

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Audacy License, LLC
Application for Renewal of License for
Station WFAN-FM, New York, NY
(FIN 67846)

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) Application File No. 0000183797
) Pleading File No. 0000189471
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To: Media Bureau

**OPPOSITION TO PETITION TO DENY LICENSE
RENEWAL APPLICATION**

Audacy License, LLC (“Audacy”), licensee of station WFAN-FM, New York, NY (the “Station”), hereby opposes the Petition to Deny (the “Petition”) its license renewal application for the Station filed by Kevin DeBlasi (the “Petitioner”), who identifies himself as a “New York State Attorney.”¹ Because Petitioner lacks standing to challenge the license renewal application of the Station, his Petition should be dismissed without consideration. Even if the Petition is considered, however, Petitioner’s allegations do not raise a substantial and material question as to whether Audacy has operated WFAN-FM consistent with the public interest, convenience, and necessity during the current license term. Thus, the Petition should be denied and the above-captioned license renewal application should be granted.

**I. PETITIONER HAS FAILED TO ESTABLISH STANDING TO CHALLENGE
WFAN’S LICENSE RENEWAL APPLICATION.**

The Petition should be dismissed without consideration as Mr. DeBlasi has failed to demonstrate standing to challenge the Station’s license renewal application. The Petition is a

¹ See Affidavit for the Petition to Deny WFAN’s Radio License (Apr. 18, 2022).

transparent attempt to relitigate Petitioner’s client’s complaints against the Station that are currently the subject of a pending complaint in the Supreme Court of New York.² This alone is insufficient to confer standing in the instant proceeding. Furthermore, the affidavit from Petitioner that accompanies his Petition fails to satisfy the Commission’s criteria for establishing standing in a broadcast license renewal proceeding.

Under the Communications Act of 1934, as amended (the “Act”), only a “party in interest” has standing to file a petition to deny a license renewal application.³ In addition to containing the necessary factual allegations to support a *prima facie* case that grant of an application would be inconsistent with the public interest, convenience, and necessity, a petition to deny must contain specific allegations of fact demonstrating that the petitioner is a party in interest.⁴ In the broadcast regulatory context, standing is generally shown in one of three ways: (1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station’s service area or regular listener of the station.⁵

Petitioner has made no effort to demonstrate that he is a party in interest in the license renewal application for the Station. Petitioner clearly does not meet the first two criteria as a competitor in the market. And he makes no attempt to show that he is a resident of the Station’s

² See *Joseph DeBlasi v. Sidney Rosenberg and WFAN Radio*, Index No. 151695/18 (S.Ct. of NY filed Feb. 26, 2018).

³ 47 U.S.C. § 309(d); 47 C.F.R. § 73.3584.

⁴ See *Consent to Transfer Control of Certain License Subsidiaries of NBI Holdings, LLC to Terrier Media Buyer, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 10554, 10563 ¶ 25 (MB 2019).

⁵ *Alpha Media Licensee LLC, Debtor-in-Possession (Assignor) And Alpha Media Licensee LLC (Assignee)*, Order, 36 FCC Rcd 10891, 10902 ¶ 32 (Aud. Div. 2021).

service area or that he is a regular listener of WFAN-FM.⁶ To be sure, Petitioner describes himself as a “New York State attorney.”⁷ But this alone does not confirm that he is a “resident of the station’s service area.” One can certainly be a New York state attorney and reside elsewhere in the country. Furthermore, describing himself as a “New York State attorney” does not in any way suggest that he is a regular listener of WFAN-FM.⁸

Instead, this Petition is nothing more than an attempt to relitigate issues that Petitioner has raised in a complaint he filed on behalf of someone else in New York state court. Standing to challenge the Commission’s regulation of a broadcast station “is accorded to persons not for the protection of their private interest but only to vindicate the public interest.”⁹ Petitioner is not vindicating any public interest with his Petition, and his private interest in representing a client in a pending lawsuit against a broadcast station is insufficient to confer standing on Petitioner in the instant proceeding.

Because Petitioner has failed to establish that he is a party in interest in the above-captioned license renewal application, the Petition should be summarily dismissed.

⁶ In fact, the Petition twice ascribes its complaints to a station with a “50,000-watt audience.” See Petition at 2; 3. This does not describe WFAN-FM.

⁷ See *supra* n.1.

⁸ See *Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9156, 9162 ¶ 21 (MB 2014) (“Among the facts to be alleged is that the petitioner is a resident of the station’s service area and a regular viewer of the station.”).

⁹ *Alpha Media Licensee LLC, Debtor-in-Possession (Assignor) And Alpha Media Licensee LLC (Assignee)*, Order, 36 FCC Rcd 10891, 10902 ¶ 32 (Aud. Div. 2021) (quoting *United Church of Christ*, 359 F.2d 994, 1003 (D.C. Cir. 1966)).

II. THE PETITION DOES NOT RAISE QUESTIONS ABOUT AUDACY'S OPERATION OF THE STATION IN THE PUBLIC INTEREST.

Even if the Bureau was to consider the allegations in the Petition, it should be denied. Petitioner has not provided any facts sufficient to rebut the statutory presumption in favor of license renewal, nor has he demonstrated that Audacy's operation of the Station is inconsistent with the public interest.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.¹⁰ That section provides that if, upon consideration of the application and pleadings, the Commission finds that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, the Commission must grant the renewal application.¹¹

Pursuant to Section 309(d) of the Act, the Commission applies a two-part test when evaluating a petition to deny under the public interest standard.¹² First, the Commission must determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest. The Commission next must determine whether the totality of the evidence raises a substantial and

¹⁰ 47 U.S.C. § 309(k).

¹¹ *Windy City Broadcasting, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 2022 FCC LEXIS 862, *13-14 ¶ 15 (Aud. Div. released Mar. 15, 2022).

¹² 47 U.S.C. § 309(d).

material question of fact justifying further inquiry. If a petition to deny fails to satisfy both steps, the Commission will deny the petition and grant the application.¹³

Petitioner fails to offer any specific allegations of fact sufficient to show that granting the Station's license renewal application would be *prima facie* inconsistent with the public interest. As a threshold matter, Petitioner references actions alleged to have been taken in the prior license term and not during the current license term. Section 309(k) requires the Commission to consider a license renewal application based on the licensee's operation of the station during the current term of license, and "[t]he renewal grant date is the first day of the current term of license."¹⁴ The renewal grant date for WFAN-FM was October 10, 2014.¹⁵ The sponsorship identification allegations in the Petition, even if accurate, occurred in August 2014.¹⁶ Thus, they are not relevant to the Commission's consideration of the instant license renewal application.

Petitioner offers no other facts to establish a *prima facie* case against the Station's license renewal application. Instead he offers only conclusory assertions about one particular radio show host who has not been associated with the Station for nearly eight years.¹⁷ His

¹³ *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998). A similar test is applied if the Petition is treated as an informal objection. See *I Square Media, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 5015, 5019-20 ¶ 10 (Vid. Div. 2017).

¹⁴ See *Escalante City*, Forfeiture Order, 26 FCC Rcd 5961, 5963 ¶ 8 (Aud. Div. 2011); see also *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 33 FCC Rcd 7221, 7234 ¶ 32 (2018) (quoting 47 U.S.C. § 503(b)(6) ("[a] separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license")).

¹⁵ See CDBS File No. BRH-20140131ALO (granted Oct. 10, 2014).

¹⁶ See Petition at 2.

¹⁷ See *Applications of The Evening Star Broadcasting Company (Assignor) and Pacific and Southern Company, Inc. (Assignee)*, Memorandum Opinion and Order, 68 FCC 2d 129, 143 ¶ 42

allegations of sponsorship identification violations by the Station are without any evidentiary support, unsurprisingly, as according to him, he brought these same claims to the Commission's attention in 2014 and they have not resulted in any adverse findings against the Station or Audacy.¹⁸

Even if Petitioner had properly presented evidence of an isolated sponsorship identification issue at the Station over the eight-year license term,¹⁹ he has offered no evidence—nor could he, as none exists—of widespread or serious violations that “constitute a pattern of abuse” at the Station. Indeed, Petitioner's conclusory assertions on behalf of his relative are hardly the “totality of the evidence” that would warrant further Commission inquiry into the Station's service to the public.

Indeed, what Petitioner seeks is yet another forum to relitigate the claims he has already made in New York state court. As discussed above, his client's pending case in New York state court is irrelevant to the question of whether the Station had met the statutory standard for renewal of its license. It is axiomatic that the Commission does not involve itself in private contractual disputes between parties.²⁰ This is particularly true where, as here, a state court

(1978) (“mere allegation is insufficient to raise a substantial or material question of fact which would warrant further inquiry”).

¹⁸ Petition at 2 (“The Enforcement Bureau never even publicly responded to the duly filed Sponsorship complaints in 2014.”).

¹⁹ Audacy acquired the Station pursuant to a transfer of control consummated on November 17, 2017. See CDBS File No. BTC-20170320AAZ (lead application) (granted Nov. 9, 2017).

²⁰ See *Applications of Stockholders of Renaissance Communications Corporation (Transferor) and Tribune Company (Transferee) For Transfer of Control of Renaissance Communications Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 11866, 11869 ¶ 6 (1997) (“The Commission has previously determined that it is not the proper forum for the adjudication of private contractual disputes.”).

provides the proper forum.²¹ Petitioner’s personal vendetta against the Station and a former program host raises no serious questions about whether grant of the Station’s license renewal application is in the public interest.

Based on the foregoing, the Petition to Deny the license renewal application for WFAN-FM should be dismissed or, alternatively, denied, and the Station’s license renewal application should be granted.

Respectfully submitted,

AUDACY LICENSE, LLC

By: /s/ Laura Berman
Laura Berman
Vice President, Legal

Audacy License, LLC
2400 Market Street, 4th Floor
Philadelphia, PA 19103
202.571.6555

May 19, 2022

²¹ *Listeners’ Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (affirming “the Commission’s longstanding policy of refusing to adjudicate private contract law questions for which a forum exists in the state courts”); *NatTel, LLC Petition to Deny Application of Puerto Rico Telephone Company, Inc.*, Order, 24 FCC Rcd 428, 432 ¶ 12 (Mob. Div. 2009) (“The Commission refrains from making decisions based on mere allegations of misconduct where those allegations are in the process of being adjudicated by another agency or court.”).

DECLARATION

I declare under penalty of perjury that the foregoing Opposition to Petition to Deny the License Renewal Application of WFAN-FM is true and correct to the best of my knowledge, information, and belief, which includes information provided to me by others.

A handwritten signature in black ink, appearing to read 'MDash', is written over a horizontal line.

Michael E. Dash, Jr.
Executive Vice President,
Compliance and Administration
Deputy General Counsel

May 19, 2022

CERTIFICATE OF SERVICE

I, Laura Berman, hereby certify that on this 19th day of May 2022, I caused a copy of the foregoing “**OPPOSITION TO PETITION TO DENY**” to be served on the following via first-class United States mail, postage prepaid:

Kevin DeBlasi, Esq.
5 Millie Lane
East Setauket, NY 11733

/s/ *Laura Berman*
Laura Berman