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Federal Communications Commission
Office of the Secretary

In the Matter of)	
KUDL(FM), Sacramento, CA	)	Facility ID No. 57889
	)	File No. BRH-20050728ATP
	)	File No. BRFT-20130730ANC
KRXQ(FM), Sacramento, CA	)	Facility ID No. 20354
	)	File No. BRH-20050728AUQ
	)	File No. BRH-20130730AN1
KSEG(FM), Sacramento, CA	)	Facility ID No. 11281
	)	File No. BRH-20050728ATX
	)	File No. BRH-20130730ANK
KKDO(FM), Fair Oaks, CA	)	Facility ID No. 57889
	)	File No. BRH-20130730ANC
KIFM(AM), Sacramento, CA	)	Facility ID No. 67848
	)	File No. BR-20130730ANG

To: Marlene H. Dortch, Secretary
Attn: Chief, Media Bureau

**OPPOSITION OF ENTERCOM LICENSE, LLC
TO PETITION FOR RECONSIDERATION**

Entercom License, LLC (“Entercom”) hereby opposes the Petition for Reconsideration¹ filed by Edward R. Stolz II (“Stolz”) against the *Letter Order* granting Entercom’s renewal applications for Stations KUDL(FM), KRXQ(FM), KSEG(FM), KIFM(AM), and KKDO(FM) (the “Renewed Stations”).² Stolz lacks standing and fails to identify any error in the *Letter Order* or otherwise provide any basis sufficient to warrant reconsideration. Accordingly, the Petition should be dismissed or denied.

¹ Petition of Edward R. Stolz II for Reconsideration, KUDL FCC File No. BRH-20050728ATP et al. (dated Feb. 17, 2017) (“Petition”).

² Letter from Peter H. Doyle, Chief, Audio Services Division, Federal Communications Commission, to Dennis J. Kelley, Esq. et al., Reference No. 1800B3-JM (Jan. 18, 2017) (“*Letter Order*”), http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=71468.

I. STOLZ LACKS STANDING

As a threshold matter, Stolz lacks standing to seek reconsideration of the *Letter Order*. The Commission's rules state that only a "party to the proceeding" or "other person whose interests are adversely affected" may file a petition for reconsideration of a non-rulemaking order.³ The Commission accords standing to a petitioner that demonstrates – by affidavit or declaration – that he or she resides in the service area of the station that is the subject of the petition or listens to the station regularly.⁴ The Bureau properly concluded, however, that the declaration accompanying Stolz's Petition to Deny demonstrates, at best, that Stolz had "transient contacts" with the above-captioned stations, which were insufficient to support Stolz's claim of listener standing.⁵

Stolz does not demonstrate any material error in the Bureau's finding on this point, offering only the unsupported assertion that he "clearly" has standing under the D.C. Circuit decision in *United Church of Christ*.⁶ Unfortunately for Stolz, however, the *United Church of Christ* decision makes clear that the Commission will be "accorded broad discretion in establishing and applying rules for" listener/viewer standing.⁷ The Commission did just that

³ 47 C.F.R. § 1.106(b)(1).

⁴ See 47 U.S.C. § 309(d)(1); *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 F.C.C.2d 89 (1980).

⁵ *Letter Order* at 4. "[L]istener/viewer standing should not rest on transient or infrequent contacts with a station" and a petitioner that is not a resident must demonstrate that she listens to the station regularly. *Chet-5 Broadcasting, L.P.*, 14 FCC Rcd 13041, 13042 ¶ 4 (1999); see also *Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551, 22555 n.25 (2003) ("*Sagittarius*") ("As we have long stated, the Commission's primary concern at license renewal time is with the licensee's overall performance in serving the needs of its community. See *Pacifica Foundation*, 36 F.C.C. 147 (1964). A transient is not in a good position to comment on a station's overall performance to the community."). Stolz did not indicate how regularly he occupies the residence he owns in Sacramento and alleged that he listens to only one of the five captioned stations. *Letter Order* at 4.

⁶ Petition at 6 (citing *Office of Communication of United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966)).

