibility to hold a noncommercial educational license. Section 73.503(a) of the Commission's rules (Rules) provides that a "noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program."¹² An applicant may qualify as a noncommercial educational licensee by demonstrating that it is either an educational institution or an educational organization.¹³ Organizational applicants must demonstrate that they have an educational goal and are committed to the advancement of an educational program.¹⁴

Objectors contend that grant of the Application would be contrary to the public interest, primarily because of the loss of programming aired on WSHA(FM). Although the Bureau recognizes that the Station's format has attracted a devoted listenership, it is "well-settled Commission policy that potential changes in programming formats are not considered in reviewing assignment applications."¹⁵ With regard to public broadcasting in particular, the 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."¹⁶ While the Commission "reserve[s] the right to intervene in such matters if necessary to serve the public interest more fully,"¹⁷ we see no reason to do so at this time. EMF has demonstrated its qualifications to operate NCE radio stations many times in the past and in the Application.¹⁸

With respect to Mr. Elliott's concern that, under EFM's stewardship, the Station will no longer report adequately on the causes and consequences of civil disorders and on the underlying problems of race relations, under well-established precedent, an applicant is required to provide only a brief narrative description of its proposed community issue-responsive service.¹⁹ EMF's program service statement fully satisfies this application requirement. EMF states its intention to broadcast educational programming of local, as well as national, interest and no credible evidence has been submitted to rebut this assertion. In any event, these sorts of objections may be renewed and are appropriately reviewed in connection with the Station's next license renewal application.²⁰

¹² 47 CFR § 73.503(a).

¹³ *Eligibility for Noncommercial Educational FM and TV Broadcast Licenses*, Notice of Inquiry, 43 Fed. Reg. 30842, 3084-3085 (1978) (*Notice of Inquiry*); see also *Palm Bay Public Radio, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 1772, 1773, para. 11 (1991), *aff'd sub nom.*, 952 F.2d 549 (D.C. Cir. 1992).

¹⁴ *Notice of Inquiry*, 43 Fed. Reg. at 30845.

¹⁵ *WDCU(FM)*, Letter Order, 12 FCC Red 15242 (MMB 1997) (*WDCU*); see also *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC 2d 858, 865-66, para. 21 (1976), *recon. denied*, 66 FCC 2d 78 (1977), *rev'd sub nom. WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir 1970, *rev'd*, 450 U.S. 582 (1981).

¹⁶ *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rulemaking, 87 FCC 2d 716, 732, para. 35 (1981).

¹⁷ *WNYC Communications Corp.*, Memorandum Opinion and Order, 11 FCC Red 13841, 13844, para. 11 (MMB 1996).

¹⁸ See Application, Section III, Item 2.b.

¹⁹ See *Request for Declaratory Ruling Concerning Programming Information in Broadcast Applications for Construction Permits, Transfers and Assignments*, Memorandum Opinion and Order, 3 FCC Rcd 5467, 5467-5468, paras. 8-11 (1988); see also *Public Radio and Television Programming*, Report and Order, 98 FCC 2d 746, 751-752, paras 13-14 (1984).

²⁰ See *WDCU, supra*, 12 FCC Rcd at 15245, citing 47 U.S.C. § 309(d)(1) and 47 CFR § 73.3580(d)(4).

With respect to the allegation that EMF has a monopoly on contemporary Christian music, we note initially that the multiple ownership rules in Section 73.3555 of the Rules specifically do not apply to NCE station.²¹ Additionally, in support of its argument CAB references two FM translator stations carrying EMF programming; FM translator stations are secondary services not protected from interference from any full-service station, irrespective of when the full-service facility commences operation.²² EMF cannot be considered to have a “monopoly” on contemporary Christian programming in Raleigh based on its carriage on two secondary-service stations.

Conclusion/Actions. We have reviewed the Application and find that Shaw is qualified to assign, and EMF is fully qualified to operate, noncommercial educational FM station WSHA(FM) and that grant of the Application would further the public interest, convenience, and necessity. In light of the above discussion, IT IS ORDERED that the Informal Objections filed by members of the Station Community Advisory Board and by Norman Elliott ARE DENIED.

IT IS FURTHER ORDERED, that the Application for consent to the assignment of the license for Station WSHA(FM), Raleigh, North Carolina, from Shaw University to Educational Media Foundation IS GRANTED subject to the following conditions:

Commission records reflect that stations W280EP (Fac. Id. 156774) and W272DD (Fac. Id. 156766) have been off the air since November 7, 2017 and January 1, 2018, respectively. Therefore, the license for these stations will expire as a matter of law if the stations do not resume broadcast operations by November 8, 2018 and January 2, 2018, 12:01 a.m., respectively. See Pub. Law. No. 1040104, 110 Stat 56, Sect. 403(l), codified at 47 U.S.C. Section 312(g).

The FM Translator Licensee must notify the Federal Communications, Commission, Office of the Secretary, 445 12th Street, S.W., Washington, DC 20554 of any change in the station that will be rebroadcast. The parties should also notify Robert Gates via email at Robert.Gates@fcc.gov. See 47 C.F.R. Section 74.1284.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

cc: Shaw University
Educational Media Foundation
T. Hall

²¹ See 47 CFR § 73.3555(f).

²² Application, Exhibit 18: “EMF will offer a wide variety of education programming designed to meet the needs and interests of resident within the local community of license, including education programs on current events, and programs examining economic, social and religious issues”