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6712-01

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 16-357; FCC 16-153]

**Entercom License, LLC, Applications for Renewal of License for Station KDND(FM),
Sacramento, California**

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing to determine whether the applications (FCC File Nos. BRH-20050728AUU and BRH-20130730ANM) (Applications) of Entercom License, LLC (Entercom), for renewal of FM Station KDND, Sacramento, California (Station) should be granted. The hearing will include issues regarding whether Entercom operated the Station in the public interest during the relevant license term, in light of record evidence that Entercom formulated, promoted, conducted, and aired over the Station an inherently dangerous contest in which one listener-contestant died of water intoxication and others suffered serious physical distress.

DATES: Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene not later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please file documents with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Each document that is filed in this proceeding must display on the front page the document number of this hearing, “MB Docket No. 16-357.”

FOR FURTHER INFORMATION CONTACT: Pamela Kane, Special Counsel, Enforcement Bureau, (202) 418-2393.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Hearing Designation Order (Order), FCC 16-153, adopted October 26, 2016, and released October 27, 2016. The full text of the Order is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street, SW, Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission’s copy contractor, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

Synopsis

1. This Order commences a hearing proceeding before an Administrative Law Judge to determine whether the Applications of Entercom for renewal of FM Station KDND, Sacramento, California, should be granted. During the relevant license term, on January 12, 2007, Entercom conducted and aired a contest (Contest) that resulted in the death of one of its listener-contestants, Jennifer Lea Strange (Ms. Strange), and endangered others. At a civil trial (Trial), Entercom was found liable for the wrongful death of Ms. Strange.¹

2. Section 309(k) of the Communications Act of 1934, as amended, 47 U.S.C. 309(k), requires the Commission to determine whether the “public interest, convenience, and necessity” will be served by the granting of each renewal application. If the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience and convenience would be served by the granting thereof, it shall grant the application. If a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding that

¹ William A. Strange et al. v. Entercom Sacramento LLC et al., Superior Court of California, County of Sacramento (Dept. 44), Case No. 07AS00377.

the station has, inter alia, served the public interest, it shall formally designate the application for hearing. If the Commission determines, after notice and opportunity for a hearing, that a licensee has failed to meet the requirements for renewal and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall issue an order denying the renewal application.

3. In this case, significant and material questions exist as to whether Entercom: (i) designed and conducted a contest that was inherently dangerous; (ii) increased the danger to the contestants by changing the announced Contest terms; (iii) was aware of the potential dangers of the Contest and water intoxication; (iv) failed to protect the contestants from the potential dangers of the Contest; (v) failed to warn the contestants of the Contest's potential dangers; (vi) prioritized entertainment value over the welfare of the contestants; and (vii) failed to conduct adequate training and exercise appropriate supervision of Station KDND employees and the Contest to ensure the safety of the contestants. Because the Commission is unable to make a determination on the record currently before it that grant of the Applications would serve the public interest, convenience and necessity, it designates the Applications for hearing.

4. Inherent dangers of the Contest. Entercom's Station KDND held the Contest, called "Hold Your Wee for a Wii," live on its January 12, 2007, 5:30-10:00 a.m. Morning Rave Show (Show). The premise of the Contest was that the contestant who was able to drink water at regular intervals for the longest time without urinating or vomiting would win a Nintendo Wii video game console. At the Trial, a medical expert testified that such over-consumption of water may cause pressure in the brain leading to confusion, disorientation, impaired judgment, and ultimately risk of death. In this case, Ms. Strange returned home after participating in the Contest, slipped into a coma, and died, leaving a husband and three children. The autopsy revealed that she had died of water intoxication. Accordingly, the Commission designates for

hearing the issue of whether Entercom designed and conducted a contest that was inherently dangerous.

5. Increased danger to participants by changing the Contest terms. In a number of over-the-air announcements prior to the Contest, Entercom staff stated that contestants would be drinking water every fifteen minutes from eight- or 16-ounce glasses of water. These promotional announcements did not mention any risks associated with the Contest in general or with water intoxication (also known as hyponatremia) specifically. When the contestants arrived at the Station, they were informed for the first time by Entercom staff—acting throughout in the course of their employment for Entercom—that they would be drinking eight ounces of water every ten minutes rather than at the fifteen minute intervals previously announced on air, again without mention of any specific risk. No medical personnel were present at the Contest. About 90 minutes into the Contest, apparently concerned that the Contest would not be concluded before the end of the Show, the hosts increased the required water consumption to 16.9-ounce bottles of water every 10 minutes. A medical expert at the Trial testified that these modifications to the Contest heightened the risk of death for the contestants, including Ms. Strange. Accordingly, the Commission designates for hearing the issue of whether Entercom increased the danger to Contest participants by changing the Contest terms from those announced previously on air.

