



Federal Communications Commission
Washington, D.C. 20554

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DA 06-501
In Reply Refer to:
1800B3-RDH

Mr. Rick Morrison, President
RJM Communications, Inc.
1228 S. Park Street
Kalamazoo, Michigan 49001

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107 Delaware Avenue
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In Re: **WSIR(AM), Winter Haven, Florida**
Facility ID No. 72683
File No. BR-20030911AAH
Application for Renewal of License

WAVP(AM), Avon Park, Florida
Facility ID No. 72684
File No. BR-20030911AAF
Application for Renewal of License

Dear Mr. Morrison and Mr. Cohen:

This letter concerns the captioned applications filed by Anscombe Broadcasting Group, Ltd. ("ABG") to renew the licenses of stations WSIR(AM), Winter Haven, Florida, and WAVP(AM), Avon Park, Florida. Also before us is a December 30, 2003, informal objection (the "Objection") filed by RJM Communications, Inc. ("RJM"), directed to the subject renewal applications.¹ For the reasons set forth below, we deny the objection and grant both the renewal applications.

Background. On September 11, 2003, ABG filed applications for license renewal with respect to WSIR(AM), Winter Haven, Florida, and WAVP(AM), Avon Park, Florida. In its Objection, RJM states that, at all times pertinent hereto, it was the licensee of station WGSR(AM), Fernandina Beach, Florida.²

¹ A "Reply to Informal Objection to Application for Renewal" and a "Response to Anscombe Broadcasting Group, LTD's Reply to Informal Objection to Application for Renewal Licensee" were filed on February 4, 2004 and May 12, 2004, respectively.

² The call sign of the Fernandina Beach AM station was changed to WNNR(AM) on January 16, 2004, and to WVOJ(AM) on January 21, 2004. For administrative convenience, we will refer to the station as WGSR(AM) throughout this letter.

It asserts that, on June 20, 2002, it entered into a “Local Marketing Agreement” with ABG.³ RJM contends that on March 13, 2003, it mailed a letter to ABG stating that it was going to sell WGSR(AM) to another company and that ABG would have to cease its operation of the station and vacate the premises by April 15, 2003. RJM asserts that ABG did not vacate the station by April 15, 2003, and that when it sent its engineer to turn off the station on April 30, 2003, ABG refused him entry to the transmitter room. As a result, RJM went to court in Florida to obtain a Judgment of Eviction against ABG which vacated the station on May 21, 2003. RJM contends that this constituted a usurpation of control of WGSR(AM) without Commission approval, in violation of Section 310(d) of the Communications Act.

In response, ABG claims that, since April 2003, it has been involved in litigation in the United States District Court for the Western District of New York with RJM relating to WGSR(AM).⁴ It claims that RJM threatened to object to the renewal of the licenses for ABG’s stations WSIR(AM), Winter Haven, Florida, and WAVP(AM), Avon Park, Florida, if ABG did not discontinue the litigation. It also claims that the Florida court vacated the eviction notice and that the reason its personnel did not allow the RJM engineer access to the transmitter is because they did not know who he was.⁵

Discussion. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Communications Act. That section provides that we are to grant a broadcast station’s license renewal application if, upon consideration of the application and pleadings, we find *with respect to that station* that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission’s Rules with respect to that station; 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

In the instant case, RJM’s objection is to the renewal of licenses for stations WSIR(AM), Winter Haven, Florida, and WAVP(AM), Avon Park, Florida. The allegations contained in that objection, however, pertain to alleged misconduct at station WGSR(AM), Fernandina Beach, Florida. Section 309(k) precludes consideration of allegations of misconduct at any station but that for which a renewal application is before the agency. This position is reflected in the broadcast license renewal form and instructions.⁸ Because in the instant matter, the alleged misconduct took place at a station (*i.e.*,

³ RJM further states that the parties had originally discussed the eventual purchase of WGSR(AM) by ABG but never reached a satisfactory agreement.

⁴ Civil Case # 03 CV 036A(F).

⁵ RJM contends that ABG has misrepresented the state of the eviction. It states that the Florida court denied ABG’s motion to vacate the eviction notice and provides a copy the court’s Order.

⁶ 47 U.S.C. §309(k)(1) (emphasis supplied). 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 Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁸ *See* FCC Form 303-S, Section II, Item 4 and concomitant instructions.

WGSR(AM)) other than the stations whose renewal applications are before us (*i.e.*, WSIR(AM) and WAVP(AM)), we may not consider those allegations as having a bearing on the licensee's fitness to have these stations' licenses renewed.⁹

Conclusion/Actions. Because we find that there have been no serious violations of the Communications Act or the rules and regulations of the Commission involving stations WSIR(AM) or WAVP(AM), or violations by the licensee of the Act or rules and regulations of the Commission which, taken together, would constitute a pattern of abuse, and because we find that stations WSIR(AM) and WAVP(AM) served the public interest, convenience, and necessity during the subject license term, we will grant the subject renewal applications.

Accordingly, for the reasons set forth above, the RJM objection IS DENIED. Finally, because the subject applications are otherwise 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 applications for renewal (File Nos. BR-20030911AAH and BR-2003911AAF) for stations WSIR(AM), Winter Haven, Florida, and WAVP(AM), Avon Park, Florida, respectively, ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Anscombe Broadcasting Group, Inc.

⁹ WGSR(AM)'s unconstested license renewal application (File No. BR-20030916ACD) was routinely granted by the staff on June 15, 2004. Moreover, RJM sold the station to Florida Sports News Network, LLC in 2004 (Application No. BAL-2030409AAI, granted by the staff on May 25, 2003), which subsequently sold the station to Norsan Consulting and Management, Inc. (File No. BAL-2050405ABB, granted on June 1, 2005 and consummated on September 14, 2005). It is well established that the Commission's routine sanction for an unauthorized transfer of control is forfeiture and not designation for revocation. The Commission, however, is statutorily barred from instituting forfeiture proceedings against either RJM or ABG based on alleged conduct which occurred in 2002 and 2003. *See* 47 U.S.C. § 503(b)(6).