

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

In the Matter of)	
)	
KGAN Licensee, LLC)	File No. BRCT-20050930ALF
)	Facility ID No. 25685
Licensee of Station)	
KGAN-TV, Cedar Rapids, Iowa)	

MEMORANDUM OPINION AND ORDER

Adopted: March 12, 2010

Released: March 16, 2010

By the Chief, Video Division:

I. INTRODUCTION

1. The Commission, by the Chief, Video Division, pursuant to delegated authority considers a Petition to Deny Renewal filed on behalf of Iowans For Better Local Television (IBLT) against the above-referenced television broadcast license renewal application of KGAN Licensee, LLC (KGAN), licensee of KGAN-TV, Cedar Rapids, Iowa.¹ KGAN filed an opposition pleading, and IBLT responded thereto.

2. In the petition, IBLT generally asserts that KGAN is in violation of the Commission’s multiple ownership rules, and has not met its children’s programming, public inspection file, and digital television conversion obligations. IBLT also asserts that KGAN has broadcast inappropriate programming. Further, it argues that the quality and content of KGAN’s programming and news product is inadequate and biased, and does not serve or contribute to local needs and interests. IBLT argues that KGAN’s business model for operating the station does not serve the public interest. It maintains that these facts reveal a pattern of abuse that indicates that KGAN lacks the character to remain a Commission licensee, and that the KGAN renewal application must be denied or designated for an evidentiary hearing.²

3. In its opposition pleading, KGAN asserts that the IBLT petition is both procedurally defective and substantively lacking, and should be summarily dismissed. It maintains that KGAN and its agents were served with incomplete and unfiled copies of the petition. It contends the petition is not properly supported with affidavits of those with “first-hand personal knowledge” of the facts alleged, but are based on newspaper articles, personal opinion and viewer letters contained in the station’s public file. It argues that many declarations proffered by IBLT are those of persons with no standing, contain statements made

¹ IBLT describes itself as a grassroots organization including a broad range of KGAN-TV viewers and whose steering committee is comprised of local citizens. It states that its efforts are supported by Iowa state and local government officials representing its members and many other Iowans who have expressed on-line support for the group. Petition to Deny, at 8-9.

² Alternatively, IBLT states that if the Commission is unwilling to deny the renewal, it should issue a conditional or short-term renewal pursuant to Section 309(k)(2) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §309(k)(2)&(3).

by those who do not endorse or support the petition, or are otherwise conclusory, speculative or vague.³ Moreover, KGAN states that other than disagreeing with the station's programming and business judgments, IBLT has set forth neither a legitimate basis for challenging whether the station has operated in the public interest, nor a substantial and material question as to whether its renewal application should be granted.⁴

4. Section 309(k)(1) of the Communications Act states that the Commission shall grant a license renewal application if it finds, with respect to that station, that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission rules or regulations which, taken together, would constitute a pattern of abuse.⁵ If the licensee fails to meet this 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.

5. The Commission analyzes any public interest allegation according to a two-step process.⁶ The petition must first contain specific allegations of fact sufficient to show that such a grant would be *prima facie* inconsistent with the public interest. This first step of the public interest analysis “is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the affidavit were true, could a reasonable fact finder conclude that the ultimate fact in dispute had been established.”⁷ If the petition meets the first step, the Commission will designate the application for hearing if the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether grant would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.⁸ A substantial and material question is raised when “the totality of the evidence arouses a sufficient doubt. . . . that further inquiry is called for.”⁹ We find that the petitioner has failed to raise a substantial and material question of fact as to any rule violations. Based on a review of the record as a whole, we further conclude that IBLT's allegations – both individually and collectively -- fail to raise a substantial and material question of fact as to whether grant of the above-captioned license renewal application would serve the public interest.

³ We will exercise our discretion and consider IBLT's petition and the allegations raised therein. Thus, we need not determine whether IBLT has standing.

⁴ In a reply pleading, IBLT generally challenges the licensee's interpretation of its allegations as well as the responsibilities expected of Commission licensees generally and in the operation of this station. Reply, at 4. It asserts that KGAN has not adequately responded to the matters raised in its petition. It also challenges the licensee's view of what constitutes the public interest. It asserts that because “some of the licensee's behavior involves matters not specifically forbidden by the Commission does not lessen their significance. . . .” and, when taken together, indicate that its operation of KGAN is not in the public interest. *Id.*, at 5.

⁵ 47 U.S.C. §309(k)(1).

⁶ 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*).

⁷ *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987). See also *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (affirming two-step public interest analysis).

⁸ *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

⁹ *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985).

