



Federal Communications Commission
Washington, D.C. 20554

November 28, 2012

In Reply Refer to: 1800B3-VM

Ms. Myra C. Waddell
2904 Summerfield Road
Selma, AL 36701

Peter Gutmann, Esq.
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1200 19th Street N.W., Fifth Floor
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Re: WBFZ(FM), Selma, AL
Imani Communications Corporation
Facility ID No. 81739
File Nos. BRH-20111201RAP
BRH-20120418AAD
BELSTA-20121003ABN

Dear Ms. Waddell and Mr. Gutmann:

The staff has under consideration (1) a Petition for Reconsideration of Termination of Operating Authority and Call Sign (“Petition”),¹ (2) the referenced applications of Imani Communications Corporation (“Licensee”) for renewal of license for Station WBFZ(FM), Selma, Alabama (“Station”), (3) an Informal Objection to the Station’s renewal application filed by Ms. Waddell on May 21, 2012, raising issues regarding the content of the Station’s broadcasts, including false statements about her character, and (4) the referenced request for an extension of Special Temporary Authority (“STA”) to operate pending consideration of its renewal application (“STA Extension Request”).

For the reasons set forth below, we grant the Petition, deem filed the December 1, 2011, renewal application, dismiss as moot the April 18, 2012, renewal application and STA Extension Request, and assess Licensee a 25 percent late-fee penalty charge. Furthermore, we deny Ms. Waddell’s Informal Objection, grant the December 1, 2011, renewal application, contingent on the timely payment of the requisite penalty, and reinstate the Station’s call sign.

Discussion. Timing of filing. Section 73.3539(a) of the Commission’s Rules (“Rules”) requires that applications for renewal of license for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”² An application for renewal of WBFZ(FM)’s license should have been filed by December 1, 2011. No such application was successfully filed, and the Station’s license expired on April 1, 2012. Accordingly, on

¹ We note that the Petition for Reconsideration incorrectly referred to the Station’s call sign as WFBZ, and that it referenced the wrong Facility ID number. The correct call sign and Facility ID numbers are as referenced here.

² 47 C.F.R. § 73.3539(a).

authority to operate the Station was terminated; and (2) the Station's call letters were deleted from the Commission's data base. Licensee was advised that any further operation of the Station was unauthorized and must cease immediately.³

On April 18, 2012, Licensee filed a license renewal application for WBFZ(FM) and an STA request to continue operations pending consideration of the untimely WBFZ(FM) renewal application.⁴ The staff granted the STA Request on April 19, 2012, and it was to expire on October 16, 2012.⁵ Licensee timely filed a request for extension of the STA on October 3, 2012, which remains pending.⁶

In its Petition for Reconsideration, Licensee explains that it attempted to timely file the license renewal application for WBFZ(FM), but did not submit the requisite filing fee with the application. Therefore, the application was never accepted for filing or processing.⁷ Licensee states that it has now properly filed a second license renewal application – with the appropriate filing fee – and the STA Request, as noted above.

We have reviewed the record in this case and the Commission's data bases, and we find that the Licensee did in fact tender a license renewal application for WBFZ(FM) on December 1, 2011, but failed to pay the requisite filing fee. Section 1.1116(b) of the Rules⁸ sets forth the procedures for processing applications submitted without required fees. Specifically, a filer is billed the fee amount due plus a 25 percent penalty if the application is inadvertently forwarded to Commission staff for substantive review and the discrepancy is not discovered until after 30 calendar days from receipt of the filing. Section 1.1116(b) antedates electronic application filing, when fee processing and substantive review were performed by separate Commission staff. Thus, under current electronic application filing procedures, the December 1, 2011, submission was never "forwarded to Commission staff for substantive review." Because Section 1.1116(b), both as written and as originally conceived, provides that the Commission's recourse, once 30 days have elapsed from the date an application is submitted with no fee, is to retroactively bill the applicant and impose the 25 percent penalty,⁹ we will do so here.

³ *Letter to Imani Communications Corporation* (Chief, Audio Division, Media Bureau, Apr. 6, 2012).

⁴ See File No. BLSTA-20120418AAF ("STA Request").

⁵ *Letter to Mr. Peter Gutmann, Esq.*, Ref. 1800B3 (Chief, Audio Division, Media Bureau, Apr. 19, 2012).

⁶ See File No. BELSTA-20121003ABN.

⁷ CDBS assigned this submission the number "20111201RAP." The filing fee for license renewal applications for commercial FM stations is \$175.00. See 47 C.F.R. § 1.1104.

⁸ 47 C.F.R. § 1.1116(b).

⁹ See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, Report and Order, 2 FCC Rcd 947, 957, *supplemental order*, 2 FCC Rcd 1882 (1987), *recon. granted in part*, 3 FCC Rcd 5987 (1988), *aff'd sub nom. Brown v. FCC*, 888 F.2d 898 (D.C. Cir. 1989) ("On further review, we believe that a clearer demarcation point is necessary to avoid industry confusion and uncertainty as to the consequences of an insufficient fee payment. Generally, when applications are received, tracking information is put into a data base. Although some bureaus and offices may enter data fast than others [sic], the process generally takes approximately 30 days. During this same 30 day period we will expect bureau and office staff to take a second review of the fee and enter identifying codes into the fee system. Thus, this timeframe allows the Commission to complete its initial review of fees and return unprocessable applications before authorizations are granted. Therefore, fee underpayments identified by Commission staff in 30 calendar days or less from the time of receipt of the application at the Commission or Treasury lockbox bank will result in dismissal of the application and its return to the applicant. . . . Underpayments identified after this time will result in a bill to the applicant that includes a penalty charge of 25 percent of the amount due."). See also *Leon F. Petterson*, Letter, 22 FCC Rcd 14021 (MB 2007) (after 30 days, recourse when application is submitted without appropriate filing fee is to bill the applicant retroactively for a 25% penalty).

Informal Objection. Both petitions to deny and informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (“Act”), provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act,¹⁰ which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission’s Rules (“Rules”); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹¹ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹²

In her objection, Ms. Waddell states that the Station aired false statements concerning her and has also distorted the news concerning the community of Selma. She is concerned that the Station “brings out ‘the worst’ in their listeners,” and believes that the Station’s broadcasts are racially divisive and against the best interests of the community.

The role of the Commission in overseeing program content is limited. The First Amendment to the United States Constitution and Section 326 of the Act¹³ prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights. The Commission does regulate broadcast content where federal statutes direct it to do so. For example, the Commission enforces the statutory prohibition on the broadcast of obscene, indecent and profane material contained in 18 U.S.C. § 1464. However, it will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.¹⁴ A licensee has broad discretion – based on its right to free speech -- to choose, in good faith, the programming that it believes serves the needs and interests of the members of its audience.¹⁵ We will intervene in programming matters only if a licensee abuses that discretion.¹⁶ Ms. Waddell has not demonstrated that the Station has done so here. Moreover, allegations of defamation are outside the Commission’s jurisdiction. “Such allegations are properly the subject of private defamation actions

¹⁰ 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).

¹¹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹³ 47 U.S.C. §326.

¹⁴ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

¹⁵ See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) (“*Philadelphia Station License Renewals*”), citing *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1082 (1972), and *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted).

¹⁶ *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401.

[under state law], not of Commission licensing proceedings.”¹⁷ Accordingly, we have no legal basis to take action based on Ms. Waddell’s allegations of false and distorted programming aired on the Station.

Conclusion/Actions. For the foregoing reasons, we deny the Informal Objection. We have evaluated the renewal application pursuant to Section 309(k) of the Act,¹⁸ and we find that the Station has served the public interest, convenience, and necessity during the subject license term. Moreover, we find that there have been no serious violations of the Act or the Rules involving the Station, or violations by the Licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse.

As discussed above, the \$175.00 fee required for a license renewal application was not submitted with the December 1, 2012, renewal application. Accordingly, pursuant to Section 1.1116(b) of the Rules, Licensee will be assessed a penalty charge equal to 25 percent of the filing fee. Therefore, Licensee will be billed a total of \$43.75 under separate cover.

Accordingly, pursuant to Section 309(k) of the Communications Act of 1934, as amended, IT IS ORDERED, that the license renewal application of Imani Communications Corporation for Station WBFZ(FM), Selma, Alabama, filed on December 1, 2011 (File No. BRH-20111201RAP), IS DEEMED FILED.

IT IS FURTHER ORDERED, that the license renewal application filed on April 18, 2012 (File No. BRH-20120418AAD) and the request for extension of STA filed on October 3, 2012 (File No. BELSTA-20121003ABN) ARE DISMISSED AS MOOT.

IT IS FURTHER ORDERED, that the call sign WBFZ(FM) IS REINSTATED. IT IS FURTHER ORDERED, that the December 1, 2011, license renewal application (File No. BRH-20111201RAP) IS GRANTED contingent on timely payment of the assessed penalty charge and IS SUBJECT to rescission for failure to make a timely payment.¹⁹

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Imani Communications Corporation

¹⁷ *Jacor Broadcasting of Tampa Bay, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1826 (MB 1992) (citing *Anti-Defamation League of B'nai B'rith*, Memorandum Opinion, 4 FCC 2d 190, 191 (1966)). See also *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (subsequent history omitted) (narrowing the range of non-FCC related misconduct to be considered when assessing an applicant’s character qualifications).

¹⁸ 47 U.S.C. § 309(k).

¹⁹ See 47 C.F.R. § 1.1116(b) (“Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission”).