



Federal Communications Commission
Washington, D.C. 20554

December 16, 2013

Joseph Allen O'Bryan, Jr.
[No address provided]

Belo Kentucky, Inc.
c/o Kathleen A. Kirby, Esq.
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

Re: WHAS-TV, Louisville, KY, ID No. 32327,
File No. BRC DT-20130329AIU.

Dear Sir and Madam:

This letter is in reference to the above-captioned application for renewal of the license of digital television station WHAS-TV, Louisville, Kentucky. Joseph Allen O'Bryan, Jr. (O'Bryan) filed a petition to deny the application. Belo Kentucky, Inc. (Belo), the licensee of WHAS-TV, did not file a response. For the reasons stated below, we deny the petition and grant the application.

In his petition, O'Bryan states that he has been censored by the Kentucky Press Association and that WHAS-TV, "has failed to serve the best interests of the public, by withholding any media disclosure" of said censorship. He further states that local officials "failed to respond" to his complaint and that, as a result, he is "attempting to enlist Federal Forces in order to get some action."

The Commission applies a two-step analysis to a petition to deny under the public interest standard. First, it must determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.¹ This first step "is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the [petition] were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established."² If the petition meets this first step, the Commission then must determine whether "on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice," the petitioner has raised a substantial and material question of fact as to whether the application would serve the public interest.³

¹ 47 U.S.C. § 309(d)(1); *Astroline Communications Co., Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*).

² *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

³ *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(e).

The First Amendment to the Constitution of the United States⁴ and Section 326 of the Communications Act of 1934, as amended,⁵ prohibit Commission actions that have the effect of improperly interfering with the programming decisions of licensees. Journalistic and editorial discretion in the presentation of news and public information lies at the heart of the constitutional guarantee of freedom of the press, and the Commission has little authority to review such news judgments. Indeed, the Commission has long held that “[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter left to the licensee’s good faith discretion.”⁶ O’Bryan has failed to provide evidence that Belo exercised its editorial discretion in bad faith.

In light of the above discussion, we find that the applicant is fully qualified and conclude that the grant of the application would serve the public interest.

ACCORDINGLY, IT IS ORDERED That the petition to deny filed by Joseph Allen O’Bryan, Jr. is DENIED. IT IS FURTHER ORDERED That the application for the renewal of the license of WHAS-TV, Louisville, Kentucky (File No. BRC DT-20130329AIU) IS GRANTED.

Sincerely,



David J. Brown
Associate Chief, Video Division
Media Bureau

⁴ U.S. Const., amend. I.

⁵ 47 U.S.C. § 326.

⁶ See, e.g., *National Broadcasting Company v. FCC*, 515 F.2d 1101, 1112-1113, 1119-1120, 1172 (1974), *vacated as moot, id.* At 1180, *cert. denied*, 424 U.S. 910 (1976); *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 124 (1972); *Hunger in America*, 20 FCC 2d 143, 150-51 (1969).