



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

March 12, 2008

**DA 08-556**

*In Reply Refer to:*

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In re: WKCP(FM), Miami, FL  
Facility ID No. 68118  
Trinity International Foundation, Inc.  
File No. BALED-20070928ADQ

**Application for Assignment of License**

**Petition to Deny and Informal Objections**

Dear Counsel:

We have before us the above-captioned application (the "Application") seeking approval for the proposed assignment of license for noncommercial educational ("NCE") Station WKCP(FM) (formerly WMCU(FM)), Miami, Florida (the "Station"), from Trinity International Foundation, Inc. ("Trinity") to American Public Media Group ("APMG"). Also before us is a Petition to Deny, filed on November 2, 2007, by several Station listeners opposing the grant of the Application (collectively, the "Petitioners"),<sup>1</sup> as well as over one hundred informal objections filed by Station listeners (the "Objectors") between October 1, 2007, and February 15, 2008.<sup>2</sup>

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<sup>1</sup> See Petition to Deny, filed by Leslie Aquart *et al.*, on Nov. 2, 2007. Trinity filed an Opposition to Petition to Deny on November 15, 2007 (the "Opposition"). Petitioners filed a Consent Motion For Extension of Time to file a Reply on November 21, 2007, and filed a Reply on December 5, 2007 (the "Reply").

<sup>2</sup> Many of the objections are identical postcard-style pleadings styled as "Petitions to Deny." However, these and the remaining objections filed by the Objectors listed in Appendix A fail to meet the requirements of a petition to deny because they were either late-filed or failed to provide sworn statements supporting factual allegations. See 47

**Background.** Petitioners oppose grant of the Application, arguing that Trinity has engaged in a pattern of conduct that demonstrates that it lacks the basic character qualifications necessary to be permitted to assign a broadcast license to a third party.<sup>3</sup> To support this assertion, Petitioners allege that Trinity has: (1) failed to give adequate public notice of the filing of the Application; (2) repeatedly failed to report its complete ownership structure in accordance with the Rules; (3) failed to provide the Commission with all contracts and exhibits relating to the proposed assignment of the Station; (4) failed to abide by the station identification Rule; and (5) engaged in the fraudulent on-air solicitation of listener donations.<sup>4</sup> The other informal objections largely reiterate the claims raised by the Petitioners.<sup>5</sup> A number of Objectors also express strong appreciation for the current programming on the Station and ask the Commission to bar the proposed sale to AMPG.<sup>6</sup>

**Discussion.** Section 310(d) of the Communications Act of 1934, as amended (the “Act”),<sup>7</sup> requires the Commission to make a determination whether the proposed transfer or assignment of a broadcast license would be in the public interest. Pursuant to Section 309(d)(1) of the Act,<sup>8</sup> any party in interest may file a petition to deny an application. In order to assess the merits of a petition to deny, a two-step analysis is required. First, the petition must make specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.<sup>9</sup> This threshold determination is made by evaluating the petition and the supporting affidavits. If the petition meets this threshold requirement, the Commission must then examine all of the material before it to determine whether there is a substantial and material question of fact calling for further inquiry and requiring resolution in a hearing.<sup>10</sup> If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity.

Similarly, under Section 309(e) of the Act,<sup>11</sup> informal objections, like petitions to deny, 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 310(d) of the Act.<sup>12</sup>

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U.S.C. § 309(d). We will, however, treat them as informal objections, pursuant to Section 73.3587 of the Commission’s Rules (the “Rules”). See 47 C.F.R. § 73.3587.

<sup>3</sup> Petition at 15-16.

<sup>4</sup> See *id.*

<sup>5</sup> See, e.g., Informal Objection filed by Alexander J. Alfano, Esq. on Nov. 5, 2007 (“Alfano Objection”), at 3.

<sup>6</sup> See, e.g., Informal Objection filed by Jane Abruzzo on October 1, 2007 (“Abruzzo Objection”), at 1.

<sup>7</sup> 47 U.S.C. § 310(d).

<sup>8</sup> 47 U.S.C. § 309(d)(1).

<sup>9</sup> See *id.*; *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

<sup>10</sup> 47 U.S.C. § 309(d)(2).

<sup>11</sup> 47 U.S.C. § 309(e).

<sup>12</sup> 47 U.S.C. § 310(d). 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).

*Public Notice.* Trinity filed the Application on September 28, 2007.<sup>13</sup> The Station subsequently ceased broadcasting programming on October 1, 2007, and resumed operation on October 24, 2007.<sup>14</sup> While the Station was silent, Trinity published newspaper notice of the filing of the Application in *The Sun Sentinel*.<sup>15</sup> When the Station went back on-air, it also broadcast notice of its filing on the Station once daily from October 24, 2007, through October 27, 2007.<sup>16</sup> Objectors and Petitioners argue that Trinity's public notice was defective under the Rules on several grounds. First, several Objectors allege that Trinity's on-air public notice was defective because it was not timely broadcast in accordance with Section 73.3580(d) of the Rules.<sup>17</sup> Next, Petitioners allege that Trinity failed to give adequate public written notice pursuant to Section 73.3580(c) of the Rules.<sup>18</sup> Petitioners claim that *The Sun Sentinel* is published and distributed in Fort Lauderdale (approximately 24 miles north of Miami) and therefore does not constitute a "newspaper of general circulation" in the Miami area.<sup>19</sup> Finally, Petitioners allege that Trinity's public notice was defective because it failed to fully disclose Trinity's ownership structure.<sup>20</sup> Specifically, Petitioners allege that Trinity's public notice was defective because it "failed to disclose the officers, directors, and 10 percent or greater shareholders of its two parent organizations," Trinity International University ("TIU") and the Evangelical Free Church of America ("EFCA").<sup>21</sup>

In Opposition, Trinity asserts that NCE stations are not required to give notice via newspaper publication, and that broadcast notice is deemed sufficient.<sup>22</sup> It argues that, under the Rules, only when NCE stations do not broadcast are they required to give newspaper notice.<sup>23</sup> Trinity asserts that because it broadcast on-air notices of the Application, it was not required to provide newspaper notice under the Rules, but did so nonetheless.<sup>24</sup> Trinity further argues that, contrary to Petitioners' allegations, *The Sun*

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<sup>13</sup> See FCC File No. BALED-20070928ADQ. The Commission published public notice of the filing of the Assignment application on October 3, 2007. See *Broadcast Applications*, Public Notice, Report No. 26584 (Oct. 3, 2007).

<sup>14</sup> See Opposition at 6.

<sup>15</sup> Specifically, Trinity published newspaper notice in the Sun Sentinel on the following dates: October 8, 9, 10, 11, 25, 26, 29, and 30. See Opposition at 8.

<sup>16</sup> *Id.*

<sup>17</sup> See, e.g., Abruzzo Objection at 1, citing 47 C.F.R. § 73.3580(d)(3)(i). That Rule requires on-air notice for an assignment of license application to be given at least once daily on four days in the second week immediately following filing of the application. Objectors also allege that Trinity's notice was defective because it failed to provide notice in West Palm Beach, Florida, where Trinity maintains a translator station. However, no public notice is required for an application to assign an FM translator license. See 47 C.F.R. § 73.3580(d)(3). Because Objectors fail to implicate any provision of the Rules or Act, we will not consider this allegation further.

<sup>18</sup> See Petition at 4, citing 47 C.F.R. 73.3580(c). That Rule requires published notice in a "daily newspaper of general circulation ... in the community in which the station is located" when an application involving a major change has been filed.

<sup>19</sup> See Petition at 5.

<sup>20</sup> See *id.* at 12, citing 47 C.F.R. § 73.3580(f)(1). Under that Rule, public notice of the filing of an assignment application must include the names of all persons holding 10 percent or more of stock or other ownership interest.

