



**Federal Communications Commission
Washington, D.C. 20554**

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In re: WEAC(AM), Gaffney, South Carolina
Facility ID No. 23005

WNOW-FM, Gaffney, South Carolina
Facility ID No. 23006

File Nos. BTC-20070504ACV
BTCH-20070504ACW

**Application for Transfer Of Control
Informal Objection**

Gentlemen:

We have before us the above-captioned application (the "Application") for approval of the proposed transfer of control of Gaffney Broadcasting, Inc. ("Gaffney"), licensee of Stations WEAC(AM) and WNOW-FM (formerly WAGI-FM),¹ Gaffney, South Carolina (collectively, the "Stations"), from the current stockholders to Davidson Media Group, LLC ("Davidson"). On May 31, 2007, John Flynn ("Flynn") filed an Informal Objection ("Objection") to the Applications, expressing his appreciation for the programming currently offered at the Stations and his concern about the loss of that programming in the event of their sale. For the reasons set forth below, we deny the Objection and grant the Application.

¹ The call sign of the Station was changed from WAGI-FM to WNOW-FM on May 15, 2007. We will use the Station's current call sign in this document.

Discussion. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the “Act”),² informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(a) of the Act,³ which governs our evaluation of grant of a license application. Specifically, Section 309(a) provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters as that we may officially notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the assignee fails to meet that standard, the Commission may deny the application -- after notice and opportunity for a hearing under Section 309(e) of the Act.

Davidson currently provides programming to WEAC(AM) and WNOW-FM pursuant to a Time Brokerage Agreement (“TBA”) executed on April 20, 2007.⁴ The programming supplied by Davidson appears to be in a format different from that previously aired by the Stations.⁵ Flynn states that WEAC(AM) and WNOW-FM have been a “substantial part” of the community of Gaffney, South Carolina for over 20 years, and it provides “comfort, entertainment and important daily information” to members of the community. Flynn equates the loss of the Stations’ programming with the loss of a “family member.” Flynn, operator of a local business, also states that grant of the transfer will “devastate local businesses that would advertise on [WNOW-FM]” as there is “no other means to reach the large amount of listeners” served by WNOW-FM.

We find that Flynn’s arguments are without merit. To the extent that Flynn is objecting to the transfer of WEAC(AM) and WNOW-FM, his arguments on programming grounds concern matters over which the Commission has limited jurisdiction.⁶ While we recognize that the Stations’ prior format has developed a devoted listenership, it is well-settled that the Commission does not regulate programming formats, nor does it take potential format changes into consideration in reviewing license assignment or transfer applications.⁷ In 1976, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Act, would not benefit the public, would deter innovation, and would impose substantial administrative burdens on the Commission.⁸ The Supreme

² 47 U.S.C. § 309(e).

³ See e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

⁴ A copy of the TBA is supplied in Attachment 6 of the Application.

⁵ We have reviewed the TBA and find that it comports with Commission policy and precedent. See, e.g., *Letter to William Silva, Esq.*, 9 FCC Rcd 6155 (MMB 1994); *Letter to Roy R. Russo, Esq.*, 5 FCC Rcd 7586 (MMB 1990); *Letter to Joseph A. Belisle*, 5 FCC Rcd 7585 (MMB 1990).

⁶ See *Letter to Stephen Diliberto and Kevin Walsh*, 22 FCC Rcd 12983 (MB 2007).

⁷ See *Letter to Richard Eiswerth and Dan Baughman*, 22 FCC Rcd 6807 (MB 2007).

⁸ See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC 2d 858, 865-66 (1976), recon. denied, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), rev’d sub nom., *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), rev’d, 450 U.S. 582 (1981). Section 326 of the Act expressly prohibits the Commission from interfering with the right of free speech of broadcasters. 47 U.S.C. § 326.

Court of the United States has upheld this policy and the Commission's determination that "the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . . and that a change in programming is not a material factor that should be considered by the Commission in ruling on an application for license agreement or transfer."⁹

Similarly, to the extent that Flynn argues that grant of the transfer will result in the loss of a vital advertising outlet for local businesses such as his own, this claim raises a matter over which the Commission has limited jurisdiction. It is well established that broadcast stations are not common carriers and thus retain the right to select certain advertisers and reject others.¹⁰

Based on the above, we find that the objector has not raised a substantial and material question of fact warranting further inquiry. We further find that Davidson Media Group is qualified to own the Stations and that grant of the Application is consistent with the public interest, convenience, and necessity.

Conclusion/Actions. Accordingly, it is ORDERED, that the Informal Objection of John Flynn IS DENIED.

It is FURTHER ORDERED, that the application (containing File Nos. BTC-20070504ACV and BTCH-20070504ACW, respectively) for transfer of control of Stations WEAC(AM) and WNOW-FM, Gaffney, South Carolina, to Davidson Media Group IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Francisco R. Montero, Esq. (Counsel for Davidson Media Group, LLC)
Andrew Kersting, Esq. (Counsel for Gaffney Broadcasting, Inc.)

⁹ See *FCC v. WNCN Listener's Guild*, 450 U.S. 582, 585 (1981).

¹⁰ See *Louis C. DeArias, Receiver*, Memorandum Opinion and Order, 11 FCC Rcd 3662, 3666 (1996) citing *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94 (1973). This right, however, is not unlimited. For example, federal antitrust laws may prohibit a broadcaster from using its station to gain a competitive advantage in the licensee's other business. *Id.* Nevertheless, the Commission has held that "where the practices do not amount to antitrust violations [e.g. actionable anticompetitive behavior] . . . they are unlikely to have serious harmful effect." *Elimination of Unnecessary Broadcast Regulation*, Policy Statement and Order, 57 RR 2d 913, 921 (1985).