



**Federal Communications Commission
Washington, D.C. 20554**

September 14, 2007

DA 07-3932

In Reply Refer to:

1800B3-RDH

Released: September 14, 2007

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In re: WINR (AM), Binghamton, New York
Facility ID No. 67191
File No. BR-20060131AZR

WENE(AM), Endicott, New York
Facility ID No. 19625
File No. BR-20060201AOZ

WKGB-FM, Conklin, New York
Facility ID No. 34451
File No. BRH-20060201APL

WMXW(FM), Vestal, New York
Facility ID No. 19624
File No. BR-20060201APY

WMVR-FM, Endicott, New York
Facility ID No. 19626
File No. BRH-20060201APW

WBBI(FM), Endwell, New York
Facility ID No. 18899
File No. BRH-20060201AOP

Applications for Renewal of License

Petition to Deny

Dear Petitioners:

This letter concerns the captioned applications (the “Renewal Applications”) of AMFM Radio Licenses, LLC, for the renewal of its license for Station WINR(AM), Binghamton, New York, and of CC Licenses, LLC, for the renewal of its licenses for Stations WENE(AM), Endicott, New York, WKGB-FM, Conklin, New York, WMXW(FM), Vestal, New York, WMRV-FM, Endicott, New York, and WBBI(FM), Endwell, New York (collectively, the “Stations”). Both AMFM Radio Licenses, LLC and CC Licenses, LLC, are subsidiaries of Clear Channel Communications, Inc., and, accordingly, we will refer to Clear Channel as the “Licensee” of these Stations. William Huston, Karen Glauber and Kevin Bunger (collectively, the “Petitioners”) jointly filed a Petition to Deny those applications dated May 3, 2006 (the “Petition”). On June 2, 2006, Licensee filed an Opposition to Petition to Deny, (the “Opposition”). For the reasons set forth below, we deny the Petition and grant the Renewal Applications.

Background. In the Petition, Petitioners represent that each is a party in interest in that each resides, works, and/or attends school within the Stations’ service areas.¹ They request that the Commission deny the Renewal Applications until such time as Licensee certifies that certain alleged deficiencies identified by the Petitioners regarding the operation of the Stations “are remedied.”² In this regard, they object both to the fact that Licensee is a for-profit company and is the licensee of a substantial number of broadcast stations,³ resulting in Licensee being a “near duopoly” in Binghamton New York, and “an illegal monopoly under the Sherman Act”⁴ Petitioners further express their dissatisfaction with the Stations’ formats, use of automation, and alleged lack of public affairs, news, political and local entertainment programming.⁵ Petitioners maintain that the Licensee’s programming decisions are improperly driven by commercial considerations, that Licensee’s operating deficiencies are attributable to the fact that it is a large company with decisions on local programming being made “in some location distant to the community of license,”⁶ and are motivated by profit.⁷ They also allege that the Stations fail to provide public access to their airtime⁸ and cite to news reports that disclose that Licensee is being investigated by the Commission for violation of the payola rules.⁹ Finally, they state that “certain deficiencies” exist in the Stations’ public files¹⁰ and that the Stations’ public files lacked a “List of Contracts Required to be Filed with the FCC.”¹¹

¹ Petition at 1.

² *Id.* at 6.

³ *Id.* at 2 - 3.

⁴ *Id.* at 3.

⁵ *Id.* at 3-4.

⁶ *Id.* at 4.

⁷ *Id.* at 3-5.

⁸ *Id.* at 5 - 6.

⁹ *Id.* at 4.

¹⁰ *Id.* at 6.

¹¹ Petition at 6. *See* 47 C.F.R. §73.3526(e)(5).

In its Opposition, Licensee denies that the single violation of the Commission's Rules, *i.e.*, the "List of Contracts Required to be Filed with the FCC," occurred. It states that the required list was included in the Stations' ownership reports, which were in the public file, and that Petitioner Huston was informed that the contracts on the list would be provided to him upon request.¹² It further states that no request for copies of the contracts was subsequently made.¹³ The Opposition notes that the alleged rule violation, in any event, would not constitute a major violation of the Commission's Rules.¹⁴ Licensee also argues that Petitioners' complaints concerning program formats and musical selections broadcast have no bearing on the Commission's consideration of its Stations' license renewals. Its programming decisions concerning such matters, it asserts, are protected by the First Amendment and case precedent.¹⁵ Petitioners' broad concerns about localism, it continues, are more appropriately addressed in the Commission's pending broadcast localism proceeding.¹⁶ Finally, in response to Petitioners' assertion that the Stations air insufficient amounts of local public affairs and news programming, Licensee provides details on local programming that these Stations broadcast during their license terms.¹⁷

Discussion. Procedural Issue. As an initial matter, we find that the Petitioners failed to file the Petition by the deadline for the submission of petitions to deny the Renewal Applications. New York radio station licenses, including those of the Licensee at issue here, expired on June 1, 2006.¹⁸ Accordingly, petitions to deny such applications had to be filed with the Commission by May 1, 2006.¹⁹ The instant Petition was received by the Commission on May 3, 2006. Petitions to deny are considered to be timely filed with the Commission only upon receipt, not when they are mailed or postmarked.²⁰ Accordingly, the Petition was not filed by the appropriate deadline. Additionally, the Petition was not supported by an affidavit of a person or persons with personal knowledge of the allegations made in the Petition as required by Section 309(d)(1) of the Communications Act of 1934, as amended (the "Act").²¹ There is attached a notarized signature of Petitioner Huston. No affidavit stating that he has personal knowledge of the facts alleged in the Petition, however, was provided by Petitioners. Nevertheless, we will consider the filing as an informal objection pursuant to Section 73.3587 of the Commission's Rules (the "Rules").²²

¹² Opposition at 3 and "Declaration of Douglas Mosher" appended thereto at 1 ("Mosher Declaration").

