



Federal Communications Commission
Washington, D.C. 20554

October 19, 2007

DA 07-4342

In Reply Refer to:

1800B3-JP

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WHYY, Inc.
150 North Sixth Street
Independence Mall West
Philadelphia, PA 19106

In re: WHYY-FM, Philadelphia, Pennsylvania
Facility ID: 72336
File No. BR-20060403BGL

Application for Renewal of License

Dear Applicant:

We have before us the referenced application of WHYY, Inc. ("WHYY") for renewal of license of Station WHYY-FM, Philadelphia, Pennsylvania, filed on April 3, 2006. We also have before us a Petition to Deny ("Petition") filed by Zack Smith ("Smith") on April 17, 2006. For the reasons set forth below we deny the Petition and grant the WHYY-FM license renewal application.

Background. WHYY timely filed its license renewal application on April 3, 2006. In his pleading, Smith claims that WHYY-FM's license should not be renewed because the Station does not serve the public interest. Smith states that the Station's "news content consists of an overwhelmingly large proportion of propaganda from well-known 'think tanks,' without any serious questioning of their opinions"¹ and that WHYY did not alert the public to the "criminal election rigging and voter exclusion and intimidation" that took place during the 2004 election.²

Discussion. Under Section 309(d) of the Communications Act of 1934, as amended (the "Act"),³ a party has standing to file a petition to deny if grant of an application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.⁴ The Commission also accords party-in-interest status to a petitioner who demonstrates either that he/she resides in the service area of the station that is the subject of the petition or that he/she listens to or views the station regularly and that such listening or viewing is not the result of transient contacts with the station.⁵ To do so, the petitioner

¹ Petition at 1.

² Petition at 2.

³ 47 U.S.C. § 309(d).

⁴ See, e.g., *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC2d 696 (1978).

⁵ See *Tabback Broadcasting Company*, Memorandum Opinion and Order, 15 FCC Rcd 11899, 11900 n. 3 (2000), and *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999).

must provide an affidavit or declaration that establishes such standing.⁶ Smith fails to provide an affidavit or declaration raising a specific injury that would be caused to him by grant of the WHYF-FM renewal application or that establishes listener/residence status as a basis for standing. Therefore, we find that Smith lacks standing to file a petition to deny in this proceeding. Nevertheless, we will consider Smith's Petition as an informal objection under Section 73.3587 of the Rules.⁷

Informal objections must, pursuant to Section 309(e) of the Act,⁸ 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,⁹ 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 Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹⁰ 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.”¹¹

Smith does not claim that WHYF has violated the Act or any Commission Rule. His core complaint relates to alleged “propaganda” programming. While we recognize Smith's concerns about the quality of the Station's programming, the role of the Commission in overseeing program content is limited. The First Amendment to the United States Constitution¹² and Section 326 of the Act¹³ prohibit the Commission from censoring program material or interfering with broadcasters' free speech rights. Generally, 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.¹⁴ A licensee has broad discretion – based on its right to free speech – to choose, in good

⁶ See *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89 (1980); see also *Infinity Broadcasting Corp. of California*, Memorandum Opinion and Order, 10 FCC Rcd 9504 (1995); *Tabback Broadcasting Company*, *supra*, and *Niles Broadcasting Company*, Memorandum Opinion and Order, 7 FCC Rcd 5959 (1992).

⁷ 47 C.F.R. § 73.3587.

⁸ 47 U.S.C. § 309(e).

⁹ 47 U.S.C. § 309(k). 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).

¹⁰ 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).

¹¹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹² U.S. CONST. amend. I.

¹³ 47 U.S.C. § 326.

¹⁴ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

faith, the programming that it believes serves the needs and interests of the members of its audience.¹⁵ We will intervene in programming matters only if a licensee abuses that discretion.¹⁶ Smith has not demonstrated that the Station has done so here. We find that Smith's Petition contains neither adequate nor specific factual allegations sufficient to warrant further inquiry regarding renewal of WHY Y-FM's license.¹⁷

Conclusion/Actions. We have evaluated the above-referenced renewal application pursuant to Section 309(k) of the Act,¹⁸ and we find that Station WHY Y-FM, Philadelphia, Pennsylvania, has served 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 Station WHY Y-FM by WHY Y, Inc. which, taken together, would constitute a pattern of abuse. In light of the foregoing, we will grant the renewal application.

Accordingly, IT IS ORDERED that the April 17, 2006, Petition to Deny filed by Zack Smith is DENIED.

IT IS FURTHER ORDERED that the application of WHY Y, Inc. for renewal of its license for Station WHY Y-FM (File No. BR-20060403BGL) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Zack Smith
Steven C. Schaffer, Esq.

¹⁵ 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)).

¹⁶ *Philadelphia Station License Renewals* at 6401.

¹⁷ See *Area Christian Television, Inc.*, Decision, 60 R.R. 2d 862 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁸ 47 U.S.C. § 309(k).