

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

In the Matter of)	
)	
Beasley Broadcast Group, Inc.)	EB-04-IH-0661
)	
WQAM License Limited Partnership)	FRN: 0004305215
)	Facility ID No. 64002
Application for Renewal of License of Station)	File No. BR-20031001BXU
WQAM(AM), Miami, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: October 21, 2008

Released: October 23, 2008

By the Commission:

I. INTRODUCTION

1. The Commission has before it an Application for Review filed by John B. Thompson (“Mr. Thompson”).¹ Mr. Thompson requests review of the Enforcement Bureau’s (“Bureau”) *Memorandum Opinion and Order* (“*Bureau Order*”) in the above-captioned case, which denied a complaint of Mr. Thompson’s against Beasley Broadcast Group, Inc. (“Beasley”), licensee of several radio broadcast stations. The complaint alleged that Beasley had engaged in improper conduct by retaliating against Mr. Thompson for filing indecency complaints with the Commission against some of Beasley’s radio stations.² For the reasons set forth below, we deny the Application for Review.

II. BACKGROUND

2. Beasley is the ultimate parent of WQAM License Limited Partnership, licensee of Station WQAM(AM), Miami, Florida, and WRXK License Limited Partnership, licensee of WRXK-FM, Bonita

¹ See E-mail dated June 11, 2007, from Jack Thompson to FCC Chairman Kevin J. Martin, Re: Formal Demand for Federal Communications Commission Review of Erroneous Findings and Order, attaching letter requesting review (“Application for Review”). Mr. Thompson cites both Sections 1.106 and Section 1.115 of the Commission’s rules, but states that his filing is an application for review. See 47 C.F.R. §§ 1.106 (petitions for reconsideration), 1.115 (applications for review of action taken pursuant to delegated authority). Mr. Thompson was entitled to file a petition for reconsideration or an application for review of the *Bureau Order*, but not both. See 47 C.F.R. § 1.104(b). Consequently, we will treat Mr. Thompson’s filing as an application for review. We also note that, on December 13, 2007, Mr. Thompson filed an e-mail supplementing his informal objections to the WQAM(AM) license renewal, and attached a letter dated December 12, 2007. See E-mail from Jack Thompson to Kevin J. Martin, Chairman, Federal Communications Commission, transmitted December 13, 2007, 1:53 p.m. This filing, as well as various other informal objections filed against WQAM(AM)’s license renewal, raises the same allegations of improper retaliatory conduct and abuse that we address here. In light of the disposition of those issues here, Mr. Thompson’s objection to WQAM(AM)’s license renewal application, filed by letter dated December 12, 2007, and all other similarly based objections to the station’s license renewal, are hereby denied.

² *The Beasley Broadcast Group, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 10075 (Enf. Bur. 2007) (“*Bureau Order*”).

Springs, Florida (collectively, “the Beasley Stations”). Mr. Thompson has filed complaints against the Beasley Stations alleging violations of the federal restrictions regarding the broadcast of indecent and profane material.³ Mr. Thompson also filed a complaint alleging that Beasley and its counsel had engaged in threats, abuse and intimidation against him in retaliation for filing the indecency complaints.⁴ The Bureau issued a letter of inquiry to Mr. Thompson directing him to produce all documents providing the basis for, or supporting, his allegations that Beasley had engaged in improper conduct.⁵ Mr. Thompson filed a response to the Bureau’s letter of inquiry and later filed numerous addenda and supplements to his response, as well as additional e-mails concerning his complaint and other matters.⁶ Mr. Thompson alleged, among other things, that: (1) on air-personalities at Station WQAM(AM) made threats against him and his client at Beasley’s direction; (2) that material at issue in the Commission’s *Notice of Apparent Liability* issued against Beasley for airing indecent material on Station WQAM(AM) (“*WQAM NAL*”)⁷ contains threats and corroborates his claims that Beasley has engaged in impermissible conduct to retaliate against him for filing indecency complaints; (3) Beasley’s agent and attorney, Norman Kent, has filed lawsuits and a contempt of court proceeding against him at Beasley’s direction in order to harass, target and intimidate him; and (4) Beasley and its counsel have improperly filed complaints against him with the Florida Bar.⁸

3. Beasley denied Mr. Thompson’s allegations that it had engaged in improper conduct in response to his indecency complaint filings.⁹ Beasley asserted that it had not contested or interfered with Mr. Thompson’s right to file complaints with the Commission and that Mr. Thompson had not submitted any evidence to substantiate or corroborate his claims.¹⁰ Beasley also argued that Mr. Thompson’s own conduct demonstrates that he has abused the Commission’s processes and should be sanctioned.¹¹

³ See 18 U.S.C. § 1464; 47 C.F.R. § 73.3999. Mr. Thompson’s indecency complaints will not be addressed here, but will be considered separately.

