Federal Communications Commission
Washington, D.C. 20554

December 15, 2011

In Reply Refer To:
1800B3-MM

Ms. Sandra P. Sims
2017 Kathleen Drive
Columbia, SC 29210

John C. Trent, Esq.
Putbrese Hunsaker & Trent, P.C.
200 South Church Street
Woodstock, VA 22664

In re: WDEK(AM), Lexington, South Carolina
Facility ID No. 250
File No. BAL-20100915AAP
Application for Consent to Assignment of License

Petition to Deny

File No.BR-20110721AHN
Application for Renewal of License

Dear Ms. Sims and Mr. Trent:

We have before us: (1) the referenced application ("Assignment Application") for Commission consent to the assignment of the license of station WDEK(AM) (formerly WQVA(AM)), Lexington, South Carolina ("Station") from John C. Trent, Esq., Acting Receiver ("Receiver") for Peregon Communications ("Peregon"), to Broomfield Broadcasting of Lexington, Inc. ("Broomfield"); and (2) a Petition to Deny the Assignment Application ("Petition") filed by Sandra P. Sims on October 12, 2010.[1] We also have before us the timely application for renewal of the Station's license ("Renewal Application").[2] For the reasons stated below, we deny the Petition and grant the Assignment Application, and we grant the Renewal Application with an appropriate condition.

Background. The Assignment Application arises out of a South Carolina court-ordered sale to satisfy a judgment against Peregon. Specifically, on August 7, 2007, Branch Banking and Trust Company ("BB&T") filed a summons and complaint with the South Carolina County of Lexington Court

[1] Supplemented on October 14, 2010 ("Supplement"). The Receiver filed an Opposition to the Petition on November 25, 2010 ("Opposition").

[2] The Renewal Application is uncontested.

of Common Pleas ("Court") regarding Peregon's default on a $700,000 mortgage.[3] The mortgage included a security agreement in which Peregon pledged "[a]ll general intangibles of Peregon Communications, Inc., including but not limited to: any and all rights to all FCC licenses. . . ."[4]

On December 14, 2007, the Court awarded a $726,349 judgment against Peregon and ordered a judicial sale of Peregon's assets, including the Station's license.[5] On February 7, 2008, all physical and intangible assets were sold through the court to BB&T.[6] On June 17, 2010, the Court appointed the Receiver as acting receiver for Peregon to complete the assignment or transfer of the Station license from Peregon to BB&T or another party.[7] The Commission granted a short-form application for consent to an involuntary assignment of the Station license from Peregon to the Receiver on June 25, 2010.[8] On September 16, 2010, the Receiver filed the Assignment Application.

On October 12, 2010, Sims filed the Petition. Sims, a five percent shareholder[9] of Peregon, opposes the proposed assignment of the Station's license to Broomfield and wishes to "maintain ownership of the Station."[10] She argues that the Commission should deny the Application because the Court's judgment against Peregon violates Commission precedent by subjecting Peregon's license to a mortgage, security interest, lien, pledge, or attachment.[11] Sims claims she was not notified of the court proceedings or orders.[12] She also wishes to purchase the Station[13] and collect on a debt owed to her by Peregon.[14]

In its Opposition, the Receiver claims that Sims' arguments are irrelevant, because (1) Sims lacks standing;[15] (2) this is the kind of private contractual dispute in which the Commission does not interfere;[16] and (3) Sims' Petition is an abuse of process.[17]

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[3] *Branch Banking & Trust Co. v. Peregon Communications, Inc.*, C/A No. 2007-CP-32-2758 (S.C. Ct. of Common Pleas, Lexington County, Dec. 14, 2007) (Judgment of Foreclosure and Sale and Findings of Fact ¶1).

[4] *Id.* at ¶8.

[5] *Id.* at Decree, ¶1.

[6] *See* Bill of Sale, Feb. 7, 2008.

[7] *See* Supplemental Order, Jun. 17, 2010.

