Federal Communications Commission
Washington, D.C. 20554

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MB Communications, Inc.
c/o James L. Oyster, Esq.
Law Offices of James L. Oyster
108 Oyster Lane
Castleton, VA 22716

The Finger Lakes Radio Group, Inc.
c/o John F. Garziglia
Womble Carlyle Sandridge & Rice PLLC
1401 I Street, NW, 7th Floor
Washington, D.C. 20005

In Re: WFLK(FM), Geneva, New York
Facility ID No. 40804
BALH-20101110ADV

Application for Assignment of License

Dear Applicants:

We have before us the referenced application (the "Application") seeking Commission consent to the proposed assignment of the license of Station WFLK(FM), Geneva, New York (the "Station"), from MB Communications, Inc. to The Finger Lakes Radio Group, Inc. ("FLRG"). On December 10, 2010, Towers Investment Trust, Inc. ("Towers") filed an Informal Objection (the "Objection") to the Application.[1] For the reasons set forth below, we deny the Objection and grant the Application.

Background. The Application proposes to assign the Station's license to FLRG, a corporation comprised of three officers and shareholders. In the Application, FLRG discloses that George W. Kimble ("Kimble"), an officer with a 67 percent ownership interest, is currently subject to Chapter 7 bankruptcy in the United States Bankruptcy Court, District of Arizona.[2] Towers, one of the creditors in Kimble's bankruptcy proceeding, objects to the grant of the Application. Specifically, Towers avers that because Kimble's assets, including his stock in FLRG, are subject to the control of the United States Bankruptcy Court, Kimble is not in control of FLRG and, therefore, had no authority to enter into the subject transaction. In its Opposition, FLRG asserts that the fact that Kimble's assets are subject to a bankruptcy court proceeding does not impact the pending Application. FLRG emphasizes that the transaction was entered into by FLRG as a corporate entity, and the actions taken by the corporate entity are unrelated to

[1] We also have before us FLRG's February 28, 2011, Opposition to the Objection.

[2] *See* Application at Exhibit 13. Kimble's bankruptcy case was originally filed under Chapter 11 and was converted to a case under Chapter 7 on November 2, 2010.

Kimble's financial affairs.

Discussion. Pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act"), informal objections 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 the public interest, convenience, and necessity.[3] For the reasons discussed below, Towers does not carry this burden.

Towers has failed to demonstrate how Kimble's personal bankruptcy is decisionally significant to this proceeding. FLRG is a separate and distinct corporate entity. The corporation itself is not in bankruptcy, and it has stockholders, officers, and directors distinct from Kimble. FLRG explains in its Opposition that it entered into the transaction with full corporate authority, *i.e.*, the subject transaction and filing of the Application were duly authorized by FLRG's board of directors.[4] Towers provides no evidence that Kimble's personal bankruptcy has any adverse effect on the legal, financial, or other qualifications of FLRG. Accordingly, we find that the personal bankruptcy proceeding is not an impediment to grant of the Application.[5]

With respect to Towers' contention that Kimble circumvented the Bankruptcy Court's Orders and had no authority to be a party to the subject transaction, the Commission has a well-settled policy of not interjecting itself into private disputes, especially when they are already before a court of competent jurisdiction.[6] In the absence of a stay or injunction issued by a court, the Commission has routinely acted favorably on license assignment applications pending resolution of private disputes such as those at issue here.[7] We note, however, that Commission grant of an assignment or transfer of control application merely finds that the parties to the Application are qualified under, and the proposed transaction does not violate, the Act, or the Commission's rules and policies. As such, it is permissive only and does not prejudice any relief to which any party may ultimately be entitled under state law or federal bankruptcy law. Towers' financial dispute with Kimble is properly before the United States Bankruptcy Court for the District of Arizona. To the extent Towers believes Kimble is in violation of the court's Orders, it should seek redress at the court, not at the Commission.

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[3] 47 U.S.C. § 309(e); *see also, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n. 10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh'g denied* (1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

[4] *See* Declaration of Alan Bishop, Vice President of FLRG, attached as Exhibit to Opposition.

[5] *See, e.g., F.E.M. Ray, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 848 (1992) (declining to add a financial issue where petitioner had not shown that the bankruptcy of one of applicant's shareholders negatively affected applicant's financial qualifications); *Webster-Baker Broadcasting Co.*, Decision, 88 FCC 2d 944 (1982) (declining to add an issue where petitioner failed to demonstrate how bankruptcy of company largely owned by one of applicant's shareholders impacted applicant's qualifications).

[6] *See, e.g., Birach Broadcasting Corp.*, Letter, 23 FCC Rcd 478, 4781(MB 2008) (the Commission is not the appropriate forum to resolve the contractual, property, and bankruptcy issues raised by petitioner), citing *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976); *Decatur Telecasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 8622 (1992).

[7] *See, e.g., Farm and Home Broadcasting Company*, Letter, 24 FCC Rcd 11814, 11815 (MB 2009).

Conclusion/Actions. Based on our review of the Application, we conclude that the proposed transaction complies with the Act and all Commission rules and policies and that its grant would further the public interest, convenience, and necessity. Accordingly, IT IS ORDERED, that the Informal Objection, filed by Towers Investment Trust, Inc., IS DENIED.

IT IS FURTHER ORDERED, that the application for consent to assign the license for Station WFLK(FM), Geneva, New York (File No. BALH-20101110ADV) from MB Communications, Inc. to The Finger Lakes Radio Group, Inc., IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: William H. Brothers, Towers Investment Trust, Inc.