

BakerHostetler

April 1, 2021

VIA LMS

Marlene Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

**Re: Amended Petition to Deny, or in the Alternative, Informal Objection
(Pleading File No. 0000142196)**

Ms. Dortch:

Ronda McMichael, by her undersigned counsel, hereby files this amendment to her Petition to Deny, or in the Alternative, Informal Objection, filed March 31, 2021 (Pleading File No. 0000142196), with respect to the license renewal application (LMS File No. 0000129035) for Class A Television station, WEAC-CD, Jacksonville, Alabama (Facility ID No. 64338), licensed to Alabama Heritage Communications LLC (“AHC”).

The purpose of this amendment is to correct the date on which Jarrod McMichael transferred his membership interests in AHC to Ronda McMichael from “January 2019” to “January 2020.” This correction is being made in petition on pages 2 and 6 as well as in Paragraph 9 of the supporting Declaration of Ronda McMichael. No other changes to the petition are being made herein.

Should you have any questions regarding this transmittal, please contact the undersigned.

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Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D. Sashkin', enclosed in a light blue rectangular border.

Davina Sashkin
Keenan Adamchak

Counsel for Ronda McMichael

Enclosures

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

In the Matter of the Application of)	
)	
ALABAMA HERITAGE COMMUNICATIONS, LLC,)	Facility ID No. 64338
)	
For the Renewal of License of Class A Television Station,)	LMS File No. 0000129035
WEAC-CD, Jacksonville, Alabama)	

To: Secretary, Federal Communications Commission
Attn: Chief, Video Division, Media Bureau, Federal Communications Commission

**AMENDED PETITION TO DENY, OR
IN THE ALTERNATIVE, INFORMAL OBJECTION**

Ronda McMichael, by her attorneys, and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended (the “Act”), and Section 73.3584 of the Commission’s rules,¹ hereby files this amended petition to deny (“Petition”)² the above-captioned license renewal application (“Renewal Application”) of Class A Television station WEAC-CD, Jacksonville, Alabama (Facility ID No. 64338) (“WEAC-CD”), filed by its licensee, Alabama Heritage Communications LLC (“AHC”). As further stated herein, the Commission must dismiss or deny WEAC-CD’s Renewal Application, or impose some alternative sanction, for AHC’s successive unauthorized transfers of control following the death of its member, Forney McMichael, in February 2017.

¹ 47 U.S.C. § 309(d)(1); 47 C.F.R. § 73.3584.

² The Commission’s rules require that a petition to deny a license renewal application be filed by the end of the first day of the last full calendar month of the expiring license term. 47 C.F.R. §§ 73.3516(e) & 73.3584(a). WEAC-CD’s license is set to expire on April 1, 2021. *See* CDBS File No. BRTTA-20121127AAH, Authorization. Accordingly, should the Commission find that this Petition is untimely, Ronda McMichael respectfully requests that the Commission accept it as an Informal Objection to WEAC-CD’s Renewal Application. *See* 47 C.F.R. § 73.3587. *See, e.g., Richard S. Yoon*, Letter Order, 23 FCC Rcd. 7113 (MB 2008) (finding a petition to deny filed after deadline to be an informal objection under Section 73.3587).

BACKGROUND

A. AHC's Ownership

Forney McMichael, Ronda McMichael's late husband, died on February 24, 2017.³ Before his death, Forney McMichael held a 48.8% membership interest in AHC – making him the largest member in the company.⁴ Following his death, Forney McMichael's interests in AHC passed to his son, Jarrod McMichael.⁵ AHC, however, failed to: (1) notify the Commission of Forney McMichael's death; (2) file an involuntary transfer of control application requesting the Commission's consent to the transfer of Forney McMichael's membership interests in AHC to his estate; and (3) file a subsequent transfer of control application requesting the Commission's consent to the transfer of Forney McMichael's former membership interests to Jarrod McMichael from Forney McMichael's estate.⁶ AHC also erroneously reported in its 2018 and 2020 Biennial Ownership Reports that Forney McMichael continued to hold his membership interests in AHC following his death in February 2017.⁷

In January 2020, Jarrod McMichael gifted his membership interests in AHC to his mother, Ronda McMichael.⁸ Again, AHC failed to seek Commission consent to this ownership change by filing a transfer of control application.⁹ Nevertheless, following Jarrod McMichael's

³ Declaration of Ronda McMichael ¶ 4 ("McMichael Declaration"), attached hereto. *See also* Forney Ladell McMichael Obituary, *The Anniston Star* (Feb. 28, 2017), available at <https://www.legacy.com/obituaries/annistonstar/obituary.aspx?n=forney-ladell-mcmichael&pid=184268483&fhid=8337>.

⁴ McMichael Declaration ¶ 5. *See also* CDBS File No. BOA-20151202CAM.

⁵ McMichael Declaration ¶¶ 6-7.

⁶ *Id.* ¶ 8. *See also* 47 C.F.R. §§ 73.3540 & 73.3541(a)-(b).

⁷ McMichael Declaration ¶ 8. *See also* FCC LMS File Nos. 0000048128 & 0000104466.

⁸ McMichael Declaration ¶ 9.

⁹ *Id.* ¶ 10. *See also* 47 C.F.R. § 73.3540.

membership gift, AHC's members acknowledged Ronda McMichael as a fellow owner of the company and involved her in WEAC-CD's operations.¹⁰ AHC even listed Ronda McMichael as a member on WEAC-CD's license to cover application ("License to Cover Application") filed on April 30, 2020 – noting that she had a 48.8% (voting/equity) membership interest in the company.¹¹

Due to increasing differences over WEAC-CD's operations, however, AHC's members subsequently excluded Ronda McMichael from involvement in the business – effectively stripping Ms. McMichael of her ownership interests.¹² Again, AHC failed to seek Commission consent to this ownership change.¹³

B. WEAC-CD's Renewal Application

AHC filed WEAC-CD's Renewal Application on December 1, 2020.¹⁴ AHC made no mention in the application of the unauthorized transfers of control of Forney McMichael's membership interests to his estate, then to Jarrod McMichael, and then to Ronda McMichael.¹⁵ Nor did AHC disclose in the application Ronda McMichael's effective ouster from her role in the company.¹⁶ WEAC-CD's Renewal Application remains pending as of the filing of this instant Petition.

¹⁰ McMichael Declaration ¶ 10.

¹¹ *Id.* See also LMS File No. 0000112954.

¹² McMichael Declaration ¶ 11.

¹³ *Id.* Ronda McMichael disputes the actions of the other members of AHC to nullify her membership interests and is seeking advice of local counsel regarding remedial action. *Id.* ¶ 11. If it is in fact AHC's position that Ms. McMichael is no longer a member of the company, however, then AHC has experienced another unauthorized transfer of control. See *infra* pp. 6-7.

¹⁴ McMichael Declaration ¶ 12. See also LMS File No. 0000129035.

¹⁵ McMichael Declaration ¶ 12. See also LMS File No. 0000129035.

¹⁶ McMichael Declaration ¶ 12. See also LMS File No. 0000129035.

DISCUSSION

Section 309(a) of the Act provides that, when considering renewal of a broadcast license, the Commission shall determine “whether the public interest, convenience, and necessity will be served” by granting the application.¹⁷ Furthermore, Section 309(k) provides that the Commission may grant a license renewal application only if, upon consideration of the application and pleadings, it finds that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission’s rules; and (3) no violations by the licensee of the Act or the Commission’s rules which, taken together, constitute a pattern of abuse.¹⁸ Here, AHC did not satisfy this criteria since it violated the Act and the Commission’s rules by failing to obtain Commission approval for successive ownership changes following Forney McMichael’s death in February 2017, and by failing to accurately disclose its ownership structure in its 2018 and 2020 Biennial Ownership Reports.

A. **AHC Failed to Obtain FCC Consent to the Transfers of Forney McMichael’s Membership Interests**

AHC’s failure to obtain Commission approval for the transfer of Forney McMichael’s membership interests in AHC first to his estate, then to Jarrod McMichael, then to Ronda McMichael, and ultimately to AHC’s members following Ronda McMichael’s effective ouster, constitute a series of unauthorized transfer of controls by AHC. Altogether, AHC has undergone at least four (4) unauthorized transfers of control since February 2017:

¹⁷ 47 U.S.C. § 309(a).

¹⁸ *Id.* at § 309(k)(1). *See also John Garziglia, Esq., et al.*, Letter Order, 20 FCC Rcd. 12105, 12110-11 (MB 2005).

1. *Transfer of Forney McMichael’s Membership Interests to his Estate.* Section 73.3541(a) of the Commission’s rules requires that the Commission “be notified in writing promptly of the death or legal disability of . . . a member of a partnership, or a person directly or indirectly in control of a corporation which is a permittee or licensee.”¹⁹ AHC never notified the Commission of Forney McMichael’s passing in February 2017.²⁰

Furthermore, Section 73.3541(b) requires that “[w]ithin 30 days after the occurrence of such death or legal disability, an application on FCC Form 316 shall be filed requesting consent to . . . involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved.”²¹ AHC failed to file the requisite Form 316 with the Commission seeking its consent to the involuntary transfer of Forney McMichael’s membership interests in AHC to his estate following his death.²²

2. *Transfer of Forney McMichael’s Membership Interests from His Estate to Jarrod McMichael.* Section 73.3540(a) requires that “[p]rior consent of the FCC must be obtained for a voluntary . . . transfer of control.”²³ AHC never filed a transfer of control application seeking the Commission’s consent to the transfer of Forney McMichael’s membership interests to Jarrod McMichael from Forney McMichael’s estate.²⁴

¹⁹ 47 C.F.R. § 73.3541(a).

²⁰ McMichael Declaration ¶ 8.

²¹ 47 C.F.R. § 73.3541(b).

²² McMichael Declaration ¶ 8.

²³ 47 C.F.R. § 73.3540(a)-(b).

²⁴ McMichael Declaration ¶ 8.

3. *Transfer of Jarrod McMichael’s Membership Interests to Ronda McMichael.*

Next, AHC failed to obtain FCC approval for the transfer of Jarrod McMichael’s membership interests to Ronda McMichael— thereby violating the Commission’s rules by not seeking its prior consent to the transfer.²⁵ Indeed, Ronda McMichael was listed on WEAC-CD’s 2020 License to Cover Application as a member of AHC with a 48.8% (voting/equity) membership stake in the company – larger than any other single membership share in AHC.²⁶ Doing so showed that the other AHC members, at least at that time, had ratified her receipt of Jarrod’s ownership interests.

4. *Exclusion of Ronda McMichael from Management of AHC.* In determining whether an unauthorized transfer of control has occurred, the Commission “employs a tripartite, fact-based test for control within the meaning of Section 310(d) of the Act.”²⁷ Specifically, the Commission examines whether the entity or individual in question “has the right to determine the station’s basic operating policies,” including in the areas of “programming, personnel and finances.”²⁸ Ronda McMichael became involved in decision-making concerning AHC and WEAC-CD following the transfer of Jarrod McMichael’s membership interests to her in January 2020.²⁹ Ronda McMichael remained involved in decision-making until she was effectively

²⁵ *Id.* ¶ 10. *See also* 47 C.F.R. § 73.3540.

²⁶ McMichael Declaration ¶ 10. *See also* LMS File No. 0000112954.

²⁷ *Aaron P. Shainis, Esq.*, Letter Order, 28 FCC Rcd. 126, 132 (MB 2013) (citing first *WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd. 8140, 8142-46 (2005); and then citing *Choctaw Broadcasting Corporation*, Memorandum Opinion and Order, 12 FCC Rcd. 8534, 8538-39 (1997)). *See also* 47 U.S.C. § 310(d).

²⁸ *WJZD, Inc.*, Letter Order, 20 FCC Rcd. 9941, 9943 (MB 2005) (citing *Secret Communications II, LLC*, Memorandum Opinion and Order, 18 FCC Rcd. 9139, 9145 (2003)).

