



Federal Communications Commission
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Re: WEBR-CA, New York, New York
File Nos. BESTA-20040419ACF
and BRTTA-20070131AIL
Facility ID No. 67866

Dear Counsel:

This is with respect to the above-referenced applications filed by K Licensee, Inc. (“K Licensee”) for renewal of its license for Class A television station WEBR-CA, analog channel 17, New York, New York, and for extension of its Special Temporary Authorization (“STA”) to continue to operate the station at approximately 50% of its authorized power. Jose Luis Rodriquez, the former permittee of low power television station DW44BC, Brentwood, New York, and unsuccessful applicant for a major modification to that permit to substitute channel 17 for channel 44,¹ has filed a petition to deny both applications.²

Procedural Matters: As an initial matter, we cannot consider the filing against the STA extension application as a petition to deny. Petitions to deny may not be filed with regard to applications that do not require local public notice pursuant to Section 73.3580 of the Commission’s Rules.³ Such local public notice is not required in the case of an application for

¹ The staff’s actions cancelling the construction permit for DW44BC and dismissing the major modification application are on reconsideration.

² Rodriquez filed a supplement to these pleadings on January 9, 2007, that also contained arguments and allegations with respect to the cancellation of his construction permit and applications filed on behalf of low power television station W17CR, Plainview, New York. Our decision here does not reach issues related to these other actions and stations, which remain pending.

³ See 47 C.F.R. § 73.3584(a) “[A] party in interest may file with the Commission a Petition to Deny any application . . . for which local public notice pursuant to § 73.3580 is required . . .”).

an STA or an extension thereof. Accordingly, we will consider the pleading as an informal objection pursuant to Section 73.3587 of the Commission's Rules.⁴

With respect to the petition to deny filed against the WEBR-CA renewal application, a party has standing to file a petition to deny if grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.⁵ The Commission also accords party-in-interest status to a petitioner who demonstrates that he/she listens to or views the station regularly and that such listening or viewing is not the result of transient contacts with the station.⁶ In order to file a petition to deny, the petitioner must provide an affidavit or declaration that establishes such standing.⁷ Rodriquez did not provide an affidavit or declaration alleging a specific injury that would be caused by grant of the WEBR-CA renewal application, or attempt to establish listener/residence status as a basis for standing. Therefore, we find that Rodriquez lacks standing to file a petition to deny against the renewal application. Nevertheless, we will consider his filing as an informal objection.

STA Extension Request. Commission records show that on November 9, 1992, Trimtab Products, Inc. ("Trimtab") was granted a construction permit for a new low power television station on channel 17 at the Empire State Building, with an expiration date of May 9, 1994.⁸ Trimtab received three extensions of time to construct its authorized facility and in 1995, filed an application to assign the construction permit to Empire Broadcasting, LLC ("Empire").⁹ That application was granted on October 13, 1995. Empire filed for, and was granted, a minor modification of the construction permit,¹⁰ and shortly thereafter, filed a license to cover construction of the station.¹¹

Empire filed an application to assign its license to Young D. Kwon ("Kwon"), the president of K Licensee, in late 1998, and that application was granted on February 9, 1999.¹² Kwon subsequently assigned the license to K licensee.¹³ By letter dated August 23, 1999, K Licensee requested an STA to operate the station at reduced power. According to its counsel's letter, after acquiring the station:

K Licensee discovered through its consulting engineer that the WEBR(LP) transmission facilities are operating at reduced power with an ERP of 1.037 kW which is approximately 50% of the 2.0 kW value authorized by the Commission

⁴ 47 C.F.R. § 73.3587.

⁵ See, e.g., *Telesis Corp.*, 68 FCC 2d 696 (1978).

⁶ See *Tabback Broadcasting Company*, 15 FCC Rcd 11899, 11900 n.3 (2000); *Chet-5 Broadcasting, L.P.*, 14 FCC Rcd 13041 (1999).

⁷ See *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89 (1980); see also *Infinity Broadcasting Corp. of California*, 10 FCC Rcd 9504 (1995); *Tabback Broadcasting Company*, *supra*; *Niles Broadcasting Company*, 7 FCC Rcd 5959 (1992).

⁸ File No. BPTTL-19810217FB.

⁹ File No. BAPTTL-19950630IB.

¹⁰ File No. BMP TTL-19951012IA, granted October 30, 1995.

¹¹ File No. BLTTL-19960116JC, granted February 12, 1996.

¹² File No. BALTTL-19981123IA.

¹³ File No. BTCTTL-19990823IA, granted November 23, 1999.

in the station's underlying construction permit (File No. BMPTTL-930402ZX). This reduced power results from the fact that the antenna at the transmission facilities produces a reduced antenna gain (actual power gain of 1.235 vs. 2.33).

By letter dated November 1, 1999, the staff granted the STA request, authorizing the station to operate with an antenna at variance with the antenna authorized in the underlying construction permit. That STA was extended eight times without objection.

On September 13, 2004, the Commission granted an unopposed application for assignment of license from K Licensee to Atmor Properties, Inc. ("Atmor"). Rodriquez filed a petition for reconsideration on October 18, 2004, arguing that because K Licensee and its predecessors never constructed the station as authorized, that authorization must be considered expired and forfeited. By letter dated April 4, 2005, the staff denied reconsideration, finding that Rodriquez failed to raise any issue with respect to the assignment applicant or the qualifications of either party thereto. Rather, the staff concluded that Rodriquez's pleading essentially asked the Commission to reconsider its November 1, 1999 grant of an STA to permit the station to operate at a variance from its license, and that such a request was untimely under the Commission's Rules.¹⁴ Rodriquez filed an application for review, which the staff dismissed as moot after Atmor informed the Commission that it would not consummate the approved assignment of license.

The October 29, 2004 objection Rodriquez filed against above-referenced STA, raises essentially the same arguments that were disposed of by the staff in its April 4, 2005 letter decision. For the same reasons set forth in the staff's decision, we will deny the informal objection.

Renewal Application. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k)(1) of the Communications Act. That section provides that 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 Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁵ 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.”¹⁶

Rodriquez has not provided specific facts sufficient to show a violation of the Commission's rules by K Licensee. While it appears that the station was constructed with an

¹⁴ Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106(f) provides that a petition for reconsideration of a Commission action must be filed within 30 days from the date of public notice of that action.

¹⁵ 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).

¹⁶ 47 U.S.C. §§ 309(k)(2) and (3).

antenna different from that authorized, there is no evidence that K Licensee – which acquired that station almost three years after Empire filed its license to cover -- was involved in the unauthorized construction. Instead, the evidence shows that once K Licensee learned that the station had been constructed at a variance, it immediately requested an STA to legitimize the station's operations.

Rodriquez also argues that K Licensee falsely certified that there were no violations of FCC rules during the preceding license term, knowing “it failed to properly construct WEBR-CA.” Again, there is no evidence that K Licensee was involved in the construction of WEBR-LP in 1995, and more importantly, such construction took place outside the license term for which the renewal application was filed. The instructions to FCC Form 303-S, Application for Renewal of Broadcast Station License, states that “[f]or purposes of the license renewal form only, an applicant is required to disclose only violations of the Communications Act of 1934, as amended, or the Rules of the Commission that occurred at the subject station during the license term . . .” We also note that K Licensee voluntarily disclosed to the Commission that the station was operating at a variance, after it acquired the station.

Finally, Rodriquez argues that the Commission cannot grant a renewal for an unlicensed station. WEBR-CA, however, is licensed – the license application filed by Empire was granted in 1995 and renewed in 1999.¹⁷ In addition, the application of K Licensee to convert the license to a Class A Television station license was granted in 2000.¹⁸ Rodriquez also argues that the renewal should not be granted because the station operated during its entire license term pursuant to an STA, but does not explain how that fact demonstrates that a station is not entitled to have its renewal application granted under the applicable renewal standard. We also conclude that WEBR-CA has served the public interest, convenience and necessity during its renewal period.¹⁹

In view of the foregoing, the informal objections filed by Jose Luis Rodriquez ARE DENIED and the above-referenced applications filed by K Licensee ARE HEREBY GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁷ File No. BRTTL- 19990125AC, granted May 20, 1999.

¹⁸ File No. BLTTL-20000707ADX, granted August 21, 2000.

¹⁹ K Licensee argues that “for the past decade,” Rodriquez and his counsel have engaged in abuse of the Commission’s processes by filing untimely and frivolous pleadings. Because other parties have raised the same issue in other proceedings, see fn. 2, we will defer action on K Licensee’s abuse of process complaint.