



Federal Communications Commission
Washington, D.C. 20554

DA 06-1311
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Re: Applications for Assignment of License
WMYD(TV), Detroit, Michigan (File No.
BALCT-20060502AEC; Facility ID No.
74211)
KBWB(TV), San Francisco, California (File
No. BALCT-20060502AED; Facility ID No.
51189)

Counsel:

This is in regard to the above-referenced applications for consent to assign the television licenses of stations WMYD(TV), Detroit, Michigan, and KBWB(TV), San Francisco, California, from WXON License, Inc., and KBWB License, Inc. (collectively "Applicants"), wholly owned subsidiaries of Granite Broadcasting Corporation ("Granite"), to DS Audible Detroit License, LLC, and DS Audible SF License, LLC, respectively. Harbinger Capital Partners Master Fund I, Ltd. ("Harbinger"), filed a Petition to Deny on June 7, 2006; the Applicants filed an opposition on June 12, 2006; and Harbinger filed a reply on June 15, 2006. For the reasons stated below, we deny Harbinger's Petition to Deny and grant the applications without condition.

Background. Harbinger owns approximately 39% of Granite's 12.75% Cumulative Exchangeable Preferred Stock. It maintains that Granite must make a \$19.7 million interest payment on \$405 million in Senior Secured Notes by June 30, 2006, and both Harbinger and the Applicants agree that Granite does not have the cash to make this payment without selling the above-referenced stations. Harbinger states, and the Applicants acknowledge, that Granite will seek Chapter 11 federal bankruptcy protection if the Applicants fail to consummate the sale of the stations by June 30, 2006. Harbinger contends, however, that, even were the sale consummated by the June 30, 2006, deadline, and the interest on the notes paid, Granite will eventually seek bankruptcy protection and that, given this fact, the sale is a fraudulent conveyance. Harbinger also expresses concern that, given Granite's financial condition, it may

not be able to obtain full value for the stations. It has filed a state law claim in the Court of Chancery of the State of Delaware seeking to prevent the sale of the stations. Harbinger asks that the Commission either withhold action on the above-referenced applications until the state or bankruptcy court resolves the issues raised by the transaction, or state that the grant is without prejudice to any future court action and specifically condition the grant upon return of the licenses to the Applicants should a court determine that the sale is improper.

The Applicants respond that the Commission is not the proper forum in which to adjudicate whether the proposed transaction constitutes a fraudulent conveyance, and that Harbinger's motive is to delay consummation so as to force Granite into bankruptcy. The Applicants complain that Harbinger is asking that the Commission delay grant of the applications based on speculation that a court may in the future find the sale to be improper.¹

Discussion. We will not delay consideration of the assignment applications pending adjudication of Harbinger's fraudulent conveyance allegation. The Commission has consistently held that it is not the proper forum for the resolution of private disputes and that any redress should be sought in a local court of competent jurisdiction.² A grant of an assignment application, moreover, is permissive in that the parties need not consummate the transaction.³ In granting the applications, the Commission is concluding only that the transactions do not violate the Communications Act of 1934, as amended (the "Act"), the Commission's rules or policies, and would otherwise serve the public interest, convenience and necessity. For these reasons, our decision on the instant assignment applications will not prejudice the outcome of any potential court proceeding and any relief to which Harbinger may be entitled in its civil action. It is for the Delaware state court, in exercising its jurisdiction, to evaluate the parties' claims. Harbinger has raised no statutory or rule violations, and has not shown that grant of the applications would disserve the public interest.⁴

Further, we will not place a condition on the grant based upon Harbinger's speculation that the Delaware state court will void the transaction, or that Granite will declare bankruptcy in the future. While the Commission endeavors to accommodate state court decisions, where appropriate, a decision by the Delaware state court has not been issued,⁵ and while federal courts, likewise, have stated that the Commission must reconcile its policies under the Act with

¹ Applicants argue that Harbinger does not have standing. We need not reach this issue since we have determined to consider the merits of Harbinger's pleading.

² *Mark R. Nalbone, Receiver*, 6 FCC Rcd 7529, 7533 (Video Services Div. 1991). *See, also, Listener's Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987).

³ *Paso Del Norte Broadcasting Corporation*, 12 FCC Rcd 6876, 6878 (MMB 1997).

⁴ Harbinger notes that the above-captioned applications disclosed several pending FCC proceedings raising character issues against a member of the proposed assignee, albeit it "has no knowledge of the facts of these proceedings." *Petition to Deny*, at page 9. The pendency of such proceedings is not an impediment to grant of the instant applications. Our approval here is without prejudice to whatever action the Commission may deem appropriate following resolution of these other proceedings. *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1224-25 (1985).

⁵ *See, e.g., Stop 26 Riverbend, Inc.*, 18 FCC Rcd 22734 (2003).

other federal laws and statutes, including federal bankruptcy law,⁶ Granite has not filed for bankruptcy.

We find that Harbinger has failed to raise a substantial and material question of fact that grant of the applications would be inconsistent with the public interest. We, moreover, find that the parties are fully qualified and that grant of the applications would serve the public interest, convenience and necessity.

Accordingly, **IT IS ORDERED**, That the Petition to Deny filed by Harbinger Capital Partners Master Fund I, Ltd., **IS DENIED**. **IT IS FURTHER ORDERED**, That the application to assign the license of station WMYD(TV), Detroit, Michigan (File No. BALCT-20060502AEC) from WXON License, Inc., to DS Audible Detroit License, LLC, and the application to assign the license of station KBWB(TV), San Francisco, California (File No. BALCT-20060502AED) from KBWB License, Inc., to DS Audible SF License, LLC, **ARE GRANTED**.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁶ *Radio Station WOW v. Johnson*, 326 U.S. 120, 132 (1945); *La Rose v. FCC*, 494 F.2d 1145, 1146 note 2 (D.C. Cir. 1974).