



Federal Communications Commission  
Washington, D.C. 20554

October 12, 2012

In Reply Refer to:  
1800B3-VM

Mr. Jacob E. Lippman  
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In re: WPBI(FM), West Palm Beach, FL  
Facility ID No. 58363  
Classical South Florida, Inc.  
File No. BRED-20111003ALA

Application for Renewal of License

**Informal Objection**

Dear Counsel and Mr. Lippman:

This letter refers to: (1) the referenced application (“Application”) of Classical South Florida, Inc. (“CSF”), to renew the license of radio station WPBI(FM), West Palm Beach, Florida (“Station”) and (2) the December 21, 2011, Informal Objection (“Objection”) filed against the Application by Mr. Lippman.<sup>1</sup> Mr. Lippman argues that the Application should be denied because (1) the Station’s format change from public news to classical music demonstrates a “disregard” for the public interest and fails to serve the needs of the local community;<sup>2</sup> (2) CSF has violated Section 73.3527 of the Commission’s Rules (“Rules”);<sup>3</sup> and (3) retransmission of the Station’s HD2 signal by a translator is a “misuse” of the Rules.<sup>4</sup> For the reasons set forth below, we deny the Objection and grant the Application.

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<sup>1</sup> Mr. Lippman also filed four Supplements to his Objection, on February 1, 2012, February 2, 2012 (“February Complaint”), February 6, 2012, and July 3, 2012, respectively. CSF filed an Opposition on February 13, 2012, to which Mr. Lippman replied on February 27, 2012.

<sup>2</sup> Objection at 4.

<sup>3</sup> Objection at 2.

<sup>4</sup> February Complaint at 3.

**Discussion.** In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k)(1) of the Communications Act of 1934, as amended (the “Act”). That section provides that 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, we are to grant the renewal application.<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> For the reasons set forth below, we will deny the Objection and grant the Application.

Mr. Lippman first objects to the Station’s classical music format, maintaining that CSF promised Station listeners that it would continue its public news format when it acquired the Station from Barry Communications, Inc., in 2011, but failed to do so.<sup>7</sup> As such, he maintains that CSF has “taken valuable news programming away from [area residents].”<sup>8</sup> It is well-settled that the Commission does not scrutinize or regulate programming format. In 1976, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Act, would not benefit the public, would deter innovation, and would impose substantial administrative burdens on the Commission.<sup>9</sup> The Supreme Court of the United States has upheld this policy.<sup>10</sup> In doing so, the Court accepted the Commission’s findings that “the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . .” and that a change in programming is not a material factor that should be considered by the Commission in ruling on applications for renewal.<sup>11</sup> This is particularly so with regard to the programming decisions of NCE broadcast stations, based on the Commission’s historically “limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming.”<sup>12</sup>

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<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> Objection at 4. See FCC File No. BALED-20101228AAS (“Assignment Application”), granted on May 16, 2011, consummated on May 25, 2011. Mr. Lippman also argues that CSF “misled” the public about its plans for WPBI. Objection at However, the Assignment Application at Exhibit E clearly states that “CSF plans to broadcast classical music programming over WXEL.” Thus, we will not consider this issue further.

<sup>8</sup> Objection at 5.

<sup>9</sup> See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC 2d 858, 865-66 (1976), *recon. denied*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev’d sub nom. WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev’d*, 450 U.S. 582 (1981)

<sup>10</sup> *FCC v. WNCN Listener’s Guild*, 450 U.S. 582 (1981).

<sup>11</sup> *Id.* at 585.

<sup>12</sup> *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 FCC 2d 716, 732 (1981). See also *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) (licensees have broad discretion over programming decisions).

Mr. Lippman next asserts that the CSF violated Section 73.3527 of the Rules because the Station's prepared issues/programs lists fail to identify properly any "issues."<sup>13</sup> The Commission grants broadcast licensees "broad discretion to choose, in good faith, which issues are of concern to the community and to choose the best way to address those issues."<sup>14</sup> Section 73.3527 requires licensees every quarter to place in their public inspection files list of programs that addressed community issues during the preceding three-month period, but does not impose any specific format for the presentation of the list.<sup>15</sup> We have reviewed the Station's issues/programs lists that were attached as an exhibit to Mr. Lippman's Objection, and find that they are acceptable under Section 73.3527. While they do not contain a section or heading entitled "Issues," the lists do document treatment of the "issues" of local arts programming, local community affairs, local events, news weather and emergency communications. CSF's issues/programs lists also show the specific programs, delineated by date, time, duration and title, in which issues were addressed. Thus, the information provided in the quarterly lists is sufficient to fulfill the Commission's goal of giving the public "substantial and sufficient information about a station's issue responsive programming."<sup>16</sup>

Finally, Mr. Lippman objects to CSF's transmission of the Station's HD subchannel containing the WPBI News service on W270AD, maintaining that translators should not be used for this purpose.<sup>17</sup> However, the Commission has specifically held that there is no prohibition on the use of FM translator stations to re-broadcast a station's digital programming stream.<sup>18</sup> Accordingly, it is within the Rules for the Station to rebroadcast the WPBI News service via its commonly-owned FM translator in West Palm Beach.

**Conclusion.** We have evaluated the Station's license renewal application pursuant to Section 309(k) of the Act,<sup>19</sup> 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.

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<sup>13</sup> Objection at 2.

<sup>14</sup> See *Mr. Robert Schore*, Letter, 23 FCC Rcd 736, 737 (MB 2008).

<sup>15</sup> See 47 C.F.R. § 73.3527(e)(8)(i).

<sup>16</sup> *Id.*

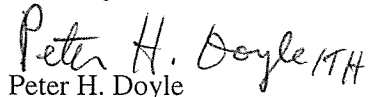
<sup>17</sup> February Complaint at 2.

<sup>18</sup> See *Alan Bishop*, Letter, 25 FCC Rcd 4691, 4692 (MB 2010) (noting that the Commission allows FM translator stations to re-broadcast the primary station's FM2 or FM3 digital programming stream).

<sup>19</sup> 47 U.S.C. § 309(k).

In light of the above discussion, and pursuant to Section 309(k) of the Act, and Sections 0.61 and 0.283 of the Rules,<sup>20</sup> the Informal Objection filed on December 21, 2011, by Jacob E. Lippman, IS DENIED, and the application (File No. BRED-20111003ALA) of Classical South Florida, Inc., for renewal of license for WPBI(FM) IS GRANTED.

Sincerely,

Handwritten signature of Peter H. Doyle in black ink, with the initials "PH" at the end.

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>20</sup> 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.