



Federal Communications Commission
Washington, D.C. 20554

October 17, 2012

DA 12-1658

In Reply Refer to: 1800B-IB

Released: October 17, 2012

Mr. Leonard Clark
5303 Central Ave.
Portage, IN 46368

Lawrence Miller, Esq.
Schwartz Woods and Miller
Counsel for Northwest Indiana Public Broadcasting, Inc.
1233 20th Street, N.W., Suite 610
Washington, D.C. 20036

In re: WLPR-FM, Lowell, IN
Facility ID No. 89212
Northwest Indiana Public Broadcasting, Inc.
File No. BRED-20120322ABP

Application for Renewal of License
Informal Objection

Dear Messrs. Clark and Miller:

This letter refers to: (1) the above-referenced application of Northwest Indiana Public Broadcasting, Inc. ("Licensee") to renew its license for Station WLPR-FM, Lowell, IN; and (2) the May 8, 2012, Informal Objection ("Objection") to that application filed by Len Clark ("Clark"), a former station employee. In his Objection, Clark raises concerns about Licensee's compliance with Commission rules (the "Rules") including those governing underwriting announcements, public inspection file, and Equal Employment Opportunity ("EEO"). For the reasons set forth below, we deny the Objection and grant the renewal application.

License Renewal Standard. An Informal Objection to a license renewal application 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.¹ Specifically,

¹ See *Visionary Related Entertainment, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 1392, 1395 (MB 2012), citing *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 10 (1990), *aff'd 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).

Section 309(k)(1) provides that we are to grant the license 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 Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.² 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.”³

Background. WLPR-FM is a noncommercial educational (“NCE”) FM station operating in the portion of the band reserved solely for such operations. Clark’s primary allegation is that WLPR-FM engages in underwriting practices that do not comply with Commission requirements. Section 399B of the Act and Section 73.503(d) of our Rules specifically proscribe NCE radio stations from airing announcements which promote the sale of goods and services of for-profit entities in return for consideration paid to the station.⁴ These provisions, however, permit contributors to receive on-air acknowledgements and stations to air enhanced underwriting announcements which identify sponsors and their products. However, announcements that promote (rather than identify) products, or include price information, calls to action, and/or inducements to buy are not permissible.⁵ In enforcing these requirements we rely on each broadcaster’s good faith judgments and impose sanctions for clear abuses of discretion. The specific language used in an announcement is crucial to evaluating any alleged violation.

Clark states that while he was serving as WLPR’s Program Director between January 2009 and April 2010, he and the station’s attorney temporarily pulled “blatant commercials” and “infomercials” off the air. He states that station management restored the material to the air, however, taking the position that WLPR-FM was merely “push[ing] the envelope” on permissible underwriting announcements. Clark provides one brief example, stating he was asked to have a guest on a talk show endorse a medical product, but refused. Clark states that he cannot provide more specific information about any announcement because he kept records on an office computer and was unable to retrieve those files after he was fired in April 2010. Clark’s objection refers to the Licensee’s website as indicative of company policies and priorities. In visiting that site, we note that it contains the following statement: “Underwriting on Lakeshore Public Television and Radio allows businesses to promote their products and services to the viewers who tune into our programs.”⁶

Discussion. Clark has not provided us with the text of any announcement or show segment. Accordingly, we are unable to evaluate specific language of any WLPR-FM underwriting announcement that aired during the renewal period. Accordingly, we are unable to find a substantial and material question of fact concerning whether the Licensee’s decision to air any particular announcement was an

² 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).

³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁴ 47 U.S.C. § 399B. 47 C.F.R. § 73.503(d).

⁵ See *Commission Policy Concerning the Noncommercial Educational Nature of Educational Broadcasting Stations*, Public Notice, 7 FCC Rcd 827 (1992).

⁶ <http://www.lakeshoreptv.com/main.taf?p=2> (accessed Sept. 26, 2012).

abuse of discretion and/or violation of our underwriting requirements. Nevertheless, we are concerned that the Licensee's web page is soliciting support by offering to air announcements that "promote" sponsor products and services. Such announcements, of course, would be prohibited. In these circumstances, we strongly encourage the Licensee to review its sponsorship practices and materials to ensure compliance with our underwriting policies.

Clark raises several additional matters concerning station programming and operations. He states that WLPR participated in a "mock" public file inspection conducted by the Indiana Broadcasters Association ("Association") and that the Association asked the station to correct information regarding its transmitter location and Emergency Alert System tests. Clark states that the Licensee took no action but incorrectly told the Association that it had changed the information in order to obtain a certificate of compliance from the Association. Clark further states that he "has reservations" about the quarterly issues-programs lists in the public file because the station does not air unpaid Public Service Announcements ("PSAs") and does not air programming for Black listeners. He also questions whether the Station employs a sufficient number of minorities to meet EEO requirements. Finally, he states that the station does not comply with various requirements established by the Corporation for Public Broadcasting ("CPB") for stations receiving CPB funding, such as holding open meetings and seeking input from a community advisory board.

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 WLPR-FM renewal application would contravene the public interest, convenience, and necessity. With respect to programming, 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.⁷ We will intervene in programming matters only if a licensee abuses that discretion.⁸ Clark has not demonstrated that the station has done so here. For example, Clark has not shown that the issue-responsive programs identified in the public file, taken as a whole, ignore the needs of Black listeners.⁹ Similarly, because PSAs are just one of many types of programming that can meet the requirement to air issue-responsive programming, the alleged failure of WLPR-FM to air any PSAs would not necessarily indicate any abuse of discretion.

With respect to non-programming matters, the Licensee's receipt of a certificate from its state broadcasters' association under the voluntary Alternative Broadcast Inspection Program ("ABIP") would not prevent the Commission from taking action in response to contrary information raised during the license renewal process.¹⁰ Here, however, Clark provides no specific information to support his claim

⁷ 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).

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

⁹ *Id.* at 6402 (broadcasters do not need to design specific programming for each minority group within the community if they address topics of concern to the community as a whole).

¹⁰ See *Connecticut Radio Fellowship, Inc.*, Notice of Apparent Liability, 25 FCC Rcd 3299 (EB 2010) (rejecting argument that station should be exempt from monetary forfeiture for violation discovered during Commission inspection because state association had not identified same violation under the ABIP); *TCW Broadcasting, Inc.*,
(footnote continued)

that public file documents may be missing or inaccurate.¹¹ For example, Clark makes the conclusory allegation that the Association identified a problem with the transmitter location but does not provide anything to show that the actual and authorized geographic coordinates of the transmitter differ. The Licensee certified in the renewal application that its public file was complete. We find that Clark has failed to raise a substantial and material question of fact regarding this certification. With respect to requirements for CPB funding, such as holding open meetings and consulting a community advisory board, it is well settled that CPB has exclusive responsibility for the distribution of funds pursuant to Section 396 of the Act,¹² and that the Commission does not consider a licensee's compliance with that section in its licensing proceedings.¹³ With respect to EEO, the Licensee provided EEO information on FCC Form 396 with its renewal application, as required. The Commission's EEO staff did not identify any matter therein requiring additional consideration.

Conclusion. We have evaluated the WLPR-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,¹⁴ the Informal Objection filed on May 8, 2012, by Len Clark IS DENIED, and the application (File No. BRED-20120322ABP) of Northwest Indiana Public Broadcasting, Inc. for renewal of its license for Station WLPR-FM IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

Forfeiture Order, 23 FCC Rcd 9999 (MB 2008) (state association's finding that public file was complete two years prior to license expiration did not warrant reduction of forfeiture for later public file violations disclosed in renewal application); *Capstar Radio Operating Co.*, Forfeiture Order, 19 FCC Rcd 15374 (EB 2008) (station's participation in ABIP did not exempt it from non-routine inspection by the Commission and forfeiture for violations found). *See also, The Information Needs of Communities: The Changing Media Landscape in a Broadband Age*, by Steven Waldman and the Working Group on Information Needs of Communities at 319 (June 9, 2011) available at www.fcc.gov/info-needs-communities and 2011 WL 2226864, 319 (describing relationship between industry self-inspection and inspection by the Commission).

¹¹ See 47 C.F.R. § 73.3527(e)(1).

¹² 47 U.S.C. § 396.

¹³ See *WQED Pittsburgh*, Memorandum Opinion and Order, 15 FCC Rcd 202, 206 (1999), citing *KQED, Inc.*, 88 FCC 2d 1159, 1164-65, *aff'd*, *California Public Broadcasting Forum v. FCC*, 752 F.2d 670 (D.C. Cir. 1985).

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