<sup>21</sup> See *id.*

<sup>22</sup> See Opposition at 8, citing 47 C.F.R. § 73.3580(e).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

*Sentinel* is indeed published in Miami, and provides an affidavit from a representative of *The Sun Sentinel* attesting to this fact.<sup>25</sup>

While Section 73.3580(e) of the Rules exempts operating NCE stations from our print public notice requirements under certain circumstances, NCE stations that do not broadcast timely on-air notices are still required to give newspaper notice.<sup>26</sup> In this case, the Station was silent during the period in which broadcast notice was required.<sup>27</sup> Accordingly, Trinity was required to publish newspaper notice. We find that it complied with this requirement by publishing notice in *The Sun Sentinel*. We reject Petitioners' argument that *The Sun Sentinel* does not constitute a newspaper of general circulation in the Miami area. The affidavit provided by Trinity demonstrates that the newspaper is published in Miami, and Petitioners have failed to provide any evidence to the contrary.<sup>28</sup> Moreover, we reject Petitioner's assertion that Trinity's newspaper notice should have included the ownership interests of TIU and EFCA. Neither Section 73.3580 of the Rules nor Form 314 indicates that a public notice must contain this information.<sup>29</sup> As such, we find that Trinity complied with the notice requirements under the Rules.

*Trinity's Ownership Structure.* Petitioners claim that Trinity has not fully disclosed its ownership structure to the Commission, as required by Section 73.3615(d) of the Rules.<sup>30</sup> As such, it asserts that the Commission cannot make a statutory finding under the Act that Trinity is qualified to assign the Station to APMG.<sup>31</sup> Specifically, Petitioners claim that the three ownership reports filed by Trinity fail to provide full information with respect to Trinity's parent organizations, and instead merely include a statement to the effect that "Trinity International Foundation, Inc. (TIF) is under the control of Trinity International University (TIU), which is under the ultimate control of the Evangelical Free Church of America (EFCA)."<sup>32</sup> It further claims that Trinity never filed ownership reports for either TIU or EFCA.<sup>33</sup>

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<sup>25</sup> See *id.* at 9; Exhibit D, Attachments A and B.

<sup>26</sup> See 47 C.F.R. § 73.3580(e).

<sup>27</sup> Trinity filed its Application on September 28, 2007, making broadcast notice due the week of October 8, 2007. See 47 C.F.R. § 73.3580(d)(3)(i).

<sup>28</sup> Petitioners submitted with its Reply an "Audit Bureau of Circulations Audit Report" which, according to Petitioners, demonstrates that the paid circulation of *The Sun Sentinel* in Miami-Dade County is less than two percent. See Reply, Exhibit A. We have found no case law to support the Petitioners' theory that using a newspaper with a low circulation figure in the community of license violates Section 73.3580(c) of the Rules or subverts the intent of the Rule. Accordingly, we find that this evidence fails to rebut Trinity's showing that *The Sun Sentinel* is published in Miami. Moreover, even if we were to conclude that Trinity did not comply with our Rules, the remedy would simply be republication of the notice in a different newspaper. See *Marri Broadcasting, L.P.*, Memorandum Opinion and Order, 16 FCC Rcd 10,772, 10,775 (MB 2001) (holding that in cases "where an applicant has failed to publish or improperly published the required local notice, the Commission generally requires the applicant to correctly republish the local notice and advise the Commission it has done so."). Given the publicity this case has attracted in the Miami area and the fact that Trinity gave both broadcast and newspaper notice, we find that republication of Trinity's public notice is unnecessary.

<sup>29</sup> See 47 C.F.R. § 73.3580(f)(1) and Worksheet 1 to FCC Form 314 (rev. Sept. 2004).

<sup>30</sup> See Petition at 6, 11, citing 47 C.F.R. § 73.3615(d).

<sup>31</sup> See *id.* at 12, citing 47 U.S.C. § 309(a) and 47 U.S.C. § 310(d).

<sup>32</sup> See *id.* at 6, citing FCC File Nos. BOA-020031001AXH, BOA-20051003BRJ, and 20070924AGO.

