



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

September 8, 2009

DA 09-2021

In Reply Refer to:

1800B3-BSH

Released: September 8, 2009

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In re: **WQXR-FM, New York, New York**
Facility ID No. 29022
File No. BALH-20090716ADE

**Application for Assignment of License
Petition to Deny
Informal Objections**

Dear Dr. Jaffe, Ms. Shively, Mr. Gennaro, Mr. Schenck, and Counsel:

We have before us the above-referenced application (the “Assignment Application”) seeking approval for the proposed assignment of license of Station WQXR-FM, New York, New York (the “Station”), from The New York Times Radio, LLC (“NYT”) to WADO-AM License Corp. (“WADO”). Barbara F. Shively (“Shively”) filed an informal objection to the Assignment Application, dated July 23, 2009. G.P. Gennaro (“Gennaro”) filed an informal objection to the Assignment Application dated August 4, 2009. David M. Gerstein (“Gerstein”) filed an informal objection to the Assignment Application dated August 6, 2009. Dr. Israeli A. Jaffe (“Jaffe”) filed a petition to deny the Assignment Application, dated August 9, 2009. Charles Schenck (“Schenck”) (collectively, with Shively, Gennaro, Gerstein, and Jaffe, the “Objectors”) filed an informal objection dated August 10, 2009. For the reasons stated below, we deny the informal objections and the petition to deny, and grant the Assignment Application.

The Objectors indicate their appreciation for the current WQXR-FM classical music format, but express concern that the terms of the Station sale might not preserve the programming format in the listening area.¹ While the Commission appreciates that WQXR-FM’s classical music format has attracted a devoted listenership, it is well-settled policy that the Commission does not scrutinize or regulate programming, nor does it take potential changes in programming formats into consideration in reviewing assignment applications. In 1976, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Communications Act of 1934, as amended (“the Act”), would not benefit the public, would deter innovation, and would impose substantial administrative burdens on the Commission.² The Supreme Court of the United States has upheld this policy and the Commission’s determination that “the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . .” and that a change in programming is not a material factor that should be considered by the Commission in ruling on applications for license transfer.³ Additionally, the Commission is not authorized to deny a proposed assignment based on the comparative service that a party other than the proposed assignee might provide to the public.⁴ Notwithstanding these Commission policies, we emphasize that licensees are required to operate in accord with the terms of their authorization, and in the public interest.

¹ The Assignment Application is part of a proposed multi-step transaction whereby the WQXR-FM license will be exchanged for the license of Station WCAA(FM), Newark, New Jersey. WCAA(FM), 105.9 MHz, is currently licensed to WADO, a subsidiary of Univision Communications, Inc. Pursuant to the Asset Exchange Agreement, upon completion of the captioned assignment, the WCAA(FM) license will then be immediately re-assigned to WNYC Radio, which will receive WQXR-FM’s extensive classical music collection, and will broadcast a classical music format on 105.9 MHz. See File No. BALH-20090716ADA (the “WCAA(FM) Application”). The unopposed WCAA(FM) Application is being simultaneously granted with the release of this letter decision. See, e.g., John H. Phipps, 11 FCC Rcd 13053, 13055 (1996).

² See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC2d 858, 865-66 (1976), *recon. denied*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev’d sub nom.*, *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev’d*, 450 U.S. 582 (1981).

³ *FCC v. WNCN Listener’s Guild*, 450 U.S. 582, 585 (1981).

⁴ See 47 U.S.C. § 310(d) (in acting on a proposed assignment, Commission may not consider whether the public interest will be served by assignment of license to a person other than the proposed assignee).

Based on the above, we find that the Objectors have not raised a substantial and material question of fact warranting further inquiry. We further find that WADO is qualified to hold the Station's license and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that Barbara F. Shively's informal objection IS DENIED; G.P. Gennaro's informal objection IS DENIED; David M. Gerstein's informal objection IS DENIED; Dr. Israeli A. Jaffe's petition to deny IS DENIED; Charles Schenck's informal objection IS DENIED, and that the application for approval to assign the license for Station WQXR-FM, New York, New York (File No. BALH-200900716ADE), from The New York Times Radio, LLC to WADO-AM License Corp. IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau