Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
1800B3-ATS

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In re: WDUQ(FM), Pittsburgh, Pennsylvania
Facility ID No. 17747
File No. BALED-20110505ACD

W22AP, New Baltimore, Pennsylvania
Facility ID No. 140904
File No. BALFT-20110505ACE

W263AW, Johnstown, Pennsylvania
Facility ID No. 140931
File No. BALFT-20110505ACF

W281AH, Somerset, Pennsylvania
Facility ID No. 140951
File No. BALFT-20110505ACG

W281AI, Ligonier, Pennsylvania
Facility ID No. 140966
File No. BALFT-20110505ACH

New NCE (FM), Marion Center, Pennsylvania
Facility ID No. 175812
File No. BAPED-20110505ACI

W262BU, Ligonier, Pennsylvania
Faciltiy ID No. 141045
File No. BAPFT-20110505ACJ

New NCE (FM), Everett, Pennsylvania
Facility ID No. 175801
File No. BAPED-20110505ACK

Assignment Applications

Dear Petitioners and Counsel:

We have before us: 1) the applications (collectively, "Applications") for consent to assign the licenses for noncommercial educational FM station WDUQ(FM), Pittsburgh, Pennsylvania, and associated FM Translator Stations W222AP, New Baltimore, Pennsylvania; W263AW, Johnstown, Pennsylvania; W281AH, Somerset, Pennsylvania; and W281AI, Ligonier, Pennsylvania, from Duquesne University ("Duquesne") to Essential Public Media LLC ("EPM"); and for consent to assign the construction permits for new noncommercial educational FM stations in Marion Center, Pennsylvania,[1] and Everett, Pennsylvania,[2] and new noncommercial educational FM Translator Station W262BU, Ligonier, Pennsylvania (collectively, "Stations"),[3] from Duquesne to EPM; and 2) six Informal Objections (collectively, "Objections") filed against the Applications.[4] For the reasons set forth below, we will deny the Objections and grant the Applications.

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[1] *See* File No. BNPED-20071019AYW (unbuilt construction permit with an expiration date of December 17, 2012).

[2] *See* File No. BNPED-20071019AYZ (unbuilt construction permit with an expiration date of January 19, 2013).

[3] *See* File No. BNPFT-20080619AKE (unbuilt construction permit with an expiration date of August 7, 2011).

[4] We have received the following informal objections: Bryce A. Palchick, M.D. ("Palchick"), filed on June 2, 2011; Alexander C. Krach ("Krach"), filed on June 6, 2011; Evan Pattack, Chair, Jazz Lives in Pittsburgh ("Pattack"), filed on June 8, 2011; Michael J. Stokes ("Stokes"), filed on June 8, 2011; Mary Louise Wilson, filed June 13, 2011; Robert Cowan ("Cowan"), filed on June 28, 2011. EPM filed an Opposition to Informal Objections ("Opposition") on June 30, 2011. We also have a letter filed by Amanda Cross on June 16, 2011, supporting the assignment and proposed format change.

Discussion. Section 310(d) of the Communications Act of 1934, as amended (the "Act") requires the Commission to make a determination whether the proposed transfer or assignment of a broadcast license would be in the public interest.[5] Pursuant to Sections 309(d) and (e) of the Act,[6] informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact calling for further inquiry regarding whether grant of the assignment application would be *prima facie* inconsistent with Section 309(a) of the Act.[7] This section provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters of which we may officially take notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the applicant fails to meet that standard, the Commission may deny the application after notice and opportunity for a hearing under Section 309(e) of the Act.[8]

Format Change. The Objections express opposition to WDUQ's proposed format change from a jazz format to a news-centric programming.[9] Although the Commission recognizes that WDUQ's program format has attracted a devoted listenership, it is well-settled policy that the Commission does not scrutinize or regulate programming, nor does it take potential changes in programming formats into consideration in reviewing assignment applications. In 1976, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Act, would not benefit the public, would deter innovation, and would impose substantial administrative burdens on the Commission.[10] The Supreme Court of the United States has upheld this policy.[11] In doing so, the Court accepted the Commission's findings 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 transfer.[12] This is particularly so with regard to the programming decisions of non-commercial educational broadcast stations, based on the Commission's historically "limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming."[13]

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[5] 47 U.S.C. § 310(d).

[6] 47 U.S.C. §§ 309(d), (e).

[7] 47 U.S.C. § 309(a). *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *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).

[8] 47 U.S.C. § 309(e).

[9] Pattack in particular states that WDUQ plays a significant role in supporting Pittsburgh's jazz culture and related social events. Palchick notes that WDUQ has a high following among African-American listeners and suggests their needs are not addressed in the assignment. However, this is essentially an argument against the proposed format change.

[10] *See Changes in the Entertainment Formats of Broadcast Stations,* Memorandum Opinion and Order, 60 FCC 2d 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).

[11] *FCC v. WNCN Listener's Guild*, 450 U.S. 582 (1981).

[12] *Id.* at 585.

[13] *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees,* Notice of Proposed Rule Making, 87 FCC 2d 716, 732 (1981). *See also License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania,* Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) (licensees have broad discretion over programming decisions).

Other Matters. Krach alleges that employees of EPM and Public Radio Capital, a third-party which assisted EPM in this transaction, fraudulently worked to prevent another party, Pittsburgh Public Media, from acquiring the Stations. However, he fails to substantiate his allegations or cite to any rule violation. Stokes alleges that EPM did not disclose that it is a wholly-owned subsidiary of Pittsburgh Community Broadcast Corp. However, EPM did in fact reveal its ownership in the Applications.[14] Cowan claims Duquesne fraudulently solicited donations from the public to fund the WDUQ, only to sell it to EPM. We have previously found that complaints about alleged fraudulent solicitation of donations are private disputes beyond the Commission's regulatory reach and must be resolved in a local court of competent jurisdiction.[15]

Based on the evidence presented in the record, we find that the Objectors have failed to raise a substantial and material question of fact warranting further inquiry regarding grant of the Applications. We further find that EPM is fully qualified to be the licensee of the Stations, and that grant of the Applications will further the public interest, convenience, and necessity.

Conclusion/Actions. Accordingly, IT IS ORDERED that the Informal Objections of Bryce A. Palchick, filed on June 2, 2011; Alexander C. Krach, filed on June 6, 2011; Evan Pattack, Chair, Jazz Lives in Pittsburgh, filed on June 8, 2011; Michael J. Stokes, filed on June 8, 2011; Mary Louise Wilson, filed on June 13, 2011, and Robert Cowan, filed on June 28, 2011, ARE DENIED.

IT IS FURTHER ORDERED that the applications for consent to assign the licenses for stations WDUQ(FM), Pittsburgh, Pennsylvania (File No. BALED-20110505ACD); W22AP, New Baltimore, Pennsylvania (File No. BALFT-20110505ACE); W263AW, Johnstown, Pennsylvania (File No. BALFT-20110505ACF); W281AH, Somerset, Pennsylvania (File No. BALFT-20110505ACG); W281AI, Ligonier, Pennsylvania (File No. BALFT-20110505ACH); and for consent to assign the construction permits for a new noncommercial educational FM station in Marion Center, Pennsylvania (File No. BAPED-20110505ACI); W262BU, Ligonier, Pennsylvania (File No. BAPFT-20110505ACJ), and a new noncommercial educational FM station in Everett, Pennsylvania (File No. BAPED-20110505ACK) from Duquesne University to Essential Public Media LLC, ARE GRANTED, subject to the following conditions:

Pursuant to 47 C.F.R. Sections 73.7002(c) and 73.7005(b) the permittee/licensee is required to construct and operate NEW(FM) in Marion Center, Pennsylvania (Facility Id. 175812), for a period of four years of on-air operations with technical facilities substantially as proposed and shall not downgrade service to the area on which the preference was based.

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[14] *See* Applications at Exhibit 13.

[15] *See Trinity International Foundation, Inc.*, Letter, 23 FCC Rcd 4000, 4006 (MB 2008) (finding that station donors' allegation of fraudulent solicitation of donations was a private dispute and not grounds for denial of assignment application).

The construction permits for W262BU, Ligonier, Pennsylvania (Facility Id. 141045); Marion Center, Pennsylvania (Facility Id. 175812); and Everett, Pennsylvania (Facility Id. 175801) expire on August 7, 2011, December 17, 2012, and January 19, 2013, respectively. Commission rules, which became effective on February 16, 1999, have a bearing on these construction permits. See Report & Order, Streamlining of Mass Media Applications, MM Docket No. 98-43, 13 FCC Rcd 23056. Pursuant to these rules, consummation of the assignment(s) consented to herein has no effect on the expiration date of the permit(s). Construction permit(s) will be subject to automatic forfeiture unless construction is complete and an application for license to cover is filed prior to expiration.

Sincerely,

Peter H. Doyle HH

Peter H. Doyle
Chief, Audio Division
Media Bureau