



Federal Communications Commission  
Washington, D.C. 20554

**DA 11-91**  
**Released: January 19, 2011**

The Tri-State "Like It Is" Support Coalition  
c/o Weequahic Park Association  
Lisa V. Davis, Chair  
P.O. Box 2248  
Newark, NJ 07114

NBC Telemundo License Co.  
Margaret Tobey, Esq.  
1299 Pennsylvania Avenue, NW  
9<sup>th</sup> Floor  
Washington, DC 20004

Re: Application for Renewal of License  
WNBC(TV), New York, New York  
File No. BRCT-2007013AJJ  
Fac. ID No. 47535

Dear Ms. Davis and Counsel:

This is in regards to the above-captioned application for renewal of license for television station WNBC(TV), New York, New York, filed by NBC Telemundo License Co. The Tri-State "Like It Is" Support Coalition, ("Like It Is")<sup>1</sup> filed a Petition to Deny ("petition")<sup>2</sup> against the renewal application. NBC filed an opposition pleading ("Opposition"), and Like It Is responded thereto ("Reply").

Like It Is asserts generally that WNBC(TV)'s local news coverage and public affairs programming have failed to meet the needs and interests of the community.<sup>3</sup> Specifically, Like It Is argues that WNBC(TV) does not air sufficient public affairs programming to serve the

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<sup>1</sup> Like It Is describes itself as "a broad based coalition of grass roots community organization and individuals organized throughout the African –American community in the tri-state area to protect the media interest" of the African-American community. Petition at 1.

<sup>2</sup> NBC argues that Like It Is failed to support its petition with an affidavit from a person or persons with personal knowledge of the allegations asserted in its petition and failed to properly serve WNBC(TV) with the petition. We agree that Like It Is failed to support the allegations that it asserts in its petition with an "affidavit of a person or persons with personal knowledge thereof." 47 U.S.C. § 309(d)(1). Although Like It Is claims that it submitted a declaration by its chairperson attesting to the facts, the petition does not contain such a declaration. Therefore, Like It Is' petition will be treated as an Informal Objection. 47 C.F.R §73.3587. Thus, we need not address the issue of service.

<sup>3</sup> Petition at 2.

interests and concerns of the tri-state area African-American community.<sup>4</sup> Like It Is also asserts that WNBC(TV)'s local news focuses on the criminal element of the African-American community, to the exclusion of the positive contributions of the African-American community.<sup>5</sup> Finally, Like It Is states that WNBC(TV)'s local news coverage serves to increase racial bias and is a detriment to the African-American community.<sup>6</sup>

In its Opposition, NBC argues that Like It Is fails to present the allegations required to justify Commission inquiry. NBC notes that "a petition to deny a renewal application must satisfy the 'two-step analysis'<sup>7</sup> that is 'required under Section 309(d)(1) and (2) of the [Communications] Act,'" and contends that Like It Is does not satisfy either step.<sup>8</sup> NBC further states that the petition fails to meet the heightened burden required when a petition to deny implicates the content of a licensee's programming – particularly news and public affairs programming. NBC explains that "the Commission is prohibited from 'censoring broadcast matter or directing licensees in the selection or presentation of broadcast material,'"<sup>9</sup> "because news and comment programming are at the core of speech which the First Amendment is intended to protect."<sup>10</sup> NBC concludes that "a petition to deny regarding a station's editorial discretion can 'make a prima facie case' only if it includes 'specific allegations of fact which, if true, would establish that the licensee's overall past programming could not reasonably have met the needs and interests of the people within [its] service area.'"<sup>11</sup> NBC submits that Like It Is has not met its burden to establish a prime facie case. Additionally, NBC provides a brief overview of WNBC(TV)'s record of public service to its viewers and alleges that Like It Is' procedural and jurisdictional deficiencies independently compel rejection of the petition.<sup>12</sup>

Section 309(k)(1) of the Communications Act of 1934, as amended (the "Act"), states that the Commission shall grant a license renewal application if it finds, with respect to that station, that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Communications Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission rules or regulations which, taken together, would constitute a pattern of abuse.<sup>13</sup>

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<sup>4</sup> *Id.* at 5.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 8.

<sup>7</sup> *Infra* ¶ 4.

