



Federal Communications Commission  
Washington, D.C. 20554

**DA 08-1409**  
**Released: June 13, 2008**

1800E3-JLB

Action Community Television  
Broadcasting Network, Inc.  
c/o Barry D. Wood, Esq.  
Wood, Maines & Nolan, Chartered  
1827 Jefferson Place, N.W.  
Washington, D.C. 20036

George Fisher  
619 Goldrock Road  
Rocky Mount, North Carolina 27804

Re: Low Power Television Station WHIG-LP  
File Nos. BLTTA-20010709ACV;  
BDCCDTL-20061012AAZ  
Facility ID No. 22800

Gentlemen:

This is with respect to the above-referenced applications filed by Action Community Television Broadcasting Network, Inc. ("ACTBN"), the licensee of low power television station WHIG-LP, Rocky Mount, North Carolina, for a digital companion channel and for Class A television status.<sup>1</sup> George Fisher, a viewer of the station, filed a "Petition to Deny" on behalf of himself and the "Project Truth of Rocky Mount" (collectively, "Fisher"), which ACTBN opposes. On December 7, 2007, Fisher filed an "Amendment and Supplement" on his own behalf.

**Procedural Matters.** A petition to deny a broadcast application must be supported by allegations showing that grant of the subject application "would be *prima facie* inconsistent with the public interest."<sup>2</sup> "Such allegations of fact, except for those of which official notice may be taken,

---

<sup>1</sup> WHIG-LP has been found to be eligible for Class A television status pursuant to 47 U.S.C. § 336(f)(2)(A) of the Communications Act of 1934, as amended. See Public Notice, Certificates of Eligibility for Class A Television Status, 15 FCC Rcd 9502 (2000). ACTBN filed a timely application for Class A station status, which remains pending due, in part, to the imposition of a freeze on certain full-power and Class A television stations in connection with the DTV transition. Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," 19 FCC Rcd 14810 (2004).

<sup>2</sup> 47 U.S.C. § 309(d)(1).

shall be supported by affidavit of a person or persons with personal knowledge thereof.”<sup>3</sup> The factual allegations contained in the “Petition to Deny” were not supported by an affidavit or sworn declaration of either Fisher or a member and viewer of the “Project Truth of Rocky Mount.” Accordingly, we will consider this filing as an informal objection under Section 73.3587 of the Commission’s Rules.

Fisher’s objection is directed against three separate applications filed by ACTBN – the above-referenced applications for a digital companion channel and for a Class A television license, and an application for minor modification of the analog facilities of WHIG-LP.<sup>4</sup> The grant of the minor modification application was placed on public notice on December 19, 2006, nine days before Fisher filed his objection. Because he does not explain why it was not possible for him to have participated earlier with respect to the minor modification application, as required by Section 1.106 of the Commission’s Rules, we decline to treat the objection as a petition for reconsideration of the grant of that application.

**Discussion.** At the outset, Fisher alleges that ACTBN has failed to comply with certain Commission rules, but, he provides no information in support of these allegations. Accordingly, we give no further consideration to these alleged rule violations.

Fisher next argues that the Commission must act on a petition to deny filed by Ray Livesay against ACTBN’s application for a Class A license. Commission records show that Livesay filed a letter with the Commission on January 9, 2004, requesting withdrawal of his petition pursuant to a settlement agreement with ACTBN. The Commission approved the settlement and dismissed the petition to deny by letter dated February 13, 2004. The dismissal of the petition is now final and the allegations raised by Livesay form no basis for the denial of ACTBN’s application.<sup>5</sup> Fisher also makes a number of allegations regarding ACTBN’s corporate status, including that ACTBN’s title to the station license is somehow clouded by the alleged assertion by a “non-profit North Carolina corporation” with the same name of “ownership rights by claims, which have not been declared by judgment to be insufficient.”<sup>6</sup> Any issues involving the ownership of the licensee, however, were resolved when the Commission dismissed Livesay’s petition to deny on February 13, 2004 and granted an application for transfer of control of the licensee, which was filed pursuant to a settlement reached by order of the local court with jurisdiction over the claims.<sup>7</sup>

---

<sup>3</sup> *Id.*

<sup>4</sup> File No. BPTTL-20061012ABA.

<sup>5</sup> Fisher’s assertion that ACTBN admitted in response to the petition to deny that some rule violations had occurred at the station is not entirely correct. In a supplement to the petition, Livesay provided video tapes of programming aired on the station on two separate dates which, he alleged, showed that the station failed to broadcast the required station identification. In response, ACTBN stated that it was impossible to determine with certainty from the tapes whether station identifications were run, but that even if the station may have missed some station identifications, such lapses were not so serious as to warrant denial of its Class A application.

<sup>6</sup> This apparently is a reference to a lawsuit filed in the Superior Court for Nash County, North Carolina, involving Livesay and Herbert Greenberg, who each owned 50% of the stock of the licensee.

<sup>7</sup> File No. BTCTTL-20031231AAI. The application sought consent to the transfer of all of Livesay’s corporate stock to Greenberg.

Fisher also alleges that the station has aired indecent programming. However, we are unable to make a determination that the material about which Fisher complains is actionably indecent or obscene. Fisher has not provided us with sufficient information regarding the details of what the station broadcast and its context. While he states that he has submitted tapes of certain programming aired on the station, the Commission has no record of having received any such tapes. Fisher's other allegations are similarly unsupported, and also do not include the date of any broadcasts. Accordingly, we take no further action on these allegations.<sup>8</sup>

Finally, Fisher alleges that the station has conducted unfair and misleading contests and promotions. Again, however, he does not provide sufficient information supporting these assertions. In addition, Fisher does not cite to any Commission rule or policy, and the allegations are too vague to establish any rule violations. While Fisher stated that he would provide a declaration "by a member of the selection committee," no such declaration has been supplied.

In view of the foregoing, the "petition to deny" IS DISMISSED and when considered as an informal objection IS HEREBY DENIED, and the above-referenced application for a construction permit for a digital companion channel for WHIG-LP IS HEREBY GRANTED.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

---

<sup>8</sup> While we are unable to determine, based on the record before us, whether the described programming is actionable, we appreciate and recognize Fisher's concern. He may file a complaint with the Commission's Enforcement Bureau, to provide additional information in the form of a significant excerpt of the broadcast or a full or partial tape or transcript of the broadcast, but these are not required. As an assistance to Fisher, we are providing the link to the Commission's information sheet regarding the law with respect to indecent, profane and obscene broadcasts and our enforcement procedures, <http://www.fcc.gov/cgbl/consumerfacts/obscene.html>.