6. Entercom's awareness of the potential dangers of the Contest and water intoxication. The record suggests that, prior to and during the Contest, Entercom was aware that water intoxication could cause severe health consequences, and even death. Specifically, during at least two Shows broadcast before the Contest, Entercom staff had discussed on air the fraternity hazing death of a college student by water intoxication, and even attempted a humorous reenactment of that event, during which an Entercom employee drank a large quantity

of water and suffered water intoxication symptoms. During the Contest, the hosts of the Show again referred on air to the possibility of “water poisoning” like “that poor kid in college.” In addition, during the Show, the producer and hosts received several phone calls from concerned listeners—including medical professionals—specifically warning that the Contest was dangerous and even potentially lethal. Entercom employees responded dismissively to these calls, simply telling callers that the contestants had signed releases. Finally, Entercom employees ignored or joked about the symptoms displayed by contestants, including Ms. Strange, who had a visibly extended abdomen, difficulty walking, and stated on air that her head hurt. Accordingly, the Commission designates for hearing the issue of whether Entercom was aware of the potential dangers to the contestants associated with the Contest.

7. Failure to protect contestants. At the Trial, a medical expert testified that Jennifer Strange could have been saved if she were provided with medical assistance at any time prior to her having a convulsion or losing consciousness. However, Entercom did not provide medical assistance even after contestants began to complain of extreme discomfort. Therefore, the Commission designates for hearing the issue of whether Entercom failed to take appropriate steps to ensure the contestants’ safety and to protect them from the dangers of the Contest.

8. Failure to warn contestants of the potential danger posed by the Contest. The record reflects that, in promotional announcements and on the day of the Contest, Entercom did not inform participants of risks associated with the Contest in general or water intoxication specifically, even after Station staff were specifically notified of the danger by callers. Rather, the hosts of the Show made jocular statements to the contestants that dismissed or otherwise minimized the risks or the severity of the symptoms they were experiencing. Even after learning of Ms. Strange’s death, Entercom did not contact the other participants to inform them of her death or suggest that they seek medical attention. Accordingly, the Commission designates for

hearing the issue of whether Entercom failed to warn the Contest contestants about the possible dangers associated with water intoxication.

9. Prioritization of entertainment value over welfare of contestants. The record suggests that Entercom ran the Contest in a way to maximize its entertainment value to listeners at the expense of the dignity and well-being of the contestants. For example, Show staff induced themselves to vomit near the contestants to get them to do so, photographed the contestants in various states of physical distress, including emerging from the bathroom, and otherwise heckled contestants to create a theatrical atmosphere that may have fostered the discomfort and degradation of the contestants for entertainment value. Accordingly, the Commission designates for hearing the issue of whether Entercom may have prioritized the entertainment value of the Contest over the welfare of the contestants.

10. Failure to train and supervise Station staff. It appears from the record that Station staff largely conceived and ran the Contest without adequate supervision or guidance from Station management and Entercom's corporate parent, Entercom Corp. In apparent violation of corporate rules and procedures, the Contest was not presented to Entercom Corp.'s legal department for vetting. Nor did Station staff independently research or otherwise make an objective determination on the Contest's safety or compliance with corporate contest guidelines. The facts on record indicate that there may have been systemic problems with Entercom's training and contest review and oversight process. It appears that Station management had minimal involvement in the conception or conduct of the Contest, perhaps in light of the Show's high ratings and resulting contribution to the licensee's financial bottom line. No individual, at either the Station or corporate level, had clear responsibility for compliance with contest policy, and guidelines formulated at a corporate level were not necessarily communicated to the Station staff who would be actually conducting contests. For these reasons, among others, the record

suggests that although the hosts of the Show may have exercised poor judgment during the course of the Contest, they were also not adequately trained or supervised by Entercom with respect to contests. Accordingly, the Commission designates for hearing the issue of whether Entercom conducted adequate training and exercised appropriate supervision over the contest-related activities of KDND personnel, including, in particular, the Contest.

