

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In Reply Refer To: 1800B3-JR

May 29, 1996

The Board of Regents of Florida Acting for
and on Behalf of the Florida State University
The Public Broadcast Center
1600 Red Barber Plaza
Tallahassee, Florida 32310

In re: WFSQ-FM, Tallahassee, FL
File No. BRED-951002G4
WFSU-FM, Tallahassee, FL
File No. BRED-951002H7

Informal Objection

Translator Station W291AD, Marianna, FL
File No. BRFT-951002UA

Translator Station W283AC, Apalachicola, FL
File No. BRFT-951002UB

Translator Station W231AC, Tallahassee, FL
File No. BRFT-951002UC

Translator Station W222AB, Thomasville, GA
File No. BRFT-951002UD

Dear Applicant:

This concerns: (1) the captioned applications for renewal of the licenses of Stations WFSQ-FM and WFSU-FM, Tallahassee, Florida, Translator Station W291AD, Marianna, Florida, Translator Station W283AC, Apalachicola, Florida, Translator Station W231AC, Tallahassee, Florida, and Translator Station W222AB, Marianna, Florida, and (File Nos. BRED-951002G4, BRED-951002H7, BRFT-951002UA, BRFT-951002UB, BRFT-951002UC, and BRFT-951002UD, respectively); and (2) the informal objection to the WFSQ and WFSU applications filed by Eugene Danaher ("Danaher"). For the reasons set forth below, the informal objection is denied, the WFSQ and WFSU applications are granted, and action on the translator applications is deferred.

Public file allegation. Danaher initially complains about the licensee's delay in providing him with access to the WFSU-FM public file in violation of 47 C.F.R. §73.3527(d), which states that a noncommercial educational station's public file is to be accessible to the public during normal business hours. While he was inconvenienced by the delay, however, Danaher has not shown that he was prejudiced in any way by that delay; he was able to view the station's file and to file a timely objection to the WFSU-FM license renewal application. See R&L Broadcasters, 7 FCC Rcd 5551, 5554 (1992). Additionally, the Commission will not designate a potentially disqualifying public file issue when there is no evidence of intentional or repeated misconduct. See Millard V. Oakley, 45 RR 2d 661, 663 (1979); Professional Radio, Inc., 2 Rcd 6666, 6667 (1987). Danaher has not demonstrated that there was an intentional or repeated violation of the public file rule. This argument therefore must fail.

Programming and other allegations. Danaher also alleges an "imbalance" towards liberal viewpoints in the stations' programming, a lack of response to listener complaints, a failure to elicit audience concerns, and excessive promotion of Florida State University to the exclusion of the "public interest" of the broader local community within its coverage area. While the Commission appreciates Danaher's interest, it will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming. See WGBA Educational Foundation, 69 FCC 2d 1250, 1251 (1978). This is especially so where, as here, there is no showing that the programming in question violated the agency's rules. See e.g., Letter to Paul E. Killinger [Station KOA(AM), Denver, Colorado] from the Chief, Audio Services Division, Mass Media Bureau, June 12, 1991 (reference 8900-IB).

Rather, a public broadcaster's performance is sufficient for renewal purposes if the station's overall programming responds to the problems, needs, and interests of the community. See Seattle Public Schools, 4 FCC Rcd 625, 629-30 (Rev. Bd. 1989); WHYI, Inc., 93 FCC 2d 1086, 1096 (1983). Individual programming decisions, such as whether to air unpopular political viewpoints, are matters which fall within the licensee's discretion, and absent substantial extrinsic evidence that a licensee has abused this discretion, the Commission will not intervene. Citizens Communication Center, 25 FCC 2d 705, 707 (1970). Here, Danaher has not shown that the programming aired by WFSQ-FM and WFSU-FM fails to meet the needs of the Tallahassee community, as he has not submitted evidence to show deficiencies in the stations' overall programming, which also includes coverage of non-political issues.

Conclusion. Danaher's objection fails to raise a substantial and material question of fact as to whether grant of the WFSQ-FM and WFSU-FM license renewal applications would serve the public interest, convenience, and necessity. On the contrary, an examination of the applications reveals that their grant would serve the public interest, convenience, and necessity.

Translator applications. The translator applications as submitted are not grantable. Action on those applications awaits the submission of requested perfecting amendments. Determinations as to those applications will be addressed under separate cover.

In light of the above and pursuant to 47 C.F.R. §0.283, the informal objection filed by Eugene Danaher IS DENIED, and the applications for renewal of the licenses of Stations WFSQ-FM and WFSU-FM, Tallahassee, Florida, filed by The Board of Regents of Florida Acting for and on Behalf of the Florida State University (File Nos. BRED-951002G4 and BRED-951002H7, respectively) ARE GRANTED.

Sincerely,

Linda Blair, Chief
Audio Services Division
Mass Media Bureau

cc: Wayne Coy, Jr., Esquire
Eugene Danaher