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Ref. No. 1800B3-TSN

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In re: **WTIC(AM), Hartford, Connecticut**  
File No. BR-20131127AOD  
Facility ID No. 66464

**Application for Renewal of License**

Dear Counsel:

We have before us the application (Application) of CBS Radio Stations, Inc. (CBS or Licensee) for renewal of the license of standard broadcast station WTIC(AM), Hartford, Connecticut (WTIC). The Application is challenged by an informal objection (Objection) filed by Kenneth J. Krayske (Krayske or Objector). For the reasons discussed below, we deny the Objection and grant the Application.

**Background.** John Rowland (Rowland) is a former governor of the State of Connecticut. In 2005, Rowland pleaded guilty to one count of conspiracy to commit tax fraud and deprive the public of honest services, and served one year and one day in prison.<sup>1</sup> In September 2010, WTIC hired Rowland to co-host a conservative political talk show, "State and Church."

In 2011, while employed as a WTIC radio host, Rowland apparently entered into an agreement with Lisa Wilson-Foley (Wilson-Foley), a candidate for the Republican nomination for the Congressional seat from the Fifth District of Connecticut, to act as an advisor to her campaign. Rowland signed a consulting agreement with a company, Apple Health Care (Apple Health), which was owned by Wilson-Foley's husband Brian Foley (Foley). Under this agreement, Rowland was paid \$30,000 for consulting services to be performed, ostensibly for Apple Health, from October 31, 2011, through March 31, 2012. A federal jury subsequently found, however, that the \$30,000 payment was actually for Rowland's

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<sup>1</sup> <http://www.nytimes.com/2005/03/19/nyregion/former-governors-sentence-brings-gasps-and-questions-about-leniency.html>

services as a political consultant to the Wilson-Foley campaign.<sup>2</sup> In 2011 and 2012, however, Rowland and the Wilson-Foley campaign maintained that Rowland was being paid to consult with Apple Health, and that he was only an unpaid volunteer with the Wilson-Foley campaign.<sup>3</sup>

According to trial testimony, Rowland performed several functions on the Wilson-Foley campaign, including media strategy. He would on occasion provide the campaign with a list of topics to be discussed on his radio show, allowing the campaign to generate press releases on those topics before Rowland addressed them on the air. Rowland would then discuss the issues favorably to Wilson-Foley's position.<sup>4</sup> Although testimony regarding Rowland's on-air activities in coordination with the Wilson-Foley campaign was largely non-specific, in one instance Rowland assisted the campaign in writing a radio ad attacking the opposition to the death penalty of one of Wilson-Foley's opponents, Connecticut State Senator Andrew Roraback (Roraback).<sup>5</sup> After the ad aired on WTIC, Roraback was a guest on Rowland's WTIC radio show, and Rowland berated Roraback for his anti-death penalty stance. Further, according to testimony Rowland then obtained Roraback's cell phone number from Wilson-Foley's then-campaign manager, which either Rowland or his co-host broadcast on the air, encouraging listeners to call Roraback and voice their opposition to his anti-death penalty stance.<sup>6</sup>

Although rumors regarding Rowland's employment as a consultant to the Wilson-Foley campaign circulated in the press and on the Internet in the spring of 2012, Rowland remained on the air until April 3, 2014, one week before his April 10, 2014, indictment for fraud, falsification of records, submitting false statements, and causing the submission of illegal campaign contributions, among other counts.<sup>7</sup> During this period, WTIC management periodically questioned Rowland about the rumors and his involvement with the Wilson-Foley campaign. In each instance, Rowland informed WTIC management that the rumors were false and were politically motivated; that he was being paid to consult with Apple Health; and that he was only an unpaid volunteer with the Wilson-Foley campaign. WTIC management informed him that he was to disclose his volunteer involvement with the campaign any time he discussed the Fifth District Congressional race on the air.<sup>8</sup>

On May 3, 2012, Kraveske filed a complaint with the Commission, in which he stated his concern that CBS and Rowland may have violated Sections 73.1212, 73.1942, and 73.1943 of the Commission's rules.<sup>9</sup> Kraveske referenced his complaint to the FEC of the same date, which in turn relied upon a complaint to the FEC made by Mike Clark, a Wilson-Foley opponent. Both the Kraveske and Clark FEC complaints were based on political blogs and newspaper articles that speculated on the true nature of the

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<sup>2</sup> On September 19, 2014, Rowland was convicted of seven counts of fraud, falsification of records, making illegal campaign contributions, and submitting false statements to the Federal Election Commission (FEC). Rowland's appeal was denied on June 17, 2016. *U.S. v. Rowland*, Docket No. 15-985, 2016 WL 3361542 (2d Cir. June 17, 2016).

