



Federal Communications Commission
Washington, D.C. 20554

April 10, 2008

DA 08-850

In Reply Refer to: 1800B3-BSH

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Mr. John Svadbik
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In re: **WMCU(AM), Coral Gables, FL**
Facility ID No. 74165
File No. BAL-20071019AXC

**Application for Assignment of License
Petition to Deny**

Dear Mr. Svadbik, Mr. Block and Counsel:

We have before us the above-captioned application (the "Assignment Application") seeking approval for the proposed assignment of license for Station WMCU(AM), Coral Gables, Florida (the "Station"), from Radio One Licenses, LLC ("Radio One") to Caron Broadcasting, Inc. ("Caron"). On November 6, 2007, John Svadbik ("Svadbik") filed a pleading entitled "Petition to Deny the Assignment of License." On November 16, 2007, Svadbik filed a second pleading entitled "Formal Petition to Deny."¹ The two pleadings raise the same issues and we shall address them jointly as the "Svadbik Petitions." For the reasons stated below, we deny the Svadbik Petitions and grant the Assignment Application.

Background. The Assignment Application was filed with the Commission on October 19, 2007, referencing the Station's then-current call sign of WTPS(AM). Pursuant to Radio One's request, the Station's call sign was changed to WMCU(AM), effective October 25, 2007.²

¹ Radio One filed an Opposition to Informal Objection on November 9, 2007, a Supplement to Opposition to Informal Objection on November 14, 2007, and an Opposition to "Formal Petition to Deny" on November 29, 2007.

² See FCC Call Sign Exchange Request Form, attached as Exhibit C to Radio One Opposition to Informal Objection.

Discussion. Svadbik argues that the Commission should deny or defer action on the Assignment Application for two reasons. First, Svadbik alleges that the applicants failed to give proper public notice of the proposed Assignment Application, as required by Section 73.3580 of the Commission’s rules.³ Second, Svadbik argues that the call sign change “was deliberately done to mislead the public.”⁴ Svadbik urges the Commission to withhold action on the Assignment Application pending resolution of several civil actions that have been filed by “various groups seeking legal and equitable remedies in Florida state courts against the call letters WMCU contemplated by the above-referenced application.”⁵

Public Notice. The Commission requires two forms of local public notice of a pending application for consent to the assignment of a broadcast station: publication in a local newspaper and broadcast on the subject station. Radio One states that it “is in substantial compliance with the Commission’s rules governing local public notice.”⁶ Radio One maintains that it complied with the local newspaper publication rule, stating that it published public notice of the pending assignment application in the November 1, 2007, the November 8, 2007, and the November 15, 2007, editions of the *Coral Gables Gazette*,⁷ a weekly newspaper published in Coral Gables,⁸ the Station’s community of license. Moreover, Radio One provides evidence of such publication.⁹ As explained by Radio One, “the text of the local public notice announcement was prepared shortly after the Application was filed,” and therefore contained the WTPS(AM) call sign that was in use at the time this notice was prepared.¹⁰ This newspaper notice provided the Station’s frequency, as well as the address for the Station’s public file, and appropriately indicated that a copy of the Assignment Application was available for inspection at that location. Accordingly, we find that this notice was in full compliance with the local newspaper publication requirement of the relevant rule.

Because of “an internal miscommunication,” Radio One acknowledges, it did not begin broadcasting the local public notice announcement on the Station until November 9, 2007.¹¹ The rule directed Radio One to broadcast the announcements in the week that ended six days before the announcements actually began.¹² Radio One states that it aired the notice twice the number of times that is normally required “in order to ensure that the public is adequately notified of the proposed

³ 47 C.F.R. § 73.3580.

⁴ Informal Objection at 2.

⁵ Formal Petition to Deny at 5, citing Clerk of the Courts, Miami-Dade County, Florida, Case No. 2007-35088-CA-01 and Case No. 13-2007-CA-035088-0000-01 (filed Oct. 18, 2007).

⁶ Opposition to Informal Objection at 2.

⁷ *Id.*

⁸ Publication in a weekly newspaper is appropriate because, as Radio One attests without challenge, there is no daily newspaper of general circulation that is published in Coral Gables. *See* 47 C.F.R. § 73.3580(c)(1)(ii).

⁹ *See* Opposition to Informal Objection at Exhibit B.

¹⁰ Opposition of Formal Petition to Deny at 5.

¹¹ *See id.* at 2.

¹² *See* 47 C.F.R. § 73.3580(d)(3)(i).

assignment.”¹³ In support, Radio One provides evidence that it broadcast notice of the filing of the Assignment Application between both 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m. on each day from November 9, 2007, through November 12, 2007,¹⁴ although only one such daily announcement would have satisfied the rule. To avoid confusion, Radio One also states that these broadcast announcements “contained both the Station’s current and former call sign.”¹⁵ We find that these twice-daily broadcast notices provide substantial compliance with the rules, following Radio One’s acknowledged “miscommunication” that delayed their commencement.¹⁶

Call Sign. Radio One’s request to change the Station’s call sign from WTPS(AM) to WMCU(AM) was appropriately filed through the FCC Broadcast Call Sign Reservation and Authorization System on October 18, 2007. The request was approved and became effective on October 25, 2007. With respect to Svadbik’s contention that the call sign assignment creates confusion in the local market, the Commission’s policy concerning claims of this nature is clear. It is well-settled that such call sign disputes should be resolved in local forums because Commission resolution of these claims would be “an unnecessary and inefficient use of our administrative resources.”¹⁷ Accordingly, Svadbik fails to raise a substantial and material question on this issue warranting further consideration.

Finally, the civil action concerning the WMCU(AM) call sign that is referenced by Svadbik¹⁸ constitutes a private controversy. The Commission has consistently held that it is not the proper forum for the resolution of such private disputes, and that the parties should seek redress for such matters in local courts of competent jurisdiction.¹⁹ Svadbik has not provided evidence of an injunction or a stay issued by a local court against the proposed sale. In the absence of such an order from the local court, the Commission has routinely acted favorably on license assignment applications. We note, however, that Commission grant of an assignment application merely finds that the parties are qualified under, and 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 ultimately be entitled.

Conclusion/Actions. Based on the above, we find that Svadbik has not raised a substantial and material question of fact warranting further inquiry. We further find that Caron is qualified to hold the Station WMCU(AM) license and that grant of the Assignment Application is consistent with the public interest,

¹³ Opposition to Informal Objection at 2.

¹⁴ See Supplement to Opposition to Informal Objection.

¹⁵ Opposition of Formal Petition to Deny at 5.

¹⁶ See, e.g., *Timothy Welch, Esq.*, Letter, 21 FCC Rcd 692 (MB 2006); *WHDH-AM, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 4329 (1991) (late airing of broadcast notices of assignment application “substantially complied” with Section 73.3580).

¹⁷ *Revision of Section 73.3550 of the Commission’s Rules with respect to the Assignment of New and Modified Call Letters to AM, FM and TV Broadcast Stations*, Report and Order, 95 FCC 2d 1079, 1080 (1983).

¹⁸ See *supra* note 4.

¹⁹ See *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976); *Decatur Telecasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 8622 (1992).

convenience and necessity. Accordingly, IT IS ORDERED, that the Svadbik Petitions ARE DENIED, and that the application for approval to assign the license for Station WMCU(AM), Coral Gables, Florida (File No. BAL-200711019AXC) from Radio One Licenses, LLC to Caron Broadcasting, Inc. IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: James Riley, Esq.