



Federal Communications Commission
Washington, D.C. 20554

April 27, 2012

In Reply Refer to:
1800B3-CK/ATS

Lauren A. Colby, Esq.
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113

Dennis J. Kelly, Esq.
P.O. Box 41177
Washington, DC 20018-0557

In re: WBVA(AM), Bayside, Virginia
Facility ID No. 84068
File No. BAL-20071119AIW

WVAB(AM), Virginia Beach, Virginia
Facility ID No. 57611
File No. BAL-20071119AIX

**Applications for
Assignment of Licenses**

Petition for Reconsideration

Dear Counsel:

This letter concerns the Petition for Reconsideration (“Petition”) filed by Ronald Cowan (“Cowan”) on April 21, 2008. The Petition seeks reconsideration of the March 21, 2008, letter decision (the “Letter Decision”)¹ granting the above-referenced application (the “Assignment Application”), for consent to the assignment of the licenses of Stations WVAB(AM), Virginia Beach, Virginia, and WBVA(AM), Bayside, Virginia (collectively, “Stations”), from R. Clinton Stackhouse Jr., Interim Trustee (in Bankruptcy) (“Stackhouse”) to Birch Broadcasting Corp. (“BBC”).² For the reasons set forth below, we grant the Petition in part and deny it in all other respects. We further admonish Stackhouse for his apparent willful violation of Section 73.3526(c) of the Commission’s rules (the “Rules”).³

Background. This is the latest chapter in the ongoing dispute regarding the Stations. At one time, both Stations were licensed to Cowan. However, Cowan’s assets, including the Stations’ licenses, were subsequently transferred to Stackhouse in his capacity as Cowan’s Chapter 7 bankruptcy Trustee. In his capacity as Trustee, Stackhouse applied for Commission approval to assign the Stations to BBC. The Assignment Application for the Stations was listed in a Public Notice on November 26, 2007.⁴ Cowan filed a Petition to Deny the Assignment Application on December 31, 2007, asserting, among other things, that he was denied access to the Stations’ public files by Stackhouse.⁵ The Letter Decision

¹ Letter to Lauren A. Colby, Esq., and Ronald W. Cowan, 23 FCC Rcd 4781 (MB 2008).

² Also before us is an Opposition to Petition for Reconsideration (“Opposition”) filed by BBC on April 25, 2008, and a Reply to Opposition to Petition for Reconsideration (“Reply”) filed by Cowan on May 2, 2008.

³ 47 C.F.R. §73.3526(c). Although BBC currently owns the above-referenced Stations, Stackhouse is still liable for violations which occurred during his former ownership of the Stations. See *First Media of Monterey, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 4589 ¶ 3 (1992).

⁴ Public Notice, *Broadcast Applications*, Report No. 26619 (Nov. 26, 2007) at 1.

⁵ Petition to Deny at 2.

dismissed Cowan's Petition to Deny as procedurally defective, but treating it as an informal objection pursuant to Section 73.3587 of the Rules,⁶ denied Cowan's allegations of public file Rule violations, finding that he failed to provide proper factual support. Specifically, it rejected his allegation that "the public file itself was denied access repeatedly" (sic), noting that Stackhouse had filed a declaration under penalty of perjury stating that "I never denied him [Cowan] access to the Public Inspection Files." Accordingly, the Letter Decision dismissed the Petition to Deny on procedural grounds, denied it substantively, and granted the Assignment Application.⁷

On April 21, 2008, Cowan filed the Petition, arguing that the Letter Decision (1) improperly characterized his Petition to Deny as an informal objection, and (2) failed to consider evidence in support of his assertion that Stackhouse had violated the public file access rules.⁸

Discussion. Section 1.106(c) of the Rules and established case law provide that, "reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."⁹

