



Federal Communications Commission
Washington, D.C. 20554

January 25, 2008

DA 08-159

In Reply Refer to:

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Dr. Thomas N. Wilfrid
Mercer County Community College
1200 Old Trenton Road
Trenton, NJ 08690-1099

In re: Mercer County Community College
WWFM(FM), Trenton, New Jersey
Facility ID: 41194
File No. BRED-20060201AYF

Application for Renewal of License

Dear Dr. Wilfrid:

We have before us the application of Mercer County Community College (the "Licensee") to renew its license for Station WWFM(FM) (the "Station") filed on February 1, 2006. We also have before us (1) an informal objection to the above-captioned application filed by William Knight ("Knight") on May 8, 2006; and (2) an opposition to the informal objection filed by the Licensee on July 20, 2006. For the reasons discussed below, we deny the informal objection and grant the renewal application.

Background. Knight claims that the renewal application should be denied because: (1) the Station is a "wholly amateur organization" and that everything the Station does "is done better by other local stations"; and (2) the Station "is guilty of gross racial insensitivity" as evidenced by the broadcast of a show about Al Jolson during Martin Luther King weekend.¹ In response, the Licensee states that: (1) Knight does not support his allegations as required by Section 309 of the Communications Act of 1934, as amended, (the "Act") and instead relies on general, conclusory assertions; and (2) to the extent Knight challenges the programming aired by the Station, the First Amendment to the United States Constitution and Section 326 of the Act prohibit the Commission from improperly interfering with the programming decisions of licensees.

Discussion. Pursuant to Section 309(e) of the Act,² informal objections, like petitions to deny, must 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,³ which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1)

¹ Informal objection at 1.

² 47 U.S.C. § 309(e).

³ 47 U.S.C. § 309(k). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 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 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

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 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

Knight states that the Station broadcasts racially insensitive programs; however he does not provide evidence of the content of such programs. While we recognize Knight’s concerns about the quality of the Station’s programming, the role of the Commission in overseeing program content is limited. The First Amendment to the United States Constitution⁶ and Section 326 of the Act⁷ 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.⁸ 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.⁹ We will intervene in programming matters only if a licensee abuses that discretion.¹⁰ Knight has not demonstrated that the station has done so here. Furthermore, neither the Rules nor the Act prohibit operation of a station by an “amateur organization,” thus we find that Knight’s characterization of the Licensee as an amateur organization has no bearing on the Station’s license renewal application. Knight’s informal objection contains neither adequate nor specific factual allegations sufficient to warrant further inquiry regarding renewal of the Station’s license.¹¹

Conclusion/Actions. We have evaluated the Licensee’s renewal application pursuant to Section 309(k) of the Act, and we find that the Station 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.

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).

⁶ U.S. CONST. amend. I.

⁷ 47 U.S.C. §326.

⁸ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

⁹ See, e.g., *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)).

¹⁰ *Philadelphia Station License Renewals* at 6401.

¹¹ See *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR. 2d 862 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

In light of the above discussion, and pursuant to Section 309(k) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules,¹² the Informal Objection filed by William Knight IS DENIED, and the application (File No. BRED-20060201AYF) of Mercer County Community College for renewal of its license for Station WWFM(FM), Trenton, New Jersey, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Lee J. Peltzman, Esq.
William Knight

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