



Federal Communications Commission
Washington, D.C. 20554

May 13, 2015

Harold E Doley, Jr.
67 N. Broadway
Irvington, NY 10533

Re: WPIX-TV, New York, New York
File No. BRC DT-20150202ABS
Facility ID No. 73881

Dear Mr. Doley, Jr.:

This is with respect to two letters filed with the Federal Communications Commission ("Commission") by Mr. Harold E. Doley, Jr. ("Petitioner").¹ The letters request that the Commission deny the license renewal application for WPIX(TV), New York, New York ("WPIX"), which is licensed to WPIX, LLC. In light of the facts and circumstances discussed below we deny Petitioner's request.

At the time the letters were received by the Commission there was no pending license renewal application on file for the Commission to deny. In fact, the file number referenced by the Petitioner was not even a license renewal application, but WPIX's license to cover that was granted in October 2010 (File No. BLC DT-20090911ABN). WPIX did not file its license renewal application (File No. BRC DT-20150202ABS) until February 2, 2015, nearly eight months after the letters were received. Furthermore, the letters do not comport with the procedural requirements of a petition to deny, notably there is no evidence that they were served on the applicant, WPIX.² Accordingly, we will evaluate the letters as a single informal objection filed against WPIX's current license renewal application.³

Petitioner contends that in late December 2013 a segment that aired on WPIX called "Help Me Howard" inaccurately reported on a financial dispute between the Petitioner and Mr. Aaron Cohen of AAA Property Tax Appeal. The dispute involved an unpaid bill that the letters state was "settled well before [the] program aired." Both letters allege that the segment was nothing more than "capricious broadcasting with a biased political agenda" and by airing a segment that WPIX knew to be false the station ignored its "journalistic ethics." The letters go on to state that WPIX's actions were an "abuse of the airways," which run counter to WPIX's core statutory obligation as a broadcaster to operate in the public interest, convenience and necessity. The letters note that when you attempted to disagree with the substance of the report on WPIX's social media site the posts you made "were quickly pulled from public view...."

As an initial matter, we note that both Section 326 of the Communications Act of 1934 (the "Act") and the First Amendment to the U.S. Constitution prohibit any Commission actions that would

¹ One letter was dated May 22, 2014, and addressed to Commissioner Mignon L. Clyburn and the other was dated June 4, 2014 and addressed to Chairman Tom Wheeler.

² See 47 U.S.C. § 309(d)(1)(requiring petitioners to serve a copy of petitions to deny on the applicant); 47 C.F.R. § 1.47 (establishing the requirements with regards to making valid service and providing proof of service).

³ An informal objection may be filed at any time prior to Commission action on an application and need not meet the procedural requirements of a petition to deny. 47 C.F.R. § 73.3587.

improperly interfere with the programming decisions of licensees.⁴ Because of this statutory prohibition, and because journalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment's Free Press guarantee, the Commission has very little authority to interfere with a licensee's selection and presentation of news and editorial programming.⁵ With respect to the accuracy of a news report in particular, the Commission has stated that it possesses "neither the expertise nor the desire to look over the shoulder of broadcast journalists and inquire why a particular piece of information was reported or not reported."⁶ To do otherwise "would involve the Commission deeply and improperly in the journalistic functions of broadcasters."⁷

The letters allege what appears to be akin to an allegation of news distortion. The Commission applies a two-step analysis under the public interest standard.⁸ The Commission must first 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.⁹ Once a petition meets this first step, the Commission must determine "whether the totality of the evidence raises a substantial and material question of fact justifying further inquiry."¹⁰ If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity.¹¹

In *Serafyn v. FCC*, the U.S. Court of Appeals stated that "[i]n determining whether an allegation of news distortion raises a question about the licensee's ability to serve the public interest, the Commission analyzes both the substantiality and materiality of the allegation," and that "[t]he Commission regards an allegation as material only if the licensee itself is said to have participated in, directed, or at least acquiesced in a pattern of news distortion."¹² An allegation of news distortion is "substantial" if it meets two conditions. First, the distortion must be deliberately intended to slant or mislead. Second, to be substantial, the allegation of distortion must involve a significant event and not merely a minor or incidental aspect of the news report.¹³ The court stated specifically that it was sufficient for a petitioner to raise a "substantial and material question of fact" as to intent, and that the Commission could not require a petitioner to demonstrate "intent." However, the court went on to state that it was for the Commission to determine in the first instance whether the evidence submitted raises a substantial question of fact.¹⁴

⁴ 47 U.S.C. §326; U.S. CONST., amend. I.

⁵ 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 (1973); *Hunger in America*, 20 FCC 2d 143, 150-51 (1969).

⁶ *In Re CIA*, 58 Rad.Reg2d (P & F) 1544, 1549 (1985).

⁷ *Hon. Harley O. Staggers ("Selling of the Pentagon")*, 21 Rad.Reg.2d (P & F) 912, 916 (1971).

⁸ 47 U.S.C. §309(d)(1), (2); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

⁹ 47 U.S.C. §§309(d)(1) and 309(k).

¹⁰ *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985); 47 U.S.C. §309(e).

¹¹ 47 U.S.C. §§ 309(d)(2) and 309(k).

¹² *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) ("*Serafyn*").

¹³ *Id.* at 1217; see also *Galloway v. FCC*, 778 F.2d 16, 20 (D.C. Cir. 1985).

¹⁴ *Serafyn*, 149 F.3d at 1220.

We find that the letters have failed to provide a showing in accordance with the aforementioned precedent. In particular, we find that the letters do not raise a substantial and material question as to whether the news report intended to slant or mislead, or was more than an incidental aspect of the news report. The letters have not presented any evidence that warrants either immediate Commission action or consideration of these letters as part of WPIX's upcoming license renewal proceeding.

ACCORDINGLY, IT IS ORDERED that, the informal objection filed by Mr. Harold E. Doley, Jr. is DENIED.

Sincerely,



Barbara Kreisman
Chief, Video Division
Media Bureau

cc:

Jason Roberts
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