<sup>33</sup> See *id.*

In Opposition, Trinity asserts that it has fully and openly disclosed its ownership in accordance with the Rules.<sup>34</sup> Trinity alleges that it fully explained its ownership structure when Trinity became licensee of the Station, and has provided ownership information in subsequent ownership reports submitted to date.<sup>35</sup> It further argues that the Rules do not require NCE stations to file separate ownership reports for parties that hold an interest in the licensee.<sup>36</sup>

In Reply, Petitioners note that the instructions to the current version of Form 323-E (“Instructions”) states that, “If the licensee or permittee is directly or indirectly controlled by another entity, a separate Form 323-E should be submitted for such entity.”<sup>37</sup>

We find that Trinity has complied with the Commission’s Rules regarding ownership disclosure. The Rules require that NCE FM station licensees file biennial ownership reports which provide the “name, residence, office held, citizenship, principal profession or occupation: and method of appointment of officers, members of the governing board, and holders of one percent or more ownership interest,” including “full information with respect to the interest and identity of any individual, organization, corporation, association, or other entity which has direct or indirect control over the licensee.”<sup>38</sup> Trinity has provided this information in its ownership reports, including the fact that it is ultimately controlled by TIF and EFCA. Unlike commercial licensees, there is nothing in our Rules that requires an NCE licensee to file separate ownership reports for entities which have direct or indirect control over the licensee.<sup>39</sup> Given the ambiguities between our Rules and the Instructions, we find that Trinity’s interpretation of Section 73.3615(d) of the Rules is reasonable, and that its failure to file ownership reports for TIF and EFCA as required by the Instructions cannot be a basis for sanction.<sup>40</sup> Because Trinity has complied with the requirements set forth in our Rules, further consideration of this issue is unwarranted.

*Disclosure of the Trinity/APMG Agreement.* Petitioners argue that the Application is defective because it fails to include the complete agreement to sell and assign the Station to APMG.<sup>41</sup> Trinity and APMG certified in the negative to Section II, Question 3, and Section III, Question 3 in the Application, explaining in an exhibit that the parties were submitting the Asset Purchase Agreement dated as of September 24, 2007, by and between Trinity and APMG, and an Affiliation Agreement dated as of September 24, 2007, by and between Trinity and APMG (collectively, the “Agreements”), and omitting the schedules and exhibits to these Agreements. Trinity and APMG justified these omissions by arguing that the omitted items were either proprietary or not germane to the Commission’s review of the

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<sup>34</sup> See Opposition at 3-4, citing 47 C.F.R. § 73.3615(d)(2).

<sup>35</sup> See *id.* at 5.

<sup>36</sup> See *id.*

<sup>37</sup> Instructions to Form 323-E, para. 5.

<sup>38</sup> 47 C.F.R. §§ 73.3615(d)(1) and (d)(2).

<sup>39</sup> See 47 C.F.R. § 73.3615(a)(3)(iv)(B), which specifically requires for commercial stations that an ownership report be filed for each entity having an attributable interest in the licensee “regardless of its position in the vertical ownership chain.” No parallel provision is contained in Section 73.3615(d) of the Rules, which governs NCE stations. See n.38, *supra*.

<sup>40</sup> See, e.g., *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618, 632 (D.C. Cir. 2000) (finding that, where regulations are unclear and where the petitioner’s interpretation is reasonable, a regulated party is not ‘on notice’ of the agency’s ultimate interpretation of the regulations, and may not be punished).

<sup>41</sup> See Petition at 7.

transaction.<sup>42</sup> Petitioners assert that these omissions are “patently not in accordance with FCC Rules” and that without a list of the materials Trinity is withholding, it is impossible to evaluate the claims that the withheld exhibits are “not germane” or contain “proprietary” information.<sup>43</sup>

It has been longstanding staff practice to accept assignment and transfer of control applications containing sales contracts that omit schedules and exhibits that either contain proprietary information or are not material to our review of a particular transaction.<sup>44</sup> In Exhibit 4 to the Application, Trinity provided a reasonable explanation as to why certain exhibits to the Agreements were not being included in its submission, and offered to identify the missing exhibits upon request.<sup>45</sup> It subsequently did so in its Opposition.<sup>46</sup> Accordingly, we find that the Application is not defective and that Petitioners have failed raise a substantial and material question of fact calling for further inquiry.

