



Federal Communications Commission
Washington, D.C. 20554
September 11, 2017

DA 17-871
In Reply Refer To:
1800B3-JM
Released: September 11, 2017

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In re: Entercom Sacramento Licenses, LLC

**KUDL(FM) (formerly KBZC(FM),
Sacramento, CA**

Facility ID No. 57889
File No. BRH-20050728ATP
File No. BRH-20130730ANC

KRXQ(FM), Sacramento, CA

Facility ID No. 20354
File No. BRH-20050728AUQ
File No. BRH-20130730ANI

KSEG(FM), Sacramento, CA

Facility ID No. 11281
File No. BRH-20050728ATX
File No. BRH-20130730ANK

KKDO(FM), Fair Oaks, CA
Facility ID No. 57889
File No. BRH-20130730ANC

**KIFM(AM) (formerly KCTC(AM)),
Sacramento, CA**
Facility ID No. 67848
File No. BR-20130730ANG

Application for Renewal of Licenses

Petition for Reconsideration

Dear Counsel:

The Media Bureau (Bureau) has before it a Petition for Reconsideration (Petition) filed on February 17, 2017, by Edward Stolz II (Stolz).¹ The Petition seeks reconsideration of the Bureau's *Letter Decision*² denying Stolz's informal objections and granting the above-referenced applications of a subsidiary of Entercom Communications (Entercom) to renew the licenses of five stations (collectively, the Stations) for the license terms ending December 1, 2005 (2005 Renewal Applications), and December 1, 2013 (2013 Renewal Applications) (collectively, the Renewal Applications). For the reasons set forth below, we dismiss the Petition.

Background. Stolz filed procedurally defective petitions to deny the 2005 and 2013 Renewal Applications (2005 Objection and 2013 Objection) on November 1, 2005, and November 1, 2013, respectively,³ arguing that Entercom had: (1) shown a "willful and reckless disregard" for the Commission's rules as evidenced by the many Notices of Apparent Liability and Letters of Inquiry it received; (2) violated the statutory prohibition on indecency on multiple occasions; and (3) violated the Commission's multiple ownership rules in its "unlawful" acquisition of Station KUDL(FM), Sacramento, California. In the *Letter Decision*, the staff treated the petitions as informal objections, dismissed the 2013 Objection to the extent that it improperly attempted to incorporate by reference arguments raised in the 2005 Objection and otherwise denied the Objections, and granted the Renewal Applications.

Following the *Letter Decision*, Entercom voluntarily relinquished the license and other authorizations for another station, KDND(FM), Sacramento, California,⁴ which had previously been designated for evidentiary hearing on issues relating to the death of a contestant in a station-conducted promotional contest.⁵

¹ Entercom License, LLC filed an Opposition to the Petition on March 2, 2017.

² *Entercom Sacramento Licenses, LLC*, Letter Order, 1800B3-JM (January 18, 2017) (*Letter Decision*).

³ The Bureau in the *Letter Decision* found that Stolz lacked standing to file a petition to deny. *Letter Decision* at 3-4. Stolz claimed to have party in interest status because he owned a residence within KUDL(FM)'s service contour and listened to the station when he is there, with no indication of how regularly he occupied this residence. The Bureau found that Stolz's contacts with the Stations, at most, were transient. *Id.* at 4. Additionally, we note that Stolz's affidavit was not signed as required by Section 1.16 of the Commission's Rules (Rules). See 47 CFR § 1.16.

⁴ See *Entercom License, LLC*, Order, FCC 17M-02, 2017 WL 499210 (ALJ Feb. 6, 2017) (*Entercom Relinquishment Order*).

⁵ See *Entercom Licenses, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 31 FCC Rcd 12196, 12229, para. 83 (2016) (*KDND HDO*).

In his Petition, Stolz argues that by surrendering the license for Station KDND(FM), Entercom evaded having to demonstrate that it “possessed the basic character qualifications” to be a Commission licensee and “that grant of the KDND renewal of license applications would serve the public interest, convenience, and necessity.”⁶ Stolz avers that the *Entercom Relinquishment Order* presents new facts or changed circumstances which warrant reconsideration.⁷ Stolz also challenges the staff’s determination that he lacked standing to file a petition to deny by reasserting his claim of listener standing, and asserting for the first time that he has an “economic interest in this matter,” citing pending litigation in the United States Court of Appeals for the District of Columbia Circuit in which Stolz is attempting to recoup Station KUDL(FM) from Entercom.⁸ Stolz urges the Renewal Applications be designated for hearing upon unresolved issues stemming from the *KDND HDO* and that he be granted status as an intervenor in such hearing.⁹

In its Opposition, Entercom argues the Petition should be dismissed or denied because “Stolz lacks standing and fails to identify any error in the [*Letter Decision*] or otherwise provide any basis sufficient to warrant reconsideration.”¹⁰ With regard to standing, Entercom notes that Stolz does not identify any material error in the *Letter Decision*’s finding that the transient contacts with which Stolz shares with the Stations were insufficient to support his claim of listener standing and that Stolz failed to sign the declaration in his earlier objection to the Applications.¹¹ Entercom also challenges Stolz’s economic standing argument as being untimely, and argues Stolz has not demonstrated concrete injury as a direct and current competitor or other likely financial injury.¹² Finally, Entercom argues Stolz lacks sufficient basis to warrant reconsideration of the *Letter Decision*, citing to Section 309(k)(1) of the Rules which limit the Commission’s review of broadcast license renewal applications exclusively to matters occurring at the station whose licenses is at issue.¹³

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original order, or raises additional facts, not known or existing at the time of the petitioner’s last opportunity to present such matters.¹⁴ If the petitioner is not a party to the proceeding, it must state with particularity the manner in which its interests are adversely affected and show good reason why it was not possible to participate in the earlier stages of the proceeding.¹⁵

⁶ Petition at 3-4.

⁷ *Id.* at 4.

⁸ *Id.* at 6-7 (citing *Stolz v. FCC*, Case No. 16-1248 (D.C. Cir. 2016)).

⁹ Petition at 7.

¹⁰ Opposition at 1.

¹¹ Stolz only mentions that he “owns a residence in the Arden-Arcade district in Sacramento, California,” with no mention of whether he primarily resides there or regularly frequents the residence and listens to the station. *See* Petition at 6.

¹² *Id.* at 3.

¹³ 47 U.S.C. § 309(k)(1); Opposition at 4.

¹⁴ *See* 47 CFR § 1.106(c),(d); *see also* *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

¹⁵ 47 CFR § 1.106(b)(1).

Unlike the filing of a petition to deny, the filing of an informal objection does not confer party status upon the objector.¹⁶ Thus, by failing in the initial stage to adequately demonstrate standing as a regular listener, or some other injury of a direct, tangible or substantial nature, Stolz forfeited his right to seek reconsideration in this proceeding.¹⁷ Stolz's reassertion of listener standing and his untimely assertion of "economic standing" also do not indicate that the Bureau erred in finding in the *Letter Decision* that Stolz lacked standing to file a petition to deny. As Entercom notes and both the Bureau and Commission have stated in previously addressing Stolz pleadings, "property ownership without residency is not a reliable indicator of radio listenership" and will not confer party in interest status.¹⁸ Likewise, setting aside the fact that Stolz "economic standing" argument is untimely,¹⁹ Stolz fails to demonstrate that he is currently a competitor in the Stations' market and lacks the direct competitive injury or likely financial injury required to assert such standing as an "aggrieved party."²⁰ Accordingly, we will dismiss the Petition.

Even if we were to find Stolz has standing and considered the Petition on its merits, we would deny the Petition because Stolz has not raised new facts or changed circumstances which warrant reconsideration. As stated in the *Letter Decision* and by the Commission, Section 309(k) limits the scope of the "violations" listed in Section 309(k)(1) to the station for which license renewal is being considered.²¹ Thus, we are barred from considering conduct of station KDND(FM) or any stations other than those whose applications are before us here. Likewise, the termination of the KDND proceeding upon Entercom's surrender of the Station's license is not a new fact or changed circumstance with respect to this proceeding.

Conclusion/Actions. For the reasons stated herein, we find Stolz is not a party to this proceeding and lacks standing to seek reconsideration of the *Letter Decision*.

¹⁶ *Montgomery County Broad. Corp.*, Memorandum Opinion and Order, 65 FCC 2d 876, 877 n.2 (1977).

¹⁷ *Id.* (an informal pre-grant objector who could have filed a petition to deny but did not and who later files a petition for reconsideration is not, as a matter of right, entitled to a decision on the merits).

¹⁸ *KDND HDO*, 31 FCC Rcd at 12206, para. 23; see *Letter Decision* at 3-4; Opposition at 3.

¹⁹ 47 CFR § 1.106(c) (requiring that the petition rely on facts or arguments unknown to petitioner until after his last opportunity to present them).

²⁰ Stolz argues economic standing on the basis that he is "attempting to get station KUDL (formerly KWOD) back from Entercom." Stolz argument rests on the anticipation that he will receive a favorable outcome in the pending litigation and be awarded a Commission license. Arguments for competitor or "economic" standing require an "actual state of competition, not the future prospect thereof." See *William L. Fox, et al.*, Memorandum Opinion and Order, 17 FCC 2d 876, 877, para. 3 (1969); cf. *Cloud Nine Broad., Inc.*, Letter Order, 10 FCC Rcd 11555, 11556 (MMB 1995) (finding that, by stating with particularity the manner in which the person's interest are adversely affected by the action taken and showing good reason why it was not possible to participate in the earlier stages of a proceeding, a petitioner who was not previously a party to the proceeding had standing to file a petition for reconsideration as an aggrieved party). Moreover, the Commission has rejected precisely this argument with regard to Stolz's standing in the KDND proceeding. *Entercom License, LLC*, Memorandum Opinion and Order, FCC 17-114, para. 4 (2017) (finding Stolz lacked standing to file a petition for reconsideration of the *KDND HDO*).

²¹ *Sagittarius Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 22551, 22555, para. 8 (2003).

Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed on February 17, 2017, by Edward Stolz II, IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau