

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application for Assignment of Licenses)	
of KBLA (AM) Santa Monica, California from)	LMS File Nos. 0000213967
Multicultural Radio Broadcasting Licensee, LLC)	Facility ID 34385
To Smiley Radio Properties, Inc.)	
)	
To: Marlene H. Dortch, Secretary		
Attn. Holly Saurer, Chief Media Bureau		

OPPOSITON TO MOTION TO STRIKE

The Ukrainian Congress Committee of America, Inc. (“UCCA”), by counsel, hereby files its Opposition to Motion to Strike (“Motion”) filed by Multicultural Radio Broadcasting Licensee, LLC’s (“MRBL”). The Motion seeks to strike UCCA’s timely filed Second Supplement to Petition to Deny (“Second Supplement”).

UCCA’s Second Supplement was Timely Filed and is Properly Before the Commission

MRBL’s Motion is performative; it is all sound and fury, but fails to address any of the issues raised in this proceeding. The only new information put forth in the Motion is that Brandon Wong altered the dates on political advertising contracts, but this is hardly a revelation.

The Motion consists of nothing more than manufactured outrage. MRBL claims that UCCA is “harassing Multicultural for expressing its First Amendment rights”¹ and is abusing process. UCCA is not aware of any Commission precedent which holds that alerting the Commission to a licensee’s numerous rule violations constitutes harassment or abuse of process²

¹ Motion at p. 1.

² In *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986), the Commission defined "abuse of process" as "serious willful misconduct that directly threatens the integrity of the Commission's licensing processes." UCCA could have brought the

and MRBL cites no cases in support of its unfounded accusations.

According to MRBL, the “Commission must strike this pleading.” (emphasis added) But how can the Commission strike the pleading? Assuming, *arguendo*, that MRBL’s arguments concerning timeliness are correct, and they are not, the FCC would not strike UCCA’s Second Supplement. Instead, the FCC would treat the Second Supplement as an informal objection. Thus, MRBL’s Motion is based on a faulty premise, i.e. that the FCC can strike UCCA’s pleading and wipe from the record the evidence of MRBL’s numerous rule violations. Regardless of how the FCC decides to treat UCCA’s Second Supplement, MRBL’s failure to comply with the rules and its repeated violations of the political broadcast rules will remain a part of the record of this proceeding.

Despite MRBL’s objections to the contrary, UCCA’s Second Supplement was timely filed. MRBL failed to provide public notice of the application. Section 73.3580(c)(4)(ii) of the rules requires the placement of an online notice of an application for assignment of license. This still has not been done on the KBLA website.³ Notice was given on MRBL’s corporate website only after UCCA filed its Petition to Deny and the time for parties in interest to file petitions to deny had expired. In the assignment application, MRBL certified that it would comply with the requirements of section 73.3580, but it did not. Consequently, the public was not given notice of the proposed KBLA assignment. MRBL further argues that the Media Bureau can simply ignore the requirements of Section 73.3580 and Section 311 of the Communications Act. It cannot. Neither the Media Bureau nor the full Commission can waive the requirements to the

rule violations to the attention of the Enforcement Bureau in an *ex parte* filing. Instead, it served MRBL and offered it a fair and full opportunity to respond.

³ KBLA’s website does not even have a link to the FCC’s Online Public Inspection File.

Communications Act.⁴ MRBL Motion is silent on this point.

Also not addressed in its Motion is the fact that UCCA's Second Supplement was based on new evidence. UCCA filed a FOIA request, which was recently granted. UCCA's Second Supplement was based, in large part, on the documents produced in response to the FOIA request. Thus, UCCA's Second Supplement is timely filed and ripe for FCC consideration.

MRBL has Repeatedly Violated The Political Broadcast Rules

MRBL has consistently failed to explain its repeated violations of the political broadcast and public file rules. Concerning its charging of political candidate hugely discrepant rates for political advertising on KBLA, MRBL has only this to say,

As for the allegations that certain candidates were overcharged, the matter was answered in the previously filed Motion to Strike of July 25, 2023. The programmer has not provided Multicultural with any additional information.⁵

The first sentence ignores that what MRBL stated in its July 25, 2023, Motion is demonstrably not true. In that Motion MRBL wrote,

As for the allegation that two candidates were charged different rates during the period in which the lowest unit charge was in effect, Candidate Maxine Waters willingly agreed to pay the extra amount because she wanted a guarantee so that the ads would be aired on certain shows, including the Tavis Smiley show, which were preemptible time periods and otherwise not available.

