

Federal Communications Commission
Washington, D.C. 20554

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Re: WDCU(FM), Washington, DC
Assignment of License Application
File No. BALED-970630GE; as amended by
File No. BALED-970815GE

Dear Counsel:

This letter concerns: (1) the above-referenced application (the "Application") for consent to assign the license of noncommercial educational ("NCE") station WDCU(FM), Washington, DC, from the University of the District of Columbia ("UDC") to National Cable Satellite Corporation ("C-SPAN"); and (2) approximately seventy-five letters from listeners opposing the Application.¹ The listener letters will be treated as informal objections in accordance with Section 73.3587 of the Commission's rules. For the reasons set forth below, the informal objections are denied and

¹ The Application, as initially filed, sought Commission consent to assign the WDCU(FM) license from UDC to Community Resource Educational Association, Inc. (File No. BALED-970630GE). Media Access Project and National Public Radio filed comments regarding the Application and subsequently were made parties to this proceeding. See Letter from Linda Blair, Chief, Audio Services Division, to Ann Bavender, Esq, dated July 28, 1997. On August 15, 1997, an amendment to the Application was filed to substitute C-SPAN for Community Resource Educational Association, Inc. as the proposed assignee. On, August 15, 1997, the Mass Media Bureau issued a Public Notice of the acceptance for filing of the amendment, the release of which initiated a new thirty-day period for filing of petitions to deny. *Public Notice*, Report No. 24056B (released August 15, 1997).

the Application is granted.²

Section 310(d) of the Communications Act, as amended (the "Act"), charges the Commission with determining whether the grant of a license assignment application will serve "the public interest, convenience and necessity. . . ." 47 U.S.C. § 310(d). With regard to the assignment of NCE radio stations in the reserved band, such as the radio station at issue here, the Commission first must ascertain whether the proposed buyer has demonstrated its eligibility to hold a noncommercial educational license. Section 73.503(a) of the Commission's rules provides that a "noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program." 47 C.F.R. § 73.503(a). An applicant may qualify as a noncommercial educational licensee by demonstrating that it is either an educational institution or an educational organization. *Notice of Inquiry in BC Docket No. 78-164*, 43 Fed. Reg. 30842, 3084-3085 (1978) ("*Notice of Inquiry*"); see also *Palm Bay Public Radio, Inc.* 6 FCC Rcd 1772, 1773 (1991), *aff'd sub nom.*, 952 F.2d 549 (D.C.Cir. 1992).³ Organizational applicants must demonstrate that they have an educational goal and are committed to the advancement of an educational program. *Notice of Inquiry*, 43 Fed. Reg. at 30845.

C-SPAN is not an educational institution and therefore must demonstrate that it qualifies as an educational organization. C-SPAN is a nonprofit corporation organized for the purpose of "distributing public affairs and other educational information." In this regard, C-SPAN reports that it intends to broadcast educational programming of local and national interest, including university symposia, congressional hearings and call-in shows featuring journalists and public policy makers. C-SPAN also states its intention to disseminate its programming through "C-SPAN in the Classroom," which includes seminars for teachers interested in integrating C-SPAN programming into their curricula. Because C-SPAN has demonstrated that it has an educational

² Three listeners filed pleadings captioned "petitions to deny." None of these pleadings meets the statutory requirements for filing petitions to deny. See 47 U.S.C. § 309(d). Gerald Osheroff filed a pleading captioned "petition to deny," but failed to serve the parties and did not submit an affidavit, as required under Section 309(d) of the Act. Thomas W. Baughman, PHD, likewise filed a pleading captioned "Petition to Deny," but did not serve the parties and did not submit an affidavit. In addition, Henry Mayfield, on behalf of himself and Citizens for Jazz for WDCU, filed a pleading captioned "Petition to Deny," which was filed two days after the September 15, 1997 deadline. We will treat these "petitions to deny" as informal objections under Section 73.3587 of our rules as well. Although the listener letters and "petitions to deny" were not served on the parties to this proceeding, these presentations are exempt from the prohibitions on presentations that generally apply in restricted proceedings. See 47 C.F.R. § 1.1204(a)(8) (a written presentation to the Commission by a listener or viewer of a broadcast station is exempt from the Commission's *ex parte* rules).

³ Although the *Notice of Inquiry* was terminated by Order dated January 11, 1990, the Commission stated that it would continue to apply the standards enunciated in the *Notice of Inquiry* on an *ad hoc* basis. *Matter of Amendment of the Commission's Rules Governing the Eligibility for Noncommercial Educational FM and TV Broadcast Station Licenses*, 5 FCC Rcd 394, 394 n.1 (1990).

goal and is committed to the advancement of an educational program, we find that C-SPAN is eligible to operate an NCE broadcast station in the reserved band.⁴

Having determined C-SPAN's eligibility to hold a noncommercial educational license, we turn to the informal objections filed by WDCU(FM) listeners. The principal objection to the proposed assignment is that, if approval is granted, C-SPAN will change WDCU(FM)'s current jazz format to a format dedicated primarily to public affairs and news programming. Many informal objectors argue that the public interest would be better served by preservation of the jazz format. One informal objector also argues that grant of the application is not in the public interest because C-SPAN's proposed national programming does not address the problems, needs and interests of the Washington, DC community. In addition, two informal objectors contend that it is impermissible for UDC, an NCE licensee, to maximize its profits by selling WDCU(FM) to the highest bidder.