⁴ See *Bureau Order*, 22 FCC Rcd at 10075 ¶¶ 1-2 & nn.1, 3 (citing Letter from John B. Thompson, Attorney at Law, to Michael K. Powell, Chairman, Federal Communications Commission, dated November 27, 2004 (“*Complaint*”)).

⁵ See *Bureau Order*, 22 FCC Rcd at 10075 ¶ 3 & n.5 (citing Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to John B. Thompson, Esquire, dated December 15, 2004 (“*Thompson LOI*”)).

⁶ See *Bureau Order*, 22 FCC Rcd at 10075-10076 ¶ 3 & n.6 (citing Letter from John B. Thompson, Attorney at Law, to William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated January 5, 2005 (Revised Subsequent Version) (“*Thompson LOI Response*”)). See also *Bureau Order*, 22 FCC Rcd at 10076 ¶ 3 & nn.7-9 (concerning Mr. Thompson’s subsequent filings).

⁷ See *WQAM License Limited Partnership*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 22997 (2004) (“*WQAM NAL*”) (response pending).

⁸ See *Bureau Order*, 22 FCC Rcd at 10076 ¶ 4.

⁹ See *id.* at 10077 ¶ 5 & nn.11-15 (citing Beasley’s initial reply to Mr. Thompson’s LOI response, Letter from Steven A. Lerman, Esquire, Dennis P. Corbett, Esquire and David S. Keir, Esquire, Counsel for The Beasley Broadcast Group, Inc. to Melanie A. Godschall, Investigations and Hearings Division, Enforcement Bureau, dated January 28, 2005) (“*Reply To Thompson Complaint*”), as well as Beasley’s additional supplements filed on March 11, 2005 (“*Supplemental Reply to Thompson Complaint*”); December 16, 2005 (“*Second Supplemental Reply to Thompson Complaint*”); April 14, 2006 (“*Third Supplemental Reply to Thompson Complaint*”); and February 12, 2007 (“*Further Reply*”).

¹⁰ See *id.*

¹¹ See *Bureau Order*, 22 FCC Rcd at 10077 ¶ 5 & nn.16-17; see also *Reply To Thompson Complaint*; *Supplemental Reply to Thompson Complaint*; and *Second Supplemental Reply to Thompson Complaint*.

Specifically, Beasley pointed to what it characterized as the repetitious and irrelevant filings of Mr. Thompson. Beasley also argued that Mr. Thompson made significant misrepresentations in those filings, including unsubstantiated, false allegations that Beasley and its counsel have engaged in a range of criminal misconduct.¹² Beasley further contended that Mr. Thompson has been sanctioned for similar misconduct in an Alabama state court proceeding¹³ and that the Florida Bar has initiated disciplinary proceedings against him in a multiple count complaint that includes allegations of misconduct brought not only by Beasley and its counsel but also by other attorneys and the judge in the Alabama state court proceeding.¹⁴

4. As reflected in the *Bureau Order*, the Enforcement Bureau addressed each of Mr. Thompson's allegations in accordance with Commission precedent. That precedent requires a complainant to submit corroborating evidence to demonstrate that a licensee engaged in threats of reprisals or other unnecessary and abusive conduct reasonably calculated to dissuade the complainant from continued involvement in a proceeding. The Bureau found that, during the pendency of its investigation of Mr. Thompson's complaint, while he informed the Commission that he expected to submit documentation to support his allegations and requested that action on his complaint be withheld until he did so, no documentation was ultimately submitted.¹⁵ The Bureau ruled that, as a consequence of Mr. Thompson's failure to submit documentation to support his allegations, he failed to meet his evidentiary burden to substantiate his claims that Beasley and its counsel had acted improperly; thus, there was no basis on which to conclude that Beasley had improperly threatened, abused or harassed Mr. Thompson in retaliation for his complaints against the Beasley Stations.

5. More specifically, the Bureau found that although the *WQAM NAL* found that certain material aired over Beasley's station apparently violated the restrictions on the airing of indecent material,¹⁶ because Mr. Thompson's filings acknowledged that threats contained within the apparently indecent material were made against someone else, and not him or his family, this indecency

¹² *See id.*

¹³ *See Second Supplemental Reply to Thompson Complaint*, at Attachment 1 (attaching the Orders of Judge James Moore, Circuit Judge, 24th Judicial Circuit, Fayette County Alabama, denying Mr. Thompson's motion to withdraw as counsel in a civil lawsuit against Sony, Take-Two Interactive Software, Inc. and other defendants; revoking Mr. Thompson's admission *pro hac vice*; and denying Mr. Thompson's motion to vacate the Order revoking his *pro hac vice* admission). *See Strickland v. Sony Corporation*, Order, Case No. CV 05-19 (Nov. 17, 2005); *motion to vacate denied*, Order (Nov. 21, 2005).

¹⁴ *See Further Reply*, at Attachment 3 (*The Florida Bar v. John Bruce Thompson*, Case No. SC07-80, filed January 18, 2007 ("Florida Bar Complaint")). As set forth in the *Bureau Order*, in accordance with the Florida Bar's disciplinary procedures, a grievance committee has found probable cause to believe that Mr. Thompson may have violated certain of the Florida rules regulating attorney conduct and that discipline appears to be warranted, and the Florida Bar has filed a complaint with the Supreme Court of Florida. *See Bureau Order*, 22 FCC Rcd at 10086 ¶ 22, n.72. The Florida Bar Complaint, as originally filed, included two counts relating to complaints concerning Mr. Thompson's conduct toward Beasley and its counsel. *See Florida Bar Complaint* at 25-35, Counts IV and V. As discussed herein, Mr. Kent's complaints underlying Count IV apparently have been dismissed, but the Bureau found no evidence to substantiate Mr. Thompson's repeated assertion that this dismissal was based upon a finding that the complaints were without merit. *See* paragraph 18 of this Order, *infra*; *Bureau Order*, 22 FCC Rcd at 10086-10087 ¶ 24. Mr. Kent submitted to the Commission a copy of his voluntary authorization to the Florida Bar to delete matters related to complaints that he had filed on his own behalf. *See Bureau Order*, FCC Rcd at 10086-10087 ¶ 24 & n.78.

¹⁵ *See Bureau Order*, 22 FCC Rcd at 10077-10078 ¶ 6.

¹⁶ *See* 18 U.S.C. § 1464; 47 C.F.R. § 73.3999.

determination did not corroborate Mr. Thompson's harassment and intimidation complaint.¹⁷ The Bureau also found that Mr. Thompson had failed to substantiate his allegations that the same on-air host involved in the programming at issue in the *WQAM NAL* had made other threats against him. The Bureau noted that the excerpts of the alleged threats did not name Mr. Thompson and that no corroborating evidence had been submitted to demonstrate that these threats were actually broadcast or directed at him in retaliation for filing indecency complaints.¹⁸ Finally, the Bureau concluded that Mr. Thompson's allegations that other Beasley on-air personalities had improperly threatened him were similarly unsubstantiated by documentation or other corroborating evidence.¹⁹

6. The Bureau also found that there was no evidence to substantiate or corroborate Mr. Thompson's allegations that Beasley and its counsel had impermissibly filed retaliatory lawsuits and bar complaints against him as a consequence of his filing indecency complaints with the Commission. The *Bureau Order* noted that the record included legitimate reasons, other than impermissible retaliation, for Beasley's actions.²⁰ Furthermore, the Bureau cited evidence in the record in which Beasley and its counsel specifically state that the litigation and bar complaints are separate and distinct from Mr. Thompson's complaints concerning Station WQAM(AM)'s programming and statements which acknowledge his right to file complaints with the Commission.²¹

7. The Bureau further found no evidence to support Mr. Thompson's allegations that at Beasley's direction, Beasley's counsel had filed civil lawsuits against him in 2004 and 2006 in order to harass and intimidate him.²² The Bureau cited Mr. Kent's statements that these lawsuits were filed in his individual capacity as a consequence of Mr. Thompson's untruthful and defamatory characterizations of

¹⁷ See *Bureau Order*, 22 FCC Rcd at 10079-10080 ¶¶ 8-9. The *NAL* at issue addressed, in part, a complaint by another listener, and not Mr. Thompson, alleging that Station WQAM(AM)'s on-air host, Scott Farrell, received an angry phone call from a listener and then threatened to have the caller incarcerated, after which the caller would be raped and sodomized, and Mr. Ferrall would perform sexual acts on his wife and also engage in violence against his family. See *id.* at ¶ 8, n.27; see also *WQAM NAL*, 19 FCC Rcd at 23001 ¶ 9. We are informed that Mr. Ferrall no longer works at Station WQAM(AM).

¹⁸ See *Bureau Order*, 22 FCC Rcd at 10081 ¶ 13 & nn.39-42. In addition, the Bureau rejected allegations that Beasley's response to the *WQAM NAL* misrepresented that Mr. Thompson was the sole complainant and improperly attacked his credibility. See *id.* at 10080-10081 ¶¶ 10-12. In this regard, the Bureau noted that Beasley had been provided redacted copies of the two complaints at issue in the *WQAM NAL* and that Mr. Thompson himself had made public statements apparently taking credit for filing both complaints. See *id.* at 10080, nn.35, 37. Under these circumstances, the Bureau concluded there was nothing impermissible in Beasley's response, which acknowledged its uncertainty as to whether Mr. Thompson had filed both complaints and for convenience, referred to a "Complainant" throughout. Mr. Thompson does not challenge the Bureau's findings concerning Beasley's response to the *WQAM NAL*.

