



Federal Communications Commission  
Washington, D.C. 20554

July 13, 2007

**DA 07-3222**

In Reply Refer to:

1800B3-KV

Released: July 13, 2007

Mr. Stephen Diliberto  
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Kevin M. Walsh, Esquire  
Irwin, Campbell & Tannenwald, P.C.  
1730 Rhode Island Avenue, NW  
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In re: KRPS(FM), Pittsburg, Kansas  
Pittsburg State University  
Facility ID No. 52740  
File No. BRED-20050201AZE

Application for Renewal of License

**Informal Objection**

Dear Messrs. Diliberto and Walsh:

This letter refers to the above-noted application filed on February 1, 2005, by Pittsburg State University (the "Licensee"), for renewal of license for noncommercial educational ("NCE") Station KRPS(FM), Pittsburg, Kansas (the "Application"). On March 10, 2005, Mr. Stephen Diliberto ("Diliberto") filed an Informal Objection<sup>1</sup> to the Application. On June 6, 2005, the Licensee filed a response. For the reasons set forth below, we deny the Informal Objection and grant the Application.

**Background.** Station KRPS(FM) is an affiliate of National Public Radio ("NPR"). Diliberto, a listener of Station KRPS(FM), raises an assortment of objections to the NPR programming aired on KRPS(FM). The bulk of these objections concern NPR's alleged hiring decisions and the perceived content of its programs. Diliberto argues that NPR "as it now operates is clearly under the domination of one cultural/political faction reflected in its personnel, editorial viewpoint, and programming . . . ."<sup>2</sup>

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<sup>1</sup> We are treating the untitled filing by Diliberto as an Informal Objection under Section 73.3587 of the Commission's Rules (the "Rules"), 47 C.F.R. § 73.3587, because it fails to comply with the procedural requirements for filing a Petition to Deny, *e.g.*, it was not served on KRPS(FM) or its counsel, and it is not supported by affidavit. *See* 37 U.S.C. § 309(d), 47 C.F.R. § 73.3584.

<sup>2</sup> Informal Objection at 2.

Specifically, Diliberto alleges that “NPR is staffed by Zionists, Jews, homosexuals, purveyors of popular culture . . . promoting their personal ends.”<sup>3</sup> Dilberto claims that other groups and viewpoints are either excluded or depicted as embracing “the NPR’s staff goals.”<sup>4</sup> According to Diliberto, “the most serious fault of NPR is its divisiveness regarding foreign policy.”<sup>5</sup> He also contends that NPR is “propaganda organ” for the war in the Middle East.<sup>6</sup> Additionally, Diliberto lists a series of what he considers “rather petty complaints about NPR compared to it being a Zionist organ but so serious that were there proper oversight they’d be not allowed.”<sup>7</sup> Finally, Diliberto argues that Station KRPS(FM)’s broadcasts of Christmas music violates the separation of Church and State.<sup>8</sup>

**Discussion.** Informal objections 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,<sup>9</sup> which governs our evaluation of an application for license renewal. Specifically, Section 309(k)(1) provides that 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, we are to grant the renewal application.<sup>10</sup> 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.”<sup>11</sup>

Several of Diliberto’s arguments are either speculative and unsupported or concern matters relating to practices occurring at NPR, which is not a Commission licensee and over which the Commission has no jurisdiction. Diliberto’s programming objections concern matters over which the Commission has only limited review authority. The First Amendment of the Constitution and Section

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3.

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

<sup>6</sup> *Id.* at 13.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 17-18.

<sup>9</sup> See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *affirmed 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).

<sup>10</sup> 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).

<sup>11</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

326 of the Act prohibit the Commission from exercising any power of censorship over broadcast station programming.<sup>12</sup> Licensees are entitled to broad discretion in the scheduling, selection and presentation of news programming.<sup>13</sup> This is particularly so with regard to the programming decisions of NCE broadcast stations. The Commission historically “has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming.”<sup>14</sup> Finally, Diliberto’s allegation that Station KRPS(FM)’s broadcasts of Christmas music violate the constitutional requirement regarding the separation of church and state is without legal basis. The Supreme Court<sup>15</sup> guidelines are satisfied here, and no constitutional bar exists which would prohibit the Licensee from broadcasting Christmas music.<sup>16</sup> Accordingly, we will deny the Informal Objection.

**Conclusion/Actions.** We have evaluated the Application pursuant to Section 309(k) of the Act,<sup>17</sup> and we find that Station KRPS(FM) 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 Act, and Sections 0.61 and 0.283 of the Rules,<sup>18</sup> the Informal Objection filed on March 10, 2005, by Stephen Diliberto IS DENIED, and the application (File No. BRED-20050201AZE) of Pittsburg State University for renewal of license for noncommercial educational Station KRPS(FM), Pittsburg, Kansas, IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Pittsburg State University

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<sup>12</sup> U.S. Const., Amend I; 47 U.S.C. § 326.

<sup>13</sup> See, e.g., *National Broadcasting Company v. FCC*, 516 F.2d 1101, 1112-1113, 1119-1120, 1172 (D.C. Cir. 1974), cert denied sub nom. *Accuracy in Media Inc. v. National Broadcasting Company*, 424 U.S. 910 (1976); see also *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 124 (1973); *Hunger in America*, Memorandum Opinion and Order, 20 FCC 2d 143, 150-151 (1969).

<sup>14</sup> *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 FCC 2d 716, 732 (1981). See also *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) (licensees have broad discretion over programming decisions).

<sup>15</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 91 Sup. Ct. 2105 (1971) (*i.e.*, whether the State activity has a secular purpose, whether its primary effect will not advance or inhibit religion, and whether it will not foster excessive government entanglement with religion).

<sup>16</sup> See, e.g., *Corvallis TV Cable Co., Assignor*, Memorandum Opinion and Order, 59 FCC 2d 1282 (1976).

<sup>17</sup> 47 U.S.C § 309(k).

<sup>18</sup> 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.