

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

2015 MAR 07 A 9:44

Accepted / Filed

MAR 26 2015

**Federal Communications Commission
Office of the Secretary**

In re Applications of)
)
ENTERCOM LICENSE, LLC)
(formerly ENTERCOM BOSTON)
LICENSE, LLC))
)
WAAF(FM), Westborough, MA)
)
)
)
WEEI(AM), Boston, MA)
)
)
)
)
WEEI-FM, Lawrence, MA)
(formerly WMKK(FM)))
)
)
)
WRKO(AM), Boston, MA)
)
)
)

File No. BRH-20051201CFP
File No. BRH-20131127AOB
Facility ID # 74467

File No. BR-20051201CFN
File No. BR-20131127AMI
Facility ID # 1912

File No. BRH-20051201CFM
File No. BRH-20131127ANR
Facility ID # 1919

File No. BR-20051201CFG
File No. BR-20131127AMS
Facility ID # 1902

TO: Honorable Marlene H. Dortch
Secretary of the Commission

ATTN: The Commission

APPLICATION FOR REVIEW

The Estate of Irene M. Stolz, Edward R. Stolz II, Executor (Stolz), by its attorney, and pursuant to Section 1.115 of the Rules and Regulations of the Federal Communications Commission, 47 C.F.R. §1.115, hereby respectfully submits this Application for Review of the letter ruling of the Chief, Audio Division,

Media Bureau by letter dated February 19, 2015 (Letter Ruling) denying the Stolz "Petition for Reconsideration" and simultaneously affirming the grant of the above-captioned license applications filed by a subsidiary of Entercom Communications Corp. (Entercom). In so doing, the following is shown:

Timeliness

1. This pleading is timely filed pursuant to Section 1.115(d) of the Rules. A descriptive public notice of the denial of the Stolz Informal Objection and grant of the above-referenced applications was released by the Commission on February 24, 2015, **Public Notice, Broadcast Applications, Report No. 28432**, pp. 13-18 (an abstract of this public notice is attached as Exhibit A). Since this pleading is being filed within 30 days of the release of the descriptive public notice, it is timely filed.

Questions of Law Presented

2. Pursuant to Section 1.115(b) of the Rules, this is to state the questions of law presented by this Application for Review:

- a. Whether the dismissal of the Stolz Petition for Reconsideration on procedural grounds was arbitrary and capricious and in conflict with **Press Broadcasting Co., Inc. v. FCC**, 59 F.3d 1365 (D. C. Cir. 1995) where an informal objector was permitted to pursue appeals of the adverse

rulings rendered by the FCC staff acting pursuant to delegated authority.

- b. Whether the refusal of the Audio Division to investigate Entercom's complicity in the death of a contestant in the contest "Hold Your Wee for a Wii" violates the Administrative Procedure Act requirement that the FCC not act arbitrarily or capriciously and that the FCC act in accordance with law, 5 U.S.C. §706(2)(A).
- c. Whether the Audio Division had an obligation pursuant to Section 312(a)(2) of the Communications Act of 1934, 47 U.S.C. §312(a)(2) to investigate the circumstances surrounding the "Hold Your Wee for a Wii" contest and to determine as a result thereof whether Entercom continued to possess the basic character qualifications to be an FCC licensee.

Section 1.115(b)(2) Factors

3. The rulings of the Audio Division in this case must be reversed or vacated, because they implicate the following factors stated in 47 C.F.R. §1.115(b)(2):

(i) The action taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy.

(v) Prejudicial procedural error.

Question of Law "a"

4. At page 4 of the February 19, 2015 Audio Division letter ruling, it was stated: "As an informal objector, Stolz is not a "party to the proceeding" within the meaning of Section 1.106(b)(1) of the Rules, and thus has no right to seek

reconsideration in this proceeding", citing a staff ruling, **David Ryder**, 24 FCC Rcd 10874 (MB 2009).

5. This attempt to convert a staff ruling into hornbook law seems to us to be in conflict with **Press Broadcasting**, supra. This case involved an informal objection filed against an application to extend the expiration date of a television station construction permit. Petitions to deny did not lie against this type of application; therefore, Press Broadcasting could only file an "informal objection". Press Broadcasting's informal objection was initially granted and the subject application dismissed as a result thereof; however, the staff later reversed itself and extended the construction permit. Press Broadcasting filed a number of pleadings with the FCC, which ultimately led to an appeal to the District of Columbia Circuit, where a remand of the proceeding back to the FCC was ordered.

6. Therefore, we have a precedent where an informal objector was able to have pleadings ruled upon on their merits. It was therefore both in conflict with case precedent and a prejudicial procedural error for the FCC staff to deny Stolz a full ruling on the merits of the petition for reconsideration, particularly on the substantial issue related to an FCC licensee's involvement with the death of a contestant in a game broadcast over its radio station.

