

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re: Applications of)	
)	
Choice Radio Corporation)	
)	
For Consent to the Involuntary Transfer of)	LMS File No. 0000135150
Control of Choice Radio Corporation to the)	
Court Master Commissioner Authorized by)	
Court Order to Execute Transaction)	
Documents for Choice Radio Corporation)	
)	
and)	
)	
For Consent to the Assignment of the FCC)	LMS File No. 0000135218
Authorizations for Radio Broadcast Stations)	
WYWY(AM), WKKQ(FM) and)	Facility ID Nos. 3953, 3954, 158017,
FM Translator W227CD, Barbourville,)	72441, 39774 and 155775
Kentucky, and WWXL(AM) and)	
WTBK(FM), Manchester, Kentucky, and)	
FM Translator W283AI, Mount Vernon,)	
Kentucky, to Roy Jaynes Broadcasting, LLC))	
Attention: Audio Division, Media Bureau		

OPPOSITION

Respectfully submitted,

First State Bank of the Southeast

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SUMMARY

First State Bank (“FSB”) is the senior and only secured creditor with a perfected security interest in, and holds a default judgment (as amended) that is a final court order authorizing (to satisfy said judgment) the sale of, all of the assets (excluding the broadcast licenses) and stock of Choice Radio Corporation (“Choice”), and in all proceeds of any sale of the assets (including the broadcast licenses held by Choice) of Choice or its stock, including but not limited to the assets and FCC license for commercial radio broadcast stations licensed to Choice.

Perhaps not surprisingly, Choice’s principals, Jonathan Smith (“Smith”) and Karen Moses (“Moses”), have chosen not to cooperate with FSB’s collection efforts, and - - after largely electing not to participate in the legal process before the local Kentucky court with proper jurisdiction over the state law issues involved - - now seek to raise and have the Federal Communications Commission (“FCC”) adjudicate state law issues that have already been addressed by final orders by the local Kentucky court (which, of course, the FCC shouldn’t entertain).

Further, the central gist of the objection filed by Choice, Smith, and Moses is that FSB hasn’t followed proper FCC procedures to seek FCC consent prior to any transfer of control of Choice or assignment of Choice’s FCC licenses, oddly enough in a pleading objecting to the very FCC applications filed to seek just that consent. But the FCC should see these efforts for what they are - - an effort to delay or avoid FSB’s proper collection actions through both the local Kentucky court and the FCC - - and deny the objection, in comity with the local Kentucky court orders, and grant the pending applications for an involuntary transfer of control of Choice and assignment of Choice’s FCC licenses to a qualified buyer.

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Attention: Audio Division, Media Bureau

OPPOSITION

First State Bank of the Southeast (formerly known as First State Financial, Inc., hereinafter, “FSB”), by its counsel, and pursuant to Sections 1.45(b) and 73.3584(b) of the Commission’s rules, 47 C.F.R. §§ 1.45(b) and 73.3584(b), respectfully submits this Opposition to the pleading styled as a Petition to Deny dated March 8, 2021 but filed as an informal objection on March 19, 2021 (the “Objection”)¹ by Strategic Impact Marketing Consulting Corporation

¹ The Objection is shown as filed in the Commission’s Licensing and Management System (“LMS”) on March 19, 2021, first without exhibits in LMS Pleading File No. 0000140310 and then with exhibits in LMS Pleading File No. 0000140311); this Opposition is being filed in response to the latter pleading filing.

(“Strategic”), Choice Radio Corporation (“Choice”), and Jonathan Smith (“Smith”), objecting to the above-captioned pending applications for an involuntary transfer of control of Choice (LMS File No. 0000135150, the “Transfer Application”) and the assignment of the Federal Communications Commission (“FCC”) authorizations of the above-captioned AM and FM radio and FM translator broadcast stations (the “Stations”) to Roy Jaynes Broadcasting, LLC (“Jaynes”) by Choice (LMS File No. 0000135218, the “Assignment Application”, and together with the Transfer Application, the “Applications”), pursuant to final court orders.

The Applications reflect the culmination of a very garden variety and “conventional debtor-creditor case”, but see Objection at 3, by FSB, the senior and sole secured creditor of the debtor Choice, with a perfected first priority security interest in Choice’s assets and stock and any proceeds of their sale, which debt was also guaranteed by Choice’s principals (Smith and Karen Moses² (“Moses”), who is the sole owner of Strategic, such that Strategic and Moses are referred to interchangeably herein), holding a default judgment against Choice and its principals, Smith and Moses, jointly and severally (Choice, Smith and Moses/Strategic, the “Joint Debtors”), with final court orders authorizing the sale of the Stations to satisfy the default judgment, and authorizing the court’s master commissioner to execute documents to proceed with such sale if Choice and its principals prove uncooperative (which they have). See Transfer Application at Description of Transaction and Court Orders exhibit (and additional exhibits referenced therein and attached thereto); see also, Assignment Application at Description of Transaction and Agreements exhibit (and additional exhibits referenced therein and attached thereto).

The central thesis of the Objection (other than raising some state law issues that have already been resolved by final court orders) is that FSB somehow has not sought Commission

² While Choice and Smith have always represented to the Commission that Smith is the only officer, director or shareholder of Choice, including as recently as the biennial ownership report certified by Smith and filed for Choice on April 24, 2020, see LMS File No. 0000112709, Choice represented to FSB, and the physical stock certificates for Choice that Choice delivered to and are being held by FSB as part of the collateral, demonstrate that Smith holds 510 shares and Moses holds 490 shares of the stock of Choice, and have done so since April 6, 2016 (which may be a misrepresentation by Choice and Smith to the Commission regarding the stock ownership of Choice).

consent for the involuntary transfer of control of Choice necessary to allow the court's master commissioner to execute documents on Choice's behalf, nor for the proposed sale of the Stations and assignment of their FCC authorizations to Jaynes, which seems an odd argument to assert with respect to the very applications filed to seek that very Commission consent (in the Transfer Application and Assignment Application, respectively). In support of this Opposition, FSB respectfully submits the following:³

1. **Background.** FSB is the senior and only secured creditor of Choice, pursuant to a promissory note executed by Choice and given to FSB (the "Note"), which Note is secured by a Commercial Security Agreement signed by Choice (the "Security Agreement"), and by a personal Guaranty executed by two individuals (each a "Guaranty"), specifically, by each of Smith (as President of Choice), and Moses, all of the foregoing documents executed on April 6, 2016.⁴ In the Note and Security Agreement, the Joint Debtors granted FSB a security interest in the stock of Choice, all of the assets of Choice (including its broadcast stations and any later acquired assets, but excluding any FCC broadcast station licenses), and the proceeds of any sale of such stock or assets (and including proceeds of a sale or assignment of FCC broadcast stations licenses held or later acquired by Choice) (all of the foregoing, the "Collateral"). See Note at 1 and 3-5, and Security Agreement at 1-2. Smith and Moses, individually, each also executed a Guaranty, each personally guaranteeing that Choice would perform its obligations under the Note and other loan documents. See Smith Guaranty and Moses Guaranty. FSB's first priority security interest in the Collateral was perfected on April 18, 2016, when FSB made the appropriate Uniform Commercial

³ Most facts asserted herein are based on public records, of which the Commission may take official notice. Any other facts asserted but not otherwise supported herein are to the knowledge of and supported by the Declaration of Janine Thomas, the FSB manager responsible for FSB's collection actions in this matter, a copy of which is attached hereto as Exhibit 1 (the "Thomas Declaration"). FSB notes that the Declaration does not and needs not attest to the procedural and legal arguments on page 1 and in footnote 1, and in paragraph 4 and footnote 8, related to the timing of the filing of the Objection, which only rely on Commission records of which official notice may be taken.

⁴ Copies of the Note, Security Agreement, the Guaranty signed by Smith ("Smith Guaranty"), and the Guaranty signed by Moses ("Moses Guaranty") are attached as exhibits to the Transfer Agreement.

Code (“UCC”) filing with the Kentucky Secretary of State (“SOS”), in UCC Filing No. 2016-2826024-53.01 with the Kentucky SOS (the “UCC Filing”), and by FSB’s physical possession of the stock certificates.

2. After Choice defaulted on the Note held by FSB, FSB obtained a judgment against the Joint Debtors (i.e., each of Choice, Smith, and Moses, jointly and severally) in court, and began the process of enforcing and collecting upon that judgment (as amended) through a court-ordered sale of all of Choice’s stock and assets, including assignments of Choice’s FCC broadcast station licenses for the Stations.⁵ After retaining a media broker and marketing the Stations, and discussions with multiple parties (most of whom were wary of proceeding due to the involuntary nature of the sale and the lack of cooperation from the Joint Debtors), Jaynes was identified as a buyer, and FSB went back to the Kentucky Court for approval of that sale, and the court issued an order compelling Smith to execute the documents required for the sale (including a purchase agreement and FCC applications) or, if he remained uncooperative, the court authorized its Master Commissioner, Karen Davenport (“Davenport”), a neutral third party, to execute such documents on behalf of Choice.⁶

3. Having gone through the steps with the local Kentucky Court as required by the Commission and its precedent, to have a court-ordered sale of the Stations assets (so that FSB

⁵ Specifically, FSB first obtained a Default Judgment and Order Authorizing Transfer of Collateral (the “Default Judgment”) entered May 29, 2019, by the Whitley Circuit Court, Division 1, for the Commonwealth of Kentucky 34th Judicial Circuit (the “Kentucky Court”), as amended by the Amended Judgment and Order Authorizing Transfer of Collateral entered by the Kentucky Court on November 20, 2019 (the “Amended Order”, and together with the Default Judgment, the “Judgment”). Copies of the Default Judgment and Amended Order are attached as exhibits to the Transfer Application. FSB notes that while there is a typographical error in the station’s call sign (“WTKB” instead of “WTBK”) on page 2 of the Amended Order, the Kentucky Court was clearly referring to WBK, as it referenced the correct FCC facility identification number for WBK, of 39774.

⁶ A copy of the Order Compelling Jonathan L. Smith To Make Disclosures And To Execute Transfer Instruments Or, In The Alternative, Order Authorizing The Harlan County Master Commissioner To Execute Transfer Instruments To Transfer Ownership Of Choice Radio Corporation, entered by the Kentucky Court on October 12, 2020 (the “Davenport Authorization Order”), is attached as an exhibit to the Transfer Agreement.

could collect on Choice's debt from the proceeds of such sale) and a neutral third party (Davenport) appointed by the court to sign documents on Choice's behalf (when Smith elected to be uncooperative), FSB then filed the involuntary transfer of control Transfer Application (for Commission consent to Davenport exercising control over Choice) and the assignment of FCC authorizations Assignment Application (for Commission consent to the sale of the Stations to Jaynes). FSB notes that the Joint Debtors have been properly served with all of the Kentucky Court actions, have had ample opportunities to raise the state law issues they hope to put before the FCC before that appropriate local court, where any arguments they have presented in that proper forum have been denied, and the various Kentucky Court orders provided to the Commission by FSB are all final orders, no longer subject to appeal or review.⁷

4. **Procedural Issues.** While the Objection purports to be a petition to deny (although it lacks citation to any specific Commission rule, or federal statute), FSB notes that under Section 73.3584(a), petitions to deny may not be filed against the Transfer Application, as an involuntary transfer of control application for which local public notice is not required. See § 73.3584(a) and § 73.3580(d)(2). In addition, petitions to deny must be filed within thirty days after the FCC public notice accepting an assignment application for filing, see § 73.3584(a), which was given for the Assignment Application on February 8, 2021, see Public Notice, Report No. PN-1-210208-01 (released February 8, 2021), so any petition to deny was due to be filed by March 10, 2021; since the Objection wasn't filed in LMS until March 19, 2021, see LMS Pleading File No. 0000140310 or 0000140311, the Objection is untimely as a petition to deny and must be dismissed without

⁷ While avoiding unnecessarily delving too far into Kentucky law, the correct relevant governing rules are Rules 54.01 and 54.02 of the Kentucky Rules of Civil Procedure, see KY ST RCP Rules 54.01 and 54.02 (copies attached hereto as Exhibit 2); per those rules, FSB notes that the Default Judgment resolved all matters raised in its underlying action, and even recited that it was "a final and appealable judgment there being no just reason for delay in its entry." See Default Judgment at 3. Any appeal of the Judgment was required to be initiated by the filing of a notice of appeal within 30 days, under Rule 73.02 of the Kentucky Rules of Civil Procedure, see KY ST RCP Rule 73.02, yet no appeal was timely-filed, such that the Judgment is now final (and any motion to set it aside after it was final would have had to have been filed "within a reasonable time", where the Joint Debtors have known about the Judgment for at least a year).

consideration.⁸ However, in the event that the Commission elects to treat the Objection as an informal objection with respect to the Applications, under Section 73.3587 of the Commission's rules, 47 C.F.R. § 73.3587, FSB requests that the Commission consider this Opposition to such informal objection.

5. The Joint Debtors also included in their extensive caption a pair of applications requesting Commission consent to the sale and assignment of the license of Choice's radio broadcast station WTBK(FM), Manchester, Kentucky (FCC Facility ID No. 39774, "WTBK"), first by Choice to Manchester Communications, Inc. ("MCI") (CDBS File Nos. BALH-20200903AAL, the "Choice-MCI Application"), and then by MCI to Strategic (CDBS File No. BALH-20200903AAN, the "MCI-Strategic Application"); neither of these applications may be granted nor their proposed transactions consummated, due to a permanent injunction issued by the Kentucky Court.⁹ Further, FSB timely-filed a petition to deny both the Choice-MCI Application and the MCI-Strategic Application, and related pleadings,¹⁰ to the extent that the Joint Debtors seek to re-argue matters related to those two applications in their new Objection, FSB requests that

⁸ Counsel for the Joint Debtors has advised informally that the Objection was submitted to the FCC by email on or about March 8 or 9, 2021; however, pleadings filed with respect to the Applications, which were filed in LMS, may only be filed in LMS, see How to File an Assignment of License or Transfer of Control Application in LMS at 7 (<https://www.fcc.gov/file/20003/download>), therefore the Objection may not be considered filed as of that date. While petitions to deny may not be filed against the Transfer Application, the Objection would also be untimely as a petition to deny against the Transfer Application as well, since the FCC released a public notice that the Transfer Application was accepted for filing on February 5, 2021. See Public Notice, Report No. PN-1-210205-01 (released February 5, 2021).

