

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Application of Community Broadcast Group, Inc.)
for Consent to the Assignment of) File No. BALTTA-20141009AAD
)
Class A Television Station WMNT-CA,) Facility Id. No. 51913
Toledo, OH)

To: Secretary
Attn: Chief, Video Division, Media Bureau

Accepted/Files

NOV 14 2014

**Federal Communications Commission
Office of the Secretary**

PETITION TO DENY

Jerry Jones and Jonathan James (together, the “Petitioners”), by their attorney and pursuant to Section 309(d)(1) of the Communications Act, 47 U.S.C. § 309(d)(1), and Section 73.3584 of the Commission, Rules, 47 C.F.R. § 73.3584, hereby jointly petition for the denial of the above-referenced application (the “Application”) for consent to the assignment of the Class A Television Station license for WMNT-CA from Community Broadcast Group, Inc. (“Licensee”) to Novia Communications, LLC (“Assignee” and, together with the Licensee, the “Applicants”). In support whereof, the following is shown:

STANDING

Petitioners are minority shareholders of the Licensee. Mr. Jones is owner of 4% of the issued shares and serves as Chief Executive Officer; Mr. James is the owner of 15% of Licensee shares. Together the Petitioners control 19% of votes and equity of the Licensee. As such, their interest in the Application is clear. As will be discussed in detail below, neither either of the Petitioners was consulted on the proposed transaction nor provided copies of the material agreements, and neither consented to the proposed Station sale.

ARGUMENTS

The Application and Licensee are in Violation of Commission Rules and Policies. The purchase agreement submitted with the Application references, in Section 2.1 thereof, a contemporaneous “Sale Proceeds Agreement” and a promissory note, denoted “October 2014 Note”, as well as a previously executed “Amended and Restated Promissory Note” dated August 21, 2013 (collectively, the “Omitted Documents”). The purchase agreement as submitted has been redacted of these ancillary agreements, in contravention of the directives found in Worksheet #2 of the FCC Form 314 regarding disclosure of “all contractual documents, agreements and/or understandings between the assignor and assignee”, and in violation of the mandate that licensees file all required information to the FCC. 47 C.F.R. § 1.80(b)(4). At best, the Applicants were overzealous in their omissions of relevant information; at worst, the omission of pertinent transaction information demonstrates a lack of candor and an intent to deceive the Commission and the public.

The Applicants claim the Omitted Documents are excluded from the Application pursuant to Commission’s decision in *LUJ, Inc. and Long Nine, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 16980 (2002). However, the instant Application is distinguished from *LUJ, Inc.* in that the Commission found there that all pertinent material terms of the transaction were disclosed and the omitted materials did not deprive the public or the Commission of information essential to the disposition of the application. Here there are three separate agreements which modify the actual purchase price to be paid by the Assignee at closing. It goes without saying that “full and clear disclosure of all material facts in *every application* is essential to the efficient administration of the Commission’s licensing process, and proper analysis of an application is critically dependent on the accuracy and completeness of information and data which only the applicant can provide.” *Citicasters Licenses, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22

FCC Rcd 19324, 19338 (2007). It is disingenuous for the Applicants to claim that agreements which speak directly on the material term of consideration should be considered immaterial and not germane to the Commission's processing of the Application.

Not only should the Video Division deny the Application for failure to disclose material terms and agreements, but the Video Division is *required, at a minimum*, to suspend processing of the Application because the Licensee has not provided the FCC's public reference room or the Station public file with the required documents. The Commission has long held that it is in the public interest for "unredacted sales agreements and contracts" of a transaction to be submitted to the Commission for maintenance in the public reference room and made available in the relevant Station's public file. *Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, ¶¶ 40-41 (2002). The Commission has found that public interest in maintaining maximum public access and transparency is so important that, "[i]f we determine that the documents have not been submitted for use in the public reference room, we will neither accept for filing, nor process the application for assignment or transfer. Similarly, we will suspend application processing if it comes to our attention that the documents have not been placed in the station's public file." *Id.* at ¶ 41. Petitioners' counsel has reviewed the FCC's public reference room files for the Station as well as the online public file at <https://stations.fcc.gov/>. In neither repository is found the material transaction agreements (nor, or that matter, the governing documents of the Licensee, which must be filed pursuant to Section 73.3613 of the Commission's Rules).¹ The Video Division is therefore compelled to immediately halt processing of the Application and demand full public disclosure of the Omitted Documents.

¹ The Petitioners would be happy to submit these documents to the FCC on behalf of their company but, despite many requests of Mr. Weatherby, they have not been provided these documents.

