

ORIGINAL

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

ACCEPTED/FILED

JUL 26 2013

Federal Communications Commission
Office of the Secretary

In re Application of)
)
Gray Television Licensee, LLC)
)
For Renewal of the License of Station) FCC File No. BRC DT-20130401AEG
WKYT-TV, Lexington, Kentucky) Facility ID #24914
)

To: The Secretary, Federal Communications Commission
Attn: The Chief, Video Division, Media Bureau

OPPOSITION TO INFORMAL OBJECTION

Gray Television Licensee, LLC ("Gray"), the licensee of WKYT-TV, Lexington, Kentucky ("WKYT" or the "Station"), by its attorney of the Commission's rules, hereby opposes the Informal Objection erroneously labeled as a Petition to Deny (the "Objection") submitted by Daniel Logsdon against Gray's captioned application to renew WKYT's license. The Objection is the latest maneuver in a highly inappropriate campaign of intimidation against a news outlet that elected to broadcast political programming that the Objector does not want on the air. It is also utterly lacking in merit under the law, as the allegations are insufficient to establish even a *prima facie* showing that the grant of the subject license renewal application would be inconsistent with the public interest. The Bureau must dismiss the Objection promptly.

Section 309(k) of the Communications Act of 1934, as amended, requires that the Commission grant a broadcast renewal application if, upon consideration of the application and pleadings, it finds that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the FCC's rules; and (3) there

have been no other violations which, taken together, constitute a pattern of abuse.¹ Mr. Logsdon does not claim that WKYT has violated the Communications Act or any FCC rule. Nor does Mr. Logsdon make any allegation that, if true, would establish a substantial and material question that grant of WKYT's license renewal application would be *prima facie* inconsistent with Section 309(k) of the Communications Act.² The Bureau therefore may dismiss the Objection on these bases alone.

Mr. Logsdon complaint is with WKYT's decision to air certain programming – a choice that is at the complete discretion of the licensee. The Commission has repeatedly affirmed that licensees have “broad discretion to choose, in good faith, the programming they believe serves the needs and interests of their communities.”³ The Commission “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.”⁴ Mr. Logsdon complains that WKYT did not stop airing a particular political advertisement after his organization insisted that the station yield to its censorship demands. He asserts that the advertisement contained false information that was defamatory to a candidate he supported in his position as Chairman of the Democratic Party of Kentucky.⁵ WKYT's exercise of its programming and editorial discretion - in Mr. Logsdon's mind - make Gray unfit to act as a “public trustee of the airwaves.”⁶ Mr. Logsdon's allegations fall far short of demonstrating any basis for Commission action.

¹ 47 U.S.C. §309(k).

² *Id.* While Mr. Logsdon attempts to claim standing as a viewer of the Station, his only personal grievance relates to his responsibilities as a political party official – a matter that is clearly beyond the Commission's area of responsibility. Consequently, he has no standing to file a Petition to Deny WKYT's license renewal application.

³ *Id.* and *KGAN Licensee, LLC*, 25 FCC Rcd 2549 (2010)(denying renewal objection that claimed the station's programming was not responsive to the community needs and did not serve the public interest).

⁴ *WHYY, Inc.* 22 FCC Rcd 18636 (audio Div. 2007) (citing *WGBH Educational Foundation*, 69 FCC2d 1250, 1251 (1978)) (footnotes omitted).

⁵ Under long-standing Supreme Court precedent, a political candidate is a “public figure” for purposes of defamation law, and his campaign could not obtain, as it had threatened, a federal court injunction against the publication of the political speech to which it objected. Moreover, Gray notes that the candidate depicted in the complained-of advertisement—who in fact won the election -- has not filed a defamation complaint against the Station.

⁶ Petition at 4.

Gray takes seriously its obligation to program WKYT in a manner that best serves the public interest. During political campaigns, WKYT encourages robust political participation by airing a variety of political programming, including extensive news coverage, debates, and political advertisements placed by candidates and political groups that desire to communicate messages relating to political matters of national importance.

WKYT often receives demands from organized political groups that the Station refuse their opponents' advertisements. Gray carefully considers each such request, reviews the material provided to support each party's position (if any), and then exercises its discretion as the licensee to decide whether to continue to air the advertisement. Gray followed its standard procedure in evaluating the advertisement complained of by Mr. Logsdon and stands by its decision to continue airing the spot. In fact, WKYT's even-handed approach has led to it rejecting demands from Republican campaigns to remove from the air negative advertisements directed at their candidates that contained more inflammatory claims than those leveled against the Democratic candidate in the advertisement at issue here.

The Bureau should act swiftly to dismiss Mr. Logsdon's Objection as meritless. This Objection is simply an attempt by Mr. Logsdon, Chairman of the Democratic Party of Kentucky, to intimidate WKYT to yield to his demands to reject any political advertising to which he objects. For a political party official to stoop to this unprecedented level and suggest that a well-respected and award-winning television broadcast station should be put out of business, and its hardworking and dedicated local employees out of work, is morally abhorrent and cannot be tolerated by this Administration or this Commission.

The Commission has determined on numerous occasions that this type of program-related allegation does not raise an issue regarding renewal of a station's license. Under established

precedent, the Bureau must deny Mr. Logsdon's Objection and grant WKYT's license renewal application. Quick and decisive action is critical to prevent the Bureau from becoming the next routine stop for every other political group or partisan who, after verbal and written threats against a broadcast news organization fail, see further intimidation value in hijacking the Commission's license renewal process to advance their political or professional cause.

Respectfully submitted,

GRAY TELEVISION LICENSEE, LLC

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July 26, 2013

Certificate of Service

I, Kimberly Booth, a secretary in the law firm of Wiley Rein LLP, do hereby certify that I have on this 26th day of July 2013, caused a copy of the foregoing "Opposition" to be served by First Class U.S. Mail postage prepaid, upon the following:

Neil P. Reiff, Esq.
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Kimberly Booth

DECLARATION OF CHRIS MOSSMAN

I, Chris Mossman, declare under penalty of perjury as follows:

I am the General Manager of WKYT-TV, Lexington, Kentucky. I have reviewed the Opposition to Informal Objection and the facts stated therein are true and correct to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to be 'CM' followed by a stylized flourish.

Chris Mossman

July 26, 2013