

temp



Federal Communications Commission
Washington, D.C. 20554

March 18, 2015

In Reply Refer to:
1800B3-SS

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In re: **Entercom License, LLC**
KNRK(FM), Camas, Washington
Facility ID No. 51213
File No. BRH-20051003BFQ

Entercom Buffalo License, LLC
WBEN(AM), Buffalo, New York
Facility ID No. 34381
File No. BR-20060201AYW

WWKB(AM), Buffalo, New York
Facility ID No. 34383
File No. BR-20060201AZR

Applications for Renewal of License

Informal Objections

Dear Counsel:

We have before us the applications (“Applications”) for renewal of license for stations KNRK(FM), Camas, Washington, and WBEN(AM) and WWBK(AM), Buffalo, New York (“Stations”), filed by Entercom License, LLC (“Entercom Seattle”) and Entercom Buffalo License, LLC (“Entercom Buffalo”), respectively. Both entities are wholly owned subsidiaries of Entercom Communications Corporation (“Entercom”). We also have before us Informal Objections to the Applications filed by Edward R. Stolz, II (“Stolz”), as Executor for the Estate of Irene M. Stolz (“Objections”).¹ For the reasons set forth below, we deny the Objections and grant the Applications.

¹ Irene M. Stolz filed the Objection against the KNRK(FM) and certain other Entercom Seattle license renewal applications on January 23, 2006. Mrs. Stolz died on April 24, 2006. Upon her death, Edward R. Stolz, II, was substituted as the petitioner in his capacity as the executor of Mrs. Stolz’s estate. He filed the Objection against the WBEN(AM) and WWBK(AM) and certain other Entercom Buffalo license renewal applications on May 1, 2006. Entercom opposed both Objections in a Consolidated Opposition (“Opposition”) filed on September 28, 2007. The (continued . . .)

Background. In the Objections, Stolz indicates that it “incorporates by reference” the 2005 Petition to Deny filed in the Sacramento Proceeding.² Stolz argues that the Applications should not be granted because Entercom has shown a “wanton disregard for the FCC’s rules” as evidenced by: (1) Notices of Apparent Liability (“NALs”) issued to Entercom stations in other markets for violations of restrictions on the broadcast of indecent programming; and (2) Entercom’s role as a target of “payola” investigations³ by the New York State Attorney General and the Commission.⁴ Stolz states that the “aggregate of violations” by Entercom and its subsidiaries creates a “discernible pattern of abuse” under the Communications Act of 1934, as amended (“Act”) and the Commission’s rules, which establishes a substantial and material question of fact as to whether the licenses for the Applications should be renewed.

In its Opposition, Entercom argues that the Objections should be denied because: (1) there is no need to re-litigate the indecency issues because the Commission determined that monetary forfeitures were the appropriate remedy and that these sanctions did not affect Entercom’s qualifications as a licensee; and (2) a *Consent Decree*⁵ between the Commission and Entercom has rendered the payola allegations moot.

Discussion. Informal objections must, pursuant to Section 309(e) of the Act, 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,⁶ which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find, with respect to that station, that: (1) the station has served the public interest, convenience, and necessity; (2)

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staff denied the Objections and granted the license renewal applications of Entercom Seattle and Entercom Buffalo in March 2008, except for those of the Stations here. See *Entercom Portland License, LLC, et al.*, Letter, 23 FCC Rcd 3695 (MB 2008) (“*Entercom Portland Staff Decision*”). The renewal applications for the subject Stations were held pending the resolution of matters involving those Stations by the Commission’s Enforcement Bureau.

² On November 1, 2005, Mrs. Stolz petitioned to deny (“2005 Petition”) the license renewal applications of stations licensed to the Sacramento, California, subsidiaries of Entercom (“Sacramento Proceeding”). On September 6, 2012, the staff denied the 2005 Petition with respect to, *inter alia*, Entercom Stations KCTC(AM), Sacramento and KKDO(FM), Fair Oaks, California. See *Entercom Sacramento License, LLC*, Letter, Ref. 1800B3-MM (Sep. 6, 2012) (“*Entercom Sacramento Decision*”).

³ A station’s receipt of payment for airing programming without disclosing the payment is known as “payola.” See *Educational Community Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 5283 (MB 2013). “Payola” is prohibited by the sponsorship identification laws. See 47 U.S.C. § 508, 47 C.F.R. § 73.1212.

⁴ Stolz also states that the renewals of the Stations, “at a minimum,” should be deferred until the completion of these payola proceedings.

⁵ *Entercom Communications Corp.*, Order and Consent Decree, 22 FCC Rcd 7121 (2007) (“*Consent Decree*”).

⁶ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 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 objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

there have been no serious violations of the Act or the Commission's Rules ("Rules"); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁷

Indecency. Stolz does not raise any indecency issues specific to the Applications. Rather, Stolz relies upon instances of indecent programming at other Entercom stations, specifically referencing KNDD(FM), Seattle, Washington. The plain language and structure of Section 309(k) clearly establish that the scope of the "violations" listed in Section 309(k)(1) is limited to the station for which license renewal is being considered. Congress has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought.⁸ To the extent that Stolz claims we should consider the activities of Entercom at stations other than those referenced here, his Objections will be denied.⁹

Additionally, the Commission previously investigated these specific instances and found that they do not call into question Entercom's qualifications to be a Commission licensee.¹⁰ Further, subsequent to the release of these NALs, the Commission has permitted Entercom to acquire a station and granted license renewal applications for other Entercom stations.¹¹ Accordingly, we find that no further inquiry is warranted regarding Entercom's airing of indecent programming.

Payola. Stolz's arguments regarding Entercom's violations of the sponsorship identification laws are barred from consideration by the terms of a *Consent Decree* entered into by the Commission and Entercom. Under the terms of the *Consent Decree*, the Commission agreed to refrain from entertaining petitions to deny or other third-party objections against Entercom based upon any broadcast occurring prior to the April 13, 2007, effective date of the *Consent Decree*.¹² Stolz's Objections were filed on January 23, 2006, and May 1, 2006, respectively, and concerned programming aired before the effective date of the *Consent Decree*. Accordingly, Stolz's allegations about Entercom's compliance with the sponsorship identification requirements do not warrant additional consideration.

Conclusion/Actions. For the foregoing reasons, we conclude that Stolz has not raised a substantial and material question of fact calling for further inquiry regarding Entercom's qualifications to remain a Commission licensee.

Additionally, we have evaluated the referenced Applications pursuant to Section 309(k) of the Act,¹³ and we find that the Stations have served the public interest, convenience, and necessity during the

⁷ 47 U.S.C. § 309(k)(1).

⁸ *Sagittarius Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 22551, 22555 (2003).

⁹ As a related matter, given that we have already refused to credit arguments raised in the Sacramento Proceeding, we find that Stolz's "using incorporation by reference to reprise arguments already made and rejected is improper." See, e.g., *KFCD(AM), Farmersville, Texas*, Letter, 23 FCC Rcd 2646, 2648 (MB 2008).

¹⁰ See, e.g., *Entercom Kansas City License, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 25011, 25018 (2004) (concluding that a monetary forfeiture alone was the appropriate sanction).

¹¹ See, e.g., *Entercom Portland Staff Decision*, 23 FCC Rcd at 3695 (MB 2008) (renewing licenses for 30 Entercom stations and denying Informal Objections filed by Stolz raising identical indecency issues); *Entercom Sacramento Staff Decision* (renewing licenses for 6 Entercom stations); and *WVEI-FM, Easthampton, MA*, Letter, 22 FCC Rcd 20058 (MB 2007) (granting assignment application).

¹² See *Consent Decree*, 22 FCC Rcd at 7121 (¶ 8).

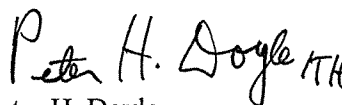
¹³ 47 U.S.C. § 309(k).

subject license term. Moreover, we find that there have been no serious violations of the Act or the Rules, nor have there been violations by Licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse.

Accordingly, the Objections filed by Edward R. Stoltz, II, on January 23, 2006, and May 1, 2006, respectively, ARE DENIED.

Additionally, the applications for renewal of license for Stations KNRK(FM), Camas, Washington (File No. BRH-20051003BFQ), WBEN(AM), Buffalo, New York (File No. BR-20060201AYW), and WWKB(AM), Buffalo, New York (File No. BR-20060201AZR) ARE GRANTED.

Sincerely,

A handwritten signature in black ink that reads "Peter H. Doyle" followed by a stylized monogram "PH".

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Edward R. Stolz, II