



Federal Communications Commission
Washington, D.C. 20554

March 29, 2021

DA 21-366
In Reply Refer to:
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In re: Radio Training Network

W236CA, Durham, NC
Facility ID No. 87686
File No. 0000078295

W237BZ, Clayton, NC
Facility ID No. 157001
File No. 0000078295

**Application for Renewal of License
Informal Objection**

Dear Counsel and Objecter:

We have before us the referenced application for renewal of license (Application) filed by Radio Training Network, Inc. (RTN) for FM translator stations W236CA, Durham, North Carolina, and W237BZ, Clayton, North Carolina (Translators). Also, before us is an Informal Objection (Objection) to the Application filed by Triangle Access Broadcasting, Inc. (Triangle) and related responsive pleadings,¹ and RTN's "Response to Show Cause and Petition for Reconsideration" (Response)² filed in response to a staff letter directing RTN to change its exempted status in the Application and either pay regulatory fees required for an FM translator or show cause why the fee is inapplicable, waived, or deferred.³ For the

¹ Triangle filed the Objection on October 31, 2019 (Pleading No. 0000087759). RTN filed an Opposition to Triangle's Objection on November 12, 2019 (Pleading No. 0000089022) (Opposition). Triangle filed a Reply to the Opposition on November 18, 2019 (Pleading No. 0000090259) (Reply).

² RTN filed the Petition on May 7, 2020 (Pleading No. 0000113394).

³ Letter from Albert Shuldiner, Chief, Audio Division, FCC Media Bureau to Steven L. White, Director, Triangle Access Broadcasting and A. Wray Fitch III, Esq., Gammon & Grange, P.C. (Apr. 8, 2020) (*Staff Letter*).

reasons set forth below, we deny the Objection, rescind the *Staff Letter*, dismiss the Petition, and grant the Application.⁴

Background. The Translators are both licensed to rebroadcast the programming of the digital WDCG-HD2 channel of WDCG(FM), licensed to Capstar TX, LLC (Capstar). RTN timely filed the Application on July 18, 2019.

In the Objection, Triangle argues that the Translators operate as commercial stations and RTN has failed to pay required regulatory fees.⁵ Triangle notes that the Translators rebroadcast the commercial programming of a commercial station, which is licensed to Capstar, itself a commercial entity.⁶ Triangle also argues that broadcasting commercial programming is inconsistent with RTN's charitable purpose, and that Capstar may exercise control over the Translators and could have an attributable ownership interest in RTN.⁷ Finally, Triangle notes that other nonprofit entities, such as Positive Alternative Radio (PAR), pay regulatory fees for commercial translators.⁸

In its Opposition, RTN counters that it is a qualified nonprofit, tax-exempt entity under section 501(c)(3) of the Internal Revenue Service (IRS) Code and is therefore exempt from paying regulatory fees on all of its licensed stations under section 1.1162(c) of the Rules.⁹ RTN notes that the Commission's nonprofit exemption applies to a licensee based solely on its status as a nonprofit entity.¹⁰ RTN furthers states that the State of Georgia recognizes its status as a nonprofit entity, and that it is permitted to generate unrelated business income as long as it primarily engages in activities that accomplish one or more tax-exempt purposes.¹¹ RTN states that its status as a nonprofit entity—not the commercial nature of the programming it rebroadcasts—is the determinative factor, for assessing regulatory fees.¹² Finally, RTN argues that Triangle did not provide evidence that PAR attempted to assert a nonprofit exemption from regulatory fees, but notes that, contrary to Triangle's assertion, PAR has in fact claimed an exemption from regulatory fees on a recent application.¹³ RTN supports its Opposition with a letter from the IRS granting RTN tax-exempt status and a Certificate of Good Standing from the State of Georgia stating that RTN is a nonprofit corporation.¹⁴

⁴ Although RTN's Response is partially styled as a Petition for Reconsideration, the *Staff Letter* was an interlocutory action that did not grant, dismiss or deny the Application. Section 1.106(a)(1) of the Commission's rules (Rules) prohibits the filing of petitions for reconsideration of interlocutory actions. 47 CFR § 1.106(a)(1). We will thus consider the filing entirely as a response to the *Staff Letter* and dismiss it as a petition for reconsideration.

⁵ Objection at 1-2.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 3.

⁹ Opposition at 1 (citing 47 CFR § 1.1162(c)).

¹⁰ Opposition at 2.

¹¹ *Id.* at 2-3.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.* at Exhibits A and B.

