



Federal Communications Commission
Washington, D.C. 20554

DA 10-46
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Chicago Media Action and Milwaukee Public Interest Media
Coalition
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Media Access Project
Suite 1000
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Re: Second Petition for Reconsideration filed by
Chicago Media Action and Milwaukee Public
Interest Media Coalition

Gentlemen:

On August 11, 2008, Chicago Media Action (“CMA”) and Milwaukee Public Interest Media Coalition (“MPIMC”) filed a Second Petition for Reconsideration seeking reconsideration of a July 11, 2008, letter,¹ affirming the staff’s June 13, 2007, denial of petitions to deny filed by CMA and MPIMC opposing the license renewal of eight broadcast television stations serving the Chicago metropolitan area and 11 broadcast television stations serving the Milwaukee metropolitan area.² Responsive oppositions were filed on or about August 25, 2008. For the reasons set forth below, we deny the Second Petition for Reconsideration

Background. CMA and MPIMC argued in their respective petitions to deny that the television stations serving the Chicago and Milwaukee markets failed to present adequate programming relating to state and local elections during the last four weeks of the 2004 election campaign, and submitted, as support, a study analyzing programming on the five highest-rated commercial television stations in the Chicago and Milwaukee markets. The 2007 staff letter denied these allegations on the basis that CMA and MPIMC failed to provide evidence that the licensees exercised their editorial discretion in bad faith.³

In their respective petitions for reconsideration, CMA and MPIMC alleged that the staff was incorrect in concluding that it did not have the authority to review the broadcasters’ programming decisions, and that it failed to consider the numerical data contained in the study attached to the petitions to deny. They submitted an additional study which they claimed provided further evidence of a marketwide failure to broadcast sufficient coverage of elections and government in 2006. The staff reaffirmed that the Commission does not generally question

¹ *Chicago Media Action and Milwaukee Public Interest Media Coalition*, 23 FCC Rcd 10608 (Vid. Div. 2008).

² *Chicago Media Action and Milwaukee Public Interest Media Coalition*, 22 FCC Rcd 10877 (Vid. Div. 2007).

³ *Id.*, at 10879, citing, *American Broadcasting Companies, Inc.*, 83 FCC 2d 302, 305 (1980).

the editorial discretion of a broadcaster, but that the editorial decisions of a broadcaster may be reviewed where such discretion is exercised in “bad faith;” affirmed its earlier determination that the petition and attached study did not demonstrate that television programming in Milwaukee and Chicago was generally unresponsive; and found the updated study was insufficient to alter this determination as it only covered news programming on the major network affiliates during the early and late evening news broadcasts.

In this Second Petition for Reconsideration, CMA and MPIMC cite the 2008 release of the *Enhanced Disclosure Order*,⁴ arguing that the Commission’s decision is “premised on the value of collecting information which the staff erroneously held was irrelevant to its public interest determination.”⁵ The various oppositions filed by broadcasters in Chicago and Milwaukee generally argue that the Second Petition for Reconsideration is repetitious and procedurally improper, and that the *Enhanced Disclosure Order* relied upon by CMA and MPIMC did not place any quantitative programming obligations on broadcast television licensees.

Discussion. As set forth in Section 1.106(c) of the Commission’s rules, a petition for reconsideration that relies on facts not previously raised before the staff or Commission may only be granted only if: (a) the facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; (b) the facts relied on were unknown to the petitioner until after the last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity; or (c) the Commission or designated authority determine that consideration of such facts is in the public interest.⁶ The staff has the discretion to dismiss a petition for reconsideration as repetitious, if a previous petition for reconsideration of the same order has already been denied.⁷

The *Enhanced Disclosure Order* was released on January 24, 2008, over five months before denial of the first Petition for Reconsideration. Its release was a matter of public record, and CMA and MPIMC cite no reason why they could not have amended their Petition for Reconsideration prior to release of the July 11, 2008, staff letter. They state that the *Enhanced Disclosure Order* “provide[s] a new lens with which the staff must revisit [] its prior decisions.”⁸ Otherwise, they make no argument as to why consideration of this new petition would serve the public interest. We will, thus, dismiss the Second Petition for Reconsideration as repetitious.

We, nevertheless, address CMA’s and MPIMC’s arguments. In denying the original petitions to deny, the staff noted the then-pending rulemaking to standardize and enhance television broadcasters’ public interest disclosure requirements, but the staff’s conclusions were not contingent on the eventual resolution of the rulemaking. There is nothing in the language of the *Enhanced Disclosure Order* that indicates an affirmative restraint on licensee programming

⁴ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2008) (“*Enhanced Disclosure Order*”).

⁵ *Second Petition for Reconsideration*, at 2.

⁶ 47 C.F.R. § 1.106(c).

⁷ 47 C.F.R. § 1.106(k)(3).

⁸ *Second Petition for Reconsideration*, at 2.

discretion. As stated in the *Enhanced Disclosure Order*, “[o]ur decision here does not adopt quantitative programming requirements or guidelines” and does not “otherwise improperly intervene[] in licensee discretion.”⁹ The Commission stated that the purpose of the new disclosure requirement was instead to make “information about broadcasters’ efforts more understandable and more easily accessible by members of the public.”¹⁰ Thus, the *Enhanced Disclosure Order* did not alter established precedent governing Commission review of a licensee’s editorial discretion. The arguments raised in the Second Petition for Reconsideration do not justify reconsideration of the staff’s ultimate finding that CMA and MPIMC had failed to provide evidence that Chicago and Milwaukee television stations had exercised their editorial discretion in bad faith.

Accordingly, the Second Petition for Reconsideration filed by Chicago Media Action and the Milwaukee Public Interest Media Coalition **IS DISMISSED**.

Sincerely,

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⁹ *Enhanced Disclosure Order*, at 1287.

¹⁰ *Id.*, at 1275.

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