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In Reply Refer to:
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Mr. Charles N. James
130½ Melody Lane
Bay St. Louis, Mississippi 39520

Lee J. Peltzman, Esq.
Shainis & Peltzman, Chartered
1850 M Street NW, Suite 240
Washington, DC 20036

In re: WBSL(AM), Bay St. Louis, MS
Hancock Broadcasting, Inc.
Facility ID 25961
File No. BR-20040130BDV
Application for Renewal of License

Informal Objection

Dear Mr. James and Counsel:

This letter concerns the captioned application (the "Application") filed by Hancock Broadcasting, Inc. ("HBI") to renew the license of Station WBSL(AM), Bay St. Louis, Mississippi. Also on file is an informal objection (the "Objection") filed by Charles N. James ("James") on May 3, 2004.¹ For the reasons set forth below, we deny the Objection and grant the Application.

Background. James states that HBI failed to serve the public interest, convenience and necessity and "failed to provide service" to its community of license during the preceding eight-year license period. Specifically, James refers to a 2001 forfeiture the Commission assessed to HBI for violation of the Commission's Emergency Alert System ("EAS") rules and for HBI's failure to secure the WBSL(AM) tower within locked fencing or another appropriate enclosure.² James asserts, based on these violations, that HBI failed to adhere to the Commission's technical standards and safety requirements, and he questions whether these problems were ever remedied. James also suggests, without further explanation, that HBI violated National Electrical Code Standards.³ James further expresses concern about the

¹ HBI filed an Opposition on August 6, 2004.

² See *Hancock Broadcasting Corporation*, Forfeiture Order, 16 FCC Rcd 15344 (EB 2001).

³ It is unclear what James means by this allegation, for which there is no further explanation or elaboration. It therefore will receive no further consideration. See *Area Christian Television, Inc.*, Memorandum Opinion and Order, 64 RR 2d 862 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

public's "accessibility" to WBSL(AM)'s public inspection file: he alleges that "persons or employee" [sic] were not available for the "majority of the day" when the station was in operation, and that there was no access to the main studio for the physically impaired. Finally, James submits that HBI has failed to adhere to the corporate laws of the State of Mississippi, and submits documentation that the State has designated HBI's legal status as "dissolved." In this regard, James asserts that HBI is "providing a disservice" by offering formal broadcast instruction to "persons interested in proper broadcast operations" while it is simultaneously "blatantly violating" both the Commission's rules and Mississippi corporate law.

In its Opposition, HBI states that it met the renewal standard as enunciated in Section 309(k) of the Communications Act of 1934, as amended (the "Act"). HBI also states that James' Objection neither demonstrates that WBSL(AM) failed to serve the public interest nor failed to provide service to its community of license. HBI states that violations identified in the 2001 *Forfeiture Order* were corrected that same year, and that HBI has since operated in compliance with the Commission's rules. HBI submits that this "one forfeiture order" does not render HBI unqualified to remain a Commission licensee. HBI states that James has not shown any other violations during the license term by failing to provide any specifics or proof of any violation, much less a serious one or a pattern of abuse.

Discussion. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act. That section provides that if upon consideration of the application and pleadings, we find: (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, we are to grant the renewal application.⁴ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."⁵

First, James has presented no information to support his allegations of inadequate staffing at the main studio as it relates to accessibility to the public file.⁶ Although broadcast licensees are required to maintain management and staff presence on a full-time basis during normal business hours,⁷ Jones's unsupported allegation that "persons or employee[s were] not available while in operation majority of the day" is simply insufficient to warrant further inquiry into WBSL(AM)'s compliance with the Commission's studio staffing requirements.⁸ Further, while a licensee's compliance with state

⁴ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by *Section 204(a) of the Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁶ 47 C.F.R. § 73.3526(c).

⁷ See, e.g., *Alpine Broadcasting Limited Partnership*, Forfeiture Order, 21 FCC Rcd 3017, 3019 (EB 2006), citing *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 (1991), *clarified*, Memorandum Opinion and Order, 7 FCC Rcd 6800 (1992).

⁸ See *Area Christian Television, Inc.*, *supra*, n. 3.

corporate law requirements may be a relevant Commission inquiry,⁹ we generally will not deny an application based on alleged violations of such laws where no challenge has been made in the state courts and the determination is one that is more appropriately a matter of state resolution.¹⁰

We presume that James's main studio accessibility allegation is intended to establish a possible violation of the Americans with Disabilities Act of 1990 (the "ADA").¹¹ However, allegations concerning a possible violation of Title III of the ADA, which prohibits discrimination on the basis of disability in "places of public accommodation" (businesses and non-profit agencies that serve the public) and "commercial facilities" (other businesses),¹² come under the jurisdiction of the Disability Rights Section of the Civil Rights Division at the Department of Justice, which oversees Title III of the ADA. Complaints of this nature should be filed with that Department.

Finally, we find that HBI's violations underlying the 2001 forfeiture do not constitute a "serious violation" of the Commission's rules warranting designation for evidentiary hearing. The forfeiture assessed by the Enforcement Bureau is sufficient sanction for the specified violations, and HBI has made the uncontradicted claim that all violations that were the subject of the 2001 Forfeiture Order have been corrected.¹³ Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.¹⁴ Further, we find that Station WBSL(AM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.¹⁵

⁹ See, e.g., *Cosmopolitan Enterprises, Inc.*, Order and Notice of Apparent Liability, 47 FCC 2d 325, 326 (1974).

¹⁰ See *Abundant Life, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4972 (2001) citing *North American Broadcasting Co., Inc.*, Memorandum Opinion and Order, 15 FCC 2d 979, 983 (Rev. Bd. 1969). See also *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543, 18546 (1999) (Commission will not deny the application of a self-described *de facto* California corporation when its status was not challenged in state court).

¹¹ Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat.327 (codified in scattered sections of 42 U.S.C.).

¹² See e.g., Title III, governing Public Accommodations, 42 U.S.C. § 12181(7).

¹³ In his Objection, James does not claim that the violations have not been cured; rather, he simply asks, "Is this fixed?" HBI has declared that the violations have been corrected. No further inquiry or discussion is warranted on this allegation.

¹⁴ For example, we do not find here that the licensee's station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." See *Heart of the Black Hills Stations*, Order, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. See also *Center for Study and Application of Black Economic Development*, Memorandum Opinion and Order, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

¹⁵ See 47 U.S.C. § 309(k).

Action. Accordingly, pursuant to Section 309(k) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's rules,¹⁶ the informal objection filed by Charles N. James IS DENIED. IT IS FURTHER ORDERED, that the application (File No. BR-20040130BDV) of Hancock Broadcasting, Inc. for renewal of license for Station WBSL(AM), Bay St. Louis, Mississippi, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Hancock Broadcasting, Inc.

¹⁶ 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.