



Federal Communications Commission  
Washington, D.C. 20554

February 22, 2018

Portland (WPFO-TV) Licensee, Inc.  
c/o Miles S. Mason, Esq.  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, NW  
Washington, DC 20037

CMCG Portland Licensee LLC  
c/o Erwin G. Krasnow  
Garvey Schubert Barer  
1000 Potomac Street, NW  
Suite 200  
Washington, DC 20007

Re: WPFO(DT), Waterville, Maine  
Fac. ID No. 84088  
File No. BALCDT-20131119BDP

Counsel:

The Video Division (Division) has before it a July 27, 2017, Petition for Reconsideration (Petition) filed by Cliff Gaston, Mitchell Lambert, and Charles Fox (collectively, Petitioners) with respect to the June 23, 2017, grant of the application for assignment of license of WPFO(DT), Waterville, Maine, from CMCG Portland Licensee LLC (CMCG) to Portland (WPFO-TV) Licensee, Inc. (Portland).<sup>1</sup> CMCG filed an Opposition to Petition for Reconsideration (Opposition) on August 4, 2017.<sup>2</sup> For the reasons stated below, we dismiss the Petition.

*Background.* Public notice of the grant appeared in the Daily Digest on June 28, 2017.<sup>3</sup> Petitioners did not participate earlier in this proceeding, but filed the Petition for Reconsideration before July 28, 2017.

Petitioners are minority equity owners and attributable interest holders of Power Television International LLC, which owns fifty-one percent of the voting rights of CMCG's parent company, Corporate Media Group.<sup>4</sup> In the Petition, Petitioners allege that the "assignment was entered into, and submitted without notice or consultation with the minority equity owners;" and that they are "unaware of any compliance, within the past year, by CMCG of the Commission's public notice requirements related to the proposed assignment."<sup>5</sup> They argue that the grant was not in the public interest because it did not promote media ownership in the African-American community, and because the African-American

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<sup>1</sup> Petition for Reconsideration, File No. BALCDT-20131119BDP (July 9, 2017) (Petition).

<sup>2</sup> Opposition to Petition for Reconsideration, File No. BALCDT-20131119BDP (Aug. 4, 2017) (Opposition).

<sup>3</sup> Petition at 1.

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> *Id.* at 2.

minority owners were treated as “inconsequential surplusage.”<sup>6</sup> Petitioners request that the Commission rescind the grant and avoid approving the transaction until the minority owners pursue their private remedies in court.<sup>7</sup> They argue that participation without filing a petition to deny is appropriate because they did not become aware of the grant until July 24, 2017.<sup>8</sup>

CMCG asserts that the Petition is procedurally defective because Petitioners did not file a petition to deny or an informal objection.<sup>9</sup> CMCG asserts that even if the Petition is not procedurally defective, it involves a private business dispute outside of the Commission’s jurisdiction. Finally, CMCG asserts that Petitioners failed to provide an affidavit with “specific allegations of fact” that illustrate the assignment is against the public interest.<sup>10</sup>

*Discussion.* Section 1.106(b)(1) of the Commission’s Rules allows a petition for reconsideration to be filed by any party to the original proceeding or any party whose interests will be adversely affected by the action taken by the Commission.<sup>11</sup> If a petitioner was not a party to the original proceeding, it must show good reason why it was unable to participate earlier.<sup>12</sup> So long as the application was accepted via established public notice procedures, a petitioner’s lack of actual notice of the pendency of an application proceeding does not establish good cause for its failure to participate.<sup>13</sup> The Commission published its Public Notice announcing that the application had been accepted for filing on November 22, 2013, which is sufficient to put Petitioners on notice.<sup>14</sup> Petitioners cite only the fact that they were unaware of the grant of the application. We therefore dismiss the Petition.

Even were the Petition for Reconsideration not dismissed on procedural grounds, we deny the substantive arguments raised therein. Petitions for reconsideration are only appropriate where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters, or the Commission determines that consideration of the facts is required in the public interest.<sup>15</sup> The existence of a possible internal corporate or contractual legal dispute does not compel the Commission to stop processing a license application until the matter is resolved by the courts.<sup>16</sup> Furthermore, grant of an assignment application is permissive and does not prejudice any relief to which the parties may ultimately be entitled pursuant to a subsequent ruling by a court of competent jurisdiction.<sup>17</sup> The Commission’s grant of an assignment application is based on its finding that the parties are qualified and that the proposed transaction does not violate the Communications Act of 1934, as amended, and the

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Opposition at 2.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> 47 CFR § 1.106(b)(1)

<sup>12</sup> *Id.*

<sup>13</sup> See e.g., *In the Matter of Pamplin Broadcasting, Inc.*, 23 FCC Rcd 2571, 2572 (2008).

<sup>14</sup> See e.g., *Northwest Broadcasting, Inc.*, 12 FCC Rcd 3289, 3291 (1997).

<sup>15</sup> See 47 CFR § 1.106(c).

<sup>16</sup> See *KAXT, LLC*, Letter Decision, 30 FCC Rcd 2691 (Vid. Div. 2015); *Channel 61 Assocs., LLC Cross Hill Communications, LLC Convergence Entertainment & Communications, LLC*, Letter Decision, 31 F.C.C. Rcd 1340, 1343 (2016).

<sup>17</sup> See *Mark Lipp, Esq.*, Letter, 26 FCC Rcd 11138 (Aud. Div. 2011); *Peggy Haley, N.C.M.*, Letter, 23 FCC Rcd 12687, 12688(MB 2008).

Commission's rules and policies.<sup>18</sup>

With respect to the public interest argument, the Petitioners assert - without supporting affidavit or description of the underlying facts - that CMCG failed to promote black ownership or otherwise mistreated its minority and African-American shareholders. We find the allegations so vague and conclusory as to not be actionable, especially given the extensive period of time with which the Petitioners had the opportunity to file a petition to deny. We further find that the local public notice allegation is nonactionable, especially since the Petitioners failed to state unequivocally whether the applicants failed to broadcast the required notice at the time the original application was filed.

Accordingly, IT IS ORDERED that the Petition for Reconsideration set forth by Cliff Gaston, Mitchell Lambert, and Charles Fox IS DISMISSED.

Sincerely,



Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc: Ernest T. Sanchez, Esq.

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<sup>18</sup> See *id.*