



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

March 12, 2007

DA 07-1203

In Reply Refer to:

1800B3-KD

Released: March 12, 2007

Mr. Marvin J. Tick
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In re: WISN(AM), Milwaukee, WI
Facility ID No. 65695
Capstar TX Limited Partnership
File No. BR-20040802ANM

Application for Renewal of License

Informal Objection

Dear Mr. Tick and Ms. Bunkin:

This letter refers to: (1) the above-noted August 2, 2004, application of Capstar TX Limited Partnership ("Capstar") to renew the license of radio station WISN(AM), Milwaukee, Wisconsin, and (2) the November 7, 2004, Informal Objection ("Objection") to that application filed by Marvin J. Tick. In his Objection, Mr. Tick raises concerns over use of the phrase "wetbacks" by a radio personality during a program broadcast on WISN(AM) on November 2, 2004. For the reasons set forth below, we deny Mr. Tick's Objection and grant the renewal application.

Discussion. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k)(1) of the Communications Act of 1934, as amended (the "Act"). That section 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 Commission's Rules (the "Rules"); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹ If, however, the licensee

¹ 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).

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 and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”²

Allegations regarding program content are generally significant at renewal time only to the extent that they show a violation of the Rules or the Act or a failure by the licensee, in its overall programming, to address issues and problems of importance to the community.³ The First Amendment to the United States Constitution and Section 326 of the Act⁴ prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights.⁵ This holds true even if the material broadcast is insulting to a particular minority or ethnic group in the station’s community.⁶ Indeed, as we have held in earlier decisions, “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.”⁷ For this reason, we deny the Informal Objection.

Conclusion. We have evaluated the WISN(AM) renewal application pursuant to Section 309(k) of the Act,⁸ and we find that WISN(AM) has served the public interest, convenience, and necessity during the subject license term; there have been no serious violations of the Act or the Rules; and there have been no other violations which, taken together, constitute a pattern of abuse.

² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

³ *Jacor Broadcasting of Tampa Bay, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1826, 1826 (MB 1992) (citing *Deregulation of Radio*, Report and Order, 84 FCC 2d 797, *recon. granted in part and denied in part*, Memorandum Opinion and Order, 87 FCC 2d 797, *aff’d in relevant part and remanded in part*, Memorandum Opinion and Order, 87 FCC 2d 797, *aff’d in relevant part and remanded in part sub nom.*, *Office of Communications of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983). In this case, the complaint only cites a single instance of the broadcast of an offensive term. This is insufficient to raise a *prima facie* question concerning the station’s overall record of addressing issues and problems of importance to the community during the license term as a whole.

⁴ 47 U.S.C. § 326.

⁵ 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 18 U.S.C. § 1464. However, because Congress has not authorized the Commission to do so, the Commission does not regulate the material at issue here.

⁶ *Zapis Communications Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 3888 (MB 1992).

⁷ *Id.* (citing *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). *See also The Outlet Co.*, Memorandum Opinion and Order, 53 FCC 2d 611 (1975); *Avco Broadcasting Corp.*, Memorandum Opinion and Order, 53 FCC 2d 48 (1975); *Doubleday Broadcasting Co., Inc.*, Memorandum Opinion and Order, 56 FCC 2d 333 (1975) (all dismissing petitions to deny renewal applications based on use of the term “wetback” in programs aired on applicants’ stations).

⁸ 47 U.S.C. § 309(k).

In light of the above discussion, and pursuant to Section 309(k) of the Act, and Sections 0.61 and 0.283 of the Rules,⁹ the Informal Objection filed on November 7, 2004, by Marvin J. Tick IS DENIED, and the application (File No. BR-20040802ANM) of Capstar TX Limited Partnership for renewal of license for WISN(AM) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Capstar TX Limited Partnership

⁹ 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.