



Federal Communications Commission
Washington, D.C. 20554

March 30, 2007

DA 07-1553
In Reply Refer to:
1800B3-BSH/LAS
Released: March 30, 2007

Mark Chapman, Court-Appointed Agent
Sumiton Broadcasting Company, Inc.
5318 Whisper Wood Drive
Hoover, AL 35226

Re: DWRSM(AM), Sumiton, AL
Facility ID No. 63652

File No. BR-20040315ACS
Application for Renewal of License

File No. BAL-20050121ACS
Application for Assignment of License

Petition for Reconsideration

Dear Mr. Chapman:

This is in reference to the Petition for Reconsideration (the "Petition") filed August 15, 2005, by Mark Chapman on behalf of Sumiton Broadcasting Company, Inc. ("Sumiton"), previous licensee of former Station WRSM(AM), Sumiton, Alabama (the "Station"). The Petition requests reconsideration of the July 14, 2005, staff decision (the "Staff Decision")¹ finding that the Station's license had expired as a matter of law due to the non-operation of the Station and dismissing Sumiton's above-captioned applications to: (1) renew the license for the Station (the "Renewal Application"); and (2) assign the Station's license from Sumiton to American Trust Corporation (the "Assignment Application"). The Petition argues that Sumiton ceased operation of the Station while the licensee was controlled by Thomas Herb Steadman ("Steadman"), who had acted without the knowledge or consent of Sumiton's other shareholders.² Chapman, the court-appointed agent of Sumiton, asks that we consider the diligent efforts that Sumiton has made, pursuant to court directive, to restore the Station to operation. For that reason, the Petition requests that we exercise our statutorily-authorized discretion³ to reinstate the Station's license and grant the Renewal Application and the Assignment Application. For the reasons stated below, we grant the Petition to the extent indicated herein, and reinstate the license for the Station, the Station's call sign, the Renewal Application and the Assignment Application.

Background. *Corporate Control.* Sumiton's March 15, 2004, FCC Form 323 Ownership Report indicates that Steadman held 66.67 percent of the Sumiton stock and the "Estate of J.C. Chapman"

¹ See *Letter to Mark A. Chapman*, Ref. No. 1800B3-ALM (MB July 14, 2005).

² See Petition at 3. See also Renewal Application, Exhibit 6.

³ See 47 U.S.C. § 312(g).

(“Chapman Estate”) held the remaining 33.33 percent.⁴ In response to civil litigation among Sumiton’s shareholders, on September 9, 2004, the Circuit Court of Jefferson County, Alabama (the “Circuit Court”) issued an Order appointing Chapman⁵ the duly-authorized agent of Sumiton.⁶ The Circuit Court further found that Steadman had “offered no good reason” why the assets of Sumiton should not be sold to an entity capable of operating the Station in the public interest,⁷ and that the sale proposed in the Asset Sales Agreement with American Trust Corporation, the prospective purchaser, “appears to be a sound business decision that would benefit the parties.”⁸

Cessation of Station Operation. The record provides the following information concerning the Station’s period of discontinued operation. In February 2003, Commission staff received a telephone call from Chapman, inquiring if Commission records indicated whether the Station was operating. When told by staff that Sumiton had not notified the Commission of discontinued operations, Chapman expressed his belief that Steadman had taken the Station off the air. As a result of this call, on February 21, 2003, the staff sent Sumiton an operational status inquiry letter.⁹ While Sumiton did not provide a written response, in March 2003, Steadman called the staff, advised that the Station had gone off the air, and requested that Commission records reflect that fact. On February 3, 2004, Toni Chapman Brinker, the executrix of the Chapman Estate, faxed material to the Commission, including a February 2, 2004, letter from Chapman indicating that the Station had resumed operations as of January 30, 2004.