<sup>8</sup> Opposition at 2-3 (citing *License Renewal Applications of Certain Commercial Television Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion & Order, 5 FCC Rcd 3847, 3847 (1990), *recon. denied.*);

<sup>9</sup> *Id.* at 3-4 (citing *In re Dena Pictures, Inc. et al.*, 71 F.C.C. 2d 1401, 1405 (1979)).

<sup>10</sup> *Id.* at 4 (citing *In re Liability of NPR Phoenix, L.L.C.*, 13 FCC Rcd 14070, 14072 (1998)).

<sup>11</sup> *Id.* (citing *In re Dena Pictures, Inc.*, 71 F.C.C. 2d at 1405).

<sup>12</sup> *Supra* n. 2.

<sup>13</sup> 47 U.S.C. §309(k)(1).

The Commission analyzes any public interest allegation according to a two-step process. The petition must first contain specific allegations of fact sufficient to show that such a grant would be *prima facie* inconsistent with the public interest.<sup>14</sup> If so, the Commission will designate the application for hearing when the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether grant would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.<sup>15</sup> We find that the petition has failed to establish a *prima facie* case that grant of the renewal application would disserve the public interest.

With respect to Like It Is' allegation that WNBC(TV)'s local news coverage has failed to meet the needs and interests of the tri-state area African-American community, Section 326 of the Act and the First Amendment to the Constitution prohibit any Commission actions that would improperly interfere with the programming decisions of licensees.<sup>16</sup> Because journalistic discretion in the presentation of news and public information is the core concept of the First Amendment's Free Press guarantee, licensees are entitled to the broadest discretion in the scheduling, selection, and presentation of news programming.<sup>17</sup> Thus, the Commission has repeatedly held that "[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter to the licensee's good faith discretion," and that "the Commission will not review the licensee's news judgments."<sup>18</sup>

Further, Like It Is' allegation that WNBC(TV) has failed to provide adequate public affairs programming for the African-American community does not raise an issue with respect to the licensee's compliance with the Commission's rules and regulations. In this regard, a station is not required to present specific public affairs programming in order to meet community needs.<sup>19</sup> In its *Localism Notice of Inquiry*, the Commission specifically noted that programming not specifically produced in or targeted at a local community may nonetheless serve the needs and interests of the community.<sup>20</sup> Thus, although Like It Is' concerns may be legitimate matters

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<sup>14</sup> 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) ("Astroline").

<sup>15</sup> *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

<sup>16</sup> 47 U.S.C. §326; U.S. CONST., amend. I.

<sup>17</sup> See, e.g., *National Broadcasting Company v. FCC*, 515 F.2d 1101, 1112-1113, 1119-1120, 1172 (1974), *vacated as moot*, *id.* at 1180, *cert. denied*, 424 U.S. 910 (1976); *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 124 (1973); *Hunger in America*, 20 FCC 2d 143, 150-51 (1969).

<sup>18</sup> *American Broadcasting Companies, Inc.*, 83 F.C.C.2d 302, 305 (1980). See also *Dr. Paul Klite*, 12 Com. Reg. (P&F) 79, 81-82 (MMB 1998), *recon. denied sub nom*, *McGraw-Hill Broadcasting Co.*, 16 FCC Rcd 22739 (2001) (denying petition that cited excess of news stories dedicated to "mayhem" and under-coverage of issues involving the environment, arts, science, education, poverty AIDS, children and local elections).

<sup>19</sup> *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 989 FCC 2d 1076 (1984), *aff'd on recon.*, 104 FCC 2d 358 (10986).

<sup>20</sup> *In the Matter of Broadcast Localism, Notice of Inquiry*, 19 FCC Rcd 12425, 12431 (2004) (subsequent history omitted) ("*Localism Notice of Inquiry*"). See also *Revision of Programming and Commercialization Policies, Ascertainment Requirement, and Program Log Requirements for Commercial Television Stations*, 104 FCC 2d 357, 366 (1986).

for discussion within the tri-state area African–American community, we do not find that the matters raised justify intervention by the Commission in the pending renewal application, nor do we find that Like It Is has established a *prima facie* case that grant of the renewal application would disserve the public interest.

Accordingly, the Petition to Deny filed by The Tri-State Support Coalition, when considered as an informal objection, **IS DENIED**.

Sincerely,

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau