

**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)	

Accepted/Files

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

DEC - 9 2014
Federal Communications Commission
Office of the Secretary

REPLY TO OPPOSITION TO PETITION TO DENY

Jerry Jones and Jonathan James (together, the “Petitioners”), by their attorneys, hereby jointly reply to the Opposition to Petition to Deny (the “Opposition”) filed November 25, 2014, on behalf of Community Broadcast Group, Inc. (the “Company”), regarding the above-captioned application (the “Application”) for consent to the assignment of the Class A Television Station license for WMNT-CA (the “Station”) from the Company to Novia Communications, LLC (“Assignee” and, together with the Company, the “Applicants”). While the Company quickly moved to provide material documents regarding the proposed sale as requested by the Petitioners, the newly-revealed information raises even more questions about the lawfulness of the proposed transaction. Because the Opposition fails to fully satisfy the Applicants’ burden of proof that the proposed station assignment will serve the public interest, the Application must be denied or, in the alternative, held in abeyance pending resolution of a federal court inquiry.

The Opposition and Amendment to Application Suggest an Unauthorized Transfer of Control. Upon review of the documents now appended to the amended Application at Attachment 5, it is clear why the Applicants omitted these additional material documents pertinent to the transaction. Unbeknownst to the Petitioners – even to Mr. Jones, who is in fact the Chief Executive Officer of the Company –, Mr. Weatherby, on behalf of the Company and his other business interests, entered into a series of loans and sales agreements with the Assignee beginning more than 15 months ago, the number and terms of which are troublesome. In fact, the various agreements collectively suggest that for more than a year the Assignee has exercised *de facto* control over the Station, in violation of Section 310(d) of the Communications Act.

In determining whether an unauthorized transfer of control has occurred, the Commission looks at the unique circumstances of every station situation, focusing on the locus of control over a station's operations, specifically in the areas of programming, personnel, and finances. The evidence before the Commission indicates that the Assignee has financial control over the majority shareholder, Mr. Weatherby, and over Station operations. The evidence also indicates that the Assignee exercises control over Station personnel. Finally, the evidence suggests that the Assignee has influence over programming decisions.

In the Option Agreement entered by the Company and the Assignee, Assignee agree to pay to Mr. Weatherby directly a monthly fee of \$1,000 for his "Services." See Option Agreement, at Section 4. Essentially, Assignor agreed to pay Mr. Weatherby, the *president* of the Station licensee, to perform (or oversee) routine testing and maintenance of the Station equipment and to manage the Station personnel. In other words, beginning over a year before the assignment application was submitted to the Commission for consent, the now-Assignee began paying the majority shareholder and president of the Station licensee to perform the very duties the Commission expects to be controlled by the officers and owners of the licensee. The financial compensation

paid by Assignee to Mr. Weatherby conveys to Assignee power over Mr. Weatherby's management and operation of the Station. Assignor therefore has *de facto* control over Station personnel and equipment.

The Option Agreement also makes clear that Orion Media Management – a company solely owned and operated by Mr. Weatherby – would act as broker on the transaction if the option were exercised by Assignee. Consummation of the contemplated transaction would trigger the payment by the Assignee of an additional \$35,000 commission to Orion Media Management. *See* Option Agreement, at 3(f)(iv). Thus, Mr. Weatherby had a personal financial interest in entering these agreements with Assignee and in keeping the details from the Petitioners, suggesting control and influence from the Assignee. In addition to the direct compensation of Mr. Weatherby by the Assignor for his Station duties, the multiple and strangely-drafted loan documents only further suggest that there is financial influence being exerted by the Assignee over Mr. Weatherby specifically and the Station operations generally. All told, there are more than \$135,000 in outstanding loans made by Assignee to the Company. The vast majority of said loans were made over a year before the Station purchase agreement was entered, and loans appear to continue to be entered with Mr. Weatherby. This suggests that the Station's operations for the previous year have been largely funded by the Assignee – including compensation to the president of the licensee.

