



Federal Communications Commission
Washington, D.C. 20554

July 13, 2007

DA 07-3211
Released: July 13, 2007
In Reply Refer to:
1800B3-TSN

The University of Southern California
515 S. Figueroa Street
Suite 2050
Los Angeles, CA 90071

Desert Coalition for Responsible Broadcasting
c/o Kerry E. Burke
543 Tercero Circle
Palm Springs, CA 92262

In re: **The University of Southern California**
KPSC(FM), Palm Springs, California
Facility ID No. 69394
File No. BRED-20050729BBS

**Application for Renewal of NCE
Radio Station License**

Informal Objection

Dear Applicant and Objector:

We have before us the above-referenced application ("Application") filed by The University of Southern California ("USC") for renewal of the license of Station KPSC(FM), Palm Springs, California. We also have before us an informal objection to the Application, filed on October 25, 2005, by the Desert Coalition for Responsible Broadcasting ("DCRB"). For the reasons set forth below, we deny the informal objection and grant the Application.¹

Background. USC timely filed an application to renew the KPSC(FM) license on July 29, 2005.² On October 25, 2005, DCRB filed a letter objecting to grant of the Application (the "Objection"). While the Objection was filed within the requisite time period for petitions to deny the Application,³

¹ We also have before us USC's November 9, 2005, Response to Informal Objection ("Response"), DCRB's December 12, 2005, reply to the Response ("Reply"), and DCRB's December 20, 2005, revised reply, correcting an error in the Reply.

² Renewal applications for stations in California were to be filed by August 1, 2005, and licenses expired December 1, 2005.

³ Under 47 C.F.R. § 73.3516(e), petitions to deny the Application were due by November 1, 2005.

DCRB's letter is styled as an "informal objection," and thus we will so consider it. USC filed its Response on November 9, 2005, to which DCRB replied on December 12, 2005.

Discussion. DCRB lodges a number of complaints, primarily concerning what it believes is a lack of local programming on KPSC(FM). DCRB first notes that the KPSC(FM) authorization has a special operating condition waiving Section 73.1125 of the Commission's Rules (the "Rules")⁴ and allowing KPSC(FM) to operate as a satellite of station KUSC(FM), Los Angeles, California.⁵ DCRB contends that USC does not provide sufficient local programming, and thus requests that the special operating condition be revoked so that a new licensee could "become a local voice for the community."⁶ DCRB goes on to list what it believes to be six failures on USC's part to provide local programming. It alleges that USC has "repeatedly failed" to: (1) cover local elections and ballot issues; (2) provide a local studio presence where citizens might be able to participate in discussions relevant to the desert communities; (3) provide local news, weather, and traffic reports; (4) provide educational programming appropriate to the desert communities; (5) provide "even a minimal amount of programming about cultural activities in the desert," and (6) provide public service announcements about local charities.⁷ Attached to the Objection are six substantially identical declarations of area residents, each stating that the declarant has the impression that broadcast stations have a responsibility to cover local events and elections, news, weather, and disaster information, and stating that their "right to have access to local programming has been harmed by the refusal of KPSC not willing to provide this service to our community [sic]."⁸ DCRB concludes that USC's programming policy for KPSC(FM) is "contrary to the local interests of this community," and requests we designate the Application for a hearing to consider whether grant of license renewal is in the public interest.⁹

USC states that KPSC(FM), while operating as a satellite of KUSC(FM) in Los Angeles, nevertheless is the only one of the 31 radio stations operating in the Palm Springs Arbitron Metro that serves the community's cultural, fine arts, and public affairs interests.¹⁰ It further argues that the amount of financial support KPSC(FM) receives from its listeners is indicative of the regard the station's listeners have for its programming.¹¹ USC also cites entertainment and public interest programming that, it contends, it "routinely develops and airs" to meet the "significant needs and interests of Palm Springs area listeners," including coverage of the Palm Springs Film Festival, features highlighting an exhibit at the Palm Springs Art Museum, and "[h]undreds of public service, civic, cultural and educational programs and announcements responsive to the interests and needs of local residents" that are broadcast

⁴ 47 C.F.R. § 73.1125.

⁵ Objection, first unnumbered page.

⁶ *Id.*

⁷ Objection, second unnumbered page.

⁸ *See* Declarations of Rev. Hank Bates, Thomas Yanni, Thais Boneta, John Johansen, Frank Arellano, and Stanley Stump, attached to Objection. Two of the declarants (Yanni and Johansen) identify themselves as DCRB members.

⁹ *Id.*

¹⁰ Response at 2.

¹¹ *Id.* at 3.

throughout the year.¹² Additionally, USC lists programs currently planned that will cover the arts in the Palm Springs area, partly funded by a recent grant from the James Irvine Foundation.¹³ USC also notes that it maintains a toll-free telephone number for the convenience of area listeners, who may call with comments, music and programming requests, questions, and voluntary financial contributions.

DCRB, in reply, states that the Palm Springs Film Festival was “covered internationally by all media,” and thus that KPSC(FM)’s coverage thereof does not address the need for “continuing coverage of the myriad local events in this community.”¹⁴ DCRB also questions USC’s planned future programming, claiming that it spoke with the KUSC(FM) and KPSC(FM) general manager about such needs two years previously, without result.¹⁵ Finally, DCRB notes that KPSC(FM)’s toll-free number appears to have, as its sole purpose, “the solicitation of monies for the Los Angeles operation.”¹⁶

A petition to deny a renewal application (as well as an informal objection) must, pursuant to Section 309(d) of the Communications Act of 1934, as amended (the “Act”),¹⁷ 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,¹⁸ 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 violations of the Act or the Rules; and (3) there have been no other violations that, taken together, constitute a pattern of abuse.¹⁹ 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.”²⁰

¹² *Id.* and n.4.

¹³ *Id.*

¹⁴ Reply at second unnumbered page.

¹⁵ *Id.* Curiously, DCRB concedes that “many people do listen to KPSC,” but goes on to contend that this “only underlines the fact that there is a need for this frequency to be utilized to serve the LOCAL community.” *Id.* DCRB appears to be arguing that the KPSC(FM) license should not be renewed precisely *because* many people in the community listen to its programming.

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 309(d).

¹⁸ *Id.*, § 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), *reh’g denied* (D.C. Cir. Sept. 10, 1993).

¹⁹ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described in the text 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).

²⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

While it is true, as DCRB states, that radio stations have an obligation to provide coverage of issues facing their communities,²¹ radio licensees have broad discretion to determine, in good faith, the programming that they believe serves the needs and interests of their communities. The Commission intervenes only in circumstances in which a licensee has abused this discretion.²² In making this determination, stations may reasonably take into account programming provided by other stations in the market.²³ The record in this case does not support DCRB's claim that USC's program judgment with regard to KPSC(FM) is arbitrary or unreasonable. In particular, we find no basis in fact for DCRB's statement that USC's programming policy is "contrary to the local interests of [KPSC(FM)'s] community,"²⁴ with its implication that the station's programming is not merely insufficient, but is actually antithetical to the public interest. USC has provided evidence of programming meeting the needs of its community within the context of its mission as a fine arts broadcaster.²⁵ Although USC does not claim to provide all of the types of local programming that DCRB demands, it has shown that the Palm Springs area is provided with abundant broadcast service, and thus that its program judgment has not deprived the community of vital local programming. The Commission will not take adverse action on a license renewal application based on the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.²⁶

We likewise find no merit in DCRB's complaint regarding USC's special operating condition allowing it to operate KPSC(FM) as a satellite of KUSC(FM). The Commission has traditionally recognized the benefits of centralized operations for noncommercial educational stations, given the limited funding available to such stations, and has granted waivers to operate "satellite" stations, such as KPSC(FM), that do not necessarily meet the requirements of a main studio.²⁷ While such stations must still serve local needs, for the reasons discussed above we find that KPSC(FM) has done so, and USC's evidence of listener support for KPSC(FM) supports this conclusion. There is thus no reason to revisit the Commission's earlier determination to allow USC to operate KPSC(FM) as a satellite of KUSC(FM).

²¹ *Deregulation of Radio*, Report and Order, 84 FCC2d 968, 977, *on recon.* 87 FCC2d 797 (1981), *remanded on other grounds sub nom. Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983).

²² *See, e.g., License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993), citing *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC2d 1081, 1082 (1972), and *Office of Communications of United Church of Christ v. F.C.C.*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted).

²³ *Deregulation of Radio*, 84 FCC2d at 978, 982 n.32.

²⁴ Objection, second unnumbered page.

²⁵ Response at 2-3.

²⁶ *See WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC2d 1250, 1251 (1978). *See also Mr. George Philip Reno*, Letter, 21 FCC Rcd 6957 (MB 2006) (Media Bureau renewed broadcast license notwithstanding "difference of opinion" between informal objector and licensee over whether licensee should have provided news coverage of the events of September 11, 2001).

²⁷ *See Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5027 (1988); *Board of Visitors of James Madison University*, Hearing Designation Order, 8 FCC Rcd 1751, 1752 (MMB 1993).

We therefore cannot conclude from this record that USC has violated the Act or the Rules, or has failed to serve the needs of its community or the public interest generally, and thus do not find that DCRB's allegations raise a substantial and material question of fact that grant of the Application would be *prima facie* inconsistent with the Act.

Conclusion. As discussed above, we find no evidence of rule violations by USC that would warrant conditioning or denying its Application to renew the license for Station KPSC(FM). Further, we find that Station KPSC(FM) served the public interest, convenience, and necessity during the subject license term. Accordingly, the Objection filed by Desert Coalition for Responsible Broadcasting IS DENIED. IT IS ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of Santa Monica Community College District, for Station KPSC(FM), Palm Springs, California (File No. BRED-20050729BBS) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Lawrence Bernstein, Esq., Counsel for The University of Southern California