



**Federal Communications Commission
Washington, D.C. 20554**

December 13, 2007

DA 07-4925

In Reply Refer to:

1800B3-RDH

Released: December 14, 2007

Mr. Mark N. Lipp, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

In re: Multicultural Radio Broadcasting Licensee, LLC
Station KAZN(AM), Pasadena, California
Facility ID No. 51426
File No. BR-20050801CWN

Multicultural Radio Broadcasting Licensee, LLC
Station KAHZ(AM), Pomona, California
Facility ID No. 61814
File No. BR-20050801CVN

Polyethnic Broadcasting Licensee, LLC¹
Station KMRB(AM), San Gabriel, California
Facility ID No. 52913
File No. BR-20050801DCK

**Informal Objections
to Applications for License Renewal**

Dear Mr. Lipp:

This letter concerns the above-noted applications (collectively, the "Applications") filed by Multicultural Radio Broadcasting Licensee, LLC to renew its licenses for Stations KAZN(AM), Pasadena, California and KAHZ(AM), Pomona, California, and by Polyethnic Broadcasting Licensee, LLC to renew its license for Station KMRB(AM), San Gabriel, California (collectively, the "Stations"). Also before us are three separate Informal Objections filed on October 31, 2005, by Liu-Chun Lin

¹ Polyethnic Broadcasting Licensee, LLC, was the Licensee of Station KMRB(AM) at the time of the filing of the instant application for renewal of station license. On November 27, 2006, an Application for Consent to Assign Broadcast Station Construction Permit or License (BAL-20061114ADK) was granted by the Commission. Pursuant to this application, the License for Station KMRB(AM) was voluntarily assigned from Polyethnic Broadcasting Licensee, LLC, to Multicultural Radio Broadcasting Licensee, LLC. Both entities are controlled by the same individual and the assignment was sought as part of the merger of these two entities. Polyethnic Broadcasting Licensee, LLC, and Multicultural Radio Broadcasting Licensee, LLC, are referred to herein collectively and individually as "Licensee."

“Lin”), on December 12, 2005, by eight named individuals (“Joint Informal Objection”);² and on November 29, 2005 (the “First Lau Objection”), and May 11, 2005 (the “Second Lau Objection”), and July 24, 2007 (the “Third Lau Objection”) by Vincent Lau (“Lau”).³ Licensee responded to the Lin Informal Objection and the Joint Informal Objection.⁴ Lin challenges the license renewal of all three stations. The Joint Informal Objection and Lau challenge only that of KMRB(AM). For the reasons set forth below, we deny the Informal Objections and grant the Applications.

Discussion. *Renewal Standard.* Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Act”), both petitions to deny and informal objections must 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, which governs our evaluation of an application for license renewal.⁵ 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.⁶ 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.”⁷

The Lin Objection. Lin alleges that the Licensee, on June 25, 2004, held a gala named the “2004 Golden Oldies Charity Gala” without disclosing that the proceeds would be contributed to the Michael D. Antonovich Charitable Foundation (“Foundation”). Michael D. Antonovich is a Los Angeles County

² The eight named individuals are: Tam Chung Kwon, Lee Yau Kee, Leung Siu Wah, Wong Wai Chi, Ho Tak Chong, Christina Lew, Chau Pak Leung and Cheng Chi Ming (“Joint Informal Objectors”).

³ The first two Lau objections were dated October 17, 2005 and August 24, 2006. The latter appears to have been mailed to the Media Bureau’s Audio Division from Hong Kong. The First Lau Objection includes copies of complaint letters Mr. Lau sent to the station on April 27, 2005, May 11, 2005, May 27, 2005, July 15, 2005, August 25, 2005, and September 15, 2005. Each of these letters is written in Chinese.

On March 3, 2006, Mr. Lau submitted an “Update” to his informal objection, containing additional letters to the station – written in English but signed “Anonymous” – dated December 13, 2005 (informing the Licensee that the author had filed an objection to the KMRB(AM) license renewal applications) and a 20-page letter to the licensee, written in Chinese. Additionally, on February 4, 2007, Mr. Lau submitted copies of additional letters he claims to have sent to the station.

⁴ See Oppositions to Informal Objections, filed November 29, 2005, and February 24, 2006. See also Supplement to Opposition to Informal Objection, filed August 14, 2007

⁵ See 47 U.S.C. § 309(e). See also *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).

⁶ 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).

⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Supervisor. The Informal Objection alleges that Antonovich appeared at the gala, made a speech, and showed a film concerning the activities of the Foundation. Lin alleges that the real purpose of the gala was “to advance [Antonovich’s] political career but states that the proceeds were “donated to Michael D. Antonovich Charitable Foundation.” Lin also attached a printed promotion for the event that states, “For Michael D. Antonovich. [sic] Charitable Foundation.”

In its Opposition, Licensee asserts that a broadcast station may hold a fundraising event for a charity and that the Stations permissibly donated all proceeds to the Foundation. It claims that it clearly disclosed the purpose of the event.

The Lin Informal Objection fails to raise any issue of a violation of our rules or any provision of the Communications Act of 1934, as amended (the “Act”). It is permissible for radio stations to promote charitable fundraising events both on-the-air and off-the-air. The Foundation is registered as a nonprofit public benefit corporation incorporated in the State of California to be operated exclusively for charitable purposes.⁸ As long as the proceeds go to the recipients as advertised, no violation takes place if a broadcast station promotes such a fundraising event as was present here.⁹ Lin has not alleged that the proceeds of the instant fundraiser went to any party other than advertised¹⁰ but, instead, appears to be concerned that publicity and goodwill inured to the politician for whom the Foundation is named. That is not a matter over which the Commission has any authority. Additionally, although Lin states that the public was not informed that the proceeds of the gala would go to this charity, the publicity brochure supplied with the Informal Objection contradicts this claim by clearly stating that the 2004 “Golden Oldies Charity Gala” was “For Michael D. Antonovich. [sic] Charitable Foundation.” Accordingly, we will deny the Lin Informal Objection.

The Joint Informal Objection. The Joint Informal Objectors¹¹ allege that the Licensee failed to broadcast required pre- and post-filing license renewal announcements. They claim to have monitored KMRB(AM) and, while the announcements should have aired “several times a day” on the 1st and 16th of June, July, August, September, and October of 2005, they heard the announcements only twice.¹² They state that the two announcements they did hear were broadcast in English, not in Cantonese, which is the primary language in which Station KMRB(AM) broadcasts, in violation of Section 73.3580 of the

⁸ See Supplement to Opposition to Informal Objection, filed August 14, 2007.

⁹ The distribution of fundraiser proceeds other than as advertised could constitute a violation of 18 U.S.C. § 1343 (“Fraud by wire, radio, or television”). The Commission is expressly authorized to impose on licensees a monetary forfeiture or to revoke a station’s license for violations of this provision of the Criminal Code. See 47 U.S.C. §§ 312(a)(6) and 503(b)(1)(D).

¹⁰ Indeed, the Informal Objection states, “The whole amount [of the proceeds raised] was donated to Michael D. Antonovich Charitable Foundation.”

¹¹ Attached to the Joint Informal Objection are two letters addressed to the Licensee and incorporated into the Joint Informal Objection by reference.

¹² The Joint Informal Objectors indicate that they recorded the Station’s programming from 9:30 p.m. until midnight on October 1, 2005 and from 4:00 to 6:00 p.m. on October 16, 2005, and heard no post-filing announcements during those dates and times. *Joint Informal Objection* at unnumbered page 7.

Rules.¹³ They also contend that the Licensee broadcast what it characterizes as obscene commercials, chiefly for “health related food supplements.” Additionally, the Joint Informal Objectors complain that one of KMRB(AM)’s show hosts, Chien-Chien, enjoys special privileges at the station that include allowing her to air more commercials, to criticize celebrities and businesses, to make disparaging comments regarding consumer products, *etc.* They also contend that she is unresponsive to complaints about her program, is contemptuous of her audience, and may be engaging in payola. Joint Informal Objectors also claim the station is poorly run, promotes various brands of automobiles, disparages others in a libelous fashion, and presents material that “sound[s] strange, farfetched, and fictitious.”¹⁴

In its opposition, Licensee submits affidavits from its Executive Vice President and from the KMRB(AM) Station Manger averring that KMRB(AM) aired the required pre- and post-filing license renewal announcements with one exception in which it made the announcement an hour earlier than planned.¹⁵ It states that the text, dates and times of these announcements were placed in the Stations’ public inspection files and would have been available to Joint Informal Objectors.¹⁶ Additionally, it asserts that some of the announcements were broadcast in English and that this is allowed by the Commission’s rules which state only that stations broadcasting primarily in a foreign language “should” broadcast their announcements in the station’s primary broadcasting language.¹⁷ Licensee also denies that the advertisements for “health related food supplements” contained any obscene or indecent material or any other sexual material. Additionally, it contends that the Stations take precautions to assure the advertisements contain no fraudulent or misleading material. With regard to Joint Informal Objectors’ programming complaints, Licensee notes that much of the criticized programming (*e.g.*, weather information, reminders to listeners to drive safely, announcements about upcoming community events, *etc.*) is valuable and provides useful information to other listeners even though the Joint Informal Objectors may not find it entertaining or instructive. It rejects all allegations of violations of law, such as defamation, copyright infringement, payola, obtaining money by false pretenses and unauthorized use and publication of communications. Moreover, Licensee argues that, by Joint Informal Commentor’s own admission, these claims are speculative and unsupported by evidence.

Joint Informal Objectors have presented no affidavit or other materials in support of their contention that the Licensee failed to air its pre-filing and post-filing announcements as required by the Commission’s Rules. It has provided no details of its monitoring of the Stations, and fails to provide specific information regarding the allegedly missed announcements, or missing public inspection file

¹³ See 47 C.F.R. §§ 73.3580(d)(4)(i), (ii) (“Stations broadcasting primarily in a foreign language should broadcast the [pre- and post-filing] announcements in that language.”)

¹⁴ The Joint Objectors also ask that the Commission order the Licensee to discontinue two of the Station’s programs, remove Chien-Chien from the air and direct the Licensee to “eradicate the entire administration [of the station]” and “close KMRB AM-1430.” Joint Informal Objection at unnumbered pages 14, 16. The Commission is without authority to mandate such actions.

¹⁵ Opposition to Joint Informal Objection at 3; *see also* Affidavit of David Sweeney, Executive Vice President, West Coast, Polyethnic Broadcasting Licensee, LLC at ¶ 4; Affidavit of Hon Vu, Station Manager, KMRB(AM) at ¶ 5. The declarants indicate that on this occasion, the renewal announcement was aired at 2:59 p.m. rather than during the 4:00 to 6:00 p.m. time period, an oversight occurring due to a programming scheduling error.

¹⁶ Opposition to Informal Objection at 3.

¹⁷ *Id.*

documentation of the announcements. Its allegations are adequately rebutted by the Licensee's affidavits.¹⁸ Licensee has admitted, however, to having aired one such announcement at the incorrect time, and it acknowledges broadcasting two announcements in English, not in the Station's primary language, Cantonese, contrary to the exhortation in Section 73.3580(d)(4) that such announcements "should" be broadcast in the station's primary language. We find, on the basis of the evidence presented here, that the Licensee aired its pre- and post-filing announcements in substantial compliance with Section 73.3580, and we will impose no sanction for its insubstantial deviations from the requirements of the Rules.¹⁹ We encourage the Licensee to heed the hortatory language of Section 73.3580(d)(4) in the future.

Additionally, Joint Informal Objectors' claim that obscene commercials were broadcast does not warrant further review. They do not provide any evidence that obscenity, as defined by the courts, was present in the material against which the objection is lodged. To be legally obscene, speech must meet a three-part test: (1) an average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest; (2) the material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and (3) the material, taken as a whole, must lack serious literary, artistic, political, or scientific value.²⁰ We are unable to make a determination that the material about which the Joint Informal Objectors complains is actionably obscene because their claims do not allege any of the elements necessary to establish whether there is a case of obscenity. Rather, the Joint Objectors appear to be characterizing as "obscene" advertising claims about various health supplements that they believe are misleading or false.

Moreover, the Joint Informal Objectors' allegation that one air personality receives favorable treatment from station management would, even if true, not raise an issue over which the Commission has jurisdiction. Finally, Joint Informal Objectors' claims of defamation, payola, copyright infringement and fraud are unaccompanied by any supporting evidence or affidavits. Indeed, Joint Informal Objectors' simply complain that certain things that occur on the station, such as the airing of new musical works by certain artists from Hong Kong, "suggest" such violations. Joint Informal Objectors have not provided the level of specificity required to warrant further inquiry.²¹

The Lau Objections. In his Informal Objections, Mr. Lau contends that Station KMRB(AM) is broadcasting material on several of its programs that is insulting, detrimental and threatening to the complainant. The complainant believes, for instance, that the station broadcasts fictitious news stories

¹⁸ See, e.g., *Texas Educational Broadcasting Co-Operative, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 2007 WL 2033157 (MB 2007), at ¶ 17 (unsupported allegation adequately rebutted by licensee submission supported by affidavit from station employee with responsibility for that matter).

