

ORIGINAL

2014 DEC -2 A 9 51

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Accepted/Files

In re Applications of)

ENTERCOM LICENSE, LLC)

WAAF(FM), Westborough, MA)

WEEI(AM), Boston, MA)

WEEI-FM, Lawrence, MA)

WRKO(AM), Boston, MA)

For Renewal of Licenses)

To: Honorable Marlene H. Dortch
Secretary of the Commission

Attn: Chief, Audio Division, Media Bureau

NOV 26 2014

Federal Communications Commission
Office of the Secretary

File No. BRH-20051201CFP
File No. BRH-20131127AOB
Facility ID No. 74467

File No. BR-20051201CFN
File No. BR-20131127AMI
Facility ID No. 1912

File No. BRH-20051201CFM
File No. BRH-20131127ANR
Facility ID No. 1919

File No. BR-20051201CFG
File No. BR-20131127AMS
Facility ID No. 1902

OPPOSITION TO PETITION FOR RECONSIDERATION

Entercom License, LLC ("Entercom License"), licensee of Stations WAAF(FM), Westborough, Massachusetts; WEEI(AM), Boston, Massachusetts; WEEI-FM, Lawrence, Massachusetts; and WRKO(AM), Boston, Massachusetts (collectively, the "Boston Stations"), by its attorneys, submits this *Opposition* with respect to the *Petition for Reconsideration* (the "*Petition*") filed on November 13, 2014, by the Estate of Irene M. Stolz (Edward R. Stolz II,

Executor) (“Stolz”). Entercom License is an indirect, wholly-owned subsidiary of Entercom Communications Corp. (“Entercom”).

Stolz seeks reconsideration of the letter of the Chief of the Audio Division of the Media Bureau dated October 9, 2014 (corrected and redated on October 14, 2014) (the “*Grant Letter*”), which granted the 2006 renewal applications for the Boston Stations. However, the *Petition* is not based on the *Grant Letter*’s denial of arguments made by Stolz in an informal objection filed February 28, 2006, arguments that have repeatedly been rejected by the Commission.¹ Rather, Stolz seeks reconsideration based on the alleged failure of the *Grant Letter* to reference a listener complaint regarding the broadcast on Station WAAF of a commercial announcement on June 10, 2008. That allegation is just a mere pretext for Stolz’s filing to launch a wider challenge to the Boston Stations’ 2006 renewal applications and attempt to challenge belatedly the Boston Stations’ 2014 renewal applications² by citing a contest conducted in 2007 at Station

¹ See, e.g., *CBS Radio Stations, Inc. and Entercom Memphis License, Inc.*, 22 FCC Rcd 20058 (MB 2007) (“*CBS Radio Stations*”); *Letter from Peter H. Doyle, Chief, Audio Division, to Mr. Edward R. Stolz II, Executor of the Estate of Irene M. Stolz, dated March 4, 2008*, 23 FCC Rcd 2695 (MB 2008); and *Letter from Peter H. Doyle, Chief, Audio Division, to Mr. Edward R. Stolz II, Executor of the Estate of Irene M. Stolz, dated September 6, 2012*, Ref. 1800B3-MM (MB 2012).

² This is the first time that Stolz has objected to the 2014 renewal applications of the Boston Stations, which applications were granted on October 14, 2014. Even if the claims made in the *Petition* with respect to the 2014 renewal applications were not barred on procedural grounds, they should be dismissed, as the relief now sought by Stolz is contrary to Commission rules. Under 47 C.F.R. §73.3516(e), a petition to deny the 2014 renewal applications for a radio station licensed in Massachusetts was due to be filed by March 1, 2014 (extended to March 3, 2014 pursuant to 47 C.F.R. §73.3516(e)(2)). Informal objections must be filed before the grant of the challenged application. 47 C.F.R. §73.3587. See *Letter from Peter H. Doyle, Chief, Audio Division, to Messrs. Brahim Ayad and Michael Watson, dated November 20, 2007*, 22 FCC Rcd 20002 (MB 2007). Stolz filed no timely petition to deny or informal objection as to the 2014 renewal applications of the Boston Stations.

KDND(FM), Sacramento, California. For both procedural and substantive reasons set forth below, the Commission should dismiss and deny the *Petition*.

The *Petition* Fails to Satisfy the Commission's Procedural Requirements.

Pursuant to Section 1.106 of the Commission's rules, a petition for reconsideration of a decision in a non-rulemaking proceeding may be filed by a party to the proceeding or by any other petitioner whose interests are adversely affected by the decision.³ Any petition for reconsideration which relies on facts or arguments not previously raised by a petitioner must persuade the Commission that: (i) new events or changed circumstances since the filer's last opportunity to present them exist, (ii) unknown facts or arguments have been discovered that petitioner "could not through the exercise of ordinary diligence" have learned of prior to the last opportunity to present them, or (iii) consideration of the new facts or arguments relied on is required in the public interest. *See* 47 C.F.R § 1.106(c), and the provisions cited therein. As Stolz is aware, as a consequence of a direct ruling in an unrelated proceeding, the Commission's "Rules and precedent clearly provide that [the Commission] will not consider petitions for reconsideration which rely on facts or theories that could have been presented earlier in the proceeding."⁴

³ 47 C.F.R § 1.106(b)(1). As noted previously, Stolz did not file either a petition to deny or an informal objection against the 2014 renewal applications for the Boston Stations and has failed to "state with particularity the manner in which [Stolz]'s interests are adversely affected by the action taken, and [to] show good reason why it was not possible for [Stolz] to participate in the earlier stages" of any proceeding concerning those renewal applications. *Id.* The Petition should be dismissed summarily as to the grants of the 2014 renewal applications for the Boston Stations. *See* 47 C.F.R. §1.106(p)(9).

⁴ *Royce International Broadcasting Company*, 26 FCC Rcd 9249 (MB 2011). Edward R. Stolz II is the owner of Royce International Broadcasting Company.

With respect to the arguments regarding the KDND contest, Stolz cannot meet the procedural requirements for filing a petition for reconsideration, and the *Petition* should be dismissed. 47 C.F.R. § 1.106(p). Stolz cannot claim to be unaware of the 2007 contest prior to the filing of the *Petition* – Stolz previously raised that issue with the Commission. Specifically, Stolz raised them on January 24, 2007, less than two weeks after the contest, in the *First Supplement to Petition to Deny* filed by Royce International Broadcasting Company in connection with the Commission’s consideration of the assignment of 15 radio stations from CBS or its subsidiaries to Entercom subsidiaries.⁵ In that decision, the Commission acknowledged that the contest was under review in connection with the pending KDND renewal application pursuant to an Enforcement Bureau inquiry⁶, and granted the applications for assignment of the CBS stations to Entercom.

Further, any assertion that the Commission’s consideration of the contest is required by the public interest before the renewal applications for the Boston Stations could be granted must fail. As noted above, Stolz raised the matter directly in *CBS Radio Stations* on January 24, 2007; this cannot in any way be considered at this stage as a new or changed circumstance, an unknown matter not previously discoverable, or a new fact required to be considered in the public interest. Since the KDND contest was conducted, the Commission has approved 146 renewal applications for Entercom stations, including the 2006 and the 2014 renewal applications for the Boston Stations in this proceeding.⁷

⁵ *CBS Radio Stations*, *supra*, at 20064-65.

⁶ *Id.* at 20065.

⁷ *See* Attachment A.

In short, the Petition for Reconsideration should be dismissed for failure to satisfy the Commission's long-standing procedural requirements.

Stolz Has Not Cited Any Commission Rule or Policy That Requires a Written Decision in a Renewal Proceeding on a Non-Party Listener's Complaint.

Even if the claims made in the Petition were not barred on procedural grounds, they should be denied. Attachment B to Stolz's Petition consists of a copy of two email complaints sent to the FCC staff by a single listener to Station WAAF. In the substantively identical complaints, the listener contends that a commercial announcement's use of the words "emergency message" at the beginning of the announcement was a "false emergency notice."

The Commission previously considered these complaints. The Commission staff forwarded the complaints to Entercom's counsel by letter dated June 20, 2008. Entercom filed a response on July 21, 2008. The response left no doubt that the advertisement was not accompanied by any emergency sounder of any sort and was plainly of a commercial nature. That the Commission staff took no further action with regard to the complaints is not surprising. Stolz has not cited any rule or policy of the Commission that requires further action by the staff.

