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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

2013 DEC -4 A 6: 14

In the Matter of)

Application for Renewal of Broadcast Station)
License of)

Capstar TX LLC for)
Station KFI(AM))
Los Angeles, CA)

FCC File No. BR-20130801AGW

(Facility ID No. 34425)

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Federal Communications Commission
Office of the Secretary

OPPOSITION TO PETITION TO DENY

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December 2, 2013

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To: The Chief, Audio Division)	

OPPOSITION TO PETITION TO DENY

Capstar TX LLC, a licensee subsidiary of Clear Channel Communications, Inc. (“Clear Channel”), by its attorneys and pursuant to Section 73.3584 of the Commission’s Rules,¹ hereby submits this Opposition to the “Petition to Deny Application for Broadcast Station License” (“Petition”) filed by the National Hispanic Media Coalition (“NHMC”) on November 1, 2013 against the above-captioned application for renewal of the license of radio station KFI(AM), Los Angeles, CA (Facility Id. No. 34425) (“KFI” or “the Station”). As shown below, the Petition does not establish a failure by Clear Channel to meet the standard for renewal of the Station’s license under Section 309(k) of the Communications Act of 1934, as amended.² Accordingly, the Petition should be dismissed or denied and KFI’s license promptly renewed.

¹ 47 C.F.R. § 73.3584.

² 47 U.S.C. § 309(k). Section 309(k) requires the Commission to grant a license renewal application if it finds that (a) the station has served the public interest, convenience, and necessity, (b) there have been no serious violations of the Communications Act or Commission rules, and (c) there have been no other violations by the licensee of the Act or Commission rules which, taken together, constitute a pattern of abuse.

I. NHMC FAILS TO ESTABLISH ANY VIOLATION OF THE COMMUNICATIONS ACT OR ANY FCC RULE, AND CONSIDERATION OF ITS ASSERTIONS REGARDING KFI'S PROGRAMMING WOULD VIOLATE THE FIRST AMENDMENT.

NHMC offers a singular basis for challenging KFI's license renewal application: that the Station has aired certain program content that NHMC and its members find offensive or believe is inaccurate. NHMC does not—and could not—claim that KFI has violated the Communications Act or any FCC rule. Instead, NHMC's allegations focus solely on statements made by certain personalities appearing on news and talk shows that are aired on the Station, statements which NHMC repeatedly characterizes as "hate speech."³ NHMC claims, further, that the speech of which it complains "could cause physical harm,"⁴ and vaguely alludes to the FCC's policy regarding "news distortion"⁵ and concerns related to consolidation in the Los Angeles radio market.⁶ None of NHMC's allegations establish a *prima facie* case that renewal of KFI's license would be inconsistent with Section 309(k), nor has NHMC presented a substantial and material question of fact as necessary to warrant a hearing.⁷

³ *E.g.*, Petition at 2, 3, 4, 6, 10, 12, 14, 16, 22. In 2009, NHMC filed a "Petition for Inquiry" regarding "Hate Speech in the Media," requesting initiation of an "inquiry." See Petition for Inquiry Filed on Behalf of National Hispanic Media Coalition, RM Docket No. ___ (filed Jan. 28, 2009). The Commission has not, to date, taken any action on its petition.

⁴ Petition at 14-16.

⁵ *Id.* at 1-2, 23-24.

⁶ *Id.* at 19-22, 25.

⁷ 47 U.S.C. §§ 309(d), (k); *Astroline Commc'ns Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). NHMC appears to suggest that the Commission could "deny the renewal application outright" without holding a hearing, and requests a hearing as an "alternative" to an order denying the application. Petition at 1-2, 25. Although neither a hearing *nor* denial is warranted here, Clear Channel notes that the Communications Act would plainly require a hearing as a prerequisite to any order denying KFI's license renewal application. 47 U.S.C. § 309(k)(1)-(3).

As the Commission has recognized, its “role in overseeing programming content is very limited.”⁸ The deference that the FCC affords to the editorial discretion of broadcast licensees is not founded on mere policy; rather, “[t]he First Amendment and section 326 of the Act prohibit the Commission from censoring program material and from interfering with broadcasters’ freedom of expression.”⁹ Moreover, the prohibition on censorship applies at its highest to “news and comment programming”—the very type of programming at issue here—because it lies “at the core of speech which the First Amendment is intended to protect.”¹⁰ As the Bureau has explained:

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. Licensees have broad discretion—based on their right to free speech—to choose, in good faith, the programming they believe serves the needs and interests of their communities. This holds true even if the material broadcast is insulting to a particular minority or ethnic group in a station’s community. Indeed, as we have held in earlier decisions, “if there is to be free speech, it must be free for speech that we abhor and hate as well as for speech that we find tolerable and congenial.”¹¹

⁸ *Greater Boston Radio, Inc.*, 19 FCC Rcd 13064, 13065 (2004).

