



Federal Communications Commission
Washington, D.C. 20554

September 5, 2014

The Tri-State "Like It Is" Support Coalition
c/o Weequahic Park Association
Lisa V. Davis, Chair
P.O. Box 2248
Newark, NJ 07114

Fox Television Stations, Inc.
c/o Joseph M. Di Scipio, Esq.
444 North Capital Street, NW
Suite 740
Washington, DC 20001

Re: WNYW(TV), New York, New York
File No. BRCT-20070201AJS
Fac. ID No. 22206

Dear Parties:

This is in regards to the above-captioned application for renewal of license for television station WNYW(TV) ("WNYW"), New York, New York, filed by Fox Television Stations, Inc. ("Fox Television"). The Tri-State "Like It Is" Support Coalition ("Like It Is"),¹ filed a document styled as a petition to deny ("Objection") against the WNYW renewal application.² Fox Television filed an opposition pleading ("Opposition").

Like It Is asserts generally that WNYW's local news coverage and public affairs programming has failed to meet the needs and interests of the community.³ Specifically, Like It Is states that WNYW's "daily deluge in negative imagery and blatant racist diatribes" against issues affecting African Americans, "contrasted with very little positive programming about African Americans, has contributed to open racial hostilities and is thereby detrimental."⁴ Like It Is argues that WNYW does not air sufficient public affairs programming to serve the tri-state area African-American community.⁵ Furthermore, Like It Is alleges that Fox's news coverage "serves as platforms for racially incendiary rhetoric,"⁶ and cites to specific

¹ Like It Is describes itself as "a broad based coalition of grass roots community organizations and individuals organized throughout the African-American community in the tri-state area to protect the media interest" of the African-American community. Objection at 1.

² Fox Television asserts that the petition to deny should be treated as an informal objection because Like It Is failed to serve Fox Television with the petition to deny and to attach a certificate of service when filing the petition with the Commission. Fox Television also notes that the deadline to file petitions to deny WNYW (TV)'s license renewal was May 1, 2007; however, Like It Is untimely filed its petition on June 4, 2007. Finally, Fox states that Like It Is failed to support its petition with an affidavit from a person or persons with personal knowledge of the allegations asserted in its petition. We agree that Like It Is failed to support the allegations in its petition to deny with an "affidavit of a person or persons with personal knowledge thereof." 47 U.S.C. § 309(d)(1). The petition does not contain such an affidavit. Therefore, Like It Is' petition to deny will be treated as an informal objection. 47 C.F.R. §73.3587. Thus, we need not address the issues of service and timeliness.

³ Objection at 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2.

program personalities, such as Bill O'Reilly and John Gibson, aired on the Fox News Channel, a cable network owned by Fox Television's parent company, to demonstrate its point.⁷ Like It Is concludes that such news coverage serves to increase racial bias and is detrimental to the African-American community.⁸

In opposition, Fox Television states that the Objection "fails to meet the requirements of [s]ection 309 of the Communications Act because it fails to establish a *prima facie* case that the renewal of WNYW's license would disserve the public interest."⁹ Fox Television explains that the programming that Like It Is claims portrays "negative imagery and blatant racist diatribes," is aired exclusively on the Fox News Channel, a cable network owned and operated by Fox Television's parent company, and was at no time aired on WNYW.¹⁰ Fox Television further notes that, "[t]he Commission should not interfere with constitutionally protected journalistic judgment of a non-broadcast corporate affiliate of WNYW...."¹¹ As for the allegations against the news and public affairs programming aired on WNYW, Fox Television states that the Commission, pursuant to section 326 of the Communication Act and the First Amendment, prohibits Commission action that would improperly interfere with programing and editorial decisions.¹²

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.¹³ 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.¹⁴ 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.¹⁵ We find that the Objection fails to establish a *prima facie* case that grant of the renewal application would disserve the public interest.

With respect to Like It Is' allegation that WNYW's local news coverage has failed to meet the needs and interests of the tri-state area African-American community, 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.¹⁶ Because journalistic discretion in the presentation of news and public information is the core concept of the First Amendment's Free Press guarantee, licensees are

⁷ *Id.*

⁸ *Id.*

⁹ Opposition at 1-2.

¹⁰ *Id.* at 2

¹¹ *Id.*

¹² *Id.* at 4.

¹³ 47 U.S.C. §309(k)(1).

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

¹⁵ *Astroline*, 857 F.2d at 1561; 47 U.S.C. §309(e).

¹⁶ 47 U.S.C. §326; U.S. CONST., amend. I.

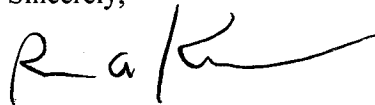
entitled to the broadest discretion in the scheduling, selection, and presentation of news programming.¹⁷ Thus, the Commission has repeatedly held that “[t]he choice of what is or is not to be covered in the presentation of broadcast news is a matter committed to the licensee’s good faith discretion,” and that “the Commission will not review the licensee’s news judgments.”¹⁸

Further, Like It Is’ allegation that WNYW has failed to provide adequate public affairs programming for the African-American community does not raise an issue with respect to the licensee’s compliance with the Commission’s rules and regulations. In this regard, a station is not required to present specific public affairs programming in order to meet community needs.¹⁹ In its *Localism Notice of Inquiry*, the Commission specifically noted that programming not specifically produced in or targeted at a local community may nonetheless serve the needs and interests of the community.²⁰ Thus, although Like It Is’ concerns may be legitimate matters for discussion within the tri-state area’s African-American community, we do not find that the matters raised justify intervention by the Commission in the pending renewal application, nor do we find that Like It Is has established a *prima facie* case that grant of the renewal application would disserve the public interest.

Finally, with respect to Like It Is’ objection to specific programming aired on the Fox News Channel, a cable network by Fox Television’s parent company, the license renewal of station WNYW is not the proper forum to address such concerns. This proceeding solely examines the programming aired on WNYW; at no time were the programs in question ever aired on WNYW, and therefore Like It Is’ objections to them are not relevant to this proceeding.

Accordingly, the Informal Objection filed by The Tri-State “Like It Is” Support Coalition, **IS DENIED.**

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁷ 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*, Memorandum Opinion and Order, 20 FCC 2d 143, 150-51 (1969).

¹⁸ *American Broadcasting Companies, Inc.*, 83 F.C.C.2d 302, 305 (1980). See also *Dr. Paul Klite*, Letter, 12 Com. Reg. (P&F) 79, 81-82 (MMB 1998), *recon. denied sub nom, McGraw-Hill Broadcasting Co.*, Memorandum Opinion and Order, 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).

¹⁹ *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1076 (1984), *aff’d on recon.*, 104 FCC 2d 358 (10986).

²⁰ *In the Matter of Broadcast Localism, Notice of Inquiry*, 19 FCC Rcd 12425, 12431 (2004) (subsequent history omitted) (“*Localism Notice of Inquiry*”). See also *Revision of Programming and Commercialization Policies, Ascertainment Requirement, and Program Log Requirements for Commercial Television Stations*, Memorandum Opinion and Order, 104 FCC 2d 357, 366 (1986).