Federal Communications Commission
Washington, D.C. 20554

**CORRECTED**

July 29, 2013

**DA 13-1654**
**Released: July 29, 2013**

John W. Kohler, Jr.
602 Prospect Avenue N.
Kent, WA 98030-4656

KIRO-TV, Inc.
c/o Michael D. Basile
Dow Lohnes PLLC
1200 New Hampshire Avenue NW
Suite 800
Washington, DC 20036

Re: Application for Digital TV License Renewal
KIRO-TV, Seattle, Washington
File No. BRCT-20061002ATH[1]
Facility ID No. 66781

Dear Petitioner/Counsel:

This is with respect to the petition to deny ("Petition") that was filed opposing the grant of the above referenced broadcast television renewal application filed by KIRO-TV, Inc. ("licensee") for station KIRO-TV, Seattle, Washington. Pursuant to delegated authority, we have considered the Petition and for the reasons set forth below we deny it.

Background. On December 29, 2006, Mr. John W. Kohler, Jr. ("Petitioner") filed the Petition opposing the renewal of KIRO-TV's broadcast license.[2] Petitioner objects to the substance of various CBS Network news programming that is aired by KIRO-TV, a CBS Network affiliate. Petitioner contends that KIRO-TV's license should not be renewed because the network news programming it airs represents an "abuse of power[,]takes the form of opinion shaping[,] and results in the public airwaves being used as a propaganda tool by licensees." The licensee did not file an opposition to the Petition.[3]

[1] The file number referenced by the Petition to Deny, File No. BAFCDT-2006111ACE, is incorrect. This letter references the correct file number for KIRO-TV's broadcast license renewal application.

[2] An identical Petition to Deny was filed by Petitioner on January 9, 2007. For purposes of our evaluation we are treating both filings as a single Petition to Deny.

[3] "The failure to file an opposition or a reply will not necessarily be construed as an admission of fact or argument contained in a pleading." 47 C.F.R. § 73.3584(b). *See MG-TV Broad. Co. v. F.C.C.*, 408 F.2d 1257, 1263-64 (D.C. Cir. 1968).

Discussion. In cases involving a petition to deny, the Commission applies a two-step analysis under the public interest standard.[4] 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. If the petition meets the first step, the Commission will designate the application for hearing if 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.[5] We find that the Petitioner has failed to raise a substantial and material question of fact as to any rule violations.

The Petition highlights a variety of news programming that is described by the Petitioner as biased and not treating all viewpoints equally. While viewers may disagree with a broadcaster's choice in programming, broadcasters are afforded wide discretion in choosing their programming.[6] Under the First Amendment of the United States Constitution and Section 326 of the Act, the Commission is generally prohibited from involving itself in the content of specific programs or otherwise engaging in activities that might be regarded as program censorship. There is also no federal law that requires broadcasters to present contrasting viewpoints.[7] The Petition fails to demonstrate any violation of Commission rules or regulations. Even if Petitioner's assertions are viewed as being true, the Commission has no basis in law for granting the Petition and designating the license renewal application for hearing.

ACCORDINGLY, IT IS ORDERED that the petition to deny filed by John W. Kohler, Jr., IS DENIED.

IT IS FURTHER ORDERED, that the application filed by KIRO-TV, Inc. for the renewal of the license of KIRO-TV, Seattle, Washington, File No. BRCT-20061002ATH IS GRANTED.

Sincerely,

Barbara Kreisman
Chief, Video Division
Media Bureau

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[4] 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

[5] *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

[6] *See, e.g.*, National Broadcasting Co., Inc., 14 FCC Rcd 9026, 9031 (1999).

[7] *See, e.g.*, *In the Matter of Amendment of Parts 1, 73 & 76 of the Commission's Rules*, 26 FCC Rcd 11422, 11422-11423 (2011) (deleting as obsolete from the Code of Federal Regulations the Commission's so-called "Fairness Doctrine" and corollaries of the rule which no longer have any legal effect).