



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

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In Reply Refer to:

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In re: **WSKG Public Telecommunications
Council**

WSKG-FM, Binghamton, New York
Facility ID No. 74039
File No. BRED-20060131BEE

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

Informal Objections

Dear Applicant and Objectors:

We have before us the above-referenced application ("Application") filed by WSKG Public Telecommunications Council ("WSKG") for renewal of the license of Station WSKG-FM, Binghamton, New York. We also have before us three informal objections to the Application, filed together on May 30, 2006, by Peter Hudiburg ("Hudiburg"), Horace H. C. Albaugh ("Albaugh"), and Hilton Baxter ("Baxter"). For the reasons set forth below, we deny the informal objections and grant the Application.

Background. WSKG timely filed an application to renew the WSKG-FM license on January 31, 2006.¹ On May 30, 2006, Hudiburg, Albaugh, and Baxter (collectively, the "Objectors") filed

¹ Renewal applications for stations in New York were to be filed by February 1, 2006, and licenses expired June 1, 2006.

declarations objecting to grant of the Application (collectively, the “Objections”). The Objections were not filed within the requisite time period for petitions to deny the Application,² were styled as “informal objections,” and will be so considered. WSKG filed a Response to Informal Objections on June 21, 2006 (“Response”), the Objectors filed a Rebuttal to the Response on July 6, 2006 (“Rebuttal”), and WSKG filed a Response to the Rebuttal on July 27, 2006 (“July Response”).

Discussion. Objectors lodge a number of complaints against WSKG. These complaints may be summarized as follows: (1) WSKG-FM broadcasts little if any local news coverage, which is mostly purchased from a news service outside the area, and few local announcements except with regard to the arts;³ (2) in particular, WSKG has refused to air the program “Democracy Now” over WSKG-FM, despite overwhelming public demand for the program, and has allegedly yielded to pressure from a state legislator in declining to air the program;⁴ (3) WSKG uses donor funds to settle sexual discrimination cases rather than for programming;⁵ and (4) WSKG has failed to maintain the required list of donors supporting specific programs.⁶ We address the Objections below.

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”),⁷ 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,⁸ 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.⁹ 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

² Under 47 C.F.R. § 73.3516(e), petitions to deny the Application were due by May 1, 2006.

³ Baxter Objection, para. 5; Hudiburg Objection, paras. 6-11, 21-22. *See also* Albaugh Objection, para. 4 (labeling WSKG-FM talk show programming as “superficial,” “practically irrelevant,” and “vacuous,” and not meeting genuine issues of concern in the area).

⁴ Baxter Objection, paras. 6-7; Hudiburg Objection, paras. 15-20; Albaugh Objection, para. 5.

⁵ Baxter Objection, para. 8; Hudiburg Objection, paras. 12-13; Albaugh Objection, para. 6.

⁶ Hudiburg Objection, para. 14; Albaugh Objection, para. 7. *See* 47 C.F.R. § 73.3527(e)(9), which requires that such lists be placed in the public file.

⁷ 47 U.S.C. § 309(d).

⁸ *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).

⁹ 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).

the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁰

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.¹¹ The record in this case does not support a claim that WSKG’s program judgment with regard to WSKG-FM is arbitrary or unreasonable. Although Objectors protest that WSKG’s programming concentrates on issues of national rather than local importance, they have not shown that the national issues listed by WSKG in its quarterly issues/programs lists were not of interest to the station’s listeners as a whole. Moreover, with regard to WSKG’s declining to air “Democracy Now” over WSKG-FM, the evidence presented shows that WSKG opted to air the program over its sister station WSQX-FM, Binghamton, New York.¹² WSKG’s decision not to broadcast the same program over two stations licensed at the same community cannot be said to be an arbitrary or unreasonable exercise of program judgment.¹³ 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.¹⁴

As for Objectors’ other complaints, we likewise find no substantial and material issues of fact regarding the sexual discrimination cases filed against WSKG. While Baxter appears to allege that WSKG used station funds to settle discrimination claims, he provides no evidence as to either the amount of the alleged settlement or the source of the funds paid to the complainant. He thus fails to make out a *prima facie* case that WSKG defrauded its donors or underwriters. We further reject Hudiburg’s charge that WSKG “change[d] its story” regarding claims made against it and reported both on FCC Form 396 and in WSKG’s response to a Commission audit letter.¹⁵ The description of the actions filed against WSKG was substantially similar in both responses (including the case numbers and disposition), and we

¹⁰ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹¹ 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 F.C.C.2d 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).

¹² See Attachments 16a-b to Objections.

¹³ We give little credence to the Objectors’ suggestion that interference by a local legislator led to WSKG’s decision not to air “Democracy Now” over WSKG-FM. Objectors provide no evidence other than the conclusory statements that “evidently” the decision was prompted by a letter from a state senator, the contents of which have never been made public. See Baxter Objection, para. 7; Rebuttal at first unnumbered page. Such unsupported statements cannot suffice to raise a *prima facie* case that grant of the WSKG-FM renewal is contrary to Section 309(k) of the Act. Moreover, if WSKG were in fact acting under such duress, one would expect it to have canceled “Democracy Now” entirely, rather than continuing to air the program over WSQX-FM. See <http://www.wskg.org/radiowsqx.htm> (accessed Jan. 31, 2008) (showing that “Democracy Now” continues to be broadcast on WSQX-FM).

¹⁴ 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).

¹⁵ Hudiburg Objection, para. 13 and attached pages 12a – 13e.

find no misrepresentation or lack of candor on WSKG's part in this regard. Finally, we find no violation of Section 73.3527(e)(9),¹⁶ requiring the maintenance of a list of donors supporting specific programs for two years following the air dates of such programs. WSKG states that it only accepts donations for general support, not specific programs, although it does allow underwriters to schedule underwriting announcements during specified dayparts or during specific programs.¹⁷ Objectors have not provided information to show that certain sponsors cover the entire cost of airing the programs during which their acknowledgments air, nor have they proffered any other evidence to indicate that certain donors to WSKG retain editorial control or influence over specific programs broadcast on WSKG-FM.¹⁸ Absent such a showing, we find no violation of the obligation to maintain donor lists in the WSKG-FM public file. We therefore cannot conclude from this record that WSKG 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 the Objectors' 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 WSKG that would warrant conditioning or denying its Application to renew the license for Station WSKG-FM. Further, we find that Station WSKG-FM served the public interest, convenience, and necessity during the subject license term. Accordingly, the Objections filed by Hilton Baxter, Peter Hudiburg, and Horace H.C. Albaugh ARE DENIED. IT IS ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of WSKG Public Telecommunications Council, for Station WSKG-FM, Binghamton, New York (File No. BRED-20060131BEE) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Barry S. Persh, Esq., Counsel for WSKG Public Telecommunications Council

¹⁶ 47 C.F.R. § 73.3527(e)(9).

¹⁷ Response at second-third unnumbered pages; July Response at first-second unnumbered pages.

¹⁸ See *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13333-34 and n.39 (2004).