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Washington, D.C. 20554

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In Reply Refer to:
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In re: Citicasters Licenses, Inc.
WKRC(AM), Cincinnati, OH
Facility ID No. 29737
File No. 0000115403

WLW(AM), Cincinnati, OH
Facility ID No. 29733
File No. 0000115405

**Applications for Renewal of Licenses
Informal Objections**

Dear Counsel and Objector:

We have before us the referenced applications for renewal of licenses (collectively, Applications)¹ filed by Citicasters Licenses, Inc. (Citicasters)² on June 1, 2020, for stations WKRC(AM), Cincinnati, Ohio and WLW(AM), Cincinnati, Ohio (collectively, Stations). Also before us are the Informal Objections (Objections) to the Applications filed by Jim J. Condit, Jr. (Condit)³ and related responsive pleadings.⁴ For the reasons set forth below, we deny the Objections and grant the Applications.

Background. iHeart timely filed the Applications on June 1, 2020. In the Objections, Condit first argues that the Applications should be denied because iHeart violated sections 315(a) and 312(a)(7) of the

¹ File Nos. 0000115403 and 0000115405.

² Licensee is a subsidiary of iHeart Media, Inc. (iHeart). In this letter, we will refer to Citicasters as iHeart.

³ Pleading File Nos. 0000123292 (objection to the WKRC(AM) application) and 000012329 (objection to WLW(AM) application). The two objections raise identical arguments, and we will therefore consider them jointly.

⁴ iHeart filed an Opposition to the Objections (Pleading File Nos. 0000125842 and 0000125834) (filed Nov. 11, 2020). Condit filed a Reply to the Opposition (Pleading File Nos. 0000125842 and 0000125834) (filed Jan. 7, 2021).

Communications Act of 1934, as amended (Act),⁵ by failing to air political ads for Condit's political campaign.⁶ Condit states that his campaign entered into a contract with iHeart to air the ads on the Stations, but after several ads had aired, iHeart informed Condit that it no longer considered him to be a legally qualified candidate, and ceased airing the ads.⁷ Accordingly, Condit argues that iHeart engaged in prohibited censorship against him and denied him reasonable access to broadcast time.⁸ Condit next argues that the Applications should be denied because iHeart violated section 315(e)(3) of the Act and section 73.1943(c) of the Commission's rules (Rules) by failing to timely upload required materials to the online political files of various stations licensed to iHeart.⁹ Condit also argues that iHeart incorrectly certified in the Applications that it was in compliance with the Commission's foreign ownership requirements, and notes that in July of 2019, iHeart filed a petition for declaratory ruling to allow it to have up to 100% foreign ownership.¹⁰ Finally, Condit argues that iHeart lacks the character to hold a commission license because it filed for bankruptcy and avoided paying its credit in full.¹¹

In its Opposition, iHeart notes that the issue of whether it violated the Act by refusing to broadcast Condit's political advertisements is the subject of a separate complaint Condit filed with the Media Bureau (Bureau), that iHeart reasonably determined that Condit was not a legally qualified candidate for office, its dispute with Condit is a private contractual matter, and that even if iHeart did violate the Act, such a violation would not be grounds to revoke the Stations' licenses.¹² iHeart next argues that the *iHeart Political File Order* specifically provided that the Bureau would not use the facts developed in its investigation into iHeart's political file violations, or the existence of the related Consent Decree, in response to any third-party objection concerning the political file violations.¹³ iHeart also argues that its petition for declaratory ruling on foreign ownership, which was granted by the Commission,¹⁴ should have no bearing on the Applications and that iHeart followed the Commission's procedures to seek approval for additional foreign ownership.¹⁵ Finally, iHeart notes that the Commission approved its plan to emerge from bankruptcy and that its bankruptcy reorganization has no bearing on its character qualifications.¹⁶

⁵ 47 U.S.C. §§ 315(a), 312(a)(7).

⁶ Objections at 2-3.

⁷ *Id.*

⁸ *Id.*

⁹ Objections at 3-4 (citing 47 U.S.C. 315(e)(3); 47 CFR 73.1943(c); *Online Political Files of iHeartMedia, Inc.*, Order, 35 FCC Rcd 7264 (MB 2020) (*iHeart Political File Order*)).

¹⁰ Objections at 5-7.

¹¹ *Id.* at 7-8.

¹² Opposition at 2-3. After the filing of the Opposition, the Bureau released an order denying Condit's complaint. See *Political Programming Complaint of Jim Condit, Jr., against Citicasters Licenses, Inc.*, Memorandum Opinion and Order, DA 22-395 (MB Apr. 8, 2022) (*iHeart-Condit Order*).

