



Federal Communications Commission  
Washington, D.C. 20554

DA 05-3094  
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Re: Petition to Deny Various Applications for Assignment of  
License from Emmis Television License, LLC<sup>1</sup>

Dear Counsel:

This is in regard to the applications to assign the licenses of several television stations currently controlled by Emmis Broadcasting License, LLC (Emmis) to Journal Broadcast Corporation

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<sup>1</sup> A list of the applications covered by this letter is attached as Exhibit A.

(Journal) and LIN Television Corporation (LIN). A petition to deny the applications was filed by Broadcast Company of the Americas, LLC (BCA). Emmis filed an opposition to the petition. LIN and Journal filed a combined opposition to the petition. BCA filed a reply to the oppositions. For the reasons stated below, we deny the petition and either grant or defer action on the individual applications as stated below.

In its petition, BCA states that it is in the business of providing programming over Mexican stations pursuant to Section 325 of the Communications Act.<sup>2</sup> In its September 29, 2005 Petition to Deny, BCA contends that Emmis and another entity, Lazer Broadcasting Corporation (Lazer),<sup>3</sup> abused Commission processes in a proceeding involving Section 325 applications filed by BCA to provide programming over the Class B and Class C1 facilities of station XHBCE-FM, Ensenada, Baja North California, Mexico. BCA alleges “willful misrepresentation, lack of candor and abuse of the Commission’s process” by Emmis in opposing BCA’s application which renders Emmis unqualified to be a Commission licensee. Therefore, BCA argues that the assignment applications that are the subject of this letter should be dismissed.<sup>4</sup>

In their petition to deny BCA’s Section 325 applications, Emmis and Lazer alleged that the licensee of XHBCE-FM had constructed facilities that had not been coordinated with the United States and that XHBCE-FM’s Class B facilities were not constructed at the appropriate location. That petition further stated that the antenna of XHBCE-FM’s Class C1 facility was pointed to place its major lobe to the northwest, that those facilities were operating when they should not have been and that they were causing interference to Lazers’ station KXRS(FM), Hemet, California.

In its petition to deny in this proceeding, BCA attacks Emmis claim to have standing in the XHBCE-FM proceeding. Although Emmis, as a broadcaster, claimed to have a “stake in the integrity and reliability of station notifications under U.S. broadcast agreements with Mexico,”

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<sup>2</sup> Section 325(c) of the Communications Act states:

No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefore.

Section 325 applications are handled by the Commission’s International Bureau. This letter does not represent a ruling or comment on the merits of BCA’s Section 325 applications.

<sup>3</sup> Lazer is not a party to this proceeding.

<sup>4</sup> Emmis argues that BCA lacks standing to file its petition to deny. BCA has not made a showing that it has standing, but instead has only alleged that it is an “aggrieved party” because of Emmis’s role in the Section 325 proceedings. However, because the allegations in BCA’s petition go to the issue of Emmis’s character and its basic qualifications to be a licensee, we have considered the matters raised in its pleadings.

BCA says that Emmis was actually trying to protect its station KPWR(FM), Los Angeles from interference with the XHBCE(FM) signal. BCA claims that Emmis, therefore, was abusing the Commission's processes by trying to obtain a level of protection for its station to which it was not entitled.

BCA goes on to claim that Emmis's pleadings in the Section 325 proceedings were "rife with misrepresentations." BCA states that Emmis claimed that the XHBCE-FM Class B facilities were not constructed at the appropriate location. As Emmis points out in its opposition, however, BCA admits that the facilities were constructed "a few hundred feet" from the authorized site. BCA also asserts that Emmis sought to mislead the Commission by "playing games" with the name for the Class B site. Emmis states that BCA's consultant identified the Class B site as "at the peak" of Cerro Grande, while Emmis offered up a topographical map showing the "Peak of Cerro Grande" is 2.55 kilometers and 1700 feet higher in elevation than the facility's authorized location. BCA claims that Emmis also sought to mislead the Commission when it claimed that XHBCE-FM's had commenced operations at its Class C1 facility, while Emmis claims that its consultant detected unauthorized operations. BCA states that Emmis falsely alleged that the antenna was not properly oriented, while Emmis claims it has raised legitimate questions based on the photos of its own consultant and those of BCA's consultant, as well as on the manufacturer's drawings.

BCA alleges that Emmis has acted to delay action on a request for Special Temporary Authority to use the Class C1 facilities for certain programming. Emmis counters that BCA has been the one to ask for extensions of time in that proceeding. In its reply to the opposition, BCA claims that that extension to which Emmis refers was sought by another party to the proceeding. Finally, BCA alleges that Emmis has refused to work with BCA to resolve interference concerns.

We will not attempt to resolve any of the factual issues related to the Section 325 proceedings. Those issues, and the issue of whether Emmis has standing in those proceedings, will be resolved in due course by the International Bureau. The only issues before us are whether Emmis's participation in the Section 325 proceedings represents an abuse of process and whether, therefore, Emmis lacks the requisite character to be a Commission licensee.

In its order on *Character Qualifications*, the Commission defined "abuse of process" as "serious willful misconduct that directly threatens the integrity of the Commission's licensing processes."<sup>5</sup> An example of such misconduct is the filing of a "strike petition," which is the essence of what BCA has alleged that Emmis did in the Section 325 proceeding. In determining whether a pleading is a strike petition, the Commission considers several factors: (1) statements by the petitioner's principals or officers admitting the obstructive purpose; (2) the withholding of information relevant to disposition of the issues raised; (3) the absence of any reasonable basis for the allegations raised in the petition; (4) economic motivation indicating a delaying purpose;

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<sup>5</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986).

and (5) other conduct by the petitioner.<sup>6</sup> In this case, these factors have not been demonstrated. Most notably, the allegations made by Emmis in the Section 325 proceeding appear to have had a reasonable basis. BCA has even admitted that Emmis's allegation that the XHBCE-FM transmitter was not constructed at the appropriate location is true. In fact, all of the statements made by Emmis that BCA claims are either false or misleading appear, based on the record in this proceeding, to at least be the subject of legitimate dispute. The accuracy of each party's allegations in the Section 325 proceeding, and the weight to be given to those allegations, will be resolved by the International Bureau and are not an appropriate subject for this assignment proceeding. However, BCA has not demonstrated in this proceeding that Emmis has abused the Commission's processes or that it lacks the requisite character to be a Commission licensee. Therefore, we will deny BCA's petition. Furthermore, we find that grant of the applications would be in the public interest and we find the applicants are fully qualified to be licensees.

ACCORDINGLY, IT IS ORDERED THAT the petition to deny filed by Broadcast Company of the Americas, LLC IS DENIED. FURTHERMORE, the applications to assign the following licenses: (1) KGUN(TV), Tucson, Arizona, File No. BALCT-20050826AAB and WFTX(TV), Cape Coral, Florida, BALCT-20050826AFE from Emmis Television License, LLC to Journal Broadcasting Corporation; (2) KRQE(TV), Albuquerque, New Mexico, File No. BALCT-20050825ABS and KBIM-TV, Roswell, New Mexico, File No. BALCT-20050825ADB from Emmis Television License, LLC to LIN of New Mexico, LLC; (3) KREZ-TV, Durango, Colorado, File No. BALCT-2050825AEB, from Emmis Television License, LLC to LIN of Colorado, Inc; (4) WALA-TV, Mobile, Alabama, File No. BALCT-20050825AEY, from Emmis Television License, LLC to LIN of Alabama, LLC; (5) WLUK-TV, Green Bay, Wisconsin, File No. BALCT-20050825AFA, from Emmis Television License, LLC to LIN of Wisconsin, LLC and (6) WTHI-TV, Terra Haute, IN, File No. BALCT-20050825AFC, from Emmis Television License, LLC to Indiana Broadcasting, LLC are GRANTED. Action on the application to assign WBPB(TV), Gulf Shores, Alabama, File No. BALCT-20050825AEZ from Emmis Television License, LLC to LIN of Alabama IS DEFERRED pending resolution of that station's renewal application.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>6</sup> See *Radio Carrollton*, 69 FCC 2d 1138, 1150 (1978), clarified, 69 FCC 2d 424 (1978), recon. denied, 72 FCC 2d 264 (1979), aff'd sub nom., *Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. October 15, 1980), cert. denied, 450 U.S. 1041 (1981).