

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

In the Matter of	)	
	)	
Radio Training Network	)	File No. BNPED-20071022AFU
for a New Noncommercial FM Station	)	Facility ID No. 176380
at Dillon, South Carolina	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 16, 2015**

**Released: September 17, 2015**

By the Commission:

1. We have before us a Joint Application for Review (“AFR”) filed on July 13, 2011.<sup>1</sup> The AFR challenges the Media Bureau’s (“Bureau”) grant of an application (“Application”) filed by Radio Training Network, Inc. (“RTN”) for a new noncommercial educational (“NCE”) FM station at Dillon, South Carolina.<sup>2</sup> The AFR also seeks review of the Bureau’s determination that certain applicants whose applications were included in the same group of mutually exclusive applications as the Application lacked standing to challenge the dismissal of the applications of other applicants whose applications also were included in that group.<sup>3</sup>

2. The AFR seeks review of a Bureau decision affirming its earlier grant of the Application.<sup>4</sup> It specifically takes issue with the Bureau’s conclusion that the Application, as amended, satisfied the requirements of Section 73.525 of the Commission’s rules (“Rules”) with respect to WECT(TV).<sup>5</sup> After carefully reviewing the entire record, we affirm the Bureau’s decision. At the time the Application was filed, NCE FM applicants were required to either protect nearby Channel 6 television stations or submit a consent letter from each affected television station. On October 27, 2009, a new processing policy became effective under which NCE applicants were no longer required to submit Channel 6 consent letters with respect to affected TV stations that had ceased analog operations. This policy was implemented by public notices released in April and October of 2009, which established a

<sup>1</sup> Radio Training Network, Inc. filed an Opposition to Joint Application for Review (“Opposition”) on August 1, 2011.

<sup>2</sup> Six applicants whose applications were included in the same group of mutually exclusive applications as the Application challenge this grant. These applicants are Columbus Club of Florence, Cultural Renewal Radio UA, Down East Communications, Pathway Christian Academy, Inc., Calvary Chapel Myrtle Beach, and Spirit Broadcasting Group, Inc.

<sup>3</sup> In addition to the six applicants challenging grant of the Application, RTN and another 18 applicants from the same group of mutually exclusive applications challenge this finding. The other parties are Airwaves for Jesus, Inc., Bible Broadcasting Network, Inc., Calvary Broadcasting, Inc., Church Planters of America, Clean Air Broadcasting Corporation, Coastal Carolina University, Friends of Hometown Radio, Florence-Darlington Technical College, Highland Baptist Church, Nassuna Broadcasting, Inc., Network of Glory, Inc., Richburg Educational Broadcasters, Inc., Solid Foundation Broadcasting Corporation, God’s Final Call & Warning, Asheboro Seventh Day Adventist Church, Florence First Seventh-Day Adventist Church, Centro Christiano de Vida Eterna, and Voices for Justice, Inc.

<sup>4</sup> Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Stuart W. Nolan, Jr., Esq. et al. (dated June 13, 2011).

<sup>5</sup> AFR at 5-8. See also 47 C.F.R. § 73.525 (requiring that applications for new or modified NCE stations in the FM reserved band protect nearby television Channel 6 broadcast stations).

clear, fair and transparent process for licensees and applicants to take advantage of the cessation of Channel 6 analog operations.<sup>6</sup> After October 27, 2009, with WECT(TV)'s cessation of analog operations on Channel 6,<sup>7</sup> its concurrence was no longer required. The Bureau reasonably declined to take adverse action based solely on the Application's earlier acceptability, when subsequent events – *i.e.*, a change in applicable law and WECT(TV)'s termination of analog operations on Channel 6 – resulted in a fully acceptable application at the time of processing.<sup>8</sup>

3. The AFR also asserts that the Bureau erred in determining that an applicant in a group of mutually exclusive applications lacks standing to challenge the dismissal of the application of another applicant in that group unless it has been given the express authority to do so.<sup>9</sup> We agree with the Bureau's determination that here, the applicants lacked standing to seek reconsideration of the dismissals of the other dismissed applicants, but further note that the Bureau incorrectly stated that an applicant in a group of mutually exclusive applications "can authorize another applicant to challenge the dismissal of its application on its behalf."<sup>10</sup> Standing is not conferred in this manner. Rather, for an applicant in a mutually exclusive group of applications to challenge the dismissal of the application of another applicant in that group, it would need to demonstrate third party standing.

4. Both the Commission and the courts generally disfavor third party standing because it contravenes the basic prudential principle that a party generally "must assert his own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties."<sup>11</sup> We acknowledge that in certain limited circumstances the courts have permitted the assertion of third party standing.<sup>12</sup> Specifically, the courts have allowed a party to assert the rights of third parties where (1) the party itself has suffered an injury in fact, thus giving it a sufficiently concrete interest in the outcome of the issue in dispute; (2) the party has a close relation to the third party or parties; *and* (3) there exists some hindrance to the ability of the third party or parties to protect their own interests.<sup>13</sup> This test has not been satisfied here because nothing has hindered the other dismissed applicants from challenging the Bureau's dismissal of their applications.<sup>14</sup> The dismissed applicants have simply taken no action and demonstrated no desire to resurrect their applications.<sup>15</sup>

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<sup>6</sup> See *Media Bureau Establishes October 27, 2009, Initial Filing Date for Acceptance of Certain Noncommercial Educational FM Station Minor Change Applications*, Public Notice, 24 FCC Rcd 12598 (MB 2009); *Media Bureau Provides Guidance to NCE FM Stations Regarding Television Channel 6 Protection Requirements*, Public Notice, 24 FCC Rcd 3916 (MB 2009).

<sup>7</sup> WECT(TV) terminated its analog operations on September 30, 2008. See File No. BDTUCT-20080718AOC.

<sup>8</sup> See *HarryCo, Inc. & S. Entm't, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 18 FCC Rcd 23411, 23423 ¶ 26 (2003); see also *BVM Helping Hands*, Memorandum Opinion and Order, 29 FCC Rcd 6464, 6464 ¶ 4, n.14 (2014).

<sup>9</sup> AFR at 8-9.

<sup>10</sup> See *Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Stuart W. Nolan, Jr., Esq. et al.* (dated June 13, 2011) n.27.

<sup>11</sup> *Powers v. Ohio*, 499 U.S. 400, 410 (1991) (citations omitted). See also *Instapage Network Ltd.'s Informal Request for Retroactive Bidding Credits*, Order on Reconsideration, 19 FCC Rcd 20356, 20369 ¶ 10 (WTB 2004) (recognizing that third party standing has been generally disfavored by the Commission).

<sup>12</sup> *Powers*, 499 U.S. at 410-11.

<sup>13</sup> *Id.* at 411 (citations omitted).

<sup>14</sup> See, e.g., *King v. Governor of the State of New Jersey*, 767 F.3d 216, 244 (3d Cir. 2014) (plaintiffs lacked standing to pursue claims on behalf of their minor clients where they failed to establish that their clients were "hindered" in their ability to bring suit themselves); *Instapage*, 19 FCC Rcd at 20356 (to assert third party standing, petitioner must demonstrate the existence of some hindrance to the absent party's ability to protect its own interest in the matter, and third party standing is not appropriate where nothing has prevented the absent party from pursuing the particular claim at issue). Because we find that the third factor necessary to assert third party standing is not

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5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,<sup>16</sup> and Sections 1.115(g) of the Commission's Rules,<sup>17</sup> the Application for Review IS GRANTED IN PART and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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present here, we need not reach Dismissal Opponents' arguments regarding the injury caused to them by the dismissal of applications not their own. *See* AFR at 9.

<sup>15</sup> We note that we have considered the concern expressed in the AFR that disallowing standing in this case and others like it could undermine our ability to achieve the objectives of Section 307(b) of the Act. AFR at 10. We disagree that the Section 307(b) directive to the Commission to "provide a fair, efficient, and equitable distribution of radio service" to the States requires us to ignore the basic prudential principle that a party must assert its own legal rights and interests. The purposes of Section 307(b) are served here by the award of the license to RTN.

<sup>16</sup> 47 U.S.C. § 155(c)(5).

<sup>17</sup> 47 C.F.R. § 1.115(g).