⁹ *Id.*

¹⁰ *NPR Phoenix, LLC*, 13 FCC Rcd 14070, 14072 (1998); *see, e.g., Paul Klite*, 12 Comm. Reg. (P&F) 79 (1998) (denying Petition to Deny alleging that station aired programming that “stereotyped” minorities “as perpetrators of crime in newscasts” on First Amendment grounds and reaffirming that “[b]ecause journalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment’s free press guarantee, licensees are entitled to the widest latitude of journalistic discretion in this regard”) (citations omitted).

¹¹ *Citicasters Licenses, L.P.*, 22 FCC Rcd 19324, 19331 (2007) (footnotes and citations omitted); *see, e.g., Greater Boston Radio, Inc.*, 19 FCC Rcd at 13064-65 (rejecting complaints alleging that station should be subject to enforcement action due to talk show host’s statements that “advocated dropping bombs in the Middle East to kill Muslims”); *Anti-Defamation League of B'nai B'rith*, 4 FCC 2d 190, 191 (1966) (denying Petition to Deny alleging that station aired anti-Semitic material, stating that “[t]he issue presented here is not whether the broadcasts in question were proper, or were false and defamatory, or were anti-Semitic,” because those “are not legal issues that are properly before the Commission,” and that any other result would have the agency “becom[e] the censor of broadcasting, which it is forbidden to do”), *aff’d sub nom. Anti-*

Although NHMC claims that certain of KFI's programming is offensive and inappropriate, the Commission has made clear that it will intervene only where a licensee has abused its discretion.¹² Clear Channel has not done so here.

To the extent NHMC alleges that certain of KFI's programming was intended to incite violence,¹³ Petitioner's claims fall far short of what is required under settled precedent.

"Commission action in response to an allegation that a broadcast should be characterized as an 'incitement' to violence or illegal action meeting the 'clear and present danger' test is limited to situations where a local court of competent jurisdiction has made such a determination."¹⁴

NHMC cites no instance in which a court has adjudicated material in any of the programs about which it complains as presenting a clear and present danger, and no such determination has in fact been made. And NHMC's related claims regarding the allegedly inappropriate broadcast of two individuals' telephone numbers¹⁵ are, under settled precedent "outside of the Commission's jurisdiction."¹⁶

Defamation League of B'nai B'rith v. FCC, 403 F.2d 169 (D.C. Cir. 1968), *cert. denied*, 394 U.S. 930 (1969).

¹² *Citicasters Licenses, L.P.*, 22 FCC Rcd at 19331; *see, e.g., John Neely, Esq.*, 22 FCC Rcd 8395, 8397 (2007) (citing *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, 8 FCC Rcd 6400, 6401 (1993) (abuse of discretion occurs if a licensee is unreasonable or discriminatory in its selection of issues that it believes are of concern to the local community or if it offers such nominal levels of issue-responsive programming as to have effectively defaulted on its obligation)).

¹³ *E.g.*, Petition at 10-11, 14-16.

¹⁴ *Spanish Radio Network*, 10 FCC Rcd 9954, 9959 (1995); *see, e.g., Citicasters Licenses, L.P.*, 22 FCC Rcd at 19331-32; *Capstar TX Limited Partnership*, 19 FCC Rcd 11303 (2004); *Greater Boston Radio, Inc.*, 19 FCC Rcd at 13064, 13066; *Anti-Defamation League*, 4 FCC 2d at 191.

¹⁵ Petition at 10-11.

¹⁶ *John Neely, Esq.*, 22 FCC Rcd at 8397-98 (denying petition to deny based, in part, on broadcast of individuals' home addresses without their permission). Moreover, in both of the

The Petition also makes vague reference to the FCC's "news distortion policy,"¹⁷ but comes up short in this regard as well. Under settled precedent, a petitioner seeking to make out a news distortion claim "must present to the Commission extrinsic evidence"—that is, "evidence outside of the content of the program"—"which supports the allegations of deliberate news distortion."¹⁸ The evidence must also establish that the licensee, station management, or news management participated in, directed, or at least acquiesced in the acts of distortion.¹⁹ In this case, NHMC has provided no extrinsic evidence whatsoever, let alone any evidence of managerial involvement in intentional news distortion. Moreover, the study on which NHMC bases its claims involved review of a mere thirty- to forty-minute segment of the *John and Ken Show* broadcast on a single date in 2008, and sought to determine the "truth" of factual statements based on a small sampling of sources that the study's authors themselves identified as "credible."²⁰ Because of the limited nature of this study, NHMC's contention that it establishes a

instances NHMC cites, the telephone numbers were included in *press releases* that were sent to the Station. An individual who includes their telephone number in a press release can hardly claim a reasonable expectation of privacy in that information. In any event, KFI has since revised its programming guidelines to prohibit the dissemination of personal phone numbers regardless of how they are obtained.

