



Federal Communications Commission  
Washington, D.C. 20554

DEC 13 2006

DA 06-2503

Released: December 13, 2006

Third Coast Press  
c/o Rik Adamski  
P.O. Box 577595  
Chicago, Illinois 60657

Re: Petition to Deny filed by Third Coast Press

Gentlemen:

On November 1, 2005, Third Coast Press ("TCP") filed a Petition to Deny opposing the license renewal applications of 18 television stations serving the Chicago market.<sup>1</sup> The licensees of the various stations named in the petitions filed oppositions on or about December 15, 2005. For the reasons set forth below, we deny the Petition to Deny.<sup>2</sup>

*Background.* TCP argues that the named stations have been "systematically negligent in serving the public interest in terms of their news and public affairs coverage, children's programming, and hypercommercialism."<sup>3</sup> TCP states that the news coverage provided on Chicago television stations "emphasizes the day's police actions, crime and celebrity trivia;" "does not include news of key importance for petitioners;"<sup>4</sup> fails to serve the needs of African Americans and Latinos; contains an inadequate amount of programming devoted to local public affairs; and lacks vigorous debate on important issues, particularly the Iraq War. TCP further alleges that Chicago stations have been "systematically negligent in their public interest requirement to air three hours per week of educational television programming aimed at children,"<sup>5</sup> and that the programming intended to fulfill this requirement contains "negligible educational content and air[s] at times with negligible audiences."<sup>6</sup> Finally, Third Coast states that no locally produced shows providing commentary and critique of local and national politics are hosted by an African American, and that none of the designated "political commentators" on local daily news programs in Chicago are African-American.

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<sup>1</sup> The stations and licensees named in the petition are attached to this letter as an appendix. Third Coast characterizes itself as an independent, volunteer journalism organization located in Chicago, Illinois, acting alongside several individuals and leaders of local community groups.

<sup>2</sup> We will exercise our discretion pursuant to section 73.3587 of the Commission's rules and consider all of the allegations raised in the petition and the various oppositions.

<sup>3</sup> *Petition to Deny*, at 1.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.*

The oppositions argue that the Petition to Deny is devoid of specific allegations of fact, and consists instead of general allegations or mere statements of nonfactual opinion. The oppositions further respond that the allegations raised fall within the editorial discretion vested in licensees by the Communications Act of 1934 (the "Act") and by Commission and court precedent. Finally, the individual licensees generally disagree that their news programming has failed to serve the public interest, and state that their programming has complied with the Children's Television Act and Commission rules implementing the Equal Employment Opportunity Act.

*Discussion.* Section 309(k)(1) of the Act states that the Commission shall grant a license renewal application if it finds, with respect to that station, that (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or the rules or regulations of the Commission which, taken together, would constitute a pattern of abuse.<sup>7</sup>

The Commission applies a two-step analysis of a petition to deny under the public interest standard. First, the petition must contain specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.<sup>8</sup> This first step of the public interest analysis "is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the [petition] were true, could a reasonable factfinder conclude that the ultimate fact in dispute had been established."<sup>9</sup> "Allegations within these documents that consist of ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits, are not sufficient."<sup>10</sup> If the allegations meet this first step, then the Commission will designate the application for hearing when the allegations, together with any opposing evidence before the Commission, raise a substantial and material question of fact as to whether granting the application would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.<sup>11</sup>

TCP's petition contains statements of opinion as opposed to the specific allegations of fact necessary to make out a *prima facie* case that any of the licensees at issue have failed to serve the public interest. TCP's allegations concerning children's programming and the hiring of African-American news personalities, in particular, do not contain enough information to determine whether the actions of any specific licensee implicates the Children's Television Act or the Commission's rules implementing the Equal Employment Opportunity Act.

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<sup>7</sup> 47 U.S.C. §309(k)(1).

<sup>8</sup> 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) ("*Astroline*").

<sup>9</sup> *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

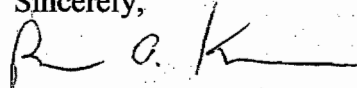
<sup>10</sup> *Id.* at 180, n. 11.

