



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

October 9, 2007

DA 07-4180

In Reply Refer to:

1800B3-SC

Released: October 9, 2007

Mr. Peter D. Moss
Moss for U.S. Senate
Fairfax, Vermont
05454-0413

Ms. Peggy Sapphire
1927 Morey Hill Road
Craftsbury, Vermont 05826

Melodie A. Virtue, Esq.
Garvey Schubert Barer
1000 Potomac Street, NW
Washington, DC 20007-3501

In re: WVPR(FM), Windsor, VT
Facility ID No. 69951
Vermont Public Radio
File No. BRED-20051201BEM

WVPS(FM), Burlington, VT
Facility ID No. 69952
Vermont Public Radio
File No. BRED-20051201BHZ

WBTV-FM, Bennington, VT
Facility ID No. 9310
Vermont Public Radio
File No. BRED-20051201BHP

WNCH(FM), Norwich, VT
Facility ID No. 84441
Vermont Public Radio
File No. BRED-20051201BHF

WRVT(FM), Rutland, VT
Facility ID No. 69953
Vermont Public Radio
File No. BRED-20051201BGL

WVPA(FM), St. Johnsbury, VT
Facility ID No. 85029
Vermont Public Radio

Applications for Renewal of Licenses

Petition to Deny and Informal Objection

Dear Mr. Moss, Ms. Sapphire and Ms. Virtue:

We have before us the above-referenced applications (the “Applications”) of Vermont Public Radio (“VPR”) for the renewal of license of the following stations: WVPR(FM), Windsor, VT; WVPS(FM), Burlington, VT; WBTN-FM, Bennington, VT ; WNCH(FM), Norwich, VT ; WRVT(FM), Rutland, VT; and WVPA(FM), St. Johnsbury, VT (collectively, the “Stations”). Also on file are: (1) an Informal Objection filed by Peter D. Moss on January 18, 2006 (the “Moss Objection”)¹; (2) an Informal Objection filed by Peggy Sapphire on January 27, 2006 (the “Sapphire Objection”); (3) Licensee’s Opposition to the Moss Objection filed on March 8, 2006; (4) Licensee’s Opposition to the Sapphire Objection filed on March 24, 2006 (together, the “Oppositions”) and; (5) a Reply to the Opposition filed by Peter D. Moss on March 24, 2006. For the reasons set forth below, we deny the Moss Objection and the Sapphire Objection and grant the Applications.

Background. *The Moss Objection.* Moss commences his Objection with a section entitled “Reasons for Denial”, which declares that VPR is “nothing more than a regime propaganda tool...slavishly support[ing] the rotten conservative bushist [*sic*] regime line and lies.” He notes that he submitted a letter to VPR’s General Manager, Mark Vogelzang, in which he stated that “public broadcasting in general, including VPR and VPTV, are quasi federal agencies broadcasting Washington propaganda,” and asserts that the receipt of federal funding heavily influences VPR’s programming. The Objection also discusses the sentencing decisions of Vermont judge, Ed Cushman, and Moss’s belief that VPR aired a program interviewing corrections officials to purposefully divert attention from Judge Cushman. As a way to disclose the bias he perceives to be present in VPR’s programming, Moss proposes that VPR replace “public broadcasting” with “federally subsidized” in its name, and he indicates that he will withdraw his petition should VPR do so.

The Sapphire Objection. In her Objection, Sapphire states that she writes on behalf of a grassroots coalition of Vermont Public Radio listeners who submitted a petition with thousands of signatures to Mr. Vogelzang, requesting broadcast of the program, “Democracy Now.” The Objection also describes the coalition’s collection of “virtual” pledges to VPR, made contingent on the broadcast of “Democracy Now.” Sapphire claims that Mr. Vogelzang “violated his responsibility” to VPR’s listeners and members by disregarding the petition and virtual pledge drive and by not broadcasting “Democracy Now” on any of the Stations. Sapphire contends that in a state like Vermont, with a comparatively small population, the views of thousands of listeners are “essential and significant.” The Objection requests that the Commission withhold renewal of the Stations’ licenses until VPR agrees to air “Democracy Now.”

VPR Oppositions. VPR’s Oppositions to both pleadings are substantially similar. Both note that each Petitioner premises its claim that VPR does not serve the public interest based only on dissatisfaction with VPR’s programming. In response, VPR argues that long-standing policy dictates that

¹ Moss explicitly states that his submission is a Petition to Deny. However, for the reasons discussed below, we find that Moss lacks standing to file a petition to deny the Applications. *See infra*, note 2. We consider the merits of his submission as an informal objection.

the Commission “is not the arbiter of programming formats” and ultimately, the “licensee decides which programs to air and which to target.” For this reason, VPR states, both Objections should be dismissed.²

Discussion. Petitions to deny and informal objections must, pursuant to Section 309(e) of the Act, 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, which governs our evaluation of an application for license renewal.³ 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 Commission’s Rules (the “Rules”); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁴ 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.”⁵

We have examined the Moss Objection and the Sapphire Objection and find that they do not raise any substantial and material question of fact calling for further inquiry, nor do they otherwise persuade us that grant of the Stations’ renewal applications would contravene the public interest, convenience, and necessity. Neither alleges a violation of the Act or the Rules. The Moss Objection alleges that VPR does not serve the public interest and the Sapphire Objection, while not explicitly stating so, suggests the same. Both attempt to support this contention by taking issue with VPR’s programming choices. The First Amendment to the U.S. Constitution and Section 326 of the Act, 47 U.S.C. §326, which states that “no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication,” generally limit the role of the Commission in overseeing program content. Licensees have broad discretion, to choose, in good faith, the programming

² The Opposition to the Moss Objection additionally comments that Moss did not establish standing to file a petition to deny the Applications. Under Section 309(d) of the Communications Act of 1934, as amended (the “Act”) and Section 73.3584 of the Commission’s rules, a person filing a petition to deny an application in a broadcast proceeding must demonstrate that he or she is a “party in interest.” *See* 47 U.S.C. §309(d)(1); 47 C.F.R. §3584(a). Members of the public may establish standing as a party in interest by demonstrating that they are either (1) a resident of the station’s service area or (2) a listener or viewer whose contact with the station is not transient. Individuals not capable of receiving the station’s full offerings on a regular basis thus lack standing. *See Sagittarius Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 22551, 22554-5 (2003). Moss’s Reply to the Opposition largely reiterates the points made in his original pleading. He responds specifically to the question of his standing by pointing out that he appeared on a VPR program as a candidate for the 2004 U.S. Senate primary (party not specified), to represent the state of Vermont. This fact does not confirm whether or not Moss resides in any of the Stations’ listening areas nor does it show that he is more than a transient listener (or a listener at all) of any of the Stations. Given the absence of information proving Moss’s standing, we cannot consider him a party in interest but will nevertheless review the merits of his pleading as an informal objection. *See id.*

³ 47 U.S.C. §309(k).

⁴ 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).

⁵ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

they believe serves the needs and interests of their communities.⁶ With particular regard to noncommercial educational stations, the Commission has chosen to advance the public broadcasting system by leaving format decisions to the licensees “rather than determining the content of its programming.”⁷ The Commission will intervene in programming matters only if a licensee abuses its discretion, which a petitioner must affirmatively demonstrate.⁸

The Petitioners have not shown that VPR has abused its discretion or failed to serve the public interest in any other way. Moss’s allegations that VPR aired programming with the intent of distracting listeners from the events concerning Judge Cushman and that VPR in general broadcasts federal “propaganda” are speculative personal opinions, entirely unsupported by fact. With respect to Sapphire’s characterization of Mr. Vogelzang’s decision not to air “Democracy Now” as a violation of his duties, although we recognize the members’ interest in public radio format and programming matters, the subjective determination of a listener or group of listeners as to what constitutes appropriate programming does not constitute sufficient grounds to take adverse action on a license renewal.⁹

Conclusion/Actions. For the foregoing reasons, we deny the Moss Objection and Sapphire Objection. We have evaluated the above-referenced renewal applications and we find that Stations have 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 Stations or violations by Licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse.

Accordingly, pursuant to Section 309(k) of the Act and Sections 0.61 and 0.283 of the Rules,¹⁰ the Informal Objection filed by Peter D. Moss and the Informal Objection filed by Peggy Sapphire are DENIED and the Applications of Vermont Public Radio, for renewal of its licenses for the radio stations referenced above, ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Vermont Public Radio

⁶ See, e.g., *Mr. Robert Meshanko*, Letter, 22 FCC Rcd 4809, 4810 (2007); *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (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).

⁷ See *Mr. Edward W. Mudd II*, Letter, 21 FCC Rcd 11871, 11872 (2006), citing *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rulemaking, 87 FCC 2d 716, 732 (1981).

⁸ *Philadelphia Station License Renewals* at 6401 (emphasizing that a petitioner bears a heavy burden in proving abuse of discretion and offering as an example of such abuse a licensee’s unreasonable or discriminatory selection of issues in the context of issue-responsive programming).

⁹ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

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