



Federal Communications Commission
Washington, D.C. 20554

March 31, 2006

DA 06-758

In Reply Refer To: 1800B3-RDH

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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Radio One of Dayton Licenses, LLC
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In re: Blue Chip Broadcasting Licenses, Ltd.
WDHT(FM), Springfield, Ohio
Facility ID No. 60252
File No. BRH-20040521ADQ
Application for Renewal of License
NAL/Account No. MB200641410007
FRN: 0005004874

WGTZ(FM), Eaton, Ohio
Facility ID No. 25043
File No. BRH-20040521ADK
Application for Renewal of License
NAL/Account No. MB200641410008
FRN: 0005004874

WING(AM), Dayton, Ohio
Facility ID No. 25039
File No. BRH-20040521ADR
Application for Renewal of License
NAL/Account No. MB200641410009
FRN: 0005004874

Radio One of Dayton Licenses, LLC
WRNB(FM), West Carrollton, Ohio
Facility ID No. 26451
File No. BRH-20040521ACE
Application for Renewal of License

Dear Sirs:

This letter concerns the captioned applications filed by Blue Chip Broadcasting Licenses, Ltd. (“Blue Chip”) to renew the licenses of Stations WGTZ(FM), Eaton, Ohio, WDHT(FM), Springfield, Ohio, WING(AM), Dayton, Ohio, and by Radio One of Dayton Licenses, LLC (“Radio One Dayton”) to renew the license of Station WRNB(FM), West Carrollton, Ohio (collectively, the “Stations”).¹ Also on file is an “Objection to License Renewals” (“Objection”) filed August 25, 2004, on behalf of Robin M. Rothschild (“Petitioner”) directed to the Applications and a responsive pleading filed November 18, 2004, by Radio One. Petitioner has subsequently withdrawn her Objection.² However, in accordance with longstanding practice, when a petition that raises serious allegations is withdrawn, we consider these matters to ensure that the public interest will be served by grant of those applications.³ For the reasons set forth below, we dismiss the Objection, propose a forfeiture of \$12,000 against Blue Chip and admonish Blue Chip and Radio One, and grant the renewal applications.

On May 21, 2004, Radio One filed its captioned renewal applications. Subsequently, Petitioner filed an Objection to these applications alleging that Radio One had violated Section 73.3526 of the Commission’s Rules⁴ by failing to maintain complete public inspection files. Moreover, Petitioner alleged that Licensee has made misrepresentations to the Commission by answering Section III, Item 3 of the Stations’ renewal applications in the affirmative. This question requires an applicant to certify whether the material required to be placed in its station’s public inspection file by that rule had been inserted “at the appropriate times.” Exhibit 11 of each referenced license renewal application includes the following statements:

“[Licensee] recently conducted an inspection of the station public file in conjunction with its license renewal application.

¹ Both Blue Chip and Radio One Dayton are subsidiaries of Radio One, Inc. Accordingly, hereinafter those licensees will be referred to collectively as “Licensee” or “Radio One.”

² See *Declaration*, filed by Robin M. Rothschild, February 7, 2005.

³ See, e.g., *Quincy D. Jones*, 11 FCC Rcd 2481, 2484 (1995); *Stockholders of CBS Inc.*, 11 FCC Rcd 3733, 3741 (1995); *BBC License Subsidiary L.P. (WLUK-TV)*, 10 FCC Rcd 7926 (1995) (all citing *Booth American Company*, 58 FCC 2d 553, 554 (1976)).

⁴ 47 C.F.R. § 73.3526.

[Licensee] has answered Section III, Question 3 of this renewal application in the affirmative upon the belief that the station's public file *currently* contains all documents for which [Licensee] is responsible as the licensee." (Emphasis added.)

Petitioner contends that Licensee tried to mislead the Commission by simply claiming its public files were complete as of the time it filed its renewal applications. Petitioner contends that this renewal question plainly required the Licensee to disclose that its public files were incomplete during the license term.⁵

In it Opposition to the Objection, Licensee contends that Petitioner has failed to demonstrate that she has standing to challenge these Stations' license renewal applications.⁶ Additionally, Licensee contends that a legal assistant in its corporate headquarters had more issues/programs lists than Petitioner claimed were in the Stations' files. This, the Licensee contends, supports its view that the public file was more complete than the Petitioner alleges. While unable to confirm that its Stations' public inspection files were complete at the time of Petitioner's visits, Licensee argues that it has taken steps to train the staff who are responsible for public file maintenance. Finally, Licensee explains that its response to item Section III, Item 3 and supporting exhibit evidence not misrepresentation but forthrightness and honesty "in responding to a question that . . . solicits a virtually impossible certification when read in its broadest sense."

