



Federal Communications Commission
Washington, D.C. 20554

September 27, 2006

DA 06-1923

In Reply Refer to:

1800B3-SS

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Clear Channel Broadcasting Licenses, Inc.
2625 S. Memorial Dr., Suite A
Tulsa, OK 74129

In re: WMJY(FM), Biloxi, MS
Clear Channel Broadcasting
Licenses, Inc.
Facility ID No. 61368
File No. BRH-20040202ACQ

WKNN-FM, Pascagoula, MS
Clear Channel Broadcasting
Licenses, Inc.
Facility ID No. 61367
File No. BRH-20040202ACV

WBUV(FM), Moss Point, MS
Clear Channel Broadcasting
Licenses, Inc.
Facility ID No. 29687
File No. BRH-20040202ACW
Application for Renewal

Informal Objection

Dear Applicant:

On file are the above-captioned applications of Clear Channel Broadcasting Licenses, Inc. (the "Licensee") for renewal of the licenses of WMJY(FM), Biloxi, Mississippi; WKNN-FM, Pascagoula, Mississippi; and WBUV(FM), Moss Point, Mississippi (collectively, the "Station Licenses"). Also before the staff is an Informal Objection ("WJZD Objection") filed on behalf of WJZD, Inc. ("WJZD") on May 25, 2004, and a related pleading.¹ WJZD seeks denial of the above-captioned, pending applications for

¹ The Licensee filed an Opposition to the WJZD Objection on August 25, 2004.

renewal of license. For the reasons set forth below, we deny the WJZD Objection, and we grant the license renewal applications.

In its Objection, WJZD alleges that the Licensee “engineered” an unauthorized transfer of control of its station WQYZ(FM), Ocean Springs, Mississippi. WJZD further alleges that the Licensee “may be” in violation of Section 73.3555 of the Commission’s Rules (the “Rules”).² WJZD also claims that the captioned applications should be denied or designated for hearing because the Licensee “is a recidivist violator of Section 1464” of Title 18 of the United States Code.³ Finally, WJZD alleges misrepresentation and lack of candor issues.

In its Opposition, the Licensee argues that: (1) WJZD’s claim against the pending assignment application of WQYZ(FM), Ocean Springs, Mississippi,⁴ has no relevance to the captioned applications for renewal of license; (2) WJZD’s allegation that the Licensee is in violation of Section 73.3555 of the Rules has no merit; and (3) WJZD has not pointed to any indecency violations by any of the captioned stations in this proceeding.

Procedural Matter. The Licensee argues that the WJZD Objection is procedurally defective and should be dismissed as untimely because it was not filed by the May 1, 2004, deadline “for petitions or objections.” The Licensee contends that pursuant to Section 73.3516(e) of the Rules,⁵ interested parties are afforded three full months, in this case between February 2 and May 1, 2004, to supply “input on the stations’ renewal applications.” We disagree. Section 73.3516(e) pertains only to petitions to deny.⁶ Pursuant to Section 73.3587 of the Rules, any person may file an informal objection before the Commission has taken action on any application for an instrument of authorization. Therefore, we reject the Licensee’s claim and will discuss the merits of WJZD’s Objection to the captioned applications.

Substantive Matters. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Communications Act of 1934, as amended (the “Act”). That section provides that if upon consideration of the application and pleadings, we find: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e)

² 47 C.F.R. § 73.3555.

³ WJZD does not point to any specific indecency allegations involving any of the three captioned stations. *See WJZD, Inc., Golden Gulf Coast Broadcasting, Inc., and Capstar Limited Partnership*, 20 FCC Rcd 9941 (MB 2005) (“WJZD Letter”) (issue of indecency complaints resolved by Consent Decree need not be further addressed).

⁴ *See* File No. BALH-20031125ALX and related pleadings.

⁵ 47 C.F.R. § 73.3516(e).

⁶ *See id.*

⁷ 47 U.S.C. § 309(k)(1). The renewal standard was amended 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)*, 11 FCC Rcd 6363 (1996).

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.”⁸

In this case, WJZD objects to the renewal of licenses for stations WMJY(FM), Biloxi, Mississippi, WKNN-FM, Pascagoula, Mississippi, and WBUV(FM), Moss Point, Mississippi. The allegations contained in its Objection, however, pertain to alleged misconduct at station WQYZ(FM), Ocean Springs, Mississippi. Section 309(k) precludes consideration of allegations of misconduct at any station but that for which a renewal application is before the agency. This position is reflected in the broadcast license renewal form and instructions.⁹ Because in the instant matter, the alleged misconduct took place at a station, *i.e.*, WQYZ(FM), other than the stations whose renewal applications are before us, *i.e.*, WMJY(FM), WKNN-FM, and WBUV(FM), we may not consider those allegations in connection with our evaluation of the renewal of the Station Licenses.¹⁰

Similarly, WJZD has not been able to cite any instances in which any of the captioned stations have broadcast allegedly indecent programming. Rather, it claims that the subject license renewal applications should not be granted because of indecent programming aired on other Licensee stations.¹¹ Accordingly, this argument also is misplaced.

Finally, WJZD argues that the Licensee “may be” in violation of Section 73.3555 of the Rules because the Licensee purportedly has attributable interests in five commercial FM stations in the Biloxi, Mississippi, Metro area with city-grade contour overlap at common points where it can permissibly only have four.¹² This contention lacks merit. The staff analyzed technical data submitted by the Licensee in regard to the WQYZ(FM) application for assignment¹³ and found that the proposed transaction complied with the local radio ownership provisions of Section 73.3555.¹⁴ WJZD did not challenge this finding in its petition for reconsideration of that proceeding, and we will not further examine the issue here.

Conclusion/Order. Because we find that there have been no serious violations of the Act or the Rules involving stations WMJY(FM), WKNN-FM, and WBUV(FM), or violations by the Licensee of the Act or Rules which, taken together, would constitute a pattern of abuse, and because we find that stations WMJY(FM), WKNN-FM, and WBUV(FM) served the public interest, convenience, and necessity during the subject license term, we will grant the subject renewal applications. Accordingly, for the reasons set forth above, the WJZD Objection IS DENIED. Finally, because the subject applications are otherwise in full compliance with the Rules and the Act, and finding that the public interest, convenience, and

⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁹ See FCC Form 303-S, Section II, Item 4 and concomitant instructions.

¹⁰ See 47 U.S.C. § 309(k)(1); see also *Letter to Rick Morrison from Peter H. Doyle, Chief, Audio Services Division*, DA 06-501, (rel. Mar. 2, 2006).

¹¹ See WJZD Objection at 3.

¹² See *id.* at 2.

¹³ See File No. BALH-20031125ALX at Attachment 1.

¹⁴ See *WJZD Letter* at 6.

necessity would be served thereby, the applications for renewal (File Nos. BRH-20040202ACQ, BRH-20040202ACV, and BRH-20040202ACW) for stations WMJY(FM), Biloxi, Mississippi; WKNN-FM, Pascagoula; Mississippi; and WBUV(FM), Moss Point, Mississippi, respectively, ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Dennis J. Kelly, Esq.
Martha E. Heller, Esq.