⁹ A copy of the Order Enjoining Attempted Sale of WTBK FM, as entered October 12, 2020, by the Kentucky Court, is attached hereto as Exhibit 2 (the "Injunction").

¹⁰ Specifically, FSB timely-filed its Petition to Deny the Choice-MCI Application and the MCI-Strategic Application on October 13, 2020 (the "FSB Petition"), a Supplement to Petition to Deny on October 15, 2020 (to provide a copy of the Injunction), and a Reply on November 19, 2020 (the "FSB Reply", and all of the foregoing collectively, the "FSB Pleadings"). FSB notes that neither Choice nor MCI filed any opposition or objection to the FSB Pleadings, with respect to the Choice-MCI Application, which the Commission may now dismiss or deny on the basis shown by FSB (and once dismissed, the MCI-Strategic Application must be dismissed as moot, since MCI would not become the FCC licensee of WTBK, and therefore would not be able to assign that license to Strategic as proposed in the MCI-Strategic Application).

the Commission also consider the arguments FSB presented in its responsive FSB Pleadings. This permanent injunction by the Kentucky Court invalidates any claim that Strategic may have to acquire WTBK(FM), such that Strategic has no “contract right to acquire WTBK”, as the Joint Debtors suggest. See Objection at 9.

6. **No Premature Transfer Of Control.** The Joint Debtors suggest that FSB has taken a “premature assumption of control over Choice”, see Objection at 3 and 9, but that has not been the case; indeed, quite to the contrary, Smith and Moses continue to control Choice (except to the extent that the Kentucky Court has authorized Davenport to execute certain documents on Choice’s behalf when Smith has refused to do so) and operate the Stations to this day, without interference from FSB, pending Commission consent to the involuntary transfer of control and assignment of the Stations to Jaynes. All actions taken by FSB to date have been pursuant to court orders, and Commission consent has been properly requested for the involuntary transfer of control of Choice to Davenport (by the Transfer Application, with respect to the limited actions Davenport has been authorized by the Kentucky Court to take on Choice’s behalf) and for the proposed sale of the Stations to Jaynes (by the Assignment Application).

7. **The Collateral Includes All Choice Assets, Including Station WTBK(FM).** The Joint Debtors argue that the bank’s collateral wasn’t supposed to include WTBK, and proffers a distorted reading of the collateral description and parol evidence (in statements by Smith and Moses) to the Commission to try to support that view. See Objection at 2-3 (referencing declarations from Smith and Moses attached to an Opposition to Petition to Deny filed November 12, 2020, by Strategic (regarding the MCI-Strategic Application, the “Strategic Opposition”), and Exhibit A (the “Smith Declaration”) at 2-4 and Exhibit B (the “Moses Declaration”) at 1-2, respectively). But contrary to these self-serving claims, the description of the Collateral that was attached to the Security Agreement and other loan documents (signed by each of the Joint Debtors, i.e., Choice, Smith and Moses) and UCC Filing (a copy of which is attached as an exhibit to the Transfer Application, the “Collateral Description”) was expansive, stating (in its first three lines, in pertinent part) and covering “**all** equipment, ... general intangibles, **including without limitation** rights under ... **all present & future authorizations, permits, licenses, ...**

government authorizations, ...”, before then saying that is just “including” (so, not limited to) such FCC authorizations for two other Choice broadcast stations (WKKQ-FM and WYWY(AM)). See Collateral Description at 1 (bold emphasis added).

8. More importantly, the Kentucky Court has already expressly recognized that the WTBK assets were included in this broad Collateral Description at least twice, in the Amended Order and in the Injunction. See Amended Order at 2 (including WTBK), and Injunction at 1. If the Joint Debtors believed that the assets of WTBK (or other radio stations licensed to Choice) were to be excluded from the Collateral Description, they should not have signed the loan documents with that expansive language, or perhaps better yet, added language expressly *excluding* such Choice assets from the Collateral Description, or transferred such radio stations to an entity other than Choice before signing for the loan. The Joint Debtors also should have timely raised this state law question of fact in the proceedings before the Kentucky Court, rather than ask the FCC to decide a state law issue at this late date. Furthermore, all of the stock of Choice was included as part of FSB’s Collateral; how could some of the radio station assets of Choice logically be thought to be excluded from the Collateral when all of the stock of Choice itself (and therefore ultimate ownership of such assets) was included as part of the Collateral? The Joint Debtors also suggest that the FSB Petition wasn’t supported by an affidavit from an officer of FSB, see Objection at 4, but it was, see FSB Objection at Exhibit A (Declaration of Janine Thomas), and really if the Joint Debtors wished to have raised that issue they should have done so during the relevant Kentucky Court proceedings (they did not), rather than ask the Commission to adjudicate a state law issue at this late date.

