



Federal Communications Commission
Washington, D.C. 20554

February 10, 2015

John R. Hatcher, III, President
NAACP, Ventura County Chapter
P.O. Box 5792
Oxnard, CA 93031

Byron K. Ward, Chairman
Community Advocacy Coalition
P.O. Box 5383
Oxnard, CA 93031

David Oxenford, Esq.
Wilkinson Barker Knauer, LLP
2300 N Street, N.W., Suite 700
Washington, DC 20037

Mark Lipp, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

Re: License Renewal Applications for
Twelve California Radio Stations

Informal Objections

Dear Counsel and Objectors:

The Media Bureau ("Bureau") has before it applications filed in July 2013 by Gold Coast Broadcasting, LLC, and Point Four, LLC (collectively "Gold Coast"), Cumulus Licensing, LLC ("Cumulus"), and Educational Media Foundation ("EMF") to renew their respective licenses for 12 radio stations serving communities in Ventura and Santa Barbara Counties, California.¹ The Ventura County Chapter of the National Association for the Advancement of Colored People, in coordination with the Community Advocacy Coalition (collectively "NAACP") filed informal objections against each application in October 2013 (the "Objections") alleging inadequate service to African-Americans.² For the reasons discussed below, we deny the Objections and grant all but one of the applications.³

¹ The Appendix to this letter provides additional identifying information for each station and licensee. Gold Coast Broadcasting and Point Four are commonly controlled. The sole EMF station included in this proceeding was acquired during the license term through an assignment from Cumulus.

² NAACP claims standing based on residency in the local community. Objections at 1. Also before us are: Cumulus's October 24, 2013 Opposition to which NAACP filed a Reply on November 13, 2013; a November 18, 2013 Opposition from Gold Coast; and a December 4, 2013 Opposition from EMF.

³ KKZZ (AM), Santa Paula, CA (Fac. ID No. 70562) is currently silent. Accordingly, its renewal application will be held in pending status until we are notified that the station has resumed licensed operation.

I. BACKGROUND

An informal objection to a license renewal application must provide properly supported allegations of fact that, if true, would establish a substantial and material question whether grant of the application would be *prima facie* inconsistent with Section 309(k) of the Communications Act of 1934, as amended.⁴ We must grant renewal if we find that, during the preceding license period, the station has served the public interest with no serious violations and no smaller violations which, taken together, constitute a pattern of abuse.⁵

NAACP, in identical allegations against each of the 12 stations, argues that each excluded the African-American community by failing: (1) to provide sufficient employment opportunities; (2) to air enough programming pertaining to African-Americans; (3) to become involved in events, issues, or projects concerning African-Americans; and (4) to conduct “community assessments” with African-American leaders.⁶ Each licensee responds that NAACP’s allegations are conclusory, unsupported, contrary to facts, and/or address matters that are not requirements under Commission rules (the “Rules”).⁷

II. DISCUSSION

Employment Opportunities. First, we consider NAACP’s allegation that African-Americans are underrepresented among station employees. The Commission’s Equal Employment Opportunity (“EEO”) rules focus on recruitment, outreach, and nondiscrimination practices, without imposing numerical guidelines or requiring hiring programs for any particular group.⁸ Allegations that a broadcast station does not currently employ individuals from particular races or ethnic groups will not raise a substantial or material question absent a showing of discrimination or noncompliance with the EEO Rules. We have reviewed the EEO program (FCC Form 396) filed with each of the 12 license renewal applications, and have found that each fully complies with the Rules. NAACP has not shown otherwise.⁹

⁴ 47 U.S.C. §§ 309(e) and (k).

⁵ See 47 U.S.C. § 309(k).

⁶ Objections at 1.

⁷ Cumulus Opposition at 2-5; Gold Coast Opposition at 3-8; EMF Opposition at 3-5. EMF also contends that the Objection against its station, KYGA(FM), may be directed at the record of the former licensee Cumulus, not EMF.

⁸ 47 C.F.R. § 73.2080.

⁹ NAACP makes only a bare, single sentence statement that the stations have few African-Americans in professional positions due to a lack of recruitment and hiring programs. Objections at 1. We agree with Gold Coast that this allegation is unsupported and inconsistent with facts provided to the Commission in Form 396 filings. See Gold Coast Opposition at 5 (citing FCC File. No. B39620130730ALB). Gold Coast, for example, describes its use of a wide variety of recruitment sources that are open to all population groups, states that 9.4 percent of its workforce are African-Americans (all in executive or on-air professional positions) even though only 1.8 percent of Ventura County is African-American, and notes that other minorities such as Hispanic women are represented among its officers and managers. Gold Coast also argues that NAACP’s allegations are contrary to the favorable results of a random EEO compliance audit of its stations in 2009, during the relevant license term. *Id.* at 2.

Programming. With respect to programming, NAACP states that it reviewed each station's public inspection file and found a "glaring absence" of service to African-Americans.¹⁰ An objection based on programming faces a high hurdle because the Commission's role in programming is quite limited, consistent with First Amendment rights to freedom of speech without government intervention. Broadcasters have broad discretion to choose, in good faith, which community issues and problems to address and the type of non-entertainment programs in which to respond.¹¹ The Commission will not intervene absent a showing that the broadcaster was unreasonable or discriminatory in its selection of issues or offered such nominal levels as to have effectively defaulted on its obligation.¹² When a station's service area has a significant ethnic or minority population, an arbitrary refusal to program to that population's needs or to include that group in its programs could be viewed as a failure by the licensee to meet its public interest obligation.¹³ However, the Commission will not take adverse action on a license renewal application based upon the subjective programming preferences of a particular group.¹⁴ NAACP has not made a *prima facie* case that any of the licensees abused its discretion because its programming allegations lack any supporting factual evidence, such as examples, discussion, or explanation of how any licensee's selection of issues or programs was inadequate.¹⁵

Event Participation/Ascertainment. Finally, we consider two related arguments that the stations and their managers have not sufficiently interacted with the African-American community. First, NAACP faults each station for inadequate participation in community events, issues, and projects involving African-Americans. NAACP views such participation as desirable because it could enable the managers to assess compliance, to discuss the community's concerns, and to create opportunities for collaboration.¹⁶ Second, NAACP contends that the stations have failed to conduct community

¹⁰ Objections at 1.

