

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ACCEPTED/FILED
DEC 23 2013
Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Application for Renewal of Broadcast Station) File No. BR-20130801AGW
License of) (Facility ID No. 34425)
)
Capstar TX LLC, subsidiary of Clear Channel)
Communications, Inc.,)
For Renewal of Station License KFI,)
Los Angeles, CA)
)

REPLY TO OPPOSITION TO PETITION TO DENY

The National Hispanic Media Coalition (“NHMC”) respectfully submits this reply to the Opposition filed by Capstar TX LLC, a licensee subsidiary of Clear Channel Communications, Inc. (“Applicant”), to NHMC’s Petition to Deny Application for Broadcast Station License (“Petition”) of radio station KFI, Los Angeles.

As NHMC states below, there is no merit to Applicant’s claim that NHMC lacks standing to bring its Petition. Moreover, in its Opposition, Applicant failed to adequately demonstrate that renewal of its license would serve the public interest and made no attempt to deny many of the allegations of harm set forth in the Petition.

I. NHMC HAS DEMONSTRATED THAT IT HAS STANDING TO CHALLENGE THIS LICENSE RENEWAL APPLICATION

NHMC has clearly established standing in this proceeding as required by the Communications Act of 1934, as amended, Commission rules, and long-standing precedent. Applicant’s off-handed and dangerous assertions to the contrary fly in the face of a multitude of decisions rendered by the Commission and various judicial bodies, as well as the accepted

purpose and spirit of the law and threaten the established ability of the listening public to participate in the broadcast licensing process.

Under the Communications Act of 1934, as amended, a “party in interest” has standing to file a petition to deny.¹ The petition to deny must contain specific allegations of fact demonstrating that the petitioner is a party in interest and that a grant of the application would be inconsistent with the public interest, convenience, and necessity.² The allegations of fact must be supported by an affidavit of a person with personal knowledge of the facts alleged.³ As NHMC noted in its Petition, standing under 47 U.S.C. § 309(d)(1) accords party in interest status to a petitioner who demonstrates either residence in the station's service area *or* that the petitioner listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with the station.⁴

In this instance, NHMC has demonstrated that it is a party in interest. NHMC has provided the requisite affidavits from two individuals within its organization, with each attesting to personal knowledge of the facts contained in the Petition, alleging that personal injury would result should the Commission grant Applicant’s license renewal, and demonstrating that they reside in KFI’s service area and regularly listen to the station.⁵ Further, NHMC is headquartered within the station’s service area, in Pasadena, California, and filed the Petition from that location, indicating that it is a responsible representative of the listening public in the local market.⁶

¹ 47 U.S.C. § 309(d).

² *Id.*

³ *Id.*

⁴ *In Re Applications of Chet-5 Broad., L.P. (Assignor) & Crystal Commc'ns Corp. (Assignee) Chet-5 Broad., L.P. (Transferor) & Crystal Commc'ns Corp. (Transferee)*, 14 FCC Rcd. 13041 (1999).

⁵ Petition at Exhibit 1.

⁶ *See Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994 (1966).

Beyond that, within the Petition and the accompanying affidavits, NHMC puts forth allegations of fact showing that the grant of Applicant’s license renewal application would be inconsistent with the public interest, convenience, and necessity due to a well-documented history of KFI using its license to harm many and diverse individuals and groups within the local community through the repeated use of hate speech and targeted calls to action against members of the public with whom they disagree. The Petition and affidavits recount dozens of specific instances and allegations of abuse that were uncovered by NHMC, local scholars, and unaffiliated members of the listening public that filed complaints about KFI with the Commission. Further, both individuals providing affidavits demonstrate that they will be personally injured should the Commission decide to grant Applicant’s license renewal application as both identify as members of groups that are explicitly targeted and degraded by KFI in certain programming.⁷

Applicant’s reliance on *Rainbow/PUSH* to argue that NHMC lacks standing is misplaced.⁸ *Rainbow/PUSH* recognized that “audience members may have standing to challenge a decision of the Commission because they may bring to the Commission’s attention matters relating to a broadcaster’s programming.”⁹ This is precisely what NHMC has done in the present case. In *Rainbow/PUSH*, petitioner was denied standing because its two supporting declarations “merely identif[ied] rather than document[ed] ... injury” and, as a result, “failed to produce

⁷ Applicant asserts, “NHMC’s claim of standing is, at bottom, based on the apparent view that another entity would program the station differently.” Opposition at 8. This statement represents a gross mischaracterization of the arguments put forth in NHMC’s Petition and an apparent disregard of the facts contained in the Petition. The Petition clearly alleges harm inflicted by the licensee on a majority of listeners in the local community during its previous license term as well as its ongoing indifference to its obligation to serve the public interest or its local community.

⁸ Opposition at 8, note 32.

