



Federal Communications Commission
Washington, D.C. 20554

March 17, 2015

In Reply Refer to:
1800B3-HOD

Mr. Edmund B. Papiernik
3120 North Wales Road
East Norriton, PA 19403

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In re: **Trinity Associates Broadcasting, LLC**
WFYL(AM), King of Prussia, PA
Facility ID No. 22896
File No. BR-20140328AER

Renewal Application
Petition to Deny

Dear Mr. Papiernik and Counsel:

We have before us the application (“Application”) of Trinity Associates Broadcasting, LLC (“Trinity”) for renewal of its license for WFYL(AM), King of Prussia, Pennsylvania (“Station”). We also have before us a Petition to Deny (“Petition”) filed by Edmund B. Papiernik (“Petitioner”).¹ As discussed below, we deny the Petition, and grant the Application.

Background. Trinity acquired the Station from Langer Broadcasting Outdoors, Inc. (“Langer”) on November 1, 2012. Trinity filed the Application on March 28, 2014. Petitioner – who was the Station’s General Manager from November 1, 2010, until May 29, 2013 – timely filed his Petition on June 23, 2014. Petitioner alleges that Trinity has failed to comply with the Commission’s rules and policies regarding main studios, public inspection files, station identifications, operating schedules, the emergency alert system (“EAS”), and pre- and post-filing announcements. He also takes issue with the programming broadcast by the Station and questions whether Trinity is qualified to be a Commission licensee. Petitioner urges us to designate the Application for hearing.

Discussion. A petition to deny a renewal application must, pursuant to Section 309(d) of the Communications Act of 1934, as amended,² 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*

¹ Trinity filed an Opposition to Petition to Deny (“Opposition”) on July 24, 2014, and Petitioner filed a Response to WFYL’s Attorney on August 4, 2014.

² 47 U.S.C. § 309(d).

facie inconsistent with Section 309(k) of the Act,³ which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that we are to grant the 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 by the licensee of the Act or the Rules; and (3) there have been no other violations by the licensee that, taken together, constitute a pattern of abuse.⁴ If, however, the licensee fails to meet that standard, the Commission may deny the application, after notice and opportunity for a hearing under Section 309(d) of the Act, or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁵

Main Studio. The Commission requires broadcast stations to maintain a main studio.⁶ The Commission requires, among other things, that a licensee maintain a “meaningful management and staff presence” at its main studio.⁷ Specifically, the Commission has found that a licensee “must, at a minimum, maintain full-time managerial and full-time staff personnel” at a station’s main studio.⁸ Petitioner alleges that Trinity does not adequately staff the Station’s main studio. According to him, “the station does not employ any full time staff.”⁹ Petitioner asserts that he attempted to visit the Station’s main studio on three separate occasions but found it closed.¹⁰ However, he does not indicate that he attempted to visit the Station’s main studio during normal business hours. In fact, Petitioner does not list even the dates on which he made these attempts. Further, he does not offer evidence to substantiate his allegation that Trinity does not employ any full-time staff. Accordingly, we find that Petitioner has failed to raise a substantial or material question regarding Trinity’s compliance with the Commission’s main studio staffing requirements. In addition, we note that the Enforcement Bureau’s Philadelphia Office inspected the Station on July 8, 2014, and found the main studio was staffed with both full-time and part-time staff.

Public Inspection File. The Commission requires that every licensee of an AM station maintain a public inspection file at the station’s main studio.¹¹ The station must make the file available for public inspection at any time during regular business hours.¹² Petitioner asserts that, on three separate occasions,

³ 47 U.S.C. § 309(k). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh’g denied* (D.C. Cir. Sept. 10, 1993).

⁴ 47 U.S.C. § 309(k)(1).

⁵ 47 U.S.C. §§ 309(k)(2) & (3).

⁶ 47 C.F.R. § 73.1125(a).

⁷ *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026 ¶ 24 (1988), *erratum issued*, 3 FCC Rcd 5717 (1988) (correcting language in n.29).

⁸ See *Jones Eastern of the Outer Banks, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 3615, 3616 ¶ 9 and n. 2 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

⁹ Petition at 6.

¹⁰ *Id.* at 7.

¹¹ 47 C.F.R. § 73.3526.

