

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

In the Matter of)	
)	
Marshall Group, Inc., as Debtor-in-Possession)	
(Assignor))	
)	File Nos. BALCDT-20200408AMM
and)	BALCDT-20200408AAN
)	BALCDT-20200408AAL
Mission Broadcasting, Inc. (Assignee))	
)	
Applications for Consent to the Assignment)	
of Television Broadcast Station Licenses)	
KLJB, KMSS-TV, and KPEJ-TV)	
)	

To: Secretary, Federal Communications Commission
Attn: Chief, Video Division, Media Bureau

Mission Broadcasting, Inc. Consolidated Opposition

Pursuant to the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ Mission Broadcasting, Inc. (“Mission”), by its attorneys, respectfully submits this consolidated opposition to the petitions to deny filed by the Congress of Racial Equality (“CORE”) and the National Newspaper Publishers Association (“NNPA”) and the informal objection filed by Chere D. Lott, Esq. (“Lott”)² (each of CORE, NNPA, and Lott an “Opponent,”

¹ See 47 C.F.R. §§ 1.41, 1.45 and 73.3584(b).

² See Letter from Niger Innis, National Chairman, CORE, to Barbara Kreisman, Chief, Video Division, Media Bureau (dated May 11, 2020) (“CORE Petition”); Letter from Dr. Benjamin F. Chavis, Jr., President, NNPA, to Barbara Kreisman, Chief, Video Division, Media Bureau (dated May 10, 2020) (“NNPA Petition” and with the CORE Petition, the “Petitions”); and Letter from Chere D. Lott, Randall and Associates, to Barbara Kreisman, Chief, Video

and collectively, the “Opponents”) filed against the above-referenced applications (“Applications”) seeking consent to the assignment of the licenses (“Licenses”) of television broadcast stations KLJB, Davenport, Iowa, KMSS-TV, Shreveport, Louisiana, and KPEJ-TV, Odessa, Texas (collectively, the “Stations”) from Marshall Broadcasting Group, Inc., as Debtor-in-Possession, (“Marshall”) to Mission.

As demonstrated herein, the Media Bureau (“Bureau”) should summarily dismiss the Oppositions because the Opponents lack standing and the Oppositions are procedurally defective for failing to comply with various FCC rules (“Rules”) governing the filing of petitions to deny and informal objections. In the event the Bureau considers the merits of the Oppositions, the Oppositions should be denied because they are conclusory and unsupported, and fail to present a substantial and material question of fact regarding whether grant of the Applications will serve the public interest. Indeed, a review of the Applications shows unequivocally that Mission is qualified under the Communications Act of 1934, as amended (“Act”), and the Rules to hold the Licenses.

I. BACKGROUND

Marshall acquired the Stations more than five years ago after having obtained the requisite FCC approvals. To finance this acquisition, Marshall obtained an initial line of credit of nearly \$60 million that was guaranteed by Nexstar Media Group, Inc. (“Nexstar”). Marshall failed to pay the required loan balance when it came due and payable on November 29, 2019. As a result of Marshall’s payment default, Nexstar, as guarantor, would have been required to

Division, Media Bureau (May 5, 2020) (“Lott Comments” and, together with the Petitions, the “Oppositions”).

assume Marshall's obligations under the loan. However, because Nexstar's assumption of Marshall's debt would have violated the FCC's equity debt plus rule, Nexstar transferred its obligation as guarantor to Mission. On December 2, 2019, Mission paid the outstanding loan balance of over \$49 million and initiated a foreclosure proceeding against Marshall.³

On December 3, 2019, the day after Mission initiated the foreclosure proceeding, Marshall filed a voluntary petition for relief under chapter 11 ("Chapter 11") of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas ("Bankruptcy Court").⁴ On February 14, 2020, Marshall designated Allen Media Broadcasting Evansville, Inc. ("Allen"), which is controlled by Byron Allen, an African-American, as the stalking horse bidder to acquire the Licenses and other assets of Marshall.⁵ On that same day, the Bankruptcy Court authorized Marshall to sell its assets, including the Licenses, via a public auction.⁶ In accordance with the Bidding Procedures Order, Marshall's financial advisor

