



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

September 25, 2007

DA 07-4024

In Reply Refer to:

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Ms. Mary Ann Applegate
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Monroe Township Municipal Utilities Authority
143 Union Valley Rd.
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In re: WKXW-FM, Trenton, NJ
Facility ID No. 53458
Millennium Central New Jersey
License Holdco, LLC
File No. BRH-20060201BFW

Application for Renewal of License

Informal Objections

Dear Ms. Applegate and Mr. Zaragoza:

This letter refers to: (1) the above-noted February 1, 2006, application of Millennium Central New Jersey License Holdco, LLC ("Millennium") to renew the license of radio station, WKXW-FM, Trenton, NJ (the "Station"); (2) an Informal Objection ("Applegate Objection") to that application filed by Mary Ann Applegate ("Applegate");¹ and (3) an Informal Objection ("MUA Objection") filed by the Monroe Township Municipal Utilities Authority ("MUA").² For the reasons set forth below, we deny both the Applegate Objection and the MUA Objection, and grant the renewal application.

Discussion. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k)(1) of the Communications Act of 1934, as amended (the "Act"). That section

¹ The Applegate Objection was filed on February 2, 2006.

² The MUA Objection was filed on December 28, 2005.

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 Commission's Rules (the "Rules"); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.³ 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.”⁴

Applegate Objection. Applegate claims that radio personalities Craig Norton and Ray Rossi broadcast jokes on the Station that are allegedly offensive to members of the Catholic faith.⁵ Specifically, Applegate claims that these radio personalities mocked a group of Catholic schoolboys who protested the opening of a strip club in their town.⁶

Allegations regarding program content are generally significant at renewal time only to the extent that they show a violation of the Rules or the Act or a failure by the licensee, in its overall programming, to address issues and problems of importance to the community.⁷ The First Amendment to the United States Constitution and Section 326 of the Act⁸ prohibit the Commission from censoring program material or interfering with broadcasters' free speech rights.⁹ This holds true even if the material broadcast is insulting to a particular minority or ethnic group in the station's community.¹⁰ 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.”¹¹ For this reason, we deny the Applegate Objection.

³ 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).

⁴ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁵ See Applegate Objection at 1.

⁶ *Id.*

⁷ *Jacor Broadcasting of Tampa Bay, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1826, 1826 (MB 1992) (citing *Deregulation of Radio*, Report and Order, 84 FCC 2d 797 (1981), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 87 FCC 2d 797 (1981), *aff'd in relevant part and remanded in part sub nom.*, *Office of Communications of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983)). In this case, the complaint only cites a single instance of the broadcast of an offensive term. This is insufficient to raise a *prima facie* question concerning the station's overall record of addressing issues and problems of importance to the community during the license term as a whole.

⁸ 47 U.S.C. § 326.

⁹ 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 18 U.S.C. § 1464. However, because Congress has not authorized the Commission to do so, the Commission does not regulate the material at issue here.

¹⁰ *Zapis Communications Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 3888 (MB 1992).

¹¹ *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)). See also *The Outlet Co.*, Memorandum Opinion and Order, 53 FCC 2d 611 (1975); *Avco Broadcasting Corp.*, Memorandum Opinion and Order, 53 FCC 2d 48 (1975);

MUA Objection. MUA claims that the Station: (1) broadcast defamatory statements about the Executive Director of the MUA, and (2) “aired a series of ... false and irresponsible allegations regarding the quality of drinking water in Jackson Township.”¹² Allegations of defamation are outside the Commission’s jurisdiction. Such allegations are properly the subject of private defamation actions under state law, not of Commission licensing proceedings.¹³ Moreover, the Commission only considers misrepresentation allegations to the extent that the alleged misrepresentation is made to a governmental unit.¹⁴ Accordingly, we have no legal basis to take action based on MUA’s programming allegations.

Conclusion. We have evaluated the WKXW-FM renewal application pursuant to Section 309(k) of the Act,¹⁵ and we find that WKXW-FM 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,¹⁶ the Informal Objection filed by Mary Ann Applegate on February 2, 2006, and the Informal Objection filed by Monroe Township Municipal Utilities Authority on December 28, 2005, ARE DENIED, and the application (File No. BRH-20060201BFW) of Millennium Central New Jersey License Holdco, LLC, for renewal of license for WKXW-FM, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Millennium Central New Jersey License Holdco, LLC

Doubleday Broadcasting Co., Inc., Memorandum Opinion and Order, 56 FCC 2d 333 (1975) (all dismissing petitions to deny renewal applications based on use of the term “wetback” in programs aired on applicants’ stations).

¹² See MUA Objection at 1.

¹³ *Jacor Broadcasting of Tampa Bay, Inc.*, 7 FCC Rcd at 1828 (citing *Anti-Defamation League of B’nai B’rith*, 4 FCC 2d at 191.) See also *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1985), *recon. denied*, 1 FCC Rcd 421 (1986) (“*Policy Statement*”), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), and 7 FCC Rcd 6564 (1992) (describing categories of relevant adjudicated, non-FCC misconduct when considering a licensee’s character issues).

¹⁴ See *Policy Statement*, n.13, *supra*. See also *AT&T Wireless Services, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 21522, 21548-2149 (2004) (finding that licensee’s alleged misrepresentations to private parties had no bearing on its character qualifications).

¹⁵ 47 U.S.C. § 309(k).

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