II. PETITION TO DENY

6. **Ownership Allegations.** IBLT states that when KGAN acquired KGAN-TV, it sought a waiver of the Commission's duopoly rule, Section 73.3555(b), in order to permit common ownership of that station and KDSM-TV, Des Moines, Iowa, licensed to KDSM Licensee LLC. Both KGAN and KDSM-TV are licensed to subsidiaries of Sinclair Broadcast Group, Inc. ("Sinclair"). IBLT states that in seeking the waiver, Sinclair promised the Commission that KGAN would not share staff with KDSM and the waiver was subsequently granted.¹⁰ However, it asserts that shortly after the assuming control of KGAN, Sinclair announced plans to share news staff between the two stations. IBLT maintains that the short amount of time between the grant of the KGAN acquisition and the commencement of staff-sharing suggests that Sinclair may well have had such plans at the very time its application was pending before the Commission and, if so, it was therefore lacking in candor or engaging in misrepresentations to the Commission.¹¹ In addition, it alleges that KGAN also has a joint operating agreement with KFXA-TV, Cedar Rapids, that puts the two stations under single management, and has placed programming on KWWF-TV, Waterloo, Iowa, and results in Sinclair having other prohibited "cognizable interests" in the market.¹²

7. In opposition, KGAN states that IBLT's assertion that it lied to the Commission in 1998 when it acquired KGAN is a "ludicrous accusation premised on a fundamental misunderstanding or mischaracterization of the Commission's ownership rules."¹³ It states that when it acquired KGAN, the Commission's rules in place at that time prohibited common ownership of KGAN and KDSM because of the stations' overlapping Grade B signal contours. Consistent with those rules, Sinclair's acquisition of the station was subject to Sinclair coming into compliance with the rules to be established in a then-pending rulemaking concerning television ownership.¹⁴ It further states that shortly after Sinclair acquired KGAN, the local television ownership rule was changed, and joint operation of KGAN and KDSM became permissible.¹⁵ KGAN states that only after that rule changed did it combine the news operations of the two stations. Thus, it rejects the notion that it "lied" to the Commission as utterly baseless.

8. KGAN asserts that IBLT misunderstands and mischaracterizes its relationship with KFXA and its satellite station, KFXB-TV, Dubuque, Iowa. KGAN states that it has an "Outsourcing Agreement" with KFXA/KFXB which requires KFXA to provide certain non-programming related operational and managerial services to KGAN, not the other way around as alleged by IBLT. Thus, it asserts, KGAN as the "brokered station" cannot conceivably have any control over KFXA, in this instance the "brokering

¹⁰ *Guy Gannett Communications*, 14 FCC Rcd 6204, 6208 (MMB 1999).

¹¹ Moreover, even if Sinclair did not have such plans at the time it made those representations to the Commission, IBLT argues that KGAN's renewal application should be set for an evidentiary hearing "because, without that promise, the Commission would not have granted the license in the first place." Petition to Deny, at 10-11.

¹² IBLT states that "crucial portions" of the operational agreement between KGAN and KFXA were missing or incomplete, and that KGAN must replace or complete portions of the agreement, place them in the public file and make it available to the petitioners so that the Sinclair's level of control can be determined. Petition to Deny, at 15. Further, IBLT asserts that it found two e-mails sent to viewers in the public file regarding the placement of a program on KWWF-TV; it is unsure whether there is any contractual agreement between the stations because it found none in the public file. Although it cannot document the exact relationship between these stations, it nevertheless contends that the ability to place a program on another market station indicates that Sinclair may have a cognizable interest in KWWF-TV. *Id.* at 16.

¹³ Opposition, at 10.

¹⁴ *Guy Gannett Communications*, 14 FCC Rcd at 6213.

¹⁵ See *Review of the Commission's Regulations Governing TV Broadcasting*, 14 FCC Rcd 12903 (1999).

station.”¹⁶ Moreover, KGAN claims that the provisions listed by IBLT in the petition as evidence of KGAN’s control of KFXA are actually *limitations* on KFXA’s ability to gain control of certain aspects of KGAN’s operations. KGAN notes that its agreement with KFXA is not a “time brokerage” agreement, does not provide for joint sales of broadcast time, and does not result in KFXA placing any programming on KGAN. It states that similar agreements are used by many broadcasters, and is fully permissible, as well as non-attributable under current Commission’s Rules.¹⁷ Further, to the extent that KFXA separately obtains some news services from KGAN, that programming is well below the 15 percent limit established by the Commission for an attributable interest.¹⁸ Thus, KGAN concludes that it is compliant with all relevant aspects of Section 73.3555 of the Commission’s Rules with regard to broadcast ownership, and that IBLT has raised no substantial and material question to the contrary.

