



Federal Communications Commission
Washington, D.C. 20554

January 29, 2015

In Reply Refer to:
1800B3-EAB

Mr. Peter Hudiburg
P.O. Box 61
South Plymouth, NY 13844

Ms. Margaret L. Miller, Esq.
Gray Miller Persh LLP
1200 New Hampshire Avenue, N.W.
Washington, DC 20036

In re: **WSKG Public Telecommunications Council**
Station WSKG-FM, Binghamton, New York
Facility ID No. 74039
File No. BRED-20140130ACZ

Informal Objection

Dear Mr. Hudiburg and Counsel:

We have before us: (1) the referenced application of WSKG Public Telecommunications Council ("Licensee") to renew its license ("Renewal Application") for Station WSKG-FM, Binghamton, NY ("Station"); and (2) the Informal Objection ("Objection") to the Renewal Application filed on May 30, 2014, by Mr. Peter Hudiburg ("Hudiburg"). For the reasons discussed below, we treat the Objection as a petition for reconsideration and dismiss it.

Background. Licensee timely filed the Renewal Application on January 30, 2014.¹ The Media Bureau ("Bureau") granted the uncontested Renewal Application on May 23, 2014.² Hudiburg then filed the Objection on May 30, 2014. In the Objection, Hudiburg criticizes the Station for failing to adequately cover the "burning local issue" of shale gas drilling and hydraulic fracturing ("fracking"), despite a "demonstrated community concern" for gas-related accidents.³ Hudiburg further claims that the Station has deliberately neglected to take advantage of the numerous local opportunities to engage the issue, including a failure to broadcast public hearings, meetings, and debates,⁴ to interview local experts, industry players, and affected residents,⁵ and to accept material from community producers.⁶ While Hudiburg concedes that the Station has provided some coverage,⁷ he claims that it is infrequent and one-

¹ The Commission gave Public Notice of the filing of the Renewal Application on February 4, 2014. *See Broadcast Applications*, Public Notice, Report No. 28169 (February 4, 2014).

² The Commission gave Public Notice of the grant of the Renewal Application on July 9, 2014. *See Broadcast Actions*, Public Notice, Report No. 28277 (July 9, 2014).

³ Objection at 1.

⁴ *Id.* at 1-3.

⁵ *Id.* at 2-3.

⁶ *Id.* at 3.

⁷ *Id.* at 1.

sided, and suggests that the Station's programming choices may be motivated by undisclosed pro-fracking donors.⁸ Hudiberg points to the extensive coverage that fracking has received in the national and international media, and concludes that the Station's coverage "does not constitute adequate service for the local community of these all important . . . issues."⁹ Licensee did not file an Opposition to the Objection.

Discussion. Section 73.3587 of the Commission's Rules ("Rules") requires that informal objections be filed *before* the Bureau takes action on an application.¹⁰ Because Hudiburg filed the Objection one week *after* the Bureau granted the Renewal Application -- but within 30 days of public notice of the grant of the Renewal Application -- we will treat the Objection as a petition for reconsideration.¹¹

Section 1.106(b)(1) of the Rules allows any party to an original proceeding, or any non-party whose interests are adversely affected by an action taken by the Commission, to file a petition for reconsideration of the action taken.¹² Non-parties must state "with particularity" the manner in which their interests are adversely affected, and must show good reason why they were unable to participate in the earlier proceeding.¹³

Hudiburg fails to meet this burden, having provided no explanation as to why he did not object prior to the Bureau's grant of the Renewal Application. While the Commission has accorded standing to petitioners whose failure to timely file a pre-grant objection was the result of unusually prompt staff action,¹⁴ such is not the case here. Hudiburg had nearly four months to object to the Renewal Application, but failed to do so.¹⁵ Because the Bureau may dismiss a petition for reconsideration that does not show good cause for the petitioner's inability to participate earlier in the proceeding,¹⁶ we dismiss the Objection accordingly.¹⁷

Moreover, even if we were to consider Hudiburg's arguments on the merits, we would deny the Objection. Under Sections 1.106(c) and (d) of the Rules, the Bureau will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present

⁸ Opposition at 4.

⁹ *Id.* at 2, 4.

¹⁰ 47 C.F.R. § 73.3587.

¹¹ See *Zwerling Broadcasting System Ltd.*, Letter, 29 FCC Rcd 9606, 9606 (MB 2014) (treating an informal objection filed more than 30 days after the grant of a renewal application, but within 30 days of Public Notice of the grant, as a petition for reconsideration) ("*Zwerling*"); 47 C.F.R. § 1.106(f).

¹² 47 C.F.R. § 1.106(b)(1).

¹³ *Id.*

¹⁴ See, e.g., *Aspen FM, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 17852, 17854 (1997) (awarding standing to file petition for reconsideration without pre-grant objection when application granted five days after Public Notice of its acceptance); *Ted and Jana Tucker*, Memorandum Opinion and Order, 4 FCC Rcd 2816 (1989) (standing for post-grant objection when application granted four days after Public Notice).

¹⁵ See 47 U.S.C. § 309(b), (d); *Broadcast Applications*, Public Notice, Report No. 28169 (February 4, 2014).

¹⁶ See, e.g., *Florida Public Radio*, Letter Decision, 22 FCC Rcd 2305 (MB 2007) (dismissing petition for reconsideration for lack of standing where petitioner was not involved in the case prior to the grant, did not show adversely affected interests, and did not establish good cause for failing to participate in the original proceeding).

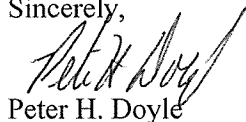
¹⁷ See *Zwerling* at 9607.

such matters.¹⁸ Commission action with respect to broadcast station license renewal applications is governed by Section 309(k) of the Communications Act of 1934, as amended (“Act”), which provides that we are to grant a station’s license renewal 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 violations which, taken together, constitute a pattern of abuse.¹⁹ Hudiburg has not shown that, under the standard set forth in Section 309(k), the Bureau erred in granting the Renewal Application.

Hudiburg’s sole complaint is that the Station has failed to serve the needs of the community by providing inadequate news coverage of the fracking controversy. While we recognize that fracking may be, as Hudiburg claims, an issue of particular gravity for the citizens of Southern New York, our role in overseeing program content is limited by the First Amendment to the United States Constitution and Section 326 of the Act, which prohibit the Commission from interfering with broadcasters’ freedom of expression.²⁰ Barring exceptions that are not applicable in the present case, we “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.”²¹ Ultimately, Hudiburg’s allegations amount to little more than a subjective evaluation of the quality of the Station’s news coverage. Because of the broad programming discretion afforded to licensees, Hudiburg’s conclusions, even if accurate, fail to show that the Bureau erred in granting the Application as consistent with the public interest, convenience, and necessity under Section 309(k) of the Act.

Conclusion. Accordingly, IT IS ORDERED, that the Informal Objection filed by Peter Hudiburg on May 30, 2014, treated here as a Petition for Reconsideration, is DISMISSED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: WSKG Public Telecommunications Council

¹⁸ See *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F. 2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); 47 C.F.R. § 1.106(c)-(d).

¹⁹ 47 U.S.C. § 309(k)(1).

²⁰ U.S. Const., Amend I; 47 U.S.C. § 326.

²¹ *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978). In fact, the Commission has specifically noted that programming not targeted at a local community may nonetheless serve community needs and interests. See *KGAN Licensee, LLC*, 25 FCC Rcd 2549, 2557 (2010).