9. **The Pledge Of The Choice Stock Shares Is Appropriate.** The Joint Debtors also takes issue with Smith and Moses pledging their shares of Choice stock to FSB as part of the Collateral, and FSB physically holding such shares of Choice’s stock to perfect its security interest in them. See Objection at 3. Shares of stock are considered personal property, and one common and legal method of perfecting a security interest in personal property is for the secured party to hold possession of such property; doing so does not make the secured party the “owner” of or in control of that property, or in the case of shares of stock, able to vote such shares, but rather it is

just a mechanism to ensure that such personal property is not sold or transferred to a third party in a manner contrary to the security interest granted in such property.¹¹ As such, Smith and Moses have always retained the right to vote their Choice shares; FSB retained a media broker who widely marketed Choice and its radio stations (either as an asset and/or stock sale, as authorized by the Kentucky Court in the Judgment) to reach a “private arm’s length sale” of same; and as expressly set forth both in the Amended Order and in the Collateral Description, any such sale of Choice’s assets or stock must be subject to obtaining the Commission’s prior consent to same, see Amended Order at 2, and Collateral Description at 1, which is now being timely sought by the Applications. Therefore, FSB’s holding physical possession of the stock certificates has been in compliance with the Commission’s guidelines for same. See, e.g., Instructions to FCC Form 314, Worksheet 2 at 2 (which, FSB notes, pertains to sales contracts between a proposed seller/assignor and proposed buyer/assignee, rather than loan documents between a secured creditor and a debtor licensee as with the parties here).

10. **The Collateral Description Clearly Excluded Any Security Interest In The FCC Licenses.** Contrary to the Joint Debtors assertions, see Objection at 4, the Collateral Description makes clear that FSB was granted a security interest in the proceeds of any sale or assignment of the FCC licenses of the Stations, but not a security interest directly in the FCC licenses themselves. See Collateral Description. Specifically, the Collateral Description states, in pertinent part, that any security interest in the FCC licenses is “only to the extent it currently is, or hereafter may become, lawful to grant a security interest in such FCC license ... together with the rights to receive all proceeds derived from or in connection with the sale, assignment or transfer of any FCC license used for ownership or operations of the stateions [*sic*]”. Id. The Collateral Description goes on to state that FSB acknowledged that “prior approval of the FCC may be required” and that FSB “will not take any action prusuant [*sic*] to this [Collateral Description]

¹¹ Interestingly, in response to the FSB Petition, Smith claimed that Moses transferred her 490 shares of Choice stock to him (which Moses did not acknowledge in her own declaration), but didn’t explain how he might have done so when neither he nor Moses had possession of the stock share certificate in order to affect such a transfer. See Smith Declaration at 1; but see, Moses Declaration, *passim*.

which could constitute or result in any assignment of an FCC license, or change of control over the broadcasting station owned or operated by [Choice], if such assignment of license or change of control would require, under then existing law, the prior approval of the FCC without first obtaining appropriate approval of the FCC.” Id.

11. Indeed, the Joint Debtors quotation of FSB’s original complaint in the Kentucky Court proceeding, see Objection at 4-5, is disingenuously truncated in a manner that appears intended to intentionally mislead the Commission - - in the remainder of that quoted language (that the Joint Debtors at least signal with ellipsis as omitted), FSB clearly refers to the Collateral Description (quoted here in the preceding paragraph), stating at the omitted end of the Joint Debtors’ quoted sentence that the security interest in the collateral also is “**as set forth more fully** within the commercial security agreement and collateral pledge agreement” (to which the Collateral Description, expressly acknowledging the limitations on security interests in FCC licenses, was attached). See Complaint (attached as Exhibit A to the Objection) at ¶ 7 (bold emphasis added).

12. **FSB And The Kentucky Court Have Followed Commission Precedent.** Contrary to the Joint Debtors’ assertions, see Objection at 5, both the Amended Order and the Davenport Authorization Order reflect that FSB and the Kentucky Court have followed Commission precedent on the sale of the Stations in a manner that FSB may collect on the debts owed by the Joint Debtors from the proceeds of the sale of the Stations and the assignment of their FCC licenses, all in a manner consistent with FCC rules and precedent. The proposed sale of the Stations to Jaynes, so that FSB may collect from the proceeds of such sale, has been in a manner directed by the Kentucky Court (with notice to and an opportunity to participate by the Joint Debtors at each step), and with documents signed by a neutral third party (Davenport) who was appointed by and is an agent of the Kentucky Court (not the creditor, FSB, contrary to the Joint Debtors’ suggestions, id.). While the loan documents may grant FSB a power of attorney right with respect to the Collateral, which is legal and appropriate for use by FSB with respect to the non-FCC license assets, FSB has not relied upon nor used that power of attorney with respect to any of the Collateral (and certainly not with respect to the FCC licenses of the Stations, as the Joint

Debtors suggest, id.). Furthermore, throughout this process, Choice as the FCC licensee has continued to be the party to operate the Stations, with the responsibility to comply with all FCC requirements (again, contrary to the Joint Debtors' assertions, id.).

13. **The Stations Were Marketed In A Commercially Reasonable Manner.** Next the Joint Debtors complain that FSB's marketing of the Stations was "half-hearted", resulting in a sale price that they believe was low, and somehow not "commercially reasonably", see Objection at 6, none of which is true, and where the sale process and whether the sale is "commercially reasonably" are state law issues that the Joint Debtors could and should have raised before the Kentucky Court (rather than the Commission).¹² FSB retained a media broker who marketed the Stations extensively, but whose main frustration was a lack of knowledge about the Stations and the assets involved (other than what could be researched independently of Choice), due to the complete lack of cooperation from the Joint Debtors. Any suppression of the sale price, then, is due to the actions and choices of the Joint Debtors themselves, not FSB, nor the legal process that FSB has followed before the Kentucky Court and the FCC.

14. **The Judgment Authorizes The Sale Of Both The Assets And Stock Of Choice.** FSB's Judgment authorizes the sale of both the assets and stock of Choice, in order for FSB to collect on the debt owed by the Joint Debtors. See Amended Judgment at 1-2. The Joint Debtors appear not to understand that, and suggest that the Amended Judgment only authorizes the sale of one or the other types of collateral (i.e., either the assets of Choice or its stock), see Objection at 8-9, but by the plain language of the Amended Judgment clearly authorizes FSB to proceed against both types of collateral. Stemming from this misunderstanding, the Joint Debtors suggest that perhaps the FCC application should be filed only as a transfer of control of Choice, rather than as the assignment of the FCC licenses of the Stations (i.e., an asset sale), as it was filed as the

¹² FSB notes that the Joint Debtors cite no FCC rule or precedent requiring an asset sale of Stations and their related assets to be a public sale or auction, or even "commercially reasonable", whatsoever. See Objection at 6. And again, to the extent that state law may impose such a requirement, the Joint Debtors could and should have raised that issue in the Kentucky Court proceedings.

Assignment Application, id., but that is not the case.¹³ Jaynes elected to purchase the Stations in an asset sale, with the Stations' FCC licenses assigned to a new entity, as permitted by the Amended Judgment, and to also purchase the stock of Choice at the same closing (at which point, Choice would no longer be the FCC licensee, the FCC licenses having been assigned to Jaynes). While Joint Debtors correctly point out that Smith is a holder of Choice stock (and asserts that he is the sole holder of that stock, contrary to the stock certificates that show Moses also holds shares of Choice stock, see infra at n.2), id. at 9, that is a point without a distinction, since Smith (as well as Moses) are jointly and severally liable (along with Choice) to FSB under the Judgment, which Judgment specifically authorizes the sale of their stock in Choice. Again, if Smith or Moses wished to challenge that, they should have timely raised that issue before the Kentucky Court.

15. **Issues Related To Jaynes.** Last, the Joint Debtors attempt to raise a number of issues related to the proposed assignee and buyer, Jaynes (and a consultant used by Jaynes, Mr. Pirkle), see Objection at 6-10; generally, FSB will leave it to Jaynes to respond to these issues directly, in its own opposition to the Objection. As a general matter, FSB observes that Jaynes is free to contact and have conversations with any third parties with whom it may choose to do so, including shareholders of Choice and individuals working at the Stations, and that it is understandable that Jaynes might do so given the unknowns and uncertainties about the assets of Choice and the Stations in this proposed sale (due to the lack of cooperation in the process by Smith and Moses). More specifically, and as a legal matter, the Kentucky Court issued an order that FSB and its broker and "any other agents" (which broadly would encompass a potential buyer, such as Jaynes) were and are all granted access to all property owned or leased by any of the Joint Debtors (i.e., Choice, Smith, and Moses), related to the Stations or otherwise, any documents or records related to same, and specifically ordered "all owners, ... **employees**, ... and **any persons affiliated with or working at**" any of the Stations (including but not limited to Mr. Terrill) to

¹³ Indeed, FSB has little doubt that if the proposed sale to Jaynes was structured as a stock sale and filed as a transfer of control of Choice application, but with Jaynes also receiving the assets of Choice, that the Joint Debtors would be making this same argument but in reverse, that it somehow should have been filed as a proposed asset sale on an assignment of FCC authorizations application.

cooperate with FSB and its agents and give FSB and its agents access to such property and records.¹⁴

16. **Conclusion.** Wherefore, the above premises in this Opposition being considered, FSB respectfully requests that the Commission dismiss or deny the Objection, and grant the Applications.

Respectfully submitted,

First State Bank of the Southeast



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¹⁴ See Order Granting Civil Rule 34 Access To Property, Equipment and Records On A Continuing Basis For Purposes Of Marketing And Sale entered March 16, 2020 by the Kentucky Court, a copy of which is attached hereto as Exhibit 3 (the “Rule 34 Order”). FSB notes that while the Rule 34 Order gives FSB and its agents access to property and documents and individuals, it grants no control over Choice or the operation of the Stations. Id.

CERTIFICATE OF SERVICE

I, Jeffrey L. Timmons, hereby certify that on this 19th day of March, 2021, a copy of the foregoing "Opposition" has been served by United States first class or priority mail, postage prepaid and postmarked by the pleading filing date (or by email only, with the consent of the recipient, for those marked with an *), upon the following:

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3300 Fairfax Drive, Suite 2020
Arlington, Virginia 22201
*Counsel to Strategic Impact Marketing Consulting Corporation,
Choice Radio Corporation, and Jonathan Smith*



Jeffrey L. Timmons, Esq.

Exhibit 1

Declaration of Janine Thomas

I, Janine Thomas, under penalty of perjury and pursuant to Section 1.16 of the Federal Communications Commission's rules, 47 C.F.R. § 1.16, do hereby declare that:

1. I am a Special Assets Manager for First State Bank of the Southeast (the "Bank"), and I have been responsible for the Bank's collection efforts with the regards to the loan to and default by Choice Radio Corporation ("Choice"), including with respect to the Bank's lawsuit and judgment against Choice, and the Bank's efforts to collect on that judgment through the collateral that Choice pledged for its loan.

2. I have reviewed the foregoing Opposition to which this declaration is attached, and the facts set forth therein are true and correct to the best of my knowledge and belief.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. Executed this 18th day of March, 2021.



Janine Thomas, Special Assets Manager
First State Bank of the Southeast

Exhibit 2

Injunction

Attached hereto is a true and correct copy of the Order Enjoining Attempted Sale of WTBK FM, as entered October 12, 2020, by the Kentucky Court (the “Injunction”).

COMMONWEALTH OF KENTUCKY
34TH JUDICIAL CIRCUIT
WHITLEY CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 18-CI-00552

ELECTRONICALLY FILED

FIRST STATE BANK OF THE SOUTHEAST,

PLAINTIFF,

VS.

CHOICE RADIO CORPORATION,
JONATHAN L. SMITH,
KAREN MOSES-BOWLING,

DEFENDANTS.

ORDER ENJOINING ATTEMPTED SALE OF WTBK FM

*** **

This matter is before the Court upon the Motion of the plaintiff, First State Bank of the Southeast, seeking an Order holding the defendants in contempt and enjoining the attempted sale of a portion of the assets upon which the Bank holds a perfected lien by virtue of this Court's Amended Judgment entered November 20, 2019 and with the Court having considered the Motion and heard argument of counsel and being sufficiently advised **IT IS HEREBY ORDERED** that the Motion is **SUSTAINED** and the defendants, Choice Radio Corporation, Jonathan L. Smith, and Karen Moses-Bowling are **HEREBY ENJOINED** from proceeding with any sale of WTBK (FM), FCC facility ID no. 39774. The defendants are hereby **PERMANENTLY ENJOINED** from attempting to sell or liquidate any of the assets and collateral upon which the Bank holds a perfected first lien as set forth within this Court's Amended Judgment entered November 20, 2019.

SO ORDERED THIS THE 8th DAY OF OCTOBER 2020.

/s/ Kent Hendrickson

HON. KENT HENDRICKSON, SPECIAL JUDGE
WHITLEY CIRCUIT COURT, DIVISION I

DISTRIBUTION TO:

Hon. R. Aaron Hostettler
Hamm, Milby & Ridings, PLLC
120 North Main Street
London, KY 40741

Choice Radio Corporation
c/o Jonathan L. Smith, Registered Agent
201-A East Main Street
Stanford, KY 40484

Choice Radio Corporation
c/o Jonathan L. Smith, Registered Agent
P. O. Box 390
Stanford, KY 40484

Jonathan L. Smith
201-A East Main Street
Stanford, KY 40484

Jonathan L. Smith
P. O. Box 390
Stanford, KY 40484

Hon. Larry Conley
714 S. Main Street
Corbin, KY 40701

Hon. John Aubrey
214 Town Branch Road
Manchester, KY 40962

Clerk's Initials & Date

Exhibit 3

Rule 34 Order

Attached hereto is a true and correct copy of the Order Granting Civil Rule 34 Access To Property, Equipment and Records On A Continuing Basis For Purposes Of Marketing And Sale entered March 16, 2020 by the Kentucky Court.

COMMONWEALTH OF KENTUCKY
34TH JUDICIAL CIRCUIT
WHITLEY CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 18-CI-00552



ELECTRONICALLY FILED

FIRST STATE BANK OF THE SOUTHEAST,

PLAINTIFF,

VS.

CHOICE RADIO CORPORATION,
JONATHAN L. SMITH,
KAREN MOSES-BOWLING,

DEFENDANTS.

**ORDER GRANTING CIVIL RULE 34 ACCESS TO PROPERTY, EQUIPMENT
AND RECORDS ON A CONTINUING BASES FOR
PURPOSES OF MARKETING AND SALE**

*** **

This matter is before the Court upon the Motion of plaintiff, First State Bank of the Southeast, ("the Bank") seeking an Order pursuant to Civil Rule 34 and in furtherance of this Court's Amended Judgment entered November 20, 2019 authorizing the Bank and its agents, officers, servants, staff, employees, attorneys, brokers, engineers, sales professionals, and any other agents continuing access to all properties owned or leased or held by Choice Radio Corporation including any and all studio locations and all transmitter locations and related equipment locations and including any properties owned by the defendants Jonathan L. Smith or Karen Moses-Bowling where Choice Radio Corporation assets may be located for the purpose of marketing and selling those assets pursuant to and consistent with this Court's Amended Judgment entered November 20, 2019. The Court has reviewed the Motion and has heard argument of counsel and being sufficiently advised **IT IS HEREBY ORDERED** that the Motion is **SUSTAINED**.


Upon entry of this Order, the Bank, its agents, servants, staff, employees, officers, attorneys, brokers, real estate professionals, retained sales persons, engineers, and any related professionals or agents of the Bank are granted continuing access to all Choice Radio Corporation properties whether owned or leased or held by Choice Radio Corporation and including any properties owned, leased, or held by the defendants Jonathan L. Smith and Karen Moses-Bowling where Choice Radio Corporation assets and equipment may be located. This includes access to all Choice Radio Corporation studios and transmitters wheresoever located in connection with WYWY AM in Barbourville, Kentucky, WKKQ FM in Barbourville, Kentucky, WTBK FM in Manchester, Kentucky, WWXL AM in Manchester, Kentucky, and all associated translators and transmitters including but not limited to translators numbers W283AI and W227CD.

IT IS FURTHER ORDERED that the Bank is granted continuing access to and the defendants shall grant the Bank continuing access to all records relating to Choice Radio Corporation including all financial records, bank statements, tax returns, contracts, FCC records, reports, franchise agreements, sale agreements, and any and all records of whatsoever nature pertaining to the operation of the Choice Radio Corporation stations described herein.

All owners, operators, contractors, employees, agents, servants, and any persons affiliated with or working at the various radio stations are **ORDERED** to cooperate with the Bank and its staff and attorneys and real estate professionals, and brokers, engineers, and other professional persons to provide the Bank with access to the premises at issue at any time so that the Bank may effectively market and sell the radio stations. The sheriffs of Clay County, Knox County, and Lincoln County, Kentucky are hereby ordered to assist the Bank with any such inspections. If any properties affiliated with Choice Radio Corporation or the defendants upon which Choice

Radio Corporation equipment and assets are located are found to be locked such that the Bank is denied access, the Bank is authorized to break the locks or remove other impediments to gain access to the premises and related equipment and records. The Sheriffs of the foregoing counties shall assist the Bank if called upon for assistance.

SO ORDERED THIS THE 12th DAY OF March 2020.


HON. KENT HENDRICKSON, SPECIAL JUDGE
WHITLEY CIRCUIT COURT, DIVISION I

DISTRIBUTION TO:

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Hamm, Milby & Ridings, PLLC ✓
120 North Main Street
London, KY 40741

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Hon. Larry Conley
714 S. Main Street ✓
Corbin, KY 40701

Hon. Kent Hendrickson
Special Judge, Laurel Circuit Court
P. O. Box 1530
Harlan, KY 40831-5530

(Via Regular Mail & Email: kenthendrickson@kycourts.net)

GWB / JP 3/16/20
Clerk's Initials & Date

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