



Federal Communications Commission
Washington, D.C. 20554

April 19, 2023

DA 23-339
In Reply Refer To:
1800B3-DB

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In re: W237FK, Opp, AL
Facility ID No. 201661
Application File No. 0000204488

Application for Assignment of License

Petition to Deny

Dear Applicant and Counsel,

We have before us the above-referenced application (Application) for consent to assign the license of FM translator W237FK, Opp, Alabama (W237FK), from Brantley Broadcast Associates, LLC (Brantley), to Christopher W. Johnson (Johnson), licensee of station WAMI(AM), Opp, Alabama (WAMI).¹ Also before us is a petition to deny the Application, which we treat as an informal objection, filed by Marble City Media, LLC (Marble City).² For the reasons set forth below, we (1) grant the Objection; (2) rescind the grant of the W237FK authorization and dismiss, with prejudice, the associated application; (3) cancel the W237FK construction permit; (4) delete the W237FK call sign; and (5) dismiss, with prejudice, the Application at issue. We also dismiss as moot a related petition to deny filed by Marble City and a special temporary authority (STA) extension request filed by Brantley.

¹ Application File No. 0000204488.

² Petition to Deny of Marble City Media, LLC, Pleading File No. 0000205607 (filed Dec. 15, 2022) (Objection). The Objection is unopposed.

Background. In October 2015, the Commission directed the Media Bureau (Bureau) to open two filing windows during which AM station licensees or permittees seeking to rebroadcast on an FM translator were permitted to acquire and relocate one non-reserved band FM translator station up to 250 miles as a minor modification application, notwithstanding section 74.1233(a)(1) of the Commission’s rules (Rules).³ The first modification window was available only to applications to modify and/or relocate FM translator stations rebroadcasting Class C and D AM stations.⁴ The second window was available to applications to modify and/or relocate FM translator stations rebroadcasting any AM station of any class, including Class C and D stations that did not file an application in the initial window.⁵ The Commission accepted applications to modify authorized FM translator stations that the AM station licensee or permittee owned, sought to acquire in a pending assignment or transfer application,⁶ or for which the AM station licensee had a rebroadcasting agreement.⁷ Beginning in 2017, to further promote the long-term viability of the AM service, the Commission directed the Media Bureau, in conjunction with the Wireless Telecommunications Bureau, to open new FM translator application auction windows, designated as Auctions 99 and 100, for AM stations that did not file a modification application in 2016.⁸

On August 1, 2017, pursuant to the Auction 99 Public Notice and section 73.3517 of the Rules, Brantley filed a contingent application for a new translator construction permit (CP) at Calera, Alabama.⁹ The same day, Johnson filed an application for consent to assign the license of WAMI to Brantley.¹⁰ On January 17, 2018, the Bureau granted the CP Application subject to conditions, including the following:¹¹

³ See *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145, 12152, para. 15 (2015) (*Revitalization of the AM Radio Service First Report and Order*); 47 CFR § 74.1233(a)(1).

⁴ *Revitalization of the AM Radio Service First Report and Order*, 30 FCC Rcd 12145, 12152, para. 15.

⁵ *Id.*

⁶ 47 CFR § 73.3517(a) (“Upon filing of an application for the assignment of a license or construction permit, or for a transfer of control of a licensee or permittee, the proposed assignee or transferee may, upon payment of the processing fee prescribed in Subpart G, Part 1 of this chapter, file applications in its own name for authorization to make changes in the facilities to be assigned or transferred contingent upon approval and consummation of the assignment or transfer.”).

⁷ *Revitalization of the AM Radio Service First Report and Order*, 30 FCC Rcd at 12152, para. 15.

⁸ *Id.* at 12151, para. 12; *FCC Announces Opening of First Auction Filing Window for AM Broadcasters Seeking New FM Translators*, Public Notice, 32 FCC Rcd 5159 (2017) (Auction 99 Public Notice).

⁹ See File No. BNPFT-20170801AJA (seeking authority to construct a new FM translator station on channel 293 at Calera, Alabama), as modified by File No. BNPFT-20171219AEO (seeking authority to construct a new FM translator station on channel 292 at Calera, Alabama) (CP Application). As stated above, the Media Bureau granted the CP Application on January 17, 2018. See File No. BNPFT-20171219AEO (granted Jan. 17, 2018) (2018 Permit). Subsequently, on April 23, 2020, Brantley filed an application for a minor modification to the 2018 Permit, which the Bureau granted on May 13, 2020. See Application File No. 0000112504. Brantley then filed another permit minor modification application on June 7, 2021, which the Bureau granted on June 10, 2021. See Application File No. 0000114527.

¹⁰ See File No. BAL-20170801AIN (granted Mar. 1, 2018) (WAMI Assignment Application or WAMI Assignment).

¹¹ See 2018 Permit (Special Operating Condition 4- “Pursuant to Revitalization of the AM Radio Service, Notice of Proposed Rule Making, 28 FCC Rcd 15221, 15227, para. 14 (2013), and First Report and Order, 30 FCC Rcd 12145, 12154, para. 17 and n.43 (2015), the permittee and any successor in interest (licensee, transferee, or

Grant of this authorization is conditioned on the common ownership, in perpetuity, of this facility and the specified AM primary station. Any violation of this condition shall result in the rescission of the grant of this authorization and the dismissal, with prejudice of the associated application and, if applicable, cancellation of the associated construction permit.

Roughly two months later, the Bureau then granted the WAMI Assignment Application. Among other things, the grant required that consummation of the assignment was to be completed within 90 days of the grant and notification of the completion was to be furnished promptly to the Commission in letter form by the seller or buyer showing the date the acts necessary to effect the transaction were completed.¹² On July 9, 2021, just before the modified 2018 Permit expired, Brantley filed a license to cover application, and then filed an amendment to that application on March 30, 2022.¹³ The Bureau granted the license to cover the same day and again conditioned the license authorization on, among other things, “the common ownership, in perpetuity, of [W237FK] and the specified AM primary station, [i.e., WAMI].”¹⁴

assignee) shall be subject to the following restrictions: (1) this facility may only, in perpetuity, be used to rebroadcast the authorized facilities of the AM primary station set forth in this construction permit, except that it may also originate nighttime programming if the AM primary station set forth in this construction permit is not authorized regular nighttime service, and then only during periods of the broadcast day when the primary AM station is not regularly authorized to operate; (2) if the AM primary station is operating with reduced facilities, this cross-service FM translator facility may only operate if its coverage contour conforms to the limits set forth in 47 CFR Section 74.1201(g) as applied to the reduced facilities of the AM primary station; (3) the authorization for this facility may not be assigned or transferred except in conjunction with the primary AM station set forth in this construction permit; and (4) if the authorization of the AM primary station set forth in this construction permit is rescinded, revoked, surrendered, subject to special temporary authorization (STA) to remain silent, or is otherwise suspended from operation, the authorization of this cross-service FM translator station shall likewise be rescinded, revoked, surrendered, silent for the duration of the AM primary station’s STA to remain silent, or suspended from operation. Minor modifications of this authorization are permitted, provided that the translator meets all of the preceding conditions. Grant of this authorization is conditioned on the common ownership, in perpetuity, of this facility and the specified AM primary station. Any violation of this condition shall result in the rescission of the grant of this authorization and the dismissal, with prejudice, of the associated application and, if applicable, cancellation of the associated construction permit.”) (Special Operating Condition). The 2018 Permit, as modified, expired on July 17, 2021.

¹² WAMI Assignment (authorization stating that “[t]he assignee [(Brantley)] is not authorized to construct or operate WAMI unless and until notification of consummation in letter form is forwarded to the Commission.”).

¹³ See Application File No. 0000152159.

¹⁴ Application File No. 0000152159 (granting license covering Application File No. 0000114527); Special Operating Condition. We note that on March 30, 2022, Brantley filed a STA request for W237FK to remain silent because its primary station, WAMI, was silent due to tower site issues. See File No. BLSTA-20220330AAB. The Bureau granted the STA request on June 1, 2022. *Id.* Brantley then filed, on September 29, 2022, another minor modification application proposing to move W237FK from Opp, Alabama, to Tuskegee, Alabama. See Application File No. 0000201205 (Tuskegee Modification Application). Marble City opposed the Tuskegee Modification Application in a petition to deny filed on October 5, 2022, and requests in the instant Objection that the Bureau incorporate those arguments in this proceeding. See Petition to Deny of Marble City Media, LLC, Pleading File No. 0000201957 (filed Oct. 5, 2022) (October Petition); Objection at 1. While the Tuskegee Modification Application was pending, Brantley filed a STA extension request for W237FK on November 23, 2022, seeking authorization to remain silent until March 26, 2023, when WAMI “implements the facilities in the construction permit.” See

In the Objection, Marble City argues that Brantley failed to comply with the specific terms of the W237FK authorization and associated construction permit requiring common ownership of W237FK and WAMI, and also violated the Commission's *Revitalization of the AM Radio Service First Report and Order* and section 73.3517 of the Rules.¹⁵ Specifically, Marble City maintains that Brantley and Johnson failed to consummate the WAMI Assignment and that violation of this condition requires the rescission of the grant of the W237FK authorization and dismissal, with prejudice, of the associated application.¹⁶ Marble City further contends that without the required consummation of the WAMI Assignment, Brantley does not hold a valid license for W237FK which can be assigned.¹⁷ Accordingly, Marble City urges the Bureau to deny the instant Application.¹⁸

Discussion. Section 310(d) of the Communications Act of 1934, as amended (Act),¹⁹ requires the Commission to determine whether the proposed assignment or transfer of a broadcast license is in the public interest. Section 309(d)(1) of the Act states that any party in interest may file a petition to deny certain applications, including assignment applications such as the one currently before us.²⁰ A petition to deny must “contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with [the public interest].”²¹ The allegations of fact, except for those of which official notice may be taken, must be supported by an affidavit or declaration under penalty of perjury of someone with personal knowledge of the facts alleged.²² Here, Marble City has not provided an affidavit to support the allegations raised in its pleading.²³ Therefore, we find that the pleading is a procedurally defective petition to deny and dismiss it as such.²⁴ Consistent with Commission practice, however, we instead consider the pleading as an

Application File No. 0000204178 (STA Extension Request). On December 15, 2022, the Bureau dismissed the Tuskegee Modification Application because the proposed 40 dBμ F(50,10) interfering contour would overlap the 60 dBμ F(50,50) protected contour of WRLD(FM) in violation of section 74.1204(a) of the Rules. *See Broadcast Actions*, Public Notice, Report No. PN-2-221219-01 (MB Dec. 19, 2022). In light of the Bureau's dismissal of the Tuskegee Modification Application, we dismiss the October Petition as moot. However, because some of the arguments raised in the October Petition are related and relevant to the instant matter, we incorporate them here by reference. Additionally, as discussed below, we dismiss the STA Extension Request, which has remained pending until this point.

¹⁵ See Petition at 2.

¹⁶ Petition at 2; October Petition at 3-4 (referencing Application File No. 0000152159 and Application File No. 0000114527).

¹⁷ Petition at 1.

¹⁸ *Id.*

¹⁹ 47 U.S.C. § 310(d).

²⁰ 47 U.S.C. § 309(d)(1).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 47 CFR § 73.3584(e).

informal objection pursuant to section 73.3587 of the Rules²⁵ and grant the Objection for the reasons discussed below.

