



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
1800B3-DB

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In re: **WFAN-FM, New York, NY**
Facility ID No. 67846
Application File No. 0000183797

Petition to Deny

Dear Counsel:

We have before us the above-captioned application (Application) for the license renewal of station WFAN-FM, New York, New York (Station), filed on February 1, 2022, by Audacy License, LLC (Audacy).¹ We also have before us a petition to deny (Petition) filed against the Application by Kevin DeBlasi (Petitioner) and related responsive pleadings.² For the reasons set forth below, we deny the Petition and grant the Application.

Background. The Station's most recent license term began on October 10, 2014, and expired on June 1, 2022.³ Petitioner objects to grant of the Application based on his allegation that the Station's host, Sidney Rosenberg (Rosenberg), violated section 73.1212 of the Commission's rules (Rules).⁴

¹ See Application File No. 00000183797 (filed Feb. 1, 2022). Audacy acquired the Station pursuant to a transfer of control consummated on November 17, 2017. See File No. BTC-20170320AAZ (granted Nov. 9, 2017).

² Petition to Deny of Kevin DeBlasi, Pleading File No. 0000189471 (filed Apr. 19, 2022) (Petition); Opposition of Audacy License, LLC, Pleading No. 0000191062 (filed May 19, 2022) (Opposition); Response to Opposition, Pleading File No. 0000192828 (filed June 1, 2022) (Response).

³ See File No. BRH-20140131ALO (granted Oct. 10, 2014). Section 307(c)(3) of the Communications Act of 1934, as amended ("the Act") permits licensees to continue operation while there is a pending license renewal application. See 47 U.S.C. § 307(c)(3).

⁴ 47 CFR § 73.1212(a) ("When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) By whom or on whose behalf such consideration was supplied: **Provided, however,** That "service or other valuable consideration" shall not include any service or property furnished either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an

Petitioner claims that the alleged violations occurred on three separate occasions in August 2014. According to the Petitioner, in each instance, Rosenberg discussed on-air a book entitled “Polarized: Sex, Lies, and Family Betrayal” (“Polarized”) and its author, Joseph DeBlasi (DeBlasi), without disclosing that Rosenberg had received \$5000.00 from Petitioner and DeBlasi in exchange for promoting the book and securing an interview with Geraldo Rivera on the Geraldo Rivera Show.⁵ Petitioner claims that CBS Radio (CBS) and Entercom Communications Corp. (Entercom), the Station’s parent companies, subsequently suspended Rosenberg in December 2014 but then re-hired him as a weekend host on Miami Sports Radio 560 WQAM-AM in May 2017, thereby revealing what Petitioner claims is a culture of Audacy condoning “payola” on its stations.⁶ Petitioner states that only after he filed a fraud case on behalf of DeBlasi against Rosenberg and the Station in the Supreme Court of New York in February 2018 did CBS and Entercom once again relieve Rosenberg of his duties at CBS Sports Radio Network.⁷ Petitioner argues that the Station has a culture of condoning payola and repeatedly misleading its audience that is opposed to the public good and therefore the Application must be denied.⁸

In its Opposition, Audacy argues that the Petition should be dismissed without consideration because Petitioner lacks standing to challenge the Application.⁹ Audacy states that if the Bureau considers the allegations raised in the Petition, it should be denied because it does not present facts sufficient to rebut the statutory presumption in favor of license renewal or raise a substantial and material question as to whether Audacy has operated the Station consistent with the public interest, convenience, and necessity during the current license term.¹⁰ Audacy maintains that the underlying allegations concern events the Petitioner says took place prior to the current license term and therefore they are not relevant to the Commission’s consideration of the Application.¹¹ Moreover, Audacy contends that the Petition fails to present widespread or serious violations that constitute a pattern of abuse at the Station warranting further Commission inquiry into the Station’s service to the public.¹² Audacy argues that the underlying allegations are without evidentiary support and are only conclusory assertions about one particular radio show host who has not been associated with the Station for nearly eight years.¹³ Audacy asserts that the Petition is a transparent attempt to relitigate Petitioner’s complaints against the Station that are currently

identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.”).

⁵ Petition at 1-2. The alleged illegal “plugs” took place on the Station’s nationally syndicated “Boomer and Carton Show.” *Id.* at 1. We note that Petitioner is also DeBlasi’s brother and legal counsel.

⁶ *Id.* at 1-2.

⁷ *Id.* at 1.

⁸ *Id.* at 3.

⁹ Opposition 1-3 (arguing that Petitioner’s private interest in representing a client in a pending lawsuit against a broadcast station is insufficient to establish standing in the instant proceeding). *Id.* at 6.

¹⁰ *Id.* at 4-6.

¹¹ *Id.* at 5 (stating that the sponsorship identification allegations in the Petition, even if accurate, occurred in August 2014, while the renewal grant date for the Station was October 10, 2014). Audacy asserts that the statute requires the Commission to consider license renewal applications based on the licensee’s operation of the station during the current license term and that the renewal grant date is the first day of such term. *Id.*

¹² *Id.* at 6-7 (arguing that state court is the proper forum to litigate the contractual dispute at issue).

¹³ *Id.* at 5-6.

the subject of a pending complaint in the Supreme Court of New York.¹⁴ Audacy states that Petitioner's personal vendetta against the Station and a former program host raises no serious questions about whether grant of the Application is in the public interest.¹⁵

In the Response, Petitioner states that he has standing to file the instant Petition because he lives and works within the Station's service area and is also a regular listener of the Station.¹⁶ Petitioner then restates his argument that Rosenberg plugged "Polarized" in three Station broadcasts without disclosing the alleged \$5000.00 payment from Petitioner and DeBlasi and that the Station violated the Rules by allowing the "Polarized" broadcasts to air without the announcements required for sponsored programming under section 73.1212(a) of the Rules.¹⁷ Petitioner maintains that the absence of these announcements also violated section 73.1212(d) of the Rules, which requires sponsorship announcements at both the beginning and end of any broadcast involving the discussion of a controversial issue of public importance lasting more than five minutes.¹⁸ Petitioner argues that in promoting "Polarized," the Station was treading into criminal violations of section 1464 of the U.S. Code involving the transmission of obscene and indecent material.¹⁹ Petitioner contends that these violations call into question whether the licensee is exercising sufficient control over the Station, thereby affecting the Station's qualifications to remain a Commission licensee.²⁰

Discussion. For the reasons set forth below, we deny the Petition and grant the Application. Section 309(d)(1) of the Act authorizes any party in interest to file a petition to deny a license renewal application and any other application to which section 309(b) of the Act applies as long as the petition "contain[s] specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with [the public interest]."²¹ A party has standing to file a petition to deny if grant of the petitioned application would result in, or be reasonably

¹⁴ *Id.* at 3, 5-6 (stating that Petitioner's client's pending case in New York state court is irrelevant to the question of whether the Station met the statutory standard for license renewal as the Commission does not involve itself in private contractual disputes between parties).

¹⁵ *Id.* at 7.

¹⁶ Response at 3-4.

¹⁷ See 47 CFR § 73.1212(a). Petitioner submits what he says is a copy of the Royalty Agreement between himself, DeBlasi and Sidney Rosenberg authorizing Rosenberg to publicize "Polarized" and to facilitate the promotion of "Polarized" on the Geraldo Rivera Show (radio or television) in exchange for \$5000.00 and a \$1.00 per book royalty on all sales of "Polarized" after the execution of the agreement. We note that Petitioner and DeBlasi signed this agreement on April 24, 2014; it is not signed by Sidney Rosenberg. See Response at 2 and Exh. A at 8, Royalty Agreement. However, Petitioner asserts that Rosenberg received \$1700.00 pursuant to this agreement via a Western Union money order on April 22, 2014, and that another \$3300.00 was paid to Rosenberg via PayPal on June 7, 2014, when Petitioner says Rosenberg purported to secure DeBlasi an on-air interview with Geraldo Rivera. See Response at 17 and Exh. A at 6, 30, and 32-34.

¹⁸ See 47 CFR § 73.1212(d); Response at 7 (claiming that "Polarized" involved a controversial political issue because it was written to advance New York's Child Victim's Act, a law that eventually amended New York's statute of limitations for victims of child sexual abuse).

¹⁹ Response at 8.

²⁰ *Id.* at 6. Petitioner agrees with Audacy that the Commission may not be the best venue to adjudicate this pattern of abuse by the Station at the expense of an unsuspecting public. *Id.* at 20.

²¹ *Id.*

likely to result in, some injury of a direct, tangible or substantial nature.²² In the broadcast regulatory context, standing is generally obtained by a petitioner in one of three ways: (1) as a competitor in the 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.²³ A claim of standing must be supported by affidavit or a declaration.²⁴ Here, Petitioner attests that he lives within the service area of and/or regularly listens to the Station.²⁵ We therefore affirm that he has standing to file the instant Petition.

Parties filing a petition to deny an application must make specific allegations of fact sufficient to show that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.²⁶ The Commission bases its threshold determination on an evaluation of the petition and supporting affidavits.²⁷ Once the Commission determines that the petitioner has made a *prima facie* case under section 309(d)(1), the Commission must determine whether the petitioner has presented a substantial and material question of fact upon which relief may be granted.²⁸ If no such question is raised, the Commission will deny the petition and grant the application if it otherwise serves the public interest, convenience, and necessity.

In evaluating an application for broadcast license renewal, the Commission's decision is governed by section 309(k) of the Act. That section provides that if, upon consideration of the application and pleadings, we find that, with respect to the station for which license renewal is sought, during the preceding license term: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²⁹ If, however, the licensee fails to meet that standard, we may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act³⁰—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”³¹

At issue in this case is whether Audacy and the Station violated section 73.1212 of the Rules. That section requires a broadcast station transmitting any matter for which it directly or indirectly

²² See 47 U.S.C. § 309(d)(1). See also, 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).

²³ See, e.g., *Chapin Enterprises, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4252 (MB 2014).

²⁴ 47 U.S.C. § 309(d)(1); 47 CFR § 1.16 (allowing unsworn declaration under penalty of perjury in lieu of a sworn affidavit in certain circumstances).

²⁵ Response at 2-3; Declaration. Petitioner also provides copies of emails, texts, and legal documents between himself and Station broadcasters, attorneys, and executives to demonstrate standing. See Response at 1 and Attach. A.

²⁶ *Astroline Communications Co. L.P. v. FCC*, 857 F.2d 1556, 1561 (D.C.Cir.1988); 47 U.S.C. § 309(d)(1).

²⁷ *Id.*

²⁸ See 47 U.S.C. § 309(d)(1).

²⁹ See 47 U.S.C. § 309(k)(1).

³⁰ See 47 U.S.C. § 309(e).

³¹ 47 U.S.C. §§ 309(k)(2)-(3).

receives any money or other valuable consideration, to announce, at the time of the broadcast: (1) that such matter is sponsored, paid for, or furnished either in whole or in part, and (2) by whom or on whose behalf such consideration was supplied.³² Related to this requirement are two prohibited practices known as “payola” and “plugola.” “Payola” is the “unreported payment to, or acceptance by, employees of broadcast stations, program producers or program suppliers of any money, service or valuable consideration to achieve airplay for any programming.”³³ “Plugola” exists when a person responsible for including promotional material in a broadcast has a financial interest in the goods or services being promoted.³⁴ Our policies do not disallow plugs or paid promotions but, rather, prohibit hidden payments or interests by requiring on-the-air disclosure.³⁵

Here, Petitioner alleges that Rosenberg committed plugola by promoting “Polarized” on three Station broadcasts without disclosing the purported \$5000.00 payment from Petitioner and DeBlasi and that the Station violated the Commission’s sponsorship rules when the broadcasts failed to announce sponsorship.³⁶ Petitioner provides audio clips of two broadcasts airing on August 8 and 12, 2014, during which Rosenberg plugs “Polarized” for approximately 80 seconds and 12 seconds, respectively.³⁷ Petitioner does not provide an audio clip of the third broadcast.³⁸

