

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Application of)	
)	
Trinity Associates Broadcasting, LLC)	
)	File No. BR-20140328AER
For Renewal of Broadcast Station License)	Facility ID No. 22896
WFYL(AM), King of Prussia, Pennsylvania)	

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To: The Chief, Media Bureau

JUL 24 2014

OPPOSITION TO PETITION TO DENY

Federal Communications Commission
Bureau / Office

Trinity Associates Broadcasting, LLC ("TAB"), licensee of AM radio station WFYL, King of Prussia, Pennsylvania (Facility ID No. 22896) ("WFYL" or the "Station"), by its counsel and pursuant to §73.3584(b) of the Commission's Rules, hereby opposes the Petition to Deny (the "Petition") filed by Edmund B. Papiernik ("Papiernik" or "Petitioner"), directed against the above-captioned WFYL license renewal application (the "Application").¹ In support hereof, the following is shown:

I. Introduction

In accordance with Section 309(d) of the Communications Act of 1934, as amended (the "Act"),² a petition to deny the license renewal of a broadcast station 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

¹ According to CDBS, the Petition was filed on June 24, 2014. Accordingly, this Opposition is timely filed.

² 47 U.S.C. § 309(d).

Act, which governs the Commission's evaluation of broadcast license renewal applications.³ Specifically, Section 309(k)(1) requires the Commission to grant a license renewal application if, upon consideration of the application and pleadings, it finds that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations of the Act or Commission Rules; and (3) there have been no other violations of the Act or the Rules that, taken together, constitute a pattern of abuse.⁴

From an objective reading of the Petition, it is crystal clear that the Petitioner fails to meet his burden to establish a substantial and material question of fact that the grant of the Application would be *prima facie* inconsistent with Section 309(k) of the Act. Indeed, the Petitioner puts forward nothing more than (i) a misguided personal attack against TAB principal Alan Loch (Petition at 7); (ii) a rant against TAB's programming choices (Petition at 4-5), (iii) wholly fictitious conjecture that the Station operates without any on-site management and staff (Petition at 6) and in violation of a host of other Commission rules (Petition at 7-9); and (iv) rank speculative arguments about the Station's financial strength (Petition at 5, 7) and the future ownership of the Station (Petition at 8-9), each of which is apparently intended to publicly humiliate and embarrass TAB's principals. As will be shown, Papiernik, the proverbial "disgruntled" former employee, is baring his personal animus toward his former employers in an effort to inflict unwarranted pain and damage. Papiernik should be admonished for both abusing the Commission's processes and wasting Commission resources to further a personal vendetta. For all of these reasons, the Petition should be summarily denied.

³ *Id.*, § 309(k). See *Letter to Sally A. Buckman, Esq. (In re Journal Broadcast Corp.)*, 29 FCC Rcd 5014, 5015 (Media Bur. 2014).

⁴ 47 U.S.C. § 309(k)(1).

II. WFYL Operates with a Meaningful Management and Staff Presence.

By way of background, TAB has owned and operated WFYL since November 1, 2012, when it purchased the Station from Langer Broadcasting Outdoors, Inc. (“Langer”) pursuant to prior Commission consent.⁵ While TAB’s two principals – spouses, Alan and Susan Loch – had had years of experience owning and managing an electrical engineering/field testing firm, neither of them had prior broadcast station ownership or management experience. Thus, they decided to retain the Station employees who had been working for Langer, including Papiernik, who had been Langer’s general manager for WFYL.

The Lochs moved quickly to learn the ropes of radio station operations and management. And, contrary to Papiernik’s claims, the Lochs consulted (and still consult) when necessary, with undersigned communications counsel, among other broadcast professionals. By necessity, the Lochs’ involvement in managing the day-to-day operations of WFYL substantially increased as of May 29, 2013, when Papiernik abruptly resigned. Since Papiernik’s departure (and contrary to Papiernik’s specious claim at p. 6 of the Petition), the Station has had a full-time managerial and staff presence.

