



Federal Communications Commission
Washington, D.C. 20554

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In Reply, Refer to: Mail Room
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In re: **WBBK-FM, Blakely, Georgia**
Facility ID No. 41207
File No. BALH-20110216AAB

WESP(FM), Dothan, Alabama
Facility ID No. 6891
File No. BALH-20110216AAC

WDBT(FM), Headland, Alabama
Facility ID No. 10666
File No. BALH-20110216AAD

WLDA(FM), Slocumb, Alabama
Facility ID No. 60591
File No. BALH-20110216AAE

WJRL-FM, Fort Rucker, Alabama
Facility ID No. 63945
File No. BALH-20110216AAF

WKMX(FM), Enterprise, Alabama
Facility ID No. 73179
File No. BALH-20110216AAG

WTVY-FM, Dothan, Alabama
Facility ID No. 73639
File No. BALH-20110216AAH

**Applications for Assignment of
License
Petition to Deny**

Dear Counsel:

We have before us the above-captioned applications seeking approval for the proposed assignment of license for: (1) Station WBBK-FM, Blakely, Georgia, from Magic Broadcasting Alabama Licensing, LLC ("Magic") to Alabama Media Investments, LLC ("AMI"); (2) Stations WESP(FM), Dothan, Alabama, and WDBT(FM), Headland, Alabama from Gulf South Communications, Inc. ("Gulf South") to Southeast Alabama Broadcasters, LLC ("SAB"); (3) Stations WLDA(FM), Slocomb, Alabama, and WJRL-FM, Fort Rucker, Alabama, from Magic to SAB; and (4) Stations WKMX(FM), Enterprise, Alabama, and WTVY-FM, Dothan, Alabama, from Magic to Gulf South. These four simultaneously filed applications comprise one proposed (related) transaction ("Assignment Applications" or "Proposed Transaction"). On March 25, 2011, Leigh Simpson ("Simpson"), a resident of Dothan, Alabama, and an employee of Stations WOOF(AM) and WOOF-FM, Dothan, Alabama, filed a Petition to Deny ("Petition") the Assignment Applications.¹ For the reasons stated below, we deny the Petition and grant the Assignment Applications, as conditioned.

Background. As explained in the Gulf South Opposition, Clay E. Holladay ("Holladay"), President and majority shareholder of Gulf South was approached by a broker representing Magic and was told that Magic wished to sell the above-captioned stations, all located in the Dothan, Alabama, radio market, as a group because Magic planned to exit the radio broadcasting business.² Gulf South is the licensee of Stations WUSD(FM), Hartford, Alabama; WDJR(FM), Enterprise, Alabama; WESP(FM), Dothan, Alabama; and WDBT(FM), Headland, Alabama, all in the Dothan, Alabama, radio market. The Dothan, Alabama, radio market has 28 stations. In a market this size, a single entity may own, operate or control up to six stations, no more than four in the same service.³ Thus, Gulf South currently owns the maximum number of FM stations permissible in the Dothan, Alabama, radio market under the Commission's multiple ownership rule.⁴ Gulf South proposes to acquire two of Magic's stations, WKMX(FM) and WTVY-FM, with its acquisition of these stations contingent upon the assignment of Stations WESP(FM) and WDBT(FM) to SAB, in order to comply with the multiple ownership rule.

Gulf South states that it also agreed to help Magic find other buyers for the remaining Magic stations. Holladay approached Georgia Edminston ("Edminston"), a former business associate of his, and Alisha K. Cummings ("Cummings"), about the possibility of acquiring certain of Magic's stations. Cummings is the daughter of the station manager of radio stations in the Jackson, Mississippi, market

¹ On April 7, 2011, separate Oppositions were filed by Magic and Gulf South. Also on April 7, 2011, AMI and SAB filed a Joint Opposition. Simpson filed a Reply on April 19, 2011.

² Gulf South Opposition at 2.

