

FILED
6/20/13
ORIGINAL
2013 MAY 20 A 7:09

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

In re Application of)
)
Radio One Licenses, LLC) File No. BL-20070220ADT
Station WOLB(AM)) Facility Id. No. 54711
Baltimore, Maryland)
)

FILED/ACCEPTED

MAY 15 2013

To: Office of the Secretary
Attn: The Commission

Federal Communications Commission
Office of the Secretary

APPLICATION FOR REVIEW

Radio One Licenses, LLC ("Radio One"), licensee of Station WOLB(AM), Baltimore, Maryland, by its counsel, hereby seeks review of the decision of the Media Bureau by letter of April 9, 2013 ("Bureau Letter"), dismissing the Petition for Reconsideration concerning the above captioned license application.¹ The Bureau was previously willing to defer processing of the above captioned license application until it acted on a pending minor modification of permit application for WOLB (BMP-20050317ABQ) ("WOLB Modification Application"). However, on May 14, 2008, without explanation, the Bureau granted the license application. This grant coincided with the Bureau's grant of a Petition for Reconsideration of a defective application filed by WIOO, Inc. ("WIOO"), licensee of Station WIOO(AM), Carlisle, Pennsylvania (BP-20040809AAO) (the "WIOO Application").² If the grant of the WOLB license application becomes final, Radio One will lose its grandfathered rights with respect to WIOO and other

¹ The FCC issued Public Notice on April 15, 2013. See Report No. 27967. Thus, this Application for Review is timely filed. See 47 C.F.R. § 1.4 and 1.115(d).

² See Letter from Peter H. Doyle to Jerrold Miller, Esq. and Mark N. Lipp, Esq., DA 08-1416 (June 13, 2008) (the "WIOO Reinstatement Letter").

stations.³ It is for these reasons that Radio One respectfully requests that the Bureau rescind its grant of the above captioned license application, reinstate the license application to its previous pending status, and continue to defer processing until it takes action on the pending WOLB Modification Application. In the interim, Radio One will continue operation of WOLB pursuant to the June 7, 2007, program test authority (“PTA”) extension that was granted “until final action is taken on the WOLB(AM) license application.”⁴ In support hereof, Radio One states as follows:

1. On November 18, 2003, Radio One filed a minor change application for WOLB to operate at a new site. This application was granted on February 20, 2004. *See* BP-20031118ABA (the “WOLB Permit”). Subsequently, on August 9, 2004, WIOO prematurely filed a minor change application that failed to protect WOLB’s licensed facilities and was thus contingent on the licensing of the facilities in the WOLB Permit. *See* BP-20040809AAO (the “WIOO Application”). Nearly three years later, on March 19, 2007, the Commission dismissed the WIOO Application based on this defect.⁵ Two years earlier, on March 17, 2005, Radio One filed the WOLB Modification Application. This application was properly filed, albeit contingent on the dismissal of the defective WIOO Application. The Commission’s processing rules allow an application to remain in queue behind another pending application. *See* 47 C.F.R. § 73.3571(f).⁶

³ Radio One is separately filing an Application for Review of the Bureau Letter dismissing the Petition for Reconsideration concerning the grant of the WIOO Application (BP-20040809AAO). *See* Exhibit 1.

⁴ Radio One is separately filing a request to continue PTA and to clarify that the June 7, 2007 grant is still valid.

⁵ The Commission stated in both the WIOO Dismissal Letter and in the WIOO Reinstatement Letter, that the WIOO application was defective because WIOO did not protect the licensed facilities of WOLB. In doing so, the Commission stated that “Radio One is correct that Commission case law requires applications to continue to protect the formerly licensed facilities of a station until the grant of the covering license application for the modified facility.” *See* WIOO Reinstatement Letter, at p. 3. *See also*, Letter from Susan N. Crawford to Jerrold Miller, Esq. and Richard J. Bodorff, Esq. (Mar. 19, 2007) (the “WIOO Dismissal Letter”).

