



Federal Communications Commission
Washington, D.C. 20554

January 8, 2015

In Reply Refer to:
1800B3-AJR

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In Re: KPNT(FM), Collinsville, IL
Facility ID No. 56525
Emmis Radio License, LLC
File No. BRH-20041001AHL
File No. BRH-20120928AWF

**Applications for License Renewal
Petitions to Deny**

Dear Counsel:

We have before us the referenced applications (the "Applications") of Emmis Radio License, LLC ("Emmis") to renew the license of Station KPNT(FM), Collinsville, Illinois (the "Station"),¹ covering two separate license terms.² We also have before us two Petitions to Deny the Applications filed by Julie Cordry ("Cordry") on January 3, 2005, and January 2, 2013 ("2005 Petition," "2013 Petition," collectively the "Petitions"), as well as various related pleadings.³ For the reasons discussed below, we grant the Applications and deny the Petitions.

Background. On October 1, 2004, and September 29, 2012, Emmis filed the Applications to renew the Station's license. Cordry, a resident within the 60 dBu contour of the Station, argues in the 2005 Petition that: (1) during the license term, Emmis willfully violated

¹ The Station was previously licensed to St. Genevieve, Missouri. The Station was granted a construction permit, File No. BPH-20081121ALQ, as modified by BMPH-20120228ADC, authorizing a change in the Station's community of license to Collinsville, Illinois. It filed a covering license application on January 25, 2013. See File No. BLH-20130125ABQ.

² File Nos. BRH-20041001AHL and BRH-20120928AWF are for the license terms expiring on February 1, 2005, and February 1, 2013, respectively.

³ These pleadings include: (1) an Opposition to the 2005 Petition filed February 2, 2005, by Emmis; (2) a Reply to Opposition to Petition to Deny filed February 22, 2005, by Cordry; and (3) an Opposition to the 2013 Petition filed January 31, 2013, by Emmis.

restrictions on the broadcast of obscene, indecent, or profane material;⁴ (2) an August 12, 2004, *Consent Decree*⁵ between Emmis and the Commission seeking to settle indecent programming issues against Emmis is illegal as “*ultra vires*”; and (3) despite the *Consent Decree*, Emmis lacks the character qualifications to be a licensee because there are links to pornographic sites on the Station’s website and the Station’s counsel threatened to file a lawsuit against Cordry for urging advertisers not to do business with the Station. Accordingly, Cordry requests that the Applications be denied.⁶

In its Opposition, Emmis contends that: (1) Cordry does not have standing to file the Petitions; (2) the Commission has already appropriately disposed of the Petitions’ indecent programming issues in the *Consent Decree*; and (3) the remaining allegations regarding Emmis’ character qualifications do not raise a substantial and material question of fact because they involve matters that the Commission does not regulate. Accordingly, Emmis requests that the Commission deny the Petitions. In her Reply, Cordry reiterates her previous arguments.

Discussion. Pursuant to Section 309(d) of the Communications Act of 1934, as amended (the “Act”) petitions to deny a license renewal application must, among other things, provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act, which governs our evaluation of an application for license renewal.⁷ Section 309(k) provides that the Commission shall grant a renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁸

Procedural Issue: Standing. Cordry claims standing as a listener to challenge the Applications and alleges that she and her family would be injured by Emmis’ continuing to broadcast indecent programming. While Emmis acknowledges that listeners can have standing in renewal proceedings, it questions whether Cordry has shown actual harm to warrant standing because the nature of the programming about which Cordry complains has dramatically changed and is in compliance with the Commission’s Rules.

In the renewal context, the Commission accords party-in-interest status to a petitioner who demonstrates either: (1) residence in the station’s service area; or (2) that he/she listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with

⁴ See 18 U.S.C. § 1464; 47 C.F.R. § 73.3999.

⁵ See *Emmis Communications Corporation*, Order, 19 FCC Rcd 16003 (2004), *recon. denied*, 21 FCC Rcd 12219 (2006), *app. dismissed sub nom. Smith v. FCC*, Order No. 06-1381 (D.C. Cir. Mar. 29, 2007) (“*Consent Decree*”).

⁶ The 2013 Petition incorporates by reference and reiterates the arguments set forth in the 2005 Petition.

⁷ 47 U.S.C. § 309(e). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁸ 47 U.S.C. § 309 (k)(1).

the station.⁹ No showing of actual harm is required in renewal or other proceedings where the allegations are based upon a station's programming or enforcement of a rule with a program-based purpose.¹⁰ Because Cordry's allegations relate to the Station's programming, she has satisfied the requirement for listener standing by submitting an affidavit that she resides in the service area and has been impacted by the station's allegedly indecent programming.

Substantive Issues: Consent Decree. The programming that Cordry complains about was the subject of the *Consent Decree* between the Commission and Emmis. Under the terms of the *Consent Decree*, Emmis agreed to pay \$300,000 in settlement of certain indecency complaints and to take steps to ensure future compliance with the restrictions on the airing of indecent programming. In exchange, the Commission agreed not to take further enforcement action or to entertain petitions or third-party objections against Emmis with respect to any broadcast that was aired prior to the August 12, 2004, effective date of the *Consent Decree*. Cordry's arguments about indecent programming are barred by this provision of the *Consent Decree* because they involve programming that was aired prior to the effective date. We have also previously addressed and rejected similar arguments by Cordry and other parties in connection with the renewal of other Emmis radio stations.¹¹ Further, it is well established that the Commission has wide discretion to enter into a consent decree regarding the alleged violations of the indecency laws.¹² Accordingly, no substantial and material question of fact has been raised about the airing of indecent programming or the Commission's entering into the *Consent Decree*.

Character Qualifications. We find that a statement in a letter by the Station's counsel to Cordry that Emmis might pursue legal action in response to her letter-writing campaign to discourage advertisers from purchasing time on the Station does not raise a question regarding Emmis' character qualifications.¹³ As we previously noted in other cases involving the renewal of Emmis stations, the Commission does not regulate the non-broadcast activities of stations or their

⁹ See, e.g., *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, Memorandum Opinion and Order, 82 FCC 2d 89, 98-99 (1980); *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1996).

¹⁰ See *Llerandi v. FCC*, 836 F.2d 79 (D.C. Cir. 1988) (granting standing to listeners to challenge the assignment of two radio stations based on violations of the Commission's "duopoly" rule because the rule is intended to promote program diversity); see also *Rainbow/PUSH Coalition v. FCC*, 396 F. 3d 1235, 1242 (D.C. Cir. 2005) (denying standing to contest the renewal of a radio station based upon the station's employment practices because the petitioners had not demonstrated harm resulting from the station's employment actions, but distinguishing *Llerandi* on the ground that "a listener, who would be directly affected by the programming diversity the rule was designed to promote, had standing to challenge the Commission's alleged violation of the rule").

¹¹ See, e.g., *Emmis Radio License Corporation*, Letter, 22 FCC Rcd 16637 (MB 2007), *recon. denied*, Letter, 24 FCC Rcd 369 (MB 2009), *rev. denied*, Memorandum Opinion and Order, 29 FCC Rcd 2571 (2014) (finding that an informal objection based upon based upon allegations of indecent programming against Emmis were barred by the *Consent Decree* and renewing the licenses of five Emmis radio stations); *Emmis Radio License Corporation*, Letter, Ref. 1800B3-MFW (Oct. 22, 2010), *rev. denied*, Memorandum Opinion and Order, 29 FCC Rcd 2571 (2014) (affirming dismissal of petition to deny as barred by the *Consent Decree*).

¹² See *Smith v. FCC*, *supra* note 5 (finding that the decision of the Commission to enter into the *Consent Decree* is a nonreviewable exercise of agency discretion); *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

¹³ Letter from Michael A. Kahn, Esq., to Julie Cordry (Nov. 18, 2003), 2005 Petition to Deny, Exhibit E ("My client is proud of its reputation within this community and will take appropriate legal measures if anyone attempts to damage or otherwise defame that reputation").

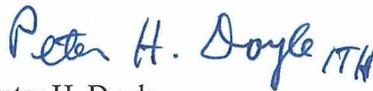
personnel such as the filing of civil lawsuits unrelated to the scope of their employment.¹⁴ Likewise, the alleged presence of links on the Station's website to third-party sites that may contain objectionable content does not raise a character issue because the content of a radio station's website is not a matter regulated by the Commission.¹⁵ Further, "non-FCC misconduct" is relevant only in limited circumstances and when it has been adjudicated.¹⁶ Cordry has not shown that the statement from Emmis' counsel that it may pursue legal action in appropriate circumstances is evidence of "misconduct" at all rather than a statement that Emmis will exercise its right to protect its reputation from defamation. Finally, these alleged instances of "non-FCC misconduct" have not been adjudicated by a court or agency of competent jurisdiction.

Conclusion/Actions. For the foregoing reasons, we conclude that Cordry has raised no substantial and material question of fact calling for further inquiry regarding Emmis' qualifications to remain a Commission licensee.

Additionally, we have evaluated the referenced Applications pursuant to Section 309(k) of the Act,¹⁷ and we find that the Station has served the public interest, convenience, and necessity during the subject license terms. Moreover, we find that there have been no serious violations of the Act or the Rules, nor have there been violations by the Licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse.

Accordingly, the Petitions to Deny filed by Julie Cordry on January 3, 2005, and January 2, 2013, ARE DENIED, and the Applications (File Nos. BRH-20041001AHL and BRH-20120928AWF) of Emmis Radio License, LLC for renewal of license for Station KPNT(FM), Collinsville, Illinois, ARE GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁴ See *Indiana Renewals*, 22 FCC Rcd at 16639 (rejecting an argument that Emmis abused the Commission process by allegedly condoning a civil lawsuit filed by a program host).

¹⁵ See, e.g., *Martha Beatriz Lopez Amador*, Letter, 22 FCC Rcd 6796, 6797 (MB 2007) (denying an informal objection because a station's decision not to post a photograph on its website is not conduct regulated by the Commission).

¹⁶ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order, and Policy Statement, 102 FCC Rcd 1179, 1195 (1986) (¶ 34). See also *Policy Statement Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (¶¶ 3-6).

¹⁷ 47 U.S.C. § 309(k).