



Federal Communications Commission
Washington, D.C. 20554

May 3, 2010

DA 10-764

In Reply Refer To:

1800B3-SS

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Alan Bishop, President
ROI Broadcasting, Inc.
3568 Lenox Road
Geneva, NY 14456

Saga Communications of New England, LLC
c/o Gary S. Smithwick, Esq.
Smithwick & Belendiuk, PC
5028 Wisconsin Avenue, N.W., Suite 301
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Re: **FM Translator Station W277BS,
Ithaca, NY**

Facility ID No. 24216

File No. BPFT-20100128AHD

Minor Modification Application

Informal Objection

Dear Counsel and Mr. Bishop:

We have before us a January 29, 2010, Informal Objection (“Objection”) filed by ROI Broadcasting, Inc. (“ROI”)¹ to the grant of Saga Communications of New England, LLC’s captioned minor modification application (the “Application”) for FM translator station W277BS, Ithaca, New York (the “Station”).² For the reasons set forth below, when treated as a Petition for Reconsideration, we deny the Objection.

Background. Saga is licensee of five full-power stations and four FM translator stations serving the Ithaca, New York, Arbitron radio market (“Ithaca Metro”).³ On January 28, 2010, Saga filed the

¹ ROI is the licensee of WFIZ(FM) (formerly WFLR) at Odessa, New York, in the Ithaca, New York, Arbitron radio market.

² Saga filed an Opposition on February 1, 2010, to which ROI replied on February 2, 2010.

³ Eleven radio stations serve the Ithaca Metro. Saga is licensee of: WHCU(AM), WNYX(AM), WYXL(FM), WQNY(FM), Ithaca, and WHII(FM), Courtland, New York; and FM translator stations W277BS, W240CB, W254BF, and W262AD, Ithaca.

Application for a minor change to the Station. The staff granted the Application on January 29, 2010.⁴ ROI filed the Objection that same day, arguing that grant of the Application would allow Saga to circumvent the Commission's local radio ownership rules.⁵ In addition, ROI argues that the Commission should refrain from action on any Saga applications until a false certification claim made against Saga in another proceeding is resolved.⁶ In its Opposition, Saga argues that ROI's Objection is untimely, without merit, and must be dismissed. In Reply, ROI argues that the Objection is timely, pursuant to Sections 73.3587, 1.102(b)(1) and 1.4 of the Commission's Rules (the "Rules").⁷

Discussion. Procedural Issue. As noted above, the Application was granted by the staff one day after it was filed and on the same day that the Objection was filed. Thus, the staff was unaware of ROI's Objection when it granted the Application. Because the staff did not consider the arguments made in the Objection prior to granting the Application, we will treat ROI's Objection as a Petition for Reconsideration ("Petition") and consider those arguments herein.⁸

Substantive Issues. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁹ A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.¹⁰ ROI has failed to demonstrate a material error or omission in the staff's underlying action, and thus, reconsideration is not warranted.

Local Radio Ownership Limits. Currently, Saga is licensed in the Ithaca Metro to operate three FM and two AM full-power radio stations. This is the maximum number of stations that Saga is permitted to own in this 11-station market under the Commission's local radio ownership rules.¹¹ ROI argues that the Commission should rescind grant of the Application because Saga is using the Station as a "main signal" to circumvent the local radio ownership rules.¹² Specifically, ROI argues that Saga is using its two additional digital ("HD") programming streams in combination with its "high-power" FM translators to effectively create two new FM stations in the Ithaca Metro and, thereby, circumvent the rules.¹³ ROI adds that Saga is using its HD-2 and HD-3 services as quasi "studio-transmitter links" to

⁴ See *Broadcast Actions*, Public Notice, Report No. 47165 (rel. Feb. 3, 2010).

⁵ See 47 C.F.R. § 73.3555.

⁶ See n.18, *infra*.

⁷ 47 C.F.R. §§ 73.3587, 1.102(b)(1), and 1.4.

⁸ See, e.g., *Richard F. Swift, Esq., and Alan Stuart Graf, Esq.*, Letter, 24 FCC Rcd 12426, 12427 (MB 2009).

⁹ See 47 C.F.R. § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964) ("*WWIZ*"), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

¹⁰ See *WWIZ*, 37 FCC at 686.

¹¹ See 47 C.F.R. § 73.3555(a)(1)(iv).

¹² Petition at 2.

¹³ Petition at 2-3. We note that an affiliate of ROI, The Finger Lakes Radio Group, Inc., filed a January 6, 2010, supplement to an October 14, 2008, Informal Objection with similar arguments to another Saga Ithaca FM translator station, W240CB, as well as making a false certification claim against Saga.

feed programming to its FM translators creating an “over-the-local-ownership-limit situation.”¹⁴ We disagree. The Commission clearly stated in its 2007 *Digital Audio Broadcasting Second Report and Order*, that FM stations may use their additional digital bit rate capacity as it wishes. A licensee owning the maximum permissible number of stations in a particular market may not acquire additional broadcast streams on non-commonly-owned stations through time brokering agreements.¹⁵ ROI does not allege that Saga has violated this restriction. In contrast, there is no prohibition on FM translator stations re-broadcasting the station’s FM2 or FM3 digital programming stream. Accordingly, we find ROI’s argument meritless.

False Certification Issue. In an October 14, 2008, Informal Objection in another proceeding, an ROI affiliate argues that Saga Vice President Susan Johnston made “willful and false certifications” regarding the filing of a license application for FM translator station W240CB (formerly W238AA). Here, ROI argues that the Commission “should not act on any further FCC applications signed by [Saga Vice-President] Susan Johnson, including this W277BS application.”¹⁶ We disagree. There is no automatic presumption that alleged misconduct at one station renders a licensee unqualified to operate other stations.¹⁷ In any event, the Media Bureau recently found that Saga’s actions in connection with its efforts to modify the facilities of FM translator station W240CB did not put in issue Saga’s qualifications to remain a licensee.¹⁸

Conclusion/Actions. Based on the record before us, we conclude that our grant of the Application serves the public interest, convenience and necessity.

Accordingly, IT IS ORDERED that the Informal Objection filed by ROI Broadcasting, Inc., to the grant of Saga Communications of New England, LLC’s, minor change application (File No. BPFT-20100128AHD), IS DISMISSED, and when treated as a Petition for Reconsideration, IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Saga Communications of New England, LLC

¹⁴ *Id.* at 4.

¹⁵ See *Digital Audio Broadcasting Systems*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10360-61 (2007).

¹⁶ Petition at 5.

¹⁷ See *Character Qualifications*, Report, Order, and Policy Statement, 1102 FCC 2d 1179, 1224 (1985), *recon. denied*, 1 FCC Rcd 421 (1986) (“*Character Policy Statement*”).

¹⁸ See *Saga Communications of New England, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 10-702 (rel. Apr. 27, 2010).