



Federal Communications Commission
Washington, D.C. 20554

November 18, 2013

In Reply Refer to:
1800B3-SS

Mr. Martin Hensley
P.O. Box 846
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In re: **WTLC(AM), Indianapolis, IN**
Facility ID No. 51433
File No. BR-20120329AJY

WTLC-FM, Greenwood, IN
Facility ID No. 25071
File No. BRH-20120329AKC

Applications for Renewal of License

Petition to Deny

Dear Counsel and Petitioner:

We have before us the referenced license renewal applications (the "Renewal Applications") of Radio One of Indiana, LLC ("ROI") for Stations WTLC(AM), Indianapolis and WTLC-FM, Greenwood, Indiana (the "Stations").¹ We also have before us a June 7, 2012, "Petition to Deny and Request for Hearing" (the "Petition") the Renewal Applications, filed by Martin Hensley ("Hensley").² For the reasons set forth below, we deny the Petition and grant the Renewal Applications.

Background. In the Petition, Hensley alleges that ROI falls short of meriting renewal of its Stations in seven different subject areas. Specifically, Hensley argues that: (1) ROI has violated the

¹ Petitioner also references the pending renewal application for Station WNOU(FM), Speedway, Indiana (File No. BRH-20120329AJX), which is subject to a "hold" requested by the Commission's Enforcement Bureau. In addition, petitioner references the license renewal application of Station WHHH(FM), Indianapolis, Indiana (File No. BRH-20120329AKE). The staff, unaware of the filing of Petitioner's pleading, granted the WHHH(FM) renewal application on July 27, 2012. *See Broadcast Actions*, Public Notice, Report No. 47792 (rel. Aug. 1, 2012). That action is now final. *See* 47 C.F.R. § 1.117(a) (staff action taken pursuant to delegated authority generally becomes final and not subject to administrative review 40 days after the release of public notice announcing the action). Finally, Petitioner references the license application of television Station WDNI-CD, Indianapolis, Indiana (BLDTA-20090615ADH), which was granted by the staff on July 1, 2009. *See Broadcast Actions*, Public Notice, Report No. 47021 (July 87, 2009). That action also is now final. Petitioner's allegations as they pertain to WHHH(FM) and WDNI-CD will be dismissed without consideration.

² On July 9, 2012, ROI filed an Opposition to the Petition.

Commission's political programming rules by allowing ROI "stations and associated businesses advertising (sic) at one rate while charging rates that are not similar to political candidates"; (2) "in many announcements for specific programs . . . [ROI] fail[s] to provide the actual sponsor of the commercial, a violation of Sponsor Identification Rules"; (3) ROI provides programming that violates "community standards";³ (4) African-American owned ROI violates EEO rules by not hiring enough white employees and by providing "a hostile work environment for white employees";⁴ (5) ROI has not properly maintained the Stations' public files; (6) ROI has failed to honor citizens' agreements and contracts; and (7) ROI has misrepresented itself by placing Hensley's name on the Tower Registration for one of the Stations and misstating that Hensley owns "thousands of pounds of metal [transmission equipment]," posing a danger to the public at that Station's rooftop tower site.⁵

In its Opposition, ROI argues that Hensley's Petition should be dismissed or denied because it fails to meet the threshold standard of the Communications Act of 1934, as amended (the "Act"),⁶ of supplying "specific allegations of fact" to support denial of, or a hearing on, the Renewal Applications.⁷ Specifically, ROI argues that Hensley's Petition contains "no specifics," such as particular programs complained of or missing public file items; no citations to statements allegedly made by ROI executives and employees; no affidavits from persons with first-hand knowledge; and not one single document provided as support for any of Hensley's assertions.⁸

Discussion. Any interested party may file a petition to deny with the Commission alleging facts, supported by affidavit, sufficient to show that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act.⁹ Specifically, Section 309(k) 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.¹⁰

If the specific allegations support a *prima facie* case, we next examine and weigh all the evidence presented, to determine whether "a substantial and material question of fact" is presented,¹¹ i.e., "whether

³ Petition at 1.

⁴ *Id.* at 1-2.

⁵ *Id.* at 2.

⁶ 47 U.S.C. § 309(d)(1).

⁷ Opposition at 3; see also *Astroline Communications Co., Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir 1988).

⁸ *Id.*

⁹ 47 U.S.C. § 309(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 Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1989) ("*Area Christian*") (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁰ 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, 10 Stat. 56 (1996). See *Implementation of Section 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹¹ 47 U.S.C. § 309(d)(2).

the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for.”¹² We must also determine whether grant of the Renewal Applications would serve the public interest.¹³ If the Commission finds, on the basis of the application, the pleadings filed, or other matters which it may officially notice, that there are no substantial and material questions of fact and that a grant of the application would be consistent with the standard of Section 309(k), it shall make the grant and deny the petition. 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.”¹⁴

We have examined the Petition and find that it does not raise a substantial and material question of fact calling for further inquiry or otherwise persuade us that granting the Renewal Applications would contravene the public interest, convenience, and necessity. Specifically, with respect to Hensley’s argument that ROI charges businesses lower advertising rates than it does for political candidates, Section 315 of the Act and Sections 73.1941(e) and 73.1942(a)(1)(i)¹⁵ of the Rules prohibit discrimination between candidates, and between candidates and commercial advertisers, in station practices. The Commission, of course, will intervene in circumstances where a licensee has violated these rules.¹⁶ However, the Objection fails to set forth specific factual allegations sufficient to warrant Commission action.¹⁷

Next, with regard to Hensley’s claims regarding sponsorship identification, inappropriate programming content, violation of EEO rules, and tower sites/registrations, again, Hensley fails on all counts to present any specific facts or evidence, anecdotal or otherwise, supporting these contentions.¹⁸ With respect to Hensley’s allegation that ROI has “failed to honor citizens agreements and contracts,” not only does Hensley fail to present any evidence to support his claim, but he has not demonstrated that such alleged failure is violative of any Commission rule or policy.¹⁹

¹² *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985).

¹³ 47 U.S.C. § 309(a); *See also Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

¹⁴ 47 U.S.C. §§ 309(k)(2),(3).

¹⁵ *See* 47 C.F.R. §§ 73.1941(e) and 73.1942(a)(1)(i). Section 73.1942(a)(1)(i) provides, in pertinent part:

Any station practices offered to commercial advertisers that enhance the value of advertising spots must be disclosed and made available to candidates on equal terms. Such practices include but are not limited to any discount privileges that affect the value of advertising, such as bonus spots, time-sensitive make goods, preemption priorities, or any other factors that enhance the value of the announcement.

¹⁶ *See, e.g., L. Douglas Wilder and Marshall Coleman*, Order, 9 FCC Rcd 7951, 7951 (MMB 1994) (complainants established *prima facie* case for violation of lowest unit charge requirements).

¹⁷ *See, e.g., Lynn J. Faris*, Letter, 22 FCC Rcd 11293, 11294 (MB 2007) (informal objection fails to present sufficient information concerning the alleged political broadcasting issues to enable the staff to determine whether a violation took place).

¹⁸ *See, e.g., Union County Broadcasting Co., Inc.*, Letter, 22 FCC Rcd 10285, 10291 (MB 2007) (“Hensley provides no evidence, anecdotal or otherwise, to support any of . . . [his] claims.”).

¹⁹ *See, e.g., Formulation of Policies And Rules Relating to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, First Report and Order, 4 FCC Rcd 4780, 4787 (1989) (“Matters that are not germane to our decision (continued . . .)

Finally, Hensley alleges that ROI has failed to maintain or provide public access to the Stations' public inspection files, in violation of Section 73.3526 of the Rules.²⁰ Because Hensley fails to provide evidence that he visited any of the Stations to inspect the public files or identify anyone with whom he spoke at the Stations, we conclude that he has not provided the necessary specific information to establish a violation of Section 73.3526 by ROI.²¹ Accordingly, this allegation warrants no further inquiry.

Conclusion/Actions. We find that Hensley has failed to raise a substantial and material question of fact calling for further inquiry regarding whether grant of the application would be consistent with Section 309(k) of the Act. We also find that the Stations have served the public interest, convenience, and necessity; there have been no serious violations of the Act or the Rules; and there have been no other violations which, taken together, constitute a pattern of abuse. Thus, grant of the Renewal Applications is consistent with the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED that the June 7, 2012, Petition to Deny and Request for Hearing filed by Martin Hensley IS DISMISSED to the extent indicated above and IS DENIED in all other respects.

IT IS FURTHER ORDERED that Radio One of Indiana, LLC's applications to renew the licenses of Stations WTLC(AM), Indianapolis (File No. BR-20120329AJY) and WTLC-FM, Greenwood, Indiana (File No. BRH-20120329AKC) ARE GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

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making process do not become subject to agency enforcement simply because they are included in an agreement that is filed with us . . . Accordingly, unless an action taken by the Commission is specifically conditioned on licensee representations relating to programming matters, we do not intend to enforce private contractual agreements relating to programming.”), *recon. granted in part and denied in part*, 5 FCC Rcd 3902, 3907 (1990) (“Since the Commission does not itself regulate programming categories through the renewal process or enforce specific requirements regarding the amounts of news, public affairs, and non-entertainment programming that stations will air in the next license term, there is no basis to use the renewal process to enforce programming contracts made by licensees to others in citizens' agreements.”).

²⁰ 47 C.F.R. § 73.3526.

²¹ See 47 U.S.C. § 503(b)(4) (a notice of apparent liability for forfeiture must include, *inter alia*, the nature of the act or omission charged and the date on which such conduct occurred).