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Re: WHAT(AM), Philadelphia, PA
Facility ID No. 33686
File No. BAL-20061108AHP

**Application for Consent to Assignment of
License
Petition for Reconsideration**

Dear Counsel:

We have before us a January 29, 2007, Petition for Reconsideration (“Petition”) filed by Leon A. Williams, Esq. (“Williams”), a Philadelphia resident and former candidate for public office who listens to and advertises his law practice on WHAT(AM), Philadelphia, Pennsylvania. Williams argues that we should set aside our December 28, 2006, grant of an application to assign WHAT(AM)’s license from Urban Radio 1, LLC (“Urban”) to Marconi Broadcasting Company, Ltd. For the reasons discussed below, we deny the Petition and affirm our grant of the application.

Williams opposes the assignment because he believes that a resulting change in the station’s format from talk radio to music will adversely affect the flow of election-related information in the African American community.¹ Although the assignment application was uncontested, Williams argues that he and other listeners would have filed timely objections to the transaction had the station given adequate public notice, as required. In support, Williams provides affidavits of two individuals who state that they are

¹ See Petition at 1-2.

regular WHAT(AM) listeners, did not hear any on-air notices about the assignment, and would have opposed the application had they known about it in advance.²

Assuming *arguendo* that the station's public notice was defective, Williams' earlier non-participation would not be a bar to his filing the Petition.³ Consideration of the Petition would not, however, alter the outcome of the underlying assignment application. Williams' focus is a listener desire to preserve WHAT(AM)'s former talk radio format. It is well-settled policy that the Commission does not regulate programming formats, nor does it take potential format changes into consideration in reviewing license assignment applications. In 1976, the Commission issued a *Policy Statement* in which it concluded that review of program formats was not required by the Communications Act of 1934, as amended (the "Act"), would not benefit the public, and would deter innovation, as well as impose substantial administrative burdens on the Commission.⁴ The Supreme Court of the United States has upheld this policy and the Commission's determination that "the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters" and that a change in programming is not a material factor that should be considered by the Commission in ruling on applications for license assignment or transfer.⁵ A petitioner's phrasing of a format issue in public interest language is not sufficient to alter these policies.⁶

Regardless of program format, licensees have a duty to respond to local needs and issues by choosing appropriate issue-responsive informational programming. They also have broad discretion to determine, in good faith, the issues they believe to be of concern to their communities and the manner in which to address those issues.⁷ Whether a licensee has met the needs of its community through such programming is a matter that is generally considered at the time of license renewal. We would encourage Williams and other listeners to make their specific interests in local election coverage and other issues of concern to the African American community known to the station's new licensee. In our experience, stations appreciate hearing from their listeners.

² See Affidavits of Joyce Hammond and Saboor Muhammad (Jan 23, 2007) (Petition, Exhibits C and D). Urban responds that it complied fully with the Commission's public notice requirements, and submits supporting documentation. See Declaration of Christopher Squire, Vice President of Operations, Urban (Feb. 14, 2007); Inner City Broadcasting Company, Inc., Time Order (Nov. 13, 2006); WHAT(AM) Contract Confirmation (Nov. 13, 2006) (Urban Opposition, Exhibit A); Sworn Declaration of Anna Dickerson, Philadelphia Inquirer (Nov. 28, 2006) (Urban Opposition, Exhibit B); 47 C.F.R. §§ 73.3580(c) and (d)(3)(i).

³ See 47 C.F.R. § 1.106(b)(1).

⁴ See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev'd sub nom.*, *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev'd*, 450 U.S. 582 (1981). Section 326 of the Act expressly prohibits the Commission from interfering with the right of free speech of broadcasters. 47 U.S.C. § 326.

⁵ See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 585 (1981).

⁶ See, e.g., *College of Staten Island*, Letter, 22 FCC Rcd 4890, 4894 (MB 2007) (license renewal petition alleging station's failure to play enough music by local musicians considered as a disagreement over program content although phrased by the petitioner in terms of the public's interest in local diversity).

⁷ See *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1092 (1972).

Accordingly, the January 29, 2007, Petition for Reconsideration filed by Leon A. Williams IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau