

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of Combined Communications, Inc.	)	File Nos.: 0000160476
For Renewal of License FM Station KTWS	)	Facility ID: 13579
Bend, Oregon	)	

To: The Commission  
Attn: Media Bureau, Audio Division

**OPPOSITION TO PETITION TO DENY**

Combined Communications, Inc. (Combined), by counsel and pursuant to Section 73.3584(b) of the Commission’s Rules,<sup>1</sup> respectfully submits this Opposition to Petition to Deny (Opposition) responding to the Petition to Deny (Petition) filed in the captioned proceeding by Western Radio Services Co. (Western) and its President Richard L. Oberdorfer (Oberdorfer) on December 31, 2021.

**I. Introduction**

The Commission should dismiss Western’s Petition because it is procedurally flawed and substantively baseless. As an initial matter, Western and Oberdorfer lack standing. Moreover, the Communications Act of 1934, as amended, (Act) and the Commission’s rules require a petition to deny to “contain specific allegations of fact” showing that grant of an application would not serve the public interest.<sup>2</sup> Absent specific factual allegations, Combined is unable to provide a detailed response to the Petition’s claims, and the Commission lacks a basis upon which it can evaluate the Petition. Based on these procedural defects alone, the Commission must dismiss the Petition and should grant KTWS’s (KTWS) renewal application. In addition, the general and

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<sup>1</sup> 47 C.F.R. § 73.3584(b).

<sup>2</sup> 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(d).

conclusory statements in the Petition have no basis in fact. Under Oberdorfer’s leadership, Western has a history of making spurious interference claims to suit its litigation strategy and policy agenda. Now, it has filed a wave of petitions to deny against a number of broadcast licensees in Central Oregon. Each of those petitions repeats generic claims of interference without offering detailed support or identifying any source of interference. Western also alleges that there is pending litigation involving Combined and KTWS’s tower site. Combined is unaware of any such litigation. In sum, the Petition lacks sufficient detail to deny KTWS’s renewal application, and to the extent the Petition makes any specific allegations, Western is either fabricating or misrepresenting the nature of those allegations.<sup>3</sup>

## **II. Discussion**

### **a. Western and Oberdorfer Lack Standing**

Because the Petition does not make a *prima facie* showing that either Western or Oberdorfer is a party in interest, Western and Oberdorfer lack standing, and the Petition must be dismissed. Section 309(d) of the Act limits the ability to file a petition to deny to parties in interest.<sup>4</sup> “Under this provision of the Act, a party in interest must essentially meet the same requirements as those required for standing to appeal a Commission decision to a federal court.”<sup>5</sup>

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<sup>3</sup> Combined would note that Western is a Commission licensee. *See e.g.*, ULS File No. 0008540034 (seeking renewal of call sign KKB562). As a licensee, Western may be in violation of the Commission’s rules if any statements in the Petition are untruthful, inaccurate, or misleading. *See* 47 C.F.R. § 1.17.

<sup>4</sup> *See* 47 U.S.C. § 309(d)(1); *see also* 47 C.F.R. 1.939(d); 47 C.F.R. § 73.3584(a).

<sup>5</sup> *Timothy K. Brady, Esq., et. al.*, Letter, 20 FCC Rcd. 11987, 11990 (Audio Division 2005) (citing, *inter alia*, *In re Application of MCI Communications Corp., Transferor, and Southern Pacific Telecommunications Company, Transferee for Consent to Transfer Control of Qwest Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd. 7790, 7794 (1997) (*MCI Communications*)) (*Brady*); *see also In re the Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee), et. al. for Transfer of Control of Tribune Media Company to Nexstar Media Group, Inc., and Assignment of Certain Broadcast Licenses and Transfer of Control of Certain Entities Holding Broadcast Licenses*, Memorandum

Thus, a person or entity claiming standing “must allege and prove three elements: (1) personal injury; (2) the injury is ‘fairly traceable’ to the challenged action; and (3) there is a substantial likelihood that the relief requested will redress the injury claimed.”<sup>6</sup>

The Petition does not allege or prove any of the elements required to satisfy the Commission’s party in interest or standing requirements. While the Petition generally claims that Western and Oberdorfer have been harmed by interference at Awbrey Butte, a petition “must contain *specific* allegations of fact sufficient to show that the petitioner is, in fact, a party in interest.”<sup>7</sup> Simply put, the Petition contains no specific factual allegations regarding a personal injury suffered by Western, Oberdorfer, or any other party due to purported interference at Awbrey Butte.<sup>8</sup> Even if the Petition did make factual allegations of interference or some other injury, there is no showing that the injury is fairly traceable to KTWS. In fact, KTWS is mentioned only twice in the Petition: in the first paragraph indicating that the Petition seeks the denial of KTWS’s renewal application and in the final paragraph again asking that KTWS’s renewal be denied. Finally, because Western and Oberdorfer fail to provide any specific

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Opinion and Order, 34 FCC Rcd. 8436, ¶ 23, n.103 (2019) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), *MCI Communications*, 12 FCC Rcd. at 7790, and *Brady*, 20 FCC Rcd. at 11987).