Like petitions to deny, informal objections 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 Act.²⁶ We find that Marble City has met this burden.

We have carefully considered all of the facts involved in this matter and find that Brantley failed to act with the responsibility and diligence expected of a Commission licensee and required by the terms of the W237FK authorization and associated construction permit. When Brantley accepted the conditional authorization and permit, it agreed to be subject to the conditions set forth therein, including the condition requiring common ownership, in perpetuity, of translator W237FK and station WAMI.²⁷ In order to comply with this condition, Brantley or Johnson was required to submit to the Commission by May 29, 2018, a notification of the completed consummation of the WAMI Assignment in letter form showing the date the acts necessary to effect the transaction were completed.²⁸ It was incumbent upon Brantley to comply with the terms of its conditional authorization and permit or to seek additional time to comply with those conditions. Brantley had explicit notice that failure to comply the express terms of its conditional license and permit would result in the rescission of the grant of its authorization and the dismissal, with prejudice, of the associated application and, if applicable, cancellation of the associated construction permit. More than four years have passed since the grant of the WAMI Assignment and neither party has notified the Commission that consummation of the assignment was completed or has requested an extension of time to fulfill the condition.²⁹ Because Brantley failed to comply with its conditional authorization for W237FK and the associated construction permit, we rescind the grant of the W237FK authorization, dismiss, with prejudice, the associated application, cancel the associated construction permit, and delete the W237FK call sign. Additionally, we terminate W237FK's operating authority, effective immediately, and dismiss Brantley's STA Extension Request. We also dismiss, with prejudice, the Application at issue as there is no valid license to assign.

Conclusion/Actions. For the foregoing reasons, **IT IS ORDERED** that the Petition to Deny filed by Marble City Media, LLC, Pleading File No. 0000205607, on December 15, 2022, **IS DISMISSED** as procedurally defective and alternatively **GRANTED** on the merits as an informal objection.

²⁵ 47 CFR § 73.3587.

²⁶ See *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²⁷ See Application File No. 0000152159; Special Operating Condition. See also *P&R Temmer v. FCC*, 743 F.2d 918, 928 (D.C. Cir. 1984) (“An FCC licensee takes its license subject to the conditions imposed on its use. These conditions may be contained in both the Commission’s regulations and in the license. Acceptance of a license constitutes accession to all such conditions. A licensee may not accept only the benefits of the license while rejecting the corresponding obligations.”). See also 47 CFR § 1.110 (applicants are subject to a 30-day deadline after conditional grant of an application to challenge the condition).

²⁸ WAMI Assignment Application.

²⁹ See Application, Asset Purchase Agreement at Section 1(c) (acknowledging that Johnson is the owner of WAMI(AM)).

IT IS FURTHER ORDERED that the application filed by Brantley Broadcast Associates, LLC on November 11, 2022, for consent to assign the license of FM translator W237FK, Opp, Alabama to Christopher W. Johnson, Application File No. 0000204488, **IS DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that grant of the license for FM translator W237FK, Opp, Alabama, Application File No. 0000152159, **IS RESCINDED**, and the application **IS DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that the construction permit for FM translator W237FK, Opp, Alabama, Application File No. 0000114527, **IS CANCELLED**.

IT IS FURTHER ORDERED that call sign W237FK **IS DELETED**.

IT IS FURTHER ORDERED that FM translator W237FK, Opp, Alabama, **MUST CEASE OPERATIONS IMMEDIATELY**.

IT IS FURTHER ORDERED that the request filed by Brantley Broadcast Associates, LLC on November 23, 2022, for an extension of silent special temporary authority for FM translator W237FK at Opp, Alabama, Application File No. 0000204178, **IS DISMISSED**.

IT IS FURTHER ORDERED that the Petition to Deny filed by Marble City Media, LLC, Pleading File No. 0000201957, on October 5, 2022, **IS DISMISSED AS MOOT**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau