



Federal Communications Commission
Washington, D.C. 20554

May 6, 2022

In Reply Refer to:
1800B3-AR

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In re: **Horizon Broadcasting Group,
LLC**

File No. 0000162367
KWPK(FM), Sisters, OR
Facility ID No. 59365

File No. 0000162355
KQAK(FM), Bend, OR
Facility ID No. 31175

File No. 0000162340
KLTW(FM), Prineville, OR
Facility ID No. 27168

File No. 0000162341
K227DC, Prineville, OR
Facility ID No. 27170

Informal Objection

Dear Licensee and Objector:

We have before us the above referenced applications for renewal of licenses (Applications) filed by Horizon Broadcasting Group, LLC (Licensee) for Stations KWPK(FM); Sisters, Oregon, KQAK(FM), Bend, Oregon; and KLTW(FM), Prineville, Oregon (collectively, Stations).¹ Also before us are Petitions

¹ KWPK(FM) Application File No. 0000162367 (filed Oct. 1, 2021); KQAK(FM) Application File No. 0000162355 (filed Oct. 1, 2021); KLTW-FM Application File No. 0000162340 (filed Oct. 1, 2021).

to Deny opposing grant of the Applications, which we will treat as Informal Objections (Objections), filed by Western Radio Services Co. (Western) and Richard L. Oberdorfer (Oberdorfer), in his capacity as President of Western.² For the reasons set forth below, we deny the Objections and grant the Applications.

Background. In the Objections, Oberdorfer argues that the Commission should deny the Applications because: 1) the Stations allegedly create noise and spurious emissions at 158 MHz, which cause interference to Western’s commercial mobile radio service (CMRS) stations at Awbrey Butte, Oregon, as well as to public safety communications, causing harm to Oberdorfer as a central Oregon resident and as operator of commercial mobile radio service (CMRS) stations;³ 2) Licensee “is a member of a cartel of broadcasters” in Central Oregon that have agreed to refuse to resolve interference complaints, including refusing to install cavity bandpass filters;⁴ 3) Oberdorfer initiated litigation against “the cartel” for its failure to mitigate interference and to force it to participate in arbitration, that “the cartel” still refused to do so despite a court order, and a contempt of court claim “has been filed against the cartel and is pending;”⁵ and 4) penalties for contempt of court, such as fines or incarceration, could render Licensee unqualified to hold the Station licenses.⁶

In oppositions to the Objections (Oppositions), Licensee argues the objections should be dismissed because: 1) Oberdorfer lacks standing to file the petitions to deny as either a party in interest, or a party who has suffered injury, and does not demonstrate that withholding grant of the applications provides redress;⁷ 2) Oberdorfer’s claims lack specificity, are conclusory, and are not based on any specific allegations of fact, and Oberdorfer does not allege any specific violation of the Rules;⁸ 3) Licensee has installed cavity bandpass filters at KWPK(FM), KQAK(FM), and KLTW(FM);⁹ 4) local public safety organizations transitioned out of 158 MHz and now use 800 MHz spectrum, and have never filed an interference complaint against the Stations;¹⁰ and 5) Licensee is unaware of any pending litigation related to the Stations, and the only litigation Licensee is aware of is a resolved dispute from 2011-2013, in which the judgment characterized Oberdorfer’s interference claims as unsupported and brought in improper forums.¹¹

² KWPK(FM) Objection, Pleading File No. 0000178087 (filed Dec. 28, 2021); KQAK(FM) Objection, Pleading File No. 0000178079 (filed Dec. 28, 2021); KLTW-FM Objection, Pleading File No. 0000178073 (filed Dec. 28, 2021). As explained below, the Objections fail to meet the requirements of a Petition to Deny. We will treat the pleadings as informal objections under section 73.3587 of the Commission’s rules (Rules). Additionally, the Petition to Deny filed against the KLTW-FM Application originally objected to the grant of the renewal for K227DC, which is included as part of that application. However, Western and Oberdorfer withdrew their Objection to the renewal of that translator’s license. *See* K227DC Reply, Pleading File No. 0000185481 (filed Feb. 23, 2022) at 1.

³ KWPK(FM), KQAK(FM), and KLTW(FM) Objections at 1.

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

⁷ KWPK(FM) Opposition, Pleading File No. 0000181687 (filed Jan. 27, 2022); KQAK(FM) Opposition, Pleading File No. 0000181685 (filed Jan. 27, 2022); KLTW(FM) Opposition, Pleading File No. 0000181690 (filed Jan. 27, 2022) at 1-4.

⁸ *Id.* at 1-2 and 4-5.

⁹ *Id.* at 5-6; Exhs. A and B.

¹⁰ *Id.* at 6; Exh. C.

¹¹ *Id.* at 5-8; Exh. D.

In replies to the Oppositions, Oberdorfer counters that: 1) he observed spurious emissions at the 800 MHz band, which impact both county government provided 911 services and Western's CMRS stations as well as USDA Forest Service radio stations on the 150-175 MHz band;¹² 3) Licensee falsely claimed that it was unaware of any pending interference complaints because it is a party to interference arbitration that remains pending, and attaches attorney correspondence from 2008 to show there is ongoing arbitration;¹³ and 4) the excerpt Licensee provides from the 2013 order mischaracterizes the facts.¹⁴

Discussion. In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Communications Act of 1934, as amended (Act).¹⁵ The Commission shall grant a renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹⁶

Petitions to deny 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 section 309(k) of the Act.¹⁷ Moreover, both petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief request.¹⁸

Under section 309(d) of the Act, only a "party in interest" has standing to file a petition to deny.¹⁹ In addition to containing the necessary factual allegations to support a *prima facie* case that grant of the application would be inconsistent with the public interest, convenience, and necessity, a petition to deny must contain specific allegations of fact demonstrating that the petitioner is a party in interest.²⁰ 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. A petitioner must also allege and prove that grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.²¹ In the broadcast regulatory context, standing is generally obtained by a petitioner in one of three ways: (1) as a competitor in the

¹² KWPK(FM) Reply, Pleading File No. 0000185479 (Filed Feb. 23, 2022); KQAK(FM) Reply, Pleading File No. 0000185480 (Filed Feb. 23, 2022); KLTW(FM) Reply, Pleading File No. 0000185481 (Filed Feb. 23, 2022) at 1.

¹³ *Id.* at 1-2 and Exh. A.

¹⁴ *Id.*

¹⁵ 47 U.S.C. § 309(k).

¹⁶ 47 U.S.C. § 309(k)(1).

¹⁷ 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 Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (Sept. 10, 1993) (*WWOR-TV*).

¹⁸ *See Area Christian*, 60 R.R.2d at 864, para. 6; *WFBM, Inc.*, Memorandum Opinion and Order, 47 FCC 2d 1267, 1268, para. 3 (1974).

¹⁹ *See* 47 U.S.C. § 309(d)(1).

²⁰ *Id.*

²¹ *See, e.g., Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6063 (1992); *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC 2d 696 (1978).

market suffering signal interference; (2) as a competitor in the market suffering economic harm; or (3) as a resident of the station's service area or regular listener of the station.²²

Oberdorfer has not provided any documentation to support his claims that he has suffered harm in his capacity as president of Western, whose CMRS stations are allegedly suffering signal interference, or as a resident of the Central Oregon area. The Objections lack any factual evidence or documentation of precisely where Oberdorfer resides, and in fact provide only a mailing address for a post office box in Arizona. The Objections also fail to include any evidence of instances of interference which harm Western's CMRS stations. Oberdorfer likewise does not demonstrate that there is a causal link between his alleged injury and grant of the Applications, or that withholding grant of the Applications would remedy or prevent the alleged injury in fact. Accordingly, Oberdorfer has not demonstrated that he is a party-in-interest in this proceeding.

Because the Objections do not satisfy the standing requirements of sections 309(d), we treat the pleadings as informal objections.²³ We find that Oberdorfer has not made a *prima facie* case that the Stations failed to meet their public interest obligations or violated any Commission rule or policy, and deny the Objections.

Interference Claims. The Commission has found that blanket assertions of a conclusory nature regarding interference do not meet the evidentiary requirements of either a petition to deny or an informal objection.²⁴ The Objections' allegations are conclusory, are unsubstantiated by any extrinsic evidence, and fail to cite any provision of the Act or the Rules.²⁵ Oberdorfer submits no evidence to support his interference claims. Oberdorfer also fails to make any determination as to what level of noise or interference the Stations cause. The Objections lack details regarding instances of interference, locations or duration of the interference observed, a description of how the emissions were measured, or any engineering or technical information otherwise to support the claims. Moreover, Oberdorfer has not submitted any documentation of attempts to resolve the alleged interference directly with the Licensee, nor any record of submitting an interference complaint to FCC Regional and Field Offices, the Bureau, or the Enforcement Bureau, to request assistance with interference complaints involving the Licensee. Oberdorfer likewise alleges that the Stations causes interference to public safety and public service

²² See *Chapin Enterprises, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250 (MB 2014); *CHET-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042 (1999) (“[W]e will accord party-in-interest status to a petitioner who demonstrates either residence in the station's service area or that the petitioner listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with the station”); *Office of Communications of the United Church of Christ v. FCC*, 359 F.2d 994, 1000-1006 (D.C. Cir. 1966) (“*United Church of Christ*”) (expanding standing from traditional categories of electrical interference or economic injury to station listeners).

²³ 47 CFR § 73.3587.

²⁴ See *License Renewal Applications of Certain Broadcast Stations Licensed to Communities in Maryland, Virginia, West Virginia, and the District of Columbia*, Memorandum Opinion and Order, 9 FCC Rcd 2143, 2145, paras. 8-9 (1994) (finding that non-specific testimony regarding interference, and conclusory allegation that 47 license renewal licensees would likely cause interference to National Radio Astronomy Observatory facility, without specific supporting engineering evidence, does not establish a *prima facie* showing that grant of the applications would not be in the public interest).

²⁵ See *Roy E. Henderson*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5223, 5230, para. 19 (MB 2018) (finding that vague, unsupported, and non-actionable allegations in an objection would not be given further consideration) (*Roy Henderson*); *Texas Educ. Broad. Co-Op., Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13038, 13040, para. 6 (MB 2012) (concluding that unsupported and irrelevant allegations without specific instances of misconduct, nor any activity that bears on the Station's compliance with the Act and the Rules, warrants no further consideration).

communications, yet submits no documentation or testimony of any interference complaint from a public safety or public service representative to corroborate this allegation.

While Oberdorfer argues that Licensee should install cavity bandpass filters to reduce the likelihood of interference, Licensee confirms that it has in fact installed cavity bandpass filters at each of the Stations, and submits a declaration from its president and CEO and photographs of the cavity bandpass filters to support this claim.²⁶ Accordingly, we find no basis to consider this allegation further.

Pending Court Action. We also reject Oberdorfer's claim that the Applications should be denied because Licensee has allegedly not submitted to arbitration. The Commission has consistently held that it will not act on mere allegations of non-FCC misconduct prior to adjudication by a tribunal of competent jurisdiction.²⁷ Absent the issuance of an order from a court, the Commission has granted renewal applications pending the resolution of private legal disputes.²⁸ The Commission has also repeatedly held that it will not insert itself into the private affairs of parties, and that parties should seek redress for such matters in local courts of competent jurisdiction.²⁹ Lastly, grant of the Applications merely finds that the parties are qualified under, and the proposed renewal does not violate, the Act or the Rules.³⁰ It is therefore permissive and does not prejudice or influence any relief that the parties may be entitled to under a civil suit.³¹ In his replies to the KWPK(FM), KQAK(FM), and KLTW(FM) Oppositions, Oberdorfer attaches correspondence apparently related to a dispute from 2008, yet offers no case information regarding the referenced court actions nor does he attach any final court order to his pleadings. Further, Licensee submits a declaration from its president and CEO in which he affirmatively states that he is unaware of any pending litigation.³² Licensee speculates that Oberdorfer may be referencing an action that concluded with a judgment in 2013, which Licensee was not party to, in which Oberdorfer's interference claims were addressed.³³

