

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of
Jerry Russell d/b/a The Russell Company
and
Hanszen Broadcasting
For Assignment of License for Station
KWRD(AM), Henderson, Texas
Facility I.D. No. 71519
File No. BAL-20080617ACD

MEMORANDUM OPINION AND ORDER

Adopted: July 27, 2012

Released: July 27, 2012

By the Chief, Audio Division

I. INTRODUCTION

1. The Media Bureau has before it the captioned application (the "Application") seeking Commission consent to the assignment of the license for Station KWRD(AM), Henderson, Texas (the "Station") from Jerry Russell d/b/a The Russell Company ("Russell" or the "Licensee") to Hanszen Broadcasting ("Hanszen"). Also before us are Petitions to Deny the Application filed on July 17, 2008, by Larry G. Fuss ("Fuss") (the "Fuss Petition") and on August 12, 2008, by counsel for Phillip Burr ("Burr") (the "Burr Petition"), related responsive pleadings, and Russell's January 29, 2009, and February 22, 2011, responses to two staff inquiry letters as described below.

2. In this Memorandum Opinion and Order, for the reasons set forth below, we treat the Fuss and Burr pleadings as informal objections, deny those objections, and grant the Application with conditions.

1 Additionally, on July 21, 2008, Burr also filed on his own behalf a letter accusing Russell of defrauding him in connection with the sale of the Station. Attached was a copy of the "Plaintiff's Original Petition" regarding this claim which Burr instituted in the District Court for the 4th Judicial District of Rusk County, Texas, Case No. 2008-156.

2 Hanszen filed oppositions to the Fuss Petition and the Burr Petition on July 30, 2008, and August 1, 2008, respectively. Russell also filed an opposition to the Fuss Petition on August 7, 2008. Burr also filed a "Consolidated Reply to Oppositions to Petition to Deny" ("Burr Reply") on August 12, 2008. Additionally, on January 20, 2011, and again on March 11, 2011, counsel for Hanszen wrote the Commission claiming that Hanszen would make an "exemplary licensee" committed to improving station performance and urging the Commission to grant the Application without further delay. Finally, on August 2, 2011, counsel for Hanszen filed a "Motion for Prompt Relief."

3 On March 11, 2009, Fuss filed comments on Russell's January 20, 2009, response.

II. BACKGROUND

3. Russell and Hanszen filed the Application on June 17, 2008, proposing to assign the license and sell the assets of the Station to Hanszen for a total purchase price of \$100,000.⁴ In the Application, Russell responded to the question in Section II, Item 4, regarding his other broadcast interests by checking the box “N/A” but including an Exhibit 5 stating, “Assignor believes it is the licensee of KOFY-AM, [Gilmer, Texas].”⁵

4. *Fuss Petition.* In his Petition, Fuss alleges that the Application failed to disclose Russell’s ownership of numerous other broadcast stations.⁶ This, he claims, “exhibits an act of deception” that the Commission should investigate.⁷ Additionally, Fuss asserts that all of Russell’s and MRSVI’s radio stations have been silent for more than one year without Commission authority. Fuss also alleges that: (1) Russell, Community and MRSVI have all failed to pay forfeitures assessed by the Commission against stations licensed to them for a variety of rule violations, including violations of the Emergency Alert System, tower enclosure, and public inspection file rules;⁸ (2) Russell, Community, and MRSVI each failed to file biennial ownership reports required by Section 73.3615 of the Rules;⁹ (3) Russell, Community and MRSVI have failed to pay their annual regulatory fees as required by Section 9 of the Act¹⁰ and Section 1.1151 of the Rules;¹¹ and (4) Russell, Community and MRSVI all engage in “shoddy” radio station business practices, such as disregarding contractual and other legal obligations.¹²

5. In its opposition, Hanszen contends that, even if true, the Fuss Petition’s allegations are irrelevant and that the revocation of the Station’s license would not serve the public interest. Hanszen argues that Fuss lacks standing to file a petition to deny because he lives in Las Vegas, Nevada, and is simply a creditor of Russell.¹³ With regard to Russell’s alleged failure to report other broadcast interests in the Application, Hanszen contends that Russell was under no obligation to do so because the stations not reported had been silent for over a year and, therefore, pursuant to Section 312(g) of the Act,¹⁴ their licenses had terminated by operation of law. Additionally, Hanszen asserts that: (1) Section 1.80(f)(5) of

⁴ Hanszen also agrees to assume certain Station’s liabilities. Among these was the \$7,200 balance on a *Forfeiture Order* issued to Russell by the Enforcement Bureau, Acct No. 200732500002 as discussed below. See *Jerry Russell dba The Russell Company*, Forfeiture Order, 22 FCC Rcd 48 (South Central Region, EB, 2007), *recon. dismissed*, Memorandum Opinion and Order, 22 FCC Rcd 9065 (EB 2007) (the “2007 Forfeiture”). The 2007 Forfeiture was imposed for willful and repeated violation of 47 C.F.R. § 11.35(a) of the Rules due to Russell’s failure to ensure the operational readiness of the Station’s Emergency Alert System. Hanszen loaned to Russell \$25,000 out of the deposited purchase price to satisfy this and other obligations. See Application, Asset Purchase Agreement, Paragraphs 2.3.9 and 3.2 and Security Agreement. The Commission’s Office of Managing Director has confirmed that the 2007 Forfeiture has been paid.

⁵ Application Section II, Item 4 and Exhibit 5.

