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Federal Communications Commission
Office of the Secretary

9 October 2019

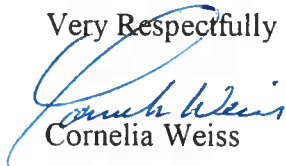
Secretary
Federal Communications Commission
ATTN: Audio License Renewal Processing Team
445 12th Street SW, Room TW-A325
Washington DC 20554
VIA HAND DELIVERY

RE: Response to Opposition to Petition to Deny Classical WETA (ID#s 65669 & 90076 – W205BL, File #0000073932) License Renewal due to Discrimination Against Women Composers (Pattern and Practice of Excluding Work by Women Composers)

Dear Federal Communications Commission:

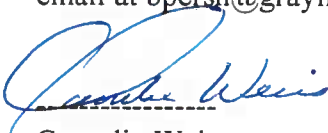
Attached please find my Response to Opposition to Petition to Deny.

Very Respectfully Yours,



Cornelia Weiss

I certify I have sent a copy of this letter and the attached Response to Opposition to Petition to Deny this 9th day of October 2019 to Counsel for GWETA, Barry Persh of Gray Miller Persh LLP, 2233 Wisconsin Ave, NW Ste 226, Washington DC 20007, via email at bpersh@graymillerpersh.com.



Cornelia Weiss

RESPONSE TO OPPOSITION TO PETITION TO DENY
In Re Application of Greater Washington Educational Telecommunications Association
for Renewal of License for Station WETA(FM), Washington, DC
(ID#s 65669 & 90076 –W205BL, File #0000073932)

1. Section 309(d)(1) of the Communications Act requires “allegations of fact or denials thereof” by the applicant “shall,” like that of the Petitioner, “be supported by affidavit.” The Opposition to Petition to Deny is not supported by affidavit. The Opposition to Petition to Deny has attached unnotarized “Declarations.” Declarations are not affidavits. Therefore, this Commission should, at minimum, disregard as fact any assertions made in the Declarations and incorporated into the Opposition to Petition to Deny.

2. The U.S. Supreme Court, in the first sentence of its opinion in *FCC v. WCVN Listeners Guild*,¹ states that the Federal Communications Committee/Commission is empowered to “grant an application for license . . . renewal **only** if it determines that ‘the public interest, convenience, and necessity’ will be served thereby” (emphasis mine). Renewal is a privilege, not a right.

3. The burden to show that renewal is in the public interest is on the renewal applicant; that is, Greater Washington Educational Telecommunications Association, as the renewal applicant, is obliged to show that renewal of a licensee serves the public interest.² Section 309(k)(1)(A-C) outlines the standards for renewal. For a license to be renewed, the Commission must find that the Station has met all standards for renewal. The Station has not met all standards for renewal. Greater Washington Educational Telecommunications Association has failed to meet, at minimum, the burden of showing that a renewal of a license for Classical WETA serves the public interest.

4. This is not a case of whether Monty Python’s Flying Circus is or is not “good” programming.”³ This is not a case of about broadcasting “predominance of violence” in the local news.⁴ This is a case of sex-based discrimination, aggravated because it is by a noncommercial educational radio station. Sex-based discrimination, like race-based discrimination, in programming does not serve the public interest. The Greater Washington Educational Telecommunications Association engages in sex-based discrimination in programming and therefore does not serve the public interest.

5. In its Opposition to Petition to Deny, Greater Washington Educational Telecommunications Association cites language from *In re License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania* as support for its contention that “GWETA’s program selection practices fall well within its broad

¹ 450 U.S. 582 (1981).

² “Section 309(e) of the Communications Act imposes upon the renewal applicant the burden of showing that renewal is in the public interest.” *In re: AETC for renewal of licenses of Stations WLAQ, WBIO, WDIQ, WEIQ, WFIQ, WGIO, and WHIQ*, FCC 74-1385, decision of December 17, 1974, para 6.

³ *In Re Application of WGBH Educational Foundation for Renewal of License*, 69 FCC 2d 1250 (1978), para 4.

