



Federal Communications Commission
Washington, D.C. 20554

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DA 07-3931

In Reply Refer to:

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Mr. John Ravetti
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In re: KOA(AM), Denver, Colorado
Jacor Broadcasting of Colorado, Inc.
Facility ID No. 29738
File No. BR-20041130BNQ

Application for Renewal of License

Informal Objection

Dear Mr. Ravetti and Counsel:

This letter refers to the referenced application (the "Application") filed by Jacor Broadcasting of Colorado, Inc. (the "Licensee"), for renewal of license for station KOA(AM), Denver, Colorado (the "Station"). On February 28, 2005, John Ravetti ("Ravetti") filed an informal objection ("Objection") to the Application.¹ For the reasons set forth below, we deny the Objection and grant the Application.

Background. In his Objection, Ravetti alleges that the Licensee "shirked" its responsibility as an Emergency Alert System ("EAS") station on several occasions, especially during the 2002 Hayman Fire (the "Hayman Fire"), by failing to adequately issue emergency alerts. Ravetti argues that the Station did not adequately interrupt its regularly scheduled programming to report on the Hayman Fire.² Ravetti further argues that "[o]n other occasions, KOA hosts ignored EAS alerts which cut into their shows by not reading any issued weather warnings."³ In its Opposition, the Licensee argues that the Objection misconstrues the Station's EAS obligations and fails to demonstrate that the station violated the Communications Act of 1934, as amended (the "Act"), the Commission's Rules (the "Rules"), or

¹ The Licensee filed an Opposition on August 20, 2007.

² Objection at 1; *see also* Attachments.

³ Objection at 1.

policies.⁴ The Licensee states that its responsibilities to relay EAS information are triggered when national, state, or local authorities activate the system by issuing an emergency message, and the station did not receive any messages from any governmental authorities the day of the Hayman Fire, nor did it receive any fire-related emergency messages on any other day during the month of June 2002.⁵ Furthermore, the Licensee notes that the Station serves voluntarily as the “Primary Entry Point” station⁶ for national, state and local EAS messages, and therefore, it immediately relays any emergency messages it receives to the public.⁷

Discussion. Section 309(k)(1) of the Act 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.⁸ 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.”⁹ Informal Objections must, pursuant to Section 309(e) of the Act, provide properly supported allegations of fact that, if true, would raise a substantial and material question of fact as to whether grant of the application would be *prima facie* inconsistent with Section 309(k).¹⁰

EAS operations must be conducted as specified in State and Local Area EAS Plans.¹¹ The Station did not receive an emergency announcement triggering the activation of EAS procedures from state or local authorities on the day of the Hayman Fire.¹² Thus, the Station was not in violation of the Rules for not activating EAS for the Hayman Fire. With respect to his allegation that the Station ignored EAS

⁴ Opposition at 2.

⁵ Opposition at 2; *see also* Opposition at Exhibits 1, 2, and 3.

⁶ *See* 47 C.F.R. § 11.14.

⁷ Opposition at n.3. The Licensee states that the weekly tests recorded in the Station’s EAS log reveal that the Station’s EAS equipment functioned properly during the month of June 2002. *Id.* at 3.

⁸ 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).

⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁰ *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 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).

¹¹ *See* 47 C.F.R. § 11.55(a). *See also Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, Report and Order, 20 FCC Rcd 2968, 2969 (2005) (participation in state and local area EAS activations is voluntary when a State or Local Area EAS Plan is not in effect).

¹² *See* Opposition at Exhibits 1, 2, and 3.

alerts on unspecified “other occasions,” Ravetti provides no specific support for these generalized allegations. Accordingly, they will receive no further consideration.¹³

Moreover, regarding Ravetti’s contention that the station has demonstrated a lack of concern for the public interest by “shirking its responsibility” during weather-related and other emergencies, Section 326 of the Act and the First Amendment to the Constitution prohibit any Commission actions that would improperly interfere with the programming decisions of licensees.¹⁴ As a result, the Commission has very little authority to regulate a licensee's selection and presentation of news and editorial programming.¹⁵ The Commission has long held that “[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter to the licensee's good faith discretion,” and that “the Commission will not review the licensee's news judgments.”¹⁶ We find that the Objector has not provided evidence that the Licensee has exercised its editorial discretion in bad faith.¹⁷ Accordingly, we find that on this issue Ravetti has failed to show any violation by the Station of the Act, the Rules, or Commission policies.

