

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In re Application of	)	
	)	
<b>HOUSTON CHRISTIAN BROADCASTERS, INC.</b>	)	Facility ID No. 87144
	)	
and	)	
	)	
<b>COX RADIO, INC.</b>	)	
	)	
For Consent to Assignment of	)	File No. BALFT-20120308ABY
FM Translator Station K285EU, Mendoza, Texas	)	

To: Secretary, to forward to Chief, Audio Division, Media Bureau

**INFORMAL OBJECTION**

CC Licenses, LLC (“CCL”), the licensee of full-service FM stations in San Antonio, Texas, by its attorney, pursuant to Section 73.3587 of the Commission’s Rules, hereby files this Informal Objection to the above-captioned pending application of Houston Christian Broadcasters, Inc. (“HCBI”) and Cox Radio, Inc. (“Cox”) for Commission consent to the assignment to Cox of the license to operate FM Translator, K285EU, Mendoza, Texas (the “Translator”), File No. BALFT-20120308ABY (the “Assignment Application”).

In September 2011, Cox filed an exhaustively documented “Petition for Cancellation of License, Request for Hearing Designation Order, and Petition for Reconsideration” (the “Cox Petition”). <sup>1/</sup> The Cox Petition documents that the HCBI Translator

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<sup>1/</sup> CCL is concurrently filing a Petition for Reconsideration (“CCL Petition for Reconsideration”) of the Media Bureau’s grant of the most recent construction permit for the modification of the Translator, File No. BPFT-20120308ABX (the “Datapoint Drive

[Footnote continued]

failed to provide dependable service, that HCBI violated multiple Commission rules and that HCBI “committed more than three dozen material misrepresentations in its various applications. ...” 2/ Consequently, Cox urged the Media Bureau to cancel HCBI’s license to operate the Translator, or, in the alternative, declare the license expired as a matter of law, or, alternatively, issue an order to show cause to HCBI as to why the Translator’s license should not be revoked.

Notwithstanding, or perhaps because of, the substantial case made by Cox against HCBI and the Translator’s operating authority, HCBI and Cox undertook negotiations for the sale of the Translator to Cox. The Asset Purchase Agreement between HCBI and Cox attached to the Assignment Application (the “APA”) is dated as of March 7, 2012. That same day, Cox filed a letter withdrawing its Petition against the Translator (the “Cox Withdrawal Letter”). 3/ The subject Assignment Application was filed the next day, March 8, 2012.

The APA provides for Cox to pay HCBI a purchase price of Two-Hundred and Fifty Thousand Dollars in cash for the Translator. 4/ Moreover, under the APA, HCBI was obligated to file and prosecute a modification application chosen, prepared and paid for by

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[Footnote continued]

Application”). A copy of the Cox Petition, obtained from Commission files, is attached to the CCL Petition for Reconsideration and is incorporated by reference herein.

2/ See Cox Petition at Summary.

3/ A copy of the Cox Withdrawal Letter is attached to the CCL Petition for Reconsideration and is incorporated by reference herein. The APA required Cox to file the withdrawal letter, *see* APA at Section 6.4, and approval by the FCC of the withdrawal is a pre-condition to closing, *see* APA at Sections 7.1(d) and 7.2(e).

4/ APA at Section 2.

Cox. <sup>5/</sup> The Datapoint Drive Application, designating as the proposed transmitter site the top of the San Antonio building that houses the studios of Cox's AM station KKYX (the primary station to be rebroadcast by the Translator, was filed with the Commission the day after execution of the APA.

In the Cox Withdrawal Letter, Cox makes the unsubstantiated claim that its agreement to purchase the Translator from HCBI is "for its fair market value." Cox also contends in its Withdrawal Letter that the certifications required pursuant to Section 73.3588 of the Commission's rules do not apply to its withdrawal of the Cox Petition, because the Petition was a post-grant filing for reconsideration, not a pre-grant petition to deny or informal objection, and because the subject authorization is for an FM translator.

Whether or not the Commission was required to strictly apply the procedure spelled out in Section 73.3588 when the Cox Petition was dismissed, once the Assignment Application was filed, the Commission cannot fail to confirm that no pricing discount would be obtained by Cox due to the pressure exerted by the Cox Petition. Under the Communications Act, the Commission may only grant its consent if the assignment serves the public interest. By enacting several rules designed to prevent its processes from exacting undue leverage on a

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<sup>5/</sup> See APA at Section 6.3, which provides in part: "At Buyer's request, Seller shall make such filings with the FCC and take such other actions as Buyer may reasonably request to file a construction permit application to relocate the Station to a site reasonably designated by Buyer (the "Construction Permit Application"). Buyer shall prepare at Buyer's expense the engineering portions of the Construction Permit Application (including any amendments or supplements thereto), which shall be subject to Seller's approval (not to be unreasonably withheld). Buyer shall be responsible for any FCC filing fees incurred in connection with the submission of the Construction Permit Application."

licensee, 6/ the Commission has made it crystal clear that it would not serve the public interest to reward a proposed assignee who obtained a lower purchase price due to the weighty financial pressure of a pending petition that, if granted, would leave the licensee with only the salvage value of any station equipment. Consequently, the Bureau may not proceed to act on the Assignment Application unless and until the parties present third party evidence – such as statements from unaffiliated brokers and appraisers – that the APA price is not a depressed price from fair market value. 7/

Besides ascertaining the fair market value of the Translator, another impediment stands in the way of Commission action on the Assignment Application. As noted above, Cox submitted its Withdrawal Letter on March 7, 2012, the day before the Assignment Application was filed. CDBS records indicate that the Cox dismissal request was granted on March 13, 2012, without a letter or published decision addressing the substantial issues raised by the Cox Petition. 8/

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6/ For example, in addition to Section 73.3588, Sections 1.420(j), 73.3523, 73.3525, and 73.3589 all address the Commission’s concern that a petitioner or conflicting applicant not gain pecuniary advantage from the FCC’s objection and application processes.

