



Federal Communications Commission
Washington, D.C. 20554

October 25, 2006

DA 06-2086

In Reply Refer to:

1800B3-LAS/JP

Released: October 25, 2006

Denise B. Moline, Esq.
1212 So. Naper Blvd, Suite 119-215
Naperville, IL 60540

In re: Lyle Robert Evans
(New), Escanaba, MI
Facility ID: 160560
File No. BNP-20050118AKH

(New), Houghton, MI
Facility ID: 160693
File No. BNP-20050118AKM

(New), Howard, WI
Facility ID: 161042
File No. BNP-20041019AFF

(New), Rhinelander, WI
Facility ID: 160855
File No. BNP-20041029AEJ

**Request for Leave to Amend
Applications for Construction Permit**

Dear Ms. Moline:

We have before us Jeffrey F. Jaekels's ("Jaekels") April 20, 2006, Request for Leave to Amend the above-captioned applications (the "Applications"). As Special Temporary Administrator for the Estate of Lyle Robert Evans (the "Estate"), Jaekels seeks to substitute the court-appointed representative of the Estate of Lyle Robert Evans, Steven A. Roy ("Roy"), for Lyle Robert Evans ("Evans") as the applicant.¹ For the reasons discussed below, we grant the Request for Leave to Amend the Applications.

Background. On November 6, 2003, the Media Bureau and the Wireless Telecommunications Bureau jointly released a Public Notice announcing a January 26-30, 2004, AM auction filing window for applications for new AM stations and major modifications to authorized AM facilities.² Six of the Form 175 applications that Evans had filed during the AM auction filing window were determined to be non-

¹ The April 20, 2006, Request for Leave to Amend was supplemented on June 9, 2006.

² "AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze," *Public Notice*, 18 FCC Rcd 23016 (MB/WTB 2003).

mutually exclusive.³ Evans thereafter timely filed six long form (Form 301) applications, including the Applications.⁴ Subsequently, on March 6, 2006, Evans passed away.⁵ Jaekels was then appointed Special Temporary Administrator of Evans's Estate on March 9, 2006. On May 22, 2006, Roy was appointed personal representative of Evans's Estate by James R. Queoff, Court Commissioner for the Brown County, Wisconsin, Circuit Court.⁶

In his Request for Leave to Amend the pending applications, Jaekels contends that: (1) amending the Applications is similar to an involuntary assignment of a license or permit pursuant to Section 73.3541 of the Commission's Rules (the "Rules");⁷ (2) Commission precedent recognizes a change in control resulting from the death of an applicant as involuntary and permits amendment of the application, instead of requiring dismissal of the application as a major change; (3) allowing the Applications to be amended will not prejudice any other party involved in AM Auction No. 84 because each of the Applications is not mutually exclusive with any other proposal filed in the window; and (4) amending the Applications is in the public interest because it will avoid delay in deploying new service to the communities covered by the applications.

Discussion. The Commission has long recognized that an involuntary assignment of license or permit to the personal representative of a deceased licensee or permittee is in the public interest, and provides a procedure to accommodate this process through the filing of a *pro forma* Form 316 application pursuant to Section 73.3541 of the Rules. While there is no corresponding rule addressing the related case of the death or legal disability of an individual applicant or a controlling shareholder in a pending application, we find that Commission precedent indicates that similar treatment is appropriate.⁸

Typically, a change in the controlling interest of an applicant would be considered a major change.⁹ An amendment to a pending application which would effect such a major change would not be accepted.¹⁰ However, the death of either an individual applicant or an applicant's controlling shareholder,

³ See "AM Auction No. 84 Singleton Applications," *Public Notice*, 19 FCC Rcd 16655 (MB/WTB 2004); "AM Auction No. 84 Singleton Applications," *Public Notice*, 19 FCC Rcd 22569 (MB/WTB 2004).

⁴ The other two applications are not at issue in this letter decision. One construction permit was granted before Evans's decease (Escanaba, Michigan, File No. BNP-20041029AEI), and the other application was dismissed at the request of Evans's Estate (Ashwaubenon, Wisconsin, File No. BNP-20050118AKU). Pursuant to an involuntary *pro forma* assignment application granted on June 14, 2006, Roy was assigned the licenses of the two stations previously licensed to Evans: WRMO(FM), Millbridge, Maine (File No. BALH-20060605AAM) and KHAM(FM), Britt, Iowa (File No. BALH-20060605AAN).