Finally, with respect to Ravetti’s allegation that the Station has not responded to his phone calls or letters voicing “concerns about the station’s programming,”¹⁸ the Commission has essentially no role in overseeing a broadcast licensee’s “response time” to public inquiries and complaints. The Rules only require that the licensee’s main studio house a public inspection file, the contents of which must include “all written comments and suggestions received from the public regarding operation of a station”¹⁹ Written comments also include “electronic mail messages transmitted via the internet to station management or an e-mail address publicized by the station.”²⁰ The Rules do not require the public inspection file to retain records of complaints received over the phone. Furthermore, the Rules do not require licensees to take affirmative steps to respond to each communication from the public or to respond within a fixed time period. The Rules only require that “[l]etters [such as those of the Objector] and

¹³ See *Area Christian Television, Inc.*, *supra*.

¹⁴ See 47 U.S.C. § 326; U.S. Const., amend. I.

¹⁵ See, e.g., *National Broadcasting Company v. FCC*, 515 F.2d 1101, 1112-1113, 1119-1120, 1172 (1974), *vacated as moot, id.* at 1180, *cert. denied*, 424 U.S. 910 (1976); *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 124 (1973); *Hunger in America*, Memorandum Opinion, 20 FCC 2d 143, 150-51 (1969).

¹⁶ *American Broadcasting Companies, Inc.*, Memorandum Opinion and Order, 83 FCC 2d 302, 305 (1980); *see also Dr. Paul Klite*, Letter, 12 Com. Reg. (P&F) 79, 81-82 (MMB 1998), *recon. denied sub nom.*, *McGraw-Hill Broadcasting Co.*, Memorandum Opinion and Order, 16 FCC Rcd 22739 (2001).

¹⁷ See *In re License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400 (1993) (though licensees may not have addressed every problem petitioners view as important, petitioners claims were insufficient to show that licensee’s programming decisions ignored the needs of any substantial segment of the community); *see also Letter to John V. Oldfield from Peter H. Doyle, Chief, Audio Division, Media Bureau*, 21 FCC Rcd 7988 (MB 2006).

¹⁸ Objection at ¶ 4.

¹⁹ 47 C.F.R. § 73.3526(e)(9)(i).

²⁰ 47 C.F.R. § 73.2526(e)(9)(ii).

electronic messages . . . be retained.”²¹ Licensees may, of course, take listener comments and complaints about station operations into account, but there is no requirement that they do so.²²

Conclusion/Actions. We have evaluated the Application pursuant to Section 309(k) of the Communication’s Act of 1934, as amended,²³ we find that Station KOA(AM) has served the public interest, convenience, and necessity during the subject license term; there have been no serious violations of the Communications Act or the Commission’s rules; and there have been no other violations which, taken together, constitute a pattern of abuse.

Accordingly, IT IS ORDERED, that the Informal Objection filed on February 28, 2005, by John Ravetti IS DENIED. Additionally, because we find, pursuant to Section 309(k) of the Act, that Station KOA(AM) served the public interest, convenience, and necessity during its 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, IT IS FURTHER ORDERED, that the application (File No. BR-20041130BNQ) of Jacor Broadcasting of Colorado, Inc., to renew the license for Station KOA(AM), Denver, Colorado, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Jacor Broadcasting of Colorado, Inc.

²¹ See 47 C.F.R. § 73.3526(e)(9)(i) (letters and e-mail messages must be retained for a period of three years from the date on which they are received by the licensee).

²² See, e.g., *Agape Broadcasting Foundation, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 9262 (MMB 1998) (forfeiture for indecent programming reduced in part because of licensee’s “prompt response” to listener complaint). The Commission may, however, consider a licensee’s failure to respond to numerous listener complaints in connection with an investigation into a licensee’s apparent lack of control and supervision over its broadcast facility or other licensee misconduct. See, e.g., *The Trustees of the University of Pennsylvania*, Decision, 69 FCC 2d 1394 (1978).

²³ 47 U.S.C. § 309(k)(1).