⁶ Contrary to note 19 of the WIOO Reinstatement Letter, Radio One had the right to file a modification of permit application and such application was not an exercise in “gamesmanship.” As stated, Section 73.3571(f) permits the

2. In view of the fact that the WOLB Modification Application was filed almost two years before the February 20, 2007, expiration date of the WOLB Permit, Radio One reasonably expected that the Commission would act on such application before the expiration of the permit. When it did not, Radio One was compelled to file a license application for the WOLB Permit to avoid the expiration of the permit. In doing so, Radio One requested that the Bureau defer processing of the license application until it granted the WOLB Modification Application.⁷ On March 9, 2007, the Bureau decided to defer action on the license application by separately granting PTA for WOLB by letter to operate with its authorized facilities while awaiting action on the WOLB Modification Application.⁸ On June 7, 2007, the Bureau extended PTA for WOLB until final action on the license application, processing of which was being deferred until final action on the WOLB Modification Application.⁹

3. Thus, it was clear from the Bureau's grant and subsequent extension of PTA, that the Bureau planned to act on the WOLB Modification Application before it acted on the license application especially because the defective WIOO Application (the impediment to grant of the WOLB Modification Application) had been dismissed on March 19, 2007. However, over a year later, on May 14, 2008, the Bureau, without explanation, granted the WOLB license application, even though the WOLB Modification Application was then, and is still, pending.

4. On June 4, 2008, a mere three weeks after it granted the WOLB license application, the Bureau reinstated and granted the defective WIOO Application. In doing so, it

application to remain in queue behind other applications whether defective or premature. On the other hand, the Commission's rules do not permit the filing of an application, like WIOO's application, contingent on a permit becoming a licensed facility. *See e.g., Cut and Shoot, Texas*, 11 FCC Rcd 16383 (1996); *see also*, 47 C.F.R. §73.208. The Bureau's characterization of the WOLB Modification Application was inappropriate.

⁷ *See* Letter from Eve K. Reed to Media Bureau (February 15, 2007).

⁸ *See* Letter from Son K. Nguyen to Eve K. Reed (March 9, 2007).

⁹ *See* Letter from Son K. Nguyen to Eve K. Reed (June 7, 2007). This deferral action occurred over the objection of WIOO to which Radio One responded on March 19, 2007. *See* letter of March 14, 2007 from WIOO, Inc.

held that the defect in the WIOO Application was cured by grant of the WOLB license application. Radio One disagrees with the Bureau's analysis and is separately filing an Application for Review setting forth its arguments with regard to the grant of the WIOO Application.¹⁰

5. The timing of the change in the Bureau's position after 15 months of deferred action is worth noting. On April 25, 2008, Senator Arlen Specter sent a letter inquiring about the status of the WIOO Application and the WOLB license application.¹¹ Less than three weeks after the Commission received this letter, the Bureau granted the WOLB license application. Three weeks later, the Bureau reinstated and granted the defective WIOO Application. The Commission's action in response to Senator Specter's letter gave the appearance that the Commission was influenced by Senator Specter's inquiry.

6. Given the fact that the Bureau granted the WOLB license application, without explanation, after it had deferred processing for 15 months, the fact that it had previously dismissed the defective WIOO Application, and the fact that in granting the WIOO Application it relied on nothing other than the grant of the WOLB license application, Radio One has no choice but to seek review. If it failed to do so, WOLB's grandfathered rights with respect to interference caused to and received from other AM broadcast facilities would be forfeited. Radio One relied on WOLB's grandfathered status when it filed its WOLB Modification Application and Radio One has the right to have the WOLB Modification Application, filed two years earlier, processed before the license application is processed. Thus, Radio One seeks

¹⁰ The underlying issue in the related WIOO application proceeding is whether an application that is defective because it violates the Commission's processing procedures that are designed to protect other licensees from premature speculative filings can be granted if the defect is cured by subsequent Commission action. Radio One has previously argued in the WIOO proceeding that such defect cannot be cured because permitting an applicant to file in advance of the "first come first served" filing opportunity and gain an advantage over other potential filers is fundamentally unfair and prejudicial to other parties. See Exhibit 1.

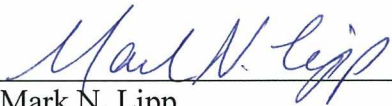
¹¹ See Letter from Senator Arlen Specter to Diane Atkinson, Congressional Liaison, FCC (April 25, 2008).

review of the grant of the WOLB license application.

For the foregoing reasons, Radio One respectfully requests that the Commission rescind grant of the WOLB license and continue to defer processing of the license application until it grants the WOLB Modification Application.

Respectfully submitted,

RADIO ONE LICENSES, LLC

By: 
Mark N. Lipp
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7503

Its Counsel

May 15, 2013

13592929

EXHIBIT 1

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

In re Application of)	
)	
WIOO, INC.)	File No. BP-20040809AAO
Station WIOO(AM))	Facility Id. No. 72985
Carlisle, Pennsylvania)	
)	

To: Office of the Secretary
Attn: The Commission

APPLICATION FOR REVIEW

Radio One Licenses, LLC (“Radio One”), licensee of Station WOLB(AM), Baltimore, Maryland, by its counsel, hereby seeks review of the decision of the Media Bureau by letter of April 9, 2013 (“Bureau Letter”) affirming the grant on reconsideration of the above captioned application of WIOO, Inc. (“WIOO”).¹ At the time of filing, the WIOO application, failed to protect WOLB’s licensed facilities and therefore was properly dismissed as a contingent application on March 19, 2007.² WIOO subsequently filed a *Petition for Reconsideration Nunc Pro Tunc* of the WIOO Dismissal Letter, which was granted 15 months later on June 13, 2008.³ The grant of the WIOO application violates Commission policy and precedent and prejudices Radio One, which has an application pending to modify the facilities of WOLB.⁴ The Bureau Letter fails to address the issues raised by Radio One and instead makes the unreasonable assumption that Radio One is engaging in “gamesmanship” by trying to protect its “past, present

¹ The FCC issued Public Notice of the decision on April 15, 2013. *See* Report No. 27967. Thus, this Application for Review is timely filed. *See* 47 C.F.R. §§1.4 , 1.115(d).

² *See* Letter from Susan N. Crawford to Jerrold Miller and Richard J. Bodorff (Mar. 19, 2007) (the “WIOO Dismissal Letter”).

³ *See* Letter from Peter H. Doyle to Jerrold Miller and Mark N. Lipp, DA 08-1416 (June 13, 2008) (the “WIOO Reinstatement Letter”).

⁴ BMP-20050317ABQ.

and future” facilities. The Bureau assumptions are unwarranted. Thus, Radio One urges the Commission to reverse the grant of the above captioned WIOO application. In support hereof, Radio One states as follows:

I. THE WIOO APPLICATION WAS CORRECTLY DISMISSED AS DEFECTIVE WHEN FILED.

1. On November 18, 2003, Radio One filed a minor change application for WOLB to operate at a new site. This application was granted on February 20, 2004. *See* BP-20031118ABA (the “WOLB Permit”). Subsequently, on August 9, 2004, WIOO Radio prematurely filed the above captioned application (the “WIOO Application”). The application indisputably failed to protect WOLB’s licensed facilities and was thus contingent on the licensing of the facilities in the WOLB Permit. Nearly three years later, on March 19, 2007, the Commission dismissed the WIOO Application based on this defect.⁵ In the interim, on March 17, 2005, Radio One filed a modification of permit application to upgrade WOLB to 1000 Watts based on the station’s grandfathered status. *See* BMP-20050317ABQ (the “WOLB Modification Application”). This application was properly filed despite the fact that the WIOO Application was pending at that time due to the Commission’s processing rule which allows an application to remain in queue behind another pending application. *See* 47 C.F.R. § 73.3571(f).⁶

2. On March 17, 2005, Radio One filed an application to modify its permit (BMP-20050317ABQ) two years prior to the expiration date and at a time when it was expected that the

⁵ The Commission stated in both the WIOO Dismissal Letter and in the WIOO Reinstatement Letter that the WIOO application was defective because WIOO did not protect the licensed facilities of WOLB. In doing so, the Commission stated that “Radio One is correct that Commission case law requires applications to continue to protect the formerly licensed facilities of a station until the grant of the covering license application for the modified facility.” WIOO Reinstatement Letter, at p. 3.

⁶ Contrary to Note 19 of the WIOO Reinstatement Letter, Radio One had the right to file a modification of permit application and such application was not an exercise in “gamesmanship.” Section 73.3571(f) permits the application to remain in queue behind a prior filed application. On the other hand, the Commission’s rules do not permit the filing of an application, like WIOO’s application, contingent on a permit becoming a licensed facility. *See e.g., Cut and Shoot, Texas*, 11 FCC Rcd 16383 (1996); *see also*, 47 C.F.R. §73.208. Thus, the Bureau’s characterization of the WOLB Modification Application as “gamesmanship” in Note 19 was erroneous.

WIOO application would be dismissed. Thus there was no intent to game the system with the filing of a modification application and certainly no intent to block the WIOO application. Radio One was focused on its own project and had no desire to impact the plans of WIOO to improve its facility. When the Bureau failed to act on the WOLB modification application during the next two years, Radio One was compelled to file a license application for the WOLB Permit to avoid its expiration at the end of the three year period. This was a reasonable decision and certainly did not deserve to be characterized as “gamesmanship”.⁷ Again, it was the Media Bureau which had not yet acted on the WIOO Application or the WOLB modification application at that point in time. Thus, Radio One requested that the Bureau defer processing of the license application until the Bureau acted on the WOLB Modification Application.⁸

3. On March 9, 2007, the Bureau agreed to defer action on the license application and separately granted program test authority (“PTA”) for WOLB by letter.⁹ Furthermore, on June 7, 2007, the Bureau extended the PTA for WOLB until final action was taken on the license application, processing of which was being deferred until action was taken on the WOLB Modification Application.¹⁰ In the interim, the Bureau dismissed the WIOO application as defective. Thus, it seemed clear from the Bureau’s grant and subsequent extension of PTA, that the Bureau planned to act on the WOLB Modification Application before it acted on the license application because the defective WIOO Application (the impediment to grant of the WOLB Modification Application) had been dismissed. However, over a year later, on May 14, 2008, the

⁷ See Bureau Letter at p. 3.

⁸ See Letter from Eve K. Reed to Media Bureau (February 15, 2007).

⁹ See Letter from Son K. Nguyen to Eve K. Reed (March 9, 2007).

¹⁰ See Letter from Son K. Nguyen to Eve K. Reed (June 7, 2007). This deferral action occurred over the objection of WIOO Radio to which Radio One responded on March 19, 2007. See letter of March 14, 2007 from WIOO, Inc.

Bureau, without explanation, granted the WOLB license application, even though the WOLB Modification Application was then, and is still, pending.¹¹

4. On June 4, 2008, a mere three weeks after it granted the WOLB license application, the Bureau reinstated and granted the defective WIOO Application. In doing so, it stated that the defect with the WIOO Application was cured by grant of the WOLB license application.¹² In its decision to reinstate and grant the WIOO Application, the Bureau ignored Radio One's legal arguments and its own precedent. Radio One believes that an application which is defective because it violates the Commission's interference protection standards cannot be granted unless the defect is cured by an amendment during the one opportunity offered by the Commission at the time the Petition for Reconsideration Nunc Pro Tunc is due. Further, permitting an applicant to file in advance of the "first come first served" filing opportunity and to gain an advantage over other potential filers is fundamentally unfair and prejudicial.¹³ As discussed below, the Bureau's reinstatement and grant of the WIOO Application cannot be reconciled with these two central premises and, accordingly, must be reconsidered.

¹¹On June 18, 2008, Radio One filed a Petition for Reconsideration of the grant of the WOLB license application. As Radio One stated in its Petition for Reconsideration, it decided to file due to (1) the premature action of the Bureau granting the WOLB license application, without explanation, after it had deferred processing for 15 months; (2) the erroneous grant of the defective WIOO Application; (3) the fact that in granting the WIOO Application it relied on nothing other than the grant of the WOLB license application; and (4) the need to retain its grandfathered rights with respect to interference caused to and received from other AM broadcast facilities which otherwise would be permanently forfeited.