9. **Discussion.** IBLT’s allegations do not raise a substantial and material question of fact concerning KGAN’s disclosed relationships noted above. There is nothing to indicate that KGAN’s acquisition of KDSM did not comply with the Commission’s interim policy regarding waiver of the former duopoly rule, that KGAN somehow misrepresented its intended compliance with that rule, or that the subsequent joint operation of KGAN with KDSM pursuant to the later amended duopoly rule now requires us to revisit that grant. In this regard, IBLT has mischaracterized the nature of the waiver by which Sinclair acquired control of KGAN while retaining its prior interest in KDSM. That acquisition involved a waiver of the duopoly rules then in place prohibiting overlapping Grade B signals subject to the outcome of a pending ownership proceeding and not on the licensee maintaining separate station operations as alleged by IBLT. Finally, there is nothing in its agreements or its actions to indicate that KGAN has cognizable interests in or exercises *de facto* control over KFXA/KFXB or KWWF-TV.¹⁹

10. **Children’s Programming Allegations.** IBLT alleges that KGAN fails to serve the informational and educational needs of children through its overall programming.²⁰ It states that the Commission requires that licensees air a minimum of three hours of “core programming” for children each week, averaged over a two-month period. It asserts that KGAN has failed to meet those minimums because virtually all of its purported core programming is produced by Nickelodeon for its “Nick Jr.” programs, which are little more than program-length commercials for Nick Jr./Nickelodeon-related products or promotions.²¹ IBLT states that KGAN’s alleged core programming: is not “regularly

¹⁶ Opposition, at 12.

¹⁷ KGAN also notes that while currently permissible without attribution, agreements similar in nature to its Outsourcing Agreement with KFXA are currently under review by the Commission. *See In the Matter of Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, 19 FCC Rcd 15238 (2004).

¹⁸ KGAN states that IBLT’s allegation that it programs KWWF, Waterloo, or any other stations is wholly speculative and untrue. With regard to KWWF, KGAN states that e-mails referenced by IBLT merely evidence its efforts to find another station willing to air certain sports programming.

¹⁹ In determining *de facto* control, the Commission traditionally looks beyond the legal title to whether an entity or individual has obtained the right to determine the basic operating policies of the station. *WHDH, Inc.*, 17 FCC 2d 856 (1969), *aff’d sub nom.*, Greater Boston Television Corp. v. FCC, 44 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971). While such an analysis transcends formulas, the Commission generally looks to policies concerning programming, personnel and finances to make this determination. *See, e.g., Stereo Broadcasters, Inc.*, 87 FCC 2d 87 (1981), *recon. denied*, 50 RR 2d 1346 (1982).

²⁰ See Section 303(b) of the Act, 45 U.S.C. §303(b).

²¹ Petition to Deny, at 19-20. IBLT states that KGAN has also failed the “somewhat less” than three-hour standard by which the Commission permits a licensee to make up weekly core programming deficiencies with specials, short-form programs and regularly scheduled non-weekly programs that have educating and informing children as a significant purpose. See Section 73.671(d) of the Commission’s Rules. IBLT states that it believes that KGAN does not air *any* such programming that would qualify as core programming, and, in any event, the amount of time

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scheduled weekly” programming,²² is neither “educational” nor “informational,”²³ and exceeds advertising maximums.²⁴ It also maintains that its members were not able to find evidence that KGAN supplies children’s programming information, including the intended age range for each program, to publishers of program guides, casting doubt on whether the licensee complies with this obligation.²⁵

11. IBLT further argues that however the Commission might resolve these allegations, and beyond whatever “core programming” KGAN may be credited with broadcasting, the licensee has not demonstrated any “commitment above and beyond the Congressional or Commission requirements” its members believe are appropriate for children. In fact, IBLT believes that the licensee “is quite willing to harm children” by airing inappropriate adult material on afternoon programming or adjacent to children’s programming when children are unsupervised and more susceptible to advertising and “implicit cultural assumptions” these shows make.²⁶ For these reasons, IBLC maintains that KGAN’s compliance with its obligations to children is a substantial and material question of fact that must be determined in an evidentiary hearing.

12. In opposition, KGAN states that it has adequately met its children’s programming obligations. It asserts that although the station did preempt some core children’s programming, KGAN did not drop below the required level of such programming – the majority of preemptions noted by the petitioner were rescheduled and therefore properly calculated towards the station’s programming requirements.²⁷ It states that IBLT’s claim that it exceeded commercial advertising limits during its

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KGAN falls short of the three-hour minimum would not be not obviated by substitute programming. Petition to Deny, at 22-23.

²² See Section 73.671 of the Commission’s Rules.

²³ It notes that at least two programs, *The New Tales From The Cryptkeeper* and *Wheel of Fortune 2000*, “are clearly neither” and that the former “is actually detrimental to children” because it contains violence and leads children to inappropriate adult material on which the show is based. IBLT contends that eliminating these shows from its core programming calculation, KGAN did not meet its required three-hour per-week minimum between January 1, 1998, and September 30, 2000. Petition to Deny, at 20-21.

²⁴ In this regard, IBLT asserts that even if KGAN’s purported core programming is not program-length commercials, its members monitored the station between May 28 and June 4, 2005, and found that it has run as much as 17 minutes and 18 seconds of commercials – consisting of advertising, station identifications and public service announcements not a part of that program -- during one of its hours of children’s programming and as much as 10 minutes and 48 seconds of commercials during its half-hour children’s programming. Petition to Deny, at 21

²⁵ See Section 73.673 of the Commission’s Rules.

