



Federal Communications Commission
Washington, D.C. 20554

DA 06-1313
Released: June 23, 2006

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Re: Application for Renewal of License
KWWL(TV), Waterloo, Iowa
File No. BRCT-20050930AYJ
Facility ID No. 593

Gentlemen:

On December 29, 2005, Mr. Richard C. Young filed a Petition to Deny the above-referenced license renewal application of Raycom America License Subsidiary, LLC ("Raycom"), licensee of station KWWL(TV), Waterloo, Iowa. On January 30, 2006, Raycom filed an Opposition to Petition to Deny. For the reasons set forth below, we deny the Petition to Deny.

Background. Mr. Young's Petition stems from two station KWWL(TV) editorials aired on September 30 and November 7, 2005, styled as "Reality Checks," which Mr. Young claims were motivated by the station's undisclosed financial interests. The September 30, 2005, editorial, entitled "The Digital Age of Television," advocates maintaining the current deadline for television stations to convert from analog to digital broadcasts without, according to Mr. Young, disclosing that station KWWL(TV) risked financial exposure from postponement of the deadline. Mr. Young states that station KWWL(TV) had already converted to digital format and thus postponing the deadline for conversion would have extended the period of time the station had to broadcast in both digital and analog formats. The November 7, 2005, editorial urged voters to reject a ballot measure that would authorize the formation of a local telecommunications utility commission without, according to Mr. Young, mentioning that the station had a financial relationship with the local cable provider directly affected by the measure. Mr. Young further states that the station aired the editorial the night before the election, thus

failing to provide the ballot measure's proponents adequate time to rebut the editorial's contentions.

Raycom responds that it did not air the editorials in order to promote its private interests, and that airing the editorials was not incompatible with the public interest. The September 30, 2005, editorial, according to Raycom, was meant to promote viewer awareness of the digital transition. Raycom argues that the editorial reflected the station's good faith belief that postponement of the digital transition was not in the public interest. The November 7, 2005, editorial, according to Raycom, reflected the station's good faith belief about the ballot measure's impact on the community. Raycom denies Mr. Young's assertion that it provided proponents of the ballot measure no opportunity to respond. In any case, Raycom argues that under prevailing precedent, it had the discretion to air the editorials regardless of motivation, and was under no obligation to provide the ballot measure's proponents an opportunity to respond to the November 7, 2005, editorial.

Discussion. Section 309(k)(1) of the Communications Act of 1934 (the "Act") states that the Commission shall grant a license renewal application if it 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 the rules or regulations of the Commission which, taken together, would constitute a pattern of abuse.¹

The Commission applies a two-step analysis of a petition to deny under the public interest standard. The petition must first contain specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.² This first step of the public interest analysis "is much like that performed by a trial 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."³ If the allegations meet this test, then the Commission will designate the application for hearing when the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether granting the application would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.⁴ Mr. Young has failed to demonstrate, under the standard set forth above, that grant of the license renewal application would be *prima facie* inconsistent with the public interest.

Section 326 of the Act and the First Amendment to the Constitution usually prohibit any Commission actions that would improperly interfere with the programming decisions of

¹ 47 U.S.C. §309(k)(1). Mr. Young has demonstrated standing in this case as a resident in station KWWL(TV)'s service area. See *Chet-5 Broadcasting, L.P.*, 14 FCC Rcd 13041, 13042 (1999).

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

³ *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987). See also *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (affirming two-step public interest analysis).

⁴ *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

licensees.⁵ Because of this statutory prohibition, and 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 very little authority to interfere with a licensee's selection and presentation of news and editorial programming.⁶ Thus, with regard to news programming in particular, the Commission has repeatedly 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," and that "the Commission will not review the licensee's news judgments."⁷ Station KWWL(TV) exercised its good faith discretion in determining that the two editorials were relevant and important to the community it served.

The public interest is paramount to the private interests of a commercial broadcast licensee, but it does not follow that all actions which further a licensee's private interest necessarily violate the public interest. The Commission generally refuses to intervene on the basis that a licensee aired programming motivated by private economic interest unless the licensee's private interest and the public interest are incompatible, "i.e. if the private interest poses 'a substantial risk of serious harm to listeners.'"⁸ Raycom has argued that, regardless of motivation, the editorials enhanced public awareness of two important public issues. The private interest in airing the two editorials, to the extent there existed one, did not pose a risk of harm to viewers. The Commission no longer enforces the fairness doctrine and, therefore, station KWWL(TV) was under no obligation to provide time for a rebuttal of the ballot measure editorial.⁹ We need not determine, therefore, whether Raycom did provide time to respond, as it asserts in its Opposition to Petition to Deny.

⁵ 47 U.S.C. §326; U.S. CONST., amend. I.

⁶ See, e.g., *National Broadcasting Company v. FCC*, 515 F.2d 1101, 1112-1113, 1119-1120, 1172 (1974), *vacated as moot, id.* at 1180, *cert. denied*, 424 U.S. 910 (1976); *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 124 (1973); *Hunger in America*, 20 FCC 2d 143, 150-51 (1969).

⁷ *American Broadcasting Companies, Inc.*, 83 FCC 2d 302, 305 (1980). See also *Dr. Paul Klite*, 12 Com. Reg. (P&F) 79, 81-82 (MMB 1998), *recon. denied sub nom.*, *McGraw-Hill Broadcasting Co.*, 16 FCC Rcd 22739 (2001).

⁸ *Certain Broadcast Stations Serving Communities in the State of Louisiana*, 7 FCC Rcd 1503, 1507 (1992), *citing Elimination of Unnecessary Broadcast Regulation*, 57 RR 2d 913, 921 (1985), *aff'd sub nom.*, *Telecommunications Action Research Center v. FCC*, 800 F.2d 1181 (D.C. Cir. 1986).

⁹ *Syracuse Peace Council v. WTVH*, 2 FCC Rcd 5043 (1987), *aff'd*, *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied* 110 S.Ct. 717 (1990) (finding that enforcement of the fairness doctrine did not serve the public interest). The fairness doctrine required licensees to (1) "provide coverage of vitally important controversial issues of interest in the community served by the licensees" and (2) "provide a reasonable opportunity for the presentation of contrasting viewpoints on such issues." *Report Concerning General Fairness Doctrine Obligations of Broadcast Licensees*, 102 FCC 2d 143, 146 (1985).

Accordingly, the Petition to Deny filed by Richard C. Young **IS DENIED. IT IS FURTHER ORDERED** that, pursuant to Section 309(k) of the Act, the application (File No. BRCT-20050930AYJ) of Raycom America License Subsidiary, LLC, for renewal of license for station KWVL(TV), Waterloo, Iowa, **IS HEREBY GRANTED.**

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau