



**Federal Communications Commission
Washington, D.C. 20554**

July 9, 2015

In Reply Refer To:
1800B3-EA

Mr. Troy Langham
iHeartMedia
2625 S. Memorial Dr., Suite A
Tulsa, OK 74129

Mr. Roger Smith
6755 Wells Ave.
Loomis, CA 95650

Mr. Harry Cowan
Box 212
Mount Akum, CA 95656

In re: **AMFM Broadcasting Licenses, LLC**
KFBK(AM), Sacramento, CA
Facility ID No. 10145
File No. BR-20130731AGT

Application for Renewal of License

Informal Objections

Dear Mr. Langham, Mr. Smith, and Mr. Cowan:

This letter refers to the above-noted application ("Application") filed on July 31, 2013, by AMFM Broadcasting Licenses, LLC, ("AMFM") a subsidiary of iHeartMedia, Inc. ("iHM"), for renewal of the license for Station KFBK(AM), Sacramento, California ("the Station"). On October 10, 2013, Roger Smith ("Smith") filed an Informal Objection to the Application ("Smith Objection") and on October 11, 2013, Harry Cowan ("Cowan") (collectively, "the Objectors") also filed an Informal Objection to the Application ("Cowan Objection").¹ For the reasons set forth below, we deny the Informal Objections and grant the Application.

Background. Objectors allege that the Station airs biased programming. For example, according to the Smith Objection, the Station "[uses] the airwaves as a political 'pulpit,' presenting only one-sided predictable opinion—and even endorsing and promoting one party and individual candidates."² Cowan argues that the Station's choice of programming "is especially important during election campaigns when

¹ AMFM filed an opposition to the Cowan Objection on June 19, 2015 ("Opposition").

² Smith Objection at 1.

Republican ideas and candidates are promoted over the air and the opposing viewpoints and candidates are not even given a minute of air time.”³

Cowan also alleges that the Station has not maintained its public file as required by law.⁴ Specifically, Cowan says he sent a letter to the Station on November 22, 2011, and that when he visited the following year, he could not find it in the Station’s public files, and the “attendant” was unable to tell him where the letter could be located.⁵

In its Opposition, AMFM responds that the Cowan Objection does not contain enough information for the Station to be able to determine whether it received the letter or placed it in the public file.⁶ AMFM also notes that “Cowan’s 2011 letter is not required to be in the Station’s public file today,” as the Commission’s Rules only require stations to keep letters from the public for a period of three years.⁷ As for the Station’s choice of programming, AMFM states that the allegation that “the local airwaves are essentially being used as a political tool of the Republican Party in Sacramento” is “insufficient to demonstrate that the renewal of [the Station’s] license would be inconsistent with Section 309(k).”⁸ In addition, AMFM states that the editorial discretion of broadcast licensees is protected under the First Amendment and Section 326 of the Act, especially for “news and comment programming.”⁹

Discussion. Informal objections to license renewal applications must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (“Act”),¹⁰ 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,¹¹ which governs our evaluation of an application for license renewal. 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 which, taken together, constitute a pattern of abuse.¹² 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(e) of the Act – or grant the application “on terms

³ Cowan Objection at 1.

⁴ *Id.*; see 47 C.F.R. § 73.3526(e)(9).

⁵ *Id.*

⁶ Opposition at 2.

⁷ *Id.*, citing 47 C.F.R. § 73.3526(e)(9).

⁸ *Id.* at 3.

⁹ *Id.* at 3-4.

¹⁰ 47 U.S.C. § 309(e).

¹¹ 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), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹² 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).

and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹³

Content. The role of the Commission in overseeing program content is limited. The First Amendment to the United States Constitution and Section 326 of the Act prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights.¹⁴ The Commission does regulate broadcast content where federal statutes direct it to do so. For example, the Commission enforces the statutory prohibition on the broadcast of obscene, indecent and profane material contained in the United States Criminal Code.¹⁵ However, because Congress has not authorized the Commission to do so, the Commission currently does not regulate the type of material about which the Objectors have complained. Although the Objectors may find viewpoints presented on the stations to be offensive or derogatory, it is well settled 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 or congenial.”¹⁶ Therefore, for the same reasons provided when we denied a similar objection made by Smith in 2007,¹⁷ we find the Objectors’ content-based arguments unpersuasive.

Political Broadcasting Allegation. Section 315(a) of the Act provides that, if a licensee allows a legally qualified candidate for public office to use a broadcast station, it must afford equal opportunities to other such candidates for that office.¹⁸ However, the Objectors fail to make adequate and specific factual allegations concerning the alleged political programming issues sufficient to warrant Commission action.¹⁹ For example, we cannot determine if the Objectors claim that the Station has permitted certain candidates to “use”²⁰ its facilities such that the equal opportunities provisions are triggered, or if the Station promoted candidates in some other way that does not fall under Section 315(a).²¹ Therefore, we reject the Objectors’ political broadcasting allegations.

¹³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁴ U.S. Const. amend. I; 47 U.S.C. 326.

¹⁵ *FCC v. Fox Television Stations, Inc.*, 132 S.Ct. 2307, 2308 (2012); *See also* 18 U.S.C. § 1464.

¹⁶ *Anti-Defamation League of B’nai B’rith*, Memorandum Opinion, 4 FCC 2d 190, 191 (1966) *aff’d sub nom. Anti-Defamation League of B’nai B’rith v. FCC*, 403 F.2d 169 (D.C. Cir. 1968), *cert. denied*, 394 U.S. 930 (1969).

¹⁷ *Brian M. Hasserr, Ph.D.*, Letter, 22 FCC Rcd 4804, 4805 (MB 2007).

¹⁸ 47 U.S.C. § 315(a). *See* 47 C.F.R. § 73.1941. Section 315(a) also states, however, that appearances by legally qualified candidates on four categories of *bona fide* news programming, including *bona fide* newscasts (Section 315(a)(1)) and *bona fide* news interviews (Section 315(a)(2)), are exempt from equal opportunities requirements.

¹⁹ *See Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

²⁰ A “use” is defined as any identifiable, positive appearance (including by voice or picture) of a candidate lasting four seconds or more that is not exempt pursuant to Sections 73.1941 (a)(1) through (a)(4) of the Commission’s Rules, 47 C.F.R. § 73.1941(a)(1)-4. *See* 47 C.F.R. § 73.1941(b).

²¹ The Commission repealed the former “political editorial rule,” Section 73.1930, which required licensees to allow candidates a reasonable opportunity to respond, over the licensee’s facilities, to editorials that either oppose that candidate or endorse another candidate. *See Repeal or Modification of the Personal Attack and Political Editorial Rules*, Order, 15 FCC Rcd 20697 (2000).

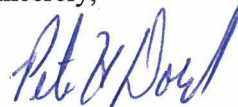
Public File. Licensees are required under Section 73.3526(e)(9) of the Rules to maintain a public inspection file containing "letters and e-mail from the public" for a period of three years.²² Even we were to accept as true Cowan's allegation that his November 22, 2011 letter was missing from the Station's public file, this is not a serious violation under Section 309(k). Rather, the appropriate remedy for a licensee that is missing only one letter from a member of the public in its public inspection file is, at most, admonishment.²³ Given the relatively minor nature of the alleged violation and the impossibility of verifying the allegation at this time, we do not believe an admonishment is necessary or appropriate. However, we caution AMFM to ensure future compliance with Section 73.3526(e)(9).

Conclusion/Actions. The Informal Objections have not provided properly supported allegations that 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. Additionally, we have evaluated the Application in accordance with Section 309(k) and find that the Station has served the public interest, convenience, and necessity during the subject license term; there have been no serious violations of the Act or the Commission's Rules; and there have been no other violations which, taken together, constitute a pattern of abuse.

Accordingly, IT IS ORDERED, that the Informal Objections filed by Roger Smith and Harry Cowan on October 10 and October 11, 2013, respectively, ARE DENIED.

IT IS FURTHER ORDERED that the application (File No. BR-20130731AGT) of AMFM Broadcasting Licenses, LLC, to renew the license for Station KFBK(AM), Sacramento, California, IS GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Kathryn C. Dickerson, Esq.
Gregory L. Masters, Esq.

²² 47 C.F.R. § 73.3526(e)(9).

²³ See *Emmis Television License Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 22851 (EB 2004) (television station admonished for failure to maintain copies of two letters from a member of the public).