



Federal Communications Commission  
Washington, D.C. 20554

February 26, 2016

**DA 16-213**

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Arlington, VA 22209-3801

Convergence Entertainment and Communications, LLC  
c/o Jeffrey Loper  
3212 Masters Drive  
Clearwater, Florida 33761

Re: Application for Assignment of License of  
WNMN(TV), Saranac Lake, New York  
File No. BALCDT-20131115BDM  
Facility ID No. 77515

Dear Counsel and Mr. Loper:

This is in regard to the above-referenced application to assignment the license (FCC Form 314)<sup>1</sup> of WNMN(TV), Saranac Lake, New York ("WNMN") from Channel 61 Associates, LLC ("Channel 61") to Cross Hill Communications, LLC ("Cross Hill") (collectively "Applicants"). Convergence Entertainment and Communications, LLC's ("Convergence") filed a pleading in opposition to grant of the Application captioned as a petition to deny ("Petition" or "Pleading") the application. For the reasons stated below, we dismiss Convergence's pleading as a petition to deny and deny it as an informal objection.

**Background.** Applicants propose to assign WNMN(TV), Saranac Lake, New York from Channel 61 to Cross Hill. The assignment is subject to a pre-closing Time Brokerage Agreement

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<sup>1</sup> File No. BALCDT-20131115BDM ("Application").

and Escrow Agreement.<sup>2</sup> Convergence timely filed a pleading on December 23, 2013 captioned as a petition to deny; Applicants submitted a joint opposition on January 2, 2014 (“Opposition”); and Convergence filed its reply on February 1, 2014 (“Reply”).

In its Pleading, Convergence requests that the Commission defer its review of the Application until the New York State Court has an opportunity to review a contractual dispute between Channel 61 and Convergence.<sup>3</sup> Convergence also states that Channel 61 may not be qualified as a Commission licensee based on allegations that Channel 61 made knowing misrepresentations of facts to the Commission in its 2007 analog license to cover a new construction permit application.<sup>4</sup> Convergence urges the Commission to investigate Channel 61’s alleged misrepresentations in that application.<sup>5</sup>

Channel 61 and Cross Hill jointly oppose the Pleading. Applicants challenge Convergence’s standing to file a petition to deny claiming “It is not a competing broadcaster but rather only a party that desired to acquire WNMN.”<sup>6</sup> Applicants also claim the Petition contains procedural defects because it is not signed by a licensed attorney, but rather by the Managing Member of Convergence, Jeffery Loper.<sup>7</sup> Furthermore, Applicants state that “there are no judicial proceedings to accommodate, because no proceeding has been initiated, and that even when a judicial proceeding is in progress the Commission should not defer action on the assignment application, because “grant of an assignment application of license only provides the parties with permission to consummate ....”<sup>8</sup> Finally, Applicants claim Convergence’s allegation concerning its 2007 analog license to cover construction permit application is speculative and stress that the analog facility was “built six years in the past at a site no longer in use.”<sup>9</sup> In reply, Convergence reiterates and expands on its allegations that Channels 61 made misrepresentations to the Commission concerning its 2007 analog license to cover application.<sup>10</sup>

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<sup>2</sup> The time brokerage agreement is in compliance with all of the Commission’s rules and regulations, including the requirement pursuant to Commission Rule 73.3555, note (j)(3), certifying that the licensee of the brokered station will maintain “ultimate control over the station’s facilities, specifically, control over station finances, personnel and programming.” 47 CFR § 73.3555, Note (j)(3).

<sup>3</sup> Petition at 1-2.

<sup>4</sup> See File No. BLCT-20071002ACL (dismissed Feb. 4, 2011). (Convergence did not oppose the application when it was filed. The application was ultimately dismissed and the proceeding was closed.)

<sup>5</sup> Petition at 3-5.

<sup>6</sup> Opposition to Petition to Deny at 2.

<sup>7</sup> *Id.* at 3. An attorney is not listed as the contact representative for the Petition therefore Mr. Loper’s signature suffices. 47 C.F.R. § 1.52. Applicants also claim the Petition contains no verification under penalty of perjury, in violation on sections 1.16 and 1.52 of the Commission’s Rules, and fails to provide Convergence’s address in violation of section 1.52. *Id.* at § 1.16, 1.52. We confirm that Convergence failed to provide verification under penalty of perjury and its address in its Petition.

<sup>8</sup> Opposition at 3-4.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> File No. BLCT-20071002ACL.

Convergence supports its claim that it has standing to file the Petition by explaining that it is the licensee of station WGMU-LP, Burlington, Vermont, which is in the same DMA (Burlington-Plattsburgh) as WNMN(TV), and it is, therefore, a competing broadcaster.<sup>11</sup>

On Nov. 4, 2015, the Bureau and Channel 61 negotiated the terms of a Consent Decree<sup>12</sup> that covered numerous violations of Commission Rules, including 73.1350(a),<sup>13</sup> that the Video Division discovered in reviewing WNMN(TV)'s application for renewal of the Station's license (FCC Form 303-S)<sup>14</sup> and the proposed transaction.<sup>15</sup> Specifically, the Consent Decree addressed the fact that Channel 61 failed install its analog antenna on a different tower than listed on its construction permit.<sup>16</sup> The Consent Decree requires, among other things, that Channel 61 make a voluntary contribution to the United States Treasury in the amount of thirty thousand dollars (\$30,000) within 60 days of the date of Consummation of the proposed transaction.

**Discussion. Procedural Issues.** Section 309(d)(1) of the Act provides that only a "party in interest" may file a petition to deny a proposed assignment.<sup>17</sup> 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.<sup>18</sup> The Commission has long recognized that a competing broadcaster qualifies as a party in interest.<sup>19</sup> Applicants assert that Convergence lacks standing. Our records indicate that Convergence is the licensee of WGMU-LP, Burlington, Vermont. Station WNMN(TV) is located in the same DMA, Burlington-Plattsburgh, as WGMU-LP and, therefore, Convergence is a competing broadcaster. Thus, as a competing broadcaster, Convergence has standing to file a petition to deny.

Section 1.52 of the Commission's rules states that "A party who is not represented by an attorney shall sign and verify the document [(petition, motion, pleading, brief, or other document)] and state his address." Furthermore, Section 1.16 of the Commission's Rules states that a pleading which requires a verification may be supported by an unsworn verification.<sup>20</sup> Applicants correctly state that the Petition contains no verification under penalty of perjury, in violation on sections 1.16 and 1.52 of the Commission's Rules, and fails to provide Convergence's address in violation of section 1.52. Accordingly, we will dismiss Convergence's

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<sup>11</sup> Reply at 6.

<sup>12</sup> *Channel 61 Associates, LLC*, Order, DA 15-1244 (MB Nov. 4, 2015) ("Consent Decree").

<sup>13</sup> 47 C.F.R. § 73.1350(a).

<sup>14</sup> File No. BRCDT-20150202ABE.

<sup>15</sup> File No. BALCDT-20131115BDM.

<sup>16</sup> File No. BLCDT-20071002ACL.

<sup>17</sup> 47 U.S.C. § 309(d)(1).

<sup>18</sup> See, e.g., *Pinelands, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6058, 6063 (1992); *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC 2d 696 (1978).

<sup>19</sup> *Anabelle Savage*, 25 FCC Rcd 3665, 3667 (2010).

<sup>20</sup> 47 C.F.R. §1.16

pleading as a petition to deny. We will, however, treat the pleading as an informal objection pursuant to Section 73.3587 of the Rules.<sup>21</sup>

*Substantive Issues:* The Commission applies a two-step analysis when evaluating a petition to deny or informal objection under the public interest standard.<sup>22</sup> First, the Commission must determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.<sup>23</sup> Once a petition meets this first step, the Commission must determine “whether the totality of the evidence raises a substantial and material question of fact justifying further inquiry.”<sup>24</sup> If no such question is raised, the Commission will deny the petition and grant the application if it concludes that such grant otherwise serves the public interest, convenience, and necessity.<sup>25</sup>

The informal objection fails to meet this statutory burden by failing to raise a substantial and material question of fact warranting further inquiry. It is true that the Commission seeks to reconcile its exclusive jurisdiction over licensing matters with the authority that state and local courts have over contractual disputes.<sup>26</sup> However, contrary to Convergence’s contention, the existence of a contractual dispute does not compel the Commission to stop processing a license application until the matter is resolved by the courts.<sup>27</sup> Furthermore, grant of the Application is permissive only and does not prejudice any relief to which the parties may ultimately be entitled pursuant to a subsequent ruling by a local court.<sup>28</sup> Finally, the Commission’s grant of an assignment application is based on its finding that the parties are qualified and that the proposed transaction does not violate the Communications Act of 1934, as amended, and the Commission’s rules and policies.<sup>29</sup>

Concerning Convergence’s allegation that Channel 61 made a knowing misrepresentation of facts to the Commission in its 2007 analog license to cover new construction permit application,<sup>30</sup> the Consent Decree terminated the investigation.<sup>31</sup> Additionally, the Commission

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<sup>21</sup> 47 C.F.R. § 73.3587.

<sup>22</sup> 47 U.S.C. §309(d)(1); *Astroline Communications Co. Ltd. Partnership v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

<sup>23</sup> 47 U.S.C. §§309(d)(1) and 310(d).

<sup>24</sup> *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985); 47 U.S.C. §309(e).

<sup>25</sup> 47 U.S.C. §§ 309(d)(2) and 310(d).

<sup>26</sup> *Radio Station WOW v. Johnson*, 326 US 120, (1945); *Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985).

<sup>27</sup> *KAXT, LLC*, 30 FCC Rcd 2691 (Vid. Div. 2015).

<sup>28</sup> *Mark Lipp, Esq.*, Letter, 26 FCC Rcd 11138 (Aud. Div. 2011); *Peggy Haley, N.C.M.*, Letter, 23 FCC Rcd 12687, 12688(MB 2008).

<sup>29</sup> *Peggy Haley, N.C.M.*, Letter, 23 FCC Rcd 12687, 12688 (MB 2008).

<sup>30</sup> File No. BLCT-20071002ACKL.

<sup>31</sup> Consent Decree at para. 11.

has repeatedly held that the *sine qua non* of misrepresentation or lack of candor is intent to deceive the Commission.<sup>32</sup> Convergence fails to demonstrate the elements of intent to deceive.

**Conclusion/Actions.** Having reviewed the application, pleadings, and other facts before us, we conclude that that Convergence has not raised a substantial and material question of fact warranting further inquiry. We further find that Cross Hill Communications, LLC is qualified to hold the Station WNMN(TV), Saranac Lake, New York license and that grant of the Assignment Application is consistent with the public interest, convenience, and necessity. Accordingly, IT IS ORDERED, Convergence Entertainment and Communications, LLC's petition to deny IS DISMISSED, and when treated as an informal objection, IS DENIED, and that the application for approval to assign the license for WNMN(TV), Saranac Lake, New York (File No. BALCDT-20131115BDM) from Channel 61 Associates, LLC to Cross Hill Communications, LLC IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara A. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>32</sup> See, e.g., *Fox River Broadcasting, Inc.*, Memorandum Opinion and Order, 93 FCC 2d 127, 129 (1983).