

Pending Applications in Which Character Issues Have Been Raised

Character allegations have been raised in a petition to deny filed on September 1, 2004 by Right to Decency, Inc. and the American Decency Association (“Petitioners”) against the application for renewal of license (FCC File No. BRH-20040601BHZ) of WXYT-FM (formerly WKRK-FM), Detroit, Michigan, a station that is commonly owned with WTCN-CA. Petitioners suggest that the licensee of WXYT-FM lacks the basic character qualifications to be a Commission licensee because of alleged violations of the Commission’s rule on the broadcast of indecent material.

On November 23, 2004, the FCC approved a Consent Decree entered by Viacom Inc. (“Viacom”),¹ then the ultimate owner of WTCN-CA and WXYT-FM, which resolved all allegations that Viacom and its licensee subsidiaries had violated the broadcast indecency laws with respect to any material broadcast before that date, with the exception of the CBS Television Network’s coverage of the Super Bowl half-time show on February 1, 2004 (a broadcast that was not carried by WTCN-CA and was not the subject of the petition to deny in question). In its order approving the Consent Decree, the Commission stated that “there are no substantial and material questions of fact in regard to these matters as to whether Viacom possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations.” *In the Matter of Viacom Inc., et al.*, 19 FCC Rcd. 23100 (2004).

The attached letter, dated January 7, 2008, has been filed with the FCC requesting that the WXYT-FM license renewal application be granted.

¹ As of December 31, 2005, Viacom effected a corporate reorganization in which the name of the ultimate parent company of its owned television stations was changed to CBS Corporation.



LEVENTHAL SENTER & LERMAN PLLC

January 7, 2008

STEVEN A. LERMAN
MANAGER
(202) 416-6765

E-MAIL
SLERMAN@LSL-LAW.COM

VIA HAND DELIVERY

Mr. Peter H. Doyle
Chief, Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: License Renewal Applications for Station WXYT-FM (formerly WKRK-FM), Detroit, Michigan (File No. BRH-20040601BHZ); Station WWFS(FM) (formerly WNEW(FM)), New York, New York (File No. BRH-20060201BEE); and Station WXRK(FM) (formerly WFNY-FM), New York, New York (File No. BRH-20060201BAP)

Dear Mr. Doyle:

I am writing on behalf of our client CBS Radio East Inc. ("CBS Radio"), licensee of Stations WXYT-FM, Detroit, Michigan ("WXYT"), WWFS(FM), New York, New York ("WWFS"), and WXRK(FM), New York, New York ("WXRK"). CBS Radio respectfully requests that the Media Bureau grant the above-referenced pending license renewal applications for Stations WXYT, WWFS and WXRK.¹ The renewal applications were individually opposed by petitions to deny or informal objection (collectively, the "Oppositions")² that relied on then-pending enforcement proceedings as the basis for action requested in the Oppositions.

The Commission terminated those enforcement proceedings pursuant to the terms of the 2004 Consent Decree with Viacom Inc.³ See *Viacom Inc., et al.*, Order, 19 FCC Rcd 23100 (2004) ("Consent Decree Order"). The *Consent Decree Order* provides that the Commission is barred from using these terminated proceedings and their "underlying facts, behavior, or broadcasts" for any purpose involving CBS Radio, including but not limited to the license

¹ The name of the licensee of WXYT, WWFS and WXRK was changed to CBS Radio East Inc. from Infinity Broadcasting East Inc. effective February 21, 2006. WWFS changed its call sign from WNEW(FM) effective January 9, 2007, WXRK changed its call sign from WFNY-FM effective May 31, 2007, and WXYT changed its call sign from WKRK-FM effective October 3, 2007. All references to stations and licensees in this letter will use current call signs and names.

² See Petition to Deny jointly filed by Right to Decency, Inc. and American Decency Association (Sept. 1, 2004) (opposing WXYT license renewal application); Petition to Deny jointly filed by Rev. Giacomo Capoverdi, Nick Carlucci, Grace Vertullo and TFP Student Action (May 1, 2006) (opposing WWFS license renewal application); and Informal Objection jointly filed by Right to Decency, Inc. and American Decency Association (May 24, 2006) (opposing WXRK license renewal application).

³ The ultimate parent company of WXYT, WWFS and WXRK was changed to CBS Corporation from Viacom Inc. following a corporate separation effective January 1, 2006.



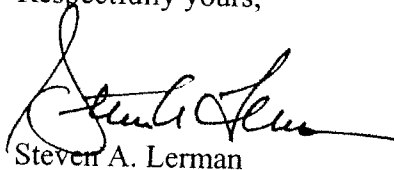
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renewal context. *Id.* at 23107. In September, the Media Bureau, relying on comparable consent decrees entered into with Emmis Communications Corp. ("Emmis") and Clear Channel Communications, Inc. ("Clear Channel"), denied informal objections filed against the renewal applications for radio stations licensed to Emmis and Clear Channel subsidiaries and granted those applications. See Letter to David Edward Smith and John E. Fiorini, III, Esq. from Peter H. Doyle, DA 07-3836 (Sept. 5, 2007) (granting Emmis applications) and Letter to Word of Faith International Christian Center and Dorann Bunkin, Esq. from Peter H. Doyle, DA 07-3837 (Sept. 5, 2007) (granting Clear Channel applications).

CBS Radio's similarly situated renewal applications require the same treatment accorded to those of Emmis and Clear Channel. The *Consent Decree Order* has been final agency action for more than one year. See *Viacom Inc., et al.*, Order on Reconsideration, 21 FCC Rcd 12223 (2006) (denying petition seeking reconsideration of the *Consent Decree Order* jointly filed by Right to Decency, Inc. and American Decency Association). The *Consent Decree Order* is not subject to further administrative or judicial review, and, as in the Emmis and Clear Channel cases, the Commission is conclusively barred from considering any aspect of the terminated enforcement proceedings, which form the basis for the Oppositions in connection with the pending license renewals of WXYT, WWFS and WXRK. Based on its review of the record, the Commission in the *Consent Decree Order* concluded that there were "no substantial and material questions of fact in regard to these [enforcement] matters as to whether Viacom possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations." *Consent Decree Order* at 23103.

Accordingly, CBS Radio respectfully requests immediate denial of the Oppositions and expeditious grant of the referenced license renewal applications. Should you have any questions concerning this matter, please do not hesitate to contact me.

Respectfully yours,



Steven A. Lerman

cc: Dennis J. Kelly, Esq.
Law Office of Dennis J. Kelly
P.O. Box 41177
Washington, DC 20018-0577

*Counsel to Right to Decency, Inc.,
American Decency Association,
Rev. Giacomo Capoverdi,
Nick Carlucci,
Grace Vertullo, and
TFP Student Action*