



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to: 1800B3-BSH/LAS

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In re: **KTPB(FM), Kilgore, TX**
Facility ID No. 34602
File No. BALED-20060518ACO
Application for Assignment of License

Informal Objections

Dear Counsel and Objectors¹:

We have before us the above-captioned application ("Assignment Application") proposing to assign the license of noncommercial educational ("NCE") station KTPB(FM), Kilgore, Texas, from Kilgore Junior College ("KJC") to Educational Media Foundation ("EMF"). KJC is a two-year, State of Texas public community college. KJC states that economic factors, including a declining tax base and "dire budgetary trends and constraints" make its sale of KTPB(FM) necessary.² A significant number of KTPB(FM) listeners have filed objections³ to the Assignment Application, expressing strong appreciation for the current programming on the station and asking the Commission to bar the proposed sale to EMF. In addition, several objectors request that the Commission direct KJC to find a different buyer. For the reasons stated below, we deny the informal objections and grant the Assignment Application. However, in response to the substantial concerns expressed by KTPB(FM) listeners, we will permit interested parties to file applications for a new station which could fill any programming void left by the sale of the station to EMF and change in format that EMF may make.

While the Commission recognizes that KTPB(FM)'s classical music format has attracted a devoted listenership, it is well-settled policy that the Commission does not regulate programming formats, nor does it take potential format changes into consideration in reviewing license assignment applications. In 1976, the Commission issued a *Policy Statement* in which it concluded that review of program formats was not required by the Communications Act of 1934, as amended (the "Act"), would not benefit the public, and would deter innovation, as well as impose substantial administrative burdens on the

¹ The Commission received objections to the above-captioned assignment application from 263 informal objectors. Each of these individuals will receive a copy of this letter.

² KJC "Response to Informal Objections," filed July 28, 2006, Attachment A at 1.

³ These listener letters will be treated as informal objections in accordance with Section 73.3587 of the Commission's Rules.

Commission.⁴ The Supreme Court of the United States has upheld this policy and the Commission's determination that "the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . ." and that a change in programming is not a material factor that should be considered by the Commission in ruling on applications for license assignment or transfer.⁵

We further reject the suggestion by several objectors that we require KJC to sell the station to an alternate buyer. Section 310(d) of the Act specifically precludes the Commission from considering any entity other than the buyer proposed in the application before us.⁶ Based on the above, we find that the objectors have not raised a substantial and material question of fact warranting further inquiry. We further find that Educational Media Foundation is qualified as the assignee and that grant of the Assignment Application is consistent with the public interest, convenience and necessity.

Nevertheless, it is evident that strong interest exists to retain an outlet for KJC's programming. In view of this concern, we find that the public interest is served by waiving Section 73.870(b) to permit KTPB(FM) listeners to file FCC Form 318 applications for a new Low Power FM ("LPMF") station in Kilgore, Texas, within 90 days of the date of this letter.⁷ The Audio Division has determined that a rule-compliant LPMF station could be located at 32° 22' 44" North Latitude and 95° 01' 11" West Longitude on Channel 246. Any such LPMF application must meet all technical standards,⁸ interference protection criteria,⁹ ownership,¹⁰ and licensing requirements¹¹ established in the Commission's Rules. In the event that one (or more than one) application is timely filed, pursuant to Section 309(b) of the Act¹² and the *Ashbacker* doctrine,¹³ the staff will provide an opportunity for any other prospective applicants to file

⁴ See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC2d 858, 865-66 (1976), *recon. denied*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev'd sub nom.*, *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev'd*, 450 U.S. 582 (1981).

⁵ *FCC v. WNCN Listener's Guild*, 450 U.S. 582, 585 (1981).

⁶ 47 U.S.C. § 310(d) (when acting on assignment or transfer applications, the Commission may not consider whether the public interest, convenience and necessity might be served by assignment or transfer of the license to an entity other than the proposed assignee or transferee). Where permission is sought to assign a valid permit, the Commission's sole inquiry with regard to a proposed buyer is whether the assignee/transferee possesses the requisite qualifications to be a Commission licensee. See, e.g., *MG-TV Broadcasting Co. v. FCC*, 408 F.2d 1257, 1264 (D.C. Cir. 1968).

⁷ 47 C.F.R. § 73.870(b). Staff analysis has established that a rule-compliant minimum Class A NCE FM facility cannot be authorized in the Kilgore, Texas area.

⁸ 47 C.F.R. § § 73.807, 73.808, 73.811, 73.812, 73.813, 73.816, 73.840, 73.845.

⁹ 47 C.F.R. §§ 73.809, 73.810, 73.825, 73.827.

¹⁰ 47 C.F.R. §§ 73.855, 73.858, 73.860.

¹¹ 47 C.F.R. §§ 73.853.

¹² 47 U.S.C. § 309(b).

¹³ *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) ("*Ashbacker*") (Under *Ashbacker*, the Commission may not grant one application without considering mutually exclusive proposals).

competing applications that also meet the requirements set forth above. To the extent mutually exclusive applications are timely filed, the licensing action for the new Kilgore, Texas, LPFM station will be completed in accordance with our LPFM point system selection procedures, as specified in Section 73.872 of the Commission's Rules.¹⁴

Accordingly, IT IS ORDERED, that the informal objections filed by the informal objectors ARE DENIED, and that the application to assign the license of station KTPB(FM), Kilgore, Texas (File No. BALED-20060518ACO) from Kilgore Junior College to Educational Media Foundation IS GRANTED. Within 90 days of the date of this letter, any current KTPB(FM) listener may file an FCC Form 318 application for a new LPFM station in Kilgore, Texas, which meets all legal and technical requirements established in the Commission's Rules.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁴ 47 C.F.R. § 73.872.