At the outset, we find that the isolated incidents relating to these broadcasts occurred before the license term under review and therefore we are statutorily barred from considering them in the context of the present license renewal proceeding.³⁹ However, even if the alleged lapses had occurred during the

³² 47 CFR § 73.1212(a). *See also* 47 U.S.C. § 508 (requiring those persons who have paid, accepted, or agreed to pay or accept such payments to report that fact to the station licensee before the involved matter is broadcast); 47 U.S.C. § 317 (requiring the licensee to announce that the matter contained in the program is paid for, and to disclose the identity of the person furnishing the money or other valuable consideration).

³³ *Payola and Undisclosed Payments*, Public Notice, 4 FCC Rcd 7708 (1988).

³⁴ *See Announcement of Financial Interests of Broadcast Stations*, Report and Order, 76 FCC 2d 221 (1980) (*Plugola Order*) (defining “plugola” as “the use or promotion on the air of goods or services in which the person responsible for including the promotional material in the broadcast, such as the licensee itself or a program producer or performer, has a financial interest”).

³⁵ *See* 47 U.S.C. § 317. The principle underlying the disclosure requirement is that “the public is entitled to know by whom it is being persuaded; to know of any private financial interests which may have influenced the use or promotion of a product or service.” *Plugola Order*, 76 FCC 2d at 222.

³⁶ Petition at 1-2; Response at 3-6.

³⁷ *See* Response at 6 and Attach., WFAN-FM Broadcast Audio Clips (dated Aug. 8 and 12, 2014). Petitioner contends that by failing to disclose on-air Rosenberg’s receipt of \$5000.00 from DeBlasi in exchange for promoting and/or securing a book promotion interview with Geraldo Rivera on the Geraldo Rivera Show, Rosenberg and/or the Station violated section 73.1212 of the Rules. *See* Petition at 1-2. We note that DeBlasi was never interviewed by Geraldo Rivera and was never a guest on the Geraldo Rivera Show.

³⁸ Petitioner alleges that the third broadcast took place on August 13, 2014, when he says he called the Station hotline phone number and engaged in “a six minute on air phone interview” with the Station’s hosts, including Rosenberg, with no sponsorship announcement on either side of the interview. Petition at 2 and Attach., New York Supreme Court Complaint. *See also* Response at 7.

³⁹ *See* 47 U.S.C. § 309(k)(1). *See also* 47 U.S.C. § 503(b)(6) (precluding the issuance of a forfeiture if the violation charged occurred more than one year prior to the issuance of an NAL or prior to the commencement of the current license term, whichever is earlier); *Zwerling Broadcasting System*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-1102 (MB Oct. 19, 2022) (noting that, in a forfeiture proceeding, the Bureau is barred from considering any violations that pre-date the station’s current license term). As previously

license term under review, the information provided would not establish a pattern of serious violations or otherwise raise a substantial and material question of fact regarding Audacy's qualifications to remain a Commission licensee.⁴⁰ In fact, Petitioner's arguments are founded on an on-going private contractual dispute with the Station and the Station's former host, Sidney Rosenberg, who has not been associated with the Station for nearly eight years.⁴¹ The Commission generally refrains from interjecting itself into private disputes, especially when, as in this case, they are already before a court of competent jurisdiction.⁴² Instead, we will process the instant Application in accordance with the Commission's rules, and leave it to the Supreme Court of New York to determine the outcome of Petitioner's private contractual dispute with the Station and Rosenberg. We emphasize, however, that allegations of the type discussed herein reflect unfavorably on a licensee's ability to properly manage its responsibilities as a public custodian of the airways. A licensee must be cognizant of its responsibilities to exercise diligence to prevent improper use of its radio facilities when it has employees in a position to influence program content.

stated, the sponsorship identification allegations concern broadcasts occurring in August 2014, before the commencement of the current license term on October 10, 2014. *See* File No. BRH-20140131ALO (granted Oct. 10, 2014); *Escalante City, Forfeiture Order*, 26 FCC Rcd 5961, 5963, para 8 (MB Apr. 15, 2011) ("The renewal grant date is the first day of the current term of license."). We therefore are also statutorily barred from instituting forfeiture proceedings against the Station or Audacy based on alleged conduct occurring before October 10, 2014.

⁴⁰ In addition to the isolated incidents summarized above, Petitioner also claims, among other things, that: (1) he provides overwhelming evidence of a year's long pattern of abuse and unreported FCC violations occurring at the Station, CBS Radio, and/or Audacy after October 10, 2014; (2) Rosenberg promoted "Polarized" on his website, www.sid-rosenberg.com; (3) the Station, CBS Radio, and/or Audacy put a sham plugola compliance plan in place (i.e., the CBS Radio Plugola Compliance Plan) and then did not watch for suspicious activity or follow up when plugola issues were raised; (4) Station executives used nothing in the CBS Radio Plugola Compliance Plan in the summer and fall of 2014 because Rosenberg remained a Station employee until Petitioner filed his complaint with the Station on December 17, 2014; (5) Rosenberg falsely assured Station executives that he had no financial stake in "Polarized;" (6) Rosenberg's reckless, unauthorized promotion of "Polarized" exposed the Station and CBS Radio to privacy and libel lawsuits; and (7) Station executives conducted a perfunctory investigation after the Petitioner's complaint was placed in the Station's public inspection file and then quickly disposed of the matter. *See* Response at 9-18. We note that these allegations, even if true, either do not reveal a serious violation of the Act or Commission rules warranting further inquiry or they are stale, unsupported, irrelevant, or concern private matters that are more appropriate for consideration by a court of competent jurisdiction. *See, e.g., Decatur Telecasting, Inc., Memorandum Opinion and Order*, 7 FCC Rcd 8622 (1992) (*Decatur*) ("The Commission has long held that it is not the proper forum for the resolution of private contractual disputes and that any redress should be sought in a local court of competent jurisdiction."); *Miami Valley Broad. Corp., Memorandum Opinion and Order*, 69 FCC 2d 870 (1978) (rejecting vague and unsupported allegations); *Midland Broadcasters, Inc., Memorandum Opinion and Order*, 48 FCC 2d 195, 197 (1974) ("It is, of course, well established that the allegation of ultimate conclusory facts or mere general allegations based on information and belief, supported by general affidavits, are not sufficient to require an evidentiary hearing."). However, even assuming, *arguendo*, that Petitioner made a timely *prima facie* case of "plugola" with respect to the three broadcasts at issue, they would be, at most, technical violations of section 73.1212 of the Rules for which we would issue an admonishment or fine. They are not the type of egregious violations that would raise the question of whether license renewal would serve the public interest.

⁴¹ Petitioner filed a complaint against the Station and Rosenberg in February 2018 before the Supreme Court of New York alleging fraud, breach of contract, and unjust enrichment arising from the Royalty Agreement mentioned above. *See* Petition at 1; Response at 5.

⁴² *See, e.g., MB Communications, Inc., Letter*, 26 FCC Rcd 11178 (MB 2008) ("the Commission has a well-settled policy of not interjecting itself into private disputes, especially when they are already before a court of competent jurisdiction"); *Decatur*, 7 FCC Rcd 8622 (1992).

Conclusion/Actions. Based on the pleadings and supporting materials before us, we find that there are no substantial and material questions of fact whether Audacy possesses the basic qualifications to remain a Commission licensee and has satisfied the standards in section 309(k) of the Act for renewal of the Station's license.⁴³ We therefore deny the Petition and grant the Application.

Accordingly, **IT IS ORDERED**, that the Petition to Deny filed by Kevin DeBlasi on April 19, 2022, **IS DENIED**.

IT IS FURTHER ORDERED that the application filed by Audacy License, LLC, on February 1, 2022, for the license renewal of station WFAN-FM, New York, NY (Facility No. 67846) **IS GRANTED**.

Sincerely,

Albert Shuldiner
Chief,
Audio Division
Media Bureau

⁴³ See 47 U.S.C. § 309(k).