¹⁹ See *id.* at 10087 ¶¶ 25-26 & nn.81-84.

²⁰ Specifically, Mr. Thompson had repeatedly characterized Beasley as a criminal enterprise and its principals as criminals in press releases, contacts with state and federal officials, and to entities with which Beasley does business. See *id.* at 10078-10079 ¶ 7 & nn.22-25. In this regard, the Bureau stated that it was unaware of any information demonstrating that Beasley or its principals have been convicted of any felony or other crime cognizable under the Commission's Character Policy and that Mr. Thompson had submitted no evidence or documentation of such criminal convictions. *Id.*

²¹ See *id.* at 10081-10082 ¶ 14 & nn.43-47; 10084 & n.60; 10084-85 ¶ 20.

²² See *id.* at 10081 ¶ 14, 10083-10084 ¶¶ 17-18. The Bureau pointed out that the record did not include a copy of the complaint in the 2006 lawsuit. See *id.* at 10083 ¶ 17.

him.²³ Furthermore, the Bureau pointed to Mr. Thompson's repeated requests that the Commission withhold a decision on his complaint in anticipation that he would make filings to substantiate his claims concerning Beasley's involvement in Mr. Kent's 2004 lawsuit.²⁴

8. The Bureau found no basis on which to attribute any impermissible conduct to Beasley based on Mr. Kent's statements to the effect that Beasley was not aware of his 2004 civil suit against Thompson until after it was filed. Mr. Kent had, in fact, sent an e-mail to Beasley's in-house counsel prior to filing suit, to alert Beasley that the contemplated lawsuit could affect Mr. Kent's ability to represent Beasley.²⁵ The Bureau noted, however, that Mr. Kent's statements concerning Beasley's prior knowledge of the 2004 lawsuit were made to Mr. Thompson and his counsel, not to the Commission and, in any event, Mr. Kent does not represent Beasley in this complaint proceeding.²⁶ The Bureau therefore concluded that there was no basis on which to find that Beasley had made misrepresentations to or otherwise engaged in improper conduct before the FCC.²⁷

9. Moreover, the Bureau rejected Mr. Thompson's allegations that Mr. Kent improperly sought court-ordered enforcement of a 1989 settlement agreement between Mr. Thompson and a Beasley on-air personality. Beasley was not a party to the settlement agreement, which predated the on-air personality's employment at Station WQAM(AM) and involved a radio station owned by an entity unrelated to Beasley.²⁸ The Bureau found that there was no evidence of Beasley's involvement in the lawsuit to enforce the agreement or that Beasley or its counsel engaged in any improper harassment or intimidation based upon the action to enforce the settlement agreement.²⁹ The *Bureau Order* also deferred consideration of Beasley's abuse of process complaint against Mr. Thompson.³⁰

III. APPLICATION FOR REVIEW

10. In his Application for Review, Mr. Thompson argues that the Bureau erred, as a matter of law and fact, in three principal respects. First, Mr. Thompson cites language in the *WQAM NAL* finding that an on-air host's comments were apparently indecent because they dwelled on the coerced and brutal nature of the sexual activities that the host suggested should be performed on a listener and his family³¹

²³ See *id.* at 10082 ¶ 14 & n.46; 10084 ¶ 18 & n.60. Specifically, Mr. Kent alleged that Mr. Thompson made statements that he was a "license-suspended drug and porn lawyer" and "a drug lawyer who has been suspended from the practice of law," when in fact he was a member of the Florida Bar in good standing, and that he falsely accused Mr. Kent of other criminal misconduct, including extortion and tax evasion. Mr. Thompson apparently entered into an agreement settling this litigation that did not include admissions of liability.

²⁴ See *id.* at 10084 ¶ 18 & nn.58-59.

²⁵ See *id.* at 10083 ¶ 15 & nn.48-50. The Bureau also found that Mr. Thompson apparently learned of the e-mail, which was ineffectively redacted, because it had been placed in Station WQAM(AM)'s public inspection file by mistake. The Bureau ruled that this redacted e-mail was a privileged communication not required to be placed in the public file. See *id.* at 10083 ¶ 15. See also 47 C.F.R. § 73.3526(e)(10). Mr. Thompson does not challenge or otherwise seek review of this aspect of the *Bureau Order*.

²⁶ See *Bureau Order*, 22 FCC Rcd at 10083 ¶ 15.

²⁷ See *id.* at 10083 ¶ 16.

²⁸ See *id.* at 10089-10090 ¶¶ 29-30. The Bureau pointed out that Mr. Thompson's own statements acknowledged that the 1989 agreement concerns another broadcaster. See *id.* at 10089 ¶ 29 & n.23

²⁹ See *id.* at 10089-10090 ¶¶ 29-31.

³⁰ See *id.* at 10077 ¶ 2 & n.17.

³¹ See *WQAM NAL*, 19 FCC Rcd at 23002-23003 ¶ 11.

and argues that this alone demonstrates that Beasley engaged in impermissible retaliatory conduct against him.³² The Bureau's contrary conclusion, Mr. Thompson contends, was therefore error. Second, Mr. Thompson claims that there are other instances in which Beasley on-air personalities have improperly threatened or harassed other listeners, apparently implying that this corroborates his contention that Beasley has threatened and harassed him.³³ Third, Mr. Thompson argues that review is appropriate because "Beasley, after the [Bureau's] improper ruling in this matter, allowed one of its on-air 'talents' to violate a written agreement not to mention me on its air!"³⁴ Mr. Thompson apparently refers to the 1989 settlement agreement and claims that the violation constitutes further impermissible harassment.³⁵ Mr. Thompson also "demand[s] a full hearing on this matter before the Commission."³⁶

11. Mr. Thompson, in several subsequent e-mails, supplements his Application for Review. Specifically, on August 2, 2007, Mr. Thompson alleged that Mr. Kent admitted in answers to interrogatories in a civil lawsuit that he was retained by Beasley to pursue a bar complaint and to represent them in other matters, and stated that his bar complaint remains under consideration when in fact it "has been dismissed with prejudice as baseless."³⁷ Mr. Thompson also alleges that Mr. Kent told him that Beasley did not know about his 2004 lawsuit until after it was filed, when in fact Mr. Kent had sent Beasley's general counsel an e-mail concerning the upcoming filing.³⁸

12. In addition, in e-mails filed on December 12 and 13, 2007, Mr. Thompson made additional allegations that apparently relate to the 1989 settlement agreement, alleging again that the Beasley on-air personality, with the assistance of Mr. Kent and with Beasley's cooperation, was improperly seeking to have him held in contempt of court for violating the agreement.³⁹ Also in the

³² See *Application for Review* at 1-2.

³³ See *id.* at 2.

³⁴ See *id.*

³⁵ See *id.*

³⁶ See *id.*

³⁷ See E-mail from Jack Thompson to Kevin J. Martin, Chairman, Federal Communications Commission, dated August 2, 2007 re: URGENT Re: Formal Demand for Federal Communications Commission Review of Ms. Monteith's Erroneous Findings and Order Re WQAM-AM (*Supplement to Application for Review*). The Commission's procedural rules provide for the filing of an application for review and supplements within 30 days of the date that the Commission issues its public notice of a Bureau decision taken pursuant to delegated authority. See 47 C.F.R. § 1.115(d). Furthermore, the Commission's rules also prohibit Mr. Thompson from raising matters of law or fact which the delegated authority has not been afforded an opportunity to consider. See 47 C.F.R. § 1.115(c). Mr. Thompson's supplement is subject to dismissal because he has failed to comply with the provisions of Sections 1.115(c) and (d). We find it in the public interest to waive, on our own motion, the provisions of Section 1.115 (c) and (d) in this case in order to consider matters raised in Mr. Thompson's August 2, 2007 filing, which relate to matters previously considered by the Bureau. See, e.g., *Brookfield Development, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 14385, 14388 & n.34 (2004) (To the extent that an application for review relies on a question of law or fact which the Bureau has not been given the opportunity to consider, it is subject to dismissal. Here, however, the Commission finds that the public interest is served by addressing the merits of the argument not presented to the delegated authority in the interest of completeness, because the argument relates to the same facts considered by the delegated authority.).

³⁸ See *Supplement to Application for Review*.

³⁹ See Letter from John B. Thompson, Attorney at Law, to Kevin J. Martin, Chairman, Federal Communications Commission, transmitted via E-mail on December 12, 2007, which requests that the Commission "open a new file as to the continuing harassment of me by Beasley in order to protect its shock radio format." On December 13, 2007, (continued....)

December 13, 2007 supplement to his Application for Review, Mr. Thompson mentioned in passing other alleged threats made against him by Station WQAM(AM) on-air personalities, which the Bureau found were unsubstantiated and did not support his complaint against Beasley.⁴⁰ Beasley did not file an opposition to Mr. Thompson's Application for Review or to his subsequent e-mail supplements.

IV. DISCUSSION

13. We deny Mr. Thompson's Application for Review and affirm the Bureau's order. To obtain relief through an application for review of an action taken pursuant to delegated authority, the aggrieved party must meet at least one of the criteria set forth in Section 1.115(b)(2) of the Commission's Rules.⁴¹ Specifically, the application for review must "specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented": (i) the action taken pursuant to delegated authority conflicts with a relevant "statute, regulation, case precedent, or established Commission policy," (ii) the action taken "involves a question of law or policy which has not previously been resolved by the Commission," (iii) the action taken "involves application of a precedent or policy which should be overturned or revised," (iv) the action taken makes "an erroneous finding as to an important or material question of fact," and/or (v) the action taken contains "prejudicial procedural error."⁴² Because the application before us fails to meet any of the criteria set forth under Section 1.115(b)(2), it is denied.

14. We find no legal or factual error in the Bureau's conclusion that Mr. Thompson failed to meet his evidentiary burden to corroborate his claims that Beasley impermissibly threatened him for the purpose of retaliating against him. Commission precedent makes it impermissible for a licensee to intimidate or harass a complainant with threats of reprisals or to engage in some other unnecessary or abusive conduct reasonably calculated to dissuade him from continued involvement in a complaint proceeding. It is the complainant's burden to present evidence to substantiate and document a claim of harassment and intimidation.⁴³ Mr. Thompson has failed to present any evidence to substantiate his

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however, Mr. Thompson filed two additional e-mails concerning these allegations, in one of which he also references his pending application for review. *See* E-mails from Jack Thompson to Kevin J. Martin, Chairman, Federal Communications Commission, transmitted December 13, 2007, 5:41 a.m. and 6:03 a.m. Under these circumstances, we will not consider these allegations to constitute a new complaint. Moreover, because these allegations relate to matters initially raised before the Bureau and in his application for review, we find that it is in the public interest to waive Section 1.115(c) and (d) in order to consider these allegations. *See* note 38, *supra*. We also note that Mr. Thompson made these supplemental filings electronically, even though the Commission's interim electronic filing procedures, which were applicable to applications for review and certain other pleadings, had been rescinded. *See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings*, Order, 22 FCC Rcd 11381 (2007); FCC Rescinds Its Interim Procedures For Electronic Filing Effective September 25, 2007, News Release (June 29, 2007). We therefore also waive the provisions of Section 1.115(f) of the Commission's rules, which requires that these pleadings be submitted to the Secretary, Federal Communications Commission at the locations set forth in Section 0.401 of the Commission's rules. *See* 47 C.F.R. §§ 0.401, 1.115(f).

⁴⁰ *See* E-mail from Jack Thompson to Kevin J. Martin, Chairman, Federal Communications Commission, transmitted December 13, 2007, 5:41 a.m.

⁴¹ *See* 47 C.F. R. § 1.115(b)(2).

⁴² *See id.*

⁴³ *See Clear Channel Broadcasting Licenses, Inc.*, Notice of Apparent Liability, 19 FCC Rcd 1768, 1777 ¶ 15 (2004) (forfeiture paid) (finding that a complainant failed to substantiate or otherwise provide evidence to corroborate his allegations that the licensee sanctioned in the *NAL* also engaged in impermissible retaliation as a result of the complaint and denying the complainant's harassment and intimidation complaint).

claims that Beasley engaged in improper conduct against him in retaliation for the filing of indecency complaints. We address his specific contentions in turn.

15. First, we reject Mr. Thompson's assertion that the Bureau was required to find that Beasley had engaged in impermissible retaliation against him because there were threats in the broadcast material that was the subject of one of the complaints at issue in the *WQAM NAL*. There were two complaints in the *WQAM NAL*, and although Mr. Thompson filed one of those complaints, he does not contest the Bureau's finding that comments in the material at issue in the *WQAM NAL* were not directed at him.⁴⁴ Under these circumstances, we find no error in the Bureau's ruling that the broadcast material at issue in the *WQAM NAL* does not support a conclusion that Beasley acted improperly in order to harass or intimidate Mr. Thompson, and that Mr. Thompson failed to substantiate his allegations that Beasley or its employees threatened him because he filed indecency complaints.

16. Second, Mr. Thompson's argument that there are unrelated instances in which on-air personalities at other Beasley stations allegedly have improperly threatened or harassed other listeners, even if true, does not substantiate his claim here. Mr. Thompson does not claim that the threats involved in these other alleged incidents were directed at him or that they were made in retaliation for his filing of indecency complaints against Beasley's stations.

17. Third, we agree with the Bureau's determination that the allegations concerning enforcement of the 1989 settlement agreement involving an entity unrelated to Beasley have no bearing on his complaint against Beasley and conclude that they do not provide a reason to find error in the *Bureau Order*. Mr. Thompson's contention that Mr. Kent has sought new sanctions against him in connection with the enforcement of this 1989 settlement agreement, and that this is further evidence that Beasley is engaging in improper conduct in order to harass and intimidate him, is similarly unpersuasive. The *Bureau Order* pointed out that Beasley was not a party to the 1989 settlement agreement, which pertained to matters related to the employee's earlier on-air job hosting a program at a station licensed not to Beasley but to another broadcaster.⁴⁵ Mr. Thompson did not specifically contest this aspect of the Bureau's decision, and we find his new allegations concerning this 1989 agreement similarly irrelevant. They are, moreover, entirely unsubstantiated.

18. We also find no basis for reversing the Bureau's decision based on those matters raised by Mr. Thompson in supplements to his Application for Review. We concur in the Bureau's conclusion that Mr. Kent's actions do not support a finding that Beasley threatened, abused or intimidated Mr. Thompson. The *Bureau Order* specifically acknowledged the attorney-client relationship between Mr. Kent and Beasley, but found that there was no evidence to support a conclusion that Mr. Kent had filed lawsuits against Mr. Thompson at Beasley's direction or that Beasley had improperly brought bar complaints against Mr. Thompson in order to harass or intimidate him or to deter him from participating in Commission complaint proceedings. We agree with the Bureau's conclusion that Mr. Thompson did not present any evidence to substantiate or corroborate these allegations, and his allegations concerning Mr. Kent's interrogatory answers, even if true, do not provide a basis to find error in the *Bureau Order*. In this regard, we also note that the *Bureau Order* referenced Mr. Kent's statements voluntarily offering to dismiss a bar complaint that he had filed against Mr. Thompson, and found that Mr. Thompson had not provided any documentation to support a finding that the dismissal constituted a dismissal on the merits.⁴⁶ Moreover, Mr. Thompson points to Mr. Kent's e-mail to Beasley prior to the filing of his 2004 lawsuit,

⁴⁴ See *Bureau Order*, 22 FCC Rcd at 10079-80 ¶¶ 8-9.

⁴⁵ See *id.* at 10089 ¶ 30.

⁴⁶ See *id.* at 10086-10087 ¶ 24 & n.78.

but does not dispute or otherwise assign error to the Bureau's finding that even if the allegations about Beasley's prior knowledge of the lawsuit are true, the record as a whole is insufficient to support a finding that Mr. Kent brought his 2004 lawsuit at Beasley's urging and in order to retaliate against him.⁴⁷

19. Mr. Thompson's passing reference to other alleged threats against him made by Beasley on-air personalities, allegedly with Beasley's guidance and support, is also unavailing. Mr. Thompson does not specifically contest the Bureau's finding that there is no credible evidence to substantiate his allegations that such threats, which do not mention him by name, were actually broadcast or that these comments were made in response to his filing of indecency complaints.⁴⁸ Nor does he provide any new evidence to substantiate his claims. Accordingly, there is no basis for reversing the Bureau's order.

20. Finally, Mr. Thompson argues that he has a right to a full evidentiary hearing before the Commission concerning his complaint.⁴⁹ Mr. Thompson cites no statutory provision or Commission rule in support of his demand, and we find none to compel the hearing that he seeks.⁵⁰ We note that Section 312 of the Act, which describes administrative sanctions, is inapposite. That section provides the Commission with the discretion to commence a hearing proceeding against a broadcast licensee for various forms of misconduct, none of which are present here.⁵¹ Furthermore, Section 312 does not

⁴⁷ See *id.* at 10083 ¶ 16. We also note that the Florida Supreme Court has issued an Order permanently disbarring Mr. Thompson based on the disciplinary proceeding initiated by the Florida Bar Complaint. See note 14, *supra*. Specifically, following a trial and disciplinary hearing, the presiding referee issued a report recommending, *inter alia*, Thompson's permanent disbarment, with no leave to reapply for admission. See *Report of Referee*, Case Nos. SC07-80 and SC07-354 (Jul. 9, 2008). The referee's report includes findings of Mr. Thompson's guilt with respect to bar complaints brought by Beasley's counsel, Tew Cardenas LLP. See *id.* at 134-144. The Florida Supreme Court's Order approves the referee's report and permanently disbars Mr. Thompson, effective 30 days from the date of its Order. See *The Florida Bar v. John Bruce Thompson*, Order, Case Nos. SC 07-80 and SC 07-354 (Sept. 25, 2008).

⁴⁸ See Application for Review at 2. See *Bureau Order*, 22 FCC Rcd at 10081 ¶ 13 (There was insufficient evidence to support a finding that the on-air host who aired the comments at issue in the *WQAM NAL* also made other impermissible threats, including the threat of a beating, against Mr. Thompson during a broadcast on October 2, 2003 where Mr. Thompson did not pursue contemporaneous complaints about the threats, the excerpts of the alleged threats that he provided did not mention him by name, and no corroborating evidence substantiated that the threats were actually broadcast or directed at him.); 22 FCC Rcd at 10087-10088 ¶ 26 (excerpts submitted by Mr. Thompson with respect to other alleged threats by a different Beasley on-air host do not mention him by name and there is no corroborating evidence that such threats were actually broadcast; even assuming, *arguendo*, that Mr. Thompson provided accurate information as to the substance of the statements, there is no evidence to support a finding that they were in retaliation for Mr. Thompson's indecency complaints).

