



Federal Communications Commission  
Washington, D.C. 20554

September 25, 2007

**DA 07-4025**

*In Reply Refer to:*

1800B3-KD

Released: September 25, 2007

Ms. Rosanda Suetopka Thayer  
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In re: KUYI(FM), Hotevilla, AZ  
Facility ID No. 85622  
The Hopi Foundation  
File No. BRED-20050531BCK

Application for Renewal of License

**Informal Objection**

Dear Ms. Thayer and Ms. Virtue:

We have before us: (1) the referenced application (the "Application") of The Hopi Foundation (the "Licensee") for renewal of its license for noncommercial educational Station KUYI(FM), Hotevilla, Arizona (the "Station"); (2) an Informal Objection (the "Objection"), filed on September 29, 2005, by Rosanda Suetopka Thayer ("Thayer");<sup>1</sup> and (3) an Opposition filed by Licensee on November 3, 2005 (the "Opposition"). Thayer alleges that the Application should be denied because Licensee has: (1) engaged in discriminatory hiring and management practices;<sup>2</sup> and (2) failed to broadcast issue-responsive programming.<sup>3</sup> For the reasons set forth below, we deny the Objection and grant the Application.

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<sup>1</sup> Thayer titles her pleading a "Petition to Deny." Petitions to deny an application for renewal of the license of an existing broadcast station must be filed no later than the first day of the last full calendar month of the expiring license term. 47 C.F.R. § 73.3516(e). For radio stations licensed in communities in Arizona, because their licenses expired on October 1, 2005, the applicable petition filing deadline was September 1, 2005. 47 C.F.R. § 73.1020(a)(10). The pleading filed by Thayer thus fails to meet the requirements of a petition to deny. We will, however, treat it as an informal objection, pursuant to Section 73.3587 of the Commission's Rules. See 47 C.F.R. § 73.3587.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* Thayer also alleges that that Station's manager, Lisa Youvella, has made false statements about the Station's recruiting and hiring practices in a local newspaper article. *Id.* at 3. The Commission only considers misrepresentation allegations to the extent that the alleged misrepresentation is made to a governmental unit. See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1985), *recon. denied*, 1 FCC Rcd 421 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), and 7 FCC Rcd 6564 (1992) (describing categories of relevant adjudicated, non-FCC

**Discussion.** Both petitions to deny and informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Act”), provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act,<sup>4</sup> which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) 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 been no other violations which, taken together, constitute a pattern of abuse.<sup>5</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>6</sup>

*Station Operation and Employment Practices.* Thayer first calls for the replacement of Station manager, Lisa Youvella, who, according to Thayer, was appointed “without public input or notification of the station manager position to the Hopi community.”<sup>7</sup> Thayer next asserts that the Station has engaged in discriminatory employment practices and station operation, and claims to have “first hand accounts of unprofessional treatment, abusive behavior ... to Hopi community station DJ volunteers...”<sup>8</sup> Thayer also seeks a change in the administration of Licensee by calling for public elections to its board of trustees.<sup>9</sup>

In response, Licensee first points out that the Station has fewer than five employees and therefore is not subject to the Commission’s Equal Employment Opportunity (“EEO”) recruitment requirements.<sup>10</sup> Licensee also points out that Thayer provides no evidence of the Station’s alleged bias or

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misconduct when considering a licensee’s character issues). *See also AT&T Wireless Services, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21548-2149 (2004) (finding that licensee’s alleged misrepresentations to private parties had no bearing on its character qualifications). Accordingly, we will not consider this allegation further.

<sup>4</sup> *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>5</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>6</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>7</sup> Objection at 1.

<sup>8</sup> *Id.* at 3. While it is unclear from the Objection, Thayer appears to be referring to a claim that two Hopi fluent Station announcers were “banned from volunteering” due to alleged personality conflicts with the Station’s former manager. *Id.*

<sup>9</sup> *Id.* at 5.

<sup>10</sup> Opposition at 6.

discrimination.<sup>11</sup> Finally, Licensee notes that it is a private entity, not a governmental agency, and that “Hopi reservation-wide elections to the Board of Trustees would violate [its] corporation formation documents.”<sup>12</sup> Accordingly, Licensee asserts that Thayer’s arguments are without merit.<sup>13</sup>

We agree. As noted in the Equal Employment Opportunity (“EEO”) Program Report filed with its Application, the Station has fewer than five full-time employees.<sup>14</sup> As such, the Station is not subject to the Commission’s EEO recruitment requirements and Licensee was not required to publicly advertise the station manager position.<sup>15</sup> With regard to Licensee’s alleged employment discrimination, we find that Thayer has failed to present properly supported specific allegations of fact to establish a *prima facie* case that a grant of the Application would be inconsistent with Section 309(k) of the Act.<sup>16</sup> Moreover, the Commission generally defers action with regard to allegations of discrimination by licensees, pending final action by the Equal Employment Opportunity Commission (“EEOC”) or other government agency and/or courts established to enforce nondiscrimination laws.<sup>17</sup> There is no evidence in the record that any proceedings regarding KUYI(FM)’s hiring and management practices have been commenced with the EEOC or in any court of competent jurisdiction. Accordingly, further consideration of this issue is unwarranted. Finally, Thayer’s demand that Licensee hold public elections to Licensee’s Board is without merit, as the Commission has no authority to direct the manner in which board members of noncommercial educational broadcast stations are to be selected.

