



Federal Communications Commission
Washington, D.C. 20554

January 7, 2020

In Reply Refer to:
1800B3-AR

Positive Alternative Radio, Inc.
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Joseph Stuart Staley, Jr.
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In re: **W241AL, Marion, Virginia**
Facility ID No. 142568
File No. 72263

W295AI, Marion, Virginia
Facility ID No. 142575
File No. 72288

**Applications for Renewal of License
Petition to Deny**

Dear Counsel:

We have before us the above referenced applications (Applications) of Positive Alternative Radio, Inc. (PAR) for renewal of licenses for FM translator stations W241AL and W295AI, Marion, Virginia, (Stations).¹ We also have before us a Petition to Deny the Applications (Petition) filed on August 27, 2019 by Joseph Stuart Staley, Jr. and related responsive pleadings.² For the reasons set forth below, we dismiss the Staley filing as a petition to deny, consider and deny it as an informal objection, and grant the Applications.

Background. In the Petition, Staley submits that he is the owner of a tract of land consisting of roughly 792 acres located in Smyth County, Virginia and identified as Tax ID No. 21-A-64.³ Staley opposes grant of both license renewal Applications and asserts that he owns the land, deeded to him

¹ Copies of the renewal Applications can be found in the Commission's Licensing and Management System (LMS).

² PAR filed an Opposition to Petition to Deny (Opposition) on August 28, 2019 and a Supplement to Petition to Deny (Supplement) on November 7, 2019.

³ Petition at 1.

March 1, 1973, on which PAR broadcasts the Stations' signals without justification or permission.⁴ Staley further contends that PAR is trespassing and that no entity has the right to use his property.⁵ In support of his claims, Staley offers maps with a building location identifying PAR's alleged encroachment.⁶ Lastly, Staley maintains that the Applications should be denied because grant is not in the public interest, as it would permit PAR to continue to trespass on his property.⁷

In its Opposition, PAR argues that it has used the same transmitting sites as a tenant of third-party land owners since 2007 without incident.⁸ PAR contends it is a month-to-month tenant of Bristol Broadcasting, Inc. with respect to Station W241AL, and has a month-to-month lease agreement with Two-Way Radio, Inc. for Station W295AI.⁹ In support of its claims, PAR attaches checks paid to Bristol Broadcasting, Inc., a letter from Two-Way Radio, Inc. confirming the lease agreement, and a billing invoice from Two-Way Radio, Inc.¹⁰ PAR insists that it is a third party to a land dispute between Staley, Bristol Broadcasting, Inc., and Two-Way Radio, Inc., which has no bearing on its qualifications as a licensee.¹¹ PAR also argues that because the Petition is based on a private contractual dispute, and the Commission historically does not become involved in such matters, the pending license renewal applications should be granted.¹²

In its Supplement, PAR maintains that Station W241AL, specifically, has never transmitted its signal from a site owned by Staley.¹³ Additionally, PAR indicates that Station W295AI was granted a license on November 6, 2019¹⁴ to broadcast from the same site where Station W241AL transmits.¹⁵ PAR also submits a letter from a representative of the Bristol Broadcasting Company, Inc. dated October 16, 2019, attesting that the tower where both Stations currently broadcast is owned by Bristol and the site is not involved in any land disputes.¹⁶

Discussion. Procedural Issue. Staley has not adequately established standing to file a petition to deny. A party filing a petition to deny must demonstrate standing by providing "specific allegations of fact sufficient to show that [it] is a party in interest."¹⁷ These allegations must show that: (1) the

⁴ *Id.* at 1-2.

⁵ *Id.* at 2.

⁶ *Id.* at Ex. 3.

⁷ *Id.* at 2.

⁸ Opposition at 1.

⁹ *Id.* at 1-2.

¹⁰ Opposition, Exs. 1 and 2.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ Supplement at 2.

¹⁴ *Id.* at 2. *See also* Application File No. 85637.

¹⁵ Supplement at 2.