¹¹ See *Commercial TV Stations*, Memorandum Opinion and Order, 98 FCC 2d 1076, 1085 n.28 (1984). 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. *Id.* at 1087 n.35. It may also include, although not primarily, news. See *Alianza Federal de Mercedes v. FCC*, 539 F.2d 732, 735 n.25 (D.C.Cir.1976). Licensees must place lists of their most significant issue-responsive programming in a public inspection file every three months. 47 C.F.R. § 73.3527(e)(8)(i).

¹² See *Commercial TV Stations*, 98 FCC 2d at 1092-94. *Deregulation of Radio*, 84 FCC 2d at 990-991. Petitioning parties thus have a heavy burden to show that a licensee has abused its discretion over programming matters. *Commercial TV Stations*, 98 FCC 2d at 1093-94.

¹³ See *Dontron, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 2560, 2561 (MB 1991) (citing *Citizens Communications Center*, 25 FCC 2d 705, 707 (1970)).

¹⁴ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978). See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) (allegations that statistically small portion of programs listed in public file addressed issues specific to women, Hispanics, gays, and lesbians insufficient to impact license renewal); See also, *Rosanda Suetopka Thayer*, Letter, 22 FCC Rcd 17305, 17308 n.18 (MB 2007) (general desire of residents on Hopi reservation for Hopi language programming insufficient to demonstrate that station which did not air such programming failed to serve its community of license).

¹⁵ See *North Idaho Broadcasting Co.*, Memorandum Opinion and Order, 8 FCC Rcd 1637, 1638 (1993) (conclusory allegations insufficient).

¹⁶ Objections at 1.

assessments with African-American leaders. It believes that such interaction could foster more effective procurement opportunities for African-American-owned businesses and more inclusive on-air content.¹⁷

The Rules do not require broadcasters to undertake the type of interaction that the NAACP desires. Over thirty years ago, as part of broadcast deregulation, the Commission eliminated formal “ascertainment” requirements, which once mandated that broadcasters consult with community leaders to determine the needs and problems of the community.¹⁸ As noted above in our discussion of issue-responsive programming, the manner in which a particular licensee identifies and selects community issues has become an informal process, and a licensee’s responsiveness is verified by quarterly documentation in its public inspection file.

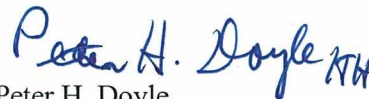
The Commission has never required licensees to participate in local events or projects. A broadcaster’s choice to do so (or not) is a business judgment entirely within its discretion. While the Commission has sometimes, at a licensee’s request and outside of the license renewal context, considered a licensee’s voluntary participation in community affairs favorably, it has neither required such participation nor taken adverse action for lack thereof.¹⁹

III. ORDERING CLAUSES

Accordingly, IT IS ORDERED that the October 18, 2013 Informal Objections filed by NAACP, Ventura County Chapter ARE DENIED.

IT IS FURTHER ORDERED that the respective applications filed by Cumulus Licensing, LLC, Educational Media Foundation, Gold Coast Broadcasting, LLC, and Point Four LLC for the stations identified in the Appendix to this letter ARE GRANTED.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized monogram "PH".

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁷ *Id.*

¹⁸ See *Deregulation of Radio*, Report and Order, 84 FCC 2d 968, 997-98 (1981).

¹⁹ See, e.g., *WBBK Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 5906, 5908 (2000) (relying in part upon licensee’s claimed participation in local events to reject objection that licensee would be insufficiently concerned with local community after a proposed facility upgrade); *Barnco, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 5414, 5417 (1999) (citing as one factor favoring waiver of radio/television cross-ownership restrictions, post-merger cost savings that proposed assignee claimed would enable more participation in community events).

APPENDIX

	Call Sign	California City	Facility ID	File Number	Licensee
	KHAY(FM)	Ventura	35848	BRH-20130731ATZ	Cumulus Licensing, LLC
	KBBY-FM	Ventura	7745	BRH-20130731AUE	Cumulus Licensing, LLC
	KVYB(FM)	Santa Barbara	8853	BRH-20130731AUC	Cumulus Licensing, LLC
	KVEN(AM)	Ventura	35847	BR-30130731ATY	Cumulus Licensing, LLC
	KRRF(FM)	Oak View	10329	BRH-20130731AUD	Cumulus Licensing, LLC
was KRUZ(FM) now	KYGA(FM)	Goleta	3159	BRH-20130731AHR	Educational Media Foundation
	KFYV(FM)	Ojai	7744	BRH-20120730ANB	Gold Coast Broadcasting, LLC
	KOCP(FM)	Camarillo	70563	BRH-20130730AME	Gold Coast Broadcasting, LLC
was KKZZ (AM) now	KUNX(AM)	Port Hueneme	25091	BR-20130730ALS	Gold Coast Broadcasting, LLC
	KVTA(AM)	Ventura	7746	BR-20130730ALF	Gold Coast Broadcasting, LLC
	KCAQ(FM)	Oxnard	25092	BRH-20130730ANT	Point Four, LLC