



Federal Communications Commission
Washington, D.C. 20554

September 12, 2019

In Reply Refer to:
1800B3-SS

Mountain Community Translators, LLC
Kona Coast Radio, LLC
c/o Victor A. Michael, Jr.
87 Jasper Lake Road
Loveland, CO 80537

Rocket Radio, Inc.
1TV.com, LLC
c/o John L. Low, Jr.
4501 Broadway
Miami, AZ 85539

Educational Media Foundation
c/o David D. Oxenford, Esq.
Wilkinson Barker Knauer, LLC
1800 M St., N.W., Suite 800N
Washington, DC 20036

In re: **K281DD, Cheyenne, WY**
Mountain Community Translators, LLC
Facility ID No. 143430

File No. BPFT-20190102AAH
File No. BALFT-20190312AAC

**Application for Minor Modification of
License**

Application for Assignment of License

Informal Objections

Dear Counsel:

We have before us the following contested applications filed by Mountain Community Translators, LLC (Mountain): (1) an application for a minor modification of the license (Modification Application) of its FM Translator Station K281DD, Cheyenne, Wyoming (Station),¹ against which Rocket Radio, Inc. (Rocket) filed an Informal Objection (Modification Objection) on February 4, 2019;²

¹ K281DD is on Channel 281 (104.1 MHz).

² Mountain filed an Opposition to the Modification Objection on February 21, 2019.

and (2) an application (Assignment Application) for consent to assign the license of the Station from Mountain to Educational Media Foundation (EMF), against which 1TV.com, Inc. (1TV)³ filed an Informal Objection (Assignment Objection) on April 9, 2019.⁴ For the reasons set forth below, we deny the Modification Objection and Assignment Objection, and we grant the Modification and Assignment Applications.

Background. Mountain filed the Modification Application on January 2, 2019, and the staff accepted it for filing that same day.⁵ The staff granted the Modification Application on January 29, 2019, but rescinded the grant on February 8, 2019.⁶ Mountain and EMF subsequently filed the Assignment Application on March 12, 2019; the staff accepted it for filing on March 13, 2019.⁷

Modification Application. In its Modification Objection, Rocket claims that Victor A. Michael, Jr., sole owner of Mountain and Kona Coast Radio, LLC (Kona Coast), failed to provide accurate information in several informal objections he filed in various proceedings involving Rocket's FM and AM stations located in Claypool, Globe, and Tuba City, Arizona.⁸ Rocket argues that in each of the proceedings, Mr. Michael misrepresented his business relationship with Rocket's president, John L. Low, Jr., either by stating that he "does not currently have, or ever had, any business relationship with [Mr.] Low"⁹ or by failing to disclose the existence of the business relationship altogether.¹⁰ Rocket argues that, due to this "blatant lack of candor, misrepresentation, and abuse of process," the Commission must review Mr. Michael's qualifications to be a licensee before taking action on any applications that he filed on behalf of Mountain and Kona Coast.¹¹

In its Opposition, Mountain argues that the Objection is procedurally deficient because Mountain's January 28, 2019, electronic filing of the Objection was "blank" and that its February 4, 2019, paper filing came after the Commission's January 29, 2019, grant of the Modification Application.¹² Mountain also states that Rocket fails to demonstrate a direct interest in the outcome of the Modification Application as Rocket is headquartered in Arizona, hundreds of miles from the translator at issue and does not own any broadcast facilities in the state of Wyoming.¹³ Mountain maintains that Rocket's only

³ John L. Low, Jr., is sole member of both Rocket and 1TV.

⁴ Mountain filed an Opposition to the Assignment Objection on April 22, 2019.

⁵ See *Broadcast Applications*, Public Notice, Report No. 29396 (rel. Jan. 4, 2019).

⁶ See *Broadcast Applications*, Public Notice, Report No. 29423 (rel. Feb 13, 2019).

