



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

**June 5, 2019**

**DA 19-520  
In Reply Refer to:  
1800B3-CEG  
Released: June 5, 2019**

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**In re: W256CL, Park Forest, Illinois**  
Facility ID No. 152811  
File No. BPFT-20171229ABE

**Informal Objection**

Dear Counsel:

We have before us the above-referenced modification application (Modification Application) filed by Edgewater Broadcasting Inc. (Edgewater) on December 29, 2017, seeking to relocate the transmitter site of FM translator station W256CL, Park Forest, Illinois (Station).<sup>1</sup> We also have an informal objection to the Modification Application filed by Sound of Hope Radio NFP (Sound of Hope) on January 19, 2018 (Informal Objection),<sup>2</sup> and an opposition to the Informal Objection filed by Edgewater on February 8, 2018 (Opposition). For the reasons stated below, we deny the Informal Objection and grant the Modification Application.

**Background.** The Modification Application is the fourth in a series of modification applications (collectively, Applications) filed by Edgewater that, taken together, relocate the Station's facilities approximately 40 miles from its originally authorized location near Beecher, Illinois, to downtown Chicago, Illinois.<sup>3</sup> On February 9, 2015, Edgewater filed a construction permit modification application (First Application), seeking to move the Station toward Chicago.<sup>4</sup> The First Application was granted on

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<sup>1</sup> See *Broadcast Applications*, Public Notice, Report No. 29145 (Jan. 4, 2018).

<sup>2</sup> An informal objection to the Modification Application was filed by Prometheus *et al* on May 16, 2018, which was dismissed and, in the alternative, denied by the Audio Division, Media Bureau (Bureau) on June 8, 2018. See *Center for International Media Action*, Letter Decision, 33 FCC Rcd 5394 (MB 2018).

<sup>3</sup> See File No. BNPFT-20130828AFF (granted December 27, 2013. *Broadcast Actions*, Public Notice, Report No. 18147 (Jan. 1, 2014)).

<sup>4</sup> File No. BMPFT-20150209AAF. Edgewater had earlier filed a construction permit modification application on January 29, 2014. File No. BMPFT-20140129ANE. This application was granted on July 25, 2014, but the specified facilities were not built. See *Broadcast Actions*, Public Notice, Report No. 48292 (MB July 30, 2014).

March 16, 2015,<sup>5</sup> and on January 27, 2016, Edgewater filed an application for a license to cover.<sup>6</sup> The license to cover the First Application was granted on February 8, 2016.<sup>7</sup> After operating at the First Application site for about a year, on April 14, 2017, Edgewater filed a modification application (Second Application) for a transmitter site located west of the First Application site but with a signal contour extending considerably further toward Chicago.<sup>8</sup> The Second Application was granted on May 10, 2017.<sup>9</sup> On July 17, 2017, Edgewater filed an application for a license to cover the Second Application construction permit<sup>10</sup> and immediately—the next day—filed another modification application (Third Application) seeking to move the Station further toward Chicago.<sup>11</sup> The license to cover the Second Application construction permit was granted on July 28, 2017,<sup>12</sup> and the Third Application was granted on July 31, 2017.<sup>13</sup> After operating at the Second Application site for about a month, on August 25, 2017, Edgewater filed a license to cover the Third Application construction permit, which was granted on September 11, 2017.<sup>14</sup> Four months later, on December 29, 2017, Edgewater filed the present Modification Application, seeking to place the Station's facilities directly into downtown Chicago. Edgewater has been operating the Station at the Third Application site for more than a year while the Modification Application was pending. None of the applications filed by Edgewater prior to the Modification Application were contested.

Sound of Hope objects to the Modification Application on the ground that the series of minor changes described above effectively circumvent the major change rule (section 74.1233(a))<sup>15</sup> and thus should be disallowed as an abuse of process.<sup>16</sup> In making this argument, Sound of Hope relies on the Audio Division, Media Bureau (Bureau)'s 2011 *Mattoon* decision, in which the Bureau explained, *obiter dicta*:

Some translator licensees have attempted to accomplish what would otherwise be dismissed as an impermissible major change under Section 74.1233(a) by filing serial minor modification applications to “hop” to new locations that are sometimes over 100 miles away. We believe the filing of serial modification applications represents an abuse of process. We recently entered into a consent decree with a party that acknowledged this practice was an abuse of process and agreed to forfeit several authorizations. The purpose of the overlap requirement is “[t]o prevent ... FM translator stations from abandoning their present service areas.” The evident purpose of the serial applications is to achieve the prohibited result. No rule specifically prohibits such a practice, but the Commission can take appropriate enforcement action, including denial of applications that are

<sup>5</sup> *Broadcast Actions*, Public Notice, Report No. 48449 (MB Mar. 19, 2015).

