



Federal Communications Commission
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In Reply Refer to:

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Mr. Lloyd B. Roach
1025 Meetinghouse Road
West Chester, Pennsylvania 19382

Christopher D. Imlay, Esq.
Booth, Freret, Imlay and Tepper, P.C.
14356 Cape May Road
Silver Spring, Maryland 20904-6011

In re: **Group A LICENSEE, LLC**
WCOJ(AM), Coatesville, PA
Facility ID No. 63593
File No. BR-20060322AAK

Group B LICENSEE, LLC
WCDL(AM), Carbondale, PA
Facility ID No. 58316
File No. BR-20060322ABO

WLNP(FM), Carbondale, PA¹
Facility ID No. 58314
File No. BRH-20060322ABP

WNAK(AM), Nanticoke, PA
Facility ID No. 59757
File No. BR-20060322ABM

WAZL(AM), Hazleton, PA
Facility ID No. 132
File No. BR-20060322ABQ

WHYL(AM), Carlisle, PA
Facility ID No. 74556.
File No. BR-20060322ABN

Applications for Renewal of License

Petition to Deny

¹ Formerly WNAK-FM. The Station's call sign was changed on July 5, 2006.

Dear Mr. Roach and Counsel:

We have before us the above-captioned applications (collectively, the “Applications” and each, an “Application”) filed by Group A Licensee, LLC and Group B Licensee, LLC (collectively, the “Licensees” and each, the “Licensee”)² to renew the licenses of the above-referenced stations. Also on file is a petition to deny (the “Petition”)³ filed by Lloyd B. Roach (“Roach”) on April 17, 2006.⁴ For the reasons set forth below, we deny the Petition and grant the Applications.

Background. The Licensees timely filed the Applications on March 22, 2006. Roach, a former shareholder in Route 81, filed his pleading on April 17, 2006. Although the pleading is styled a “Petition to Deny,” there is no indication in the pleading that it was properly served on the Licensees. Accordingly, the pleading does not meet the procedural requirements for petitions to deny set forth in Section 309(d) of the Communications Act of 1934, as amended (the “Act”).⁵ It will therefore be treated as an informal objection under Section 73.3587 of the Commission’s Rules (the “Rules”).⁶

Discussion. Pursuant to Section 309(e) of the Act, informal objections 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 Section 309(k) of the Act,⁷ which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission’s Rules (the “Rules”); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁸ If, however, a licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁹

² Licensees are wholly owned subsidiaries of Route 81 Radio, LLC (“Route 81”).

³ Licensees jointly filed an Opposition on May 17, 2006.

⁴ Roach controls Meetinghouse Media, Inc. (formerly WCOJ Radio Company, Inc.), West Chester, Pennsylvania, which has a minority interest in Route 81 Radio, the parent company of the Licensees.

⁵ 47 U.S.C. § 309(d).

⁶ 47 C.F.F. § 73.3587.

⁷ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested) (“*Area Christian*”).

⁸ 47 U.S.C. § 309(k)(1). 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 Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Technical violations. Roach first alleges that Licensee violated the Commission's rules concerning tower safety and maintenance of the WNAK(AM) and WHYL(AM) towers. Roach states that he repeatedly warned Licensee that stations WNAK(AM) and WHYL(AM) were in need of "immediate maintenance" in order to comply with sections 73.1213(a) and (b) of the Commission's rules, on tower safety and maintenance, and that he issued a verbal and written warning about the "dangerous condition" of the AM towers at both stations, which included tower structure, lighting, and painting problems.¹⁰ Roach maintains that these "complaint matters" remained unresolved as of March 3, 2006.

In addition, Roach alleges that the Licensees "repeatedly violated" the Commission's rules regarding "city-of-license requirements" in Sections 73.1125, 73.1350 and 73.1400 of the Rules at Stations WCDL(AM) and WLNP(FM) by not maintaining "properly manned and supervised space" in the City of Carbondale and by not having the capability of transmitting from the city of license "on demand."¹¹ Roach states that despite repeated warnings by the Chief Operator and the Contract Engineer, along with requests for additional capital to bring the stations into compliance, "it is [his] belief that these violations continue to exist today."

In their response, Licensees state, among other things, that Roach's Petition is "completely baseless" and unsupported by any affidavits, certifications, or declarations from any consulting or structural engineer or from any other competent individual with knowledge of the facts.¹² Licensees claim that stations WNAK(AM) and WHYL(AM) are in "full compliance" with sections 73.1213(a) and (b),¹³ and stations WCDL(AM) and WLNP(FM) in "full compliance" with section 73.1125 and the related provisions regarding program origination and remote control operation.¹⁴

We find that Roach has failed to present properly supported, specific allegations of fact to establish a substantial and material question of fact concerning either WNAK(AM)'s or WHYL(AM)'s towers

¹⁰ See 47 C.F.R. §§ 73.1213(a) and (b) ("Antenna structure, marking and lighting).

¹¹ Roach cites, specifically, the alleged violation of 47 C.F.R. §§ 73.1125 (a)(1) and (a)(3), concerning the required location of a station's main studio; 73.1350 (b), (b)(1) and (b)(2), concerning transmission system operation and personnel; and 73.1400 (a)(ii), regarding remote control operation of transmission system.

¹² Objection at 3.

¹³ Licensees support their argument with an affidavit from Route 81's consulting engineer Matthew W. Lightner. His affidavit indicates, among other things, that there is some minor "surface rust" on the WHYL(AM) towers and guy wires which does not affect the tower's structural integrity. He also states that the tower is fully compliant with required painting and lighting specifications, and the fences around the tower "are in good condition." With respect to WNAK(AM)'s tower, Mr. Lightner states that the tower has no major issues and that it is in full compliance with all tower painting and lighting specifications as well. Opposition at 4 and Declaration of Matthew W. Lightner.

¹⁴ Licensees indicate that both WCDL(AM) and WLNP(FM), licensed to Carbondale, Pennsylvania, have a main studio located in the Carbondale City Hall at One Main Street within the city of Carbondale, from which WCDL(AM) originates all of its programming and from which WLNP(FM) does "voice tracking" for nine hours each day. The Licensees maintain that all programming for the Stations could be originated at this location, if necessary. Licensees also state that they keep the Stations' public inspection files at this location as well. Opposition at 5 and Declaration of Station Manager Ed Histed.

or WCDL(AM)'s and WLNP(FM)'s main studios.¹⁵ Moreover, Roach's conclusory allegations are adequately rebutted by the unchallenged declarations under penalty of perjury from Licensees' employees having personal knowledge of these matters.¹⁶ Therefore, further consideration on these issues is unwarranted.

Roach also alleges that Licensee misrepresented the facts in its March 30, 2006, ownership report. He states that in June of 2004, he executed, as WCOJ Radio Company, Inc., a *Contribution Agreement*, filed with the Commission, to voluntarily transfer station WCOJ(AM) to Route 81.¹⁷ Roach states that this contribution of equity was made and approved by the Commission with the understanding that Roach would receive an 18.9 percent equity interest in Route 81 and the Licensees. Roach states that the Licensees, controlled by the parent company,¹⁸ "failed to perform on the promise of equity" and "took control" of the promised 18.9 percent. Roach maintains that "[t]his theft of 18.9 percent equity" violated section 73.3540 (f)(3) of the Commission's rules¹⁹ in that it was, in effect, a transfer that required prior Commission approval, and as a direct consequence, the March 30, 2006, ownership report is "in conflict with the facts." In this regard, Roach asserts that the Licensee's parent company willfully and knowingly filed untruthful information with the Commission in violation of Sections 73.1015 and 73.3615 (a)(2)(i) of the Rules.²⁰

In Opposition, the Licensees state that any transfer of Roach's 18.9 percent equity interest in Route 81 did not require the filing of any Commission form because it did not occasion any "transfer of control" of Route 81.²¹ Moreover, the Licensees contend that Roach exercised a "put" option to sell his equity interest in Route 81 in September of 2005. Licensees explain that the other equity owners warned Roach before he exercised this "put" option that doing so would not be advantageous due to current cash flow and the

¹⁵ See *Area Christian, supra*.

¹⁶ See, e.g., *Bee Broadcasting Associates*, Memorandum Opinion and Order, 3 FCC Rcd 4323, 4328 (MMB 1988) (the petitioner's speculations and conclusory allegations fail to establish that a substantial and material question exists, particularly in light of the applicant's properly supported declarations and affidavits of those with personal knowledge of the facts alleged).

¹⁷ See *Application for Consent to Assign License of Station WCOJ(AM), Coatesville, Pennsylvania from WCOJ Radio Company, Inc. to Route 81 Radio, LLC*, (File No. BAL-20031219AAD). This application was granted on February 10, 2004.

¹⁸ Roach states parent company is comprised of Avalon Equity Fund, LP and Waller-Sutton 2000, LP.

¹⁹ 47 C.F.R. § 73.3540 ("Application for voluntary assignment or transfer of control") provides, in pertinent part that:

(f) The following assignment or transfer applications may be filed on FCC "Short form" 316: . . .

(3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one.

²⁰ See 47 C.F.R. § 73.1015 and 73.3615(a)(2)(i).

²¹ The Licensees indicate that the "retirement" of Roach's equity interest increased the existing interests of Avalon Equity Fund, L.P. and WallerSutton 2000, L.P. from 37.8% to 48.65% which, it claims, is properly reported to the Commission in a periodic ownership report, FCC Form 323. Opposition at 6.

predetermined contractual formula for computing the sale of his equity interests.²² They state that Roach did not respond, and the value of his shares – done, according to Licensees, by an appraiser chosen by Roach himself – was calculated at zero. Licensees argue that, although Roach may consider this to be a “theft” of his interest, it is in fact exactly what Roach was entitled to at the time he exercised his “put” option.²³ The Licensees argue that in any event any redress Roach for his perceived unfair treatment is must be sought in a local court of competent jurisdiction, not at the Commission.

Licensees are correct that the matters raised in Roach’s objection concerning his ownership interests in the Licensees relate to a private contractual dispute. The Commission has consistently held that private disputes are beyond its regulatory jurisdiction and must be resolved in a local court of competent jurisdiction.²⁴ Further, contrary to his assertion, Roach’s “equity loss” was not a transfer that required prior Commission approval, and was correctly reflected in the ownership report.²⁵ Thus, there is no basis in fact for Roach’s allegation of misrepresentation.²⁶

Finally, Roach asserts that the Licensees failed to adhere to the Commission’s EEO rules and guidelines “specifically in how they apply” to a claimed “Vietnam Veteran’s preference” in hiring. He states that the Licensees violated an employment agreement by releasing Roach from his duties as Chief Executive Officer and Chief Operator of WCOJ Radio. Roach also argues that a principal of the Licensees, David Unger, continuously ridiculed Roach’s military service and attempted to exercise control of programming, in violation of an operating agreement. In this regard, Roach, a Vietnam veteran, asserts that the Commission’s interest in equal opportunity for Vietnam Era veterans is well known, and that the Licensee’s foregoing actions are a clear violation of the Commission’s EEO guidelines, especially as they relate to Vietnam veterans, citing the *Second Report and Order of Notice of Proposed Rule Making* in MM Docket No. 98-204.²⁷

The Licensees indicate that the Stations are fully compliant with the Commission’s EEO rules, that the “Principal” of the Licensees who allegedly ridiculed Roach’s military service was not aware that Roach

²² The Licensees provide a copy of a letter dated October 17, 2005, to Roach from the Route 81 Board of Managers indicating that it would have the shares appraised but observed that, as “the Company has no cash flow,” Mr. Roach “might not want [his interest] valued at this time” and provided Mr. Roach seven days to rescind his election. Opposition at Exhibit 2.

²³ Opposition at 7.

²⁴ See *John Neely, Esq.*, Letter, 22 FCC Rcd 8395 (MB 2007) (“*Neely*”); *John R. Kingsberry*, Memorandum Opinion and Order, 71 FCC 2d 1173 (1979); *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR 2d 773 (1976); *Transcontinental Television Corp.*, Memorandum Opinion and Order, 44 FCC 2451, 2461 (1961).

²⁵ See *Barnes Enterprises, Inc.*, Memorandum Opinion and Order, 55 FCC 2d 721,726 (1975)(transactions which have no substantial effect on licensee control are normally reported to the Commission on FCC Ownership Reports (Form 323)); see also *New FCC Form 323 Available for Use*, Public Notice, 15 FCC Rcd 19065 (2000) (providing examples of transfers of control or assignments requiring prior Commission consent).

²⁶ See *Bloomfield Hills School District*, Memorandum Opinion and Order and Notice of Apparent Liability Forfeiture, 22 FCC Rcd 14055 (2007)(A misrepresentation is a false statement of *fact* made with an intent to deceive the Commission).

²⁷ *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules*, Second Report and Order and Third Notice of Proposed Rule Making, 17 FCC Rcd 24018 (2002) (“*Second Report and Order*”).

was a Vietnam veteran until reading the Objection,²⁸ and that Roach was relieved of his duties as CEO of Route 81 in September of 2005 for cause. They contend that Roach's termination was not in violation of any employment agreement or any EEO-related Commission rules protecting Vietnam veterans. They also state that Mr. Unger is on Route 81's Board of Managers and is a member of Avalon Equity Partners, LLC, the sole general partner of Avalon Equity Fund, L.P. which owns 48.65 percent of Route 81. Thus, they conclude, Mr. Unger's involvement in programming issues was appropriate. Finally, Licensees argue that to the extent Roach believes Unger's actions violated an employment agreement, he should seek redress in local court, not at the Commission.

Contrary to Roach's assertion, the *Second Report and Order* made no specific reference to Vietnam veterans. In addition, while we appreciate the sacrifices made by all veterans, the Commission's Rules do not establish a "preference" for Vietnam or any other veterans.²⁹ Moreover, Roach's allegations regarding the employment and operating agreements are private contractual disputes not within the purview of the Commission.³⁰

Conclusion/Actions. We find that Lloyd B. Roach has not presented adequate or specific information sufficient to establish a substantial or material question of fact regarding renewal of the listed Stations' licenses. Furthermore, pursuant to Section 309(k) of the Act, we find neither evidence of serious violations of the Act or the Commission's Rules nor of other violations that, when considered together, evidence a pattern of abuse. Further, we find that the subject Stations served the public interest, convenience, and necessity during the subject license term.

Accordingly, for the reasons set forth above, pursuant to Section 309(k) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's rules,³¹ the petition to deny filed by Lloyd B. Roach IS DENIED, and IT IS HEREBY ORDERED that the applications for renewal of license for Stations WCOJ(AM), Coatesville, Pennsylvania (File No. BR-20060322AAK), WCDL(AM), Carbondale, Pennsylvania (File No. BR-20060322ABO), WLNP(FM), Carbondale, Pennsylvania (File No. BRH-20060322ABP), WNAK(AM), Nanticoke, Pennsylvania (File No. BR-20060322ABM), WAZL(AM), Hazleton, Pennsylvania (File No. BR-0060322ABQ) and WHYL(AM), Carlisle, Pennsylvania (File No. BR-20060322ABN) ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Group A Licensee, LLC
Group B Licensee, LLC

²⁸ Opposition at 8 and Declaration of [Route 81 Board of Managers Member] David W. Unger at ¶ 3.

²⁹ See 47 C.F.R. § 73.2080.

³⁰ See *Neely, supra*.

³¹ 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.