Radio One is separately filing an Application for Review of the Bureau Letter dismissing the Petition for Reconsideration of the grant of the WOLB license application (BL-20070220ADT). See Exhibit 1.

¹² What happened to change the Bureau's position after 15 months of deferred action on the WOLB license application? On April 25, 2008, Senator Arlen Specter sent a letter inquiring about the status of the WIOO Application and the WOLB license application. See Letter from Senator Arlen Specter to Diane Atkinson, Congressional Liaison, FCC (April 25, 2008). Less than three weeks after the Commission received this letter, the Bureau granted the WOLB license application. Three weeks after that, the Bureau reinstated and granted the defective WIOO Application. The Commission's action in response to Senator Specter's letter gives the appearance that the timing of the Commission's action was influenced by Senator Specter's inquiry.

¹³ See "Opposition to Petition for Reconsideration" and "Supplement to Opposition to Petition for Reconsideration" filed by Radio One on May 2, 2007 and May 29, 2008, respectively.

II. WHETHER THE PUBLIC INTEREST IS SERVED BY THE BUREAU'S ACTION IN REINSTATING THE DEFECTIVE WIOO APPLICATION DESPITE THE PROCESSING POLICY AND RULE VIOLATIONS.

5. It is undisputed that the WIOO Application was defective when filed because it failed to protect the WOLB license. As the Bureau stated in the WIOO Reinstatement Letter, "Radio One is correct that Commission case law requires applications to continue to protect the formerly licensed facilities of a station until the grant of the covering license application for the modified facility."¹⁴ Thus, the Bureau properly dismissed the WIOO Application on March 19, 2007. WIOO subsequently filed a Petition for Reconsideration requesting reinstatement of the WIOO application *nunc pro tunc* pursuant to Commission policy.¹⁵ The Bureau cites this *Processing Policy Public Notice* in the WIOO Reinstatement Letter as the basis for reinstating and granting the WIOO application. However, WIOO's and the Bureau's reliance on this Public Notice is misplaced. That policy requires applicants to file a "minor curative amendment within 30 days" of dismissal of the underlying application.¹⁶ The amendment filed by WIOO on April 20, 2007, was not a curative amendment because it failed to correct the defect identified by the Bureau in its March 19, 2007 dismissal letter (*i.e.*, it still did not protect the WOLB license in violation of Section 73.37 of the Commission's Rules).¹⁷ Thus, because WIOO failed to file a "minor curative amendment within 30 days" of the dismissal of the underlying WIOO application, the amended WIOO application must be dismissed as a matter of law.

¹⁴ See WIOO Reinstatement Letter, at p. 3.

¹⁵ See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, FCC 84-366 (rel. Aug. 2, 1984) (the "*Processing Policy Public Notice*"). This request also included a waiver of the Section 73.37 protection to the WOLB licensed facility. But the Bureau did not grant the waiver. Another defect, involving protection to Station WCST(AM), was cured.

¹⁶ *Id.*

¹⁷ The defect was not cured until the WOLB license application was granted a year later. Radio One submits that the WIOO application is still defective because the grant of the WOLB license application is not final due to the Application for Review being filed concurrently by Radio One.

6. The Commission has previously dismissed *nunc pro tunc* amendments to applications that do not cure the defect for which the underlying application was dismissed.¹⁸ For example, in *Superior Communications*, the Bureau originally dismissed an application because it failed to protect the license of another station. Superior Communications filed an amendment *nunc pro tunc* and argued that it was not required to protect the license of the other station. The Bureau disagreed with Superior Communications and dismissed the amendment holding that it did “not cure the ... violation for which the Application was initially dismissed.” Similarly, in *Saddleback Community College*, the Commission upheld the Bureau’s dismissal of an application filed by Saddleback Community College because it failed to protect the licenses of other stations. Saddleback filed an amendment *nunc pro tunc* and requested a waiver of the interference rules. Then, after the 30 day period for filing amendments *nunc pro tunc* had expired, Saddleback submitted additional data related to its waiver request in a reply pleading. The Commission held that, by submitting additional data after the 30 day *nunc pro tunc* period, Saddleback was inappropriately attempting to amend its application a second time, which prejudiced other applicants “who have prepared properly executed applications.” It then upheld the Bureau’s dismissal of the amendment *nunc pro tunc*.