¹² 47 C.F.R. § 73.3526(c)(1).

he tried and failed to access the Station's public inspection file.¹³ He claims that, on each occasion, he found the door the Station's main studio locked, the lights out and the parking lot outside the main studio empty.¹⁴ He also implies that the public inspection file may not exist or may not contain all of the materials required by the Commission's rules.¹⁵ Petitioner does not indicate the specific dates and times on which he sought access to the Station's public inspection file nor does he indicate whether he sought access during normal business hours. Further, he does not offer any evidence to support his speculations related to the contents of the Station's public inspection file. Accordingly, we find that the Petitioner has failed to raise a substantial or material question of fact regarding the Station's compliance with the Commission's public inspection file rule. In any event, we note that, during its inspection of the Station on July 8, 2014, the Enforcement Bureau found the Station's public inspection file was available for inspection and contained all required materials.

Station Identification. The Commission requires station identification announcements to be made "at the beginning and ending of each time of operation" and "hourly, as close to the hour as possible, at a natural break in program offerings."¹⁶ Petitioner asserts that the Station regularly fails to broadcast a station identification at the top of the hour.¹⁷ He does not indicate, though, on what dates or times he listened for these announcements. We find that Petitioner has failed to raise a substantial or material question of fact regarding the Station's compliance with the Commission's station identification requirements. In addition, we note that, immediately prior to its inspection of the Station on July 8, 2014, the Enforcement Bureau listened to the Station's broadcast and, within the course of 30 minutes, heard at least two station identification announcements.

Operating Schedule. The Commission requires daytime only commercial AM stations – such as the Station – to operate at least "[t]wo-thirds of the total hours they are authorized to operate between 6 a.m. and 6 p.m."¹⁸ Petitioner claims that the station does not properly perform its daily sign on and sign off.¹⁹ He states that the Station signs on late and signs off early.²⁰ Petitioner, however, does not indicate any specific dates and times on which the Station signed on late and/or signed off early. For this reason, we find that Petitioner has failed to raise a substantial or material question of fact regarding the Station's compliance with the Commission's minimum operating schedule rule.

Petitioner also asserts that the Station is frequently off the air.²¹ To support this assertion, he states that the Station was off the air on June 21 and 22, 2014.²² Trinity indicates that it has no knowledge or record of the Station having been off the air on those dates.²³ Given this and Petitioner's failure to

¹³ Petition at 7-8.

¹⁴ *Id.*

¹⁵ *Id.* at 8.

¹⁶ 47 C.F.R. § 73.1201.

¹⁷ Petition at 9.

¹⁸ 47 C.F.R. § 73.1740.

¹⁹ Petition at 9.

²⁰ *Id.* at 9.

²¹ *Id.* at 6.

²² *Id.*

²³ Opposition at 4.

offer further evidence to support its claim, we find he has failed to raise a substantial and material claim regarding the Station's regular operation.²⁴

Station Logs. The Commission requires the licensee of each broadcast station to maintain a station log containing certain specified information.²⁵ Petitioner questions whether Trinity is properly keeping the station logs required by the Commission. Petitioner, however, offers no evidence related to the Station's logs. We find that Petitioner has failed to raise a substantial or material question of fact regarding the Station's logs.

EAS. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source.²⁶ The EAS enables the President and state and local governments to provide immediate communications and information to the general public.²⁷ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from the sources such as the National Weather Service or local emergency management officials.²⁸ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by each participating station.²⁹

Petitioner asserts that the Station does not properly perform the EAS tests required by the Commission.³⁰ He again fails to offer any specifics. We find that Petitioner has failed to raise a substantial or material question regarding the Station's performance of its EAS tests. We further note that, during its inspection of the Station on July 8, 2014, the Enforcement Bureau found that the Station was able to successfully transmit an EAS test. It did find that the Station's Common Access Protocol ("CAP") system was not properly functioning and issued a verbal warning to Trinity regarding that system.³¹ Trinity indicates that it "immediately addressed the issue" and provided the Enforcement Bureau with proof of this.³² In light of this investigation, we find that Petitioner has failed to show a serious violation by Trinity under Section 309(k)(1) of the Act.³³

²⁴ The Commission's rules allow a station to be silent for up to ten days without notification to the Commission. 47 C.F.R. § 73.1740(a)(4). Even if we assumed the allegation were true, two days of Station silence during Trinity's tenure as licensee would not present a material failure to serve the public interest under Section 309(k)(1) of the Act. *Compare LKCM Radio Group, LP*, Memorandum Opinion and Order and Notice of Apparent Liability, 29 FCC Rcd 1045 (MB 2014) (short-term renewal of two years granted due to extended periods of silence).