<sup>11</sup> *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

With respect to the allegations involving news programming, Section 326 of the Act and the First Amendment to the Constitution prohibit any Commission actions that would improperly interfere with the programming decisions of licensees.<sup>12</sup> Because of this statutory prohibition, and because journalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment's Free Press guarantee, the Commission has very little authority to interfere with a licensee's selection and presentation of news and editorial programming.<sup>13</sup> The Commission has long held that "[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter to the licensee's good faith discretion," and that "the Commission will not review the licensee's news judgments."<sup>14</sup> TCP has not provided evidence that any of the licensees named in the petition has exercised their editorial discretion in bad faith.

Accordingly, the Petition to Deny filed by Third Coast Press **IS DENIED**.

Sincerely,



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<sup>12</sup> 47 U.S.C. §326; U.S. CONST., amend. I.

<sup>13</sup> See, e.g., *National Broadcasting Company v. FCC*, 515 F.2d 1101, 1112-1113, 1119-1120, 1172 (1974), vacated as moot, *id.* at 1180, cert. denied, 424 U.S. 910 (1976); *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 124 (1973); *Hunger in America*, 20 FCC 2d 143, 150-51 (1969).

<sup>14</sup> *American Broadcasting Companies, Inc.*, 83 FCC 2d 302, 305 (1980). See also *Dr. Paul Klite*, 12 Com. Reg. (P&F) 79, 81-82 (MMB 1998), recon. denied sub nom., *McGraw-Hill Broadcasting Co.*, 16 FCC Rcd 22739 (2001).

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**APPENDIX**

### Stations Named in Petition to Deny

CALL SIGN	COMMUNITY OF LICENSE	LICENSEE	FILE NO.	FACILITY ID NO.
WBBM-TV	Chicago, IL	CBS Broadcasting, Inc.	BRCT-20050801AFV	9617
WMAQ-TV	Chicago, IL	NBC Telemundo License Co.	BRCT-20050801CEL	47905
WLS-TV	Chicago, IL	WLS Television, Inc.	BRCT-20050801CUZ	73226
WGN-TV	Chicago, IL	WGN Continental Broadcasting Company	BRCT-20050801BXY	72115
WCIU-TV	Chicago, IL	WCIU-TV Limited Partnership	BRCT-20050801ADO	71428
WFLD(TV)	Chicago, IL	Fox Television Stations, Inc.	BRCT-20050729DSN	22211
WCPX(TV)	Chicago, IL	Paxson Chicago License	BRCT-20050729AGG	10981
WSNS-TV	Chicago, IL	NBC Telemundo License Co.	BRCT-20050801CFO	70119
WTTW(TV)	Chicago, IL	Window to the World Communications, Inc.	BRET-20050801AFV	10802
WXFT-TV	Aurora, IL	Telefutura Chicago LLC	BRCT-20050801CPI	60539
WGBO-TV	Joliet, IL	WGBO License Partnership, G.P.	BRCT-20050801CKR	12498
WOCK-CA	Chicago, IL	KM LPTV of Chicago-13, L.L.C.	BRTVA-20050801CTD	35092
WYCC(TV)	Chicago, IL	College Dist. #508, County of Cook	BRET-20050801BVF	12279
WFBT-CA	Chicago, IL	Weigel Broadcasting Company	BRTTA-20050801BHY	9382
WOCH-CA	Chicago, IL	KM LPTV of Chicago-28, L.L.C.	BRTTA-20050801CPO	35101
WEDE-CA	Chicago, IL	First United, Inc.	BRTTA-20050801COP	66978
WPXE(TV) <sup>15</sup>	Kenosha, WI	Paxson Milwaukee License, Inc.	BRCT-20050729AIH	37104
W64CQ	Arlington Heights, IL	Trinity Broadcasting Network	BRTT-20050719AEV	68061

<sup>15</sup> Station WPXE(TV), though serving the Milwaukee, Wisconsin market, is named in the Third Coast petition.