Public Inspection File. Section 73.3526 of the Commission's Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations. This rule serves the critical function of providing the public with timely information at regular intervals throughout the license period.⁷ In this regard, where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the Licensee, excuse or nullify a licensee's rule violation.⁸ In the instant case, it is clear from the material supplied by Licensee that the public inspection files at three of the Stations were incomplete during their license terms. For example: 1) WDHT(FM)'s public inspection file lacked any issues/programs lists for 1999, 2000 and three quarters in 2001; 2) WGTZ(FM)'s public inspection file

⁵ Petitioner claims she made four visits to the Licensee's stations. Three of those were prior to the filing the stations' renewal applications and she contends that the files were incomplete or missing at these times. She also states that she visited the stations after the stations' renewal applications were filed and found the public inspection files "to essentially be reconstituted."

⁶ Licensee is correct that Petitioner has not demonstrated standing. However, her pleading is styled as an "Objection" and not a "Petition to Deny" which would have required a showing that she is a party in interest. *See* 47 U.S.C. § 309(d)(1). Because Petitioner has styled her pleading as an "Objection" and because she has not made a showing that she has standing, we will treat her filing as an informal objection filed pursuant to Section 73.3587 of the Commission's rules. 47 C.F.R. § 73.3587. *See, e.g., USA Broadcasting Inc.*, 19 FCC Rcd 4253 (2004); *Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551 (2003).

⁷ *Cf. Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division*, 13 FCC Rcd 4102 (1997) citing *License Renewal Applications of Certain Commercial Radio Stations*, 8 FCC Rcd 6400 (1993).

⁸ *See Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Front Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

lacked any issues/programs lists for 1999, and for three quarters in 2000 and 2001; and 3) WING(AM)'s public inspect file lacked issues/programs list for three quarters in 1999, and for the entirety of 2000 and 2001.⁹ These three stations were acquired by Radio One in April 1999.¹⁰ While Licensee states that corrective action began in 2002, prior to the filing of renewal applications for the Stations, such action does not excuse or nullify the rule violations. It appears that a proposed forfeiture against Blue Chip is warranted for its rule violations.

Misrepresentation. The trait of truthfulness is one of the key elements of character necessary to establish the requisite basic qualifications to hold an authorization to operate a broadcast station.¹¹ Acts of willful misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.¹² Misrepresentation involves false statements of fact made with an intent to deceive whereas lack of candor involves concealment, evasion, and other failures to be fully forthcoming.¹³ Intent to deceive is a factual question that can be greatly informed by a motive or logical desire to deceive.¹⁴

Section III, Item 3 of the renewal application (FCC Form 303-S) states:

Local Public File. Licensee certifies that the documentation, required by 47 C.F.R. Sections 73.3526 or 73.3527, as applicable, has been placed in the station's public inspection file at the appropriate times.

Licensee responded to this item in the affirmative in each captioned renewal application and attached an "Exhibit 11," described above. A "No" response is required to this question when the licensee knows or has a reasonable belief that required material(s) had not been placed in the public file at the appropriate time(s). Thus, although the certification was false, we cannot conclude that licensee intentionally attempted to deceive the Commission when its own Exhibit 11 alerted the Commission to the possibility that its public files were incomplete at some times during the license period. Nonetheless, the manner in which Licensee responded to Section III, Item 3 seems designed to obfuscate the true state of affairs with respect to its public inspection files and to avoid the Commission scrutiny which a "No" response would have elicited. We admonish the Licensee for its manner of responding to Section III, Item 3 of each renewal form.

⁹ See, e.g., Exhibit D, Attachments 2 - 4 to Radio One's "Opposition to Objection."

¹⁰ WRNB(FM) was not acquired by Radio One until May 2003.

¹¹ Letter to John Garziglia, Esq., et al., 2005 WL 1630120 (F.C.C.), citing *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1178, 1209-1210 (1986).

¹² *Id.*

¹³ See *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983), *recon. dismissed*, FCC 831-43 (released April 20, 1983).

¹⁴ See *Black Television Workshop of Los Angeles, Inc.*, 8 FCC Rcd 4192, 4198 n. 41 (1993), citing *California Public Broadcasting Forum v. FCC*, 752 F.2d 670, 679 (D.C. Cir. 1985).

Proposed Forfeiture. Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80(a) of the Commission’s Rules,¹⁵ each state that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Commission’s Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission’s Rules.¹⁶ A continuing violation is “repeated” if it lasts more than one day.¹⁷

The Commission’s Forfeiture Policy Statement sets a base forfeiture amount of \$10,000 for violation of the public file rule.¹⁸ In this case, the apparent violations took place at three of the Licensee’s stations, over a period of several years. On the other hand, the Licensee has corrected the violations and implemented a program to assure compliance with the public inspection file rule and did so prior to the Commission being alerted to the shortcomings of the public files at the stations in question. Additionally, the Licensee voluntarily supplied the documentation that illustrated its noncompliance during a portion of the Stations’ license terms. Considering the record as a whole, we believe that a proposed forfeiture of \$4,000 for each of Stations WDHT(FM), WGTZ(FM), and WING(AM) is appropriate for the violations, a total apparent liability of \$12,000.¹⁹ We will not impose a forfeiture with respect to WRNB(FM) as it was not acquired by Radio One Dayton until July 2003 and no issue has been raised regarding the completeness of its public inspection file for that portion of the license term during which Radio One Dayton was its licensee.

License Renewal Application. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Act. That section provides that 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; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.²⁰ 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.”²¹

¹⁵ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(a).

¹⁶ See *KRP California Broadcasting Co.*, 6 FCC Rcd 4387, 4387-88 (1991).

¹⁷ *Id.*, 6 FCC Rcd at 4388.

¹⁸ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 (1997) (“Forfeiture Policy Statement”), recon denied 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

¹⁹ See *Jeffrey L. Timmons, Esq.*, 19 FCC Rcd 11218 (Media Bur. 2004); *Harry C. Martin, Esq.*, 19 FCC Rcd 11234 (Media Bur. 2004).

²⁰ 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 *Order*, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures), 11 FCC Rcd 6363 (1996).

²¹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

As noted above, the public inspection file rule serves the critical function of making available to the public important information regarding programs that provided a station's most significant treatment of community issues during the license term. On balance, however, we find that neither the violation of Section 73.3526 by Stations WDHT(FM), WGTZ(FM) and WING(AM) nor the qualified and non-responsive reply to Section III, Item 3 of the Stations' respective renewal applications constitute "serious violations" of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.²² Further, we find that Stations WDHT(FM), WGTZ(FM), WING(AM), and WRNB(FM) each served the public interest, convenience, and necessity during its respective license term. We will therefore grant their license renewal applications below.²³

Conclusion/Actions. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 503(b), and Sections 0.283 and 1.80 of the Commission's Rules, 47 C.F.R. Sections 0.283 and 1.80, Blue Chip Broadcasting Licenses, Ltd., is hereby advised of its total apparent liability for forfeiture of \$12,000 for willfully and repeatedly violating Section 73.3526 of the Rules at Stations WDHT(FM), Springfield, Ohio, WGTZ(FM), Eaton, Ohio, and WING(AM), Dayton, Ohio.

IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that within thirty days of the release of this Notice, Blue Chip Broadcasting Licenses, Ltd., SHALL PAY to the United States the full amount of this proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

Payment of the proposed forfeiture may be made by credit card through the Commission's Revenue and Receivables Operations Group at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The Payment for each station should Note the appropriate NAL/Acct. Number and the FCC Registration Number ("FRN") referenced above.

The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, Attn: Peter H. Doyle, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Account numbers (Account Nos. MB200641410007, MB200641410008, MB200641410009) and the FRN (0005004874) referenced above.

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period;

²² For example, we do not find here that the Licensee's station operation "was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, 32 FCC 2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate [the stations] in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 FCC 2d at 200. *See also Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622(1991); *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

²³ *See* 47 U.S.C. § 309(k).

(2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁴

IT IS FURTHER ORDERED, that the “Objection to License Renewals” filed, and later withdrawn, by Robin M. Rothschild IS DISMISSED.

Additionally, IT IS ORDERED, that the applications (File Nos. BRH-20040521ADK, BRH-20040521ADQ, and BRH-20040521ADR) of Blue Chip Broadcasting Licenses, Ltd. for renewal of license for Stations WGTZ(FM), Eaton, Ohio, WDHT(FM), Springfield, Ohio, and WING(AM), Dayton, Ohio, respectively, and the application (File No. BRH-20040521ACE) of Radio One of Dayton Licenses, LLC, for renewal of license for Station WRNB(FM), West Carrolton, Ohio, ARE GRANTED.

Finally, we ADMONISH Blue Chip Broadcasting Licenses, Ltd. and Radio One of Dayton Licenses, LLC for their false and non-responsive responses to Section III, Item 3 on their license renewal applications for the above-captioned stations.

IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY shall be sent by first class mail and certified mail, return receipt requested, to: Blue Chip Broadcasting Licenses Ltd., 1821 Summit Road, Suite 400, Cincinnati, Ohio 45237; Radio One of Dayton Licenses, LLC, 5900 Princess Garden Parkway, Lanham, Maryland 20706-2925 and their counsel, Richard J. Bodorff, Esq., Wiley Rein & Fielding LLP, 1776 K Street, N.W., Washington, DC 20006. It shall also be sent by first class mail and certified mail, return receipt requested, to Petitioner’s counsel, Lee W. Shubert, Esq., Katten Muchin Zavis Rosenman, 1025 Thomas Jefferson Street, N.W., East Lobby, Suite 700, Washington, DC 20007-5201.

Sincerely,

Donna C. Gregg
Chief, Media Bureau

cc:
Richard J. Bodorff, Esq.
Wiley Rein & Fielding LLP
1776 K Street, N.W.
Washington, DC 20006

²⁴ See 47 C.F.R. § 1.1914.