¹⁷ Petition at 1-2, 23-24.

¹⁸ *Lynn J. Farris*, 22 FCC Rcd 11193, 11194 (2007); see *TVT License, Inc.*, 22 FCC Rcd 13591, 13595 (2007) ("Allegations of deliberate distortion must be supported by extrinsic evidence, 'such as written or oral instructions from station management, outtakes, or evidence of bribery.'") (quoting *Galloway v. FCC*, 778 F.2d 16, 20 (D.C. Cir. 1985)).

¹⁹ *Lynn J. Farris*, 22 FCC Rcd at 11194; *TVT License, Inc.*, 22 FCC Rcd at 13595.

²⁰ Chon A. Noriega & Francisco Javier Iribarren, UCLA Chicano Studies Research Center, *Quantifying Hate Speech on Commercial Radio*, at 2, 6 (Nov. 2011), available at http://www.chicano.ucla.edu/files/WP1QuantifyingHateSpeech_0.pdf ("UCLA Study"). In addition, Clear Channel notes that the study was conducted as part of a "strategic alliance" between NHMC and UCLA, *id.* at 11, a fact that NHMC fails itself to acknowledge in its Petition.

“pattern” of any particular type of speech on KFI²¹ is misplaced.²² And a decision by the Bureau to rely on the study would involve the very type of subjective governmental evaluation of protected speech that the First Amendment abhors and the Communications Act prohibits.²³ Where, as here, there is “nothing more than [an] indicat[ion] that there is a dispute about the truth of a reported event or statement, whether a particular event or statement should or should not have been reported, or the manner in which a news item was reported, the Commission will not intervene.”²⁴ Indeed, as the Bureau has explained, “[i]n view of the freedom accorded the press by the First Amendment to the United States Constitution . . . no Government agency can authenticate the news, or should try to do so.”²⁵

NHMC’s attempt to interpose concerns related to consolidation in the Los Angeles radio market²⁶ into this renewal application proceeding should similarly be rejected. As an initial matter, Clear Channel’s ownership of stations in that market complies fully with the FCC’s local

²¹ Petition at 4-5.

²² *See, e.g., Paul Klite*, 12 Comm. Reg. (P&F) 79 (1998) (rejecting Petition to Deny based on “content analysis” involving local evening newscasts broadcast during consecutive five-day period in each quarter of 1994 (for a total of 20 newscasts) because the analysis examined only a “small sampling” of the stations’ programming and therefore presented only a “paucity of information” regarding the stations’ performance).

²³ Indeed, in addition to attempting to evaluate factual accuracy, portions of the study that NHMC cites in its Petition involved criticisms of the particular words selected by talk show hosts, the use of non-verbal cues such as “rhythm, stress, and intonation” by those hosts, and the extent to which the studied program excerpts indicated a “lack of alignment among hosts and guests in the sample segment—passages where speakers did not use the same words and tried to advance different ideas.” UCLA Study at 8-9 (cited in Petition at 5-6). Reliance on this aspect of the cited study would amount to a substitution of the researchers’ editorial judgments for that of Clear Channel, a result plainly at odds with fundamental free speech principles.

²⁴ *Lynn J. Farris*, 22 FCC Rcd at 11194.

²⁵ *Id.* at 11195 (citing *American Broadcasting Companies*, 86 FCC 2d 3, 11 (1981)).

²⁶ Petition at 19-22, 25.

radio ownership rule, and NHMC does not claim otherwise. More significantly, NHMC's consolidation-related claims—including those related to the programming content aired on KFI—mirror arguments that it has presented in the FCC's pending 2010 Quadrennial Review proceeding.²⁷ As the Supreme Court has observed, “rulemaking is generally a better, fairer, and more effective method of implementing new industry-wide policy than is the uneven application of conditions in isolated” licensing decisions.²⁸ Consistent with this precedent, the Commission has a “long . . . practice [of] mak[ing] decisions that alter fundamental components of broadly applicable regulatory schemes in the context of rulemaking proceedings,” rather than in the course of acting on individual applications.²⁹ And, of course, the Communications Act expressly

²⁷ See *Comments of National Hispanic Media Coalition (NHMC), Center for Rural Strategies, Center for Media Justice*, MB Docket Nos. 09-182, 07-294 (filed Mar. 5, 2012).

²⁸ *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983); see *California Ass'n of the Physically Handicapped, Inc. v. FCC*, 840 F.2d 88, 96-97 (D.C. Cir. 1988) (recognizing the impropriety of seeking to apply new requirements in the context of licensing proceedings, highlighting the “arbitrariness of retroactive application and the inherent constraints of the adjudicatory process”).

²⁹ *Application of Sunburst Media L.P. (Assignor), and Clear Channel Broad. Licenses, Inc. (Assignee)*, 17 FCC Rcd 1366, 1368 (¶ 6) (2002); see, e.g., *Acme Television, Inc.*, 26 FCC Rcd 5189, 5192 (2011) (“Issues of broad applicability . . . are more suited to a rule-making than to adjudication, and the Commission has long refused to develop broad new rules in an adjudicatory context.”); *Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corp., Transferees*, 21 FCC Rcd 7358, 7364-65 (¶ 15) (2006) (concerns raised by petitioner “are more properly addressed in the Commission’s pending . . . rulemaking proceeding,” in which the petitioner “ha[d] raised its concerns and public interest arguments in support of changes to the Commission’s rules and policies”); *Echo Star Commc’ns Corp.*, 17 FCC Rcd 20559, 20583 (¶ 48) (2002) (declining to consider conditions requested by a commenter “that have application on an industry-wide basis”); *Comcast Corp.*, 17 FCC Rcd 23246, 23257 (¶ 31) (2002) (“The Commission’s pending rulemaking on cable horizontal ownership is the more appropriate forum for consideration of the potential effects of industry-wide clustering on the distribution of programming by MVPDs to consumers.”); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Telecommunications, Inc. to AT&T Corp.*, 14 F.C.C.R. 3160, 3183 (¶ 43) (1999) (“[T]his is like other cases where the Commission has declined to consider, in merger proceedings, matters that are the subject of rulemaking proceedings before the Commission.”).

precludes the FCC from considering in the context of a renewal application whether grant of a license to a person other than the applicant would better serve the public interest.³⁰

These flaws in NHMC's Petition expose yet another weakness in its attempt to derail this application proceeding: NHMC lacks standing as a "party in interest" entitled to file a formal petition to deny against KFI's renewal application.³¹ NHMC's claim of standing is, at bottom, based on its apparent view that another entity would program the station differently. But this assumption is wholly speculative, and thus insufficient to establish causation.³² Nor can the FCC remedy NHMC's claimed injury, which flows from its fundamental dislike of certain of KFI's programming. As noted above, the FCC cannot lawfully dictate a change in KFI's program content, nor consider whether another licensee would program the station differently. Accordingly, NHMC cannot establish redressability either.

³⁰ 47 U.S.C. § 309(k)(4). NHMC's additional contention that its members who are "harmed by KFI do not have adequate opportunity to respond" to speech they find offensive is not credible. BIA data show that the Los Angeles FCC Geographic Market has 93 radio stations, with Clear Channel owning only 8. More 25% of the stations in the market (24 in total) have formats that suggest they cater predominantly to Hispanic audiences (these include Gruperio, Mexican, Ranchera, and a variety of "Spanish" formats). There are countless additional media outlets that serve Los Angeles, which is the second largest DMA in the country.

³¹ 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939. To qualify as a "party in interest," a party must show that: (1) "grant of the challenged application would cause the petitioner to suffer a direct injury," (2) "the injury can be traced to the challenged action," and (3) it is "likely, as opposed to merely speculative, that the injury would be prevented or redressed by the relief requested." *Alaska Native Wireless*, Order, 18 FCC Rcd 11640, 11644 (¶ 10) (2003); *see Rockne Educational TV*, Memorandum Opinion and Order, 26 FCC Rcd 14402, 14405 (¶ 7) (2011). An organization must show that at least one of its members satisfies each requirement. *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002).

³² *See Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539, 544 (D.C. Cir. 2003) (rejecting organization's claim of standing based on "broad and conclusory assertions" that "common control of two licenses in the same market necessarily or even probably affects their programming").

In sum, NHMC has failed to establish a *prima facie* case that renewal of KFI's license would be inconsistent with Section 309(k), nor has it presented a substantial and material question of fact as would be necessary to warrant a hearing. Its Petition should therefore be dismissed or denied and KFI's license renewal application promptly granted.

II. KFI OTHERWISE SERVES THE PUBLIC INTEREST, INCLUDING THE DIVERSE COMMUNITY IN THE LOS ANGELES MARKET.

Although NHMC's programming-related complaints have no place in this renewal application proceeding, it bears mention that KFI has a strong commitment to providing service to all members of the diverse community that it serves. To provide but one example, after receiving comments regarding programming that some audience members found offensive, KFI engaged with community members and, in March 2012, issued an unprecedented "Memorandum to the Los Angeles Community" regarding the steps it intended to take to address various concerns. Among other things, KFI staff and management (along with staff and management of the other Clear Channel Los Angeles stations), underwent cultural diversity training to increase their awareness of cultural issues and revised the Station's programming guidelines based on the training.³³ KFI has also increased its partnerships and interactions with local minority organizations, including by developing alliances with the League of United Latin American Citizens (LULAC), the Latino Institute for Corporate Inclusion (LICI), and the Latin Business Association (LBA). As a result of its service to the Los Angeles Latino community, Clear Channel's Los Angeles stations have received "Special Chairman's SOL Awards" from the LBA, which also issued a letter documenting "many meaningful and productive meetings"

³³ The training was conducted by some of the nation's top diversity experts, including Dr. Darnell Hunt, Director of the Ralph J. Bunche Center for African American Studies and Professor of Sociology at UCLA; Dr. Abel Valenzuela, Chair, Cesar Chavez Department of Chicana and Chicano Studies at UCLA; Professor Mignon Moore, UCLA; and Professor Sohail Daulatzai, University of California, Irvine.

between its representatives and the management of KFI. And, as a result of its broad employment outreach efforts, KFI has increased the number of minorities that it employs and has added two new multicultural programs to its program schedule.³⁴

More generally, Clear Channel's Los Angeles stations, including KFI, use a Local Advisory Board ("LAB") to ensure that stations remain responsive to community needs and concerns by periodically convening meetings between station managers, local leaders, business owners, listeners and advocacy groups. Indeed, the LAB was heavily involved in the decisions regarding the cultural diversity training and revisions to KFI's programming guidelines discussed above. The LAB has also resulted in projects that address important local issues or community needs. For example, LAB meetings highlighted gun violence as a key topic of local concern, and contributed to Clear Channel's decision to sponsor the Los Angeles Police Department's "gun buyback" program. As another example, KFI also recently launched its "Cash Mob" series, a program designed to lift struggling businesses such as minority-owned Uncle Darrow's Restaurant, which includes live broadcasts during which on-air hosts encourage listeners to visit businesses and spend at least \$20. These and other similar initiatives confirm KFI's commitment to the diverse Los Angeles community and further undermine NHMC's claims.

III. CONCLUSION

As demonstrated above, none of NHMC's allegations against KFI demonstrate any violations of the Communications Act or the FCC's rules, and consideration of its programming-related arguments would run afoul of the Act, the First Amendment, and settled Commission precedent. NHMC has failed to establish a *prima facie* case that renewal of KFI's license would

³⁴ Clear Channel notes, however, that "the EEO rules do not impose any requirements regarding the hiring of women and minorities, but only that stations engage in good faith recruitment efforts." *Paul Klite*, 12 Comm. Reg. (P&F) 79 (1998).

be inconsistent with Section 309(k), nor has it demonstrated a substantial and material question of fact as would be necessary to warrant a hearing. Accordingly, its Petition to Deny should be dismissed or denied, and KFI's renewal application promptly granted.

Respectfully submitted,

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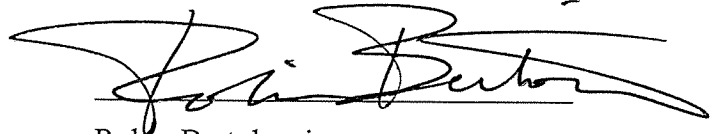
December 2, 2013

DECLARATION OF ROBIN BERTOLUCCI

I, Robin Bertolucci, do hereby declare under penalty of perjury:

1. I am the Program Director for KFI(AM).
2. I have read the foregoing "Opposition to Petition to Deny," and the facts stated therein, of which the Federal Communications Commission may not take official notice, are true and correct to the best of my knowledge and belief.

November 25, 2013

A handwritten signature in black ink, appearing to read "Robin Bertolucci", written over a horizontal line.

Robin Bertolucci

3400 W. Olive Avenue
Burbank, CA 91505

CERTIFICATE OF SERVICE

I, Eve Klindera Reed, hereby certify that on this 2nd day of December 2013, I caused the foregoing "Opposition of to Petition to Deny" to be served by first-class mail, postage prepaid, upon the following:

Jessica J. González
Michael J. Scurato
Nilda Muhr
National Hispanic Media Coalition
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Eve Klindera Reed