



Federal Communications Commission
Washington, D.C. 20554

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Re: **Houston Christian Broadcasters, Inc.**
Cox Radio, Inc.
K285EU, Mendoza, Texas
Facility ID No. 87144
File No. BALFT-20120308ABY

Informal Objection

Dear Counsel:

We have before us an application (Application) to assign the license of K285EU, Mendoza, Texas (Translator) from Houston Christian Broadcasters, Inc. (HCB) to Cox Radio, Inc. (Cox). Also before us is an Informal Objection (Objection) to the Application filed by CC Licenses, LLC (Clear Channel).¹ For the reasons set forth below, we dismiss in part and otherwise deny the Objection and grant the Application.

Background. Between November 2009 and June 2011, HCB filed a series of eight successive, uncontested minor change applications, each making a short “hop” to a new transmitter site. The Translator moved progressively away from its community of license and closer to San Antonio, Texas,² a distance of more than 56 miles over less than two years.

¹ HCB and Cox opposed the Objection on April 16, 2013. Clear Channel replied on April 23, 2013. Since then, Clear Channel has submitted a pleading titled “Comments on Amendment” on April 10, 2015, and a pleading titled “Reply to Joint Reply” on April 27, 2015. Both pleadings reiterate the arguments Clear Channel makes in the Objection.

² A direct move between Mendoza and Austin would constitute a “major” change. Major change applications may only be filed during translator filing windows. The last such filing window occurred in 2003.

After HCB completed the last of these hops, Cox sought cancellation of the Translator's license. It did so by filing a Petition for Cancellation of License, Request for Hearing Designation Order,³ and Petition for Reconsideration (Cox Petition), which challenged our grant of HCB's application for a license to cover the last of the Translator's "hops."⁴ Cox subsequently withdrew its objection on March 7, 2012, after reaching an agreement to acquire the Translator from HCB.⁵ The next day, HCB and Cox filed the Application. Clear Channel then objected to the Application. We consider the Objection, along with a Joint Opposition filed by HCB and Cox and a Reply filed by Clear Channel, below.

Discussion. Cox Petition. Clear Channel refers to the Cox Petition, noting that it documents multiple rule violations and "more than three dozen material misrepresentations" in various applications.⁶ Based on the allegations made by Cox, Clear Channel argues that we should revoke the Translator's license.⁷ Clear Channel does not attach a copy of the Cox Petition to its pleading nor does it identify the specific rules that the Translator allegedly violated or the specific misrepresentations that HCB made. It does, in a footnote, refer to another pleading that it submitted with respect to a different HBC application and attempt to incorporate the Cox Petition by reference.⁸ We reject Clear Channel's attempt to incorporate the Cox Petition by reference. As the Commission has stated in other contexts, we are not required to sift through prior pleadings to supply the reasoning that our rules require to be provided in the pleading under consideration.⁹ Considering the Objection on its own, we find that Clear Channel has not made adequate or specific allegations of fact sufficient to warrant further inquiry into rule violations or misrepresentations.¹⁰ We also note that Clear Channel improperly seeks to rely on allegations made by and declarations submitted by an unrelated party, Cox. Clear Channel itself does not have personal knowledge of any of the alleged violations or misrepresentations.¹¹ Accordingly, we dismiss this portion of its Objection.

³ Cox Radio, Inc. Petition for Cancellation of License, Request for Hearing Designation Order, and Petition for Reconsideration (filed Sept. 28, 2011) (Cox Petition).

⁴ File No. BLFT-20110817ACV; *Broadcast Actions*, Public Notice, Report No. 47575 (MB Sept. 15, 2011).

⁵ Cox Radio, Inc. Request to Withdraw Petition for Reconsideration (filed Mar. 7, 2012).

⁶ Objection at 1-2.

⁷ Objection at 5.

⁸ Objection at n.1.

