

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of)
)
Application for Consent to)
Assignment of Licenses of)
Stations WVKO(AM), Columbus, Ohio;)
WVKO-FM, Johnstown, Ohio;)
WRBP(FM), Hubbard, Ohio;)
WASN(AM), Youngstown, Ohio; and)
WGFT(AM), Campbell, Ohio)
)
From Stop 26 Riverbend Licenses, LLC,) File No. BAL-20060301ACU
Debtor-In-Possession to) File No. BALH-200600301ACV
Bernard Ohio LLC) File No. BALH-20060301ACW
) File No. BAL-200600301ACX
) File No. BAL-20060301ACY

To: Chief, Audio Division, Media Bureau

I. INTRODUCTION

This amendment (“Amendment”) is submitted by the parties to amend the pending application seeking to assign the licenses of WVKO(AM)/22341, Columbus, Ohio; WVKO-FM/58633, Johnstown, Ohio; WRBP(FM)/63498, Hubbard, Ohio; WASN(AM)/72100; Youngstown, Ohio; and WGFT(AM)/74164; Campbell, Ohio (collectively, the “Stations”) from Stop 26 Riverbend Licenses, LLC, Debtor-in-Possession (“SRL DIP”) to Bernard Ohio LLC (“Bernard”) (collectively, the “Application”).¹ SRL DIP is a debtor in bankruptcy in a case before the United States Bankruptcy Court for the Southern District of Ohio (the “Court”).² Accordingly, as discussed below, the parties respectfully request the Federal Communications Commission (“FCC” or “Commission”) grant the Application pursuant to the *Second Thursday Doctrine*³ and grant the pending license renewal applications of the Stations.⁴ Pursuant to the Commission’s *Second Thursday Doctrine*, assignment of the Stations to Bernard is the public interest because the individuals charged with misconduct in the renewal proceedings (i) would have no part in the

¹ FCC File Nos.: BAL-20060301ACU; BALH-200600301ACV; BALH-20060301ACW; BAL-20060301ACX; and BAL-20060301ACY; respectively.

² *In re Esq. Communications, Inc. et al.* (Jointly Administered Under Case No. 05-16685) (Bankr. S.D. Ohio).

³ *Second Thursday Corp.* 22 FCC 2d 515, 516, *recon granted*, 25 FCC 2d 112 (1970).

⁴ FCC File Nos.: BR-20040601AST; BRH-20040601ASR; BRH-20040601ATA; BR-20040601ASW); and BR-20040601ASV. A *pro se* petition to deny the renewal applications of WVKO(AM) and WVKO-FM was filed by Mark S. Litton on August 31, 2004.

proposed operations post-assignment; and (ii) would derive no benefit from the grant of the Applications.⁵

II. BACKGROUND

A. Bankruptcy Proceedings

Stop 26 Riverbend Licenses, LLC and related parent entities filed for Chapter 11 bankruptcy in July 2005.⁶ A *pro forma* application to assign the Stations to SRL DIP was subsequently filed and granted on January 12, 2006 to reflect the change in the licensee's status to Debtor-in-Possession.⁷

In August 2005, the Court issued an order (the "CRO Order")⁸ appointing a Chief Restructuring Officer ("CRO") of SRL DIP and Stop 26 Riverbend, Inc. ("SRI"), SRL DIP's ultimate parent company and a related Chapter 11 debtor.⁹ The CRO Order gave the debtor companies and Mr. Squire, their then Managing Member and Chief Executive Officer, until December 1, 2005 to sell or refinance the Stations. No such sale or refinancing was executed by the required date. Therefore, pursuant to the CRO Order's terms, as of passage of the December 1, 2005 deadline, all corporate powers shifted to the CRO, including the authority to sell or refinance the Stations in an effort to attempt to satisfy the claim of the primary secured lender, D.B. Zwirn Special Opportunities Fund, L.P. ("DBZ").¹⁰ The Court specifically ordered that Mr. Squire was not to be paid a salary or any compensation for his work on behalf of the corporate debtors prior to the December 1, 2005, and Mr. Squire had all executive authority stripped from him as of the passage of that deadline, when plenary executive power vested in the CRO.¹¹ The Commission

⁵ *Second Thursday Corp.*, 22 FCC 2d at 516.

⁶ See footnote 2, *supra*. The immediate parent of Stop 26 Riverbend Licenses, LLC - Associated Radio, Inc. ("ARI") did not file for Chapter 11 bankruptcy protection at the time. A Chapter 11 bankruptcy petition was filed for ARI on March 3, 2006 by the Chief Restructuring Officer.

⁷ FCC File Nos.: BAL-20060106ABE, BALH-20060106ABF, BALH-20060106ABG, ABL-20060106ABH, BAL-20060106ABI.

⁸ Order, August 17, 2005, *In re Stop 26 Riverbend, Inc.* (Case No. 05-16786), *In re Esq. Communications Inc.* (Case No. 05-16685), *In re Campbell Radio Co., LLC* (Case No. 05-16808), *In re Stop 26 Riverbend Licenses, LLC* (Case No. 05-16808). Notwithstanding prior decisions confirming his authority over ARI, to dispel any lingering confusion the Court granted a motion on April 4, 2006 formally extending the CRO Order over the ARI chapter 11 case. *In re Associated Radio, Inc.* (Case No. 06-BK-10497) (Bankr. S.D. Ohio). By way of full disclosure, Mr. Squire has filed several appeals of various orders of the Bankruptcy Court and several requests for Withdrawal of the Reference, all of which are still pending and too numerous to list here. *Citations Omitted*. Mr. Squire has also filed two Writs of Mandamus with the Sixth Circuit which have been denied. *Citations Omitted*. It is well settled that the Commission will not defer action on transfer and assignment applications simply because proceedings are pending before the courts regarding a proposed transaction. *Walter O Cheskey*, Memorandum Opinion and Order, 9 FCC Rcd 986 (1994) *citing Pinelands, Inc.*, 7 FCC Rcd 6058, 6060-61 & n. 9 (1993).

⁹ A subsequent Court order, issued in September 2005, named Bradley E. Scher as the CRO of SRL DIP and SRI DIP. SRI DIP is the 100% owner of Associated Radio, Inc. ("ARI"), an intermediate subsidiary which, in turn, owns 97% of SRL DIP. ARI filed for Chapter 11 bankruptcy protection on March 3, 2006.

¹⁰ CRO Order at 4.

¹¹ *Id.*

subsequently granted an involuntary *pro forma* application for consent to the transfer of control of the Stations from the shareholders of SRI to the CRO.¹²

In January 2006, the CRO (pursuant to Court approval) conducted an arms-length public auction of the Stations' assets. DBZ or its designee¹³ was the successful bidder at the auction with a credit bid of \$12 million—an amount representing the highest and best offer for the Stations' assets, but one falling well short of the aggregate debt owed to DBZ and other creditors. On January 26, 2006, acting on the motion of the CRO, the Court issued an order authorizing the sale of the Stations' assets to the successful bidder (“Sale Order”).¹⁴ The Sale Order also provided for SRL DIP's entry into a Local Marketing Agreement with the buyer on terms acceptable to SRL DIP (as now controlled by the CRO), and specified that final transfer of the Station's FCC licenses to Bernard would occur upon FCC approval.¹⁵ The instant assignment application seeks Commission consent to the assignment of SRL DIP's licenses to Bernard pursuant to the Sale Order.

In an effort to further effectuate the Sale Order, on March 3, 2006, the CRO exercised his authority to vote the ARI stock and removed each of the members of the ARI board of directors, including Squire and authorized the commencement of Chapter 11 bankruptcy proceedings for ARI. ARI filed a Chapter 11 bankruptcy petition on March 3, 2006. The bankruptcy court, in the Compliance Order dated March 9, 2006, found that the CRO acted properly in removing ARI's board of directors, and commencing the Chapter 11 Bankruptcy case for ARI.¹⁶

Consistent with the Commission's *Second Thursday Doctrine*, no portion of the purchase price is to be retained by SRL, ARI, SRI or Mr. Squire. Further, no debtor party including Mr. Squire will benefit in any way from the pending assignment of the Stations to Bernard, nor will any party with an ownership interest in the Stations have an interest in, or control over, the Stations following consummation.

B. Pending Renewal Applications

SRL filed renewal applications for the Stations on June 1, 2004, over a year before its bankruptcy filing, at a time when SRL was ultimately controlled by SRI and was under Mr. Squire's corporate management.¹⁷ SRL initially certified compliance with the Local Public File requirements, but then filed an amendment for stations WVKO(AM) and WVKO-FM stating that “[C]ertain documentation, including the quarterly listings of issues programs are not available and have not been in the WVKO...Local Public File for the entire eight year term of the current license period.” Moreover, as stated above, a *pro se* petition to deny was filed against

¹² FCC File Nos.: BTC/BTCH-20060203AAC-G.

¹³ DBZ's designee was Bernard, an entity formed by DBZ management to acquire the Stations' assets.

¹⁴ *In re Esq. Communications et al.* (Jointly Administered under Case No. 05-16685) Order dated January 26, 2006 (Bank. S.D. Ohio) (“Sale Order”). The Sale Order specifically stated that transfer of the FCC licenses is subject to the approval of the FCC. Sale Order at 5, 8-9.

¹⁵ Sale Order at 8.

¹⁶ *In re Associated Radio Inc.* (Case No. 06-Bk-10497), *In re Esq. Communications, Inc. et al.* (Jointly Administered Under Case No. 05-BK-16685) (Bankr. S.D. Ohio). See also footnote 8, *supra*.

