



Federal Communications Commission  
Washington, D.C. 20554

October 16, 2007

**DA 07-4300**

*In Reply Refer to:*

1800B3-BSH

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In re: **KLBU(FM), Pecos, New Mexico**  
Facility ID No. 83297  
File No. BALH-20070517ADQ

**KVSF-FM, Pecos, New Mexico**  
Facility ID No. 83285  
File No. BALH-20070515ADZ

**KBAC(FM), Las Vegas, New Mexico**  
Facility ID No. 40639  
File No. BALH-20070628ABV

**Applications for Assignment of  
Licenses  
Informal Objections**

Dear Ms. Van Riper, Mr. Meehan, Ms. Davis, Mr. Myerson and Counsel:

We have before us the above-captioned applications ("Assignment Applications") proposing to assign the licenses of: (1) Station KLBU(FM), Pecos, New Mexico, from Blu Media, LLC ("Blu") to Hutton Broadcasting, LLC ("Hutton"); (2) Station KVSF-FM (formerly KWRP(FM)), Pecos, New Mexico, from

James S. Bumpous, dba Yellow Dog Radio to Hutton; and (3) Station KBAC(FM), Las Vegas, New Mexico, from Educational Media Foundation to Hutton (collectively, the “Stations”). Between June 4 and June 11, 2007, Mona Van Riper, Bram Meehan, Kathryn M. Davis and Mark Myerson (collectively, the “Objectors”) filed virtually identical objections to the Assignment Applications,<sup>1</sup> expressing strong appreciation for the current programming on the Stations and asking the Commission to bar the proposed sale to Hutton.<sup>2</sup> In addition, Objectors suggest that the Commission direct the assignors to find different buyers for the Stations. For the reasons stated below, we deny the informal objections and grant the Assignment Applications.

While the Commission recognizes that the Stations’ program formats have attracted a devoted listenership, it is well-settled policy that the Commission does not scrutinize or regulate programming, nor does it take potential changes in programming formats into consideration in reviewing assignment applications. In 1976, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Communications Act of 1934, as amended (“the Act”), would not benefit the public, would deter innovation, and would impose substantial administrative burdens on the Commission.<sup>3</sup> The Supreme Court of the United States has upheld this policy and the Commission’s determination that “the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . .” and that a change in programming is not a material factor that should be considered by the Commission in ruling on applications for license transfer.<sup>4</sup>

We also reject Objectors’ suggestion that alternate buyers be found. Section 310(d) of the Act specifically prohibits the Commission from considering any entity other than the assignee proposed in the application before us.<sup>5</sup> Finally, the Assignment Applications demonstrate that Hutton’s proposed degree of ownership in the markets at issue satisfies the multiple ownership limits established by Section 202 of the Act and Section 73.3555 of the Rules, and we find no basis in Objectors’ inference to the contrary.

Based on the above, we find that the Objectors have not raised a substantial and material question of fact warranting further inquiry. We further find that Hutton Broadcasting, LLC is qualified as the assignee and that grant of the Assignment Applications is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the informal objections filed by the Objectors ARE DENIED, and that the application to assign the license of Station KBLU(FM), Pecos, New Mexico (File No. BALH-

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<sup>1</sup> These listener letters will be treated as informal objections in accordance with Section 73.3587 of the Commission’s Rules (the “Rules”).

<sup>2</sup> On July 2, 2007, Hutton filed a Consolidated Opposition to Informal Objections and Request for Expedited Processing.

<sup>3</sup> See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC2d 858, 865-66 (1976), *recon. denied*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev’d sub nom.*, *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev’d*, 450 U.S. 582 (1981).

<sup>4</sup> *FCC v. WNCN Listener’s Guild*, 450 U.S. 582, 585 (1981).

<sup>5</sup> 47 U.S.C. § 310(d) (when acting on assignment or transfer applications, the Commission may not consider whether the public interest, convenience and necessity might be served by assignment or transfer of the license to an entity other than the proposed assignee or transferee). Where permission is sought to assign a valid permit, the only question is whether the proposed assignee possesses the minimum qualifications consistent with the public interest, convenience and necessity. See, e.g., *MG-TV Broadcasting Co. v. FCC*, 408 F.2d 1257, 1264 (D.C. Cir. 1968).

20070517ADQ) from Blu Media, LLC to Hutton Broadcasting, LLC IS GRANTED, the application to assign the license of Station KVSF-FM, Pecos, New Mexico (File No. BALH-20070515ADZ) from James S. Bumpous, dba Yellow Dog Radio to Hutton Broadcasting, LLC IS GRANTED, and the application to assign the license of Station KBAC(FM), Las Vegas, New Mexico (File No. BALH-20070628ABV) from Educational Media Foundation to Hutton Broadcasting, LLC IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Lee J. Peltzman, Esq.  
David D. Oxenford, Esq.