Questions of Law "b" and "c"

7. On January 12, 2007, Entercom's KDND(FM), Sacramento, California, staged an on-air contest called "Hold Your Wee for a Wii".

8. The facts were chronicled by attorney Dr. Ronald B. Standler in an on-line article, <http://www.rbs2.com/KDND.pdf> (footnotes omitted):

Contestants were given an 8-ounce (235 ml) bottle of water to drink in two minutes, followed by a ten minute break, then another bottle.¹ After eight 8-ounce bottles, contestants were given 16-ounce (475 ml) bottles of water to drink. Jennifer Strange drank eight of the 8-ounce bottles and ten of the 16-ounce bottles, for a total of 224 ounces (6.6 liters) of water.² One of KDND's disk jockeys remarked that Jennifer's "stomach was so large that she looked 'three months pregnant.'"³

At 09:30 PST, Jennifer Strange quit the contest, because she had a headache and felt dizzy. She won second place in the contest. She returned to her house, instead of going to work that day. At approximately 14:00 PST, her mother found Jennifer's dead body in her house.⁴

9. Entercom conducted this contest with wanton disregard for the safety of the contestants to entertain listeners and generate audience ratings.

10. In its 1986 policy statement, *Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1204-1205, n. 60, the Commission discussed non-broadcast conduct by a licensee that shocked the conscience:

The Commission acknowledges that there may be circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation. See

e.g., supra, comments of ABC at note 29. Such misconduct might, of its own nature, constitute prima facie evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee, and might be a matter of Commission concern even prior to adjudication by another body. The Commission cannot presently contemplate the manner in which circumstances might arise, and stresses that such considerations would come into play only with regard to a specific application involving specific misconduct. [emphasis supplied]

11. Here, we have broadcast related conduct that shocked the conscience and resulted in the death of a young woman, all in the search for ratings and revenues. This matter has been raised in the context of the renewal applications of Entercom's Sacramento cluster of stations. However, it seems to us that the Commission's 1986 **Policy Statement** is not a hard and fast rule, and where the right circumstances present themselves, licensee conduct at one station can affect the basic qualifications of other stations owned by the same licensee. The FCC should not be granting any renewal applications of any of Entercom's stations nationwide, including the above-captioned stations, until the FCC conducts a full and fair hearing pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. §309(e). The death of Jennifer Strange and Entercom's corporate role in it presents a prima facie case that Entercom lacks the basic character qualifications to be a Commission licensee anywhere in the nation. The Commission simply cannot grant any Entercom renewal application, including but not limited to the above-captioned stations, without first

holding a full and fair hearing before an independent administrative law judge. *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 397 (D. C. Cir. 1985). Indeed, to quote the *WRVR* court, not only is there a "good deal of smoke" here, but we actually have the "existence of a fire". A hearing is required for all of Entercom's pending renewal applications, including those captioned above. Further, under the FCC's organic statute, 47 U.S.C. §312(a)(2), it seems to us that the FCC had an obligation to hold hearings on whether Entercom continued to possess the requisite basic character qualifications to be a Commission licensee.

12. We renew our argument made to the staff that it is procedural error for the Commission to take piecemeal action with the remaining pending Entercom renewal applications. We would note that its Sacramento cluster 2005 renewal applications are still pending. Former administrative law judge David I. Kraushaar (and more recently echoed by Commissioner Clyburn and former Commissioner Copps), noted the "pristine truth of the observation that 'justice delayed is justice denied'". *Jack O. Gross*, FCC 77D-29, 69 FCC 2d 178, ¶23 (ALJ, 1977).

13. It is disturbing that the FCC will not lift one finger to investigate an event which shocks the conscience such as the "Hold Your Wee for a Wii" contest, and yet seems to routinely impose large civil forfeitures against unfortunate small

licensees who commit seeming trivial recordkeeping violations; see e.g. **Ernesto Bustos (WTBL-CD)**, 29 FCC Rcd 12863 (2014), fining the young Hispanic single station licensee \$13,000 for children's television recordkeeping violations. More recently, the FCC announced a \$325,000.00 fine against a larger broadcasting organization, Schurz Communications, for a broadcast of three seconds' worth of graphic video of a sex organ on a station newscast. **WDBJ Television, Inc.**, FCC 15-32, ¶15 (March 23, 2015). We are constrained to point out that no one died at either WTBL-CD or WDBJ-TV. Someone did die as a result of Entercom's KDND's reckless and irresponsible broadcasting. It is arbitrary and capricious, and therefore a reversible error pursuant to the Administrative Procedure Act, 5 U.S.C. §706(2)(A), as well as a violation of 47 U.S.C. §309(e) and 47 U.S.C. §312(a)(2), for the FCC to refuse to investigate Entercom and the "Hold Your Wee for a Wii" contest, and to determine in light thereof whether Entercom possesses the basic character qualifications to be a Commission licensee.

14. Therefore, it was a violation of a number of statutory provisions contained in the Communications Act of 1934, as amended, and the Administrative Procedure Act, for the Audio Division to refuse to investigate the Entercom on-air contest described above. It was also prejudicial procedural error for

the FCC not to hold license revocation proceedings against Entercom.

Conclusion

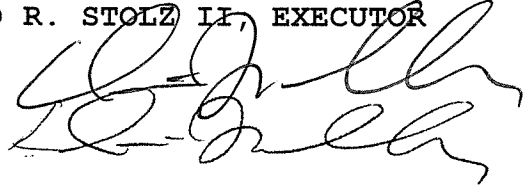
WHEREFORE, it is urged that our Application for Review **BE GRANTED**, that the rulings of the Audio Division BE VACATED, and that the above renewal applications **BE DESIGNATED FOR HEARING** upon at least the following issues, and that the Estate of Irene M. Stolz, Edward R. Stolz II as executor, **BE GRANTED STATUS AS AN INTERVENOR** in such hearing:

1. To determine the facts and circumstances surrounding Entercom's conduct of a radio contest over KDND(FM), Sacramento, California which resulted in the death of a contestant, and, in light thereof, whether Entercom possesses the basic character qualifications to be a Commission licensee; and
2. In light of the evidence adduced pursuant to the foregoing issues, whether the applications for renewal of license of the above-captioned stations should be denied.

Stolz also demands that the Commission hold a field hearing as to the death of Jennifer Strange, and that it be permitted to participate in that hearing as an intervenor and a party respondent.

Respectfully submitted,

**ESTATE OF IRENE M. STOLZ,
EDWARD R. STOLZ II, EXECUTOR**

Handwritten signature of Dennis J. Kelly in black ink, appearing as a stylized cursive script.

By _____
Dennis J. Kelly
Its Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 41177
Washington, DC 20018
Telephone: 202-293-2300

dkellyfcclaw1@comcast.net

DATED: March 26, 2015

EXHIBIT A



PUBLIC NOTICE

Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

News media information 202 / 418-0500 Recorded listing of releases and texts 202 / 418-2222

REPORT NO. 28432

Broadcast Applications

2/24/2015

<u>STATE FILE NUMBER</u>	<u>E/P CALL LETTERS</u>	<u>APPLICANT AND LOCATION</u>	<u>NATURE OF APPLICATION</u>
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AM STATION APPLICATIONS FOR RENEWAL PETITION FOR RECONSIDERATION

MA BR-20051201CFG	WRKO 1902 E 680 KHZ	ENTERCOM LICENSE, LLC MA, BOSTON	<p>Renewal of License. Informal Objection filed 2/28/06 by ("Mrs. Stolz" or "Objector") Consolidated Opposition to Informal Objection filed 9/28/07</p> <p>Informal Objection denied, license renewal application granted per letter reference 1800B3-JWR/AJR on 10/09/2014</p> <p>Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR</p> <p>Opposition Filed 11/26/2014 by Entercom License, LLC</p> <p>Reply filed 12/08/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR</p> <p>Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR denied in part and dismissed in part 2/19/2015 by letter Ref 1800B3-EAB</p>
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APPLICANT AND LOCATION

NATURE OF APPLICATION

AM STATION APPLICATIONS FOR RENEWAL PETITION FOR RECONSIDERATION

MA BR-20051201CFN

WEEI 1912

ENTERCOM LICENSE, LLC

Renewal of License.

E 850 KHZ

MA, BOSTON

Informal Objection filed 2/28/06 by ("Mrs. Stolz" or "Objector")

INFORMAL OBJECTION FILED 3/1/2006 (ALEX MALVERS)

Consolidated Opposition to Informal Objection filed 9/28/07

Informal Objection denied, license renewal application granted per letter reference 1800B3-JWR/AJR on 10/09/2014

Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR

Opposition Filed 11/26/2014 by Entercom License, LLC

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AM STATION APPLICATIONS FOR RENEWAL PETITION FOR RECONSIDERATION

MA BR-20131127AMI	WEEI 1912 E 850 KHZ	ENTERCOM LICENSE, LLC MA , BOSTON	<p>Renewal of License.</p> <p>Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR</p> <p>Opposition Filed 11/26/2014 by Entercom License, LLC</p> <p>Reply filed 12/08/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR</p> <p>Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR denied in part and dismissed in part 2/19/2015 by letter Ref 1800B3-EAB</p>
MA BR-20131127AMS	WRKO 1902 E 680 KHZ	ENTERCOM LICENSE, LLC MA , BOSTON	<p>Renewal of License.</p> <p>Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR</p> <p>Opposition Filed 11/26/2014 by Entercom License, LLC</p> <p>Reply filed 12/08/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR</p> <p>Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR denied in part and dismissed in part 2/19/2015 by letter Ref 1800B3-EAB</p>



