



Federal Communications Commission
Washington, D.C. 20554

July 20, 2006

DA 06-1481

In Reply Refer To:

1800B3-LD

Released: July 20, 2006

Mr. John V. Oldfield
300 Berkeley Drive
Syracuse, NY 13210-3031

In re: WJPZ Radio, Inc.
WJPZ-FM, Syracuse, New York
Facility ID: 73148
File No. BRED-20060201AZD

Dear Mr. Oldfield:

We have before us (1) a license renewal application for Station WJPZ-FM, Syracuse, New York, filed by WJPZ Radio, Inc.,¹ and (2) a Petition to Deny ("Petition") filed on May 1, 2006, by John V. Oldfield ("Oldfield") and a related pleading.² For the reasons set forth below, we deny the Petition and grant the license renewal application for Station WJPZ-FM.

Discussion. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (the "Act").³ That section provides that if, upon consideration of the application and pleadings, we find, with respect to that station, 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, we are to grant the renewal application.⁴

In his Petition, Oldfield first argues that WJPZ-FM "sanitized" its station public inspection file⁵ by removing items and failing to provide copies of items requested in a timely manner. Specifically, Oldfield claims that WJPZ-FM removed requested items from the file and took more than 10 days to fulfill his requests for copies. Oldfield does not specify which items were omitted. In failing to do so, it is unclear if the requested documents were required to be present in the file. Section 73.3527(c) of the

¹ The license renewal application was timely filed on February 1, 2006.

² An Opposition to the Petition to Deny was filed on May 31, 2006, by counsel for WJPZ Radio, Inc.

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 Non-commercial educational stations are required to maintain a public inspection file under 47 C.F.R. § 73.3527.

Rules specifies that requests for copies shall be fulfilled “within a reasonable period of time.”⁶ Because it is unclear which documents Oldfield was requesting, or when he requested them, this allegation lacks the specificity necessary to warrant further action or inquiry.⁷

Oldfield’s additional claim that WJPZ Radio was untruthful or inaccurate in its application for renewal is unsubstantiated and will be denied. Oldfield claims that WJPZ Radio answered “yes” to Section III, Question 3 of its renewal application, which “certifies that the documentation, required by 47 C.F.R. Section 73.3526 or 73.3527, as applicable, has been placed in the station’s public inspection file at the appropriate times.”⁸ WJPZ Radio in fact answered “no” to Question 3, disclosing that one required item previously left out of the file — a 2005 ownership report — was inserted once the omission was identified. Therefore, we find there is no indication that the licensee was untruthful or inaccurate in its renewal application.

Oldfield next claims that WJPZ-FM failed to comply with the environmental effects requirements of the Rules (e.g., by failing to refer to the fact that it is a collocated station with WAER) and that the station operates at a greater output power than is authorized in its license. Oldfield’s technical objections have no merit. The Commission staff has previously and thoroughly considered the issue of radiofrequency radiation exposure from the combined operations of WJPZ-FM and WAER, as well as other environmental concerns raised by Oldfield, and has repeatedly found that the operations of WJPZ-FM and WAER comply with the Commission’s rules and regulations.⁹ Oldfield’s unsupported observation that a nearby station of somewhat higher power than WJPZ-FM cannot be heard well on a car radio at a given location is not evidence of overpowered operation by WJPZ-FM. Reception of a given station at a particular location is dependent on many factors, such as intervening terrain, antenna height relative to the surrounding terrain, power, and the effects of interfering signals from stations on the same frequency or adjacent frequencies. Oldfield addresses none of these considerations. Car radios are also subject to wide fluctuations in received signal strength, which can occur over short distances. Finally, Oldfield presents no evidence that the technical operations of either WJPZ-FM or WAER have changed in any respect since the last time we addressed such matters.¹⁰ Accordingly, Oldfield’s objections on these matters will be denied.

Oldfield also alleges that WJPZ-FM is “grossly failing to serve the public interest” and the needs of Syracuse listeners. To support his claim, Oldfield provides several of WJPZ-FM’s issues/programs lists¹¹ and claims that there was “absolutely no change ... other than minor changes in Public Service

⁶ 47 C.F.R. §73.3527(c).

⁷ See *Area Christian Television, Inc.*, 60 RR 2d 862 (1986).

⁸ See FCC Form 303-S, Application for Renewal of Broadcast Station License.

⁹ See, e.g., *Letter to Michael A. Stanton, President, Southeast University Neighborhood Association (SEUNA)*, June 28, 2005, and *Letter to Mark Van Bergh regarding WAER, Syracuse University, Syracuse, New York*, March 3, 2005.

¹⁰ *Id.*

¹¹ Attached to the *Petition* as appendices are Quarterly Issues Reports for October 1, 2004 – December 31, 2004; October 1, 2005 – December 31, 2005; April 1, 2003 – June 30, 2003; and July 1, 2004 – September 30, 2004. Non-commercial educational stations are required to furnish a list of programs that have provided the station’s most significant treatment of community issues during the preceding three-month period under 47 C.F.R. § 73.3527(e)(8).

Announcements” in the programs identified on the lists.¹² He also provides a memo distributed in 2000 to the bus drivers of the North Syracuse Central School District. The memo directed that WJPZ-FM not be played on school buses because of its “inappropriate subject matter.”¹³ Oldfield claims that this memo provides further evidence that the station is “grossly failing to serve the public interest.”¹⁴ The evidence provided does not warrant further inquiry regarding whether or not WJPZ-FM served the needs and interests of Syracuse residents. The Commission rarely interferes with the programming decisions and discretion of a licensee,¹⁵ and the evidence provided does not establish that WJPZ-FM failed to serve a public need. The similarity of the issues/programs lists over several quarters does not indicate that WJPZ-FM failed to air programs addressing the needs and interests of Syracuse residents. Further, one documented, but isolated, instance of dissatisfaction with some unspecified station programming more than six years ago does not indicate that the station failed to serve the needs of Syracuse residents over the eight-year license term.¹⁶

Oldfield’s final allegation is that WJPZ-FM is operating as a “quasi-commercial” station on a frequency assigned for noncommercial purposes. It is unclear exactly what Oldfield means by this claim. Moreover, Oldfield provides no evidence to support this claim apart from a quote attributed to an unnamed source affiliated with the station who referred to WJPZ-FM as a “commercial radio station.”¹⁷ This unsupported allegation warrants no further inquiry.

Conclusion/Actions. We find that Oldfield’s Petition contains neither adequate nor specific factual allegations sufficient to warrant further inquiry regarding renewal of WJPZ-FM’s license.¹⁸ Furthermore, pursuant to Section 309(k) of the Act, we find that (1) Station WJPZ-FM has served the public interest, convenience, and necessity during the subject license term; (2) there have been no serious violations of the Act or Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse. Accordingly, the May 1, 2006, Petition to Deny from John V. Oldfield IS

¹² *Petition* at 4.

¹³ *Petition* at 5.

¹⁴ *Petition* at 6.

¹⁵ See 47 U.S.C. § 326, which prohibits the Commission from interfering with the right of free speech of broadcast licensees.

¹⁶ See *In re License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, 8 FCC Rcd 6400 (1993) (Though licensees may not have addressed every problem petitioners view as important, petitioners claims insufficient to show that licensee’s programming decisions ignored the needs of any substantial segment of the community).

¹⁷ *Petition* at 6.

¹⁸ 47 C.F.R. § 73.3584.

DENIED and the application (File No. BRED-20060201AZD) of WJPZ Radio, Inc., for renewal of the license for Station WJPZ-FM, Syracuse, New York, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: M. Scott Johnson, Esq.