¹³ Opposition at 4-5 (citing *iHeart Political File Order*, 35 FCC Rcd at 7271, para. 9).

¹⁴ See *iHeartMedia, Inc., Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Declaratory Ruling, 35 FCC Rcd 12770 (MB 2020) (*iHeart Foreign Ownership Ruling*).

¹⁵ Opposition at 5.

¹⁶ Opposition at 6 (citing *iHeart Media, Inc., Debtor-in-Possession Seeks Approval to Transfer Control of Assign FCC Authorization and Licenses*, Memorandum Opinion and Order, 34 FCC Rcd 2409 (MB 2019)).

In his Reply, Condit argues that iHeart’s refusal to run his political advertisements is not merely a breach of contract, as iHeart argues, but in fact prohibited political censorship.¹⁷ Condit also argues that he in fact met the requirements to be a legally qualified candidate during the 2020 election.¹⁸

Discussion. Under section 309(k) of the Act, the Commission shall grant the 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.¹⁹ 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.”²⁰

Informal objections to license renewal applications, like 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.²¹ Informal objections must also contain adequate and specific factual allegations sufficient to warrant the relief requested.²² For the reasons set for below, we find that Condit has not met this burden.

Censorship and Reasonable Access. In the *iHeart-Condit Order*, the Bureau denied Condit’s complaint alleging that iHeart violated sections 315(a) and 312(a)(7) of the Act when it discontinued airing Condit’s political advertisements.²³ The Objections rely on the same arguments that the Bureau considered and rejected. Accordingly, we reject these arguments as a basis to deny the Applications for the reasons stated in the *iHeart-Condit Order*.²⁴

Online Public Inspection File. In the *iHeart Political File Order*, the Bureau resolved its investigation into iHeart’s compliance with the online public file rules. In that resolution, the Bureau stated that it would not use iHeart’s violations of the political file rules against iHeart in any subsequent

¹⁷ Reply at 2-3.

¹⁸ *Id.* at 4-5 and Affidavit of Jim Condit, Jr.

¹⁹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

²⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²¹ 47 U.S.C. § 309(d)-(e). *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* (D.C. Cir. Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 R.R.2d 862, 864, para. 6 (1986) (*Area Christian*) (stating informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²² *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).

²³ *See generally, iHeart-Condit Order*.

²⁴ *Id.* at 7-13, paras. 12-26) (finding that Condit was not a legally qualified candidate and therefore was not entitled to the protections under sections 315(a) and 312(a)(7)).

proceeding.²⁵ We thus reject Condit's argument that these violations are grounds to deny the Applications.

Foreign Ownership. As discussed in the *iHeart Foreign Ownership Ruling*, iHeart correctly followed the Commission's requirements for coming into compliance with our foreign ownership rules, and the Commission approved iHeart's petition for declaratory ruling to exceed 25% foreign ownership.²⁶ Additionally, there is no evidence that iHeart was not in compliance with our foreign ownership rules at the time it filed the Applications, and thus correctly certified that it was in compliance. We thus reject Condit's argument that iHeart's foreign ownership is a basis to deny the Applications.

Character Qualifications. The Commission has previously made clear that it will 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-competitive and antitrust statutes.²⁷ Condit provides no evidence of violations of any law by iHeart. Moreover, as iHeart notes, bankruptcy is not grounds to find a licensee lacks that character to hold a Commission license, and indeed, the Commission approved iHeart's reorganization. We this reject this argument as well.

Renewal of License. We have reviewed the Applications in accordance with section 309(k) of the Act,²⁸ and we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Applications.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED**, that the Informal Objections filed by Jim J. Condit, Jr., on September 30, 2020, **ARE DENIED**.

²⁵ *iHeart Political File Order*, 35 FCC Rcd at 7271, para. 9 ("The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against iHeart concerning the matters that were the subject of the Investigation.").

²⁶ See generally, *iHeart Foreign Ownership Ruling*.

²⁷ 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 applicant 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 applicant 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. We do not believe that the conduct alleged by Condit "shocks the conscience." Accordingly, it would not fit within this exception to the adjudication requirement.

²⁸ 47 U.S.C. § 309(k)(1).

IT IS FURTHER ORDERED that the application of Citicasters Licenses, Inc., for renewal of license for Stations WKRC(AM), Cincinnati, Ohio (File No. 0000115403) and WLW(AM), Cincinnati, Ohio (File No. 0000115405) **ARE GRANTED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau