

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

In the Matter of)
)
ENTERCOM COMMUNICATIONS AND) MB Docket No. 17-85
CBS RADIO SEEK APPROVAL TO)
TRANSFER CONTROL OF AND ASSIGN)
FCC AUTHORIZATIONS AND LICENSES)

TO: Office of the Secretary

ATTN: The Commission

APPLICATION FOR REVIEW

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December 11, 2017

SUMMARY

This Application for Review of DA 17-1100, released November 9, 2017, occurs as a result of the denial by the Chief, Media Bureau, of Petitions to Deny filed by Deborah J. Naiman and by Edward R. Stolz et al against applications considered in MB Docket No. 17-85 relative to the merger of CBS Radio Stations and Entercom Communications Corporation. Entercom was proposed to be the surviving entity for 177 radio stations licensed to subsidiaries of CBS Corporation.

During 2017, it became known that CBS Corporation was engaging in what President Trump called "fake news". The FCC over the decades has from time to time investigated broadcast licensees that perpetrated "intentional news distortion". Petitioners called upon the FCC to investigate CBS Corporation's "intentional news distortion", because it is a matter directly related to a licensee's basic character qualifications to be a licensee. Pursuant to the appellate precedent in *Jefferson Radio Co. v. FCC*, it has been understood in federal communications law that a licensee that lacks basic character qualifications has nothing to sell.

Therefore, the Chief, Media Bureau, committed reversible error by failing to designate Docket 17-85 for hearing and to designate the following issue:

Whether a hearing should be designated when a multi-media FCC licensee such as CBS Corporation broadcasts "fake news" and therefore raises substantial and material questions of law whether it had engaged in "intentional news distortion", bringing the basic character qualifications of the entire corporation into question?

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APPLICATION FOR REVIEW

Edward R. Stolz II d/b/a Royce International Broadcasting Company (Stolz), Golden State Broadcasting, LLC (Golden), Silver State Broadcasting, LLC (Silver) and Major Market Radio, LLC (Major), and Deborah J. Naiman (Naiman) (collectively "Petitioners"), by their attorney, and pursuant to 47 CFR §1.115, hereby respectfully submit this Application for Review of the **Memorandum Opinion and Order** of the Chief, Media Bureau, DA 17-1100, released November 9, 2017 (the MO&O), denying Petitions to Deny submitted by Stolz and Naiman and granting all applications filed with the FCC related to the merger between CBS Radio and Entercom Communications Corporation involving 177 radio stations formerly licensed to subsidiaries of CBS Corporation. In so doing whereof, the following is shown:

Preliminary Statement

1. Section 1.115(a) of the Commission's rules provides that "[a]ny person aggrieved by any action taken pursuant to delegated authority" may file an Application for Review of the same.

2. The text of the MO&O was released on Thursday, November 9, 2017. The thirtieth day subsequent to November 9, 2017 was Saturday, December 9, 2017. As today is the first business day subsequent to December 9, 2017, this Application for Review is timely filed. 47 CFR §1.115(d); 47 CFR §1.4(j).

2. Stolz has attempted to intervene in the above-captioned proceeding; he has a Petition for Reconsideration pending before the Commission of the ***Hearing Designation Order and Notice of Opportunity for Hearing***, FCC 16-153, released November 28, 2016 which denied him intervenor status. It was Stolz who filed a petition that alleged facts which led the Commission en banc to reverse the Media Bureau staff and designate the above matter for hearing.

Statement of the Case

3. Stolz and Naiman filed separate Petitions to Deny against the FCC 314 and FCC 315 applications in the above-captioned docket. Naiman's petition was limited to the CBS/Entercom radio station "Cluster"; at the time CBS and Entercom filed their applications in March, 2017, it appeared that Entercom would end up with a cluster larger than that

permitted by Section 73.3555(a) of the FCC's Rules. Furthermore, Naiman argued that since Entercom was involved with former radio station KDND, Sacramento, California where a female contestant in an on-air "game show" died as the result of Entercom's actions, the FCC had an obligation to hold a hearing on whether Entercom was basically qualified to operate any of its Sacramento market radio stations.