*Station Identification Rule.* Petitioners assert that the Station violated Section 73.1201 of the Rules by not providing hourly station identifications during a three-week period in October 2007 in which the Station operated its transmitter carrier but was otherwise silent.<sup>47</sup> That Rule requires that station identifications be made “at the beginning and ending of each time of operation” and “hourly, as close to the hour as possible, at a natural break in program offerings.”<sup>48</sup>

In Opposition, Trinity notes that, during the period that the Station was off-air, “there were no program offerings to break in between, and the broadcast operation had ended and not yet begun again.”<sup>49</sup> It asserts that nothing under our Rules requires the hourly identification of an otherwise silent station.<sup>50</sup> While it concedes that the Station’s transmitter carrier continued to operate while the broadcast station was silent, Trinity maintains that “there are no station identification requirements for subcarrier uses, and the subcarrier use was provided in accordance with the Commission’s Rules.”<sup>51</sup>

We agree. The Station was silent with authority pursuant to Section 73.1740 of the Rules.<sup>52</sup> As noted by Trinity, nothing in our Rules requires an authorized silent station to continue station

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<sup>42</sup> See FCC File No. BALED-20070928ADQ.

<sup>43</sup> See Petition at 7, 12. In its Opposition, Trinity provides a list of the omitted schedules and exhibits. See Opposition at 7.

<sup>44</sup> *LUJ, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 16980, 16982 (2002).

<sup>45</sup> See FCC File No. BALED-20070928ADQ.

<sup>46</sup> See Opposition at 7, n.15. The schedules omitted from the Asset Purchase Agreement were described in the Agreement itself and included: Schedule 2.2 (Excluded Assets); 3.3 (Consents); 3.4 (Licenses); 3.5 (Real Property Leases); 3.6 (Tangible Personal Property); 3.7 (Assumed Contracts); 3.9 (Intangibles); 3.10 (Insurance); 3.12 (Employee Matters); 3.13 (Financial Information); 3.14 (Litigation); 4.3 (Buyer Consents); and 5.10 (Form of Estoppel Certificate). With regard to the Affiliation Agreement, Exhibit A (Expense Reimbursement) was omitted. We find that these omitted exhibits are not integral to our evaluation of the Application.

<sup>47</sup> See Petition at 7, 13. As discussed *supra*, the Station temporarily ceased broadcasting programming on October 1, 2007, and resumed operation on October 24, 2007. See Opposition at 6.

<sup>48</sup> 47 C.F.R. § 73.1201(a).

<sup>49</sup> Opposition at 6.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See 47 C.F.R. § 73.1740(a)(4). Trinity states that it notified the Commission of its silent status by electronic filings. See Opposition at 6.



identifications while it is off-air. This holds true even if that station continues to operate its subcarrier. Accordingly, we find that Petitioners have failed to raise a substantial and material question of fact calling for further inquiry.

*Solicitation of Donations.* Petitioners allege that the Station was soliciting donations from its listeners on-air, on its website, and via mail during the time in which Trinity was negotiating the sale of the Station to APMG.<sup>53</sup> Petitioners argue that the on-air solicitation of these donations by Trinity while it knew that it was going to sell the Station “to an entity that would not engage in Christian programming” constitutes fraudulent programming that should be considered misconduct relevant to Trinity’s character.<sup>54</sup> It notes that there are currently several legal proceedings in Miami “seeking legal and equitable remedies” and asks the Commission to withhold granting the Application until these cases have been resolved.<sup>55</sup>

In Opposition, Trinity asserts that the Commission has no jurisdiction over either private contractual claims or alleged violations of state law.<sup>56</sup> Trinity further asserts that Petitioners fail to cite any legal basis in support of their request that the Commission refrain from granting the Application pending the resolution of private litigation.<sup>57</sup>

We agree with Trinity’s assertion that Petitioners’ claims are contractual in nature and therefore involve “non-FCC” misconduct. While the allegations may arise from broadcast-related activities (namely, the broadcast of solicitations), this fact alone does not bring them within the Commission’s jurisdiction.<sup>58</sup> Our line of cases regarding fraudulent billing supports this conclusion.<sup>59</sup> There, we held that fraud allegations related to the billing of advertisers for programs that did not air at their scheduled times constituted non-FCC misconduct “because parties wronged by billing practices have adequate remedies elsewhere.”<sup>60</sup> The same reasoning applies in the instant case. While Petitioners’ characterize their claim as fraud, the crux of the matter is really whether Trinity breached its fiduciary duty to its donors by discontinuing the Station’s Christian format.<sup>61</sup> The Commission has consistently held that such

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<sup>53</sup> See Petition at 7-8, 14.

<sup>54</sup> See *id.* at 14, citing *Policy Regarding Character Qualifications In Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986). Another Objector claims that, in an effort to further its alleged fraud, Trinity employed a “deceptive scheme to confuse the public by going silent for twenty-four days and then resuming broadcasting with [a] different call sign ...”. Alfano Objection at 3.

<sup>55</sup> See *id.* at 15. Commission staff obtained a copy of a complaint filed against Trinity via the Internet, at [http://www.mdccc.org/WMCU-FM/Complaint\\_101807\\_Mathews\\_vs\\_TIU.pdf](http://www.mdccc.org/WMCU-FM/Complaint_101807_Mathews_vs_TIU.pdf) (last visited Mar. 6, 2008).

<sup>56</sup> See Opposition at 9.

<sup>57</sup> See *id.* at 10.

<sup>58</sup> In only one case has the Media Bureau issued a forfeiture for violation of the radio fraud statute under 18 U.S.C. § 1343. See *WPNT, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 1757 (MMB 1993). In that case, the station had aired a fraudulent solicitation of funds to replace its tower when insurance funds were going to be used for that purpose. These facts are distinguishable from the instant case, where Petitioners’ claims actually involve breach of fiduciary duty rather than fraud, as discussed *infra*.

<sup>59</sup> See, e.g., *Dontron, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 2560, 2563 (MB 1991) (finding that fraudulent billing practices constitute non-FCC misconduct); *WPOM Radio Partners, Ltd.*, Order, 6 FCC Rcd 5 (MB 1991) (same).

<sup>60</sup> *Dontron, Inc.*, 6 FCC Rcd at 2563.

<sup>61</sup> In their supporting Affidavits, Petitioners state that they believe that Trinity “breached its fiduciary duty” to them. See, e.g., Petition at Exhibit A, Declaration of Leslie Aquart.

private disputes are beyond its regulatory jurisdiction and must be resolved in a local court of competent jurisdiction.<sup>62</sup> Moreover, the Commission generally only considers three types of adjudicated non-FCC misconduct which are not specifically proscribed by the Act or the Rules: (1) fraudulent statements to government agencies; (2) felony convictions; and (3) mass media related violations of anti-competitive and antitrust statutes.<sup>63</sup> Because the claims raised by Petitioners do not fall into one of these enumerated categories, under our current policy, we would not consider Petitioners' claims even if adjudicated.<sup>64</sup> Accordingly, we find that the ongoing civil dispute involving Trinity and other parties is properly addressed by the state courts and is not within the scope of this proceeding.

*Format Change.* Petitioners, as well as numerous Objectors, oppose the Station's format change from Christian music and entertainment to classical music, and ask the Commission to deny the Application and return the Station's Christian programming to the air.<sup>65</sup>

Although the Commission recognizes that the Station's program format has attracted a devoted listenership, it is well-settled policy that the Commission does not scrutinize or regulate programming, nor does it take potential changes in programming formats into consideration in reviewing assignment applications. In 1976, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Act, would not benefit the public, would deter innovation, and would impose substantial administrative burdens on the Commission.<sup>66</sup> The Supreme Court of the United States has upheld this policy and the Commission's determination that "the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . ." and that a change in programming is not a material factor that should be considered by the Commission in ruling on applications for license transfer.<sup>67</sup> This is particularly so with regard to the programming decisions of NCE broadcast stations. Although market forces cannot be relied upon to regulate programming in the NCE realm, 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>68</sup> Accordingly, we find that Petitioners and Objectors have failed to raise a substantial and material question of fact warranting further inquiry.