In addition, there is a promissory note evidencing a loan from Assignee to Orion Media Management for \$17,500 – in other words, an advance of half of the commission expected to be paid to Orion upon consummation of the pending transaction. There are many curiosities about this note. For instance, the final line of the note dates it as of January 3, 2008, yet, the initials and signatures date to August 31, 2014. Paragraph Seven of the note is also confusing: it indicates that the note will become payable if (i) Jesse Weatherby is no longer Managing Member of Community Broadcasting LLC, or (ii) Mr. Weatherby steps down as CEO (presumably of Community

Broadcasting LLC). To Petitioners' knowledge, Community Broadcasting LLC is an entity of which Mr. Christian is managing member; in the context of Mr. Weatherby, and certainly in the context of WMNT (which is referenced in Section 3 of the note), this entity does not exist. Even if this reference is merely a typographical error and intended to reference the Company, Mr. Jones, *not* Mr. Weatherby, is CEO of the Company, as established by the Articles of Incorporation submitted with the Opposition.

Finally, there is the innocuous-sounding Equipment Sales Agreement in which the Assignee agreed to provide thousands of dollars of broadcast equipment to the Company in exchange for \$1.00 and the agreement to remit 50% of any fees received by the Company from any digital subchannel programming agreement the Company might enter with a third party. *See* Equipment Sales Agreement, at para. 2. The agreement specifies that the provided equipment is intended to receive certain (COZI) programming and assumes incoming programming fees (after all, the Assignee wouldn't have given so much equipment without assurance that *some* revenue split were certain), necessarily constraining the Station licensee's programming decisions. For the Company to make programming changes in the future, it would find itself limited by its arrangement with the Assignee, which, because of the financial interest in recouping the full cost of its equipment outlay, would have every incentive to influence whether such change occurs.

There is sufficient indicia of control and influence by the Assignee over the Station for the Video Division to deny the Application. At minimum, it is imperative that the Video Division inquire further about the business relationship and financial arrangements between the Assignee and Mr. Weatherby in order to determine whether an unauthorized transfer of control has occurred.

The proposed sale does not have the requisite corporate approval and is contrary to corporate law and governance principles.

As established in the Petitioners' first pleading in this matter, the proposed sale is, at best, an *ultra vires* action and a breach of fiduciary duty by the majority shareholder, Mr. Weatherby. The Opposition dismisses these allegations by arguing that the corporation does not have governing documents, thus the majority shareholder can do as he pleases. This is not the case. It is a generally accepted corporate law principle that majority shareholders owe a fiduciary duty to the minority. Specifically, majority control brings with it a fiduciary duty to deal fairly with the minority and to avoid managing the corporation in the majority's sole interest or in a manner that oppresses the other shareholders or commits a fraud upon their rights. These duties are paramount in a closely held corporation like the Company; indeed, most courts across the United States hold a closely held corporation's controlling majority shareholder to an even higher standard, that of "utmost good faith and loyalty" toward minority shareholders. Mr. Weatherby clearly breached his fiduciary duties to the Petitioners, as well as to the Company itself, by failing to communicate the proposed sale and its terms to the minority shareholders, much less seek their approval and consent. With such breach, there can be no assumed corporate approval for Mr. Weatherby's actions. The proposed sale is therefore null and void, and the Application should be dismissed.

Not only do the facts confirm *ultra vires* corporate action, they also suggest the existence of a conspiracy between Mr. Weatherby and Mr. Christian to perpetuate a fraud on the other shareholders of the Company in which they engaged in self-dealing and diversion of corporate opportunities. At some point between 2011 and May 2014, William Christian, the majority member of the proposed Assignee, became a 15% shareholder in the Company.¹ It is Petitioners'

¹ Because no votes of the other corporate shareholders was taken nor was any notice given to them of changes in the ownership structure, the Station ownership reports filed by Mr. Weatherby in

belief that Mr. Weatherby granted Mr. Christian shares in the Company in exchange for loans or direct payments to Mr. Weatherby, whether for use in Station operations or for Mr. Weatherby's personal use. Even more curious, the introduction to Mr. Christian to Company ownership coincided with the unannounced and unexplained dilution of Mr. Jones' equity from 10% to 4%.²

Petitioners agree with the Opposition that the Commission is not the proper venue for the resolution of these corporate law claims. By the same token, it is incumbent on the Commission to not tilt the deck in favor of one side or the other by taking action in a case where fundamental questions about the legality of the proposed transaction are unsettled. Petitioners will shortly file suit in the appropriate forum. They simply request that the Video Division hold the processing of the Application in abeyance until the court can act.

