



Federal Communications Commission
Washington, D.C. 20554

March 30, 2007

DA 07-1550

In Reply Refer to:
1800B3-KD

Released: March 30, 2007

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In re: WTMX(FM), Skokie, IL
Facility ID No. 6377
Bonneville Holding Company
File No. BRH-20040728ANB

Application for Renewal of License

Informal Objection

Dear Messrs. Struhar and Satten:

We have before us: (1) the above-noted application (the "Application") of Bonneville Holding Company (the "Licensee") for renewal of its license for radio Station WTMX(FM), Skokie, Illinois (the "Station"); (2) the "Formal Objection & Personal Attacks" regarding the Application (the "Initial Objection") filed by Tom Struhar ("Struhar") and filed with the Commission on October 26, 2004;¹ and (3) the Licensee's letter to the Commission dated and filed December 9, 2004, in opposition to the Objections (the "Opposition"). For the reasons set forth below, we deny the Objections and grant the Application.

Background. In the Objections, Struhar alleges that the Licensee has: (1) failed to provide programming over the Station related to community issues;² (2) failed to properly identify Skokie as the Station's community of license in its broadcasts;³ (3) operated the Station at a power higher than that

¹ Struhar supplemented his Initial Objection with the following filings: (1) corrections to his "Formal Petition to Deny," filed October 29, 2004; (2) a "Formal Petition to Deny," filed November 1, 2004; (3) an "Informal Objection," filed November 1, 2004; (4) a supplement to the "Formal Petition to Deny," filed November 3, 2004 (the "Supplement"); and (5) a letter to Audio Division staff regarding his various pleadings filed November 22, 2004. We will collectively refer to those submissions, including the Initial Objection, as the "Objections."

² Supplement at ¶¶ 8, 13.

³ Initial Objection at ¶ 6; Informal Objection at 1.

authorized by the Commission;⁴ (4) failed to maintain a Station local studio;⁵ and (5) violated the public inspection file rule.⁶

In its Opposition, the Licensee states that Struhar's Objections are procedurally defective and should not be considered. The Licensee further argues that Struhar has provided nothing more than "outlandish and unsubstantiated accusations, broad generalizations, and opinion," and has failed to provide any specific allegations of fact relating to the operation of the Station sufficient to establish a *prima facie* showing that grant of the Application would be inconsistent with the public interest.⁷ The Licensee maintains that it provides service to its community of license; has a main studio within the 25 mile limit imposed by Section 73.1125 of the Commission's Rules (the "Rules");⁸ that WTMX(FM)'s station identification announcements properly specify Skokie, in compliance with the Rules, and that the Station complies with the Commission's requirement that it include quarterly community issue/programs lists in the Station's public file.⁹ Finally, the Licensee claims that many allegations raised by Struhar should be barred from consideration because they relate to either alleged events in the 1980s, years prior to the relevant license term, and/or to non-FCC related misconduct.¹⁰

Discussion. Procedural Matters. Initially, we note that, although the Initial Opposition is styled as a "Formal Objection" and the November 1 and 3, 2004, submissions each as a "Formal Petition to Deny," Struhar has failed to provide an affidavit to support any of the allegations of fact that he has made, as required by Section 309(d)(1) of the Communications Act of 1934, as amended (the "Act").¹¹ Additionally, Struhar failed to serve a copy of his pleadings on the Licensee or its counsel, as required by Section 309(d)(1) of the Act and Section 1.47 of the Rules.¹² Accordingly, we will treat these and the other Objections collectively as an informal objection pursuant to Section 73.3587 of the Rules.¹³

⁴ Supplement at ¶ 4. Struhar also raises various allegations of non-FCC misconduct by the Licensee, including, for example, claims that the Licensee's employees have stalked and harassed him. *See, e.g.*, Informal Objection at 1 ("It is my very strong hunch that WTMX/Skokie followed me around and stalked me to harass me..."). Because these allegations fail to implicate any violation of the Act or the Rules and have not otherwise been adjudicated by a court or administrative body, we will not consider them further. *See Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (subsequent history omitted) (generally narrowing the range of non-FCC related misconduct to be considered when assessing an applicant's character qualifications to matters upon which there has been an adjudication by a tribunal of competent jurisdiction of a felony or certain other types of misconduct by the licensee and/or parties with an attributable interest in the licensee).

⁵ Informal Objection at 1, Ex. 2.

⁶ Supplement at ¶ 11.

⁷ Opposition at 3.

⁸ *See* 47 C.F.R. §73.1125(a)(3) (the main studio may be located within 25 miles of the reference points of the center of the station's community of license).

⁹ Opposition at 3.

¹⁰ *Id.*

¹¹ *See* 47 U.S.C. § 309(d)(1).

¹² *See* 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.47. Nevertheless, in the Opposition, the Licensee states that it obtained a copy of the pleadings after learning about them in public notices. Opposition at n.1.

¹³ 47 C.F.R. § 73.3587.

