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In re: **Saga Communications of New England, LLC**

WFIZ(AM), Odessa, NY
Facility ID No. 36406
File No. BRH-20140131AGJ

W235BR, Ithaca, NY
Facility ID No. 144458
File No. BRFT-20140131AGM

W242AB, Ithaca, NY
Facility ID No. 20647
File No. BRFT-20140131AGL

W299BI, Ithaca, NY
Facility ID No. 138598
File No. BRFT-20140131AGK

WHCU(AM), Ithaca, NY
Facility ID No. 18048
File No. BR-20140130ANA

WIII(FM), Cortland, NY
Facility ID No. 9427
File No. BRH-20140130AMU

W262AD, Ithaca, NY
Facility ID No. 9429
File No. BRFT-20140130AMV

WNYY(AM), Ithaca, NY
Facility ID No. 32391
File No. BR-20140130AMS

W249CD, Ithaca, NY
Facility ID No. 156452
File No. BRFT-20140130AMT

WQNY(FM), Ithaca, NY
Facility ID No. 32390
File No. BRH-20140130AMQ

WYXL(FM), Ithaca, NY
Facility ID No. 18051
File No. BRH-20140130AMJ

W244CZ, Ithaca, NY
Facility ID No. 151643
File No. BRFT-20140130AMM

W254BF, Ithaca, NY
Facility ID No. 25008
File No. BRFT-20140130AML

W277BS, Ithaca, NY
Facility ID No. 24216
File No. BRFT-20140130AMK

**Renewal Applications
Petition to Deny**

Dear Counsel:

We have before us the applications (“Applications”) of Saga Communications of New England, LLC (“Saga”) for renewal of its licenses for the above-referenced radio stations and FM translators (collectively, “Stations”). We also have before us a Petition to Deny (“Petition”) filed by Finger Lakes Alliance for Independent Media. (“FLAIM”).¹ As discussed below, we deny the Petition, and grant the Applications.

¹ Saga filed an Opposition to Petition to Deny (“Opposition”) on June 2, 2014, and FLAIM filed a Reply to Opposition (“Reply”) on June 23, 2014. Saga filed a Response to Reply to Opposition on July 10, 2014, which was accompanied by a Motion for Leave to File Response. Almost ten months later, on May 5, 2015, FLAIM filed a Response to Response to Reply to Opposition. This too was accompanied by a Motion for Leave to File Response. All the pleadings filed after the Reply are unauthorized pleadings and are hereby dismissed. *See* 47 C.F.R. § 1.45. *See, e.g., Wilks License Company – Columbus LLC*, Letter, 28 FCC Rcd 8924, 8925 n.5 (MB 2013) (declining to consider unauthorized pleadings). We also dismiss a Supplement to Petition to Deny filed by FLAIM on May 30, 2014, which was filed after the deadline for filing petitions to deny. *See* 47 C.F.R. § 73.3584 (providing that “[u]ntimely Petitions to Deny, as well as other pleadings in the nature of a Petition to Deny and any other pleadings or supplements which do not lie as a matter of law or are otherwise procedurally defective, are subject to return by

Background. Saga filed the Applications on January 30 and 31, 2014. On January 31, 2014 Saga also completed its acquisition of its sixth full power station in the Ithaca area, WFIZ(AM), Odessa, New York. FLAIM filed the Petition on May 1, 2014. FLAIM urges us to deny the Applications or, in the alternative, conditionally grant them for a term of two years.

Discussion. A petition to deny a renewal application must, pursuant to Section 309(d) of the Communications Act of 1934, as amended (the "Act"),² provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be prima facie inconsistent with Section 309(k) of the Act,³ which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that (A) the station has served the public interest, convenience, and necessity; (B) there have been no serious violations of the Act or the Rules; and (C) there have been no other violations that, taken together, constitute a pattern of abuse.⁴ 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(d) 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."⁵

Local Radio Ownership Rule. FLAIM points out that, prior to 2010, Ithaca was an Arbitron Metro Market.⁶ Based on the size of the Ithaca Metro Market then, the local radio ownership rule permitted Saga to hold attributable interests in up to five stations in the market, no more than three of which were in the same service.⁷ Arbitron ceased publishing ratings for the Ithaca Metro Market in 2010, however. When this occurred, the market – for purposes of applying the local radio ownership rule – became defined using the contour overlap methodology.⁸ Using this methodology and looking at the principal community contours of the Stations, today, Saga may hold attributable interests in up to eight commercial radio stations, no more than five of which are in the same service.⁹

the FCC's staff without consideration"). In so doing, we grant the Motion to Strike Late-Filed Supplement filed by Saga on June 9, 2014.

² 47 U.S.C. § 309(d).

³ *Id.*, § 309(k). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (D.C. Cir. Sept. 10, 1993).

⁴ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described in the text by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁶ Petition at 7-9.

⁷ 47 C.F.R. § 73.3555(a)(1)(iv).

⁸ *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13729 ¶ 284 (2003) ("Ownership Order").

⁹ 47 C.F.R. § 73.3555(a)(1)(i).

FLAIM acknowledges that Saga's ownership of the Stations complies with the Commission's local radio ownership rule.¹⁰ It thus concedes that Saga's ownership of the Stations does not raise any issues under Section 309(k)(1)(B) or (C) of the Act. FLAIM however asserts that this ownership violates "the spirit" of the local radio ownership rule.¹¹ FLAIM appears to advocate that we define the relevant radio market here by relying on another, unspecified, methodology. To the extent that FLAIM believes that the local radio ownership rule as it applies in situations where Arbitron markets are eliminated, does not serve the public interest, it must pursue change via a petition for rulemaking not a challenge to a particular licensee's renewal applications.¹² For the same reason, we reject FLAIM's request that we renew the Stations' licenses only for two years in order to permit the Commission to undertake an *ad hoc* study of the Ithaca radio market.

Finally, we note that FLAIM also asserts that Saga is using FM translators "to circumvent ownership limits by rebroadcasting digital signals from Saga's FM stations."¹³ We previously rejected this very argument when we addressed objections to applications related to W277BS and W240CB, two of Saga's FM translator stations.¹⁴ We found that the Commission addressed the question of how FM stations may use their additional digital bit rate capacity in 2007 and concluded that FM stations may use such capacity as they wish.¹⁵ To the extent that FLAIM believes the Commission should reverse its 2007 decision due to the unforeseen and unintended consequences stemming from it,¹⁶ FLAIM should file a petition for rulemaking.¹⁷

¹⁰ Petition at 2.

¹¹ *Id.* at i, 9.

¹² *See, e.g., Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1984) (citation omitted) ("rulemaking is generally a 'better, fairer and more effective' method of implementing a new industry-wide policy"); *Sunburst Media L.P.*, Memorandum Opinion and Order, 17 FCC Rcd 1366, 1368 ¶ 6 (2001) (stating "it has long been Commission practice to make decisions that alter fundamental components of broadly applicable regulatory schemes in the context of rulemaking proceedings, not adjudications"); *Great Empire Broadcasting, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 11145, 11148 ¶ 8 (1999), *citing Capital Cities/ABC, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5888 ¶ 87 (1996) (it is generally inappropriate to address arguments for a change in rules "where third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record").

¹³ Petition at 10.

¹⁴ *Id.* at 12-14.

¹⁵ *FM Translator Station W277BS, Ithaca, New York*, Letter, 25 FCC Rcd 4691, 4692-93 (MB 2010) ("*W277BS Letter*"); *Saga Communications of New England, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 4491, 4497-98 ¶ 15 (MB 2010) ("*Saga Letter*"). We noted that a licensee holding attributable interests in the maximum number of stations in a particular market may not acquire additional broadcast streams on non-commonly-owned stations through time brokering agreements but explained that, so long as a licensee simulcast its analog programming service on its digital signal, there was "no current prohibition on FM translator stations re-broadcasting the alternate program streams aired on the parent station's digital transmissions." *Saga Letter*, 25 FCC Rcd at 4498 ¶ 15. *See also W277BS Letter*, 25 FCC Rcd at 4693.

¹⁶ Petition at 12 ("The Commission must address the ability of station owners such as Saga to utilize FM translators and alternate digital streams, which do not count towards entities' multiple ownership limits, as means to thwart competition.").

¹⁷ *See, supra*, note 12.

Programming. FLAIM further alleges that the “current structure of the Ithaca market makes it difficult for diverse viewpoints to purchase broadcast time.”¹⁸ It offers limited evidence in support of this claim, citing the experience of just one individual who was unable to purchase airtime for his programming from Saga. This is insufficient evidence to support such a broad claim. In any event, as Saga points out, it is not required to accept all programming offered by members of the public.¹⁹

Conclusion. We have evaluated the Applications pursuant to Section 309(k) of the Act, and we find that the Stations have served the public interest, convenience, and necessity during the most recent license term. Moreover, we find that there have been no serious violations of the Act or the Rules involving the Stations which, taken together, would constitute a pattern of abuse. In light of the foregoing, we will grant the Applications and renew the Stations’ licenses.

Accordingly, IT IS ORDERED that the Petition to Deny filed by Finger Lakes Alliance for Independent Media on May 1, 2014, IS DENIED. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal applications of Saga Communications of New England, LLC for Stations WFIZ(FM), Odessa, New York (File No. BRH-20140131AGJ), WHCU(AM), Ithaca, New York (File No. BR-201140130ANA), WIII(FM), Cortland, New York (File No. BRH-20140130AMU), WNYY(AM), Ithaca, New York (BR-20140130AMS), WQNY(FM), Ithaca, New York (File No. BRH-20140130AMQ), and WYXL(FM), Ithaca, New York (File No. BRH-20140130AMJ) ARE GRANTED. Finally, IT IS ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal applications of Saga Communications of New England, LLC for FM translators W235BR, Ithaca, New York (File No. BRFT-20140131AGM), W242AB, Ithaca, New York (File No. BRFT-20140131AGL), W299BI, Ithaca, New York (File No. BRFT-20140131AGM), W262ADA, Ithaca, New York (File No. BRFT-20140130AMV), W249CD, Ithaca, New York (File No. BRFT-20140130AMT), W244CZ, Ithaca, New York (File No. BRFT-20140130AMM), W254BF, Ithaca, New York (File No. BRFT-20140130AML), and W277BS, Ithaca, New York (File No. BRFT-20140130AMK) ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁸ Petition at 12-14.

¹⁹ See Opposition at 6-7, citing *Applications of Certain Broadcast Stations Serving Communities in the State of Louisiana*, 7 FCC Rcd 1503 (1992) (“*Louisiana Stations Order*”).