



Federal Communications Commission  
Washington, D.C. 20554

February 12, 2008

**DA 08-348**

*In Reply Refer to:*

1800B3-JP

Released: February 12, 2008

Infinity Media Corporation  
2000 K Street, NW, Suite 725  
Washington, DC 20006

In re: Infinity Media Corporation  
WCCO(AM), Minneapolis, Minnesota  
Facility ID: 9642  
File No. BR-20041201BTO

**Application for Renewal of License**

Dear Applicant:

We have before us the referenced application of Infinity Media Corporation ("Infinity") for renewal of license of Station WCCO(AM), Minneapolis, Minnesota, filed on December 1, 2004. We also have before us a Petition to Deny ("Petition") filed by James Pennino ("Pennino") on March 10, 2005. For the reasons set forth below we deny the Petition to Deny and grant the license renewal application.

**Background.** Infinity timely filed its license renewal application on December 1, 2004.<sup>1</sup> In his Petition, Pennino claims that WCCO(AM)'s license should not be renewed because of the Station's "lack of in-depth coverage of environmental issues on WCCO news."<sup>2</sup> In response, Infinity states that Pennino's Petition is procedurally defective because it was not served on Infinity, was filed after the deadline for petitions to deny, and Pennino is not a party in interest as required by Section 309(d) of the Communications Act of 1934, as amended (the "Act").<sup>3</sup> Additionally, Infinity states that Pennino's Petition fails to present any facts showing a violation of the Commission's Rules or the Act which would warrant denying the license renewal.

**Discussion.** In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.<sup>4</sup> That Section 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

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<sup>1</sup> On March 30, 2005, the staff initially granted the license renewal application, but upon receipt of Pennino's Petition to Deny, the staff rescinded the grant to consider Pennino's Petition on March 31, 2005.

<sup>2</sup> Petition at 1.

<sup>3</sup> 47 U.S.C. § 309(d). Infinity states that Pennino has not demonstrated that he either lives within the Station's service area or that he regularly listens to the station, and it observes that Pennino has not supported his filing with an affidavit or declaration of personal knowledge. *Id.*

<sup>4</sup> 47 U.S.C. § 309(k).

application.<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>

With respect to Infinity’s claim that Pennino’s Petition should be dismissed as procedurally defective, under the Commission’s *ex parte* rules, a listener or viewer of a broadcast station need not serve an objection on the Licensee.<sup>7</sup> Moreover, Infinity received a copy of Pennino’s pleading from Commission staff and was granted an extension of time by the staff to file a response. Thus, Infinity has not been prejudiced by Pennino’s failure to serve his Petition on the licensee as required by Section 309(d)(1) of the Act.<sup>8</sup> Moreover, although Pennino has not demonstrated that he is a party in interest and his filing does not meet the requirements of a formal petition to deny under Section 309(d) of the Act, we will treat the filing as an informal objection under Section 73.3587 of the Rules.<sup>9</sup>

Notably, Pennino does not claim that Infinity has violated the Act or any of the Commission’s Rules. Rather, his core complaint is the lack of coverage of environmental issues on WCCO(AM). While we recognize Pennino’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 Constitution<sup>10</sup> and Section 326 of the Act<sup>11</sup> 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.<sup>12</sup> A licensee has broad discretion – based on its right to free speech – to choose, in good faith, the programming that it believes serves the needs and interests of the members of its audience.<sup>13</sup> We will intervene in programming matters only if a licensee abuses that

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<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> 47 C.F.R. § 1.1204(a)(8). It is true that, as argued by Infinity, Pennino does not state specifically that he is a listener of the station. However, because his objection clearly is based on his perception of a deficiency in the station’s programming, we do not believe his failure to serve Infinity with his objection violates the Commission’s *ex parte* rules. See *Letter to Richard Eisworth and Dan Baughman*, 22 FCC Rcd 6807 (MB 2007) (comments of listeners not served on parties considered in contested assignment application proceeding).

<sup>8</sup> 47 U.S.C. § 309(d)(1).

<sup>9</sup> 47 C.F.R. § 73.3587.

<sup>10</sup> U.S. CONST. amend. I.

<sup>11</sup> 47 U.S.C. § 326.

<sup>12</sup> See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

<sup>13</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)).

discretion.<sup>14</sup> Pennino has not demonstrated that the Station has done so here. We find that Pennino's Petition contains neither adequate nor specific factual allegations sufficient to warrant further inquiry regarding renewal of WCCO(AM)'s license.<sup>15</sup>

Furthermore, pursuant to Section 309(k) of the Communication's Act of 1934, as amended,<sup>16</sup> we find that: (1) station WCCO(AM) has served the public interest, convenience, and necessity during the subject license term; (2) there have been no serious violations of the Act or the Commission's Rules; and (3) there have been no other violations, which taken together, constitute a pattern of abuse.

**Conclusion**. For the above-stated reasons, the Petition to Deny filed by James Pennino IS DENIED and the application (File No. BR-20041201BTO) of Infinity Media Corporation for renewal of license for station WCCO(AM), Minneapolis, Minnesota IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Nancy L. Wolf, Esq.  
James D. Pennino

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<sup>14</sup> *Philadelphia Station License Renewals* at 6401.

<sup>15</sup> 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).

<sup>16</sup> 47 U.S.C. § 309(k)(1).