On March 15, 2004, Chapman filed the Station’s Renewal Application on behalf of Sumiton.¹⁰ The Renewal Application stated that Steadman “took the station off the air without notification to the FCC and the minority shareholder Chapman”¹¹ In April 2004, Steadman phoned the staff, complained about Chapman’s activities involving the Station, and stated that the Station had been silent prior to the staff’s February 21, 2003, operational status inquiry letter. The staff asked Steadman to submit documentation supporting his statement. On June 1, 2004, Steadman faxed to the Commission copies of two letters concerning the “closing of WRSM Radio,” the first dated July 1, 2002, and the second dated June 16, 2003. These two letters, both under Steadman’s signature, had not been previously received by the Commission.¹² The July 1, 2002, letter stated that the Station had ceased broadcasting on

⁴ File No. BOA-20040315ADF.

⁵ Toni Chapman Brinker, executrix of the Chapman Estate, had granted a Durable Special Power of Attorney to Mark Chapman on March 5, 2004, which authorized him to act on behalf of the Chapman Estate. *See* Durable Special Power of Attorney, Jefferson County, Alabama, March 5, 2004.

⁶ Civil Action CV-2004-0173-RSV, Order, Sept. 9, 2004 (the “Circuit Court Order”).

⁷ Circuit Court Order at 2.

⁸ *Id.*

⁹ *Letter to Herb Steadman, Sumiton Broadcasting Co., Inc.*, Ref. No. 1800B-ALM (MB Feb. 21, 2003).

¹⁰ Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed. An application for renewal of the WRSM(AM) license should have been filed by December 1, 2003, four months prior to the Station’s April 1, 2004, license expiration date, but was not. Sumiton did not file the Renewal Application until March 15, 2004. We reserve the right to take any appropriate enforcement action against Sumiton for this and any other matters involving the Station, including the issuance of a Notice of Apparent Liability for Forfeiture.

¹¹ Renewal Application, Exhibit 6.

June 30, 2002. The June 16, 2003, letter also so stated, and added that “[t]here was and is no intent to resume broadcasting.”

In order to determine whether the Renewal Application should be granted, on May 19, 2005, the staff sent a second operational status inquiry letter to Sumiton.¹³ In his June 20, 2005, response (the “Response Letter”), Chapman informed the Commission that the Station had been silent from at least October 2002 until January 30, 2004. Chapman further stated that he had operated the Station intermittently from January 30 through September 14, 2004, at which time “American Trust Corporation . . . took over operations of WRSM(AM) . . . and has, to the best of my knowledge, operated WRSM” since that time.¹⁴ In light of this information provided in the Response Letter, the Staff Decision found that the Station had been silent from at least sometime in October 2002 until January 30, 2004. Therefore, the Staff Decision concluded that the WRSM(AM) license had expired as a matter of law pursuant to Section 312(g) of the Communications Act of 1934, as amended (the “Act”),¹⁵ because the Station had failed to transmit broadcast signals for a consecutive 12-month period.

Discussion. As noted in the Petition, although Section 312(g) provides for the forfeiture of a broadcast license under such circumstances, it also allows the Commission the discretion, where appropriate, to extend or reinstate a forfeited license, notwithstanding more than 12 months of station silence. Specifically, in pertinent part, Section 312(g) provides, “. . . the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any reason to promote equity and fairness.”¹⁶ We find that the Petition demonstrates circumstances that merit reinstatement.

Our determination to exercise such discretion in this matter is founded on the Commission’s long-standing policy to accommodate court decrees, unless a public interest determination under the Act compels a different result.¹⁷ Here, the Circuit Court has made clear that it issued its Order to safeguard the interests of the corporation, as well as those of the Sumiton shareholders, much as a bankruptcy court protects the interests of innocent creditors.¹⁸ In this regard, the Circuit Court Order states that “[i]t is in the interests of the corporation, all its shareholders, and the public generally that the corporation’s assets be transferred to another entity that can put those assets to good use.”¹⁹

¹² The July 1, 2002, letter was addressed to the nonexistent “AM Broadcasting Bureau” and the June 16, 2003, letter was addressed to “Room 1-C807.”

¹³ See *Letter to Mark Chapman*, Ref. No. 1800B-MAT (MB May 19, 2005).

¹⁴ Response Letter at 3. The Commission has no record of receipt of any “lease-purchase agreement” or local marketing agreement (“LMA”) between Sumiton and American Trust Corporation. Sumiton is hereby directed to submit copies of any agreement(s) between the parties relating to the operation of WRSM(AM).

¹⁵ 47 U.S.C. § 312(g).

¹⁶ *Id.*

¹⁷ See, e.g., *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 132 (1945) (where the Commission’s public interest responsibility in licensing broadcast stations can be protected, the principal of fair accommodation between state and federal authority should be observed).

¹⁸ See, e.g., *O.D.T. International*, 9 FCC Rcd 2575, 2576 (1994) (Commission must reconcile its rules and policies with federal and state court mandates designed to protect creditors).

¹⁹ Circuit Court Order at 1-2.

Although Sumiton ceased broadcasting and kept the Station off the air for more than 12 consecutive months, as noted above, Section 312(g) of the Act allows the Bureau the exercise of discretion here, should we determine that circumstances warrant reinstatement of the Station's license. Because Chapman is acting to effectuate the Circuit Court Order, which was primarily issued to protect the corporation and its shareholders, we find this case warrants the exercise of that discretion.²⁰

Conclusion. Based on the above, we grant the Petition to the extent indicated herein, reinstate the cancelled WRSM(AM) license, and reinstate the Renewal Application and the Assignment Application. Although both the Renewal Application and the Assignment Application had previously been accepted for filing, given the reinstatement action taken herein, we find it in the public interest to reissue public notices accepting the two applications for filing.²¹ Therefore, petitions to deny the Assignment Application must be filed not later than 30 days after issuance of the public notice of acceptance of that application.²² Petitions to deny the Renewal Application must be filed not later than 90 days after issuance of the public notice of acceptance of that application.²³ We also direct Sumiton to broadcast over WRSM(AM) all post-filing announcements regarding the Renewal Application required by Section 73.3580(d)(4)(ii) of the Rules,²⁴ had the Renewal Application been filed on the date of this letter. Additionally, we direct Sumiton to submit to the Commission copies of any agreement(s) between itself and American Trust Corporation relating to the operation of WRSM(AM) within 30 days from the date of this letter.

Accordingly, IT IS ORDERED That the August 15, 2005, Petition for Reconsideration filed by Sumiton Broadcasting Company, Inc. IS GRANTED to the extent indicated herein. IT IS FURTHER ORDERED That the previously forfeited license for WRSM(AM) IS REINSTATED. IT IS FURTHER ORDERED That the call sign DWRSM(AM), which indicated the station's deletion, IS CHANGED to WRSM(AM). IT IS FURTHER ORDERED That the application to renew the license for Station

²⁰ Cf. *Letter to Mr. Zacarias Serrato*, 20 FCC Rcd 17232 (MB 2005) (license reinstatement not warranted for station off the air for more than three years "essentially due to a business decision" by the licensee).

²¹ The Renewal Application had previously been accepted for filing by public notice released March 19, 2004. *Broadcast Applications*, Report No. 25696, Public Notice (MB Mar. 19, 2004). The Assignment Application had previously been accepted for filing by public notice released January 26, 2005. *Broadcast Applications*, Report No. 25908, Public Notice (MB Jan. 26, 2005).

²² See 47 C.F.R. § 73.3584(a).

²³ See 47 C.F.R. § 73.3516(e).

²⁴ See 47 C.F.R. § 73.3580(d)(4)(ii).

WRSM(AM) and the application to assign the license for Station WRSM(AM) from Sumiton Broadcasting Company, Inc. to American Trust Corporation ARE REINSTATED TO PENDING STATUS with their original file numbers (BR-20040315ACS and BAL-20050121ACS, respectively), AND ARE ACCEPTED FOR FILING.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Thomas Gutierrez, Esq.