

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Application of)

LEHIGH VALLEY COMMUNITY)
BROADCASTERS ASSOCIATION)

RENEWAL OF LICENSE)
OF RADIO STATION WDIY)
ALLENTOWN, PENNSYLVANIA)

FILE NO. BRED-20140328ADA

LETTER OF INQUIRY – 1800B3-ATS
PETITION FOR RECONSIDERATION

Received & Inspected
NOV 19 2014
FCC Mail Room

To: Chief, Audio Division, Media Bureau

Response to Letter of Inquiry and
Opposition to Petition for Reconsideration

Lehigh Valley Community Broadcasters Association (“Lehigh”) hereby responds to the November 4, 2014 Letter of Inquiry from the Chief, Audio Division, Media Bureau of the Federal Communications Commission (“LOI”) and to an attached letter from Mr. Andrew Rumbold, dated August 7, 2014, and styled “Petition to Reconsider License Renewal Application BRED-20140328ADA for Radio Station WDIY” (“Petition”). The Petition incorporates a June 13, 2014 letter from Mr. Rumbold to Senator Toomey concerning a program related to gun control that aired on WDIY on May 29, 2014. Although the LOI recites Mr. Rumbold’s claim to have faxed a copy of the Petition to Lehigh on August 15, 2014, Lehigh did not receive a fax from Mr. Rumbold. Lehigh’s first actual Notice of the Petition occurred on November 6, 2014 when Lehigh’s counsel forwarded a copy of the LOI received by mail.¹

¹ See Attachment 1, Declaration of Wagner Previtato.

I. The Petition May Not Be Considered a Petition for Reconsideration

Lehigh's application for renewal of its broadcast license was filed on March 28, 2014 (File No. BRED-20140328ADA) and granted on July 25, 2014. Public Notice of the grant appeared on July 30, 2014. Mr. Rumbold did not file a petition to deny or informal objection to Lehigh's application prior to its grant. By Mr. Rumbold's own account, he first filed an online complaint with the Commission on July 31, 2014.² His Petition is dated August 7, 2014 and is stamped as received by the Commission on August 15, 2014.

A party seeking reconsideration of Commission actions must satisfy certain procedural requirements. In particular, he "shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding."³ Mr. Rumbold fails to make such a showing or to describe any "new facts or changed circumstances" upon which reconsideration could be based. His Petition cannot be considered as a petition for reconsideration and must therefore be dismissed.⁴

II. The Petition May Not Be Considered as an Informal Objection

Mr. Rumbold's Petition may also not be considered as an informal objection. Although Commission's Rules set forth relaxed procedural standards for submitting "informal objections," those Rules require that such objections be filed "*Before* FCC action on any application ..."⁵

² Lehigh has not received a copy of this complaint.

³ 47 C.F.R. § 1.106(b)(1). In addition, Mr. Rumbold has not shown how he is "adversely affected" by the grant of the license renewal of WDIY. He fails to show that he is a WDIY listener or that he can receive WDIY from his residence in Perkasi, Pennsylvania.

⁴ See 47 C.F.R. § 1.106(b)(3).

⁵ 47 C.F.R. § 73.3587 (emphasis added).

Mr. Rumbold's Petition was filed on August 15, 2014, well *after* the grant of the WDIY renewal application. His Petition must therefore be also dismissed as an informal objection.

III. The Petition is Without Substantive Merit

Even if the Petition satisfied procedural requirements for an Informal Objection or Petition for Reconsideration, it would have to be denied on the merits. The gist of the Petition is that Lehigh's renewal application should not have been granted because Lehigh violated Commission Rules concerning access to a broadcast station's public inspection file and failed to provide "equal time" to respond to a controversial program.⁶ This argument fails for four reasons.

First, although maintenance of a public file is an important aspect of a broadcast licensee's public interest responsibilities, "public file violations, on their own, do not establish grounds for denial of an application unless intentional misconduct is evident."⁷ Absent extraordinary circumstances, even "serious" violations of the public file rules do not rise to such a level that would warrant a hearing to determine whether to deny renewal of a broadcast license.⁸

Second, no actionable violation of the public file occurred. As explained in Attachment 1, there was a misunderstanding over access to a document Mr. Rumbold referred to as the "FCC logbook" and disagreement over Mr. Rumbold's right to demand "equal time," but Lehigh did not deny Mr. Rumbold access to any document contained in the WDIY public file. In fact, in response to a complaint, presumably by Mr. Rumbold, about access to WDIY's public file, two

⁶ Petition, attachment.

