

FEDERAL COMMUNICATIONS COMMISSION
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IN REPLY REFER TO: 1800B2-RHW

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Re: WWDX(FM), Saint Johns, MI
File Nos. BALH-960111HA

Dear Counsel:

This is in reference to: (1) the captioned application for the assignment of license of Station WWDX(FM), Saint Johns, Michigan, from Landsmen Communications, Ltd. ("Landsmen"), to Regional Radio Corporation ("Regional"); (2) the Joint Petition to Deny that assignment filed February 22, 1996, by Jencom Broadcasting, Inc. ("Jencom"), and Liggett Broadcast, Inc. ("Liggett"); Jencom and Liggett are jointly referred to herein as "Petitioners"; (3) an Opposition to Joint Petition to Deny and Motion to Strike filed by Landsmen on March 5, 1996; and (4) a Reply filed by Petitioners on March 15, 1996. For the reasons set forth below, we deny the Joint Petition to Deny, and we grant the application for assignment of WWDX.

The Joint Petition to Deny. The Petitioners state that Jencom is owned by James A. Jenson, who resides in WWDX's service area, and that Liggett, at the time the Petition was filed, was the licensee of WJIM(AM)/-FM, Lansing, Michigan. Petitioners also claim that WJIM(AM)/-FM and WWDX have overlapping primary service contours and that Liggett's stations compete with WWDX in the local radio market. The Petitioners thus each claim standing to file the Petition.

Petitioners state that they have been parties to certain radio station assignment applications relating to stations in the Lansing, Michigan, market. They state further that Regional filed three Petitions to Deny all the Lansing assignments, the primary contention of which was that the assignment of WJIM(AM)/-FM to Jencom was a hoax designed to allow Liggett to control more than the maximum permissible number of stations in the Lansing market under the local multiple ownership rules in effect at the time the WJIM application was filed. Petitioners contend that Regional's Petition to Deny the Lansing assignments was filed without any factual support for its allegations, and, citing Radio Carrollton, Inc., that those Petitions were "strike" filings interposed for the primary purpose of delaying the consummation of those assignments. Following the elements for establishing that a petition is a strike filing as set forth in Radio Carrollton, Petitioners contend that while Regional's principals have not directly admitted to filing its Petition to Deny to delay the Lansing assignments, Regional did misrepresent material facts in its Petition to Deny by stating falsely that Jencom was receiving funds from Liggett to acquire its stations. Additionally, Petitioners claim that there was no reasonable basis for any of the allegations made in Regional's Petition to Deny with respect to claims that the transactions were a hoax to avoid the multiple ownership rules. Petitioners also claim that Regional perceived a financial benefit in delaying the assignments. As an additional matter, Petitioners allege that Regional's February 14, 1996, "Supplement to Petition to Deny and Statements for the Record," filed in the WJIM proceeding, contained misrepresentations that Petitioners' attorneys had, at a February 13, 1996, settlement conference, "threatened" Regional with retaliatory petitions unless Regional agreed to withdraw its Petitions to Deny the Lansing assignments. According to Petitioners, Regional's alleged misrepresentations as to the what transpired at the February 13 settlement conference render Regional unfit to be a Commission licensee.

In its Opposition to Joint Petition to Deny, Regional denies that its WJIM Petition to Deny was a groundless strike petition. Regional states first that its principals have never made any statements which could be construed as an admission of an obstructive purpose. Second, Regional asserts that it did not withhold any relevant information or make any misrepresentations in its Petitions. Third, Regional asserts that it did indeed have a reasonable basis in law to support the filing of its Petition to Deny. Finally, Regional denies that it misrepresented any facts in its claim that Petitioners' attorneys threatened to file objections against future Regional applications unless Regional withdrew its Petition to Deny, and Regional notes that the Petitioners' instant Petition to Deny the WWDX assignment was indeed filed only a few days after Petitioners' attorneys made the alleged threats that were rejected by Regional.

Discussion. At the outset, we have determined that Jencom and Liggett have standing under Section 309(d)(1) of the Communications Act of 1934, as amended, because Jencom and Liggett are licensees of stations which are in economic competition with Station WWDX, which is the subject of the instant assignment application.

In assessing the merits of a petitions to deny, the Commission is guided by Section 309(d)(1) and (2) of the Communications Act, as elucidated by the Court of Appeals in *Astroline Communications Company Limited Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988). First the Commission determines whether the petitioner has made specific allegations of fact that, if true, would demonstrate that grant of the application would be prima facie inconsistent with the public interest, convenience and necessity. If so, then the Commission proceeds to examine and weigh all of the material before it, including information provided by the applicants, to determine whether there is a substantial and material question of fact requiring resolution in a hearing. Finally, the Commission must determine whether grant of the application would serve the public interest. In the case now before us, based on an examination of the applications, the petitions, the oppositions, and related pleadings, we conclude that the matters alleged by Petitioners do not raise any substantial and material questions of fact that would require resolution in a hearing.

The Commission has an obligation not to "allow the administrative process to be obstructed or overwhelmed by captious or purely obstructive protests." *United Church of Christ v. FCC*, 359 F.2d 994, 1005 (D.C. Cir. 1966). However, under the scheme of broadcast licensing established by the Communications Act, petitions to deny may be, and often are, filed by parties in interest, including competing broadcasters. "Even though the challenged applicant is undoubtedly put to the extra time and expense in defending his application, such burdens are an inseparable part of the statutory scheme under which the applicant seeks the authorization." *Radio Carrollton*, supra, 69 FCC 2d 1139, 1149. Thus, "we will not infer the existence of primary purpose to delay from the mere filing of a petition to deny, because a licensee who establishes 'standing' has a statutory right to bring to the Commission's attention public interest questions raised by a competitor's application and - as already noted - any 'delay' in considering a petition to deny is an inseparable part of the statutory scheme." *Id.* at 1150-51. In determining whether delay is a petitioner's primary purpose, the Commission will consider a number of factors, including: (1) statements by principals or offices of the licensee admitting an obstructive purpose; (2) the withholding of information relevant to a determination of the issues raised; (3) the absence of any reasonable basis for the allegations raised in the petition to deny; (4) economic motivation indicating a delaying purpose; and (5) other conduct of the licensee. *Id.* at 1151. See also *Dubuque T.V. Limited Partnership*, 4 FCC Rcd 1999, 2000 (1989); *Viacom International Inc.*, 2 FCC Rcd 3259, 3260 (1987).

Petitioners' allegations do not present a substantial and material question as to whether Regional's Petition to Deny was a "strike" filing. First, Petitioners acknowledge that there are no statements from Regional's principals admitting to an obstructive purpose. With respect to the second factor, withholding of relevant information, Petitioners claim that rather than withholding information, Regional misrepresented the facts by alleging in its Petition to Deny that Jencom was receiving funds from Liggett to acquire its broadcast stations. We do not believe that Regional's referenced allegation rises to the level of a misrepresentation. Regional did not specifically allege that Liggett was actually directly paying for Jencom's station acquisitions. Additionally, while the staff, in denying Regional's Petition to Deny, did not agree that Regional had demonstrated that Liggett was "subsidizing" Jencom's station purchases, Liggett itself acknowledged that it was selling WJIM(AM)/-FM to Jencom on

"advantageous" terms. Thus there is no evidence that Regional withheld relevant information in opposing the Lansing assignments.

Nor can we conclude that there was an absence of any reasonable basis for Regional's Petition to Deny. Again, the finding that Regional's Petition to Deny did not raise a substantial and material question of fact warranting hearing or denial of the Lansing assignments does not mean that the Petition was completely lacking a reasonable basis. Regional did demonstrate that there were significant relationships between Liggett and Jencom which called into question, at least initially, whether Liggett's assistance to Jencom in its station acquisitions -- including Jencom's owner's prior relationship with Liggett and Liggett's provision of personal guarantees and additional security for Jencom's financing from Liggett's commercial lender -- rendered Jencom's interests attributable to Liggett. While after analysis we are satisfied that these relationships did not render the transactions a "hoax," that does not mean that Regional's Petition was lacking any reasonable basis in law or fact.

Further, Petitioners have not presented any evidence of a significant economic motivation for Regional's filing Petition to Deny. While Petitioners quote, out of context, Regional's expressed fear of "unfair competition" from the combined ownership of the Liggett and Jencom stations, there is no showing that Regional's perceived concern as to the fairness of the competition means that Regional will reap an economic benefit as a direct result of Regional's pleadings, as is required under this factor. See *Dubuque T.V. Limited Partnership*, supra, 4 FCC Rcd 1999, 2000. Nor do Petitioners point to any "other conduct" of Regional that would tend to demonstrate that Regional filed its Petition to Deny for the primary purpose of delaying the grant of the Lansing assignments. For these reasons, we do not believe that Petitioners have presented a substantial and material question as to whether Regional's Petition to Deny was a "strike" pleading.

Misrepresentation. We also reject Petitioners' allegation that Regional's February 14, 1996, "Supplement to Petition to Deny and Statements for the Record," filed in the WJIM proceeding, contained misrepresentations that Petitioners' attorneys had, at a February 13, 1996, settlement conference, "threatened" Regional with retaliatory petitions unless Regional agreed to withdraw its Petitions to Deny the Lansing assignments. The May 24 Letter Decision had dismissed Regional's allegations that Petitioners' attorneys had engaged in improper threats on the basis that Regional's allegations were not supported by affidavits of persons having personal knowledge of the facts, as required by Section 309(d)(1) of the Communications Act of 1934, as amended. Indeed, Regional's Supplement was vague as to what statements were allegedly made by Petitioners' counsel that would constitute such threats (see Letter Decision, at note 10), and in the instant Petition to Deny, Petitioners do not state with specificity exactly which statements contained in the Supplement allegedly constitute misrepresentations. We find that Petitioners' allegations that the Supplement contains misrepresentations is thus lacking in specificity, and that those allegations do not raise a substantial and material question of fact as to whether Regional is qualified to be a Commission licensee.

Conclusion. In light of the above, Liggett and Jencom's February 21, 1996, Joint Petition to Deny the application to assign the license of Station WWDX(FM) from Landsmen Communications, Ltd., to Regional Radio Corporation IS DENIED. Having found that Landsmen and Regional Jencom are qualified to assign and purchase Station WWDX(FM) and that the sale would further the public interest, convenience, and necessity, we GRANT that application.

FEDERAL COMMUNICATIONS COMMISSION

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