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Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, CA 90405-1628

Desert Coalition for Responsible Broadcasting
c/o Kerry E. Burke
543 Tercero Circle
Palm Springs, CA 92262

In re: **Santa Monica Community
College District**
KCRI(FM), Indio, California
Facility ID No. 59087
File No. BRED-20050729DRJ

**Application for Renewal of NCE
Radio Station License**

Informal Objection

Dear Applicant and Objector:

We have before us the above-referenced application ("Application") filed by Santa Monica Community College District ("SMCCD") for renewal of the license of Station KCRI(FM), Indio, California. We also have before us an informal objection to the Application, filed on October 25, 2005, by the Desert Coalition for Responsible Broadcasting ("DCRB"). For the reasons set forth below, we deny the informal objection and grant the Application.

Background. SMCCD timely filed an application to renew the KCRI(FM) license on July 29, 2005.¹ On October 25, 2005, DCRB filed a letter objecting to grant of the Application (the "Objection"). While the Objection was filed within the requisite time period for petitions to deny the Application,² DCRB's letter is styled as an "informal objection," and thus we will so consider it. SMCCD filed a letter opposing the Objection on November 30, 2005 ("Opposition").

Discussion. DCRB lodges a number of complaints, primarily concerning what it believes is a lack of local programming on KCRI(FM). DCRB first notes that the KCRI(FM) authorization has a

¹ Renewal applications for stations in California were to be filed by August 1, 2005, and licenses expired December 1, 2005.

² Under 47 C.F.R. § 73.3516(e), petitions to deny the Application were due by November 1, 2005.

special operating condition waiving Section 73.1125 of the Commission's Rules (the "Rules")³ and allowing KCRI(FM) to operate as a satellite of station KCRW(FM), Santa Monica, California.⁴ DCRB contends that SMCCD does not provide sufficient local programming, and thus requests that the special operating condition be revoked so that a new licensee could "become a local voice for the community."⁵ DCRB goes on to list what it believes to be six failures on SMCCD's part to provide local programming. It alleges that SMCCD has "repeatedly failed" to: (1) cover local elections and ballot issues; (2) provide a local studio presence where citizens might be able to participate in discussions relevant to the desert communities; (3) provide local news, weather, and traffic reports; (4) provide educational programming appropriate to the desert communities; (5) provide "even a minimal amount of programming about cultural activities in the desert," and (6) provide public service announcements about local charities.⁶ DCRB concludes that SMCCD's programming policy for KCRI(FM) is "contrary to the local interests of this community," and requests we designate the Application for a hearing to consider whether grant of license renewal is in the public interest.⁷

SMCCD challenges DCRB's objection to the special operating condition allowing KCRI(FM) to be operated as a satellite of KCRW(FM). It states that it originally sought the satellite operation because it was economically infeasible to operate a local studio, given the anticipated fundraising from KCRI(FM)'s operation, and that these economic factors have not changed since SMCCD first requested the main studio waiver.⁸ SMCCD further contests DCRB's allegations that it provides no local programming for residents of KCRI(FM)'s listening area. Specifically, SMCCD states that: (1) KCRI(FM) "has regularly covered" federal, state, and local elections, state referenda, and issues in the California state legislature affecting residents of KCRI(FM)'s service area; (2) KCRI(FM) has, for the past six years, aired local news "cut-ins" during its morning broadcasts of National Public Radio's ("NPR") "Morning Edition" and evening broadcasts of "All Things Considered"; (3) KCRI(FM) provides "an extensive schedule of educational programming" of interest to listeners in the station's service area, including broadcasting segments of NPR's "Justice Talking" on those evenings when KCRW(FM) airs bi-monthly Santa Monica City Council meetings; (4) KCRW(FM) and KCRI(FM) "devoted substantial effort" to promote the Coachella Valley Music and Arts Festival, which takes place in KCRI(FM)'s service area, including interviews with and recordings by featured artists, reports on the festival's schedule of performances, and promotions of the festival by ticket giveaways; and (5) KCRI(FM) broadcasts "paid public service announcements for a wide variety of charitable organizations, some of which have ties to the Indio service area."⁹

³ 47 C.F.R. § 73.1125.

⁴ Objection, first unnumbered page. DCRB erroneously states that KCRI(FM) is operated as a satellite of station KUSC(FM), Los Angeles, California.

⁵ *Id.*

⁶ Objection, second unnumbered page.

⁷ *Id.*

⁸ Opposition at 1-2; Declaration of Ruth Seymour, attached to Opposition, paragraph 2.

⁹ *Id.* at 4-5.

A petition to deny a renewal application (as well as an informal objection) must, pursuant to Section 309(d) of the Communications Act of 1934, as amended (the “Act”),¹⁰ 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,¹¹ 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 that, taken together, constitute a pattern of abuse.¹² 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(d) 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.”¹³

Radio licensees have broad discretion to determine, in good faith, the programming that they believe serves the needs and interests of their communities. The Commission intervenes only in circumstances in which a licensee has abused this discretion.¹⁴ The record in this case does not support DCRB’s claim that SMCCD’s program judgment with regard to KCRI(FM) is arbitrary or unreasonable. In particular, we find no basis in fact for DCRB’s statement that SMCCD’s programming policy is “contrary to the local interests of [KCRI(FM)’s] community,”¹⁵ with its implication that the station’s programming is not merely insufficient, but is actually antithetical to the public interest. SMCCD has refuted, under penalty of perjury, DCRB’s allegations in at least four of the six particulars, by providing concrete examples of programming that DCRB claims has been absent from KCRI(FM).¹⁶ The Commission will not take adverse action on a license renewal application based on the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.¹⁷

¹⁰ 47 U.S.C. § 309(d).

¹¹ *Id.*, § 309(k). 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), *reh’g denied* (D.C. Cir. Sept. 10, 1993).

¹² 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described in the text 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).

¹³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁴ See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993), citing *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 F.C.C.2d 1081, 1082 (1972), and *Office of Communications of United Church of Christ v. F.C.C.*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted).

¹⁵ Objection, second unnumbered page.

¹⁶ Opposition at 3-5; Declaration of Ruth Seymour, paragraph 3.

¹⁷ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC2d 1250, 1251 (1978). See also *Mr. George Philip Reno*, Letter, 21 FCC Rcd 6957 (MB 2006) (Media Bureau renewed broadcast license

We likewise find no merit in DCRB's complaint regarding SMCCD's special operating condition allowing it to operate KCRI(FM) as a satellite of KCRW(FM). The Commission has traditionally recognized the benefits of centralized operations for noncommercial educational stations, given the limited funding available to such stations, and has granted waivers to operate "satellite" stations, such as KCRI(FM), that do not necessarily meet the requirements of a main studio.¹⁸ While such stations must still serve local needs, for the reasons discussed above we find that KCRI(FM) has done so. Moreover, SMCCD has stated, again under penalty of perjury, that the circumstances upon which the Commission relied in granting the KCRI(FM) main studio waiver still exist,¹⁹ and DCRB has not contradicted this testimony. There is thus no reason to revisit the Commission's earlier determination to allow SMCCD to operate KCRI(FM) as a satellite of KCRW(FM). We therefore cannot conclude from this record that SMCCD has violated the Act or the Rules, or has failed to serve the needs of its community or the public interest generally, and thus do not find that DCRB's allegations raise a substantial and material question of fact that grant of the Application would be *prima facie* inconsistent with the Act.

Conclusion. As discussed above, we find no evidence of rule violations by SMCCD that would warrant conditioning or denying its Application to renew the license for Station KCRI(FM). Further, we find that Station KCRI(FM) served the public interest, convenience, and necessity during the subject license term. Accordingly, the Objection filed by Desert Coalition for Responsible Broadcasting IS DENIED. IT IS ORDERED that, pursuant to Section 309(k) of the Communications Act of 1934, as amended, the license renewal application of Santa Monica Community College District, for Station KCRI(FM), Indio, California (File No. BRED-20050729DRJ) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Lewis J. Paper, Esq., Counsel for Santa Monica Community College District

notwithstanding "difference of opinion" between informal objector and licensee over whether licensee should have provided news coverage of the events of September 11, 2001).

¹⁸ See *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5027 (1988); *Board of Visitors of James Madison University*, Hearing Designation Order, 8 FCC Rcd 1751, 1752 (MMB 1993).

¹⁹ See *supra* note 8.