<sup>3</sup> *See, e.g.*, Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Kathleen A. Kirby, Esq., and Eve Klindera Reed, Esq., Counsel for CBS (June 13, 2016) (Supplemental Opposition), Exhibit A (Second Declaration of Jenneen Lee), para. 10 (Lee Declaration).

<sup>4</sup> *See, e.g.*, Transcript of Testimony of Chris Covucci, Vol. 1 at 236, Vol. 2 at 27.

<sup>5</sup> Transcript of Testimony of Chris Syrek, Vol. 2 at 15-20.

<sup>6</sup> *Id.* at 30-31.

<sup>7</sup> *U.S. v. John G. Rowland*, Indictment, Case No. 3:14-CR-00079-EBB (D. Conn. Apr. 10, 2014). The indictment was replaced by a Superseding Indictment filed June 12, 2014.

<sup>8</sup> Lee Declaration, paras. 12, 18.

<sup>9</sup> 47 CFR §§ 73.1212, 73.1942, 73.1943.

relationship between Rowland and the Wilson-Foley campaign. Neither Krayeske's FCC or FEC complaint specifically alleged wrongdoing against CBS; Krayeske stated in his FEC complaint that "[u]nder the principal-agent theory of liability, CBS Radio, Inc. as principal is liable for the acts of its agent, John Rowland, and is bound by the decisions of its agent."<sup>10</sup>

On March 6, 2014, the FEC informed Rowland and CBS that it had not found that either had violated election laws, based on Krayeske's FEC complaint, and closed its file on the complaint.<sup>11</sup> In both cases, the FEC found that WTIC and Rowland were subject to the "press exemption," under which the costs incurred in covering or carrying a news story, commentary, or editorial by a broadcast station generally do not constitute an expenditure by or contribution to a political campaign.<sup>12</sup> By letter dated May 21, 2012, the Commission took no action on Krayeske's complaint.<sup>13</sup> On June 25, 2012, Krayeske sent to the Commissioners a letter that he requested be considered an "appeal" of the *May 2012 Staff Decision*.<sup>14</sup> Subsequently, on October 1, 2014, Krayeske sent the Commissioners a letter styled "Informal Objection to the License Renewal of WTIC-1080 AM in Connecticut."<sup>15</sup> This Objection was not served on CBS; on May 2, 2016, the staff served a copy of the Objection on CBS's counsel and requested a response.<sup>16</sup> CBS filed a letter opposing the Objection on May 6, 2016,<sup>17</sup> and filed a supplemental response dated June 13, 2016.<sup>18</sup>

**Discussion. Procedural Issues.** Krayeske's May 3, 2012, complaint was summarily rejected by the staff. His June 25, 2012, "appeal," however, was (a) submitted 35 days after the date of the *May 2012 Staff Decision*, and (b) was not filed with the Office of the Secretary. For us to consider either a petition for reconsideration or an application for review, the pleading must be filed with the Office of the Secretary within 30 days of the date of the decision from which reconsideration or review is sought.<sup>19</sup> Accordingly, we dismiss the June 25, 2012, "appeal" as untimely.

The Objection, however, like any informal objection, may be filed at any time prior to action on the application to which objection is made.<sup>20</sup> We therefore address the issues raised in the Objection.

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<sup>10</sup> Letter from Kenneth J. Krayeske, Esq., to Office of the General Counsel, FEC (May 3, 2012), at 2.