⁵ Pursuant to an involuntary *pro forma* assignment application granted on June 14, 2006, Roy was assigned the licenses of the two stations previously licensed to Evans: WRMO(FM), Millbridge, Maine (File No. BALH-20060605AAM) and KHAM(FM), Britt, Iowa (File No. BALH-20060605AAN).

⁶ Domiciliary Letters, Form PR-1906, Case No. 06PR57, State of Wisconsin, Circuit Court, Brown County, May 22, 2006.

⁷ 47 C.F.R. § 73.3541.

⁸ See, e.g., *Rose Broadcasting Co.*, 68 FCC 2d 1242, 1246-47 (1978).

⁹ See 47 C.F.R. § 73.3571(a)(1) (major change in ownership occurs when the original party or parties to the application do not retain more than 50 percent ownership interest in the application as originally filed).

¹⁰ See 47 C.F.R. § 73.3571(b)(2). Prior to the adoption of competitive bidding rules, broadcast application processing rules provided that a new file number would be assigned to an application for a new station when it was amended prior to designation for hearing so as to result in a transfer of control, for which, in the case of an existing

necessitating the assignment to a personal representative of the deceased, traditionally constituted good cause for amendment in the context of comparative hearings.¹¹ In cases involving both individual¹² and corporate applicants,¹³ the Commission has treated such an amendment as minor, even where the decedent had held a controlling interest in the applicant. More recently, under a circumstance similar to that presented by Jaekels, an auction applicant was allowed to amend its pending pre-auction Form 175 application upon the death of its sole shareholder, due to the involuntary nature of the transfer of control.¹⁴

We therefore, find it in the public interest to allow amendment of the pending AM construction permit Applications to replace Lyle Robert Evans with Steven A. Roy, as the court-appointed personal representative for the Estate. In reaching this conclusion, we afford considerable weight to the fact that no other party will be prejudiced by the amendment because each of the Applications was determined to be non-mutually exclusive. We also find it in the public interest to avoid delay in implementing new service to these four communities and therefore grant Jaekels's Request for Leave to Amend the Applications. Jaekels must file the appropriate amendments through the Media Bureau's CDBS online electronic forms system.

licensee or permittee, an application would have to be filed on a Form 315. Sections 73.3540 and 73.3541 of the Rules required that an application for transfer of a controlling interest in a licensee was to have been filed on a Form 315, except for pro forma or involuntary transfers of control, which are filed on a Form 316. Thus, a transfer to a personal representative, being involuntary, was exempt from the rule requiring a new file number. *See, e.g.,* 47 C.F.R. § 73.3573(b) (1998). *See also Richardson Broadcasting Group*, 3 FCC Rcd 5453 (MMB 1988) (involuntary transfer of control due to death of original applicant does not require assignment of new file number to pending application).

¹¹ *See Rose Broadcasting Co.*, 68 FCC 2d at 1247 (amendment transferring deceased stockholder's 51 percent interest in applicant to personal representative satisfies "good cause" test for acceptance); *Peoples Broadcasting Corp.*, 92 FCC 2d 133, 144-45 (Rev. Bd. 1983) (amendment substituting one stockholder for a deceased stockholder accepted for reporting purposes only under 47 C.F.R. § 1.65); *Triple C Broadcasting Corp.*, 12 FCC 2d 503, 504 (Rev. Bd. 1968) (change in the composition of an applicant does not, of itself, preclude acceptance of the amendment, provided good cause is shown).

¹² *See Richardson Broadcasting Group*, 3 FCC Rcd at 5453 (wife and executrix of deceased applicant substituted for individual, deceased applicant on application for new FM station).

¹³ *See Azalea Corp.*, 38 FCC 2d 95 (Rev. Bd. 1972); *Creek County Broadcasting Co.*, 31 FCC 2d 462 (Rev. Bd. 1971) (corporate applicant permitted to amend application after death of controlling stockholder).

¹⁴ *Letter to Delaney M. DiStefano, Esq. from Margaret Wiener*, 19 FCC Rcd 2691 (WTB 2004) (involuntary transfer of control due to death of an applicant's controlling interest does not constitute a major amendment).

Conclusion/Actions. For the above stated reasons, Jaekels's Request for Leave to Amend the above captioned applications to replace Lyle Robert Evans with Steven A. Roy, court-appointed representative of the Estate of Lyle Robert Evans, as the applicant, is GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau