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

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| In the Matter of | ) | |
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| KGAN Licensee, LLC | ) | File No. BRCT-20050930ALF |
| | ) | Facility ID No. 25685 |
| Application for Renewal of License of Station KGAN(TV), Cedar Rapids, Iowa | ) | |

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 16, 2015** **Released: July 16, 2015**

By the Commission:

1. The Commission has before it for consideration an Application for Review filed by the Iowans for Better Local Television ("IBLT")[1] seeking review of the *2010 Memorandum Opinion and Order* ("*2010 MO&O*")[2] adopted by the Video Division, Media Bureau ("Bureau"). The *2010 MO&O* denied a petition to deny filed by IBLT related to the license renewal application of KGAN(TV), Cedar Rapids, Iowa ("KGAN"). IBLT contends that the *2010 MO&O* leaves "too many remaining substantial and material questions of fact and law to permit renewing KGAN's license without a hearing or further investigation…."[3] IBLT also requests that the Commission should overturn the decision by implementing a change in policy with regard to the Commission's interpretation of the public interest standard.[4] We find that IBLT has failed to provide the requisite factual and legal support required under Section 1.115(b) of the Commission's rules (the "Rules") for demonstrating the Bureau erred and that the requested change in policy is more appropriately evaluated in the context of a rulemaking proceeding.[5] Accordingly, we affirm the Bureau's determination in the *2010 MO&O* that IBLT failed to raise a substantial and material question of fact as to any rule violations; failed to raise a substantial and material question of fact whether grant of the license renewal application would serve the public interest; and that grant of KGAN's license renewal application was consistent with Section 309(k) of the Communications Act of 1934, as amended.[6]

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[1] Application for Review of Iowans for Better Local Television (filed Apr. 13, 2010)(" Application for Review").

[2] *In the Matter of KGAN Licensee, LLC*, 25 FCC Rcd 2549 (MB 2010) ("*2010 MO&O*"). The *2010 MO&O* addresses five core allegations raised by IBLT, which include: (1) alleged violations of ownership rules; (2) alleged violations of children's programming rules and failure to meet broadcasters underlying children's programming obligations; (3) alleged lack of viewpoint diversity and local public benefit in KGAN's programming; (4) alleged failure to comply with the Commission's public inspection file requirements; and (5) alleged failure to meet a broadcaster's public interest obligations and licensee character requirements. *Id.* at 2551-60. It also summarizes the law with respect to the First Amendment of the U.S. Constitution and Section 326 of the Communications Act. The *2010 MO&O* observes that broadcasters are afforded broad discretion regarding both their programming choices and the manner they choose to meet the needs of their local community. *Id.* at 2557 (*citing National Broadcasting Co.*, 14 FCC Rcd 9026, 9031 (1999)).

[3] Application for Review at 20.

[4] *Id.* at 4-5.

[5] *See* 47 C.F.R. §1.115(b)(2)(iii),(iv).

[6] 47 C.F.R. § 309(k).

2. Under Section 1.115(b) of the Rules, an application for review must meet certain specificity requirements including "concisely and plainly stat[ing] the questions presented for review with reference . . . to the findings of fact or conclusions of law" and "specify[ing] with particularity . . . the factor(s) which warrant Commission consideration of the questions presented."[7] IBLT contends that review is warranted by the Commission under Section 1.115(b)(2)(iv) of the Rules because the Bureau made erroneous findings as to material questions of fact.[8] While IBLT cites to paragraphs in the *2010 MO&O* where it disagrees with the Bureau,[9] it fails to provide a basis, in either fact or law, demonstrating how the Bureau has made an erroneous finding as to a material question of fact.

3. The Commission has stated that "the burden is on the Applicant to set forth fully its argument and all underlying relevant facts in the application for review."[10] Vague statements asserting error are not enough to justify review under our rules.[11] An application for review must provide factual and legal support in order for the Commission to find that there has been an erroneous finding as to a material question of fact.[12] IBLT's application for review merely references paragraphs and quotes language from the *2010 MO&O*; it does not provide any explanation as to how the Bureau made an erroneous finding as to a material question of fact.[13] In one instance IBLT attempts to provide such an explanation, but only does so through incorporation by reference of arguments IBLT made in its Petition to Deny.[14] However, the Commission has found that incorporation by reference is not a practice that is permitted under the Rules.[15] Accordingly, we find that IBLT has failed to meet its burden under Section 1.115(b)(2)(iv) of the Rules for establishing that there has been an erroneous finding by the Bureau as to a material question of fact and dismissal of the Application for Review is warranted.

4. IBLT also contends that the Bureau's action involves application of a policy that should be overturned and encourages the Commission to "reboot" its interpretation of broadcaster's public

[7] 47 C.F.R. §1.115(b)(1),(2); *see Opposition to Application for Review of KGAN Licensee, L.L.C.* at 5-9 (filed Apr. 28, 2010) (describing how IBLT has failed to establish a basis for review under our rules).

[8] Application for Review at 19-22.

[9] *Id.* at 20-22.

[10] *Red Hot Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 6737, 6745, n.63 (2004) ("*Red Hot Radio*").

[11] *See Washoe Cty., Nevada, City of Sparks, Nevada, & Sprint Nextel*, Memorandum Opinion and Order, 23 FCC Rcd 11695, 11700-01 (2008) (finding that vague allegations based on general assertions that the Bureau erred are insufficient to support an application for review).

[12] *See Red Hot Radio,* 19 FCC Rcd at 6744 (*citing RCN Telecom Services of Pa., Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15615, 15616 (2001) (finding that applications for review must present something that raises an erroneous action as to a material question of fact)).

[13] Application for Review at 19-22 (generally alleging without support or explanation that the Bureau made an erroneous findings with regards to its decisions in paragraphs 3, 6-9, 18 and 23-28 of the *2010 MO&O*).

[14] *Id.* at 21 ("IBLTV's position is that the data it provided, and arguments it put forth, with regard to the serious questions surrounding KGAN's inadequate compliance with Congressional and FCC children's programming requirements, clearly require a review of the Division's fact finding, if not a full hearing.").

[15] *See, e.g,. Tamara Radio Licenses of Tampa, Fla., Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 7588, 7589 (2010) ("The Commission is not required to sift through an applicant's prior pleadings to supply the reasoning that our rules require to be provided in the application for review."). Aside from the procedural infirmities, we agree with the Bureau that IBLT did not raise a substantial and material question of fact as to whether KGAN violated the Children's Television Act, or the Commission's rules and policies pertaining to children's programming requirements. As noted in the *2010 MO&O*, each of the allegations was sufficiently addressed by KGAN in its Opposition to Petition to Deny Renewal and, in addition, the Children's Television Programming Reports on FCC Form 398 filed during the license term by KGAN refutes many of IBLT's charges. *2010 MO&O* at 2554-55, ¶ 15.

interest standard.[16] It uses the Bureau's decision as an example of why the Commission's current public interest policy and analysis is inadequate. IBLT goes on to contend that the Commission should change the way it applies the public interest standard and move away from the purported "deregulatory approach" applied by the Bureau in the *2010 MO&O*.[17] We find that an adjudicatory proceeding, such as the instant broadcast license renewal proceeding, is not the appropriate forum for considering this type of overarching request for a change in policy. As we have previously determined, such an examination of policy is more appropriately addressed in a rulemaking proceeding.[18]

5. Upon review of the Application for Review and the entire record, and finding no basis in the Application for Review to modify the Bureau's decision, we conclude that IBLT has failed to demonstrate that the Bureau erred. We uphold the Bureau's decision for the reasons stated in the *2010 MO&O*.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(b) of the Commission's rules, 47 C.F.R. § 1.115(b), the Application for Review of the Iowans for Better Local Television **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[16] 47 C.F.R. § 1.115(b)(2)(iii); Application for Review at 10-14 (Sections One and Two of the Application for Review). In Section Three, IBLT provides an overview and excerpts of a 2005 Town Meeting on the Future of Media. Application for Review at 14-19. This Section does not specify with particularity any of the factors which warrant Commission consideration of the *2010 MO&O*, as required by 47 C.F.R. § 1.115(b)(2).

[17] Application for Review at 10-19, 22 (requesting the Commission broadly reevaluate broadcaster's public interest standard).

[18] *See, e.g.*, *Sunburst Media L.P.,* Memorandum Opinion and Order, 17 FCC Rcd 1366, 1368 ¶ 6 (2002) (making decisions that alter fundamental components of broadly applicable regulatory schemes is appropriate in the context of rulemaking proceedings, not adjudications); *see also Great Empire Broad., Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 11145, 11148 ¶ 8 (1999) (stating it is generally inappropriate to address arguments for a change in rules in an adjudicatory proceeding "where third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record") (citing *Capital Cities/ABC, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5888 ¶ 87(1996)); *Cmty. Television of S. Cal. v. Gottfried*, 459 U.S. 498, 511 (1983) ("[R]ulemaking is generally a 'better, fairer, and more effective' method of implementing a new industry-wide policy than is the uneven application of conditions in isolated [adjudicatory] proceedings.").