

Constitutionally-protected news story regarding ground water monitoring in Pine Island, Florida. The Station stands by the accuracy of its reporting, and the matter does not implicate the FCC's rules regarding broadcast hoaxes in any respect. Accordingly, FGCU submits that the Objection fails to establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.

Section 73.1217 of the FCC Rules prohibits stations from broadcasting "false information concerning a crime or a catastrophe if: (a) the licensee knows this information is false; (b) it is foreseeable that broadcast of the information will cause substantial public harm; and (c) broadcast of the information does in fact cause substantial public harm."² None of these factors, much less all of them (as would be required to demonstrate a violation), is present with respect to the broadcast that is the subject of the Objection. First, the news story was not related to a crime ("any act or omission that makes the offender subject to criminal punishment by law") or a catastrophe ("a disaster or imminent disaster involving violent or sudden event affecting the public").³ Second, WGCU-FM stands by the accuracy of its broadcast news story. The Station believed the story to be accurate at the time of broadcast, and continues to believe that it was accurately reported, such that WGCU-FM did not knowingly broadcast false information. Third, the objection alleges no substantial public harm that began "immediately" and caused "direct and actual damage property or to the health or safety of the general public, or diversion of law enforcement or other public health and safety authorities from their duties," as required by FCC

² 47 C.F.R. § 73.1217.

³ Id., at Note. While the Objection alleges that the news story had an adverse impact of property values, it does not claim that the story reported on a criminal act or a disaster or sudden and violent event affecting the public.

Rules.⁴ Forth, the Objection does not allege or demonstrate that such harm was foreseeable.

The FCC's hoax rule simply does not apply in this instance.

In enacting the hoax rule, the FCC intentionally did so in a “sufficiently narrow” manner to remain consistent with First Amendment principles and to avoid “causing an undue chilling effect on broadcast speech.”⁵ Subjecting an instance of investigative journalism to the hoax rule absent demonstration that any of the narrowing factors have been met – no knowing false statement, no crime or catastrophe, no foreseeable and substantial public harm – would serve only to frustrate the rule and directly chill First-Amendment protected free speech in the form of local reporting, in direct contrast to the FCC's regulatory intent.

As reflected in the attached declaration, the Station maintains that WGCU-FM's broadcast accurately reported the information stated to its reporter.⁶ Moreover, the broadcast news report at issue is Federally protected under the First Amendment of the U.S. Constitution. Importantly, “because journalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment's Free Press guarantee, the Commission has long held that ... the Commission will not review the licensee's news judgments.”⁷ Accordingly, any investigation of an allegation of news distortion must be “extremely limited in scope” and “it is not enough to dispute the accuracy of a news report...or to question the

⁴ Id., at Note.

⁵ In re Amendment of Part 73 Regarding Broadcast Hoaxes, 7 FCC Rcd 4106 (June 12, 1992), at 4107.

⁶ The Station made one minor correction to its online story after hearing from Mr. Acquaviva in 2017. The correction indicated that WGCU originally wrote “Acquaviva did not return WGCU's calls for comment,” but it should have read “call.”

⁷ In re: WSYR(AM), Syracuse, NY, CC Licenses, LLC, Application for Renewal of License, Petition to Deny, DA 07-4343 (Oct. 19, 2007), citing American Broadcasting Companies, Inc., 83 FCC 2d 302, 305 (1980).

legitimate editorial decisions of the broadcaster.”⁸ As a result, the Commission has determined to refrain from looking “over the shoulder of broadcast journalists” in order to avoid getting “deeply and improperly” involved “in the journalistic functions of broadcasters.”⁹ Accordingly, the FCC’s role is not to delve into the truth or accuracy of a news report, nor to adjudicate its veracity.¹⁰

The Objection also includes a number of claims outside the scope of the Commission’s jurisdiction, including allegations regarding matters of state law, the posting of the news story on the station’s website, and a journalism award. With regard to the state law claims regarding sovereign immunity and the veracity of the story, the Commission has traditionally determined to leave such matters “to local courts of appropriate jurisdiction.”¹¹ With regard to the claims regarding the posting of the news story on the station’s website and the treatment of comments on the web board, the “Commission does not regulate the non-broadcast activities of station personnel...including their operation of a web page.”¹² Likewise, the Commission has no

⁸ *Galloway v. FCC*, 778 F.2d 16, 20-21 (D.C.Cir. 1985). Allegations of deliberate distortion must be supported by extrinsic evidence “such as written or oral instructions from station management, outtakes, or evidence of bribery.” *Id.* at 20.

⁹ Hon. Harley O. Staggers, 21 Rad.Reg.2d 912, 916 (1971).

¹⁰ “The Commission is neither the national arbiter of the ‘truth’ of a news report nor the judge of the wisdom, accuracy, or adequacy with which it was handled on the air.” *In re complaint of Peter Gimpel, ABC, CBS, and NBC Television Networks*, 3 FCC Rcd 4575, 4576 (July 27, 1988).

¹¹ *See, e.g., In re: WFCL(FM), Nashville, TN, License Renewal Petition to Deny, Assignment of License Informal Objection*, 29 FCC Rcd 2869, 2876 (March 18, 2014), *citing In re Applications of Aspen, FM, Inc.*, 12 FCC Rcd 17852, 17855 (Oct. 21, 1997), *citing In re Applications of North American Broadcasting Co., Inc.*, 15 FCC2d 979, 983 (Jan 10, 1969).

¹² *See, e.g., In re KFMB(AM), San Diego, CA*, 22 FCC Rcd 6796 (Apr. 6, 2007), *citing Citadel Broadcasting Company, Memorandum Opinion and Order and Notice of Apparent Liability*, FCC 07-41 (released April 4, 2007), note 139 (*citing Eagle Radio, Inc., Memorandum Opinion and Order*, 9 FCC Rcd 1294, 1294-95 (1994); Dale A. Owens, *Memorandum Opinion and Order*, 54 FCC 2d 375, 378-79 (1975)).

jurisdiction or oversight with respect to the journalism award referenced in the Objection. Each of these matters is therefore beyond the scope of the FCC's review of the Station's broadcast operations and of the FCC's consideration of the Station's broadcast license renewal application.

In conclusion, the Objection fails to present a *prima facie* case to justify denial of the WGPU-FM license renewal. The Objection fails to demonstrate any rule violation or to otherwise raise any substantial and material question of fact which show that renewal of the Station's license would be contrary to the public interest, convenience and necessity. Accordingly, FGCU respectfully requests that the FCC dismiss the Informal Objection to the Station's renewal application and grant the application.

Respectfully submitted,
THE FLORIDA GULF COAST
UNIVERSITY BOARD OF TRUSTEES

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DECLARATION

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I, Rick Johnson, hereby declare as follows:

1. I am the General Manager of Florida Gulf Coast University's WGCU Public Media and noncommercial educational radio station WGCU-FM, Fort Myers, Florida. I oversee the day-to-day operations of the station.

2. I have read the foregoing Response to Informal Objection regarding the license renewal application for WGCU-FM. The facts set forth therein are true and correct to the best of my knowledge, information, and belief, including the assertion that WGCU-FM stands by the accuracy of its reporting with respect to the news story at issue in the Objection.

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on December 10, 2019.



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Informal Objection was delivered this 10th day of January, 2020 by first class mail, postage pre-paid, to the following:

Daniel Acquaviva
P.O. Box 62287
Ft. Myers, FL 33906

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