



Federal Communications Commission
Washington, D.C. 20554

November 24, 2014

In Reply Refer to:
1800B3-ATS

John Crigler, Esq.
Garvey Schubert Barer
Fifth Floor
1000 Potomac Street, N.W.
Washington, DC 20007

Mr. Andrew Rumbold
502 S. 8th Street
Perkasie, PA 18944

In re: Lehigh Valley Community Broadcasters
Association
WDIY(FM), Allentown, Pennsylvania
Facility ID No. 36992
BRED-20140328ADA

Petition for Reconsideration

Dear Counsel and Mr. Rumbold:

This letter refers to the Petition for Reconsideration ("Petition") filed by Andrew Rumbold on against the Media Bureau's ("Bureau") grant of the referenced application ("Application") filed by Lehigh Valley Community Broadcasters ("Lehigh") for renewal of its licensee for Station WDIY(FM), Allentown, Pennsylvania. For the reasons set forth, we dismiss the Petition.

Background. Lehigh timely filed the Application on March 28, 2014. No petition or objection was filed against the Application, and the Bureau granted it on July 25, 2014.¹ On August 15, 2014, Rumbold filed the Petition, requesting reconsideration of the grant of the Application. Rumbold states that – on behalf of Concerned Gun Owners of Pennsylvania and Firearms Owners Against Crime – he contacted the Station in response to a program discussing gun control which aired on May 29, 2014, and requested that they be afforded airtime to discuss their views on the air, but that these requests were ignored.² Rumbold also states that on June 13, 2014, he visited the Station to requests access to the Station's logbook and to register a complaint, but was denied access and was instructed to make an appointment.³

On November 4, 2014, the Bureau issued a Letter of Inquiry to Lehigh, requesting that it respond to the allegations raised in the Petition. Lehigh filed a "Response to Letter of Inquiry and Opposition to Petition for Reconsideration" on November 14, 2014 ("Opposition"). In the Opposition, Lehigh argues that Rumbold's programming complaints are barred by the First Amendment to the U.S. Constitution and Section 326 of the Communications Act of 1934, as amended ("Act").⁴ Lehigh further states that the

¹ See *Broadcast Actions*, Public Notice, Report No. 48292 (MB July 30, 2014).

² Petition at Letter to Senator Patrick Toomey.

³ *Id.*, citing 47 C.F.R. § 73.3526(c). Section 73.3526 provides the public file requirements for commercial stations. The Station, however, is noncommercial. As such, we will interpret this as a citation to Section 73.3527(c), which addresses noncommercial stations. See 47 C.F.R. § 73.3527.

⁴ Opposition at 4.

“logbook” that Rumbold sought is in fact the Station’s program log, which is not required to be maintained in the public file.⁵ Lehigh also notes that in response to a complaint from Rumbold to the Commission, two agents from the Philadelphia Field Office visited the Station and found it in compliance with the public file rules.⁶

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.⁷ A petitioner who is not a party to the proceeding also must state with particularity the manner in which its interests are adversely affected by the action taken, and show good reason why it was not possible to participate in the earlier stages of the proceeding.⁸ Rumbold has not met this threshold requirement.

While the Commission has accorded standing to petitioners for reconsideration who failed to file pre-grant objections when prompt staff action “effectively precludes participation during the initial consideration of an application,”⁹ we will not award Rumbold such standing here. The Application was filed on March 28, 2014, and placed on public notice on April 2, 2014.¹⁰ A petition to deny the Application was thus due on July 1, 2014.¹¹ Alternatively, Rumbold could have filed an informal objection any time prior to the grant of the Application.¹² Rumbold failed to file either a petition to deny or informal objection. 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.”¹³ The staff may dismiss a petition for reconsideration seeking to overturn the grant of an application where the petitioner did not show good cause for failing to participate earlier in the proceeding.¹⁴ Accordingly, we will dismiss the Petition.

⁵ *Id.* at 3-4. Commission rules require radio stations to maintain station logs, but those are not required to be made available for public inspection, and they contain different information than a program log. *See* 47 C.F.R. § 73.1800 *et seq.* Radio stations are not required to compile program logs or make them available for public inspection. *See* 47 C.F.R. §§ 73.3526 and 73.3527.

⁶ *Id.*

⁷ *See* 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).

⁸ 47 C.F.R. § 1.106(b)(1).

⁹ *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 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).

¹⁰ *See Broadcast Application*, Public Notice, Report No. 28209 (MB Apr. 2, 2014).

¹¹ *See* 47 C.F.R. §§ 73.3516(e) and 73.3584(a).

¹² *See* 47 C.F.R. § 73.3587.

¹³ *See, e.g., 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)).

¹⁴ *See The Association for Community Education, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 12682 (2004) (refusing to treat an untimely informal objection to an FM translator application on Section 74.1204(f) grounds as a petition for reconsideration because the objector had failed to participate earlier and had not shown good reason for its failure to participate); *Revival Christian Ministries*, Letter, 28 FCC Rcd 2041 (MB 2014) (dismissing petition for reconsideration that argued translator modification would cause interference in violation of Section 74.1204(f) because petitioner had failed to file an objection to the application prior to its grant).

Moreover, were we to address the merits of the Petition, we would deny it. The First Amendment to the United States Constitution¹⁵ and Section 326 of the Act¹⁶ prohibit the Commission from censoring program material or interfering with broadcasters' free speech rights. A licensee has broad discretion – based on its right to free speech – to choose the programming that it believes serves the needs and interests of the members of its audience.¹⁷ Furthermore, the Commission will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.¹⁸ The Commission will intervene in programming matters only if a licensee abuses that discretion.¹⁹ Moreover, we have consistently held that a perceived political bias is not grounds for denying the renewal of a station's license.²⁰ Thus, Rumbold's complaints about the Station's perceived bias and its refusal to permit his organizations the opportunity to respond on the air are not actionable by the Commission.

Additionally, we find that Rumbold has not shown that Lehigh violated Section 73.3527(c) by denying him access to the Station's program log. Section 73.3527(e) identifies what materials must be maintained in a noncommercial station's public file.²¹ This list does not include any type of log or logbook.²² Thus there was no violation of Section 73.3527(c).

Conclusion/Actions. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Andrew Rumbold on August 15, 2014, IS DISMISSED.

Sincerely,

The image shows a handwritten signature in blue ink that reads "Peter H. Doyle". To the right of the signature, the initials "TH" are written.

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Lehigh Valley Community Broadcasters Association

¹⁵ U.S. CONST. amend. I.

¹⁶ 47 U.S.C. § 326.

¹⁷ See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) ("*Philadelphia Station License Renewals*") (citing *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1082 (1972) and *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted)).

¹⁸ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

¹⁹ *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401.

²⁰ See, e.g., *Radio License Holding VII, LLC*, Letter, 28 FCC Rcd 14907, 14908-09 (MB 2013) (subjective belief of the listener that licensee's programming was politically biased did not indicate that licensee had abused its discretion in choosing programming); *AMFM Broadcasting Licenses, LLC*, Letter, 22 FCC Rcd 4804, 4805 (MB 2007) (informal objections against license renewals arguing that the stations aired "'heavily-biased . . . programming amount[ing] to the use of the airwaves as a relentless political pulpit, presenting only one-sided, predictable opinion on most issues, and even blatantly endorsing one political party'" denied as outside the scope of Commission authority).

²¹ 47 C.F.R. § 73.3527(e).

²² See n.5 *supra*.