



Federal Communications Commission
Washington, D.C. 20554

July 15, 2014

In Reply Refer to:
1800B3-JPC

Mr. Brad Leeger
1594 N. Allen Ave. #21
Pasadena, CA 91104

Mr. Ronald Feuer
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In re: KPCC(FM), Pasadena, CA
Facility ID No. 51701
Pasadena Area Community College District
File No. BRED-20130729AJY

Application for Renewal of License

Informal Objections

Dear Messrs. Leeger, Feuer, and Crigler:

This letter refers to: (1) the referenced application (“Application”) of Pasadena Area Community College District (“Licensee”) to renew its license for noncommercial educational (“NCE”) Station KPCC(FM), Pasadena, California (“Station”); (2) the September 30, 2013, Informal Objection (“Leeger Objection”) to the Application filed by Brad Leeger (“Leeger”); and (3) the October 29, 2013, Informal Objection (“Feuer Objection”) to the Application filed by Ronald Feuer (“Feuer”).¹ For the reasons discussed below, we deny the objections and grant the Application.

Background. In his Objection, Leeger first claims the Station does not broadcast public service announcements (“PSA”), but “will make an announcement or advertise your business if you give them money.”² To Leeger, “[t]hat sounds a lot like a commercial station.”³ Leeger also alleges that the station uses an “inordinate amount” of broadcast time to promote itself.⁴ Finally, Leeger believes that the station has a “bias to the left of the political and moral spectrum” and should, as a public station, have “a more balanced approach.”⁵

¹ Licensee filed an Opposition to each Informal Objection on December 6, 2013. Leeger filed a Reply on December 23, 2013 (“Leeger Reply”).

² Leeger Objection.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

In his objection, Feuer alleges that the programming originated by the Licensee for the Station sounds more “staged & fabricated” and thus less authentic than the programming from National Public Radio (“NPR”) also broadcast on KPCC.⁶

In Opposition, Licensee argues that the Commission’s ability to control content is limited by the First Amendment to the Constitution of the United States and the Communications Act of 1934, as amended (“Act”); therefore, it states, the decisions of the Station to air PSAs, promote itself, and choose a political balance are matters of protected editorial discretion.⁷ Licensee further argues that neither Leeger⁸ nor Feuer⁹ have alleged under Section 309(k) of the Act that Station has “failed to serve the public interest, has violated the Communications Act or FCC Rules, or has engaged in any pattern of abuse,”¹⁰ thus the Application should be granted.

In his Reply, Leeger states that in having a policy of refusing to carry any PSAs and charging for an announcement, the Station is “fail[ing] to serve the public interest.”¹¹ Leeger indicates as an example that, although 2013 “looks to be the driest year ever recorded” in the Los Angeles area, when he contacted the local water company about whether they had tried to get PSAs encouraging water conservation aired on the Station, he was told that the water company “could only afford a very limited number of paid announcement[s] on KPCC.”¹²

Discussion. Informal objections must, pursuant to Section 309(e) of the Act¹³ 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,¹⁴ which governs our evaluation of an application for license renewal. Under Section 309(k)(1) when a Licensee applies for renewal, the Commission grants the application if three criteria are met: (1) “the station . . . served the public interest, convenience, and necessity”; (2) the licensee committed “no serious violations . . . of this chapter or the rules and regulations of the Commission”; and (3) the licensee committed “no other violations . . . of this chapter or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.”¹⁵ If the application fails to meet the standards mentioned above, the Commission, after giving the requisite “notice and opportunity for a hearing” under Section 309(e),¹⁶ is empowered to either deny the application or grant an approval limited by “terms and conditions.”¹⁷

⁶ Feuer Objection at 1.

⁷ Opposition to Leeger Informal Objection at 2-3.

⁸ Opposition to Leeger Informal Objection at 3.

⁹ Opposition to Feuer Informal Objection at 2.

¹⁰ *Id.*

¹¹ Leeger Reply.

¹² *Id.*

¹³ 47 U.S.C. § 309(e).

¹⁴ 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 RR 2d 862, 864 (1986) (“informal objections . . . must . . . contain adequate and specific factual allegations sufficient to warrant the relief requested”).

¹⁵ 47 U.S.C. § 309(k)(1).

¹⁶ 47 U.S.C. §309(k)(3).

¹⁷ 47 U.S.C. §309(k)(2).

With respect to Leeger's arguments that the Station refuses to air PSAs and has a left leaning bias in programming, as well as Feuer's claim that the programming sounds "staged,"¹⁸ under the First Amendment¹⁹ and Section 326 of the Act,²⁰ the Commission does not have the "power of censorship" over the content broadcast on radio stations,²¹ and the Commission may not "interfere with the right of free speech" of radio broadcasters.²² With respect to NCE radio in particular, the Commission has limited itself to "facilitating the development of the public broadcasting system rather than determining the content of its programming."²³ Furthermore, 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.²⁴ A licensee has broad discretion -- based on its right to free speech -- to choose, in good faith, the programming that it believes serves the needs and interests of its audience.²⁵ The Commission will intervene in programming matters only if a licensee abuses that discretion.²⁶

Leeger has failed to provide sufficient evidence to indicate that the Licensee has abused this discretion by allegedly refusing to air PSAs, even those regarding the extremely dry conditions in the Los Angeles area,²⁷ and in choosing its programming, which he subjectively claims has a liberal bias.²⁸ Likewise, Feuer fails to provide sufficient evidence to indicate that the Licensee has abused its discretion in choosing the manner in which it presents its programming.

With respect to Leeger's claim that the Station acts more like a commercial station than an NCE station, under Section 399(b) of the Act²⁹ and Section 73.503(d) of the Commission's Rules ("Rules"), the Station is not allowed to broadcast commercials of for profit entities "in exchange for the receipt, in whole or in part, of consideration to the licensee, its principals, or employees."³⁰ NCE broadcast stations

¹⁸ Feuer Objection at 1.

¹⁹ U.S. Const. amend. I.

²⁰ 47 U.S.C. § 326.

²¹ *Id.*

²² *Id.*

²³ *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 FCC 2d 716, 732 (1981).

²⁴ *See WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

²⁵ *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).

²⁶ *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401.

²⁷ *See, e.g., Northwest Indiana Public Broadcasting, Inc.*, Letter, 27 FCC Rcd 13075, 13077 (MB 2012) (carrying no PSAs was not an abuse of programming discretion because PSAs are one of many types of issue-responsive programming).

²⁸ *See, e.g., Radio License Holding VII, LLC*, Letter, 28 FCC Rcd 14907, 14908-09 (MB 2013) (subjective belief of the listener that licensee's programming was politically biased did not indicate that licensee had abused its discretion in choosing programming).

²⁹ 47 U.S.C. §399(b).

³⁰ 47 C.F.R. § 73.503(d).

themselves must provide “a nonprofit and noncommercial broadcast service.”³¹ They may, however, make “acknowledgements of contributions” to the station.³² Leeger has provided no evidence to indicate that the Station is doing anything more than airing permissible acknowledgements of contributions that underwrite station activities.³³ Regarding Leeger’s complaint that the station takes too much time to promote itself on the air, such activity -- in addition to not being an abuse of programming discretion as discussed above -- is not prohibited by the Act or the Rules.

We have examined the Leeger and Feuer Objections and find that they do not raise substantial and material questions of fact calling for further inquiry into whether granting the Application would be *prima facie* inconsistent with Section 309(k) of the Act.³⁴ Additionally, we have evaluated the Application pursuant to Section 309(k) of the Act, 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.³⁵

Conclusion/Actions. 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,³⁶ the September 30, 2013, Informal Objection filed by Brad Leeger IS DENIED, the October 29, 2013, Informal Objection filed by Ronald Feuer is DENIED, and the application (File No. BRED-20130729AJY) of Pasadena Area Community College District for renewal of license for noncommercial educational Station KPCC(FM), Pasadena, California, IS GRANTED.

Sincerely,


Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Pasadena Area Community College District

³¹ *Id.*

³² *Id.*

³³ *Cf. Educational Community Radio Inc.*, Memorandum Opinion and Notice of Apparent Liability of Forfeiture, 28 FCC Rcd 5283 (MB 2013) (evidence, which was deemed after analysis of advertisement content to be *prima facie* evidence that noncommercial education station had violated advertising rules, consisted of references to specific advertisements aired on specific days and the text of the allegedly infringing advertisements).

³⁴ 47 U.S.C § 309(k).

³⁵ *Id.*

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