<sup>6</sup> *Brady*, 20 FCC Rcd. at 11990 (citing *Lujan*, 504 U.S. at 555, *MCI Communications*, 12 FCC Rcd. at 7794, and *In re Authorization of Conn-2 RSA Partnership, et. al.*, 9 FCC Rcd. 3295, 3297 (1994)).

<sup>7</sup> *In re Liberman Television of Dallas License LLC, Debtor-in-Possession, et. al.*, Order, 34 FCC Rcd. 8543, 8546 (Video Division 2019) (emphasis added).

<sup>8</sup> Combined would note that the Commission has set out several categories that it typically accords party in interest status to in the broadcast context including (1) market competitors suffering signal interference, (2) market competitors suffering economic harm, and (3) residents of the station’s service area or regular listeners or viewers of the station. *Id.* at 8547. However, these categories cannot supersede the general party in interest and standing requirements. In other words, even if Western or Oberdorfer claim to fall into one of these categories, they still must make specific factual allegations showing they meet the all three standing elements.

allegations regarding their injury or its traceability to KTWS, there can be no substantial likelihood that grant of the Petition will redress the injury claimed.

**b. The Petition Should Be Dismissed Because It Fails to Provide Any Specific Allegations of Fact Making It Procedurally Deficient**

Because the Petition’s generic allegations do not satisfy the requirements of the Act or the Commission’s rules, the Petition should be dismissed. In assessing the merits of a petition to deny, the Commission engages in a two-step analysis. As a threshold matter, “the petition must make specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.”<sup>9</sup> In conducting this threshold inquiry, the Commission must consider the petition and its supporting affidavits alone and take the *specific* facts set forth in the petition as true.<sup>10</sup> However, “nebulous statement are not specific allegations of fact.”<sup>11</sup>

The Petition can best be described as a nebulous statement and is, therefore, procedurally deficient. Even taken as true, the statements in the Petition do not constitute specific allegations of fact. Instead, the Petition alludes to an increase in the noise floor at Awbrey Butte caused by spurious emission from FM stations.<sup>12</sup> However, the Petition provides no information regarding how Western evaluated the noise floor, when it did so, the equipment it used, or why it believes KTWS is a source of spurious emissions. The Petition also fails to offer specific factual allegations concerning the adverse effect on Western’s CMRS stations.

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<sup>9</sup> Letter from Peter H. Doyle, Chief, Audio Division FCC, to William Johnson, *et. al.*, 27 FCC Rcd. 1471, 1472 (Feb. 13, 2012) (citing 47 U.S.C. 309(d) and *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (DC Cir. 1988)); *see also* 47 U.S.C. § 309(d); 47 C.F.R. § 1.939(d).

<sup>10</sup> *See Astroline*, 857 F.2d at 1561.

<sup>11</sup> *In re Application of WWOR-TV, Inc. for Transfer of Control of Station WWOR-TV, Channel 9 Secaucus, New Jersey*, Memorandum Opinion and Order, 6 FCC Rcd. 193, 199 (1990).

<sup>12</sup> Petition at 1.

Likewise, the Petition alludes generally to interference to public safety and public service communications without offering any particular factual allegations.<sup>13</sup> Again, the Petition fails to identify Combined or KTWS specifically as sources of interference and fails to identify any single specific instance of interference or impairment to CMRS licensees or users.

Finally, the Petition lumps Combined into an unnamed cartel of broadcasters that have ignored court rulings and refused to cooperate with Western's interference mitigation efforts.<sup>14</sup> However, the Petition again fails to provide even the most basic details regarding its claims. It does not identify any court case, Western filing, or Deschutes Circuit Court order involving Combined or KTWS, and the Petition fails to document any instance of Combined or KTWS operating outside the Commission's technical rules or refusing to address interference concerns related to KTWS. Therefore, the Petition should be dismissed because its nebulous statements do not satisfy the requirements of the Act and the Commission's rules that a petition to deny be supported by specific allegations of fact.

**c. To the Extent the Petition Makes Any Specific Allegations, Those Allegations Misrepresent the Facts or Are Outright Fabrications**

Even if the Petition's claims are sufficiently specific to satisfy the threshold requirements discussed above, the claims made by the Petition misrepresent the facts and do not justify denial of KTWS's renewal application. For example, the Petition wrongly claims that indefinite FM station interference has caused unspecified impairment to public safety and public service communications. It is Combined's understanding that the public safety agencies with communications systems located on Awbrey Butte have almost entirely moved away from 158 MHz. According to Tim Beuschlein, the Public Safety Systems Supervisor for the Deschutes

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 2.