⁷ See *Tallgrass Broadcasting, LLC*, 1800B3-HOD (Media Bureau, September 24, 2014).

⁸ *Gallup Public Radio*, DA 13-1979 (Media Bureau, September 25, 2013).

agents from the FCC's Philadelphia Field Office inspected WDIY shortly after Mr. Rumbold's June 13 visit. They found WDIY to be in compliance with public file rules.⁹

Third, the document Mr. Rumbold sought is not a public file document. Mr. Rumbold sought "access to the stations FCC logbook." By "logbook," Mr. Rumbold apparently means a program log, a recording of WDIY's May 29 program or some repository in which to "register a complaint." The FCC's public file rules for noncommercial stations do not require stations to maintain a schedule of programs, recordings of programs or letters from the public related to programming.¹⁰

Finally, Mr. Rumbold's fundamental demand – "equal time" for two organizations to respond to the "hour of propaganda for gun control and violating the rights of Americans"¹¹ – is not a remedy the FCC can provide. The FCC's "Fairness Doctrine," which required broadcast stations to air contrasting views on issues of public importance, was repealed in 1987 on grounds that it was inconsistent with the journalistic freedom of broadcasters.¹² The First Amendment to the U.S. Constitution and Section 326 of the Communications Act¹³ specifically prohibit the Commission from censoring program material or interfering with broadcasters' free speech rights.¹⁴ It is therefore well established that the Commission may not deny license renewal

⁹ See Attachments 1 and 2.

¹⁰ See 47 C.F.R. § 73.3527.

¹¹ Petition, attached letter to Senator Toomey.

¹² See *Syracuse Peace Council*, 867 F. 2d 654 (D.C. Cir. 1989).

¹³ 47 U.S.C. § 326.

¹⁴ The fact that WDIY is a "public" station – i.e. that it receives funds from the Corporation for Public Broadcasting ("CPB") – is irrelevant. The Commission's licensing proceedings do not incorporate CPB requirements. See *California Public Broadcasting Forum v. FCC*, 752 F 2d 670, 681-682 (D.C. Cir. 1985).

applications based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.¹⁵

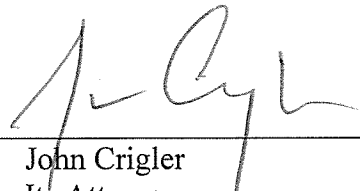
CONCLUSION

The Petition filed by Mr. Rumbold fails to meet the procedural requirements of either a petition for reconsideration or an informal objection, fails to allege any violation of FCC rules which would warrant denial of the renewal of the WDIY license, and fails to request relief which the FCC may constitutionally grant.

Accordingly, Mr. Rumbold's Petition must be dismissed or, in the alternative, denied.

Respectfully submitted,

LEHIGH VALLEY COMMUNITY
BROADCASTERS ASSOCIATION

By: 
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November 13, 2014

¹⁵ See *WGBH Educational Foundation*, 69 FCC 2d 1250, 1251 (1978).

Attachment 1

Declaration of Wagner Previato

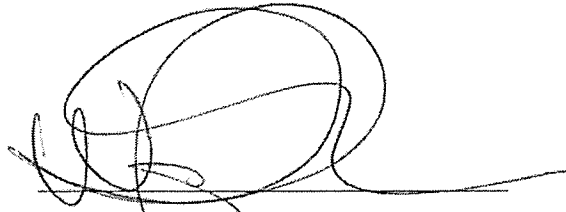
DECLARATION OF WAGNER PREVIATO

I, Wagner Previato, under penalty of perjury, hereby declare as follows:

