



Federal Communications Commission
Washington, D.C. 20554

August 7, 2009

DA 09-1769

In Reply Refer to:

1800B3-SS

Released: August 7, 2009

Rev. Vonne Blessman Anderson
First Presbyterian Church
Second and Oak Streets
P.O. Box 464
Gorden, NE 69343

Mr. James R. Lambley
DJ Broadcasting, Inc.
616 North Ash Street
Gorden, NE 69643

In re: KSDZ(FM), Gorden, NE
Facility ID No. 17028
DJ Broadcasting, Inc.
File No. BRH-20050128ABY

Application for Renewal of License

Informal Objection

Dear Rev. Anderson and Mr. Lambley:

This letter refers to: (1) the above-noted application of DJ Broadcasting, Inc. ("Licensee") to renew its license for Station KSDZ(FM), Gorden, Nebraska (the "Application");¹ (2) the May 26, 2005, Informal Objection ("Objection") to that application filed by the Rev. Vonne Blessman Anderson ("Rev. Anderson"); and (3) a responsive pleading filed by the Licensee on June 24, 2005. In the Objection, Rev. Anderson expresses concern that the station's policies regarding the airing of funeral notices are unfair. For the reasons set forth below, we deny the Objection 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,² which governs our evaluation of an application for license

¹ The Application was granted by Commission staff on May 27, 2005, and rescinded by said staff on June 16, 2005, for the purpose of considering these pleadings.

² See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion & 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* (continued . . .)

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.³ 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."⁴

Rev. Anderson states that KSDZ(FM) charges families to air funeral announcements and requires that the announcements be bought in groups of three so that sometimes an announcement is aired *after* the funeral service is over. Rev. Anderson goes on to note that the station does not charge Native Americans for funeral announcements. Rev. Anderson argues that funeral announcements are "public service announcements," and, by law, should be aired for free. In response, Licensee states that it charges commercial funeral directors and not individual families for airing funeral announcements. Licensee asserts that the number of announcements aired is solely at the discretion of the licensed funeral director. Licensee also notes that, until recently, a local business underwrote the cost of funeral announcements for the Native American community. Finally, Licensee states that funeral announcements are not "public service announcements."⁵

We have examined the Objection and find that it does not raise a substantial and material question of fact calling for further inquiry or otherwise persuade us that grant of the KSDZ(FM) renewal application would contravene the public interest, convenience, and necessity. Stations are not required to broadcast everything that is offered or suggested to them.⁶ For instance, no federal rule or law can compel a commercial broadcast licensee to broadcast funeral announcements either for a fee or for free as a "public service announcement."⁷ In fact, no federal law or rule requires stations to

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Christian Television, Inc., Memorandum Opinion & Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

³ 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).

⁴ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁵ The Licensee provides a list of public service announcements it airs addressing matters of local, regional, and national concern. The Licensee also attaches several letters of listeners commending KSDZ(FM) for its service to the community. *See* KSDZ(FM) Response at 2 (filed Jun. 24, 2005); *see also* Attachments.

⁶ *See Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94 (1973) (broadcast stations are not common carriers and thus retain the right to select certain advertisers and reject others); *see also* n.8, *infra* at *Access to Station Facilities*.

⁷ A public service announcement is an announcement for which no charge is made and serves community interests by promoting programs, activities, or services of governmental or other nonprofit organizations and is broadcast for free. *See Advertising Council, Inc.*, Order, 17 FCC Rcd 22616, 22622 (2002). Although a funeral announcement (continued . . .)

broadcast "public service announcements" of any kind.⁸ Regarding KSDZ(FM)'s charging a fee to air funeral announcements, except with respect to political advertisements,⁹ the Commission does not regulate a station's advertising rates or its profits.¹⁰ Rates charged for broadcast time are matters for negotiation between sponsors and stations.¹¹ We find that Rev. Anderson has not demonstrated that KSDZ(FM) has done anything that violates the Act or the Rules. Accordingly, we will deny the Objection.

Conclusion/Actions. We have evaluated the KSDZ(FM) renewal application pursuant to Section 309(k) of the Act, and we find that the station 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 Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules,¹² the Informal Objection filed on May 26, 2005, by Rev. Vonne Blessman Anderson IS DENIED, and the application (File No. BRH20050128ABY) of DJ Broadcasting, Inc., for renewal of its license for Station KSDZ(FM) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

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could arguably fall into this category, the airing of funeral announcements for free as a public service, under current Commission rules and procedures, is at the discretion of a commercial broadcast licensee. *See* n.8, *infra*.

⁸ *See* "The Public and Broadcasting," at *Business Practices, Advertising Rates, and Profits* (June 2008); *see also* http://www.fcc.gov/mb/audio/decdoc/public_and_broadcasting.html.

⁹ *See Complaint of Lawton Chiles, Bob Martinez, Bill Nelson, and Jim Smith*, Order, 10 FCC Rcd 1 (MB 1994); *see also Codification of the Commission's Political Programming Policies*, Report & Order, 7 FCC Rcd 678, 693-94 (1991); *The Law of Political Broadcasting and Cablecasting*, Public Notice, 690 FCC 2d 2209, 2271 (1978); *Use of Broadcast and Cablecast Facilities by Candidates for Public Office*, Public Notice, 34 FCC 2d 510, 528-29 (1972).

¹⁰ *See* n.8, *supra*.

¹¹ *Id.*

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