



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

August 3, 2016

In Reply Refer to:
1800B3-PPD

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In re: **WBAI(FM), New York, NY**
File No. BRH-20140130ANC
Facility ID No. 51249

**Application for Renewal of License
Informal Objection**

Dear Applicant and Objectors:

This letter refers to: (1) the above-referenced application of Pacifica Foundation, Inc. (Licensee) to renew the noncommercial educational license for WBAI(FM) (Station), New York, New York (Application);¹ (2) the February 3, 2014, Informal Objection (Manfredonia February 3 Objection) filed by Edward Manfredonia (Manfredonia); (3) the February 14, 2014, Informal Objection (Manfredonia

¹ See *Broadcast Applications*, Public Notice, Report No. 28169 (MB February 4, 2014).

February 14 Objection) filed by Manfredonia; (4) the March 27, 2014, Informal Objection (Miller Objection) filed by Daniel Miller (Miller); (5) the October 2, 2015, Informal Objection (Heyden Objection) filed by Marsha Vander Heyden (Heyden); (6) the December 4, 2015, Informal Objection (Manfredonia December Objection) filed by Manfredonia; and (7) the April 22, 2016, Informal Objection (Manfredonia April Objection) (collectively, the Objections) filed by Manfredonia. For the reasons set forth below, we deny the Objections and grant the Application.

Background. Licensee timely filed the Application on January 30, 2014, against which Manfredonia, Miller, and Heyden all filed numerous Informal Objections. The four Informal Objections filed by Manfredonia allege the Station engaged in: (1) theft;² (2) fraud;³ (3) bribery;⁴ (4) improper business practices;⁵ and (5) public file violations.⁶ The Miller Objection and Heyden Objection both take issue with the Station's programming.⁷ Licensee did not respond to any of the Objections.

Specifically, Manfredonia claims the Station failed to report or recoup the \$60,000 cost of stolen broadcasting equipment.⁸ Manfredonia, relying on a statement made by a board member, states the equipment was purchased with a grant from the Corporation for Public Broadcasting.⁹ According to Manfredonia, Bernard White (White), Program Director of the Station and Tony Riddle, General Manager of the Station, ordered the broadcasting equipment, which was later reported stolen.¹⁰ Manfredonia states White has been questioned about the theft, but claims that White has "provided evasive answers."¹¹ According to Manfredonia, the "felony theft" should have been reported to the Internal Revenue Service, and by not doing so, the Licensee is engaged in a "conspiracy to cover up a felony."¹²

Manfredonia also alleges impropriety concerning a \$30,000 loan from Stephen M. Brown (Brown) of the Stephen M. Brown Group and a member of the Local Station Board.¹³ According to Manfredonia, either the loan was never made, or the loan was used to hire Brown's friend, Andrea Katz (Katz) as Interim Development Director, in violation of "federal not for profit law."¹⁴ Manfredonia states

² See Manfredonia February 3 Objection at 1.

³ See Manfredonia February 14 Objection at 1.

⁴ See Manfredonia April Objection at 1.

⁵ See Manfredonia February 3 Objection at 1, claiming the improper use of consultants; Manfredonia February 14 Objection at 2-5, claiming the Stephen M. Brown Group, which controls the Local Station Board, has improper control over the Station; and Manfredonia December 4 Objection at 1-2, alleging harassment by a board member.

⁶ See Manfredonia February 14 Objection at 3-4.

⁷ See Miller Objection at 1-2 and Heyden Objection at 1.

⁸ See Manfredonia February 3 Objection at page 1.

⁹ Manfredonia February 3 Objection at 2, recounting a statement made by Frank LeFever, a member of the Station's Finance Committee and Local Station Board.

¹⁰ Manfredonia also notes he has provided information about the theft to the Internal Revenue Service and the Corporation for Public Broadcasting. Manfredonia February 3 Objection at 1.

¹¹ See Manfredonia February 3 Objection at 1. Manfredonia states various other board members have stated the equipment was stolen. See *id.* at 2, citing discussions with R Paul Martin, Chair of the WBAI Finance Committee and a member of the WBAI Local Station board; Jim Dingeman, Chair of the WBAI Community Advisory Board; and Carolyn Birden, member of the WBAI Local Station Board.

¹² See Manfredonia February 3 Objection at 2.

¹³ See Manfredonia February 14 Objection at 2-5.

