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22 F.C.C.R. 10877, 22 FCC Rcd. 10877, 2007 WL 1713163 (F.C.C.)

Federal Communications Commission (F.C.C.)

Letter

**\*\*1 CHICAGO MEDIA ACTION AND MILWAUKEE  
PUBLIC INTEREST MEDIA COALITION  
C/O ANDREW JAY SCHWARTZMAN, ESQ.**

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Released: June 13, 2007

**\*10877 Chicago Media Action and Milwaukee Public Interest Media Coalition**

c/o Andrew Jay Schwartzman, Esq.  
Media Access Project  
Suite 1000

1625 K Street, NW  
Washington, D.C. 20006

Re: Petitions to Deny filed by Chicago Media Action and Milwaukee Public Interest Media Coalition

Gentlemen:

On November 1, 2005, Chicago Media Action (“CMA”) and the Milwaukee Public Interest Media Coalition (“MPIMC”) filed petitions opposing the license renewal applications of 8 broadcast television stations in the Chicago area and 11 broadcast television stations in the Milwaukee metropolitan area.<sup>[FN1]</sup> The licensees of various stations named in the petitions, and the Illinois Broadcasters Association, filed oppositions on or about December 15, 2005. CMA filed a reply to the relevant oppositions on January 18, 2006. For the reasons set forth below, we deny the petitions.<sup>[FN2]</sup>

*Background.* The petitions contend that Chicago and Milwaukee broadcast stations have failed to present ade-

quate programming relating to state and local elections during the 2004 election campaign. They attach to their petitions a study by the Center for Media and Public Affairs, entitled “2004 Campaign News Study in Chicago, Milwaukee and Portland Markets,” which purports to analyze all regularly scheduled news and public affairs programming on the five highest-rated commercial stations in Chicago and Milwaukee, respectively. According to the study, less than 1% of newscasts in the Chicago and Milwaukee markets were devoted to non-federal elections during the four weeks prior to the 2004 election. In addition to assessing the quantity of newscast time devoted to non-federal elections, CMA and MPIMC also state that the study indicates that fully half of this news coverage did not inform voters about issues or other facts which would actually assist in voting. Both CMA and MPIMC acknowledge that **\*10878** broadcasters have wide discretion in selecting news programming, but contend that the paucity of coverage of local elections here is inconsistent the principle of localism that the Communications Act demands.

The oppositions argue that the attached study is flawed as a means of determining whether Chicago and Milwaukee stations have served the public interest during the license term since it covers only a limited period of time and only concerns one type of programming. According to the oppositions, the type of election coverage provided lies within a licensee's editorial discretion, which they have not exercised in bad faith. According to the licensees, it is overall “responsiveness” to local issues, rather than the narrow subset of local election coverage, that is most relevant in determining whether a station's programming has served the public interest. Some Chicago licensees also argue that there were no Illinois state-wide elections, no Chicago mayoral election, and no other state or local elections of similar importance to a wide sector of the station's audience during the one-month period covered by the study, and, thus, it was not unusual that there would be relatively few stories covering local non-federal elections.

**\*\*2 Discussion.** The Commission applies a two-step analysis of a petition to deny under the public interest standard. The petition must first contain specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.<sup>[FN3]</sup> This first step of the public interest analysis

“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 factfinder conclude that the ultimate fact in dispute had been established.”<sup>[FN4]</sup> “Allegations within these documents that consist of ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits, are not sufficient.”<sup>[FN5]</sup> If the allegations meet this first step, then the Commission will designate the application for hearing when the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether granting the application would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.<sup>[FN6]</sup>

Section 326 of the Act and the First Amendment to the Constitution prohibit any Commission actions that would improperly interfere with the programming decisions of licensees.<sup>[FN7]</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>[FN8]</sup> The Commission has long held **\*10879** that “[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter to the licensee's good faith discretion,” and that “the Commission will not review the licensee's news judgments.”<sup>[FN9]</sup>

cc:

The petitions have not provided evidence that the named licensees exercised their editorial discretion in bad faith. Quantity is not necessarily an accurate measure of the overall responsiveness of a licensee's programming.<sup>[FN10]</sup> The study provided only concerns one type of programming, local election coverage just prior to the 2004 election. It does not demonstrate that television programming in Chicago or Milwaukee has generally been unresponsive. The Commission, however, currently has pending a rulemaking seeking to standardize and enhance television broadcasters' public interest disclosure requirements.<sup>[FN11]</sup> In initiating this rulemaking, the Commission has sought, in part, to promote discussions between the licensee and its community about how best to meet the local public interest obligations of the community a broadcaster serves. In the meantime, we urge all viewers and listeners, including such organizations as CMA and MPIMC, to raise their programming concerns directly with their local broadcasters.

**\*\*3** Accordingly, the Petitions to Deny filed by Chicago Media Action and the Milwaukee Public Interest Media Coalition **ARE DENIED**.

Sincerely,  
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Media Bureau

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FN1. The stations and licensees named in the petition are attached to this letter as an Appendix. CMA characterizes

itself as “an activist group dedicated to analyzing and broadening Chicago's mainstream media and to building Chicago's independent media,” while MPIMC states that

it is an “*ad hoc* coalition of viewers and civic organizations concerned about the vitality of the electoral process.” *CMA and MPIMC Petitions to Deny*, at Note 1.

FN2. We will exercise our discretion and consider all of the pleadings, and allegations raised therein, that have been filed by the parties. Thus, we need not determine whether CMA or MPIMC have standing.

FN3. [47 U.S.C. §309\(d\)\(1\)](#); [Astroline Communications Co. Ltd. Partnership v. FCC](#), 857 F.2d 1556 (D.C. Cir. 1988) (“Astroline”).

FN4. [Gencom, Inc. v. FCC](#), 832 F.2d 171, 181 (D.C. Cir. 1987).

FN5. [Id. at 180, n. 11.](#)

FN6. [Astroline](#), 857 F.2d at 1561; [47 U.S.C. §309\(e\)](#).

FN7. [47 U.S.C. §326](#); [U.S. CONST., amend. I](#).

FN8. *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).

FN9. [American Broadcasting Companies, Inc.](#), 83 FCC 2d 302, 305 (1980). *See also* *Dr. Paul Klite*, 12 Com. Reg. (P&F) 79, 81-82 (MMB 1998), *recon. denied sub nom., McGraw-Hill Broadcasting Co.*, 16 FCC Rcd 22739 (2001).

FN10. *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076, 1090 (1984).

FN11. *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rulemaking, [15 FCC Rcd 19816 \(2000\)](#).

**\*10882 APPENDIX**

**Stations Named in Petitions to Deny**

CALL SIGN	COMMUNITY OF LICENSE	LICENSEE	FILE NO.	FACILITY ID NO.
WBBM-TV	Chicago, IL	CBS Broadcasting, Inc.	BRCT-20050801AFV	9617
WMAQ-TV	Chicago, IL	NBC Telemundo License Co.	BRCT-20050801CEL	47905
WLS-TV	Chicago, IL	WLS Television, Inc.	BRCT-20050801CUZ	73226
WGN-TV	Chicago, IL	WGN Continental Broadcasting Company	BRCT-20050801BXY	72115
WCIU-TV	Chicago, IL	WCIU-TV Limited Partnership	BRCT-20050801ADO	71428
WFLD(TV)	Chicago, IL	Fox Television Stations, Inc.	BRCT-20050729DSN	22211
WCPX(TV)	Chicago, IL	Paxson Chicago License	BRCT-20050729AGG	10981
WSNS-TV	Chicago, IL	NBC Telemundo License Co.	BRCT-20050801CFO	70119
WPWR-TV	Gary, IN	Fox Television Stations, Inc.	BRCT-20050401AQB	48772
WTMJ-TV	Milwaukee, WI	Journal Broadcast Corporation	BRCT-20050729CYF	74098
WITI(TV)	Milwaukee, WI	WITI License, Inc.	BRCT-20050729DRL	73107
WISN-TV	Milwaukee, WI	WISN Hearst-Argyle	BRCT-20050801CEF	65680

TV, Inc.				
WVTV(TV)	Milwaukee, WI	WVTV Licensee, Inc.	BRCT-20050801BDQ	74174
WCGV-TV	Milwaukee, WI	WCGV Licensee, LLC	BRCT-20050801BBZ	71278
WVCY-TV	Milwaukee, WI	VCY America, Inc.	BRCT-20050801AGS	72342
WMLW-CA	Milwaukee, WI	Channel 41 and 63 Limited Partnership	BRCT-20050801ADM	71422
WJJA(TV)	Racine, WI	TV-49, Inc.	BRCT-20050725ABE	68545
WWRS-TV	Mayville, WI	National Minority T.V., Inc.	BRCT-20050729DNH	68547
WPXE(TV)	Kenosha, WI	Paxson Milwaukee License, Inc.	BRCT-20050729AIH	37104
WDJT-TV	Milwaukee, WI	WDJT-TV Limited Partnership	BRCT-20050801ADL	71427

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