²⁶ IBLC states that during these times, KGAN has presented such programming as *Judge Judy*, *The Ellen DeGeneres Show* and *EXTRA*, which might be appropriate for an adult audience but not for children. It further maintains that some programming and commercial matter broadcast on KGAN are inappropriate for children or offensive to viewers generally. It alleges that the station once broadcast an advertisement for beer immediately preceding claimed “core programming.” Petition to Deny, at 22. It cites the *Victoria Secret Fashion Show*, news coverage of a local student featured in *Playboy* magazine, and commercials for erectile dysfunction drugs or featuring Paris Hilton as examples of inappropriate material aired on the station. *Id.* at 34-35.

²⁷ KGAN states that such preemptions are generally scheduled for the “second home” designated and promoted by the station. See *Children’s Television Obligations of Digital Television Broadcasters*, 19 FCC Rcd 22943, 22957 (2004). On other occasions, it notes that preemption of children’s programming was occasioned by breaking news, and that programming preempted under those circumstances does not have to be rescheduled in order to count toward fulfillment of the station’s children’s programming requirements. See *Extension of the Filing Requirement for Children’s Television Programming Reports*, 15 FCC Rcd 22921, 22928 (2000). Moreover, KGAN states that IBLT’s petition does not account for additional programming that meets children’s programming goals aired by the station, but not specifically included within its claimed core programming (e.g., *Wild America*).

presentation of children's programming improperly includes station identifications and public service announcements, which are not counted as commercial matter. Similarly, it contends that IBLT erroneously assumes that promotional spots aired during children's programming means that the shows are program-length commercials. KGAN also states that it regularly provides information concerning its core children's programming to numerous newspapers and programming guides.²⁸

13. KGAN maintains that IBLT's allegations concerning the station's children's programming are meritless and do not provide a basis to deviate from the Commission's general practice to afford licensees wide latitude in determining whether such programming furthers the educational and informational needs of children 16 years and under.²⁹ It contends that the specific programs to which IBLT complains were included as part of the CBS network's children's educational and informational programming block which is routinely counted as core children's programming by other stations.³⁰ KGAN also rejects IBLT's contention that it made "false certifications" on its children's programming reports simply because the reports were prepared and/or printed before the end of the subject quarter in which they were filed with the Commission and placed in the station's public file.³¹

14. **Discussion.** In the Children's Television Act of 1990, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that commercial television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits.³² Pursuant to this statutory mandate, the Commission adopted section 73.670 of the Commission's rules, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial").³³

15. IBLT's allegations do not raise a substantial and material question of fact as to whether KGAN violated the children's television commercial limitations or otherwise failed to serve the informational and educational needs of children through its overall programming during the subject license period. IBLT's allegations regarding compliance with regularly-scheduled programming and commercial responsibilities are sufficiently addressed by KGAN. In addition, the Children's Television Programming Reports on FCC Form 398 filed during the license term by KGAN refutes many of IBLT's charges. For example, in its report submitted for the filing period ending September 30, 2005, KGAN

²⁸ KGAN notes that the Commission has acknowledged that it is not the responsibility of licensees to ensure that publishers disseminate that information. *Id.*, at 22928-29. Thus, it claims that IBLT's alleged failure to locate a publication containing that information is not adequate evidence of a rule violation.

²⁹ As to IBLT's assertions that the station identifies no programming designed for children 12 to 16 years old, KGAN states that the Commission has no such requirement and has twice specifically declined to adopt such an obligation. *See Policies and Rules Concerning Children's Television Programming*, 11 FCC Rcd 10660 10705 (1996); *Policies and Rules Concerning Children's Television Programming*, 6 FCC Rcd 2111, 2114 (1991).

³⁰ KGAN maintains that one show assists children to learn about honesty and integrity, the importance of education, the consequences of their actions, and the other teaches children critical thinking through word and language puzzles, which satisfies the Commission's broad definition of programming that meets the educational and informational needs of children,

³¹ In this regard, KGAN states that its quarterly children's programming reports are sometimes prepared before the end of the quarter to ensure timely filing. It reports that those reports are reviewed for accuracy before they are electronically filed, and that such a routine business practice does not evidence a rule violation.

³² 47 U.S.C. §§303(a) & (b), 394.

³³ *Childrens Television Programming*, 6 FCC Rcd 2111, 2118, recon. granted in part, 6 FCC Rcd 5093, 5098 (1991).

listed TV Guide, TV Data Technologies, Tribune Media Services, and Kidsnet MediaGuide and News. Moreover, that report clearly sets out the station's core and non-core educational and informational programming presentations, as well as the target child audience age ranges for each program.³⁴ Finally, we find that IBLT's generalized allegations do not raise further issues with respect to this specific licensee's compliance with the Commission's children's programming rules and practices currently in effect.

