Federal Communications Commission
Washington, D.C. 20554

DA 11-1253
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Oregon Alliance to Reform Media
c/o Andrew Jay Schwartzman, Esq.
Media Access Project
Suite 1000
1626 K Street, N.W.
Washington, D.C. 20006

Re: Renewal Applications of Portland Area Commercial Television Stations, Petition for Reconsideration.

Dear Counsel:

This is in regard to the petition for reconsideration filed by the Oregon Alliance to Reform Media ("ORARM") of the August 15, 2007 Letter Decision by the Chief, Video Division, Media Bureau,[1] which denied ORARM's petition to deny the license renewal of 8 Portland, Oregon area commercial television broadcast stations.[2] Timely opposition pleadings and a timely reply were filed. For the reasons stated below, we deny the petition for reconsideration.

Section 309(k)(1) of the Communications Act of 1934, as amended (the "Act"), states that the Commission shall grant a license renewal application if the finds, "*with respect to that station,*" that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or Commission Rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission Rules and regulations which, taken together, would constitute a pattern of abuse.[3] If a petition to deny has been filed, the Commission applies a two-step analysis under the public interest standard. The Commission must first determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.[4] The first step "is much like that performed by a trial

[1] *Letter from Barbara A. Kreisman to Andrew J. Schwartzman, et al.*, 22 FCC Rcd 15183 (Vid. Div. 2007)("*Letter Decision*").

[2] A list of the affected stations is attached as Exhibit A.

[3] 47 C.F.R. §309(k)(1) (emphasis added).

[4] 47 U.S.C. § 309(d)(1); *Astroline Communications Co., Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) ("*Astroline*").

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."[5] If the petition meets this first step, the Commission must determine whether "on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice," the petitioner has raised a substantial and material question of fact as to whether the application would serve the public interest.[6]

In its petition to deny and again in the petition for reconsideration, ORARM alleges that the named Portland-area broadcast television stations failed to present adequate coverage of state and local elections and ballot issues during the 2004 election cycle. The basis for these allegations was a study prepared by the Center for Media and Public Affairs ("CMPA") entitled "2004 Campaign News Study in Chicago, Milwaukee and Portland Markets," which asserts that during the four weeks prior to the 2004 election, les than 1 percent of newscasts in the Portland market were devoted to state-level elections, about 9 percent to ballot issues, and less than 1 percent to other election issues. ORARM did not allege that the stations failed in a broader way to ascertain and address issues of concern to the community and its allegations did not span the stations' entire license term.

The *Letter Decision* found that the petition to deny failed to establish that the stations' programming judgments were *prima facie* inconsistent with the public interest. It went on to state that the Commission has long held 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"[7] and that "the Commission will not review the licensee's news judgments."[8] The *Letter Decision* concluded that the CMPA study had not provided evidence that the named licensees exercised their editorial discretion in bad faith. Furthermore, it pointed out that the study only covered one type of programming, local election coverage just prior to the 2004 election and that it did not demonstrate that television programming in the Portland area had been generally unresponsive. In its petition for reconsideration, OARM argues that the staff failed to acknowledge the "paramount" statutory and constitutional rights of viewers to receive programming responsive to the needs of the community and failed to recognize prior precedent under which the Commission has considered quantity of programming as an important measure of the responsiveness of a licensee's programming.

As various licensees point out in their oppositions, under Section 1.106 of the Commission's Rules, "[r]econsideration is appropriate only where the petition either shows a material error or omission in the original order or raises addition facts not known or not existing until after the petitioner's last opportunity to present such matters."[9] In this case, ORARM has simply restated its original arguments and evidence and emphasized that it disagrees with the staff's conclusion. However, contrary to ORARM's position, the staff did acknowledge the importance of a licensee providing responsive programming, but found that the petitioners did not demonstrate that the licensees at issue failed to meet their obligations in that regard. Instead of dismissing the issue of quantity of programming, the *Letter*

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

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

[7] *Letter Decision*, 23 FCC Rcd at 15183, *citing American Broadcasting Companies, Inc.*, 83 FCC 2d 302, 305 (1980).

[8] *Id.*

[9] 47 C.F.R. § 1.106. *Davidson County Broadcasting Co, Inc. for Renewal of Licenses of Stations WLXN(AM)/WWGK-FM, Lexington*, Memorandum Opinion and Order, 12 FCC Rcd 12245 (1997).

Decision found that the CMPA study was so restrictive and narrowly focused that it did not serve as a legitimate barometer of whether the Portland stations met their programming service obligations. Finally, the *Letter Decision* stated the well settled principal that the Commission will not substitute its editorial discretion for that of a licensee. For the foregoing reasons, we find the petition for reconsideration to be without merit.

ACCORDINGLY, IT IS ORDERED That the petition for reconsideration filed by the Oregon Alliance to Reform Media of the August 15, 2007 Letter Decision IS DENIED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

EXHIBIT A

CALL SIGN	COMMUNITY OF LICENSE	LICENSEE	FILE NO.	FACILITY ID NO.
KATU(TV)	Portland, OR	Fisher Broadcasting of Portland, LLC	BRCT-20060928AOZ	21649
KOIN(TV)	Portland, OR	NVT Portland Licensee, LLC	BRCT-20061002AVY	35380
KPTV(TV)	Portland, OR	Meredith Corp.	BRCT-20061002AXF	50633
KGW(TV)	Portland, OR	King Broadcasting Company	BRCT-20061002AUN	34874
KPXG-TV	Salem, OR	ION Media Portland License, Inc.	BRCT-20060929AKA	5801
KNMT(TV)	Portland, OR	Trinity Christian Center of Santa Ana	BRCT-20060929AHS	47707
KPDX(TV)	Vancouver, WA	Meredith Corp.	BRCT-20061002AXR	35460
KRCW-TV	Salem, OR	Tribune Broadcast Holdings, D-I-P	BRCT-20060929APG	10192