



**Federal Communications Commission
Washington, D.C. 20554**

March 26, 2008

DA 08-713

In Reply Refer to:

1800B3-SS

Released: March 26, 2008

Clear Channel Broadcasting Licenses, Inc.
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In re: WMJY(FM), Biloxi, MS
Clear Channel Broadcasting
Licenses, Inc.
Facility ID No. 61368
File No. BRH-20040202ACQ

WKNN-FM, Pascagoula, MS
Clear Channel Broadcasting
Licenses, Inc.
Facility ID No. 61367
File No. BRH-20040202ACV

WBUV(FM), Moss Point, MS
Clear Channel Broadcasting
Licenses, Inc.
Facility ID No. 29687
File No. BRH-20040202ACW

Applications for Renewal

Petition for Reconsideration

Dear Applicant and Counsel:

We have before us the October 30, 2006, WJZD, Inc. ("WJZD") Petition for Reconsideration ("Petition") of the staff's grant of the above-captioned applications of Clear Channel Broadcasting Licenses, Inc. (the "Licensee") for renewal of the licenses of WMJY(FM), Biloxi, Mississippi; WKNN-FM, Pascagoula, Mississippi; and WBUV(FM), Moss Point, Mississippi (collectively, the "Renewal Applications"). For the reasons set forth below, we deny the Petition.

Background. On May 25, 2004, WJZD filed an Informal Objection ("Objection") seeking denial of the Renewal Applications or designation of the Renewal Applications for hearing.¹ On

¹ The Licensee filed an Opposition to the WJZD Objection on August 25, 2004.

September 27, 2006, the staff denied the Objection and granted the Renewal Applications (“Staff Ruling”).² In its Objection, WJZD alleged that: (1) the Licensee “engineered” an unauthorized transfer of control of its station WQYZ(FM), Ocean Springs, Mississippi; (2) the Licensee “may have been in violation” of Section 73.3555 of the Commission’s Rules (the “Rules”);³ (3) the Renewal Applications should have been denied or designated for hearing because the Licensee “is a recidivist violator of Section 1464” of Title 18 of the United States Code due to its continued broadcast of indecent material;⁴ and (4) the Licensee lacked the qualifications to be a licensee based on misrepresentation and lack of candor allegations. In the Staff Ruling, the Bureau rejected these arguments and granted the Renewal Applications.⁵

Discussion. Reconsideration in this case is governed by Section 1.106 of the Rules. Under that section, as interpreted by established case law, “reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.”⁶ WJZD has failed to make such a showing.

In its Petition,⁷ WJZD argues, as it did in its Objection, that the grants should be rescinded and that the Renewal Applications should be designated for hearing. WJZD argues that the staff incorrectly concluded that Section 309(k) of the Communications Act of 1934, as amended (the “Act”), precludes consideration of allegations of misconduct at any station but that for which a renewal application is before the agency.⁸ WJZD claims that the Staff Ruling “circumscribes Sections 308 and 309 [of the] Act in a manner not possibly contemplated by Congress.”⁹ Specifically, WJZD argues that if an applicant lacks

² See *Letter to Clear Channel Broadcasting Licenses, Inc.*, 21 FCC Rcd 10756 (2006).

³ 47 C.F.R. § 73.3555.

⁴ WJZD did not point to any specific indecency allegations involving any of the three captioned stations. See *WJZD, Inc., Golden Gulf Coast Broadcasting, Inc., and Capstar TX Limited Partnership*, 20 FCC Rcd 9941 (MB 2005) (issue of indecency complaints resolved by Consent Decree need not be further addressed).

⁵ See n.2, *supra*.

⁶ *WWIZ, Inc.*, Memorandum Opinion and Order, 37 F.C.C. 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966). See also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003). See also 47 C.F.R. § 1.106(c).

⁷ WJZD requests that we consolidate its June 27, 2005, Petition for Reconsideration of the staff’s grant of WQYZ(FM)’s applications for assignment and renewal with the Petition. WJZD’s request is moot because the staff dismissed the June 27, 2005, pleading on March 12, 2007. See *Letter to Lawrence E. Steelman and Capstar TX Limited Partnership*, 22 FCC Rcd 4866 (MB 2007). An Application for Review filed by WJZD on April 11, 2007, in the WQYZ(FM) proceeding, is pending.

⁸ We note that this position is reflected in the broadcast license renewal form and instructions. See FCC Form 303-S, Section II, Item 4, and concomitant instructions.

⁹ Petition at 2.

character qualifications, the “public interest, convenience, and necessity” can never be served by a grant of its application.¹⁰ WJZD cites *Contemporary Media, Inc. v. FCC*.¹¹

We find that *Contemporary Media* is inapposite to this case. *Contemporary Media* concerned a license revocation proceeding under Section 312(a)(2) of the Act in which the Commission revoked the broadcast licenses of a corporation because the entity was controlled by a convicted child molester.¹² This case concerns applications for renewal which must be evaluated under Section 309(k) of the Act. Section 309(k) provides that we are to grant a broadcast station’s license renewal application if, upon consideration of the application and pleadings, we find *with respect to that station* that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission’s Rules with respect to that station; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹³ 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.”¹⁴ Section 309(k) precludes consideration of allegations of misconduct at any station but that for which a renewal application is before the agency. This position is reflected in the broadcast license renewal form and instructions.¹⁵ Because in the instant matter, the alleged misconduct took place at a station, *i.e.*, WQYZ(FM), other than the stations whose renewal applications are before us, *i.e.*, WMJY(FM), WKNN-FM, and WBUV(FM), we may not consider those allegations in connection with our evaluation of the renewal of the station licenses.¹⁶ We correctly stated the Commission’s holding on this issue in the Staff Ruling.

In addition, WJZD argues that “Clear Channel/Capstar is a serial violator of 18 U.S.C. § 1464, and its systematic attempts to pervert its youthful listeners ought to bring its corporate character qualifications into question.”¹⁷ However, WJZD does not cite any instances in which any of the captioned stations have broadcast allegedly indecent programming. Rather, WJZD references its

¹⁰ *Id.*

¹¹ 214 F.3d 187 (D.C. Cir. 2000) (“*Contemporary Media*”).

¹² See *Contemporary Media, Inc.*, Order to Show Cause and Notice of Apparent Liability, 10 FCC Rcd 13685 (1995); see also 47 U.S.C. § 312(a)(2).

¹³ 47 U.S.C. §309(k)(1) (emphasis supplied). 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 *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996); see also *Citadel Broadcasting Company, WWWZ(FM), Summerville, South Carolina, et al.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 7083 at n.46 (2007).

¹⁴ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁵ See FCC Form 303-S, Section II, Item 4 and concomitant instructions.

¹⁶ See 47 U.S.C. § 309(k)(1); see also *Letter to Rick Morrison from Peter H. Doyle, Chief, Audio Services Division*, 21 FCC Rcd 2193 (MB 2006).

¹⁷ Petition at 3.

Objection in which it claims that the Renewal Applications should not be granted because of indecent programming aired on other Licensee stations.¹⁸ For the reasons set forth above, this argument is misplaced. Moreover, the Commission previously has addressed the issue of allegedly indecent programming of other Licensee stations. By terms of a Consent Decree¹⁹ entered into between Clear Channel Communications, Inc. (“Clear Channel”)²⁰ and the Commission to resolve certain matters before the agency involving the possible violation by Clear Channel of the restrictions in the broadcast of obscene, indecent or profane material,²¹ Clear Channel agreed to undertake certain compliance measures and to pay the United States Treasury the sum of \$1,750,000 in consideration for the Commission rescinding, vacating and canceling certain forfeiture orders and notices of apparent liability for forfeiture issued against Clear Channel-owned broadcast licensees, terminating certain inquiries, and dismissing, with prejudice, pending indecency complaints against those licensees. In addition, the Commission agreed to refrain from taking any action against Clear Channel or any future application -- including renewal applications -- to which Clear Channel is a party, based in whole or in part on “any similar complaints alleging violation by any [station operated by Clear Channel] of the indecency laws with respect to any broadcast occurring prior to the effective date.”²² The Consent Decree became effective on June 9, 2004, the date of its public release.²³ All of the alleged indecent programming of which WJZD complains either is specifically mentioned in the Consent Decree or otherwise occurred before June 9, 2004.²⁴ Finally, we note that WJZD has not alleged any subsequent instances of indecent programming by the Licensee.

Because WJZD’s Petition fails to show a material error or omission in the original decision and did not raise additional facts unknown or not existing until after WJZD’s last opportunity to present such matters, the Petition will be denied.²⁵

¹⁸ See WJZD Objection at 3.

¹⁹ *Clear Channel Communications, Inc.*, Consent Decree, 19 FCC Rcd 10880 (2004) (“Consent Decree”); see also n.4, *supra*.

²⁰ Licensee is a wholly-owned subsidiary of Clear Channel.

²¹ See 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999.

²² See Consent Decree, ¶ 8.

²³ *Id.* at ¶ 2(h).

²⁴ See WJZD Objection at 3.

²⁵ See *Infinity Broadcasting Operations, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 4216 (2004).

Conclusion/Actions. For the reasons set forth above, WJZD's Petition fails to meet the standard set forth in Section 1.106(c) of the Rules. Accordingly, WJZD, Inc.'s Petition for Reconsideration IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Martha E. Heller, Esq.
WJZD, Inc.