



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
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In Re: WWRR(FM), Scranton, PA
Fac ID 36508
WYCK(AM), Plains, PA
Fac ID 36836
WICK(AM), Scranton, PA
Fac ID 36489

Application File Nos. BAL/BALH-
20050707AAU/AAP/AAT

Dear Counsel:

This letter concerns the captioned applications of Lane Broadcasting Corporation (“LBC”), licensee of WWRR(FM), Scranton, Pennsylvania, LB Radio Corporation (“LB”), licensee of WYCK(AM), Plains, Pennsylvania, and Lancom, Inc. (“Lancom”), licensee of WICK(AM), Scranton, Pennsylvania (collectively, the “Seller”) for consent to the assignment of these station licenses to Bold Gold Media Group (“BGMG”). For the reasons set forth below, we grant the applications.

Background

Douglas V. Lane (“Lane”) is the 100 percent shareholder of LB, and the 80 percent shareholder of Lancom and LBC. In March 2005 Lane was convicted in local Lackawanna County, Pennsylvania, court of several felony counts involving child molestation and child pornography. Lane was sentenced to a prison term in October 2005 and is currently incarcerated. He is appealing his convictions and sentence.

Prior to the execution of an asset purchase agreement, Holt Media Group, Inc. prepared an independent appraisal of the fair market value of WWRR(FM), WYCK(AM), and WICK(AM) (collectively, the “Stations”). Under the terms of the asset purchase agreement, BGMG would pay Seller \$1.925 million, less the total amount of any pre-closing loans made by BGMG to Seller for the operation of the Stations. The sale proceeds would be used to pay all taxes due and to satisfy all liabilities relating to the Stations’ assets. The proceeds also would be used to pay all valid and reasonably documented claims of Seller creditors and to fund a \$100,000 Post-Closing Escrow for potential Seller liabilities relating to the Stations. A non-refundable \$300,000 payment would be made to the Lackawanna County General Fund (“LCGF”) at closing. No payment would be made – directly or indirectly – to any Seller shareholder. Any remaining proceeds would be placed in a Post-Closing Trust. If any felony conviction of Lane is sustained in a final determination, all funds remaining in the Post-Closing Trust will be distributed to the LCGF.

A separate agreement, dated October 7, 2005, between Lane and the District Attorney for Lackawanna County (the “District Attorney”), who was the prosecuting attorney at the Lane trial, sets forth the distribution plan for funds paid into the LCGF. The non-refundable \$300,000 payment would be disbursed to victims of Lane and to Lackawanna County non-profit agencies which assist abused children. The residual distribution from the Post-Closing Trust to the LCGF would be dispersed in a manner directed by the District Attorney.

Discussion

The *Jefferson Radio* policy precludes consideration of license assignment applications where a character issue has been resolved against the seller or is pending.¹ This is because, as the Commission explained in one case, “there is no authorization to assign” if the seller ultimately is found unqualified.² The policy’s underlying purpose is to prevent licensees from evading responsibility for wrongdoing.³ The policy serves as a deterrent because of the potential for “awesome loss” that would result from revocation or non-renewal of license.⁴ This deterrent effect would be undermined if a licensee could “sell out from under a potential disqualification.”⁵

Under the Commission’s *Character Qualifications Policy Statement*,⁶ a licensee’s character may be put in issue with non-FCC misconduct. In the *1986 Character Policy Statement* the Commission stated that “there may be circumstances in which an applicant has engaged in nonbroadcast misconduct so

¹ See *Jefferson Radio Corp. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

² *Catherine C. Murphy*, 42 FCC 2d 364, at ¶ 5 (1973).

³ See, e.g., *Harry O’Connor*, 2 FCC 2d at ¶ 8 (1965) (“The purpose underlying this policy is obvious: A licensee cannot act inconsistently with the Communications Act or the Commission’s rules and policies, and then, when a question is raised concerning such improper activity, transfer or assign the license to another; if he could, the only result of the wrongdoing would be a forced sale.”).

⁴ See *Stereo Broadcasters, Inc. v. FCC*, 652 F.2d 1026, 1030 (D.C. Cir. 1981).

⁵ See *Cellular System One of Tulsa, Inc.*, 102 FCC 2d 86, at ¶ 7 (1985) (“To permit a licensee to sell out from under a potential disqualification would significantly impair the Commission’s ability to police and deter licensee misconduct.”), citing *Pass Word, Inc.*, 76 FCC 2d 465, 516 (1980), *modified*, 86 FCC 2d 437 (1981), *aff’d sub nom.*, *Pass Word, Inc. v. FCC*, 673 F.2d 1363 (D.C. Cir. 1982).

⁶ 102 FCC 2d 1179, *recon. granted in part*, 1 FCC Rcd 421 (1986) (“*1986 Character Policy Statement*”), *modified*, 5 FCC Rcd 3252 (1990) (“*1990 Character Policy Statement*”), *on reconsideration*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

egregious as to shock the conscience and evoke almost universal disapprobation Such misconduct might, of its own nature, constitute *prima facie* evidence that the applicant lacks the traits of reliability and/or truthfulness necessary to be a licensee”⁷ The *1990 Character Policy Statement* substantially expanded the scope of relevant non-FCC misconduct. In that Statement, the Commission concluded that a licensee’s propensity to comply with the law generally is relevant to the Commission’s public interest analysis and that evidence of any felony conviction, not just those that involve fraud or untruthfulness, is pertinent to its evaluation of a licensee’s character.⁸ More recently, the Commission concluded that a conviction involving repeated sexual abuse of children constitutes an independent basis for disqualification.⁹ For the same reasons, we conclude that Lane’s convictions raise a substantial and material question of fact as to whether he possesses the requisite qualifications to remain a Commission licensee.

In rare circumstances, the Commission has exempted sellers from application of the *Jefferson Radio* policy based on compelling public interest considerations. We conclude that the extraordinary terms for the sale of the Stations permit the grant of these applications, consistent with prior precedent. Most importantly, no shareholder will receive any direct benefit from the sale of the Stations. The District Attorney’s continued oversight of the distribution of sale proceeds will ensure strict compliance with this requirement. The denial of proceeds to shareholders imposes an economic result similar to the “awesome loss” which results from revocation. Thus, grant of the applications will not lessen the *Jefferson Radio* policy’s broad deterrent effect on wrongdoing. This contract term is substantially harsher than that approved in *Harry O’Connor*, a case involving an alleged unauthorized transfer of control and misrepresentation to the Commission.¹⁰ In *O’Connor*, the Commission concluded that grant of the assignment application was warranted because the seller would receive substantially less than he paid for his interest in the licensee entity.¹¹

Other public interest factors which the Commission has relied on previously also are present here. Grant of the applications will result in Lane’s full withdrawal from broadcasting¹² and will ensure the Stations’ continuous service to listeners in the Scranton area.¹³ The Commission also has long recognized the protection of creditors and lien holders as a public interest benefit.¹⁴ The claims of these innocent parties, including the United States, will be fully satisfied out of sale proceeds. We emphasize, however, that this factor is not a primary basis for our action.

Finally, we find compelling the fact that a significant portion of the sale proceeds will be distributed directly to victims of Lane and to programs which provide services to abused children. This

⁷ *1986 Character Policy Statement* at 1205 n.60.

⁸ *1990 Character Policy Statement*, 5 FCC Rcd at 3252.

⁹ *Contemporary Media, Inc.*, 13 FCC Rcd 14437, 14446 (1998)

¹⁰ *Harry O’Connor*, 2 FCC 2d 45 (1965).

¹¹ *Id.* at ¶ 10.

¹² See *Radio San Juan, Inc.*, 45 FCC 2d 375, 376 (1974); see also, *Northwestern Indiana Broadcasting Corp.*, 65 FCC 2d 66, 70 (1977).

¹³ *Harry O’Connor*, 2 FCC 2d at ¶ 10; see also, *Spanish Int’l Comm’ns Corp.*, 2 FCC Rcd 3336, 3339 (1987), *rev’d sub nom. Coalition for the Preservation of Spanish Broad. V. FCC*, 893 F.2d 1349, 1362 (D.C. Cir 1990), *vacated and aff’d*, 931 F.2d 73 (D.C. Cir) (en banc), *cert. denied*, 502 U.S. 907 (1991).

¹⁴ See *LaRose v. FCC*, 494 F.2d 1145, 1146 n.2, 1148 (D.C. Cir 1974), *Dale J. Parsons, Jr.*, 10 FCC Rcd 2718, 2720 (1995), and *Shell Broadcasting, Inc.*, 38 FCC 2d 929, 931 (1973).

creative approach, which the District Attorney and officials at the local and federal levels strongly support, promises significant relief to Lane's victims and benefits to the residents of Lackawanna County. We conclude that it is appropriate to exercise our discretion not to pursue further the issue of Mr. Lane's qualifications and to approve the subject assignment applications.

ACCORDINGLY, IT IS ORDERED, That the applications (File Nos. BALH-20050707AAU, BAL-20050707AAP, and BAL-20050707AAT) to assign the licenses of stations WWRR(FM), Scranton, Pennsylvania, WYCK(AM), Plains, Pennsylvania, and WICL(AM), Scranton, Pennsylvania from Lane Broadcasting Corporation, LB Radio Corporation, and Lancom, Inc., respectively, to Bold Gold Media Group ARE GRANTED subject to the conditions that (1) Douglas V. Lane shall not in the future acquire an attributable interest in any Commission licensee or permittee without advance notice and a full showing of his qualifications to the Commission; (2) should Douglas V. Lane hold or acquire an attributable interest in any applicant for a Commission authorization, he must submit a full showing of his qualifications and a copy of this letter decision with the application; and (3) that the proceeds from the sale of the subject stations be distributed as set forth in the captioned applications, as amended.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Howard J. Braun, Esq.