



Federal Communications Commission  
Washington, D.C. 20554

OCT 20 2014

In Reply Refer to:  
1800B3-MM

Mr. David Edward Smith  
c/o Law Office of Dennis J. Kelly  
P.O. Box 41177  
Washington, DC 20018-0577

John E. Fiorini, III, Esq.  
Eve Klindera Reed, Esq.  
Wiley Rein LLP  
1776 K St., N.W.  
Washington, DC 20006

In re: WIBC(FM) (formerly WNOU(FM)),  
Indianapolis, IN  
Facility ID No. 19524  
Emmis Radio License, LLC  
**Applications for Renewal of License**

File No. BRH-20040401AOO

**Informal Objection**

File No. BRH-20120330APH

Dear Messrs. Smith and Fiorini and Ms. Reed:

We have before us the referenced applications for renewal of license ("2004 Application" and "2012 Application," collectively, "Applications") of Emmis Radio License, LLC ("Licensee") for station WIBC(FM) (formerly WNOU(FM)), Indianapolis, Indiana ("Station"). Mr. David Edward Smith ("Smith") filed an Informal Objection against the 2004 Application on July 23, 2004 ("Objection").<sup>1</sup> The 2012 Application is uncontested. For the reasons set forth below, we deny the Objection and grant the Applications.

On August 12, 2004, the Commission and Licensee's parent corporation, Emmis Communications Corporation ("Emmis") entered into a consent decree ("Consent Decree")<sup>2</sup> by which Emmis agreed to undertake certain compliance measures and to pay the United States Treasury the sum of \$300,000 in consideration for the Commission rescinding, vacating and canceling certain forfeiture orders issued against Emmis-owned broadcast licensees, terminating certain inquiries, and dismissing, with prejudice, pending indecency complaints against those licensees. In addition, the Commission agreed to refrain from taking any action against Emmis or any future application – including renewal applications – to which Emmis is a party, based in whole or in part on "any similar complaints alleging violation by any [station operated by Emmis] of the Indecency Laws with respect to any broadcast occurring prior to the

<sup>1</sup> Licensee filed an Opposition on August 25, 2004 ("Opposition").

<sup>2</sup> See *Emmis Communications Corp.*, Order, 19 FCC Rcd 16003 (2004) ("Order Adopting Consent Decree"), *recon. denied*, Order on Reconsideration, 21 FCC Rcd 12219 (2006) (attaching Consent Decree and dismissing Smith's Petition for Reconsideration of an Enforcement Bureau letter dated June 16, 2004).

Effective Date.”<sup>3</sup> The “Effective Date” of the Consent Decree was August 12, 2004, the date of its public release.<sup>4</sup>

In the Objection, Smith urges us to deny, *inter alia*, the 2004 Application, because: (1) Licensee has established a pattern of willfully broadcasting indecent material,<sup>5</sup> and (2) Licensee has abused the Commission’s processes by allegedly supporting a “SLAPP” (“Strategic Lawsuit Against Public Participation”) lawsuit filed against Smith by one of its Station announcers. In response, Licensee claims that the Commission considered and dismissed Smith’s allegations in the *Order Adopting Consent Decree*.<sup>6</sup>

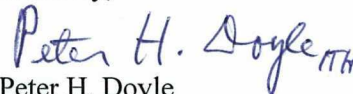
The Bureau previously considered and rejected the arguments raised in the Objection, and the full Commission upheld this decision on review.<sup>7</sup> It therefore is unnecessary to reconsider any of the arguments raised therein.

Accordingly, we deny the Objection. We have evaluated the above-referenced renewal applications pursuant to Section 309(k) of the Act,<sup>8</sup> and we find that the Station has served the public interest, convenience, and necessity during the subject license term and that there have been no serious violations of the Act or the Rules involving the Station or violations of the Act or the Rules which, taken together, would constitute a pattern of abuse. Therefore, we will grant the Applications.

Accordingly, IT IS ORDERED that the July 23, 2004, Informal Objection filed by Mr. David Edward Smith is DENIED.

IT IS FURTHER ORDERED that the applications of Emmis Radio License, LLC, for renewal of its license for station WIBC(FM), Indianapolis, Indiana (File Nos. BRH-200401AOO and BRH-20120330APH), ARE GRANTED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized monogram "PH".

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Emmis Radio License, LLC

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<sup>3</sup> Consent Decree, ¶ 8.

<sup>4</sup> *Id.* at ¶ 2(h).

<sup>5</sup> Objection at 2.

<sup>6</sup> Opposition at 2. In any event, Licensee argues that Smith resides outside of the Station’s service area and therefore has no legal basis to challenge the Station’s license renewal application. *Id.* at 3.

<sup>7</sup> See *WIBC(AM), Indianapolis, IN*, Letter, 22 FCC Rcd 16637 (MB 2007) (denying Smith’s informal objection in light of the terms of the Consent Decree and the *Order Adopting Consent Decree*; granting the applications for renewal of license for Stations WIBC(AM) and WYXB(FM), Indianapolis, Indiana; WENS(FM), Shelbyville, Indiana, WWVR(FM), West Terre Haute, Indiana, and WTHI-FM, Terre Haute, Indiana), *recon. denied*, *Dennis J. Kelly, Esq. John E. Fiorini, III, Esq.*, Letter, 24 FCC Rcd 369 (MB 2009); *rev. denied*, *Emmis Radio License, LLC*, Memorandum Opinion and Order, 29 FCC Rcd 2571 (2014); *petition for reconsideration dismissed*, 29 FCC Rcd 9129 (MB 2014).

<sup>8</sup> 47 U.S.C. § 309(k).