



Federal Communications Commission  
Washington, D.C. 20554

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*In Reply Refer to:*  
1800B3-MPM

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In re: KFI(AM), Los Angeles, CA  
Capstar TX LLC  
Facility ID No. 34425  
File No. BR-20130801AGW

**Petition to Deny**

Dear Counsel:

This letter refers to: 1) Capstar TX LLC's ("Capstar") application ("Application") for renewal of its license for Station KFI(AM), Los Angeles, California ("Station"); and 2) the petition to deny ("Petition") the Application filed by the National Hispanic Media Coalition ("NHMC") on November 1, 2013.<sup>1</sup> For the reasons set forth below we deny the Petition and grant the Application.

**Background.** Capstar timely filed the Application on August 1, 2013, and NHMC timely filed the Petition on November 1, 2013. In the Petition, NHMC first argues that it has organizational standing to file a petition to deny the Application.<sup>2</sup> It then argues that the Media Bureau ("Bureau") should deny the Application or designate it for an evidentiary hearing because: 1) Station programming includes hate speech, as evidenced by over 200 customer complaints against the Station specifically citing hate and/or violent speech;<sup>3</sup> 2) the Station has twice aired the personal contact information of individuals who were the subject of on-air personalities' "vitriol," resulting in the individuals being subjected to hundreds of threatening phone calls;<sup>4</sup> 3) the hate speech exhibited by the Station's on-air personalities causes physical and psychological harm to KFI's listeners, and the perpetuation of stereotypes increases negative, fallacious misperceptions of Latinos and immigrants;<sup>5</sup> 4) the lack of racial and gender diversity of Los Angeles station owners and the consolidation of local station ownership in the hands of a few major

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<sup>1</sup> Capstar filed an opposition ("Opposition") to the Petition, on December 2, 2013. NHMC filed a reply ("Reply") to the Opposition on December 23, 2013.

<sup>2</sup> Petition at 2.

<sup>3</sup> See *id.* 6-10; see also Petition at Exhibit 2.

<sup>4</sup> *Id.* at 10-12.

<sup>5</sup> *Id.* at 12-19.

conglomerates makes it impossible for market forces to adequately solve the problem of the Station's program content;<sup>6</sup> and 5) a UCLA Chicano Studies Research Center ("CSRC") study on the accuracy of content from the Station shows that the Station has regularly engaged in news distortion by making several false and/or unverifiable claims regarding immigrants in the local community.<sup>7</sup> Although NHMC acknowledges that it has not presented extrinsic evidence of an intent to distort the news, it argues that "malicious intent is highly likely."<sup>8</sup>

Referencing the Commission's longstanding practice of refusing to regulate based on programming content,<sup>9</sup> Capstar argues in the Opposition that NHMC's only argument for challenging the Application is that NHMC and its members find the Station's content offensive. Capstar also argues that NHMC has not provided the extrinsic evidence of an intent to distort the news required for a successful claim of news distortion.<sup>10</sup> It then challenges NHMC's argument regarding the consolidation of the Los Angeles market, pointing out that NHMC does not allege that Capstar has broken any of the Commission's Rules ("Rules") regarding local ownership requirements. Finally, Capstar argues that NHMC does not have standing to file a petition to deny because NHMC has made "speculative" claims that their injury would be redressed by denying the Application.<sup>11</sup> In the Reply, NHMC reasserts that it has standing to file a petition to deny and again argues that Capstar has failed to demonstrate that the Station satisfies the public interest.<sup>12</sup>

**Discussion. Procedural Issue: Standing.** Under 309(d)(1) of the Communications Act of 1934, as amended, an objector must first establish that it is a "party in interest" before it can file a petition to deny.<sup>13</sup> An organization may establish standing to represent the interests of local listeners if the organization provides an affidavit from one or more individuals entitled to standing indicating that the group represents local residents and that the petition is filed on their behalf.<sup>14</sup> The Petition contains two sworn affidavits from NHMC members proving that they reside within the Station's service area and that they are regular listeners of the Station.<sup>15</sup> The affidavits also sufficiently show that the Petition was filed on their behalf.<sup>16</sup> Accordingly, NHMC has standing to petition to deny the Application.

*Substantive Issues.* Pursuant to Section 309(d) of the Act, the Commission performs a two-step inquiry in evaluating a petition to deny. First, a petition to deny must provide properly supported allegations of fact that, if true, establish that grant of the license renewal would be *prima facie*

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<sup>6</sup> *Id.* at 19-21.

<sup>7</sup> *Id.* at 4-6, 23-24. The CRSC study is available at <http://www.chicano.ucla.edu/research/documents/WPQuantifyingHateSpeech.pdf>

<sup>8</sup> *Id.* at 23-24.

<sup>9</sup> *Id.* at 3-6, citing *Greater Boston Radio, Inc.*, 19 FCC Rcd 13064, 13065 (2004).

