

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

WGN CONTINENTAL
BROADCASTING COMPANY

Application For Renewal of the License
To Operate Station WGN-TV
Chicago, IL

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) File No. BRCT20050801BXY
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OPPOSITION TO INFORMAL OBJECTION

WGN Continental Broadcasting Company (the "Licensee"), licensee of Station WGN-TV (the "Station" or "WGN"), by its attorneys and pursuant to Section 73.3584 of the Commission's rules, 47 C.F.R. § 73.3584, hereby opposes the Informal Objection to the renewal of WGN's license (the "Objection") filed by Stephen H. Macek. The facts clearly demonstrate that WGN has consistently exercised its broad editorial discretion in the interest of Chicago viewers in a reasonable manner. Moreover, Mr. Macek has failed to raise a substantial and material question of fact regarding WGN's qualifications as a licensee. Accordingly, his Objection should be summarily dismissed.

I. Mr. Macek's Objection Fails To Present A Substantial And Material Question of Fact Concerning WGN's Qualifications As A Licensee.

As the Commission recently recognized, Congress "revised the standard used by the Commission to evaluate renewal applications" in the Telecommunications Act of 1996 (the "Act").¹ Specifically, the Act provides that the Commission shall grant renewal if it finds that, during the license term, "(A) the station has served the public interest, convenience, and necessity; (B) there have been no serious violations by the licensee of this Act or the rules and

¹ Notice of Inquiry, *Broadcast Localism*, 19 FCC Rcd. 12425, ¶ 41 (2004).

regulations of the Commission; and (C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.”² Thus, the Act creates a presumption in favor of renewal and the Commission must dismiss a petition to deny unless the petitioner has presented “a substantial and material question of fact” concerning the qualifications of the renewal applicant.³

Because WGN has neither committed any serious violations of the Act or the Commission’s rules, nor engaged in any pattern of abuse of such rules and regulations, Mr. Macek has no legitimate grounds on which to attack WGN’s license renewal application. Instead, Mr. Macek attacks WGN’s renewal application on the ground that WGN has failed to serve the public interest. In support of his argument, he alleges that WGN’s election coverage was “trivial and politically meaningless” and that the Station’s news coverage of the Iraq War was “incomplete and often biased.”⁴ Mr. Macek also believes that WGN airs “trashy entertainment,” has not met its children’s programming obligations, and airs too many commercials.⁵ Notwithstanding the fact that these are merely Mr. Macek’s opinions and not “specific allegations of fact” as required by Section 309(d)(1) of the Act,⁶ the record demonstrates that WGN has consistently served the interests of Chicago viewers during the current license term.

² 47 U.S.C. § 309(k)(1); *see* 47 C.F.R. § 73.3591 (renewal applications filed after May 1, 1995 processed pursuant to new renewal procedures and standard).

³ 47 U.S.C. § 309(d)(2).

⁴ Objection at 1-2.

⁵ *Id.* at 3-4.

⁶ 47 U.S.C. § 309(d)(1).

WGN broadcasts extensive coverage of local news and politics on a regular basis. As of November 9, 2005, WGN had broadcast more than 1,630 hours of news programming this year. WGN airs six hours of local news programming each weekday and one hour of local news each weekend day. In addition to the station's regular coverage of local, state and national elections in its news programming, in 2004, the station aired three election specials. In addition, WGN broadcasts one half-hour of public affairs programming each week, devoted in alternating weeks to the interests of Chicago's African-American and Hispanic communities.

Beyond local news and public affairs, WGN broadcasts a variety of programs that serve the interests of Chicago viewers. First, WGN aired more than 2,000 public service announcements (PSAs) in 2004, with an estimated airtime value of more than \$600,000. Second, the station broadcasts almost eight hours of local parade coverage, including the St. Patrick's Day Parade, the Bud Billiken Parade, the Columbus Day Parade, and the Magnificent Mile Lights Festival, each year. Third, WGN annually airs coverage of the Chicago Auto Show, the Chicago Flower & Garden Show, an Evening Of Stars (UNCF Telethon), and the Jerry Lewis MDA Telethon (which includes local segments). Finally, WGN provides substantial coverage of local sports teams, including the Chicago Cubs, Chicago White Sox, and Chicago Bulls. Indeed, nearly one quarter of all programming aired on WGN is locally-produced.

WGN has also consistently served the public interest by airing a minimum of three hours per week of "core programming"⁷ to meet the educational and informational needs of children.⁸ During the current license term, for example, WGN aired "Liberty's Kids," an animated series which teaches children ages seven to twelve about the American Revolutionary War. While Mr.