¹⁴ See *id.* at 2. Manfredonia argues the law states "a not for profit organization cannot profit from the sale of a federally regulated license if that Not for Profit has engage in conduct, which violates Not for Profit law." However, Manfredonia does not provide any citation or any other information regarding the law to which he is referring.

there is no evidence of the loan since it has not been documented or reported in the Station's financial statements.¹⁵ Manfredonia also contends that many individuals associated with the Station have lied about the loan, and therefore have perpetrated fraud.¹⁶ Manfredonia further alleges the Station was engaged in a bribery scheme when Janet Coleman, a Station board member, voted for an operating agreement with another station, only on the condition that she could keep her broadcasting hours.¹⁷

Overall, Manfredonia disagrees with the Station's business and management practices. For example, Manfredonia claims the Station has made improper use of consultants "for more than a one year period."¹⁸ Manfredonia also believes Brown has undue influence over the Station's hiring and financial practices.¹⁹ As a result of his complaints, Manfredonia states he has been harassed and assaulted by various individuals associated with the Station.²⁰ Finally, Manfredonia alleges the Station is in violation of Section 73.2080(c)(6) of the Rules²¹ because the Station did not file its annual Equal Employment Opportunity (EEO) public file report with the Application, and the positions of Interim Development Director and Webmaster were not advertised as required by Section 73.2080(c)(6).²²

The Miller and Heyden Objections both raise issues with the Station's programming. Miller simply argues the programming and points of view are "biased and far out of the mainstream" and promote unconventional ideas,²³ while Heyden does not believe the programming reflects the interests of the listeners.²⁴ These Objections do not provide any specific examples of the content or programming to which they object.

Discussion. An informal objection to a license renewal application must provide, pursuant to Section 309(d) of the Communications Act of 1934, as amended (the Act),²⁵ 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,²⁶ 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

¹⁵ See Manfredonia February 14 Objection at 2.

¹⁶ See Manfredonia February 14 Objection at 2-4.

¹⁷ See Manfredonia April Objection at 1.

¹⁸ Manfredonia does not provide any specifics as to why the use of consultants was improper, but does note that he has asked the Department of Labor to investigate the Station's use of consultants. See Manfredonia February 3 Objection at 1.

¹⁹ Manfredonia February 14 Objection at 2-5

²⁰ See Manfredonia December Objection at 1-2.

²¹ See 47 CFR §73.2080(c)(6).

²² See Manfredonia February 14 Objection at 4-5.

²³ Miller Objection at 1-2.

²⁴ Heyden Objection at 1. Specifically, Heyden does not believe the programming reflects the interests of "Indigenous peoples; ... Muslim Communities and the multiple Asian communities...." Heyden also attached an American with Disabilities Act (ADA) complaint to the Objection, but does not specifically allege the ADA issue in the Objection. In any event, such allegations are outside of the Commission's jurisdiction and only can be addressed by the Disability Rights Section of the Civil Rights Division at the Department of Justice. See *Mr. Charles N. James*, Letter, 21 FCC Rcd 11874 (MB 2006).

²⁵ 47 U.S.C. § 309(d).

²⁶ 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 Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (D.C. Cir. Sept. 10, 1993).

station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or of the Commission's Rules (Rules); and (3) there have been no other violations that, taken together, constitute a pattern of abuse.²⁷ 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(d) 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."²⁸

Manfredonia Allegations. The majority of Manfredonia's allegations contain conclusory allegations unsubstantiated by any extrinsic evidence. For example, most of Manfredonia's allegations around the theft, fraud, and bribery are based on uncorroborated and unsupported hearsay statements made by other individuals.²⁹ More importantly, apart from the allegations of the EEO violation, Manfredonia neither invokes any provision of the Act or the Rules nor demonstrates that any of the allegations relate to the Station's compliance with the Act and the Rules. Similarly, the harassment and assault allegations fail to implicate any Act or the Rule provision, and have not otherwise been adjudicated by a court or administrative body.³⁰ These unsupported or irrelevant allegations will receive no further consideration.³¹

With respect to the claim that Licensee did not file its annual EEO report with the Application, the Commission has, in fact, received the report.³² The EEO Report is complete and meets the Rule's requirements.³³ With respect to the allegation regarding available positions at the Station, the Commission requires broadcasters to use recruitment sources "reasonably calculated to reach the entire community"³⁴ but "will not dictate the number or types of sources that a broadcaster must use."³⁵ Manfredonia simply states that the positions at issue were not advertised, but has not provided any

²⁷ 47 U.S.C. § 309(k)(1).

²⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁹ We have previously declined to credit hearsay statements of third parties. *See Living Proof, Inc. Big Pine, California*, Letter, 24 FCC Rcd 2382, 2385, n.29 (MB 2009). Moreover, in 1986, the Commission made revisions to its character policy, stating it would generally limit its consideration of "non-FCC misconduct involving criminally fraudulent misrepresentations, alleged criminal activity and antitrust or anticompetitive misconduct." *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1205, para. 48 (1986) (subsequent history omitted) (*Character Policy Statement*). According to the Commission, it "lack[ed] the expertise and the resources to interpret other statutes and to make value judgments about behavior unrelated to the broadcast licensing function." *Id.* at 1191, para. 25. Thus, the Commission will not generally consider unadjudicated allegations, unless the "nonbroadcast misconduct [is] so egregious as to shock the conscious and evoke almost universal disapprobation." *Id.* at 1205, n. 60.

³⁰ *See Character Policy Statement*, 102 FCC 2d at 1189, para. 23 (generally narrowing the range of non-FCC related misconduct to be considered when assessing an applicant's character qualifications to matters upon which there has been an adjudication by a tribunal of competent jurisdiction of a felony or certain other types of misconduct by the licensee and/or parties with an attributable interest in the licensee).

³¹ *See e.g., Texas Educ. Broad. Co-operative*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 13038, 13040, para. 6 (MB 2007) (informal objection made numerous allegations, including allegations of fraud, theft and misappropriation of funds, and other misconduct, but failed to provide extrinsic evidence to support the allegations or cite to any violations of the Act or the Rules).

³² *See* File No. B396-20140130ANB (EEO Report).

³³ *See* 47 CFR §73.2080(c)(6).

³⁴ 47 CFR §73.2080(c)(1)(i). *See also Review of the Commission's Broad. And Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24048, para. 89 (2003).

³⁵ *Id.* at 24047, para 86.

extrinsic support for his allegations that the Licensee has violated Section §73.2080(c)(6). For these reasons, Manfredonia's Objections will be denied.

Miller/Hayden Objections. Finally, the Miller and Heyden Objections seek the denial of the Station's Application because they disagree with Station programming choices. Even if the Miller and Heyden Objections had provided specific examples of the objectionable programming, these content-based arguments concern matters over which the Commission has only limited review authority. The Commission's role in overseeing program content is limited by the First Amendment to the United States Constitution and Section 326 of the Act, which prohibit the Commission from interfering with broadcasters' freedom of expression censoring program material.³⁶

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.³⁷ However, 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 inappropriate programming.³⁸ A licensee has broad discretion -- based on its right to free speech -- to choose, in good faith, the programming it believes serves the needs and interests of its community of license.³⁹ We will intervene in programming matters only if a licensee abuses that discretion.⁴⁰ The Miller and Heyden Objections have not demonstrated that the Licensee has done so here, and therefore these Objections will be denied.

Conclusion/Actions. We have evaluated the Application pursuant to Section 309(k) of the Act, and we find that Station WBAI(FM) 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.

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,⁴¹ IT IS ORDERED, that the Informal Objections filed by Edward Manfredonia on February 3, 2014, February 14, 2014, December 4, 2015, and April 22, 2016; Daniel Miller on March 27, 2014; and Marsha Vander Heyden on October 2, 2015 ARE DENIED.

³⁶ U.S. Const., Amend I; 47 U.S.C. § 326.

³⁷ 18 U.S.C. § 1464.

³⁸ See *WGBH Educ. Found.*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251, para. 3 (1978).

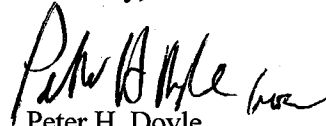
³⁹ See, e.g., *Mr. Robert Meshanko*, Letter, 22 FCC Rcd 4809, 4810 (MB 2007); *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401, para. 7 (MMB 1993) ("*Philadelphia Station License Renewals*"), citing *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).

⁴⁰ *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401.

⁴¹ 47 U.S.C. § 309(k); 47 CFR §§ 0.61, 0.283.

IT IS FURTHER ORDERED, that the application of Pacifica Foundation, Inc. to renew the noncommercial educational license for Station WBAI(FM), New York, New York (File No. BRH-20140130ANC), IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle", with a stylized flourish at the end.

Peter H. Doyle
Chief, Audio Division
Media Bureau