



Federal Communications Commission
Washington, D.C. 20554

June 17, 2015

In Reply Refer to:
1800B3-MPM

Dennis J. Kelly, Esq.
P.O. Box 41177
Washington, D.C. 20018

Brian M. Madden, Esq.
Lerman Senter PLLC
2000 K Street, N.W., Suite 600
Washington, D.C. 20060-1809

In re: **Entercom License, LLC**
KNRK(FM), Camas, Washington
Facility ID No. 51213
File Nos. BRH-20051003BFQ, BRH-
20130926AUK

Entercom Buffalo License, LLC
WBEN(AM), Buffalo, New York
Facility ID No. 34381
File Nos. BR-20060201AYW, BR-
20140131ANW

WWKB(AM), Buffalo, New York
Facility ID No. 34383
File Nos. BR-20060201AZR, BR-
20140131AOF

Petition for Reconsideration

Dear Counsel:

We have before us a petition for reconsideration (“Petition”) filed on April 24, 2015, by Edward R. Stolz II, individually, and the Estate of Irene M. Stolz, Edward R. Stolz II, Executor (collectively “Stolz”) challenging the grant¹ of the above-referenced license renewal applications (“Applications”) for Stations KNRK(FM), Camas, Washington, and WBEN(AM) and WWBK(AM), Buffalo, New York (collectively, the “Stations”), filed by Entercom License, LLC (“Entercom Seattle”) and Entercom Buffalo License, LLC (“Entercom Buffalo”),² respectively.³ For the reasons set forth below, we dismiss the Petition.

¹ *Entercom License, LLC, and Entercom Buffalo License, LCC*, Letter, Ref 1800B3-SS (MB Mar. 18, 2015) (“*Staff Decision*”).

² Entercom Seattle and Entercom Buffalo are wholly owned subsidiaries of Entercom Communications Corporation (“Entercom”).

³ We also have before us an opposition to the petition for reconsideration (“Opposition”) filed jointly by Entercom Seattle and Entercom Buffalo on May 7, 2015. Stolz filed a reply (“Reply”) on May 19, 2015.

Background. As discussed in the *Staff Decision*, Stolz filed Informal Objections (“Objections”) to Entercom Seattle’s and Entercom Buffalo’s above-referenced applications filed in 2005 and 2006 for renewal of their respective stations (“2005-2006 Applications”).⁴ In the March 18, 2015 *Staff Decision*, the Media Bureau (“Bureau”) denied the Objections and granted the 2005-2006 Applications. Shortly thereafter, the Bureau granted the unopposed license renewal applications for the Stations filed in 2013 and 2014 (“2013-2014 Applications”).⁵ Stolz then filed the Petition seeking reconsideration of these decisions.

In his Petition, Stolz raises arguments for the first time regarding a 2007 contest (“Contest”) at Station KDND(FM), Sacramento, California, also licensed to an Entercom subsidiary, which resulted in the death of one of the contestants, Jennifer Strange. Stolz argues that Entercom’s role in Ms. Strange’s death presents a *prima facie* case that Entercom lacks the character qualifications required to be a station licensee and thus urges us to designate the Applications and all of Entercom’s pending license renewal applications for an evidentiary hearing.⁶

Entercom Seattle and Entercom Buffalo argue in the Opposition that we should dismiss the Petition because it is procedurally defective for a number of reasons.⁷ They point out that Stolz was not a party to the 2013-2014 Applications because he did not file an objection to those applications,⁸ and they argue that, as a non-party, Stolz has failed to “state with particularity” how his interests in the Stations are adversely affected by the Contest.⁹ They also assert that Stolz failed to bring his Contest allegations to the Bureau’s attention earlier in these application proceedings, and that Stolz may not raise these arguments for the first time on reconsideration.¹⁰ Entercom Seattle and Entercom Buffalo also argue that, even if we were to consider the Petition on its merits, we should deny it because all of Stolz’s arguments pertain to conduct at a different Entercom-controlled station.¹¹ In the Reply, Stolz reasserts his arguments from the Petition and also contends that he may raise new arguments pursuant to Section 312(a)(2) of the Communications Act of 1934, as amended (the “Act”), which permits the Commission to “revoke or deny a broadcast license in the case of ‘conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application.’”¹²

Discussion. As an initial matter, we dismiss Stolz’s Petition with respect to the 2013-2014 Applications. Under Section 1.106(b)(1) of the Commission’s Rules (the “Rules”), if a person who was not involved in the initial proceedings wishes to file a petition for reconsideration, the petitioning party must “show good reason why it was not possible for him to participate in the earlier stages of the

⁴ *Staff Decision* at 1-2.

⁵ See *Broadcast Actions*, Public Notice, Report No. 48453 (MB Mar. 25, 2015).

⁶ Petition at 4-5, citing 47 U.S.C. § 309(k)(1)(B-C).

⁷ Opposition at 2-5.

⁸ *Id.* at 3-4.

⁹ *Id.* at 3-4, citing 47 C.F.R. § 1.106(b)(1).

¹⁰ *Id.* at 4-5.

¹¹ *Id.* at 5-7, citing 47 U.S.C. § 309(k).

¹² Reply at 2, citing 47 U.S.C. § 312(a)(2).

proceeding.”¹³ Stolz did not participate in these application proceedings and the Petition provides no reason for why he could not do so. Accordingly, we dismiss the Petition with respect to the 2013-14 Applications grants.¹⁴

We also dismiss Stolz’s Petition with respect to the 2005-2006 Applications. As an informal objector, Stolz is not a “party to the proceeding” within the meaning of Section 1.106(b)(1) of the Rules,¹⁵ and thus has no right to seek reconsideration in this proceeding. Section 1.106(b)(1) of the Rules requires a non-party to demonstrate “with particularity” how its interests are adversely affected by an action taken by the Commission.¹⁶ We find that Stolz’s claims relating to the Contest at KDND(FM) in Sacramento do not establish “with particularity” the manner in which Stolz’s interests are adversely affected.¹⁷ Moreover, under Section 1.106(c) of the Rules, the Bureau may also dismiss a petition for reconsideration that relies on facts or theories that could have been presented earlier in the proceeding.¹⁸ More than seven years elapsed between the Contest and the Bureau’s grant of the Applications. Because Stolz could have presented the Contest-related arguments earlier in the proceeding but failed to do so, we decline to consider the issue as it is now raised.¹⁹

Additionally, were we to consider the Petition on its merits, we would deny it. We will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original order or raises additional facts not known or existing at the time of petitioner’s last opportunity to present such matters.²⁰ Stolz asks the Bureau to reconsider its conclusion that the Stations have satisfied Section 309(k) of the Act. Section 309(k)(1) states that the Commission shall grant an application for a license renewal “if it finds, *with respect to that station*, during the preceding term of its license (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and (c) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.”²¹ Thus, the express language of Section 309(k)

¹³ 47 C.F.R. § 1.106(b)(1).

¹⁴ See *Revival Christian Ministries*, Letter, 28 FCC Rcd 2041 (MB 2014) (dismissing petition for reconsideration because petitioner had failed to file an objection to the application prior to its grant).

¹⁵ See *David Ryder*, Letter, 24 FCC Rcd 10874, 10875 (MB 2009) (stating that “a ‘nonparty’ participating earlier in the proceeding as an informal objector is without standing to seek reconsideration.”).

¹⁶ 47 C.F.R. § 1.106(b)(1).

¹⁷ See *Sagittarius Broadcasting Corp.*, Memorandum and Opinion Order, 18 FCC Rcd 22551, 22554-5 (2003) (“*Sagittarius*”) (finding that a listener who lived over 3,000 miles from the station whose license renewal was under consideration could not be adversely affected for the purposes of standing to seek reconsideration of the staff’s decision).

¹⁸ 47 C.F.R. § 1.106(c).

¹⁹ See *Royce International Broadcasting Company*, Memorandum Opinion and Order, 26 FCC Rcd 9249, 9249 (MB 2011) (dismissing petition for reconsideration to the extent that it presented new arguments that could have been raised in an earlier proceeding).

²⁰ 47 C.F.R. § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

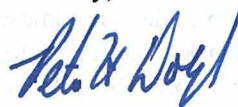
²¹ 47 U.S.C. § 309(k)(1) (emphasis added). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of*

limits the scope of our renewal review to the specific station license at issue. Accordingly, Stolz has failed to meet his obligation of showing a material error in the Commission's grant of the Applications.

Finally, in the Reply, Stolz cites for the first time Section 312(a)(2) of the Act to suggest that the Commission can consider actions of stations other than the one at issue and deny an application if the actions constitute "conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit an original application."²² We have consistently stricken arguments where wholly new claims are raised for the first time in a reply pleading and will dismiss this argument.²³ In addition, were we to consider this argument, we would reject it. Contrary to Stolz's assertions, the Commission cannot deny a renewal based on Section 312(a)(2). Section 312 pertains exclusively to revocation of licenses and thus is irrelevant to these proceedings.

Conclusion. For the reasons stated above, IT IS ORDERED that the Petition for Reconsideration filed on April 24, 2015, by Mr. Edward R. Stolz II and Estate of Irene M. Stolz, Edward R. Stolz II, Executor is DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures), Order, 11 FCC Rcd 6363 (1996).

²² Reply at 2.

²³ 47 C.F.R. § 1.45(c). See, e.g., *New Jersey Public Broadcasting Authority*, Letter, 24 FCC Rcd 2835, 2838 (MB 2009) (granting a motion to strike from consideration an argument raised for the first time in the Reply).