



Federal Communications Commission  
Washington, D.C. 20554

August 20, 2008

**DA 08-1939**

*In Reply Refer to:*

1800B3-JLB

Released: August 20, 2008

Estate of Peggy Haley, N.C.M.  
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In re: KETX(AM), Livingston, Texas  
Facility ID No. 52895  
File No. BAL-20080328AIP

KETX-FM, Livingston, Texas  
Facility ID No. 52897  
File No. BAL-20080328AIQ

KETX-LP, Livingston, Texas  
Facility ID No. 52899  
File No. BALTVL-20080328AIR

Dear Counsel:

We have before us the above-referenced applications (the "Applications") for consent to the assignment of license of stations KETX(AM), KETX-FM and KETX-LP (collectively, the "Stations") from the Estate of Peggy Haley, N.C.M. by Peggy Marsh, Legal Guardian ("Marsh"), to Telcom Supply, Inc. ("Telcom") (collectively, the "Applicants"). On May 2, 2008, Harold J. Haley, Jr. ("Haley") filed a Petition to Deny (the "Petition") the assignment applications, which he supplemented on May 9, 2008.<sup>1</sup> For the reasons stated below, we deny the Petition to Deny and grant the Applications.

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<sup>1</sup> The Applicants filed an Opposition on May 7, 2008, asking for expedited consideration because the Estate is in need of funds from this transaction for Mrs. Haley's care. Haley filed a Reply on May 28, 2008.

**Background.** In his Petition, Haley argues that the sale of the Stations must be approved by the County Court at Law for Polk County, Texas, that he had submitted an offer to the Court “which significantly exceeds that offer made by Telcom,” and that because the court had not yet acted on the outstanding offers, the Commission should deny the Applications as premature. He also claims that he would be prejudiced were the Commission to grant the Applications prior to the court’s rendering a determination on which offer should be approved. In his supplement, Haley states that on May 5, 2008, the court approved the proposed sale of the Stations to Telcom, that Haley intended to appeal the court’s action, and that the Commission should defer action on the Applications until the local appellate process was completed. In their opposition, the Applicants assert that the Commission should not defer action on the Applications based on the fact that there is a private contractual dispute regarding the sale of the station. In reply, Haley disputes that that this is a private commercial matter, but instead deals with the issue presently before the Commission – whether the Stations should be sold to Telcom.

**Discussion.** A petition to deny must, pursuant to Section 309(d)(1) of the Act, provide properly supported specific allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest, convenience, and necessity.<sup>2</sup> Haley does not present specific factual allegations sufficient to meet this standard.

Haley does not argue that Telcom is not qualified to become a Commission licensee or that the proposed transaction violates the public interest. Instead, the issue raised here relates to a private dispute between Marsh, the guardian of her mother’s estate, and Haley, the son of Peggy Haley, over Marsh’s preference to sell the Stations to Telcom, rather than her brother. The Commission has consistently held that it is not the proper forum for the resolution of such private disputes, and that parties should seek redress for such matters in local courts of competent jurisdiction.<sup>3</sup> Absent the issuance of an injunction or stay against the sale by a local court, the Commission has routinely granted assignment applications that are the subject of private legal disputes.<sup>4</sup>

With respect to Haley’s claim that he had submitted an offer for the Stations that exceeds that made by Telcom, under Section 310(d) of the Act, when acting on an application for assignment or transfer of a license, the Commission may not consider whether the public interest, convenience and necessity may be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.<sup>5</sup>

Finally, with respect to Haley’s argument that he would be prejudiced by a grant of the Applications prior to the local court’s final action on his litigation with Marsh, the Commission’s grant of an assignment application is based on its finding that the parties are qualified and that the proposed transaction does not violate the Communications Act of 1934, as amended, and the Commission’s rules and policies. As such, it is permissive only and does not prejudice any relief to which the parties may

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<sup>2</sup> *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990).

<sup>3</sup> See *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976); *Lauren A. Colby, Esq.*, 23 FCC Rcd 932, 933 (AD 2008).

<sup>4</sup> See *H. Edward Dillon*, Memorandum Opinion and Order, 94 FCC Rcd 203 (1973)(Commission refused to delay action on an involuntary assignment application where the state court had authorized the receiver to close the sale and refused to grant a stay of the receiver’s appointment).

<sup>5</sup> 47 U.S.C. § 310(d); *Shareholders of Tribune Company, Assignors*, Memorandum Opinion and Order, 22 FCC Rcd 21266, 21272 (2007).

ultimately be entitled pursuant to a subsequent ruling by a local court. It is also the Commission's long-standing policy to accommodate local court decrees unless a public interest determination under the Act would compel a different result.<sup>6</sup> Accordingly, we see no reason to impose a specific condition on our grant of the assignment applications.<sup>7</sup>

**Conclusion/Actions.** Accordingly, we find that Haley has failed to raise a substantial and material question of fact regarding grant of the Applications. Additionally, finding the Applicants qualified and that grant of the assignment applications would serve the public interest, convenience and necessity, the Petition to Deny filed by Harold J. Haley, Jr. IS DENIED, and that the applications for assignment of license for stations KETX(AM) (File No. BAL-20080328AIP), KETX-FM (File No. BAL-20080328AIQ) and KETX-LP (BALTVL-20080323AIR), Livingston, Texas from the Estate of Peggy Haley, N.C.M., Peggy Marsh, Legal Guardian, to Telcom Supply, Inc. ARE GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>6</sup> See *O.D.T. International*, Memorandum Opinion and Order, 9 FCC Rcd 2575, 2576 (1994); *Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985).

<sup>7</sup> See, e.g., *Kidd Communications*, Letter, 20 FCC Rcd 13723, 13725 (MB 2005) (a separate condition repeating language included in this letter "provides no additional benefit").