



Federal Communications Commission
Washington, D.C. 20554

DA 07-383

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Sun Broadcasting, Inc.
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Journal Broadcasting Corporation
c/o Meredith S. Senter, Jr., Esquire
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Re: Assignment of License of
WTVK(TV), Naples, FL
File No. BALCT-20060513ACT
Facility ID No. 61504

Counsel:

This is with regard to above-captioned application to assign the license of Television Station WTVK(TV), Naples, Florida, from Acme Television Licenses of Florida, LLC ("Acme") to Sun Broadcasting, Inc. ("Sun"). On June 23, 2006, Journal Broadcasting Corporation ("Journal"), licensee of WFTX(TV), Cape Coral, Florida, filed "Comments" on the proposed transaction, to which Sun filed a reply.¹ In addition, Acme filed a Motion to Expedite the

¹ In addition, comments in support of Journal's submission were filed by EBC Southwest Florida, Inc., licensee of WUVF-CA, Naples, and WLZE-LP and WTLE-LP, Ft. Myers, Florida. EBC states that it has filed a petition raising similar concerns in the context of the proposed assignment of KTFA-TV, Ft. Smith, AK (BALCT-20060411ABX). It states that the operational and financial links as set forth by Journal are an example of the "shell games" being played by such parties to evade the Commission's multiple ownership rules and are becoming increasingly more common nationwide. It suggests that to protect the integrity of its ownership rules, the Commission must, at the very least, require the applicants to disclose all their relationships or designate the application for a hearing to elicit such facts for closer examination in this and other transactions.

processing of the assignment application, which Journal opposed.

Sun, the proposed assignee, is a Florida corporation whose sole officer, director and shareholder is Joseph C. Schwartzel. Schwartzel also holds an attributable interest in Meridian Broadcasting Inc. (“Meridian”), which has an attributable interest as the licensee of four radio stations and an attributable interest in two other radio stations pursuant to local marketing agreements in the Ft. Myers-Naples DMA. In its comments, Journal states that it has no objection to the proposed transaction and will take Sun at its word with regard to the proposed ownership of this station. However, Journal states that it is concerned about relationships between Sun and Ft. Myers Broadcasting Company (“Ft. Myers”), licensee of WINK-TV, Ft. Myers, Florida, and the impact it could have on the operation of this station in the same DMA. Journal notes that there is no agreement between Sun and Ft. Myers regarding WTVK, but states that there are long-standing relationships between Schwartznel, Meridian and Ft. Myers which were the basis of allegations raised in objections to other applications.² Journal states that those concerns raise the possibility of undisclosed and improper relationships with regard to WTVK. Although Journal states that it does not challenge the representations made in the instant application, it believes the Commission must both assess whether additional information to support them must be sought and confirm that Sun and Ft. Myers do not contemplate a joint operating agreement for this station.

In its response, Sun maintains that Journal has presented an incomplete and inaccurate account of the relationships between Schwartznel, Meridian and Ft. Myers and the applications previously filed with and granted by the Commission. It maintains that those matters were previously raised and addressed in the context of prior applications, and that Journal’s pleading in this case is little more than an unsupported “fishing expedition.” It explains in detail the basis for the representations and certifications made in the previously filed applications, and further notes that all of those applications were granted. Moreover, it points out that since the grant of those assignment applications, Meridian’s uncontested radio renewal applications were granted in 2004; Ft. Myers’ uncontested radio renewal applications were granted in 2004, and Ft. Myers’ uncontested television renewal application was granted in 2005. To the extent that it seeks to review matters occurring prior to the current license term, Meridian states that Journal’s pleadings should be construed as untimely requests for the reconsideration of the license renewal grants and dismissed.

For its part, Acme contends that Journal’s concern that there “may” be undisclosed interests falls short of any proper showing that a grant of the subject application would be *prima facie* inconsistent with the public interest. It states that rather than pleading specific and properly supported allegations, Journal has attempted to shift the burden to Meridian to refute Journal’s unsupported allegations and suspicions.

In reply comments, Journal states that it wanted to provide Sun an opportunity to clear up any misunderstandings concerning the relationship between Meridian and Ft. Myers and its possible relevance to the instant transaction. To the extent that it believes Sun may not have

² See BAL-19960607HR and BALH-19960607HS & HT, granted November 11, 1996.

adequately addressed that relationship, it suggests that the Commission conduct further inquiry to assure that these concerns do not extend to Sun.

Discussion. We have examined the applications and documents submitted in support of this application. Nothing in the record supports any conclusion that Sun is not in compliance with our rules as it has certified. With respect to Journal's objection, by its own admission it does not challenge the representations or certifications in the application before us.³ Rather, Journal would have us look beyond the record based on concerns or allegations rejected by the Commission in prior applications and initiate a broad inquiry regarding the parties' potential or intent to violate the Commission's rules in the future. We know of no precedent for such a drastic action. Journal has failed to meet its burden in coming forward with any properly pleaded allegations that warrant consideration of whether the public interest is served by the proposed transaction. To the extent that Journal claims that these matters may shed light on the possible future operation of any of these stations, its allegations are speculative and, in any event, are insufficient to raise any substantial and material questions.

If Journal has relevant and credible information that the Sun application is fraudulent, then such information should have been presented for our consideration. However, Journal's "concerns" based on matters previously raised, considered and rejected by the Commission are insufficient for consideration of its filing. Therefore, because Journal has failed to show by properly supported allegations that a substantial and material question of fact exists such that the grant of the subject application is *prima facie* inconsistent with the public interest, it has not met its burden to demonstrate that further inquiry is warranted.⁴

Accordingly, in light of the above discussion, Journal's "Comments" IS DENIED, and the "Supporting Comments" of EBS IS DISMISSED. Moreover, we have examined the assignment application and find that the parties are qualified and that a grant would serve public

³ Although Journal states that it has no objection to the grant of this application, it predicates that "non-objection" on Sun's confirmation or denial of its understanding of certain facts as set forth in its comments. The failure to confirm or deny such facts, Journal asserts, should lead the Commission to fully investigate such matters. That approach, however, fails to satisfy Journal's burden of pleading under the Act and the Commission's Rules, a burden that cannot be shifted to the parties or the Commission. See Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §309(d)(1) and Section 73.3584 of the Commission's Rules, 47 C.F.R. §73.3584.

⁴ Additionally, insofar as these allegations concern matters occurring during the licensees' past license terms they are beyond the statute of limitations. Moreover, to the extent that Journal challenges long-since granted assignment and transfer applications, there is no basis to now revisit the matters previously raised and addressed in long-final assignment and transfer applications. However, to the extent that Journal claims that these matters may shed light on the possible future operation of any of these stations, its allegations are speculative and, in any event, insufficient to raise any substantial and material questions.

interest, convenience and necessity. Therefore, the application to assign the license of WTVK(TV), Naples, Florida from Acme Television Licenses of Florida, LLC to Sun Broadcasting, Inc. IS GRANTED.

Sincerely,

Barbara A. Kreisman,
Chief, Video Division
Media Bureau

cc: Lori E. Withrow, Esquire