

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

In re Application of)
)
NATIONWIDE COMMUNICATIONS, INC.)
) File No. BRH-900913UC
)
For renewal of the license of)
KISW(FM), Seattle, Washington)

MEMORANDUM OPINION AND ORDER

Adopted: January 23, 1998

Released: February 6, 1998

By the Commission:

1. The Commission has before it an application for review filed by Vincent L. Hoffart, Sr. ("Hoffart") and related responsive pleadings. Hoffart requests review of an October 29, 1996 letter ruling by the Chief, Audio Services Division, Mass Media Bureau ("staff decision") affirming renewal of the license of station KISW(FM), Seattle, Washington. The staff dismissed Hoffart's pleadings, finding them an abuse of Commission processes. The staff determined, for example, that Hoffart was re-raising well-settled matters, as a means to cause delay and economic injury to a former employer.

Background

2. At the time of Hoffart's filing, Nationwide Communications, Inc. ("Nationwide") was the licensee of station KISW(FM).¹ Nationwide purchased the station in 1986 from Alexander Broadcasting Company, which, in turn, had purchased it from Kaye-Smith Enterprises ("Kaye-Smith"). Hoffart is a former employee of Kaye-Smith who, since his termination in the late 1970's, has contested the license renewals of Kaye-Smith stations many times. Most notably, Hoffart unsuccessfully challenged the KISW license renewal in 1982, in an attempt to become the permittee of a new Seattle station to replace station KISW. Over the past 20 years, the Commission and the courts have fully addressed, but generally rejected, Hoffart's various allegations. Kaye-Smith sold its broadcast stations in the 1980's and is no

¹ECI License Co., L.P. is the current licensee of KISW. The sale of KISW from Nationwide to ECI License Co., L.P., was consummated May 30, 1997.

longer a Commission licensee. However, Hoffart has continued to object to applications of former Kaye-Smith stations. In the present case, the staff determined that Hoffart's allegations regarding unauthorized use of a directional antenna had been specifically rejected in the Kaye-Smith case and that the basis upon which those arguments were rejected was equally applicable to Nationwide. See generally Kaye-Smith Enterprises, 98 FCC 2d 688, 706 (ALJ 1983) (lengthy subsequent history omitted).

Discussion

3. We now turn to the merits of Hoffart's argument that the staff erred in renewing KISW's license and in dismissing his Petition for Reconsideration. He bases his argument primarily on three alleged errors: (1) that the staff violated his First Amendment right of free speech when it indicated that it may impose sanctions against Hoffart for continued abuse of our processes; (2) that the staff failed to follow precedent because it did not impose a monetary forfeiture on or deny renewal of the KISW license for operating with an antenna not in compliance with its construction permit; and (3) that the staff's decision indicates a misrepresentation by Nationwide. For the reasons stated below, we deny the application for review.

4. In his application for review, Hoffart first requests the recusal of Reed Hundt, former chairman of the Commission, and James Quello, a former Commissioner, charging both with bias because each has a connection, albeit tenuous, to a related case decided in 1985 concerning Kaye-Smith. Dena Pictures, Inc. et al., FCC 85-192 (released April 19, 1985). Because both Hundt and Quello have left the Commission, the recusal issue is moot.

5. *Abuse of Process.* The staff decision stated that the Commission may impose sanctions upon Hoffart if he continues to file pleadings primarily for abusive purposes. The staff noted that Nationwide had specifically argued that such sanctions would be appropriate. Hoffart characterizes this as a "gag" by both Nationwide and the staff, attempting to violate his First Amendment rights to free speech and to petition the government. However, it is well settled that a government agency may place restrictions on participation to prevent abuse of its processes. Radio Carrollton, et al., 69 FCC 2d 1138, 1148-55 (1978). In considering challenges to pending applications, "the Commission need [not] allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests." United Church of Christ v. FCC, 359 F.2d 994, 1005 (1966). As the staff noted, this Commission has authorized its Bureaus to impose sanctions upon participants whose primary purpose is to abuse our processes. See Public Notice Commission Taking Tough Measures Against Frivolous Pleadings, 11 FCC Rcd 3030 (1996). Given our concern for free participation in FCC proceedings, however, we only consider the possibility of such sanctions in egregious cases where the abusive nature of the pleadings is clear. We believe this is such a case. Since losing his job with KISW in the 1970s, Hoffart has contested the renewal of Kaye-Smith stations (and stations previously owned by Kaye-Smith) many times, raising the same arguments repeatedly in an apparent attempt to delay proceedings, despite the staff's

clear, full and frank responses to Hoffart's many letters and pleadings. Such a use of our license renewal proceeding as a means to cause delay and economic injury to a principal of a former employer is an abuse of process. We agree with the staff that it should dismiss pleadings that appear to be primarily designed to cause harm or delay to Kaye-Smith, its principals, or its successors rather than to air legitimate, substantive objections relevant to the application proceeding in which they are filed. We also agree that further action, such as requiring Hoffart to obtain our prior permission to file documents based on a showing of public interest, would be appropriate if Hoffart continues to file abusive pleadings, and we warn Hoffart against doing so. See Martin-Trigona, 592 F.Supp. 1566, 1568 (D. Conn. 1984); 47 U.S.C. §503. John Cervase, 54 FCC 2d 1039 (1975). Furthermore, contrary to Hoffart's belief, there was nothing improper about Nationwide's raising the issue of potential sanctions. Accordingly, we reject Hoffart's argument that Nationwide should be sanctioned for "enticing" us to inform him of our policies against frivolous pleadings.

6. *Precedent.* The staff decision rejects Hoffart's argument that Nationwide operated a translator illegally by using a Gibson 3 collinear vertical dipole (omnidirectional) antenna rather than a Taco Y-51 5 element Yagi (directional) antenna. The argument was virtually identical to one Hoffart raised previously against his former employer in the Kaye-Smith proceeding, and which we found insignificant as to Kaye-Smith's qualifications. See Kaye-Smith Enterprises, 98 FCC 2d at 706. Hoffart argues that the staff decision conflicts with case precedent. In particular, Hoffart alleges that although KISW was operating with an unauthorized antenna, and although the Commission imposed monetary forfeitures in other cases involving construction at variance from that authorized, the staff failed to take any such action here. Hoffart specifically cites Equinox, Inc., 87 FCC 2d 1099 (1981) ("Equinox"), in which we assessed a \$20,000 forfeiture for willful and repeated violation of our rules against a station that operated at substantial variance from terms and conditions of its construction permit. He also cites RASA Communications Corp., 11 FCC Rcd 13243 (1996) ("RASA"), in which we assessed a \$7,500 forfeiture against a station that commenced operation from a tower site approximately 130 feet from the site specified in the construction permit and with an antenna at a lower elevation on the tower than originally specified.

7. The staff's decision was fully consistent with case precedent. Both Equinox and RASA rely on facts considerably more serious than those present here. The present case was not a matter of unauthorized construction, but a misspecification of an antenna in the translator license. Further, both Equinox and RASA involved imposition of a forfeiture, not denial of a license renewal application. Thus, neither case supports Hoffart's claim that we should deny KISW's license renewal.

8. *Misrepresentation.* Finally, Hoffart asserts that the staff's decision indicates that Nationwide misrepresented itself to the Commission and therefore lacks the character qualifications we require of our licensees. Hoffart makes this argument based upon the staff decision statement that "[a]s the station's license continued to identify the wrong antenna, Nationwide asked us to correct the license," which contradicts an earlier pleading in which

Nationwide stated that it had asked only for correction of the translator station's frequency and expiration date. Hoffart assumes that Nationwide must have lied in that earlier pleading in order for the contradiction to arise. However, it is the staff decision that contains a misstatement. That error did not result from any submission by the licensee or its counsel. The matter is correctly stated in the staff's initial decision on Hoffart's claim against Nationwide, which states:

In 1987, at the request of Nationwide's attorney, the Commission's Auxiliary Services Branch issued a corrected translator authorization specifying the correct expiration date. At that time, staff also took the opportunity to correct the antenna being used and its directivity. The authorization was later corrected again at Nationwide's request to delete the incorrect "99.6 MHz" language, leaving the correct channel number 260 (which corresponds to 99.9 MHz).

Letter from Larry D. Eads, Chief, Audio Services Division, Mass Media Bureau, to Vincent Hoffart, and Edward W. Hummers, Counsel for Nationwide Communications, Inc. (March 31, 1993), at 2. Accurate information is therefore clearly in the record, and the misstatement in the staff decision was neither material nor indicative of an attempt by Nationwide to misrepresent facts to us. For the aforementioned reasons, we find no grounds for questioning Nationwide's qualifications on any of the above issues. See Character Qualifications, Gen. Docket No. 81-500, 102 FCC 2d 1179 (1988) (subsequent history omitted).

9. Hoffart also raises numerous tangential matters in his application for review, including allegations that an Administrative Law Judge was coerced by President Ronald Reagan to favor Reagan's friends, Mr. and Mrs. Danny Kaye, part owners of the then-licensee of KISW-FM, over Hoffart in a hearing in 1983, and that the Chief of the Audio Services Division intimidated Hoffart in the staff decision by cautioning him not to file frivolous pleadings. We find these matters and other similar accusations directed at Commission employees without merit and will not discuss them individually. We have examined the staff decision and fully support the conclusion that Nationwide is qualified and that Hoffart's pleadings are abusive. We warn Hoffart that, in view of his past pattern of pleadings against companies related to his former employer, and the abuse demonstrated in the present case, we have directed the staff to dismiss any further abusive pleadings that Hoffart may file, such as those raising long settled matters or that are directed primarily at causing delay or harm to licensees for Hoffart's own private interests.

Ordering Clause

10. Accordingly, IT IS ORDERED, That, pursuant to Section 1.115(g) of the Commission's rules, Vincent L. Hoffart Sr.'s Application for Review IS DENIED and grant of the license renewal application of Nationwide Communications, Inc. for station KISW(FM), Seattle, Washington, (File No. BRH-900913UC) IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary