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In re: **WBQI(FM), Bar Harbor, Maine**
Facility ID No. 40925
File No. BALH – 20120905AAZ

**Application for Assignment of Station
Informal Objection**

Dear Counsel and Petitioner:

We have before us the referenced application (the “Application”) seeking Commission approval for the proposed assignment of the license for station WBQI(FM), Bar Harbor, Maine, from WBIN Media Co., Inc. (“WBIN Media”) to Blueberry Broadcasting, LLC (“Blueberry”). Also before us is an informal objection filed October 16, 2012, by James McSorely (“McSorely”), President of Yamster Communications, LLC (“Objection”).¹ For the reasons set forth below, we deny the Objection and grant the Application.

Background. On September 4, 2012, Blueberry entered into a purchase agreement to acquire station WBQI(FM), Bar Harbor, Maine from WBIN Media and executed a local marketing agreement with WBIN Media.² WBIN Media and Blueberry then filed the Application on September 5, 2012.

¹ Letter from James McSorley to Media Bureau, Federal Communications Commission (October 16, 2012). We treat McSorely’s letter as an informal objection pursuant to 47 C.F.R. §73.3587.

² Application, Exhibit 5.

Blueberry is the licensee of the following stations broadcasting in the Bar Harbor, Maine geographic area: WKSQ(FM), Ellsworth, Maine; WLKE(FM), Bar Harbor, Maine; WTUX(FM), Gouldsboro, Maine; and WVOM(FM), Howland, Maine.³ Blueberry submits with the Application a multiple ownership study purporting to demonstrate that the transaction would comply with the Commission's local radio ownership rule.⁴ Blueberry states that with the addition of WBQI(FM), using contour overlap analysis,⁵ it would hold licenses for FM radio stations in two markets, each comprised of 17 stations.⁶ In Market #1 Blueberry states that it would own station licenses for WKSQ(FM), WLKE(FM), WVOM(FM), and WBQI(FM).⁷ In Market #2, Blueberry states that it would own station licenses for WKSQ(FM), WLKE(FM), WTUX(FM), and WBQI(FM).⁸ Thus, in each market Blueberry would operate four FM radio stations, which it claims complies with the local radio ownership rule.

In his objection, McSorely contends that Blueberry's acquisition of WBQI(FM) would give Blueberry an unfair competitive position and decrease diverse views and programming in the local radio market. Specifically, McSorely contends that the assignment of WBQI(FM) would give Blueberry four signals in the Ellsworth/Bar Harbor region, that the assignment of WBQI(FM) would not offer any new diverse broadcast options as Blueberry has previously simulcast and "trimulcast" programming from its Bangor properties, and that Blueberry owns the tower/transmitter sites for two competing radio stations in neighboring regions and could directly influence the operations of local competitors.⁹

Discussion. Pursuant to Section 309(e) of the Act, informal objections, like petitions to deny must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be prima facie inconsistent with the public interest.¹⁰ If the Commission determines that the objection satisfies this threshold determination, it proceeds to determine whether, on the basis of the application, the pleadings filed, or other matters which the Commission may official notice, the objection presents a "substantial and material question of fact" to warrant further inquiry.¹¹ If no such question is raised and the Commission otherwise makes the required public interest determination, it will deny the informal objection and grant the application.

With respect to McSorely's claim that this transaction would give Blueberry an unfair competitive position because it would give Blueberry four stations in the Ellsworth/Bar Harbor region, we have evaluated the proposed transaction, applying the Commission's interim contour-overlap methodology,¹² to determine if it complies with the local radio ownership rule.¹³ Our analysis confirms

³ Application, Exhibit 17 at ¶2.

⁴ 47 C.F.R. § 73.3555(a)(1).

⁵ Application, Exhibit 17 at ¶1. Blueberry indicated that a contour analysis is required here because only one of the stations, WKSQ(FM), Ellsworth, Maine, is in an Arbitron market.

⁶ *Id.* at ¶4-5.

⁷ *Id.* at ¶2.

⁸ *Id.*

⁹ Objection at 1.

¹⁰ 47 U.S.C. § 309(e); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987) ("*Gencom*").

¹¹ *Gencom*, 832 F.2d at 181.

¹² Under the contour-overlap methodology, the relevant radio market is defined by the area encompassed by the mutually overlapping principal community contours of the stations proposed to be commonly owned. See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd 13620, 13729-13730 (2003).

that the proposed transaction forms two separate radio markets and complies with the local radio ownership limits in both. In a local radio market with 15-29 stations, a single owner may own up to six stations, no more than four of which are in the same service (AM or FM).¹⁴ In both Market #1 and Market #2, Blueberry would own four FM stations in a 17-station market.¹⁵ Accordingly, the proposed assignment complies with the local radio ownership rule.

Additionally, McSorely has provided no support for his other allegations that this transaction would limit diversity and inhibit competition in the local radio market. Even were he to have documented these claims, however, they fail to raise a substantial and material fact calling for further inquiry here. That Blueberry has allegedly simulcast and “trimulcast” programming from Bangor, Maine does not show that Blueberry, or competing local stations, will not provide diverse views and programming in the Ellsworth/Bar Harbor region. Furthermore, that Blueberry merely owns tower/transmitter sites for two radio stations, stations owned by other entities that broadcast outside the Ellsworth/Bar Harbor region, implicates no Commission rule.¹⁶ In our character analysis of alleged anticompetitive practices, we only recognize an adjudicated violation of law and there has been no such adjudication here.¹⁷

Conclusions/Actions. Based on the evidence presented in the record, we find that McSorely has not raised a substantial and material question of fact warranting further inquiry. Additionally, we have examined the Application and find that, in addition to the local radio ownership rule, it otherwise complies with all applicable statutory and regulatory requirements, and we find that grant of the Application would further the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, That the Objection to the application to assign the license for station WBQI(FM), Bar Harbor, Maine from WBIN Media Co., Inc. to Blueberry Broadcasting, LLC IS DENIED.

IT IS FURTHER ORDERED, That the application to assign the license of station WBQI(FM), Bar Harbor, Maine from WBIN Media Co., Inc. to Blueberry Broadcasting, LLC IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

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¹³ 47 C.F.R. § 73.3555(a)(1).

¹⁴ 47 C.F.R. § 73.3555(a)(1)(iii).

¹⁵ Market #1: WKSQ(FM), WLKE(FM), WVOM(FM), and WBQI(FM).

Market #2: WKSQ(FM), WLKE(FM), WTUX(FM), and WBQI(FM).

¹⁶ McSorely does not allege that Section 73.239 of the Commission’s rules is at issue here. See 47 C.F.R § 73.239 (licensee prohibited from refusing to make available to other FM licensees a site it controls that is “peculiarly suitable” for FM broadcasting and so doing would unduly restrict competition among FM broadcast stations).

¹⁷ *Policy Regarding Character Qualifications In Broadcast Licensing*, 102 FCC2d 1179, 1200-1203 (1986), *modified*, 1 FCC Rcd 421 (1986), 5 FCC Rcd 3252 (1991), 6 FCC Rcd 3448 (1991), 7 FCC Rcd 6564 (1992).