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Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)
SHELBY BROADCAST ASSOCIATES, LLC) File No. BLFT-20181016BE
Application for License for) Facility ID No. 141124
Station W252BE, Tarrant, Alabama)

Directed to: Office of the Secretary
Attention: Chief, Audio Division, Media Bureau

Accepted / Filed

OCT 19 2018

Federal Communications Commission
Office of the Secretary

COMMENTS ON APPLICATION FOR LICENSE

Marble City Media, LLC ("Marble City"), licensee of Station WFXO(FM), Stewartville, Alabama, by its counsel, hereby respectfully submits its Comments related to the above-captioned application of Shelby Broadcast Associates, LLC ("Shelby") for a license ("STA") to operate W252BE. That application was filed to cover a construction permit file number BPFT-20170511AAL granted June 21, 2017, sixteen (16) months ago. The Commission should not favorably act on the application until it determines whether, in fact, Shelby has a current license which can be modified as proposed by Shelby in the above captioned license application, and it resolves the outstanding questions as to the qualifications of Shelby. Challenges to Shelby's licensed status and qualifications have been raised in numerous pleadings filed by Marble City over the past year and half, all of which are a matter of record at the Commission and have not been acted upon.

BACKGROUND

On July 6, 2018, Marble City respectfully renewed and revived its *Interference Complaint as to W252BE* which, on June 8, 2017, it had requested be held in abeyance, and further requested

cancellation of the license of W252BE in light of its automatic expiration pursuant to Section 312(g) of the Communications Act of 1934, as amended.

As established in the *Revival of Complaint*, W252BE had not operated in accordance with its license or any other authorization from the Commission for at least the previous 19 months since November 16, 2016, when its last Commission authorization to operate at variance from its licensed parameters had expired.¹ As is well established, unauthorized operation is considered by the Commission to be the equivalent of no operation at all. *Eagle Broad. Group*, 563 F.3d 543, 553 (D.C. Cir. 2009) ("Under the statute, unauthorized and unlicensed transmissions are no better than silence") *A-O Broad. Corp.*, 23 FCC Red 603 (2008); *see also James McCluskey, Ph.D.*, Letter Order, 27 FCC Red 6252, 6254-55 (MB 2012) ("an unauthorized transmission counts for nothing"); *A-O Broadcasting Corporation*, 23 FCC Red 603 (2008); *Tango Radio, LLC*, 30 FCC Red 10564, 10567-68 (2015) (temporarily constructed facilities do not form the basis for filing a license application). Section 312(g) of the Communications Act of 1934, as amended, specifies that the license of a station that is silent or engages in operation other than as authorized for a period of 12 consecutive months automatically expires at the end of that period. Of particular relevance to the current circumstances is the *Letter Order as to WZNN(FM), Maplesville, AL (reference 1800B3-VM)* dated November 15, 2017, which provided in part, "*Well established Commission precedent dictates that licensees cannot avoid the statutory deadline set forth in Section 312(g) through the use of unauthorized facilities.*" The Commission cancelled the WZNN(FM) license, deleted the call sign, and as a further measure required Valleydale

¹ In its "*Revival of Complaint and Petition for Cancellation of W252BE License*," filed July 6, 2018, Marble City demonstrated that W252BE has been operating at the unauthorized antenna height of approximately 750 feet, with an improperly oriented directional antenna, and transmitter output power level of 707 Watts, almost double that authorized.

Broadcasting, LLC (“Valleydale”), and its various principals to submit a copy of the *Letter Order* with every facilities application filed for a period of five years.² The named principals include those associated with Shelby. Due to its direct relevance as express notice to Shelby that prolonged unauthorized operations result in license cancellation, the Revival pleading included a copy of the Commission’s *Letter Order* concerning Valleydale and through shared principals, Shelby.

Further, in Marble City’s *Informal Objection* filed on July 24, 2018, and *Supplement to Informal Objection* filed on September 13, 2018, Marble City challenged and opposed Shelby’s two separate Requests for Special Temporary Authority to operate W252BE at variance from its license.³ Echoing the Revival of Complaint, for the reasons stated in the *Informal Objection* and *Supplement*, Marble City requested the Commission order W252BE immediately to cease broadcasting or reduce power substantially due to prohibited signal overlap. Marble City demonstrated that the STA Requests reflected W252BE’s then-present, actual, ongoing operation, with totally unauthorized facilities. Though having no authorization, Shelby nevertheless continued to operate, thereby openly and blatantly violating the FCC’s rules.

As is also a matter of record, Marble City has previously expressed its view of the modification construction permit to which the above-captioned license to cover related. In fact, in the spirit of cooperation, with the hope that the then-proposed modification would help alleviate interference in an acceptable manner, on June 8, 2017, Marble City requested that its Interference Complaint and Opposition to W252BE Modification Application be held in abeyance. *See*, Marble

² A pleading in December 2017, with respect to Valleydale’s actions as to WZNN(FM), also demonstrated that DWTID(FM), Thomaston, AL, had not operated with authorized facilities. DWTID(FM) was licensed to Great South Wireless, LLC, owned by Valleydale’s principals. Great South voluntarily relinquished the DWTID(FM) license on February 6, 2018.

³ Shelby filed 2 separate STA requests. The first File No. BSTA-20180718AAD was dismissed by the FCC the next day after filing. The second STA, File No. BSTA-20180720AAR, remains pending and was not acted upon.

City “*Request Relating to Interference Complaint, FCC Letter of Inquiry and Opposition to W252BE Modification Application.*” This filing was submitted in recognition of the fact that the stated purpose of the modification application, as amended, was to specify a custom/measured directional antenna using manufacturers and technical details agreed upon between the parties in an effort to see if the antenna would eliminate or improve the continued interference to Station WFXO(FM) from operation of W252BE.

Marble City stated therein that it felt that:

... a detailed directional antenna approach would at least have a chance of success of allowing the parties to resolve the pending issues without further Commission involvement. Of course, the proof is in actual operation, so conclusions as to interference are difficult to determine. With that understanding and in a good faith attempt to resolve the serious problem of interference to WFXO(FM), Marble City Media believes it is appropriate to have its pending Complaint as to W252BE's operation to be held in abeyance until the proposed W252BE directional antenna modification noted above can be granted, constructed, and operated by Valleydale Broadcasting/Shelby Broadcasting, with such operation thereafter evaluated over[]time by Marble City Media.

See Marble City “*Request Relating to Interference Complaint, FCC Letter of Inquiry and Opposition to W252BE Modification Application,*” filed June 8, 2017, at 2.

The W252BE modification application, BPFT-20170511AAL, was then granted on June 21, 2017, and a construction permit issued; however, over the past 16 months, until the last week, Shelby has failed to build and operate the modified facility. Instead, during all of that time, it has continued to operate W252BE in a manner causing interference to reception of listeners of WFXO(FM). Rather than demonstrating any sense of urgency or making concerted efforts to implement the modified directional antenna facilities which the parties had agreed might have some hope of resolving the ongoing interference issues, Shelby was intent on finding obstacles to making any changes that might eliminate the interference and simply ignored its obligation as a secondary service to do so.

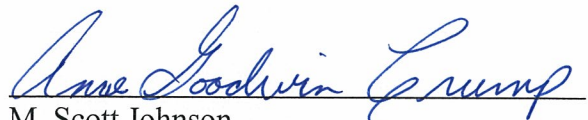
In light of the filing of the above-captioned application for license to cover construction permit, Marble City is currently evaluating the operations with the new facilities, which evidently began several days ago. Having experienced prohibited interference to WFXO(FM) from unauthorized operations of W252BE since January 2017, however, and in light of Shelby's demonstrated history of operating W252BE without Commission authorization, even assuming that there is diminished interference, Marble City is skeptical of the likelihood that Shelby will continue operating with those facilities in compliance with the FCC's rules and policies. Thus, Marble City expressly reserves the right to file appropriate interference complaints with the Commission.

In sum, as set forth in prior filings, before it can act favorably on the above captioned application, the Commission must determine whether, in fact, Shelby has a current license which can be modified as sought by Shelby in the above captioned license application and whether Shelby has the qualifications to be the licensee of W252BE. If the Commission does not conclude those determinations favorably to Shelby, W252BE must be ordered immediately to cease operation.

Respectfully submitted,

MARBLE CITY MEDIA, LLC

By:



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October 19, 2018

CERTIFICATE OF SERVICE

I, Joan P. George, a Legal Assistant with the office of Fletcher, Heald & Hildreth PLC, hereby certify that a true and correct copy of the foregoing "Comments on Application for License" was sent on this 19th day of October, 2018, via First Class U.S. Mail or by e-mail as indicated below, to the following:

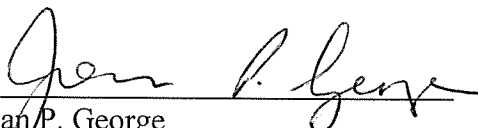
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