



Federal Communications Commission
Washington, D.C. 20554

July 11, 2007

DA 07-3108
In Reply Refer to:
1800B3-KV
Released: July 11, 2007

Elko TV District
c/o Stanley A. Zunino
881 5th Street
Elko, NV 89801

Ruby Radio Corporation
c/o David Tillotson, Esquire
4606 Charleston Terrace, N.W.
Washington, DC 20007

In re: K212AM, Carlin, NV
 Facility ID No. 19397
 File No. BRFT-20050516ATT

 K216BB, Elko, NV
 Facility ID No. 19388
 File No. BRFT-20050516ATU

 K244AC, Carlin, NV
 Facility ID No. 19392
 File No. BRFT-20050516ATP

 K266AB, Elko, NV
 Facility ID No. 19403
 File No. BRFT-20050516ATM

Applications for Renewal of Licenses

Gentlemen:

We have before us the above-captioned applications (the "Applications") of Elko TV District ("Elko") for renewal of FM Translator Station licenses for: K212AM and K244AC, Carlin, Nevada; and K216BB and K266AB, Elko, Nevada (collectively the "Stations"). We also have before us for each referenced Station a Petition to Deny (collectively the "Petitions"), each filed on September 1, 2005, by Ruby Radio Corporation ("Ruby").¹ For the reasons stated below, we deny the Petitions and grant the Applications.

¹ Although it was apparently served, Elko did not respond to the Petitions.

Discussion. A petition to deny must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Act”), provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act,² which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find 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 (the “Rules”); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.³ 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.”⁴

In the Petitions, Ruby, a competitor-licensee of Station KHIX(FM), Carlin, Nevada, alleges that Elko’s operation of the Stations is in direct violation of a Nevada state statute barring the rebroadcast of FM radio signals in certain circumstances. In particular, Ruby cites, Section 318.1187 of the Nevada Revised Statutes,⁵ as prohibiting an entity created “wholly or in part for acquiring facilities for FM radio” from “rebroadcast [of] an FM signal in a community served by a commercial radio station licensed by the Federal Communications Commission.”⁶ Both communities (Carlin and Elko), Ruby asserts, are served by five commercial stations, four of which are licensed to Elko, Nevada and one of which is licensed to Carlin, Nevada.⁷ Therefore, Ruby argues, “Elko clearly does not have the legal power under Nevada law to own and operate [the Stations] . . . [and thus] Elko is not legally qualified . . . [and] Elko’s renewal applications must be denied.”

Generally, the Commission does not adjudicate compliance with state law, but rather defers to courts of appropriate jurisdiction on such matters.⁸ For example, the Commission will not ordinarily deny an application for a commercial broadcast facility based on a applicant’s, licensee’s, or permittee’s non-

² See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

³ 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).

⁴ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁵ N.R.S. § 318.1187.

⁶ N.R.S. § 318.1187 (2)(b).

⁷ Ruby states that “in addition to KHIX, the following commercial stations licensed to Elko, Nevada and serve Elko, Nevada and by providing city grade service also serve Carlin, Nevada: KLKO, Facility ID No. 19370; KRJC, Facility ID No. 27460; KTSN, Facility ID No. 77542; and KELK, Facility ID No. 19371.” Petitions at 1.

⁸ See *Abundant Life, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 4972, 4974 (2001) citing *North American Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC 2d 979, 983 (Rev. Bd 1969).

compliance with state corporate law “where no challenge has been made in the State courts and the determination is one that is more appropriately a matter of State resolution.”⁹ Here, we note, Ruby has failed to present any evidence that Elko has been found in violation of the referenced state statute by a Nevada state court. Nor has our own independent research revealed that any Nevada licensee has been challenged under this state statute. Therefore, we believe the interpretation of the referenced Nevada state statute is most appropriately addressed by a court of competent jurisdiction. Thus, we conclude that further Commission consideration of this issue is unwarranted.

Conclusions/Actions. Accordingly, IT IS ORDERED, that the Petitions to Deny filed by Ruby Radio Corporation ARE DENIED.

IT IS FURTHER ORDERED pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the Applications (File Nos. BRFT-20050516ATT; BRFT-20050516ATU; BRFT-20050516ATP; and BRFT-20050516ATM) of Elko TV District for renewal of licenses for FM Translator Stations K212AM, Carlin, Nevada; K216BB, Elko, Nevada; K244AC, Carlin, Nevada; and K266AB, Elko, Nevada ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁹ *North American Broadcasting, Inc.*, 15 FCC 2d at 983. See also *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543, 18546 (1999) (holding denial not warranted when an application of a self-described *de facto* California corporation when its status was not challenged in state court.).