⁷ See *Broadcast Applications*, Public Notice, Report No. 29444 (rel. Mar. 15, 2019).

⁸ See Objection at 2-3, 5. On June 26, 2017, Kona Coast filed Informal Objections to Rocket's application to upgrade KIKO-FM, Claypool, Arizona (File No. BPH-20170620ABH) and the KIKO-FM covering license application (File No. BLH-20181121AAM). Kona Coast also filed Informal Objections to Rocket's applications to modify K256DB, Globe, Arizona (File No. BPFT-20170710ABF) and K246CH, Tuba City, Arizona (File No. BPFT-20180625ABP) on June 8, 2018, and June 28, 2018, respectively.

⁹ Objection at 2, Attachments 1-2.

¹⁰ *Id.* at 5, Attachments A-Y (containing several emails from 2006-2007 and one email from July 2018 to show that Mr. Michael did, in fact, have a business relationship with Mr. Low).

¹¹ *Id.* at 5.

¹² Opposition at 3. We note that the staff rescinded grant of the Modification Application on February 8, 2019. See *Broadcast Applications*, Public Notice, Report No. 29423 (rel. Feb. 13, 2019).

¹³ *Id.* at 1.

basis for its filing is that Mr. Michael allegedly made false statements to the Commission in other proceedings unrelated to the Modification Application at issue.¹⁴ Mountain states that there was never a business relationship between Mr. Michael and Mr. Low and that Rocket fails to provide any evidence, such as a signed business agreement, to support its allegation.¹⁵ According to Mountain, the emails attached to Rocket's Objection do not support its assertion that the two men had a business relationship or engaged in any business negotiations.¹⁶

Additionally, Mountain argues that Rocket's Modification Objection makes no sense and does not even correctly state its clear objection to the Modification Application and should be summarily dismissed.¹⁷ Finally, Mountain states that, at its core, Rocket is asserting a breach of contract claim that should be resolved in the courts.¹⁸

Discussion. An informal objection may be filed at any time prior to action on the subject application,¹⁹ and must, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 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.²⁰ When reviewing these filings, the Commission is not required to resolve, through a hearing, issues which the Commission finds are neither "substantial" nor "material,"²¹ regardless of whether the facts involved are in dispute.²²

Modification Application. Initially, because the staff rescinded grant of the Modification Application, we find that the Modification Objection is not procedurally defective.²³ Substantively, Rocket's Objection does not contest the merits of the Modification Application. Rather, Rocket asserts that Mr. Michael attempted to use FCC proceedings to attack a business associate (*i.e.*, Mr. Low),²⁴ and attempted to deceive the Commission by not disclosing the existence of a business relationship with Mr.

¹⁴ *Id.* at 2. Mountain states that Rocket repeats the same allegations of a past and existing contractual business relationship between Mr. Low and Mr. Michael in at least four other proceedings, and it appears that Rocket intends to obstruct any and all Michael filings, which constitutes an abuse of Commission processes. *Id.* at 2, 6-7, 8.

¹⁵ *See id.* at 4, 5.

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 6.

¹⁹ 47 CFR § 73.3587.

²⁰ *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) (informal objections, like petitions to deny, must also contain adequate and specific factual allegations sufficient to warrant the relief requested).

²¹ A "substantial" question of fact is one in which "the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for." *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 397 (D.C. Cir. 1985). A "material" fact is one in which the Commission finds relevant in making its public interest determination. *Stone v. FCC*, 466 F.2d 316, 323 n.18 (D.C. Cir. 1972), citing H.R. Rep. No. 1800, 86th Cong., 2d Sess. 12 (1960).

²² *Stone v. FCC*, 466 F.2d at 323.

²³ *See Robert J. Kern, John Joseph McVeigh, Esq., and John Wells King, Esq., Letter Order*, 23 FCC Rcd 14097, 14098 (MB 2008) (objection filed days after grant of an application considered when grant of the application rescinded).

²⁴ Objection at 2.

