



Federal Communications Commission
Washington, D.C. 20554

July 13, 2009

DA 09-1524

In Reply Refer to:

1800B3-SS

Released: July 13, 2009

Mr. Leonard Watson
6035 Bridgewater Circle
Ponte Vedra, FL 32082

Larry S. Weatherford, President
Benton-Weatherford Broadcasting of Indiana, Inc.
P.O. Box 67
Covington, IN 47932

In re: **WKZS(FM), Thomasboro, IL**
Facility ID No. 4807
File No. BPH-20080108ABK

Application for Construction Permit

Petition to Deny

Dear Messrs. Watson and Weatherford:

We have before us the referenced application (the "Application") of Benton-Weatherford Broadcasting of Indiana, Inc. ("Benton-Weatherford") for a minor modification of the facilities of Station WKZS(FM), Covington, Indiana (the "Station"). The Application proposes to remove the Station from Covington, Indiana, to Thomasboro, Illinois, and change its transmitter site and technical facilities.¹ On July 10, 2007, Leonard Watson ("Watson") filed a Petition to Deny the Application (the "Objection"). For the reasons stated below, we consider the Watson pleading as an informal objection, deny it, and grant the Application.

¹ See 47 C.F.R. § 73.3573(g). In accordance with established procedures, Benton-Weatherford certified that it provided local notice of the filing of the Application pursuant to Section 73.3580 of the Commission's Rules (the "Rules") and the Bureau published notice in the *Federal Register* that the Application had been filed. See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14218-14220 (2006) ("Community Change R&O"). The Bureau published notice of the Application on January 25, 2008. See *Notices, Radio Broadcasting Services, AM or FM Proposals to Change the Community of License*, 73 Fed. Reg. 4572 (January 25, 2008). No comments were received by the March 25, 2008, comment deadline.

Background. As described in the Objection, Watson claims that he is “part owner (33% stockholder)” of the Station.² Watson opposes a grant of the Application based on his claim that he was unaware of its filing and that over the past seven years he has received no response to questions he has presented in writing to the Station’s President regarding operation of the Station. Watson maintains that the Commission should not grant the Application until it has determined that the Station is being operated in accordance with the Rules and corporate laws of the United States, Indiana, and Illinois.³

Discussion. Procedural Matter. Because formal petitions to deny do not lie against minor modification applications, such as that of Benton-Weatherford’s here,⁴ the Watson pleading will be considered as an informal objection to the Application under Section 73.3587 of the Rules.⁵

Substantive Matters. Watson’s request as a minority shareholder for notification regarding operation of the Station⁶ relates to a shareholder dispute which constitutes a private controversy. Watson, as a Benton-Weatherford shareholder, has other avenues open to him should he believe that there is a breach of fiduciary duty on the part of the Benton-Weatherford board of directors.⁷ The public interest standard does not entitle the Commission to control or manage, or seek to control or manage, a company’s day-to-day business operations. Further, the Commission may not undertake any action of a corporate governance nature that would affect the rights of shareholders, the current board of directors, and/or management.⁸

With respect to Watson’s claim that “the Commission [must] ascertain that [the Station] is being operated . . . within the corporate laws of the United States and the states of Indiana and Illinois,” the Commission has generally declined to consider issues of a licensee’s compliance with the requirements of state corporate law where, as here, no challenge has been made before a state court.⁹ Accordingly, we find that further law consideration of these speculative and unspecific allegations is unwarranted.

² Objection at 1.

³ Although the Objection indicates that it was served on Benton-Weatherford President Larry Weatherford, Benton-Weatherford failed to oppose the Objection.

⁴ See 47 U.S.C. § 309(c) and 47 C.F.R. § 73.3584; see also *Community Change R&O*, 21 FCC Rcd at 14220; see also *CMP-Houston KC, LLC*, Memorandum Opinion and Order, 23 FCC Rcd 10656, 10660 n.31 (2008), citing *Cloud Nine Broadcasting, Inc.*, Letter, 10 FCC Rcd 11555, 11556 (1995).

⁵ 47 C.F.R. § 73.3587.

⁶ Objection at 1.

⁷ See *Motient Corporation and Subsidiaries, Transferors, and Skyterra Communications, Inc., Transferee*, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 10198, 10209 (IB 2006) (“Commission proceedings are not the appropriate forum for the adjudication of shareholder disputes.”).

⁸ See *Comsat Corporation*, Memorandum Opinion and Order, 13 FCC Rcd 2714, 2729 (1998) (more appropriate forums are available for a company to redress its alleged grievances).

⁹ See *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543, 18544 (1999).

Conclusion/Actions. Based on the above, we find that Watson has not raised a substantial and material question of fact warranting further inquiry. Accordingly, IT IS ORDERED, that the Petition to Deny filed by Leonard Watson, treated herein as an informal objection, IS DENIED, and that the Application for a minor modification of the facilities of Station WKZS(FM), Thomasboro, Illinois (File No. BPH-20080108ABK) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau