



Federal Communications Commission
Washington, D.C. 20554

March 25, 2013

In Reply Refer to: 1800B-IB

Kenneth O. Harden, President
Southern Educational Media Institute Association
102 NE 10th Ave., Suite 10
Gainesville, FL 32601

Stephen Thomas Yelverton, Esq.
Counsel to Great God Gospel and Education Station, Inc.
601 Pennsylvania Ave., N.W., Suite 900 South
Washington, DC 20004

In re: WITG-LP, Ocala, FL
Facility ID No. 131370
Great God Gospel and Education Station, Inc.
File No. BRL-20110923AFB

Application for Renewal of License
Petition to Deny

Dear Messrs. Harden and Yelverton:

This letter refers to: (1) the above-referenced application of Great God Gospel and Education Station, Inc. ("GGGES") to renew its license for Low Power FM ("LPFM") Station WITG-LP, Ocala, Florida; (2) a December 21, 2011 Petition to Deny ("Petition") filed against that application by Southern Educational Media Institute Association ("SEMIA"); and (3) supplemental and responsive filings.¹ SEMIA, GGGES, and two others were once mutually exclusive applicants seeking to build a new LPFM station at Ocala. In 2003, the Media Bureau ("Bureau") granted GGGES's application to construct WITG-LP and dismissed those of SEMIA and the others pursuant to a joint settlement agreement.² SEMIA now argues that the Bureau should not renew the WITG-LP license because GGGES obtained the station's initial authorization through "deception" by unilaterally altering the Agreement submitted to the Commission. SEMIA also argues that GGGES failed to honor a timesharing arrangement with SEMIA that was part of the Agreement that the Commission approved. SEMIA previously raised virtually identical contentions, which we dismissed, in connection with its request for reconsideration of the grant of the WITG-LP construction permit. For the reasons set forth below, we deny the Petition and grant the renewal application.

¹ SEMIA filed a Declaration from its President on December 29, 2011 and "additional evidence" on January 3, 2012. GGGES filed an Opposition on January 20, 2012 and a Supplement to Opposition on February 21, 2012. SEMIA filed a Reply on March 12, 2012.

² Motion Seeking FCC Approval of Voluntary Time-Sharing Settlement Agreements and Motion to Dismiss (filed June 13, 2003) (the "Agreement").

License Renewal Standard. A petition to deny a license renewal application 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.³ Specifically, Section 309(k)(1) provides that we are to grant the license renewal application if, upon consideration of the application and pleadings, we find that during the preceding license term: (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.⁴ 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.”⁵

Background. The allegations before us relate to the Agreement of June 13, 2003 which bore the signature of SEMIA’s principal. On July 14, 2003, the Bureau dismissed SEMIA’s application pursuant to the Agreement. SEMIA did not appeal that action. After the October 23, 2003 grant of GGGES’s application for a construction permit, however, SEMIA filed a timely Petition for Reconsideration (“Reconsideration Request”). SEMIA argued therein that GGGES had unilaterally altered the Agreement without SEMIA’s knowledge or consent. According to SEMIA, the document that its principal actually signed differed from that which GGGES submitted to the Commission and did not call for dismissal of competing applications in favor of the survival of GGGES’s application. Rather, SEMIA argued, the original document simply provided that the parties would share time.

The Bureau sent a letter of inquiry to GGGES on December 13, 2005, indicating that SEMIA’s allegations of document tampering potentially raised “serious questions” concerning whether GGGES possessed the qualifications to be a Commission permittee and whether to grant GGGES’s then-pending application for a license to cover its construction permit.⁶ GGGES responded to the inquiry on January 12, 2006, and additional rounds of pleadings followed. On April 11, 2006, SEMIA filed a request to withdraw its Reconsideration Request, but nevertheless asked us to grant a “shared license” to SEMIA pursuant to its understanding of the Agreement. The Bureau dismissed SEMIA’s Reconsideration Request on May 26, 2006, as SEMIA had requested. The Bureau stated that the dismissal was consistent with the public interest and that it was satisfied that there had been no material error in grant of the

³ See *Visionary Related Entertainment, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 1392, 1395 (MB 2012), citing *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 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).

⁴ 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).

⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁶ See Letter to James Trapani, Director, GGGES, Ref. 1800B3-SS (MB Dec. 13, 2005) at 1.

construction permit to GGGES.⁷ The Bureau further stated that SEMIA's request for a construction permit on a time-sharing basis was impermissible because SEMIA had no active application on file, the July 14, 2003 dismissal of SEMIA's application having long become final and unreviewable.⁸ The Bureau nevertheless observed that SEMIA and GGGES clearly disagreed on how to interpret the terms of the Agreement.⁹ Therefore, the Bureau informed the parties that the Commission is not the appropriate forum for resolution of such private contractual disputes and that the parties, if they were so inclined, could seek redress in a court of competent jurisdiction.¹⁰ On July 12, 2006, the Bureau granted GGGES's application to license the constructed WITG-LP facilities. GGGES has operated WITG-LP since that time and filed an application to renew the license on September 23, 2011, in preparation for the February 1, 2012 expiration of all radio licenses in Florida.

Discussion. The facts and documents supporting SEMIA's Petition are virtually identical to those it submitted to the Bureau nine years ago.¹¹ SEMIA's Petition, though captioned as an initial petition to deny a 2011 license renewal application, essentially is a repetitive (and untimely) petition for reconsideration of the Bureau's 2006 dismissal of SEMIA's Reconsideration Request. The Commission has delegated to the Bureau the authority to dismiss or deny repetitious petitions for reconsideration of staff level actions, including any petition relating to an order for which reconsideration has previously been denied on similar grounds.¹² We shall deny SEMIA's Petition as repetitious. We also provide the following brief explanation, which we believe will be helpful given that SEMIA is not represented by counsel and raises what it considers to be disqualifying conduct by a Commission licensee.

⁷ See Letter to James Trapani, Director, GGGES, Ref. 1800B3-SS (MB May 26, 2006) at 2. ("*Dismissal Letter*").

⁸ *Id.* at 3.

⁹ SEMIA believed that the Agreement required a "shared license" while GGGES believed that GGGES would be the sole licensee and make time on its station available to others. The parties also disagreed on whether SEMIA's unincorporated status invalidated the Agreement under Florida law.

¹⁰ *Dismissal Letter* at 3 citing *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR2d 773, 778 (1976).

¹¹ Allegations of conduct occurring nine years previously would usually be time-barred in a license renewal proceeding, which evaluates a licensee's performance during the prior eight-year license term. See 47 U.S.C. § 309(k)(1) (consideration of rule violations and service "during the preceding term of its license"); See generally 47 U.S.C. § 503(b)(6)(a)(ii) (monetary forfeitures for rule violations time-barred after one year unless the violation occurred during the most recent license term). However, the Commission has said that conduct affecting an applicant's basic character qualifications generally remains relevant for ten years. See *Policy Regarding Character Qualifications In Broadcast Licensing*, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1229 (1985) (subsequent history omitted); Application for Renewal of Broadcast Station License, FCC Form 303-S, Instructions, Section II at 6-7 (applicants should report rule violations within the past license term but adverse character findings within ten year period). Accordingly, SEMIA's allegation that GGGES made misrepresentations to the Commission in 2003 would not be barred solely because the alleged conduct pre-dates the July 12, 2006 issuance of the WITG-LP license. We reject GGGES's suggestion that SEMIA's allegations date to June 2001 (beyond the ten-year character limit). The 2001 date is that of GGGES's original application, not of its alleged misconduct.

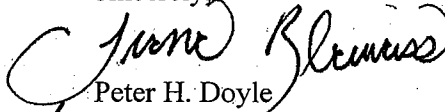
¹² See *Amendment of the Commission's Part 1 Rules of Practice and Procedure*, Report and Order, 26 FCC Rcd 1594, 1606 (2011); 47 C.F.R. § 1.106 (p)(8).

The Petition's repetitive nature is fatal because we previously found GGGES qualified on this same factual record. SEMIA submits no new information that might support a different conclusion, but merely re-frames its prior contentions.¹³ As the Bureau noted previously, a court rather than the Commission would be the proper venue to interpret the Agreement and any timesharing rights/obligations of the parties thereunder.¹⁴ SEMIA presents no evidence of any such court adjudication. The Bureau previously conducted an inquiry into SEMIA's charge that GGGES tampered with documents submitted to the Commission and developed a full record. Although SEMIA's request to withdraw its Reconsideration Request made it unnecessary for us to resolve this issue, we nevertheless informed the parties of our conclusions that we had not erred in granting GGGES's construction permit and that we had found dismissal of SEMIA's pleading consistent with the public interest.¹⁵ Had the record as a whole left unresolved any question of a substantial and material nature concerning the qualifications of GGGES to be a licensee, our practice would have been to pursue that matter despite SEMIA's request to withdraw.¹⁶

Conclusion. We have evaluated the WITG-LP renewal application pursuant to Section 309(k) of the Act; and find no matter to disqualify the licensee. 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.

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,¹⁷ the Petition to Deny filed on December 21, 2011, by Southern Educational Media Institute Association IS DENIED, and the application (File No. BRL -20110923AFB) of Great God Gospel and Education Station, Inc. for renewal of its license for Station WITG-LP IS GRANTED.

Sincerely,


Peter H. Doyle
for Chief, Audio Division
Media Bureau

¹³ For example, SEMIA's 2003 argument that GGGES was entitled to receive only a "shared authorization" becomes, in 2011, a claim that GGGES's failure to share time with SEMIA during the license term "show[s] that GGGES is an unreliable licensee." Petition at 2.

¹⁴ See *supra* n10.

¹⁵ *Dismissal Letter* at 2.

¹⁶ In accordance with longstanding practice, when a petition raises serious allegations we consider those matters to ensure that the public interest will be served, notwithstanding the fact that the petitioner seeks to withdraw its petition. See *KEGG Communications, Inc.*, 20 FCC Rcd 5768 (2005); *Quincy D. Jones*, 11 FCC Rcd 2481, 2484 (1995); *Stockholders of CBS Inc.*, 11 FCC Rcd 3733, 3741 (1995); and *BBC License Subsidiary L.P. (WLUK-TV)*, 10 FCC Rcd 7926 (1995) (all citing *Booth American Company*, 58 FCC 2d 553, 554 (1976)).

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