



Federal Communications Commission  
Washington, D.C. 20554

March 10, 2015

*In Reply Refer To:*  
1800B3-HOD

Mr. Jerome W. Mondesire  
6661 Germantown Avenue  
Philadelphia, PA 19119

Ms. Evelyn Yaari  
35 Overhill Road  
Bala Cynwyd, PA 19004

Steven C. Schaffer, Esq.  
Schwartz, Woods & Miller  
1233 20<sup>th</sup> Street, N.W., Suite 610  
Washington, DC 20036

Re: **WHYY, Inc.**  
WHYY-FM, Philadelphia, PA  
File No. BRED-20140326AAO  
Facility ID No. 72336

**Petition to Deny**  
**Informal Objections**

Dear Counsel and Objectors:

We have before us an application (“Application”) filed by WHYY, Inc. (“WHYY”) to renew the license for WHYY-FM, Philadelphia, Pennsylvania (“Station”). We also have before us informal objections to the Application filed by Jerome W. Mondesire (“Mondesire”),<sup>1</sup> and a Petition to Deny (“Petition”) filed by Evelyn Yaari (“Yaari”).<sup>2</sup> For the reasons discussed below, we deny the Objections and the Petition, and grant the Application.

**Background.** WHYY filed the Application on March 26, 2014. Mondesire filed his first objection on April 9, 2014 (“April 9 Objection”), and his second on April 17, 2014 (“April 17 Objection”). Yaari filed her Petition on July 1, 2014. Both Mondesire and Yaari urge us to deny the Application. Mondesire alleges that the Station has “failed to employ members of racial minorities commensurate with the racial profile in metro Philadelphia,” “does not employ any African American, Latino or Asian Americans” as on-air personalities, and “does not broadcast any ethnic specific programming to these populations.”<sup>3</sup> Yaari, on the other hand, takes issue with the manner and depth of

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<sup>1</sup> Mondesire styled his pleadings as “Petitions to Deny.” However, we are treating them as informal objections under Section 73.3587 of the Commission's Rules (the “Rules”), 47 C.F.R. § 73.3587, because they fail to comply with the procedural requirements for filing petitions to deny. *See* 47 U.S.C. § 309(d). Specifically, neither of the Mondesire Objections is supported by an affidavit signed by a person with personal knowledge of the facts contained in the pleading.

<sup>2</sup> WHYY opposed the pleadings. Mondesire responded to WHYY’s opposition.

<sup>3</sup> April 9 Objection at Exh. 1; April 17 Objection at 1-4.

the Station's coverage of the relocation of the Barnes Foundation's art collection from its original location to a location in Philadelphia.<sup>4</sup> We address each of these arguments in turn below.

**Discussion.** Both petitions to deny and an informal objections to a license renewal application must provide properly supported allegations of fact that, if true, would establish a substantial and material question whether grant of the application would be *prima facie* inconsistent with Section 309(k) of the Communications Act of 1934, as amended.<sup>5</sup> We must grant renewal if we find that, during the preceding license period, the Station has served the public interest with no serious violations and no smaller violations which, taken together, constitute a pattern of abuse.<sup>6</sup>

*Employment Opportunities.* Mondesire alleges that minorities are underrepresented among WHY Y's board of directors, its senior management and its on-air staff.<sup>7</sup> The Commission's Equal Employment Opportunity ("EEO") rules, however, do not impose numerical guidelines or require hiring programs for any particular group.<sup>8</sup> Allegations that a station does not currently employ individuals from particular races or ethnic groups do not raise a substantial or material question absent a showing of discrimination or noncompliance with the Commission's EEO rules. We find that Mondesire's allegations regarding WHY Y's employment of minorities do not raise a substantial and material question because he has not offered any evidence of discrimination or noncompliance with the EEO rules.

Mondesire also states that WHY Y failed to advertise its job openings in certain newspapers and failed to utilize certain sources for job referrals.<sup>9</sup> The Commission requires that broadcasters use recruitment sources "reasonably calculated to reach the entire community"<sup>10</sup> but "will not dictate the number or types of sources that a broadcaster must use."<sup>11</sup> Allegations that a station has failed to use a particular recruitment source will not raise a substantial or material question absent a showing that the recruitment source or sources used by the station were not reasonably calculated to reach the station's entire community. Mondesire himself acknowledges that "WHY Y does utilize a long list of sources for job referrals." Further, he does not allege that WHY Y failed to broadly disseminate information about its job openings. Accordingly, we find that Mondesire has failed to raise a substantial or material question regarding WHY Y's compliance with the requirement that it widely disseminate information regarding job openings at the Station.

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<sup>4</sup> Petition at 1-5.

<sup>5</sup> 47 U.S.C. §§ 309(d)(1) and (k). *See also 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* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 ¶ 6 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>6</sup> *See* 47 U.S.C. § 309(k).

<sup>7</sup> April 9 Objection at Exh. 1; April 17 Objection at 1, 2.

<sup>8</sup> 47 C.F.R. § 73.2080.

<sup>9</sup> April 17 Objection at 2-3.

<sup>10</sup> 47 C.F.R. § 73.2080(c)(1)(i). *See also Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24048 ¶ 89 (2003).

<sup>11</sup> *Id.* at 24047 ¶ 86.

*Programming.* An objection based on programming faces a high hurdle because the Commission's role in programming is quite limited, consistent with First Amendment rights to freedom of speech without government intervention. Broadcasters have broad discretion to choose, in good faith, which community issues and problems to address and the type of non-entertainment programs in which to do so.<sup>12</sup> The Commission will not intervene absent a showing that the broadcaster was unreasonable or discriminatory in its selection of issues or offered such nominal levels as to have effectively defaulted on its obligation.<sup>13</sup>

Yaari takes issue with the Station's coverage of the relocation of the Barnes Foundations' art collection from a township located just outside Philadelphia to Philadelphia. Yaari acknowledges that the Station covered the Barnes Foundation's move but argues the Station did not offer full coverage of this move.<sup>14</sup> Yaari has not demonstrated that the Station defaulted on its obligation to cover community issues or was unreasonable or discriminatory in its selection of the issues it covered. Accordingly, we find that Yaari has not made a *prima facie* case that WHYI abused its discretion.

Mondesire raises a more general objection to the Station's programming. He acknowledges that the Station airs "good programs"<sup>15</sup> but asserts that the Station does not broadcast any programming aimed specifically at the African American, Latino or Asian American communities.<sup>16</sup> He also asserts that the Station's programming does not include the voices of minorities.<sup>17</sup> We conclude that Mondesire has not made a *prima facie* case that WHYI abused its discretion because his programming allegations lack any supporting factual evidence, such as examples, discussion, or explanation of how any licensee's selection of issues or programs was inadequate.<sup>18</sup>

**Conclusion/Ordering Clauses.** We have evaluated the 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 most recent license term. Moreover, we find that there have been no serious violations of the Act or the Rules involving the Station which, taken together, would constitute a pattern of abuse. In light of the foregoing, we will grant the Application and renew the Station's license.

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<sup>12</sup> See *Commercial TV Stations*, Memorandum Opinion and Order, 98 FCC 2d 1076, 1085 n.28 (1984). Issue-responsive programming may include, but is not limited to, public affairs, public service announcements, editorials, free speech messages, community bulletin boards, and religious programs. *Id.* at 1087 n.35. It may also include, although not primarily, news. See *Alianza Federal de Mercedes v. FCC*, 539 F.2d 732, 735 n.25 (D.C.Cir.1976). Licensees must place lists of their most significant issue-responsive programming in a public inspection file every three months. 47 C.F.R. § 73.3527(e)(8)(i).

<sup>13</sup> See *Commercial TV Stations*, 98 FCC 2d at 1092-94. *Deregulation of Radio*, 84 FCC 2d at 990-991. Petitioning parties thus have a heavy burden to show that a licensee has abused its discretion over programming matters. *Commercial TV Stations*, 98 FCC 2d at 1093-94.

<sup>14</sup> Petition at 2-5.

<sup>15</sup> April 17 Objection at 3.

<sup>16</sup> April 9 Objection at Exh. 1.

<sup>17</sup> April 17 Objection at 3.

<sup>18</sup> See *North Idaho Broadcasting Co.*, Memorandum Opinion and Order, 8 FCC Rcd 1637, 1638 (1993) (conclusory allegations insufficient).

Accordingly, IT IS ORDERED that the Informal Objections filed by Jerome W. Mondesire on April 9 and 17, 2014, ARE DENIED. IT IS FURTHER ORDERED that the Petition to Deny filed by Evelyn Yaari on July 1, 2014, IS DENIED. Finally, IT IS ORDERED that the application to renew the license for WHYY-FM, Philadelphia, Pennsylvania (File No. BRED-20140326AAO), filed by WHYY, Inc. on March 26, 2014, IS GRANTED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" with a small "PH" monogram at the end.

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: WHYY, Inc.