²⁵ 47 C.F.R. §§ 73.1800, 1820.

²⁶ 47 C.F.R. §§ 11.11, 11.41.

²⁷ 47 C.F.R. §§ 11.1, 11.21.

²⁸ 47 C.F.R. § 11.18.

²⁹ 47 C.F.R. § 11.61.

³⁰ Petition at 9.

³¹ See 47 C.F.R. § 11.56 (requiring EAS Participants to have installed operational equipment that can both receive and process EAS alerts formatted in the CAP).

³² Opposition at n.11.

³³ *Compare Visionary Related Entertainment, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 1392 (MB 2012) (short-term renewal for one year granted due to Licensee's willful and repeated violations of the Commission's radiofrequency radiation exposure guidelines at two stations); *South Seas Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 24 FCC Rcd 6474 (MB 2008) (two-year renewal granted, NAL issued, for willfully and repeatedly violating 47 C.F.R § 73.1350 by engaging in operation of the station at an unauthorized

Pre- and Post-Filing Announcements. Public participation in the renewal process is crucial to helping the Commission meet its statutory obligation and determine if in the previous license term a station has served the public interest, convenience and necessity. To encourage public participation in the license renewal process, the Commission requires a station to broadcast pre-filing and post-filing announcements regarding its license renewal application.³⁴ Petitioner states that he did not hear a single pre- or post-filing announcement related to the filing of the Application.³⁵ However, Petitioner does not indicate on what dates and at what times he monitored the Station's broadcasts for these announcements. Further, Trinity states that it placed in the Station's public file statements of compliance reflecting the dates and times that it broadcast the pre- and post-filing announcements. We find that Petitioner has failed to raise a substantial and material question regarding Trinity's broadcast of the pre- and post-filing announcements regarding the Application.

Programming. Petitioner complains about the programming choices made by Trinity.³⁶ It is well established, however, that the Commission cannot exercise any power of censorship over broadcast stations with respect to content-based programming decisions.³⁷ 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.³⁸ We will intervene in programming matters only if a licensee abuses that discretion or where federal statutes direct us to do so.³⁹ Commission action is not warranted here. Petitioner has not shown that Trinity committed violations of the Act, the Commission's rules, or

site and willfully and repeatedly violating 47 C.F.R. § 73.1740 by leaving the station silent without the proper authorization).

³⁴ See 47 C.F.R. § 73.3580.

³⁵ Petition at 9.

³⁶ Petition at 7. Petitioner also asserts that the Station airs only 10 hours per week of locally produced programming. *Id.* at 4. Trinity indicates that it actually broadcasts 18 hours of locally produced programming each week. Regardless, the Commission has specifically noted that programming not produced in or targeted at a local community may nonetheless serve the needs and interests of the community. See *In the Matter of Broadcast Localism, Notice of Inquiry*, 19 FCC Rcd 12425, 12431 ¶ 14 (2004) (subsequent history omitted) ("*Localism Notice of Inquiry*"). See also *Revision of Programming and Commercialization Policies, Ascertainment Requirement, and Program Log Requirements For Commercial Television Stations*, 104 FCC 2d 358, 366 ¶ 15 (1986). Accordingly, we do not further consider Petitioner's allegation regarding the amount of locally produced programming broadcast by the Station.

³⁷ 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").

³⁸ See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 ¶ 7 (1993) ("*Philadelphia Station License Renewals*"), citing *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1092 ¶ 38 (1972) and *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted).

³⁹ *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401 ¶ 7 (abuse of discretion occurs if a licensee is unreasonable or discriminatory in its selection of issues that it believes are of concern to the local community or if it offers such nominal levels of issue-responsive programming so as to as effectively defaulted on its obligation). The Commission enforces the statutory prohibition on the broadcast of obscene, indecent and profane material. See 18 U.S.C. § 1464.

otherwise abused its discretion in determining the programming it believes serves the needs of its audience.⁴⁰

Qualifications. Petitioner argues that one of the owners of Trinity does not possess the character qualifications to hold a Commission license.⁴¹ He bases this claim mostly on the content of the programming broadcast by the station and the owner's lack of any prior broadcast experience prior to acquiring the Station.⁴² As noted, licensees have broad discretion to choose the programming they believe services the needs and interests of their listeners. Further, we note that prior broadcast experience is not a prerequisite to obtaining a Commission license. Indeed, the Commission has sought to encourage new entrants into broadcasting.

Petitioner also questions whether Trinity has the financial means to continue to operate the Station.⁴³ Trinity states that Petitioner is engaging in speculation.⁴⁴ The Commission requires that applicants for new broadcast stations and proposed assignees of broadcast permits and licenses certify that they have sufficient capital to construct the station and then operate for three months without advertising or other broadcast revenue.⁴⁵ The Commission does not, however, exercise any continuing oversight regarding a licensee's finances.⁴⁶ Indeed, the Commission does not require a licensee to disclose any financial information in its application to renew a license. Accordingly, we find Petitioner's allegations regarding Trinity's financial qualifications are irrelevant to our consideration of the Application.

Notice of Violation. Petitioner refers us to the results of a station inspection conducted by the Enforcement Bureau, which resulted in a Notice of Violation.⁴⁷ Section 309(k) of the Act specifies that, in evaluating a renewal application, the Commission shall determine whether there have been any

⁴⁰ See, e.g., *WMAL(AM), Washington, DC*, Letter, 28 FCC Rcd 14907, 14908-09 (MB 2013) (denying informal objection that argued station's programming had an "incessant bias"); *KFBK(AM), Sacramento and KSTE(AM), Rancho Cordova, California*, Letter, 22 FCC Rcd 4804, 4805 (MB 2007) (informal objections against license renewals arguing that the stations aired "'heavily-biased . . . programming amount[ing] to the use of the airwaves as a relentless political pulpit, presenting only one-sided, predictable opinion on most issues, and even blatantly endorsing one political party'" denied as outside the scope of Commission authority); *KUYI(FM), Hotevilla, Arizona*, Letter, 22 FCC Rcd 17305, 17308 (MB 2007) (denying programming objections that the station broadcasted "biased political public service programming"); *WYLL(AM), Chicago, Illinois*, Letter, 22 FCC Rcd 5579, 5580 (MB 2007) (denying an informal objection based on perceived political bias due to limits on Commission authority and objector's failure to provide any specific examples of objectionable programming).

⁴¹ Petition at 6-7.

⁴² Petitioner also discusses the actions of an individual who has no ownership interest in Trinity and is not otherwise involved with the Station. Petition at 8-9. Given that the actions of this individual have no bearing on whether Trinity or its owners have the character qualifications to hold a Commission license, we do not consider this information further.

⁴³ Petition at 7.

⁴⁴ Opposition at 2.

⁴⁵ See *Television Applications, Financial Qualifications*, Public Notice, 72 FCC 2d 784 (1979); *Financial Qualifications*, Public Notice, 69 FCC 2d 407 (1978).

⁴⁶ *Deletion of Noncommercial Reservation of Channel *16*, Memorandum Opinion and Order, 11 FCC Rcd 11700, 11712 ¶ 26 (1996).

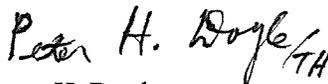
⁴⁷ Petition at 9 and Ex. 5.

“serious violations by the *licensee*” and whether there have been any “other violations by the *licensee*.”⁴⁸ The Notice of Violation that Petitioner references was issued to the former licensee of the Station, not to Trinity. Thus, it is irrelevant to our analysis of the Application, which was filed by Trinity.

Conclusion. We have evaluated the Application pursuant to Section 309(k) of the Act, and we find that the Station have served the public interest, convenience, and necessity during the most recent license term. Moreover, we find that there have been no serious violations of the Act or the Rules involving the Station which, taken together, would constitute a pattern of abuse. In light of the foregoing, we will grant the Application and renew the Station’s license.

Accordingly, IT IS ORDERED that the Petition to Deny filed by Edward B. Papiernik on June 23, 2014, IS DENIED. IT IS FURTHER ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of Trinity Associates Broadcasting, LLC for Station WFYL(AM), King of Prussia, Pennsylvania (File No. BR-20140328AER) IS GRANTED.

Sincerely,

Handwritten signature of Peter H. Doyle in black ink, with the initials 'TH' written at the end of the signature.

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁴⁸ 47 U.S.C. §§ 309(k)(1)(B) & (C) (emphasis added).