



Federal Communications Commission
Washington, D.C. 20554

June 4, 2009

DA 09-1257
In Reply Refer to:
1800B3-SS
Released: June 4, 2009

Mayor Maurice A. Brown, *et al.*
Town of White Castle
P.O. Box 355
White Castle, LA 70788

Mr. Chuck Montero, *et al.*
Donaldsonville Fire Department
P.O. Box 470
Donaldsonville, LA 70346

Mr. Harry Hoyler
706 Railroad Avenue
Donaldsonville, LA 70346

Charles L. Spencer, Esq.
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Baton Rouge, LA 70802

In re: **KKAY(AM), White Castle, LA**
Facility ID No. 36232
File No. BAL-20081126AHW

Application for Assignment of License

Informal Objections

Petition to Deny

Dear Messrs. Brown, Hoyler, Montero and Counsel:

We have before us the referenced application (the "Assignment Application") seeking approval for the proposed assignment of license for Station KKAY(AM), White Castle, Louisiana (the "Station"), from Cactus Communications, LLC ("Assignor") to Stafford and Starr, LLC ("Assignee"). On December 17, 2008, White Castle Mayor Maurice A. Brown, *et al.* (collectively, "Brown") filed a Petition to Deny the Assignment Application. On January 6, 2009, and March 12, 2009, Harry Hoyler ("Hoyler") transmitted to the staff, by e-mails, informal listener complaints¹ against the Assignment Application. On February 20,

¹ On February 12, 2009, the staff received a letter from area resident Diane T. Hebert, lauding the Station for its community activities but making no allegations against the Assignment Application.

2009, Donaldsonville, Louisiana, Fire Department Chief Chuck Montero, *et al.*² (collectively, “Montero”) submitted a listener complaint against the Assignment Application. For the reasons stated below, we consider and deny the Hoyler pleadings, collectively, as an informal objection (“Hoyler Objection”), consider and deny the Montero pleading as an informal objection (“Montero Objection”), deny the Brown Petition to Deny (“Brown Petition”), and grant the Assignment Application.

Background. The parties filed the Assignment Application on November 26, 2008. Brown is the mayor of White Castle, Louisiana. He and 17 other alleged area residents oppose grant of the Assignment Application because, they claim, the Station “unselfishly gives” to the community and “is the only voice for the Black community in [the] area.”³ Brown contends that the Assignee “plans to immediately move the radio station and remove all local Black programming.”⁴ In the Hoyler and Montero Objections, objectors allege, among other things, that the Assignee is involved in a federal district court bankruptcy proceeding facing allegations of “fraudulent actions.”⁵ In addition, the Montero Objection requests that the Assignment Application be designated for hearing so that “[citizens’] concerns may be heard.”⁶

Discussion. Procedural Matters. Brown’s Standing. Section 309(d)(1) of the Communications Act of 1934, as amended (the “Act”),⁷ provides that only a “party in interest” may file a petition to deny a proposed assignment. The Commission accords party in interest status to a petitioner who demonstrates either that he resides in the service area of the station that is the subject of the petition or that he listens to or views the station regularly and that such listening or viewing is not the result of transient contacts with the station.⁸ Because the record indicates that Brown resides in the service area of the Station, we find that he has established standing to file the Petition.⁹

Hoyler and Montero Objections. The record indicates that neither Hoyler’s nor Montero’s pleadings were served upon the parties or their attorneys. Because the pleadings are written presentations submitted by listeners of the Station, they are exempt from the Commission’s prohibition against *ex parte* presentations.¹⁰ The pleadings were filed after the deadline for filing petitions to deny had passed (*i.e.*,

² Seventy five other alleged area residents also signed the pleading.

³ Brown Petition at 1.

⁴ *Id.*

⁵ Hoyler Objection at 1.

⁶ Montero Objection at 1.

⁷ 47 U.S.C. § 309(d)(1).

⁸ See *CHET-5 Broadcasting of Poughkeepsie, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999).

⁹ See *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, Memorandum Opinion and Order, 82 FCC 2d 89 (1980); see also *Infinity Broadcasting Corp. of California*, Memorandum Opinion and Order, 10 FCC Rcd 9504 (1995); *Niles Broadcasting Company*, Memorandum Opinion and Order, 7 FCC Rcd 5959 (1992).

¹⁰ 47 C.F.R. § 1.1204(a)(8); see also *Henry Goldberg, Esq., Edward Hayes, Jr.*, Letter, 12 FCC Rcd 15242 (MMB 1997).

later than 30 days after the date of the Public Notice listing the Assignment Application as accepted for filing).¹¹ Therefore, we will treat these “listener complaints” as informal objections under Section 73.3587 of the Commission’s Rules (the “Rules”).¹²

Substantive Matters. Section 310(d) of the Act¹³ requires the Commission to make a determination whether the proposed transfer or assignment of a broadcast license would be in the public interest. Pursuant to Sections 309(d) and (e) of the Act,¹⁴ petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact calling for further inquiry regarding whether grant of the Assignment Application would be *prima facie* inconsistent with Section 309(a) of the Act.¹⁵ This section provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters of which we may officially take notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the applicant fails to meet that standard, the Commission may deny the application after notice and opportunity for a hearing under Section 309(e) of the Act.

Brown Petition. Brown opposes grant of the Assignment Application based on an unsupported allegation that the potential new owners will change the Station’s current format and move the Station from the community. In the Petition, Brown alleges that the potential new owners plan “to immediately move the radio station and remove all local Black programming.”¹⁶ Viewed in the light most favorable to Brown, the allegations made here relate to the future content of the programming on the Station. The Commission does not scrutinize or regulate programming formats, nor does it take programming format into consideration in making its licensing decisions. In 1976, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Act, would not benefit the public, would deter innovation, and would impose substantial administrative burdens on the Commission.¹⁷ The Supreme Court of the United States has upheld this policy and the Commission's determination that “the public interest is best served by promoting diversity in entertainment formats

¹¹ See *Broadcast Applications*, Public Notice, Report No. 26874 (rel. Dec. 2, 2008); see also 47 C.F.R. § 1.939(a)(2).

¹² 47 C.F.R. § 73.3587.

¹³ 47 U.S.C. § 310(d).

¹⁴ 47 U.S.C. § 309(e).

¹⁵ 47 U.S.C. § 309(a). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁶ Brown Petition at 1.

¹⁷ See *Entertainment Formats*, Memorandum Opinion and Order, 60 FCC2d 858 (1976), *reconsideration denied*, 66 FCC2d 78 (1977), *rev'd sub nom. WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1978), *rev'd*, 450 U.S. 582 (1981); see also *John Schmidt*, Letter, 8 FCC Rcd 6283 (MMB 1993).

through market forces and competition among broadcasters”¹⁸ In any event, we are precluded from taking programming decisions or formats into consideration when determining whether the Assignment Applications should be granted.¹⁹ Furthermore, Brown has failed to provide any evidence to support its claim that the Assignee would move from its community of license.²⁰

Brown also claims that “the [Assignee] Starr family” is “bullying” the Assignor into a sale and that “the [Assignee] Starr family [has] . . . destroyed at least two other stations in the area.”²¹ Given the highly speculative nature of these unsupported allegations, the evidence in the record is insufficient to raise a substantial and material question of fact regarding any potential harms associated with a grant of the Assignment Application.²² Accordingly, we will deny the Brown Petition.

Hoyler and Montero Objections. On January 6, 2009, and March 12, 2009, Hoyler transmitted his Objection by e-mails to the staff arguing that the Assignment Application should not be granted because of the “legal problems associated with the buyers.”²³ Specifically, Hoyler argues that Michael Starr, one of the parties of the Assignee, “removed his name [from the Purchase Agreement] and replaced it with his son, James Starr [because] Michael was, at the time, filing for bankruptcy.”²⁴ Hoyler contends that the Starrs are parties to a bankruptcy proceeding in federal district court in Louisiana involving station KTIB(AM), Thibodaux, Louisiana, facing allegations of “fraudulent actions.”²⁵ In addition, Hoyler claims that he has “personal knowledge” that Michael Starr made misrepresentations to the Commission concerning special temporary authorization (“STA”) requests for KTIB(AM) due to “hurricane . . . damage.” Hoyler claims that he toured the KTIB(AM) facilities and found no such damage.²⁶ Hoyler also claims that “Michael Starr was accused by KTIB partners of falsifying a signature on an FCC form.”²⁷ Finally, Hoyler contends that the Assignor would “back out” of the sale if not for the

¹⁸ See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 585 (1981); see also, *Riverside Broadcasting Co., Inc.*, 53 RR2d 1154 (1983), *reconsideration denied*, 56 RR2d 618 (1984), *remanded on other grounds sub nom., Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392 (D.C. Cir. 1985).