Cowan first asserts that the Letter Decision improperly characterized his pleading as an informal objection rather than a Petition to Deny.¹⁰ Specifically, Cowan states that "he attempted to timely file his Petition to Deny, but... was prevented from filing the document that day" as a result of circumstances beyond his control.¹¹ Section 73.3584(a) of the Rules states, "In the case of applications for transfers and assignments of construction permits or station licenses, Petitions to Deny must be filed no later than 30 days after issuance of a public notice of the acceptance for filing of the application."¹² In this case, Cowan filed his Petition to Deny on December 31, 2007, five days after the deadline for filing petitions to deny had passed. Because Cowan failed to timely file his pleading in accordance with the Rules, the Letter Decision properly dismissed his pleading as an untimely filed Petition to Deny. Moreover, because the Letter Decision treated the late-filed Petition to Deny as an informal objection and considered the merits of Cowan's claims, the characterization of the pleading is immaterial.¹³

Next, Cowan contends that the Letter Decision failed to consider evidence in support of his assertion that Stackhouse denied him access to the Stations' public files, and further claims that a "full and fair hearing before an independent administrative law judge" to address Stackhouse's qualifications as a licensee is required.¹⁴ Specifically, Cowan argues that the Letter Decision failed to take into account

⁶ 47 C.F.R. §73.3587.

⁷ *Letter to Lauren A. Colby, Esq., and Ronald W. Cowan*, 23 FCC Rcd 4781 (MB 2008).

⁸ Petition at 2, 4.

⁹ 47 C.F.R. §1.106(c); *see also National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

¹⁰ Petition at 2. Cowan further expounds on this claim in his Reply, stating, "Mr. Cowan was denied a fair shot at filing his Petition to Deny. The Audio Division is therefore compelled to revisit its Order and treat Mr. Cowan's pleading as a timely filed Petition to Deny." Reply at 3.

¹¹ Petition at 2. Specifically, Cowan claims that when he arrived at the 236 Massachusetts Avenue NE filing location on the date the pleading was due, the door was locked during normal operating hours, preventing him from timely filing his pleading. *Id.*

¹² 47 C.F.R. § 73.3584(a).

¹³ 47 C.F.R. §73.3587. Informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested. *See Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986).

¹⁴ Petition at 3.

his “nine page declaration demonstrating [public file] rule violations,” as well as Exhibits A and B of his reply (“Underlying Reply/Exhibits”).¹⁵ Cowan further states that Stackhouse’s denial of any public file violations in BBC’s Opposition to the Petition to Deny (“Underlying Opposition”) constitutes a “material misrepresentation of fact.”¹⁶ In its Opposition, BBC claims that “Cowan never submitted and still has not submitted any facts” to support his allegations.¹⁷ It asserts that “there are proper procedures which must be followed in order to demand and receive access to the public file” and that “Cowan never showed that he complied with any of these procedures.”¹⁸

As an initial matter, we note that the Letter Decision did not acknowledge the Underlying Reply/Exhibits and as such, it is unclear whether the Commission considered this pleading. Accordingly, to develop a complete record, we grant partial reconsideration and consider them here.¹⁹ In the Underlying Reply/Exhibits, Cowan provided unauthenticated copies of several emails in which he requested to view the public files, and Stackhouse’s email responses.²⁰ The emails indicate that, on July 6, 2006, Cowan requested access to the public files. Cowan sent another email the following day requesting access to the public files. Stackhouse responded, stating that “due to the tone and content of your prior emails to me, I will have to think about physical access to the files....” That afternoon, Stackhouse sent another response, stating that “I will not make the files available today based upon unreasonably short notice and the content of several of your prior emails.” On July 10, 2006, Stackhouse emailed Cowan stating that he would allow him to access the public files for “a reasonable period of time.”

In light of this evidence, we find that Cowan was willfully²¹ denied access to the public files, in violation of Section 73.3526(c) of the Rules.²² Reasonable access to a broadcast station’s public inspection files serves the important purpose of facilitating citizen monitoring of a station’s operations and public interest performance and fostering community involvement with local stations. This in turn helps to ensure that stations are responsive to the needs and interests of their local communities.²³ A public file must be available for public inspection at any time during regular business hours and a licensee may not require that a member of the public make an appointment in advance or return at another time to inspect the public file.²⁴ However, from the record, this appears to be a single isolated incident which

¹⁵ *Id.* at 2-3.

¹⁶ Petition at 3.

¹⁷ Opposition at 2.

¹⁸ *Id.*

¹⁹ Notwithstanding Cowan’s claim that we failed to consider his Underlying Reply/Exhibits, because the Commission has the discretion to review additional evidence provided in a reply pleading as a supplement to the original petition, we will do so here. *See Frances C. Gaguine & Bernice Schwartz*, Memorandum Opinion and Order, 6 FCC2d 474 (1967).

²⁰ Underlying Reply/Exhibits at Exhibit B.

²¹ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. §312(f)(1).

²² 47 C.F.R. §73.3526(c).

²³ *Review of the Commission’s Rules Regarding Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15700 (1998).

²⁴ 47 C.F.R. §73.3527(c); *see also Availability of Locally Maintained Records for Inspection by Members of the Public*, Public Notice, 13 FCC Rcd 17959 (1998).

only resulted in a temporary denial of access to the Stations' public files. Therefore, we disagree with Cowan's assertion that he was "repeatedly" denied access to the public files.²⁵


After reviewing the record before us, we conclude that Stackhouse willfully violated Section 73.3526(c) of the Rules by failing to make available immediately its public files when requested by Cowan. However, we disagree with Cowan's assertion that Stackhouse's denial of any public file violations in BBC's Underlying Opposition constitutes a material misrepresentation of fact. BBC's assertions in its Opposition, *i.e.*, its claim that Cowan failed to comply with "proper procedures" to gain access to the public files, indicate that if anything, Stackhouse apparently misunderstood the public file Rule.²⁶ As discussed above, members of the public are not required to make an appointment in advance to access the public file. Accordingly, after consideration of the facts and pertinent precedent,²⁷ we do not believe that a hearing is appropriate for the public file violation in question or on Stackhouse's qualification as a Commission licensee. We nevertheless admonish Stackhouse for his public file violation.

Conclusion/Actions. In light of the foregoing, we find that R. Clinton Stackhouse Jr. has not fully complied with Section 73.3526(c) of the Rules. Nevertheless, we believe that admonishment, rather than a hearing, is appropriate for the violation in this case.

Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Ronald Cowan IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

IT IS FURTHER ORDERED that R. Clinton Stackhouse Jr., former licensee of WVAB(AM), Virginia Beach, Virginia, and WBVA(AM), Bayside, Virginia IS ADMONISHED for his apparent willful violation of 47 C.F.R. §73.3526(c) of the Commission's Rules.

Sincerely,


Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: R. Clinton Stackhouse Jr., Esq.
Stackhouse, Nexsen and Turrietta, PLLC
555 East Main Street, Suite 1600
Norfolk, VA 23510-3640

²⁵ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. §312(f)(2).

²⁶ The Commission has recognized that "misrepresentation is a false statement of fact made with intent to deceive the Commission." *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 ¶ 19 (2004).

²⁷ See, e.g., *Tabback Broadcasting Co.*, Memorandum Opinion and Order, 15 FCC Rcd 11899, 11900 (2000) (finding that staff properly exercised its discretion to admonish licensee for public file rule violation). We find the subject action factually distinguishable from the recent Enforcement Bureau decision, *Gaston College*, Forfeiture Order, 25 FCC Rcd 982 (EB 2010) (issuing an \$8,000 forfeiture to licensee for violation of public file rule where petitioner twice visited station and was refused access to its public files, was told he could inspect the files only after making an appointment with licensee's attorney, and was threatened by licensee with arrest if he remained on the premises). Here, Cowan did not attempt, nor was he actually prevented from, physically inspecting the public files, the refusal was a one-time incident over email, and Cowan was never threatened by Stackhouse.