16. **Programming Allegations.** IBLT alleges that the licensee devotes "virtually no time to in-depth (documentaries or discussion programs) regarding major local issues." It asserts that since becoming involved with the station in 2002, KGAN has replaced its nightly local news broadcast with a regional newscast to achieve cost efficiencies.³⁵ As a result, IBLT maintains that the station has significantly decreased the percentage of local news concerning individual areas within its viewing market.³⁶ It states that the station does not provide as much coverage to "genuine local news" versus nationally distributed programming as does another Cedar Rapids station that is locally owned. It maintains that the performance of other area stations demonstrates that KGAN-TV could do much better.³⁷

17. In this regard, IBLT states that Sinclair, the parent company of a nationwide group of television stations including KGAN, is "the source of many of Petitioners' concerns and complaints."³⁸ It argues that Sinclair's management structure means that decisions are referred to corporate "headquarters" rather than made locally by those familiar with their communities. IBLT maintains that much of the news and commentaries supplied for insertion in the local news programming to its stations nationwide reflects Sinclair's partisan ideology and its willingness to promote its interest without any meaningful presentation of other viewpoints.³⁹

³⁴ See FCC Form 398 for KGAN, filed October 6, 2005.

³⁵ IBLT also claims that KGAN sells so many blocks of time for program-length commercials that it "virtually guarantees there will be an inadequate amount left for local news, public affairs, documentaries or discussion programs." Petition to Deny, at 65. It recognizes that although the Commission does not prohibit program-length commercials *per se*, "KGAN-TV has long since passed that point and has further failed to meet its public interest obligations."

³⁶ Petition to Deny, at 48-53. IBLT asserts that KGAN-TV weather coverage is poor and may place viewers dependent on emergency information in physical danger. In support, it notes that in one instance when a tornado touched down locally, other radio and television stations interrupted regularly scheduled programming to provide information and safety tips, but that KGAN-TV's coverage "consisted of nothing more than a slow-moving news crawl . . ." The petitioner further states that this incident demonstrates that the licensee "is an unreliable source of safety information and shows no signs of a willingness to take its responsibilities in this regard more seriously in the future." *Id.* at 55.

³⁷ Petition to Deny, at 40-44. In this regard, IBLT states that the disparities in the performance of KGAN-TV and the market's only remaining locally owned full-service station should be noted by the Commission "as yet one more bit of evidence of the nationwide consequences for local communities of the Commission's relaxation of its limits on concentration of media ownership." *Id.*, at 41, 55. IBLT also submits select transcripts from an October 5, 2005, Town Meeting in which various speakers urged local media, including in some instances KGAN-TV, to increase coverage of specific local issues. IBLT thus concludes that KGAN-TV's "inadequate coverage" of local issues has had an adverse impact on the ability of local elected officials to communicate with their constituents on local matters of importance.

³⁸ Petition to Deny, at 55.

³⁹ Petition to Deny, at 59. IBLT notes that the KGAN's public file is replete with viewer complaints regarding Sinclair's partisan programming, which "represent the tip of the iceberg of significant evidence" of sufficient public dissatisfaction with the station's programming to support a hearing to review the station's performance. It alleges that Sinclair regularly uses its stations for self-serving purposes to "strategically attack individuals [and] influence elections." *Id.*, at 68. IBLT recognizes that the Fairness Doctrine was repealed by the Commission and that neither

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18. In its opposition pleading, KGAN contends that the complaints lodged by IBLT represent little more than its dislike of the programming it airs, and that its subjective opinion of that programming is simply not a legitimate basis to challenge the station's license renewal. It states that broadcasters are generally required to provide programming responsive to community needs and interests, and are afforded a great deal of discretion, in the exercise of its good-faith judgment, in the scheduling, selection and presentation of such programming. KGAN argues that the Commission will question a broadcaster's programming judgments only if a petitioner meets the high burden of demonstrating that the broadcaster was unreasonable or discriminatory in its selection of issues, and that IBLT has not met that burden. It notes, for example, that IBLT complains that there is too little programming regarding local news, weather and other issues, but there is no FCC requirement to provide such programming, the Commission having eliminated its programming guidelines requiring the provision of specified quantities of non-entertainment programming.⁴⁰ Moreover, it alleges that the criticisms of its programming are little more than the personal observations and opinions of certain individuals based on a limited review of only a fraction of its news programming aired over the full license term, without consideration of other programming aired by the station.⁴¹ KGAN argues that such limited allegations do not set forth a *prima facie* showing necessary to raise a substantial and material question of fact warranting a hearing.

19. **Discussion.** In general, broadcasters have wide discretion in choosing their programming. The First Amendment of the U.S. Constitution and Section 326 of the Act, generally prohibit the Commission from involving itself in the content of specific programs or otherwise engaging in activities that might be regarded as program censorship. Moreover, there is no federal law that requires a broadcaster to present contrasting viewpoints on controversial issues of public importance. Therefore, the Commission can neither prohibit a station licensee from airing a political commentary, nor require that political speech be balanced.⁴²

20. IBLT's allegations do not raise a substantial and material question of fact as to KGAN's programming practices during the subject license term. The vast majority of IBLT's allegations, even if true, indicate no violation of any FCC rule or regulation. We agree with KGAN that its selection and presentation of news, commentary, or local programming, or its choice not to air certain programming or cover certain community events -- decisions with which viewers may disagree -- does not require further

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Sinclair nor KGAN is in apparent violation of Section 315 of the Communications Act. Nevertheless, it argues that this evidences "a violation "KGAN-TV's public interest obligations and an appropriate consideration in the Commission's evaluation of the station's application for license renewal." *Id.*, at 60-61.

⁴⁰ See *Amendment of Section 0.281 of the Commission's Rules*, 59 FCC 2d 491 (1976).

⁴¹ KGAN maintains that there is no merit to IBLT's contentions that it is not responsive to community needs and does not serve the public interest. It states, for example, that the station is the second-ranked station in the market during prime time, and that, as demonstrated by IBLT's own review of its public file, many viewers enjoy its news and other programming on the station. It also notes that a "substantial portion" of its one and one-half hours of daily news programming is focused on local affairs and is locally produced. Opposition, at 23-24. In addition, KGAN states that it has partnered with many local and national organizations to provide on-air coverage and station talent for local events and participates in non-broadcast community events. *Id.*, at 24.

⁴² Prior to 2000, the Commission's political editorial rule, 47 C.F.R. § 73.1930, required that, within 24 hours of its airing of an editorial supporting or opposing a legally qualified candidate, a licensee must transmit the following to other qualified candidates for the same office or to the candidate opposed in the editorial: a notification of the date and time of the editorial; a script or tape of the editorial; and an offer of reasonable opportunity for the candidate to respond over the licensee's facilities. However, pursuant to court order, the Commission repealed the political editorial rule in 2000. *In the Matter of Repeal or Modification of the Personal Attack and Political Editorial Rules*, 15 FCC Rcd. 20697 (2000).

Commission inquiry. Similarly, we reject as a basis for license renewal denial, IBLT's general assertion that the performance of other area stations indicates that this licensee could "do better."

21. A broadcaster is afforded a great deal of discretion in the scheduling, selection and presentation of programming responsive to issues of concern to its community.⁴³ The Commission permits its licensees, in the exercise of good faith, to address such issues by whatever program mix it believes appropriate in order to decide which programming responds to the needs of its community.⁴⁴ The Commission will question a broadcaster's programming judgment only if a petitioner sets forth a substantial and material question whether the licensee was unreasonable or discriminatory in its selection of issues.⁴⁵

22. Further, IBLT's remaining concerns about the quantity and quality of KGAN's news and programming do not raise issues with respect to a licensee's compliance with the rules and practices currently in effect. In this regard, a station is not required to present specific public affairs programming, programming dealing with controversial issues or take on-the-air self-evaluations of its performance in order to meet community needs.⁴⁶ In its *Localism Notice of Inquiry*, the Commission specifically noted that programming not specifically produced in or targeted at a local community may nonetheless serve the needs and interests of the community.⁴⁷ The Commission's localism proceeding will address the "issue of how broadcasters currently are serving the needs of their communities and whether the Commission could or should take action to better ensure that broadcasters air programming to serve their communities' needs and interests."⁴⁸ Nevertheless, we conclude that there are no substantial and material questions of fact concerning KGAN's discharge of its overall programming responsibilities to its community of license.

23. **Public File Allegations.** IBLT maintains that KGAN fails to comply with the Commission's public inspection file requirements and does not properly recognize the essential role played by those requirements. In addition to the specific deficiencies raised with its previous allegations, the petitioner alleges that certain documents required to be kept in the public file were missing or incomplete. According to IBLT, these include: the most recent version of "The Public and Broadcasting;" certain exhibits and attachments to FCC forms; certain business contracts; at least one of the station's required retransmission consent agreements; children's programming certifications; and political programming materials. It therefore asserts that KGAN must come forward with evidence of its compliance with these broadcasting obligations. IBLT further asserts that although it uncovered no record of admonishments or fines for failing its DTV obligations, the Commission should require it disclose any viewer complaints, fines or admonishments received by KGAN and other Sinclair stations.⁴⁹ IBLT thus concludes that

⁴³ See, e.g., *National Broadcasting Co., Inc.*, 14 FCC Rcd 9026, 9031 (1999).

⁴⁴ *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 989 FCC 2d 1076 (1984), *aff'd on recon.*, 104 FCC 2d 358 (10986).

⁴⁵ *License Renewal Applications of Certain Commercial Television Stations Serving Philadelphia, Pennsylvania*, 5 FCC Rcd 3847 3847-48 (1990). See also, *McGraw Hill Broadcasting Co.*, 16 FCC Rcd 22739 (2001).

⁴⁶ *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, *supra*.

⁴⁷ *In the Matter of Broadcast Localism, Notice of Inquiry*, 19 FCC Rcd 12425, 12431 (2004) (subsequent history omitted) ("*Localism Notice of Inquiry*"). See, also, *Revision of Programming and Commercialization Policies, Ascertainment Requirement, and Program Log Requirements For Commercial Television Stations*, 104 FCC 2d 357, 366 (1986).

⁴⁸ *Localism Notice of Inquiry*, 19 FCC Rcd at 12431.

⁴⁹ Petition to Deny, at 18.

KGAN's apparent failure to comply with its public file obligations has revealed evidence of the licensee's dereliction with regard to Commission requirements and calls into question whether KGAN has been completely candid regarding its operation of the station.

24. The petitioner also alleges that KGAN does not provide sufficient access to the public file claiming its chairperson was twice denied access to complete portions of the file. It maintains that the public file is kept in a room that is not accessible to the public, making it "awkward" to request specific materials or unnecessarily burdensome to all concerned to request the entire file at once. It argues that the licensee discourages access to the public file by charging a 25-cent per page fee for copies of documents; that this is excessive and prevented it from copying the entire public file.⁵⁰

25. In its opposition pleading, KGAN claims that its public inspection file is complete and in full compliance with the Commission's Rules. It claims that IBLT's allegations to the contrary are attributable to its own misunderstanding of those obligations or its own mistakes. For example, although IBLT charges that The Public and Broadcasting manual was absent from the public file, KGAN staff confirmed its presence in the file during internal reviews in October 2005 and January 2006. It maintains that other instances of unavailable materials cited by IBLT are baseless, noting that the exhibits to applications electronically filed are not "missing," but were either not required to be filed, were referenced but not included in the electronic filing as is customary, or simply do not exist.⁵¹ Finally in this regard, KGAN states that on October 19, 2005, the station underwent an audit under the alternative FCC-Inspection program conducted by the Iowa Broadcasters Association, and received a certification that its public inspection file was in full compliance with the Commission's rules.

26. KGAN also disputes that it does not provide sufficient access to the public file. It maintains that there is no specific requirement that visitors must be allowed physical access to the room where a station keeps its public file. It maintains that the photocopy rate for documents contained in its public file are comparable to that charged by various government agencies and are not unreasonable. KGAN also states that as IBLT's own submissions demonstrate it was not denied access to the materials it requested.⁵²

27. **Discussion.** Section 73.3526 of the Commission's Rules, 47 C.F.R. § 73.3526, requires that every commercial broadcast applicant, permittee and licensee maintain a public inspection file containing specific types of information related to station operations. Among the materials required for inclusion in the file are the station's authorizations, applications, citizen agreements, ownership reports, political file, quarterly issues/programs lists, letters and e-mails from the public, materials related to FCC investigations or complaints, records concerning commercial limitations, brokerage agreements, and DTV education

⁵⁰ Petition to Deny, at 28-29.

⁵¹ For example, KGAN states that there is no requirement that retransmission agreements or its "traffic" files be placed in the public inspection file as asserted by IBLT. Additionally, it notes that IBLT fails to recognize that the Commission's CDBS system automatically generates references to exhibits for certain application questions regardless of whether or not such an exhibit is included in the filing.

⁵² KGAN acknowledges that there was at least one instance in which it misunderstood the materials IBLT had requested to see, but that those materials were subsequently provided to it. Nevertheless, it is the materials IBLT found during its inspection of the station's public file, including complaint letters from viewers that are the basis of many otherwise unsupported allegations in the Petition to Deny. In this regard, KGAN states that IBLT asserts that the station does not present a balanced view of issues based primarily on complaint letters about specific programs from viewers that it placed in the public file and made available to the petitioner.

reports.⁵³ The purpose of this requirement is to provide the public with timely information at regular intervals throughout the license period.⁵⁴

28. IBLT's allegations do not raise a substantial and material question fact as to KGAN's compliance with its public file obligations during the subject license term. The petitioner's general and largely unsupported claims that certain documentation was unavailable when it reviewed the public file or that the licensee withheld documents from public view are insufficient to warrant further action. Some of the documents of concern to the petitioner are not required to be placed in the public file. In at least one instance, KGAN admitted that it did not produce certain materials because it misunderstood the petitioner's request, but that it subsequently did so when it was able to determine what the petitioner was looking for. Similarly, we find that the petitioner's concerns regarding the completeness of the public file do not raise an issue with regard to a violation of any specific FCC rule or requirement, and are largely belied both by the materials it did obtain as well as the licensee's responsive efforts and participation in a review and certification by the Iowa Broadcasters Association as to its public file compliance.

29. ***General Public Interest and Character Allegations.*** IBLT maintains that it has demonstrated that a question exists as to whether the licensee's overall operation of this station is in the public interest. It reiterates that the licensee's business structure, as part of a large, multi-state corporation focused on stock prices driven by profits and cost cutting, prevents it from interacting with its community in any meaningful manner. In the case of KGAN-TV, it argues that the licensee's performance and effort fail to serve its public, but rather the licensee's corporate parent's own political and economic interests.⁵⁵ IBLT maintains that it has raised substantial and material questions of fact as to whether KGAN has complied with Commission regulations, whether it has been untruthful with the Commission, and whether it will deal honestly with the Commission in the future. IBLT asserts that Sinclair and its principals do not possess the character required of Commission licensees, and that the operation KGAN fails to demonstrate that the public interest will be served by grant of its renewal application. It therefore urges "the Commission to hold the hearing contemplated by Section 309(k)(2) and deny KGAN-TV's application for license renewal."⁵⁶ Alternatively, if the Commission is unwilling to deny the renewal, it should issue a short-term or conditional renewal "that will enable Petitioners to monitor KGAN-TV's compliance with the Commission's conditions, rules and regulations."⁵⁷

30. In its opposition, KGAN states that the petitioner's allegations regarding its performance at the station and as a Commission licensee are baseless and warrant no further consideration. It argues that most of these allegations implicate prior FCC rules and policies no longer in effect, concern unadjudicated non-broadcast related conduct the FCC will not consider in a character context, involve stations other than KGAN, or are related to matters that are simply not Commission-prohibited activities. It again asserts that IBLT's subjective disagreement with its programming and operational decisions is simply no basis for initiating a license renewal hearing, and that the Commission must deny or dismiss the petition, and grant the station's license renewal application.⁵⁸

⁵³ See 47 C.F.R. 73.3526(e).

⁵⁴ Cf. *Letter to Kathleen N. Benfield from Linda B. Blair, Chief, Audio Services Division*, 13 FCC Rcd 4102 (MMB 1997) (citing *License Renewal Applications of Certain Commercial Radio Stations*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (MMB 1993)).

⁵⁵ Petition to Deny, at 66.

⁵⁶ Petition to Deny, at 70.

⁵⁷ *Id.*

⁵⁸ Opposition, at 21-26.

31. **Discussion.** In examining character issues, the Commission concerns itself with matters that are indicative of the licensee's truthfulness and reliability.⁵⁹ Acts of willful misrepresentation to the Commission go to the core of truthfulness; other violations of Commission rules or policies can possibly be predictive of future truthfulness or reliability; and non-FCC misconduct will be considered if those matters have been adjudicated.⁶⁰

32. The allegations raised by IBLT in this case do not raise a substantial and material question of fact as to KGAN's character to be or remain a Commission licensee. Other than IBLT's subjective disagreement, there is simply no existing Commission rule or policy that suggests that this licensee's structure and/or ownership of other broadcast stations disqualifies it from being and remaining a Commission licensee or fulfilling the obligations related thereto. IBLT's concerns about the licensee's DTV conversion efforts do not reflect any significant dereliction on its part, and its efforts in that regard are fairly typical of other licensees. From the material before us, it appears that KGAN followed appropriate procedures in requesting authority to operate at variance from its technical facilities during that process. IBLT's allegations that KGAN may have lied to the Commission are simply too vague and unsupported to be actionable. These allegations, like many contained in IBLT's petition, are based on general beliefs and suppositions rather than specific facts that can be proven or disproven in a hearing. Moreover, Section 73.1015 of the Commission's Rules requires, in pertinent part, that "[n]o applicant . . . shall . . . in any application, pleading, or report or any other written statement submitted to the Commission, make any misrepresentation or willful omission bearing on any matter within the jurisdiction of the Commission." We find, based on an examination of IBLT's petition, that there are no probative allegations presented indicating that KGAN made false certifications or misrepresentations. Finally, despite IBLT's subjective disagreement with the licensee's otherwise compliant operation of the subject station, we cannot conclude that KGAN does not possess the requisite character requiring further examination in a hearing.

III. CONCLUSION AND ORDERING CLAUSES

33. Based on a review of the record as a whole, we conclude that IBLT's allegations – both individually and collectively -- fail to raise a substantial and material question of fact as to whether grant of the above-captioned license renewal application would serve the public interest.

34. Accordingly, IT IS ORDERED that the Petition to Deny Renewal filed on behalf of Iowans For Better Local Television against the above-referenced television broadcast license renewal application for KGAN-TV, Cedar Rapids, Iowa, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁵⁹ See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209 (1986), *recon. granted in part and denied in part*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987), *modified* 5 FCC Rcd 3252 (1990).

⁶⁰ *Id.*, 102 FCC 2d at 1204-05, 1209-10.