As the Assistant General Manager of WFYL, Susan Loch works full-time at the Station’s office/main studio during normal business hours (and often after-hours), Monday through Friday, and many weekends. Likewise, Alan Loch, the General Manager of WFYL, devotes substantial time to the Station during and after normal business hours on weekdays and often on weekends, working either from the Station’s offices/main studio or from off-site locations. The Lochs are not, by a long shot, absentee owners, as Papiernik claims. Further, the Station is currently staffed with two full-time employees and a number of part-time employees, who work from the

⁵ See FCC File No. BAL-20120911ACG.

Station's offices/main studio during normal business hours each weekday. Thus, contrary to the Petition's claim that WFYL has no managerial or full-time staff presence, the Station absolutely maintains a meaningful management and staff presence and is fully compliant with the Commission's main studio rule.⁶

In connection with his false allegations of inadequate staffing, Papiernik also makes the specious claim that "WFYL being off the air is the rule rather than the exception". There is simply no truth to this assertion. Papiernik then cites as an "example— again, without any substantiation or specific details — that the Station was off the air "for a large portion" of Saturday, June 21, 2014, "and into" Sunday, June 22, 2014. (Petition at 6). Suffice it to say, TAB has no knowledge or record of the Station having been off the air on those dates, except during normal, non-daytime hours.⁷

III. WFYL Serves the Public Interest, Convenience and Necessity.

WFYL is a daytime-only station with a talk format, consisting of a mix of syndicated and locally produced programs. After several months during which the Station's programming underwent some planned and some unanticipated changes — in both syndicated and locally produced programs — the WFYL program schedule, since at least the Fall of 2013, has included the following: two hours of local programming each weekday morning, three hours of local programming each Saturday morning, and five hours of local religious programming each Sunday morning.

⁶ See *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 & n.2 (1991) (there must be management and staff presence on a full-time basis during normal business hours to be considered 'meaningful.'), *clarified*, 7 FCC Rcd 6800 (1992).

⁷ TAB will make its Station logs for June 21 and 22, 2014, available to the Commission staff, if requested.

WFYL's locally produced programming includes "*It's a New Day*", which broadcasts live from the Station's studios, each Tuesday, Wednesday and Thursday, between 7:00 a.m. and 9:00 a.m., and each Friday, between 7:00 a.m. and 8:00 a.m. Replays of "*It's a New Day*" highlights from the previous week are broadcast each Saturday between 10:00 a.m. and Noon. The program's three co-hosts cover a broad range of topics, including local, regional and national news and social issues, local weather and local events, often with guest interviews and listener call-ins.

The Station's other locally produced programs include: "*Your Voice Matters*", broadcast each Monday between 7:00 a.m. and 9:00 a.m., with three hosts, each addressing various issues of local, regional and national interest; "*Your Family Matters*", broadcast each Friday between 8:00 a.m. and 9:00 a.m., with a host who focuses on addressing topics of concern to parents; and, "*H2O*", broadcast each Saturday between 9:00 a.m. and 10:00 a.m., with two local historians/hosts, who cover local history, local events and other matters of local interest.

As demonstrated by the foregoing brief description of WFYL's local programming, WFYL is no "computer in a closet", as Papiernik recklessly charges (Petition at 4). Rather, WFYL offers substantial and varied locally produced programs each day of the week that, along with the nationally syndicated talk shows included in the Station's program schedule, are designed to meet the needs and interests of its listeners.⁸

Finally, with regard to WFYL's programming, the Petition makes obvious the fact that Papiernik, to put it mildly, does not like TAB's programming choices (Petition at 4 and 7).

However, Papiernik, who purports to be a long-time professional in the radio industry knows, or

⁸ Notwithstanding his assertion that he is a daily listener of WFYL, Papiernik unabashedly and wrongly asserts that WFYL offers only 105 hours of programming during an average month and only 10 hours per week of locally produced programming (Petition at 4). Mr. Papiernik should redo his math; the Station is on the air, with programming, seven days a week during daylight hours, and locally produced programs make up 18 hours of its weekly schedule.

should know, that his appropriate remedy is to simply not listen to WFYL, rather than cast wholly gratuitous aspersions on the licensee's character before the Commission! Indeed, it is well established that the Commission cannot exercise any power of censorship over broadcast stations with respect to content-based programming decisions.⁹ A licensee has broad discretion – based on its right to free speech – to choose the programming that it believes serves the needs and interests of the members of its audience.¹⁰ As a long-time broadcaster, Papiernik should know only too well that programming which may not appeal to his personal tastes nonetheless meet the needs and interests of many other members of the public -- which is precisely what WFYL's programming does.

IV. The Petition Offers No Proof of FCC Rule Violations, Serious or Otherwise.

Papiernik claims that he attempted to visit the Station on three occasions during “what [he] would describe as ‘normal business hours’ to review the Public File”. He asserts that he found the Station doors locked, the lights out and parking lot empty each time. (Petition at 7-8) Papiernik does not provide the dates or the time of day he attempted to visit the Station. Further, he admits that he did not bother to phone the Station, even after allegedly trying to visit more than once, claiming the phones are not answered – which only begs the questions: If he didn't call, how would he know the Station's phones are not answered? In any case, TAB can only respond to Papiernik's unsupported claim by stating that the WFYL public inspection file is available for viewing, Monday through Friday, during the Station's normal business hours, as the Station is staffed during that time. Moreover, the Station's telephone is routinely answered when

⁹ U.S. Const. amend. 1; 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 of free speech by means of radio communication”).

¹⁰ *Sally A. Buckman, Esq.*, 29 FCC Rcd at 5015.

the offices/studio is staffed, and if it cannot be answered (or if a call comes in after-hours), an automatic answering system is in place.

Without having inspected the WFYL public file, Papiernik nonetheless surmises that it may not be properly maintained, asserting that while he was still employed by TAB, the public file “became an afterthought” to the Lochs (Petition at 8). Mr. Papiernik can rest assured that his perception of the Lochs’ attitude toward the WFYL public file was misplaced. The WFYL public file has been, and is being, properly maintained. A recent inspection of WFYL by the Enforcement Division’s Philadelphia field office bears this out. Specifically, on July 8, 2014, presumably as a result of receiving from Papiernik a copy of the Petition, the District Director, Philadelphia Office, Northeast Region of the Enforcement Division, David Dombrowski, along with Matthew Urick from that same office, conducted an inspection of WFYL, including its public inspection file. No public inspection file-related Rule violations were found.¹¹

In regard to the Station’s compliance with other FCC rules, and without providing a single shred of evidence (although claiming to have documentation), Papiernik contends that WFYL regularly misses the required station identification at the top of the hour. Papiernik also claims, without providing any further detail or proof, that WFYL improperly performs sign-on and sign-off and EAS tests. He even speculates that because he did not hear any of the Station’s

¹¹ Indeed, following the July 8, 2014 inspection, Mr. Urick notified Mrs. Loch by email dated July 9, 2014, that the only issue encountered during the July 8, 2014 inspection of WFYL was that the Station’s EAS system was unable to receive Common Alert Protocol (“CAP”)-formatted messages. TAB immediately addressed the issue and provided Mr. Urick with a copy of the Station’s EAS log of July 14, 2014, reflecting receipt of a CAP-formatted message and demonstrating that the issue had been resolved.

pre-filing and post-filing announcements regarding the Application, such announcements were not made.¹²

To all of Papiernik's unsupported allegations of FCC rules violations, TAB responds as follows: The Station IDs are entered in the automation program for airing at the top of each hour and at other times; the automation program has been functioning without a problem. Further, when the members of the Enforcement Bureau's Philadelphia Office recently inspected the Station, they reviewed logs, among other station records, and found no evidence of any FCC rule violations or other problems except the CAP-related issue referenced in note 11, *supra*. They did find, however, statements of compliance reflecting dates and times of the broadcast of WFYL's pre-filing and post-filing announcements, which are contained in the public file. In sum, Papiernik has failed to show that WFYL has been operating with any serious violation of Commission rules that would warrant further investigation by the Commission in the crucible of a license renewal hearing. And, the results of the recent Enforcement Bureau inspection of the Station demonstrate that WFYL has been operating in material compliance with Commission rules.

V. Conjecture Designed to Embarrass TAB Has No Bearing on the Commission's Analysis under Section 309(k) of the Act and Should Be Ignored.

Finally, and as noted in the introduction, Papiernik engages in rank conjecture that the Station lacks financial health, and unbridled speculation regarding the possible future ownership

¹² Ironically, and demonstrative of how desperate Papiernik apparently is to paint TAB as a bad licensee, he offers one item of proof that FCC rules violations occurred at WFYL -- a Notice of Violation ("NOV") that was issued to the Station on April 18, 2011, some 18 months before TAB acquired WFYL, but while he was Langer's manager. (Petition at Exhibit 5.) It is worth noting that Langer responded to the NOV and, in that regard, Papiernik, as manager of the Station, must have been aware of and perhaps even assisted in preparing that response. In any case, he certainly had to have known that the Enforcement Bureau did not thereafter issue a Notice of Apparent Liability or take any other enforcement action as a follow-up to the NOV. Notwithstanding all of that, Papiernik states, "I believe that many of [the] violations [identified in the NOV] may still exist."

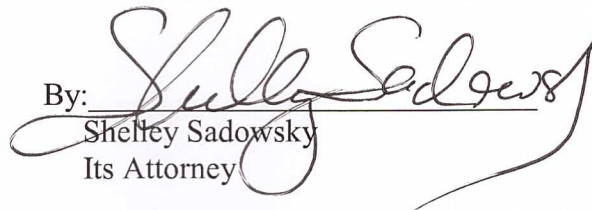
of the Station by other members of the Loch family. Neither matter has any relevance whatsoever to the renewal standards articulated in Section 309(k) and therefore will not be further addressed. However, by his disclosure of both factual and untrue statements about a troubled member of the Loch family -- who has no involvement whatsoever in the WFYL operations -- it is abundantly clear that Papiernik's agenda here is to humiliate, embarrass and cause pain and even business failure to the Lochs. While Papiernik is not a licensee of the Commission, nonetheless, such reckless and plainly cruel actions by a petitioner before the Commission should not be countenanced. Indeed, he should be admonished for abuse of the Commission's processes.

VI. Conclusion.

As demonstrated above, the Petition has failed to establish any substantial and material questions of fact as to any aspect of WFYL's ownership, management or operations relevant to the renewal standards of Section 309(k) that warrant further investigation in a hearing. Rather, as the Application and this Opposition have demonstrated, the Application should be granted in accordance with Section 309(k) of the Act, and without delay due to Papiernik's scurrilous, unscrupulous and unwarranted attack against his former employer.

Respectfully submitted,

TRINITY ASSOCIATES BROADCASTING, LLC

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Its Attorney

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June 24, 2014

DECLARATION

I, Susan Loch, hereby state as follows:

1. My husband, Alan Loch, and I are the sole managing members of Trinity Associates Broadcasting, LLC ("TAB"), licensee of AM radio station WFYL, King of Prussia, PA ("WFYL" or the "Station"). This declaration is prepared for submission to the FCC in connection with the Opposition to Petition to Deny (the "Opposition") which TAB is filing with the FCC to address Edmund Papiernik's Petition to Deny the license renewal application for WFYL.

2. I have reviewed the Opposition with which this Declaration is submitted. I provided TAB's counsel with all factual information concerning TAB and WFYL set forth in the Opposition. To the best of my knowledge, information and belief, all such factual information is true and correct.

I declare, under penalty of perjury, that the foregoing is true and correct.


Susan Loch

Dated: July 24, 2014

CERTIFICATE OF SERVICE

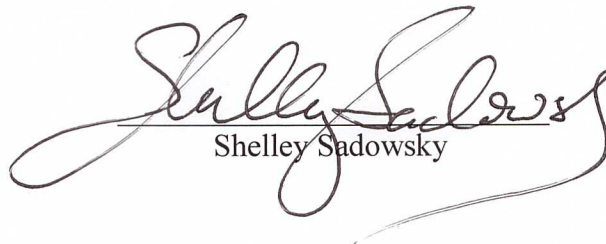
I, Shelley Sadowsky hereby certify on this 24th day of July, 2014, that a copy of the foregoing "Opposition to Petition to Deny" was served, by hand-delivery or first-class mail, to:

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