Questions about misrepresentation and character remain unresolved. Finally, Petitioners call the Video Division's attention again to the character questions raised in the prior leading. Not only has the Opposition failed to refute the allegations, it appears to have doubled-down by offering new misrepresentations of fact. Specifically, the Opposition claims that Mr. Weatherby undertook extensive efforts to sell the Station, including negotiations with one of the Petitioners, Mr. James. In fact, although Mr. James understood that his purchase of equity in the Company came with a right of first refusal, he was never approached by Mr. Weatherby to purchase the Station, nor was he presented with third party offers in order to exercise his right of first refusal. See attached Declaration of Jonathon James. There certainly were no "detailed

2011 and 2014 provide the only documentation of the shareholder transfer. *Compare* File Nos. BOL-20111202ADG and BOA-20140529AGK.

² From the date of the Company incorporation, Mr. Jones has been owner of 10% of the Company shares. Without Mr. Jones' consent or approval, Mr. Weatherby reported on prior ownership reports filed with the FCC that Mr. Jones was a 5% shareholder, and in the 2014 report that Mr. Jones' share was further reduced to 4%. Mr. Jones was unaware of these inaccurate representations to the Commission until recently.

negotiations” with Mr. James. The continued lack of candor with the Commission in every aspect of this proposed transaction is suspect and demands further inquiry before the Video Division can find in good conscience that the public interest is being served.

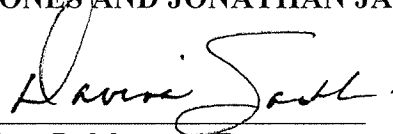
Conclusion. It is well established that the parties proposing an assignment of license “bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.” *Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, 26 FCC Rcd 4238, 4247 (2011). Mr. Weatherby and the Assignee have not overcome this burden, thus the Video Division has no choice but to find that 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).

The Video Division must DENY the Application, or, at minimum, hold the Application in abeyance pending outcome of court proceedings to determine the legitimacy of the corporate transaction.

Respectfully submitted,

JERRY JONES AND JONATHAN JAMES

By: _____



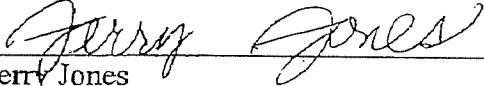
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DECLARATION OF JERRY JONES

I, Jerry Jones, do hereby declare under penalty of perjury, that:

1. I am a shareholder of Community Broadcast Group, Inc. ("the Company").
2. I am also the Chief Executive Officer of the Company.
3. The sole business of the Company is the operation of Class A Television Station WMNT-CA, Toledo, Ohio.
4. The facts and representations stated in the foregoing Reply to Opposition to Petition to Deny are true and accurate to the best of my knowledge and belief.

Executed on this 3rd day of December, 2014.



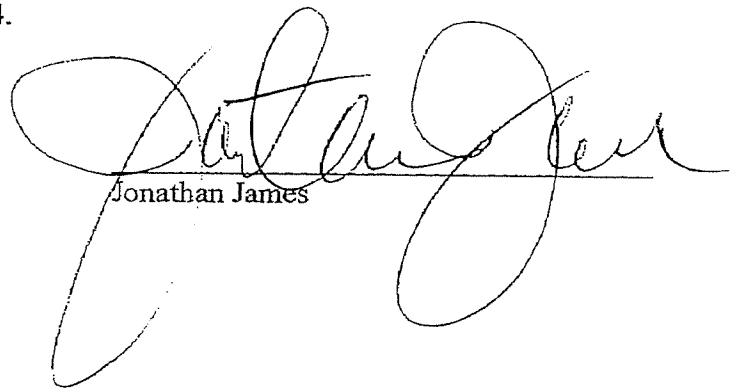
Jerry Jones

DECLARATION OF JONATHAN JAMES

I, Jonathan James, do hereby declare under penalty of perjury, that:

1. I am a shareholder of Community Broadcast Group, Inc. ("the Company"), which has as its sole business the operation of Class A Television Station WMNT-CA, Toledo, Ohio.
2. When I acquired equity in the Company, I was granted a right of first refusal of the sale of the Station. This right was not honored at any time between my buy-in through the present.
3. The facts and representations stated in the foregoing Reply to Opposition to Petition to Deny are true and accurate to the best of my knowledge and belief.

Executed on this 3rd day of December, 2014.



Jonathan James

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 REPLY TO OPPOSITION TO PETITION TO DENY was served by first class mail, postage prepaid, unless indicated otherwise, this 3rd day of December, 2014, to the following:

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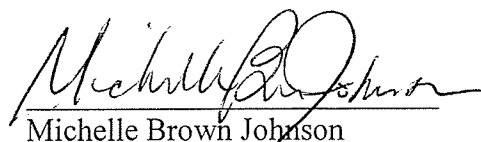
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