



Federal Communications Commission
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1800B3-KV

John M. Burgett, Esq.
Wiley Rein, LLP
1776 K Street NW
Washington, DC 20006

Scott Woodworth, Esq.
Edinger Associates, PLLC
1875 I Street, NW
Suite 500
Washington, DC 20006

Hugh W. Wyatt
279 East 44th Street
Apt. 15-C
New York, NY 10017

In re: WLIB(AM), New York, NY
Facility ID No. 28204
WBLS(FM), New York, NY
Facility ID No. 28203

Applications for Assignment of Licenses from
YMF Media New York Licensee LLC to
WBLS-WLIB License LLC
File Nos. BAL-20140221AAQ and
BALH - 20140221AAR

Petition for Reconsideration

Gentlemen:

We have before us the referenced applications for assignment of licenses ("Applications") for Stations WLIB(AM) and WBLS(FM) (collectively, "the Stations"), New York, New York, from YMF Media New York Licensee LLC ("YMF") to WBLS-WLIB License LLC ("WBLS-WLIB"). Also before us is a May 29, 2014, Informal Objection to the Applications filed by Hugh W. Wyatt ("Wyatt"). For the reasons discussed below, we will treat the Informal Objection as a Petition for Reconsideration ("Petition") and deny it.

Background. On February 21, 2014, YMF and WBLS-WLIB jointly filed the Applications. On May 29, 2014, Wyatt filed a letter opposing grant of the Applications and requesting a hearing. The Petition, however, failed to list the file numbers of the Applications or otherwise clearly identify the

Stations involved. Accordingly, it did not come to the staff's attention, and the staff routinely granted the Applications on June 2, 2014.¹

In the Petition, Wyatt, a New York City resident and three percent shareholder of Inner City Broadcasting Corp ("ICBC"), an entity affiliated with the Stations' former licensee,² primarily argues that the Applications should be denied because they will lead to the loss of minority ownership of the Stations. Wyatt contends that "black New Yorkers are entitled to have ownership of their own radio station . . . to express their own dreams, aspirations and, above all, their unique political concerns – not those of a conservative group of corporate whites in Indianapolis with little or no knowledge of their various needs and desires."³ Wyatt declares that the Communications Act of 1934, as amended, (the "Act") and case-law have mandated diversity of broadcast ownership, but "the Executive Branch, through the actions of its agency, the FCC, are on the verge of making decisions . . . [that are] inconsistent with controlling law and essentially in violation of the doctrine of separation of powers"⁴

Wyatt also challenges YMF's acquisition of the Stations from an ICBC subsidiary, declaring that the Commission "should immediately void the license to Yucaipa⁵ . . . which was approved within the last two years."⁶ Specifically, he declares that "if there was an invalid and voidable license issued to Yucaipa . . . how could Yucaipa then transfer that license to another entity . . . ?"⁷ Wyatt alleges that: (1) the ICBC's response in the bankruptcy proceedings was a "sham," and "[t]here is no demonstrable proof that the corporation complied with the requisite percentage of shareholder votes for [its response]"; and (2) Yucaipa engaged in a conflict of interest by hiring ICBC Chairman Pierre Sutton ("Sutton") and Sutton's daughter as consultants because "Sutton has held at the same time the various positions as chairman of ICBC, Inner City Media and other companies . . . all of which allegedly looted original stockholders" and that "during a recent deposition he refused to answer basic questions and admitted to not even paying taxes, yet he is on the payroll of Yucaipa and essentially running the corporation behind the scene."⁸ Wyatt also urges that the Applications be denied because of his ongoing state court litigation against ICBC regarding Sutton's purported "dissipation" and transfer of ICBC assets to other entities, for

¹ See *Broadcast Actions*, Public Notice, Report No. 48254 (June 5, 2014). Subsequently, YMF and WBLS-WLIB consummated the transaction on June 10, 2014.

² ICBC indirectly controlled the Stations' former licensee Urban Radio I, L.L.C. In 2011, Inner City Media Corporation ("ICMC") and its wholly-owned subsidiaries, including the Stations' then licensee, Urban Radio I, L.L.C. defaulted on certain loan obligations. On September 28, 2011, pursuant to a Bankruptcy Court order, the staff granted the *pro forma* applications for assignment of licenses to the licensees as debtors-in-possession. See File No. BALH-20110915ABJ, *et seq.*, *Broadcast Actions*, Public Notice, Report No. 47584 (Oct. 3, 2011). Thereafter, pursuant to a further Bankruptcy Court order, on September 12, 2012, the staff granted the applications for consent to assign the licenses to YMF Media New York Licensee LLC. See *Inner City Media Corporation*, Letter, Reference 1800B3-MFW (MB Sep. 12, 2012), Application for Review denied, *Urban Radio I, L.L.C., Debtor-in-Possession*, Memorandum Opinion and Order, 29 FCC Rcd 6389 (2014), *appeal docketed*, No. 14-1130 (D.C. Cir. Jul. 7, 2014).

