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Michael C. Dunston, Esq.
Law Offices of Michael C. Dunston
12D Bjerge Gade
Charlotte Amalie, St. Thoms
USVI 00802

John Garziglia, Esq.
Womble Carlyle Sandridge & Rice, PLLC
1401 Eye Street N.W.
Seventh Floor
Washington, DC 20005

In re: WIVI(FM). Charlotte Amalie, St. Thomas, VI
Facility ID No. 57787
File No. BRH-20030929AOA
Application for Renewal of License

Petition to Deny

Dear Mr. Dunston and Mr. Garziglia:

This letter concerns the captioned application filed by Rox Radio Enterprises, Inc., ("Rox") to renew the license of station WIVI(FM), Charlotte Amalie, St. Thomas, United States Virgin Islands. Also on file is the "Verified Petition to Deny" ("Petition") filed on behalf of Bryan D. Hollenbaugh on December 31, 2003, which is directed to the subject renewal application.¹ For the reasons set forth below, we deny the Petition and grant the renewal application.

Background. On September 29, 2003, Rox filed the WIVI(FM) renewal application. Subsequently, on December 31, 2003, Bryan D. Hollenbaugh, through his attorney, filed the Petition. In support of his Petition, Hollenbaugh states that the Ownership Report (FCC Form 323) for Rox filed in conjunction with the WIVI(FM) renewal application misrepresents Hollenbaugh's ownership interest in Rox. Additionally, he asserts that WIVI(FM) failed to present local news and public affairs programming tailored to the native West Indian population and that it employs no West Indian individuals in violation of the Commission's Equal Employment Opportunity ("EEO") rules. Finally, Hollenbaugh alleges that the station's antenna generates an unauthorized amount of radiation at the base of the antenna structure.

¹ Rox filed an "Opposition to Petition to Deny" ("Opposition") on June 7, 2004.

Discussion. As an initial matter, Rox states that the Petition was incorrectly served. Because of this error, Rox states it was unaware of the filing and asks that the Commission accept its late-filed Opposition. In view of the foregoing, we will accept its Opposition.

In his Petition, Hollenbaugh first states that the Ownership Report filed by Rox in conjunction with its renewal application listed Hollenbaugh's ownership interest in Rox as 8 percent, whereas it is actually 20 percent. Rox responds that, subsequent to Hollenbaugh receiving his shares in the company, additional stock was issued, diluting the ownership interest of other shareholders, including the Petitioner. This dispute over Hollenbaugh's level of interest in the licensee is contractual and private in nature. As such, it is beyond the Commission's authority and is appropriately left for a determination by a court of competent jurisdiction.² If another forum determines that, in fact, Hollenbaugh's claim has merit, the Commission can take any necessary steps to accommodate its ruling.³ We note that Hollenbaugh has not claimed that the licensee's Ownership Report contains deliberate misrepresentations.

Next, Petitioner asserts that WIVI(FM) failed to present news and public affairs programming relevant to the native West Indian population. Licensees have substantial discretion to determine issues of interest to their communities and to air programming responsive to these issues.⁴ We encourage listeners to share their programming concerns with stations. In this case, however, we conclude that WIVI(FM) has not violated any Commission rule.

With regard to Petitioner's allegation concerning the lack of Hispanic and West Indian employees at the station, Rox is correct that the Commission's EEO rules focus on recruitment, outreach, and nondiscrimination practices rather than impose numerical employment guidelines.⁵ The mere absence of a particular group from a station's workforce does not automatically indicate that their absence is due to discrimination, as alleged by the Petitioner. Accordingly, the allegation that individuals from particular races or ethnic groups are not employed by a broadcast station will not raise a substantial or material question absent a showing of discrimination or noncompliance with the Commission's EEO rules. We have reviewed the EEO program (FCC Form 396) filed with the WIVI(FM) license renewal application,⁶ and we find that it fully complies with the Commission's EEO rules. Petitioner has neither shown nor attempted to show otherwise.

Finally, Petitioner alleges that the station's antenna generates an unauthorized amount of radiation at the base of the antenna structure. In opposition, Rox denies that allegation and submits an RF field study conducted on August 13, 2003. Rox admits that, although radiation at almost all locations is

² See *John R. Kingsbury*, 71 F.C.C.2d (1979); *John F. Runner, Receiver (KIBF)*, 36 R.R.2d 773 (1976); *Transcontinent Television Corp.*, 21 R.R. 945 (1961).

³ See, e.g., *Dale J. Parsons, Jr.*, 10 FCC Rcd 2718, 2719-20 (1995); *Station KDEW(AM)*, 11 FCC Rcd 13683, 13687, note 9 (1996).

⁴ See 47 U.S.C. § 326; *Deregulation of Radio*, Report and Order, 84 F.C.C.2d 968, 977 (1981), *on recon.*, 87 F.C.C.2d 797 (1981), *remanded on other grounds sub nom., Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) ("Radio Deregulation"); see also *Broadcast Localism* (Notice of Inquiry), 19 FCC Rcd 12425, 12429 (2004) ("Broadcast Localism").

⁵ See 47 C.F.R. § 73.2080.

⁶ See File No. B396 – 20030929ANZ.

within both public and employee radiation exposure limits, there is one “hot spot” where the amount of radiation exceeds public exposure limits. It alleges, however, that this location is in an area not readily accessible to the public.

The Commission’s RF exposure guidelines “are relevant only to locations that are *accessible* to workers or members of the public.” (Emphasis in original.)⁷ According to Rox, the “hot spot” is at the back of the transmitter building. “Access to the site is controlled through the front part of the site and the road side is enclosed by a six foot tall chain link fence with lockable gate.”⁸ Licensee states that access from the rear and one side of the site is limited by natural barriers including nearly cliff-like terrain and thick brush.⁹ Rox also states that WIVI(FM)’s employees are protected from exposure. It contends that the “hot spot” is located on the platform for a staircase that leads from an emergency exit. It asserts that this is the only place where the RF readings exceed the public exposure limit, but that, even there, the readings still fall below the occupational threshold. Additionally, it asserts that WIVI(FM)’s facility was built to shield employees from radio frequency emissions and is constructed from concrete and steel. Petitioner has not rebutted these claims. We have reviewed Rox’s RF field study and undertaken our own study of the RF exposure at the WIVI(FM) tower site. We find that the RF radiation emitted at the WIVI(FM) site complies with the limitations set forth in the Commission’s environmental rules.¹⁰ Therefore, we find no further action concerning the RF radiation issue is warranted.

In light of the above discussion, we find evidence of neither serious violations of the Communications Act or the Commission’s Rules nor other violations that, when considered together, evidence a pattern of abuse. Further, we find that station WIVI(FM) 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 application and we will grant that application.¹¹

Conclusion/Actions. Accordingly, for the reasons set forth above, the “Verified Petition to Deny” IS DENIED. Finally, because the subject application is in full compliance with the Commission’s Rules and the Communications Act, and finding that the public interest, convenience, and necessity would be served thereby, the application for renewal (File No. BRH-20030929AOA) for station WIVI(FM), Charlotte Amalie, St. Thomas, United States Virgin Islands, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁷ OET Bulletin 65, Edition 97-01, “Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields,” at p. 12.

⁸ “Opposition to Petition to Deny,” Exhibit A (“RF Field Study for Tower Top Investments, Inc., Crown Mountain, St. Thomas Tower Facility – August 13, 2003”).

⁹ *Id.*

¹⁰ See 47 C.F.R. §§ 1.1307(b) and 1.1310.

¹¹ See 47 U.S.C. § 309(k).