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In Reply Refer To:

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TLP Communications, Inc.
516 Stedman Street
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E. Roy Paschal, President
Alaska Broadcast Communications, Inc.
3161 Channel Drive, # 202
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In re: KGTW(FM), Ketchikan, Alaska
Facility ID No. 789
File No. BRH-20050927ABD

KTKN(AM), Ketchikan, Alaska
Facility ID No. 788
File No. BR-20050927ABF

Applications for Renewal of License

Informal Objections

Dear Mr. Kern and Mr. Paschal:

This letter concerns the captioned applications (“Renewal Applications”) filed by Alaska Broadcast Communications, Inc. (“ABCI”) to renew the licenses of Station KGTW(FM), Ketchikan, Alaska, and KTKN(AM), Ketchikan, Alaska (collectively, the “Stations”). On December 6, 2005, two separate, but virtually identical Informal Objections to the Renewal Applications were filed by TLP Communications, Inc. (“TLP”), licensee of Station KFMJ(FM), Ketchikan, Alaska.¹ Because the Informal Objections raise nearly identical issues, we address them jointly. For the reasons set forth below, we deny the Informal Objections and grant the Renewal Applications.

Background. In the Informal Objections, TLP states that, with reference to the Renewal Applications for the Stations, ABCI incorrectly certified there had been no violations during the subject renewal period.² TLP also states that ABCI incorrectly certified as to the operational status of FM

¹ On January 20, 2006, ABCI filed a virtually identical Response to Informal Complaint for each station (collectively, the “Opposition”), to which TLP filed two Replies (collectively, the “Reply”) on February 22, 2006. ABCI filed a Supplement to Responses to Informal Complaints (“Supplement”) on February 27, 2006, a Further Supplement to Responses to Informal Complaints (“Further Supplement”) on May 16, 2006, and a separate Further Supplement to Responses to Informal Complaints (“Second Further Supplement”) on May 24, 2006.

² See Renewal Applications, Section II Item 4.

Translator Stations K258AD, Craig, Alaska, and K248AI, Craig, Alaska (the “Translator Stations”).³ In this regard, TLP alleges that “[E]mployees of my company, who live in Craig, also report that the[se] translator[s] ha[ve] been off the air for at least two years.”⁴ Translator Station K258AD rebroadcasts the signal of Station KGTW(FM) and Translator Station K248AI rebroadcasts the signal of Station KTKN(AM).

Discussion. 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, (“Act”).⁵ That section 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 (“Rules”); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁶ 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.”⁷

Previous Violation Certification. In its Opposition, ABCI acknowledges that it provided incorrect certifications concerning previous violations at the Stations. The Opposition states that the Stations “inadvertently responded ‘Yes’ to Section II Item 4 . . . regarding FCC violations.”⁸ ABCI explains that it “overlooked” a May 2002 FCC inspection that resulted in the issuance of a Notice of Violation for each of the Stations and that it “was not [the licensee’s] intention to mislead the Commission regarding violations of FCC rules.”⁹ The Opposition states that ABCI corrected the inaccurate response and filed an amendment to the Renewal Application on January 19, 2006, that provided the required explanation concerning the violations found by the FCC inspector in 2002.¹⁰ The Renewal Application amendment states that “[A]ll violations were resolved by the licensee and the Commission took no further action.”¹¹ Also included in the Opposition are copies of a FCC Regulatory

³ See Renewal Applications, Section V, Item 2a.

⁴ Informal Objections at 1-2.

⁵ 47 U.S.C. § 309(k)(1).

⁶ *Id.* 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).

⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁸ Opposition at 2.

⁹ *Id.*

¹⁰ *Id.* See also Renewal Applications, Exhibit 6.

¹¹ *Id.*

Compliance Certification for each of the Stations,¹² issued subsequent to the 2002 inspection, which state that each Station is fully compliant with the Commission's rules and regulations.

Translator Stations' Operational Status. ABCI's Opposition states that it "inadvertently responded 'Yes' to Section V Item 2a, regarding the operational status of FM Translator Station[s] K248AI [and] K258AD. [These Stations] are currently off the air. It was not [ABCI]'s intent to mislead the Commission regarding the operational status of the translator station[s]."¹³ ABCI adds that, subsequent to the filing of the Informal Objections, it amended the Renewal Applications to change its response to "No." ABCI explains that maintenance personnel observed the Translator Stations "to have been on the air in July/August 2005."¹⁴ When maintenance personnel attended the remote transmitter sites in January 2006, they found that the Translator Stations were not functioning, and removed the Translator Stations "for evaluation and repair. The FCC was notified that the translators were off the air, and special temporary authority was sought and granted to permit them to remain off the air pending repairs."¹⁵ On May 12, 2006, the Translator Stations were reinstalled and returned to service.¹⁶ On May 16, 2006, ABCI advised the Commission that the Translator Stations had returned to the air.¹⁷

In light of the above, we find that, although ABCI provided inaccurate responses to the Commission in response to two questions in its Renewal Applications, these errors were not intentional and were corrected by the licensee. Further, we find that these errors did not constitute misrepresentation because there has been no showing of the requisite "*prima facie* demonstration of deception and of a desire, motive or logical reason to mislead" that is the crux of misrepresentation.¹⁸ As affirmed in ABCI's January 19, 2006, amendment to the Renewal Applications, the licensee resolved the violations and the Commission imposed no further sanctions in the matter. Additionally, the sworn declaration provided by ABCI in the Second Further Supplement supports its contention that it promptly took corrective action upon discovering that the Translator Stations were not operational, returned them to the air, and properly reported these actions to the Commission. Based on all of the evidence in the record

¹² The FCC Regulatory Compliance Certifications were issued by the Alaska Broadcasters Association pursuant to the Voluntary Alternative FCC-Inspection Program after a 2003 inspection.

¹³ Opposition at 2.

¹⁴ *Id.*

¹⁵ Second Further Supplement, Declaration of Steven L. Rhyner.

¹⁶ Further Supplement at 2.

¹⁷ Second Further Supplement at 1. Subsequently, Translator Station K248AI went off the air on August 1, 2008. On September 18, 2008, staff granted ABCI's August 12, 2008, silent authority request for Translator Station K248AI (File No. BSTA-20080812ADK). An application for continued authority for Translator Station K248AI to remain silent was accepted for filing (File No. BLSTA-20080829AAP) on September 2, 2008.

¹⁸ *Garrett, Andrews, & Letizia, Inc.*, Decision, 86 FCC 2d 1172, 1180 (Rev. Bd. 1981), *mod. on other grounds*, Memorandum Opinion and Order, 88 FCC 2d 620 (1981) (burden on petitioner to demonstrate motive to deceive or conceal because Commission will not infer improper motive from errors, inconsistencies or omissions accompanied by speculation that lacks factual support). *See also Liberty Productions, A Limited Partnership*, Memorandum Opinion and Order, 16 FCC Rcd 12061, 12079-80 (2001) (substantial evidence of an intent to deceive necessary to support finding of misrepresentation);

before us, we conclude that TLP has failed to present a substantial and material question of fact as to ABCI's qualifications to be a licensee. We remind ABCI, however, that every applicant is responsible for the accuracy and completeness of information furnished in all applications that it files with the Commission. Consequently, we admonish ABCI for its acknowledged lack of diligence with respect to false certifications in the Renewal Applications as initially filed. We intend to closely monitor future filings to ensure that ABCI provides accurate information.

Accordingly, we find no evidence of serious violations of the Act or the Rules or other violations that, when considered together, evidence a pattern of abuse. Further, we find that Station KGTW(FM) and Station KTKN(AM) served the public interest, convenience, and necessity during the subject license term. Thus, there is no need for further inquiry regarding grant of the subject renewal applications and we will grant the applications.

Conclusion. Accordingly, for the reasons set forth above, TLP's Informal Objections ARE DENIED. Furthermore, Alaska Broadcast Communications, Inc. IS HEREBY ADMONISHED for its false certifications. Finally, because the subject applications are in full compliance with the Act and the Rules, and finding that the public interest, convenience, and necessity would be served thereby, the applications for renewal of license for Station KTMG(FM), Ketchikan, Alaska (File No. BRH-20050927ABD), and Station KTKN(AM), Ketchikan, Alaska (File No. BR-20050927ABF), ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: John Wells King, Esq.
John Joseph McVeigh, Esq.