

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
K Licensee, Inc.)	File Nos. BRTTA-20070131AIL and
)	BESTA-20040419ACF
Application for Renewal of License and)	Facility ID No. 67866
Request for Extension of Special Temporary)	
Authorization)	
)	
Class A Television Station WEBR-CD)	
Manhattan, New York)	

MEMORANDUM OPINION AND ORDER

Adopted: January 27, 2016

Released: January 28, 2016

By the Commission:

1. The Commission has before it for consideration an Application for Review filed by Jose Luis Rodriguez,¹ which seeks review of a 2008 letter decision by the Chief of the Video Division, Media Bureau (the "Bureau").² In his AFR, Mr. Rodriguez requests that we set aside the Bureau's Letter Decision and deny the above-captioned license renewal application (the "Renewal Application") and the request for extension of special temporary authorization (STA) (the "STA Request") filed by K Licensee, Inc.,³ both pertaining to Class A television Station WEBR-CD, Manhattan, New York (the "Station"). For the reasons discussed below, we find that Mr. Rodriguez has failed to demonstrate that he is a "person aggrieved" by the Bureau's actions taken in the Letter Decision, as required by section 1.115(a) of the Commission's rules (the "Rules"). Accordingly, we dismiss the AFR.

2. In its Letter Decision, the Bureau denied Mr. Rodriguez's informal objections⁴ to the Renewal Application and the STA Request. In his AFR, Mr. Rodriguez contends that he is an aggrieved party and accordingly has standing to file the AFR because "the letter order granting K Licensee's renewal application has direct impact on Mr. Rodriguez' authorization for [low power television station] W17CH...."⁵ The Bureau found that Mr. Rodriguez's 2004 objection to the STA Request was untimely, as it essentially asked the Commission to reconsider its November 1, 1999, grant of the initial STA. The

¹ Application for Review (filed Jun. 12, 2008) ("AFR"). On June 25, 2008, K Licensee, Inc. filed an Opposition to the AFR, to which Mr. Rodriguez filed a Reply on July 8, 2008 ("Reply").

² Letter from Barbara A. Kreisman, Chief, Video Division, to K Licensee, Inc. c/o Erwin G. Krasnow, Esq., 23 FCC Rcd 7824 (Med. Bur. 2008) ("Letter Decision").

³ K Licensee, Inc. since assigned its license for the Station to OTA Broadcasting (LGA), LLC on June 15, 2012. See FCC File No. BALDTA-20120313AAL.

⁴ Although each pleading filed by Mr. Rodriguez was styled a petition to deny, the Letter Decision treated them as informal objections, concluding that neither satisfied the pertinent requirements for a petition to deny. Letter Decision, 23 FCC Rcd at 7824-25.

⁵ AFR at 2, Reply at 2.

staff also concluded that Mr. Rodriguez had failed to provide specific facts sufficient to show any violation of the Commission's Rules by K Licensee that would preclude renewal of the Station's license.⁶

3. Section 5(c)(4) of the Communications Act of 1934, as amended (the "Act"), and section 1.115(a) of the Rules require that, in order to file an application for review, a party must be "aggrieved" by the action of which review is sought.⁷ To make such a showing, a party seeking review must demonstrate a direct causal link between the challenged action and the filing party's alleged injury, and show that the injury would be prevented or redressed by the relief requested.⁸ In the AFR, Mr. Rodriguez based his claim to be an aggrieved party on his former authorization for LPTV Station W17CH, Selden (Patchogue), New York, which he had operated pursuant to an STA.⁹ That station ceased operating at the request of Bureau staff in July 2006,¹⁰ and, in November 2011, the Bureau denied Mr. Rodriguez's request for extension of his STA. While the AFR contends that "[WEBR-CD's] renewal application has a direct impact on Mr. Rodriguez' authorization for W17CH," the AFR does not demonstrate the harm to his interests that would occur. Stated simply, Mr. Rodriguez no longer holds any channel 17 authorization; therefore his claim of harm from the Letter Decision has no merit. The extension of WEBR-CD's STA and the grant of its Renewal Application had no bearing on the cessation of operations of W17CH, and it would be sheer speculation to conclude that rescinding those Bureau actions would result in authorization to allow Mr. Rodriguez to again operate W17CH.¹¹ The grant of the relief that Mr. Rodriguez seeks in his AFR would not result in the Commission's issuance to him of authority to operate

⁶ Letter Decision, 23 FCC Rcd at 7826-27.

⁷ 47 U.S.C. § 155(c)(4); 47 C.F.R. § 1.115(a) ("Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission ... Any application for review which fails to make an adequate showing in this respect will be dismissed.").

⁸ See e.g., *Hanford FM Radio*, Memorandum Opinion and Order, 11 FCC Rcd 8509, 8511 (1993) (applicant for review must identify "direct economic or other connection" between its interests and the challenged Commission action), citing *Clarke Broadcasting Corp.*, Memorandum Opinion and Order, 11 FCC Rcd 3057 (1996). See also *Warren Ache*, Memorandum Opinion and Order, 9 FCC Rcd 2464, 2467 (1993) ("A party seeking to establish standing to file a petition to deny must demonstrate not only a direct or threatened distinct and palpable injury, but also a causal link between the claimed injury and the challenged action. The causal link must be demonstrated by establishing: (1) that the injury can be traced to the challenged action; and (2) that the injury would be prevented or redressed by the relief requested"), citing *Lawrence N. Brandt*, Memorandum Opinion and Order, 3 FCC Rcd 4082 (CCB 1988); *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59 (1978).

⁹ In December 1998, despite a series of Bureau decisions finding that Mr. Rodriguez no longer had a valid authorization to construct a facility on channel 17, he notified the Commission that he had constructed a channel 17 facility and requested an STA to so operate. On January 22, 1999, the Commission granted him such an STA, to so operate that facility under temporary call sign W17CH. On July 2, 1999, Mr. Rodriguez filed a request for extension of his STA, which was opposed by the then-licensee of WEBR-CD. While his request for extension of STA remained pending, on August 19, 2002, the Bureau granted a displacement application for LPTV Station W17CR, Plainview, New York, to move its operations from channel 17 from channel 33, the grant of which ultimately required W17CH to cease operations. As such, the Bureau denied Rodriguez's request for extension of the STA, File No. BMPTTL-19990917AAN. Mr. Rodriguez timely opposed the grant of the W17CR displacement application, and the Bureau dismissed the opposition in November 2011, concluding that "[Mr.] Rodriguez has no colorable claim to operate on channel 17 and, accordingly, has no interests that would be adversely affected...." Letter from Barbara A. Kreisman Chief, Video Division, to Jose Luis Rodriguez, at 6 (Nov. 14, 2011). Mr. Rodriguez did not appeal that decision.

¹⁰ On July 3, 2006, Bureau staff requested that Mr. Rodriguez cease operations of W17CH because his station was causing impermissible interference to Station W17CR, and he complied two days later. AFR at 2.

¹¹ See, e.g., *A-C Broadcasters*, Memorandum Opinion and Order, 10 FCC 2d 256 (1967) ("since there was no way of knowing whether" an applicant for a station "would ever obtain a permit, its claim of injury rested on pure conjecture."); *Gray Television Licensee, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 644, 646-47 (2008).

his long- silent LPTV station. Accordingly, Mr. Rodriguez has failed to demonstrate that he is a party aggrieved by the Letter Decision, as required by section 1.115(a).¹²

4. In light of the foregoing, upon review of the AFR and the record before us, we dismiss the AFR. In light of this action, we need not consider the substantive merits of the arguments contained in the AFR regarding the Bureau's actions taken in its Letter Decision.

5. ACCORDINGLY, IT IS ORDERED That, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(a) of the Commission's rules, 47 C.F.R. § 1.115(a), the Application for Review IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹² Mr. Rodriguez also maintains that, in the event that the Commission finds to be "insufficient" his claim for standing based on W17CH, he has standing because he is "a resident of New York City and lives in the area covered by WEBR-CA" and is "adversely affected by the Letter Order as a listener" because WEBR-CA "is not broadcasting at its authorized signal strength." Reply at 2, n. 7. Because Mr. Rodriguez first raised this argument in his Reply, thus depriving the Bureau of the opportunity to pass on it, we need not consider it here. See 47 C.F.R. § 1.115(c).