7/ *Accord High Point and Liberty, North Carolina*, 22 FCC Rcd 277, 278-79 [¶ 6] (Ass’t Chief, Audio Div., Media Bur. 2007) (“the Petitioner has demonstrated that its ‘cost per foot’...is at or above the rates paid by existing users of Capitol’s two towers. Because the Petitioner’s rates are not discounted from fair market value, there is no consideration to be accounted against the Petitioner’s legitimate and prudent expenses in prosecuting its rulemaking petition.”).

8/ Nor is there any indication in Commission records that the Commission undertook an investigation as to the Cox Petition matters, such as the investigation conducted regarding Broadcast Towers, Inc., *see Broadcast Towers, Inc.*, 26 FCC Rcd 7681 (Media Bur. 2011), or that the Commission issued a letter of inquiry, such as that issued to Radio Power, Inc., *see Radio Power, Inc.*, 27 FCC Rcd 1465 (Media Bur. 2012).

Clearly and repeatedly, the Cox Petition alleged the type of conduct by HCBI that goes to the heart of a licensee's qualifications, indeed, "[a]cts of willful misrepresentation to the Commission go to the core of truthfulness." <sup>9/</sup> Yet, despite the fact that the Cox Petition was pending at the time of the filing of the Assignment Application (and after dismissal, the issues remained unresolved), HCBI did not disclose the pending and unresolved character issues in response to Question 7 of Section II of the Assignment Application. <sup>10/</sup>

Clearly, the Commission must address this failure and must resolve to its satisfaction the substantial character issues set forth in the Cox Petition before it may act on the Assignment Application. <sup>11/</sup> Furthermore, the Cox Petition establishes rule violations that

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<sup>9/</sup> See *KGAN Licensee, LLC*, 25 FCC Rcd 2549, 2560 [¶ 31] (Chief, Video Div., Media Bur. 2010).

<sup>10/</sup> See *Nexstar Broadcasting, Inc., and Mission Broadcasting, Inc.*, 23 FCC Rcd 3528, 3537 (Chief, Video Div., Media Bur. 2008). There, the Video Division stated: "Mission and Nexstar's certifications in response to Section II, Question 5, and Section III, Question 7, of the above-referenced FCC Form 314 application were in fact false. Cable America's January 3, 2006, petition to deny filed against the license renewal applications for Stations KSFY-TV and KOLR(TV) specifically cites character issues, including false certification and misrepresentation. Nexstar should have been aware that, despite Cable America's formal request to withdraw the petition, the license renewal applications remain pending until the Commission reviews the matters alleged to determine whether a grant of the applications will serve the public interest. . . . We expect a greater degree of care in representations made to the Commission than was exhibited here."

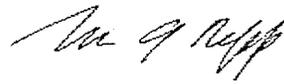
<sup>11/</sup> Notwithstanding the withdrawal by Cox, the Media Bureau clearly has the obligation to consider the material issues raised in the Cox Petition. See, e.g., *Detroit Public Schools (Station WRCJ-FM Detroit, Michigan)*, 21 FCC Rcd 13688, 13689 [¶ 6] (Media Bur. 2006) (citing *Stockholders of CBS, Inc.*, 11 FCC Rcd 3733, 3739 (1995); *Booth American Company*, 58 FCC 2d 553, 554 (1976)) ("Even where a petition or objection is dismissed at the filing party's request, however, the Commission considers the merits of that submission."); *Blue Chip Broadcasting Licenses Ltd.*, 21 FCC Rcd 3444, 3445 (Media Bur. 2006) ("in accordance with longstanding practice, when a petition that raises serious allegations is withdrawn, we consider these matters to ensure that the public interest will be served by grant of those applications").

would, as a matter of law, result in the revocation of HCBI's license to operate the Translator. Certainly, HCBI cannot assign a license that is subject to revocation.

In sum, before the Commission may act on the Assignment Application, it must first assure itself that its processes were not used to obtain a discounted purchase price by the proposed assignee, must evaluate the lack of disclosure of pending and unresolved character issues, and must consider the well-documented and serious violations raised in the Cox Petition that warrant revocation of the operating authority for the Translator.

Respectfully submitted,

**CC LICENSES, LLC**

By:   
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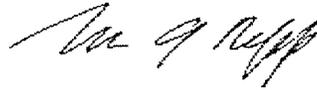
March 20, 2013

**CERTIFICATE OF SERVICE**

I, Marissa G. Repp, do hereby certify that a copy of the foregoing Informal  
Objection is being sent via first-class, U.S. Mail, postage prepaid, this 20<sup>th</sup> day of March, 2013,  
to the following:

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