



Federal Communications Commission  
Washington, D.C. 20554

June 6, 2013

*In Reply Refer To:*  
1800B3-SJW

Rev. Carel Two-Eagle  
Church of the Helping Hand, Inc.  
Indian Maid Products Incorporated  
P.O. Box 233  
Washburn, ND 58577

Christopher S. Wilson, Esq.  
North Dakota State University  
P.O. Box 6050  
Fargo, ND 58108

In re: KDSU(FM), Fargo, North Dakota  
North Dakota State University  
Facility ID No. 49213  
File No. BRED-20121130AMS

**Informal Objection**

Dear Rev. Two-Eagle and Mr. Wilson:

This letter refers to: (1) the referenced application ("Renewal Application") of North Dakota State University ("Licensee") to renew its license for KDSU(FM), Fargo, North Dakota ("Station") and (2) the February 26, 2013, Informal Objection ("Objection") to that application filed by Reverend Carel Two-Eagle ("Rev. Two-Eagle").<sup>1</sup> For the reasons set forth below, we deny the Objection and grant the Renewal Application.

**Background.** Licensee timely filed the Renewal Application on November 30, 2012. On February 26, 2013, Rev. Two-Eagle filed the Objection, arguing that the failure of Prairie Public Broadcasting ("Prairie Public"), which provides programming for the Station, to correctly note her surname demonstrated Prairie Public's unwillingness to serve the public interest. Originally, Rev. Two-Eagle had decided during a fundraising drive to become a member of Prairie Public.<sup>2</sup> She states that she called to sign up and carefully spelled and confirmed the spelling of her name with a volunteer.<sup>3</sup> After receiving a bill in the mail with her name misspelled, Rev. Two-Eagle wrote three separate letters to Prairie Public demanding that they correct it and show Native Americans greater respect.<sup>4</sup> Having neither received any response nor seen any change in spelling, she urges the Commission to require that Prairie Public make "appropriate changes."<sup>5</sup>

**Discussion.** Informal objections to license renewal applications must, pursuant to Section 309(e) of the Communications Act of 1934, as amended ("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

<sup>1</sup> Licensee did not file an Opposition to Informal Objection.

<sup>2</sup> Informal Objection at 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* Rev. Two-Eagle states that she wrote each letter after receiving a bill with the misspelled name, "Two-EHELE."

<sup>5</sup> *Id.* at 2.

be *prima facie* inconsistent with Section 309(k) of the Act,<sup>6</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>7</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>8</sup>

Rev. Two-Eagle’s objections concern matters relating to Prairie Public, which is not a Commission licensee and over which the Commission has no jurisdiction.<sup>9</sup> In her Objection, Rev. Two-Eagle argues that, because Prairie Public’s staff and volunteers have continued to misspell her name, they have exhibited a “miserable, bigoted attitude.”<sup>10</sup> But Rev. Two-Eagle incorrectly attributes the actions of Prairie Public’s staff and volunteers to the Licensee. The Licensee and Prairie Public are, in fact, separate entities. Thus, the Objection does not raise a substantial and material question of fact as to whether the Licensee’s Station has operated in the public interest.

Moreover, even if we were to consider Rev. Two-Eagle’s allegations as against the Licensee, rather than Prairie Public, we would also deny the Objection. We take very seriously evidence of bigotry, especially in a licensee’s programming.<sup>11</sup> Here, however, Prairie Public’s actions, even viewed in an unfavorable light, would not amount to clear evidence of bigotry.<sup>12</sup> “[M]ere expression of opinion or belief by a broadcast applicant or its principals is not a proper matter for Commission inquiry. . . . [O]nly evidence of past conduct, not mere expression of belief, is relevant in such an inquiry.”<sup>13</sup> Nor is there any allegation of bigotry in the Station’s programming. Accordingly, Rev. Two-Eagle’s poor experience with

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<sup>6</sup> See, e.g., *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).

<sup>7</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>8</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>9</sup> See *KRPS(FM), Pittsburg, Kansas*, Letter, 22 FCC Rcd 12983, 12984 (MB 2007) (deciding that certain alleged actions of National Public Radio were wholly outside the Commission’s jurisdiction, because National Public Radio only provided programming for and was not the licensee of the station).

<sup>10</sup> Informal Objection at 2.

<sup>11</sup> See *Pillar of Fire*, 99 FCC 2d 1256, 1273 (Rev. Bd. 1984) (considering whether there is plain evidence of bigotry on the record), *aff’d*, 2 FCC Rcd 519 (1987).

<sup>12</sup> See *United Broadcasting Co.*, 59 FCC 2d 1412, 1417-19 (Rev. Bd. 1976) (deciding that, even with multiple affidavits supporting the petitioner’s argument, the Review Board would not confront the allegations of bigotry and racial discrimination); *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251-52 (1978) (emphasizing that the Commission could not rely on the subjective view of a single person or group in determining what constitutes “good” programming).


<sup>13</sup> *United Broadcasting Co.*, 59 FCC 2d at 1418 (internal quotation marks and citations omitted).

Prairie Public's staff would not raise a substantial and material question of fact as to whether the Station has operated in the public interest.<sup>14</sup>

**Conclusion/Actions.** 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 to grant the Renewal Application would contravene the public interest, convenience, and necessity. Accordingly, we deny the Informal Objection. Moreover, we have evaluated the 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.

Accordingly, IT IS ORDERED that the Informal Objection filed on February 26, 2013 by Reverend Carel Two-Eagle IS DENIED, and the application (File No. BRED-20121130AMS) of North Dakota State University for renewal of its license for Station KDSU(FM), Fargo, North Dakota, IS GRANTED.

Sincerely,

  
Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>14</sup> See *id.* at 1417-19; 47 U.S.C. § 309(e).