Sale of the Station as Proposed is Contrary to Corporate Law and the Licensee's Governing Documents. The proposed sale of the station is, at best, an *ultra vires* action contrary to the Licensee's governing documents and a breach of fiduciary duty by the sole director; at worst, it is a case of unlawful self-dealing perpetrated by the majority shareholder and a third minority shareholder, William Christian, of the Licensee against the minority shareholders. The majority shareholder, Jesse Weatherby, negotiated and executed, and proposes to effectuate the proposed sale to the Assignee, an entity controlled by William Christian (owner of 15% of the Licensee shares), without the knowledge or approval of the minority shareholders. Petitioners were not apprised by Mr. Weatherby or Mr. Christian of negotiations to sell the Station, nor were they informed of the deal; they learned of it only from press reports after the Application had been filed.

Not only was action taken without conference with the other shareholders and officers, but the terms of the transaction suggest that Mr. Wetherby may have breached his fiduciary duty to the Licensee. It is a well-established tenant of corporate law that a corporate director's fiduciary duties require him or her to act prudently and in the best interests of the corporation and its shareholders. The proposed sale would have a station (the company's primary asset and sole going business concern) valued at approximately \$38 million² be sold for a mere \$400,000. Petitioners also believe there is undisclosed consideration to be paid to Mr. Weatherby directly by the Assignee upon or subsequent to consummation, bypassing the minority shareholders and thwarting the Commission's rules on disclosure of all consideration in a proposed transaction.

Under Section 310(d) of the Communications Act, 47 USC § 310(d), parties proposing an assignment of licenses "bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest." *Applications of Comcast Corp.*,

² See "Incentive Auction Opportunities for Broadcasters" prepared for the Federal Communications Commission by Greenhill & Co., LLC, available at: <http://wireless.fcc.gov/incentiveauctions/learn-program/docs/ia-opportunities-book.pdf>.

General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses, 26 FCC Rcd 4238, 4247 (2011). The foregoing alone raises a material question of fact as to whether the proposed assignment will serve the public interest sufficient to support denial of the Application. However, should the Video Division be unconvinced at this time as to the veracity of the Petitioners' claims, Petitioners disclose (despite potential harm to their legal strategy in making this public) that Mr. James and Mr. Jones have engaged local counsel to initiate proceedings against Mr. Weatherby for *ultra vires* action on behalf of the corporation, breach of fiduciary duty, and unlawful self-dealing. Petitioners therefore request, as an alternative to immediate denial of the Application, that the Video Division hold processing of the Application in abeyance pending local court action.

Unresolved Questions of Material Fact Regarding Assignee Character Qualifications.

Finally, as disclosed by the Assignee in the Application, recent pleadings filed with the Commission against parties to the Assignee raise questions of material fact as to their character qualifications to be FCC licenses. As discussed in pleadings against the proposed assignment of certain radio stations to a company commonly-owned with Assignee, File No. BAL-20140212AEG, the Assignee parties displayed a lack of candor and may have willfully misled the Commission in an effort to achieve an impermissible concentration of ownership.

“[I]t is well recognized that the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.” *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000). Even material omissions of information in representations to the Commission can result in disqualification. *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994). Principals of the Assignee are alleged to have misrepresented facts and lacked candor in statements to the Commission in a very recent transaction, and now they appear to have willfully misled the Commission again by omitting material information. At minimum,

these circumstances demand a full investigation into the Assignee's character qualifications to be an FCC licensee

CONCLUSION

The allegations of fact presented herein are sufficient to demonstrate that grant of the Application would be *prima facie* inconsistent with the public interest. 47 U.S.C. § 309(d)(1); *Astroline Communications Co., Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988). Therefore, the Video Division must deny the Application, or, at minimum, hold the Application in abeyance pending: (i) submission in the Application and to the reference room of all unredacted material agreements; (ii) the outcome of a state court proceeding brought by the Petitioners against the majority shareholder; and (iii) a thorough FCC investigation into the character qualifications of principals of the Assignee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michelle Brown Johnson, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that a true copy of the PETITION TO DENY was served by first class mail, postage prepaid, unless indicated otherwise, this 14th day of November, 2014, to the following:

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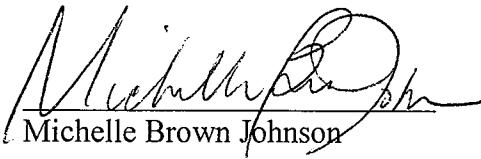
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