Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of
Applications for Renewal of Station License of

WTMJ-TV, Milwaukee, WI	)	BRCT20050729CYF
WITI-TV, Milwaukee, WI	)	BRCT20050729DRL
WISN-TV, Milwaukee, WI	)	BRCT20050729CEF
WVTV-TV, Milwaukee, WI	)	BRCT20050729BDQ
WCGV-TV, Milwaukee, WI	)	BRCT20050729BBZ
WVCY-TV, Milwaukee, WI	)	BRCT20050729AGS
WMLW-TV, Milwaukee, WI	)	BRTT20050729ADM
WJJA-TV, Racine, WI	)	BRCT20050729ABE
WWRS-TV, Mayville, WI	)	BRCT20050729DNH
WPXE-TV, Kenosha, WI	)	BRCT20050729AIH
WDJT-TV, Milwaukee, WI	)	BRCT20050729ADL
WBBM-TV, Chicago, IL	)	BRCT20050801AFV
WMAQ-TV, Chicago, IL	)	BRCT20050801CEL
WLS-TV, Chicago, IL	)	BRCT20050801CUZ
WGN-TV, Chicago, IL	)	BRCT20050801BXY
WCIU-TV, Chicago, IL	)	BRCT20050801ADO
WFLD-TV, Chicago, IL	)	BRCT20050729DSN
WCPX-TV, Chicago, IL	)	BRTTA20050729AGG
WSNS-TV, Chicago, IL	)	BRCT20050801CFO
WPWR-TV, Gary, IN	)	BRCT20050401AQB

TO: The Commission

CONSOLIDATED REPLY TO OPPOSITIONS TO APPLICATION FOR REVIEW

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February 2, 2011

Chicago Media Action ("CMA") and the Milwaukee Public Interest Media Coalition (jointly referred to as "Petitioners") respectfully respond to the four oppositions submitted in response to their January 11, 2011 *Application for Review* ("*Second Application for Review*").[1]

Three of the four oppositions are more significant for what they do not say than for what they do say. None of them even mention, much less rebut, Petitioners' showing, *Second Application for Review.* at p. 2, that the Commission's delegation of authority to the Media Bureau at 47 CFR §0.283 expressly excludes the power to act on applications for review and requires that they be referred to the full Commission for action. Nor do they offer any argument that the plain language of 47 CFR §1.115 requires that applications for review be acted upon by the full Commission. Indeed, inasmuch as these provisions implement Section 5(c)(4) of the Communications Act, no other conclusion is possible. That provision states in pertinent part that

> Any person aggrieved by any such order, decision, report or action may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and ***every such application shall be passed upon by the Commission*.**

(emphasis added).[2]

In lieu of addressing the merits of Petitioners' argument, several of the oppositions have dispatched a contingent of associates to scour past Commission decisions in a vain attempt to find

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[1]Oppositions were submitted by WISN Hearst Television, Inc. ("WISN"), Trinity Christian Center of Santa Ana, Inc. ("Trinity"), Journal Broadcast Corp., *et al.* ("Broadcast Television Licensees") and VCY/America, Inc. ("VCY").

[2]Trinity takes a different, and somewhat incomprehensible tack. It quotes 47 CFR §1.115(c) and claims that the *Second Application for Review* should be dismissed because the staff has not had an opportunity to pass on the claim that it lacks authority to act. Trinity Opposition, pp. 7-8. This ignores the clear language of Section 5(c) that is emphasized in the text above. It is also illogical; if, as Petitioners have shown, the staff has no authority to act on applications for review, it certainly does not have authority to decide if it has authority.

a single Commission decision which authorizes the staff to act on applications for review. All they could find were a handful of cases over two decades in which the staff acted upon petitions for reconsideration or other relief which were styled in some way as also being applications for review,[3] or which were ministerial in nature.[4] In one even older case, issued in 1984 under an earlier delegation of authority to a now-defunct Bureau, the Commission chose to review a decision on the merits rather than address in detail an unpublished staff dismissal which appears to have been ministerial in nature. *Garnerlynn Communications*, 99 FCC2d 150 (1984). And in *Curly Thornton*, 7 FCCRcd 4904 (1992), the Chief of the Mass Media Bureau dismissed on procedural grounds an application for review of a Branch decision, apparently directed to him, and not to the Commission. None of these cases even remotely stand for the proposition that the staff has authority to act on timely filed applications for review directed to the Commission, or that the full Commission has ever so held.

The oppositions briefly renew their claim that the staff's August 11, 2008 decision (the subject of Petitioners' *First Application for Review*) properly rejected Petitioners' *Second Petition for Reconsideration* because Petitioners should have called attention to the release of the Commission's *Enhanced Disclosure* decision at an earlier date. See VCY Opposition at pp. 4-5, Broadcast

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[3] *Evan Doss, Jr.*, 22 FCCRcd 5361 (2007) ("seeking reconsideration or review"); *Art Hage*, 21 FCCRcd 1425 (2006) (dismissing letter which "does not specifically request" treatment as an application for review); *Andrea Kessler*, 14 FCCRcd 17836 (1999) ("informal letter-application for review").

[4] *WSTX(AM) and WSTX-FM*, 25 FCCRcd 7591, 7593, n.9 (2010) (referring to staff decision (DA 06-291) which dismissed application for review that had been voluntarily withdrawn because the underlying application for assignment had been withdrawn); *Jonathan Hardis*, 25 FCCRcd 3557 (2010) (dismissing premature application without prejudice to refiling after *Federal Register* publication); *Royce International Broadcasting*, 23 FCCRcd 9010, 9014 (referring to unpublished letter dismissing application after staff "on its own motion" set aside the ruling under review); *K Licensee, Inc.,* 23 FCCRcd 7824, 7826 (2008) (referring to unpublished letter dismissing application as moot after notice that subject transaction would not be consummated).

Television Licensees at p. 7; Trinity Opposition, p. 10. Leaving aside the fact that this is an issue for the Commission - not the staff - to decide, they are wrong because they assume that parties are under a continuing obligation to inform the staff of decisions of the full Commission which merely restate the law as it should be. That is the case here; the *Enhanced Disclosure* decision did not change the law, but rather simply reinforced Petitioners' pending reconsideration petition. Petitioners had every reason to believe that the staff would act favorably on the petition for review, and even more reason to expect this once the *Enhanced Disclosure* decision was issued. Once the staff acted unfavorably notwithstanding the *Enhanced Disclosure* decision, the only way to present this argument was in a petition for reconsideration, since it could not be presented in an *Application for Review* without first being presented to the staff. 47 CFR §1.115(c).

WHEREFORE, the Commission should vacate the staff's December 10, 2010 Decision, consider the February 16, 2010 *Application for Review* on the merits, reverse the *2010 Letter Decision*, the *2008 Letter Decision* and the *2007 Letter Decision*, give detailed instructions to the staff on how to administer the license renewal process, designate the renewal applications for hearing, and grant all such other relief as may be just and proper.

Respectfully submitted,

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February 2, 2011

Certificate of Service

I, Andrew Jay Schwartzman, certify that on this 2nd day of February 2011, a copy of the foregoing *Consolidated Reply to Oppositions to Application for Review* was served by first-class mail, postage prepaid, upon the following:

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