

STATEMENT REGARDING NON-FCC MISCONDUCT

As previously reported to the Commission, Gene Stipe, the president and sole shareholder of Little Dixie Radio, Inc. ("Little Dixie") and of Bottom Line Broadcasting, Inc. ("Bottom Line"), the proposed assignors of radio stations in the instant application and in related applications,^{1/} was previously adjudicated guilty of certain non-broadcast related, non-FCC misconduct. The purpose of this amendment is provide additional details concerning this matter and to further demonstrate that, despite this adjudication, Little Dixie and Bottom Line nevertheless have the requisite character qualifications to assign their station licenses.

This isolated instance of adjudicated misconduct is an aberration in a life of exemplary public and community service. Mr. Stipe served for more than five decades as a highly respected member of the Oklahoma state legislature, was a trial lawyer, and for more than 40 years owned and operated the radio stations being sold. He is now 78 years old and in poor health. He is seeking to sell the stations at below market value in an effort to quickly exit the broadcast business. The stress and depression brought on by his recent legal problems and his current efforts to sell the stations have contributed to the deterioration of his health. In fact, as of this date, Mr. Stipe is currently hospitalized. Given these facts, despite the isolated instance of misconduct, the Commission can nevertheless make the requisite public interest finding and expeditiously grant these applications.

FACTS

On April 1, 2003, Mr. Stipe pled guilty in the U.S. District Court for the District of Columbia to a three-count information charging conspiracy to violate the Federal Election Campaign Act ("FECA"), conspiracy to obstruct a Federal Election Commission ("FEC") investigation, and perjury in violation of 18 U.S.C. §§ 371 and 1621. The charges were based on Mr. Stipe's making of monetary contributions to and expenditures in connection with the campaign of Walter L. Roberts, an unsuccessful candidate for the United States House of Representatives, and the filing of false statements with the FEC regarding these activities.^{2/} Mr. Roberts was a long time friend, to whom Mr. Stipe had long provided financial assistance. For example, Mr. Stipe had paid Mr. Roberts' law school fees, promoted his Western artwork, provided political support to his earlier campaign for state legislature, and had routinely helped with Mr. Roberts' household expenses long before Mr. Roberts ran for Congress.

Mr. Stipe contributed funds to the Roberts campaign totaling just over \$245,000 between March and November 1988. In addition to making substantial direct contributions to Mr. Roberts as well as expenditures to aid the campaign, Mr. Stipe's funds were used to reimburse

^{1/} The stations at issue are KESC(FM), Wilburton, Oklahoma, and KMCO(FM), KNED(AM), KTMC(AM) and KTMC-FM, all licensed to McAlester, Oklahoma. See FCC File Nos. BALH/BAL-20040610ABH, ABL, ABM, ABN, ABO.

^{2/} See Sentencing Memorandum of Defendant Gene Stipe, attached hereto as part of Exhibit C. The facts set forth below are taken from this Memorandum and other documents filed with the court, all of which are attached hereto.

others who made “personal” contributions to the Roberts campaign. The reports filed by the Roberts campaign with the FEC did not accurately report the source of these funds.

Beginning in late 1999 and continuing through 2002, the FEC conducted an investigation into the Roberts campaign. In written responses to FEC questions, Mr. Stipe made false statements disguising the fact that he was the true source of the funds that went into the Roberts campaign. The matter was subsequently referred to the Department of Justice (“DOJ”) for investigation. Mr. Stipe’s counsel first approached the DOJ on his behalf in the Fall of 2002, at the very beginning of its criminal investigation. That approach started the process that culminated in Mr. Stipe’s Plea Agreement. Mr. Stipe indicated his willingness to accept responsibility for his misdeeds well before the government had obtained the cooperation of other individuals implicated in the misconduct.

Mr. Stipe was sentenced on January 30, 2004 to serve a five-year probationary period, obey a six-month house arrest, and perform community service. *See United States v. Gene Stipe*, Cr. No. 03-128-01 (JR). Significantly, this sentence was well below the maximum permitted under the Federal Sentencing Guidelines for these violations.^{3/}

Mr. Stipe is now 78 years old and in poor health. Accordingly, earlier this year, he sought a buyer for the Little Dixie and Bottom Line radio stations, agreeing to sell the stations at a discount from their fair market value in an effort to leave the broadcast business. Moreover, Mr. Stipe, who suffers from high blood pressure, has just been informed that his prostate cancer, which had previously been in remission, has returned. The stress of and depression caused by the criminal proceeding, and now the current FCC proceeding reopening these issues, has only exacerbated these health problems. Mr. Stipe has at times lost his ability to function in dealing with his business and personal affairs. Over the past weekend, Mr. Stipe had to be airlifted to St. Johns Hospital in Tulsa due to extremely high blood pressure brought on by stress. Currently, he remains in the hospital.

DISCUSSION

When considering the character qualifications of applicants, the Commission concerns itself with “misconduct which demonstrates the proclivity of an applicant or licensee to deal truthfully with the Commission and to comply with [its] rules and policies.” *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1190-91 (1986) (“1986 Character Policy Statement”), *recon. granted in part*, 1 FCC Rcd 421 (1986), *modified*, 5 FCC Rcd 3252 (1990) (“1990 Character Policy Statement”) (subsequent history omitted). Consequently, in addition to misconduct that violates the Communications Act or an FCC rule or policy, the Commission also deems relevant to an applicant’s qualifications the following categories of non-FCC misconduct: adjudicated (a) fraudulent misrepresentations to

^{3/} Mr. Stipe’s offense level under the Federal Sentencing Guidelines was reduced for acceptance of responsibility. With this reduction, the maximum sentence that could have been imposed was a one-year term of imprisonment. As part of a Plea Agreement, Mr. Stipe also agreed to pay a fine of \$490,378 and to voluntarily surrender his license to practice law and to take no action toward reinstatement until the termination of his probation.

governmental units; (b) criminal misconduct involving false statements or dishonesty, (c) violations of antitrust or anticompetitive laws involving any media of mass communications, as defined in 47 U.S.C. § 309(i); and (d) misconduct constituting a felony. *1986 Character Policy Statement*, 102 FCC 2d at 1195-97, 1200-03; *1990 Character Policy Statement*, 5 FCC Rcd at 3252.

As an initial matter, the parties hereto note that there are no issues involving the character qualifications of the proposed buyers of the stations. While generally the Commission requires not only the buyer, but also the seller, to be qualified before granting its consent to the transfer of a broadcast license, *see Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1984), the parties nevertheless point out that if the instant assignment applications are granted, Mr. Stipe will no longer have an interest in any broadcast stations. Moreover, while Mr. Stipe has engaged in the type of misconduct that the FCC has traditionally considered to be pertinent to its evaluation of a licensee's character, this fact does not call into question his propensity to deal truthfully with the FCC or to obey its rules. Mr. Stipe has owned and operated radio stations in McAlester since 1964. Since that time, he has maintained a flawless record of operating the stations in the public interest and serving the communities of McAlester and Wilburton, Oklahoma. The misconduct in which he engaged was completely unrelated to the operation of the radio stations and did not involve any other officers or directors of Little Dixie, Bottom Line, or employees of the stations. He is an experienced and well respected radio station owner, and for 40 years, there have been no complaints or citations for rule violations involving the operation of the radio stations. As the FCC has recognized, "[t]he purpose of the character qualifications aspect of the Commission's licensing process is not, of course, to eliminate licensees from further activity in broadcasting, but, as we have stated, to assure that those granted a license will be truthful in their dealings with the Commission and reliable operators of their stations." *1986 Character Policy Statement*, 102 FCC 2d at 1228. In this case, Mr. Stipe's consistent record of exemplary broadcast service for more than 40 years is more indicative of truthfulness and reliability in his dealings with the FCC, as well as of his overall propensity to obey the law, than a single, isolated transgression in a field unrelated to his operation of broadcast stations.

Moreover, the *Jefferson Radio* policy is grounded on the need to deter licensee misconduct. *See* Roy M. Speer, 11 FCC Rcd 14684, ¶ 3 (1996) (citing *1400 Corp.*, 4 FCC 2d 715, 716 (1966), *modified*, 7 FCC 2d 517 (1967) (Licensees must "be held accountable for their stewardship and will not be permitted to evade the consequences of their misconduct or abuse of a license by selling the station . . .")). Thus, the Commission has made exceptions to the policy to permit licensees whose qualifications are in question to transfer their stations where the public interest would be served by approval of the transfer, and the transfer would not undermine the deterrent impact of the licensing process on the licensee and others. In the unique circumstances at issue here, no additional sanction is necessary to deter either Mr. Stipe or other existing or future licensees from engaging in similar behavior. Specifically, Mr. Stipe has already paid an extremely high price for his misconduct, including payment of a large fine, resignation from the Oklahoma State Senate after a 53-year legislative career, loss of his law practice, tarnishing of his heretofore sterling reputation, and the consequent humiliation, stress and depression. In addition, Mr. Stipe is selling his stations at a price below their market value. In January 1999, Mr. Stipe purchased his brother's 49% interest in Little Dixie and Bottom Line for a total of \$1 million. *See* Exhibit B. At that time, the brothers had valued the companies at approximately \$2

million, before they had begun to operate KESC(FM), a station now valued at more than \$766,666 in the pending Purchase Agreement. The Little Dixie and Bottom Line stations, including KESC(FM), are now being sold for a total of \$2.2 million. In the almost six years since Mr. Stipe's purchase of his brother's interests, all of the stations have increased in value and all of the stations, including KESC(FM), are worth more than the price for which they are being sold. Nevertheless, in an effort to sell the stations quickly and exit from the broadcast business, Mr. Stipe agreed to accept the buyers' discounted offer price. In these circumstances, no additional sanction by the Commission is necessary to deter misconduct such as that of Mr. Stipe.