⁹ *Rainbow/PUSH Coal. v. FCC*, 330 F.3d 539, 544 (D.C. Cir. 2003) (“Rainbow/PUSH”).

evidence that it (or one of its members) has suffered the injury-in-fact required for standing.”¹⁰ In this instance, through its Petition, exhibits, and the supplementary affidavits, NHMC thoroughly documents many specific instances of injuries to residents within KFI’s service area stemming from the licensee’s refusal to serve the local community and the public interest. NHMC asserts that these injuries would continue should the Commission decide to renew KFI’s license.

Further, the Commission has recognized that:

It is not necessary for a petitioner to make a separate showing that it has suffered an “injury in fact.” Factual allegations as to why grant of a broadcast application would not serve the public interest, combined with a showing of local residence, “supply the predicate for finding injury in fact.”¹¹

In this instance, unlike the petitioner in *Rainbow/PUSH*, NHMC has provided the requisite evidence to support its claim of injury, and therefore standing, to include detailed and extensive factual allegations as well as a showing of local residence.

II. APPLICANT HAS FAILED TO DEMONSTRATE THAT RENEWAL OF ITS LICENSE WILL SERVE THE PUBLIC INTEREST

Throughout its Opposition, Applicant does little to rebut and seems to concede the many allegations of harm set forth by NHMC’s Petition, which establish that granting its license renewal would be *prima facie*, inconsistent with the public interest, convenience and necessity.¹² Further, Applicant’s affirmative attempt to demonstrate that KFI serves the public interest and the local community raises more questions about its fitness to maintain its license than it answers.

¹⁰ *Id.* at 546.

¹¹ *Anne L. Weismann, Melanie Sloan, Antoinette Cook Bush, Joshua Gruenspecht*, 28 FCC Rcd. 6312, 6316, note. 45 (2013) (citing *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).).

¹² See 47 U.S.C. § 309(d)(1) (2013); *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985).

NHMC's Petition is brimming with data and examples of how Applicant has consistently used its broadcast license to marginalize and degrade entire segments of the diverse Los Angeles community that it is required to serve, as well as target individual members of that community. NHMC proffers academic research that studied the way that various KFI on-air personalities distorted facts and targeted vulnerable groups.¹³ Applicant does little to challenge the findings of that study. NHMC documents a number of instances of hate speech that have been uttered over KFI's airwaves, including targeted attacks on Latinos, African Americans, Asian Americans, immigrants, lesbian, gay, bisexual, and transgender ("LGBT") persons, and women.¹⁴ In its opposition, Applicant does not deny any of the highlighted instances. NHMC's Petition includes a collection of over 240 consumer complaints of hate speech received by the Commission over a 3-year period.¹⁵ Applicant does not deny any of the allegations made in those complaints. NHMC recounts instances in which KFI on-air personalities released private telephone numbers of individuals who reside in the local community and issued subsequent calls to action against those individuals resulting in harassing phone calls and death threats.¹⁶ Applicant does not deny using its license to engage in such activity.¹⁷ And, finally, NHMC cites myriad, concrete physical and psychological harms that result from the dissemination of hate speech, particularly over a mass media platform such as the one Applicant is seeking to continue to operate.¹⁸ Applicant

¹³ Petition at 4-6; *See* CHON A. NORIEGA & FRANCISCO JAVIER IRIBARREN, UCLA CHICANO STUDIES RESEARCH CENTER, QUANTIFYING HATE SPEECH ON COMMERCIAL RADIO (Nov. 2011), *available at* <http://www.chicano.ucla.edu/research/documents/WPQuantifyingHateSpeech.pdf>.

¹⁴ Petition at 6-10.

¹⁵ Petition at Exhibit 2.

¹⁶ Petition at 10-12.

¹⁷ However, apparently due to the community outcry resulting from such episodes, Applicant did, at long last, revise "its programming guidelines to prohibit the dissemination of personal phone numbers." Opposition at 4-5, note 16.

¹⁸ Petition at 12-19.

does not challenge any of the research documenting these harms. In sum, Applicant does very little to rebut any of the facts presented by NHMC.

Applicant's attempt to affirmatively show that KFI serves the community and the public interest are unpersuasive and, if anything, further demonstrate that it has failed to meet its public interest obligations for many years. In fact, much of the "service" that Applicant boasts only dates back to March 2012 and is only as a result of "receiving comments regarding programming that some audience members found offensive" and "to address various concerns [of community members]." ¹⁹ The limited, remedial measures described by Applicant are too little, too late after years of documented community outrage. ²⁰

CONCLUSION

For the foregoing reasons, the Commission should designate for hearing and, ultimately, deny Applicant's license renewal application.

Respectfully Submitted,

/s/

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Dated: December 23, 2013


¹⁹ Opposition at 9.

²⁰ Further, many of the remedial measures described by Applicant seem insufficient to absolve it of past indiscretions. For instance, the fact that KFI staff and management had to attend cultural diversity training to learn more about the diversity of the Los Angeles community after purporting to serve that community for more than a decade seems to be indicative of a larger problem. *See Id.*

CERTIFICATE OF SERVICE

I, Michael J. Scurato, hereby certify that the foregoing Reply to Opposition to Petition to Deny was served upon the following parties via USPS Priority Mail on this 23rd day of December 2013:

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