



Federal Communications Commission
Washington, D.C. 20554

October 31, 2007

DA 07-4476

In Reply Refer to:

1800B3-SC

Released: October 31, 2007

Ms. Marsha Farley
55 Bethune Street
New York, NY 10014

William H. Fitz, Esq.
1201 Pennsylvania Ave., N.W.
Washington, DC 20004

In re: WQXR-FM, New York, NY
Facility ID No. 29022
The New York Times Radio Company
File No. BRH-20060131AOL

Application for Renewal of License

Petition to Deny

Dear Ms. Farley and Mr. Fitz:

We have before us the above-referenced application (the "Application") of The New York Times Radio Company ("NYTRC") for the renewal of license of broadcast station WQXR-FM, New York, NY, filed on January 31, 2006, and a Petition to Deny the Application filed by Marsha Farley (the "Petition") on April 21, 2006. For the reasons set forth below, we dismiss the Petition and grant the Application.

Background. The Petition states that WQXR-FM is "secretly acting contrary to the public interest." It also provides a URL address for a Web site (www.fredericklembeck.com/id22.htm) that, Petitioner claims, offers "documentary proof that the New York Times Company [possesses]...evidence of dishonesty in the casino industry, but has been suppressing that evidence and keeping it hidden from the public, solely for the sake of advertising revenue they, WQXR-FM included, take in from the casino industry." The content of the Web site itself appears to be solely the product of an individual, Frederick Lembeck, created for the primary purpose of promoting strategy "games" that he has developed and discussing the theories presented in his book "Beat the House." The page on the site specifically cited by Petitioner indicates that: 1) in 1997, Lembeck sent a letter to then-Executive Editor of the New York Times newspaper, Joseph Lelyveld, about corruption in the gaming industry; 2) in 1997, Mr. Lelyveld acknowledged receipt of this letter; and 3) the Times has not published a story on this matter.

Discussion. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act"), 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 309(k) of the Act, which governs our evaluation of an application for license renewal.¹

¹ 47 U.S.C. §309(k).

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 Commission's Rules (the "Rules"); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.² 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.”³

We have examined the Petition and find that it does not raise any substantial or material question of fact calling for further inquiry. Neither does it persuade us that grant of the Application would contravene the public interest, convenience, and necessity. It does not allege a violation of the Act or the Rules or demonstrate violations constituting a pattern of abuse. Petitioner contends that WQXR-FM acts contrary to the public interest and attempts to support her contention with the purely speculative statement that the New York Times Company has purposefully hidden negative information about the gaming industry from the public in order to collect advertising revenue from casinos. She provides no such proof for her claim, other than the Web site discussed above, which offers only unsubstantiated theories and more speculation, none of which pertains to WQXR-FM or NYTRC.

Viewed in the most tolerant light, Petitioner makes the implied suggestion that the gaming industry information should have been broadcast on WQXR-FM.⁴ Parties challenging a station's programming must make specific allegations of fact, which, as noted above, Petitioner has failed to do. Further, it is the Commission's established policy that licensees have broad discretion, to choose, in good faith, the programming they believe serves the needs and interests of their communities.⁵ Whether or not to air a particular news item falls well within the scope of that discretion. A recent staff decision emphasizes this point, stating that, “in the absence of evidence that the licensee has falsified, distorted or suppressed news, the Commission will not substitute its judgment for that of a licensee in determining what news is of prime interest to its listening audience.”⁶

² 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).

³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁴ We have no jurisdiction over content of the New York Times Company's print publications or other non-broadcast media and therefore, will not address the allegations insofar as they relate to those aspects of the company's business. Licensee NYTRC is a subsidiary of the New York Times Company within the business unit, the New York Times Media Group.

⁵ See, e.g., *Mr. Robert Meshanko*, Letter, 22 FCC Rcd 4809, 4810 (2007); *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).

⁶ *Mr. William Huston*, Letter, DA 07-3932 (rel. September 14, 2007), citing *Columbia Broadcasting System, Inc.*, Memorandum Opinion and Order, 51 FCC 2d 273 (1978).

Conclusion/Actions. For the foregoing reasons, we deny the Petition. We have evaluated the Application and find that the Licensee has served the public interest, convenience, and necessity during the subject license term. Moreover, we find that there have been no serious violations of the Act or the Rules involving WQXR-FM or violations by Licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse.

Accordingly, pursuant to Section 309(k) of the Act and Sections 0.61 and 0.283 of the Rules,⁷ the Petition to Deny filed by Marsha Farley is DENIED and the Application of The New York Times Radio Company, for the renewal of license for WQXR-FM, New York, NY, is GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: The New York Times Radio Company

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