11. ACCORDINGLY, IT IS ORDERED that, pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the Applications, File Nos. BRH-20050728AUU and BRH-20130730ANM, ARE DESIGNATED FOR HEARING in a proceeding before an FCC Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues: (a) To determine whether Entercom designed and conducted a contest that was inherently dangerous; (b) To determine whether Entercom increased the danger to the contestants in the “Hold Your Wee for a Wii” contest by changing the contest terms; (c) To determine whether Entercom was aware of the potential dangers of the “Hold Your Wee for a Wii” contest and water intoxication; (d) To determine whether Entercom failed to protect the contestants of the “Hold Your Wee for a Wii” contest from its potential dangers; (e) To determine whether Entercom failed to warn the contestants of the “Hold Your Wee for a Wii” contest of the contest’s potential dangers; (f) To determine whether Entercom prioritized entertainment value over the welfare of contestants of the “Hold Your Wee for a Wii” contest; (g) 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; (h) 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 (i) 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.

12. IT IS FURTHER ORDERED that, irrespective of the resolution of the foregoing issues, the Petition to Deny filed by Irene M. Stolz, on November 1, 2005, IS DISMISSED AS MOOT IN PART AND DENIED IN PART.

13. IT IS FURTHER ORDERED that the Petition to Deny filed by Media Action Center and Sue Wilson on October 31, 2013, and the Petition to Deny filed by Edward R. Stolz II on November 1, 2013, considered as an informal objection, ARE GRANTED IN PART, to the extent that they seek designation for hearing of the subject Entercom license renewal applications on issues (a) through (g) above, AND ARE OTHERWISE DENIED.

14. IT IS FURTHER ORDERED that the Informal Objection filed by Roger D. Smith on October 22, 2013, IS GRANTED.

15. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

16. IT IS FURTHER ORDERED that Media Action Center and Sue Wilson shall be made parties to this hearing in their capacity as a petitioner to the captioned applications:

17. IT IS FURTHER ORDERED that pursuant to Section 309(e) of the Act and Section 1.221(c) of the Commission's Rules, to avail itself of the opportunity to be heard and to present evidence at a hearing in this proceeding, Entercom, in person or by its attorneys, SHALL FILE with the Commission, within 20 calendar days of the release of this Order, a written appearance stating that it will appear at the hearing and present evidence on the issues specified above.

18. IT IS FURTHER ORDERED that, pursuant to Section 1.221(c) of the Commission's Rules, if Entercom fails to file a timely written appearance, or has not filed prior

to the expiration of that time a petition to dismiss the captioned Applications without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 calendar days, the Applications shall be dismissed with prejudice for failure to prosecute.

19. IT IS FURTHER ORDERED that to avail themselves of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, pursuant to Section 1.221(e) of the Commission's Rules, Media Action Center and Sue Wilson, SHALL FILE within 20 calendar days of the release of this Order, a written appearance stating their intention to appear at the hearing and present evidence on the issues specified above. Any entity or person so named above who fails to file this written statement within the time specified, shall, unless good cause for such failure is shown, forfeit its hearing rights.

20. IT IS FURTHER ORDERED, in accordance with Section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof, with respect to all issues designated herein, shall be upon Entercom.

21. IT IS FURTHER ORDERED, that Entercom herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, GIVE NOTICE of the hearing within the time and in the manner prescribed in such Rule, and SHALL ADVISE the Commission of the publication of such notice as required by Section 73.3594(g) of the Commission's Rules.

22. IT IS FURTHER ORDERED that copies of this document SHALL BE SENT via Certified Mail, Return Receipt Requested, and by regular first class mail to the following: Carrie A. Ward, Esq., Entercom License, LLC, 401 City Avenue, Suite 809, Bala Cynwyd, PA 65483; Dennis P. Corbett, Esq., Lerman Senter PLLC, 2000 K Street, NW, Suite 600, Washington, DC 20006-1809; Media Action Center and Sue Wilson, 18125 Tyler Road, Fiddletown, CA 95629;

Edward R. Stolz, II, c/o Dennis J. Kelly, Esq., Law Office of Dennis J. Kelly, P. O. Box 41177,
Washington, DC 20018; Roger D. Smith, 6755 Wells Avenue, Loomis, CA 95650.

Federal Communications Commission

Marlene H. Dortch

Secretary.

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