This statement is supported by a declaration of Yvonne Liu⁶ attesting that she has personal knowledge of the facts. Yvonne Liu's statement lacks candor. As UCCA demonstrated in its Opposition to the July 25, 2023, Motion and more recently in the Second Supplement,

⁴ *In re Network of Glory, Inc.*, 26 FCC Rcd 14259, 14260 (2011). "[I]t is axiomatic that the Commission cannot waive the provisions of the Communications Act."

⁵ Motion, para. 3.

⁶ Arthur and Yvonne Liu are the controlling shareholders of MRBL and responsible for the day-to-day operation of MRBL's radio stations.

preemptible time was readily available and there was no legitimate basis for KBLA to offer non-preemptible advertising to political candidates.

As discussed in detail in the Second Supplement, review of the political contract dispositions discloses no difference between the preemptible and non-preemptible commercials broadcast on KBLA. MRBL dissembled when it claimed that Candidate Maxine Waters, after the clearance rate for preemptible commercials was disclosed to her campaign, was willing to pay more than twice the preemptible rate to guarantee that 100 percent of her ads would be aired and that they would be aired on certain shows, including the Tavis Smiley show. MRBL alleges, without any supporting evidence, that her campaign decided to purchase the significantly more expensive commercials so that all her commercials would air before the election. A review of these disposition invoices shows that **100 percent of the preemptible advertising purchased by candidates on KBLA was aired on the day and at the time ordered.** For example, the contract and disposition of Riana Carrillo for Mayor is a typical preemptible contract.⁷ Much like Congresswoman Maxine Waters, Candidate Carrillo purchased advertising time in October and November 2022, but she paid significantly less. Candidate Carrillo purchased 23 commercials which were to run on specific days and in designated time periods. All 23 commercials aired on the day and during the time periods agreed upon. It is worth noting that Candidate Carrillo was able to purchase weekday specific dayparts while Candidate Maxine Waters was only offered weekdays Monday – Friday 6am to 7pm. MRBL contends that Maxine Waters “wanted a guarantee so that the ads would be aired on certain shows, including the Tavis Smiley show.” The schedule Candidate Maxine Waters purchased did not guarantee her commercials would air

⁷ UCCA assumes the contract is preemptible based on the lower rate, as nothing on the contract or disposition states that it is or is not. Despite the requirement to do so, MRBL has not identified which contracts are preemptible and which are non-preemptible.

on the Tavis Smiley show, which airs Monday - Friday 9am-12pm. She was only promised that her commercials would run sometime from 6am through 7pm. The station could have fulfilled its contract with Candidate Waters without running a single commercial on the Tavis Smiley show. Compare that with the Candidate Carrillo agreement. She agreed to purchased four commercials to run during the Tavis Smiley show in October – November, Monday – Friday 9am to 12pm. The four commercials aired as agreed, October 31 at 11:55am, November 1 at 10:32am, November 7, at 10:13am and November 8, at 10:33am. Candidate Carrillo’s entire preemptible contract ran on the dates and times stated in the original contract. The same is true of the other political contracts. UCCA has checked the contracts and has been unable to find a single commercial that was preempted.

There was no basis to justify the sale of non-preemptible time to political candidates and MRLB offers none. MRBL’s only response to this obvious fraud is to claim that the programmer has not provided it with any additional information. While the programmer, for good reason, may not be forthcoming with information concerning serious and repeated violations of the political broadcast rules, it is incumbent on the licensee, MRBL, to investigate and to report to the FCC all rule violations. MRBL has not done so. Nor did it report these violations as required by the terms of the Consent Decree.⁸ In fact, it has done the opposite, it is attempting to strike from the record the evidence of its fraudulent billing of qualified candidates for political office.

Arthur and Yvonne Liu cannot simply claim they do not know what is going on at their stations because they have leased them to other entities. Arthur and Yvonne Liu have gone so far as to contend that they are too busy to monitor the day-to-day operations of their stations, instead

⁸ *In re Online Political Files of Multicultural Radio Broad. Licensee, LLC*, (“Consent Decree”) 2022 FCC LEXIS 1225 (April 13, 2022).

they delegate their duties to employees and contractors.⁹ In the case of KBLA, responsibility for political advertising, no doubt, was delegated to Tavis Smiley, the very programmer who has failed to provide “additional information.” Arthur and Yvonne Liu must take responsibility for what happens at their stations; they and only they are responsible for complying with the FCC’s rules.

In the Motion, MRLB submits yet another questionable declaration, this time from its Executive Vice President, Brandon Wong.¹⁰ After MRLB executed the Consent Decree, Brandon Wong was designated MRLB’s compliance officer. Yet Brandon Wong is unaware of what was going on at KBLA. In his declaration Brandon Wong admits that he altered political advertising contracts by crossing out and changing the dates. In a self-serving statement, Brandon Wong claims that he altered the dates “only when they did not correctly reflect the actual date that the contract was presented as a request for a political ad.”¹¹ Here again, the Commission is simply required to take MRBL’s word for it. No other contemporary documents are presented e.g. emails from candidates or their agencies requesting advertising. The Commission is simply expected to believe Brandon Wong, without any supporting evidence.

MRBL has repeatedly demonstrated that it cannot be relied on to be honest and forthcoming with the Commission. It made no serious effort to comply with the Consent Decree.

⁹ See MRBL’s Opposition to Motion to Strike Unauthorized Pleading, in New York and New Jersey license renewal proceeding, filed July 27, 2022.

¹⁰ MRBL has repeatedly made material misrepresentations. Yvonne Liu has filed knowing false declarations. In addition to her claims that KBLA had a legitimate basis to sell non-preemptible advertising, in the WZHF(AM) proceeding, Yvonne Liu has claimed that Libby Parris is a fulltime MRBL employee. This claim was made to demonstrate that Arthur and Yvonne Liu, not the Russian government, control the programming aired WZHF(AM). The uncontroverted evidence shows that Libby Parris owns two radio stations and is a fulltime employee of those stations and not of MRBL.

¹¹ Motion, Brandon Wong declaration.

If MRBL and Brandon Wong had been monitoring KBLA, the abuses that occurred could have been avoided. Instead, they took no action and as of this date Arthur and Yvonne Liu are still waiting on an explanation from the programmer. The FCC needs to designate this matter for hearing to determine if MRLB has repeatedly and willfully violated the FCC's rules. More importantly, the FCC needs to hold a hearing to determine if MRLB has made material misrepresentations to the FCC in its report concerning compliance with the terms of the Consent Decree and in its pleading and declarations.

Broadcasting Programming Unresponsive to the Needs of the Local Community is Not a First Amendment Right, Nor is it in the Public Interest

In the Motion, MRBL claims that UCCA is “harassing Multicultural for expressing its First Amendment rights.”¹² MRBL clearly has a First Amendment right to broadcast, but it also has a responsibility to serve the needs and interests of the communities it is licensed to serve. As the Supreme Court said in *Red Lion*: “It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.”¹³ The Court goes on to say, “It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC.”¹⁴ In *Sanders Radio Station* the Supreme Court stated: “An important element of public interest and convenience affecting the issue of a license is the ability of the licensee to render the best practicable service to the community reached by his

¹² Motion, p. 1.

¹³ *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 389 (1969).

¹⁴ *Id.* at p. 390.

broadcasts.”¹⁵ Localism is a longstanding core Commission broadcast policy objective.¹⁶ In discussing its localism goal, the Commission has emphasized that “[b]roadcasters, who are temporary trustees of the public’s airwaves, must use the medium to serve the public interest, and the Commission has consistently interpreted this to mean that licensees must air programming that is responsive to the interests and needs of their communities of license.”¹⁷

Arthur and Yvonne Liu are not in the broadcast business per se; rather they are in the radio station rental business. They are the worst of landlords; as has been repeatedly demonstrated they take no interest in what their rental stations broadcast or how they are operated. They have admitted that they do not have the time (or the inclination) to monitor what is broadcast on their stations, preferring to delegate that responsibility to others.¹⁸ In the case of KBLA, they have delegated full authority and control to Tavis Smiley, Smiley Radio Properties, Inc.’s (“SRP”) sole principal. While the Consent Decree placed specific obligation on MRLB concerning political broadcasting, in the minds of Arthur and Yvonne Liu, these obligations did not extend to its rental properties. SRP was left unsupervised. This lack of oversight allowed SRP to overcharge candidates for office. That this happened is bad enough. However, when UCCA made MRBL aware of fraudulent activity at KBLA, Arthur and Yvonne Liu took no action. In the Motion they repeat SRP’s discredited version of the facts and blithely reported that

¹⁵ See, *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940).

