



Federal Communications Commission
Washington, D.C. 20554

June 1, 2006

DA06-1173

In Reply Refer to:

1800B3-JP

Released: June 1, 2006

Jeff Kost
Ohana de Watsonville
115 Azure Lane
Watsonville, CA 95076-9694

Marian Martinez
704 Bronte Avenue
Watsonville, CA 95076

In re: Ohana de Watsonville
KAPU-LP, Watsonville, CA
Facility ID: 124331
File No. BLL-20040810ABF

Dear Mr. Kost and Ms. Martinez:

We have before us the above referenced application for a low power FM (“LPFM”) broadcast station license for KAPU-LP, Watsonville, California filed on August 10, 2004, and the informal objection filed by Arturo López, Leslie López, Pamela Sexton, Marian Martinez, Alma Contreras, Gretchen Regenhardt, and Amy Newell (the “Objectors”) on October 25, 2004. For the reasons discussed below, we hereby deny the informal objection and grant the license application.

Background. On June 5, 2000, Ohana de Watsonville filed an application for a construction permit for an LPFM Station. The construction permit was granted on April 10, 2003. After Station KAPU-LP was constructed Ohana de Watsonville timely filed an application for a broadcast license pursuant to Section 319(c) of the Communications Act of 1934, as amended (the “Act”).¹ The Objectors allege in their informal objection that Ohana de Watsonville has breached oral agreements with the local community and will program KAPU-LP only with Hawaiian music, contrary to the statement of purpose contained within Ohana de Watsonville’s application for a construction permit.²

Discussion. Initially, we stress the stringent standard of Section 319(c) of the Act, by which the Objectors’ challenge to Ohana de Watsonville’s license application must be judged. Evaluation of the application for a broadcast license is the second step in a two-part authorization process governed by Sections 309 and 319(c) of the Act.³ In the first step, we granted Ohana de Watsonville’s permit request based on our finding under Section 309 of the Act that the public interest would be served by the construction and operation of KAPU-LP. This finding was based on the evidence submitted by Ohana de Watsonville in support of its request, and was unchallenged. During the second step of the process under

¹ 47 U.S.C. § 319(c).

² Application No. BNPL-20000605AHC.

³ 47 U.S.C. §§ 309, 319(c). *See Focus Cable of Oakland, Inc.*, 65 FCC 2d 35, 39-40 (1977).

Section 319(c) of the Act,⁴ Ohana de Watsonville has a protected interest in grant of its license application, and the earlier public interest finding may be overturned only based upon "extraordinary circumstances."⁵

The Objectors primarily argue that Ohana de Watsonville has breached oral agreements with the local community and will program KAPU-LP only with Hawaiian music, contrary to the statement of purpose contained within Ohana de Watsonville's application for a construction permit and contrary to the needs of Watsonville's community, which is approximately 80 percent Spanish speaking. In 1981, the Commission adopted rules substantially deregulating programming requirements.⁶ The *Deregulation Order* removed the formal ascertainment requirements, quantitative programming guidelines, and the "promise vs. performance" programming standard. These rule changes were intended to increase a licensee's flexibility in meeting the changing needs of the community. Since that time, radio stations have been directed to use their good faith discretion in determining the type of programming that they will offer and the Commission does not prescribe the nature or amount of non-entertainment programming that each radio broadcast station should broadcast.⁷ The Commission will not substitute its judgment for that of the station regarding programming matters.⁸ With certain limited exceptions not applicable here, licensees are afforded broad discretion in the scheduling, selection, and presentation of programs aired on their stations. Moreover, Section 326 of the Act and the First Amendment of the Constitution prohibit any Commission actions which would improperly interfere with the programming decisions of licensees.⁹

Additionally, the Objectors claim that Ohana de Watsonville's principals, Jeff and Morgan Kost, obtained the KAPU-LP construction permit "through fraudulent means." They state that the KOSTs "got the license by collaborating with a community group... But after Ohana [de Watsonville] received the

⁴ See 47 U.S.C. § 319(c). (The Commission shall grant permit holder's application for a license if no circumstance brought to the Commission's attention would make operation of the Station contrary to the public interest.)

⁵ *Radio Ingstad Minnesota, Inc.*, 12 FCC Rcd 8502, 8504 (1997) (citing *Whidbey Broadcasting Service, Inc.*, 4 FCC Rcd 8726, 8727 (1989)).

⁶ *Deregulation of Radio*, 84 FCC 2d 968, recon. granted in part, 87 FCC 2d 797 (1981) (the "Deregulation Order"). *Accord, Programming Information in Broadcast Applications*, 3 FCC Rcd 5467, 5468 (1988) (the Commission deleted the requirement for applicants to submit detailed programming proposals that established "promises" from which to later evaluate a licensee's performance, replacing it with a requirement to provide a brief narrative description of proposed community programming. "To mandate a specific, detailed proposal from applicants would be inconsistent with the flexibility accorded licensees to adapt programming to changing marketplace incentives without regulatory intrusion." *Id.*)

⁷ *Id.*

⁸ See *Entertainment Formats*, 60 FCC 2d 858 (1976), recon. denied, 66 FCC 2d 78 (1977) and *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 595-98 (1981) ("Commission has provided a rational explanation for its conclusion that reliance on the market is the best method of promoting diversity in entertainment formats.").

⁹ Section 326 of the Act states in part: "Nothing in this chapter shall be understood or construed to give the Commission the power of censorship ... and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication." 47 U.S.C. § 326.

[construction] permit, the Kosts used their considerable business resources to gradually shut everyone else out of the organization and the radio project.”¹⁰

The Objectors have provided no evidence of misrepresentations made to the Commission in Ohana de Watsonville’s construction permit application for the Watsonville LPFM facility, nor have they provided any evidence of a “fraud” perpetrated on the Commission in order to obtain a grant of that application. To the extent that the Objectors believe the Kosts have breached an agreement with a community group or otherwise dealt unfairly with members of the Objectors, they should seek redress in a local court of competent jurisdiction.¹¹ Because the Objectors have not presented any “extraordinary circumstances” warranting further inquiry into Ohana de Watsonville’s qualifications to be the licensee of KAPU-LP, the Informal Objection will be denied.

Conclusion. For the reasons discussed above the Objectors’ Informal Objection is DENIED. Additionally, we have evaluated Ohana de Watsonville’s proposal and we find both that it complies with all pertinent statutory and regulatory requirements and that the public interest, convenience, and necessity will be served by its grant. Accordingly, the application of Ohana de Watsonville for a broadcast station license for Station KAPU-LP, Watsonville, California (File No. BLL-20040810ABF) is GRANTED. The authorization is enclosed.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁰ Objection at 2.

¹¹ See *John F. Runner, Receiver (KBIF)*, 36 Rad. Red. 2d (P&F) 773, 778 (1976); *Listener’s Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); *Decatur Telecasting, Inc.*, 7 FCC Rcd 8622, 8624 (1992).