



Federal Communications Commission
Washington, D.C. 20554

February 19, 2015

In Reply Refer to:
1800B3-EAB

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In re: **Entercom License, LLC**

WAAF(FM), Westborough, MA
Facility ID # 74467
File Nos. BRH-20051201CFP, BRH-
20131127AOB

WEEI(AM), Boston, MA
Facility ID # 1912
File Nos. BR-20051201CFN, BR-
20131127AMI

WEEI-FM, Lawrence, MA
Facility ID # 1919
File Nos. BRH-20051201CFM, BRH-
20131127ANR

WRKO(AM), Boston, MA
Facility ID # 1902
File Nos. BR-20051201CFG, BR-
20131127AMS

Petition for Reconsideration

Dear Counsel:

We have before us the Petition for Reconsideration ("Petition") filed on November 13, 2014, by the Estate of Ms. Irene M. Stolz ("Stolz"), which seeks review of the Media Bureau ("Bureau") decision that denied Stolz's Objection ("Stolz Objection") and granted the referenced applications ("Renewal Applications") filed by Entercom License, LLC (formerly Entercom Boston License, LLC), a subsidiary of Entercom Communications Corp. ("Entercom"), to renew the licenses of the above-captioned four stations ("Boston Stations").¹ For the reasons set forth below, we grant the Petition to the extent indicated, deny the Petition in part, and dismiss the Petition in all other respects.

Background. In the Stolz Objection, Stolz argued that Entercom had shown a "wanton disregard for the FCC's rules" as evidenced by: (1) Notices of Apparent Liability issued to Entercom stations in other markets for violations of restrictions on the broadcast of indecent programming; and (2) Entercom's role as a

¹ *Entercom Boston License, LLC*, Letter, Ref. 1800B3-JWR/AJR (MB Oct. 9, 2014) ("*Letter Decision*"). Entercom filed an opposition to the Petition ("Opposition") on November 26, 2014. Stolz filed a reply to the Opposition ("Reply") on December 8, 2014.

target of “payola” investigations² by the Commission in cooperation with the New York State Attorney General. Stolz stated that the “aggregate of violations” by Entercom and its subsidiaries amounted to a “discernible pattern of abuse” under the Communications Act of 1934, as amended (“Act”),³ and the Commission’s Rules (“Rules”), thereby raising a substantial and material question of fact as to whether the Renewal Applications should be granted.

On June 11, 2008, the Bureau received two identical e-mail complaints from Mr. Larry Bruce (“Bruce”) alleging that, on the previous day, Station WAAF (“WAAF”) broadcasted a false emergency announcement as part of a commercial advertisement (“Announcement”).⁴ According to Bruce, the Announcement began: “This is an emergency message,” followed by a commercial advertisement, and concluded with: “The emergency message brought to you by Central Mass Motorsports.”⁵ Bruce further alleges that, three minutes prior to the Announcement, WAAF issued a weather warning for violent lightning storms in the area.⁶ Bruce claims that WAAF’s actions were “irresponsible and dangerous to the general public,” and asked the Bureau to revoke WAAF’s license to broadcast.⁷ The Bureau treated the complaint as an informal objection (“Bruce Objection”), and served Entercom with a copy and a letter stating that “[t]he [Bruce O]bjection will be made part of the record and will be considered in determining the merits of the [Renewal A]pplication.”⁸

In the October 9, 2014, *Letter Decision*, the Bureau denied the Stolz Objection and granted the Renewal Applications, finding that: (1) Stolz had not raised any indecency issues specific to the Applications,⁹ as required by Section 309(k)(1) of the Act;¹⁰ and (2) Stolz’s payola claim was barred from consideration by the terms of a *Consent Decree* entered into by the Commission and Entercom.¹¹ Consequently, the Bureau concluded that Stolz had not raised a substantial and material question of fact regarding Entercom’s qualifications to remain a commission licensee.¹² The *Letter Decision* did not address the Bruce Objection.

In the Petition, Stolz does not challenge the Bureau’s findings regarding the allegations made in the Stolz Objection, but claims that: (1) the Bureau should not have granted the Renewal Application without ruling on the matters raised in the Bruce Objection; and (2) Entercom’s corporate involvement in a January

² “Payola” refers to a station’s receipt of payment for airing programming without disclosure. See *Educational Community Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 5283 (2013). Payola is prohibited by the sponsorship identification laws. See 47 U.S.C. § 508; 47 C.F.R. § 73.1212.

³ 47 U.S.C. § 309(k)(1).

⁴ Petition at 14, 15.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Entercom Boston License, LLC*, Letter, Ref. 1800B3 (MB Jun. 20, 2008).

⁹ Additionally, the Bureau noted that the Commission had previously investigated the alleged instances of indecency and found that they did not put Entercom’s qualifications in question. See, e.g., *Entercom Kansas City License, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 25011, 25018 (MB 2004) (concluding that a monetary forfeiture alone was the appropriate sanction).

¹⁰ 47 U.S.C. § 309(k)(1).

¹¹ See *Letter Decision* at 1-2.

¹² *Id.* at 2.

12, 2007, contest that resulted in the death of a woman is *prima facie* evidence that “Entercom lacks the basic character qualifications to be a Commission licensee anywhere in the nation.”¹³

In its Opposition, Entercom argues that: (1) pursuant to Section 1.106 of the Rules,¹⁴ Stolz does not have standing to file a petition for reconsideration because (i) Stolz is not a formal party to the proceeding and has not shown that its interests are “adversely affected” by the *Letter Decision*, and (ii) the Petition relies on facts and theories that were not raised in the Stolz Objection; (2) the Bureau considered the Bruce Objection when it forwarded the complaint to Entercom, and was not required to take further action; and (3) pursuant to Section 309(k) of the Act,¹⁵ the Bureau’s determination whether to grant a renewal application is based on the licensee’s record of operation at each individual station, and thus the Sacramento Station’s involvement in the Wii Contest is not relevant to the Bureau’s decision to grant the Renewal Applications for Entercom’s Boston Stations.¹⁶

In the Reply, Stolz contends that: (1) Section 312(a)(2) of the Act,¹⁷ authorizes the Commission to “revoke any station license . . . because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license . . . on an original application,” and that the Wii Contest, which was “so egregious as to shock the conscience,” qualifies as such a condition; and (2) because the Bureau took cognizance of the Bruce Objection and invited Entercom to respond, the Bureau should not have granted the WAAF Renewal Application without acting on the matters raised therein.¹⁸

Discussion. The Bureau will grant a petition for reconsideration that identifies a material error, omission, or reason warranting reconsideration.¹⁹ Because the Bureau’s failure to act on the arguments raised by the Bruce Objection prior to granting the Renewal Application amounts to a material omission, we grant the Petition to the extent necessary to consider those arguments.²⁰

The Bruce Objection. Informal objections to license renewal applications must, pursuant to Section 309(e) of the Act, 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, which governs our evaluation of an application for license renewal.²¹ Specifically, Section 309(k)(1) 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 that, taken together, constitute a pattern of abuse.²² The Bruce Objection fails to meet this burden.

¹³ Entercom station KDND(FM), Sacramento, California (“Sacramento Station”), staged an on-air contest called “Hold Your Wee for a Wii” (“Wii Contest”), that resulted in the death of one contestant, Jennifer Strange. Petition at 3.

¹⁴ 47 C.F.R. § 1.106.

¹⁵ 47 U.S.C. § 309(k).

¹⁶ Opposition at 6.

¹⁷ 47 U.S.C. § 312(a)(2).

¹⁸ Reply at 2, 4.

¹⁹ 47 C.F.R. § 1.106(p)(1).

²⁰ See *Radio Free Nashville, Inc.*, Letter, 24 FCC Rcd 12426, 12427 (MB 2009) (Bureau’s failure to consider a timely objection grounds for granting petition for reconsideration).

²¹ 47 U.S.C. § 309(e), (k). 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), *reh’g denied* (D.C. Cir. Sept. 10, 1993).

²² 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described in the text by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections*

Section 11.45 of the Rules states that “[n]o person may transmit . . . the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual . . . emergency or authorized test of the EAS.”²³ A “simulation” of the EAS distress signal includes recordings of actual EAS codes, as well as other sounds that an average listener could reasonably mistake for an EAS code or signal.²⁴ Because Bruce does not allege that the Announcement was accompanied by any signal, sound, or tone that an average listener would mistake for an actual EAS distress signal, Bruce has failed to establish a *prima facie* violation of the rule.

