

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

Accepted / Filed

JUL 24 2019

Federal Communications Commission  
Office of the Secretary

In re )  
)  
Edgewater Broadcasting, Inc. )  
Licensee of FM Translator ) File No. BPFT-20171229ABE  
W256CL )  
Park Forest, IL )

To: Office of the Secretary  
Attn: Chief, Media Bureau

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Edgewater Broadcasting, Inc. (“EBI”), by its attorneys, hereby submits its Opposition to the July 1, 2019 Petition for Reconsideration of the grant of the EBI modification application, BPFT-20171229ABE, with respect to W256CL, Park Forest, IL (the “Station”), filed by Sound of Hope Radio NFP (“SOH”). In support, EBI respectfully submits the following:

**Background**

The modification application at issue is the fourth in a series of legally countenanced modification applications filed by EBI that, taken together, relocate the Station’s facilities approximately 40 miles from its authorized location to downtown Chicago, Illinois. SOH objected to the application on the grounds that the series of minor changes circumvents the major change rule (Section 74.1233(a)) and thus should be disallowed as an abuse of process.<sup>1</sup>

On June 5, 2019, in a Letter Decision, DA 19-520, the Commission, by the Chief, Audio Division, denied SOH’s informal objection and granted EBI’s modification application.

---

<sup>1</sup> SOH submitted an informal objection on January 19, 2018.

The Letter Decision, in examining the abuse of process claim, pointed out the need to distinguish between modifications based on legitimate business or interference concerns and deliberate attempts to circumvent the Commission's rules and policies. *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). The Letter Decision listed four (4) factors to be examined in determining whether there has been an abuse of process. These factors are:

- (A) Temporary construction
- (B) Duration of operation
- (C) Alternative purposes
- (D) Pattern to translator relocations

The Commission examined the facts pursuant to the above-mentioned criterion and concluded as follows:

“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.”

The Commission also concluded that grant of the modification application did not violate the Ashbacker rights of SOH. *See Ashbacker Radio Corp v. FCC*, 326 U.S. 327 (1945). In this regard, the Commission found as follows:

“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*... 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.”

### Argument

The basic tenet of SOH’s argument is that there was an abuse of process by EBI. SOH mischaracterizes the Letter Decision as finding an abuse of process. This assertion ignores the following:

“...the record evidence taken as a whole does not support a finding that Edgewater deliberately and abusively attempted to evade the major change rule... Taking the totality of the circumstances into account, we conclude that the serial modifications at issue here to [sic] do not warrant an enforcement action based on abuse of process.”

The Commission correctly concluded, based on a reasoned analysis, that there was no abuse of process.

SOH argues that the Letter Decision violates the Administrative Procedure Act (the “APA”). SOH is correct that the APA requires that “the decisions of an administrative agency must contain the reasons and basis for its findings on the evidence and the law.” *See* 5 U.S.C. § 557. However, contrary to SOH’s assertions, the Letter Decision is not violative of the APA. The Letter Decision provides a reasoned determination. The Letter Decision specifically provides a reasoned analysis as to why there was no abuse of process by EBI. The Letter Decision also provides a reasoned determination as to why SOH’s *Ashbacker* rights were not violated. In this regard, the Letter Decision provides a detailed analysis of the facts with an explanation for the conclusions reached.

SOH argues that the minor modification application is equivalent to a major change application, and, thus, there was no adequate notice. This argument is premised on sophistry. The filing appeared in a Public Notice and SOH filed its informal objection.

SOH is disappointed that it is precluded from filing its own modification and, thus, filed the Informal Objection and the instant Petition in a futile effort to utilize the Commission’s processes to advance its own agenda. It should be noted that in SOH’s Informal Objection it stated:

"The public interest will be well served by denial of the EBI modification, enabling SOH to submit a modification to move closer to the Chinese community of Chicago."

This assertion is hardly the basis for winning a public interest argument. SOH makes no attempt to explain why its modification is of greater public interest value than the instant EBI modification application.

**Conclusion**

For the reasons articulated herein, the Petition for Reconsideration should be denied.

Respectfully submitted,



Aaron P. Shainis  
Counsel to  
Edgewater Broadcasting, Inc.

Shainis & Peltzman, Chartered  
1850 M Street NW  
Suite 240  
Washington, DC 20036  
(202) 293-0011

July 24, 2019

**CERTIFICATE OF SERVICE**

I, Malinda Markland, hereby certify that I have sent, this 24<sup>th</sup> day of July, 2019, copies of the foregoing OPPOSITION TO PETITION FOR RECONSIDERATION to the following:

James L. Winston, Esq.\*\*  
Rubin, Winston, Diercks, Harris & Cooke, LLC  
1201 Connecticut Avenue NW  
Suite 200  
Washington, DC 20036  
(jwinston@rwdhc.com)

Albert Shuldiner, Esq.\*  
Chief, Audio Division, Media Bureau  
Federal Communications Commission  
445 12th St SW  
Washington, DC 20554  
(albert.shuldiner@fcc.gov)

Michael Wagner, Esq.\*  
Federal Communications Commission  
445 12th St SW  
Washington, DC 20554  
(michael.wagner@fcc.gov)

James Bradshaw\*  
Federal Communications Commission  
445 12th St SW  
Washington, DC 20554  
(james.bradshaw@fcc.gov)

Robert Gates\*  
Federal Communications Commission  
445 12th St SW  
Washington, DC 20554  
(robert.gates@fcc.gov)

\*sent via email only

\*\*sent via email and regular mail

  
Malinda Markland