

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

In the Matter of Applications of)	
)	
Little Dixie Radio, Inc., Assignor)	File No. BALH-20040610ABH
)	
and)	
)	
KESC Enterprises, LLC, Assignee)	
)	
For Assignment of License for Station KESC(FM))	
(FIN 83209), Wilburton, Oklahoma)	
)	
Little Dixie Radio, Inc., Assignor)	File Nos. BAL/BALH-20040610ABL/ABN
)	
and)	
)	
Southeastern Oklahoma Radio, LLC, Assignee)	
)	
For Assignment of Licenses for Stations)	
KMCO(FM) (FIN 37777) and KNED(AM) (FIN)	
37778), McAlester, Oklahoma)	
)	
Bottom Line Broadcasting, Inc., Assignor)	File Nos. BAL/BALH-20040610ABN/ABO
)	
and)	
)	
Southeastern Oklahoma Radio, LLC, Assignee)	
)	
For Assignment of Licenses for Stations)	
KTMC(AM) (FIN 67593) and KTMC-FM (FIN)	
67592), McAlester, Oklahoma)	

MEMORANDUM OPINION AND ORDER

Adopted: April 21, 2010

Released: April 22, 2010

By the Commission:

I. INTRODUCTION

1. The Commission has before it the captioned applications (collectively, the “Assignment Applications”) for consent to: the assignment of the license for Station KESC(FM), Wilburton, Oklahoma, from Little Dixie Radio, Inc. (“Little Dixie”) to KESC Enterprises, LLC (“KESC Enterprises”); the licenses for Stations KMCO(FM) and KNED(AM), McAlester, Oklahoma, from Little

Dixie to Southeastern Oklahoma Radio, LLC (“Southeastern”);¹ and the licenses for Stations KTMC(AM) and KTMC-FM, McAlester, Oklahoma, from Bottom Line Broadcasting, Inc. (“Bottom Line”) to Southeastern (the licenses for the aforementioned stations collectively, the “Station Licenses”). For the reasons set forth below, we find that the public interest would not be served by exercising our authority under Section 1.117 of the Commission’s Rules to modify or reverse the Bureau’s action.

II. BACKGROUND

2. The Assignment Applications were filed on June 10, 2004. The applications and documents requested by the Media Bureau (“Bureau”) and provided by Little Dixie and Bottom Line disclosed that, on April 1, 2003, Little Dixie/Bottom Line President and sole shareholder Gene Stipe² pled guilty to several criminal counts, including Conspiracy to Violate the Federal Election Campaign Act, Conspiracy to Obstruct a Federal Election Commission Investigation, and Perjury.³ The crimes for which Stipe pled guilty involved the following actions. Between March and November of 1988, he made monetary contributions of over \$245,000 to the unsuccessful campaign of Walter Roberts for the United States House of Representatives.⁴ The funds were used in part to reimburse others who had made “personal” contributions to the campaign. The reports filed with the Federal Election Commission (“FEC”) by Roberts did not accurately disclose Stipe as the source of the funds.⁵ In an FEC investigation begun in 1999, Stipe falsely denied that he was the true source of these funds to the Roberts campaign. The matter was referred to the United States Department of Justice, resulting in Stipe’s guilty pleas. He was sentenced on January 30, 2004, to serve five years’ probation, obey a six-month house arrest, and perform community service. As part of the plea agreement, Stipe also agreed to pay a fine of \$490,378 and surrender his license to practice law.⁶

3. On January 18, 2005, the Bureau granted the Assignment Applications.⁷ The *Staff Decision* imposed only one condition on Little Dixie and Bottom Line: that Stipe demonstrate that he was

¹ On May 12, 2006, the staff issued a final *Report and Order* pursuant to a Petition for Rule Making jointly filed by Little Dixie, KESC Enterprises, and Southeastern which (1) reallocated and changed the community of license for KESC(FM) from Channel 279C1 at Wilburton to Channel 279C1 at Okemah, Oklahoma; and (2) reallocated and changed the community of license for KMCO(FM) from Channel 267C1 at McAlester to Channel 267C1 at Wilburton. See *Wilburton, Okemah, and McAlester, Oklahoma*, Report and Order, 21 FCC Rcd 5127 (MB 2006). The staff granted applications to implement the rule making (File Nos. BPH-20061010AND and BPH-20060926AKU, respectively) in January of 2007 and subsequently granted covering license applications for each station (File Nos. BLH-20070914ABQ, granted February 26, 2008, and BLH-20070914ABN, granted December 4, 2007). Additionally, on June 1, 2007, KESC Enterprises successfully requested that the call sign KESC(FM) be changed to KOCD(FM). For administrative convenience, because all pleadings and Orders issued in this proceeding have referenced these stations’ prior communities of license and the call sign KESC(FM), we will continue to use them in this document.

² See, e.g., File No. BALH-20040610ABH, Attachment 7, “Statement Regarding Non-FCC Misconduct.”

³ *Id.* at 1.

⁴ *Id.* at 1-2.

⁵ *Id.* at 2.

⁶ *Id.* at 2 and n.3.

⁷ *Letter to Richard Zaragoza, Esq. and Veronica McLaughlin Tippet, Esq.*, Reference 1800B3-MFW (MB Jan. 18, 2005) (“*Staff Decision*”). The Public Notice announcing the grant of the Assignment Applications was issued on January 24, 2005. See Report No. 45906 (Jan. 24, 2005).

qualified to hold a broadcast license before acquiring an attributable interest in any Commission licensee. The *Staff Decision* acknowledged the significance of Stipe's adjudicated misconduct and its relevance under the Commission's *Character Qualifications Policy Statement*.⁸ It also recognized that, under the Commission's *Jefferson Radio* policy,⁹ "it is well settled that an assignment or transfer application will not be granted when the seller's qualifications to continue holding the licenses are in issue."¹⁰ Ultimately, however, the Bureau decided not to pursue further the matter of Stipe's qualifications and granted the Assignment Applications.¹¹ In the *Staff Decision*, it provided several reasons and supporting precedent: (1) Stipe was selling all of his broadcast interests to purchasers unrelated to him and would retain no Commission authorizations of any type; (2) his misconduct did not involve any other officers, directors, or employees of Little Dixie or Bottom Line; (3) Little Dixie and Bottom Line had unblemished records of compliance with the Commission's Rules (the "Rules") and the Communications Act of 1934, as amended (the "Act"); (4) Stipe's admitted offenses, while serious, were based on an isolated instance of misconduct; and (5) Stipe was 78 years old and in failing health.¹² Additionally, the Bureau stated that permitting the proposed license assignments could prevent a potentially serious deterioration of service to the public. In this regard, the letter noted that Little Dixie and Bottom Line held licenses for four of the five radio stations licensed to McAlester, Oklahoma, and the only station licensed to Wilburton, Oklahoma.¹³ The Bureau determined that revocation proceedings in these circumstances could adversely affect broadcast service to these communities.

4. The parties consummated the transactions on January 28, 2005. On February 1, 2005, KESC and Southeastern timely filed applications for renewal of their respective Station Licenses (the "Renewal Applications"). On March 4, 2005, the Commission, pursuant to Section 1.117(a) of the Rules,¹⁴ ordered the record of the Assignment Application proceedings before it for review.¹⁵ Subsequently, on July 27, 2005, the Bureau granted the Renewal Applications.¹⁶

III. DISCUSSION

5. In the *Staff Decision*, the Bureau recognized that the *Jefferson Radio* policy precludes grant when the seller's qualifications to continue holding the license are in issue, and correctly determined that Stipe's felony convictions fall within the scope of relevant misconduct which puts in issue his

⁸ *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986) ("*Character Qualifications Policy Statement*"), *recon. denied*, Memorandum Opinion and Order, 1 FCC Rcd 421 (1986) ("*Character Qualifications Reconsideration Order*"), *appeal dismissed sub nom. National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. Jun. 11, 1987), *modified*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) ("*1990 Character Qualifications Policy Statement*"), *on reconsideration*, Order, 6 FCC Rcd 4787 (1991), *modified in part*, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992).

⁹ See *Jefferson Radio Corp. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

¹⁰ *Staff Decision* at 2.

¹¹ *Id.* at 3-4.

¹² *Id.* at 2-3.

¹³ *Id.* at 3.

¹⁴ 47 C.F.R. § 1.117.

¹⁵ *Little Dixie Radio, Inc., and Bottom Line Broadcasting, Inc.*, Order, 20 FCC Rcd 4938 (2005) ("*Referral Order*").

¹⁶ See Broadcast Actions, Report No. 46038 (Aug. 1, 2005).

qualifications to be a Commission licensee.¹⁷ Nevertheless, as discussed above, the Bureau decided to approve the Assignment Applications despite *Jefferson Radio* based on a number of factors, including the failing health of Little Dixie/Bottom Line principal Gene Stipe. Based on our independent review of the record, and contrary to the arguments of the assignors and assignees, we find that there is no closely analogous Commission-level precedent to the facts presented by this case and therefore conclude that the Bureau erred and exceeded its delegated authority in granting the Assignment Applications.¹⁸ Although the Commission has exempted sellers from application of the *Jefferson Radio* policy in cases presenting public interest considerations such as the failing health of the seller, the Commission has required that no profit would be realized on the assignment of license in such cases.¹⁹ Requiring the absence of profit helps to preserve the effect of the general policy.²⁰ Pursuant to the documentation provided in the Assignment Applications, the aggregate proceeds from the sale of the stations at issue here were approximately \$2.2 million. The Bureau's grant of the Assignment Applications in these circumstances without imposing any restrictions on the profit that would be realized by Stipe was a departure from the *Jefferson Radio* policy and was inconsistent with Commission precedent. Accordingly, we find that the

¹⁷ See *Character Qualifications Policy Statement*, 102 FCC 2d at 1190-91; *Character Qualifications Reconsideration Order*, 1 FCC Rcd at 422 (relevant non-FCC misconduct include misrepresentations to any other governmental unit which result in criminal or civil violations, or criminal convictions involving false statements or dishonesty); see also *1990 Character Qualifications Policy Statement*, 5 FCC Rcd at 3252 (evidence of any conviction for misconduct constituting a felony will be relevant to Commission's evaluation of a licensee's character).

¹⁸ See 47 C.F.R. § 0.283(c).

¹⁹ See *Lois I. Pingree*, 69 FCC 2d 2179, at ¶ 5 (1978) (no-profit sale permitted where disability provides mitigation for wrongdoing); *Northwestern Indiana Broadcasting Corp.*, 65 FCC 2d 66, 70 (1977) (listing four factors relevant to determining whether the Commission should exercise its equitable discretion to except an application from *Jefferson Radio* on disability grounds, including that "no profit would be realized on the assignment of license"); *Hertz Broadcasting of Birmingham*, 57 FCC 2d 183 at ¶ 5 (1976) (evidentiary hearing terminated on basis of principal's disabling illness; station sale permitted for no profit); *Cathryn C. Murphy*, 42 FCC 2d 346 at ¶ 4 (1973); *Milton Broadcasting Co.*, 12 FCC 2d 354 (1968) (licensee's physical condition constituted an inadequate basis for invoking equitable powers to terminate a hearing where "the absence of profit to the assignor has not even been alleged"); *Walton Broadcasting Co.*, 38 FCC 2d at 207, ¶ 5 (where a portion of proceeds were to be placed in irrevocable trust for the care and maintenance of licensee, proposed sale "violates our stricture against sanctioning a license assignment which will result in a significant benefit to a putative wrongdoer"); *Tinker, Inc.*, 8 FCC 2d 22 at ¶ 4 (1967); *Martin R. Karig*, 3 RR 2d 669, at ¶ 4 (1964). See also *Harry O'Connor*, 2 FCC 2d 45 (1965) (excepting an application from *Jefferson Radio* on grounds that seller would receive from sale substantially less than he paid for his interest in licensee and buyer would return station to air promptly); *Letter to Charles R. Naftalin, Esq.*, 20 FCC Rcd 19373 (2005) (approving assignment of radio station licenses from convicted pedophile where no direct or indirect payment made to any seller shareholder from sale proceeds). But see *Spanish Int'l Communications Corp.*, 2 FCC Rcd 3336, 3339 (1987), *rev'd sub nom. Coalition for the Preservation of Spanish Broadcasting v. FCC*, 893 F.2d 1349, 1362 (D.C. Cir. 1990), *vacated and aff'd*, 931 F.2d 73 (D.C. Cir.) (en banc), *cert. denied*, 502 U.S. 907 (1991); *Calhoun Co. B'casting Co.*, 104 FCC 2d 22 (Rev. Bd. 1986) (renewals granted conditioned on assignment of stations to unrelated third party within 180 days, but without any "no profit" condition). A three-judge panel of the D.C. Circuit deemed the approval of a full-price sale in *Spanish Int'l Communications Corp.* to be "a substantive departure from *Jefferson Radio*" that required a reasoned explanation. *Coalition for the Preservation of Spanish Broadcasting*, 893 F.2d at 1362. In a subsequent *en banc* ruling, however, the court upheld the FCC's decision on procedural grounds and did not address the *Jefferson Radio* issue.

²⁰ See *Milton*, 12 FCC 2d at ¶ 6 ("[e]quity does not require that a licensee be provided with a profitable escape route from the consequences of his own wrongdoing merely because he is in poor health."). See also *Stereo Broadcasters v. FCC*, 652 F.2d 1026, 1030 (D.C. Cir. 1981) (*Jefferson Radio* policy serves as a deterrent because of the potential for "awesome loss" that would result from revocation or non-renewal).

Bureau erred in approving a for-profit sale of the Station Licenses while the character qualifications of Stipe remained in issue.²¹

6. As discussed above, the Commission generally does not permit a licensee with unresolved basic qualifying issues to sell its station at full market value. We are, however, ‘vested with broad discretion in our choice of remedies.’²² Accordingly, we must determine whether modifying or reversing the Bureau’s grant of the Assignment Applications would serve the public interest in light of all the circumstances presented here. For the reasons that follow, we are satisfied that allowing the Bureau’s action to stand will serve the public interest without compromising our ability to enforce our rules and regulations or undermining the integrity of our proceedings. First, we acknowledge the weight of the public interest factors relied on by the Bureau in granting the Assignment Applications: Stipe’s proposed disposal of all of his broadcast interests to unrelated buyers; the lack of involvement of other Little Dixie/Bottom Line officers, directors, or employees in Stipe’s misconduct, and the licensee’s otherwise ‘unblemished record of compliance with Commission rules and the Communications Act;’ Stipe’s failing health; and the avoidance of “a potentially serious disruption of service to the public.”²³ In the latter regard, the Station Licenses represent four of the five stations licensed to McAlester, Oklahoma and the only station licensed to Wilburton, Oklahoma, so that disruption of the stations’ operations is likely to disrupt most radio service to the public in this underserved area. Even in the unlikely event that the transaction were reformed to return Stipe’s profit, unwinding it would remove the Station Licenses from KESC Enterprises and Southeastern, which have operated the stations since January 28, 2005, and place them in the hands of Stipe for an indeterminate time period. In addition, Stipe may be unable to participate in Commission proceedings to determine whether he is qualified to be a Commission licensee.²⁴ We are persuaded by the unique circumstances of this case that allowing the Bureau’s action to stand will not unacceptably undermine the deterrent effect served by the *Jefferson Radio* policy. Although we remain committed to the *Jefferson Radio* policy, when balanced against the significant equitable considerations under the circumstances presented in this case, we do not believe that the public interest would be served by unwinding this transaction. As discussed above, the Bureau’s grant of the Assignment Applications without any profit limitation was inconsistent with Commission precedent and does not represent good law. Nevertheless, in the exercise of our equitable discretion, we find that the public interest would not be served by exercising our authority under Section 1.117 of the Commission’s rules to modify or reverse the Bureau’s action at this stage.

²¹ Even if we were to fully accept the appraisals and other documentation submitted on September 17, 2009, these materials do not establish that Stipe realized no profit from the sale of the captioned stations.

²² *Spanish Int’l Broadcasting Corp.*, 2 FCC Rcd at 3338, quoting *WMOZ, Inc.*, 3 FCC 2d 637, 639 (1966).

²³ *Staff Decision* at 3.

²⁴ See generally Supplemental Information on Request for Special Relief (filed Dec. 19, 2007) (indicating that the United States District Court for the Eastern District of Oklahoma, in a proceeding to determine Stipe’s parole status, concluded that he “is suffering from a mental disease or defect of dementia rendering him mentally incompetent to aid and assist properly in his defense and to understand the nature and consequences of the proceedings against him.”).

IV. CONCLUSION

7. For the foregoing reasons, IT IS ORDERED, pursuant to Section 1.117(c) of the Commission's Rules,²⁵ that the *Staff Decision* IS AFFIRMED and all pleadings filed subsequent to the release of the *Referral Order* ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁵ 47 C.F.R. § 1.117(c).