



Federal Communications Commission
Washington, D.C. 20554
September 18, 2019

In Reply Refer To:
1800B3-ALV

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In re: **WJCP(AM), North Vernon, IN**
Facility ID No. 61196
File No. BAL-20180723AAB

W249DG, North Vernon, IN
Facility ID No. 141722
File No. BALFT-20180723AAC

Application for Assignment of Licenses
Petition to Deny

Dear Applicants, Counsel, and Mr. Hensley:

We have before us the above referenced application (Application) for Commission consent to the proposed assignment of the license for WJCP(AM), North Vernon, Indiana, and FM translator station W249DG, North Vernon, Indiana, from Tom and Diana Taylor (the Taylors) to Jennings County Promotion Partners, LLC (Jennings). We also have before us a Petition to Deny (Petition) the Application, filed on September 4, 2018, by New Beginnings Movement, Incorporated (NBM or Petitioner).¹ For the reasons set forth below, we dismiss the NBM filing as a petition to deny, consider and deny it as an informal objection, and grant the Application.

¹ On September 17, 2018, Jennings filed an Opposition to the Petition (Opposition). NBM subsequently filed the following unauthorized pleadings: (1) "Supplement Petition to Deny," dated September 24, 2018; (2) Supplement, dated October 3, 2018; (3) "Petition to Deny New/Motion to Enlarge," dated October 10, 2018; (4) "Motion to Enlarge Issues and Request Hearing," dated October 18, 2018; (5) Supplement, dated November 1, 2018; and (6) a separate Supplement, dated November 1, 2018. Jennings filed an "Opposition to Supplements to Petition to Deny," dated October 9, 2018.

Background. The Petitioner, NBM, is the prior licensee of FM translator station W249DG. On March 28, 2018, NBM filed an application to assign the translator station's license to the Taylors.² The assignment was granted on June 26, 2018,³ and consummated June 29, 2018. The Taylors subsequently filed the subject Application seeking Commission consent to assign the licenses for both W249DG and WJCP(AM) to Jennings. In its Petition, NBM asserts that the Taylors never paid the full purchase price for FM translator W249DG and that the Taylors' proposed sale of the station to a third party, without notification to NBM, breached the terms of a March 28, 2018, Rebroadcast Agreement between the parties. NBM also alleges that the Application violates the Commission's multiple ownership rules because Keith Reising (Reising), the Managing Member of Jennings, has an "excessive market concentration in the Columbus, Indiana and surrounding market."⁴ Accordingly, NBM urges the Commission to deny the Application and "revoke the transfer [of FM translator W249DG to the Taylors] until such time as all funds are paid."⁵

In its Opposition, Jennings argues that the Commission should dismiss the Petition as procedurally defective and deny the Petition on substantive grounds because: (1) the merits concern a private contractual dispute; and (2) the proposed assignment complies with the Commission's multiple ownership rules.⁶ NBM did not file a Reply to the Opposition, but rather filed numerous supplements, petitions, and motions, raising new allegations. Specifically, in its supplemental pleadings NBM claims, for the first time, that (1) there has been an unauthorized transfer of control of WJCP from the Taylors to Jennings; and (2) the Taylors, Jennings, and their affiliates have violated multiple Commission rules.⁷

Procedural Issues. We dismiss the Petition as procedurally defective. NBM failed to timely file its Petition or serve a copy on the licensee and counsel for Jennings, as required by the Commission's rules.⁸ Further, NBM has not adequately established standing to file a petition to deny. A party filing a petition to deny must demonstrate standing by providing "specific allegations of fact sufficient to show that [it] is a party in interest."⁹ These allegations must show that: (1) the petitioner would suffer a direct injury that is more than hypothetical or purely speculative;¹⁰ (2) the injury is causally linked to the challenged action;¹¹ and (3) the relief sought will likely be remedied with the Commission's denial of the

² See FCC File No. BALFT-20180328ABG.

³ See CDBS Broadcast Actions, Public Notice, Rpt. No. 49268 (June 29, 2018) (announcing the grant of BALFT-20180328ABG).

⁴ NBM Petition, Exhibit 1.

⁵ *Id.*

⁶ See Opposition at 1.

⁷ NBM alleges, *inter alia*, that Reising broadcast impermissible underwriting announcements on his noncommercial stations and failed to construct one of his stations in a timely manner.

⁸ See 47 U.S.C. § 309(d)(1); 47 CFR § 1.47. The Application appeared on Public Notice on July 26, 2018. Accordingly, any petition to deny should have been filed by August 27, 2018. NBM submitted its Petition on September 4, 2018.

⁹ 47 U.S.C. § 309(d)(1).