Substantive Matters. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k)(1) of the Act. That section provides that the Commission is to grant a license 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 Rules, and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹⁴ 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) 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.”¹⁵

Informal objections, like petitions to deny, must provide properly supported specific allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest, convenience, and necessity.¹⁶ For the following reasons, Struhar has failed to present specific factual allegations sufficient to raise such a question of fact whether grant of the Application would be inconsistent with the public interest. Accordingly, we deny the Objection.

First, Struhar contends that the Licensee has failed to present programming responsive to the needs of the community. Specifically, he states that the Station never aired information about local issues, news, or public affairs pertaining to Skokie.¹⁷ Licensees have a duty to respond to local needs and issues by choosing appropriate programming. They also have broad discretion to determine, in good faith, the issues that they believe to be of concern to the communities that they serve and the manner in which to address those issues.¹⁸ The Commission may intervene in circumstances in which a licensee has abused this discretion. For instance, we may consider whether a licensee offers such nominal levels of issue-responsive programming as to have defaulted on this core obligation.¹⁹ However, Struhar has failed to provide specific allegations of fact that call for further inquiry whether the Licensee has abused its broad discretion or otherwise failed to meet this programming obligation.²⁰

Next, Struhar makes several allegations relating to the Station’s operation, including its alleged failure to properly specify Skokie in its station identification announcements, failure to maintain a local studio, and its alleged operation at a power exceeding that authorized by the Commission.²¹ Again,

¹⁴ 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).

¹⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁶ *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁷ See note 2, *supra*.

¹⁸ *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1092 (1972). See also *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413, 1431 (D.C. Cir 1983), and *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12429 (2004).

¹⁹ See, e.g., *Philadelphia Radio Stations*, Memorandum Opinion and Order, 5 FCC Rcd 3487, 3487-88 (1990).

²⁰ See *Area Christian*, 60 FCC Rcd at 864.

²¹ See notes 3-5, *supra*.

Struhar fails, on all counts, to present any specific facts or evidence supporting these contentions.²² Thus, these allegations fail to meet the requirement for an informal objection as set forth in *Area Christian, supra*.

Finally, Struhar alleges that the Licensee has failed to provide public access to the Station's public inspection file, in violation of Section 73.3526 of the Rules. In this regard, Struhar states that, "in about summer of 2002," he went to the Licensee's offices in downtown Chicago and requested access to the Station's public files. According to Struhar, he was told that he would have to make an appointment in order to view the files, even after he informed the employee that it was his right to view the public files at any time during regular business hours.²³ Because Struhar fails to provide the specific date on which he so visited the Station or identify with whom he spoke at the Station, we conclude that he has not provided the necessary specific information to establish a violation by the Licensee.²⁴

We note, however, that the requirement that a licensee provide interested members of the public reasonable access to the public inspection file serves the important purpose of facilitating citizen monitoring of a station's operations and public interest performance and fostering community involvement with local stations. This in turn helps ensure that stations are responsive to the needs and interests of their local communities.²⁵ Under Section 73.3526(c) of the Rules, a licensee must make its public file available for public inspection at any time during regular business hours and may not require that a member of the public make an appointment in advance or return at another time to inspect the public file.²⁶ While we are unable to conclude that a specific violation occurred based upon the limited facts presented to us by Struhar, we direct the Licensee to take whatever steps are necessary to ensure that all Station staff are made aware of the Licensee's specific obligations under that Rule and that appropriate procedures are in place for its full compliance with those obligations.

Conclusion/Actions. For the foregoing reasons, we deny the Objections. We have evaluated the WTMX(FM) renewal application pursuant to Section 309(k) of the Act,²⁷ and we find that Station WTMX(FM) 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 involving Station WTMX(FM), or violations by Bonneville Holding Company of the Act or the Rules which, taken together, would constitute a pattern of abuse. In light of the foregoing, we will grant the Application.

Accordingly, IT IS ORDERED that the Objections filed by Tom Struhar ARE DENIED.

²² It appears that Struhar's complaint regarding the Station's method of station identification is that the announcements include the word "Chicago;" the announcement is "WTMX/Skokie, Chicago." See, e.g., Nov. 1, 2004, Formal Petition to Deny at 1. Such an announcement complies with our station identification rule, Section 73.1201. See 47 U.S.C. § 73.1201(b)(2) ("A station may include in its official station identification the name of any additional community or communities, but the community to which the station is licensed must be named first.").

²³ Supplement at ¶ 11.

²⁴ See 47 U.S.C. § 503(b)(4) (a notice of apparent liability for forfeiture must include, *inter alia*, the nature of the act or omission charged and the date on which such conduct occurred).

²⁵ *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15700 (1998).

²⁶ 47 C.F.R. § 73.3526(c). See also *Availability of Locally Maintained Records for Inspection by Members of the Public*, Public Notice, 13 FCC Rcd 17959 (1998).

²⁷ 47 U.S.C. § 309(k).

IT IS FURTHER ORDERED that, because the application of Bonneville Holding Company for renewal of its license for Station WTMX(FM) (File No. BRH-20040728ANB), is in full compliance with the Commission's Rules and the Communications Act of 1934, as amended,²⁸ and, finding that the public interest, convenience, and necessity would be served thereby, the application IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Bonneville Holding Company
David Blocher, Esq. (via fax)

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