<sup>11</sup> Letter from Peter G. Blumberg, Ass't General Counsel, FEC, to Jan Witold Baran, Esq., Ref. No. MUR 6604 (Mar. 6, 2014) (CBS FEC Letter).

<sup>12</sup> See Factual and Legal Analysis, attached to CBS FEC Letter, at 3-4, citing 2 U.S.C. § 431(9)(B)(i) and 11 CFR §§ 100.73 and 100.132.

<sup>13</sup> Letter from Mark Berlin, Policy Division (Political Office) to Kenneth James Krayeske (MB May 21, 2012) (*May 2012 Staff Decision*).

<sup>14</sup> Letter from Kenneth J. Krayeske, Esq., to Mr. Tom Wheeler, Chairman, Mr. Michael O'Rielly, Commissioner, et al. (June 25, 2012) (Appeal).

<sup>15</sup> Letter from Kenneth J. Krayeske, Esq., to Mr. Tom Wheeler, Chairman, Mr. Michael O'Rielly, Commissioner, et al. (Oct. 1, 2014) (Objection).

<sup>16</sup> Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to Rebecca L. Neumann, Esq., Anne Lucey, Esq., and Kenneth J. Krayeske, Esq., Ref. No. 1800B3-TSN (MB May 2, 2016).

<sup>17</sup> Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Kathleen A. Kirby, Esq., and Eve Klindera Reed, Esq., Counsel for CBS (May 6, 2016) (Opposition).

<sup>18</sup> Supplemental Opposition, *supra* note 3.

<sup>19</sup> See 47 CFR §§ 1.106(f), 1.115(d); 47 U.S.C. § 405(a).

<sup>20</sup> 47 CFR § 73.3587.

*Substantive Issues.* An informal objection, like a petition to deny, must 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 the public interest.<sup>21</sup> Although Krayeske provides no affidavit in support of his claims, he does reference testimony from Rowland’s criminal trial. Section 309(d) of the Act allows consideration of facts of which we may take official notice.<sup>22</sup> We therefore take official notice, *inter alia*, of Rowland’s criminal trial and the testimony adduced therein, as well as the evidence provided by CBS.

Alleged Violations of Sections 317 and 507 of the Communications Act and Section 73.1212 of the Rules. As discussed above, the jury verdict in Rowland’s criminal trial and denial of his appeal establish that Rowland served as a paid political consultant to the Wilson-Foley campaign, under the guise of being paid as a consultant to Apple Health. The Objection, however, does not request we take action against Rowland. Rather, Krayeske seeks to extend liability for Rowland’s campaign activities—at least to the extent that they were allegedly carried out on Rowland’s WTIC talk show—to CBS as Rowland’s employer. Krayeske states that WTIC, “as Mr. Rowland’s employer, bears responsibility for its role in this shameful, disgraceful scandal,” and urges us to hold WTIC “to a heightened standard of scrutiny for its conduct.”<sup>23</sup> Krayeske also states that CBS had an “obligation . . . to conduct a thorough investigation of the actions of [Rowland],”<sup>24</sup> and that it failed to conduct the “simple due diligence” of “investigat[ing] Rowland’s tapes and comparing them to Wilson-Foley’s press releases.”<sup>25</sup> Because it did not do so, Krayeske contends, CBS must now be held to have “ratified” Rowland’s illegal behavior.<sup>26</sup> As discussed below, however, the law requires only that the licensee exercise reasonable diligence. We must therefore determine, based on what was known to CBS at the time Rowland was working for the Wilson-Foley campaign, whether its actions constituted reasonable diligence.

Krayeske contends that Rowland’s use of his WTIC talk show to benefit the Wilson-Foley campaign constituted a violation of Sections 317 and 507 of the Communications Act of 1934, as amended (Act),<sup>27</sup> as well as Section 73.1212 of the Commission’s rules.<sup>28</sup> These statutory and rule sections require certain announcements to be made when material is broadcast for which the broadcaster receives compensation. The general principle underlying these provisions is that the listening public is entitled to know by whom it is being persuaded.<sup>29</sup> Krayeske contends that the public was deprived of that information on those occasions when Rowland’s discussion of issues on “State and Church” was allegedly motivated by Rowland’s activities on behalf of Wilson-Foley and her Congressional campaign.

