



Federal Communications Commission  
Washington, D.C. 20554

November 6, 2013

*In Reply Refer to:* 1800B3-RSS

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**In re:** WUOL-FM, Louisville, KY  
Facility ID No. 69113  
Kentucky Public Radio, Inc.  
File No. BRED-20120321AAD

WFPK(FM), Louisville, KY  
Facility ID No. 38621  
Kentucky Public Radio, Inc.  
File No. BRED-20120321AAE

WFPL(FM), Louisville, KY  
Facility ID No. 4258  
Kentucky Public Radio, Inc.  
File No. BRED-20120321AAC

**Applications for Renewal of License  
Informal Objection**

Dear Messrs. Gettleman, Gray, and Persh:

This letter refers to: (1) the above-referenced applications of Kentucky Public Radio, Inc. (d/b/a Louisville Public Media) ("LPM") to renew the noncommercial educational ("NCE") licenses for Stations WUOL-FM, WFPK(FM), and WFPL(FM), all licensed to Louisville, Kentucky; and (2) the June 26, 2012, Informal Objection ("Objection") to those applications filed by Lawrence Gettleman ("Gettleman"), a former LPM community advisory board volunteer member.<sup>1</sup> In his Objection,

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<sup>1</sup> On August 1, 2012, LPM filed a Reply to Informal Objection ("Reply").

Gettleman raises concerns about LPM’s failure to comply with certain provisions of the Corporation for Public Broadcasting’s (“CPB”) community advisory board requirements, particularly those that require a community advisory board’s independence from station staff and governing board.<sup>2</sup> For the reasons set forth below, we deny the Objection and grant LPM’s license renewal applications for Stations WUOL-FM and WFPK(FM).<sup>3</sup>

**Background.** Gettleman is a former member and chair of LPM’s community advisory board. LPM receives funding from CPB and is thereby subject to CPB requirements attached to receipt of those funds. Gettleman’s sole allegation is that LPM failed to comply with CPB’s requirement that its member stations maintain community advisory boards that are independent from the staff and governing boards of the stations which they serve. Gettleman claims that LPM violated this requirement when it “disbanded the duly constituted and self-governing [community advisory board],” on which he had served.<sup>4</sup> Gettleman further alleges that LPM demonstrated a “mean spirit” toward the community advisory board;<sup>5</sup> that the community advisory board received “very little cooperation” from LPM staff;<sup>6</sup> and, that LPM’s proffered reason for dissolving the community advisory board—that it lacked diversity— was offensive, a “specious and a personal smear on our integrity.”<sup>7</sup> As a result of LPM’s treatment of the community advisory board, Gettleman concludes that LPM “no longer deserves to receive its CPB grant.”<sup>8</sup> In its Reply, LPM submits that the violations alleged in the Objection are outside of the Commission’s purview because the Commission defers to the CPB with respect to compliance with its own regulations.<sup>9</sup> Furthermore, LPM argues that the Objection raises no substantial and material question of fact which would indicate that renewal of the Station licenses would be contrary to the public interest, convenience, and necessity.<sup>10</sup>

**Discussion.** An Informal Objection to 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.<sup>11</sup> Specifically, Section 309(k)(1) provides that we are to grant license renewal applications if, upon consideration of the application(s) and pleadings, we find that: (1) the station has served the public interest, convenience, and

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

<sup>3</sup> WFPL(FM)’s Renewal Application is currently subject to an unrelated administrative hold.

<sup>4</sup> Objection at 1.

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

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1.

<sup>9</sup> Reply at 1.

<sup>10</sup> *Id.*

<sup>11</sup> 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).

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>12</sup> If, however, a licensee fails to meet this standard, the Commission may deny its application(s) – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the applications “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>13</sup>

It is well settled that CPB has the authority and exclusive responsibility for the distribution of its funds pursuant to Section 396 of the Act,<sup>14</sup> and that the Commission does not consider a licensee’s compliance with that section in its licensing proceedings.<sup>15</sup> It is not even required “to consider allegations of violations of the Public Broadcasting Act’s provisions in its public interest determinations.”<sup>16</sup> As LPM correctly notes, the Commission defers to the CPB on the issue of compliance with its own regulations. We have previously explained, “CPB has the authority and responsibility for the distribution of funds under Section 396(k), and because it has taken steps to implement compliance criteria, the Commission defers to that agency in regard to compliance with its regulations.”<sup>17</sup> Even in the absence of specific CPB enforcement action, the Commission does not provide substitute or auxiliary enforcement. Indeed, the D.C. Circuit Court has clarified that the Commission is under no “duty to act as a backup enforcer” of “the Public Broadcasting Act.”<sup>18</sup>

Thus, inasmuch as the Objection questions LPM’s qualifications for CPB funding, or its eligibility for the continuing receipt of such funding, it is misplaced. Regardless of the merit of the allegations set forth in the Objection, the Commission will not consider LPM’s compliance with CPB requirements in the determination of its applications for license renewal. As such, the Objection “does not raise a substantial and material question of fact as to whether renewal...would serve the public interest, convenience and necessity.”<sup>19</sup>

**Conclusion.** We have evaluated LPM’s renewal applications for Stations WUOL-FM and WFPK(FM) pursuant to Section 309(k) of the Act, and we find that the stations have 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>12</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>13</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>14</sup> 47 U.S.C. § 396.

<sup>15</sup> See *WQED Pittsburgh*, Memorandum Opinion and Order, 15 FCC Rcd 202, 206 (1999) (citing *KQED, Inc.*, 88 FCC 2d 1159, 1164-65, (1982) (“*KQED*”), *aff’d*, *California Public Broadcasting Forum v. FCC*, 752 F.2d 670 (D.C. Cir. 1985) (“*California Pub. Broad. Forum*”).

<sup>16</sup> *California Pub. Broad. Forum*, 752 F.2d at 681-82.

<sup>17</sup> *KQED*, 88 FCC 2d at 1165 (citing *Mississippi Authority for Educational Television*, 79 FCC 2d 577 (1980); *Community Television of Southern California*, 72 FCC 2d 349 (1979)).


<sup>18</sup> *California Pub. Broad. Forum*, 752 F.2d at 681-82.

<sup>19</sup> See *supra* note 17.

In light of the foregoing, 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,<sup>20</sup> the Informal Objection filed on June 26, 2012, by Lawrence Gettleman IS DENIED, and the applications (File Nos. BRED-20120321AAD and BRED-20120321AAE) of Kentucky Public Radio, Inc. for renewal of its licenses for Stations WUOL-FM and WFPK(FM) ARE GRANTED.

Sincerely,



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.