¹⁰ See, e.g., *Conn-2 RSA Partnership*, Memorandum Opinion and Order, 9 FCC Rcd 3295, 3297, para. 8 (1994) (injury cannot be hypothetical, but rather fairly traceable to whether the Commission decides to grant the application).

¹¹ See, e.g., *Riverside Youth & Rehabilitation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10360, 10362-63, para. 6 (2008).

pending application.¹² Moreover, it is well established that “standing is accorded to persons not for the protection of their private interests but only to vindicate the public interest.”¹³

The harm NBM claims it will suffer stems from its belief that it had a contractual right to be notified of the proposed assignment and that it was not paid in full for the FM translator station. NBM has not adequately shown that denial of the Application would redress the contractual dispute, or that grant of the Application would eliminate its recourse or is contrary to the public interest. Accordingly, for the reasons explained above, NBM’s pleading cannot be considered as a petition to deny.¹⁴ We will, however, consider the pleading as an informal objection under Section 73.3587 of the Commission’s rules.¹⁵

Discussion. Section 310(d) of the Communications Act of 1934, as amended (the Act)¹⁶ requires the Commission to determine whether the proposed assignment of a broadcast license would be in the public interest. Informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.¹⁷ For the reasons discussed below, NBM has not satisfied this threshold requirement.

Contractual Dispute. NBM’s Petition is grounded on a private contractual dispute, rather than public interest considerations. NBM does not provide any concrete evidence that the proposed assignment violates the public interest. Rather, the central issue raised here relates to a dispute between NBM and the Taylors regarding allegations of a breach of contract and an alleged payment default. Specifically NBM contends that the Taylors only paid a portion of the \$35,000 purchase price for the FM translator station license. In contrast, the Taylors maintain that they paid the full purchase price prior to the June 29, 2018, closing.¹⁸ We will not reach the merits of this contractual dispute. The Commission has repeatedly held that it will not insert itself into the private affairs of parties, and that parties should seek redress for such matters in local courts of competent jurisdiction.¹⁹ Accordingly, we decline to intervene in this private dispute and instead, leave resolution to the proper forums.

Moreover, the record before us does not contain any evidence that NBM has filed a lawsuit with a local court. Absent the issuance of an injunction or stay against the sale by a local court, the Commission has routinely granted assignment applications pending the resolution of such private legal disputes.²⁰ We note, however, that our grant of the assignment application merely finds that the parties are qualified

¹² *Id.*

¹³ *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1001 (D.C. Cir. 1966); *see also Rainbow/Push Coalition*, 330 F.3d 539, 556 (D.C. Cir. 2003).

¹⁴ *See* 47 CFR § 73.3584; 47 U.S.C. § 309(d)(1).

¹⁵ 47 CFR § 73.3587.

¹⁶ 47 U.S.C. § 310(d).

¹⁷ 47 U.S.C. § 309(d). *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986).

¹⁸ *See* Opposition at 5.

¹⁹ *See John F. Runner, Receiver*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976).

²⁰ *See, e.g., A.L.Z. Broadcasting, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 23200, 23201, paras. 3-4 (2000).

under, and the proposed transaction does not violate, the Act or the Commission's rules.²¹ It is therefore permissive, rather than compulsory, and does not prejudice or influence any relief that NBM may be entitled to under civil suit.²²

Finally, we note that NBM claims that it had a contractual right to notice and consent of the FM translator sale, and it urges the Commission to revoke the prior assignment of the W249DG license to the Taylors until the dispute is resolved and the funds are paid. NBM's request is untenable. The grant of the assignment of the FM translator station license to the Taylors is final and cannot be set aside.²³ Moreover, upon assignment of the station license, NBM's rights with respect to the station ended. Prior licensees are prohibited from retaining a reversionary or security interest in the license.²⁴ Finally, when acting on an application for the assignment or transfer of a license, the Commission may *not* consider whether the public interest, convenience, and necessity may be served by the transfer or assignment of the license to a person or entity, such as NBM, other than the proposed transferee or assignee.²⁵

Multiple Ownership Compliance. NBM also asserts that Reising, the Managing Member of the proposed assignee, failed to account for his ownership of noncommercial educational (NCE) FM stations in the multiple ownership analysis and that grant of the Application would result in an undue concentration of radio stations attributable to Reising. The Commission's multiple ownership rule, 47 CFR 73.3555, states, however, that "[t]his section is not applicable to noncommercial educational FM . . . stations."²⁶ Therefore, because NCE FM stations are not counted for purposes of the multiple ownership rule restrictions,²⁷ Reising's interest in NCE FM stations is irrelevant for purposes of multiple ownership compliance. Moreover, Jennings has provided a detailed narrative statement and analysis of each relevant radio market, demonstrating compliance with the Commission's rules.²⁸ Staff analysis also confirms that the proposed assignment complies with the Commission's local radio ownership limits. Accordingly, we reject NBM's allegation of undue market concentration.

Unauthorized Pleadings. Finally, in multiple pleadings filed from September 24, 2018, to November 1, 2018, NBM reiterates its arguments from its initial Petition and raises numerous new

²¹ See, e.g., *Cumulus Licensing LLC*, Letter, 21 FCC Rcd 2998, 3007 (2006).

²² *Id.*

²³ See CDBS Broadcast Actions, Public Notice, Rpt. No. 49268 (June 29, 2018) (announcing the grant of BALFT-20180328ABG). An application grant becomes final 40 days after public notice of the grant of the application, unless a petition for reconsideration or application for review is timely filed, or the Commission otherwise sets aside the grant. See 47 CFR §§ 1.106, 1.115, 1.117. Accordingly, since no petition for reconsideration, or other pleading, was filed within 30 days of the public notice of the grant, the grant of the application to assign of the FM translator station license to the Taylors became final on August 10, 2018.

²⁴ See 47 CFR § 73.1150(a) (providing that an assignor of a broadcast station license may retain "no right of reversion of the license, no right to reassignment of the license in the future, and may not reserve the right to use the facilities of the station for any period whatsoever.").

²⁵ See 47 USC 310(d); *Shareholders of Tribune Company*, Memorandum Opinion and Order, 21 FCC Rcd 21266, 21272, para. 20 (2007).

²⁶ See 47 CFR § 73.3555(f).

²⁷ See *Northern Illinois University*, Memorandum Opinion and Order, 2 FCC Rcd 2496 (1987).

²⁸ See FCC File No. BAL-20180723AAB at Exhibit 18. Reising Radio is the licensee of three FM stations: WXCH, Columbus, Indiana; WRZQ, Greenburg, Indiana; and WYGB, Edinburg, Indiana, which is part of the Arbitron-rated Indianapolis radio market. Jennings' Engineering Statement demonstrates through both an Arbitron market analysis and the contour overlap methodology that the proposed assignment complies with the Commission's ownership limits. See 47 CFR § 73.3555(a)(1)(iv).

allegations, unsupported by concrete evidence.²⁹ New issues may not be raised in responses or replies.³⁰ NBM's September 24, 2018, Supplement Petition to Deny, as well as the subsequent filings, are unauthorized pleadings. We, therefore, dismiss them without consideration.³¹

Conclusion/Actions. For these reasons, we find that NBM has failed to raise a substantial and material question of fact calling for further inquiry regarding the Application. We also find that the Taylors are qualified to assign the Stations' licenses, Jennings is qualified to hold the Stations' licenses, and that grant of the Application is consistent with the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED that the Petition to Deny, filed September 4, 2018, by New Beginnings Movement, Incorporated IS DISMISSED, and when treated as an Informal Objection, IS DENIED.

IT IS FURTHER ORDERED, that the Supplement Petition to Deny, filed September 24, 2018, by New Beginnings Movement, Incorporated, and all of the subsequent unauthorized pleadings filed in this application proceeding, ARE DISMISSED.

IT IS FURTHER ORDERED, that the Application for the Assignment of Licenses for Stations WJCP(AM) and W249DG, North Vernon, Indiana (File Nos. BAL/BALFT-20180723AAB, AAC), from Tom and Diana Taylor to Jennings County Promotion Partners, LLC IS GRANTED.

Sincerely,

A handwritten signature in blue ink, appearing to read "Albert Shuldiner".

Albert Shuldiner
Chief, Audio Division
Media Bureau

²⁹ Although NBM makes bold allegations, including, *inter alia*, that there has been an unauthorized transfer of control of WJCP(AM) and that the Taylors, Jennings, and their affiliates have violated multiple Commission rules, NBM's claims are unsubstantiated. Accordingly, even if we were to consider these arguments, we would reject them on their merits.

³⁰ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously, which NBM fails to do. See 47 CFR § 1.45(c).

³¹ See 47 CFR § 1.45; see also *New Life Broadcasting*, Letter, 25 FCC Rcd 7293, 7294, n.5 (MB 2010) (declining to consider unauthorized pleadings pursuant to Section 1.45 of the rules); see also *Kin Shaw Wong*, Memorandum Opinion and Order, 11 FCC Rcd 11928, 11930 (1996) (rejecting argument that staff should have considered arguments raised in unauthorized pleadings).