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<sup>21</sup> 47 U.S.C. § 309(d). See also *Public Media of New England, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 14922, 14925 para. 7 (2015).

<sup>22</sup> 47 U.S.C. § 309(d).

<sup>23</sup> Objection at 3.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> Objection at 1.

<sup>27</sup> 47 U.S.C. §§ 317, 508. Section 317 sets forth the circumstances under which sponsorship identification announcements are required. Section 507 requires that persons receiving compensation for broadcasting matter disclose such payments to the station licensee, and provides criminal penalties for violations of its provisions.

<sup>28</sup> 47 CFR § 73.1212.

<sup>29</sup> See, e.g., *Amendment of Sections 3.119, 3.289, 3.654, and 3.789 of the Commission’s Rules*, 34 F.C.C. 829, 836 para. 20 (1963).

At the outset, we reject CBS's contention that the issues raised by Krayeske have been laid to rest by the FEC's dismissal of Krayeske's complaint to that agency,<sup>30</sup> or by the Commission's Enforcement Bureau, which closed its investigation of a confidential complaint filed by another party but raising similar issues to those raised by Krayeske.<sup>31</sup> The FEC based its dismissal of Krayeske's complaint on an FEC rule exempting press coverage of candidates from being considered as campaign contributions, and specifically did not reach issues of coordination between the Wilson-Foley campaign and CBS or Rowland.<sup>32</sup> The Enforcement Bureau, while closing out its investigation of the confidential complaint, stated that CBS "should not construe the closing of the investigation as a determination that a violation did not occur."<sup>33</sup> Neither of these determinations precludes our evaluation of Krayeske's Objection in the context of the WTIC renewal application.

While there was trial testimony regarding Rowland's on-air activities, that testimony is vague at best and does not establish that the Wilson-Foley campaign compensated either Rowland or CBS for specific on-air mentions of the candidate or campaign. That testimony establishes only that Rowland discussed Wilson-Foley's press releases on the air on at least two occasions, in a way that was favorable to Wilson-Foley.<sup>34</sup> This, however, does not show that Rowland was paid specifically by the campaign to broadcast material on WTIC. The record is devoid of any breakdown of any payments made to Rowland, thus the testimony fails to establish that specific payments were made in exchange for on-air promotion. Moreover, any discussion of campaign press releases would not have raised sponsorship identification issues—the Commission has specifically exempted the furnishing of news releases by an individual or organization for comment on the air from the sponsorship identification requirements under Section 317 of the Act or Section 73.1212 of the rules.<sup>35</sup> Likewise, there is no testimony establishing that Rowland's on-air conduct with regard to Roraback was the result of any *quid pro quo* from the Wilson-Foley campaign. Absent such evidence, we cannot find that there was a sponsorship identification obligation on either Rowland's or CBS's part. The record indicates that not only did Rowland conceal his position with the Wilson-Foley campaign from the listening audience, but also from CBS. From CBS's perspective, Rowland was merely expressing conservative political opinions on the air, which was what he had been hired to do. There is no evidence of any conduct that would alert CBS to the fact that Rowland was secretly promoting Wilson-Foley's candidacy over those of her Republican opponents. Even Objector

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<sup>30</sup> See CBS FEC Letter, *supra* note 11.

<sup>31</sup> Letter from David N. Roberts, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to CBS Radio Stations, Inc. (EB Nov. 13, 2015) (EB Complaint Letter).

<sup>32</sup> See CBS FEC Letter at 6.

<sup>33</sup> EB Complaint Letter at 1.

<sup>34</sup> See, e.g., Testimony of Chris Covucci, Vol. 1 at 193-94, 236-37; Vol. 2 at 28, 32 (on two occasions the Wilson-Foley campaign issued press releases and Rowland would discuss Wilson-Foley's positions positively on the radio show); Testimony of Chris Syrek, Vol. 1 at 193-94 (Rowland would prospectively advise the campaign as to the issues he would discuss on the air, would review the campaign's press release, and then would discuss Wilson-Foley's position on the issue in a way that was favorable to Wilson-Foley). Although Syrek testified that Wilson-Foley was once interviewed on WTIC to discuss her position on an issue, that interview did not take place on "State and Church," and was not conducted by Rowland. *Id.* at 218-19.

<sup>35</sup> See *Sponsorship Identification Rules Applicability*, Public Notice, 40 Fed. Reg. 41936, 41938 Illustration 11 (Sept. 9, 1975) (1975 *Sponsorship Identification Public Notice*) ("News releases are furnished to a station, by Government, business, labor and civic organizations, and private persons, with respect to their activities, and editorial comment therefrom is used on a program. No announcement is required."). See also *Political Primer 1984*, 100 F.C.C.2d 1476, 1537 para. 97 (1984) ("However, Congress has indicated that no announcement need be given when mere mimeographed or printed press releases are furnished to stations.").

Krayeske refers to this conduct as “covert on-air electioneering.”<sup>36</sup> Under these circumstances, CBS’s only obligation was that of reasonable diligence.<sup>37</sup>

CBS Obligation of Reasonable Diligence. Section 317(a)(1) of the Act requires program disclosures in connection with “[a]ll matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, *the station so broadcasting*, from any person,”<sup>38</sup> As discussed above, there is no evidence, either at trial or elsewhere, that CBS, the WTIC licensee and the “station . . . broadcasting” Rowland’s program, was paid or provided other consideration by the Wilson-Foley campaign, or was aware that its employee Rowland was doing so. Nor is there evidence that the material broadcast, if considered to be political broadcast matter or broadcast matter involving the discussion of a controversial issue of public importance, was furnished to WTIC as an inducement for broadcasting the matter.<sup>39</sup> If anything, Rowland furnished the *campaign* with material, in the form of advance information regarding topics to be discussed on “State and Church,” for inclusion in campaign press releases. Moreover, even assuming *arguendo* that the idea of attacking Roraback on air was furnished by the campaign (although the record indicates that the idea originated with Rowland), there is no evidence that CBS was “induced” to air Rowland’s attack by the campaign. The record thus does not demonstrate that CBS was, or should have been, aware that some of Rowland’s program content was coordinated with the Wilson-Foley campaign.<sup>40</sup>

Objector asserts that CBS had a duty immediately to investigate the relationship between Rowland and the campaign once rumors of that relationship began to circulate. The existence of undocumented rumors regarding Rowland and Wilson-Foley does not, however, establish that CBS “ratified” or otherwise condoned Rowland’s acts, nor did it require enhanced investigation by CBS. First, as Krayeske (a former political candidate himself) must realize, allegations are made during a political campaign that are often of questionable veracity.<sup>41</sup> Second, those rumors did not become actual documented allegations, in the form of an indictment, until April 10, 2014, one week after Rowland left his employment with WTIC.<sup>42</sup> Given that CBS was aware only of undocumented rumors and allegations, its only duty was that of “reasonable diligence.”<sup>43</sup>

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<sup>36</sup> Objection at 1.

<sup>37</sup> 47 U.S.C. § 317(c).

<sup>38</sup> 47 U.S.C. § 317(a)(1) (emphasis added). *See also* 47 CFR § 73.1212(a).

<sup>39</sup> 47 CFR § 73.1212(d); 47 U.S.C. § 317(a)(2).

<sup>40</sup> Indeed, to the extent that Rowland on the air criticized Roraback’s opposition to the death penalty, he was taking what Roraback himself conceded was the majority position on that issue among Republicans. Trial Testimony of Andrew Roraback at 226.

<sup>41</sup> *See, e.g.,* Ann Banks, “Dirty Tricks, South Carolina, and John McCain,” *The Nation* (Jan. 28, 2008) (available at <http://www.thenation.com/article/dirty-tricks-south-carolina-and-john-mccain/>) (detailing smear campaign against candidate Sen. John McCain in 2000 South Carolina presidential primary race, regarding rumors that Sen. McCain had fathered an African-American child).

<sup>42</sup> WTIC’s program director, Jenneen Lee, testified that the rumored payments to Rowland for services to the Wilson-Foley campaign did not become clear to her until the end of March 2014, when Wilson-Foley and Brian Foley pleaded guilty to federal charges, implicating Rowland. Lee Declaration, para. 20.

<sup>43</sup> In deleting its former policies regarding conflicts of interest between a broadcaster and its employees in a position to violate the sponsorship identification rules, the Commission held that it was unnecessary to go beyond the statutory requirement of reasonable diligence, and expressly rejected stricter standards such as “special diligence” or “extraordinary measures” to oversee employee compliance. *Elimination of Unnecessary Broadcast Regulation*, Policy Statement and Order, 57 RR 2d 913, 918 paras. 18–19 (1985) (*Broadcast Regulation*).

Section 317(c) of the Act requires of a broadcaster the exercise of “reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.”<sup>44</sup> “Reasonable diligence,” in this instance, does not require the full-scale investigation that Kraveske demands, and he cites no precedent to the contrary. As the United States Court of Appeals for the District of Columbia Circuit stated, “[a] duty to undertake an arduous investigation ought not casually be assigned to broadcasters. A variety of considerations, ranging from practical ones of administrative feasibility to legal ones involving constitutional difficulties, support that view.”<sup>45</sup> Section 317(a) does not place a licensee in the position of being a private investigator or insurer for sponsorship announcements.<sup>46</sup> However, while a licensee cannot escape responsibility by inactivity or willful ignorance as to whether a sponsorship announcement is required,<sup>47</sup> the Commission has not prescribed specific steps that a licensee must take in order to fulfill its reasonable diligence obligation.<sup>48</sup> The station should make appropriate inquiry when questions arise, but the court of appeals has observed that “a licensee need not go behind the information it receives to guarantee its accuracy.”<sup>49</sup>

It has also been held sufficient for a licensee to require periodic statements or affidavits from its employees in order to determine whether such employees have accepted consideration in exchange for airing particular programming material.<sup>50</sup> Further, assuming (as was the case here) that the employee in question denied the allegations and actively concealed his affiliation with an outside candidate or group, any further investigation would necessitate inquiries to third parties (e.g., the Wilson-Foley campaign) of the type the *Loveday* court rejected.<sup>51</sup>

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<sup>44</sup> 47 U.S.C. § 317(c). See also 47 CFR § 73.1212(b).

<sup>45</sup> *Loveday v. FCC*, 707 F.2d 1443, 1449 (D.C. Cir. 1983) (*Loveday*).

<sup>46</sup> See *Metroplex Communications, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 5610, 5610 para. 6 (1990) (*Metroplex III*); *National Welfare Rights Organization*, Memorandum Opinion and Order, 41 FCC 2d 187, 195–196, para. 26 (1973) (*NWRO*) (“reasonable diligence” standard requires appropriate steps to secure information but does not make station an insurer); *Trumper Communications of Portland, Ltd.*, Letter, 11 FCC Rcd 20415, 20416–17 (MMB 1996) (*Trumper*) (Commission has not interpreted Section 317(c) of the Act or Section 73.1212(e) of the rules as obligating broadcasters to act as private investigators to ascertain whether the persons with whom they deal are the true sponsors).

<sup>47</sup> See, e.g., *Metroplex III*, 5 FCC Rcd at 5610 para. 6.

<sup>48</sup> *National Broadcasting Co.*, Letter, 14 F.C.C. 2d 713, 716 (1968) (*NBC Letter*) (“[W]e do not believe it appropriate for this agency to specify the particular route to be taken by a licensee in order to exercise reasonable diligence in this area.”).

<sup>49</sup> *Loveday*, 707 F.2d at 1455 n.18. In addition, the *Loveday* court cautioned that requiring a licensee to do so with respect to political program matter could raise First Amendment issues. *Id.* at 1458–59.

<sup>50</sup> See, e.g., *Metroplex Communications, Inc.*, Initial Decision, 4 FCC Rcd 847, 897-98, Ultimate Findings and Conclusions para. 19 (ALJ 1989) (*Metroplex I*) (noting that licensee “continually sought to educate and sensitize its employees as to the impropriety of payola by communicating the licensee’s concern about payola,” and concluding that licensee “communicated its policy to its employees and established a regular reporting system to safeguard against payola,” thus demonstrating reasonable diligence). See also *NBC Letter*, 14 F.C.C. 2d at 716 (“One method which might be used would be to require periodic statements of the interests of employees, with the obligation to keep them current. The licensee, particularly in small broadcast operations, might pursue other methods (e.g., making clear the principle against undisclosed conflicts of interest and requiring disclosure in any doubtful situation”). See also *Metroplex Communications, Inc.*, Decision, 4 FCC Rcd 8149, 8154 para. 34 (Rev. Bd. 1989) (*Metroplex II*) (noting that ALJ had found that employee handbook, employee affidavits, and corporate memoranda, among other things, constituted “reasonable diligence”).

<sup>51</sup> *Loveday*, 707 F.2d at 1457.

In this instance, the record discloses that Jenneen Lee, Rowland's superior, made specific inquiries of Rowland as to the allegations regarding his affiliation with the Wilson-Foley campaign when she learned of those allegations in April of 2012.<sup>52</sup> Lee testified that on at least three occasions she questioned Rowland about allegations that had been brought to her attention by various press reports or inquiries.<sup>53</sup> In each case, Rowland denied that he was being paid by the Wilson-Foley campaign, stating that he was only an unpaid volunteer, and characterizing the rumors as attacks on him and the campaign by political enemies.<sup>54</sup> Additionally, the Wilson-Foley campaign backed up Rowland's story by releasing a statement attaching the (later proved to be sham) consulting agreement between Rowland and Apple Health.<sup>55</sup>

CBS also employed preventative measures to advise and monitor employees such as Rowland regarding their obligations under the sponsorship identification rules. Rowland's employment contract with CBS during the pertinent period contained a section entitled "Personnel Policies and Section 317 and 507 of the Communications Act."<sup>56</sup> That section required Rowland to represent that: (1) he had read the relevant statutory provisions (which were attached to the Rowland Agreement); (2) he would comply with all policies regarding Section 317 of the Act; (3) to his knowledge, he had complied with the sponsorship identification requirements; and (4) he would comply with the sponsorship identification requirements during the term of his employment.<sup>57</sup> Additionally, CBS provided employees, including Rowland, with annual training on payola and plugola rules.<sup>58</sup> CBS also had a Business Conduct Statement setting forth its policies on, among other things, conflicts of interest.<sup>59</sup> Those policies included requiring employees to disclose currently existing and potential conflicts of interest, including a requirement that the disclosure be updated should circumstances require it.<sup>60</sup> Rowland indicated his compliance with CBS's policies and disclosed no conflicts.<sup>61</sup>

We conclude that the record before us does not raise a substantial and material question of fact that CBS violated Sections 317 or 507 of the Act, or Section 73.1212 of the rules. The record indicates that Rowland's concealment of his relationship with the Wilson-Foley campaign extended not only to the public at large, but also to his employer, CBS. We further conclude that there is no evidence in the record

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<sup>52</sup> See generally Lee Declaration, paras. 9-20.

<sup>53</sup> *Id.*, paras. 9-16, 18.

<sup>54</sup> *Id.*, paras. 10, 16, 18.

<sup>55</sup> See Letter from Christopher Syrek, Campaign Manager, Lisa Wilson-Foley for Congress, to Michael Clark, Mike Clark for Congress at 1-2 (Apr. 25, 2012) and attachments thereto.

<sup>56</sup> See Letter from Eve Klindera Reed, Esq., Counsel to CBS Radio Stations, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CBS Radio Employment Agreement [Union], Redacted Version, Section 21, at 18 (Dec. 10, 2014) (Rowland Agreement). CBS requested confidential treatment of certain aspects of the Rowland Agreement. The cited portions of the redacted Rowland Agreement do not disclose material for which confidential treatment was requested. Accordingly, we need not rule on CBS's request and until we so rule, will honor CBS's request for confidential treatment of these materials. See, e.g., *Sonshine Family Television, Inc.*, 24 FCC Rcd 12830, 14834-35, para. 14, n.48 (2009).

<sup>57</sup> *Id.*

<sup>58</sup> See Supplemental Opposition, Exhibits B-1 and B-2.

<sup>59</sup> See generally Supplemental Opposition, Exhibits D-1 and D-2.

<sup>60</sup> See, e.g., Supplemental Opposition, Exhibit D-1 at 4-5.

<sup>61</sup> Supplemental Opposition, Exhibit C.



of circumstances that would have alerted CBS to Rowland's status as a paid consultant to, rather than an unpaid volunteer for, the Wilson-Foley campaign, and thus find that the actions taken by CBS and its management were reasonably diligent under the circumstances presented.<sup>62</sup>

Alleged Violation of Sections 73.1942 and 73.1943. We likewise reject Objector's allegations that CBS violated Sections 73.1942 and 73.1943 of the Commission's rules.<sup>63</sup> As discussed above, there is no evidence in the record that Wilson-Foley made requests for broadcast time, except for a paid political advertisement that is not the subject of the Objection. Krayeske would have us assess a violation of Section 73.1943 for every broadcast by Rowland that was intended to assist the Wilson-Foley campaign, and that was not placed in WTIC's political file. As noted above, however, there were no "requests for broadcast time" made by the campaign—the record indicates that any such broadcasts (the exact number of which is not clear from the record) were undertaken by Rowland. Again, the record does not indicate that Rowland's broadcasts were obviously or disproportionately pro-Wilson-Foley, and thus CBS had no reason to manufacture "requests" to place in the political file based on commentary by a station employee hired to provide such commentary. With regard to Objector's allegation of violations of Section 73.1942, which prescribes the charges that can be made to candidates for the use of the station, this rule applies only to the period 45 days before a primary or general election.<sup>64</sup> Even assuming *arguendo* that any of Rowland's broadcasts could be found to be subject to the rules on candidate rates, the record does not disclose the exact dates of any such broadcasts, and the latest such broadcast according to the record would have occurred sometime in February 2012. As the Connecticut Republican primary was held on August 14, 2012, broadcasts prior to June 30, 2012, would not have been subject to Section 73.1942.

*License renewal.* We have evaluated the above-referenced renewal application for WTIC pursuant to Section 309(k) of the Act, and we find that WTIC has served the public interest, convenience, and necessity during the 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 the Licensee of the Act or the rules that, taken together, would constitute a pattern of abuse.

**Conclusion.** Based on the record before us we find no evidence that CBS, as licensee of WTIC, was or had any reason to be aware, in 2011 and 2012, of the conduct for which Rowland was indicted and convicted in 2014. Given the facts and allegations known to CBS at the time, and Rowland's and Wilson-Foley's efforts to conceal Rowland's connection with the campaign, CBS was bound by the duty of reasonable diligence set forth in Section 317 of the Act and Section 73.1212 of the rules, and discharged that duty.

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<sup>62</sup> Cf. *NBC Letter, supra*, in which the Commission determined that NBC did not exercise reasonable diligence as required by the Commission's former conflict of interest rules. In that case, NBC was aware that news anchor Chet Huntley had financial interests in various aspects of the beef industry, including an attempt to market steaks under his own name, yet did not disclose those interests when Huntley broadcast, *inter alia*, commentaries critical of the federal meat inspection program and of the importation of Australian beef. In that case, however, the employee did not conceal or deny his conflict of interest to his employer.

<sup>63</sup> 47 CFR §§ 73.1942, 73.1943.

<sup>64</sup> *Id.* § 73.1942(a)(1).

For the foregoing reasons, then, IT IS ORDERED that the June 25, 2012, letter "appeal" filed by Kenneth J. Krayeske IS DISMISSED AS UNTIMELY. IT IS FURTHER ORDERED that the Informal Objection filed by Kenneth J. Krayeske IS DENIED. IT IS FURTHER ORDERED that the application of CBS Radio Stations, Inc., for renewal of the license for Station WTIC(AM) (File No. BR-20131127AOD) IS GRANTED.

Sincerely,

*Lisa Scanlon*

*for*  
Peter H. Doyle  
Chief, Audio Division  
Media Bureau