

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
KGAN Licensee, LLC	)	File No. BRCT-20050930ALF
	)	Facility ID No. 25685
Application for Renewal of License of Station	)	
KGAN(TV), Cedar Rapids, Iowa	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: July 16, 2015**

**Released: July 16, 2015**

By the Commission:

1. The Commission has before it for consideration an Application for Review filed by the Iowans for Better Local Television (“IBLT”)<sup>1</sup> seeking review of the *2010 Memorandum Opinion and Order* (“*2010 MO&O*”)<sup>2</sup> adopted by the Video Division, Media Bureau (“Bureau”). The *2010 MO&O* denied a petition to deny filed by IBLT related to the license renewal application of KGAN(TV), Cedar Rapids, Iowa (“KGAN”). IBLT contends that the *2010 MO&O* leaves “too many remaining substantial and material questions of fact and law to permit renewing KGAN’s license without a hearing or further investigation...”<sup>3</sup> IBLT also requests that the Commission should overturn the decision by implementing a change in policy with regard to the Commission’s interpretation of the public interest standard.<sup>4</sup> We find that IBLT has failed to provide the requisite factual and legal support required under Section 1.115(b) of the Commission’s rules (the “Rules”) for demonstrating the Bureau erred and that the requested change in policy is more appropriately evaluated in the context of a rulemaking proceeding.<sup>5</sup> Accordingly, we affirm the Bureau’s determination in the *2010 MO&O* that IBLT failed to raise a substantial and material question of fact as to any rule violations; failed to raise a substantial and material question of fact whether grant of the license renewal application would serve the public interest; and that grant of KGAN’s license renewal application was consistent with Section 309(k) of the Communications Act of 1934, as amended.<sup>6</sup>

<sup>1</sup> Application for Review of Iowans for Better Local Television (filed Apr. 13, 2010)(“ Application for Review”).

<sup>2</sup> *In the Matter of KGAN Licensee, LLC*, 25 FCC Rcd 2549 (MB 2010) (“*2010 MO&O*”). The *2010 MO&O* addresses five core allegations raised by IBLT, which include: (1) alleged violations of ownership rules; (2) alleged violations of children’s programming rules and failure to meet broadcasters underlying children’s programming obligations; (3) alleged lack of viewpoint diversity and local public benefit in KGAN’s programming; (4) alleged failure to comply with the Commission’s public inspection file requirements; and (5) alleged failure to meet a broadcaster’s public interest obligations and licensee character requirements. *Id.* at 2551-60. It also summarizes the law with respect to the First Amendment of the U.S. Constitution and Section 326 of the Communications Act. The *2010 MO&O* observes that broadcasters are afforded broad discretion regarding both their programming choices and the manner they choose to meet the needs of their local community. *Id.* at 2557 (citing *National Broadcasting Co.*, 14 FCC Rcd 9026, 9031 (1999)).

<sup>3</sup> Application for Review at 20.

<sup>4</sup> *Id.* at 4-5.

<sup>5</sup> See 47 C.F.R. §1.115(b)(2)(iii),(iv).

<sup>6</sup> 47 C.F.R. § 309(k).

interest standard.<sup>16</sup> It uses the Bureau's decision as an example of why the Commission's current public interest policy and analysis is inadequate. IBLT goes on to contend that the Commission should change the way it applies the public interest standard and move away from the purported "deregulatory approach" applied by the Bureau in the *2010 MO&O*.<sup>17</sup> We find that an adjudicatory proceeding, such as the instant broadcast license renewal proceeding, is not the appropriate forum for considering this type of overarching request for a change in policy. As we have previously determined, such an examination of policy is more appropriately addressed in a rulemaking proceeding.<sup>18</sup>

5. Upon review of the Application for Review and the entire record, and finding no basis in the Application for Review to modify the Bureau's decision, we conclude that IBLT has failed to demonstrate that the Bureau erred. We uphold the Bureau's decision for the reasons stated in the *2010 MO&O*.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(b) of the Commission's rules, 47 C.F.R. § 1.115(b), the Application for Review of the Iowans for Better Local Television **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>16</sup> 47 C.F.R. § 1.115(b)(2)(iii); Application for Review at 10-14 (Sections One and Two of the Application for Review). In Section Three, IBLT provides an overview and excerpts of a 2005 Town Meeting on the Future of Media. Application for Review at 14-19. This Section does not specify with particularity any of the factors which warrant Commission consideration of the *2010 MO&O*, as required by 47 C.F.R. § 1.115(b)(2).

<sup>17</sup> Application for Review at 10-19, 22 (requesting the Commission broadly reevaluate broadcaster's public interest standard).

<sup>18</sup> See, e.g., *Sunburst Media L.P.*, Memorandum Opinion and Order, 17 FCC Rcd 1366, 1368 ¶ 6 (2002) (making decisions that alter fundamental components of broadly applicable regulatory schemes is appropriate in the context of rulemaking proceedings, not adjudications); see also *Great Empire Broad., Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 11145, 11148 ¶ 8 (1999) (stating it is generally inappropriate to address arguments for a change in rules in an adjudicatory proceeding "where third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record") (citing *Capital Cities/ABC, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5888 ¶ 87(1996)); *Cnty. Television of S. Cal. v. Gottfried*, 459 U.S. 498, 511 (1983) ("[R]ulemaking is generally a 'better, fairer, and more effective' method of implementing a new industry-wide policy than is the uneven application of conditions in isolated [adjudicatory] proceedings.").