¹³ Opposition at 3 and Mosher Declaration at 1.

¹⁴ Opposition at 3.

¹⁵ Opposition at 4.

¹⁶ Opposition at 4. *See In the Matter of Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 (2004).

¹⁷ Opposition at 5 – 6. Licensee contends that the challenged stations each provide a minimum of one hour per week of this local public affairs and news programming.

¹⁸ *See* 47 C.F.R. § 73.1020.

¹⁹ *See* 47 C.F.R. § 73.3516(e).

²⁰ *See* 47 C.F.R. § 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.")

²¹ 47 U.S.C. § 309(d)(1).

²² 47 C.F.R. § 73.3587.

Substantive Issues. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act. That Section provides that we are to 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.²³ 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.”²⁴

The Commission has long held that licensees of radio stations have a bedrock obligation to provide coverage of issues facing their communities.²⁵ In accordance with the First Amendment and the non-censorship provisions of the Act, each licensee retains the discretion to make operational and programming decisions.²⁶ The Commission will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.²⁷ Moreover, the Commission has recognized that a licensee has wide discretion in the area of news programming and, in the absence of extrinsic evidence that a licensee has falsified, distorted or suppressed news, the Commission will not substitute its judgment for that of a licensee in determining what news is of prime interest to its listening audience and the manner in which it should be presented.²⁸ Further, the Commission will not interfere with the exercise of a licensee’s news judgment where there is no showing that the licensee consistently and unreasonably ignored matters of public concern.²⁹ Petitioners have made no such showing. As to the allegations regarding alleged payola practices, while the Petitioners correctly note the Commission’s Enforcement Bureau is investigating possible violations of the applicable provisions of the Act and the Rules, they have cited no specific evidence of such practices at the Stations.

²³ 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 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

²⁴ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁵ *Deregulation of Radio*, Report and Order, 84 FCC 2d 968, 977 (1981), *on recon.*, 87 FCC 2d 797 (1981), *remanded on other grounds sub nom., Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983).

²⁶ See 47 U.S.C. § 326.

²⁷ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978) (Commission will not deny renewal application based on the opinion of a viewer, or group of viewers, as to what constitutes “good” programming).

²⁸ See, e.g., *Columbia Broadcasting System, Inc.*, Memorandum Opinion and Order, 51 FCC 2d 273 (1975) (Commission will not place burden on licensee to rebut petitioner’s conclusory allegations concerning news coverage).

²⁹ See *id.*

With regard to the Petitioners' stated concern about Licensee's size, the number of stations licensed to it, and its ownership of various media enterprises, we note that Licensee's ownership of the Stations complies fully with Section 73.3555 of the Rules.³⁰ Much of the Petition focuses on the allegedly adverse impact of the current ownership rules on the quality and amount of local service provided by radio stations. The Commission is currently considering the adequacy of the current ownership limitations on fostering localism, competition and diversity.³¹ That rulemaking proceeding is the appropriate forum in which such issues of general applicability should be addressed.

Finally, with respect to Petitioners' specific allegation of a public file rule violation, we find that it has not supported its allegations nor rebutted Licensee's showing of compliance. According to Licensee, the required list of contracts was in the public file at the time of Huston's visit.³² Further, Licensee states that within two days of Petitioner Huston's visit, it offered to provide that Petitioner with a copy of the ownership reports themselves. Section 73.3526(e)(5) provides that "[I]icensees who choose to retain a list of contracts must provide a copy of any contracts to requesting parties within 7 days." Thus, no violation of this Rule was committed by Licensee.

Accordingly, we find neither evidence of serious violations of the Act or the Rules nor of other violations by Licensee that, when considered together, evidence a pattern of abuse. Further, we find that each captioned Licensee station served the public interest, convenience, and necessity during its subject license term. Thus, there is no need for further inquiry regarding grant of the subject renewal applications, which we will grant.

Conclusion/Actions. Accordingly, for the reasons set forth above, the Petition to Deny jointly filed by William Huston, Karen Glauber and Kevin Bunger IS DISMISSED, and, when treated as an informal objection, IS DENIED. Because the subject applications are in full compliance with the Act and the Rules, and finding that the public interest, convenience, and necessity would be served by their grant, the applications for renewal of license for Stations WINR(AM), Binghamton, New York (File No. BR-20060131AZR), WENE(AM), Endicott, New York (File No. BR-20060201AOZ) , WKGB-FM, Conklin, New York (File No. BR-20060201APL), WMXW(FM), Vestal, New York (File No. BR-20060201APY), WMRV-FM, Endicott, New York (File No. BR-20060201APW), and WBBI(FM), Endwell, New York (File No. BR-20060201AOP) , ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Martha E. Heller, Esq.

³⁰ 47 C.F.R. §73.3555.

³¹ See *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rule Making, 21 FCC Rcd 8834 (2006).