



Federal Communications Commission
Washington, D.C. 20554

August 1, 2012

In Reply Refer to:
1800B3-ERC

Mr. Christopher Maxwell
1520 Porter Street
Richmond, VA 23224

Henrico County Schools
c/o Mr. Tre Clark
100 Tech Drive
Highland Springs, VA 23075

In re: **WHCE(FM), Highland Springs, Virginia**
Facility ID No. 26916
Henrico County Schools
File No. BRED-20110621ABB

Informal Objection

Gentlemen:

This letter refers to: the referenced application of Henrico County Schools ("Licensee") to renew its license for noncommercial educational ("NCE") FM Station WHCE(FM), Highland Springs, Virginia (the "Application"); and an Informal Objection ("Objection") to the Application filed by Christopher Maxwell ("Maxwell") on September 1, 2011.¹ For the reasons set forth below, we deny the Objection and grant the Application.

Background. Licensee timely filed its Application on June 21, 2011. In the Objection, Maxwell argues that WHCE(FM)'s renewal should be conditional because of its "habitual inattention to the Commission's requirement for maintaining a modulated carrier."² Maxwell claims that on "at least a dozen occasions" Licensee left its carrier on over weekends with no modulation and no announcement of call letters or location.³ Maxwell requests that the Commission grant with conditions the WHCE(FM) license renewal application.⁴

¹ Maxwell submitted his original objection as a Petition to Deny on September 1, 2011. However, it was procedurally defective as it did not contain an affidavit supporting his allegations. *See* 47 U.S.C. § 309(d). Maxwell subsequently filed a supplement affidavit on September 7, 2011, but the deadline for filing petitions to deny had passed by this time. *See* 47 C.F.R. § 73.3516(e). Thus, we treat Maxwell's objection as an Informal Objection. *See The University of Washington, Letter, 22 FCC Rcd 16737, 16739 (MB 2007)* ("[A] retroactive declaration [or affidavit] is inadequate to cure the failure to provide such an affidavit or declaration with the Petition"). Licensee filed an Opposition ("Opposition") on October 14, 2011.

² Objection at 2.

³ *Id.*

⁴ *Id.* Maxwell requests that Licensee's renewal be conditioned upon its "verifiable commitment" to abide by the Commission's policies. He recommends that the Commission make surprise inspections of WHCE periodically for the next three years, impose fines for future infractions, and initiate an investigation of the causes of WHCE's non-compliance in order to enforce Licensee's commitment.

In its Opposition, Licensee states that it has never knowingly left the station carrier on without modulation and that it has taken steps to avoid weather-related outages and technical problems, which have occurred in the past.⁵ Further, the Opposition states that the Objection does not provide specific examples of the alleged violations to which Licensee can respond.

Discussion. Informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act"), 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 Act,⁶ 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 Commission's Rules (the "Rules"); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁷ 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."⁸

We have examined the Objection and find that it does not raise a substantial and material question of fact calling for further inquiry or otherwise persuade us that the unconditional grant of the WHCE(FM) renewal application would contravene the public interest, convenience, and necessity. Maxwell fails to provide any specific dates, times, or factual support for the alleged violations. Additionally, aside from stating that he "observed" that the carrier was on without modulation, Maxwell does not offer any explanation of how he was aware that only the carrier was being transmitted, and his unsupported claim that the station transmitted an unmodulated carrier "at least a dozen" times is insufficiently precise to warrant further inquiry. We therefore will deny the Objection.

Conclusion and Ordering Clauses. We have evaluated the WHCE(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

⁵ Licensee certifies in the Application that, notwithstanding past weather-related outages, the Station has not been silent (operating for less than its prescribed minimum operating hours) for any period of more than 30 days. Application, Section III, Item 4. Maxwell does not contradict this certification. Additionally, NCE stations licensed to educational institutions are not required to operate on Saturday or Sunday, or observe the Commission's minimum operating schedule requirements during school vacation or recess periods. 47 C.F.R. § 73.561(a).

⁶ 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).

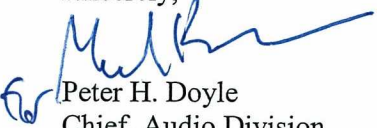
⁷ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Act or the Rules; and there have been no other violations which, taken together, constitute a pattern of abuse.

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,⁹ the Informal Objection filed on September 1, 2011 by Christopher Maxwell IS DENIED, and the application (BRED-20110621ABB) of Henrico County Schools, for renewal of its license for Station WHCE(FM), Highland Springs, Virginia, IS GRANTED.

Sincerely,


Peter H. Doyle
Chief, Audio Division
Media Bureau

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