[8] *See* File No. BAL-20100621AAV (consummated Jun. 28, 2010).

[9] *See* File No. BOA-20070730AAY. In the Petition, Sims claims to have a 40 percent ownership interest, and in the Supplement, a ten percent interest.

[10] Supplement at 2.

[11] Petition at 1.

[12] Supplement at 1 and 2.

[13] *Id.* at 2.

[14] *Id.* at 1.

[15] Opposition at 5.

[16] *Id.* at 4-5.

[17] *Id.* at 5-6.

On July 21, 2011, Licensee timely filed the Renewal Application.

Discussion. *Procedural Matters*. Section 309(d)(1) of the Communications Act of 1934, as amended ("Act"), provides that only a "party in interest" may file a petition to deny a proposed assignment.[18] The Commission accords party in interest status to a petitioner if grant of the application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.[19] To the extent that Sims claims an ownership interest in Peregon, we find that she has standing.[20]

Substantive Matters. The Assignment Application. Section 310(d) of the Act requires the Commission to make a determination whether the proposed transfer or assignment of a broadcast license would be in the public interest.[21] Section 309(d) of the Act states that a petition 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.[22] This section provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters of which we may officially take notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the applicant 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.[23]

Sims asserts that the Court's judgment against Peregon violates Commission precedent by subjecting Peregon's license to a mortgage, security interest, lien, pledge, or attachment.[24] As Sims correctly notes, a Commission license is "not subject to a mortgage, security interest, or lien, pledge, attachment, seizure or similar property right."[25] The prohibition on security interests in licenses is

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[18] 47 U.S.C. § 309(d)(1).

[19] *See Annabelle Savage, Chapter 7 Trustee, Universal Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3665, 3667 (MB 2010) ("*Savage*") (citing *Pinelands, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 6058, 6063 (1992); *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC 2d 696 (1978).

[20] To the extent that there is a dispute regarding Sims' ownership in Peregon, we find that this is a private contractual matter best left for state courts to decide. *See WSUV, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 9436 (1995) (citing *John F. Runner*, 36 RR 2d 773, 778 (1976)) (declaring issue regarding ownership interest in a corporation to be a private contractual matter best left to the appropriate court).

[21] 47 U.S.C. §310(d).

[22] 47 U.S.C. § 309(a), (d). *See, 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), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (petitions to deny must contain adequate and specific factual allegations sufficient to warrant the relief requested.).

[23] 47 U.S.C. § 309(e).

[24] Petition at 1.

[25] *WPAL-FM, Ridgeville, SC*, Letter, 24 FCC Rcd 2894, 2897, n.28 (MB 2009) (citing *Kirk Merkeley*, 56 RR 2d 413, 416 (1984) ("*WPAL-FM*") *app. for review denied, Gresham Communications, Inc.*, Memorandum Opinion and Order, FCC 11-127 (rel. Aug. 25, 2011) ("*Gresham*") (although an initial court order providing for a broadcast license to be attached and sold at a court-ordered sale was invalid, a subsequent court order appointing a receiver to seek Commission approval to take possession of the station and manage the station until a Commission-approved sale to a third party occurred conformed to the Act and Commission requirements). The Court's judgment with

(footnote continued)

necessary to prevent the foreclosure of such an interest and transfer of the license without Commission approval, in violation of our statutory duty to approve the qualifications of every applicant for a license.[26] Here, however, the Court Order of December 14, 2007, is consistent with Section 310(d) the Act. On that date, the Court ordered the sale at public auction of Peregon's property, including the Station license, and ordered Peregon to "prepare, sign and file (or cause to be filed) with the [Commission] the assignor's or transferor's portion of any application or applications for consent to...the assignment of any [Commission] [l]icense or the transfer of control thereof...."[27] By ordering Peregon to fill the assignor portion of an application for assignment with the Commission, the Court satisfied the provision of Section 310(d) of the Act which requires assignments to be "upon application to the Commission."[28]

Next, Sims urges the Commission to deny the Assignment Application because she believes she should have been given the right to purchase the Station, collect on Peregon's debt to her, and be informed of Court dates and rulings. In response, the Opposition argues that these are private contractual matters to be governed by the Commission's long-standing policy to accommodate the actions of state courts and leave contractual issues to private parties.[29] We agree. The Commission has consistently held that it is not the proper forum for the resolution of private disputes, and that parties should seek redress for such matters in local courts of competent jurisdiction.[30] Furthermore, Section 310(d) of the Act states that "the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee" in evaluating assignment and transfer applications.[31] To the extent Sims seeks to present herself as a superior potential buyer of the Station for any reason, we find that Section 310(d) prohibits us from considering that issue.

We have examined the Assignment Application, and we find Broomfield to be fully qualified to be the licensee of the Station and that grant of the Assignment Application will further the public interest, convenience, and necessity.

The Renewal Application. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Act.[32] That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and

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respect to the security agreement pledge of "any and all rights" to Peregon's FCC licenses is consistent with *Gresham*'s recognition that while a license itself may not be attached, the proceeds from the sale of a license are subject to attachment and may be used to satisfy a judgment. *See Gresham*, ¶ 11 and n.36.

[26] 47 U.S.C. § 310(d).

[27] Judgment of Foreclosure and Sale, Dec. 14, 2007, at ¶¶15, 16.

[28] 47 U.S.C. § 310(d). *See also Arecibo Radio Corporation,* Memorandum Opinion and Order, 101 FCC 2d 545, 549 (1985) (honoring court order requiring licensee to execute assignment application in favor of another party).

[29] *See WOW* at 132; *see also Gresham,* para. 10; *WPAL-FM,* 24 FCC Rcd at 2897, n.28 (MB 2009) (citing *Kirk Merkley*, Memorandum Opinion and Order, 56 RR 2d 413, 416 (1984)).

[30] *See 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).

[31] 47 U.S.C. § 310(d).

[32] 47 U.S.C. § 309(k).

necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[33] If, however, the licensee 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 – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."[34]

We have evaluated the Renewal Application and find that the Station has served the public interest, convenience, and necessity during the license term and that Licensee has engaged in no serious violations or other violations which, taken together, constitute a pattern of abuse. We will therefore grant the Renewal Application below.[35]

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED, that the Petition to Deny filed on October 12, 2010, and supplemented on October 14, 2010, by Sandra P. Sims, IS DENIED.

IT IS FURTHER ORDERED, that the application for consent to assign the license of Station WDEK(AM), Lexington, South Carolina from John C. Trent, Esq., Acting Receiver for Peregon Communications, to Broomfield Broadcasting of Lexington, Inc. (File No. BAL-20100915AAP) IS GRANTED.

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[33] 47 U.S.C. § 309(k)(1).

[34] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[35] We do not normally grant a renewal application when a license is being held by a receiver or trustee. However, because we are contemporaneously granting an application to assign the station license to permanent licensee, we will do so here. *Compare Harry Wallerstein, Receiver, Televisino Co. of America*, Decision, 1 FCC 2d 91, 93 (1965) (finding that "[g]rant of a license to a trustee or receiver by its very nature is temporary, and action on applications for renewal of licenses filed by such trustees or receivers is deferred until an assignee has been found, an application for assignment of a license has been filed, and the qualifications of the assignee have been considered.").

IT IS FURTHER ORDERED, that the application for renewal of license for Station WDEK(AM), Lexington, South Carolina (File No. BR-20110721AHN) IS GRANTED subject to the following condition:

> That the assignment of license covered by BAL-20100915AAP will be consummated within ninety (90) days of the date of the grant, that the Commission be notified of such consummation within one (1) day thereafter.
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> Failure to consummate will render the grant null and void and will cause the renewal application to revert to pending status.

Sincerely,

Peter H. Doyle /HH

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mr. Eric Broomfield, Broomfield Broadcasting of Lexington, Inc.