



Federal Communications Commission
Washington, D.C. 20554

October 14, 2014

In Reply Refer to:
1800B3-RSS

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Ms. Florence A. Jonic
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In re: **WRNI(AM), Providence, RI**
File No. BR-20131126AXH
Facility ID No. 48308

WRNI-FM, Narragansett Pier, RI
File No. BRED-20131126AXL
Facility ID No. 22874

**Petition for Reconsideration
Informal Objection**

Dear Counsel and Ms. Jonic:

We have before us a Petition for Reconsideration ("Petition") to our grant of Rhode Island Public Radio's ("RIPR") application to renew its license for Station WRNI(AM) ("WRNI Application"), filed on April 25, 2014, by Ms. Florence A. Jonic ("Ms. Jonic").¹ We additionally have before us an Informal Objection ("Objection") to RIPR's application to renew its noncommercial educational ("NCE") license for Station WRNI-FM ("WRNI-FM Application"), also filed by Ms. Jonic, on April 30, 2014. For the reasons outlined below, the Petition and Objection will be dismissed.

Background. *WRNI Application.* RIPR timely filed the WRNI Application on November 26, 2013.² On March 24, 2014, the Commission granted the WRNI Application.³ No challenge to the WRNI Application was filed with the Commission prior to its granting the WRNI Application. On April 25, 2014, Ms. Jonic, a former employee of RIPR, filed the Petition. In the Petition, she accuses RIPR of violating "several state and federal laws" by (1) paying its only male reporter "more than all the other female reporters, anchor and...his own boss"; (2) terminating Ms. Jonic's employment "without cause," and; (3) "failing to pay time-and-a-half to its non-management employees for holidays and Sundays worked."⁴ On this basis Ms. Jonic concludes, "WRNI is not acting in the public interest and should be denied a license renewal."⁵

¹ RIPR filed an "Opposition to Petition for Reconsideration" ("Opposition") to the Petition on May 5, 2014.

² See File No. BR-20131126AXH. The filing deadline for license renewal applications for radio stations in the state of Rhode Island was December 2, 2013. See *State-by-State List: Renewal Application and Petition to Deny Filing Deadlines and License Expiration Dates for AM, FM, FM Translator and LPFM Stations*, <http://transition.fcc.gov/localism/radio-states.pdf> (last visited September 10, 2014).

³ The WRNI Application and the WRNI-FM Application were both granted March 24, 2014. Public notice of their grant was issued on March 27, 2014. See *Broadcast Actions*, Public Notice, Report No. 48205 (MB Mar. 27, 2014).

⁴ Specifically, Ms. Jonic alleges that RIPR violated the Americans with Disabilities Act, the Equal Pay Act, and the Civil Rights Act. See Petition.

⁵ See Petition.

In its Opposition, RIPR urges the Commission to “summarily dismiss the Petition” on both procedural and substantive grounds.⁶ RIPR states that the Petition “neither addresses nor satisfies” the Commission’s procedural requirements for petitions for reconsideration because it “fails to state how [Ms.] Jonic’s interests were adversely affected,” and because it “is silent as to why it was not possible for her to participate in the earlier stages of the proceeding.”⁷ RIPR further contends that even if the Commission were to “treat the Petition as an informal objection, it must be denied because it utterly fails either to raise any substantial and material question of fact calling for further inquiry, or otherwise to establish that grant of the [WRNI] Application contravened the public interest, convenience, and necessity.”⁸ RIPR characterizes the Petition as “an impulsive attack,” and its allegations as “bare and conclusory.”⁹ It thus concludes that the Petition “clearly fails” to raise a question about WRNI(AM)’s suitability for license renewal under the statutory review standard.¹⁰

WRNI-FM Application. RIPR timely filed the WRNI-FM Application on November 26, 2013.¹¹ Bureau staff granted the uncontested WRNI-FM Application on March 24, 2014.¹² On April 30, 2014, Ms. Jonic filed the Objection, alleging that RIPR did not allow her sufficient time to inspect its public file, and that in its “most recent” license application, RIPR incorrectly stated that it had no program sponsorships.¹³ RIPR did not file a responsive pleading to the Objection.

Discussion. *WRNI Application.* Pursuant to Section 1.106(b)(1) of the Commission’s Rules (“Rules”), both parties to an original proceeding and non-parties whose interests were adversely affected are permitted to file a petition for reconsideration of an action taken by the Commission or by its staff operating pursuant to designated authority.¹⁴ The Commission, under Sections 1.106(c) and (d) of the Rules, considers a petition for reconsideration only where the petitioner shows either a material error in the Commission’s original order or raises additional facts, either unknown or not existing at the time of the petitioner’s last opportunity to present such matters.¹⁵ Non-parties to the original proceeding must state with particularity how their interests are affected and show good reason why they were unable to participate in the earlier proceeding.¹⁶

Ms. Jonic has not met this threshold requirement. While the Commission has accorded standing to petitioners for reconsideration who failed to file pre-grant objections when application processing has been particularly expeditious, “effectively precluding” a petitioner’s participation, Ms. Jonic was not thus precluded and is therefore entitled to no such standing here.¹⁷ Ms. Jonic had nearly four months to

⁶ See Opposition at 2.

⁷ *Id.* (citing 47 C.F.R. § 1.106(b)(1)).

⁸ *Id.* (citing 47 C.F.R. §§ 73.3584(a) and 73.3516(e)).

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ See File No. BRED-20131126AXL.

¹² See *supra*, note 3.

¹³ See Objection (stating, “[I]n their most recent application for a license they listed ‘no program sponsorships... [when, i]n fact, a program called ‘Killer Drugs’ that aired 03/09/14 was sponsored by United Way”).

¹⁴ 47 C.F.R. § 1.106(b)(1).

¹⁵ 47 C.F.R. § 1.106(c)-(d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

¹⁶ 47 C.F.R. § 1.106(b)(1).

¹⁷ For example, when prompt staff action “effectively precludes participation during the initial consideration of an application.” See, e.g., *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854 (1997) (standing awarded to file petition for reconsideration without pre-grant objection when application granted five days

challenge the WRNI Application, but did not, and has not explained why she failed to do so.¹⁸ It is well settled that the staff may dismiss a petition for reconsideration seeking to overturn the grant of an application where the petitioner does not show good cause for her failure to participate earlier in the proceeding.¹⁹ Accordingly, we will dismiss the Petition.

Were we to consider Ms. Jonic's arguments on the merits, we would still deny the Petition. Station license renewals are governed by Section 309(k) of the Communications Act of 1934, as amended (the "Act"), which provides that the Commission must grant a license renewal application if, upon consideration of the application and pleadings, it finds 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.²⁰ Any interested party may file a petition to deny with the Commission alleging facts, supported by affidavit, sufficient to show that grant of the application would be *prima facie* inconsistent with the standard set forth above.²¹ If the specific allegations support a *prima facie* case, we next examine and weigh all the evidence presented, to determine whether "a substantial and material question of fact" is presented,²² *i.e.* "whether the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for."²³ We must also determine whether grant of a renewal application would serve the public interest.²⁴

The Petition's discrimination and personnel claims against RIPR are not germane to our renewal inquiry. Commission precedent is clear that, "individual complaints of employment discrimination do not suffice to make a *prima facie* case that grant of a renewal application would be inconsistent with the public interest."²⁵ This is based on Commission policy that, "such complaints should be resolved in the

after Public Notice of its acceptance); *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816 (1989) (standing to file petition for reconsideration without pre-grant objection when application granted four days after Public Notice of its acceptance).

¹⁸ It is axiomatic that an adjudicatory process cannot operate efficiently or accurately if a party does not participate in a proceeding but is permitted to "sit back and hope that a decision will be in its favor and, when it isn't, to parry with an offer of more evidence." *Canyon Area Residents for the Environment*, Memorandum Opinion and Order, 14 FCC Rcd 8152, 8154 (1999) (quoting *Colorado Radio Corp. v. FCC*, 118 F.2d 24, 26 (D.C. Cir. 1941)).

¹⁹ *See, e.g., Revival Christian Ministries*, Letter, 28 FCC Rcd 2041 (MB 2014) (dismissing petition for reconsideration where petitioner had failed to file an objection to the application prior to its grant without showing good cause); *The Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682 (2004) (refusing to treat an untimely informal objection as a petition for reconsideration where objector had failed to participate earlier and had not shown good reason for such failure).

²⁰ 47 U.S.C. § 309(k)(1). The renewal standard was amended 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).

²¹ 47 U.S.C. § 309(d)(1).

²² 47 U.S.C. § 309(d)(2).

²³ *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985).

²⁴ 47 U.S.C. § 309(a); *See also Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

²⁵ *Curators of Univ. of Missouri*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 1174, 1178 (2001) ("*Curators of Missouri*") (citing *Pacific and Southern Company, Inc.*, 11 FCC Rcd 8503, 8505-506 (1996); *CBS, Inc.*, 59 FCC 2d 1127, 1132 (1976)) *aff'd in part*, Memorandum Opinion and Order, 19 FCC Rcd 3030, 3032 (2004) (stating "[i]t is for the EEOC, not [the FCC], to determine whether [discrimination] claims are actionable"), *Rainbow/PUSH Coalition v. FCC*, 396 F.3d 1235 (D.C. Cir. 2005).

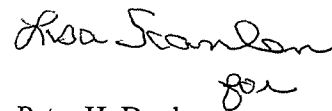
first instance by the ... government agency and/or court established to enforce non-discrimination laws.”²⁶ The Petition’s remaining complaints involve employment matters between RIPR and Ms. Jonic. It is well established the Commission does not regulate the non-broadcast activities of station personnel.”²⁷ This is, in part, because we find it of “utmost importance that broadcasters maintain effective control over station operations and personnel.”²⁸

For these reasons, we find that the Petition does not make specific factual allegations sufficient to either establish a *prima facie* case or raise substantial and material questions of fact that grant of the WRNI Application was inconsistent with the public interest. Because Ms. Jonic has failed to show the staff erred in granting the WRNI Application under Section 309(k) of the Act, her Petition would have been denied on the merits were it not dismissed on procedural grounds.

WRNI-FM Application. Informal objections, pursuant to Section 73.3587 of the Rules, must be filed “[b]efore FCC action on any application for an instrument of authorization.”²⁹ Ms. Jonic filed the Objection over thirty days after staff granted the WRNI-FM Application.³⁰ The self-styled informal objection therefore fails as such, and is also too late to be considered as a petition for reconsideration.³¹ Accordingly, we will dismiss the Objection as untimely.³²

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the Petition for Reconsideration filed by Florence A. Jonic, on April 24, 2014, and the Informal Objection filed by Florence A. Jonic, on April 30, 2014, ARE DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Joseph O’Connor

²⁶ *Curators of Missouri*, 16 FCC Rcd at 1178.

²⁷ See, e.g., *Emmis Radio License Corporation*, Letter, Ref. 1800B3-MFW (MB 2010); *Eagle Radio, Inc.*, Memorandum Opinion and Order, 9 FCC Rcd 1294, 1294-95 (1994); *Dale A. Owens*, Memorandum Opinion and Order, 54 FCC 2d 375, 378-79 (1975).

²⁸ *Trustees of University of Pennsylvania*, Decision, 69 FCC2d 1394, 1396-97 (1978).

²⁹ 47 C.F.R. § 73.3587 (emphasis added); see also *Zwerling Broadcasting System Ltd.*, Letter, DA 14-1165 (MB 2014).

³⁰ Staff granted the WRNI-FM Application on March 24, 2014, while the Objection was filed April 30, 2014. See *supra*, note 3; Objection.

³¹ See 47 C.F.R. §§ 73.3587, 1.106(f) (providing that petitions for reconsideration may only be considered when filed within thirty days of public notice of the underlying application grant).

³² Here too, however, we note that Ms. Jonic’s allegation does not show that RIPR violated any provisions of the Act or Rules that would make our grant of the WRNI-FM Application inconsistent with Section 309(k).