

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

In the Matter of)	
)	
NBC Telemundo License Co.)	File No. BRCT-20041001ABM
)	Facility ID No. 63154
For Renewal of License of)	
Station WTVJ(TV), Miami, Florida)	
)	
CBS Television Stations, Inc.)	File No. BRCT-20041001AJQ
)	Facility ID No. 47902
For Renewal of License of)	
Station WFOR-TV, Miami, Florida)	

MEMORANDUM OPINION AND ORDER

Adopted: July 16, 2015

Released: July 16, 2015

By the Commission:

I. INTRODUCTION

1. By this *Memorandum Opinion and Order*, we deny an Application for Review filed by the Office of Communication of the United Church of Christ, Inc. (“UCC”), challenging two staff decisions that denied petitions opposing the above-captioned license renewal applications of Station WTVJ(TV) and Station WFOR-TV, Miami, Florida.¹ The stations are licensed to NBC Telemundo License Co. (“NBC Telemundo”), and CBS Television Stations, Inc. (“CBS”), respectively. NBC Telemundo and CBS filed separate oppositions.

II. BACKGROUND

2. In its original petitions, UCC requested that the Commission deny the license renewals of Stations WTVJ(TV) and WFOR-TV based on the NBC Television Network’s and the CBS Television Network’s decisions not to air one of its advertisements on the network programming provided to affiliates.² UCC had argued in both petitions that “under the facts here, [WFOR and WTVJ] improperly failed to recognize that UCC had a limited right of access for the purchase of time.”³ Thus, UCC maintained that the stations had failed to serve the public interest. The staff decisions, however, noted that UCC did not offer the spot to either Station WTVJ(TV) or Station WFOR-TV, and that NBC Telemundo and CBS policy permit local NBC and CBS-owned stations to determine the acceptability of local spots.⁴ The staff determined that UCC did not establish that the grant of the license renewals for Stations

¹ *NBC Telemundo License Co.*, Letter Decision, 22 FCC Rcd 15073 (Vid. Div. 2007) (“WTVJ Letter”); *CBS Television Stations, Inc.*, Letter Decision, 22 FCC Rcd 15070 (Vid. Div. 2007) (“WFOR Letter”).

² The advertisement at issue, entitled “Night Club,” depicted would-be worshippers approaching a church guarded by bouncers who refuse entrance to what appears to be a gay couple, a Hispanic young man, a man in a wheelchair, and an African-American woman, followed by the tag “Jesus didn’t turn people away...Neither do we.” The spot then concludes with the statement: “No matter who you are or where you are on life’s journey, you’re welcome here.”

³ *WFOR Letter*, 22 FCC Rcd at 15071; *WTVJ Letter*, 22 FCC Rcd at 15074.

⁴ *WTVJ Letter*, 22 FCC Rcd at 15074; *WFOR-TV Letter*, 22 FCC Rcd at 15071.

WTVJ(TV) and WFOR-TV would be *prima facie* inconsistent with the public interest because, “[u]nder the plain terms of section 309(k) [of the Communications Act of 1934 (the “Act”)], ...the relevant findings must be made ‘with respect to that station’” whose license is up for renewal, and the advertisements here had not been offered directly to the stations.⁵

3. In its Application for Review, UCC contends that the Video Division erred in concluding that the licensees did not act contrary to the public interest based on the networks’ refusal to air the advertisement at issue. UCC argues that *Sagittarius Broadcasting Corp.*, which the letter decisions cited as precedent, dealt solely with the procedural issue of standing, and does not support the staff’s interpretation of Section 309(k).⁶ A “more logical” interpretation of Section 309(k), according to UCC, is to permit review of network practices during license renewal proceedings involving owned and operated stations.⁷ UCC argues that the “effect of the[] [Staff] decisions is to remove Commission authority to examine network programming practices in the context of license renewal proceedings of network owned and operated stations.”⁸ UCC maintains that the “Commission has never interpreted [Section] 309(k) to mean that networks are not accountable for their programming as implemented by network owned and operated stations,”⁹ and that the staff’s “new construction of that provision is illogical, arbitrary and capricious.”¹⁰

4. CBS, in its opposition, argues that the staff’s decision “reflects a logical interpretation of Congress’ mandate that the Commission grant a station’s renewal application upon making the requisite findings ‘with respect to that station.’”¹¹ CBS states that Commission precedent holds that a licensee is responsible for all the programming it airs, whatever the source. It maintains, however, that this responsibility does not mean, as UCC asserts, “that a network’s decision *not* to broadcast certain programming may properly be attributed to a network station in a license renewal proceeding.”¹² NBC Telemundo, in its separate opposition, states that Station WTVJ(TV) was never involved in the decision not to air the editorial advertisement in question.¹³ CBS and NBC Telemundo, moreover, both argue that neither the Communications Act nor the First Amendment obligates a broadcaster to accept editorial advertising, and that, contrary to UCC’s assertion, there is nothing inherent in the public interest standard that requires a broadcaster to accept such advertising.¹⁴ NBC Telemundo states, in particular, that the “Commission and the courts consistently have upheld the principle that private individuals, with the very limited exception of qualified candidates for federal office, do not have the right to demand access for broadcast time.”¹⁵

⁵ *Id.*

⁶ See *Sagittarius Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 22551, 22555 (2003).

⁷ Application for Review (“AFR”) at 7.

⁸ AFR at 1.

⁹ *Id.* at 4.

¹⁰ *Id.* at 5-6.

¹¹ CBS Opposition to AFR at 4 (emphasis in original).

¹² *Id.* at 5.

¹³ NBC Telemundo Opposition to AFR at 6.

¹⁴ CBS Opposition to AFR at 6-7; NBC Telemundo Opposition to AFR at 7-8, citing *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94 (1973).

¹⁵ NBC Telemundo Opposition to AFR at 7-8, citing *Columbia Broadcasting System*, 412 U.S. at 105; *Rokus v. American Broadcasting Company, Inc.*, 616 F.Supp. 110, 113-114 (S.D.N.Y. 1984); Letter from Stephen F. Sewell, Assistant Chief, Complaints and Compliance Division, to J. Curtis Herge, 88 F.C.C.2d 626 (B’cast Bur. 1981).

III. DISCUSSION

5. Based upon the record in this case, we deny the Application for Review and affirm grant of the renewal applications for the reasons set forth herein.¹⁶ With respect to Petitioner's main argument that the stations failed to recognize UCC's limited right of access, we agree with NBC Telemundo that no such right of access exists under either the Communications Act or the First Amendment to the Constitution, but rather there exists a limited Congressionally-mandated right of access set forth in Section 312(a)(7) of the Act governing the purchase of advertising time by a political candidate for Federal elective office¹⁷ – a right not implicated here. Although the licensees have an “obligation to provide coverage of issues facing their communities, [] licensees have broad discretion to determine, in good faith, the programming that they believe serves the needs and interests of their communities.”¹⁸ Licensees are not required to accept and air every piece of programming offered to them.¹⁹ The Supreme Court has affirmed this, and has stated that the “‘public interest’ standard necessarily invites reference to First Amendment principles.”²⁰ The Commission has long held that the right of access requested here is inconsistent with said principles.²¹ Thus, we do not believe that UCC met its burden under Section 309(d)(1) of the Act²² to show that grant of the renewal applications would be *prima facie* inconsistent with the public interest. Even if the networks' refusal to air the advertisements were attributed to the stations themselves, as UCC contends should be the case, such refusal would violate no provision of the Communications Act or rules, or suggest that the stations failed to serve the public interest. Our decision to reject UCC's Application for Review on these grounds renders moot all other arguments raised by UCC and, therefore, we do not address them.

IV. CONCLUSION

6. Accordingly, **IT IS ORDERED**, that the Application for Review filed by the Office of Communication of the United Church of Christ, Inc., seeking reversal of the staff decisions granting the above-captioned license renewal applications of Station WTVJ(TV) and Station WFOR-TV, Miami, Florida, is **DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁶ See 47 C.F.R. § 1.115(b).

¹⁷ 47 U.S.C. § 312(a)(7).

¹⁸ *The University of Southern California Desert Coalition for Responsible Broadcasting*, Letter Decision, 22 FCC Rcd 12955, 12958 (Aud. Div. 2007).

¹⁹ See *Columbia Broadcasting System*, 412 U.S. at 111 (explaining that “[s]ince it is physically impossible to provide time for all viewpoints...the right to exercise editorial judgment was granted to the broadcaster.”).

²⁰ *Id.* at 122 (affirming the Commission's initial holding that the public interest standard of the Act does not require broadcasters to accept editorial advertising).

²¹ See *Democratic National Committee, Washington, D.C. Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations*, 25 F.C.C.2d 216 (1970); *Business Executives' Move for Vietnam Peace Concerning Fairness Doctrine Re Station WTOP, Washington, D.C.*, 25 F.C.C.2d 242 (1970), rev'd, *Business Executives' Move for Vietnam Peace v. FCC*, 450 F.2d 642 (D.C. Cir. 1971), rev'd, *Columbia Broadcasting System*, 412 U.S. 94 (1973).

²² 47 U.S.C. § 309(d)(1).