



Federal Communications Commission  
Washington, D.C. 20554

February 15, 2008

**DA 08-388**

*In Reply Refer To:*

1800B3-BSH

Released: February 15, 2008

Ms. Andrea Cano, Representative  
Oregon Alliance to Reform Media  
917 S.W. Oak Street, #422  
Portland, OR 97205

Mr. Bruce Fife, President, Local 99  
American Federation of Musicians  
325 N.E. 20<sup>th</sup> Avenue  
Portland, OR 97232

In re: KCMD(AM), Portland, Oregon  
Facility ID No. 26926  
File No. BR-20050929AVA  
Application for Renewal of License

**Informal Objections**

Dear Ms. Cano and Mr. Fife:

This letter concerns the captioned application (“Renewal Application”) filed by CBS Radio Stations Inc. (“CBS”) to renew the license of Station KCMD(AM), Portland, Oregon (the “Station”). On January 9, 2006, two separate Informal Objections to the Renewal Application were filed, one by the Oregon Alliance to Reform Media and the second by Local 99 of the American Federation of Musicians (collectively, the “Objectors”).<sup>1</sup> Because the Objectors raise nearly identical issues in their respective Informal Objections, we address them jointly. For the reasons set forth below, we deny the Informal Objections and grant the Renewal Application.

**Background.** Objectors state that they monitored the Station for a period of several months, from August through December of 2005. Based on “hundreds of hours of informal listening”<sup>2</sup> to the Station during this period, Objectors contend that the Station “is falling short of ‘localism’ expectations as required by the FCC”<sup>3</sup> and request that the Commission deny the Renewal Application.

**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, (“Act”).<sup>4</sup> That section provides that we are to grant the renewal application if, upon consideration of the application and

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<sup>1</sup> On April 4, 2007, CBS filed a Consolidated Opposition to Informal Objections (“Opposition”).

<sup>2</sup> Oregon Alliance to Reform Media Informal Objection at first unnumbered page.

<sup>3</sup> *Id.*

<sup>4</sup> 47 U.S.C. § 309(k)(1).

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 ("Rules"); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.<sup>5</sup> 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.”<sup>6</sup>

Objectors contend that Station KCMD(AM) has no connection to the local community. Objectors first criticize the Station's lack of local on-air talent and the absence of locally oriented news, weather and traffic information. Objectors also complain that the Station's comedy format “is obviously produced elsewhere,”<sup>7</sup> therefore limiting potential access by local comedians. Additionally, Objectors oppose the Station's broadcast of public affairs programming on Sunday mornings, rather than during peak, drive-time hours.

Objectors' complaint concerning the Station's failure to use local talent provides no basis for denying the Renewal Application, because the Commission has no requirement to this effect.<sup>8</sup> Although the Objectors are dissatisfied with the Station's news programming, 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, including news programming.<sup>9</sup> The Commission has recognized that a licensee has wide discretion in the area of news programming and, in the absence of extrinsic evidence that a licensee has falsified, distorted or suppressed news, the Commission will not substitute its judgment for that of a licensee in determining what news is of interest to its listening audience and the manner in which it should be presented.<sup>10</sup> Further, the Commission will not interfere with the exercise of a licensee's news judgment where there is no showing that the licensee consistently and unreasonably ignored matters of public concern.<sup>11</sup> The Objectors have made no such showing.

Likewise, the Station's decision to broadcast its weekly public affairs programming on Sunday mornings does not violate any Rule or policy. We note that the Opposition contends that this

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<sup>5</sup> *Id.* 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).

<sup>6</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>7</sup> Oregon Alliance to Reform Media Informal Objection at second unnumbered page.

<sup>8</sup> See *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12440 (2004).

<sup>9</sup> See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978) (Commission will not deny renewal application based on the opinion of a viewer, or group of viewers, as to what constitutes “good” programming).

<sup>10</sup> See, e.g., *Columbia Broadcasting System, Inc.*, Memorandum Opinion and Order, 51 FCC 2d 273 (1975) (Commission will not place burden on licensee to rebut petitioner's conclusory allegations concerning news coverage).

<sup>11</sup> See *id.*

programming is locally produced, and features interviews with local Portland newsmakers with discussions of events and issues that are important to the community. Additionally, CBS states that the producer and host of this public affairs program is a long-time Portland area resident who has served in this position for more than seven years and is familiar with issues of significance in Portland. The Commission has long held that radio stations have a bedrock obligation to provide coverage of issues facing their communities.<sup>12</sup> Notwithstanding the Objectors' differing views, however, the First Amendment<sup>13</sup> and the noncensorship provisions of the Act<sup>14</sup> protect each licensee's plenary authority regarding programming decisions.

Objectors also express concern about the Station's "emergency broadcast capabilities (EAS) in the event of a disaster."<sup>15</sup> CBS responds that Objectors' concerns are speculative and unfounded, stating that "CBS Radio can confirm that the Station's EAS system is fully functional and ready to operate in the event it is triggered by the appropriate state or federal officials."<sup>16</sup> In light of this response, supported by the sworn Declaration of Scott Mason, Director of Engineering, West Coast, for CBS, we find no *prima facie* showing of any rule violation. Finally, Objectors question the completeness of the Station's public file, stating that they found no written correspondence from listeners and a downward trend in the number of public service announcements ("PSAs") contained in the public file. CBS replies that it reviewed the public file after receiving the Informal Objection and found, contrary to the Objectors' claim, that "the local public inspection file contains 55 letters and emails received from the public since the Station's license was last renewed on January 29, 1998 including seven letters from 2005. This volume of correspondence is not surprising given the Station's relatively low audience ratings."<sup>17</sup> Additionally, CBS states that the Objectors' comments about the number of PSAs reflected in the public file is irrelevant because there is no requirement that a station's public file include a log of PSAs. CBS is correct on this point,<sup>18</sup> and we find no public file violation based on the record before us.

Accordingly, we find no evidence of serious violations of the Act or the Rules, or other violations that, when considered together, evidence a pattern of abuse. Further, we find that Station KCMD(AM) served the public interest, convenience, and necessity during the subject license term. Thus, there is no need for further inquiry regarding grant of the subject renewal application and we will grant that application.

**Conclusion.** Accordingly, for the reasons set forth above, the two Informal Objections ARE DENIED. Finally, because the subject application is in full compliance with the Act and the Rules, and

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<sup>12</sup> *Deregulation of Radio*, Report and Order, 84 FCC 2d 968, 977 (1981), *on recon.*, 87 FCC 2d 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).

<sup>13</sup> *See* U.S. CONST. amend. I.

<sup>14</sup> *See* 47 U.S.C. § 326.

<sup>15</sup> Local 99 Informal Objection at 2.

<sup>16</sup> Opposition at 4.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *See* 47 C.F.R. § 73.3526.

finding that the public interest, convenience, and necessity would be served thereby, the application for renewal of license for Station KCMD(AM), Portland, Oregon (File No. BR-20050929AVA) IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: CBS Radio Stations Inc.  
Steven A. Lerman, Esq.