



Federal Communications Commission
Washington, D.C. 20554
March 9, 2012

In Reply Refer to:
1800B3-TSN

Buck Owens Production Company, Incorporated
c/o Gregory L. Masters, Esq.
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In re: **KUZZ(AM), Bakersfield, California**
Facility ID No. 7695
File No. BTC-20111221AEL

KUZZ-FM, Bakersfield, California
Facility ID No. 7697
File No. BTCH-20111221AEM

KCWR(FM), Bakersfield, California
Facility ID No. 43749
File No. BTCH-20111221AEN

KRJK(FM), Lamont, California
Facility ID No. 183302
File No. BTCH-20111221AEO

Applications for Transfer of Control

Dear Counsel:

We have before us four applications for transfer of control of Buck Owens Production Company, Incorporated, formerly known as Owens One Company, Inc. ("BOPC"), licensee of stations KUZZ(AM), KUZZ-FM, and KCWR(FM), all licensed at Bakersfield, California, and station KRJK(FM), licensed at Lamont, California (the "Transfer Applications").¹ We also have before us a Petition to Deny one of the Transfer Applications, filed by Calvary Chapel of Costa Mesa, Inc. ("Calvary"). For the reasons set forth below, we deny the Petition to Deny and grant the Transfer Applications.

¹ The Transfer Applications are File Nos. BTC-20111221AEL (KUZZ(AM)), BTCH-20111221AEM (KUZZ-FM) (the "KUZZ-FM Application"), BTCH-20111221AEN (KCWR(FM)), and BTCH-20111221AEO (KRJK(FM)).

Background. BOPC's stock was passed to the Buck Owens Revocable Trust II ("Owens Trust") following the death of BOPC's 100 percent shareholder, the late Alvis "Buck" Owens.² The co-trustees of the Owens Trust are Michael Owens and Melvin L. Owens, Jr. In the Transfer Applications, 100 percent of BOPC's stock is to be transferred from Michael Owens and Melvin L. Owens, Jr., as co-trustees, to Melvin L. Owens, Jr., individually, pursuant to the provisions of the Owens Trust.³

Calvary filed a Petition to Deny only the KUZZ-FM Application ("Petition").⁴ Calvary forwards two grounds for denying the KUZZ-FM Application. First, it cites "Melvin Owens' intransigence," stemming from an ongoing dispute between Calvary and BOPC regarding modification of the facilities of Calvary's station KWVE-FM, San Clemente, California. KWVE-FM is short-spaced to co-channel KUZZ-FM, and Calvary employs a directional antenna in order to avoid prohibited contour overlap with KUZZ-FM. BOPC opposed Calvary's application to modify the KWVE-FM facilities to specify a non-directional antenna,⁵ and the application was subsequently dismissed.⁶ According to Calvary, BOPC and Melvin L. Owens, Jr., have also consistently resisted informal overtures by Calvary aimed at reaching agreement to expand the KWVE-FM facilities, and have abused the Commission's processes by continuing "to file numerous pleadings."⁷ Second, Calvary accuses BOPC of lacking candor. Specifically, Calvary notes that, until very recently, the licensee of KUZZ-FM was identified in Commission records as "Owens One Company, Inc.," but attaches evidence showing that the corporation's name changed to Buck Owens Productions, Incorporated, in May of 2001.⁸ Calvary thus accuses BOPC of going "to great lengths to conceal" the corporation's name change from the Commission, and states that this "deception" must be resolved before the KUZZ-FM Application may be granted.⁹

BOPC responds by challenging Calvary's standing to object to the KUZZ-FM Application.¹⁰ As to the merits of the Petition, BOPC states that it was entitled to object, as it did, to Calvary's request for a

² File Nos. BTC-20060502ADX, BTCH-20060502ADY, and BTCH-20060502ADZ (Form 316 application for the involuntary transfer of control of BOPC from Alvis E. ("Buck") Owens (deceased) to the Owens Trust, Michael Owens and Melvin L. Owens, Jr., serving as co-trustees).

³ Section 5.1 of the Owens Trust calls for 50 percent of the BOPC stock to be distributed to Melvin L. Owens, Jr., and 50 percent to be distributed to John Owens. However, in a separate Stock Redemption Agreement dated April 30, 2009, BOPC redeemed John Owens's 50 percent of the corporation's stock in exchange for consideration. Thus, the remaining BOPC stock is owned by Melvin L. Owens, Jr.

⁴ Owens filed an Opposition to Petition to Deny ("Opposition") on February 1, 2012, and Calvary filed a Reply to "Opposition to Petition to Deny" ("Reply") on February 10, 2012.

⁵ File No. BPH-20070919ABO ("KWVE Modification Application").

⁶ *Lauren Colby, Esq., Gregory Masters, Esq., and Daniel Huber, Esq.*, Letter, 23 FCC Rcd 9971 (MB 2008), *recon. pending*.

⁷ Petition at 2-3.

⁸ See Exhibit C to Petition.

⁹ Petition at 3-4.

¹⁰ Opposition at 2 n.3.

waiver of the Rules in order to modify its facilities to specify non-directional operation. It further notes that, with the exception of its initial Informal Objection, every document it has filed with regard to KWVE-FM was in response to a pleading filed by Calvary.¹¹ BOPC thus disputes Calvary's charge of "intransigence" as being merely a characterization of BOPC's opposing position to Calvary's wishes.¹²

With regard to Calvary's charge of lack of candor, BOPC states that Melvin L. Owens, Jr., was unaware of the fact that the corporation's name had been changed back to "Buck Owens Productions, Incorporated" until he was preparing to acquire the corporation's stock in late 2011, whereupon he learned it had already been changed.¹³ According to his declaration, Mr. Owens instructed his counsel to inform the Commission of the change.¹⁴ BOPC nonetheless contends that any confusion over the corporation's name does not affect the fact that the corporation has existed for years and has "faithfully reported" all changes in ownership during that time, and that in any event the name change should not pose an obstacle to the proposed transfer of control of the corporation to Melvin L. Owens, Jr.¹⁵ Calvary replies that BOPC has filed "pleading after pleading, as well as applications, in the name of a non-existent corporation," concluding that therefore all of BOPC's pleadings opposing the 2007 KWVE-FM modification application "must be summarily dismissed."¹⁶ Calvary also summarizes its original position with regard to the KWVE Modification Application, that there is in reality no overlap between KWVE-FM's and KUZZ-FM's signals.¹⁷

Discussion. *Petition to Deny.* We find no merit to the Petition. We need not address the myriad arguments set forth by the parties in relation to the KWVE Modification Application, which was dismissed by the staff with reconsideration pending.¹⁸ It suffices to observe that the Petition appears to be no more than a thinly veiled attempt to argue the merits of that application from a different angle, or a collateral attack on that decision on spurious grounds.

We also find that Calvary lacks standing to file a petition to deny the KUZZ-FM Application or any of the Transfer Applications. To establish standing, Calvary must plead injury in fact fairly traceable to the conduct complained of and likely to be redressed by the requested relief.¹⁹ Not only does Calvary fail to set forth injury in fact, but it bases its petition on the past "intransigence" of BOPC and its current

¹¹ *Id.* at 3-4 and n.6.

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ See Exhibit A to Opposition, ¶ 2.

¹⁵ Opposition at 4-5.

¹⁶ Reply at 2.

¹⁷ *Id.*

¹⁸ See *supra* note 6.

¹⁹ *KQQK, Inc. and El Dorado 108, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18550, 18551 (1999) (quoting *Conn-2 RSA Partnership*, Memorandum Opinion and Order, 9 FCC Rcd 3295, 3297 (1994) and *Orange Park Florida T.V., Inc. v. FCC*, 811 F.2d 664, 670 (D.C. Cir. 1987).

co-trustee, Melvin L. Owens, Jr. Denial of the Transfer Applications would maintain a *status quo* which, by Calvary's allegations, would mean continuation of the alleged "intransigence." Thus, the conduct complained of would not be redressed by the requested relief.