¹⁹ See, e.g., *Timothy Welch, Esq.*, Letter, 21 FCC Rcd 692 (MB 2006); *WHDH-AM, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 4329 (1991) (late airing of broadcast notices of assignment application "substantially complied" with Section 73.3580).

²⁰ See *Miller v. California*, 413 U.S. 15, 24 (1973), *reh.g. denied*, 414 U.S. 881 (1973). See also *Industry Guidance on the Commission's Case Law Interpreting 18 U.S.C. §1464 and Enforcement Policies Regarding Broadcast Indecency*, Policy Statement, 16 FCC Rcd 7999, 8017 n. 3 (2001).

²¹ See *Area Christian Television*, *supra*.

that people have been murdered or have died because the Station wants to kill him.²² Additionally, he alleges that the station broadcast news of a man with Alzheimer's Disease who was lost and being sought by the police because the complainant has Alzheimer's. The Informal Objections and related pleadings present numerous similar examples, including the broadcast of expletives, and are accompanied by tape recordings and transcripts, annotated to explain how the stations' use of Chinese idiomatic phrases "hint" that they want Mr. Lau to "leave or die," all in Chinese. Similarly, the transcripts "hint" at the use of vulgar language in reference to Mr. Lau.²³ In the Third Lau Objection, Mr. Lau also describes how he believes the station has invaded his privacy. Licensee did not respond to these filings.

The role of the Commission in overseeing program content is limited. The First Amendment to the United States Constitution and Section 326 of the Act prohibit the Commission from censoring program material or interfering with broadcasters' free speech rights.²⁴ The Commission does regulate broadcast content where federal statutes direct it to do so. For example, the Commission enforces the statutory prohibition on the broadcast of obscene, indecent and profane material contained in Section 1464 of the United States Criminal Code.²⁵ However, the Commission will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.²⁶ Licensees have broad discretion – based on their right to free speech -- to choose, in good faith, the programming that they believe serves the needs and interests of their communities.²⁷ This holds true even if the material broadcast is insulting to a particular minority or ethnic group in the station's community.²⁸ Indeed, as we have held in earlier decisions, "if there is to be free speech, it must be free for speech that we abhor and hate as well as for speech that we find tolerable and congenial."²⁹ We will intervene in programming matters only if a licensee abuses that discretion.³⁰

²² For example, he believes that the use of the phrase, "[a]ll the tables in the restaurant are cutting boards because all of them are made of wood," by an air personality actually means that this air personality will "chop[] me into pieces. She (the air personality) wants to help (another air personality) to murder me."

²³ For example, Mr. Lau indicates that KMRB(AM) announcer Kong Kaa Man "said repeatedly 'sun' and 'beach' and also play[ed] songs about 'sun' and 'beach' many times. 'Sun' and 'beach' are hinted words for 'son of a bitch.'" First Lau Objection at 3, transcript of KMRB(AM) broadcast on May 22, 2005. Additionally, Mr. Lau writes that KMRB(AM) announcer Inez "deliberately talked about a magazine. She said, 'The name of this magazine begins with 'F.'" I can tell "F" means "Fuck." That means Inez Fuck me."

²⁴ U.S. CONST., Amend. I.; 47 U.S.C §326.

²⁵ 18 U.S.C. § 1464.

²⁶ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

²⁷ See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) ("*Philadelphia Station License Renewals*"), citing *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1082 (1972), and *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted).

²⁸ *Zapis Communications Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 3888 (MB 1992).

²⁹ *Id.* (citing *Anti-Defamation League of B'nai B'rith*, Memorandum Opinion, 4 FCC 2d 190, 192 (1966), *aff'd*, Memorandum Opinion and Order, 6 FCC 2d 385 (1967), *aff'd sub nom. Anti-Defamation League of B'nai B'rith v. FCC*, 403 F. 2d 169 (1968), *cert. denied*, 394 U.S. 930 (1969)).

The Lau Informal Objections do not present evidence indicating that the Licensee has abused this discretion. Rather, it appears that the objections are based on the objector's interpretation of perfectly lawful material that was being broadcast by the station.

The only possible exception to this was the alleged occasional broadcast of isolated expletives. The Commission defines indecent speech as language or material that, in context, depicts or describes, in terms patently offensive as measure by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. In determining whether the complained-of material is patently offensive, three factors are particularly relevant: (1) the explicitness or graphic nature of the description or images; (2) whether the material dwells on or repeats at length descriptions or sexual or excretory organs or activities; and (3) whether the material appears to pander or is used to titillate or shock. The Commission applies these three factors as part of a balancing interest to determine if the material is indecent. Here, however, the allegation appears to be based upon Mr. Lau's interpretation of "hints" of vulgar or allegedly indecent language used by KMRB(AM) announcers on specified occasions, rather than on specific language actually broadcast. Under the Commission's established analysis discussed above, the language quoted in Mr. Lau's transcripts is neither indecent nor profane.³¹

Finally, with respect to the claim in the Third Lau Objection that the Stations has invaded his privacy by, among other things, circulating among the staff letters he wrote,³² such allegations are outside of the Commission's jurisdiction. Lau may pursue these issues in private defamation or invasion of privacy actions under state law, and not in Commission licensing proceedings.³³

³⁰ *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401 (abuse of discretion occurs if a licensee is unreasonable or discriminatory in its selection of issues that it believes are of concern to the local community or if it offers such nominal levels of issue-responsive programming as to have effectively defaulted on its obligation).

³¹ See, e.g., *In The Matter Of Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Notices of Apparent Liability and Memorandum Opinion and Order, 21 FCC Rcd 2664, 2713 (2006), *vacated in part*, 21 FCC Rcd 13299 (2006) (holding that a sexual double entendre made through an animated lion character's statement, "Big Daddy's ready for lovin' ... it may be nine o'clock in New York, but right here it's mountin' time," was not indecent). See also *Complaints by Parents Television Council Against Various Broadcast Licensees*, Memorandum Opinion and Order, 20 FCC Rcd 1931 (2005), and Memorandum Opinion and Order, 20 FCC Rcd 1920 (2005) (references or innuendo alluding to sexual organs or activities held not to be patently offensive where they were not sufficiently graphic or explicit and were not repeated or dwelled upon).

³² Lau also claims that the Stations "hired a hacker" to break into seven of his e-mail accounts and read through his e-mails and psychological profiles, and that the Stations "eavesdrop" on his telephone conversations. Third Lau Objection, at 3-5. He claims that the Stations' personnel "made fun of, laughed at, and criticized his personal affairs." *Id.* at 3.

³³ *Jacor Broadcasting of Tampa Bay, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1826 (MB 1992) (citing *Anti-Defamation League of B'nai B'rith*, Memorandum Opinion, 4 FCC 2d 190, 191 (1966)). See also *See Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) (subsequent history omitted) (generally narrowing the range of non-FCC related misconduct to be considered when assessing an applicant's character qualifications to matters upon which there has been an adjudication by a tribunal of competent jurisdiction of a felony or certain other types of misconduct by the licensee and/or parties with an attributable interest in the licensee). Several Objectors also assert that the Licensee has filed numerous frivolous lawsuits and made false claims against them to various government agencies. Because these allegations fail to implicate any violation of the Act or the Rules and have not otherwise been adjudicated by a court or administrative body, we will not consider them further. *Id.*

Conclusion/Actions. Because we find that there have been no serious violations of the Communications Act or the rules and regulations of the Commission involving stations KAZN(AM), KAHZ(AM) or KMRB(AM) , or violations by the licensee of the Act or rules and regulations of the Commission which, taken together, would constitute a pattern of abuse, and because we find that stations KAZN(AM), KAHZ(AM), and KMRB(AM) served the public interest, convenience, and necessity during the subject license term, we will grant the subject renewal applications.

Accordingly, for the reasons set forth above, the Informal Objections of Liu-Chun Lin, Vincent Lau, and Joint Informal Objectors ARE DENIED. Finally, because the subject applications are otherwise in full compliance with the Commission's Rules and the Communications Act, and finding that the public interest, convenience, and necessity would be served thereby, the applications for renewal (File Nos. BR-20050801CWN, BR-20050801CVN, and BR-20050801DCK) for stations KAZN(AM), Pasadena, California, KAHZ(AM), Pomona, California, and KMRB(AM), San Gabriel, California, respectively, ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau