



Federal Communications Commission
Washington, D.C. 20554

April 30, 2007

DA 07-1940

In Reply Refer to:

1800B3-RDH

Released: April 30, 2007

Mr. Martin L. Hensley
Hoosier Public Radio Corporation
15 Wood Street
Greenfield, Indiana 46140

In re: Metropolitan School District of Wayne Township
Station WBDG(FM), Indianapolis, Indiana
Facility ID No. 41317
File No. BRED-20040324ABY

Hoosier Public Radio Corporation
File No. BNPED-20040823AAC

Petition for Reconsideration

Dear Mr. Hensley:

We have before us the "Petition for Reconsideration and Reinstatement Nunc Pro Tunc/Petition for Reconsideration Nunc Pro Tunc WBDG Renewal and License Grant – Motion to Correct Errors/Petition for Hearing" (the "Petition") filed March 29, 2005, by Hoosier Public Radio Corporation ("Hoosier"). The Petition asks us to reconsider our March 2, 2005, staff decision¹ granting the license renewal application (the "Application") of Station WBDG(FM), Indianapolis, Indiana, licensed to Metropolitan School District of Wayne Township ("Metropolitan") and dismissing the application filed by Hoosier seeking time-share operation of the Station.² Also before us is an "Opposition to Petition for Reconsideration" ("Opposition") filed by Metropolitan.³ For the reasons set forth below, we deny the Petition.

Background. Metropolitan filed the Application on March 24, 2004. On September 1, 2004, Hoosier filed a "Request for Construction Permit/License for Hoosier Public Radio;"⁴ Request to

¹ Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau to Kathryn R. Schmeltzer, Esq. and Martin L. Hensley, Reference 1800B3-CLR (Media Bureau, March 2, 2005)("Staff Decision").

² File No. BNPED-20040823AAC (the "Time-Share Application").

³ Metropolitan also incorporates by reference its October 12, 2004, pleading "WBDG(FM)'s Omnibus Response to Hoosier's Pleadings and Request for Administrative Sanctions."

⁴ Hoosier filed the Time-Share Application on August 23, 2004. The Time-Share Application, seeking involuntary time-share operation of Station WBDG(FM), was filed pursuant to Section 73.561(b) of the Commission's Rules (the "Rules"), (47 C.F.R. § 73.561(b)).

Terminate License/Authorization for Wayne Township; Motion to Correct Errors Re: Defective Filings by Wayne Township (Renewal and Amendment)” (“Request”) concerning WBDG(FM)’s license and then-pending Application.⁵ In the *Staff Decision*, the staff granted the Application, dismissed Hoosier’s Time-Share Application, denied Hoosier’s Request, and dismissed Hoosier’s other filings.⁶

The Petition itself is a compendium of claims, both new and previously made. Hoosier reiterates numerous claims, that it previously made in its September 24, 2004, pleading that were considered and rejected in the *Staff Decision*, including its contentions that: the Station’s renewal application was not signed in compliance with an Indiana state law concerning the signing of contracts and the Commission’s rule concerning the signing of applications;⁷ the Application was unsigned when first submitted; the Commission’s CDBS system did not allow Hoosier to file its Time-Share Application, WBDG(FM) does not operate “staffed 24 hours per day;” WBDG(FM) has a single part-time employee who is employed full-time as a teacher; Metropolitan has engaged in violations of the “RICO” (Racketeer Influenced and Corrupt Organizations) and Sherman Anti-Trust Acts; and, Metropolitan has violated the public inspection file rule.⁸ New allegations raised by Hoosier include that: Metropolitan’s attorney coerced Commission employees into granting the WBDG(FM) license renewal application, Metropolitan is not, as it has certified, a non-profit corporation; Metropolitan has engaged in unauthorized transfers of control of the station; and Commission personnel are acting in collusion with Metropolitan and its counsel.

