



Federal Communications Commission
Washington, D.C. 20554

July 11, 2007

DA 07-3109
In Reply Refer to:
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White Pine Television District #1
c/o R.E. Swain, Chairman
P.O. Box 151704
Ely, NV 89315

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

In re: K237AJ, McGill, NV
Facility ID No. 72242
File No. BRFT-20050516ACR

Application for Renewal of License

Gentlemen:

We have before us the above-captioned application (the "Application") of White Pine Television District #1 ("White Pine") for renewal of FM Translator Station license for K237AJ for McGill, Nevada (the "Station"). We also have before us a Petition to Deny (the "Petition") the Application, filed on September 1, 2005, by Ruby Radio Corporation ("Ruby").¹ For the reasons stated below, we deny the Petition and grant the Application.

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

¹ On October 19, 2005, White Pine untimely filed an opposition, dated October 11, 2005 ("Opposition"); Ruby replied to the Opposition on October 24, 2005 ("Reply"). In addition, on October 25, 2005, White Pine submitted a supplement to its Opposition ("Supplement") challenging Ruby's service of the Petition to which Ruby responded on November 9, 2005.

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).

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

Procedural Issue. Pursuant to Section 1.45⁵ of the Commission’s rules, White Pine’s response to the September 1, 2005, Petition was due within 10 days, but it was not filed until October 19, 2005, approximately six weeks later. White Pine blames its untimely filing on Ruby’s failure to serve it “in a direct manner.”⁶ Both parties acknowledge that White Pine’s designated Contact Representative, Joseph R. Christensen (“Christensen”), was in fact served. However, White Pine contends that this service was insufficient because Christensen was merely “a local contractor . . . not a Board member . . . [and he did not] represent the Board in any manner other than his contracted services.”⁷ We disagree. As noted above, Christensen was, and remains, listed in the Commission’s database as White Pine’s authorized representative, hence, White Pine was properly served.⁸ Accordingly, we find that White Pine’s Opposition was untimely filed without good cause. Moreover, as discussed below, even if we did accept the tardy Opposition, its consideration would not change or add to our decision regarding the merits of the Petition. Therefore, we will not accept the late-filed Opposition.

Substantive Issue. In the Petition, Ruby, a competitor-licensee of Stations KCLS(FM)⁹ and KELY(AM),¹⁰ Ely, Nevada,¹¹ alleges that White Pine’s operation of the Station 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,¹² 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.”¹³ Ruby contends that its stations, KCLS(FM) and KELY(AM) serve McGill, Nevada.¹⁴ Therefore, Ruby argues, “White Pine clearly does not have the legal power under Nevada law to own and operate [the Station] . . . [and thus] White Pine is not legally qualified . . . [and] White Pine’s renewal application must be denied.”

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 47 C.F.R. § 1.45.

⁶ Supplement at 1.

⁷ *Id.*

⁸ See 47 C.F.R. § 1.47(d).

⁹ Facility ID No. 55461.

¹⁰ Facility ID No. 55462.

¹¹ According to Ruby, Stations KCLS(FM) and KELY(AM) provide “city grade coverage to the community of McGill, Nevada, and compete with Station K237AJ for audience in that community.” Petition at 1.

¹² N.R.S. § 318.1187.

¹³ N.R.S. § 318.1187 (2)(b).

¹⁴ Petition at 2.

Generally, the Commission does not adjudicate compliance with state law, but rather defers to courts of appropriate jurisdiction on such matters.¹⁵ For example, the Commission will not ordinarily deny an application for a commercial broadcast facility based on an applicant's, licensee's, or permittee's non-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."¹⁶ Here, we note, Ruby has failed to present any evidence that White Pine 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. 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 Petition to Deny filed by Ruby Radio Corporation, IS DENIED.

IT IS FURTHER ORDERED that the Opposition to the Petition to Deny filed by White Pine Television District # 1 IS DISMISSED.

IT IS FURTHER ORDERED pursuant to Section 309(k) of the Communications Act of 1934, as amended, that the Application (File No. BRFT-20050516ACR) of White Pine Television District #1 for renewal of license for FM Translator Station K237AJ, McGill, Nevada IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Joseph R. Christensen

¹⁵ 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).

¹⁶ *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.).