The Commission has also made exceptions to *Jefferson Radio* to permit licensees whose qualifications are in question to transfer their stations where it finds other compelling, equitable reasons for doing so. For example, the Commission historically has made exceptions to its *Jefferson Radio* policy to permit a licensee whose character qualifications are at issue to assign its station where the individual licensee or its principal shareholder was severely ill. *See, e.g., Calhoun County Broadcasting Company*, 104 FCC 2d 22 (1986) (proceeding terminated and renewal applications granted conditioned on rapid assignment where serious illness prevented applicant from adequately assisting in his own defense, and the illness would be aggravated by continuation of the proceeding); *Revocation of the License of Tinker, Inc.*, 8 FCC 2d 22 (1967) (proceeding terminated and assignment application granted where medical condition of principal stockholder of licensee rendered him unable to assist in his own defense and strains and rigors of proposed evidentiary hearing could substantially worsen his condition); *Martin R. Karig*, 3 RR 2d 669 (1964) (proceeding terminated and licensee permitted to assign construction permit due to his extreme physical disability and its resultant hardship). In this case, Mr. Stipe is in poor health, suffering from prostate cancer and high blood pressure. *See* Exhibit A hereto. He is currently in the hospital, where doctors are working to stabilize his blood pressure and to otherwise fully assess his medical condition. *Id.* Participation in a lengthy FCC proceeding to examine his character qualifications would likely substantially worsen his condition.

Finally, the unique mitigating circumstances of this case counsel against further sanction of Mr. Stipe or the licensees. Where an applicant has engaged in relevant misconduct, the Commission entertains and weighs a showing of mitigating circumstances, including, the willfulness, frequency, currency and seriousness of the misconduct; the nature of participation of managers and owners; efforts made to remedy the wrong; the applicant's overall record of compliance with the Commission's rules and policies; and rehabilitation. *1986 Character Policy Statement*, 102 FCC 2d at 1227-29; *1990 Character Policy Statement*, 5 FCC Rcd at 3254. The isolated and uncharacteristic nature of the incident when considered in the context of Mr. Stipe's extraordinary record of public service, civic leadership and charitable giving, his efforts made to remedy the wrong, rehabilitation, and the lack of relation of the misconduct to the operation of the radio stations are especially relevant here. Specifically, as evidenced in filings with the court, Mr. Stipe has led a life of exemplary public and community service. For more than five decades, he served as a member of the Oklahoma state legislature and a trial lawyer. More than 100 people, from a former U.S. Senator to community leaders and ordinary citizens who have known Mr. Stipe for a number of years, wrote to the court to testify to and commend his high moral character and his service as a tireless champion of those who, in his words, "live in life's shadows." *See* Exhibit C, Sentencing Memorandum of Defendant Gene Stipe at 2. They

mentioned his payment of “hundreds” of utility bills for the elderly, poor and others who could not pay their bills, his payment of tuition, room and board for people who could not afford to attend college, his mentoring of young lawyers and young people who needed guidance, and his championing of civil rights. *Id.* at 4, 6, 8, 15.^{4/} The record was also replete with descriptions of legislative initiatives that Mr. Stipe authored or co-authored to aid those with mental and physical disabilities, children, the elderly, the poor and the otherwise disadvantaged. *Id.* at 7. As pointed out to the court, Mr. Stipe’s record of service to the community highlights the fact that the adjudicated misconduct was an aberration against the backdrop of a life of honesty, integrity, and public service. Moreover, Mr. Stipe was one of the first of those involved in the misconduct to come forward to the government and indicate his willingness to accept responsibility for his misdeeds, eventually entering into a Plea Agreement with the government in which he admitted to his wrongdoing and agreed to pay a substantial fine. *See* Sentencing Memorandum at 17.

In sum, the record demonstrates that Mr. Stipe’s misconduct was an uncharacteristic aberration in a lifetime of honesty and public service. Moreover, Mr. Stipe is now 78 years old and in poor health, the criminal proceeding regarding the misconduct at issue itself having exacerbated his health problems, and is seeking to assign his stations at a below market price to assignees of unblemished character. In these circumstances, further action by the FCC with respect to these matters would serve no purpose. Mr. Stipe has been punished for his legal transgressions – matters having nothing to do with his more than 40 years of operating radio stations in the public interest. Allowing him to exit the business, by approving the pending transactions, serves the public interest. For these reasons, grant of the instant assignment applications is respectfully requested.

^{4/} Copies of these letters will be provided to the Commission upon request.