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 309(d)(1).

petitioner would suffer a direct injury that is more than hypothetical or purely speculative;¹⁸ (2) the injury is causally linked to the challenged action;¹⁹ and (3) the relief sought will likely be remedied with the Commission's denial of the pending application.²⁰ Moreover, it is well established that "standing is accorded to persons not for the protection of their private interests but only to vindicate the public interest."²¹

In his Petition, Staley claims that he will suffer harm from grant of the Applications because PAR will continue to trespass on his property.²² However, Staley has not shown that denial of the Applications would cure the contractual land dispute between Staley and either Bristol Broadcasting Company, Inc. or Two-Way Radio, Inc., or that grant of the Applications would preclude any claims Staley may have against Bristol Broadcasting Company, Inc. or Two-Way Radio, Inc. Accordingly, the Staley pleading cannot be considered a petition to deny.²³ We will, however, consider the pleading as an informal objection under section 73.3587 of the Commission's rules.²⁴

Substantive Issue. Both petitions to deny and 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 public interest, convenience, and necessity.²⁵ Specifically, section 309(k)(1) provides that we are to grant renewal applications if, upon consideration of the application and pleadings, we find that: "(A) the station has served the public interest, convenience, and necessity; (B) there have been no serious violations by the licensee of this chapter or the rules and regulations of the Commission; and (C) there have been no other violations by the licensee . . . which . . . would constitute a pattern of abuse."²⁶ If, however, the licensee 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, or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."²⁷

Staley's Petition is rooted in a private contractual dispute regarding property boundaries between Staley and Bristol Broadcasting Company, Inc., Two-Way Radio, Inc., or both. The Commission has

¹⁸ See, e.g., *Conn-2 RSA Partnership*, Memorandum Opinion and Order, 9 FCC Rcd 3295, 3297, para. 8 (1994) (injury cannot be hypothetical, but rather fairly traceable to whether the Commission decides to grant the application).

¹⁹ See, e.g., *Riverside Youth & Rehabilitation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10360, 10362-63, para. 6 (2008).

²⁰ *Id.*

²¹ *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1001 (D.C. Cir. 1966); see also *Rainbow/Push Coalition*, 330 F.3d 539, 556 (D.C. Cir. 2003).

²² Petition at 2.

²³ See 47 CFR § 73.3584; 47 U.S.C. § 309(d)(1).

²⁴ 47 CFR § 73.3587.

²⁵ 47 U.S.C. § 309(d). 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); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986).

²⁶ 47 U.S.C. § 309(k)(1).

²⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

repeatedly held that it will not insert itself into private contractual disputes, and that parties should seek redress for such matters in local courts of competent jurisdiction.²⁸ Accordingly, we decline to intervene in this contractual dispute and leave resolution to the proper forums.

Moreover, absent the issuance of an order from a local court, the Commission has granted renewal applications pending the resolution of private legal disputes.²⁹ We emphasize that grant of the Applications merely finds that the parties are qualified under, and the proposed renewal does not violate, the Act or the Commission's rules.³⁰ It is therefore permissive, not compulsory, and does not prejudice or influence any relief that Staley may be entitled to under civil suit.³¹

Conclusion/Actions. We have evaluated the Applications pursuant to section 309(k) of the Act, and 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 Stations served the public interest, convenience, and necessity during the subject license terms.

Accordingly, pursuant to section 309(k) of the Communications Act of 1934, as amended, and sections 0.61 and 0.283 of the Commission's Rules,³² IT IS ORDERED that the Petition to Deny, filed by Joseph Stuart Staley, Jr. IS DISMISSED, and when treated as an Informal Objection, IS DENIED.

IT IS FURTHER ORDERED, that the Application filed by Positive Alternative Radio, Inc., for renewal of license for Station W241AL, Marion, Virginia, Facility ID No. 142568, (File No. 72263) IS GRANTED.

IT IS FURTHER ORDERED, that the Application filed by Positive Alternative Radio, Inc., for renewal of license for Station W295AI, Marion, Virginia, Facility ID No. 142575, (File No. 72288) IS GRANTED.

Sincerely,



Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁸ See *In Re Application of Basic Commc'ns, Inc. for Renewal of License for Station Wyde, Birmingham, Alabama*, Memorandum Opinion and Order, 59 FCC 2d 1125, para. 3 (1976); *Kathleen N. Benfield Glenn C. Benfield M. Anne Swanson, Esq.*, Letter, 13 FCC Rcd 4102, 4105 (1997); *John F. Runner, Receiver*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976); *Decatur Telecasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 8622 (1992).

²⁹ See *Cnty. Media Corp*, Memorandum Opinion and Order, 61 FCC 2d 493, 494, para. 5 (1976).

³⁰ See, e.g., *Cumulus Licensing LLC*, Letter, 21 FCC Rcd 2998, 3007 (2006).

³¹ *Id.*

³² 47 U.S.C. § 309(k); 47 CFR §§ 0.61, 0.283.