



Federal Communications Commission  
Washington, D.C. 20554

MAR 21 2011

Mr. Robert K. Phelps  
7800 Tayloe Drive  
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Manassas, VA 20112-0143

Joseph M. Di Scipio, Esq.  
Vice President, Legal and FCC Compliance  
Fox Television Stations, Inc.  
444 North Capitol Street, NW  
Washington, DC 20001

Re: Application for Renewal of License  
WTTG(TV), Washington, D.C.  
File No. BRCT-20040527AKR  
Facility ID No. 22207

Mr. Phelps and Counsel:

On August 24, 2004, Robert K. Phelps filed an Informal Objection against the above-referenced license renewal application of Fox Television Stations, Inc. ("FTS"), licensee of station WTTG(TV), Washington, D.C. FTS filed an opposition to the informal objection on August 2, 2006.<sup>1</sup> For the reasons set forth below, we deny the Informal Objection.

Mr. Phelps argues generally that WTTG(TV)'s license "should not be renewed because of numerous violations of FCC regulations, technical problems that are allowed to go out over the air, violations of community standards of decency, and other examples of not serving the community."<sup>2</sup> Despite these general allegations, Mr. Phelps' primary complaint appears to be lack of public access to the station, in particular the presence of a "beefy rent-a-cop," and the failure of station management to follow-up on several of his attempts to bring "hot news stor(ies)" to their attention.<sup>3</sup> With respect to ownership, he states that WTTG(TV) and station WDCA(TV) are "virtual clones," without making a specific allegation that the stations in any way violate the Commission's multiple ownership rules, and complains that there are too many "technical errors" at the station, including failure to air certain programs on time and other unspecified instances in which the station aired profanity and sexual references. He also

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<sup>1</sup> FTS filed its opposition after Commission staff forwarded a copy of the Informal Objection. Mr. Phelps did not serve FTS with the Informal Objection.

<sup>2</sup> *Informal Objection*, at 1.

<sup>3</sup> *Id.* at 1-2.

complains generally about the quality of the programming aired by station WTTG(TV), especially its newscasts.

Section 309(k)(1) of the Communications Act of 1934, as amended (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 Communications Act or Commission rules and regulations; and (c) there have been no other violations by the licensee of the Act or Commission rules or regulations which, taken together, would constitute a pattern of abuse.<sup>4</sup> The Commission analyzes any public interest allegation according to a two-step process. The petition must first contain specific allegations of fact sufficient to show that such a grant would be prima facie inconsistent with the public interest.<sup>5</sup> If so, 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 grant would serve the public interest, or if the Commission is otherwise unable to conclude that granting the application would serve the public interest.<sup>6</sup>

Most of the allegations raised in the Informal Objection are outside the Commission’s jurisdiction. The failure to provide what the petitioner deems is adequate access, as well as the purported “technical problems,” do not violate any Commission rule. The petitioner does not provide a specific description of the alleged profanity or sexual references, and has further failed to show how common ownership of station WTTG(TV) and WDCA(TV) violates the broadcast multiple ownership rule.<sup>7</sup> Trading syndicated programming among broadcast stations does not, in itself, implicate any Commission rule.

With regard to the more general complaints about station WTTG(TV)’s 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>8</sup> We find, therefore, that the station’s programming choices, so long as they do not implicate any Commission rule, are within its discretion. With regard to news programming in particular, the Commission has repeatedly 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>9</sup>

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<sup>4</sup> 47 U.S.C. §309(k)(1).

<sup>5</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>6</sup> *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

<sup>7</sup> See 47 C.F.R. § 73.3555(b).

<sup>8</sup> 47 U.S.C. §326; U.S. CONST., amend. I.

<sup>9</sup> *American Broadcasting Companies, Inc.*, 83 F.C.C.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) (denying petition that cited excess of news stories dedicated to “mayhem” and under-coverage of issues involving the environment, arts, science, education, poverty AIDS, children and local elections).

Accordingly, the Informal Objection filed by Robert K. Phelps **IS DENIED**.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara A. Kreisman", with a long horizontal flourish extending to the right.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau