

United States Senate

WASHINGTON, DC 20510

August 2, 2018

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Pai:

We write to express our strong objection to the Federal Communications Commission's (FCC or Commission) decision to renew WWOR-TV's license earlier this month. For more than a decade, WWOR has failed to live up to its obligations to the people of New Jersey. And we believe that in renewing this license, the FCC has failed to live up to its statutory obligations under Section 309(k)(1) of the Communications Act to examine whether WWOR has complied with its obligation to "serve[] the public interest, convenience, and necessity."¹ As a result, we ask that the FCC immediately reconsider its decision to renew this license.

As you know, if the densely populated state of New Jersey had its own media market, it would be the fourth-largest media market in the country. However, due to its position between New York City and Philadelphia, the state does not have a designated television market area centered in New Jersey. Rather, the state is split between the New York City and Philadelphia markets. As a result, WWOR-TV is the only commercial high-power television station licensed to a community in New Jersey.

Carrying out a law passed in 1982 and codified in Section 331 of the Communications Act, the FCC stipulated that any license holder for WWOR "devote itself to meeting the special needs of its new community (and the needs of the Northern New Jersey area in general)."² The WWOR-TV license makes clear – and the FCC has confirmed on multiple occasions – that WWOR has special obligations to serve North Jersey. And multiple commenters in the proceeding suggested that WWOR is not meeting these very specific, substantial obligations to serve the people of New Jersey. This evidence included both studies about the quantity of New Jersey content being aired by WWOR, as well as anecdotal evidence of the view of New Jersey residents about the quality of that content. Yet, in your July 12, 2018 Memorandum Opinion and Order ("the Order") approving the WWOR license renewal, the Commission seems to accept on face-value the conclusion made by the FCC's Media Bureau that WWOR is meeting its obligations to "address issues of public importance to the community."

Even more troubling is that the Commission questions whether WWOR should even have to continue to adhere to its special obligations. For example, in footnote 46 of the Order, the FCC states:

¹ 47 U.S.C. Sec. 309(k)(1).

² Channel 9 Reallocation (WOR-TV), 53 RR 2d 469 (1983)

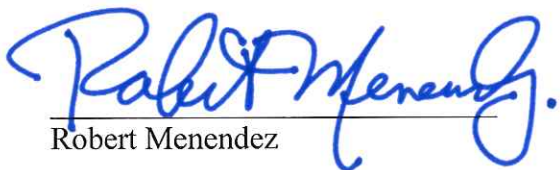
“We note there are significant questions as to whether WWOR should continue to have to comply with the special New Jersey service obligation in connection with subsequent renewal applications, in light of Section 331’s express concern about the availability of VHF stations and the fact and WWOR changed from a VHF to UHF station following the DTV transition. We do not reach this question today, however, as the parties have not raised it, and because we conclude, in any event, that WWOR has complied with its service obligation in connection with the present applications.”³

At best it is presumptuous that the FCC would raise this issue; at worst, it shows the agency’s continued unwillingness to hold WWOR accountable and in fact signals to WWOR that at the next renewal, it should ask the agency to be relieved of all obligations to the citizens of New Jersey.

Additionally, we recognize, as the FCC states in the Order, “the Commission has repeatedly made clear that we will not second-guess a licensee’s editorial judgments.”⁴ We understand that the FCC does not sit as the final arbiter of what a station must or must not air – something that would be inconsistent with the First Amendment. But the FCC grant of this renewal raises a serious question as to what a concerned local citizen would have to demonstrate for the FCC to deny a license renewal based upon the inability of WWOR (or any other station) to serve its local community consistent with its license obligations. On one hand the Bureau found program lists to be “fundamental” in reviewing a station’s performance, yet the Commission refuses to second-guess a station’s editorial discretion. This raises the question regarding what evidence opponents of a license renewal must show to get the FCC to take seriously its statutory obligation to determine that a licensee is complying with the Communications Act.

We fear that the FCC’s rubber-stamping of WWOR’s license renewal portends the end of the public interest standard for TV licensees as set forth in the Communications Act. The FCC is charged with “implementing and enforcing America’s communications law and regulations,”⁵ a task that can only be accomplished if the agency uses its enforcement prerogative. The FCC, must in the future, take its responsibility to the American people, including to the people of New Jersey, more seriously. And that includes reconsidering its decision in this case. Thank you in advance for your prompt attention to this matter.

Sincerely,


Robert Menendez


Cory A. Booker

³ <https://docs.fcc.gov/public/attachments/FCC-18-97A1.pdf>

⁴ <https://docs.fcc.gov/public/attachments/FCC-18-97A1.pdf>

⁵ <https://www.fcc.gov/about/overview>