

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

In the Matter of
George L. Miller, Chapter 11
Trustee, Reading Broadcasting, Inc.
Assignor
and
WRNN-TV Associates Limited
Partnership
Assignee
Application for Assignment of License of
Television Station WTVE(TV),
Reading, Pennsylvania
File No. BALCT-20080125ACD
Facility ID No. 55305

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 2009

Released: March 18, 2009

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration an application for review filed by Philadelphia Television Network ("PTN") of the letter decision by the Chief, Video Division, Media Bureau, granting the application to assign the license of WTVE(TV), Reading, Pennsylvania from George L. Miller, Chapter 11 Trustee for Reading Broadcasting, Inc. ("Trustee") to WRNN-TV Associates Limited Partnership ("WRNN-TV"). For the reasons stated below, we deny the application for review and affirm the Letter Decision.

II. BACKGROUND

2. On October 7, 2005, Reading Broadcasting, Inc., ("RBI") sought protection from its creditors in a Chapter 11 bankruptcy filing in the United States Bankruptcy Court for the Eastern District of Pennsylvania (the "Bankruptcy Court"). PTN was a creditor of RBI and a participant in the bankruptcy proceeding. PTN and the Trustee filed competing plans with the Bankruptcy Court for resolving the claims against RBI. The Bankruptcy Court confirmed the Trustee's Plan of Liquidation, which included the sale of the station to WRNN, and rejected PTN's competing plan. In its order, the Bankruptcy Court found that the Trustee's plan was fair and equitable and met the "best interests of the creditors" test; that WRNN was financially capable of completing the purchase; and that it was likely that WRNN would fulfill its station asset purchase agreement, thereby rendering the Trustee's plan feasible. In rejecting

1 Letter from Barbara A. Kreisman to George L. Miller, et al., re: WTVE(TV), Reading, Pennsylvania, 23 FCC Rcd 7740 (2008) ("Letter Decision").

2 Reading Broadcasting, Inc., ___ B.R. ___ (Bankr. E.D. Pa., Jan. 17, 2008).

PTN's plan, the Bankruptcy Court found that PTN would not receive sufficient funding to effectuate its plan and that PTN's plan proposal was not feasible and could not be confirmed. PTN subsequently filed a motion asking the Bankruptcy Court to reconsider its order. The motion for reconsideration was denied by the Bankruptcy Court on March 12, 2008.³ PTN appealed the Bankruptcy Court's decision to the United States District Court for the Eastern District of Pennsylvania and that appeal was dismissed on August 8, 2008.⁴ In a Supplement to its Application for Review, PTN stated that it intended to file an appeal of that decision.⁵

III. DISCUSSION

3. In its Application for Review, PTN alleges that: (1) the *Letter Decision* was premature because the bankruptcy litigation had not been finally resolved at the time it was issued; and (2) WRNN has failed to demonstrate that it was financially qualified.

4. PTN's contention that the *Letter Decision* was premature is based on two arguments. First, PTN contends that the Commission should not have acted on WRNN's application until there was a "final resolution of the bankruptcy proceeding."⁶ In support of its position, PTN cites several cases which it argues compel the Commission to adopt a "wait and see" attitude in respect to proceedings in a bankruptcy court or other court before entering its own decision. In fact, each of the cases cited by PTN applies the well-established precedent that the Commission should avoid creating conflicts over matters within a federal or state court's jurisdiction.⁷ In this case, the *Letter Decision* relied on an order of the Bankruptcy Court, which: (1) confirmed the Trustee's Plan of Liquidation; (2) found WRNN financially qualified to proceed with the transaction; and (3) dismissed PTN's competing plan. This was a final order by the Bankruptcy Court, not an interlocutory decision. The Video Division was not required to wait until PTN exhausted every conceivable interlocutory motion and possible route of appeal before granting the application.⁸

5. PTN also contends that *Letter Decision* was premature because the application was in some way contingent on potential actions by the courts. Had the application been filed prior to the issuance of the order by the Bankruptcy Court, the application would have been contingent on the Court's action. Had the Court stayed its own order prior to the filing of the application, an argument could be made about the contingent status of the application. Neither of those situations applied at the time the application was filed, apply now, or applied at the time of the *Letter Decision*. Therefore, we find that the *Letter Decision* was not premature.

³ *Reading Broadcasting, Inc.*, __ B.R. __ (Bankr. E.D. Pa, March 12, 2008).

⁴ *Reading Broadcasting, Inc.*, Slip Opinion, No. 5:08-1775 (E.D. PA Aug. 8, 2008).

⁵ PTN Supplement at 2.

⁶ Application for Review at 6.

⁷ See *Kralowec Children's Family Trust, Memorandum Opinion and Order*, 12 FCC Rcd 19690 (Med. Bur. 1997) (Commission will not revisit issues previously considered and resolved by a bankruptcy court); *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974) (Commission is obligated to protect innocent creditors as long as the transaction in question does not unduly interfere with objectives of the Communications Act); *Listeners Guild v. FCC*, 813 F.2d 465 (D.C. Cir. 1987) (Commission has long-standing policy to not become involved in private contractual disputes); *Hanover Radio, Inc.*, 52 F.C.C. 2d 849 (Rev. Bd. 1982) (ALJ's order was inconsistent with Commission policy "which seeks to avoid federal/state conflicts and recognizes valid local contract law.").

⁸ WRNN reports that PTN's motion for stay pending appeal was denied on March 21, 2008 and its motion for reconsideration of the order confirming the Trustee's Plan of Liquidation was denied on March 12, 2008. As noted above, PTN's appeal of the Bankruptcy Court's decision to the United States District Court for the Eastern District of Pennsylvania was dismissed on August 8, 2008.

6. PTN's second allegation is that WRNN failed to demonstrate that it was financially qualified. As the *Letter Decision* correctly noted, an applicant is not required to provide documentation supporting its financial certification unless it is specifically requested to do so.⁹ In this particular case, the Bankruptcy Court, prior to the filing of the assignment application, had held that WRNN had demonstrated, under oath and following cross-examination, that it was financially capable of completing the purchase.¹⁰ Also, WRNN, in addition to indicating that it could fulfill its obligations without additional financing, produced a letter from Goldman Sachs which the *Letter Decision* found provided reasonable assurance of committed funding because any loan would be implemented by amending a preexisting crediting agreement between Goldman Sachs and WRNN and because the parties were fully aware of the terms of the loan. To determine whether there is reasonable assurance of financing, the Commission considers whether the borrower's qualifications have been preliminarily reviewed by the bank, whether adequate collateral has been demonstrated, and whether the tentative terms are identified and acceptable to the borrower and the lender.¹¹ In this case, the financing at issue was an amendment to a preexisting credit arrangement between the two parties, which the Division reasonably found met the standard for supporting financial certification. Furthermore, according to WRNN, Goldman Sachs did in fact provide the financing for the closing which took place on June 12, 2008. Based on the foregoing, we find that PTN has failed to show that the Video Division failed to act inconsistently with statute, regulation, case precedent, or Commission policy, and, thus, we deny the Application for Review.

IV. CONCLUSION

7. ACCORDINGLY, IT IS ORDERED That the application for review filed by Philadelphia Television Network IS DENIED and the letter decision by the Chief, Video Division, Media Bureau, granting the application to assign the license of WTVE(TV), Reading, Pennsylvania from George L. Miller, Chapter 11 Trustee for Reading Broadcasting, Inc. to WRNN-TV Associates Limited Partnership, File No. BALCT-20080125ACD, IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹ See Instructions for FCC Form 314 at 8.

¹⁰ *Reading Broadcasting, Inc.*, ___ B.R.___ (Bankr. E.D. Pa., Jan. 17, 2008).

¹¹ See *Liberty Productions, L.P.*, 7 FCC Rcd 7581 (1992)