⁴⁹ See Application for Review at 2 ("I demand a full hearing on this matter before the Commission. . . . to tell the Commission directly about threats . . . [and to hear Commission personnel] respond to my testimony.").

⁵⁰ Pursuant to Section 1.80(e) of the Commission's Rules, the Commission may institute forfeiture proceedings either via a written notice of apparent liability or via a full evidentiary hearing before an administrative law judge. See 47 C.F.R. § 1.80(e) and (g). Typically, however, hearings occur "only when a hearing is being held for some reason other than the assessment of a forfeiture." *Id.* at § 1.80(g). Such circumstances are not present here, and the Enforcement Bureau properly exercised its discretion to resolve Mr. Thompson's complaint via written notice and pleadings, in which Mr. Thompson has participated fully.

⁵¹ See 47 U.S.C. § 312(a). See, e.g., *Humboldt Bay Video Co.*, Memorandum Opinion and Order, 56 FCC 2d 68, 71 ¶ 6 (1975) (citations omitted). The Commission generally will refuse to issue an order to show cause based upon a third-party petition unless that party's allegations establish a *prima facie* violation of a Commission rule or order. See *Humboldt Bay Video Co.*, 56 FCC 2d at 71 n.9. Moreover, even if the Commission finds a violation based upon the petition of a third party, it has broad discretion to refuse to conduct a hearing. See *id.*

specifically create rights in third party complainants.⁵² Thus, even if Mr. Thompson had substantiated his harassment and intimidation complaint against Beasley, which he did not, we would not be required to initiate a hearing proceeding.⁵³ As set forth in exhaustive detail in the *Bureau Order*, which we uphold here, Mr. Thompson did not provide the required documentation to corroborate the allegations in his complaint against Beasley. The record here supports denial of Mr. Thompson's complaint, and there is no basis on which to find that a hearing is warranted under the circumstances present here.

21. For the foregoing reasons, we find that there is no basis to disturb the Bureau's denial of Mr. Thompson's complaint and accordingly deny his Application for Review.

V. ORDERING CLAUSES

22. **IT IS ORDERED** that the Application for Review filed by John B. Thompson in the above-captioned matter **IS DENIED**.

23. **IT IS FURTHER ORDERED** that, to the extent that Mr. Thompson has raised allegations of improper retaliatory conduct and abuse in informal objections filed with the Commission against the renewal of the license of Station WQAM (AM), Miami, Florida, FCC File No. BR-20031001BXU, and dated November 11, 12, 13, 17, 18, 2003, August 20, 2004, and December 12, 2007, these informal objections and all other similarly based objections **ARE HEREBY DENIED**.

24. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order* **SHALL BE SENT** by Certified Mail to John B. Thompson, and to Beasley Broadcast Group, Inc., 3033 Riviera Drive, Naples, Florida, 34103, with a courtesy copy by regular mail to its counsel, Steven A. Lerman, Esquire, Dennis P. Corbett, Esquire, and Philip G. Bonomo, Esquire, Leventhal Senter & Lerman PLLC, 2000 K Street, N.W., Suite 600, Washington, D.C. 20006-1809.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵² See 47 U.S.C. § 312(a). See, e.g., *Humboldt Bay Video Co.*, 56 FCC 2d 71 n.9; see also *C&W Communications, Inc.*, Order on Review, 20 FCC Rcd 5586, 5589 ¶ 7 (2005) (Commission has complete discretion, even when there is evidence of violations, to determine not to issue an order to show cause under Section 312 and can refuse to do so based upon the petition of a third party even if it determines a violation of the Act or rules exists).

⁵³ See *id.* Similarly, the Commission is not compelled to conduct a hearing pursuant to Section 309 of the Act, which permits the Commission to designate for hearing before an administrative law judge the renewal of a station license. See 47 U.S.C. § 309(k); see also *South Seas Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 6474 (Med. Bur. 2008) (granting short-term renewal as remedy, not a live hearing, where Media Bureau found licensee engaged in a pattern of abuse by failing to operate in the public interest and ignoring staff inquiries). In the instant case, we note that, even if Mr. Thompson had shown that WQAM(AM)'s application did not meet the requirements of Section 309(k)(1), we would not be compelled to designate Station WQAM(AM)'s pending license renewal application for an evidentiary hearing. In any event, Mr. Thompson has failed to substantiate any violation of the Act or the Commission's rules, and no evidentiary hearing before the Commission or an administrative law judge is warranted.