7. Here, WIOO filed a second amendment on May 23, 2008 reporting the grant of the WOLB license application and “hence, WIOO’s application now complies fully with all rules”.¹⁹ This filing clearly demonstrates, and by its terms admits, that the April 20, 2007 “curative” amendment did not cure the defect. Therefore, it is not clear why the WIOO Reinstatement Letter states that this case “involves a properly filed petition for reconsideration

¹⁸ See *Superior Communications*, 22 FCC Rcd 16634 (2007); *Saddleback Community College*, 11 FCC Rcd 11938 (1996).

¹⁹ See BP-20040809AAO (amended on May 23, 2008), Exhibit 14 (emphasis added).

which unquestionably satisfies the pleading requirements of Section 1.106(d) of the Rules.”²⁰ That Section provides that the petition shall state specifically why the petitioner believes the action taken was in error. Radio One’s Opposition to Petition for Reconsideration, filed May 2, 2007, questioned whether WIOO satisfied the requirements in Section 1.106. In fact, the entire Radio One pleading was based on WIOO’s failure to comply with that Section. The Opposition indicated that WIOO made no attempt to cure the defect and provided no new facts or changed circumstances with respect to the WOLB licensed facility. Radio One also cited case law for the well established Commission policy that requires “protection of a licensed facility, *regardless of the existence of an outstanding construction permit.*”²¹ Therefore, the WIOO Reinstatement Letter was demonstrably erroneous. There was no minor curative amendment and the Commission’s processing rule was incorrectly applied in this case.

8. The grant of the amended WIOO Application also violates the Commission’s processing rules (Sections 73.37, 73.3517 and 73.3571) and sets a dangerous precedent that will permit a queue behind construction permits while waiting for the license application to be filed and granted. As Radio One stated in its Supplement, the Commission’s rules and policies do not contemplate such a queue for good reasons. Permittees are given three years to build. When a party, like WIOO, files a premature application that does not protect the licensed site but instead relies on the new permit, it is unfair to allow the premature application to wait in a queue on reconsideration while other potential applicants who follow the rules wait for the three year period to end. The Commission routinely dismisses such premature filings,²² as it did in this

²⁰ See WIOO Reinstatement Letter at p. 4.

²¹ Citing *Application of State of Oregon*, 15 FCC Rcd 15456, para. 3 (2000) (quoting *Southern Oregon University*, FCC 99-315 (rel.Oct. 28, 1999)); *Applications of Station WKVE*, 18 FCC Rcd 23411, para. 26 (2003). See Opposition at p. 8.

²² See, e.g., BP-20070205AAA (the Commission dismissed minor change application filed by WBIC(AM) because it failed to protect the construction permit of WFGM(AM) in violation of the Commission’s processing rules).

case (albeit nearly three years later). The Commission should also dismiss petitions for reconsideration which are filed in the hope that the defect will be eliminated before the Commission acts on the reconsideration. This is exactly what WIOO has done and the Commission should not reward WIOO for its circumvention of the Commission's rules.

9. The Commission has tried to discourage the filing of petitions for reconsideration to delay the implementation of an initial grant or to gain protection from other first-come/first-serve filings in the past.²³ Here, the Bureau allowed WIOO to keep its application "alive" by the filing of a petition for reconsideration. This action undermines the Commission's processing policies and will certainly encourage parties to file a petition for reconsideration of the dismissal of a defective application in the hope that circumstances will change while the reconsideration is pending. This would be a tremendous waste of Commission resources and would do nothing more than encourage speculative filings. It is particularly telling here that WIOO filed its second amendment immediately after Public Notice of the grant of the WOLB license application. Clearly, WIOO's intent was to keep its defective application "alive" for almost three years until WOLB licensed its new facilities. The Commission should not reward this type of behavior by reinstating and granting the WIOO Application.