⁷ 47 C.F.R. § 73.671(c).

⁸ See 47 C.F.R. § 73.671 n.2; see also WGN-TV FCC 398 Children's Television Programming Reports 1997 to 2004.

Macek feels that WGN's children's programming is of "poor quality,"⁹ the Television Critics Association nominated "Liberty's Kids" for an Award for Outstanding Achievement in Children's Programming in 2003. In addition, the popular "Bozo Super Sunday Show," a locally-produced program that included musical and cultural presentations and physical activity segments for six- to nine-year-old children aired for five years during this eight-year license term. WGN also aired several children's programs focusing on animals, geography, and the environment, including "Wild America" and "Critter Gitters." Other core programming broadcast this license term includes "Teen Talk," a discussion show about the social and emotional issues facing teenagers, including social acceptance and drug abuse, and "Field Trip," a program that explores history, art, music, and science "up close and personal" for children ages six to twelve. Thus, contrary to Mr. Macek's claims of "lack of variety," the record clearly demonstrates WGN's commitment to broadcasting a wide range of educational and informational programming for children.¹⁰

Moreover, while Mr. Macek takes issue with the quantity, frequency, and/or content of WGN's national and local news coverage, talk shows, children's programming, and commercials, such claims cannot form the basis for denial of the Station's renewal application. Longstanding Commission precedent clearly establishes that programming decisions are entirely within the editorial discretion of the renewal applicant:

The focus of our inquiry in the case of a challenge to license renewal will be upon the reasonableness of the licensee's exercise of its discretion. . . . this standard is not unknown to Commission practice which has long held, with regard to programming, that a hearing is required only where a substantial

⁹ Objection at 3.

¹⁰ *Id.*

and material question of fact is raised as to whether the licensee abused its broad discretion by acting unreasonably or in bad faith.¹¹

Since the early 1980s, the Commission has provided broadcasters greater discretion in meeting their programming obligations. In 1984, the Commission eliminated quantitative informational, local, and non-entertainment programming guidelines for television station licensees and held that for renewal purposes, a “licensee need only have addressed community issues with whatever types of programming, that in its reasonably exercised discretion, it determined was appropriate to those issues.”¹² In reducing its oversight of program content, the Commission emphasized the judgment of individual licensees:

A licensee, in the exercise of its good faith judgment, will be able to address issues by whatever program mix it believes is appropriate in order to be responsive to the needs of the community. . . . Moreover, licensees will also have the freedom to decide what amounts of such programming will be offered. Stations should continue to be guided by the needs of the community and their reasonable good faith discretion in selecting issues to be covered and appropriate programming responsive to those issues.¹³

The Commission’s subsequent decisions underscored the wide-ranging discretion of television and radio licensees in making programming decisions. In 1988, Commission highlighted that it had “moved closer toward the goal of minimizing governmental scrutiny of broadcast program content and, in the process, maximizing broadcast licensee editorial discretion under the [F]irst

¹¹ Memorandum Opinion and Order, *Deregulation of Radio*, 87 F.C.C.2d ¶ 41 (1981); see *Broadcast Localism*, ¶ 41 (noting that “the Commission itself deregulated the renewal process substantially in the 1980s, turning from active review to a more passive role based on petitions to deny and license certifications”); see generally Second Further Notice of Inquiry and Notice of Proposed Rulemaking, *Formulation of Policies and Rules to Broadcast Renewal Applicants, Competing Applicants, and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process*, 3 FCC Rcd. 5179 (1998) (“*Comparative Renewal Process*”); Report and Order, *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 F.C.C.2d 1075 (1984) (“*Programming and Commercialization Policies*”).

¹² *Programming and Commercialization Policies*, ¶¶ 7, 36.

¹³ *Id.* ¶ 33.

[A]mendment.”¹⁴ Four years later, the Commission held that radio “licensees must . . . reserve to themselves *the ultimate editorial discretion* necessary to ensure that their stations program in the public interest and serve the needs of their communities of license.”¹⁵

As mentioned above, here, Mr. Macek alleges that WGN’s news coverage “ignores local political races” and “minimizes dissident political perspectives,” particularly in its coverage of the Iraq War.¹⁶ However, Mr. Macek’s *opinions*, for example, that WGN aired *too few* stories highlighting the “substantive issues” of the 2004 campaigns and *too many* stories using a “horse race” angle are just that.¹⁷ Because an individual viewer may not agree with how WGN exercised its wide-ranging editorial discretion to cover the 2004 elections, the Iraq War, or any other news story does not automatically render WGN’s use of such discretion unreasonable. Mr. Macek completely fails to raise a material question as to whether WGN has abused that constitutionally-protected discretion.

Nor can mere disagreement with WGN’s programming choices warrant denial of its license renewal application. In another license renewal context, the Mass Media Bureau rejected a similar complaint alleged against the licensees of several television stations in one market regarding the content of their news broadcasts.¹⁸ The Bureau’s letter ruling held that “with

¹⁴ *Comparative Renewal Process*, ¶ 11.

¹⁵ Report and Order, *Revision of Radio Rules and Policies*, 7 FCC Rcd. 2755 n.124 (1992) (emphasis added).

¹⁶ Objection at 1.

¹⁷ *Id.* at 2.

¹⁸ See Letter from Barbara A. Kreisman, Chief, Video Servs. Div., Mass Media Bureau, FCC to Dr. Paul Klite, Executive Dir., Rocky Mountain Media Watch, et al., 1998 WL 208060, *2-4 (Apr. 30, 1998) (holding that petitioner’s claims that licensees aired excessive crime stories and celebrity news and ignored local elections in their local news programming failed to establish a *prima facie* case against renewal).

regard to news programming in particular, the Commission has repeatedly recognized that ‘[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter committed to the licensee’s good faith discretion,’ and that, ‘the Commission will not review licensee’s news judgments.’”¹⁹ The letter ruling further noted that “[w]ith respect to the general issue-responsive programming [public interest] obligation, the Commission has granted licensees broad discretion to choose, in good faith, which issues are of concern to the community and to choose the types of programming to address those issues.”²⁰

Similarly, as the Commission itself held:

[Petitioner’s] objections concerning KCOP’s news programming are in essence a disagreement with licensee’s news judgment as to how much and what items should be covered by its newscasts. Moreover, “programming . . . can never be measured by a simple percentage test.” As we previously stated, broadcast licensees are necessarily given wide discretion in the areas of content and scheduling of news programming.²¹

In *KCOP*, the Commission also rejected petitioners’ argument that KCOP failed to meet its children’s programming by rerunning the same programs.²² According to the Commission, petitioner’s allegations were “matters within the licensee’s discretion as to program selection and content.”²³ The Commission later held that “television licensees enjoy *substantial discretion*

¹⁹ *Id.* at *4 (quoting *Am. Broad. Cos.*, 83 F.C.C.2d 302, 305 (1980)) (alteration in original).

²⁰ *Id.* at *5.

²¹ *Application of KCOP Television, Inc. For Renewal of License of Station KCOP-TV Los Angeles, California*, 59 F.C.C.2d 1321, ¶ 27 (1976) (internal citations omitted).

²² *Id.* ¶ 14.

²³ *Id.*

both in determining whether a particular program qualifies as educational and informational and in fixing the level or amount of children's programming that it will air."²⁴

Likewise, here, the Commission cannot intrude upon the editorial discretion of WGN in its news, entertainment, or children's programming. Mr. Macek has failed to allege any other facts that if proven, raise a substantial question of fact as to WGN's qualifications. His claims that WGN has a "pro-war, pro-administration bias" in its news coverage, has a "jingoistic tenor" and its airing of commercials "is contributing to the victimization of America's youth" are mere hyperbole.²⁵ Consequently, Mr. Macek has failed to meet his burden under the renewal standard and his Objection must be dismissed.

II. Conclusion

For the foregoing reasons, Mr. Macek's Informal Objection should be denied and WGN's license renewal application should be granted.

Respectfully submitted,

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December 1, 2005

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²⁴ Notice of Inquiry, *Policies and Rules Concerning Children's Television Programming Revision of Programming Policies For Television Broadcast Stations*, 8 FCC Rcd. 1841, ¶ 4 (1993) (emphasis added).

²⁵ Objection at 2 & 4. In addition, there would be extraordinary First Amendment concerns if the Commission accepted Mr. Macek's invitation to micro-manage television news, public affairs and children's programming, including the presence or absence of particular viewpoints.

AFFIDAVIT

I, Thomas E. Ehlmann, Vice President and General Manager of WGN Continental Broadcasting Company, declare that I have read the foregoing Opposition to Informal Objection to WGN-TV's license renewal application filed by Stephen H. Macek and know the contents thereof to be true of my own knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Chicago, Illinois on the 1st day of December, 2005.

Thomas E. Ehlmann

CERTIFICATE OF SERVICE

I, Jennifer Tatel, hereby certify that on this 1st day of December, 2005, I caused a true and correct copy of the foregoing Opposition to Informal Objection to WGN-TV's license renewal application to be served by First Class Mail upon:

Stephen H. Macek
1201 Greensfield Drive
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Jennifer Tatel