



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

January 8, 2009

**DA 09-14**

*In Reply Refer to:*

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University of Rhode Island  
326 Memorial Union  
Kingston, RI 02881

Mr. Ronald P. Marsh  
PO Box 3742  
Newport, RI 02840

Norman C. Remington  
87 Darrow Drive  
Warwick, RI 02886

In re: **WRIU(FM), Kingston, RI**  
**Facility ID No. 69206**  
File No. BRED-20051201CHG  
Application for Renewal of License

**Informal Objections**

Dear Licensee, Mr. Marsh and Mr. Remington:

This letter concerns the captioned application (the "Application") filed by University of Rhode Island ("Licensee") to renew its license for noncommercial educational ("NCE") Station WRIU(FM), Kingston, Rhode Island (the "Station"). Also on file are the Informal Objections filed by Ronald Marsh (the "Marsh Objection") on March 15, 2006, and Norman Remington (the "Remington Objection") on March 27, 2006. For the reasons set forth below, we deny the Objections and grant the renewal application.

**Background.** In their objections,<sup>1</sup> Marsh and Remington state that, after the Station made known its intentions of limiting classical and jazz programming in 2003, it welcomed listeners to "inspect its file of documents relevant to its performance during the period prior to the application."<sup>2</sup> Thereafter, they

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<sup>1</sup> Marsh and Remington styled their pleadings "Petitions to Deny." We are treating the pleadings as Informal Objections under Section 73.3587 of the Commission's Rules (the "Rules"), 47 C.F.R. § 73.3587, because they fail to comply with the procedural requirements for filing Petitions to Deny, *e.g.*, they were not served on the Station, and they are not supported by affidavit signed by a person with personal knowledge of the facts contained in the pleading. *See* 37 U.S.C. § 309(d), 47 C.F.R. § 73.3584.

<sup>2</sup> *See Marsh Objection Letter to Federal Communications Commission* (March 15, 2006). The station now airs a much more diversified programming format, although it still includes some jazz and classical music. *See* <http://www.wriu.org/programming.html>.

claim, the Station received and reviewed listener input, much of which urged the Station to keep its broadcast programming of jazz and classical music. However, Marsh argues and Remington agrees, there is no record of this public comment, nor is there any reference to this issue “as a controversy,” in the Station’s public inspection file.<sup>3</sup>

**Discussion.** Pursuant to Section 309 (e) of the Communications Act of 1934, as amended, informal objectors must 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 Communications Act of 1934, as amended (the “Act”),<sup>4</sup> 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: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.<sup>5</sup> 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(e) 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.”<sup>6</sup>

The Objectors complain that the Station’s public inspection file contained no trace of any listener comments regarding the Licensee’s alleged solicitation of input regarding its format change in 2003. Section 73.3527 of the Rules<sup>7</sup> requires an NCE broadcast licensee to maintain a public inspection file containing specific types of information related to station operations. That rule does not require that NCE licensees retain copies of letters or electronic mail messages from the public.<sup>8</sup> Accordingly, even were we to take as true the Objector’s claim that the Station’s public inspection file in 2006 contained no public comment regarding the proposed format change in 2003, the Licensee’s failure to retain in its public file comments regarding its 2003 format change does not violate the Rules. This argument requires no further discussion.

**Conclusion/ Actions.** We have evaluated the WRIU(FM) renewal application pursuant to Section 309(k) of the Act, and we find that the station has served the public interest, convenience, and necessity during the subject license term; there have been no serious violations of the Act or the Rules; and there have been no other violations which, taken together, constitute a pattern of abuse. Moreover,

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<sup>3</sup> Marsh Objection at 1. Mr. Marsh states that he “personally visited the radio station” and viewed its public inspection file. *Id.*

<sup>4</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>5</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described 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).

<sup>6</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>7</sup> 47 C.F.R. § 73.3527.

<sup>8</sup> Compare 47 C.F.R. § 73.3526(e)(9), which requires *commercial* broadcast licensees to retain all letters and electronic mail messages from the public for a period of three years from when they are received.

we find that the Marsh and Remington objections contain inadequate factual allegations sufficient enough to warrant further inquiry regarding renewal of WRIU(FM)'s license.

In light of the above discussion, and pursuant to Section 309(k) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules,<sup>9</sup> the Informal Objections filed on March 15, 2006, and March 27, 2006, respectively, by Ronald P. Marsh and Norman Remington ARE DENIED, and the application (File No. BRED-20051201CHG) of the University of Rhode Island for renewal of license for Station WRIU(FM), Kingston, Rhode Island, IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>9</sup> 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.