³ See 47 C.F.R. § 73.3555(a)(1)(iii). (Magic acquired its group of five FM stations under the Commission's prior ownership rules, and has been able to retain that group because its ownership was grandfathered).

⁴ 47 C.F.R. § 73.3555(a).

licensed to New South Radio, Inc., a company in which Holladay has a 20 percent interest and serves as president. Edminston decided, through her company SAB, to purchase WDBT(FM) and WESP(FM) from Gulf South as well as WLDA(FM) and WJRL-FM from Magic. Cummings decided, through her company AMI, to purchase WBBK-FM from Magic.⁵

The Petition states that Simpson suspects that sale of the Magic stations to the proposed parties “could result in an anti-competitive situation in the market.”⁶ Simpson states she is unable to obtain “the information necessary to carry the burden” of supporting her suspicion that the Proposed Transaction will have an improper anti-competitive effect.⁷ She notes that Edminston has had previous business relationships with Holladay, and that Cummings is related to the station manager of stations licensed to New South Radio, and asks the Commission to conduct an investigation to determine if there is evidence that grant of the Assignment Applications will create an anti-competitive situation. Finally, Simpson states that the failure by Magic to offer to sell any of its stations to Simpson or her employer “may violate the Commission’s obligation that there be no discrimination in the sale of broadcast stations.”⁸ Simpson does not allege that race, color, religion, national origin or sex played any part in Magic’s selection of any of the proposed assignees.⁹

Discussion. Section 309(d)(1) of the Communications Act of 1934, as amended (the “Act”), requires a two-step analysis for judging the adequacy of Simpson’s Petition.¹⁰ We must first determine whether Simpson has made specific allegations of fact that, if true, would demonstrate that grant of the Assignment Application would be *prima facie* inconsistent with the public interest. These specific allegations must be supported by the affidavit of a person with knowledge of the facts alleged, except for those of which we may take official notice.¹¹ If the specific allegations make a *prima facie* case, we next examine and weigh the evidence presented, to determine “whether the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for.”¹² We must also determine whether grant of the Assignment Applications would serve the public interest.¹³

⁵ Gulf South Opposition at 2-3.

⁶ Petition at 2.

⁷ *Id.*

⁸ *Id.* at 7.

⁹ See 47 C.F.R. § 73.2090.

¹⁰ 47 U.S.C. § 309(d)(1).

¹¹ *Id.*

¹² *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985). See also 47 U.S.C. § 309(d)(1) (“The petition shall contain specific allegations of fact sufficient to show that . . . grant of the application would be *prima facie* inconsistent with [Section 309(a)]. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.”); 47 C.F.R. § 73.3584(b).

¹³ *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988). See also *Rocky Mountain Radio Co., LLP*, Memorandum Opinion and Order, 15 FCC Rcd 7166, 7167 (1999).

We find that Simpson fails to provide the necessary specific allegations of fact required by Section 309(d)(1) of the Act to make a *prima facie* case concerning any allegation.¹⁴ Simpson provides no evidence that Gulf South will have any interest in or influence over the stations that will be assigned to AMI and SAB, or that the assignment of these stations will result in any anti-competitive behavior. Moreover, Edminston, the Manager and sole member of SAB, declares that she is “not an officer, director, employee or owner of any legal entity in which Clay Holladay has an interest,” and that she has not had any business interests with Holladay since 2003.¹⁵ Edminston further declares that she intends to “operate the Stations as I may determine in my sole discretion and without direction, influence or other involvement with Clay Holladay or any company or other legal entity in which he has an ownership interest.”¹⁶ Cummings, the Manager and Sole Member of AMI, declares that she is “not an officer, director, employee or owner of any legal entity in which Clay Holladay has an interest.” Cummings further declares that she intends to “operate the Stations as I may determine in my sole discretion and without direction, influence or other involvement with Clay Holladay or any company or other legal entity in which he has an ownership interest.”¹⁷

Based on the above, we find that Simpson fails to provide evidence that Gulf South will have any interest in or influence over the stations that will be assigned to AMI and SAB. Furthermore, Simpson provides no evidence of any anti-competitive behavior. In light of this conclusion, Simpson has failed to present a substantial and material question of fact sufficient to demonstrate that grant of the Assignment Applications would be inconsistent with the public interest.

Conclusion/Actions. Accordingly, we find that Simpson has not raised a substantial and material question of fact warranting further inquiry. We further find that Alabama Media Investments, LLC is qualified to hold the Station WBBK-FM license; that Southeast Alabama Broadcasters, LLC is qualified to hold the Station WESP(FM), Station WDBT(FM), Station WLDA(FM) and Station WJRL-FM licenses; that Gulf South Communications, Inc. is qualified to hold the Station WKMX(FM) and Station WTVY-FM licenses; and that grant of the Assignment Applications is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Petition to Deny filed by Leigh Simpson IS DENIED.

¹⁴ Concerning Simpson’s suggestion that the sale may involve prohibited discrimination, we note that 47 C.F.R. § 73.2090 means that approval of any commercial broadcast transaction tainted by any type of discrimination within the ambit of the rule – “race, color, religion, national origin or sex” – would be inconsistent with the public interest pursuant to 47 U.S.C. § 309(d)(1). However, because Simpson does not allege that the Proposed Transaction is tainted by such discrimination, we find that no substantial and material question of fact exists with respect to compliance with the cited rule by the parties here. Simpson also notes that she was not offered an opportunity to purchase any of the Magic stations. Petition at 7. However, 47 U.S.C. § 310(d) states that “the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee” in evaluating assignment and transfer applications. To the extent any party seeks to present anyone other than the proposed assignee as a superior potential buyer of a station for any reason, we find that Section 310(d) prohibits the Bureau from considering that issue.

¹⁵ Joint Opposition, Declaration of Georgia Edminston.

¹⁶ *Id.*

¹⁷ Joint Opposition, Declaration of Alisha K. Cummings.

IT IS FURTHER ORDERED That the application for approval to assign the license for Station WBBK-FM, Blakely, Georgia (File No. BALH-20110216AAB) from Magic Broadcasting Alabama Licensing, LLC to Alabama Media Investments, LLC IS GRANTED.

IT IS FURTHER ORDERED That the application for approval to assign the licenses for Station WESP(FM), Dothan, Alabama (File No. BALH-20110216AAC) and WDBT(FM), Headland, Alabama (File No. BALH-20110216AAD) from Gulf South Communications, Inc. to Southeast Alabama Broadcasters, LLC IS GRANTED.

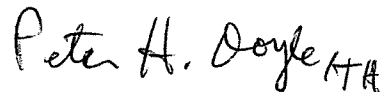
IT IS FURTHER ORDERED That the application for approval to assign the licenses for Station WLDA(FM), Slocum, Alabama (File No. BALH-20110216AAE) and WJRL-FM, Fort Rucker, Alabama (File No. BALH-20110216AAF) from Magic Broadcasting Alabama Licensing, Inc. to Southeast Alabama Broadcasters, LLC IS GRANTED.

IT IS FURTHER ORDERED That the application for approval to assign the licenses for Station WKMX(FM), Enterprise, Alabama (File No. BALH-20110216AAG) and WTVY-FM, Dothan, Alabama (File No. BALH-20110216AAH) from Magic Broadcasting Alabama Licensing, Inc. to Gulf South Communications, Inc. IS GRANTED, subject to the following condition:

Grant of this application is subject to the prior or concurrent consummation of the transaction proposed in BALH-20110216AAC.

IT IS FURTHER ORDERED THAT, grant of each application is subject to the condition that the transaction be consummated by December 1, 2011. If consummation does not occur prior to December 1, 2011, the transaction may not be consummated until after the license for the station has been renewed.

Sincerely,

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

Peter H. Doyle
Chief, Audio Division
Media Bureau