⁷ *United Church of Christ*, 359 F.2d at 1005-06.

when it ruled that transient contacts with a station by a person who does not reside (that is, live) in the area do not support standing.⁸ As the Commission held in finding that Stolz’s Petition to Deny did not demonstrate standing with respect to another Entercom station in Sacramento: “Stolz fails to allege that he is a resident of the Station’s service area, only that he owns a ‘residence’ – i.e., a house – in the area,” and “[p]roperty ownership without residency is not a reliable indicator of radio listenership.”⁹ Moreover, Stolz’s declaration was not signed, as required by Commission rule.¹⁰

Stolz’s untimely assertion of “economic standing” is likewise flawed. Stolz appears to argue that his pending case involving the past assignment of the license for Station KUDL(FM) gives him economic standing to participate in this proceeding.¹¹ Economic standing, however, can be found only by reason of “direct competitive injury” or other *likely* financial injury.¹² Further, the alleged financial injury must be caused by a “direct and current competitor” and must be concrete.¹³ The alleged injury must involve “*substantial aggrievement* or interests

⁸ See *supra* note 5.

⁹ *Entercom License, LLC Applications for Renewal of License for Station KDND(FM), Sacramento, California*, 31 FCC Rcd 12196, 12206 ¶ 23 (2016) (“*KDND HDO*”).

¹⁰ *Id.*

¹¹ Petition at 6-7 (citing *Stolz v. FCC*, Case No. 16-1248 (D.C. Cir 2016)). Stolz did not assert economic standing in the declaration accompanying the Petition to Deny (or even in the Reply responding to Entercom’s argument that he lacked standing); accordingly, this argument is untimely under 47 C.F.R. § 1.106(c).

¹² See, e.g., *Clarksburg Publishing Co. v. FCC*, 225 F.2d 511, 514 n.8 (D.C. Cir. 1955); *Metropolitan Television Co. v. United States*, 221 F.2d 879, 881 (D.C. Cir. 1955) (cited by *Elm City Broadcasting Corp. v. United States*, 235 F.2d 811 (D.C. Cir. 1956)) (“KOA’s loss of listeners will impair its competitive position as to all its competitors in the area, including the Denver Post, and economic injury will result.”).

¹³ *KERM, Inc. v. FCC*, 353 F.3d 57, 60 (D.C. Cir. 2004) (citing *New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002); and *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 477 (1940)) (“KERM fares no better under a theory of competitor standing. A party seeking to establish standing on this basis must demonstrate that it is ‘a direct and current competitor whose bottom line may be adversely affected by the challenged government action.’ While a party that is ‘likely to be financially injured’ by a Commission decision may have competitor standing to challenge Commission actions under the Act, that

substantially affected.”¹⁴ Thus, even if his argument could be considered timely, Stolz does not meet these stringent standards. His claim of economic injury that might result based on the potential outcome of tangentially related litigation (in which his claims have been repeatedly rejected by the Commission)¹⁵ is by definition contingent and speculative and is therefore insufficient to support standing.

II. STOLZ PRESENTS NO BASIS SUFFICIENT TO WARRANT RECONSIDERATION OF THE *LETTER ORDER*

As a matter of substance, the Petition is based exclusively on the Commission’s designation for hearing of Entercom’s renewal application for Station KDND(FM) and Entercom’s permanent discontinuance of operations on KDND(FM) and surrender of the station license and other instruments of authorization to the Audio Services Division of the Media Bureau.¹⁶ These circumstances, however, have no material bearing on the grant of the applications for the Renewed Stations and do not warrant reconsideration of the *Letter Order*.

As the Bureau recognized, the plain language of Section 309(k)(1) of the Act limits the Commission’s review of a broadcast license renewal application exclusively to matters occurring *at the station whose license is in question*.¹⁷ In other words, the Commission’s review of the renewal applications for the Renewed Stations is limited by law to Entercom’s conduct of those five stations: KUDL(FM), KRXQ(FM), KSEG(FM), KIFM(AM), and KKDO(FM). Any

party must make a concrete showing that it is in fact likely to suffer financial injury as a result of the challenged action.”).

