BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In re Application of	)	
	)	
ENTERCOM LICENSE, LLC	)	MB Docket No. 16-357
	)	
FM Broadcast Station KDND,	)	File No. BRH-20050728AUU
Sacramento, California	)	File No. BRH-20130730ANM
	)	Facility ID # 65483
	)	
For Renewal of License	)	

TO: Office of the Secretary

ATTN: The Commission

Accepted / Filed

NOV 28 2016

Federal Communications Commission
Office of the Secretary

PETITION FOR RECONSIDERATION

Edward R. Stolz II (Stolz), by his attorney, and pursuant to 47 U.S.C. §405 and 47 CFR §1.106, hereby respectfully submits his Petition for Reconsideration from that portion of the ***"Hearing Designation Order and Notice of Opportunity for Hearing"*** (HDO), FCC 16-153, released October 27, 2016, which denied Stolz's request that he be made an intervenor and/or party in interest upon the designation of the pending renewal of license applications filed by Entercom License, LLC (Entercom) for FM Broadcast Station KDND, Sacramento, California. In so doing whereof, the following is shown:

1. 47 C.F.R. § 1.106(f) provides that a Petition for Reconsideration be filed within thirty days of the "date of public notice of the final Commission action, as that date is defined in § 1.4(b) of these rules". In this case, the HDO was released on Thursday, October 27, 2016. As the thirtieth day subsequent to October 27, 2016 was a Saturday, November 26, 2016, this petition, which is being filed on the first business day subsequent thereto, Monday, November 28, 2016, is timely filed. *See* 47 C.F.R. §1.4(j).

2. The Commission refused to grant Stolz party in interest or intervenor status. HDO at ¶23. It ruled that merely owning a residence in the Sacramento area did not give Stolz "listener standing".

3. This "Petition for Reconsideration" is not an interlocutory pleading, as the ruling denying standing to Stolz is a final administrative order as to him.

4. While "listener standing" as described in ***Office of Communication of United Church of Christ v. FCC***, 359 F.2d 994 (D. C. Cir. 1966) is a moving target, granted or denied at the Commission's whim and caprice, the Commission overlooked other facts alleged in Stolz' 2013 Petition to Deny against Entercom which accord Stolz economic standing to be a party in interest with respect to the KDND renewal application.

5. Stolz and Entercom have contested the ownership of another radio station in Entercom's Sacramento radio market "cluster", KUDL(FM) (formerly KWOD(FM)), 106.5 MHz, Sacramento, California, FCC Facility ID #57889, for approximately twenty years.

6. An FCC Form 314 application seeking the consent of the Commission to the assignment of the KUDL/KWOD license was filed in 2002 against Stolz's will, File No. BALH-20021120ACE. Stolz contested this application, and, at one point, the Commission pigeonholed a Stolz, 2005 "Application for Review", only ruling on it in 2015. This case is now in the United States Court of Appeals for the District of Columbia Circuit, ***Stolz v. FCC***, Case No. 16-1248.

7. In the 1986 ***Policy on Comparative Qualifications in Broadcast Licensing***, 102 FCC 2d 1179, at footnote 60, the Commission wrote:

> The Commission acknowledges that there may be circumstances in which an applicant has engaged in nonbroadcast misconduct so egregious as to shock the conscience and evoke almost universal disapprobation. See e.g., supra, comments of ABC at note 29. Such misconduct might, of its own nature, constitute prima facie evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee, and might be a matter of Commission concern even prior to adjudication by another body. The Commission cannot presently contemplate the manner in which circumstances might arise, and stresses that such considerations would come into play only with regard to a specific application involving specific misconduct.

8. In the post-RKO cases regulatory environment, the Commission has typically limited regulatory sanctions and

punishments to the station which was involved with the investigated conduct. However, the foregoing writing leaves open the possibility that the Commission could sanction an entire broadcast group. In the Entercom case, we would note that ownership and management of KUDL/KWOD perpetrated the conduct which led to the HDO. If they are disqualified from being a Commission licensee of KDND, why would they not also be disqualified from being a Commission licensee of KUDL/KWOD?

9. If Entercom were disqualified as a Commission licensee in Sacramento, File No. BALH-20021120ACE would have to be vacated or dismissed, and KUDL/KWOD would have to be returned to Stolz.

10. Furthermore, it is Stolz's legal position that the appellate precedent of ***Kidd Comunications v. FCC***, 427 F.3d 1 (D. C. Cir. 2005) requires that the FCC consent granted in File No. BALH-20021120ACE be rescinded or otherwise vacated and that said application be dismissed. In that event, Stolz, doing business as Royce International Broadcasting Company, would resume as licensee of KUDL/KWOD.

