



Federal Communications Commission
Washington, D.C. 20554

January 16, 2015

In Reply Refer to:
1800B3-EAB

Mr. Tom Dwyer
530 Southeast Tenino Street
Portland, OR 97202

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In re: **Citicasters Licenses, Inc.**
Station KPOJ(AM), Portland, Oregon
Facility ID No. 53069
File No. BR-20130930BBC

Petition to Deny

Dear Mr. Dwyer and Counsel:

We have before us: (1) the referenced application of Citicasters Licenses, Inc., a license subsidiary of Clear Channel Communications, Inc. (collectively "Clear Channel") to renew its license ("Renewal Application") for Station KPOJ(AM), Portland, Oregon ("KPOJ"); and (2) the Petition to Deny the Renewal Application ("Petition") filed on December 31, 2013, by Mr. Tom Dwyer ("Dwyer"). For the reasons discussed below, we treat the Petition as an informal objection, deny the Petition, and grant the Renewal Application.

Background. Clear Channel timely filed its Renewal Application on September 30, 2013. In the Petition, Dwyer claims that "[b]y switching to Sports . . . and dropping its Progressive talk format . . . KPOJ abrogated its responsibility to serve the public."¹ In support of the Petition, Dwyer submitted 338 electronic signatures with accompanying comments, many of which express frustration with the perceived overabundance of sports and politically conservative programming in the Portland market, and lament the loss of Portland's only progressive format station.² According to Dwyer, KPOJ "manifestly failed" to "act in the public interest by serving the informational needs of that public," and that "[w]ithout a balanced examination of critical societal issues our democracy can't continue."³

On January 23, 2014, Clear Channel filed its Opposition, claiming that "the Petition ignores long-standing Commission precedent affirming the programming discretion of broadcast licensees," and that

¹ Petition at 1.

² See, e.g., *id.* at 6 ("I used to listen to KPOJ faithfully when it was a progressive radio station. I miss those days. What Oregon does NOT need is another sports talk show . . ."); *id.* at 8 ("[T]he Portland area has two all-sports radio stations. That public need is being served by those two stations. There are no progressive programming radio stations in the Portland area. That area of interest is not being served."); *id.* at 10 ("There is NO Other[sic] place to listen to the opinions and arguements[sic] that KPOJ provided. We have right wing radio everywhere, the other side should have a place to publicise[sic] issues important to them as well!").

³ *Id.* at 1.

the Petition's allegation "fails to establish a *prima facie* case that renewal of KPOJ's license would be inconsistent with Section 309(k) [of the Communications Act of 1934, as amended ("Act")]."⁴

Discussion. Procedural Matters. Section 309(d)(1) of the Act, requires that any petition to deny an application for renewal of license "be supported by affidavit of a person or persons with personal knowledge" of the factual allegations made in the petition.⁵ Because Dwyer failed to support the Petition's factual allegations with such an affidavit as required by Section 309(d)(1), we will treat the Petition as an informal objection under Section 73.3587 of the Commission's Rules ("Rules").⁶

Substantive Matters. Informal objections to license renewal applications must, pursuant to Section 309(e) of 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, which governs our evaluation of an application for license renewal.⁷ 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 that, taken together, constitute a pattern of abuse.⁸ 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(d) 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."⁹

As the Opposition correctly indicates,¹⁰ it is well-settled policy that, as a general matter, the Commission does not scrutinize or regulate programming, nor does it take potential changes in entertainment programming formats into consideration in reviewing license renewal applications.¹¹ In 1976, the Commission issued a *Format Policy Statement* in which it concluded that review of entertainment program formats was not required by the Act, would not benefit the public, would deter

⁴ Opposition at 1-2.

⁵ 47 U.S.C. § 309(d)(1). We note that 47 C.F.R. § 1.16 allows use of an unsworn declaration in lieu of an affidavit.

⁶ 47 C.F.R. § 73.3587 (informal objections may be filed any time prior to Commission action on the corresponding application). See *William Marsh Rice University*, Letter, 26 FCC Rcd 5966 (MB 2011), and *Farm and Home Broadcasting Company*, Letter, 24 FCC Rcd 11814 (MB 2009) (procedurally defective petitions to deny treated as informal objections).

⁷ 47 U.S.C. § 309(e), (k). 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), *reh'g denied* (D.C. Cir. Sept. 10, 1993).

⁸ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described in the text 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).

⁹ 47 U.S.C. §§ 309(k)(2)-(3).

¹⁰ Opposition at 2-3.

¹¹ See, e.g., *KCOH, Inc.*, Letter, 28 FCC Rcd 1009 (MB 2013); see also *William Marsh Rice University*, Letter, 26 FCC Rcd 5966 (MB 2011); *The New York Times Radio, LLC*, Letter, 24 FCC Rcd 11761 (MB 2009); and *Cactus Communications, LLC*, Letter, 24 FCC Rcd 7632 (MB 2009).

innovation, and would impose substantial administrative burdens on the Commission.¹² The Supreme Court has upheld this policy and the Commission's determination that "the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters."¹³

Moreover, the Commission's role in overseeing program content is limited by the First Amendment to the United States Constitution and Section 326 of the Act, which prohibit the Commission from interfering with broadcasters' freedom of expression and from censoring program material.¹⁴ While the Commission will regulate broadcast content where federal statutes direct it to do so,¹⁵ we "will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming,"¹⁶ such as is the case here. Rather, a licensee has broad discretion to choose, in good faith, the programming it believes serves the needs and interests of its audience community.¹⁷ We will intervene in programming matters only if a licensee abuses that discretion.¹⁸

Ultimately, Dwyer's complaints concerning KPOJ's sports programming amount to a "subjective determination" that a progressive talk format better suits the Portland market's needs. Such a difference of opinion is not actionable by the Commission, and does not constitute grounds for denial of a licensee's renewal application. Because of the broad programming discretion afforded to licensees, Clear Channel's decision to switch KPOJ's format is well within its purview. As Dwyer has not produced any evidence to indicate that Clear Channel has abused its broad discretion, we will not substitute our judgment for that of Clear Channel. Therefore, we find the format-based objection to the Renewal Application without merit.

We have examined the Petition and find that it does not raise substantial and material questions of fact calling for further inquiry into whether granting the Renewal Application would be *prima facie* inconsistent with Section 309(k) of the Act.¹⁹ Additionally, we have evaluated the Renewal Application pursuant to Section 309(k) of the Act, and we find that KPOJ 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.²⁰

¹² *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC 2d 858, 865-66 (1976).

¹³ See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 585 (1981).

¹⁴ U.S. Const., Amend I; 47 U.S.C. § 326.

¹⁵ See, e.g., 18 U.S.C. § 1464.

¹⁶ *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978). In fact, the Commission has specifically noted that programming not targeted at a local community may nonetheless serve community needs and interests. See *KGAN Licensee, LLC*, 25 FCC Rcd 2549, 2557 (2010).

¹⁷ See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) ("*Philadelphia Station License Renewals*") (citing *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1082 (1972), and *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted)).

¹⁸ *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401.

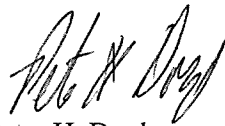
¹⁹ 47 U.S.C. § 309(k).

²⁰ *Id.*

Conclusion. Accordingly, IT IS ORDERED that the Petition to Deny filed by Tom Dwyer, treated as an Informal Objection, IS DENIED.

IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of Citicasters Licenses, Inc., for Station KPOJ(AM), Portland, Oregon (File No. BR-20130930BBC) IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle". The signature is written in a cursive style with a large initial "P" and "D".

Peter H. Doyle
Chief, Audio Division
Media Bureau