<sup>10</sup> *Id.* at 5

<sup>11</sup> *Id.* at 8

<sup>12</sup> Reply at 1-6.

<sup>13</sup> 47 U.S.C. § 309(d)(1)

<sup>14</sup> See *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, Memorandum Opinion and Order, 82 FCC 2d 89, 99 (1980).

<sup>15</sup> See Declaration of Alex Nogales at Exhibit 1; Declaration of Brian Pacheco at Exhibit 1.

<sup>16</sup> *Id.*

inconsistent with Section 309(k) of the Act, which governs our evaluation of an application for license renewal.<sup>17</sup> 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: (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations of the Act or the Rules; and (c) there have been no other violations which, taken together, constitute a pattern of abuse.<sup>18</sup> If the petition passes this initial step, the Bureau then decides whether, on the basis of the entire record, a “substantial and material question of fact is presented.”<sup>19</sup> Assuming the petition passes the Section 309(d) inquiry, the Bureau may deny the application – after notice and opportunity for a hearing under Section 309(e) 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.”<sup>20</sup> If, however, the petition fails either step of the Section 309(d) inquiry, we shall deny the petition and grant the license renewal.

Programming. In light of the First Amendment to the United States Constitution and Section 326 of the Act,<sup>21</sup> we must reject NHMC’s programming arguments. The First Amendment and Section 326 prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights. Accordingly, the Commission has stated that it will not take “adverse action on a license renewal application based only upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.”<sup>22</sup> It has recognized that “licensees have broad discretion - based on their right to free speech - to choose, in good faith, the programming they believe serves the needs and interests of their communities. This holds true even if the material broadcast is insulting to a particular minority or ethnic group in a station’s community.”<sup>23</sup> Indeed, the Commission has held that “if there is to be free speech, it must be free for speech that we abhor and hate as well as for speech that we find tolerable and congenial.”<sup>24</sup> For the foregoing reasons, we decline to accept NHMC’s argument that the Station’s program content raises a substantial and material question of fact calling for further inquiry.

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<sup>17</sup> See 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.929(d). See, e.g., *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988); *Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985).

<sup>18</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>19</sup> 47 U.S.C. § 309(d)(2). See, e.g., *Astroline Communications*, 857 F.2d at 1561; *Citizens for Jazz on WRVT, Inc.*, 775 at 394.

<sup>20</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>21</sup> U.S. CONST. amend. I; 47 U.S.C. § 326.

<sup>22</sup> See *Citadel Broadcasting Co.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 7083, 7101 ¶ 41 (2007), citing *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 ¶ 4 (1978).

<sup>23</sup> *Multicultural Radio Broadcasting Licensee, LLC*, Letter, 22 FCC Rcd 21429, 21434 (MB 2007), citing *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 ¶ 7 (1993), and *Zapis Communications Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 3888, 3889 ¶ 7 (MB 1992).

<sup>24</sup> *Anti-Defamation League of B'nai B'rith*, Memorandum Opinion, 4 FCC 2d 190, 192 (1966), *aff'd*, Memorandum Opinion and Order, 6 FCC 2d 385 (1967), *aff'd sub nom. Anti-Defamation League of B'nai B'rith v. FCC*, 403 F.2d 169 (1968), *cert. denied*, 394 U.S. 930 (1969).

Throughout the Petition, NHMC asserts that hate speech espoused by the Station's personalities has caused significant harms to the community, indicating that the Station no longer serves the public interest.<sup>25</sup> While there are no provisions in the Act or the Rules specifically addressing hate speech, the Commission will take action based on the content of a broadcast when broadcasts "are found to create a 'clear and present danger of serious evils that rises above public inconvenience, annoyance, or unrest.'"<sup>26</sup> However, we require a local court to first "make its own inquiry into the imminence and magnitude of the danger said to flow from the particular utterance and then to balance the character of the evil, as well as its likelihood, against the need for free and unfettered expression."<sup>27</sup> NHMC argues that the release of two individuals' phone numbers by on-air personalities led to those individuals being subjected to hundreds of threatening phone calls, and that this action was hate speech.<sup>28</sup> However, NHMC has produced no evidence that a local court has ruled on or even evaluated the nature of the speech from the Station's on-air personalities. Without such evidence, we cannot find the requisite "clear and present danger" occasioned by the station's conduct.

Reliance on Market Forces. The Commission has long held that "market forces and competition among broadcasters" are the most effective ways of regulate programming content.<sup>29</sup> NHMC argues that it is "impossible" for market forces to adequately resolve issues pertaining to Station programming content for two reasons: 1) a lack of racial and gender diversity of ownership groups in the Los Angeles market; and 2) the consolidation of ownership of Los Angeles station's in the hands of a few conglomerates.<sup>30</sup> NHMC has brought similar claims before the Commission. During the *2014 Quadrennial Regulatory Review of the Commission's Ownership Rules*, NHMC submitted comments in which it argued that the lack of racial and gender diversity in station ownership "impacts the issues covered by a station and the way in which those issues are covered," and asked the Commission to "adopt rules to promote diverse radio ownership."<sup>31</sup> The Commission, however, tentatively concluded that retaining the existing rules "would serve the public interest and simultaneously promote viewpoint diversity."<sup>32</sup> Furthermore, we decline to use this renewal proceeding to reconsider the Commission's

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<sup>25</sup> See *supra* note 7.