Even considering the Petition as an informal objection, however, we find that "intransigence" is not a ground for denying an application for transfer of control of a licensee, and Calvary cites no law holding otherwise. Further, we will not find that BOPC has engaged in abuse of process absent a showing that delaying action on the KWVE Modification Application was BOPC's primary and substantial purpose in filing its objection to that application.²⁰ Calvary has not shown any such purpose behind the BOPC objection. In light of our determination that the objection was valid, we find that the objection was filed to present relevant information, rather than for the purpose of delaying action on the KWVE Modification Application. Likewise, we do not infer any improper motivation from BOPC's other filings in that proceeding. As BOPC points out in its Opposition, without contradiction by Calvary, any other documents it filed in relation to KWVE-FM were only responsive to Calvary's pleadings. Neither making a meritorious argument nor presenting arguments in response to an adverse party's contentions can be said to subvert the Commission's processes.

We likewise find no actionable lack of candor on BOPC's part, sufficient to justify denial of the Transfer Applications. BOPC's explanation regarding the corporate name is not unreasonable, given that (by Calvary's own evidence) the corporate name had changed to "Owens One Company, Inc." from "Buck Owens Production Company, Incorporated" in 1998. Moreover, the circumstances do not indicate an intent to deceive, given that the transfer of control to the Owens Trust, after Alvis "Buck" Owens's death in 2006, was promptly reported.²¹ Intent to deceive is a necessary and essential element of lack of candor which, while difficult to prove directly, may be shown by the fact of misrepresentation coupled with knowledge of falsity, or from motive or logical desire to deceive. Here, Calvary has not shown that Melvin L. Owens, Jr., was aware that the corporate name reported to the Commission was inaccurate, and there appears to be no advantage to the use of a previous corporate name sufficient to infer a motive or logical desire to mis-report it. We therefore find no lack of candor on BOPC's part.

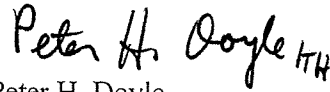
Because Calvary presents no grounds on which to deny the KUZZ-FM Application, its Petition to Deny IS DENIED.

²⁰ See *Radio Carrollton*, Memorandum Opinion and Order, 69 F.C.C.2d 1138, 1150-52, *recon. granted in part sua sponte*, 69 F.C.C.2d 424 (1978), *recon. denied*, 72 F.C.C.2d 264 (1979), *aff'd sub nom. Faulkner Radio, Inc. v. FCC*, No. 79-1749 (D.C. Cir. Oct. 15, 1980), *cert. denied*, 450 U.S. 1041, 101 S.Ct. 1758 (1981). In *Radio Carrollton*, the Commission stated that it would consider the following indicia in assessing the motivation for a petition to deny filed by a competing station: (1) incriminating statements by the petitioner's principals; (2) withholding of relevant information; (3) the absence of a reasonable basis for the petition; (4) economic motivation indicating a delaying purpose; and (5) any other incriminating conduct indicating a purpose to impede the grant of a competitor's application.

²¹ See, e.g., File No. BTC-20060502ADX.

Transfer Applications. We have reviewed the Transfer Applications and related documents. We conclude that the applicants are fully qualified and that grant of the Transfer Applications will serve the public interest, convenience, and necessity. Accordingly, IT IS ORDERED that the Transfer Applications, File Nos. BTC-20111221AEL, BTCH-20111221AEM, BTCH-20111221AEN, and BTCH-20111221AEO, ARE GRANTED.

Sincerely,

A handwritten signature in black ink that reads "Peter H. Doyle" followed by a small, stylized monogram "TH".

Peter H. Doyle
Chief, Audio Division
Media Bureau