Character Qualifications. We also reject Oberdorfer's argument that the Licensee's financial status or the outcome of potential court actions calls into question its qualifications to hold a broadcast license. Section 309(k) does not provide that the Commission may take a licensee's financial status into account when deciding whether to grant a license renewal application.³⁴ We further reject Oberdorfer's argument that the Licensee's potential involvement in local court matters calls into question its qualifications to hold a Commission license. The Commission does not consider non-FCC conduct (*i.e.*, conduct which is not specifically proscribed by the Act or the Rules) in its evaluation of character unless such conduct has been adjudicated by an appropriate court or agency and concerns either (1) fraudulent statements to government agencies; (2) felony convictions; or (3) mass media related violations of anti-

²⁶ See KWPK(FM), KQAK(FM), and KLTW(FM) Oppositions at 5-6; Exhs. A and B.

²⁷ See *Roy Henderson* 33 FCC Rcd 5223 at 5231, citing *Mayor Maurice A. Brown*, Letter Order, 24 FCC Rcd 7632, 7636 (MB 2009) (holding that unsupported allegations provide no basis for denying or designating for evidentiary hearing an assignment application).

²⁸ See *Cnty. Media Corp*, Memorandum Opinion and Order, 61 FCC 2d 493, 494, para. 5 (1976).

²⁹ See *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).

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

³¹ *Id.*

³² KWPK(FM), KQAK(FM), and KLTW(FM) Oppositions at 6; Exh. A.

³³ *Id.* at 6-8; Exh. D

³⁴ See 47 U.S.C. § 309(k)(1).

competitive and antitrust statutes.³⁵ Oberdorfer has not provided any evidence of any such activity.

We have reviewed the Applications in accordance with section 309(k) of the Act,³⁶ and we find that the stations KWPK(FM), KQAK(FM), and KLTW(FM) have served the public interest, convenience, and necessity during the subject license terms. We therefore grant the Applications.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Petitions to Deny filed by Western Radio Services Co. and Richard L. Oberdorfer (Pleading File Nos. 0000178087, 0000178079, and 0000178073), considered as informal objections, **ARE DENIED**.

IT IS FURTHER ORDERED that the Applications of Horizon Broadcasting Group, LLC, for renewal of license for Stations KWPK(FM), Sisters, Oregon; KQAK(FM), Bend, Oregon; KLTW(FM), Prineville, Oregon; and K227DC, Prineville, Oregon (Application File Nos. 0000162367, 0000162355, 0000162340, and 0000162341), **ARE GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

³⁵ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1195, para. 34 (1985) (*Character Policy*), recon. granted in part, denied in part, Memorandum Opinion and Order, 1 FCC Rcd 421 (1986), as modified, Policy Statement and Order, 5 FCC Rcd 3252 (1990). The Commission did create an exception to the general rule that non-Commission related misconduct must result in an adjudication before the Commission will consider it. In adopting the *Character Policy* the Commission acknowledged “that there may be circumstances in which an Licensee has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation.” In such cases, it indicated, the misconduct might, of its own nature, constitute *prima facie* evidence that the Licensee lacks the traits of reliability and/or truthfulness necessary to be a licensee and might be a matter of Commission concern even prior to adjudication by another body. *Character Policy*, 102 FCC 2d at n.60.

³⁶ 47 U.S.C. § 309(k)(1).