³ The background information in this paragraph is set forth in Preliminary Objection of Mission Broadcasting, Inc. to Emergency Motion of the Debtor for Interim and Final Order Authorizing the Use of Cash Collateral and Related Relief, *In re Marshall Broadcasting Group, Inc.*, United States Bankruptcy Court for the Southern District of Texas, Case No. 19-36743 at 1-2 (Dec. 9, 2019). *See also* Final Order (I) Authorizing Debtor To Use Cash Collateral, (II) Granting Certain Protections To Prepetition Lender, and (III) Modifying the Automatic Stay, *In re Marshall Broadcasting Group, Inc.*, United States Bankruptcy Court for the Southern District of Texas, Case No. 19-36743 at 2-5 (Jan. 21, 2020).

⁴ Voluntary Petition for Bankruptcy of Marshall Group, Inc., Case No. 19-36743 (Dec. 3, 2019).

⁵ *See* Notice of Stalking Horse Bidder, *In re Marshall Broadcasting Group, Inc.*, United States Bankruptcy Court for the Southern District of Texas, Case No. 19-36743 (Feb. 14, 2020).

⁶ Order (A) Approving Bidding Procedures and Certain Bid Protections, (B) Scheduling Bid Deadline, Auction Date, and Sale Hearing and Approving Form and Manner of Notice Thereof; and (C) Approving Cure Procedures and the Form and Manner of Notice Thereof, *In re Marshall Group, Inc.*, United States Bankruptcy Court for the Southern District of Texas, Case No. 19-36743 (Feb. 14, 2020) ("Bidding Procedures Order").

solicited bids for Marshall’s assets. Only two bids were received: a bid from the stalking horse bidder and a bid from Mission.⁷

On March 21, 2020, after having determined that the bid from Allen did not comply with the bidding procedures, Marshall rejected the stalking horse bid and cancelled the public auction.⁸ Shortly thereafter, Marshall notified the Bankruptcy Court that it had accepted Mission’s timely submitted bid as the highest bid.⁹ Marshall then entered into an asset purchase agreement (“APA”) with Mission for the sale of all of its assets, including the Licenses.¹⁰ Concurrently therewith, Marshall’s sole shareholder, Pluria Marshall, Jr., agreed in a transaction support agreement with Mission, *inter alia*, to use commercially reasonable efforts to cause Marshall to implement the transactions contemplated by the APA and not to take, or fail to take, any actions that would be reasonably expected to have the effect of materially delaying FCC consent to the Applications.¹¹ On April 1, 2020, the Bankruptcy Court entered an order approving the sale to Mission, subject to receipt of FCC approval, finding that Mission was a good faith purchaser and the sale was in the best interests of Marshall.¹²

⁷ Amended Order (I) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and other Interests, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (III) Granting Related Relief, *In re Marshall Group, Inc.*, United States Bankruptcy Court for the Southern District of Texas, Case No. 19-36743 at 5 (Apr. 1, 2020) (“Sale Order”).

⁸ Notice of Cancellation of Auction, *In re Marshall Group, Inc.*, United States Bankruptcy Court for the Southern District of Texas, Case No. 19-36743 (March 21, 2020).

⁹ Notice of Successful Bidder, *In re Marshall Group, Inc.*, United States Bankruptcy Court for the Southern District of Texas, Case No. 19-36743 (March 23, 2020).

¹⁰ Sale Order at Ex. 1.

¹¹ *Id.* at Ex. 3.

¹² *Id.* at 14.