11. Therefore, Stolz has a concrete Article III economic interest in the outcome of the above-captioned proceedings, since if Entercom is found to be legally qualified to be a Commission licensee of its Sacramento cluster, Stolz would suffer financial injury. As the Supreme

Court wrote in FCC v. Sanders Brothers Radio Station, 309 U.S. 470, 477:

> Congress had some purpose in enacting § 402(b)(2). It may have been of opinion that one likely to be financially injured by the issue of a license would be the only person having a sufficient interest to bring to the attention of the appellate court errors of law in the action of the Commission in granting the license. It is within the power of Congress to confer such standing to prosecute an appeal [footnote nine].[1]
>
> We hold, therefore, that the respondent had the requisite standing to appeal and to raise, in the court below, any relevant question of law in respect of the order of the Commission.

12. Since Stolz has an economic interest in the outcome of the KDND proceeding, the Commission lacks the discretion to deny Stolz party in interest status in the above-captioned docket. In ***Elm City Broadcasting Corporation v. FCC***, 235 F.2d 811, 819 (D. C. Cir. 1956), the appellate court wrote:

> We think it clear that the only legislative purpose in requiring petitioners for intervention to show 'the basis for their interest' is to enable the Commission to determine whether the petitioners' allegations show them to be 'parties in interest.' When that is done, the Commission has exhausted its discretion; it may not deny intervention to a party in interest merely because it thinks his participation would not aid its decisional process.

13. Therefore, the FCC must grant reconsideration of ¶23 of the HDO and grant Stolz status as a party and interest and accord him intervenor status in MB Docket No. 16-357.

---

[1]The text of footnote 9 is: Compare *Interstate Commerce Commission v. Oregon-Washington R. Co.*, 288 U. S. 14, 288 U. S. 23-25.

14. *Other Matters.* So far as we can tell, the Commission has not published the HDO or a summary thereof in the Federal Register. 47 C.F.R. §1.221(b) of the Rules states:

> The order designating an application for hearing is mailed to the applicant by the Reference Information Center of the Consumer and Governmental Affairs Bureau and this order or a summary thereof is published in the FEDERAL REGISTER. Reasonable notice of hearing will be given to the parties in all proceedings; and, whenever possible, the Commission will give at least 60 days notice of comparative hearings.

15. The undersigned performed a WESTLAW search and could not find any reference to the HDO as having been published in the Federal Register. The undersigned also contacted the Office of the Secretary, and was told by the person answering the phone that the HDO had not yet been published in the Federal Register.

16. As deadlines for certain matters such as Section 1.223 petitions to intervene are triggered by HDO publication in the Federal Register, the conduct of further proceedings in the above-captioned docket would probably be deemed null and void by a reviewing court should Federal Register publication not take place. ***Way of Life Television Network, Inc. v. FCC,*** 593 F.2d 1356 (D. C. Cir. 1979) (failure of an administrative agency to follow its own rules is reversible error).

WHEREFORE, Edward R. Stolz II urges that this Petition for Reconsideration BE GRANTED, and that he **BE GRANTED STATUS AS AN INTERVENOR** in MB Docket No. 16-153:

Respectfully submitted,

EDWARD R. STOLZ II

By_____
Dennis J. Kelly
His Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 41177
Washington, DC 20018
Telephone: 202-293-2300
E-mail: dkellyfcclaw1@comcast.net

DATED: November 28, 2016

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Petition for Reconsideration" were served by first-class mail, postage prepaid, or by e-mail to FCC personnel as indicated below, on this 28th day of November, 2016 upon the following:

Brian M. Madden, Esquire
Dennis P. Corbett, Esquire
Lerman Senter
2000 K Street, NW, Suite 600
Washington, DC 20006
Counsel for Entercom License, LLC

Michael Couzens, Esquire
Michael Couzens Law Office
6536 Telegraph Avenue, Suite B201
Oakland, CA 94609
Counsel for Media Action Center and Sue Wilson

David H. Solomon, Esquire
Robert G. Kirk, Esquire
J. Wade Lindsay, Esquire
Wilkinson Barker Knauer LLP
1800 M Street, NW, Suite 800N
Washington, DC 20036

Roger D. Smith
6755 Wells Avenue
Loomis, CA 95650

Travis LeBlanc, Chief*
Enforcement Bureau
Federal Communications Commission
Washington, DC 20554
travis.leblanc@fcc.gov

Hon. Richard L. Sippel*
Chief Administrative Law Judge
Federal Communications Commission
Washington DC 20554
Richard.Sippel@fcc.gov

Rachel Funk, Esquire*
Attorney Advisor
Office of Administrative Law Judges
Federal Communications Commission
Washington DC 20554
rachel.funk@fcc.gov

Patricia Ducksworth*
Legal Technician
Office of Administrative Law Judges
Federal Communications Commission
Washington DC 20554
patricia.ducksworth@fcc.gov

Dennis J. Kelly

---

*Also by courtesy copy hand delivery to Office of Secretary filing counter in 445 Twelfth Street, NW, Washington DC 20554