



Federal Communications Commission
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Mr. Ronald Hester
8531 Temple Road
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Re: WTVE(TV), Reading, Pennsylvania
Facility ID No. 55035, Application for
Assignment of License,
File No. BALCT-20080125ACD

Dear Counsel:

This is in regard to the application filed by George L. Miller ("Trustee"), Chapter 11 Trustee for Reading Broadcasting, Inc. ("RBI") for the assignment of the license of WTVE(TV), Reading, Pennsylvania, File No. BALCT-20080125ACD, to WRNN-TV Associates Limited Partnership ("WRNN"). Petitions to deny were filed by Philadelphia Television Network, Inc. ("PTN") and Mr. Ronald Hester ("Hester"). For the reasons stated below, we deny the petitions and grant the application.

On October 7, 2005, RBI sought protection from its creditors in a Chapter 11 bankruptcy filing in the United States Bankruptcy Court for the Eastern District of Pennsylvania (the "Bankruptcy Court"). PTN was a creditor of RBI and a participant in the bankruptcy proceeding. PTN and the Trustee filed competing plans with the Bankruptcy Court for resolving the claims against RBI. The Bankruptcy Court confirmed the Trustee's Plan of Liquidation and rejected PTN's competing plan. In its order, the Bankruptcy Court found that the Trustee's plan was fair and equitable and met the best interests of the creditors test; that WRNN was financially capable of completing the purchase; and that it was likely that WRNN would fulfill its station asset purchase agreement, thereby rendering the Trustee's plan feasible.¹

¹ *Reading Broadcasting, Inc.*, __ B.R. __ (Bankr. E.D. Pa., Jan. 17, 2008).

In rejecting PTN's plan, the Bankruptcy Court found that PTN would not receive sufficient funding to effectuate its plan and that PTN's plan proposal was not feasible and could not be confirmed. PTN subsequently filed a motion asking the Bankruptcy Court to reconsider its order and a motion to dismiss. The motion for reconsideration was denied by the Bankruptcy Court on March 12, 2008.² PTN has also filed a motion to stay the Bankruptcy Court's decision approving the Trustee's plan and an appeal of that decision.

The PTN Petition. In its petition to deny, PTN contends that the assignment application is premature because it was filed prior to the completion of the bankruptcy proceedings. In support of this contention, PTN states that the Bankruptcy Court's decision is still subject to reconsideration, modification or dismissal and is likely to be rescinded because the unsecured creditors and equity holders presented a joint plan for distribution of the bankruptcy estate. PTN also argues that the application should be rejected as an improperly filed contingent application under Section 73.3517 of the Commission's Rules.³ PTN states that the application is contingent because the asset purchase agreement submitted with the application is dependent on completion of a tower lease agreement for the station's future digital operations, which is also a precondition for WRNN's loan from Goldman Sachs Specialty Lending Group, L.P. ("Goldman Sachs"), which PTN claims is necessary to complete the Trustee's Plan of Liquidation. PTN claims that completion of the lease agreement is in doubt and is subject to ongoing litigation. Finally, PTN argues that WRNN is not financially qualified because the letter it received from Goldman Sachs (the "Goldman Sachs Letter") relating to its proposed financing is in the nature of an accommodation letter rather than a firm commitment to provide a loan.

In its opposition, the Trustee argues that the Bankruptcy Court's order was valid and enforceable at the time it was filed and notes that the Bankruptcy Court denied PTN's motion for reconsideration. It also notes that the order has not been stayed. The Trustee argues that the motion to dismiss is likely to be denied because it relies on the same facts as the motion for reconsideration and it fails to allege any of the statutory factors relied on by a bankruptcy court under 11 U.S.C. § 1112 in ruling on a motion to dismiss. The Trustee also argues that, contrary to PTN's assertion, no alternative reorganization plan has been submitted to the Bankruptcy Court and, under 11 U.S.C. § 1129(c), no such plan can be filed because, subject to certain exceptions not relevant here, the Bankruptcy Court may confirm only one plan.

In regard to PTN's contention that the assignment application is contingent, the Trustee argues that Section 73.3517 applies only to applications for new stations and for changes in facilities of existing stations. Both the Trustee and WRNN argue that the possibility that the Bankruptcy Court may reconsider its decision does not make the application contingent under Section 73.3517. Likewise, they argue that the existence of closing conditions in the Goldman Sachs letter does not make the application contingent. WRNN also argues that the type of application covered by the rule is one in which the application is contingent on Commission action with respect to another pending application before it.⁴ Both applicants also argue that the negotiations for the tower lease and the ongoing litigation represent

² *Reading Broadcasting, Inc.*, __ B.R. __ (Bankr. E.D. Pa, March 12, 2008).

³ 47 C.F.R. § 73.3517.

⁴ *Citing 1998 Biennial Regulator Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, First Report and Order*, 14 FCC Rcd 5272 (1999) ("An application is contingent when it cannot be granted unless and until a second application, also pending before the Commission, is granted.")

private contractual disagreements between the relevant parties and are not a proper subject for Commission review.

Responding to PTN's claims that WRNN is not financially qualified, WRNN argues that its asset purchase agreement with the Trustee is not subject to a financing contingency, that it has testified before the Bankruptcy Court that it has sufficient assets on hand to consummate the transaction without third-party financing,⁵ and that the Bankruptcy Court found the Goldman Sachs Letter acceptable. Furthermore, WRNN argues that the Goldman Sachs Letter confirms that it will provide financing by amending the parties' existing credit facility, which has established terms.

As the Trustee points out, the Bankruptcy Court's order was valid and enforceable at the time it was issued. There is no requirement in our rules that such an order no longer be subject to appeal before an application for assignment pursuant to it can be filed. Although PTN states that it filed a motion to stay the Bankruptcy Court's order, the motion was not filed prior to the filing of the application and there is nothing in the record to indicate whether the Court has ruled on it. Therefore, PTN's claim that the application was filed prematurely is without merit.⁶

The Trustee is correct in its interpretation of Section 73.3517. That section applies to applications for new stations or for changes in existing facilities, not to applications for assignment or transfer of control. Furthermore, Section 73.3517 is designed to limit the filing of applications that cannot be granted unless and until the Commission acts on another application under its review. The application before us is not one for a new station or a change in existing facilities and is not predicated on the Commission acting on another application. Section 73.3517, therefore, is not applicable.

When WRNN certified in the application that it was financially qualified to own and operate the station, it was not required to specify how it would meet its commitment or to provide documentation supporting its certification unless requested to do so. WRNN has indicated that it can fulfill its obligations without relying on financing from Goldman Sachs, but that it has the resources specified in the Goldman Sachs Letter available to it. In determining whether a financing letter affords reasonable assurance of committed funding, we consider whether the borrower's qualifications have been preliminarily reviewed by the bank; whether adequate collateral has been demonstrated; and whether tentative terms are identified and acceptable to the lender and the borrower.⁷ Having reviewed the Goldman Sachs Letter and the portions of the bankruptcy hearing transcript provided by PTN, we find that the letter represents a sufficient commitment by Goldman Sachs to support WRNN's certification. The Goldman Sachs Letter binds it to extend the existing credit agreement between the parties, which has specified terms, in order to facilitate the purchase of the station. The fact that there is an existing credit agreement between the parties indicates that Goldman Sachs has reviewed WRNN's financial qualifications and has found the collateral to be adequate. It also indicates that the parties have negotiated and are fully aware of the terms of the proposed loan. We do not believe the conditions precedent to providing the financing in the Goldman Sachs Letter, *e.g.*, further due diligence review, make this a mere "accommodation letter" as argued by PTN. We also find nothing in the record that belies WRNN's claim that it can finance the

⁵ PTN disputes WRNN's characterization of its testimony.

⁶ Our decision here is not meant to influence the outcome of the Bankruptcy Court's ruling on the merits of the motion for stay or on the motion to dismiss. Those motions are not before us and are outside of our jurisdiction.

⁷ See *Liberty Productions, Inc.*, 7 FCC Rcd 7581 (1992).

transaction without the loan from Goldman Sachs. Based on the record before us, we find that PTN's argument that WRNN is not financially qualified is without merit.

The Ronald Hester Petition. In his petition to deny, Hester argues the application is defective because the Trustee has not certified that the asset purchase agreement for the sale of the station has been placed in its public file, that the agreement as filed embodies the full and complete understanding of the parties with respect to the sale of the station, and that the agreement complies with the Commission's rules and policies. Hester also argues that WTVE(TV), while under the stewardship of the Trustee, has failed to provide programming that is responsive to the needs and interests of its city of license.

Although the applicants did not file a response to Hester's petition, Exhibit 4 to the application states:

Schedules to the asset purchase agreement have been omitted because they either do not reflect on the legal or other qualifications of the parties, contain no information relevant to whether the structure of the transaction complies with the Commission's rules, or contain proprietary information relating to the licensee and the station. Therefore, these documents need not be submitted to the Commission but will be provided upon the Commission's request.

This statement is in conformance with the Commission's directives on proper certification in response to Question 3 of the Assignor's portion of an assignment application when schedules not germane to the Commission's review have been omitted from the filed application and the station's public inspection file.⁸ We find that the applicants' certification was proper and that they complied with our requirements regarding the filing of contracts in an assignment of license proceeding.

In regard to Hester's concerns about the station's programming under the stewardship of the Trustee, we note that, because of First Amendment considerations and the no-censorship provision in the Communications Act of 1934, as amended, we do not provide news-gathering guidelines or review the content of newscasts. Government review of journalistic editorial judgment has long been viewed to be inherently more harmful than the occasional lapses by the media.

We urge Hester to make his dissatisfaction with the station's programming known directly to management personnel at the station and also to those in network organizations. These are the people who are responsible for selecting the programs and announcements that are broadcast. Letters to stations and networks keep broadcasters informed about audience needs and interests, as well as public opinion on specific material. It has been our experience that broadcasters are interested in hearing from viewers and often develop programming consistent with requests and input from viewers. Accordingly, no further action in regard to this issue is warranted.

Having found the applicants fully qualified, we hold that grant of the application would be in the public interest.

⁸ *LUI, Inc., Memorandum Opinion and Order*, 17 FCC Rcd 16980 (2002); *Media Bureau Announces Interim Filing and Certification Requirements Regarding Submission of Contracts With Assignment/Transfer of Control Applications, Public Notice*, 16 FCC Rcd 16116 (2002).

ACCORDINGLY, IT IS ORDERED, That the petitions to deny filed by Philadelphia Television Network, Inc. and Mr. Ronald Hester ARE DENIED. IT IS FURTHER ORDERED That the application filed by George L. Miller, Chapter 11 Trustee for Reading Broadcasting, Inc. for the assignment of the license of WTVE(TV), Reading, Pennsylvania, File No. BALCT-20080125ACD, to WRNN-TV Associates Limited Partnership IS GRANTED.

Sincerely,

Barbara A. Kreisman,
Chief, Video Division
Media Bureau