¹⁹ See *Coosa Valley News, Inc.*, Letter, 23 FCC Rcd 9146, 9150 (MB 2008); see also *Entertainment Formats*, 60 FCC2d 858 (1976).

²⁰ See *WBBK Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 5906 (2000) (Bureau denies informal objection where objector failed to provide any evidence to support its claim that licensee would not serve its community of license).

²¹ Brown Petition at 1.

²² See, e.g., *Solar Broadcasting, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 5467, 5482 (2002).

²³ Hoyler Objection at 1.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

threat of litigation made by “Michael Starr.”²⁸ The Montero Objection makes the same allegations as those set forth above by Hoyler. In addition, Montero states that James Starr “is . . . of questionable character” and that “police records [are] being researched in St. Tammany Parish concerning drug violations as late as 2006.”²⁹ Montero did not submit documentation supporting these claims.

The Commission has previously determined that in deciding character issues such as those alleged by Hoyler and Montero, it will consider certain forms of adjudicated, non-FCC related misconduct that includes: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition. With respect to FCC-related misconduct, the Commission has stated that it would treat any violation of any provision of the Act, or of the Rules, as predictive of an applicant's future truthfulness and reliability, and thus, as having a bearing on an applicant's character qualifications.³⁰ However, the Commission normally will not act on mere allegations of non-FCC misconduct prior to adjudication by a tribunal of competent jurisdiction. We also note that even if there were some probative evidence of misconduct at KTIB(AM), the Commission has found that misconduct at one station is not necessarily imputed to a licensee's other stations, and thus, it is not relevant.³¹

Hoyler and Montero have not presented affidavits or other materials in support of their contentions that grant of the Assignment Application to the Assignee would not be in the public interest. In fact, Hoyler has not provided any information beyond bare allegations that Michael Starr, which the record indicates is not a party to this proceeding,³² has by some unspecified misconduct violated federal bankruptcy law or the Rules. Moreover, Montero has not provided any information beyond bare allegations that “drug violations” involving some unnamed party are being investigated. No factual support for these allegations or details concerning these allegations is provided. Hoyler's and Montero's unsupported allegations provide no basis for denying or designating for evidentiary hearing the Assignment Application.³³

²⁸ *Id.*

²⁹ Montero Objection at 1.

³⁰ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1209-10 (1986) (“*Character Policy Statement*”), modified, Policy Statement and Order, 5 FCC Rcd 3252 (1990), recon. granted in part, Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991), modified in part, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992). The Commission stated in part:

We will not take cognizance of non-FCC misconduct involving criminally fraudulent misrepresentations, alleged criminal activity . . . unless it is adjudicated. In this regard, there must be an ultimate adjudication by an appropriate trier of fact, either by a government agency or court, before we will consider the activity in our character determinations. (footnotes omitted). *Id.* at ¶ 48.

³¹ See, e.g., *Citicasters Licenses, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 19234, 19336 (MB 2007) (allegations of misconduct by licensee at stations other than those at issue not relevant for consideration).

³² See Assignment Application at Section III, Question 4a.

³³ See generally, *PCS Partners, LP*, Order, 17 FCC Rcd 21419, 21420 (WTB 2002).

Further, there is no evidence in this case of any ultimate adjudication by any court or other legal or administrative tribunal regarding the Assignee or any of its principals. It is therefore inappropriate to consider Hoyler's and Montero's allegations with respect to the Assignee's qualifications. We find that the allegations in both Objections do not demonstrate that any of the parties to this transaction were found guilty of any felony or of any type of criminal misconduct of which the Commission takes cognizance in making a determination as to character qualifications.³⁴ Accordingly, the Hoyler and Montero Objections warrant no further inquiry.

Conclusion/Actions. Based on the above, we find that neither Brown, Hoyler, nor Montero have raised a substantial and material question of fact warranting further inquiry. We further find that the Assignee is qualified to hold the Station KKAY(AM) license and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Petition to Deny filed by Maurice A. Brown *et al.*, IS DENIED. IT IS FURTHER ORDERED, that the informal objections submitted by Harry Hoyler and Chuck Montero, *et al.*, ARE DENIED, and that the application for approval to assign the license for Station KKAY(AM), White Castle, Louisiana (File No. BAL-20081126AHW) from Cactus Communications, LLC, to Stafford and Starr, LLC, IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Cactus Communications, LLC
Stafford and Starr, LLC

³⁴ See *Character Policy Statement*, 102 FCC Rcd at 1196-98.