Discussion. Under Section 1.106 of the Rules, as interpreted by established case law, “reconsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters.”⁹ Petitioner has failed to demonstrate that reconsideration is warranted in this case. Accordingly, we will deny Hoosier’s Petition.

Section 1.106 of the Rules provides that a petition for reconsideration which relies on facts not previously presented to the Commission or designated authority can only be granted where: 1) the petition relies on facts relating to events that have occurred or circumstances which have changed since the last opportunity to present such matters; 2) the petitioner could not, through the exercise of ordinary diligence,

⁵ Hoosier subsequently filed a number of other requests, motions and petitions concerning the Application and other unrelated license renewal applications. See “Motion To Join the Parties, Request For Review and Declaratory Ruling – RICO Act and Sherman Antitrust Act – Market Allocation, Request for Review and Declaratory Ruling – Ex Parte Applicant Communications, Motion To Compel – Request For Discovery, Petition To Deny – Request for Moratorium,” filed September 20, 2004.

⁶ Public Notice of the *Staff Decision* was released on March 7, 2005 Public Notice, *Broadcast Actions*, Report No. 45935 (March 7, 2005).

⁷ 47 C.F.R. § 73.3513.

⁸ 47 C.F.R. § 73.3527.

⁹ *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* 383 U.S. 967 (1966)(“*WWIZ, Inc.*”); see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003). See also 47 C.F.R. § 1.106(c).

have learned of the facts prior to its last opportunity to present the facts; or 3) where the Commission or designated authority determines that consideration of the facts relied on is required in the public interest.¹⁰ With regard to newly raised matters, Hoosier has not demonstrated either that the alleged circumstances have changed or occurred since its last opportunity to present them to the Commission or that it could not have learned of these asserted facts prior to its last opportunity to present them to Commission staff. Hoosier also fails to provide any factual support for these conclusory allegations. Finally, we do not believe our consideration of these allegations is required by the public interest, particularly given their lack of specificity and dearth of factual support. Accordingly, we will deny the Petition as to these allegations.

With regard to the issues previously raised by Hoosier in the Petition, we note that “[r]econsideration will not be granted to debate matters upon which the Commission has already deliberated and spoken.”¹¹ The *Staff Decision* fully and accurately addressed Hoosier’s Time-Share Application and stated the basis for its dismissal. Hoosier has failed to demonstrate staff error in this action. Hoosier’s application was patently defective. It was late filed and it failed to comply with Section 73.561(b) of the Commission’s Rules (the “Rules”)¹² which governs the circumstances under which a person or entity may seek an involuntary time-share arrangement. The *Staff Decision* stated:

The Commission will not entertain proposals that do not conform to these requirements. (Footnote omitted.) Hoosier’s does not. We find that the record clearly establishes that WBDG operates 24 hours per day and is, therefore, not subject to non-consensual proposals for time sharing. (Footnote omitted.) Thus, Hoosier’s application is subject to dismissal.¹³

Similarly, the *Staff Decision* fully addressed Hoosier’s other claims that it reiterates in its Petition. With regard to these contentions, Hoosier has failed to demonstrate any material error or omission in the *Staff Decision* and simply reasserts its earlier allegations.

Conclusion/Actions. For the reasons set forth above, Hoosier Public Radio Corporation’s “Petition for Reconsideration and Reinstatement Nunc Pro Tunc/Petition for Reconsideration Nunc Pro

¹⁰ 47 C.F.R. § 1.106(b) and (c).

¹¹ *WWIZ, Inc.*, 37 FCC at 686; *See also William L. Carroll*, Memorandum Opinion and Order, 8 FCC Rcd 6279 (1993).

¹² 47 C.F.R. § 73.561(b).

¹³ *Staff Decision* at 2-3.

Tunc WBDG Renewal and License Grant – Motion to Correct Errors/Petition for Hearing” IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Kathryn R. Schmeltzer, Esq.
Jarrett Taubman, Esq.