Low.²⁵ We find that whether these men have some sort of business relationship such that Mr. Michael should have disclosed it in Commission filings opposing Mr. Low's applications is neither substantial nor material and that further inquiry is not warranted prior to rendering a determination on the Modification Application. Mr. Low's claim that Mr. Michael misrepresented facts to the Commission²⁶ or lacked candor in his objections to other Low applications therefore requires no further discussion. To the extent these allegations arise from a contract dispute between the parties, we defer those claims to the appropriate court for resolution as it is neither within the jurisdiction nor the expertise of this agency to address whether any breach of contract has occurred.²⁷

Assignment Application. In its Assignment Objection, 1TV reiterates, albeit in abbreviated form, the arguments it made under the auspices of Rocket in the Modification Objection.²⁸

In its Assignment Opposition, Mountain argues that the Assignment Objection is procedurally deficient because 1TV's Assignment Objection lacks signatures and the required Certificate of Service.²⁹ Mountain also argues that 1TV's only basis for its filing is that Mr. Michael allegedly made false statements to the Commission in other proceedings unrelated to the Assignment Application.³⁰ Finally, Mountain argues that 1TV's Assignment Objection makes no sense and does not even correctly state its clear objection to the Assignment Application and should be summarily dismissed.³¹

For similar reasons, we also find that the Assignment Objection fails on its merits and that further consideration of the Assignment Objection is unwarranted.

Conclusion/Actions. We have evaluated the Applications, and we find that they comport with all pertinent statutory and regulatory requirements and that Mountain is qualified to assign, and EMF is qualified to own the Station, and we further find that grant of the Applications should further the public interest, convenience, and necessity.

²⁵ *Id.* at 2-3.

²⁶ A misrepresentation is a false statement of fact or false certification made with intent to deceive the Commission. *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129 (1983); *San Francisco Unified Sch. Dist.*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, nn.40-41 (2004) (subsequent history omitted). Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification) and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive. *Leflore Broad. Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *American Int'l Dev., Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816, n.39 (1981) (subsequent history omitted). In a case where all of the allegations are a matter of public record on file with the Commission, there is no logical basis to infer a motive to deceive unless there is other probative evidence of intent to deceive. *KAXT, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 9638, 9646, para. 16 and n.69 (2017).

²⁷ *Milford Broadcasting Co.*, Hearing Designation Order, 8 FCC Rcd 680, para. 2 (MB 1993) (private disputes are beyond the Commission's jurisdiction and must be resolved in a local court of competent jurisdiction); *Centel Corp., et al.*, Memorandum Opinion and Order, 8 FCC Rcd 1829, 1831, para. 10 (CCB 1993) (the Commission is not the proper forum for the resolution of private contractual disputes).

²⁸ Assignment Objection at 2-4.

²⁹ Assignment Opposition at 2.

³⁰ *Id.* at 1. Mountain states that the 1TV Assignment Objection constitutes an abuse of Commission processes. *Id.* at 2, 3.

³¹ *Id.* at 2.

Accordingly, for the reasons set forth above, IT IS ORDERED, that the Informal Objection filed by Rocket Radio, Inc., on February 4, 2019, IS DENIED.

IT IS FURTHER ORDERED, that the Informal Objection filed by 1TV.com, Inc., on April 9, 2019, IS DENIED.

IT IS FURTHER ORDERED, that the application for the minor modification of the license of K281DD, Cheyenne, Wyoming (File No. BPFT-20190102AAH), filed on January 2, 2019, by Mountain Community Translators, LLC, IS GRANTED.

IT IS FURTHER ORDERED, that the application for consent to assign the license of K281DD, Cheyenne, Wyoming (File No. BALFT-20190312AAC), filed on March 12, 2019, by Mountain Community Translators, LLC, IS GRANTED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Albert Shuldiner" with a stylized flourish extending to the right.

Albert Shuldiner
Chief, Audio Division
Media Bureau