⁴ *In Re Dr. Paul Klite*, 12 CR 79 (1998).

discretion and are designed to further a direct effort to serve the greater public interest in a specific classical music entertainment format”;⁵ specifically language from paragraphs 8 (“arguments regarding insufficient program quantity . . . of specific relevance to women and minorities,”) and 9 (“almost exclusively statistical . . . are insufficient to demonstrate that . . . stations defaulted on their obligation to serve the public interest”⁶). Greater Washington Educational Telecommunications Association ignores that its programming is too minimal to deserve renewal expectancy, despite the issue of “too minimal” being addressed in the same paragraph 9 of *In re License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*.

6. The Commission has found that a renewal applicant’s “informational programming too minimal to deserve renewal expectancy when it comprised .48% of the station’s air time and consisted solely of public service announcements that did not respond to any ascertained community needs.”⁷ In the present case, a cursory review of a week of the daily play list (19 August 2019 to 25 August 2019) illuminates that Classical WETA relegates the broadcasting of music by women composers to less than .33% of total broadcast time. Given that the Commission has determined that .48% is too minimal, Classical WETA’s less than .33% of time given to broadcasting music composed by women is too minimal to deserve renewal expectancy.

7. The Commission has found that “inferences of discriminatory practices may justifiably be drawn from the lack of integrated programming.”⁸ The Commission has found that sample weeks of .7% and 1.5% programming “clearly demonstrate a pattern of negligible integrated programming.”⁹ Given that the Commission has determined that .7% and 1.5% “clearly demonstrate a pattern of negligible integrated programming,” Classical WETA’s less than .33% programming of music by women composers demonstrates a pattern of negligible integrated programming. As such, this Commission may justifiably draw inferences of discriminatory practices as a result of the 99.67% exclusion of women composers by Greater Washington Educational Telecommunications Association and place the burden on Greater Washington Educational Telecommunications Association to overcome this adverse evidence. Greater Washington Educational Telecommunications Association has failed to overcome this adverse evidence.

8. The Commission has “consistently held that the failure to ascertain and serve the special needs and interests of sizable minority groups in its service area is, in itself, a

⁵ GWETA Opposition to Petition to Deny, at 6.

⁶ GWETA Opposition to Petition to Deny, at 6, citing *In re License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, 8 FCC Rcd 6400, 6401 (Aug. 24, 1993).

⁷ *In re License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, 8 FCC Rcd 6400 (August 24, 1993), para 9, comparing *Simon Geller*, 90 FCC 2d 250, 264-67 (1982), recon. Denied, 91 FCC 2d 1253, *aff’d* in relevant part sub nom., *Committee for Community Access v. FCC*, 737 F.2d 74, 77-78 (D.C. Cir. 1984).

⁸ *In re AETC for renewal of licenses of Stations WLAQ, WBIQ, WDIQ, WEIQ, WFIQ, WGIQ, and WHIQ*, FCC 74-1385, decision of December 17, 1974, para 10.

⁹ *In re AETC for renewal of licenses of Stations WLAQ, WBIQ, WDIQ, WEIQ, WFIQ, WGIQ, and WHIQ*, FCC 74-1385, decision of December 17, 1974, para 10.

failure of licensee's responsibility irrespective of any intent to discriminate."¹⁰ Thus, even if, as the Declaration of Daniel C. DeVany, General Manager of Classical WETA asserts, "GWETA does not take into account matters of gender . . . in connection with its selection of music programming for broadcast over WETA (FM),"¹¹ intent is not the determining factor.

9. The Commission has found that educational media has "a paramount obligation to endeavor to serve the minority needs in its service areas."¹² The Commission has found that "a licensee's failure to ascertain and serve the needs of some 30 percent of its community residents is fundamentally irreconcilable with the obligations which the Communication Act places upon those who receive authorizations to use the airwaves."¹³ Thus, a failure of to ascertain and serve the needs of some 53 percent of its community residents (women – a majority minority) is fundamentally irreconcilable with the obligations that the Communications Act places upon those who receive authorizations to use the airwaves – Greater Washington Educational Telecommunications Association.

10. The Commission has found that a licensee that followed a racially discriminatory policy in its overall programming practices "falls far short of the high standards we expect licensees of a broadcast facility to maintain" and that by "its pervasive neglect of a black minority consisting of approximately 30 percent of the population, its programming did not adequately meet the needs of the public it was licensed to serve."¹⁴ Likewise, by excluding all but less than .33% of programming of music by women composers, Greater Washington Educational Telecommunications Association "falls far short of the high standards we expect licensees of a broadcast facility to maintain."

11. The Commission has found that it will intervene in programming matters "if a licensee abuses its discretion, ie, if it is unreasonable or discriminatory in its selection of issues or offers such nominal levels of issue-responsive programming as to have effectively defaulted on its obligation."¹⁵ Greater Washington Educational Telecommunications Association, compounded by its status as a noncommercial educational radio station, has abused its discretion and effectively defaulted on its obligation to the public by unreasonably and discriminatorily broadcasting music composed by women less than .33% of broadcast time. In addition to statistical evidence, the Petition and its Affidavit also raised issues demonstrating sex-based discrimination against the broadcasting of music by women composers, to include, but not limited to:

¹⁰ *In re AETC for renewal of licenses of Stations WLAQ, WBIO, WDIQ, WEIQ, WFIQ, WGIQ, and WHIQ*, FCC 74-1385, decision of December 17, 1974, para 21.

¹¹ Unnotarized Declaration of Daniel C. DeVany of September 25, 2019.

¹² *In re AETC for renewal of licenses of Stations WLAQ, WBIO, WDIQ, WEIQ, WFIQ, WGIQ, and WHIQ*, FCC 74-1385, decision of December 17, 1974, para 21.

¹³ *In re AETC for renewal of licenses of Stations WLAQ, WBIO, WDIQ, WEIQ, WFIQ, WGIQ, and WHIQ*, FCC 74-1385, decision of December 17, 1974, para 21.

¹⁴ *In re AETC for renewal of licenses of Stations WLAQ, WBIO, WDIQ, WEIQ, WFIQ, WGIQ, and WHIQ*, FCC 74-1385, decision of December 17, 1974, para 31.

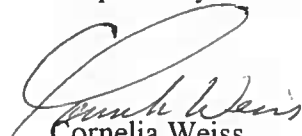
¹⁵ *In re AETC for renewal of licenses of Stations WLAQ, WBIO, WDIQ, WEIQ, WFIQ, WGIQ, and WHIQ*, FCC 74-1385, decision of December 17, 1974, para 7.

- Tokenism: Limiting the broadcasting of music composed by women in a week to only one woman composer (Clara Wieck Schumann -- A cursory review of a week of the daily play list, 19 August 2019 to 25 August 2019).¹⁶
- Stereotyping¹⁷: Appearing to describe music composed by women/women composers as “esoteric.”¹⁸

Further, Greater Washington Educational Telecommunications Association creates the appearance of intentional discrimination and a pattern of abuse by continuing to proactively exclude the broadcasting of music by women composers after a year of being on notice that it was excluding music by women composers and after a year of being requested to not exclude music by women composers, to include via email, via mail, and via in-person communication with President/CEO of WETA and the Vice-President/General Manager of Classical WETA for Classical WETA following a board meeting in 2018.¹⁹

Given that the Federal Communications Commission was created “[f]or the purpose of regulating . . . radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of . . . sex” (emphasis mine),²⁰ respectfully request that the Commission deny the request of Greater Washington Educational Telecommunications Association to dismiss the Petition to Deny, and further respectfully request that the Commission deny the request of the Greater Washington Educational Telecommunications Association (GWETA) to renew the license of Classical WETA.

Respectfully submitted this 9th day of October 2019.



Cornelia Weiss

¹⁶ See Petition and Affidavit.

¹⁷ *Frontiero v. Richardson*, 411 US 677 (1973).

¹⁸ See Petition, Affidavit, and Exhibits.

¹⁹ See Petition and Affidavit.

²⁰ 47 U.S. Code § 151.