



Federal Communications Commission
Washington, D.C. 20554

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DA 07-4343

In Reply Refer To:

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Mr. John V. Oldfield
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In re: WSYR(AM), Syracuse, New York
CC Licenses, LLC
Facility ID: 48720
File No. BR-20060201AWA

Application for Renewal Of License

Petition to Deny

Dear Mr. Oldfield and Counsel:

We have before us (1) a license renewal application for Station WSYR(AM), Syracuse, New York, filed by CC Licenses, LLC (the "Licensee"),¹ an indirect, wholly-owned subsidiary of Clear Channel Communications, Inc. ("Clear Channel"); and (2) a Petition to Deny ("Petition") that application filed on May 1, 2006, by John V. Oldfield and Howie Hawkins (collectively, "Petitioners").² For the reasons set forth below, we deny the Petition and grant the license renewal application for Station WSYR(AM).

Background. Petitioners make a number of allegations about Clear Channel's operation of WSYR(AM), concluding that it would not be in the public interest "to re-license the station absent a major change in policy and guarantees that in the renewed license period up to 2014, it will broadcast in the public interest."³

Discussion. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (the "Act").⁴ That section

¹ The license renewal application was timely filed on February 1, 2006.

² CC Licenses, LLC, filed an Opposition to the Petition to Deny on May 31, 2006.

³ Petition at 7.

⁴ 47 U.S.C. § 309(k).

provides that if, upon consideration of the application and pleadings, we find, with respect to that station, that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's Rules (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.⁵

Petitioners argue that Clear Channel failed to maintain the political file section of the WSYR(AM) public inspection file⁶ by "paying inadequate attention to administrative procedures and record keeping."⁷ Specifically, Petitioners claim that WSYR(AM) violated Section 73.1943(a) of the Rules⁸ by failing to place in its local public inspection file sufficient documentation concerning 30-second spots placed during the weekend of November 5-6, 2005, by Citizens for Integrity in Politics ("Citizens") during the Syracuse mayoral election.⁹ Petitioners state that Mr. Oldfield visited the Clear Channel offices on November 14, 2005, to inspect the WSYR(AM) public inspection file and found the records regarding the Citizens for Integrity in Politics' spots were incomplete.¹⁰ In opposition, the Licensee argues that Citizens is a political action committee that is not authorized by any political candidate to expend funds on any candidate's behalf.¹¹ Accordingly, as an "issue" advertiser and not an entity requesting station time on behalf of a legally qualified candidate for public office, Citizens falls under the sponsorship identification provisions of Section 73.1212(e) of the Rules rather than the candidate

⁵ 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).

⁶ Commercial broadcast stations are required to maintain a public inspection file under 47 C.F.R. § 73.3526.

⁷ Petition at 2.

⁸ 47 C.F.R. § 73.1943(a), which requires broadcast stations to keep a file containing records of all requests for broadcast time made by or on behalf of legally qualified candidates for public office and indicate how the station responded to such requests and (if the request was granted), the charges made, a schedule of time purchased, the times the spot(s) actually aired, the rates charged, and the classes of time purchased.

⁹ The text of the spots is as follows:

Let's get the facts straight. Mayor Driscoll's negative ads accuse [Syracuse mayoral election challenger Joanie] Mahoney of getting campaign contributions from [real estate developer Destiny USA, run by Mr. Robert Congel]. But Driscoll did too: \$30,000, including \$3,000 from Congel himself. Driscoll says Congel was investigated. But what he didn't say is that Congel was completely cleared 20 years ago. And the Poughkeepsie Mall he built created over 2,000 jobs and \$3 billion for the economy. So what do we need, Syracuse? Jobs or more of Driscoll's negative ads. Paid for by Citizens for Integrity in Politics.

¹⁰ Petitioners note that "many entries [in the record] had been left blank." *See* Petition at 3.

¹¹ *See* http://www.elections.state.ny.us/plsql_browser/getfiler2?filerid_in=A19118. The entity was "terminated" as a registrant in August of 2006. *Id.*

advertising requirements of Section 73.1943(a).¹² The Licensee claims that it met its local public inspection file requirements with respect to the Citizens for Integrity in Politics' spots.¹³

We find that the Licensee is correct in its characterization of Citizens as an "issue" advertiser, and thus its reliance on Section 73.1212(e) of the Rules is correct. The text of the message, provided by Petitioners from the materials obtained from the WSYR(AM) public inspection file, reveals no endorsement or approval by any political candidate,¹⁴ and the record demonstrates that Clear Channel station personnel made diligent efforts, as required by Section 73.1212(e), to investigate the nature of "Citizens for Integrity in Politics" after receiving its request for time on WSYR(AM). Clear Channel station personnel also properly documented the entity, the request, and its disposition.¹⁵ We also find that the information on Citizens provided by the Licensee in the political file section of its local public inspection file meets Section 73.1212(e) requirements.¹⁶ In addition, although not raised by Petitioner, the Licensee notes in its Opposition its view that the subject Citizens advertisement does not address a "political matter of national importance." As such, it asserts that the station was not obligated to place the information required in Section 315(e)(1)(B) of the Act in its political file.¹⁷ We agree with the reasonableness of the Licensee's determination that the text of these advertisements does not appear to address an issue of national importance. No further action is warranted on this allegation.

Petitioners also argue that Oldfield visited "Clear Channel Communications" on April 6, 2006, to inspect the political file contents regarding Citizens and found that the "Political File . . . was empty,"¹⁸ notwithstanding that Section 73.1943(c) of the Rules requires that all public file records be retained for two years.¹⁹ Petitioners state that a second visit by two other individuals on April 24, 2006, revealed only a copy of the check for and text of the Citizens for Integrity in Politics' spots.²⁰ In opposition, the Licensee contends that on neither occasion did the requestors alert WSYR(AM) employees to any problems with the political file. Further, the Licensee states that when it first learned of the alleged

¹² See 47 C.F.R. § 73.1212(e). As Licensee recognizes, the spots involved a "controversial issue of public importance." See Opposition at 4. Accordingly, Licensee made available in its public file, pursuant to Section 73.1212(e) of the Rules, a list of the members of the entity sponsoring the spots.

¹³ See Opposition at 3-4

¹⁴ The text of the spots indicates that it was "Paid for by Citizens for Integrity in Politics." Petition, Appendix B pp. 1, 12.

¹⁵ See Opposition at 4 and Declaration of Joel Delmonico, at ¶¶ 2-4.

¹⁶ See, e.g., Petition at Appendix B.

¹⁷ See 47 U.S.C. § 315(e)(1)(B).

¹⁸ See Petition at 5. Petitioners state that on that date they inspected the public files of all Clear Channel stations in the Syracuse market. They indicate that "files for other stations contained folders for candidates in local elections, but not the Syracuse Mayoral Race." *Id.* at 4-5.

¹⁹ 47 C.F.R. § 73.1940(c).

²⁰ See Petition at Appendix D (Declarations of Orville T. Bakeman and Giancarlo Moneti). Messrs. Bakeman and Moneti indicate that portions of the file were "out of chronological order, including a Political Advertising sub-file for Matthew J. Driscoll, one of the other candidates." *Id.*

deficiencies to its political file in the Petition, it “reviewed the public inspection file and found the political file . . . to be present in the file and fully intact.”²¹

Petitions to deny and informal objections to broadcast applications must contain adequate and specific factual allegations sufficient to warrant the relief requested.²² Petitioners’ allegations regarding the “emptiness” of the purported WSYR(AM) political file do not meet this standard. Petitioners allege nothing more than that the station’s political file apparently contained no materials, although they acknowledge that material relating to candidate Matthew Driscoll was present elsewhere in the file; they do not identify material that was (or even may have been) missing from the file. On the basis of Petitioners’ bare allegations here, we cannot find that the Licensee violated Section 73.1943 with respect to the WSYR(AM) political file.

Petitioners’ additional claim that the Licensee was untruthful or inaccurate in its application for renewal is unsubstantiated and will be denied. Petitioners state that the Licensee answered “yes” to Section III, Question 3 of its renewal application, which “certifies that the documentation, required by 47 C.F.R. Section 73.3526 or 73.3527, as applicable, has been placed in the station’s public inspection file at the appropriate times.”²³ Because we cannot find on the basis of the information presented by Petitioners that the WSYR(AM) public inspection file was incomplete or that required documentation was not placed in the file at appropriate times, we reject Petitioners’ allegations that the Licensee was untruthful or inaccurate in its renewal application.²⁴

Petitioners also allege that during a regional electrical power blackout on August 14, 2003, which affected the Syracuse area, WSYR(AM) “failed to serve the public interest, necessity and convenience” and the needs of Syracuse listeners by not setting up adequate emergency preparedness arrangements.²⁵ As evidence, Petitioners submit a news article and several negative letters to the editor of the local newspaper regarding the Station’s programming during the electrical power blackout. Petitioners state that one letter alleged that Clear Channel has a “policy of paring down and consolidating news gathering and presentation staff.”²⁶ In opposition, the Licensee argues that it is well settled precedent that the Commission may not interfere with a broadcaster’s individual programming decisions,²⁷ and it observes that even the newspaper articles and commentary submitted by Petitioners are not uniform in its criticism of Clear Channel’s performance during the blackout.²⁸

²¹ See Opposition at 5.

²² *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862 (1986).

²³ See FCC Form 303-S, Application for Renewal of Broadcast Station License.

²⁴ See n.16, *supra*.

²⁵ See Petition at 6.

²⁶ See *id.*; see also Petition at Appendix F.

²⁷ See Opposition at 7.

²⁸ Licensee references the Petition’s Exhibit F at 5 (a Letter to the Editor of the Syracuse *Post-Standard* criticizing the “politically motivated harangue against Clear Channel” in connection with blackout coverage) and 7-8 (an October 8, 2003, *Post-Standard* article, “Staff Cuts, Recent Ratings Drop put Focus on WSYR,” quoting Peter

Initially, and significantly with respect to Petitioners' allegations involving news programming, it appears that Petitioners do not argue that WSYR(AM) failed to cover at all the August 14, 2003, blackout; rather, Petitioners appear to take issue with the nature of the coverage, utilizing the Station's local news director and then switching to a CNN feed with a national, and not local, focus. Clear Channel states that it based its decision to air national programming as part of its coverage of the blackout because "the blackout caused more than 40 million people in eight states to lose power. Thus, . . . the station felt that national coverage was entirely appropriate."²⁹ 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.³⁰ Because of this statutory prohibition, and because journalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment's Free Press guarantee, the Commission has limited authority to interfere with a licensee's selection and presentation of news and editorial programming.³¹ 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."³² Nor will we review the manner in which licensees choose to air their coverage of newsworthy events. We find that Petitioners have not provided evidence that the Licensee has exercised its editorial discretion in bad faith.³³

Finally, Petitioners provide a copy of a newspaper article published in the *Post-Standard* on March 14, 2006, which indicates that local television and radio broadcasters, including Clear Channel, created an "editorial commercial" urging that a certain land development project be built.³⁴ Petitioners claim that this article provides evidence that the Station "may have a serious conflict of interest in covering local and regional news"³⁵ and that the Station has otherwise offered unbalanced news coverage. As with news programming, the role of the Federal Communications Commission in overseeing

Alberti, Onondaga County emergency management director, to the effect that "WSYR has always cooperated fully in getting out official messages during emergencies, including the August 14 blackout.")

²⁹ Opposition at 8.

³⁰ See 47 U.S.C. §326; U.S. Const., amend. I.

³¹ 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*, 20 FCC 2d 143, 150-51 (1969).

³² *American Broadcasting Companies, Inc.*, 83 FCC 2d 302, 305 (1980); see also *Dr. Paul Klite*, 12 Com. Reg. (P&F) 79, 81-82 (MMB 1998), *recon. denied sub nom.*, *McGraw-Hill Broadcasting Co.*, 16 FCC Rcd 22739 (2001).

³³ 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 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).

³⁴ See *id.* at 6 and Appendix G. Petitioners allege that Clear Channel has an existing partnership with developer Robert Congel to promote Destiny USA, a multi-billion-dollar shopping mall and entertainment complex to be constructed north of Syracuse in Salina, New York.

³⁵ See *id.* at 7.

“editorial” content is also limited. As noted above, the First Amendment and Section 326 of the Act prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights.

Conclusion/Actions. We find that the Petition contains neither adequate nor specific factual allegations sufficient to warrant further inquiry regarding renewal of WSYR(AM)’s license.³⁶ Furthermore, we have evaluated the WSYR(AM) license renewal application pursuant to Section 309(k) of the Act,³⁷ 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.

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,³⁸ the May 1, 2006, Petition to Deny filed by John V. Oldfield and Howie Hawkins IS DENIED, and the application (File No. BR-20060201AWA) of CC Licenses, LLC, to renew the license of Station WSYR(AM), Syracuse, New York, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: CC Licenses, LLC
Mr. Howie Hawkins

³⁶ 47 C.F.R. § 73.3584.

³⁷ 47 U.S.C § 309(k).

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