Accordingly, the Bruce Objection does not raise substantial and material questions of fact that the Bureau’s grant of the Renewal Application was *prima facie* inconsistent with Section 309(k) of the Act.²⁵ It therefore provides no basis to overturn the Bureau’s determination in the *Letter Decision* that Entercom had served the public interest, convenience, and necessity during the subject license term; that there had been no serious violations of the Act or the Rules; and that there had been no other violations which, taken together, constitute a pattern of abuse.²⁶

The Petition. Section 1.106(b)(1) of the Rules allows any party to an original proceeding, or any non-party whose interests are adversely affected by an action taken by the Commission, to file a petition for reconsideration of the action taken.²⁷ To qualify as a party, a petitioner for reconsideration must have filed a valid petition to deny against the application.²⁸ Non-parties must state “with particularity” the manner in which their interests are adversely affected, and must show good reason why they were unable to participate in the earlier proceeding.²⁹ Under Section 1.106(c) and 1.106(p)(2) of the Rules, the Bureau may dismiss a petition for reconsideration that relies on facts or theories that could have been presented earlier in the proceeding.³⁰

As an informal objector, Stolz is not a “party to the proceeding” within the meaning of Section 1.106(b)(1) of the Rules,³¹ and thus has no right to seek reconsideration in this proceeding. Moreover, Stolz’s general claims regarding Entercom’s character fitness as a licensee do not establish “with particularity” the manner in which Stolz’s interests are adversely affected by the Wii Contest aired by the Sacramento Station,³² nor does the Petition offer any explanation for Stolz’s failure to timely file a

204(a) and 204(c) of the Telecommunications Act of 1996 (*Broadcast License Renewal Procedures*), Order, 11 FCC Rcd 6363, 6363 (1996).

²³ 47 C.F.R. § 11.45.

²⁴ 47 C.F.R. § 11.3; *Emergency Alert System False, Fraudulent or Unauthorized Use of the Emergency Alert System Attention Signal and Codes is Strictly Prohibited*, Enforcement Advisory, 28 FCC Rcd 15438, 15439 (EB 2013). See *Emmis Broadcasting Corp. of St. Louis*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 2289 (1991) (prior to existence of § 11.45, finding radio station in violation of Section 325(a) for broadcasting an announcement that the United States was under nuclear attack, accompanied by “bleep” tones that listeners mistook for the Emergency Broadcast System (EBS)).

²⁵ 47 U.S.C § 309(k).

²⁶ *Letter Decision* at 3.

²⁷ 47 C.F.R. § 1.106(b)(1).

²⁸ See *University of North Carolina*, Memorandum Opinion and Order, 4 FCC Rcd 2780 (1989); *Montgomery County Broadcasting Corporation*, Memorandum Opinion and Order, 65 FCC 2d 876 (1977).

²⁹ 47 C.F.R. § 1.106(b)(1).

³⁰ 47 C.F.R. §§ 1.106(c), (p)(2).

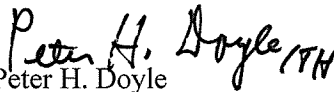
³¹ See *David Ryder*, Letter, 24 FCC Rcd 10874, 10875 (MB 2009) (stating that “a ‘nonparty’ participating earlier in the proceeding as an informal objector is without standing to seek reconsideration”).

³² See *Sagittarius Broadcasting Corp.*, Memorandum and Opinion Order, 18 FCC Rcd 22551, 22554-5 (2003) (finding that a listener who lived over 3,000 miles from the station whose license renewal was under consideration

petition to deny or to supplement the Stolz Objection earlier in the proceeding.³³ More than seven years elapsed between the Wii Contest and the Bureau's grant of the Renewal Applications, and the Petition does not claim that Stolz was unaware of the Contest prior to the grant. Because Stolz could have presented the Wii Contest earlier in the proceeding, we decline to consider the issue as it is now raised.³⁴

Conclusion/Actions. Accordingly, the Petition for Reconsideration filed on November 13, 2014, by the Estate of Ms. Irene M. Stolz IS DENIED to the extent indicated and IS DISMISSED in all other respects.

Sincerely,


Peter H. Doyle
Chief, Audio Division
Media Bureau

³³ Informal objections can be filed at any point prior to the grant of an application. 47 C.F.R. § 73.3587. Because there is no formal petition to deny cycle for informal objections, the Bureau will typically consider supplemental pleadings as well. See *Benavides Communications*, Letter, 21 FCC Rcd 1248, 1248 n.1 (MB 2006); *Tabback Broadcasting Company*, 15 FCC Rcd 11899, 11900 (2000) ("the limitations on the number and timing of pleadings filed in response to petitions to deny are inapplicable to informal objections.").

³⁴ See *Royce International Broadcasting Company*, 26 FCC Rcd 9249, 9249 (MB 2011) (dismissing petition for reconsideration to the extent that it presented new arguments that could have been raised in an earlier proceeding).