³ Petition at 2.

⁴ *Id.* at 3.

⁵ Yucaipa Corporate Initiatives Fund II, L.P. indirectly controlled YMF. See Applications, Exhibit 6.

⁶ Petition at 2.

⁷ *Id.* at 3.

⁸ *Id.*

personal profit. He claims that Sutton has failed to comply with a state court order to produce certain documents and that his litigation is currently on appeal.⁹

Discussion. Procedural Issue. On May 29, 2014, Wyatt timely filed his pleading against the Applications.¹⁰ Because the staff did not consider Wyatt's objection before granting the Applications, we will treat the objection on its merits as a petition for reconsideration of the grant of the Applications.¹¹

Substantive Issues. Petitions for reconsideration must show either a material error in the Commission's original order, or raise additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.¹² As discussed below, Wyatt has not met this standard.

Wyatt's arguments primarily appear to contest YMF's acquisition of the Stations from an ICBC subsidiary rather than the subject Applications. As noted above, the Commission's approval of that transaction currently is on appeal with the Court of Appeals for the District of Columbia Circuit.¹³ To the extent that Wyatt challenges that proceeding, his arguments are grossly untimely and will not be considered here. Furthermore, with respect to Wyatt's arguments that grant of the Applications will result in the loss of minority ownership of the Stations, we agree that promoting broadcast ownership diversity is an important Commission goal.¹⁴ The scope of the Commission's review of the Applications, however, is statutorily limited to the transaction before it.¹⁵ The Commission cannot consider whether the public interest, convenience, and necessity might be served by the assignment or transfer of a station license to any other than the proposed assignee or transferee. Here, the staff found that WBLS-WLIB is qualified to be a Commission licensee and that the assignments do not violate, the Act, the Rules or Commission policies and therefore, that grant of the Applications served the public interest.¹⁶ We agree with that determination.

Additionally, with respect to Wyatt's argument concerning his litigation against ICBC, the Commission has consistently held that it is not the proper forum for resolving private contractual disputes. Nevertheless, Commission grant of an assignment application merely finds that the parties are qualified under, and the proposed transaction does not violate, the Act, the Rules or Commission policies.

⁹ *Id.* Wyatt also states that Yucaipa has made "numerous fraudulent claims," including that former professional basketball player Ervin "Magic" Johnson owned 20 percent of Yucaipa, and that the Commission relied on this in granting the assignment to YMF. *Id.* Wyatt fails to provide any documentary or other evidence to back these charges. We will not further consider these unsupported allegations.

¹⁰ Section 73.3587 of the Commission's Rules ("Rules") requires that informal objections be filed before the Commission takes action on an application. 47 C.F.R. § 73.3587

¹¹ *See, e.g., Saga Communications of New England, LLC*, Letter, 25 FCC Rcd 4691, 4692 (MB 2008) (timely informal objection not brought to staff's attention prior to application grant treated as petition for reconsideration).

¹² *See* 47 C.F.R. § 1.106(c) and (d). *See also WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sum nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

¹³ *See supra*, n.2.

¹⁴ *See, e.g., Promoting Diversification of Ownership in the Broadcasting Services*, Sixth Further Notice of Proposed Rulemaking, 28 FCC Rcd 461, 463 (2013) ("It has been a longstanding goal of the Commission to promote diverse ownership of broadcast stations, including ownership by women and minorities.").

¹⁵ *See* 47 U.S.C. § 310(d). *See, e.g., Shareholders of Stop 26 Riverbend, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 6516, 6522 n. 47 (2012).

¹⁶ *See* 47 U.S.C. § 310(d). *See also Jerry Russell d/b/a the Russell Company and Hanszen Broadcasting*, Memorandum Opinion and Order, 27 FCC Rcd 8323, 8330 (MB 2012).

As such, it is permissive only and does not prejudice any relief to which parties may ultimately be entitled.¹⁷

Conclusion/Actions. We find that Wyatt does not demonstrate either a material error in the staff's grant of the Applications or present new material facts that would otherwise warrant reconsideration.

Accordingly, IT IS ORDERED, that the Informal Objection filed by Hugh W. Wyatt on May 29, 2014, treated as a Petition for Reconsideration, is DENIED.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁷ See, e.g., *MB Communications, Inc., and The Finger Lakes Radio Group, Inc.*, Letter, 26 FCC Rcd 11178, 11179 (MB 2011).