



**Federal Communications Commission
Washington, D.C. 20554**

August 22, 2005

DA 05-2308
In Reply Refer to:
1800B3-BSH

Kidd Communications
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RE: KTHO(AM), South Lake Tahoe, CA
Facility ID No. 51528
File No. BAL-20040210AAM

Petition for Reconsideration

Dear Mr. Gillenwater, Mr. Coombs and Counsel:

This letter refers to the January 11, 2005, Petition for Reconsideration filed by Chris Kidd d/b/a Kidd Communications ("Kidd"). Kidd requests reconsideration of the December 10, 2004, staff decision ("Staff Decision") denying Kidd's April 1, 2004, Petition to Deny and granting the above-captioned application to assign the license ("Live Wire Assignment Application") of station KTHO(AM), South Lake Tahoe, California, from Paradise Broadcasting, Inc. ("PBI") to Live Wire Media Partners, LLC ("Live Wire").¹ For the reasons stated below, we deny the Petition for Reconsideration.

BACKGROUND

Kidd's Petition to Deny the Live Wire Assignment Application reiterated arguments made by Kidd against the previous involuntary assignment of the KTHO(AM) license from Kidd to Alan Slater, Chief Executive Officer/Clerk of the Superior Court of the State of California ("Trustee")² and the

¹ The Staff Decision also denied a second Petition to Deny the Live Wire Assignment Application, filed by John M. Naugher and his corporation, Live Wire Media, Inc. (collectively, "Naugher") on April 2, 2004. Naugher has filed no further pleadings.

² File No. BAL-20010724AAW.

subsequent assignment of the KTHO(AM) license from the Trustee to PBI.³ Kidd asserted that the two previous assignment applications were filed to effectuate a reversionary interest in the station's license in violation of Section 73.1150 of the Commission's rules.⁴ On November 16, 2001, Kidd had filed an Application for Review of an October 17, 2001, staff decision that (1) affirmed the August 1, 2001, grant of the previous involuntary assignment of the KTHO(AM) license to the Trustee, and (2) granted the assignment from the Trustee to PBI.⁵ Kidd's Petition to Deny argued that grant of the assignment to Live Wire should be denied, or alternatively, that grant should be conditioned on Commission action on its then-pending Application for Review.

On July 16, 2004, the Commission denied Kidd's Application for Review, thus affirming the staff's grant of the involuntary assignment to the Trustee and its subsequent grant of the assignment from the Trustee to PBI.⁶ Kidd filed an appeal of the Commission decision with the United States Court of Appeals, District of Columbia Circuit,⁷ and the case is currently pending before the court. The Staff Decision declined to defer action on the Live Wire Assignment Application and dismissed Kidd's Petition to Deny.

On reconsideration, citing three decisions, Kidd argues that it is "Commission policy to attach an appropriate condition upon an assignment grant to reflect that such grant is without prejudice to whatever further action, if any, is appropriate upon a final ruling in such court proceeding."⁸ Kidd asserts that "[t]he inclusion of such a condition places the parties on direct notice that although they are *permitted* to consummate the transaction, they do so at their own risk."⁹

DISCUSSION

The Staff Decision addressed Kidd's concern. After stating that, in the absence of a stay or injunction issued by a court, "the Commission has routinely acted favorably on license assignment applications pending resolution of private disputes such as those at issue here," it added:

We note, however, that Commission grant of an assignment application merely finds that the parties are qualified under, and the proposed transaction does not violate, the Communications Act of 1934, as amended, and the Commission's

³ File No. BAL- 20010808AAR.

⁴ 47 C.F.R. § 73.1150.

⁵ *Letter to Dan J. Alpert, Esq. and Erwin G. Krasnow, Esq.*, Ref. No. 1800B3-BSH (MMB, Oct. 17, 2001).

⁶ *Kidd Communications and Alan Slater, Trustee, Chief Executive Officer/Clerk of the Superior Court of the State of California*, 19 FCC Rcd 13584 (2004).

⁷ *Kidd Communications v. FCC*, No. 04-1274 (D.C. Cir. Aug. 16, 2004).

⁸ Petition for Reconsideration at 2 (citing *Chief Washakie TV*, 46 R.R.2d 1594, 1598 n.7 (1980); *Decatur Telecasting, Inc.*, 7 FCC Rcd 8622, ¶ 12 (MMB 1992); and *Northwest Broadcasting, Inc.*, 12 FCC Rcd 3289 ¶¶ 14-15 (1997)).

⁹ *Id.* (emphasis in original).

rules and policies. As such, it is permissive only and does not prejudice any relief that the parties may ultimately be entitled to under civil suit.¹⁰

Kidd has cited decisions, the most recent of which was issued in 1997, which demonstrate that the Commission has occasionally added an explicit condition that grant of an assignment application did not prejudice any relief to which a petitioner was entitled from ongoing civil litigation.¹¹ Contrary to Kidd's assertion, however, those decisions do not reflect routine or recent Commission practice. Where the issue arises, the Commission typically does not add a separate condition, but rather includes language such as that which the staff employed here in the text of a decision letter granting an assignment application which relates to ongoing civil litigation. We find that inclusion of the information in this manner provides sufficient notice to the parties, is consistent with past practice,¹² and that a separate condition repeating this information provides no additional benefit.

For the reasons stated above, we find Kidd's argument to be without merit. Accordingly, the June 11, 2003, Petition for Reconsideration filed by Chris Kidd d/b/a Kidd Communications IS DENIED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

¹⁰ Staff Decision at 4.

¹¹ See *supra* note 8 and accompanying text.

¹² See, e.g., *Letter to John S. Neely, Esq., Christopher D. Imlay, Esq., and Lawrence Roberts, Esq.*, Ref. No. 1800B3-BSH (MB, Mar. 11, 2005); *Letter to J. Richard Carr, Esq., Richard J. Hayes, Jr., Esq., and Dennis J. Kelly, Esq.*, Ref. No. 1800B3-BSH (MB, Oct. 29, 2004).