



Federal Communications Commission  
Washington, D.C. 20554

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**DA 06-2089**

In Reply Refer to:  
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Mr. Edward W. Mudd II  
P.O. Box 43333  
Birmingham, Alabama 35243

M. Scott Johnson, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
11<sup>TH</sup> Floor, 1300 North 17th Street  
Arlington, Virginia 22209-3801

In re: WBHM(FM), Birmingham, AL  
Facility ID No. 4240  
File No. BRED-20031201AUJ  
Application for Renewal of License

**Informal Objection**

Dear Mr. Mudd and Counsel:

This letter concerns the captioned application (the "Application") filed by the Board of Trustees/University of Alabama at Birmingham ("BTUA") to renew the license of noncommercial educational Station WBHM(FM), Birmingham, Alabama. Also on file is an informal objection (the "Objection") filed by Edward W. Mudd II ("Mudd") on March 4, 2004. For the reasons set forth below, we deny the Objection and grant the Application.<sup>1</sup>

**Background.** In his Objection, Mudd states that "it is my opinion" that WBHM(FM) "is not conducting itself in the best interest of the public." In support of this assertion, Mudd states that the demographics of Birmingham have changed during the last decade and that WBHM(FM) "is either unable or unwilling" to adapt its programming, "which is heavily oriented towards symphony music," to reflect the area's cultural and racial diversity.<sup>2</sup> Mudd submits that, "in order to serve the public interest," WBHM(FM) should make a serious effort to understand, appreciate, and serve all segments of the area's residents, an audience of "great variety and tastes." Mudd maintains that WBHM(FM) should diversify the station's format, instead of "rigidly adhering to its narrow perspective, programmed around symphony music." Mudd states that, before the Commission takes final action on WBHM(FM)'s Application, it should convene a public hearing "to allow the citizens to be heard on the subject of WBHM(FM);" that the question is not whether WBHM(FM)'s license should be denied, but rather how WBHM(FM) can be changed in such a way that the public is adequately served. Mudd submits that his request for a public hearing is not premised on "forcing a particular format upon the station," but rather, on determining whether WBHM(FM) "is indeed, serving the best interests of its community's needs,

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<sup>1</sup> BTUA filed an Opposition on May 14, 2004, and Mudd filed "Supplemental Comments" on June 2, 2004.

<sup>2</sup> Mudd states Birmingham has a "very large" African-American and Hispanic population.

problems, and interests.<sup>3</sup> Additionally, Mudd states that WBHM(FM)'s on-air announcements of its "license expiration and renewal process" were inadequate because "... would-be listeners who do not favor symphony music, simply aren't listening."

In its Opposition, BTUA states that it welcomes input from members of the Birmingham community on its programming choices, and that it regularly consults with a ten-member advisory board of outside community members that assists the station by providing grassroots feedback about WBHM(FM)'s programming and services. BTUA also notes that the Commission, long ago, removed program formats as a consideration in license renewal proceedings, focusing only on a station's overall efforts to respond to its community's needs, problems and interests.<sup>4</sup> WBHM also states that it has broadcast all of the pre- and post-filing announcements required by the Commission's rules,<sup>5</sup> and that the Commission has always deemed such on-air announcements as adequate to apprise the public of the renewal process in its service area.

**Discussion.** In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (the "Act").<sup>6</sup> That section provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse. If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."<sup>7</sup>

Initially, Mudd's format-based public interest analysis is misguided. It is the Commission's general policy to leave format issues to the discretion of the licensee.<sup>8</sup> This is particularly so with regard to noncommercial educational broadcast stations. The Commission historically "has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming."<sup>9</sup> Licensees have a duty to respond to local needs and issues

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<sup>3</sup> Objection at 1-2.

<sup>4</sup> BTUA cites *Program Policy Statement*, Memorandum Opinion and Order, 60 FCC 2d 858 (1970), *recon. den.* 66 FCC 2d 78 (1977). *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981). *Seattle Public Schools*, Decision, 4 FCC Rcd 629, 639 (Rev. Bd. 1989); *WNEW-TV License Renewal*, Memorandum Opinion and Order, 2 FCC Rcd 139 (1987).

<sup>5</sup> 47 C.F.R. § 73.3580.

<sup>6</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>7</sup> 47 U.S.C. §309(k)(1). The renewal standard was amended to read as described by *Section 204(a) of the Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>8</sup> See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC 2d 858 (1976).

<sup>9</sup> *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 FCC 2d 716, 732 (1981).

by choosing appropriate programming. They also have broad discretion to select, in good faith, the issues they believe to be of concern to their communities, and the manner in which to address those issues.<sup>10</sup> The Commission may intervene in circumstances in which an abuse of discretion becomes apparent. For example, we may consider whether a licensee which offers almost no amount of issue-responsive programming has defaulted on its public interest obligation.<sup>11</sup> Mudd has not demonstrated that WBHM(FM) has abused that discretion.

Finally, Mudd has presented no information to demonstrate that BTUA violated the local public notice provisions of Section 73.3580 in its pre- and post-filing announcements of the filing of WBHM(FM)'s renewal application.<sup>12</sup> Mudd's assertion that the licensee failed to provide adequate notice of the filing of its renewal application because it broadcasts (in Mudd's opinion) an unpopular format is without merit.

**Conclusion/Actions.** We find that Mudd's Objection contains neither adequate nor specific factual allegations sufficient to warrant further inquiry regarding renewal of WBHM(FM)'s license. Furthermore, pursuant to Section 309(k) of the Act, we find neither evidence of serious violations of the Act or the Commission's Rules nor of other violations that, when considered together, evidence a pattern of abuse. Further, we find that Station WBHM(FM) served the public interest, convenience, and necessity during the subject license term. Accordingly, for the reasons set forth above, pursuant to Section 309(k) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's rules,<sup>13</sup> the informal objection filed by Edward W. Mudd II IS DENIED, and the application (File No. BRED-20031201AUJ) of Board of Trustees/University of Alabama at Birmingham for renewal of license for station WBHM(FM), Birmingham, Alabama, IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc Board of Trustees/ University of Alabama at Birmingham

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<sup>10</sup> *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1092 (1972). See *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1413,1431 (D.C. Cir. 1983).

<sup>11</sup> See *Philadelphia Television Stations*, 5 FCC Rcd 3487, 3487-88 (1990).

<sup>12</sup> 47 C.F.R. § 73.3580.

<sup>13</sup> 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.