Neither Consideration of Matters Related to the KDND Contest, Nor Grant of the Relief Requested by Stolz, Is Required Under Applicable Commission Rules and Policies with Respect to the Renewal Applications of the Boston Stations.

Stolz invokes the process of reconsideration to inject the 2007 contest at KDND in Sacramento into the consideration of the Boston license renewal applications. Stolz claims that "Entercom conducted this contest with wanton disregard for the safety of the contestants to entertain listeners and generate audience ratings" and insists its opinion that the principles of the

*Character Policy Statement*⁸ are not “hard and fast rule[s].”⁹ The conduct of the KDND contest, Stolz declares, “shocks the conscience and brings into question the character qualifications of the entire Entercom corporation to continue to be Commission licensee [*sic*] anywhere in the nation.”¹⁰ Stolz submits that no Entercom renewal application “nationwide” should be granted without a hearing on how the contest was conducted, citing *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392 (D.C. Cir. 1985).¹¹

There is no substantive basis for consideration of this matter in connection with the Boston Stations. The *WRVR* decision cited by Stolz is not on point. The standards applicable to broadcast renewal applications were substantially changed after the *WRVR* decision, including the adoption of Section 309(k) as a part of the 1996 amendments to the Communications Act. Section 309(k) makes clear that it is the licensee’s record of operation *at each individual station* that determines whether the Commission should grant an application for renewal of a license for that station.¹² The *Grant Letter* properly analyzes the factors relevant to the operation of solely the Boston Stations, as required by Section 309(k) of the Act. Apart from the baseless objections to action on *any* renewal grant without a hearing regarding the contest, Stolz does not dispute

⁸ See n.13, *infra*.

⁹ *Petition* at 4.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 4.

¹² *Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551, 22555 (2003). See also *Letter from Peter H. Doyle, Chief, Audio Division, to Mr. Edward R. Stolz II, Executor of the Estate of Irene M. Stolz, dated September 6, 2012, supra*, at p. 6 (renewal application for Station KCTC, Sacramento, California, granted pursuant to Section 309(k) of the Act and petition to deny filed by Stolz in 2005 denied).

any of the reasoning in the *Grant Letter* supporting the approval of the renewal applications for the Boston Stations.

Nevertheless, Stolz's analysis of the scope of the Commission's *Character Policy Statement* is incorrect. In 1986, as a result of a comprehensive review of the types of broadcast licensee conduct relevant to *its* jurisdiction, the FCC announced that the scope of its concern for licensee conduct subject to adjudication by other government authorities and courts would be limited to certain itemized types of licensee behavior.¹³ The Commission explained its conclusion as follows:

We believe that the non-FCC behavior of concern to us is that which allows us to predict whether an applicant has or lacks the character traits of 'truthfulness' and 'reliability' that we have found relevant to the qualifications to operate a broadcast station in accordance with the requirements of the Communications Act and of our rules and policies. Based on the record before us, we find it appropriate to focus generally on three types of adjudicated misconduct which are not specifically prescribed by the Act or our rules and policies: (1) fraudulent statements to government agencies; (2) certain criminal convictions; and (3) violations of broadcast related anti-competitive and antitrust statutes.

102 FCC 2d at 1195.¹⁴ These areas of concern do *not* include civil negligence, which was the only finding made by the civil and criminal authorities that examined the 2007 KDND contest in detail in its aftermath.

Soon after the contest was conducted at Station KDND, the Sacramento County District

¹³ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (subsequent history omitted) ("*Character Policy Statement*").

¹⁴ The FCC later expanded this list of three to include felonies. *Character Qualifications Policy*, 5 FCC Rcd 3252 (1990).

Attorney conducted a criminal investigation. That investigation ended in April 2007 without any criminal charges being filed. The findings of the Sacramento County District Attorney are summarized in the attached *Case of Interest*, key elements of which are as follows:

The facts and circumstances of this ill-fated event do not support the filing of criminal charges against the radio station or any of its employees. Based on the evidence, no duty or special relationship existed or was created between the radio station and/or its employees and Jennifer Strange because of the contest. Finally, and most importantly in our decision not to file involuntary manslaughter charges, there were no observable indications or symptoms that Jennifer Strange was experiencing a serious medical emergency which would have required station employees to seek or administer medical aid to her.

Case of Interest, Office of the District Attorney of Sacramento County, California, April 2, 2007.¹⁵

A civil trial was held in 2009 with respect to a complaint filed by the contestant's family in the Superior Court of California, County of Sacramento. The KDND operating subsidiary was determined to be negligent; Entercom was found to have not been negligent. The plaintiffs in the case were awarded only compensatory damages; no punitive damages were awarded. The civil judgments are long since final and no longer subject to appeal.

Even if there was a basis for Stolz's assertion that a hearing must be conducted by the Commission to determine whether Entercom has the character qualifications to warrant the grant of Entercom's license renewal applications "nationwide" – and there is no such basis – the California authorities have already properly handled the matter consistent with all Commission requirements. The Sacramento County District Attorney thoroughly investigated and brought no charges. The Sacramento County Superior Court conducted an extensive trial. A jury made

¹⁵ See Attachment B.

findings and an award against the operating subsidiary only. Again, the jury found in favor of the parent corporation on all claims, which focused on alleged negligence in Entercom's overall contest standards and policies. Stolz's call for review of all Entercom station license renewal applications "nationwide" is baseless. In accordance with FCC policies, this civil matter was sufficiently handled on a local level. Furthermore, nothing in the findings of the Sacramento County District Attorney or the Sacramento County Superior Court impugns Entercom's basic qualifications to hold a broadcast license.

Finally, the Commission in 1985 eliminated its prior policies regarding "disruptive contests" and other contests resulting in "public disorder." The Commission concluded that these issues "can all be ably handled at the local level through civil means ... and criminal means...."¹⁶ This policy was reinforced in *Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Seth A. Neidhardt*, 22 FCC Rcd 14042, 14043 (MB 2007), where allegations were made in a petition to deny a license renewal application that the placement of a contest prize on the private property of a fertilizer company "endangered the safety of the contest participants because the '[i]nhalation of ammonia could cause harm to people.'" The Media Bureau found that:

... Neidhardt's allegations that the contest was disruptive or endangered the safety of its participants are outside of the Commission's jurisdiction. ...[T]he Commission abolished its 'disruptive contest' rule in 1985, finding that contests resulting in 'public disorder can all be ably handled at the local level through both civil means (e.g., actions for trespass, personal injury, private nuisance, invasion of privacy, or injunctive relief) and criminal means (e.g., disturbing the peace of public nuisance).'

¹⁶ *Elimination of Unnecessary Broadcast Regulation*, Policy Statement and Order, 57 RR 2d 939 ¶ 5 (1985).

Id. at 14045, citing *Elimination of Unnecessary Broadcast Regulation*, Policy Statement and Order, 57 RR 2d 939, ¶5 (1985).

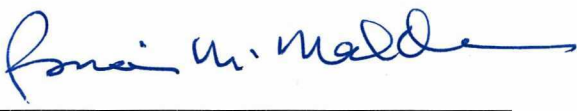
In summary, the events concerning the 2007 contest conducted at the Sacramento station have been handled in accordance with FCC rules and policies. Under the standards applicable to the consideration of renewal applications and under the Commission's *Character Policy Statement*, no hearing is required in connection with the renewal applications for the Boston Stations.

CONCLUSION

For the reasons set forth above, Stolz has failed to establish that the grant of the renewal applications for the Boston Stations should be reconsidered. Entercom respectfully requests that the Petition be dismissed or denied and the *Grant Letter* be reaffirmed.

Respectfully submitted,

ENTERCOM LICENSE, LLC

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November 26, 2014

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ATTACHMENT A

Application Search Details

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Search returned: 146 matching applications

Application Search Results

File Number	Form	Paper/ Elect	Call Sign	Facility Id	Service	Status	Status Date	Details
BR 20140326ADH	303	E	WBZU	36200	AM	GRANTED	07/25/2014	Info Application
BRH 20140326ADF	303	E	WGGI	19543	FM	GRANTED	07/25/2014	Info Application
BRH 20140326ADD	303	E	WKRZ	34379	FM	GRANTED	07/25/2014	Info Application
BRH 20140326ADA	303	E	WILK-FM	22666	FM	GRANTED	07/25/2014	Info Application
BR 20140326ACX	303	E	WKZN	22667	AM	GRANTED	07/25/2014	Info Application
BRH 20140326ACW	303	E	WHBS	22925	FM	GRANTED	07/25/2014	Info Application
BR 20140326ACV	303	E	WILK	34380	AM	GRANTED	07/25/2014	Info Application
BRH 20140326ACS	303	E	WKRF	14643	FM	GRANTED	07/25/2014	Info Application
BRH 20140326ACQ	303	E	WGGY	36202	FM	GRANTED	07/25/2014	Info Application
BRH 20140131AOY	303	E	WLKK	9250	FM	GRANTED	05/23/2014	Info Application
BR 20140131AOW	303	E	WWWS	56104	AM	GRANTED	05/23/2014	Info Application
BR 20140131AOQ	303	E	WGR	56101	AM	GRANTED	05/23/2014	Info Application
BR 20140131AON	303	E	WROC	71205	AM	GRANTED	05/23/2014	Info Application
BRH 20140131AOM	303	E	WBEE-FM	71206	FM	GRANTED	05/23/2014	Info Application
BRH 20140131AOL	303	E	WBZA	71204	FM	GRANTED	10/10/2014	Info Application
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BRH 20140131AOH	303	E	WCMF-FM	1905	FM	GRANTED	05/23/2014	Info Application
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BRH 20131127ASL	303	E	WWEI	11295	FM	GRANTED	03/24/2014	Info Application
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BRH 20131127AOB	303	E	WAAF	74467	FM	GRANTED	10/09/2014	Info Application
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BRH	20130926AUG	303	E	KYCH-FM	35034	FM	GRANTED	10/10/2014	Info Application
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BRH	20130730AOA	303	E	KRBQ	65486	FM	GRANTED	11/22/2013	Info Application
BRH	20130730ANY	303	E	KOIT	6380	FM	GRANTED	11/22/2013	Info Application
BRH	20130730ANX	303	E	KGMZ	25446	FM	GRANTED	11/22/2013	Info Application
BRH	20130730ANU	303	E	KUFX	65415	FM	GRANTED	07/21/2014	Info Application
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BRH	20060403BRL	303	E	WGGI	19543	FM	GRANTED	03/04/2008	Info Application
BRH	20060403BRJ	303	E	WGGY	36202	FM	GRANTED	03/04/2008	Info Application