9. The Bureau summarily dismissed Radio One's claim that this decision will set a dangerous precedent by permitting applicants filing petitions for reconsideration to keep applications "alive" until a defect is cured and thereby circumvent the Commission's processing rules. The WIOO Reinstatement Letter notes that "if the staff notes an increase in impermissible contingent filings, it is prepared to take these and other measures to discourage these filings."²⁴

²³ See e.g. *Auburn, AL*, 17 FCC Rcd 16227 (2002); *recons. granted*, 18 FCC Rcd 10333 (2003) and *Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stays of Certain Allotment Orders*, 11 FCC Rcd 9501 (1996).

²⁴ See WIOO Reinstatement Letter at p.4.

This response actually serves to acknowledge that Radio One is correct with respect to the premature and contingent nature of the WIOO Application. It is not an adequate or acceptable response for the Bureau to state that there has not been “an increase in impermissible contingent filings.” This response simply ignores the fact that its decision to keep the WIOO Application alive until the defect is cured has already lead to abuse (by WIOO) and has prejudiced other parties who followed the Commission’s rules and policies, including Radio One, who filed a rule-compliant application to modify the facilities of WOLB.

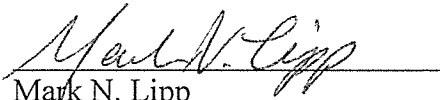
10. The Bureau Letter of April 9, 2013, also summarily dismisses Radio One’s arguments as “repetitious”, “has not demonstrated material error”, or “raised changed circumstances or unknown additional facts.” However, the fact remains that the WIOO application was defective when filed, was not cured on reconsideration, was held for nearly three years until the WOLB license application was filed. Then despite the Bureau’s willingness to defer action on the license application, the Bureau suddenly changes position without explanation and grants the WOLB license so that it can then grant the WIOO application and “cure its defect”. The Commission must review the Bureau’s action and decide whether these actions were proper, fair and in the public interest particularly in view of the facts presented by Radio One that the rules have been circumvented to bring about the desired result.²⁵

²⁵ On January 5, 2012, WIOO filed a modification application in which it proposes to remain on 1000 kHz (instead of moving to 1010 kHz), increase daytime power and specify critical hours operations. In Exhibit 12-A, WIOO states, “[a]t the time the WIOO filed its application, WIOO was prepared to build the requested facilities on a prompt, timely construction permit grant from the Commission. Unfortunately, WIOO’s application was not timely granted, and almost four years elapsed before WIOO received a construction permit. By then, the economic depression of 2008 occurred and FM translators became available to AM licensees. These simultaneous events occurring during the pendency of WIOO’s construction permit grant required WIOO to reevaluate the cost–benefit of spending an estimated \$400,000 for local permits and associated legal services, and construction of the authorized directional facilities on land already owned by the licensee.

For the foregoing reasons, Radio One respectfully requests that the Commission rescind the grant of and dismiss the WIOO Application.

Respectfully submitted,

RADIO ONE LICENSES, LLC

By: 
Mark N. Lipp
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7503

Its Counsel

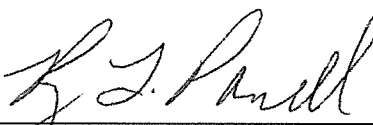
May 15, 2013

EXHIBIT 1

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2013, I caused copies of the foregoing
“**APPLICATION FOR REVIEW**” to be mailed via first-class postage prepaid mail to the
following:

Jerrold Miller
Miller and Neely, PC
6900 Wisconsin Avenue
Suite 704
Bethesda, MD 20815
(Counsel to WIOO, Inc.)



Randy Pannell

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2013, I caused copies of the foregoing
APPLICATION FOR REVIEW to be mailed via first-class postage prepaid mail to the
following:

Jerrold Miller
Miller and Neely, PC
6900 Wisconsin Avenue
Suite 704
Bethesda, MD 20815
(Counsel to WIOO, Inc.)



Randy Pannell