¹⁷ Footnote 4, *supra*.

the WVKO(AM)-FM renewal applications on August 31, 2004 containing allegations regarding the stations' public inspection files and other operational matters concerning WVKO(AM) and WVKO-FM, all of which occurred pre-bankruptcy and under now-deposed corporate management. On March 7, 2006, the Chief of the Commission's Audio Division, Media Bureau, issued a Section 1.88 Letter raising the question as to whether SRL (not SRL DIP as controlled by the CRO) has the requisite qualifications to remain a Commission licensee.¹⁸

Having assumed corporate control of the now-bankrupt licensee and its parent entities pursuant to Court and Commission approval well after the filing of the pending renewal applications, the CRO is obviously unable to respond meaningfully to the Audio Division's Section 1.88 Letter. Counsel for the CRO, who in that capacity now represents the licensee, has been informally advised by Division staff that specific responses to the Section 1.88 Letter will not be required.¹⁹ By way of this Amendment, however, the CRO and the Stations' proposed assignee establish that grant of the WVKO(AM) and WVKO-FM applications, and of the application to assign SRL DIP's licenses to Bernard, are in the public interest under the *Second Thursday Doctrine*.

III. Grant of the Applications and Renewal of the Stations' Licenses is Warranted Pursuant to the *Second Thursday Doctrine*

The Commission's long standing *Second Thursday Doctrine* protects innocent creditors of a broadcast licensee whose managers and principals have engaged in conduct placing the station license(s) in jeopardy. The Commission held in *Second Thursday Corp.* that when a licensee is in bankruptcy, it will grant the assignment of a broadcast station license, even if there are questions about the fitness of the licensee, as long as: (i) the individuals charged with misconduct will have no part in the proposed operations; and (ii) the pending assignment is part of a station sale that benefits the licensee's innocent creditors (with minimal, if any, benefit flowing to the licensee or the individuals charged with the misconduct).²⁰

The facts of this case fall squarely within the *Second Thursday Doctrine*. SRL DIP is in the midst of a Chapter 11 bankruptcy proceeding under the supervision of the Court. Pursuant to the CRO Order, the CRO has assumed complete control over the corporate affairs of SRL DIP and its ultimate parent SRI, as well as operation of the radio stations licensed to SRL DIP. Moreover, as described above, former licensee management has been removed from intermediate subsidiary ARI. Bernard, the proposed assignee of the stations, is unrelated to the debtor companies and their individual principals. In short, the individuals alleged of wrongdoing with respect to the Stations are uninvolved in corporate or station management now and will remain so following the assignment.

With respect to the second prong of the *Second Thursday* test, none of SRL DIP, any entity with an ownership interest in SRL DIP, nor Mr. Squire as an individual will benefit from the proposed

¹⁸ Letter from Peter H. Doyle, Chief Audio Division, Media Bureau to Joseph M. Di Scipio, Esq. dated March 7, 2006.

¹⁹ Email from Peter H. Doyle, Chief Audio Division, Media Bureau to Joseph M. Di Scipio, Esq. dated March 23, 2006.

²⁰ *Second Thursday Corp.* at 516.

assignment. As noted above, the successful bid for the Stations' assets at auction was a credit bid. No money will change hands at closing and none will be distributed to the debtors' shareholders or officers and directors. The consummation of the Stations' sale will serve only to reduce the outstanding claims of DBZ, the primary creditor. In fact, Mr. Squire will continue to be personally liable for at least \$4 million once the sale is closed because the minimum credit bid did not cover all of the outstanding debt.²¹ Absent a grant of the instant Applications, SRL DIP's primary creditor will receive virtually no compensation in the bankruptcy proceeding as the hard assets provide little value. The *Second Thursday Doctrine* was intended to prevent such a result.

In addition, the stations are operating today only by virtue of more than \$300,000 of debtor-in-possession financing provided by DBZ. Without a grant of the instant Application, the Stations will likely go dark as there are insufficient funds to operate them.²² Such an outcome would be counter to *Second Thursday Corp.*, where the Commission found that the resumption of broadcast service is a favorable public interest consideration which supports the grant of the assignment application.²³ Moreover, Bernard (the proposed assignee) is prepared to operate the Stations uninterrupted and to invest in the Stations to improve the Stations facilities upon grant of the instant Applications. The sale of the Stations is fully supported and endorsed by the Sale Order of the Court pending only Commission grant of the Application.

III. CONCLUSION

The parties to the Application respectfully request that the Commission grant the Application and the pending license renewal applications of the Stations. Grant of these applications is warranted under and supported by the *Second Thursday Doctrine* and other public interest considerations.

²¹ See *New South Broadcasting, Inc.* Order, 8 FCC Rcd 1272, 1273 (1973) (granting assignment of a broadcast station license where the "bad actor" will, at most, receive only an incidental benefit from the elimination of his potential liability through the bankruptcy). Here, Mr. Squire's liability is not eliminated, he still remains personally liable for at least \$4 million.

²² Prior to the CRO taking control, SRL was behind on payroll and taxes. Those obligations are now being met timely by the CRO.

²³ *Second Thursday Corp.* at 520.