4. It is to be pointed out that were Entercom to be disqualified to be the licensee of KUDL(FM), Sacramento, California, then an FCC Form 314 application filed in 2002, File No. BALH-20021120ACE, the grant of which Stolz has appealed in the United States Court of Appeals for the District of Columbia Circuit, *Stolz v. FCC*, Case No. 16-1248, would have to be dismissed, and Stolz would be entitled to recoup the KUDL license which was wrongfully taken from him. Stolz raised the matters that Naiman raised, and then raised the issue of CBS Corporation's broadcast of "fake news" according to President Trump, which we believe constituted "intentional news distortion", which goes to the basic qualifications of CBS Corporation to assign its 177 radio stations to Entercom. Without basic qualifications, CBS Corporation has nothing to assign to Entercom. ***Jefferson Radio Co., Inc. v. FCC***, 340 F.2d 781 (D. C. Cir. 1964).

5. In the MO&O, the Chief, Audio Division refused to designate this case for a hearing before an independent Administrative Law Judge. She determined that Entercom could spin off three of its FM stations to the "Entercom Divestiture Trust" and have a Sacramento cluster which complied with Section 73.3555(a) of the Commission's Rules. She refused to hold a hearing on the effect of the death of Jennifer Lea Strange on Entercom's basic qualifications, holding that these matters were disposed of in the recent renewals of Entercom's Sacramento market stations. She then ruled that since (in her opinion) CBS Corporation's broadcast of "fake news" was limited to CBS television, CBS Corporation's "intentional news distortion" did not apply to the radio stations, and she found that CBS Corporation was qualified to assign its stations to Entercom.

Questions of Law Presented

8. Pursuant to Section 1.115(b) of the Rules, this is to state the questions of law presented by this Application for Review:

- a. Whether a hearing should be designated when a multi-media FCC licensee such as CBS Corporation broadcasts "fake news" and therefore raises substantial and material questions of law whether it had engaged in "intentional news distortion", bringing the basic character qualifications of the entire corporation into question?
- b. Whether the issues which were designated for hearing in Docket No. 16-357 must now be tried against Entercom's five other radio stations in the Sacramento, California radio market.

- c. Whether a Petition to Enlarge Issues filed on behalf of the intervenor in Docket No. 16-357 on January 9, 2017 must be granted against Entercom's five other radio stations in the Sacramento, California radio market.
- d. Whether procedural error was committed by the ALJ failing to ascertain whether Entercom actually suffered an economic penalty or loss by its voluntary act turning in the KDND(FM) license?

Section 1.115(b)(2) Factors

9. The rulings in this case must be reversed or vacated, because they implicate the following factors stated in 47 C.F.R. §1.115(b)(2):

- (i) The actions in the MO&O taken pursuant to delegated authority is in conflict with statute, regulation, case precedent, or established Commission policy (issues a, b, c and d).
- (ii) The action involves a question of law or policy which has not previously been resolved by the Commission (issues a, b, c and d).
- (iii) The action involves application of a precedent or policy which should be overturned or revised (issue a).
- (v) Prejudicial procedural error (all issues).

Argument

10. "*Intentional News Distortion*". 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.

11. In such a case, the offending conduct by the parent corporation would taint all of its stations, not just an owned and operated TV station (such as, for example, WCBS-TV, New York, New York). There is a precedent where the owner of nine stations in two markets was convicted of sex crimes, and even though the sex crimes may not have related to all the stations he owned, the conduct tainted the basic character qualifications of all nine stations, and the Commission revoked their licenses, a result which was affirmed in the appellate court. **Contemporary Media, Inc.**, 12 FCC 14254 (ALJ, 1997), *affirmed*, 13 FCC Rcd 14437 (FCC en banc, 1998), *recon. den.*, 14 FCC Rcd 8790 (1999), *affirmed sub nom. Contemporary Media, Inc. v FCC*, 214 F.3d 187 (D. C. Cir. 2000), *cert. den.*, 532 U.S. 920 (2001).

12. In **Red Lion Broadcasting Co., Inc. v. FCC**, 395 U.S. 379, 389-90 (1969), the Supreme Court wrote:

No one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because "the public interest" requires it "is not a denial of free speech". *National Broadcasting Co. v. United States*, 319 U.S. 190, 319 U.S. 227 (1943).

* * *

This is not to say that the First Amendment is irrelevant to public broadcasting. On the contrary, it has a major role to play, as the

Congress itself recognized in §326, which forbids FCC interference with “the right of free speech by means of radio communication”. Because of the scarcity of radio frequencies, the Government is permitted to put restraints on licensees in favor of others whose views should be expressed on this unique medium. But the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount. See *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 309 U.S. 475 (1940); *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 349 U.S. 361-362 (1955); 2 *Z. Chafee, Government and Mass Communications* 546 (1947). It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government or a private licensee. *Associated Press v. United States*, 326 U.S. 1, 326 U.S. 20 (1945); *New York Times Co. v. Sullivan*, 376 U.S. 254, 376 U.S. 270 (1964); *Abrams v. United States*, 250 U.S. 616, 250 U.S. 630 (1919) (Holmes, J., dissenting). “[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.” *Garrison v. Louisiana*, 379 U.S. 64, 379 U.S. 74-75 (1964). See Brennan, *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 Harv.L.Rev. 1 (1965). It is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here. That right may not constitutionally be abridged either by Congress or by the FCC.

13. One such instance of “fake news” cast was Scott Pelley, who according to various news articles had been dismissed from his duties with the CBS Evening News sometime around May 30-31, 2017. Usually in broadcasting, when a program host is terminated, he is told after his last broadcast that his services are no longer required. Therefore, by allowing him to remain on the air through June 16, 2017, the principals of CBS Corporation knew or had to have known what Pelley was going to say on the air.

14. The key language from the Pelley broadcast is as follows:

It's time to ask whether the attack on the United States Congress, yesterday, was foreseeable, predictable and, to some degree, self-inflicted.

Too many leaders, and political commentators, who set an example for us to follow, have led us into an abyss of violent rhetoric which, it should be no surprise, has led to violence.

15. In the federal Constitution, at Article I, Section 6, clause 1, the so-called "Speech and Debate Clause", it is stated:

[Senators and Representatives] shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; **and for any Speech or Debate in either House, they shall not be questioned in any other Place.**
[emphasis supplied]

16. 18 U.S.C. §351(c) provides that:

Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished by imprisonment for any term of years or for life.

17. It is also a federal crime pursuant to 18 U.S.C. §245(b) and 18 U.S.C. §1505 to intimidate a member of Congress, as that individual is engaging in a federally protected activity, and is engaging as a member of Congress in the due administration of the laws.

18. Therefore, it was "fake news" for CBS and Pelley to intimate that the wounding and attempted murder of Representative Steve Scalise by a would-be assassin with different political

views was in any way "self-inflicted". Moreover, by asserting that a member of Congress could give a speech that deserved death or serious injury, CBS has crossed the line and committed conduct which is criminally actionable. For example, 18 U.S.C. §241 states:

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

19. As it took at least two persons to effectuate the broadcast of the June 16, 2017 episode of the CBS Evening News, federal law enforcement, including the FCC, needs to investigate CBS Corporation. Clearly, CBS and Pelley have engaged in intimidation of members of Congress who dare to speak their minds in a way contrary to the political leanings of CBS Corporation and its principals and management.

20. CBS Corporation's conduct since President Trump took office on January 20, 2017 raises a substantial and material question of fact: does the CBS news organization fabricate and

broadcast "fake news", known before the FCC as intentional news distortion. Allegations of intentional news distortion are nothing new at CBS News. ***Serafyn v. FCC***, 149 F.3d 1213 (D. C. Cir. 1998). If the promises of President Trump to "drain the swamp" are to come to anything, the FCC needs to start here and now and hold either a 403 hearing, or, in the alternative, designate the above-captioned applications for hearing, to determine whether the CBS organization and its principals possess the basic character qualifications required of FCC licensees. It was disappointing that the FCC staff didn't designate the above-captioned proceeding for hearing to determine whether CBS Corporation has engaged in "intentional news distortion" and, if so, whether it possesses the basic character qualifications required to assign its 177 radio licenses to Entercom.

21. Indeed, President Trump has called out CBS Corporation for its repeated "fake news" misconduct:



With all of the Fake News coming out of NBC and the Networks, at what point is it appropriate to challenge their License? Bad for country!

9:55 AM - Oct 11, 2017

68,230 18,899 78,126



Network news has become so partisan, distorted and fake that licenses must be challenged and, if appropriate, revoked. Not fair to public!

5:09 PM - 11 Oct 2017

22. It appears that CBS Corporation, along with other national news operations (such as Cable News Network), has intentionally distorted the news apparently to effectuate a "silent coup" to force President Trump to leave his office. We can't think of a worse way of using the public airwaves against the public interest, convenience and necessity.

23. Further, it is unclear to the undersigned how an entity which hires misanthropes such as Hayley Geftman-Gold and Scott Pelley can serve as a public trustee operating licensed broadcast stations in the public interest, convenience and necessity. The

Commission must take official notice that 62,979,636 American citizens voted for President Trump in the 2016 general election². CBS Corporation clearly holds these 62,979,636 citizens in contempt. The Commission owes it to these 62,979,636 individuals to strip CBS Corporation of all of its broadcast station licenses.

24. *Other Issues* (issues "b", "c" and "d"). The other issues that we stated above have been resolved adversely to Petitioners in other collateral cases. Stolz has sought reconsideration as to each issue. The issues are being repeated herein to keep them alive in the event that Petitioners herein seek judicial review of the FCC final order in this matter. The issues that Petitioners seek the Commission to designate for hearing are reiterated in Exhibit A hereto.

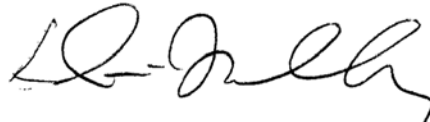
Conclusion

25. In view of the foregoing, Petitioners urge that the Commission vacate DA 17-1100, rescind the grants of all applications in this Docket, and, in addition to the issues listed in Exhibit A hereto, designate all said applications in MB Docket No. 17-85 for a hearing before an independent Administrative Law Judge to determine whether CBS Corporation has engaged in "intentional news distortion", and, if so, what effect that would have on its basic character qualifications to be able to assign its 177 radio stations to Entercom Communications Corporation.

WHEREFORE, it is urged that this Application for Review **BE GRANTED** and that relief as requested herein **BE GRANTED**.

Respectfully submitted,

EDWARD R. STOLZ II, d/b/a ROYCE
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SILVER STATE BROADCASTING, LLC
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DATED: December 11, 2017

EXHIBIT A

Other Issues Preserved by this Application for Review

- To determine whether Entercom designed and conducted a contest that was inherently dangerous;
- To determine whether Entercom increased the danger to the contestants in the “Hold Your Wee for a Wii” contest by changing the contest terms;
- To determine whether Entercom was aware of the potential dangers of the “Hold Your Wee for a Wii” contest and water intoxication;
- To determine whether Entercom failed to protect the contestants of the “Hold Your Wee for a Wii” contest from its potential dangers;
- To determine whether Entercom failed to warn the contestants of the “Hold Your Wee for a Wii” contest of the contest's potential dangers;
- To determine whether Entercom prioritized entertainment value over the welfare of contestants of the “Hold Your Wee for a Wii” contest;
- To determine whether Entercom failed to properly train and exercise appropriate supervision of Station KDND(FM) staff and the “Hold Your Wee for a Wii” contest to ensure the safety of the contestants;
- To determine, in light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License, LLC operated Station KDND(FM) in the public interest during the most recent license term; and
- To determine, in light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom's Applications for Renewal of License for KDND(FM), File Nos. BRH-20130730ANM and BRH-20050728AUU, should be granted.
- To determine whether Entercom Sacramento, a subsidiary of Entercom, failed to properly train and exercise appropriate supervision of staff with respect to FCC compliance matters at stations KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM);
- To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License, LLC operated Stations KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM) in the public interest during the most recent license term;
- To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom's applications for renewal of licenses should be granted, as follows:

KUDL(FM)	File No. BRH-20130730ANC
KIFM(AM)	File No. BRH-20130730ANG
KKDO(FM)	File No. BRH-20130730AND
KRXQ(FM)	File No. BRH-20130730ANI
KSEG(FM)	File No. BRH-20130730ANK

- To determine, light of the evidence adduced under the foregoing issues and the totality of circumstances, whether Entercom License LLC possesses the necessary character attributes of reliability and legal compliance to be a Commission licensee of Stations KDND (FM), KUDL (FM); KIFM (AM); KKDO (FM); KRXQ (FM) and KSEG (FM);
- To determine whether Entercom License LLC violated Section 73.3588 of the Rules, by failing to report to existence or terms of a settlement agreement, whereby judgment creditors in the case of William A. Strange et al. v. Entercom Sacramento LLC et al. agreed to dismiss their FCC filing pending against the defendants

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Application for Review" have been served by e-mail and first-class United States mail, postage prepaid, or by e-mail only where shown by "*", on this 11th day of December, 2017 upon the following:

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