<sup>26</sup> *Spanish Radio Network*, Memorandum Opinion and Order, 10 FCC Rcd 9954, 9959 ¶ 21 (1995) (quoting *Anti-Defamation League of B'nai B'rith*, 403 F.2d at 169).

<sup>27</sup> *Id.* (quoting *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 843 (1975)). See also *Cattle Country Broadcasting*, 58 R.R.2d 1109, 1113 (1985). The requirement that a local court first make a determination of hate speech stems from *Brandenburg v. Ohio*. 395 U.S. 444, 447 (1969). As the Commission found in *Spanish Radio Network*, "[a]ny determination that particular speech poses a 'clear and present danger of serious substantive evil' presupposes a familiarity with the circumstances, issues, and concerns of the community where such speech was heard, a familiarity which the Commission, in most cases, does not have and cannot practically obtain. Local authorities responsible for keeping the peace and enforcing the law are better positioned to know and assess the specific and unique circumstances in the [local] community and, thus, to determine whether the *Brandenburg* test has been met." *Spanish Radio Network*, 10 FCC Rcd at 9959 ¶ 22.

<sup>28</sup> See *supra* note 6.

<sup>29</sup> *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981). See also *Changes in Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC 2d 858 (1976).

<sup>30</sup> See *supra* note 6.

<sup>31</sup> *2014 Quadrennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC 4371, 4416 (2014) ("*2014 Quadrennial Review*").

<sup>32</sup> *Id.* at 4417.

policy with regard to alleged failures of the market to resolve issues related to broadcast station programming. When addressing matters of broad applicability, the Commission has preferred to utilize rulemaking proceedings and policy statements rather than fact-specific adjudicatory proceedings to give guidance and reasonable notice to licensees on “going forward” requirements.<sup>33</sup>

**News Distortion.** In order to make a valid claim of news distortion, “a petitioner must present to the Commission extrinsic evidence (evidence *outside* the content of the program) which supports the allegations of deliberate news distortion and demonstrates that it was *directed by the licensee, station management, or news management.*”<sup>34</sup> Such evidence could include “written or oral instructions from station management, outtakes, or evidence of bribery.”<sup>35</sup> Under the initial step of our two-part inquiry, NHMC does not have an obligation to bring forth extrinsic evidence that unequivocally proves the Station intentionally engaged in news distortion.<sup>36</sup> However, it does have an obligation to produce evidence that creates the possibility that a reasonable factfinder *could* find that the Station intentionally distorted the news.<sup>37</sup> It has not done so. Although NHMC argues that the CRSC study demonstrates that the station has regularly engaged in news distortion by making false or unverifiable claims regarding immigrants, the CRSC study does not provide any extrinsic evidence that the Station intentionally distorted the news. In such cases, “the Commission will not intervene.”<sup>38</sup> We decline to do so here.

**Conclusion/Actions.** NHMC’s arguments fail to establish a *prima facie* case that renewal of the Station’s license would be inconsistent with Section 309(k). Additionally, we have evaluated the Application under Section 309(k), and find that the Station has served the public interest, convenience, and necessity during the most recent term. In light of the foregoing, we deny the Petition, grant the Application, and renew the Station’s license.

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<sup>33</sup> See *Cox Radio, Inc.*, Letter, 28 FCC Rcd 5674, 5677 (MB 2013) (“It has long been Commission practice to make decisions that alter components of broadly applicable regulatory schemes in the context of rulemaking proceedings, not adjudications.”)

<sup>34</sup> *Lynn J. Farris*, Letter, 22 FCC Rcd 11193, 11194 (2007) (emphasis added). See also *American Broadcasting Companies, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 3, 10-11 (1981); *Hunger in America*, Memorandum Opinion, 20 FCC 2d 143, 150-51 (1969).

<sup>35</sup> *TVT License, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 13591, 13595 (2007) (quoting *Galloway v. FCC*, 778 F.2d 16, 20 (D.C. Cir. 1985)).

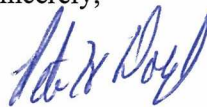
<sup>36</sup> *Serafyn v. F.C.C.*, 149 F.3d 1213, 1220 (D.C. Cir. 1998)

<sup>37</sup> *Id.*

<sup>38</sup> *Lynn J. Farris* at 11195.

Accordingly, IT IS ORDERED that the Petition to Deny filed by the National Hispanic Media Coalition 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 Capstar TX LLC for Station KFI(AM), Los Angeles, California (File No. BR-20130801AGW) IS GRANTED.

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau