



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

July 17, 2008

DA 08-1676

In Reply Refer to:

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Ms. Lora Leland
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In re: WBAE(AM), Portland, Maine
Saga Communications of New England, LLC
Facility ID No. 49983
File No. BR-20051201BBG
Application for Renewal of License

Informal Objection

Dear Counsel, Ms. Leland and Ms. Zevich:

This letter refers to the above-noted application filed on December 1, 2005, by Saga Communications of New England, LLC (the "Licensee"), for renewal of license for Station WBAE(AM), Portland, Maine (the "Application"). On January 25, 2006, Ms. Lora Leland and Ms. Anne Zevich (collectively "the Objectors") filed an Informal Objection to the Application.¹ On March 7, 2006, the Licensee filed a response.² For the reasons set forth below, we deny the Informal Objection and grant the Application.

Background. The Objectors seek the denial of the Station's renewal of license application because they contend that during the months March through September, the Licensee pre-empts its regular music programming format to broadcast Portland Seadogs and Boston Red Sox games.

¹ We are treating the untitled filing by the Objectors 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 Station or its counsel, and it is not supported by affidavit. *See* 37 U.S.C. § 309(d), 47 C.F.R. § 73.3584.

² "Opposition to Informal Objection" ("Opposition").

According to the Objectors, such broadcasts are in violation of promises made by the Licensee to broadcast: “‘Music of Your Life’ 24-7-365. ‘All music all the time’ was their promise when the Station started.”³ The Objectors allege that they have complained to the Licensee, its sponsors, and the “Music of Your Life” network, to no avail. Therefore, they request that Commission “not re-license [the Station] . . . if they are going to preempt “Music of Your Life” with any kind of sports this year.”⁴

In response, the Licensee argues that its programming serves the local public interest. The Station’s General Manager states:

WBAE, Portland, 1490 kHz is simulcast with a music standards/nostalgia format for much of the time with WVAE, 1400 kHz, Biddeford, Maine, which serves the area south of Portland. At other times, WBAE carries the broadcasts of the Portland Seadogs baseball team and WVAE carries broadcasts of the Boston Red Sox’s baseball games. To the best of my knowledge, Saga never promised to broadcast ‘all music all the time’ on WBAE.

The Seadogs coverage runs from April until about Labor Day; the Red Sox coverage is on the air until early October. The games run only about 3 hours each and are heard mostly at night and on weekends. The Complainants apparently called ‘Music of Your Life’ which syndicates music programs nationally. I have no records of calls or complaints from Ms. Leland, Ms. Zevich

WBAE is the only station in Cumberland County, Maine, broadcasting the Seadogs’ games. It is Saga’s belief that the Seadogs are a major component of the Portland community and that the broadcast of their games clearly serve the public interest.⁵

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

³ Informal Objection at 1.

⁴ *Id.*

⁵ Opposition, Declaration of Cary Pahigian.

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, 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).

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 seek the denial of the Station’s renewal of license not due to an alleged violation of the Act or the Rules, but rather because they disagree with its programming choices. These content-based arguments, however, concern matters over which the Commission has only limited review authority. The Commission's role in overseeing program content is limited by the First Amendment to the United States Constitution and Section 326 of the Act, which prohibit the Commission from interfering with broadcasters' freedom of expression and from censoring program material.⁹ 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.¹⁰ However, 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.¹¹ 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.¹² We will intervene in programming matters only if a licensee abuses that discretion.¹³ The Objectors have not demonstrated that the Licensee has done so here. Accordingly, we deny the Informal Objection.

Conclusion/Actions. We have evaluated the Application pursuant to Section 309(k) of the Act,¹⁴ and we find that Station WBAE(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,¹⁵ the Informal Objection filed on January 25, 2006, by Lora Leland and Anne Zevich

⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁹ U.S. Const., Amend I; 47 U.S.C. § 326.

¹⁰ 18 U.S.C. § 1464.

¹¹ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

¹² See, e.g., *Mr. Robert Meshanko*, Letter, 22 FCC Rcd 4809, 4810 (MB 2007); *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (MMB 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).

¹³ *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401.

¹⁴ 47 U.S.C § 309(k).

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

IS DENIED, and the application (File No. BR-20051201BBG) of Saga Communications of New England, LLC for renewal of license for Station WBAE(AM), Portland, Maine, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Saga Communications of New England, LLC