

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

In the Matter of)	
)	
Emmis Radio License, LLC)	
)	
License Renewal Applications of)	
Station WFNI(AM)	)	File No. BR-20040401AOH
Indianapolis, Indiana	)	Facility I.D. No. 19521
)	
Station WLHK(FM)	)	File No. BRH-20040401ARD
Shelbyville, Indiana	)	Facility ID No. 19522
)	
Station WYXB(FM)	)	File No. BRH-20040401AOL
Indianapolis, Indiana	)	Facility ID No. 51432
)	
Station WWVR(FM)	)	File No. BRH-20040401AJ0
West Terre Haute, Indiana	)	Facility ID No. 68824
)	
Station WTHI-FM	)	File No. BRH-20040401AJH
Terre Haute, Indiana	)	Facility ID No. 70652
)	
and)	
)	
Merlin Media License, LLC)	
)	
Station WKQX(FM)	)	File Nos. BRH-20040802AQH,
Chicago, Illinois	)	BRH-20120801AJU
	)	Facility ID No. 19525

MEMORANDUM OPINION AND ORDER

Adopted: March 7, 2014

Released: March 7, 2014

By the Commission:

1. The Commission has before it two Applications for Review (collectively, “AFRs”) – the first filed by David E. Smith (“Smith”) on February 17, 2009 (“February AFR”),¹ and the second filed by Smith, together with Peter LaBarbera, Kathy Valente, Illinois Family Institute, and Illinois Chapter of the Concerned Women for America (collectively, “Petitioners”) on November 26, 2010 (“November AFR”).² In the AFRs, Smith and Petitioners seek review of two Media Bureau (“Bureau”) decisions granting the captioned license renewal applications filed by Emmis Radio License, LLC (“Emmis”), for Stations WFNI(AM) (formerly WIBC(AM)), Indianapolis, Indiana; WLHK(FM) (formerly WENS(FM)), Shelbyville, Indiana; WYXB(FM), Indianapolis, Indiana; WWVR(FM), West Terre Haute, Indiana; and

¹ Emmis filed an Opposition to the February AFR on March 4, 2009. Smith filed a Reply on March 18, 2009.

² Emmis filed an Opposition to the November AFR on December 13, 2010. Petitioners filed a Reply on December 29, 2010.

WTHI-FM, Terre Haute, Indiana (collectively, “Indiana Applications”),³ and for Station WKQX(FM) (formerly WIQI(FM)), Chicago, Illinois (“WKQX Application”).⁴ Smith and Petitioners request that the Commission rescind the Consent Decree⁵ it entered into with Emmis’ parent corporation, Emmis Communications Corporation (“Emmis CC”), set aside the Bureau’s grants of the Indiana Applications and the WKQX Application, and designate those applications for hearing.

2. Upon review of the AFRs and the entire record, and finding no basis in the Applications for Review to modify any of the Bureau’s decisions, we conclude that Smith and Petitioners have failed to demonstrate that the Bureau erred. We uphold the Bureau’s decisions for the reasons stated in the *Indiana Staff Decision*, the *Indiana Reconsideration Decision*, and the *Illinois Staff Decision*.⁶

3. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,⁷ and Section 1.115(g) of the Commission’s Rules:⁸ (1) the Application for Review filed by David E. Smith IS DENIED; and (2) the Application for Review filed by David E. Smith, Peter LaBarbera, Kathy Valente, Illinois Family Institute, and Illinois Chapter of the Concerned Women for America IS DENIED.

4. IT IS FURTHER ORDERED that the Petition to Deny the license renewal application of Merlin Media License, LLC (File No. BRH-20120801AJU) IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³ The February AFR also seeks review of the grant of the license renewal application for Emmis Station WIBC(FM) (formerly WNOU(FM)), Indianapolis, Indiana (File No. BR-20040401AOO). However, the Bureau took no action on that application in its decision denying the Smith Informal Objection to the Indiana Applications and the application remains pending. *Emmis Radio License Corporation*, Letter, 22 FCC Rcd 16637 (MB 2007) (“*Indiana Staff Decision*”).

⁴ Smith filed a Petition for Reconsideration of the *Indiana Staff Decision*. The Bureau denied the Petition and affirmed the *Indiana Staff Decision*. *Emmis Radio License Corporation*, Letter, 24 FCC Rcd 369 (MB 2009) (“*Indiana Reconsideration Decision*”). Smith and Petitioners also filed a Petition to Deny the WKQX Application. The Bureau denied that Petition based on the *Indiana Staff Decision* and the *Indiana Reconsideration Decision*. *Emmis Radio License Corporation*, Letter, Ref. 1800B3-MFW (MB Oct. 22, 2010) (“*Illinois Staff Decision*”).

⁵ The Commission adopted the Consent Decree, which resolved pending forfeiture orders, a memorandum opinion and order, and all ongoing Commission investigations and complaints involving the broadcast of allegedly indecent material by Emmis CC and its licensee subsidiaries, on August 12, 2004. *Emmis Communications Corp.*, Order, 19 FCC Rcd 16003 (2004), *recon. denied*, Order on Reconsideration, 21 FCC Rcd 12219 (2006) (denying Petitioners’ petition for reconsideration of the order approving the consent decree), *aff’d David Edward Smith et al. v. FCC*, No. 06-1381, Order (D.C. Cir. Mar. 29, 2007).

⁶ During the pendency of the AFRs, Emmis filed an application to assign the license for Station WKQX(FM) to Merlin Media License, LLC (“Merlin”). See File No. BALH-20110627AAW. The unopposed assignment application was granted on August 16, 2011. See *Broadcast Actions*, Public Notice, Report No. 47544 (MB Aug. 19, 2011). Merlin subsequently filed a license renewal application for the station for the current renewal cycle. See File No. BRH-20120801AJU. On November 1, 2012, Petitioners filed a Petition to Deny that application, arguing that the application should not be granted until their November AFR is addressed. Because we are denying the November AFR, that Petition is dismissed as moot.

⁷ 47 U.S.C. § 155(c)(5).

⁸ 47 C.F.R. § 1.115(g).