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DIGITAL TRANSLATOR OR DIGITAL LPTV APPLICATIONS FOR RENEWAL ACCEPTED FOR FILING

NM BRD TT-20150219AAO	K48AW-D 66149	THE NAVAJO NATION	Renewal of License.
E CHAN-48		NM, SHIPROCK	

FM STATION APPLICATIONS FOR RENEWAL PETITION FOR RECONSIDERATION

MA BRH-20051201CFM	WEEI-FM 1919	ENTERCOM LICENSE, LLC	Renewal of License.
E 93.7 MHZ		MA, LAWRENCE	Informal Objection filed 2/28/06 by ("Mrs Stolz" or "Objector")
			Consolidated Opposition to Informal Objection filed 9/28/07
			Informal Objection denied, license renewal application granted per letter reference 1800B3-JWR/AJR on 10/09/2014
			Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR
			Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR denied in part and dismissed in part 2/19/2015 by letter Ref 1800B3-EAB



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FM STATION APPLICATIONS FOR RENEWAL PETITION FOR RECONSIDERATION

MA BRH-20051201CFP	WAAF 74467 E 107.3 MHZ	ENTERCOM LICENSE, LLC MA , WESTBOROUGH
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Renewal of License.

Informal Objection filed 2/28/06 by ("Mrs. Stolz" or "Objector")
Consolidated Opposition to Informal Objection filed 9/28/07

Informal Objection denied, license renewal application granted per letter
reference 1800B3-JWR/AJR on 10/09/2014

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MA BRH-20131127ANR	WEEI-FM 1919 E 93.7 MHZ	ENTERCOM LICENSE, LLC MA , LAWRENCE
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FM STATION APPLICATIONS FOR RENEWAL PETITION FOR RECONSIDERATION

MA BRH-20131127AOB	WAAF 74467 E 107.3 MHZ	ENTERCOM LICENSE, LLC MA, WESTBOROUGH	<p>Renewal of License.</p> <p>Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR</p> <p>Opposition Filed 11/26/2014 by Entercom License, LLC</p> <p>Reply filed 12/08/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR</p> <p>Petition for Reconsideration filed 11/13/2014 by ESTATE OF IRENE M. STOLZ, EDWARD R. STOLZ II, EXECUTOR, denied in part and dismissed in part 2/19/2015 by letter Ref 1800B3-EAB</p>
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TV TRANSLATOR OR LPTV STATION APPLICATIONS FOR RENEWAL ACCEPTED FOR FILING

CA BRTT-20150219ABV	KVVB-LP 14153 E CHAN-33	H&H ENTERPRISES CA, LUCERNE VALLEY	Renewal of License.
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AM STATION APPLICATIONS FOR TRANSFER OF CONTROL ACCEPTED FOR FILING

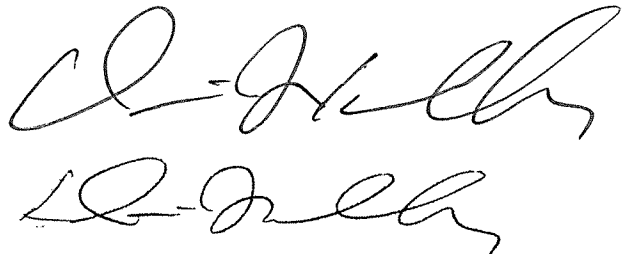
TX BTC-20150218AAL	KCKM 35048 E 1330 KHZ	KICKIN' COUNTRY BROADCASTING, L.L.C. TX, MONAHANS	<p>Voluntary Transfer of Control</p> <p>From: ROBERT W. SOUZA</p> <p>To: JOANNE SOUZA</p> <p>Form 315</p>
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CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing "Application for Review" were served by first-class mail, postage prepaid, on this 26th day of March, 2015 upon the following:

Brian M. Madden, Esquire
Dennis P. Corbett, Esquire
Lerman Senter
2000 K Street, NW, Suite 600
Washington, DC 20006
Counsel for Entercom License LLC

Larry Bruce
254 Chandler Road
Andover, MA 01810

A handwritten signature in black ink, appearing to read "D. Kelly", written in a cursive style. The signature is positioned above a horizontal line.

Dennis J. Kelly