II. THE PETITIONS SHOULD BE DISMISSED BECAUSE CORE AND NNPA LACK STANDING

The Bureau should summarily dismiss the Petitions for lack of standing.¹³ The CORE Petition does not even assert standing, much less attempt to meet the well-established standard for demonstrating standing.¹⁴ While the NNPA Petition states that one of its members viewed an announcement regarding the assignment of the Licenses, it fails to show that the member resides in any of the Stations' viewing areas, nor does it state that the member is a regular viewer of any of the Stations.¹⁵ Thus, the NNPA Petition does not satisfy the FCC's standing requirements.

III. THE OPPOSITIONS ARE PROCEDURALLY DEFECTIVE AND MUST BE DISMISSED

The Oppositions were not filed in accordance with various FCC procedural requirements and should be summarily dismissed. As an initial matter, the Oppositions were not served on Mission.¹⁶ In addition, the Opponents did not comply with the filing requirements set forth in

¹³ While Lott did not file a petition to deny subject to the FCC's standing requirements, the Lott Comments nonetheless should be dismissed because they do not identify the party on whose behalf the filing is made. *See infra* at Section III.

¹⁴ To demonstrate standing to file a petition to deny, a petitioner must demonstrate that grant of the application would cause it to suffer a direct injury, establish a causal link between the claimed injury and the grant of the application, and show that it is likely, as opposed to merely speculative, that the injury would be prevented or redressed by denying the application. *See, e.g.*, Letter to Sweetwater Broadcasting Company from Donna C. Gregg, Chief Media Bureau, 20 FCC Red 13034, 13037 (MB 2005). Membership organizations may assert standing on behalf of their members, but in order to do so they must show that at least one member "would otherwise have standing to sue in [his or her] own right." *Free Press, et al. v. FCC*, Judgment, Case No. 17-1129 (D.C. Cir., July 25, 2018) *citing* *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343-44 (1977).

¹⁵ *See In re Consent to Transfer Control of Licensees of Cox Enterprises, Inc., et al, to Terrier Media Buyer, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 10554, 10563 (MB 2019).

¹⁶ The Act and Rules expressly require that petitions to deny be served on the applicant. *See* 47 U.S.C. § 309(d); *also* 47 C.F.R. 73.3584(a). None of the Oppositions include a certificate of service or other indication that Mission was served. Indeed, Mission first learned of the Oppositions on the afternoon of May 19, 2020, when the Media Bureau staff contacted Mission's

Sections 1.4 and 1.49 of the FCC's rules, which mandate that petitions to deny be filed in hard copy with the FCC Secretary's Office or filed electronically through CDBS or ECFS.¹⁷ Lastly, the allegations set forth in the Objections are not supported by affidavits from persons with first-hand knowledge of the facts alleged.¹⁸

In addition, Lott's filing should be dismissed as defective because she does not disclose the person on whose behalf the submission is being made, does not set forth clearly the relief sought or the regulatory provisions under which relief is sought, and does not identify the interest of the person submitting the request.¹⁹ Rather, the Lott filing contains only an oblique reference to "those of us in the investment community."

IV. MISSION'S QUALIFICATIONS ARE WELL-ESTABLISHED AND OPPONENTS OFFER NO EVIDENCE TO THE CONTRARY

Mission is the licensee of 19 full power television stations and thus has had its qualifications to hold a broadcast television station license reviewed and approved by the Bureau and Commission on numerous occasions over the past twenty-two years. Importantly, a review of Mission's responses, certifications and information supplied in the Applications demonstrates

counsel to inform him that the Oppositions had been filed. Mission still has not received copies of the Oppositions from the Opponents. At that time, the Media Bureau staff told counsel for Mission that Mission had as much time as needed to respond to the Oppositions because Mission was not served with any of the Oppositions. Nevertheless, to the extent necessary, Mission respectfully requests an extension of the deadline for filing this pleading. *See* Section 1.45(b).

¹⁷ *See* 47 C.F.R. §§ 1.4(f), 1.49(f)(3); *also* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing, Public Notice, DA 20-304 (Mar. 19, 2020). Each of the Oppositions on their face purport to have been sent via fax (Lott), email (NNPA Petition), or mail (CORE Petition) to the Chief of the Media Bureau's Video Division, Ms. Barbara Kreisman.

¹⁸ *See* Univision Holdings, Inc., 8 FCC Red 3931 (1993); *see also* North Idaho Broadcasting Company, 8 FCC Red 1637, 1638 (1993) (quoting *Gencom, Inc. v. FCC*, 832 F.2d 171, n.11 (D.C. Cir. 1987)).

¹⁹ *See, e.g.*, 47 C.F.R. § 1.41.

that Mission complies with the FCC's television duopoly and other multiple ownership rules and is otherwise financially and legally qualified under the Act and the Rules to hold the Licenses. Accordingly, the public interest will be served by grant of the Applications. By contrast, the Oppositions do not present any substantial and material questions of fact concerning whether grant of the Applications would be *prima facie* inconsistent with Section 309 of the Act.²⁰ Rather, the Oppositions rely upon unsupported and conclusory assertions, without setting forth any facts (or governing law) that, if true, would warrant further inquiry into Mission's qualifications to acquire the Licenses.

The Petitions both appear to object to the Applications on the ground that the Stations will be assigned to a party other than a African-American-owned broadcaster.²¹ The scope of the FCC's review of an assignment application is statutorily limited to the transaction before it, and does not extend to a consideration of whether another person would be better qualified than the

²⁰ See 47 U.S.C. §§ 309(d) and 309(e). See also, *In re Cumulus Media, Inc., Debtor-in-Possession Seeks Approval to Transfer Control of and Assign FCC Authorizations and Licenses*, 33 FCC Rcd 5243, para. 8 (MB 2018) ("informal objections, like petitions 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").

²¹ While NNPA appears to insinuate that people of color will lose their jobs at the Stations by virtue of the transaction, it conveniently ignores Mission's commitment to offer employment on terms and conditions that are substantially similar to those offered to the Stations' employees by Marshall. See Section 5.6 of the APA. Contrary to NNPA's assumption, Mission does not intend to make any programming changes and intends to continue to broadcast the same amount and high quality of local news currently being broadcast on the Stations. In any event, the Commission does not take potential changes in programming formats into consideration in reviewing assignment applications. See *Changes in the Entertainment Formats of Broadcast Stations, Memorandum Opinion and Order*, 60 FCC 2d 858, 865-66 (1976), *recon. denied*, *Memorandum Opinion and Order*, 66 FCC 2d 78 (1977) (adopting the policy that the Commission will not consider changes in format in reviewing assignment applications because to do so would be inconsistent with the Act and administratively infeasible), *rev'd sub nom. WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev'd*, 450 U.S. 582 (1981). Thus, the change in ownership will be seamless to the Station's viewers.

assignee to hold the Station licenses.²² Thus, Petitions are wholly without merit and must be rejected.²³

Both the CORE Petition and the Lott filing allege, without any support, that Mission is controlled by Nexstar. The business relationship between Nexstar and Mission has been approved repeatedly by the FCC over the past twenty-two years.²⁴ There is no change proposed in that relationship here. Shared services agreements between Nexstar and Mission have been

²² 47 U.S.C. § 310(d) (when acting on assignment or transfer applications, “the Commission may not consider whether the public interest, convenience and necessity might be served by assignment or transfer of the license to an entity other than the proposed assignee or transferee”); *see, e.g., In re Urban Radio I, L.L.C, Debtor-in-Possession and YMF Media, New York Licensee LLC for Consent to Assign Licenses*, Memorandum Opinion and Order, 29 FCC Rcd 6389, 6391 (2014) (affirming the Bureau’s finding that 310(d) prohibited it from considering allegations that transfer of the station would result in the decline of black-owned radio stations); *see also, In re Application of MMM Holdings, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8243, 8244 (1989) (“comparisons between transferees and transferors generally are inappropriate”).

²³ The CORE Petition also claims that the grant of the Applications will result in a reduction of independent broadcast voices. *See* CORE Petition at 2. This claim is blatantly false. As an initial matter, grant of the Application will not result in the loss of an independent voice in the three markets served by the Stations because Mission does not own any stations in these markets. Moreover, Mission is a majority female-owned broadcaster, and as such, will further the FCC’s viewpoint diversity goal.

²⁴ The Lott Comments assert that a relationship between Nexstar and Mission should have been disclosed in the Applications because Nexstar reported Mission as a consolidated entity in a filing with the United States Securities and Exchange Commission (“SEC”). This claim is misplaced because, as noted in the text, the FCC has approved the relationship between Nexstar and Mission on numerous occasions. Moreover, when Nexstar sought FCC and SEC approval to become a publicly traded company in 2002, the SEC investigated Nexstar’s relationship with Mission, confirming with the FCC that these relationships complied with FCC Rules. The FCC further affirmed such conclusions in approving Nexstar’s “going public” applications. *See, e.g., Nexstar Broadcasting of Rochester Application to Transfer Control of Broadcast Station Licenses, BTCCT-20020529ABF* (granted June 19, 2002) (approving Nexstar’s corporate reorganization pursuant to an initial public offering of securities registered with the SEC).

previously reviewed and approved by the Commission and Bureau on multiple occasions.²⁵ In no instance have such agreements been found to create an attributable ownership interest for either Mission or Nexstar in each other's television broadcast stations.²⁶

V. GRANT OF THE APPLICATIONS IS IN THE PUBLIC INTEREST

Not only is Mission qualified to hold the Licenses, grant of the Applications will enable the Stations to exit from bankruptcy and thus will further the Commission's policy of supporting the bankruptcy laws. As the Bureau has recognized, facilitating prompt emergence from bankruptcy "advances the public interest by providing economic and social benefits".²⁷ In the instant case, upon consummation of the assignment of the Licenses to Mission, Mission will operate the Stations free and clear of all liens, with the financial and other resources necessary to ensure that the Stations not only serve their local markets, but also become strong and vital competitors.

²⁵ See, e.g., Application for Consent to the Assignment of Broadcast Station Licenses of Newport Television License LLC, File No. BALCDT-20120725AGJ (granted December 10, 2012) (approving Mission's acquisition of KLRT-TV, Little Rock, AR from Newport Television after Mission disclosed that it planned to enter into a shared services agreement with Nexstar, licensee of stations KARK-TV and KARZ-TV, Little Rock, AR). It is ironic that the shared services agreement between Nexstar and Mission filed with the Applications is identical to the FCC-approved shared services agreement between Marshall and Nexstar that has been in effect since the time Marshall acquired the Stations from Nexstar. See Shared Services Agreement between Marshall Broadcasting Group, Inc. and Nexstar Broadcasting, Inc. dated January 1, 2015, available at <https://publicfiles.fcc.gov/api/manager/download/b9dbf049-20af-5d14-07c4-94ddb469af68/5a70b3fd-cb09-453c-a2a7-035697b72cb0.pdf>

²⁶ Indeed, the Commission has found that resource sharing through shared services agreements "can deliver meaningful public interest benefits." See *2014 Quadrennial Review of the Commission Broadcast Ownership Rules*, Second Report and Order, 31 FCC Rcd 9864, 10008 (2016).

²⁷ See *In re Liberman Television of Dallas License, Debtor-in-Possession, et al.*, Order, 34 FCC Rcd 8543, 8550-51 ¶ 14 (MB 2019).

Based on the foregoing, Mission urges the Bureau to summarily dismiss or deny the Oppositions and grant the Applications expeditiously.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Dayle Jones, of Akin Gump Strauss Hauer & Feld, LLP, certify that a copy of the foregoing "Consolidated Opposition" filed on behalf of Mission, Inc., was served via electronic mail or first class mail, as indicated, on this 1st day of June 2020, upon the following:

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