*Programming Objections.* Thayer alleges that the Station fails to broadcast programming responsive to the needs of the community, particularly with respect to Hopi programming.<sup>18</sup> Thayer also

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<sup>11</sup> *Id.* Licensee further asserts that the Station received “no complaints filed before any body having competent jurisdiction ... alleging unlawful discrimination in the employment practices of the Station.” *Id.*

<sup>12</sup> Opposition at 3.

<sup>13</sup> *Id.*

<sup>14</sup> FCC File No. B396-20050531BBE.

<sup>15</sup> See 47 C.F.R. § 73.2080(d).

<sup>16</sup> See 47 U.S.C. § 309(d)(1); *Area Christian Television, Inc., supra.*

<sup>17</sup> See *Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rule Making, 17 FCC Rcd 24018, 24036 (2002); see also *Letter to J.B. Crawley and Mr. Martin Hensley*, 22 FCC Rcd 10285, 10291 (MB 2007) (discrimination allegation properly the province of the EEOC or court of competent jurisdiction).

<sup>18</sup> Objection at 2. To support this assertion, Thayer submits portions of a survey that allegedly indicates that Station listeners would be interested in more Hopi language programs. However, this survey is of limited probative value for several reasons. First, the survey was conducted in December of 1996 – four years *before* the Station filed its license application and began broadcasting. See FCC File No. BLED-20001221ABG. Second, Thayer withheld the portion of the survey that describes the methodology used to conduct the survey. Finally, the survey appears only to have been taken among members of the Hopi reservation community, to the exclusion of the rest of the Hotevilla, Arizona, community. Accordingly, we find that this survey lacks any probative value with regard to the level of issue-responsive programming broadcast on the Station.

objects to the Station's Spanish language format,<sup>19</sup> as well as its broadcast of allegedly "biased political public service programming."<sup>20</sup>

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, while we recognize the fact that the Station is licensed to an entity whose stated corporate mission is to preserve and revitalize the Hopi culture,<sup>21</sup> the Commission 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.<sup>22</sup> Licensees have broad discretion – based on their right to free speech -- to choose, in good faith, the programming that they believe serves the needs and interests of their communities.<sup>23</sup> This is particularly so with regard to the programming decisions of noncommercial educational broadcast stations.<sup>24</sup> We will intervene in programming matters only if a licensee abuses that discretion.<sup>25</sup> Thayer has not demonstrated that the Station has done so here.

**Conclusion/Actions.** For the foregoing reasons, we deny the Informal Objection. We have evaluated the Application pursuant to Section 309(k) of the Act,<sup>26</sup> and we find that the Station has served

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<sup>19</sup> Objection at 3.

<sup>20</sup> Objection at 4. Thayer also alleges the Station has broadcast indecent material, but has failed to provide us with any details about this allegedly indecent broadcast, including its content or what time of day it was aired. *Id.* at 1. As such, we find that Thayer has failed to raise a substantial and material question of fact which establishes a *prima facie* case for denial of the Application.

<sup>21</sup> See Opposition at Ex. 2. (the Articles of Incorporation of The Hopi Foundation).

<sup>22</sup> See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

<sup>23</sup> 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 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).

<sup>24</sup> 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. See *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 FCC 2d 716, 732 (1981). See also *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) (licensees have broad discretion over programming decisions).

<sup>25</sup> *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401 (abuse of discretion occurs if a licensee is unreasonable or discriminatory in its selection of issues that it believes are of concern to the local community or if it offers such nominal levels of issue-responsive programming as to have effectively defaulted on its obligation).

<sup>26</sup> 47 U.S.C. § 309(k).

the public interest, convenience, and necessity during the subject license term. Moreover, we find that there have been no serious violations of the Act or the Rules involving the Station, or violations by the Licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse.

Accordingly, 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>27</sup> the Informal Objection filed by Rosanda Suetopka Thayer IS DENIED, and the application of The Hopi Foundation for renewal of its license for Station KUYI(FM), Hotevilla, Arizona (File No. BRED-20050531BCK) IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: The Hopi Foundation

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<sup>27</sup> 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.