¹⁶ 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd 13620, 13643-13644, paras. 73-76 (2003); *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 at para. 1 (2004) (*Broadcast Localism NOI*).

¹⁷ *Broadcast Localism NOI* at 12425, para. 1 (citing *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92, para. 11 (1982), on recon., 56 Rad. Reg. 2d (P&F) 448 (1984).

¹⁸ MRBL’s Opposition to Motion to Strike Unauthorized Pleading, in New York and New Jersey license renewal proceeding, filed July 27, 2022.

“[t]he programmer has not provided Multicultural with any additional information.”¹⁹

In the case of WZHF(AM) Arthur and Yvonne Liu have delegated control of the station’s programming to Arnold Ferolito, the sole owner and manager of RM Broadcasting, LLC. RM Broadcasting and Ferolito are registered agents of the Russian government. It is the Russian government, not Arthur and Yvonne Liu, that decides what is broadcast on WZHF(AM). UCCA has documented what is being broadcast concerning Ukraine. It is vile agitprop designed to justify Russia’s brutal invasion of Ukraine, the murder and rape of its citizens, the destruction of property and the theft of territory. But as MRBL points out, there is so much more to WZHF’s programming than just news about Russia’s invasion of Ukraine. For example, since Hamas attacked Israel, WZHF has been broadcasting a steady stream of antisemitic tropes. The station has stated that Hamas’ attack was fully justified, and that Palestinians are “prisoners” seeking to break free. Israel, on the other hand, is referred to as a “war criminal.” UCCA urges the FCC staff to tune in to WZHF and hear for themselves, as the station can be heard through most of the Washington, DC metropolitan area.

All decisions concerning programming on WZHF are made in Moscow and must be broadcast without changes or deletions if Arthur and Yvonne Liu want to be paid. It is on this programming that MRBL stakes its First Amendment claims. However, it is well established that First Amendment rights do not extend to foreign organizations operating abroad.²⁰ This is because as a matter of constitutional law, foreign citizens outside U. S. territory do not possess rights under the U. S. Constitution.²¹ The Russian government has no First Amendment right to

¹⁹ Motion, para. 3.

²⁰ *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 140 S. Ct. 2082 (2020)

²¹ See, e.g., *Boumediene v. Bush*, 553 U. S. 723, 770-771, (2008)

broadcast its hate-filled programming within the United States.

To accept MRBLs First Amendment argument, the Commission must conclude that MRBL first ascertained the needs and interests of the local Washington area community. After ascertaining the needs of the community, Arthur and Yvonne Liu decided that what served the public interest was programming hostile to U.S. values, interest and culture; programming that intentionally undermines U.S. institutions; programming that openly lies to its audience; programming that seeks to deny or cover horrendous war crimes; programming that supports acts of terrorism and calls such acts “justified”; and programming that claims that a long-term U.S. ally, Israel, is guilty of war crimes. Next the FCC must conclude that Arthur and Yvonne Liu then decided that the best way to provide this type of programming was to lease the station to Russia, a hostile foreign power closely aligned with Iran another hostile foreign government. If the FCC can draw these conclusions, then and only then can it give any credence to MRBL’s First Amendment argument. The truth is much simpler, Arthur and Yvonne Liu care nothing about what happens at their leased stations. This was demonstrated in the case of KBLA, when the programmer overcharged candidates for advertising by selling sham non-preemptible commercials. Yet, Arthur and Yvonne Liu took no remedial action. Likewise, Arthur and Yvonne Liu have exercised no control over Russian government broadcasts. Rather, they claim that Russia’s programming decision are somehow protected by their First Amendment rights. This is nonsense. What is crystal clear is that the public interest would be best served by revoking MRBL’s licenses. It is hard to image broadcasters less qualified to be licensees than Arthur and Yvonne Liu. UCCA urges the FCC to expeditious designate their licenses for hearing.

Respectfully Submitted,

/s/Arthur V. Belendiuk

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November 14, 2023

Declaration of Gregory Radionov

I, Gregory Radionov, declare under penalty of perjury, that the following information is true and correct:

I declare that I have personal knowledge of the factual allegations I make in UCCA's Opposition to Motion to Strike. These allegations are the direct cause of the injury I suffer as a regular listener of KBLA (AM).

Gregory Radionov



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via email and/or first class mail to the following:

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