<sup>6</sup> File No. BLFT-20160127AFF. On January 28, 2016, Edgewater filed another modification application, which was granted on February 4, 2016, but was never built. See File No. BMPFT-20160128BEG; *Broadcast Actions*, Public Notice, Report No. 48667 (MB Feb. 9, 2016).

<sup>7</sup> *Broadcast Actions*, Public Notice, Report No. 48669 (MB Feb. 11, 2016).

<sup>8</sup> File No. BMPFT-20170414AAB.

<sup>9</sup> *Broadcast Actions*, Public Notice, Report No. 48985 (MB May 15, 2017).

<sup>10</sup> File No. BLFT-20170717ACV.

<sup>11</sup> File No. BPFT-20170718ACW.

<sup>12</sup> *Broadcast Actions*, Public Notice, Report No. 49040 (MB Aug. 2, 2017).

<sup>13</sup> *Broadcast Actions*, Public Notice, Report No. 49041 (MB Aug. 3, 2017).

<sup>14</sup> File No. BLFT-20170825ABG; *Broadcast Actions*, Public Notice, Report No. 49070 (MB Sept. 14, 2017).

<sup>15</sup> 47 CFR § 74.1233(a) (Section 74.1233(a)) (characterizing as a major change “any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area”).

<sup>16</sup> Informal Objection at 1-4.

intended to evade the requirement or subvert its purpose pursuant to Section 308(a) of the Communications Act of 1934, as amended, on the ground that grant would not serve the public interest.<sup>17</sup>

Sound of Hope also cites to two other decisions: (1) the 2014 *EMF* decision, in which the Commission upheld the Bureau's denial of a *Mattoon* waiver request that did not satisfy the *Mattoon* criterion that the translator rebroadcast an AM station;<sup>18</sup> and (2) the 2014 *Trenton* decision, in which the Bureau denied a *Mattoon* waiver request on the ground that a previous modification had the apparent purpose of satisfying the *Mattoon* criteria of mutual exclusivity.<sup>19</sup>

In its Opposition, Edgewater argues that Sound of Hope's pleading is motivated by its intention to file a competing modification application and that competitive advantage is not a valid basis for an informal objection.<sup>20</sup> Apparently in the alternative, Edgewater complains that Sound of Hope "does not even attempt to explain how the instant modification would impact it."<sup>21</sup> On the merits, Edgewater states that not all of the construction permits it applied for were licensed and asserts that the modifications were "implemented consistent with the Commission's rules and policies."<sup>22</sup>

**Discussion.** An informal objection may be filed at any time prior to action on the subject application<sup>23</sup> and must, pursuant to section 309(e) of the Communications Act of 1934, as amended (Act), provide properly supported allegations of fact which, if true, would establish a substantial and material question of fact regarding whether grant of the application in question would be consistent with the public interest, convenience and necessity.<sup>24</sup> Sound of Hope has failed to meet this burden.

**Standing.** As a threshold matter, we find that Edgewater's argument that Sound of Hope lacks standing to object to the Application is misplaced. First, standing is not required to file an informal objection.<sup>25</sup> Second, as a competitor in the relevant market, Sound of Hope has standing to object to the Application.<sup>26</sup> Therefore, we will consider Sound of Hope's arguments on the merits.

**Abuse of process analysis.** In *Mattoon* and *Broadcast Towers*, we articulated the policy that a licensee who effectuates a major change in antenna location by means of a succession of serial minor changes may be abusing the Commission's processes.<sup>27</sup> "Abuse of process" has been defined as "the use of a Commission process, procedure or rule to achieve a result which that process, procedure or rule was

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<sup>17</sup> John F. Garziglia, Letter Decision, 26 FCC Rcd 12685, 12687 (MB 2011) (*Mattoon*) (citing *Broadcast Towers, Inc.*, Order, 26 FCC Rcd 7681, 7684, paras. 3-5 (MB 2011) (*Broadcast Towers*)) (other internal citations omitted).

<sup>18</sup> *Educational Media Foundation*, Letter Decision, 29 FCC Rcd 15051 (2014) (*EMF*).

<sup>19</sup> Harry C. Martin, Letter, 29 FCC Rcd 12718, 12719-20 (MB 2014) (*Trenton*).

<sup>20</sup> Opposition at 1-2.

<sup>21</sup> Opposition at 2.

<sup>22</sup> Opposition at 1-2.

<sup>23</sup> 47 CFR § 73.3587.

<sup>24</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986).

<sup>25</sup> See, e.g., *Chapin Enterprises, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4251 (2014).

<sup>26</sup> See, e.g., *Urban Radio I, LLC, et al.*, Memorandum Opinion and Order, 29 FC Rcd 6389, 6390, para. 2 (2014) ("In the broadcast regulatory context, standing is generally obtained in one of three ways: (1) as a competitor in the market suffering signal interference; (2) as a competitor in the market suffering economic harm; or (3) as a resident of the station's service area or regular listener of the station.").

<sup>27</sup> *Mattoon*, 26 FCC Rcd at 12687; *Broadcast Towers*, 26 FCC Rcd at 7684, para. 2(m).

not designed or intended to achieve or, alternatively, use of such process, procedure, or rule in a manner which subverts the underlying intended purpose of that process, procedure, or rule.”<sup>28</sup> An abuse of process ordinarily involves an intent to gain some benefit by manipulating the Commission's procedures.<sup>29</sup> Much of our case law involving abuse of process relates to pleadings or applications that are filed for the purpose of delay or extracting a profit from settlement.<sup>30</sup> In such cases, if a petition is found to be abusive because it lacks correct verification, for example, the enforcement sanction is typically dismissal of the pleading.<sup>31</sup> Similarly, in *Mattoon*, the Bureau suggested that an appropriate sanction for abusive serial modifications could be “denial of applications that are intended to evade the [major change] requirement or subvert its purpose.”<sup>32</sup> Therefore, in this case we consider whether to grant or deny the Modification Application based on the abuse of process theory set out in *Mattoon* and *Broadcast Towers*.

Because the Commission has considered allegedly abusive serial translator modifications in both the waiver and enforcement contexts, it is important to note that these two types of proceedings are governed by different standards and procedures. In an enforcement proceeding, as here, the Commission determines whether the conduct at issue violates a Commission rule or policy, and, if so, what sanctions or other actions would be appropriate. In a waiver proceeding—although the Commission must carefully consider all waiver requests—the requesting party is by no means entitled to a waiver grant and faces a “high hurdle even at the starting gate.”<sup>33</sup> The burden is on the waiver requestor to show that (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.<sup>34</sup> Therefore, the same set of circumstances (or public interest considerations) that might lead the Commission to deny a waiver request may not equally warrant an enforcement action. This distinction is crucial, because while the decisions cited by Sound of Hope are waiver cases, including *Mattoon* itself, in this case Edgewater is not requesting a waiver. Rather, Sound of Hope urges us to take enforcement action based on abuse of process, as discussed above.

In its only previous enforcement action based on serial modifications, *Broadcast Towers*, the Bureau entered into a consent decree resolving various violations including the “abuse of Commission processes committed by BTI as it migrated the Translators north to Miami.”<sup>35</sup> After reiterating this policy in *Mattoon* (in the context of a waiver request), the Bureau has considered only one other non-waiver serial modification case. In *Branchport*, the Bureau determined that it would not pursue an enforcement action where the serial modifications at issue ultimately returned the station’s antenna to its approximate starting location, explaining that in such circumstances enforcement was not necessary “(1) to protect the *Ashbacker* rights of potential applicants to comparative consideration for the “same” license (i.e. that are mutually exclusive with the final destination of the “hopping” station), and (2) to prevent, in the public interest, FM translator stations from abusing Commission processes in order to ‘abandon[] their present

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<sup>28</sup> *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and other Participants in the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, First Report and Order, 4 FCC Rcd 4780, 4780, para. 2, n.3 (1989).

<sup>29</sup> *TRMR, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 17081, 17087, para. 10 (1996).

<sup>30</sup> See, e.g., *Radio Carrollton, et al.*, 69 FCC 2d 1139, 1150 (1978).

<sup>31</sup> See, e.g., *Lincoln, Missouri*, Memorandum Opinion and Order, 17 FCC Rcd 6119, 6122, para. 11 (2002).

<sup>32</sup> *Mattoon*, 26 FCC Rcd at 12687.

<sup>33</sup> See, *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969); *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

<sup>34</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)).

<sup>35</sup> *Broadcast Towers*, 26 FCC Rcd at 7684, para. 2(m).

service areas' in favor of more populous locations."<sup>36</sup> Based on the reasoning of *Mattoon* and *Branchport*, we first analyze the potential abuse of process issue and then consider the *Ashbacker* implications of the Edgewater serial modifications.

When considering serial translator moves, we must distinguish between modifications based on legitimate business or interference concerns and deliberate attempts to circumvent the Commission's rules and policies.<sup>37</sup> As the Commission has noted, "[i]nformation as to intent to make improper use of the Commission's process is likely to be unusually difficult to obtain, given the subjectiveness of the issue and the frequently ambiguous nature of the associated conduct."<sup>38</sup> Because of the evidentiary difficulties inherent in abuse of process cases, the Commission has refused to "infer improper purpose in filing an application or pleadings without a specific showing of improper motivation."<sup>39</sup> To make this determination, we identify the relevant evidentiary factors for an abuse of process analysis based on serial modifications and then apply each factor to the circumstances presented here, as follows:

(1) Temporary construction. Central to our abuse of process analysis in *Broadcast Towers* was the ample evidence in the record that the translator operator intended each modification site as simply a waystation on its path to its final destination. A key fact in that case was that the broadcast facilities at each location were temporarily constructed, both physically (consisting of telescoping antennas transported by vehicle to public roadside sites and powered by portable generators) and legally (the applicant lacked reasonable assurance of site availability at each site).<sup>40</sup> The temporary nature of the construction was further evidenced by the fact that after a brief operation, the transmission facilities were dismantled and a license to cover was filed.<sup>41</sup> This cycle of repeated temporary construction was a clear indicator of abuse of process. In the present case, however, there is no evidence before us that the facilities at issue were not technically capable of long-term operation or subject to any legal impediment to long-term operation, which would have been one indicator of being used merely as a waystation. A key indicator of non-temporary construction is long-term operation, which occurred at the First and Third Application sites (more than a year at each site).<sup>42</sup> In addition, at the Second and Third Application sites, the Station antennas were mounted on existing, third-party-owned communications towers, which also indicates durable construction. For these reasons, we conclude that this factor does not support an enforcement action based on abuse of process.

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<sup>36</sup> Gary S. Smithwick, Esq., Letter Decision, 28 FCC Rcd 15494, 15497-98 (MB 2013) (*Branchport*) (internal citations omitted) (citing *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) (*Ashbacker*)).

<sup>37</sup> See, e.g., John C. Trent, Esq., Letter, Ref. No. 1800B3-MM, File No. BPFT-20110829AAU (MB Oct. 29, 2015) (rejecting an abuse of process argument where the translator filed a modification application because of interference to a co-channel station).

<sup>38</sup> *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and other Participants in the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, Memorandum Opinion and Order, 5 FCC Rcd 3902, 3902-3, para. 9 (1990).

<sup>39</sup> *WWOR-TV, Inc.*, Decision, 7 FCC Rcd 636, 638, para. 25 (1998).

<sup>40</sup> *Broadcast Towers*, 26 FCC Rcd at 7684, 7686, paras. 4, 15; *Matinee Media Corporation*, Letter, 33 FCC Rcd 6685, 6690 (MB 2018) (*Matinee*) ("Each case [finding temporary construction] relied on facts indicating that long-term operation using the constructed facility would be impossible or very unlikely, such as physical limitations on the durability of the equipment (e.g., an antenna mounted on a vehicle) and/or legal limitations on operating a broadcast facility at the relevant site (e.g., failure to obtain permission from the landowner). Just as significantly, in each case, the temporary facilities were dismantled soon after construction.").

<sup>41</sup> *Broadcast Towers*, Order, 26 FCC Rcd at 7684, paras 4-5.

<sup>42</sup> For example, in some instances, a licensing condition creates a presumption of temporary construction if the station goes silent during the first year of licensing. See Mr. Cliff Topp, Letter, Ref. No. 1800B3-VM, File No. BLSTA-20151119AZY (MB Mar. 15, 2016); Jeffrey L. Timmons, Esq., Letter, Ref. No. 1800B3-CEG, File No. BLH-20171226AAM (MB Oct. 17, 2018).

(2) Duration of operation. Related to temporary construction, this factor concerns the length of time that the licensee broadcast from each modification site. In addition to evidence of physical or legal impediments to long term operation, we have found that operation of less than a year at a site may be an indicator that the facilities were temporarily constructed.<sup>43</sup> Long periods of silence—whether authorized or not—can provide evidence that the interim location is merely a formality to satisfy the contour overlap requirement and thus evade the major change rule.<sup>44</sup> In *Broadcast Towers*, for example, the translator operator stipulated that, due to the brief operation at each roadside site, it had failed to provide dependable service and avoid unwarranted interruptions to service from the translators at issue, in violation of section 74.1263(a) of the rules.<sup>45</sup> After licensing, the translator operator broadcast “for two to five hours once every thirty days” at each site to avoid the requirement to seek Commission approval to be off air.<sup>46</sup> These factors pointed to a deliberate strategy to operate the interim site only to the extent necessary to satisfy the Commission’s minimum requirements before moving on to the next site. Here, as noted above, Edgewater operated the station at the First Application Site for more than a year. Although it operated the Station at the Second Application site for only one month, which is a red flag that the Second Application site could represent simply a waystation, Edgewater then broadcast from the Third Application site for more than a year, from August 2017 to the present. The prolonged periods of service at the First and Third Application sites indicate that these facilities were not temporarily constructed and that Edgewater in fact served the public from each location. Therefore, although it partially cuts both ways, this factor overall does not support an enforcement action based on abuse of process.

(3) Alternative purposes. As mentioned above, our policy against serial modifications is based on potential abuse of the Commission’s licensing procedures, i.e., intentional efforts to evade rule restrictions.<sup>47</sup> An application that is filed for a demonstrably legitimate purpose—e.g., that is the result of unexpected tower damage, or to resolve interference issues that are outside the translator licensee’s control—does not raise abuse of process concerns.<sup>48</sup> In this case, however, there is no evidence that Edgewater filed any Application due to interference or any other clearly legitimate reason, so this factor does not remove any of the Applications from further scrutiny regarding potential abuse of process.

(4) Pattern of translator relocations. The purpose of the overlap requirement of the major change rule is “[t]o prevent . . . FM translator stations from abandoning their present service areas.”<sup>49</sup> The Commission has long been concerned that its statutory goal of distributing radio service fairly and equitably may be undermined by the financial incentive for broadcasters to move their stations from rural areas into heavily populated urban areas.<sup>50</sup> In *Branchport*, we concluded that serial modifications do not implicate abuse of process concerns if they ultimately return the relevant station’s facilities to their original location.<sup>51</sup> In contrast, in *Broadcast Towers*, we found that abuse of process existed where the

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<sup>43</sup> See, e.g., *Matinee*, 33 FCC Rcd at 6690.

<sup>44</sup> See 47 CFR § 74.1233(a)(1).

<sup>45</sup> *Broadcast Towers*, 26 FCC Rcd at 7686, para. 15; see 47 CFR § 74.1263(a).

<sup>46</sup> *Broadcast Towers*, 26 FCC Rcd at 7684, para. 5.

<sup>47</sup> *Russell M. Perry*, Letter, 27 FCC Rcd 5955, 5957 (MB 2012).

<sup>48</sup> See *John C. Trent, Esq.*, Letter, Ref. No. 1800B3-MM, File No. BPFT-20110829AAU (MB Oct. 29, 2015).

<sup>49</sup> 1998 Biennial Regulatory Review, Notice of Proposed Rulemaking, 13 FCC Rcd 14859, 14872, para. 50 (1998).

<sup>50</sup> *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rulemaking, 24 FCC Rcd 5239, 5242-43, para. 5 (2009) (“We are therefore concerned that the current allotment priorities, as applied in the FM allocations process, skew our [47 U.S.C. § 307(b)] determinations toward communities near large cities, at the expense of new and needed service at smaller communities and in rural areas.”).

<sup>51</sup> *Branchport*, 28 FCC Rcd at 15498.

licensee migrated its translators straight north from the Florida Keys area into Miami.<sup>52</sup> Such straight-line “marches” are clearly indicative of an intention to circumvent the major change rule by moving the station to a distant location that would otherwise be considered a major change. This is particularly the case in the presence of a clear incentive for avoiding the major change rule—such as increasing signal coverage in a densely populated area. In this case, the Station modifications moved the station directly from the rural outskirts of Chicago into the center of the (presumably) more lucrative urban area. Therefore, this factor weighs in favor of a finding of abuse of process.

Based on the above, although we agree that the pattern of translator relocations in this case raises concerns regarding potential abuse of process, we conclude that the record evidence taken as a whole does not support a finding that Edgewater deliberately and abusively attempted to evade the major change rule. Critical to this conclusion are the facts that (1) none of the Station facilities were temporarily constructed, and (2) Edgewater operated the Station for more than a year at two of the relevant interim locations. We are not persuaded that such gradual changes are the functional equivalent of a single major change and therefore evidence of an attempt to evade the major change rule. Taking the totality of the circumstances into account, we conclude that the serial modifications at issue here do not warrant an enforcement action based on abuse of process. However, we will continue to monitor the actions of Edgewater and other licensees to ensure that they are not abusing our application processes to relocate facilities in a manner that is not permitted and inconsistent with the minor modification rules.

*Ashbacker considerations.* In addition to abuse of process issues, we consider whether Edgewater’s serial modifications raise *Ashbacker*-related procedural concerns.<sup>53</sup> In *Ashbacker*, the Supreme Court held that where two applications are mutually exclusive, the grant of one without considering the other violates the statutory right of the second applicant to comparative consideration.<sup>54</sup> We have held that this doctrine applies where prospective mutually exclusive applications would have been timely but for the window filing restriction on FM translator major changes.<sup>55</sup> It is well established that the Commission may promulgate procedural rules limiting the eligibility of parties to file mutually exclusive applications, including the first-come, first-served procedure governing minor change applications.<sup>56</sup> However, applicants subject to such procedures must be treated equally and fairly: “The *Ashbacker* decision . . . held that the Commission must use the same set of procedures to process the applications of all similarly situated persons who come before it seeking the same license.”<sup>57</sup> In sum, “[t]he ability to compete on an equal basis . . . is the essence of *Ashbacker*.”<sup>58</sup>

We conclude that grant of the Modification Application is consistent with the *Ashbacker* doctrine. Absent a waiver request, Edgewater is subject to the same procedural rules as any other potentially competing applicant, including the overlap requirement of section 74.1233(a)(1), and is therefore “competing on an equal basis” as required by *Ashbacker*. This situation is distinguishable from the *Mattoon* waiver situation, in which a proposed “long-distance, one-step move” could take “even a vigilant

<sup>52</sup> *Broadcast Towers*, 26 FCC Rcd at 7684 para. 2.

<sup>53</sup> *Ashbacker*, 326 U.S. at 332-33.

<sup>54</sup> *Ashbacker*, 326 U.S. at 332-33.

<sup>55</sup> See *See Robert D. Augsberg*, Letter Decision, 29 FCC Rcd 11287, 11289 (MB 2014) (*Augsberg*) (citing *Bachow v. FCC*, 237 F.3d 683, 689-90 (D.C. Cir. 2001) (holding that *Ashbacker* rights inheres in potential applicants whose right to file a timely competing application is frustrated by a Commission freeze order)).

<sup>56</sup> See *Ashbacker*, 326 U.S. at 333 n.9; *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212, 14217 (2006) (finding that in the community of license change context “the use of first come-first served procedures is consistent with the *Ashbacker* doctrine”).

<sup>57</sup> *Maxcell Telecom Plus, Inc. v. FCC*, 815 F.2d 1551, 1555 (D.C. Cir. 1987).

<sup>58</sup> *Committee for Effective Cellular Rules v. FCC*, 53 F.3d 1309, 1321 (D.C. Cir. 1995).

competitor” by surprise.<sup>59</sup> It is likewise distinguishable from the *Broadcast Towers* situation, in which a rapid series of modifications could have effectively precluded potential competitors from filing mutually exclusive applications. Because Edgewater operated the Station at the Third Application site for four months before filing the Modification Application, other potentially competing applicants had ample notice that a modification application affecting nearby areas might be filed and sufficient time to file mutually exclusive modification applications if desired. For these reasons, we conclude that grant of the Modification Application does not unfairly preclude potentially competing applications in violation of the *Ashbacker* doctrine.

**Conclusion/Actions.** For these reasons, IT IS ORDERED that the Informal Objection filed by Sound of Hope Radio NFP (Sound of Hope) on January 19, 2018, IS DENIED and the Modification Application, BPFT-20171229ABE, IS GRANTED.

Sincerely,

A handwritten signature in dark ink, appearing to read "Al Shuldiner", with a stylized flourish at the end.

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>59</sup> See *Augsberg*, 29 FCC Rcd at 11290.