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<sup>62</sup> See *John R. Kingsbury*, Memorandum Opinion and Order, 71 FCC 2d 1173 (1979); citing *Transcontinent Television Corp.*, Memorandum Opinion and Order, 21 RR 945 (1961).

<sup>63</sup> See *Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252, 3252-53 (1990) ("*Character Policy Statement*"), modified, 6 FCC Rcd 3448 (1991), and 7 FCC Rcd 6564 (1992). Civil misrepresentations may also be considered on a case-by-case basis. See *Character Policy Statement*, 6 FCC Rcd at 3448.

<sup>64</sup> Violations of a criminal fraud statute, for example, would be considered relevant non-FCC misconduct. However, Petitioners have not alleged, nor have we found, that the lawsuits filed against Trinity include such a claim.

<sup>65</sup> See Petition at 4; see, e.g., Abruzzo Objection at 1.

<sup>66</sup> See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC 2d 858, 865-66 (1976), recon. denied, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), rev'd sub nom., *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), rev'd, 450 U.S. 582 (1981).

<sup>67</sup> *FCC v. WNCN Listener's Guild*, 450 U.S. 582, 585 (1981).

<sup>68</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).



*Failure to Maintain Public File.* In identical postcard-style pleadings, numerous Objectors allege that Trinity failed to provide access to the Station’s public inspection files as required by the Rules because the office listed in Trinity’s public notice was closed to the public.<sup>69</sup> However, because Objectors fail to provide the specific dates or times on which any attempts were made to visit the Station’s office, we conclude that Objectors have not provided the necessary specific information to present a substantial and material question of a Rule violation by Trinity.<sup>70</sup> In addition, we note that in an affidavit attached to the Petition, Petitioner Tameisha Campbell states that, on October 31, 2007, she “visited the main studio location of the radio station . . . [and reviewed] the contents of the public file.”<sup>71</sup> This statement appears to contradict Objectors’ assertions. Given these inconsistencies, further consideration of this issue is unwarranted.

**Conclusion/Actions.** Based on the above, we find that neither Petitioners nor Objectors have raised a substantial and material question of fact warranting further inquiry. We further find that American Public Media Group is qualified to hold the Station WKCP(FM) license and that grant of the Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Petition to Deny filed by the Petitioners listed in Appendix A IS DENIED, the Informal Objections filed by the Objectors listed in Appendix A ARE DENIED, and that the application for approval to assign the license for Station WKCP(FM), Miami, Florida (File No. BALED-20070928ADQ) from Trinity International Foundation, Inc. to American Public Media Group IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>69</sup> See, e.g., Abruzzo Objection at 1.

<sup>70</sup> See *Area Christian Television, Inc.*, 60 RR 2d at 864. See also *Tom Struhar*, Letter, 22 FCC Rcd 6568, 6571 (MB 2007). See also 47 U.S.C. § 503(b)(4) (a notice of apparent liability for forfeiture must include, *inter alia*, the nature of the act or omission charged and the date on which such conduct occurred).

<sup>71</sup> See Petition to Deny, Exhibit B.

## APPENDIX A

### A. Petitioners

Leslie Aquart  
Reinaldo de Armas  
Victor Gonzalez  
Stanley B. Goldenberg  
German Guillen  
Nancy A. Guillen  
Janet O. Hurley  
Claudio M. Perez  
Lisa M. Powell  
Louis Dominguez Rodriguez  
Ivan Sanchez

### B. Objectors

Alexander Alfano  
Ira Warren Patasnik  
Anthony Atwood  
Nina Gail Betancourt-  
Morgan  
David Nicoletto  
Sabrina Gonzalez  
Louisiana Petit  
Ingrid Jean-Mondesir  
Barbara Echeverria  
Maria De Pablo  
Judith A. Kohlasch  
Iveth Echeverria  
Janet Carrasquillo  
Carlos, Grace, Priscilla and  
Stephen Armas  
Themis Quirino  
Mez Mondesir  
Carol Stokes  
Aquaria Nelly  
Eladia Iles  
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