



**Federal Communications Commission
Washington, D.C. 20554**

March 12, 2007

DA 07-1204

In Reply Refer to:
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Mr. Robert Meshanko
419 Reinhard Avenue
Columbus, OH 43206

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Wiley Rein LLP
1776 K St., N.W.
Washington, DC 20006

In re: WTVN(AM), Columbus, OH
Facility ID No. 11269
Citicasters Licenses, L.P.
File No. BR-20040601BEU

Application for Renewal of License

Informal Objection

Dear Mr. Meshanko and Ms. Bunkin:

This letter refers to: (1) the above-noted June 1, 2004, application of Citicasters Licenses, L.P. ("Citicasters") to renew the license of radio station WTVN(AM), Columbus, Ohio, and (2) the May 9, 2004, Informal Objection ("Objection") to that application filed by Robert Meshanko. In his Objection, Mr. Meshanko expresses his concern about the "rapid qualitative decline in the programming and broadcasting" aired on WTVN(AM). For the reasons set forth below, we deny Mr. Meshanko's Objection and grant the renewal application.

Discussion. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k)(1) of the Communications Act of 1934, as amended (the "Act"). That section provides that 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 (the "Rules"); and (3) there have been no other violations which, taken

together, constitute a pattern of abuse, we are to grant the renewal application.¹ 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.”²

Mr. Meshanko states that WTVN(AM) has replaced high quality radio shows with “low cost, low quality replacement programs” that are “vulgar” (pointing to on-air discussions about the size of human feces and descriptions of spoiled food) and hosted by “arrogant” radio personalities. He attributes this perceived decline in quality programming to the dominant position of Clear Channel Communications, Inc. (Citicasters’ parent company) in the Central Ohio market and its alleged focus on “the bottom line.”

We have examined Mr. Meshanko’s Objection and find that it does not raise a substantial and material question of fact calling for further inquiry or otherwise persuade us that grant of the WTVN(AM) renewal application would contravene the public interest, convenience, and necessity. The role of the Commission in overseeing program content is limited. The First Amendment to the United States Constitution and Section 326 of the Act prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights. The Commission does regulate broadcast content where federal statutes direct it to do so. For example, the Commission enforces the statutory prohibition on the broadcast of obscene, indecent and profane material contained in 18 U.S.C. § 1464.³ However, it will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.⁴ Licensees have broad discretion – based on their right to free speech -- to choose, in good faith, the programming it believes serves the needs and interests of their communities.⁵ We will intervene in programming matters only if a licensee

¹ 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).

² 47 U.S.C. §§ 309(k)(2), 309(k)(3).

³ While the Commission is responsible for enforcing its rules and applicable statutory provisions restricting obscene, indecent or profane broadcasts, we are unable to make a determination that the material about which Mr. Meshanko complains is actionably indecent or profane because: (1) he has not alleged that the station broadcast the material during 6 a.m. to 10 p.m., the only time period within which the FCC enforces the prohibitions on indecent or profane broadcasts; and (2) he has not provided us with sufficient information regarding the details of what the station broadcast and its context. In any event, we also note that such a complaint would be barred from consideration by the terms of a consent decree entered into by the Commission and Clear Channel (the “Consent Decree”). See *Clear Channel Communications, Inc.*, Consent Decree, 19 FCC Rcd 10880 (2004). By the terms of the Consent Decree, Clear Channel agreed to undertake certain compliance measures and to pay the United States Treasury the sum of \$1,750,000 in consideration for, among other things, the Commission’s agreement to refrain from considering indecency complaints that pertain to broadcasts aired before the Effective Date of the Consent Decree in connection with any Clear Channel renewal application. The Effective Date of the Consent Decree is June 9, 2004, the date of its public release.

⁴ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

⁵ See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) (“*Philadelphia Station License*”)
(footnote continued)

abuses that discretion.⁶ Mr. Meshanko has not demonstrated that the station has done so here. Accordingly, we deny the Informal Objection.

Conclusion. We have evaluated the WTVN(AM) renewal application pursuant to Section 309(k) of the Act,⁷ and we find that the station has served the public interest, convenience, and necessity during the subject license term; there have been no serious violations of the Act or the Rules; and there have been no other violations which, taken together, constitute a pattern of abuse.

In light of the above discussion, and pursuant to Section 309(k) of the Act, and Sections 0.61 and 0.283 of the Rules,⁸ the Informal Objection filed on May 9, 2004, by Robert Meshanko IS DENIED, and the application (File No. BR-20040601BEU) of Citicasters Licenses, L.P., for renewal of license for WTVN(AM) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Citicasters Licenses, L.P.

Renewals”), citing *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1082 (1972), and *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted).

⁶ *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401.

⁷ 47 U.S.C. § 309(k).

⁸ 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.