



Federal Communications Commission  
Washington, D.C. 20554

July 13, 2007

**DA 07-3223**

*In Reply Refer to:*

1800B3-KV

Released: July 13, 2007

Mr. Michael Scott Clem  
1188 Pershing Road  
West Frankfort, IL 62896-4807

Donald E. Martin, P.C.  
P.O. Box 8433  
Falls Church, VA 22041

In re: WDQN-FM, Du Quoin, Illinois  
Three Angels Broadcasting Network,  
Inc.  
Facility ID No. 17749  
File No. BRH-20040716AAI

Application for Renewal of License

**Informal Objection**

Dear Messrs. Clem and Martin:

This letter refers to the above-noted application filed on July 16, 2004, and amended on July 22, 2004, by Three Angels Broadcasting Network, Inc. (the "Licensee"), for renewal of license for Station WDQN-FM, Du Quoin, Illinois (the "Application"). On November 2, 2004, Michael Scott Clem ("Clem") filed an Informal Objection<sup>1</sup> to the Application which the Licensee responded to on December 23, 2004. For the reasons set forth below, we deny the Informal Objection and grant the Application.

**Discussion.** Informal objections must, pursuant to Section 309(e) of 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>2</sup> which governs

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<sup>1</sup> We are treating the Clem's "Petition Deny Renewal of Broadcast License" 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 WDQN-FM or its representative, and it is not supported by affidavit. *See* 47 U.S.C. § 309(d) and 47 C.F.R. § 73.3584.

<sup>2</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 RR2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

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.<sup>3</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>4</sup>

Clem, a resident of West Frankfort, Illinois, objects to grant of the Application based on the Licensee’s alleged misrepresentation in an assignment application filed and granted in 2003.<sup>5</sup> Specifically, Clem alleges that the Licensee, in the 2003 Assignment Application, falsely certified that it was a for-profit corporation when in fact the Licensee was a non-profit corporation. In response, the Licensee asserts that Clem’s allegations relating to the previously granted 2003 Assignment Application are “grossly untimely,” irrelevant (because they do not concern the subject renewal application), and involve a “harmless clerical error” in the assignment application.<sup>6</sup>

After reviewing the record before us, we find that Clem has failed to raise a substantial and material question of fact calling for further inquiry. In particular, Clem has not shown why his objection could not have been filed against the 2003 Assignment Application, the grant of which has long become a final action. Additionally, it is clear that the Licensee’s checking the wrong box regarding its corporate status in the 2003 Assignment Application was an error rather than an intentional misrepresentation.<sup>7</sup>

**Conclusion/Actions.** We have evaluated the Application pursuant to Section 309(k) of the Act,<sup>8</sup> and we find that Station WDQN-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.

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<sup>3</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>4</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>5</sup> BALH-20030415AAG. (“2003 Assignment Application”). Commission staff, on May 23, 2003, granted the 2003 Assignment Application assigning the Station to the Licensee; on July 16, 2003, the parties consummated the assignment. There have been no appeals of the application grant.

<sup>6</sup> Opposition at 2-4. The Licensee acknowledges that it checked the wrong box regarding its corporate status, but notes that the Asset Purchase Agreement attached to the 2003 Assignment Application clearly and correctly identified its status as a non-profit corporation. Therefore, it contends, this obvious internal contradiction “cannot logically lead to a finding that there was an intent to deceive. *Id.* at 4.

<sup>7</sup> *See KM Radio of St. Johns, L.L.C.*, Memorandum Opinion and Order, 19 FCC Rcd 5847, 5850 (2004) (misrepresentation not inferred from error).

<sup>8</sup> 47 U.S.C § 309(k).

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>9</sup> the Informal Objection filed on November 2, 2004, by Michael Scott Clem IS DENIED, and the application (File No. BRH-200407AAI) of Three Angels Broadcasting Network, Inc. for renewal of license for Station WDQN-FM, Du Quoin, Illinois, IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Three Angels Broadcasting Network, Inc

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<sup>9</sup> 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.