¹⁴ *Red River Broadcasting Co. v. FCC*, 267 F.2d 653, 654 (D.C. Cir. 1959) (emphasis added) (citation omitted).

¹⁵ *Royce International Broadcasting Co.*, 30 FCC Rcd 10556 (2015), *aff’d* 31 FCC Rcd 7439 (2016).

¹⁶ Petition at 3-6.

¹⁷ *Letter Order* at 4. See also 47 U.S.C. § 309(k)(1); *Sagittarius*, 18 FCC Rcd 22551, 22555 ¶ 8 (“Congress ... has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought.”) (citation omitted); *KDND HDO*, 31 FCC Rcd at 12205 ¶ 21, 12207-08 ¶ 28; *Entercom License, LLC, License Renewal Applications for Stations WAAF(FM), Westborough, Massachusetts et al.*, 31 FCC Rcd 12034, 12036 n.13 (2016).

questions raised as to Entercom's operation of Station KDND(FM) therefore have no bearing on the question of whether the licenses for Stations KUDL(FM), KRXQ(FM), KSEG(FM), KIFM(AM), and KKDO(FM) should be renewed under Section 309(k) of the Act. Stolz has ignored this statutory language and Commission precedent.¹⁸

Notwithstanding the Section 309(k) renewal standard, Stolz argues that reconsideration of the *Letter Order* is necessary to prevent Entercom from "walk[ing] away from" unresolved issues designated for hearing against Station KDND(FM).¹⁹ There are no unresolved hearing issues relevant to other Entercom Sacramento stations to be decided, however. Contrary to Stolz's characterization, the Commission did not designate for hearing Entercom's "basic statutory qualifications...."²⁰ The Commission expressly declined to designate a character qualification issue for hearing and none of the nine issues actually designated for hearing mention Entercom's basic qualifications.²¹ Stolz is well aware of this fact – the Commission reiterated this point in a separate proceeding involving him, stating: "Contrary to [Stolz's] suggestion, Entercom's qualifications to be the licensee of KUDL are not at issue in the [*KDND HDO*], which instead concerns whether to renew the KDND license."²²

The Commission designated for hearing only issues relating to whether, in light of the facts and circumstances of the KDND(FM) "Hold your Wee for a Wii" contest, (a) Entercom

¹⁸ Issues regarding the *KDND HDO* are also not new or changed circumstances that justify them being raised at this late date, as suggested by Stolz. Petition at 3-4. The Commission released the *KDND HDO* nearly three months before the *Letter Order* and the Bureau obviously was aware of the *KDND HDO* at the time it issued the *Letter Order*. See *Letter Order* at n.3.

¹⁹ Petition at 4-5 (citing *Western Cities Broadcasting, Inc.*, 5 FCC Rcd 6177 (Audio Services Division, 1990)).

²⁰ Petition at 6.

²¹ *KDND HDO*, 31 FCC Rcd at 12209 ¶ 30 n.122 ("As noted above, MAC in its Petition and Edward Stolz in his Reply each request that the Commission designate a character issue against Entercom. We decline to do so.").

²² *Stolz v. FCC*, U.S. Court of Appeals for the District of Columbia Circuit, No. 16-1248, Brief for Appellee at 30 (filed Dec. 15, 2016).


operated Station KDND(FM) in the public interest and (b) its renewal application for Station KDND(FM) should be granted.²³ It follows that Entercom's discontinuance of operations on KDND(FM) and surrender of the station license and other instruments of authorization renders these issues moot. And, consistent with Section 309(k), these issues are not otherwise material to the Bureau's actions in the *Letter Order*.

III. CONCLUSION

For these reasons, the Commission should dismiss or deny the Petition.

Respectfully submitted,

ENTERCOM LICENSE, LLC

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March 2, 2017

²³ Petition at 3; *KDND HDO*, 31 FCC Rcd at 12229-30 ¶ 83.


CERTIFICATE OF SERVICE

I, Blake A. Zanardi, do hereby certify that, on this 2nd day of March, 2017, the foregoing Opposition of Entercom License, LLC to Petition for Reconsideration was served by e-mail, except as otherwise indicated below, on the following persons:

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