In its Reply, Triangle argues that regardless of the nonprofit exemption in section 1.1162(c) of the Rules, section 1.1162(e) also requires broadcasters to adhere to section 73.503, which provides that a noncommercial translator will only be used for the advancement of an educational program.¹⁵ Triangle further argues that the Commission should examine agreements between Capstar and RTN to determine whether Capstar has an attributable interest in the Translators.¹⁶ Triangle also argues that PAR's recent assertion of the nonprofit exemption is inapposite because that translator station is rebroadcasting noncommercial programming.¹⁷ Finally, Triangle argues that the exhibits RTN provided in the Opposition are from 2011 and 1989 and thus outdated, and that it is possible that RTN is no longer a nonprofit entity because RTN's operation of a commercial translator deviates from the exclusively religious, nonprofit purposes originally stated in those documents.¹⁸

In the *Staff Letter*, the Audio Division determined, even though RTN is a nonprofit entity under sections 73.503 and section 74.1201(c) of the Rules, the Translators were commercial translators, and thus RTN was required to pay regulatory fees. The *Staff Letter* directed RTN to amend the Application to reflect that it was not exempt from paying regulatory fees and pay its outstanding regulatory fees for FY 2019, or demonstrate why the regulatory fees were inapplicable or should otherwise be waived or deferred.

RTN filed the required amendment to the Application on April 24, 2020, in which it noted that the Commission's filing system, LMS, does not allow it to modify the Application to indicate that it is not exempt from regulatory fees, and requested that the Bureau manually modify the Application. RTN also noted that it had paid the required regulatory fees to avoid dismissal of the Application.

In its Petition, RTN reiterates that RTN is a qualified nonprofit, tax-exempt entity under section 501(c)(3) of the IRS Code and is therefore exempt from paying regulatory fees on all of its licensed stations under section 1.1162(c), regardless of the nature of the Translators' programming.¹⁹ RTN further argues that it did not address the commercial nature of the Translators' primary station, WDCG, because the programming and the nature of the primary station are irrelevant in determining whether a translator is exempt from regulatory fees where the licensee of the translator is a nonprofit entity.²⁰ RTN avers that the *Staff Letter* conflicts with the Commission's 2019 Order assessing regulatory fees, which notes that nonprofit entities are exempt from paying regulatory fees and identifies noncommercial radio stations as a separate category of exempt entities.²¹ Thus, RTN argues the Bureau erred in the *Staff Letter* when it found that the nonprofit exemption applies only to nonprofit or noncommercial activity, and argues that

¹⁵ Reply at 1 (citing 47 CFR § 73.503).

¹⁶ Reply at 2 (citing Note 2 to 47 CFR § 73.5555).

¹⁷ Reply at 3.

¹⁸ *Id.* at 3-4.

¹⁹ Petition at 1-2 (citing 47 CFR § 1.1162(c)).

²⁰ Petition at 2.

²¹ *Id.* at 3 (citing *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket No 19-105, Report and Order and Further Notice of Proposed Rulemaking, 34 RCC Rcd 8189, 8190, para. 2 (2019) ("Regulatory fees also cover the costs incurred in regulating entities that are statutorily exempt from paying regulatory fees (e.g., governmental and *nonprofit entities*, amateur radio operators, and noncommercial radio and television stations) and entities whose regulatory fee are waived." (emphasis added))).

the nonprofit exemption applies to a licensee based solely on its status as a nonprofit entity, regardless of the commercial nature of the station's programming.²²

Discussion. Under section 309(k) of the Communications Act of 1934, as amended (Act), the Commission shall grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.²³ Under section 309(k) of the Act, we will deny an application for renewal of a broadcast station license only if we find, after notice and an opportunity for a hearing, that the station has failed to serve the public interest, convenience and necessity, committed a serious violation of the Act or rules, or committed a series of violations that constitute a pattern of abuse.²⁴

Informal objections to license renewal applications, 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 section 309(k) of the Act.²⁵ Informal objections must also contain adequate and specific factual allegations sufficient to warrant the relief requested.²⁶ For the reasons set forth below, we find that Triangle has not met this burden.

Regulatory Fees. Section 9 of the Act, and section 1.1153 of the Rules require that the Commission assess and collect regulatory fees to recover the costs of certain regulatory activities.²⁷ Section 159(e)(1)(A) of the Act and section 1.1162(c) of the Rules exempt nonprofit entities from the requirement to pay regulatory fees.²⁸ The nonprofit exemption is available only to those licensees who have established their nonprofit status under section 501 of the Internal Revenue Code or to those licensees with certification as a nonprofit entity by state or other governmental authority.²⁹ Thus, this exemption is predicated solely on the entity's status as a qualified nonprofit entity.³⁰

²² Petition at 2-3.

²³ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

²⁴ *See Pacifica Found., Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 13566, 13566–67 (2016).

²⁵ 47 U.S.C. § 309(d)-(e). *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (D.C. Cir. Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 R.R.2d 862, 864, para. 6 (1986) (*Area Christian*) (stating informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²⁶ *See Area Christian*, 60 R.R.2d at 864, para. 6; *WFBM, Inc.*, Memorandum Opinion and Order, 47 FCC 2d 1267, 1268, para. 3 (1974).

²⁷ 47 U.S.C. § 159(a); 47 CFR §§ 1.1151-1.1167.

²⁸ 47 U.S.C. § 159; 47 CFR § 1.1162(c).

²⁹ 47 CFR § 1.1162(c) (No regulatory fee shall be required for “[a]pplicants and permittees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as: “an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. 501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority.”).

³⁰ 47 CFR § 1.1162(c)(1) (“Any permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee *based upon its status as a nonprofit entity*, as described above, shall file with the Secretary of the Commission (Attn: Managing Director) written documentation establishing the basis for its

We have confirmed that RTN is recognized as a nonprofit organization under section 501 of the Internal Revenue Code, and was recognized as such at the time it filed the Application.³¹ Therefore, we conclude RTN is exempt from the requirement to pay regulatory fees for the Translators.³² We reject Triangle's argument that an entity requesting an exemption under section 1.1162(c) must also meet the criteria of section 1.1162(e). Triangle provides no authority for this argument, and as discussed, RTN has demonstrated that it meets the requirements of section 1.1162(c), which is all that is required to obtain exemption from regulatory fees. Accordingly, whether the Translators are commercial translators is not dispositive.

We further reject Triangle's argument that RTN's operation of a commercial translator might affect its status as a non-profit entity with either the IRS or the State of Georgia. The Commission generally defers to the IRS on whether a licensee is complying with the Internal Revenue Code, and the Commission will not consider issues of a licensee's compliance with the requirement of state corporate law unless a challenge to an applicant's corporate status has been made in state court.³³ No such challenge has been raised here.

We also reject Triangle's argument that RTN should pay regulatory fees because another nonprofit entity, PAR, paid regulatory fees for translator stations rebroadcasting commercial programming. RTN has demonstrated here that it is entitled to claim the exemption under section 1.1162(c), and PAR's failure to claim this exemption is irrelevant to RTN's qualification to the exemption. Finally, Triangle does not explain how, under the criteria of Note 2 to section 73.3555 of the Rules, Capstar would have an attributable interest in the Translator.³⁴ We thus reject the argument that Capstar has an attributable interest in the Translator which would require payment of regulatory fees. Accordingly, we will deny the Objection.

exemption . . .”) (emphasis added); *Documentation of Nonprofit Exemption from Regulatory Fees*, Public Notice, 13 FCC Rcd 744 (1998) (providing that “Nonprofit entities are exempt from paying FCC annual regulatory fees if they claim nonprofit status under Section 501(c)(3) of the Internal Revenue Code (IRS), 26 U.S.C. §501 or are certified, or otherwise authorized, as a nonprofit entity by a state or other governmental authority.”). *See, e.g., Assessment & Collection of Regulatory Fees for Fiscal Year 2005*, Report and Order, 20 FCC Rcd 12259, 12266 (2005) (“A University owns a commercial facility whose profits are used to support the University and/or its programs. If the facility is licensed to the University directly, or to an exempt subsidiary of the University, it is exempt from regulatory fees. If, however, the license is held by a for-profit subsidiary, regulatory fees are owed, even though the University is an exempt entity. A state pension fund is the majority owner of a for-profit commercial broadcasting firm. The facilities licensed to the for-profit broadcasting firm would be subject to regulatory fees, even though it is owned by an exempt agency.”).

³¹ *See* IRS, Charities and Non-Profits, <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search> (last visited July 30, 2020) (displaying tax exempt status for “Radio Training Network Inc”).

³² 47 CFR § 1.1162(c). RTN does not claim (nor is it qualified to claim) the NCE regulatory fee exemption. *See* 47 CFR § 1.1162(e) (No regulatory fee shall be required for “[a]pplicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.305 of this chapter.”).

³³ *See Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17855, para. 10 (1997) (citing *North American Broadcasting Co., Inc.*, 15 FCC 2d 979 (1969)).

³⁴ *See* 47 CFR § 73.3555, Note 2.

We thus rescind our determination in the *Staff Letter* that RTN was not eligible for an exemption from regulatory fees and we rescind the directive to amend the Application and pay regulatory fees for the Translators.³⁵

Renewal of License. We find that RTN has satisfied the standards of section 309(k) of the Act and grant of the Application is consistent with the public interest. We find neither evidence of serious violations of the Act or the FCC rules nor of other violations that, when considered together, evidence a pattern of abuse. Further, we find that the Translators served the public interest, convenience, and necessity during the subject license terms. Accordingly, we will grant the Applications.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Informal Objection filed by Triangle Access Broadcasting, Inc. on October 31, 2019, **IS DENIED**.

IT IS FURTHER ORDERED that the April 8, 2020 *Staff Letter* direction to pay FM translator regulatory fees for stations W236CA, Durham, North Carolina and W237BZ, Clayton, North Carolina **IS RESCINDED**.

IT IS FURTHER ORDERED that Radio Training Network, Inc.'s pending Application amendment **IS DISMISSED**, and the Application of Radio Training Network, Inc. for renewal of license for stations W236CA, Durham, North Carolina and W237BZ, Clayton, North Carolina (File No. 0000078295) **IS GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

³⁵ RTN may submit a request for refund of the paid regulatory fees, with a copy of this order and its FRN, to ARINQUIRIES@fcc.gov.