



Federal Communications Commission  
Washington, D.C. 20554

November 20, 2019

*In Reply Refer to:*  
1800B3-AF

Greater Washington Educational  
Telecommunications Association  
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Ms. Cornelia Weiss  
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In re: Greater Washington Educational  
Telecommunications Association

Application for Renewal of License for  
WETA(FM), Washington, D.C.  
Facility ID No. 65669  
File No. 0000073932

**Petition to Deny**

Dear Counsel and Petitioner:

We have before us the referenced application for renewal of license (Application) filed on May 31, 2019, by Greater Washington Educational Telecommunications Association (Licensee) for station WETA(FM) (Station), Washington, D.C. Also before us is a Petition to Deny License Renewal (Petition) filed on August 29, 2019, by Cornelia Weiss (Petitioner) and related pleadings.<sup>1</sup> For the reasons set forth below, we deny the Petition and grant the Application.

**Background.** On May 31, 2019, Licensee filed the Application. On August 29, 2019, Petitioner, a listener of WETA(FM), filed the Petition due to Licensee's purported "discrimination against women composers."<sup>2</sup> Petitioner contends there are a number of female composers from the era of music the Station concentrates on,<sup>3</sup> but the Station has a "pattern and practice" of excluding those composers from its daily playlists.<sup>4</sup> Accordingly, Petitioner does not think the Station serves the public.<sup>5</sup>

In response to Petitioner's allegations, Licensee argues that Petitioner does not present a *prima facie* case to warrant denial of the Station's license renewal.<sup>6</sup> Licensee contends its programming

<sup>1</sup> Licensee filed an Opposition to Petition to Deny (Opposition) on September 26, 2019, and Petitioner filed a Reply to Opposition to Petition to Deny (Reply) on October 9, 2019.

<sup>2</sup> Petition at 1. Petitioner's status as a listener of the Station supports her standing to submit the Petition. *See, e.g., Entercom License, LLC*, Hearing Designation Order, 31 FCC Rcd 12196, 12205-06, paras. 22-24 (2016).

<sup>3</sup> Petition at 2-3.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> Opposition at 1-2.

decisions are “based on good faith determinations of how best to serve the marketplace” and fall within the “broad discretion afforded all broadcast station licensees.”<sup>7</sup> In her reply, Petitioner insists her complaint is not about programming decisions but about “sex-based discrimination.”<sup>8</sup> Petitioner further alleges that Licensee’s female-composed programming is “too minimal”<sup>9</sup> to deserve renewal expectancy.<sup>10</sup>

**Discussion.** 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,<sup>11</sup> which governs our evaluation of an application for license renewal.<sup>12</sup> Under section 309(k), the Commission shall grant the 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.<sup>13</sup> Petitioner does not allege any such violations by the Station, and accordingly this case involves a public interest determination.

The Commission generally does not scrutinize or regulate programming. This is particularly true of entertainment programming. In 1976, the Commission issued a Policy Statement in which it concluded that review of entertainment programming formats was not required by the Act, would not benefit the public, and would deter innovation, as well as impose substantial administrative burdens on the Commission.<sup>14</sup> The Commission instead considers whether a licensee has operated in the public interest by airing non-entertainment programming that addresses the issues and problems of importance to its community of license.<sup>15</sup> Licensees have broad discretion to choose, in good faith, which issues to address

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<sup>7</sup> Opposition at 4.

<sup>8</sup> Reply at 1

<sup>9</sup> Reply at 2.

<sup>10</sup> Petitioner also argues the Commission should “disregard as fact any assertions made” in the Opposition because it is supported by unnotarized declarations rather than by notarized affidavits. Reply at 1. We reject the Petitioner’s procedural objection. Section 1.16 of the Commission’s rules (Rules) allows unsworn declarations under penalty of perjury in lieu of affidavits in these circumstances. 47 CFR § 1.16. As for Petitioner’s claim regarding a renewal expectancy, that is an obsolete term formerly applied in a comparative analysis of a license renewal application versus a competing application. Once Congress set forth a revised license renewal process in section 309(k) of the Communications Act of 1934, as amended (the Act), opportunities for competing applications ended, and the Commission no longer needed to engage in such an analysis of a station’s programming.

<sup>11</sup> 47 U.S.C. § 309(k)(1).

<sup>12</sup> 47 U.S.C. § 309(d). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh’g denied* (Sept. 10, 1993).

<sup>13</sup> 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*, Order, 11 FCC Rcd 6363 (1996).

<sup>14</sup> See *Changes in Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 F.C.C.2d 858 (1976). The Supreme Court of the United States has upheld this policy, stating that “the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . . .” See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 585 (1981).

<sup>15</sup> *Deregulation of Radio*, Report and Order, 84 F.C.C.2d 968, 977, *on recon.* 87 F.C.C.2d 797 (1981), *remanded on other grounds sub nom. Office of Comm’n of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983).

and the types of issue-responsive programming<sup>16</sup> to air.<sup>17</sup> Licensees must place lists of their most significant issue-responsive programming in the station's online public inspection file every three months.<sup>18</sup> This obligation provides a tangible means for community residents and the Commission staff to determine whether the station is, in fact, serving its community of license and operating in the public interest.<sup>19</sup> The Commission will not intervene absent a showing that the licensee abused its discretion and has consistently and unreasonably ignored matters of public concern.<sup>20</sup>

Moreover, the Commission's role in overseeing program content is limited by the First Amendment of the Constitution and section 326 of the Act, which prohibit the Commission from exercising any power of censorship over broadcast station programming.<sup>21</sup> This holds true even if the material broadcast is insulting to a particular minority or ethnic group in the station's community.<sup>22</sup> Licensees are entitled to broad discretion in the scheduling, selection, and presentation of programming.<sup>23</sup> This is particularly true with regard to the programming decisions of noncommercial educational stations.<sup>24</sup> The Commission historically "has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming."<sup>25</sup>

We find that Petitioner has not made a *prima facie* case that the station has failed to meet its public interest obligation. The Petition only addresses the Station's entertainment programming and fails to acknowledge specific issues/programs that Licensee has listed in the Station's public file, or explained why that programming is inadequate. Although phrased in public interest language, Petitioner's complaint is really about the Station's content-based entertainment programming decisions. As stated above, licensees have broad discretion in this area. The facts of this case do not support a departure from the Commission's general policy.<sup>26</sup> Accordingly, we will deny the Petition because Petitioner has failed

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<sup>16</sup> Issue-responsive programming may include, but is not limited to, public affairs, public service announcements, editorials, free speech messages, community bulletin boards, and religious programs. See *Commercial TV Stations*, Report and Order, 98 F.C.C.2d 1075, 1087 n. 35 (1984).

<sup>17</sup> See *Time-Life Broad., Inc.*, Memorandum Opinion and Order, 33 F.C.C.2d 1081, 1092 (1972); see also *Office of Comm'n of United Church of Christ v. FCC*, 707 F.2d 1413, 1431 (D.C. Cir. 1983).

<sup>18</sup> 47 CFR § 73.3527(e)(8)(i).

<sup>19</sup> See *WNOW-FM*, Letter Order, 23 FCC Rcd 8412, 8420 (MB 2008).

<sup>20</sup> See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (MB 1993); *Commercial TV Stations*, 98 F.C.C.2d at 1092-94; *Deregulation of Radio*, 84 F.C.C.2d at 990-91. Petitioning parties thus have a heavy burden to show that a licensee has abused its discretion over these programming matters. *Commercial TV Stations*, 98 F.C.C.2d at 1093-94.

<sup>21</sup> U.S. CONST. amend. I; 47 U.S.C. § 326 ("Nothing in [the] Act shall be understood or construed to give the Commission the power of censorship over radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated . . . by the Commission which shall interfere with the right to free speech by means of radio communication").

<sup>22</sup> See *Zapis Communications Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 3888 (MB 1992).

<sup>23</sup> See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, 8 FCC Rcd at 6401, para. 7.

<sup>24</sup> *Pittsburg State Univ.*, Letter Order, 22 FCC Rcd 12983, 12985 (MB 2007).

<sup>25</sup> *Id.*, quoting *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 F.C.C.2d 716, 732, para. 36 (1981).

<sup>26</sup> Licensee has chosen to focus its programming on popular material from a specific time period in response to research on the interests of the majority of its listening audience. Opposition at 5. Such programming decisions are well within Licensee's discretion. See, e.g., *See Dontron, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 2560, 2562 (1991) (holding that it is well within a license's discretion to schedule music based on the tastes of its

to raise a substantial and material question of fact that grant of the Application is inconsistent with section 309(k) of the Act.

Additionally, we have evaluated the 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. Moreover, we find that there have been no serious violations of the Act or the Rules involving the station, or violations by the Licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse.

**Conclusion/Actions.** For the reasons set forth above, IT IS ORDERED that the Petition to Deny filed by Cornelia Weiss on August 29, 2019, IS DENIED.

IT IS FURTHER ORDERED that the application of Greater Washington Educational Telecommunications Association for renewal of license for Station WETA, Washington, D.C. (File No. 000073932) IS GRANTED.

Sincerely,



Tom Hutton  
Deputy Division Chief  
Audio Division  
Media Bureau

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audience); *see also Taft Broad. Co.*, Memorandum Opinion and Order, 38 F.C.C.2d 770, 795 (1973); *RadiOhio, Inc.*, Memorandum Opinion and Order, 38 F.C.C.2d 721, 741 (1973). *Central States Broad., Inc.*, Memorandum Opinion and Order, 37 F.C.C.2d 500, 512 (1972).