County 9-1-1 Service District, public safety agencies in and around Deschutes County, Oregon had largely transitioned to 800 MHz spectrum by 2019.<sup>15</sup> As the Commission knows, public safety agencies across the country have transitioned to 800 MHz spectrum to upgrade their communications technology. Combined is not aware of any interference complaint regarding KTWS by a public safety agency and would promptly respond to any such properly filed interference complaint.

In addition, the Petition's suggests that unnamed members of a group of broadcasters have refused to install cavity bandpass filters is irrelevant to KTWS's renewal application.<sup>16</sup> It goes without saying that neither Western nor Oberdorfer have the authority to impose technical requirements on another licensee beyond the FCC's existing rules. Combined certified KTWS's compliance with the Commission's technical regulations in the station's renewal application,<sup>17</sup> and it now reaffirms that certification.<sup>18</sup> However, Oberdorfer's desire for Combined to install a bandpass filter at KTWS's facilities does not oblige Combined to install a filter and is irrelevant to the Commission's consideration of the Petition. Moreover, the Petition's suggestion that KTWS does not have a bandpass filter is flatly untrue. Combined has installed a bandpass filter at KTWS's transmission facilities.<sup>19</sup>

The Petition also incorrectly implies that Combined has ignored a court order compelling arbitration regarding interference mitigation and that Combined may be at risk of contempt of court. Combined believes that the litigation referenced in the Petition does not describe active litigation. Combined's counsel was unable to identify an active case as described in the Petition.

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<sup>15</sup> See Ex. A.

<sup>16</sup> Petition at 2.

<sup>17</sup> See File No. 0000160476.

<sup>18</sup> See Ex. B Declaration of Charles V. Chackel at 1.

<sup>19</sup> *Id.* at 2.

Moreover, to the extent Western or Oberdorfer are currently involved in litigation regarding interference mitigation at Awbrey Butte, Combined is either not a party or was never served.<sup>20</sup>

The litigation discussed in the Petition may refer to a 2013 dispute among Western, a group of other tower owners and licensees at Awbrey Butte, and Awbrey Towers, LLC (a company formed by those tower owners and Western to coordinate the lease interests of several parties operating facilities at Awbrey Butte).<sup>21</sup> Combined was not a party to that case, but Combined would note that the court briefly addressed the nature of Western's interference claims.

Western Radio has frequently complained of RF interference ("Interference") affecting its low-power transmission from Western Radio's tower on the Awbrey Butte Property. Several of the Other Members have voluntarily undertaken, at considerable expense to them, testing and mitigation steps to determine the cause of and reduce the possibility of Interference with Western Radio. In one case, the Interference has been eliminated. In some cases, Western Radio, without much support, has disagreed with the findings of technicians who tested for Interference. In one case, the FCC determined that the source of Interference could not be determined. However, Western Radio continued to contend in improper forums that the Other Members are causing Interference which materially interferes with the business of [Awbrey Towers, LLC].

The Operating Agreement and the Lease provide specific mechanisms for resolving Interference claims. Western Radio properly obtained an order of the Deschutes County Circuit Court compelling arbitration of one of its Interference claims. However, Western Radio unreasonably refused to advance the fees of the arbitrator pending a determination by the arbitrator of who the "offending party" behind the Interference was. This had the effect of stopping the arbitration and preventing resolution of the Interference claim. Western Radio's refusal to agree upon the terms for advancing the arbitrator's fees was unreasonable and had resulted in the Interference claim remaining pending for four years. This has deprived [Awbrey Towers, LLC] of a final resolution of the underlying issues in the required forum.<sup>22</sup>

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<sup>20</sup> See Ex. B Chackel Decl. at 2.

<sup>21</sup> See Deschutes County Circuit Court Case No. 13CV0287. The general judgment in the case is attached as Ex. C.

<sup>22</sup> See Ex. C. at 11.

Even if the litigation described in the Petition is not related to the prior Awbrey Towers, LLC dispute, Western's approach here is startlingly similar. Again, it has offered no evidence regarding its claims of interference or identifying its source. Western also apparently has not availed itself of the Commission's interference reporting processes and, instead, filed an unsupported petition to deny KTWS's license renewal application. Combined stands ready to resolve any credible interference concerns raised by another party, including by Western.<sup>23</sup> However, the Commission should not permit its processes to be abused by a serial frivolous litigator to air unsubstantiated interference complaints.

### **III. Conclusion**

In light of the forgoing, Combined respectfully requests that the Commission dismiss or deny the Petition and grant the pending KTWS renewal application.

Respectfully submitted

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January 31, 2022

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<sup>23</sup> See Ex. B Chackel Decl. at 2.



## **Exhibit A**

## **Exhibit B**

## **Exhibit C**

## **Exhibit D**

## Certificate of Service

I, Seth L. Williams, hereby certify that I have, this 31st day of January, 2022, cause a copy of the foregoing "Opposition to Petition to Deny" to be sent via U.S. Mail or electronic mail, as indicated below, to:

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