

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

In the Matter of)	
)	
Entercom Sacramento License, LLC)	
Applications for Renewals of Licenses for)	
)	
KUDL(FM), Sacramento, CA	)	File No. BRH-20050728ATP
	)	File No. BRH-20130730ANC
	)	Facility ID No. 57889
)	
KRXQ(FM), Sacramento, CA	)	File No. BRH-20050728AUQ
	)	File No. BRH-20130730ANI
	)	Facility ID No. 20354
)	
KSEG(FM), Sacramento, CA	)	File No. BRH-20050728ATX
	)	File No. BRH-20130730ANK
	)	Facility ID No. 11281
)	
KKDO(FM), Fair Oaks, CA	)	File No. BRH-20130730AND
	)	Facility ID No. 6810
)	
KIFM(AM), Sacramento, CA	)	File No. BR-20130730ANG
	)	Facility ID No. 67848

MEMORANDUM OPINION AND ORDER

Adopted: June 26, 2018

Released: June 26, 2018

By the Commission:

1. We have before us the Application for Review (AFR) filed by Edward R. Stolz II (Stolz) that seeks the designation for hearing of the captioned license renewal applications filed by subsidiaries of Entercom Communications Corp.¹ Entercom filed the applications in 2005 and 2013 (2005 Applications and 2013 Applications, respectively) for stations in the Sacramento market. For the reasons set forth below, we affirm the Bureau's conclusion that Stolz lacks standing and deny the AFR.²

I. BACKGROUND

2. The Media Bureau (Bureau) held that Stolz and his (now deceased) mother, Irene M. Stolz, lacked standing to file petitions to deny the 2005 Applications and the 2013 Applications, treated those petitions to deny as informal objections, and denied the objections as lacking merit.³ Stolz sought

¹ For clarity and simplicity, the parent company and all subsidiaries will be referred to as Entercom, except in case citations. All stations will be referred to by their current call signs, without reference to prior changes in call signs. Former station KDND, identified in the Commission's broadcasting database as DKDND, will be referred to as KDND. The Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*), will be referred to as the Act and the Commission's rules (47 CFR § 0.1 *et seq.*) will be referred to as the Rules.

² Stolz filed the AFR on December 27, 2017. Entercom filed an Opposition on January 11, 2018. Stolz filed a Reply on January 22, 2018.

³ *Entercom Sacramento Licenses, LLC*, Letter Order, Ref. 1800B3-JM (Jan. 18, 2017) (*Letter Decision*).

reconsideration, asserting he has standing to challenge those applications based on his ownership of a residence in Sacramento and his efforts to reclaim ownership of KUDL(FM), Sacramento, California from Entercom in pending litigation.⁴ On September 11, 2017, the Bureau released an order⁵ (*Reconsideration Order*) rejecting those claims regarding standing. The Bureau rejected Stolz's original claim of standing, based on his ownership of that Sacramento residence, as inadequate to establish listener standing.⁶ The Bureau rejected Stolz's alternative claim of standing, based on the pendency of litigation involving KUDL, as untimely because Stolz failed to assert this claim in his original petition to deny.⁷ In addition, the Bureau found that the pendency of litigation over KUDL did not establish economic standing for Stolz as a current competitor in the Sacramento radio market or as a party subject to a direct competitive injury or likely financial injury from the Bureau's grant of license renewals for the Entercom stations in question.⁸

3. Almost simultaneously with the Bureau's release of the *Reconsideration Order*, the Commission released an order (*KDND Order*)⁹ dismissing attempts by Stolz to overturn the outcome of the KDND case, which involved another Sacramento station that had been licensed to Entercom.¹⁰ On March 16, 2017, the administrative law judge terminated the KDND hearing proceeding after Entercom announced that it was ending its operation of KDND and submitting the station's license for cancellation.¹¹ The *KDND Order* upheld the termination of the proceeding and dismissed Stolz's application for review of the termination order due to lack of standing.¹² In particular, the *KDND Order*: (a) observed that Stolz was not appealing his unsuccessful claim of standing based on his ownership of a residence in Sacramento; (b) dismissed as untimely a new Stolz claim that he had standing as a potential competitor; (c) in the alternative, rejected Stolz's claim that the pendency of litigation over KUDL and KDND each separately gave him standing as a potential competitor; and (d) held that Entercom's conduct of the KDND Contest only implicated the KDND license and, under the terms of section 309(k)(1) of the Act, the KDND proceeding could not serve as a basis for Stolz having the KUDL license restored to him.¹³

4. Stolz thereafter filed a petition for reconsideration of the Bureau's September 11, 2017 *Reconsideration Order*, stating that he wished to present arguments relating to the outcome of the KDND case, particularly whether the cancellation of the KDND license was an appropriate sanction for

⁴ Petition for Reconsideration by Edward R. Stolz II (Feb. 17, 2017) (First Petition). The history of the KUDL litigation, including the 2003 court-ordered sale of the station by Stolz to Entercom, is recounted in the recent appellate decision upholding the Commission's determination that the Bureau correctly approved the involuntary assignment of the KUDL license. *See Stolz v. FCC*, 882 F.3d 234, 237-38 (D.C. Cir. 2018). The court denied rehearing of that decision on March 20, 2018.

⁵ *Entercom License Sacramento, LLC*, Letter Order, 32 FCC Rcd 6880 (MB 2017).

⁶ *Id.*, 32 FCC Rcd at 6883.

⁷ *Id.*

⁸ *Id.*

⁹ *Entercom License, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 7149 (2017), *recon. dismissed in part and denied in part*, Order, DA 18-472 (OGC May 8, 2018), *app. for review pending*.

¹⁰ That station's license renewal applications were designated for hearing in 2016 in connection with a January 2007 radio contest KDND sponsored that resulted in the death of a participant and a jury finding of civil negligence against the Entercom subsidiary that operated the Sacramento stations (KDND Contest). *Entercom License, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 31 FCC Rcd 12196 (2016) (*KDND HDO*).

¹¹ *See KDND Order*, 32 FCC Rcd at 7150, paras. 4-5.

¹² *Id.* at 7152-54, paras. 10-14.

¹³ *Id.*

Entercom's conduct of the KDND Contest. The Bureau dismissed the second petition for reconsideration due to Stolz's lack of standing.¹⁴

5. In the AFR, Stolz argues that he has standing because he was injured by the outcome of the KUDL litigation and the FCC did not contest his standing in that proceeding.¹⁵ Stolz also repeats his claim to standing from the KDND case, where he argued unsuccessfully that if Entercom were disqualified to hold the KUDL license based on character issues from the KDND case, he would be entitled to reinstatement as the licensee of KUDL.¹⁶ On the merits, Stolz argues that the Commission has an obligation to transfer the hearing issues from the KDND case to this case for a determination of Entercom's character qualifications and whether the Sacramento stations have served the public interest.¹⁷

II. DISCUSSION

6. For the reasons explained below, we deny the AFR. First, we address Stolz's various assertions of standing to challenge these license renewal applications. To establish party-in-interest standing, a petitioner must allege facts sufficient to demonstrate that grant of the application would cause it to suffer a direct injury. The petitioner must demonstrate a direct causal link between the challenged action and the alleged injury to the applicant, and show that the injury would be prevented or redressed by the relief requested.¹⁸ In the broadcast regulatory context, standing is generally shown in one of three ways: (1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station's service area or regular listener of the station.¹⁹ Stolz fails to demonstrate standing by any of these means.

7. As in the KDND proceeding, Stolz's claim of standing evolved in a way that conflicts with our procedural rules for petitions for reconsideration. In both cases, Stolz initially asserted standing based solely on a claim of status as a resident due to his ownership of a residence in Sacramento.²⁰ On reconsideration, Stolz then added a claim of standing as a potential competitor in the market due to his efforts to reclaim KUDL.²¹ As we held in the *KDND Order* and as the Bureau correctly held here, presenting such a new argument in a petition for reconsideration violates our procedural rules against relying on facts or arguments known to the petitioner but not presented previously.²²

8. In his AFR, Stolz has discarded his residential claim to standing while improperly adding new standing arguments. First, he repeats his argument from the KDND proceeding that he would be

¹⁴ *Entercom License, LLC*, Letter Order, Ref. 1800B3-ATS (MB Nov. 21, 2017).

¹⁵ AFR at 4-5.

¹⁶ *Id.* at 3.

¹⁷ *Id.* 5-7 & Ex. A. In the Exhibit to the AFR, which lists the issues that should be designated for hearing, Stolz introduces a new issue that was not raised first with the Bureau—whether Entercom violated Section 73.3588 of the Commission's rules by failing to disclose the terms of its settlement of the civil negligence judgment *Id.* at Ex. A.

¹⁸ See, e.g., *AT&T Inc. and Deutsche Telecom*, Memorandum Opinion and Order, 27 FCC Rcd 4423, 4425, para. 8 (2012); *WINV, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 2032, 2033-34, para. 3 (1998).

¹⁹ *Chapin Enterprises, LLC*, 29 FCC Rcd 4250, 4252, para. 7 (2014); see also *Chet-5 Broad., L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042, para. 3 (1999) (“[W]e will accord party-in-interest status to a petitioner who demonstrates either residence in the station's service area or that the petitioner listens to or views the station regularly, and that such listening or viewing is not the result of transient contacts with the station”); *Office of Comm. of the United Church of Christ v. FCC*, 359 F.2d 994, 1000-06 (D.C. Cir. 1966) (expanding standing from traditional categories of electrical interference or economic injury to station listeners).

²⁰ See *Reconsideration Order*, 32 FCC Rcd at 6883; *KDND Order*, 32 FCC Rcd at 7152, para. 10.

²¹ See *Reconsideration Order*, 32 FCC Rcd at 6883; *KDND Order*, 32 FCC Rcd at 7152-53, para. 7.

²² *Reconsideration Order*, 32 FCC Rcd at 6883; *KDND Order*, 32 FCC Rcd at 7152, para. 10; 47 CFR § 1.106(b)(2), (c).

entitled to recover the KUDL license if Entercom were disqualified as a licensee as a result of the KDND Contest.²³ Second, he argues that the Commission never challenged his standing in the KUDL litigation.²⁴ Section 5(c)(5) of the Act and Section 1.115(c) of the Rules bar applications for review that rely “on questions of fact or law upon which the [designated authority issuing the decision] has been afforded no opportunity to pass.”²⁵ Accordingly, these new arguments are procedurally defective.

9. Thus, we find that the only timely-asserted claim to standing presented by Stolz is the claim of residence rejected by the Bureau, and he does not appeal that decision in the AFR. Stolz does appeal the Bureau’s rejection of his previous claim of economic standing as untimely. But for the reasons stated above and in the *Reconsideration Order* and KDND proceeding, we find the Bureau appropriately dismissed that claim as procedurally improper.²⁶ As an alternative and independent basis for our decision, as we held in the *KDND Order*, we find that Stolz’s claim of standing as a potential licensee of KUDL rests on speculative and unsupported claims.²⁷ Accordingly, Stolz has failed to show that his status as a potential competitor in the market due to his attempt to reclaim KUDL is sufficient to support a claim of standing with respect to any of the 2005 Applications or 2013 Applications.²⁸

10. Finally, as an alternative and independent basis for upholding the Bureau’s decision, we consider and reject on the merits Stolz’s argument that the Commission should designate the 2005 Applications and 2013 Applications for evidentiary hearing based on the issue of whether, in light of the KDND Contest, Entercom operated the stations in the public interest and holds the character qualifications to be a Commission licensee.²⁹ Section 309(k) provides that in a license renewal proceeding, the Commission “shall grant the [renewal] application if it finds, *with respect to that station*, during the preceding term of its license [that] the station has served the public interest, convenience, and necessity”³⁰ Thus, as the Bureau correctly held, Entercom’s conduct at KDND cannot serve as the

²³ AFR at 3. As noted above, *supra* para. 2, Stolz previously claimed economic standing in this proceeding on the grounds that the sale of KUDL to Entercom was subject to pending litigation, and were he to prevail, the license would be restored to him. First Petition at 6-7.

²⁴ *Id.* at 4.

²⁵ See 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c); *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) (upholding Commission’s order dismissing arguments under Section 1.115(c) because that Rule does not allow the Commission to grant an application for review if it relies upon arguments that were not presented below).

²⁶ See *KDND Order*, 32 FCC Rcd at 7152-53, para. 10; *Reconsideration Order*, 32 FCC Rcd at 6883, n.20.

²⁷ *Id.*, paras. 11-13 (rejecting standing claims premised on a favorable outcome in pending litigation and on disqualification of Entercom due to KDND Contest); see also *Applications for A and B Block Broadband PCS Licenses*, Memorandum Opinion and Order, 61 Fed. Reg. 19620-02 (May 2, 1996) (allegations based on potential future status as a licensee “are too contingent and speculative to support the required finding of a direct injury causally linked to the challenged action”). As for Stolz’s new argument that he has standing here because the Commission did not challenge his standing in the KUDL litigation, that comparison is misplaced. In the KUDL litigation, Stolz challenged a court-ordered sale to Entercom of a station that Stolz had previously owned. *Stolz v. FCC*, 882 F.3d 234 (D.C. Cir. 2018). Here, Stolz’s claim rests on an indirect and speculative connection between the claimed injury and the requested relief. Even if the license for KUDL were revoked or not renewed after hearing, Stolz offers no legal theory or precedent for the proposition that Entercom’s valid acquisition of the KUDL license more than three years before the alleged misconduct at KDND would be reversed and the license returned to Stolz. Cf. *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1107 (D.C. Cir. 2009) (“[W]e judge the reasonableness of an agency’s decision on the basis of the record before the agency at the time it made its decision”).

²⁸ *Id.*, 32 FCC Rcd at 7153, para. 11 (rejecting standing claim based on the speculative assumption of a favorable outcome in pending litigation); see also *Reconsideration Order*, 32 FCC Rcd at 6883, n.20 (same).

²⁹ AFR at 5-7.

³⁰ *KDND HDO*, 31 FCC Rcd at 12209, para. 30 and n.122; *KDND Order*, 32 FCC Rcd at 7154, paras. 13-14 (citing 47 U.S.C. § 309(k) (emphasis added)). See also *Sagittarius Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 22551, 22555, para. 8 (2003) (“Congress, however, has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought.”). In his second petition,

basis to designate the 2005 Applications and the 2013 Applications for hearing.³¹ The Commission's character policy does not override this statutory limitation.³² For the same reason, Stolz's argument that the relinquishment of KDND may not be a sufficient deterrent to future misconduct at its remaining stations is misplaced here – the possibility of future misconduct at the stations at issue here is outside the scope of the section 309(k) license renewal inquiry in the absence of any finding of misconduct at those stations.³³

III. ORDERING CLAUSE

11. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the

(Continued from previous page) _____

Stolz claimed that references in subparts of Section 309(k)(1) to violations of the Act or rules “by the licensee” mean that the Commission can look beyond conduct at the station under consideration. Second Petition for Reconsideration at 2-3 (citing 47 USC § 309(k)(1)(B)-(C)). Stolz's interpretation conflicts with the language and structure of the statute, which defines the scope of relevant conduct as that occurring “with respect to [the] station” at issue. The more specific type of conduct that is relevant is described in the subparts, and in that context, it is reasonable to interpret the scope of relevant conduct as that occurring with respect to the station at issue; the word “licensee” does not broaden the scope of the inquiry. Indeed, if the language were construed as Stolz advocates, the scope of the renewal inquiry would turn on the completely arbitrary distinction of corporate form, as the result would differ for a broadcaster that holds all of its licenses in a single licensee subsidiary and another that holds licenses through multiple licensee subsidiaries. Although the Bureau dismissed Stolz's Second Petition, he does not seek review of the Bureau's interpretation of Section 309(k)(1). *Reconsideration Order*, 32 FCC Rcd at 6883.

³¹ *Letter Decision* at 4; *Reconsideration Order*, 32 FCC Rcd at 6883. Stolz offers no support for his claim that failure to designate issues for hearing gave the appearance that “there are two Commissions: one that punishes small, undercapitalized businesses and individuals; and the other that treats publicly traded entities and powerful individuals with extreme deference,” AFR at 5-6, which runs contrary to the Commission's designation of the KDND renewal application for hearing in the first instance. In his Reply, Stolz cites *Immaculate Conception Apostolic School*, 32 FCC Rcd 2684 (2017) (*ICAS*), claiming that staff “put [the station] to the sword without a hearing.” Reply at 5. The case is inapposite here. *ICAS* involved a permittee that had obtained its construction permit for a new noncommercial educational (NCE) station through a comparative point selection process based on its certification that it would be a local entity for four years following the commencement of station operations. When the permittee closed its local campus, it ceased to be a local entity, was no longer entitled to the comparative points through which it obtained its construction permit, and thus was no longer eligible to obtain a license through the comparative point selection process. See *Immaculate Conception Apostolic School*, Memorandum Opinion and Order, 31 FCC Rcd 13754 (2016); see also 47 CFR § 73.7000 (point selection process for NCE applicants). In contrast, this proceeding involves whether the license renewal applications for the Sacramento Stations should be granted pursuant to Section 309(k) of the Act. Stolz likewise does not support his assertion that failure to designate this issue for hearing violates the Administrative Procedure Act. AFR at 7.

³² Stolz argues that conduct that “is so egregious as to shock the conscience and evoke almost universal disapprobation” provides authority for the Commission to base a license renewal decision on conduct at other stations. Reply at 2-3 (citing *Policy Regarding Character Qualifications in Broadcast Licensing*, Order and Policy Statement, 102 FCC 2d 1179, 1205 & n.60 (1986), *subsequent history omitted*). He alleges that the KDND Contest satisfies this standard. *Id.* Stolz provides no legal reasoning to support the inference that this policy overrides the statutory limitations on conduct that can be considered when the Commission acts on license renewal applications.

³³ Moreover, Stolz provides no factual basis for suggestions about the extent of economic damage sustained by loss of station KDND. See *Entercom-CBS* at n. 30. We also reject Stolz's suggestion that Entercom may have failed to comply with the reporting requirements of 47 CFR § 73.3588, an allegation that is not discussed in the AFR but rather is merely listed in the Exhibit as an issue to be designated for hearing. Stolz did not raise this argument before the Bureau, and it is procedurally barred as a result. 47 CFR § 1.115(c). Alternatively and independently, we reject this claim on the merits. Section 73.3588 of our rules applies to the withdrawal of petitions to deny and informal objections, not to the withdrawal of complaints, such as the complaint that was withdrawn in connection with the settlement of the KDND civil negligence judgment. See *KDND HDO*, 31 FCC Rcd 12196, 12200, paras. 9-10 & n.30 (noting that plaintiffs withdrew a letter they had sent to the FCC Chairman, which the Enforcement Bureau treated as a complaint).

Communications Act of 1934, as amended,³⁴ and Sections 1.115(a) and 1.115(c) of the Commission's Rules,³⁵ the Application for Review filed by Edward R. Stolz II, on December 27, 2017, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁴ 47 U.S.C. § 155(c)(5).

³⁵ 47 CFR § 1.115(a), (c).