



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

**February 19, 2016**

*In Reply Refer to:*  
1800B3-SS

Mr. Michael Conforti  
170 Jackson Ave.  
Syosset, NY 11791

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Wiley Rein LLP  
1776 K Street, N.W.  
Washington, DC 20006

In re: WQHT(FM), New York, New York  
Facility ID: 19615  
File No. BRH-20140130AGC

**Application for Renewal of License**

**Petition to Deny**

Dear Mr. Conforti and Counsel:

We have before us the referenced application of Emmis License Corporation of New York (Emmis) for renewal of license (Application) of Station WQHT(FM), New York, New York (Station), filed on January 30, 2014. We also have before us a Petition to Deny (Petition) filed by Michael Conforti (Conforti) on April 28, 2014, and related pleadings.<sup>1</sup> For the reasons set forth below, we deny the Petition and grant the Application.

**Background.** On January 30, 2014, Emmis timely filed the Application. In his Petition, Conforti claims that the Station's license should not be renewed because it does not serve the public interest. Specifically, Conforti argues that the Application should be designated for hearing because the Station fails to adequately serve the New York "hip hop" community as it: (1) does not provide adequate programming directed to the "hip hop culture"; (2) focuses disproportionately on hip hop music as compared to the related "culture"; and (3) does not do enough to support and promote the New York hip hop scene.<sup>2</sup>

In its Opposition, Emmis argues that Conforti's complaints relate solely to matters that, pursuant to the First Amendment, the Communications Act of 1934, as amended (Act), and settled precedent, are under the auspices of Emmis' editorial discretion and therefore outside of the Commission's inquiry in evaluating the Station's license renewal application.<sup>3</sup> In addition, Emmis claims that Conforti lacks standing as a "party in interest" to file the Petition because his standing claim is based on his apparent view that another entity might program the Station differently and that this assumption is wholly

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<sup>1</sup> On May 28, 2014, Emmis filed an Opposition to Petition to Deny (Opposition), to which Conforti replied on June 6, 2014 (Reply).

<sup>2</sup> Petition at 3, 6-7, 10, 13, 14-19.

<sup>3</sup> Opposition at 2-3.

speculative, and thus, insufficient to establish causation.<sup>4</sup> Emmis also argues that the Commission cannot remedy Conforti's claimed injury, which flows from his subjective view that Emmis should program the Stations differently.<sup>5</sup>

In his Reply, Conforti reiterates the claims made in his Petition, adding that grant of the Application would cause direct injury to himself and others because the Station is not serving the needs and interests of the community.<sup>6</sup>

**Discussion.** Under Section 309(d) of the Act,<sup>7</sup> a party has standing to file a petition to deny if grant of an application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.<sup>8</sup> The Commission also accords party-in-interest status to a petitioner who demonstrates either that he/she resides in the service area of the station that is the subject of the petition or that he/she listens to or views the station regularly and that such listening or viewing is not the result of transient contacts with the station.<sup>9</sup> Factual allegations as to why grant of a broadcast application would not serve the public interest, combined with a showing of local residence, supply the predicate for finding injury in fact.<sup>10</sup> To warrant standing as a listener/resident, the petitioner must provide an affidavit or declaration that establishes such standing.<sup>11</sup> Conforti provides an affidavit that establishes listener/residence status as a basis for standing. Therefore, we find that he has standing to file a petition to deny in this proceeding.

Petitions to deny must, pursuant to Section 309(d) of the Act,<sup>12</sup> 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,<sup>13</sup> 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

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<sup>4</sup> *Id.* at 6.

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

<sup>6</sup> Reply at 3, 5.

<sup>7</sup> 47 U.S.C. § 309(d).

<sup>8</sup> See, e.g., *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC 2d 696 (1978).

<sup>9</sup> See *Tabback Broadcasting Company*, Memorandum Opinion and Order, 15 FCC Rcd 11899, 11900 n.3 (2000), and *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999).

<sup>10</sup> See *Shareholders of Tribune Co., Transferors & Sam Zell, et al. Transferees*, Memorandum Opinion and Order on Reconsideration, 29 FCC Rcd 844, 847, para. 10 and n.26 (2014).

<sup>11</sup> See *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89 (1980); see also *Infinity Broadcasting Corp. of California*, Memorandum Opinion and Order, 10 FCC Rcd 9504 (1995); *Tabback Broadcasting Company, supra*, and *Niles Broadcasting Company*, Memorandum Opinion and Order, 7 FCC Rcd 5959 (1992).

<sup>12</sup> 47 U.S.C. § 309(e).

<sup>13</sup> 47 U.S.C. § 309(k). 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 para. 6 (1986) (*Area Christian*) (petitions to deny must contain adequate and specific factual allegations sufficient to warrant the relief requested).

violations of the Act or the rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.<sup>14</sup> 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 and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>15</sup>

Conforti does not claim that Emmis has violated any Commission rule or the Act, but rather merely asserts that the Station is acting “inconsistent[ly]” with Section 309(k) of the Act.<sup>16</sup> His core complaint relates to alleged programming that provides “little to no . . . support [to] the cultural, artistic and community-minded endeavors of the Hip Hop community in New York City and surrounding areas at large . . . .”<sup>17</sup> However, the role of the Commission in overseeing program content is limited. The First Amendment to the United States Constitution<sup>18</sup> and Section 326 of the Act<sup>19</sup> prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights. Generally, the Commission 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.<sup>20</sup> A licensee has broad discretion – based on its right to free speech – to choose, in good faith, the programming that it believes serves the needs and interests of the members of its audience.<sup>21</sup> We will intervene in programming matters only if a licensee abuses that discretion.<sup>22</sup> Conforti has not demonstrated that the Station has done so here. We therefore find that the allegations in Conforti’s Petition are sufficient to warrant further inquiry regarding renewal of the Station’s license.<sup>23</sup>

**Conclusion/Actions.** We have evaluated the Application pursuant to Section 309(k) of the Act,<sup>24</sup> and we find that the Station has served the public interest, convenience, and necessity during the subject license term. Moreover, we find that there have been no serious violations of the Act or the rules involving the Station by Emmis which, taken together, would constitute a pattern of abuse. In light of the foregoing, we will grant the Application.

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<sup>14</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>15</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>16</sup> *See* Reply at 5.

<sup>17</sup> Petition at 23.

<sup>18</sup> U.S. CONST. amend. I.

<sup>19</sup> 47 U.S.C. § 326.

<sup>20</sup> *See WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251, para. 3 (1978).

<sup>21</sup> *See, e.g., License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401, para. 7 (1993) (*Philadelphia Station License Renewals*) (citing *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1082 (1972), and *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted)).

<sup>22</sup> *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401.


<sup>23</sup> *See Area Christian*, 60 RR 2d at 864.

<sup>24</sup> 47 U.S.C. § 309(k).

Accordingly, IT IS ORDERED that the April 28, 2014, Petition to Deny filed by Michael Conforti is DENIED.

IT IS FURTHER ORDERED that the application of Emmis License Corporation of New York for renewal of its license for Station WQHT(FM), New York, New York (File No. BRH-20140130AGC), IS GRANTED.

Sincerely,

  
Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Emmis License Corporation of New York