²⁹ McMichael Declaration ¶ 9.

pushed out of her role by the other AHC members in the Fall of 2020 – an ownership change for which AHC has again failed to seek FCC approval.³⁰

B. The Unauthorized Transfers of Control Call into Question AHC’s Character and Fitness to be a Broadcast Licensee

AHC’s failure to seek FCC approval for the four transfers of control call into question AHC’s character and fitness to serve as WEAC-CD’s licensee. A licensee’s character “is among those factors that the Commission considers in its review of applications to determine whether the [licensee] has the requisite qualifications to be a Commission licensee.”³¹ This includes the consideration of “the extent of a licensee’s candor with the Commission and compliance with its rules”³² “Egregious misconduct,” including “*unauthorized transfers of control; numerous misrepresentations; . . . and failure to file required forms and information* which would tend to disclose the ownership or control of such persons in the licensee entity . . . could constitute a basis for serious sanctions such as revocation of licenses” and monetary forfeitures.³³

³⁰ *Id.* ¶ 11.

³¹ *Pendleton C. Waugh, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, 22 FCC Rcd. 13363, 13381, ¶ 51 (2007) (citing *Policy Regarding Character Qualifications in Broadcast Licensing, et al.*, Policy Statement and Order, 5 FCC Rcd. 3252, 3252 (1990), *recon. denied on other grounds*, 6 FCC Rcd. 3448 (1991), *modified on other grounds*, 7 FCC Rcd. 6564 (1992)).

³² *Id.* at 13381, ¶ 52.

³³ *Id.* (emphasis added) (citing first *Ronald Brasher et al.*, Decision, 19 FCC Rcd. 18462 (2004) (affirming Administrative Law Judge’s Initial Decision revoking, denying, or dismissing licensees’ private land mobile radio licenses and applications based on the licensees’ misrepresentations and lack of candor, unauthorized transfers of control, and abuse of process); then citing *Marc Sobel*, Decision, 17 FCC Rcd. 1872 (EB 2002) (revoking certain licenses based on unauthorized *de facto* transfer of control); and then citing *Terry Keith Hammond*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 21 FCC Rcd. 10267 (EB 2006) (ordering licensee to show cause why license should not be revoked for misrepresentations, and lack of candor violations, and designating renewal application for hearing) (other citations omitted)); *Silver Star Communications-Albany, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd. 6905, 6907, ¶¶ 21 & 22 (1992) (ordering forfeiture in lieu of license revocation for unauthorized transfer of control without intent to deceive FCC).

Here, AHC failed to file at least four transfer of control applications with the Commission since the death of Forney McMichael in February 2017. These unauthorized transfers of control reflect upon AHC's character qualifications as a broadcast license given the repetitive nature of its non-compliance with the Act and the Commission's rules.³⁴ AHC's failure to file these applications may even constitute a deliberate effort to conceal from the Commission its true ownership structure.³⁵ At the very least, AHC's continued reporting in the 2018 and 2020 Ownership Reports of Forney McMichael's ownership interests in AHC following his death constitute false certifications which should subject AHC to forfeiture penalties.³⁶

Accordingly, should the Commission determine that revocation of WEAC-CD's license is not warranted for AHC's unauthorized transfers of control, the Commission should impose the appropriate forfeiture penalties on AHC for: (1) its failure to file the requisite transfer applications; and (2) falsely certifying to the accuracy of its ownership information provided to the Commission through its 2018 and 2020 Biennial Ownership Reports.

³⁴ See *supra* note 34.

³⁵ Section 1.17 of the Commission's rules prohibit misrepresentations and a lack of candor in Commission filings. 47 C.F.R. § 1.17. Misrepresentation is "a false statement of fact made with intent to deceive." *Fox River Broadcasting, Inc.*, Order, 93 F.C.C.2d 127, 129 (1983). "Lack of candor is concealment, evasion, or failure to be fully informative, accompanied by intent to deceive." *Pendleton C. Waugh*, 22 FCC Rcd. at 13376-77, ¶ 35 (citing *Fox River Broadcasting, Inc.*, 93 F.C.C.2d at 129, ¶ 6). The FCC may disqualify an applicant "who deliberately makes misrepresentations or lacks candor in dealing with the agency." *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 196 (D.C. Cir. 2000).

³⁶ See LMS File Nos. 0000104466 & 0000048128. See also 47 C.F.R. § 1.17(a)(2) (false certifications to FCC prohibited).

CONCLUSION

For the foregoing reasons, the Commission should grant this Petition, and either dismiss or deny WEAC-CD's Renewal Application or impose forfeiture penalties for AHC's unauthorized transfers of control and false certifications concerning its ownership structure.

Respectfully submitted,



By:

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Counsel for Ronda McMichael

Date: April 1, 2021

ATTACHMENT

Amended Declaration of Ronda McMichael

AMENDED DECLARATION OF RONDA MCMICHAEL

I, **Ronda McMichael**, hereby declare that:

1. I am a member of Alabama Heritage Communications LLC (“AHC”). I make this declaration (“Declaration”) voluntarily and in support of my Petition to Deny (“Petition”) the license renewal application (LMS File No. 0000129035) of Class A Television station, WEAC-CD, Jacksonville, Alabama (Facility ID No. 64338) (“WEAC-CD”), filed by AHC, its licensee. All information in this Declaration is being provided to best of my knowledge, information, and belief.
2. It is not my intent to harm AHC or the television station. However, I feel it is also my obligation to make the FCC aware that the parties controlling this station license are not complying with their obligations as Commission licensees.
3. Until I retained separate communications counsel in March 2021, I was unaware that AHC was obligated to obtain consent of the FCC for the multiple transfers of control that have occurred. Had I learned this when I became involved with AHC, I would have promptly sought to make all such filings as might have been necessary to correct the matter.
4. Forney McMichael, my deceased husband, died on February 24, 2017.
5. Prior to his death, Forney had the largest membership interest in AHC at 48.8% (voting/equity).
6. Forney indicated in his will that his membership interests in AHC should pass to our son, Jarrod McMichael.
7. Jarrod then acquired Forney’s former membership interests in AHC.
8. Following Forney’s death in February 2017, AHC failed to: (1) notify the Federal Communications Commission (“FCC” or the “Commission”) of Forney’s death; (2) file an involuntary transfer of control application with the FCC requesting the Commission’s consent to the transfer Forney’s membership interests in AHC to his estate; and (3) file the subsequent transfer of control application with the FCC requesting the Commission’s consent to the transfer of Forney’s former membership interests to Jarrod from Forney’s estate. Unbeknownst to me until this month, AHC also filed its 2018 and 2020 Biennial Ownership Reports in which it certified that Forney held membership interests in AHC, despite having passed in February 2017.
9. In or about January 2020, Jarrod conveyed to me his membership interests in AHC.
10. AHC failed to seek FCC approval of Jarrod’s transfer of his AHC membership interests to me by filing a transfer of control application. Nevertheless, following this transfer, AHC’s members acknowledged that I was a fellow member in the company and involved

me in WEAC-CD's operational decisions. AHC even listed me as a member on WEAC-CD's license to cover application filed with the FCC on April 30, 2020 (LMS File No. 0000112954).

11. Due to increasing differences between me and the AHC members over AHC's operations, the AHC members subsequently began to exclude me during the past year from involvement in AHC's business operations – effectively pushing me out by the Fall of 2020. The AHC members did so even though Jarrod conveyed to me a 48.8% ownership interest in the company, the largest single membership holding out of any of the members. The FCC has not been informed to date of my effective removal from AHC. I dispute the actions of the other members of AHC to nullify my membership interests. Accordingly, I am seeking advice of local counsel regarding remedial action.
12. AHC filed WEAC-CD's Renewal Application on December 1, 2020. AHC made no mention in the application of its failure to obtain FCC consent to the transfer of Forney's membership interests to his estate, to Jarrod, and ultimately to myself. Nor did AHC disclose in the application that the AHC members had effectively ousted me from my role in the company.
13. I have read the accompanying "Petition," and to the best of my knowledge and belief, the factual statements in it are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.


Ronda McMichael

Executed on April 1, 2021

CERTIFICATE OF SERVICE

I, Keenan P. Adamchak, of Baker & Hostetler LLP, hereby certify that I caused a true copy of the foregoing Amended Petition to be sent this 1st day of April, 2021, via U.S. First Class Mail and/or via email, where indicated, to the following individuals.

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* Via First Class U.S. Mail and Email

** Via Email



Keenan P. Adamchak