While the Commission recognizes that WDCU(FM)'s jazz format has attracted a devoted listenership, it is well-settled Commission policy that potential changes in programming formats are not considered in reviewing assignment applications. See *Changes in the Entertainment Formats of Broadcast Stations*, 60 FCC 2d 858, 865-66 (1976); *recon. denied*, 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). With regard to public broadcasting in particular, the Commission historically "has had the appropriately limited role of facilitating the development of the public broadcasting system rather than determining the content of its programming." *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees, Notice of Proposed Rulemaking*, 87 FCC 2d 716, 732 (1981); *Report and Order*, 98 FCC 2d 746 (1984) ("*Public Radio and Television Programming*").

One informal objector expresses concern regarding the "national" character of C-SPAN's programming. Under well-established precedent, an applicant is required to provide only a brief

⁴ One informal objector erroneously argues that C-SPAN is not eligible to hold a noncommercial license because it has failed to demonstrate how it will satisfy the public interest requirement enunciated in Section 396(a)(6) of the Communications Act, as amended, which provides that "it is in the public interest to encourage the development of programming that involves creative risks and that addresses the needs of unserved and underserved audiences, particularly children and minorities." 47 U.S.C. § 396(a)(6). Section 396(a) of the Communications Act does not establish operational standards for noncommercial educational broadcast stations. See *Seattle Public Schools*, 4 FCC Rcd 625, 628 (Rev. Bd. 1989). Rather, Section 396(a) sets forth the congressional basis for establishing and continuing to fund public broadcasting with public tax monies. *Id.*; see also *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees, Notice of Proposed Rulemaking*, 87 FCC 2d 716, 731(1981) (Section 396 programming goals "not specifically directed to the role of this Commission in public broadcasting"); *Report and Order*, 98 FCC 2d 746 (1984). Furthermore, the Commission does not require stations to present programming specifically designed for minority groups. See *Spectacor Broadcasting L.P.*, 9 FCC Rcd 1729, 1731 (1993); citing *Puerto Rico Media Action and Educational Action, Inc.*, 51 FCC 2d 1178, 1181-82 (1975).

narrative description of its proposed community issue-responsive service. *See Request for Declaratory Ruling Concerning Programming Information in Broadcast Applications for Construction Permits, Transfers and Assignments*, 3 FCC Rcd 5467, 5467-5468 (1988); *see also Public Radio and Television Programming, Report and Order*, 98 FCC 2d at 751-752; *Deregulation of Radio*, 84 FCC 2d 968, 982 (1981), *recon. granted in part and denied in part*, 87 FCC 2d 797, *aff'd in part and remanded in part sub nom., Office of Communications of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983). C-SPAN's program service statement fully satisfies this application requirement. C-SPAN states its intention to broadcast educational programming of local, as well as national, interest and no credible evidence has been submitted to rebut this assertion. In any event, these sorts of objections may be renewed and are appropriately reviewed in connection with the station's next license renewal application. *See* 47 U.S.C. § 309(d)(1) and 47 C.F.R. § 73.3580(d)(4).

With regard to the claim that UDC, as an NCE licensee, should not be permitted to maximize its "profit" by selling WDCU(FM) to the highest bidder, we note that "profit *per se* in assignment of licensed broadcast properties has never been held to be contrary to the public interest. . . ." *See Robert E. Sewell*, 19 FCC 2d 872, 874 (1969). We find no basis for precluding an NCE licensee from maximizing profits on the sale of its stations unless there is evidence that the receipt of such profits would affect the licensee's nonprofit status.⁵ The informal objectors submit no evidence demonstrating that a profit from the sale of WDCU(FM) would jeopardize UDC's nonprofit status. *See Certain Broadcast Stations Licensed to Communities in Maryland, Virginia, West Virginia and the District of Columbia*, 9 FCC Rcd 2143, 2145 (1994) (informal objections like petitions to deny must contain adequate and specific factual allegations sufficient to warrant the relief requested).⁶ We decline to deny the assignment application on this basis.

The informal objections do not raise a substantial and material question of fact. Examination of the Application establishes that C-SPAN is qualified to be a Commission licensee, and that the proposed assignment will serve the public interest, convenience and necessity. In light of the foregoing, and pursuant to 47 C.F.R. § 0.283, the informal objections ARE DENIED. Furthermore, the application (File No. BALED-970630GE as amended by BALED-

⁵ One informal objector erroneously claims that Section 73.503(a) of the Commission's rules prohibits a noncommercial educational broadcaster from earning a profit from the sale of its station. Section 73.503(a) merely requires that a noncommercial educational broadcast station provide a noncommercial educational broadcast service. 47 C.F.R. § 73.503(a).

⁶ We also note that some informal objectors contend that the Commission should require UDC to sell WDCU(FM) to a buyer who they claim would better serve the public interest. Section 310(d) of the Communications Act specifically precludes the Commission from considering any party other than the buyer proposed in the application before us. *See* 47 U.S.C. § 310(d); *see also Iowa State University Broadcasting Corporation*, 9 FCC Rcd 481 (1993), *citing MMM Holdings, Inc.*, 4 FCC Rcd 8243, 8244 (1989).

970815GE) to assign the license of station WDCU(FM), Washington, DC from the University of the District of Columbia to National Cable Satellite Corporation IS GRANTED.

Sincerely,

Roy J. Stewart, Chief
Mass Media Bureau

cc: Ann Bavender, Esq.
Gigi Sohn, Esq.
Neal A. Jackson, Esq.
Mr. Gerald Osheroff
Thomas W. Baughman, PHD
Mr. Henry Mayfield