



**Federal Communications Commission**  
**Washington, D.C. 20554**  
October 21, 2016

In Reply Refer To:  
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**In re: KORC(FM), Burns, OR**  
Facility ID No. 62264  
File No. BALH-20160712AAM

**KBNH(AM), Burns, OR**  
Facility ID No. 62265  
File No. BAL-20160712AAN

**Application for Assignment of License**

**Petition to Deny**

Dear Counsel:

We have before us the referenced applications ("Applications") seeking approval for the proposed assignment of the licenses for Stations KORC(FM) and KBNH(AM), Burns, Oregon (collectively, "Stations"), from Harney County Radio, LLC ("HCR"), to Starlight Broadcasting LLC ("Starlight"). Also before us is a Petition to Deny the Applications ("Petition"), filed August 12, 2016, jointly by Toni Carson and Trevor Carson, and Toni Carson as receiver (collectively, the "Petitioners").<sup>1</sup> For the reasons set forth below, we deny the Petition, and grant the Applications.

*Background.* Petitioners were the sole owners of B&H Radio, Inc. ("B&H"), former licensee of the Stations, until 2010, when B&H assigned the Stations' licenses to HCR.<sup>2</sup> HCR purchased the Stations partially in cash, financing the remainder in a securitized note and deed of trust.<sup>3</sup> After the sale of the Stations, B&H dissolved and Petitioners became successor in interest to the note and deed of trust.

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<sup>1</sup> Petitioners also filed a supplement to the Petition on August 22, 2016. Starlight filed an Opposition to the Petition ("Opposition") on August 24, 2016, and supplement to the Opposition on September 26, 2016. Because the Supplements contain material relevant to the disposition of this case that could not have been presented earlier – subsequent state court orders, as described below -- we will consider them here. *See, e.g. John Garziglia, Esq., Letter*, 20 FCC.Rcd 12105, 12107 (2005); *Family Vision Ministries, Inc., Memorandum Opinion and Order*, 18 FCC Rcd 1418, n.2 (2003).

<sup>2</sup> Petition at 2; *See* FCC File Nos. BAL-20100514AJD and BALH-20100514AJE.

<sup>3</sup> Petition at 2; *See* FCC File Nos. BAL-20100514AJD and BALH-20100514AJE, Attachment 5, at 3.

Subsequently, HCR suspended its radio operations and defaulted on the note.<sup>4</sup> In May 2016, Petitioners began foreclosure proceedings in the Circuit Court of the State of Oregon for Harney County (the “Court”), pursuant to which Toni Carson was appointed receiver of HCR’s “real property consisting of the radio station and improvements on it, including the personal property subject to the security agreement . . . .” on June 7, 2016.<sup>5</sup> The *Receiver Order* gave Toni Carson the right to manage, control, and protect the Stations’ property and collect “the rents, issues, and profits.”<sup>6</sup>

Notwithstanding the receivership proceeding, HCR filed the Applications on June 12, 2016. Petitioners contest the Applications, arguing they must be denied or dismissed because HCR lacks authority to assign the Stations’ licenses to Starlight or dispose of the Stations’ property in any way.<sup>7</sup>

Subsequently, on August 19, 2016, the Court issued an order, “*Order Approving Receiver Petition for Involuntary Assignment of Federal Communications Commission (“FCC”) Licenses*,” permitting Toni Carson to file an application for involuntary assignment of the Stations’ licenses with the Commission.<sup>8</sup> Toni Carson, as receiver, filed such an involuntary assignment application on August 19, 2016.<sup>9</sup> However, the Court subsequently vacated its *Involuntary Assignment Order*, noting in an accompanying memorandum that “the Receiver in this case has no direct claim on the FCC licenses as plaintiffs in the case have no contractual right to it.”<sup>10</sup> At the request of Petitioners, the staff dismissed the Involuntary Assignment Application on September 27, 2016.<sup>11</sup>

*Discussion.* Section 310(d) of the Communications Act of 1934, as amended (the “Act”),<sup>12</sup> 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 Section 309(d)(1) of the Act,<sup>13</sup> any party in interest may file a petition to deny an application. In order to assess the merits of a petition to deny, a two-step analysis is required. First, the petition must make specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.<sup>14</sup> This threshold determination is made by evaluating the petition and the supporting affidavits. If the petition meets this threshold requirement, the Commission must then examine all of the material before it to determine whether there is a substantial and material question of fact calling for further inquiry and requiring resolution in a

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<sup>4</sup> Petition at 2. Commission records indicate that the Stations have been silent since October 31, 2015. See FCC File Nos. BLSTA-20151123ADZ, BLESTA-20160603ADN (KORC(FM)); BLSTA-20151123AEA, and BLESTA-20160603ADM (KBNH(AM)).

