



Federal Communications Commission
Washington, D.C. 20554

April 26, 2007

DA 07-1838
In Reply Refer to:
1800B3-RDH
Released: April 26, 2007

Mr. Martin L. Hensley
Hoosier Public Radio Corporation
15 Wood Street
Greenfield, Indiana 46140

In re: Franklin Township Community School Corp.
Station WRFT(FM), Indianapolis, Indiana
Facility ID No. 22366
File No. BRED-20040414AAO

Hoosier Public Radio Corporation
File No. BPED-20040701AAC

Petition for Reconsideration

Dear Mr. Hensley:

We have before us the “Petition for Reconsideration and Reinstatement Nunc Pro Tunc; Petition for Reconsideration Nunc Pro Tunc WRFT Renewal and License Grant; Motion to Correct Errors; Petition for Hearing” (the “Petition”) filed March 29, 2005, by Hoosier Public Radio Corporation (“Hoosier”).¹ The Petition asks us to reconsider our March 2, 2005, letter² granting the above-noted license renewal application of Franklin Township Community School Corporation (“Franklin Township”) for noncommercial educational Station WRFT(FM) (the “Station”) Indianapolis, Indiana (the “Renewal Application”), and dismissing Hoosier’s above-noted application seeking time-share operation of the Station (the “Time-Share Application”).³ For the reasons set forth below, we deny the Petition and affirm the *Staff Decision*.

¹ Hoosier also filed a “Supplement Petition for Reconsideration Petition to Deny” (the “Supplement”) on May 9, 2005. We will dismiss the “Supplement” because it was untimely filed. *See* 47 C.F.R. § 1.106(f). That provision of the Commission’s Rules requires that “[t]he petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of the final Commission action, as that date is defined in § 4(b) of these rules” (emphasis added). The Supplement was filed more than two months after the March 7, 2005, Public Notice of the decision of which reconsideration is being sought. Thus, even if we considered the Supplement to be a reply to the Licensee’s Opposition, it would not have been timely pursuant to 47 C.F.R. § 1.106(h). That Section requires replies to oppositions to be filed within seven days after the last day for filing oppositions, making the reply deadline April 15, 2005.

² Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau to Kathryn Schmeltzer, Esq., Reference 1800B3-CLR (Mar.2, 2005) (the “Staff Decision”).

³ Also before us are the April 8, 2005, “Opposition to Petition for Reconsideration of Hoosier Public Radio Corporation (the “Opposition”) and the May 13, 2005, “Response to ‘Supplement’ of Hoosier Public Radio Corporation” (the “Response”), both of which were filed by Franklin Township.

Background. On April 14, 2004, Franklin Township filed the Renewal Application for the Station. On July 1, 2004, Hoosier filed its Time-Share Application, seeking involuntary time-share operation of the Station pursuant to Section 73.561(b) of the Commission's Rules.⁴ On August 9, 2004, Hoosier filed a Petition to Deny the Renewal Application.⁵ In the *Staff Ruling*, the Media Bureau granted the Renewal Application, dismissed Hoosier's Time-Share Application, and denied Hoosier's Petition to Deny and its other filings.⁶

The Petition contains a compendium of claims, alleging *inter alia*, that the Licensee does not exist as a legal entity, is engaged in extortion and collusion with others in violation of the "RICO" (Racketeer Influenced and Corrupt Organizations) and Sherman Anti-Trust Acts, has, together with unidentified Commission staff, engaged in violations of the Commission's *ex parte* rules through "unscrupulous dealings behind closed doors at the Commission,"⁷ has not presented any programming concerning issues facing its community of license, has misrepresented the number of its employees, has denied access to its public inspection file,⁸ and did not have its application signed by a person authorized to do so under Indiana state law.

Discussion. "[R]econsideration is appropriate only when the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."⁹ A petition that simply reiterates arguments previously considered and rejected will be denied. In this case, Petitioner has neither demonstrated material error or omission nor presented such new matters to the staff, simply repeating allegations that were rejected in the *Staff Decision*. Accordingly, we will deny Hoosier's Petition.

As an initial matter, the Petition is procedurally defective.¹⁰ Even ignoring these infirmities, however, "[r]econsideration will not be granted to debate matters upon which the Commission has already deliberated and spoken."¹¹ The *Staff Ruling* fully and accurately addressed Hoosier's Time-Share

⁴ 47 C.F.R. § 73.561(b).

⁵ Hoosier subsequently filed a number of other requests, motions and petitions.

⁶ Public Notice of the *Staff Decision* was released on March 7, 2005. *Broadcast Actions*, Public Notice, Report No. 45935 (Mar. 7, 2005).

⁷ Petition at unnumbered page 2.

⁸ 47 C.F.R. § 73.3527.

⁹ *WWIZ, Inc.*, 37 FCC at 686; *see also National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003). *See also* 47 C.F.R. § 1.106(c).

¹⁰ The Hoosier Petition fails to comply with 47 C.F.R. § 1.49(a) (containing specifications for pleadings filed with the Commission), 47 C.F.R. § 1.49(c) (requiring that pleadings exceeding ten pages include as part of the pleading, "a succinct, but accurate and clear condensation of the substance of the filing"), and 47 C.F.R. §§ 1.106(d)(1) and (2) (requiring petitions for reconsideration to "state with particularity the respects in which petitioner believes the action taken by the Commission or the designated authority should be changed;" "cite the findings of fact and/or conclusions of law which petitioner believes to be erroneous;" and "state with particularity the respects in which he believes such findings and conclusions should be changed").

Application and clearly stated the basis for its dismissal.¹² Hoosier has demonstrated no error in this action. Similarly, the *Staff Ruling* fully addressed Hoosier's claims concerning the alleged incorporation defects of Franklin Township, the signing of its renewal application by one Greg Case, its claims concerning asserted violations of the RICO and Sherman Anti-Trust Acts, and other matters. Hoosier's attempt to reargue these matters that it raised in its Petition to Deny, allegations rejected in the Staff Decision, is contrary to Section 1.106 of the Rules and the precedent cited above.¹³

Conclusion/Actions. For the reasons set forth above, Hoosier Public Radio Corporation's "Petition for Reconsideration and Reinstatement Nunc Pro Tunc; Petition for Reconsideration Nunc Pro Tunc WRFT Renewal and License Grant – Motion to Correct Errors; Petition for Hearing" IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Kathryn R. Schmeltzer, Esq., Counsel for Franklin Township Community School Corporation

¹¹ *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied* 383 U.S. 967 (1966). See also *William L. Carroll*, Memorandum Opinion and Order, 8 FCC Rcd 6279 (1993).

¹² The Staff Decision noted that Hoosier had failed to attempt to negotiate a voluntary time-share arrangement with Franklin County prior to filing its time-share application, in violation of 47 C.F.R. § 73.561(b). *Staff Decision* at 2-3.

¹³ Hoosier complains in its Petition that the *Staff Decision* "does not address the denied access to the WRFT Public File during the License period and more recently in 2004." Petition at unnumbered page 8. Hoosier's August 9, 2004, Petition to Deny the Renewal Application did not allege that Franklin Township had denied it such access or had otherwise violated the relevant public file rule, 47 C.F.R. § 73.3527. We note, however, that, on September 20, 2004, Hoosier filed a "Motion to Join the Parties; Request for Review and Declaratory Ruling-RICO Act and Sherman Antitrust Act-Market Allocation; Request for Review and Declaratory Ruling-Ex Parte Applicant Communications; Motion to Compel-Request for Discovery; Petition to Deny-Request for Moratorium" which, in its caption, referenced the renewal applications for seven stations, including that for Station WRFT(FM). This pleading is referred to in footnote 3 of the *Staff Decision* as directed to Franklin Township and "several other NCE FM radio stations that are also the subject of time share applications filed by Hoosier." In its September 20 filing, Hoosier alleged that its principal Martin Hensley "attempted to look at the Public Inspection Files of each of the stations. In certain cases the officials responsible for each public inspection file were particularly upset at the 'affront' of being asked to show their public inspection file to a member of the public, Hensley." Elsewhere in the filing, Hoosier alleged that the licensees in question "opposed efforts to see their Public Files." However, because Hoosier failed to specifically allege that Franklin Township had denied it or Hensley access to the WRFT(FM) public file, much less provide the details of such wrongdoing, the Staff Decision correctly denied the Hoosier pleadings and granted the Renewal Application. See 47 U.S.C. § 309(d)(1)(petition to deny renewal application must contain specific allegations of fact sufficient to show that a grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act, which requires grant, absent a determination that there have been serious violations of the Act or the Rules or other such violations that, taken together, constitute a pattern of abuse).