



Federal Communications Commission
Washington, D.C. 20554

July 31, 2006

DA 06-1546

In Reply Refer To:

1800B3-LD

Released: July 31, 2006

Mr. Steven Wendell
17 Knightsbridge Court
Nanuet, NYS 10954

In re: Long Island Multimedia, LLC
WLIE(AM), Islip, New York
Facility ID: 37805
File No. BAL-20060410ABY

Dear Mr. Wendell:

We have before us an application ("Application") to assign the license of Station WLIE(AM), Islip, New York,¹ from Long Island Multimedia, LLC ("LIM"), to NYStar, Inc. Steven Wendell ("Wendell") filed an Informal Objection ("Objection") to the Application on May 12, 2006. Counsel for LIM and NYStar filed an Opposition to the Informal Objection ("Opposition") on May 30, 2006. For the reasons set forth below, we deny the Objection and grant the Application.

Background. Wendell is the permittee of new unbuilt Station WXNH(AM), Jaffrey, New Hampshire.² Wendell submitted to the Commission on April 17, 2006, an application for minor modification of the WXNH(AM) construction permit.³ On April 28, 2006, LIM submitted an informal objection to Wendell's application for minor modification, alleging that the proposed WXNH(AM) facilities violate Section 73.37(a) of the Commission's Rules (the "Rules")⁴ and would receive prohibited contour overlap from WLIE(AM). In his Objection to the Application, Wendell indicates that the WXNH(AM) construction permit "does not have a prohibited overlap to the WLIE licensed facilities and that the WLIE licensed facilities ... and its construction permit ... have been incorrectly granted due to inconsistencies with the WLIE engineering information submitted to the FCC." Wendell suggests that the Commission should withhold making a decision on the Application "until the LIM informal objection and all other issues of the informal objection are resolved by the FCC."

Discussion. Procedural Matter. In the Opposition, LIM and NYStar claim that the Objection was not timely because it was served after it had been filed and contained no proof of service.⁵ Under

¹ File No. BAL-20060410ABY.

² File No. BNP-20001023ACT.

³ File No. BMP-20060417AAA.

⁴ 47 C.F.R. § 73.37(a).

⁵ 47 C.F.R. § 1.47(g) lists the requirements for valid proof of service.

Section 1.47(b) of the Rules, “service shall be made ... on or before the day on which the document is filed.”⁶ The Objection was filed with the Commission on May 12, 2006. LIM was served the Objection via mail on May 20, 2006,⁷ and received it on May 22, 2006. Though the Objection should have been served on or before May 12, 2006, neither LIM nor NYStar was harmed by Wendell’s tardy service. LIM and NYStar did receive the Objection, and we are considering their Opposition to that pleading. Accordingly, no further action on this claim is warranted. Similarly, even though no proof of service accompanied the Objection, Section 1.47(g) of the Rules states that “failure to make proof of service will not affect the validity of the service.”

Informal Objection. Informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested.⁸ Wendell’s Objection is unrelated to the WLIE(AM) Application. The only issues raised in the Objection concern the acceptability of the WXNH(AM) modification application. With respect to Wendell’s allegation that WLIE(AM)’s license (BL-20040212ABX) and subsequent modification application (BP-20041105ABM) were “incorrectly granted,” the grants of both are long since final.⁹ We reject Wendell’s untimely and collateral attempt to challenge those actions.¹⁰

Strike Petition. LIM and NYStar also refer to the Objection as a “strike petition that warrants at least admonishment,”¹¹ claiming that the Objection was “obviously filed for the purpose of ‘blocking, impeding, or delaying the grant of an application.’”¹² The Commission’s strike petition policy aims to curb abuses of the Commission’s processes.¹³ Before the issue of a strike petition can be raised, the party requesting such issue must make a strong threshold showing that the primary and substantial purpose behind the licensee’s action is delay.¹⁴ LIM and NYStar do not meet that threshold here, claiming only that there was an absence of any reasonable basis for Wendell’s allegations. They also speculate that the

⁶ 47 C.F.R. § 1.47(b).

⁷ The Objection was postmarked May 20, 2006. 47 C.F.R. § 1.47(f) states that “service by mail is complete upon mailing.”

⁸ See *Area Christian Television, Inc.*, 60 RR 2d 862 (1986).

⁹ The license and modification applications were granted on May 11, 2004, and March 18, 2005, respectively.

¹⁰ See, e.g., *Letter to Jerrold Miller, Esq.*, 21 FCC Rcd 2200 (MB 2006) (declined to consider untimely collateral challenge to grant of assignment application since no fraud on Commission’s processes and challenged result not unconscionable); *In the Matter of Applications of Morningstar Educational Network*, 18 FCC Rcd 19249 (2003) (challenge to grant of protected service area rejected as untimely because raised nearly two years later).

¹¹ *Opposition* at 1.

¹² *Id.* at 3.

¹³ See *Radio Carrollton*, 69 FCC 2d 1138, 1146 (1978).

¹⁴ *Id.* at 1147.

filing of the Objection was economically motivated.¹⁵ While those are factors to be taken into account when determining if a strike petition exists, those bare allegations are insufficient to meet the threshold showing needed, and no further action on this claim is warranted.¹⁶

Conclusion/Actions. We find that Wendell’s Objection contains neither adequate nor specific factual allegations sufficient to warrant further inquiry regarding the assignment of WLIE(AM). Accordingly, the May 12, 2006, Informal Objection from Steven Wendell IS DENIED and the application (File No. BAL-20060410ABY) of Long Island Multimedia, Inc., and NYStar, Inc., for consent to assignment of license for Station WLIE(AM), Islip, New York, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Long Island Multimedia, LLC
NYStar, Inc.
Denise B. Moline, Esq.
Peter Tannenwald, Esq.

¹⁵ *Id.* at 1146. (The factors the Commission take into account to determine if a licensee’s actions constitute a strike petition are: statements by the licensee’s principals or officers admitting the obstructive purpose, withholding information relevant to disposition of the requested issues, the absence of any reasonable basis for the adverse allegations in the petition, economic motivation indicating a delaying purpose, and other conduct of the licensee. LIM and NYStar provide no evidence regarding any of these – or any other pertinent – factors.)

¹⁶ See *In the Matter of Application of Hispanic Information and Telecommunications Network, Inc.*, 19 FCC Rcd 2829 (Feb. 19, 2004) (for allegations of a strike pleading to be considered, there must be a demonstrable showing of abuse of the Commission’s processes); *In re Application of American Mobilphone, Inc., and RAM Technologies, Inc.*, 10 FCC Rcd 12,297 (July 21, 1995) (“Although Capitol has failed to raise a substantial and material question of fact, we find that its petition is not so frivolous as to constitute a ‘strike’ pleading”); *In re Applications of Utica Telephone Company, Memorandum Opinion and Order*, 5 FCC Rcd. 2791 (April 20, 1990) (an economic motivation to delay the proceeding, on its own, would not establish a prima facie case of having filed the pleadings with the sole purpose of delaying the proceeding).