



Federal Communications Commission  
Washington, D.C. 20554

April 6, 2007

DA 07-1641

In Reply Refer to:

1800B3-KD

Released: April 6, 2007

Ms. Martha Beatriz López Amador  
1124 Bay Boulevard  
Suite E-100  
Chula Vista, CA 91911

William H. Fitz, Esq.  
Covington & Burling LLP  
1201 Pennsylvania Ave., N.W.  
Washington, DC 20004-2401

In re: KFMB(AM), San Diego, CA  
Facility ID No. 42120  
Midwest Television, Inc.  
File No. BR-20050726AAV

Application for Renewal of License

**Informal Objection**

Dear Ms. Amador and Mr. Fitz:

This letter refers to: (1) the above-noted July 26, 2005, application of Midwest Television, Inc. (the "Licensee") to renew the license of radio station KFMB(AM), San Diego, California (the "Station"), and (2) the September 26, 2005, Informal Objection ("Objection") to that application filed by Martha Beatriz López Amador.<sup>1</sup> In her Objection, Ms. Amador alleges that the license for the Station should not be renewed because KFMB(AM) failed to follow through on a promise made to her by the Station's Richard Roberts on his daily talk show, "The Rick Roberts Show," to post a picture of her missing daughter on his web page on the Station's website. For the reasons set forth below, we deny Ms. Amador'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 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 (the "Rules"); and (3) there have

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<sup>1</sup> It does not appear that Ms. Amador sent a copy of her Objection to the Licensee, from which the Commission has no record of having received a response.

been no other violations which, taken together, constitute a pattern of abuse.<sup>2</sup> 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>3</sup>

In her Objection, Ms. Amador claims that, in June 2005, she called and spoke with Mr. Roberts about her missing daughter during his program broadcast over the Station. During that conversation, Mr. Roberts allegedly volunteered to upload and post a photograph of her daughter onto his web page, which is hosted on the Station’s website. According to Ms. Amador, pursuant to the Station’s instruction to her, she e-mailed the Station several photographs and a story about her missing daughter. Ms. Amador states that, when she followed up with the Station, she was told by Station personnel that her pictures would not be posted because her story was “confusing” and “contradictory.”<sup>4</sup> Ms. Amador contends that, by failing to post the pictures, KFMB(AM) has implied that her efforts are part of a hoax and has thereby tarnished her “social image.”

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. However, the only matter allegedly aired by the Licensee referred to in the Objection consisted of Mr. Roberts’ discussion with Ms. Amador about posting on his web page the photograph of her missing daughter, program material that fails to violate any Commission Rule. To the extent that Ms. Amador takes issue with Mr. Roberts’ subsequent decision not to so post the girl’s photograph, the Commission does not regulate the non-broadcast activities of station personnel or announcers, including their operation of a web page.<sup>5</sup> Finally, as to her claim to have been defamed by these events, such allegations are outside of the Commission’s jurisdiction. “Such allegations are properly the subject of private

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

<sup>4</sup> It appears from the Objection that these comments were not broadcast over the Station. Instead, Ms. Amador believes that listeners that heard her on-air conversation with Mr. Roberts would view his failure to have posted the girl’s photograph in an unflattering light to Ms. Amador. See Objection, August 8, 2005, letter from Martha López to Rick Roberts at 3.

<sup>5</sup> *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)). We note that the Licensee has posted the following disclaimer on Mr. Roberts’ web page, evidencing his control over its content: “The different points of views on the Rick Roberts Blog are not supported nor do they reflect the views and beliefs of KFMB Stations or any entity affiliated with KFMB Stations.” See [http://www.760kfmb.com/rick\\_blog/index.php#rick\\_top](http://www.760kfmb.com/rick_blog/index.php#rick_top)

defamation actions [under state law], not of Commission licensing proceedings.”<sup>6</sup> Accordingly, the Commission does not regulate the conduct that is the subject of Ms. Amador’s complaint.<sup>7</sup> We accordingly deny the Objection.

**Conclusion.** We have evaluated the KFMB(AM) renewal application pursuant to Section 309(k) of the Act,<sup>8</sup> and we find that KFMB(AM) 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,<sup>9</sup> the Informal Objection filed on September 26, 2005, by Martha Beatriz López Amador IS DENIED, and the application (File No. BR-20050726AAV) of Midwest Television, Inc., for renewal of license for KFMB(AM) IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Midwest Television, Inc.

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<sup>6</sup> *Jacor Broadcasting of Tampa Bay, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1826 (MB 1992) (citing *Anti-Defamation League of B’nai B’rith*, Memorandum Opinion, 4 FCC 2d 190, 191 (1966)). *See also Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (subsequent history omitted) (narrowing the range of non-FCC related misconduct to be considered when assessing an applicant’s character qualifications).

<sup>7</sup> To the extent that the Ms. Amador believes that the Station has breached an agreement with her or has otherwise dealt unfairly with her, she may pursue any such claims in a local court of competent jurisdiction. *See Letter to Jeff Kost*, 21 FCC Rcd 6223, 6225 (MB 2006).

<sup>8</sup> 47 U.S.C. § 309(k).

<sup>9</sup> *Id.*; 47 C.F.R. §§ 0.61, 0.283.