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In Reply Refer to:

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In re: KNUZ(AM), Bellville, Texas
Facility ID No. 48653
File No. BR-20050331BEI
Application for Renewal of License

Informal Objections

Dear Applicant and Objectors:

This letter refers to the above-referenced application filed on March 31, 2005, by Roy E. Henderson (the "Licensee"), for renewal of license for Station KNUZ(AM), Bellville, Texas (the "Application"). Also on file are Informal Objections filed by Elizabeth P. Conway ("Conway"),¹ Nathan

¹ On May 16, 2005, the Commission received via the U.S. Postal Service an identical letter from Conway dated May 5, 2005. We are treating the untitled letter by Conway as an Informal Objection under Section 73.3587 of the Commission's Rules (the "Rules"), 47 C.F.R. § 73.3587, because it fails to comply with the procedural requirements for filing a Petition to Deny, *e.g.*, it was not served on the Licensee or its counsel, and the factual assertions contained in the filings are not supported by an affiant with personal knowledge. *See* 47 U.S.C. § 309(d), 47 C.F.R. § 73.3584.

Simecek (“Simecek”), and Jeff Pullin (“Pullin”).² The filings (the “Informal Objections”) by Conway, Simecek, and Pullin (the “Objectors”)³ are virtually verbatim submissions.⁴ On May 24, 2005, the Licensee filed his response.⁵ For the reasons set forth below, we deny the Informal Objections and grant the Application.

Discussion. 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,⁶ which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) 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 Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁷ 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.”⁸

The Objectors argue that the Licensee has committed numerous violations during the Station’s license term and propose awarding the Station’s license to Tony Johnson, operator of “CAT-AM,”

² On May 11, 2005, the Commission received via the U.S. Postal Service a second undated letter from Pullin. We are treating both submissions by Pullin as Informal Objections under Section 73.3587 of the Commission’s Rules (the “Rules”), 47 C.F.R. § 73.3587, because they fail to comply with the procedural requirements for filing a Petition to Deny, e.g., they were not served on the Licensee or its counsel, and the factual assertions contained in the filings are not supported by an affiant with personal knowledge. See 47 U.S.C. § 309(d), 47 C.F.R. § 73.3584.

³ The Commission also received on April 8, 2005, and April 11, 2005, three identical Informal Objections that either failed to list the objector’s address or the contact information was illegible. These Informal Objections are substantially similar to the above-referenced Informal Objections and we will therefore dismiss them herein.

⁴ The Informal Objections also seek denial of the Licensee’s pending application for major modification (File No. BMJP-20050118ADC) which seeks to relocate the Station to Katy, Texas. With regard to this major modification application the Informal Objections remain pending.

⁵ Opposition to Informal Objections (“Opposition”).

⁶ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *affirmed 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).

⁷ 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 (the “1996 Act”), 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).

⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Monaville, Texas, which is apparently an unlicensed low power Part 15 station,⁹ because they prefer its programming. In particular, the Objectors allege that the Licensee has committed the following violations during the prior license term: the studio is non-functional; the public file has not been maintained since 2002 and is located at another radio station; and the Station operates for only two weeks per year by simulcast transmission from another radio station owned by the Licensee. However, the Objectors fail to provide any evidence to support these contentions. The Licensee, in a signed affidavit, has refuted each of these allegations.¹⁰ Accordingly, we conclude that they have failed to raise a substantial and material question of fact.

Moreover, we reject the Objectors' request that we "award" the KNUZ(AM) license to Tom Johnson. There is no statutory provision that would authorize the Commission to take such an action. In fact, the Commission is prohibited from accepting competing applications filed against applications for renewal of a broadcast radio station license.¹¹ Rather, if the Commission finds that the Station served the public interest and there are no serious violations or violations constituting a pattern of abuse, the Commission is required to renew the Station's license.¹²

Conclusion/Actions. We have evaluated the Application pursuant to Section 309(k) of the Act,¹³ and we find that Station KNUZ(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,¹⁴ the Informal Objections filed by Elizabeth P. Conway, Nathan Simecek, and Jeff

⁹ See 47 C.F.R. §§ 15.207, 15.209, 15.219, and 15.221, which permits unlicensed transmission in the AM broadcast band of 0.05 watts. See also *Permitted Forms of Low Power Broadcast Operation*, Public Notice, Mimeo No. 14089 (Jul. 24, 2001).

¹⁰ See *Morgan County Industries, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 21 FCC Rcd 13712, 13714 (MB 2006) (unsupported allegation failed to present a substantial and material question of fact when rebutted by Licensee's sworn statements). The Opposition states that the building identified by the Objectors as the unoccupied KNUZ(AM) "studio" is actually an abandoned building at the KNUZ(AM) transmitter site. According to the Licensee, the KNUZ(AM) studio is located in Brenham, Texas. Opposition, Declaration of Roy E. Henderson, at 1-2. The Licensee further avers that the KNUZ(AM) public inspection file "contains copies of all the items required by the Commission's rules," *id.* at 1, and that the Station has been on the air continuously except for the period from February 27, 2003 through January 28, 2004, when it experienced "technical problems" and was off the air with the full knowledge and consent of the Commission. *Id.* Commission records reflect that KNUZ(AM) received special temporary authorization to remain silent on March 25, 2003, see BLSTA-20030320DG, and the authorization was extended on October 3, 2003. See BLSTA-20031001CFT.

¹¹ See Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 309(k)(4) (which prohibits the comparative consideration of renewal applicants filed after May 1, 1995). See also *Broadcast License Renewal Procedure*, 11 FCC Rcd at 6363 (1996).

¹² See 47 U.S.C. 309(k)(1).

¹³ 47 U.S.C § 309(k).

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

Pullin, respectively, ARE DENIED,¹⁵ and the three unidentified informal objections, two of which were filed on April 8, 2005, and one on April 11, 2005, ARE DISMISSED. Additionally, Roy E. Henderson's application (File No. BR-20050331BEI) for renewal of license for Station KNUZ(AM), Bellville, Texas, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Robert J. Buenzle, Esquire

¹⁵ The Informal Objections remain pending as to the Licensee's application for major modification. *See supra* note 4.