<sup>5</sup> Petition at 2; see *Carson v. Harney County Radio*, No. 16CV17982 (Or. Cir. Jun 7, 2016) (order appointing receiver) (“*Receiver Order*”).

<sup>6</sup> *Receiver Order* at 2, paras. 7-11.

<sup>7</sup> Petition at 3.

<sup>8</sup> See *Carson v. Harney County Radio*, No. 16CV17982 (Or. Cir. Ct. Aug. 19, 2016) (*Involuntary Assignment Order*).

<sup>9</sup> BALH-20160819AAI (Involuntary Assignment Application).

<sup>10</sup> See *Carson v. Harney County Radio*, No. 16CV17982 (Or. Cir. Ct. Sept. 26, 2016) (order setting aside order approving receiver petition for involuntary assignment of Federal Communications Commission “FCC” license).

<sup>11</sup> See *Broadcast Actions*, Public Notice, Report No. 48831 (Sep. 30, 2016), p.3.

<sup>12</sup> 47 U.S.C. § 310(d).

<sup>13</sup> 47 U.S.C. § 309(d)(1).

<sup>14</sup> See *id.*; *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

hearing.<sup>15</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.

The Commission's long-standing policy is to accommodate the actions of state courts, thereby avoiding conflicts between state and federal authority, unless a public interest determination under the Act would compel a different result.<sup>16</sup> The Commission thus defers to judicial determinations in many areas, including bankruptcy matters, private disputes, and the interpretation and enforcement of contracts for the sale of a broadcast station. The Commission, however, retains exclusive authority to license broadcast stations<sup>17</sup> and, in the absence of a stay or injunction issued by a court, the Commission has routinely acted favorably on license assignment applications pending resolution of private disputes,<sup>18</sup> such as that currently before us. Our grant of an assignment application merely finds that the parties are qualified under, and the proposed transaction does not violate, the Act and the Commission's rules and policies.<sup>19</sup> It is permissive only and does not prejudice any relief that the parties may ultimately be entitled to under civil suit.<sup>20</sup>

Petitioners' argument regarding HRC's authority to file the Applications here relies on the assertion that the licenses were subject to receivership by the Court's *Involuntary Assignment Order*. We find the Court's action setting aside the *Involuntary Assignment Order*, and its recognition that the Carsons had no contractual right to the Stations' licenses, render the Petitioners' argument meritless.

*Conclusion/Actions.* For these reasons, we find that Petitioners have failed to raise a substantial and material question of fact calling for further inquiry regarding the Applications. We also find that HRC is qualified to assign the Stations and Starlight is qualified to hold the Station licenses and that grant of the Applications are consistent with the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED that the Petition to Deny, filed August 23, 2016, jointly, by Trevor and Toni Carson and Toni Carson as receiver, IS DENIED.

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<sup>15</sup> 47 U.S.C. § 309(d)(2).

<sup>16</sup> *Radio Station WOW v. Johnson*, 326 US 120, 132 (1945) ("*Radio Station WOW*"); *Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545, 548, para. 7 (1985) ("*Arecibo Radio*").

<sup>17</sup> See, e.g. *Arecibo Radio*, 101 FCC 2d at 549, para. 10 (honoring court order requiring licensee to execute assignment application in favor of another party).

<sup>18</sup> See, e.g., *A.L.Z. Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 23200, 23201, paras. 3-4 (2000) (finding contractual dispute concerning payment obligations to be within the province of a court of competent jurisdiction, not the Commission) (citations omitted).

<sup>19</sup> *Cumulus Licensing LLC*, Letter, 21 FCC Rcd 2998, 3007 (2006).

<sup>20</sup> *Id.*

IT IS FURTHER ORDERED, that the Applications for Assignment of License for Stations KORC(FM) and KBNH(AM), Burns, Oregon (File Nos. BALH-20160712AAM and BAL-20160712AAN) ARE GRANTED.

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Dan J. Alpert, Esq.