

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

In the Matter of
Entercom License, LLC, License Renewal
Applications for Stations
WAAF(FM), Westborough, Massachusetts
WEEI(AM), Boston, Massachusetts
WEEI-FM, Lawrence, Massachusetts
WRKO(AM), Boston, Massachusetts
KNRK(FM), Camas, Washington
and
Entercom Buffalo License, LLC, License Renewal
Applications for Stations
WBEN(AM), Buffalo, New York
WWKB(AM), Buffalo, New York
File Nos. BRH-20051201CFP, BRH-20131127AOB
Facility ID No. 74467
File Nos. BRH-20051201CFN, BRH-20131127AMI
Facility ID No. 1912
File Nos. BRH-20051201CFM, BRH-20131127ANR
Facility ID No. 1919
File Nos. BRH-20051201CFG, BRH-20131127AMS
Facility ID No. 1902
File Nos. BRH-20051003BFQ, BRH-20130926AUK
Facility ID No. 51213
File Nos. BR-20060201AYW, BR-20140131ANW
Facility ID No. 34381
File Nos. BR-20060201AZR, 20140131AOF
Facility ID No. 34383

MEMORANDUM OPINION AND ORDER

Adopted: October 19, 2016

Released: October 27, 2016

By the Commission:

1. We have before us two substantially identical Applications for Review filed by the Estate of Irene M. Stolz, Edward R. Stolz II, Executor (Stolz), on March 26, 2015 (March AFR), and July 16,

2015 (July AFR), respectively.¹ Stolz seeks review of two Media Bureau (Bureau) decisions, the first of which² dismissed in part and otherwise denied Stoltz' November 13, 2014 Petition for Reconsideration (2014 Petition) of an October 14, 2014, Bureau *Letter Decision*,³ and the second of which⁴ dismissed Stoltz' April 24, 2015 Petition for Reconsideration (2015 Petition) of a March 18, 2015, Bureau *Letter Decision*⁵ (collectively, *Reconsideration Decisions*).

2. In the *Entercom Boston and Entercom Washington/Buffalo Letter Decisions*, the Bureau denied the 2006 Informal Objections of the late Irene Stolz⁶ to the captioned 2005-2006 Entercom license renewal applications filed by subsidiaries of Entercom Communications Corp. (Entercom) and granted those applications (2005-2006 Applications). On October 9, 2014 (Massachusetts stations), and March 20, 2015 (Washington and New York stations), the staff granted by Public Notice Entercom's captioned, unopposed, 2013-2014 license renewal applications for the stations (the 2013-2014 Applications).⁷ Stolz timely sought reconsideration of the staff grants of the 2005-2006 and 2013-2014 Applications. In the *Entercom Boston Reconsideration Decision*, the Bureau granted (to consider a matter omitted from its earlier action) and then otherwise dismissed Stolz' 2014 Petition on procedural grounds, finding that Stolz was not a party to the proceeding and had not demonstrated with particularity the manner in which its interests had been adversely affected by the grants. In the *Entercom Washington/Buffalo Reconsideration Decision*, the Bureau similarly dismissed the 2015 Petition on the same procedural grounds and also found that Stolz had failed to show good reason why it was not possible for it to have participated in the earlier stages in that proceeding regarding the 2013-2014 Applications.

3. On review, Stolz argues that: (1) the Bureau has an obligation under Sections 309(e) and 312(a)(2) of the Communications Act of 1934, as amended,⁸ to investigate the circumstances surrounding a contest held in 2007 at Entercom Sacramento, California, Station KDND(FM) (Sacramento Contest) and to determine whether Entercom possesses the basic qualifications to be a licensee;⁹ (2) the Commission's 1986 *Character Policy Statement*¹⁰ creates an exception to the general rule that a licensee's conduct at one station is not relevant to its qualifications to hold another authorization, if the conduct at issue "is so egregious as to shock the conscience and evoke almost universal approbation" and Entercom's conduct of the Sacramento Contest falls within that exception; (3) the death of a contestant

¹ Entercom License, LLC (Entercom) (formerly Entercom Boston License, LLC) opposed the March AFR on April 10, 2015. Stolz replied on April 23, 2015. Entercom also filed an Opposition to the July AFR on July 28, 2015, to which Stoltz replied on August 7, 2015.

² *Dennis J. Kelly, Esq., and Brian M. Madden, Esq.*, Letter, Ref. 1800B3-EAB (MB Feb. 19, 2015) (*Entercom Boston Reconsideration Decision*).

³ *Entercom Boston License, LLC*, Letter, Ref. 1800B3-JWR/AJR (MB Oct. 14, 2014) (*Entercom Boston Letter Decision*).

⁴ *Brian M. Madden, Esq.*, Letter, Ref. 1800B3-MPM (MB Jun. 17, 2015) (*Entercom Washington/Buffalo Reconsideration Decision*).

⁵ *Entercom License, LLC, and Entercom Buffalo License*, Ref. 1800B3-SS (MB Mar. 18, 2015) (*Entercom Washington/Buffalo Letter Decision*).

⁶ Mrs. Stolz passed away after she had filed the Informal Objections and, upon her death, her son Edward R. Stolz II was substituted as the objecting party in his capacity as the executor of her estate. See *Entercom Boston Letter Decision*, note 1.

⁷ See *Broadcast Actions*, Public Notice, Report No. 48345 (Oct. 15, 2014); *Broadcast Actions*, Public Notice, Report No. 48453 (Mar. 25, 2015).

⁸ 47 U.S.C. §§ 309(e), 312(a)(2).

⁹ March and July AFRs at 6-7.

¹⁰ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1204-05, n. 60 (1986) (*Character Policy Statement*).

following the Sacramento Contest demands that a full and fair hearing before an independent administrative law judge be held for all of Entercom's pending license renewal applications;¹¹ and (4) it is procedural error for the Commission to take "piecemeal action" when there remain pending several Entercom renewal applications.¹²

4. Upon review of the March AFR and July AFR and the entire record, we conclude that the Bureau properly dismissed the 2014 and 2015 Petitions on procedural grounds, as Stolz lacked standing to seek reconsideration and had failed to show with particularity how the grants of the 2005-2006 and 2013-14 Applications adversely affected its interests. The Bureau's dismissal of Stolz' 2015 Petition also was warranted because Stolz did not participate prior to the grant of the 2013-2014 Applications and provided no reason why it could not have done so. We note that this dismissal in no way diminishes the seriousness of the issues raised by the Sacramento Contest. These issues are addressed by our actions pertaining to the pending KDND(FM) license renewal applications.¹³

5. Accordingly, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Sections 1.115(c) and (g) of the Commission's Rules, 47 CFR §§ 1.115(c), (g), the March 26, 2015, and July 16, 2015, Applications for Review filed by the Estate of Irene M. Stolz, Edward R. Stolz II, Executor, ARE DISMISSED IN PART to the extent noted in footnote 12 and ARE OTHERWISE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹ *Id.* at 7, citing *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 397 (D.C. Cir. 1985).

¹² March and July AFRs at 7, citing *Jack O. Gross*, Initial Decision, 69 FCC 2d 178 (ALJ 1977). Stolz also raises three new issues on review. March and July AFRs at 7-9. In the July AFR it asserts that the Commission routinely imposes large civil forfeitures for recordkeeping and indecency violations, but it will "not lift a finger" to investigate Entercom's "reckless" broadcasting, which resulted in someone's death. In both the March and July AFRs, it contends that: (1) the dismissal of the Petition by the Bureau on procedural grounds is arbitrary and capricious and in conflict with *Press Broadcasting Co., v. FCC*, 59 F.3d 1365 (D.C. Cir. 1995); and (2) the refusal of the Bureau to investigate Entercom's complicity in the death of a contestant in the Sacramento Contest violates the requirement that the Commission not act arbitrarily and capriciously and that it act in accordance with the law, pursuant to 47 U.S.C. § 706(2)(A) of the Administrative Procedure Act. Section 1.115(c) prohibits parties from raising new arguments on review. *See* 47 CFR § 1.115(c). Accordingly, these arguments will be dismissed. *See also* n.13, *infra*.

¹³ *See Entercom License, LLC, Applications for Renewal of License for Station KDND(FM), Sacramento, California*, MB Docket No. 16-357, File Nos. BRH-20050728AUU and BRH-20130730ANM, Hearing Designation Order and Notice of Opportunity for Hearing, FCC 16-153 (rel. Oct. 27, 2016). We note that the language from footnote 60 of the *Character Policy Statement* on which Stolz relies is an exception to the general Commission policy, articulated therein, of refraining from taking any action on non-FCC misconduct prior to adjudication by another agency or court. *Character Policy Statement*, 102 FCC 2d 1204-05, para. 48. This exception does not, and cannot, override the statutory limitation that, in acting on a renewal application, the Commission is limited to consideration of the licensee's operation of the station for which license renewal is sought. *See* 47 U.S.C. § 309(k)(1) ("If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, *with respect to that station*, during the preceding term of its license. . .") (emphasis added). As such, we decline to grant the request that we designate the renewal applications for these other Entercom stations for hearing, and to grant Stolz intervenor status. *See* March and July AFRs at 9. We also note that, as demonstrated in the HDO, Stolz' contention in each AFR that the Commission has "refused" to investigate the Sacramento Contest is incorrect.