1. I am the Executive Director of Lehigh Valley Community Broadcasters Association ("Lehigh") and the manager of noncommercial station WDIY(FM), Allentown, Pennsylvania.
2. On May 29, 2014, WDIY aired a one-hour, locally produced public affairs program titled "Lehigh Valley Discourse." The program was devoted to the issue of gun control.
3. On June 3, 2014, I received an email from a Mr. Andrew Rumbold. On behalf of two organizations named "Firearms Owners Against Crime" and "Concerned Gun Owners of Pennsylvania," Mr. Rumbold expressed disappointment that the station had aired gun control "propaganda" and requested an "hour long show to present the side of the issue that is based on fact rather than emotion." He added that "Our first thought was to ask our combined memberships to flood your station with FCC complaints."
4. On June 6, I informed Mr. Rumbold that "WDIY will air another segment to this show giving the opportunity for people of a different opinion to share their thoughts."
5. On June 11, Mr. Rumbold proposed a show which "our leadership can participate in to present our side." He demanded a reply within 24 hours.
6. On June 13, 2014 at approximately 9:50 a.m., Mr. Rumbold visited WDIY and asked to see the FCC "file book" so that he could register a complaint about the program. I and a volunteer on-air host were the only people at the station that day. Because of severe weather conditions and equipment problems related to heavy rain, I asked if we could schedule a future date to discuss the programming issue further. He agreed and chose July 1, 2014 at 11:00 a.m. Later on June 13, Mr. Rumbold sent me an email expressing disappointment that he had been denied access to our "FCC book" and asking for a copy

of the May 29 "Lehigh Valley Discourse" program. Mr. Rumbold did not appear for his July 1 appointment, but promised to return "at a future date of my choosing." He never returned.

7. On July 15 two agents from the FCC's Philadelphia Field Office made an unannounced inspection of WDIY. They informed me that the visit was prompted by a complaint that WDIY had denied access to its public file. The inspectors examined our public file and commended us for keeping the files in good order. I followed up with an email to the FCC inspectors and was informed that "the Complaint was closed." Copies of relevant emails are contained in Attachment 2.
8. I heard nothing more from Mr. Rumbold or the FCC Field Officers until I received a copy of Mr. Rumbold's "Petition for Reconsideration" from Lehigh's communications counsel on November 6, 2014. I did not receive a copy of that Petition from Mr. Rumbold by fax.



Wagner Previate

Dated: November 12, 2014

Attachment 2

Emails between Lehigh and FCC Field Inspectors

From: Palash Barua [<mailto:Palash.Barua@fcc.gov>]
Sent: Monday, July 28, 2014 3:03 PM
To: 'Wagner Previato'; Matthew Urick
Subject: RE: FOLLOW UP: Nice to Meet You - 7-28-2014

Hi Wagner,

I have closed the complaint on our end. We did not observe any FCC Rule violations during our inspection on July 15, 2014.

Please feel free to call me should you have any questions.

Thanks,

Palash

From: Wagner Previato [<mailto:wpreviato@wdiy.org>]
Sent: Monday, July 28, 2014 10:27 AM
To: Palash Barua; Matthew Urick
Subject: FOLLOW UP: Nice to Meet You - 7-28-2014

Dear Palash and Matt,

I hope this finds you well. This is a friendly follow up regarding your visit recap.

Sincerely,

Wagner

From: Wagner Previato [<mailto:wpreviato@wdiy.org>]
Sent: Wednesday, July 16, 2014 10:22 AM
To: palash.barua@fcc.gov; matthew.urick@fcc.gov
Subject: Nice to Meet You

Dear Palash and Matt,

It was nice meeting you yesterday. I appreciate your visit to our station yesterday, you are welcome to visit us again anytime! We will be in touch regarding the EAS records and appreciate your support in helping WDIY with being in good standards with the FCC. I look forward to your e-mail recap of your visit regarding our public files and the EAS records.

Please let me know if you have any other questions.

Sincerely,

Certificate of Service

The undersigned, an employee of Garvey Schubert Barer, hereby certifies that a copy of the foregoing "Response to Letter of Inquiry and Opposition to Petition for Reconsideration" was served this date, by U.S. Postal Service First Class mail, postage prepaid, upon the following:

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Mr. Andrew Rumbold
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Cindy Lloyd

November 13, 2014