⁹ *Tama Radio Licenses of Tampa, Florida, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 7588, 7589, para. 2 (2010) ("The Commission is not required to sift through an applicant's prior pleadings to supply the reasoning that our rules require to be provided in the application for review."); *Red Hot Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 6737, 6745 n.63 (2004) ("Our rules do not allow for a 'kitchen sink' approach to an application for review, rather the burden is on the Applicant to set forth fully its argument and all underlying relevant facts in the application for review."); *DFW Radio Licensee, LLC and Bernard Dallas LLC*, Letter, 23 FCC Rcd 2646, 2648 n.19 (MB 2006) (citing *Red Hot Radio* in relation to attempts to incorporate facts and arguments by reference in the context of a petition for reconsideration).

¹⁰ *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 para. 6 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹¹ *Public Media of New England, Inc.*, Memorandum Opinion and Order, FCC 15-174 (rel. Dec. 17, 2015) (Noting that informal objections "must provide *properly supported* allegations of fact" and rejecting allegations made in informal objection that were "not based on any personal knowledge"); *Patrick Sullivan*, Hearing Designation Order, 29 FCC Rcd 5421, 5428-29 para. 20 (MB 2014) (rejecting allegations made in informal objection because objector did not "set forth specific facts, supported by the affidavit of a person with personal knowledge"); *Educational*

Purchase Price. Clear Channel questions whether Cox is paying fair market value for the Translator. Clear Channel implies that Cox received a “pricing discount” in return for withdrawing the Cox Petition. The Commission generally does not concern itself with the purchase price agreed upon by the parties to an assignment application. It will consider, in the context of a request to withdraw a petition to deny or informal objection to an application, whether the objecting party “has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the petition to deny.”¹² Had Clear Channel wished to challenge Cox’s request to withdraw the Cox Petition on the grounds that Cox was profiting from its pleading, it should have done so in the context of the application that Cox had challenged and not in the context of this Application.¹³ Accordingly, we dismiss the Petition to the extent it relates to the purchase price for the Translator.¹⁴

Character Issues Certifications. FCC Form 345 requires both an assignor and assignee to make two certifications related to character issues. Each must certify that neither it nor any party to the application has or has had any interest in, or connection with, (1) “any broadcast application in any proceeding where character issues were left unresolved or were resolved adversely against the applicant or party to the application” and (2) “any pending broadcast application in which character issues have been raised.”¹⁵ If an assignor or assignee cannot make either of these certifications, it must respond “no” and submit an exhibit that includes, among other things, the call letters and location of the station or file number of the application or docket.¹⁶ It must also “fully explain the referenced matter, setting forth the reasons why the matter is not an impediment to a grant of this application.”

Clear Channel argues that HCB should have disclosed the character allegations made in the Cox Petition when it made character issues certifications as part of the Assignment Application.¹⁷ Clear

Community Radio, Inc., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 5283, 5284 n. 10 (MB 2013) (same).

¹² 47 CFR § 73.3588(a)(1) & (2).

¹³ *Motions for Declaratory Rulings Regarding Commission Rules and Policies for Frequency Coordination in the Private Land Mobile Radio Services*, Memorandum Opinion and Order, 14 FCC Rcd 12752, 12757-58 para. 11 (1999) (finding “indirect challenges to Commission decisions that were adopted in proceedings in which the right to review has expired are considered impermissible collateral attacks and are properly denied”); *MCI Telecommunications Corp. v. Pacific Northwest Bell Telephone Co.*, Memorandum Opinion and Order, 5 FCC Rcd 216, 228 n. 38 (1990) (finding that assertions were “impermissible collateral attacks on decision adopted in a proceeding in which the[] right to review has expired”) *recon denied*, 5 FCC Rcd 3463 (1990) *appeal dismissed sub nom. Mountain States Tel. and Tel. Co. v. FCC*, 951 F.2d 1259 (10th Cir. 1991) (*per curiam*).

¹⁴ Were we to reach the substance of Clear Channel’s allegation, we would find Clear Channel had not raised a substantial and material question of fact regarding whether Cox had profited from the dismissal of its pleading. HCB and Cox have submitted evidence to support their assertion that the purchase price for the Translator is “well within the fair market value range” for the market and Clear Channel has not rebutted this evidence. Opposition at 9 and Exh. A; Application at Exh. 2.

¹⁵ FCC Form 345, Section II - Assignor/Transferor, Item 7 (Character Issues), Section III - Assignee/Transferee, Item 6 (Character Issues).

¹⁶ Instructions to FCC Form 345, Section III – Assignee/Transferee, Items 6, 7: Character Issues/Adverse Findings.

¹⁷ Objection at 5.

Channel asserts that, until we dismissed the Cox Petition,¹⁸ the character allegations were “pending” and thus HCB should have certified “no” in its response to the second certification and should have submitted an exhibit disclosing the allegations.¹⁹ Clear Channel further argues that, after dismissal of the Cox Petition, these issues were “unresolved.”²⁰ Thus, according to Clear Channel, HCB should have amended the Assignment Application and changed its response to the second certification to “yes,” changed its response to the first certification to “no” and continued to disclose the character allegations in an exhibit, this time, with respect to its revised first certification.

We first consider whether, prior to dismissal of the Cox Petition, the application that was the subject of the Cox Petition was “pending” as that term is used in FCC Form 345. Only if the application was “pending” would HCB have needed to answer “no” in response to the second certification and to have disclosed the allegations made in the Cox Petition in an exhibit to the Assignment Application. For purposes of this second certification, we find an application is “pending” until our action on the application becomes final.²¹ Given our construction of the term “pending,” we conclude that the application was “pending.” Accordingly, we find HCB was obligated to disclose the character allegations made in the Cox Petition prior to our dismissal of that pleading. Because the duration of this failure to disclose was extremely short,²² however, we admonish HCB and Cox but do not further sanction them.

Next we consider whether, after dismissal of the Cox Petition, HCB was required to amend the Assignment Application to disclose the character allegations made in the Cox Petition in response to the first character certification. For such an obligation to exist, the character allegations would need to have been “unresolved or resolved adversely” against HCB. By dismissing the allegations, we did not resolve them adversely against HCB. Nor did we leave the allegations “unresolved” as the Commission has defined that term.²³ Accordingly, HCB was under no obligation to disclose them in response to the first certification after our dismissal of the Cox Petition.

¹⁸ Cox requested to withdraw the Cox Petition on March 7, 2012. We granted this request and dismissed the Cox Petition on March 12, 2012. The Assignment Application was filed on March 8, 2012, while the request to withdraw was pending before us.

¹⁹ Objection at 5.

²⁰ *Id.*

²¹ 47 U.S.C. § 311(c)(4) (defining an application as “pending” from the time it “is filed with the Commission until an order of the Commission granting or denying it is no longer subject to rehearing by the Commission or to review by any court”); 47 CFR § 1.65(a) (same).

²² Only four days elapsed between the March 8, 2012, filing of the Application and our dismissal of the Cox Petition, which rendered our September 15, 2011, grant of the application Cox challenged final. As a result, that application was no longer “pending.” See *supra* n. 21.

²³ The Commission has stated that, until character allegations “are determined to have merit and are designated for hearing, no ‘unresolved’ issue is pending ‘against’ the applicant.” *Greater Muskegon Broadcasters, Inc.*, 11 FCC Rcd 15464, 15472 para. 22 (1996); *Coosa Valley News, Inc.*, Letter, 23 FCC Rcd 9146, 9149 (MB 2008).

Ordering Clause. For the reasons set forth above, the Informal Objection filed by CC Licenses LLC on April 23, 2013, IS DENIED IN PART AND OTHERWISE DISMISSED. IT IS FURTHER ORDERED that the application to assign the license for K285EU, Mendoza, Texas, from Houston Christian Broadcasters, Inc. to Cox Radio, Inc. (File No. BALFT-20120308ABY) IS GRANTED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter H. Doyle", is positioned above the typed name.

Peter H. Doyle
Chief, Audio Division
Media Bureau