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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)
)
RADIO ONE LICENSES LLC) File No. BL-20070220ADT
)
WOLB(AM), Baltimore, Maryland) Facility Id No. 54711
For a new license)

To: Office of the Secretary
Attn: The Commission

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OPPOSITION OF WIOO TO APPLICATION FOR REVIEW

WIOO, Inc. ("WIOO"), licensee of AM station WIOO, Carlisle, Pennsylvania, by its attorney, respectfully files this opposition to the application for review filed by Radio One License, LLC ("Radio One") dated May 15, 2013 with respect to the above-captioned application. In support thereof, the following is shown.

Radio One's application for review here, in addition to its pending application for review of the grant of WIOO's application, File No. BP-20040809AAO, stems from the Commission's grant of Radio One's above-captioned application for a license to cover its construction permit, a ministerial action fully

consistent with Section 1.68(a) of the Commission's rules¹ as well as all relevant Commission policies.

For reasons known only to itself, Radio One's 2003 Form 301 application to change transmitter site specified a power less than that allowed under the rules. It waited more than one year after its application was granted to file an application to modify its construction permit to increase power. During this period, Radio One abandoned and sold its licensed transmitter site. The tower and related equipment were removed and buildings were constructed thereon. To continue broadcasting without its licensed site, Radio One obtained special temporary authority to broadcast from the site specified in its construction permit. It did not file an application for license to cover this permit until forced to do so by the imminent expiration of the 36-month period specified in its construction permit.

Radio One's transmitter site change allowed WIOO to improve its facilities and filed an appropriate application. WIOO understood that the Commission recognizes that there are

¹An application for license by the lawful holder of a construction permit will be granted without hearing where the Commission, upon examination of such application, finds that all the terms, conditions, and obligations set forth in the application and permit have been fully met, and that no cause or circumstance arising or first coming to the knowledge of the Commission since the granting of the permit would, in the judgment of the Commission, make the operation of such station against the public interest.

occasions when the facilities specified by a construction permit to modify an existing license may not be built. In such cases, the licensed facilities would remain in operation. Thus, Section 73.37(a) of the Commission's rules requires that applications by other parties protect both the licensed facilities and those specified in the construction permit. This requirement to protect the licensed facilities continues until the new facilities are licensed.

However, as with all rules and policies, waivers may be granted when special circumstances make it inappropriate to apply the underlying rule. WAIT Radio v. FCC, 418 F. 2nd 1153 (DC Cir. 1969). WIOO demonstrated that such special circumstances obtained, as Radio One had sold and abandoned its licensed transmitter site, which was then being used for construction of new buildings. Radio One does not dispute WIOO's showing that return to WOLB's abandoned licensed site was impossible. WIOO's waiver request, included in its application as amended, addressed and sought waiver of the necessity for it to comply with Section 73.37(a) of the Commission's rules. Hence, Radio One's argument that WIOO's application should have been dismissed because it failed to protect WOLB's abandoned licensed facilities, lacks validity. Radio One utterly fails to cite any authority or provide a public policy basis to support its position that an abandoned and sold site remains protected from interference from

other stations.

Radio One's application for review relies primarily on its argument that the Commission should have deferred processing its application for license to cover its construction permit so that the Commission would have acted on WIOO's application first. Radio One fails to cite any Commission rule or policy which allows an applicant to obtain deferral of action on its application. It offers no public interest justification for the Commission to delay action on its uncontested application. Such delay would be contrary to the Commission's stated goal of eliminating spectrum warehousing by requiring that construction be completed within three years of grant of the construction permit, absent unforeseen and unavoidable circumstances. See Section 73.3598 of the Commission's rules. By granting WOLB's license before acting on WIOO's application, the Commission did not have to consider WIOO's waiver request.²

Moreover, even had the Commission granted Radio One's deferral request, Radio One would not prevail here. WIOO's

²In a similar situation, the full Commission ruled that grant of a license application "eliminated the requirement to protect the formerly licensed WEND facilities, and thus, cured the Upgrade Application's acceptability defect. Our broadcast licensing procedures do not require the return of applications that were unacceptable at the time of filing but which [subsequently] came into compliance with our technical rules." WKVE, Semora, North Carolina, et al., 18 FCC Rcd 23411, para.26 (2003).

application, including its request for waiver of 73.37(a), could be granted even while Radio One's license application remained in pending status. Had the Commission reviewed WIOO's application earlier, the waiver would surely have been granted. Radio One offered no rebuttal to WIOO's showing that WOLB could not return to its licensed site. Thus, adequate grounds obtained for granting WIOO's waiver request and application. Accordingly, grant of Radio One's application for review would have no ultimate effect on its modification application, which would still have been dismissed.

In addition, Radio One's application for review fails to comply with any of the requirements for applications for review, as stated in Section 1.115(b)(2) of the Commission's rules:

(2) The application for review shall specify with particularity, from among the following, the factor(s) which warrant Commission consideration of the questions presented:

(i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.

(ii) The action involves a question of law or policy which has not previously been resolved by the Commission.

(iii) The action involves application of a precedent or policy which should be overturned or revised.

(iv) An erroneous finding as to an important or material question of fact.

(v) Prejudicial procedural error.

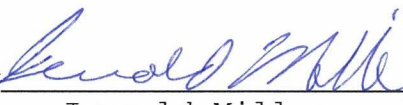
Radio One fails to cite any statute, regulation, case precedent or established Commission policy which conflicts with

the Bureau's action, other than its reliance on Section 73.37(a) which was shown above to be inapplicable. It does not present a question of law or policy not previously resolved by the Commission. It fails to identify any precedent or policy which should be overturned or revised. No erroneous finding of an important or material question of fact is specified. Radio One does not allege a prejudicial procedural error.

Accordingly, the application for review filed by Radio One fails to meet the requirements of Section 1.115(b) of the Commission's rules and must be dismissed or denied.

Respectfully submitted,

WIOO, INC.

By 
Jerrold Miller
Its Attorney


June 13, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 2013, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

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A handwritten signature in blue ink, appearing to read "Gerald Miller", is written over a horizontal line.