BR	20060403BQT	303	E	WILK	34380	AM	GRANTED	03/04/2008	Info Application
BRH	20060403BQE	303	E	WKRF	14643	FM	GRANTED	09/06/2012	Info Application
BRH	20060403BPW	303	E	WKRZ	34379	FM	GRANTED	09/06/2012	Info Application
BR	20060403BPQ	303	E	WKZN	22667	AM	GRANTED	03/04/2008	Info Application
BRH	20060201BAY	303	E	WLKK	9250	FM	GRANTED	03/04/2008	Info Application
BR	20060201BAR	303	E	WWWS	56104	AM	GRANTED	03/04/2008	Info Application
BR	20060201BAJ	303	E	WGR	56101	AM	GRANTED	03/04/2008	Info Application
BRH	20060201BAC	303	E	WKSE	34384	FM	GRANTED	03/04/2008	Info Application
BRH	20060201AZC	303	E	WTSS	34382	FM	GRANTED	03/04/2008	Info Application
BRH	20060201AOG	303	E	WFKL	37824	FM	GRANTED	03/04/2008	Info Application
BRH	20060201ANJ	303	E	WBZA	71204	FM	GRANTED	03/04/2008	Info Application
BRH	20060201ANC	303	E	WBEE-FM	71206	FM	GRANTED	03/04/2008	Info Application
BR	20060201AMI	303	E	WROC	71205	AM	GRANTED	03/04/2008	Info Application
BRH	20051201CGE	303	E	WVEI-FM	71720	FM	GRANTED	03/04/2008	Info Application
BRH	20051201CFP	303	E	WAAF	74467	FM	GRANTED	10/09/2014	Info Application
BR	20051201CFN	303	E	WEEI	1912	AM	GRANTED	10/09/2014	Info Application
BRH	20051201CFM	303	E	WEEI-FM	1919	FM	GRANTED	10/09/2014	Info Application
BR	20051201CFG	303	E	WRKO	1902	AM	GRANTED	10/09/2014	Info Application
BR	20051201CFB	303	E	WVEI	74466	AM	GRANTED	03/04/2008	Info Application
BRH	20051003CCX	303	E	KIRO-FM	33682	FM	GRANTED	03/04/2008	Info Application
BR	20051003CCW	303	E	KTTH	27023	AM	GRANTED	03/04/2008	Info Application
BR	20051003CCU	303	E	KIRO	6362	AM	GRANTED	03/04/2008	Info Application
BRH	20051003CBK	303	E	KHTP	18513	FM	GRANTED	03/04/2008	Info Application
BRH	20051003CAJ	303	E	KKWF	6367	FM	GRANTED	03/04/2008	Info Application
BRH	20051003CAA	303	E	KISW	47750	FM	GRANTED	03/04/2008	Info Application
BRH	20051003BZT	303	E	KNDD	34530	FM	GRANTED	03/04/2008	Info Application
BRH	20051003BFW	303	E	KGON	2432	FM	GRANTED	09/06/2012	Info Application
BR	20051003BFU	303	E	KMTT	35033	AM	GRANTED	03/04/2008	Info Application
BRH	20051003BFO	303	E	KWJJ-FM	13738	FM	GRANTED	03/04/2008	Info Application
BR	20051003BFL	303	E	KFXX	57830	AM	GRANTED	03/04/2008	Info Application
BR	20051003BFJ	303	E	KZZD	72475	AM	GRANTED	03/04/2008	Info Application
BRH	20051003BFH	303	E	KRSK	68213	FM	GRANTED	09/06/2012	Info Application
BRH	20051003BEY	303	E	KYCH-FM	35034	FM	GRANTED	03/04/2008	Info Application
BR	20050728AUX	303	E	KCTC	67848	AM	GRANTED	09/06/2012	Info Application
BRH	20050728ATT	303	E	KKDO	6810	FM	GRANTED	09/06/2012	Info Application
BR	20050201BEC	303	E	KWOD	87143	AM	GRANTED	10/19/2010	Info Application
BR	20050201AFZ	303	E	KNSS	53152	AM	GRANTED	10/22/2009	Info Application
BRH	20050201AFW	303	E	KFH-FM	23292	FM	GRANTED	06/16/2011	Info Application
BR	20050201AFV	303	E	KFH	53598	AM	GRANTED	05/22/2012	Info Application

Please send comments via standard mail to the Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street, S.W., Washington, D.C., 20554. Questions can also be answered by calling the FCC's National Call Center, toll free, at 1-888-Call FCC (1-888-225-5322).

Federal Communications Commission
445 12th Street SW
Washington, DC 20554
[More FCC Contact Information...](#)

Phone: 1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232
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ATTACHMENT B



OFFICE OF THE
DISTRICT ATTORNEY

SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY

CYNTHIA G. BESEMER
CHIEF DEPUTY

CASE OF INTEREST

Date: April 2, 2007

Re: Death of Jennifer Strange

District Attorney Jan Scully announced today no charges will be filed in the death of twenty-eight year old Jennifer Strange on January 12, 2007.

On Friday, January 12, 2007, Jennifer Strange voluntarily participated in a contest on radio station 107.9 KDND (THE END). The name of the contest, "Hold Your Wii", called for contestants to drink a specified amount of water within a specified amount of time. When the contest first began, contestants were asked to drink one 8-ounce bottle of water every 15 minutes. As the contest progressed, they were asked to consume a 16-ounce bottle of water every 10 minutes. The contestant who was able to drink the most water and go the longest amount of time without vomiting or urinating (in the DJs' words, "hold their Wii") would win the prize - a Nintendo Wii Video Game Console.

There were originally eighteen (18) contestants vying to win the Wii. The contest was held in an employee break room at the radio station on Madison Avenue in Sacramento County. The contest began sometime between 6:00 a.m. and 6:30 a.m. the morning of January 12. Jennifer Strange was with seventeen other contestants and their supporters throughout the contest. Toward the end of the contest, Ms. Strange expressed some level of discomfort. When asked by a DJ, she complained somewhat jokingly that her head hurt and she felt light-headed. However, she evidenced no symptoms which would lead a reasonable person to conclude that she was seriously ill or in danger of dying.

The last two contestants to remain in the competition were Jennifer Strange and Lucy Davidson. Towards the end of the contest, DJs interviewed Jennifer Strange on the radio and offered her two tickets to a Justin Timberlake show at Arco Arena for that evening if she dropped out of the competition. After discussing the choice with the DJs, she elected to drop out of the contest and take the Justin Timberlake tickets. The contest ended at that point and Ms. Davidson was declared the winner. Shortly thereafter Jennifer Strange collected her prize, left the radio station under her own power, and drove home.

She was found unresponsive in her home later that afternoon by her mother. The Rancho Cordova Police Department was called to her home and arrived there at approximately 2:15 p.m.

The Sacramento Metropolitan Fire Department pronounced her dead at the scene. Preliminary autopsy results indicate she died of water poisoning.

Her death was investigated by the Sacramento Sheriff's Department Homicide Bureau and submitted to the District Attorney's office for the possible filing of criminal charges. Based on the facts and circumstances in this case, the only criminal charge considered was involuntary manslaughter because of possible criminal negligence by the radio station and/or its employees. Further, the only criminal case supporting such a theory of prosecution is People v. Carol Ann Oliver (1989) 210 CAL APP 3D 138, 143-145.

In the Oliver case, the defendant first met her victim in a bar; he was extremely intoxicated. She took the victim to her home. At her house, the victim told her he wanted to inject dope, so she supplied him a spoon. He went into the bathroom and shot up. As he exited the bathroom he collapsed and was unresponsive. The defendant then left her home and went back to the bar. She returned sometime later and, with help from others, dragged the victim outside and placed him behind a shed away from public view. The victim was heard snoring at that time.

In the morning, defendant went out to check on him and found him dead. He died as a result of morphine poisoning. In Oliver, the court ruled that the conduct of the defendant created a special relationship and a duty of care as a result of her conduct. Thus, she had a duty to summon medical aid because by her conduct that evening she placed the decedent in a position where she alone could provide medical care.

That is clearly not the situation in the death of Jennifer Strange. No special duty or relationship was created by virtue of the radio station offering the "Hold Your Wii" contest. Jennifer Strange was an adult who was voluntarily participating in the radio contest. She knew what the contest involved when she entered it, and had the option to stop or discontinue her participation in the contest at any time. In addition, the location where the contest took place, while not in a public area, was in an area from which she was free to leave at any time; and she was constantly observed by other people including contestants, their supporters and radio employees. Ms. Strange also was interviewed twice on air by the DJs during the contest with no apparent difficulty.

The facts and circumstances of this ill-fated event do not support the filing of criminal charges against the radio station or any of its employees. Based on the evidence, no duty or special relationship existed or was created between the radio station and/or its employees and Jennifer Strange because of the contest. Finally, and most importantly in our decision not to file involuntary manslaughter charges, there were no observable indications or symptoms that Jennifer Strange was experiencing a serious medical emergency which would have required station employees to seek or administer medical aid to her.

This case is distinguishable from the hazing death of a Chico State fraternity pledge who died of water poisoning during "Hell Week" because of drinking a large quantity of water. The "hazing death" case was prosecuted under the misdemeanor manslaughter rule, where an inherently dangerous misdemeanor results in death. In the Chico case, the underlying charge was hazing, a violation of Penal Code Section 245.6. No such "inherently dangerous misdemeanor resulting in death" was present in the facts surrounding the death of Ms. Strange.

Contact: Lana Wyant, Special Assistant Deputy District Attorney
Telephone: (916) 874-5907

CERTIFICATE OF SERVICE

I, Deborah A. Morris, a secretary in the law firm of Lerman Senter PLLC, do hereby certify that a true copy of the *Opposition to Petition for Reconsideration* was sent this 26th day of November, 2014 by first-class mail to the following:

Dennis J. Kelly, Esq.
Law Office of Dennis J. Kelly
P.O. Box 41177
Washington, DC 20018

Larry Bruce
254 Chandler Road
Andover, MA 01810


Deborah A. Morris