



Federal Communications Commission  
Washington, D.C. 20554

February 26, 2014

Malcolm M. Couch  
2706 Darla Court  
St. Louis, MO 63136

KMOV-TV, Inc.  
400 South Record Street  
Dallas, TX 75292

Re: KMOV(TV), St. Louis, Missouri  
File No. BRC DT-20130930BAV  
Facility ID No. 70034

Dear Petitioner/Licensee:

This is with respect to the Informal Objection filed in the above captioned license renewal proceeding. On January 30, 2014, the Federal Communications Commission ("Commission") received an Informal Objection from Mr. Malcom Couch (the "Petitioner"). While the Informal Objection does not request specific relief, we take official notice and construe that the Petitioner is requesting that the Commission deny the above captioned license renewal application on the grounds of "news distortion." Based on the record before us, we deny the Informal Objection and grant the license renewal.

The Petitioner states that between "mid-2002" and "July 2013" KMOV aired "over 27" investigative reports concerning the Petitioner's personal conduct in connection with his real estate business. The Informal Objection alleges that KMOV investigative reporter, Mr. Craig Cheatham, assembled reports that "ignore[d] the factual outcome of the investigations" and that KMOV's "consent to this kind of conduct/behavior...constitutes a breach of public trust..." The Petitioner contends that these reports were false and directly resulted in criminal charges being brought by the State of Missouri and death threats. According to the Petitioner, while the criminal charges were ultimately dropped by the State of Missouri due to a lack of evidence, KMOV failed to broadcast this result. Furthermore, the Petitioner argues that KMOV and Mr. Cheatham have failed to respond to his complaints, on-air or in writing, concerning the investigative reports.

The Commission applies a two-step analysis to a petition to deny, or in this case an informal objection, under the public interest standard.<sup>1</sup> The Commission must first determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.<sup>2</sup> This first step "is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the [petition] were true, could a reasonable fact finder conclude that the ultimate fact in dispute had been established."<sup>3</sup> Once a

<sup>1</sup> 47 U.S.C. §309(d)(1), (2); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

<sup>2</sup> 47 U.S.C. §§309(d)(1) and 309(k).

<sup>3</sup> *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987) ("Gencom").

petition meets this first step, the Commission must determine whether “whether the totality of the evidence raises a substantial and material question of fact justifying further inquiry.”<sup>4</sup> Courts have held that, in making this determination the Commission’s “focus and its discretion are wider.”<sup>5</sup> If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity.<sup>6</sup>

In *Serafyn v. FCC*, the U.S. Court of Appeals stated that “[i]n determining whether an allegation of news distortion raises a question about the licensee’s ability to serve the public interest, the Commission analyzes both the substantiality and materiality of the allegation,” and that “[t]he Commission regards an allegation as material only if the licensee itself is said to have participated in, directed, or at least acquiesced in a pattern of news distortion.”<sup>7</sup> An allegation of news distortion is “substantial” if it meets two conditions. First, the distortion must be deliberately intended to slant or mislead.<sup>8</sup> Second, to be substantial, the allegation of distortion must involve a significant event and not merely a minor or incidental aspect of the news report.<sup>9</sup> The court stated specifically that it was sufficient for a petitioner to raise a “substantial and material question of fact” as to intent, and that the Commission could not require a petitioner to demonstrate “intent.”<sup>10</sup> The court, however, stated that it was for the Commission to determine in the first instance whether the evidence submitted raises a substantial question of fact.<sup>11</sup> We find that the Petitioner fails to make a showing of news distortion in accordance with this precedent.

While the Petitioner provides a history of the legal proceedings attempting to dispute the purported false investigative reports, the Petitioner’s pleading is comprised solely of unsupported allegations of news distortion. As stated by the U.S. Court of Appeals in *Galloway v. FCC*, “[i]t is not enough to dispute the accuracy of a news report...or to question the legitimate editorial decisions of the broadcaster,” and that such allegations of deliberate distortion must be supported by extrinsic evidence “such as written or oral instructions from station management, outtakes, or evidence of bribery.”<sup>12</sup> With respect to the accuracy of a news report in particular, the Commission has stated that it possesses “neither the expertise nor the desire to look over the shoulder of broadcast journalists and inquire why a particular piece of information was reported or not reported.”<sup>13</sup> To do otherwise “would involve the Commission deeply and improperly in the journalistic functions of broadcasters.”<sup>14</sup>

We also note that the Licensee’s decision not to report on the results of the criminal proceedings brought against the Petitioner by the State of Missouri and not to respond, on-air, to the Petitioner’s complaints and objections to the investigative reports is well within the discretion the Commission

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<sup>4</sup> *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985); 47 U.S.C. §309(e).

<sup>5</sup> *Gencom*, 832 F.2d at 181.

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

<sup>7</sup> *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (“*Serafyn*”)

<sup>8</sup> *Id.* at 1217.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 1220.

<sup>11</sup> *Id.*

<sup>12</sup> *Galloway v. FCC*, 778 F.2d 16, 20 (D.C.Cir. 1985),

<sup>13</sup> *In Re CIA*, 58 Rad.Reg2d (P & F) 1544, 1549 (1985).

<sup>14</sup> *Hon. Harley O. Staggers* (“*Selling of the Pentagon*”), 21 Rad.Reg.2d (P & F) 912, 916 (1971).

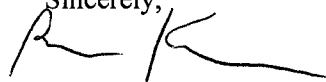
affords to licensees. Section 326 of the Communications Act of 1934 (the “Act”) and the First Amendment to the Constitution prohibit any Commission actions that would improperly interfere with the programming decisions of licensees.<sup>15</sup> Because of this statutory prohibition, and because journalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment’s Free Press guarantee, the Commission has very little authority to interfere with a licensee’s selection and presentation of news and editorial programming.<sup>16</sup>

Based on the record before us, we conclude that the Petitioner has not raised a substantial and material question of fact that the news reports at issue were intended to slant or mislead. We find that the totality of the evidence does not raise sufficient doubt on the question of whether grant of the application would serve the public interest such that further inquiry is justified. Furthermore, in accordance with Section 309(k) of the Act we conclude that the station has, during its license term, served the public interest, convenience, and necessity, and has not committed any serious violations of the Act or the Commission’s rules, or any pattern of violations that, taken together, would constitute a pattern of abuse.<sup>17</sup> Therefore, we find that the applicant is fully qualified to hold the license and that grant of the application will serve the public interest, convenience and necessity.

ACCORDINGLY, IT IS ORDERED, that the Informal Objection filed by Malcom Couch against the license renewal application filed by KMOV-TV, Inc., for television station KMOV(TV), St. Louis, Missouri, is DENIED.

IT IS FURTHER ORDERED, that the license renewal application filed by KMOV-TV, Inc., for television station KMOV(TV) St. Louis, Missouri, File No. BRC DT-20130930BAV, is GRANTED.

Sincerely,



Barbara Kreisman  
Chief, Video Division  
Media Bureau

cc:

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<sup>15</sup> 47 U.S.C. §326; U.S. CONST., amend. I.

<sup>16</sup> See, e.g., *National Broadcasting Company v. FCC*, 515 F.2d 1101, 1112-1113, 1119-1120, 1172 (1974), *vacated as moot, id.* at 1180, *cert. denied*, 424 U.S. 910 (1976); *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 124 (1973); *Hunger in America*, 20 FCC 2d 143, 150-51 (1969).

<sup>17</sup> 47 U.S.C. § 309(k)(1).