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Mr. William Haas
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In re: **KWMU(FM), St. Louis, MO**
Facility ID No. 65585
The Curators of the University of Missouri
File No. BRED-20121001BER

Informal Objection

Dear Mr. Haas and Counsel:

This letter refers to: (1) the above-referenced application (“Renewal Application”) filed by the Curators of the University of Missouri (“Licensee”) for renewal of license of noncommercial educational Station KWMU(FM), St. Louis, Missouri (“Station”); and (2) the January 10, 2013, Informal Objection (“Objection”) to that application and January 14, 2013, Addendum (“Addendum”) filed by Mr. William Haas (“Haas”).¹ For the reasons set forth below, we deny the Objection and grant the Renewal Application.

Background. In his Objection, Haas opposes the Renewal Application based on a perceived bias in the Station’s political programming, particularly with respect to his candidacy in the 2012 Democratic Primary for Missouri Lieutenant Governor.² Haas alleges that Don Marsh (“Marsh”), a host of a program aired on the Station, purportedly disparaged Haas’ candidacy during his show several times prior to the election, and that a guest of Marsh’s show allegedly insulted Haas’ candidacy on a program aired the day before the election.³ Haas further claims that he was denied air time when he called in to Marsh’s show on a separate occasion before the election.⁴

¹ Licensee filed a Response to the Informal Objection and Addendum (“Response”) on February 11, 2013.

² Objection at 1. Haas states that he was a candidate in the 2012 Democratic Primary for Missouri’s Lieutenant Governor. *See id.*

³ *Id.* at 1-2. Haas raises additional allegations of an alleged off-air personal “vendetta” against Haas by Marsh. *See* Addendum at 2. However, such allegations pertain to matters outside of the Commission’s authority. The Commission does not regulate the alleged conduct that is the subject of these allegations. *See Anti-Defamation*

Rather than deny the Application, however, Haas requests that the Commission implement certain rules for “all publicly funded stations” regarding political programming during elections, require an on-air apology to Haas, and place the Station on “probation.”⁵

In response, Licensee claims that the insults perceived by Haas “never occurred.”⁶ Licensee further argues that the Commission’s grant of Haas’ requested remedies would amount to “settling personal claims and emotional venting.”⁷

Discussion. Informal objections to license renewal applications must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (“Act”),⁸ 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,⁹ which governs our evaluation of an application for license 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 Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹⁰ 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.”¹¹

Programming Objections. We note initially that Section 399 of the Act¹² states specifically that “[n]oncommercial educational broadcasting station may support or oppose any candidate for public office.” However, the Objection fails to allege adequate and specific factual allegations concerning the

League of B'nai B'rith, Memorandum Opinion, 4 FCC 2d 190, 191 (1966) (“The Commission cannot put such matters in issue without becoming the censor of broadcasting, which it is forbidden to do.”).

⁴ Addendum at 2.

⁵ Objection at 2. Haas’ suggested rules include requiring that public radio stations: (1) refrain from airing “any shows discussing candidates or issues on their programming the week of any election”; (2) discourage “staff and guests from opining on the qualification of any candidate for nomination or office”; (3) “institute steps to make reasonable air time available for any candidate, issue group, or other person who feels aggrieved by a news story or program about them”; and (4) “consider the hiring of a public ombudsperson/ethicist to help them be more responsible on such matters.” *See id.*

⁶ Response at 4. Licensee also provides transcripts of the segment contradicting Haas’ allegations. *See* Response, Exhibit A.

⁷ *Id.* at 3.

⁸ 47 U.S.C. § 309(e).

⁹ *See, e.g., 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).

¹⁰ 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).

¹¹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹² 47 U.S.C. § 399.

alleged political programming issues sufficient to warrant Commission action.¹³ Haas maintains that Marsh, as well as a guest on Marsh's show, disparaged Haas' candidacy,¹⁴ but nowhere does Haas assert that either person's comments represented the views of the Station.¹⁵ Therefore, Haas has not raised a substantial and material question of fact calling for further inquiry regarding whether the Station "opposed" Haas' candidacy in violation of Section 399 of the Act. Accordingly, we reject these allegations.

We also reject Haas' allegation that he was "screened off" of Marsh's show when asked to identify himself upon calling in to comment on an unspecified, "not election-related" topic.¹⁶ Stations are not required to have any candidates on a particular program.¹⁷ Moreover, the reasonable access requirements of Section 312(a)(7) apply only to commercial stations and only to candidates for federal elective office¹⁸ – neither of which are at issue here. Accordingly, whether or not Haas' call was taken during a call-in show, the Station's actions violate no statute, rule, or Commission policy.

Requested Remedies. As to Haas' suggestion that the Commission implement certain rules for "public" radio stations regarding political broadcasting during elections, this is not the correct forum for such requests.¹⁹ To the extent that Haas believes that additional rules are necessary, he may file a petition for rulemaking proposing such specific provisions.²⁰

Conclusion. In light of the above discussion, we find that Haas has not raised a substantial and material question of fact calling for further inquiry regarding the Station's performance during the preceding license term. We have also evaluated the Renewal Application pursuant to Section 309(k) of the Act,²¹ 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.

¹³ See *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986).

¹⁴ Specifically, Haas alleges that he was depicted as "not a credible or legitimate candidate or some such thing." Objection at 1.

¹⁵ See *FCC v. League of Women Voters*, 468 U.S. 364, 397 (1984) (finding that Section 399 "does not prevent the use of noncommercial stations for the presentation of partisan views on controversial matters; instead, it merely bars a station from specifically communicating such views on its own behalf or on behalf of its management").

¹⁶ Addendum at 2.

¹⁷ 47 U.S.C. § 315(a) ("No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate."); see also *The Law of Political Broadcasting and Cablecasting: Political Primer 1984*, 100 FCC 2d 1476 (1984).

¹⁸ 47 U.S.C. § 312(a)(7) ("The Commission may revoke any station license or construction permit – for willful or repeated failure to allow reasonable access or to permit purchase of reasonable amounts of time for the use of a broadcasting station, **other than a non-commercial educational broadcast station**, by a legally qualified candidate for **federal** elective office on behalf of his candidacy.") (emphasis added).

¹⁹ 47 U.S.C. § 399.

²⁰ See *Paralyzed Veterans of America v. D.C. Arena, L.P.*, 117 F.3d 579, 586 (D.C. Cir. 1997); *Syncor Int'l Corp. v. Shalala*, 127 F.3d 90, 94 (D.C. Cir. 1997) (new interpretation of an agency rule in conflict with prior definitive interpretation requires notice and comment).

²¹ 47 U.S.C. § 309(k).

For the reasons set forth above, and pursuant to Section 309(k) of the Act, and Sections 0.61 and 0.283 of the Commission's Rules,²² the Informal Objection filed on January 10, 2013, by William Haas IS DENIED, and the application (File No. BRED-20121001BER) of the Curators of the University of Missouri for renewal of its license for Station KWMU(FM), St. Louis, Missouri, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

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