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By Email (to audiofilings@fcc.gov)

Marlene H. Dortch, Secretary  
Federal Communications Commission  
45 L Street N.E.  
Washington, D.C. 20554

RE: Choice Radio Corporation  
Involuntary Transfer of Control (LMS File No. 0000135150)  
Assignment of Authorizations (LMS File No. 0000135218)

Dear Secretary Dortch:

First State Bank of the Southeast (“FSB”), by its counsel, submits this response to the letter filed April 14, 2022 (the “Letter”), by counsel on behalf of Strategic Impact Marketing Consulting Corporation (“Strategic”), Choice Radio Corporation (“Choice”), and Choice’s principal, Jonathan L. Smith (“Smith”), regarding the above-referenced applications for Commission consent to an involuntary transfer of control of Choice to authorize the local Kentucky court’s master commissioner appointed by the local Kentucky court to execute documents on behalf of Choice, in lieu of the recalcitrant debtor Choice’s principal, Smith (LMS File No. 0000135150, the “Involuntary Transfer of Control Application”), and to an assignment of the licenses for all of the broadcast stations licensed to Choice<sup>1</sup> to Roy Jaynes Broadcasting, LLC (“Jaynes”) by Choice (LMS File No. 0000135218, the “Assignment Application”), in which Choice and Smith withdraw

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<sup>1</sup> The radio broadcast stations licensed to Choice that are the subject of this proceeding are: WYWY(AM), WKKQ(FM), and FM translator W227CD, Barbourville, Kentucky (FCC Facility ID Nos. 3953, 3954, and 158017, respectively, and WWXL(AM) and WTBK(FM), Manchester, Kentucky (FCC Facility ID Nos. 72441 and 39774, respectively, and FM translator W283AI, Mount Vernon, Kentucky (FCC Facility ID No. 155775) (all of the foregoing, the “Stations”).

from a pleading styled as a “petition to deny”<sup>2</sup> they filed (along with Strategic) against the Involuntary Transfer of Control Application and Assignment Application (together, the “Jaynes Applications”).<sup>3</sup>

Despite now having no stated interest in the Jaynes Applications proceeding,<sup>4</sup> since Strategic has elected to still prosecute the Pleading and the allegations suggested therein, FSB is filing this response to correct several erroneous statements made in the Letter.

The Letter refers to the master commissioner for the local Kentucky court, Karen Davenport (“Davenport”), as “the Bank’s nominee”, see Letter at 1, suggesting she is an agent or representative of FSB when she is not, but rather Davenport is an agent and representative (or “marshal”) of the local Kentucky court, who was appointed by that court and authorize to execute documents on behalf of the judgment debtor, Choice, to effect a court-approved sale of Choice’s assets and/or stock when the Choice’s officer and principal, Smith, has been uncooperative with the proposed sale. Use of a neutral appointed by a court, to act as an agent of the court to facilitate a court-approved sale of the Stations’ assets and associated FCC licenses of a judgment debtor, are one of at least two ways that the Commission and its precedent have historically allowed for the

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<sup>2</sup> See LMS Pleading File Nos. 0000140310 (as originally filed without exhibits) and 0000140311 (as refiled with exhibits), both filed March 19, 2021 (the “Pleading”). While styled as a “Petition to Deny” (although lacking any citation to Section 73.3584 of the Commission’s rules, 47 C.F.R. § 73.3584, or to any other authority supporting filing as such), Choice, Smith, and Strategic concede, as they must, that their Pleading could only be considered as an informal objection with respect to the Involuntary Transfer of Control Application. See Letter at 1. However, the Pleading also fails as a petition to deny with respect to the Assignment Application, as it was not filed within the time period required to be treated as a petition to deny, as demonstrated in more detail in the Opposition timely-filed by FSB on March 19, 2021 (in LMS Pleading File No. 0000140472, the “Opposition”). See Opposition at ¶ 4 and n.8.

<sup>3</sup> FSB notes that in addition to Choice and Smith withdrawing from their Pleading, by the Letter, Choice and Strategic also requested dismissal of applications that they filed requesting Commission consent for an assignment of the FCC license for WTBK(FM), Manchester, Kentucky (Facility ID No. 39774, “WTBK”), first by Choice to Manchester Communications, Inc. (“MCI”), and then by MCI to Strategic (CDBS File Nos. BALH-20200903AAL and BALH-20200903AAN, respectively, the “MCI-Strategic Applications”), see Letter at 1, and both applications were dismissed on April 15, 2022. As explained in more detail in the Opposition, dismissal of these two applications is appropriate since the local Kentucky court has issued a permanent injunction barring that proposed transaction or its consummation, by a final order no longer subject to review or appeal. See Opposition at ¶ 5 and nn.9-10.

<sup>4</sup> The only stated interest that Strategic claimed to have in the Jaynes Applications proceeding was “its contract right to acquire WTBK”, see Pleading at 9, from MCI (if MCI had first acquired WTBK from MCI), but that interest is now moot since Strategic has terminated its contract with MCI, see Letter at 1, and the MCI-Strategic Applications have been dismissed.

sale of the assets, and assignment of the FCC licenses, of a judgment debtor broadcast licensee<sup>5</sup> such as Choice (the other common approach being the appointment of a receiver, the difference being that a receiver typically takes over complete control and operation of the broadcast station(s) even prior to the sale).

The Letter then observes that the Commission has never passed on whether FSB is “qualified to hold [Choice’s broadcast] license”, *id.* at 1-2, and later suggests a question is raised whether FSB “is qualified to assign a broadcast licensee [*sic*] ... or to hold a broadcast license in the first place.” *Id.* at 2. But that of course is not necessary, since FSB never has had nor will have ownership or control over Choice’s Stations or FCC licenses, or be nor is even proposed to be an FCC broadcast station licensee itself, but rather only Jaynes is proposed to be a Commission licensee, and the local court’s agent, Davenport, is proposed to have limited control over Choice (to execute documents on Choice’s behalf to facilitate the court approved sale of Choice’s stations).

It is the local Kentucky court that has approved the sale of Choice’s Stations (after the Stations were marketed by an independent third-party media broker), and related assignment of the FCC licenses for such Stations, and it is Davenport, as an agent appointed and authorized by that court to execute documents on behalf of Choice to affect the court-approved sale of the Stations, that is proposed to gain limited control of Choice for that purpose. Indeed, it is ironic that Strategic has complained that Commission consent to the transfer of control of Choice has not been sought in its Pleading filed against the Involuntary Transfer of Control Application which was filed to seek exactly that consent. Strategic also has complained that the purchase price in the proposed sale to Jaynes is somehow too low or inadequate, but it has been the lack of cooperation from Choice and Smith that has depressed the value of the assets, *see* Opposition at ¶ 13 (responding to the Pleading at 6); also, the court has approved of the sale terms (and any issue with the purchase price must be a state law matter, not a matter for Commission consideration),<sup>6</sup> and Strategic has no cognizable interest in the purchase price amount anyways.

Last, the case cited in the Letter, Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945) (“WOW”), does not make the broad prohibitions or support the point that the Letter offers it to make, and in particular, has nothing to do with a court ordering a party not to file (or to withdraw) a pleading with the Commission. In WOW, the original licensee of a broadcast station leased the

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<sup>5</sup> If the Commission’s precedent on use of a court-appointed agent or marshal to facilitate a court-approved sale has been changed or is not applied correctly in this case, FSB would return to the local court to seek the appointment of a receiver for Choice and its stations by the court (however, a receiver may find it would have to take the stations silent prior to the sale).

<sup>6</sup> Indeed, most of the matters raised in the Pleading are state law issues that must be, and already have been, decided by the local Kentucky court (i.e., to what collateral does FSB’s perfected and senior security interest attach, and is WTBK part of the collateral, and may either or both of the assets or stock of Choice and Smith be sold to satisfy the judgment, and whether the sale process and purchase price for the Stations was reasonable), rather than matters for the Commission to determine.

station to a third party for over a decade, and then sold the station and assigned the FCC license to the third party new licensee; a member of the original licensee (whose real business was life insurance, not broadcasting) then filed a successful lawsuit alleging fraud, with the Nebraska courts ultimately ordering the broadcast station and the FCC license (after Commission approval) be transferred back to the original licensee (however, the original licensee apparently did not want the station back). What the U.S. Supreme Court took issue with in the case was that the Nebraska state courts ordered the parties (in that case, the original licensee and the new licensee) “to do all things necessary” to transfer the station and assign the FCC license back to the original licensee where that original licensee may not have even wanted it back, id. (“it hampers the freedom of the [original licensee] not to continue in broadcasting and to restrict itself, as it properly may, to its insurance business”); the U.S. Supreme Court had also found such an order might somehow prevent the new licensee “from seeking a new [FCC] license of its own.” Id.

In WOW, neither the original licensee nor the new licensee, or even the member of the original licensee that filed the litigation, had filed or sought to file a pleading with the Commission, nor did the Nebraska state courts contemplate or issue any order to that effect; it simply was not an issue raised or addressed in the case, and therefore is inapposite to anything pending before the Commission in this Jaynes Applications proceeding. Furthermore, Strategic is neither the original nor a new (or even proposed) licensee of the Choice Stations, nor have any interest in either (and both Choice and Smith have withdrawn from the Pleading, and so are no longer before the Commission).

As much as Strategic has tried to make this matter complicated or sinister, it really is a fairly simple case of a senior secured creditor going through the processes long established by Commission precedent to cause the sale of radio broadcast stations so that the collection towards a final judgment may be gained from the sale of the assets, and the proceeds from the sale and assignment of the FCC licenses, of the Stations. As is often unfortunately typical, the recalcitrant debtors (Choice and Smith) and now their apparent proxy (Strategic) are doing all they can before the local Kentucky court and before the Commission to forestall the sale; the Commission should end this abuse of its processes by moving promptly toward a decision on the Jaynes Applications and related pleadings (where the Pleading, at best, is an informal objection from a non-interested party).

If the Commission has any questions regarding this response, or would like to request any other additional information from FSB, please contact undersigned counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey L. Timmons". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jeffrey L. Timmons

cc (email only): Christopher Clark, Esq.  
Annette Smith, Esq.  
Dwayne Jackson, Esq.  
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