



**Federal Communications Commission
Washington, D.C. 20554**

In Reply Refer to:
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In re: **WNEX(AM), Macon, GA**
Facility ID No. 54034
File No. BAL-20160603ACN
WNEX-FM, Perry, GA
Facility ID No. 54726
File No. BALH-20160603ABO

WPGA(AM), Perry, GA
Facility ID No. 54727
File No. BAL-20160603ABN

Informal Objection

Dear Counsel:

We have before us: (1) an assignment application on FCC Form 314 seeking Commission consent to the proposed assignment of license for Station WNEX(AM), Macon, Georgia, from Radio Peach, Inc. (Radio Peach) to Creek Media, LLC; (2) an assignment application on FCC Form 314 seeking Commission consent to the proposed assignment of licenses for Stations WNEX-FM and WPGA(AM), Perry, Georgia, from Radio Perry, Inc. (Radio Perry) to Creek Media, LLC;¹ and (3) Informal Objection to the Applications (Objection) filed on July 1, 2016, by Lowell L. Register and Janice Register (Registers), stockholders in Register Communications, Inc. (Register Communications), which is nominally the 100% shareholder of Radio Peach and Radio Perry. For the reasons stated below, we deny the Objection and grant the Applications.

Background. On February 19, 2015, Mr. Gaurav Malhotra (Receiver) was appointed Receiver for Radio Peach and Radio Perry by the Superior Court of Bibb County in Georgia, pursuant to a Consent Order.² Based on this appointment and Section 73.3541(b) of the Commission's rules, on February 25, 2015, the Receiver filed FCC Form 316 applications for involuntary transfers of control of the

¹ Stations WPGA(AM), WNEX(AM) and WNEX-FM will be referred to collectively as the Stations, and the assignment applications will be referred to collectively as the Applications.

² See *Green Bull Georgia Partners, LLC, v. Register Communications, Inc.*, Civil Action No. 2015-CV062336, Consent Order Granting Plaintiff's Emergency Motion for Appointment of Receiver (Sup. Ct. of Bibb County, Ga., Feb. 19, 2015).

corporations.³ These applications were uncontested and were granted on March 18, 2015.⁴ On December 22, 2015, after Register Communications filed a Chapter 11 petition in bankruptcy, the Receiver filed a second set of Form 316 involuntary transfer of control applications to reflect the change in the status of the Stations. These applications were also uncontested and were granted on January 8, 2016.⁵

On June 3, 2016, the Receiver filed the Applications. On June 28, 2016, the court denied the Registers' motion for an injunction to bar the Receiver's sale of the Stations. At that time, the court set a status conference and possible hearing on the sale of that Stations for August 29, 2016. On July 8, 2016, the Registers filed the Objection, which was jointly opposed by Radio Peach, Radio Perry, and Creek Media. The Registers subsequently filed a Reply to the Opposition.⁶

In the Objection, the Registers state that they have contested the appointment of the Receiver in state court, which proceeding remains pending.⁷ The Registers state that the Receiver did not have the formal approval of the court to sign or file the Applications. They also argue that there are misrepresentations in the Asset Purchase Agreement (APA) filed with the Applications because the APA does not mention the state court proceeding, the disputes that they have raised in that proceeding, or the requirement that a formal court order is required for a sale to be effectuated.⁸ Finally, the Registers request that the Commission withhold its action on the Applications at least until after the court date scheduled for August 29, 2016.⁹

The Opposition argues that the Registers have not made any colorable claim that Radio Perry and/or Radio Peach, as controlled by the Receiver, lack the basic qualifications for broadcast licensees specified in Title III of the Communications Act of 1934, as amended (Act).¹⁰ They also argue that the Registers do not contest the basic qualifications of Creek Media and its principals to be a Commission licensee.¹¹ The Opposition argues that the Registers' request to withhold action on the Applications is tantamount to a request for an administrative stay, for which they are not eligible.¹² Finally, the Objection

³ See FCC File Nos. BTC-20150225ACO, BTCH-20150225ACP, BTC-20150225ACH (granted on March 18, 2015).

⁴ In footnote 1, the Objection states that on July 17, 2015, the Registers filed an amended "Motion to Terminate Receivership and to Remove Receiver," which remains pending before the court. On August 25, 2015, the state court permitted the Registers to intervene in the receivership proceedings, and to assert any and all rights of Register Communications as they existed prior to the formation of the receivership.

⁵ See FCC File Nos BTC-20151222ARF, BTCH-20151222ARGBTC-20151222ARJ (granted on January 8, 2016).

⁶ Counsel argues that it was not served the Opposition at its current address, and thus was not able to reply on a timely basis. Accordingly, we have accepted this filing as timely.

⁷ Objection at 2.

⁸ *Id.* at 4-5

⁹ *Id.* at 4.

¹⁰ 47 U.S.C. § 301, *et seq.*; Opposition at 4.

¹¹ *Id.*

¹² Opposition at 4-5, citing *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958) (a party seeking a stay must meet a four-prong test: 1) Has the movant made a strong showing of its likely success on the merits; 2) has movant shown it would suffer irreparable injury; 3) would issuance of stay substantially harm other parties; and 4) "the public interest").

requests that the Applications be granted on an expedited basis, so that the creditors of Register Communications will receive the proceeds of the sale and a new and qualified entity can become the Stations' licensee, which will serve the public interest.¹³

In their Reply to the Opposition, the Registers argue that the cases cited in the Opposition for the proposition that they lack standing are distinguishable from the instant case because they claim they are not challenging the Commission's approval of the court's appointment of the Receiver, but rather are challenging the Receiver's authority to divest the Stations to a third party prior to the court's approval.¹⁴ Until the state court decides, the Registers claim that the Commission should withhold action.

Discussion. We deny the Objection and grant the Applications. Section 310(d) of the Act requires the Commission to determine whether the proposed transfer or assignment of a broadcast license would be in the public interest.¹⁵ Pursuant to Sections 309(d) and (e) of the Act, informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact calling for further inquiry regarding whether grant of an assignment application would be prima facie inconsistent with Section 309(a) of the Act.¹⁶ This section provides that we are to grant an application if, upon consideration of the application and pleadings and other such matters of which we may officially take notice, we find that the public interest, convenience, and necessity will be served by the granting of such application. If, however, the applicant fails to meet that standard, the Commission may deny the application after resolving any substantial and material question of fact.¹⁷ Under this standard, when reviewed on its merits, the Objection fails to show that grant of the Applications would be prima facie inconsistent with Section 309(a) of the Act.

The Objection argues that the Commission should refrain from acting on the Assignment Application until the court resolves the issues the Registers have raised concerning the Receiver's authority to act. We disagree. Although the issues raised concerning the Receiver's actions certainly are a matter for the court, not the Commission, to decide, the Commission's grant of an assignment or transfer of control application merely finds that the parties to the Application are qualified under, and that the proposed transaction does not violate, the Act, or the Commission's rules and policies.¹⁸ Therefore,

¹³ Opposition at 6.

¹⁴ Reply at 2-3. The Registers also argue that the fact that they did not object to the involuntary transfer of control applications to the Receiver is immaterial to the present controversy. Reply at 3, note 6.

¹⁵ See 47 U.S.C. § 310(d).

¹⁶ See 47 U.S.C. §§ 309(d) and 309(a). See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁷ *Id.*

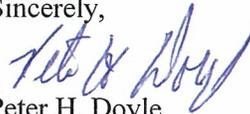
¹⁸ See, e.g., *Paxson Mgmt. Corp. and Lowell W. Paxson*, Memorandum Opinion and Order, 22 FCC Rcd 22224, 22235 (2007), citing *Northwest*, 12 FCC Rcd at 3293 (issue of whether a particular court order constitutes a valid exercise of its authority under state law is a question appropriately resolved under state judicial procedures). In particular, we reject the Registers' allegations involving claims of misrepresentations to the Commission in the APA. Although we require the parties to a Form 314 application to submit the sale agreement as part of the application, our review of the agreement is limited to terms directly related to the matters within our jurisdiction, which does not include the veracity of contract terms negotiated by private parties. See *1998 Biennial Regulatory* (continued . . .)

the permissive grant herein does not prejudice any relief to which any party may ultimately be entitled under state law.¹⁹ From our perspective, it is sufficient that the court granted the Consent Motion appointing the Receiver. We will honor and give effect to any court determination but, as explained above, we need not withhold action on the Application while the Registers bring their claim to state court. We agree with the Opposition that the Registers have failed to raise a colorable claim that Radio Peach, Radio Perry, the Receiver, or Creek Media lack the basic qualifications for broadcast licensees specified in Title III of the Communications Act of 1934, as amended. The Registers' request that we withhold processing or action on the Applications until the state court acts on their claims is tantamount to a request for a stay, for which they have not established grounds,²⁰ or an injunction, which is not a remedy that the Commission can provide.

It is well-settled that the Commission will accommodate court decrees, such as the appointment of the Receiver to assume control of the Stations and their assets, unless a public interest determination compels a different result.²¹ We believe that our action here furthers the Commission's policy of comity with state court actions and will not prejudice any involved party.²²

Conclusion/Actions. In light of the above discussion, the Registers have not raised a substantial and material question of fact warranting further inquiry regarding the Assignment Application. Accordingly, IT IS FURTHER ORDERED, that the Informal Objection filed by Lowell L. Register and Janice Register on July 8, 2016, IS DENIED, and the applications for approval to assign the licenses for Stations WNEX(AM), Macon, GA (File No. BAL-20160603ACN), WNEX-FM, Perry, GA (File No. BALH-20160603ABO), and WPGA(AM), Perry, GA (File No. BAL-20160603ABN), ARE GRANTED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

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Review – Streamlining of Mass Media Applications, Rules and Processes, 13 FCC Rcd 23056, 23074-76, paras. 39-42 (1998), *modified in part*, 14 FCC Rcd 17525 (1999).

¹⁹ See, e.g., *Florida Spanish Comm'cns Corp.*, Letter, 27 FCC Rcd 9048, 9051(MB 2012); *MB Comm'cns, Inc.*, Letter, 26 FCC Rcd 11178, 11179 (MB 2011).

²⁰ The Registers claim they are not seeking a stay and have not made any showing pursuant to the test established in *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

²¹ See *Arecibo Radio Corp.*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 131-32 (1945).

²² See, e.g., *Kirk Merkley*, Memorandum Opinion and Order, 94 FCC 2d 829, 836 (1983), *recon. denied*, FCC 84-305, 56 RR 2d 413 (1984), *aff'd sub nom. Merkley v. FCC*, 776 F.2d 365 (1985).