



Federal Communications Commission
Washington, D.C. 20554

September 6, 2012

In Reply Refer to:
1800B3-MM
Released: Sept. 6, 2012

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In re: **Entercom Portland License, LLC**
KRSK(FM), Molalla, Oregon
Facility ID No. 68213
File No. BRH-20051003BFH

Entercom Portland License, LLC (DE)
KGON(FM), Portland, Oregon
Facility ID No. 2432
File No. BRH-20051003BFW

Entercom Wilkes-Barre Scranton, LLC
WKRZ(FM), Freeland, Pennsylvania
Facility ID No. 34379
File No. BRN-20060403BPW

WKRF(FM), Tobyhanna, Pennsylvania
Facility ID No. 14643
File No. BRN-20060403BQE

Entercom Sacramento License, LLC
KCTC(AM), Sacramento, California
Facility ID No. 67848
File No. BR-20050728AUX

KKDO(FM), Fair Oaks, California
Facility ID No. 6810

Applications for Renewal of License

**Informal Objections
Petition to Deny**

Dear Sirs:

We have before us the applications of the following subsidiaries of Entercom Communications Corporation ("Entercom"): Entercom Portland License, LLC, ("Entercom Portland") for renewal of license for station KRSK(FM), Molalla, Oregon; Entercom Portland License, LLC(DE) ("Entercom Portland (DE)") for renewal of license for station KGON(FM), Portland, Oregon; Entercom Wilkes-Barre Scranton, LLC ("Entercom Wilkes-Barre"), for renewal of license for station WKRF(FM), Freeland, Pennsylvania and WKRF(FM), Tobyhanna, Pennsylvania; Entercom Sacramento License, LLC ("Entercom Sacramento"), for renewal of licenses for stations KCTC(AM), Sacramento, California and KKDO(FM), Fair Oaks, California (collectively, "Applications"). We also have before us: (1) two Informal Objections filed by Irene M. Stolz and Edward R. Stolz ("Stolz"), as Executor for the Estate of Irene M. Stolz ("Objections");¹ and (2) a Petition to Deny the Entercom Sacramento applications listed above, filed by Irene Stolz on November 1, 2005 ("Petition"); and (3) related responsive pleadings.² For the reasons set forth below, we deny the Objections and the Petition and grant the Applications.

Background. Stolz filed the Petition against the Entercom Sacramento renewal applications; the Objections incorporate by reference the Petition's allegations. The Petition avers that the Applications should not be granted because Entercom has shown a "wanton disregard for the FCC's rules" as evidenced by: (a) Entercom's violation of the multiple ownership rules in the Sacramento market by its "unlawful" acquisition of Station KWOD(FM), Sacramento;³ (b) a "veritable cornucopia of Notices of Apparent Liability and Letters of Inquiry pertaining to FCC rule violations" issued to Entercom regarding its stations in Sacramento, Kansas City, and Seattle;⁴ and (c) Entercom's role as a target of

¹ Irene M. Stolz, on January 23, 2006, objected to the Entercom Portland and Entercom Portland (DE) applications. Upon her death, Edward R. Stolz, II, was substituted as the petitioner in his capacity as the executor of Ms. Stolz's estate. He filed the second objection on June 30, 2006, against Entercom Wilkes-Barre and Entercom Sacramento.

² Entercom filed an Opposition to Petition to Deny on December 1, 2005, to which Stolz replied on December 21, 2005. On June 20, 2006, Stolz filed an "Erratum to Informal Objection to License Renewal Applications." Entercom filed a Motion to Dismiss on June 30, 2006. Stolz filed an Opposition to Motion to Dismiss on July 20, 2006, to which Entercom replied on August 1, 2006. Entercom's "Motion to Dismiss" is an unauthorized filing pursuant to Section 1.45 of the Commission's rules. See, e.g., *New Life Broadcasting*, Letter, 25 FCC Rcd 7293, 7294 n.3 (MB 2010) (declining to consider unauthorized pleadings pursuant to Section 1.45 of the Rules). Accordingly, we dismiss it. Lastly, counsel for Stolz filed a Notice of Withdrawal of Counsel on October 1, 2007.

³ Petition at 5-6.

⁴ Petition at 9-12, Objection at 3. Stolz cites *Entercom Sacramento License, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 20129 (2004), in which a \$55,000 Notice of Apparent Liability was issued to station KXRQ(FM), Sacramento, for broadcasting indecent programming. Stolz also references *Entercom Kansas City License, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 25011 (2004) ("*Kansas City NAL*"), in which the Commission issued a Notice of Apparent Liability for indecent programming aired on stations KQRC-FM, Leavenworth, Kansas, and KFH(AM), Wichita, Kansas ("*Wichita NAL*"), and Entercom Seattle License, LLC, (footnote continued)

“payola” investigations by the New York State Attorney General and the Commission.⁵ Stolz asks that, at a minimum, consideration of the Applications be deferred until the completion of the payola proceedings, and argues that the “aggregate” of violations by Entercom and its subsidiaries “creates a discernable pattern of abuse under the Communications Act of 1934, as amended (“Act”) and the Commission’s Rules (“Rules”) requiring designation in accordance with Section 309(k) of the Act.⁶

In response to Stolz’s allegations, Entercom states that Stolz lacks standing to file the Petition. Secondly, it claims that Section 309(k)(1) of the Act⁷ limits the matters considered during a license renewal proceeding to the licensee’s actions with respect to the specific station being evaluated for license renewal. Thus, Commission actions taken against other Entercom stations have no bearing on the particular Entercom license renewal applications under consideration.⁸ It also states that the *Seattle Forfeiture Order*, the *Kansas City NAL* and the *Wichita NAL* are each a non-final order, and, accordingly, the Commission is prohibited under Section 504(c) of the Act from relying on these decisions to the prejudice of Entercom. Entercom also claims that Stolz’s payola allegations are moot as a result of a Consent Decree between the Commission and Entercom.⁹ Finally, Entercom avers that Stolz has received the relief requested, *i.e.*, that action on the Applications be deferred until resolution of the payola investigations.¹⁰

Discussion. Procedural Issue. Under Section 309(d) of the Act,¹¹ a party has standing to file a petition to deny if grant of an application would result in, or be reasonably likely to result in, some injury

Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 1672 (EB 2002), Forfeiture Order, 17 FCC Rcd 18347 (EB 2002) (“*Seattle Forfeiture Order*”), *aff’d*, Memorandum Opinion and Order, 19 FCC Rcd 9069 (2004), in which the Commission issued a \$12,000 forfeiture to Station KNDD(FM), Seattle, Washington for indecent programming. Stolz argues that Entercom has demonstrated a pattern of indecency violations that evidence a “scandalous and callous disregard for the public interest.” Petition at 13. Given the “cumulative impact” of these violations, and the fact that Entercom has not learned from the first, second, or third time it was fined for indecent programming, Stolz argues that Entercom’s stations do not serve the public interest. *Id.* at 13-14.

⁵ Petition at 12-13, Objection at 4.

⁶ Objection at 4, citing 47 U.S.C. § 309(k).

⁷ 47 U.S.C. § 309(k)(1).

⁸ See Opposition at 4-5. Entercom also states that, in any event, the four indecency cases have been fully investigated by the Commission and the broadcasts were not found to raise an issue as to Entercom’s qualifications to remain a licensee; rather, the Commission determined that a monetary forfeiture was the appropriate sanction in each case. *Id.* at 6. Entercom notes that, well after the release of the NALs and the Forfeiture Order cited by Stolz, the Commission has granted applications for renewal of license for other Entercom stations, including those in Kansas City and Wichita (*see, e.g.*, KMBZ(AM), Kansas City, Missouri, File No. BR-20041001AMI, granted on January 21, 2005), applications for assignment of Stations WVEI-FM, Boston, and WKAF(FM), Brockton, Massachusetts, to Entercom (File No. BALH-20060823ACP, granted on December 27, 2006. See *Letter to Radio One Licenses, LLC and Entercom Boston License, LLC*, 21 FCC Rcd 14988 (MB 2006)). The grants of the renewal and assignment applications, states Entercom, are dispositive of the claims regarding Entercom’s basic qualifications to remain a Commission licensee. *Id.*

⁹ Opposition at 6.

¹⁰ *Id.*

¹¹ 47 U.S.C. § 309(d).

of a direct, tangible or substantial nature.¹² The Commission also accords party-in-interest status to a petitioner who demonstrates either that he/she resides in the service area of the station that is the subject of the petition or that he/she listens to or views the station regularly and that such listening or viewing is not the result of transient contacts with the station.¹³ To do so, the petitioner must provide an affidavit or declaration that establishes such standing.¹⁴

Stolz argues that the alleged “improper grant”¹⁵ of an assignment application for station KWOD(FM), Sacramento, California qualifies as an “injury of direct tangible or substantial nature.”¹⁶ Section 309(k)(1) provides that we are to grant the renewal application for a broadcast station if, upon consideration of the application and pleadings, we find that *with respect to that station*, it has acted in accordance with the standards set forth in our Rules and the Act. The plain language and structure of this section establish that the scope of our review is limited to the applications in the renewal proceeding. Congress has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought.¹⁷ Accordingly, Stolz does not have standing on this basis.

Stolz alleges that he should be accorded party in interest status because he resides in the Sacramento area and is affected by the programming on all the stations listed in the Petition.¹⁸ To establish such standing, he must establish that he listens to the station regularly and his contacts to the station are not transient.¹⁹ In an affidavit, Stolz states he is merely “a periodic listener” to those stations and fails to prove he lives within the broadcast contour of any of the listed stations. On both counts, we find his standing argument fails. Therefore, we find that Stolz lacks standing to file a petition to deny in this proceeding. Nevertheless, we will consider the Petition as an informal objection under Section 73.3587 of the Rules.²⁰

Objections. Informal objections must, pursuant to Section 309(e) of the Act,²¹ provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that

¹² See, e.g., *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC2d 696 (1978) (“*Telesis*”).

¹³ See *Tabback Broadcasting Company*, Memorandum Opinion and Order, 15 FCC Rcd 11899, 11900 n. 3 (2000), and *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999).

¹⁴ See *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89 (1980); see also *Infinity Broadcasting Corp. of California*, Memorandum Opinion and Order, 10 FCC Rcd 9504 (1995); *Tabback Broadcasting Company*, *supra*, and *Niles Broadcasting Company*, Memorandum Opinion and Order, 7 FCC Rcd 5959 (1992).

¹⁵ Petition at 3,

¹⁶ See, e.g., *Telesis*, *supra*, note 12. See also *Teleprompter Corp.*, 87 FCC 2d 531, 537 (1989), *aff'd*, 89 F.C.C. 417 (1982).

¹⁷ *Sagittarius Broadcasting Corp.*, Memorandum Order & Opinion, 18 FCC Rcd 22551, 22555 (2003).

¹⁸ Petition at 2.

¹⁹ *WHYY, Inc.*, Letter, 22 FCC Rcd 18635, 18635-6 (2007) (denying petition to deny and granting renewal for station WHYY-FM, Philadelphia, Pennsylvania).

²⁰ 47 C.F.R. § 73.3587.

²¹ 47 U.S.C. § 309(e).

grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act,²² which governs our evaluation of an application for license renewal.

Violations of Multiple Ownership Rules and Commission Rule Violations. Stolz claims that Entercom violated the multiple ownership rules in the Sacramento market by its “unlawful” acquisition of Station KWOD(FM), Sacramento.²³ The Petition also notes that Entercom has accrued a “veritable cornucopia of Notices of Apparent Liability and Letters of Inquiry pertaining to FCC rule violations” regarding its stations in Sacramento, Kansas City, and Seattle.²⁴ As stated above, for renewal purposes, Section 309(k)(1) of the Act limits the scope of our review to the station for which license renewal is being considered. The alleged multiple ownership violation involves station KWOD(FM), a renewal application not addressed here. Similarly, the alleged Commission rule violations involve stations other than those referenced above. Accordingly, we will not address these allegations.

Payola Investigation. The Objections claim that Entercom is under investigation by the New York State Attorney General and the Commission for alleged “play-for-pay” conduct.²⁵ Stolz’s allegations regarding Entercom’s participation in payola are barred from consideration by the terms of a consent decree (“Consent Decree”) entered into by the Commission and Entercom.²⁶ By the terms of the Consent Decree, Entercom agreed to undertake certain compliance measures and to pay the United States Treasury the sum of \$4,000,000 in consideration for the Commission terminating all investigations, and dismissing, with prejudice, pending payola complaints against Entercom subsidiaries. In addition, the Commission agreed to refrain from taking any action against Entercom or any future application -- including renewal applications -- to which Entercom is a party, based in whole or in part on “alleging violation by any [Entercom] Station of the Sponsorship Identification Laws with respect to any broadcast occurring prior to the Effective Date.”²⁷ The Effective Date of the Consent Decree is April 13, 2007, the date of its public release.²⁸ The Objection was filed before the Effective Date of the Consent Decree. Accordingly, Stolz’s payola allegations are barred from consideration in connection with the Applications. Furthermore, as noted by Entercom, Stolz received the relief requested. Consideration of the Applications was, in fact, deferred until after resolution of the payola investigation.

Conclusion with Respect to the Objections. For the foregoing reasons, we find that Stolz has failed to raise a substantial and material question of fact calling for further inquiry regarding the propriety

²² 47 U.S.C. § 309(k). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²³ Petition at 5-6.

²⁴ Petition at 9-12, Objection at 3.

²⁵ Payola is a violation of the sponsorship identification requirements, codified at 47 U.S.C. §§ 317 and 508, and 47 C.F.R. § 73.1212. These laws requires that employees of broadcast stations, program producers, program suppliers and others who have accepted or agreed to receive payments, services, or other valuable consideration for airing material must disclose this fact. Disclosure provides broadcasters the information they need to let their audiences know if material was paid for, and by whom.

²⁶ *Entercom Communications Corp.*, Order, 22 FCC Rcd 7910 (2007).

²⁷ Consent Decree, ¶ 8.

²⁸ *Id.* at ¶ 2(i).

of granting the above-captioned license renewal applications. We therefore deny the Objections.

Conclusion/Actions. We have evaluated the Applications pursuant to Section 309(k) of the Act,²⁹ and we find that the above-captioned stations have served the public interest, convenience, and necessity during the subject license term. Moreover, we find that for these stations, there have been no serious violations of the Act or the Rules, nor have there been violations of the Act or the Rules by Entercom Portland, Entercom Portland (DE), Entercom Wilkes-Barre, or Entercom Sacramento which, taken together, would constitute a pattern of abuse.

ACCORDINGLY, IT IS ORDERED, that the Informal Objections filed on January 23, 2006, Irene M. Stolz and June 30, 2006, by Edward Stolz, as executor of Irene Stolz's estate, ARE DENIED.

IT IS FURTHER ORDERED, that the Petition to Deny filed by Irene M. Stolz on November 1, 2005, IS DENIED.

IT IS FURTHER ORDERED, that pursuant to Section 309(k) of the Act,³⁰ that the referenced applications, (File No. BRH-20051003BFH, BRH-20050728ATT, BR-20050728AUX, BRN-20060403BQE, BRN-20060403BPW, BRH-20051003BFW) ARE GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

²⁹ 47 U.S.C. § 309(k).

³⁰ *Id.*