⁶ Fuss argues that Russell did not disclose his ownership of KZEY(AM), Tyler, Texas, owned by Community Broadcast Group, Inc. (“Community”) of which Russell is the President and 92 percent shareholder. He also alleges that Russell failed to disclose that he is President and 100 percent stockholder of M.R.S. Ventures, Inc. (“MRSVI”), the licensee of a number of radio stations in Arkansas and Mississippi.

⁷ Fuss Petition at 3.

⁸ *Id.* at 4 and Exhibit 7. See 47 C.F.R. §§ 11.35(a), 73.49, and 73.3526, respectively.

⁹ *Id.* at 5. See 47 U.S.C. § 73.3615.

¹⁰ 47 U.S.C. § 159.

¹¹ 47 C.F.R. § 1.1151.

¹² Fuss Petition at 8.

¹³ Hanszen cites *Arizona Mobile Telephone Co.*, Memorandum Opinion and Order, 80 FCC 2d 87 (Rev. Bd. 1980).

¹⁴ 47 U.S.C. § 312(g).

the Rules directly refers unpaid forfeitures to the Department of Justice for collection, and that matter does not concern the Commission here; (2) ownership reports did not have to be filed for other Russell-controlled entities because these stations had been silent for more than a year and the station licenses had expired pursuant to Section 312(g); (3) all delinquent regulatory fees appear to have been paid; and (4) the “shoddy business practices” alleged in the Fuss Petition “extend beyond FCC rule compliance [and] are not within the realm of FCC jurisdiction.” Hanszen concludes that there is nothing that the Commission could or should do to rectify any of them.¹⁵ In his Opposition to the Fuss Petition, Russell simply states that he “agrees with all key points” made by Hanszen in its Opposition and, additionally, asserts that one of the lawsuits referenced in the Fuss Petition has been dismissed.

6. *Burr Petition.* In his Petition Burr asserts that, in 2006, Burr entered into a Time Brokerage Agreement (“TBA”) with Russell to provide programming for the Station. He states that the TBA included an option to purchase the Station with payments under the TBA credited toward the purchase price. According to Burr, Russell gave notice that it was terminating the agreement due to defaults by Burr and entered into an agreement with Hanszen for the sale of the Station in April of 2008. Burr indicates that he has brought suit in the 4th Judicial District of Rusk County, Texas, with regard to Russell’s alleged breach of contract and has sought to enjoin Russell from selling the Station. He asks that the Commission hold this matter in abeyance pending a final court ruling. Burr also claims that Russell’s actions demonstrate that he does not have the character qualifications to remain a Commission licensee or to assign the Station license.

7. In its Opposition to the Burr Petition, Hanszen argues that Burr has failed to show that he has standing to file a Petition to Deny. Rather, it contends, he has only demonstrated that he has a lawsuit pending in a Texas court regarding a private contractual matter. Additionally, Hanszen notes that the Petition makes no allegation that it (Hanszen) is unqualified to be licensee of the Station and raises only issues that are irrelevant to the Commission’s concern here.

8. *Russell Inquiry Letter Responses.* The record lacked any substantive representation from Russell regarding his attributable broadcast ownership interests and the operational status of stations in which he may have had such an interest. Accordingly, on January 7, 2009, Media Bureau sent two separate letters of inquiry to Russell requesting additional information.¹⁶ Russell responded to the *Other Interests Letter*¹⁷ on January 29, 2009, indicating that Station KOFY(AM), Gilmer, Texas, “was deleted” but that he obtained a Special Temporary Authority (“STA”) from the Commission which gave him six months in which to make the station operational. He claims he is doing that and that KOFY(AM) “should be completely operational within the period specified in the STA.”¹⁸ With regard to MRSVI, Russell

¹⁵ Hanszen Opposition at 5.

¹⁶ See *Letter to Mr. Jerry Russell* (Jan. 7, 2009) (the “*Other Interests Letter*”); *Letter to Mr. Jerry Russell* (Jan. 7, 2009) (the “*Operational Status Inquiry Letter*”).

¹⁷ The *Operational Status Inquiry Letter* was returned to the Commission as “unclaimed” by the Post Office on March 10, 2009.

¹⁸ See BLSTA-20051025ACS, granted on September 23, 2008, gave Russell the authority to operate KOFY(AM) pending consideration of the station’s renewal application. The STA expired on March 23, 2009. Russell filed an untimely request for extension of that STA on June 24, 2009. See File No. 20090624AEZ. In fact, Russell had filed a timely license renewal application for that station, but neglected to pay the requisite filing fee. The staff subsequently accepted the application and assessed Russell a late-fee penalty. *Letter to Ms. Gwendolyn Walker, M.R.S. Ventures, Inc.* reference 1800B3-KAW (MB rel. Nov. 19, 2010). However, the staff was unable to grant the application due to a “red light” hold for failure to pay regulatory fees.

Additionally, the staff was unaware that, as implied by the response, Station KOFY(AM) had ceased operations. It therefore sent Russell an operational status inquiry about that station on October 27, 2011. *Letter to Jerry Russell*, Reference 1800B3-DW (MB Oct. 27, 2011). Mr. Russell responded on November 22, 2011, indicating that: (1) KOFY(AM) ceased operations in May of 2007 but returned to the air with full power on August 1, 2009; and (2) the station operated from August 1, 2009, until November 15, 2011, when Mr. Russell took the station silent once again.

contends that, as a result of financial hardship, he is selling the stations and he expects to have a “definitive agreement” in the near future. He argues that he did not list the MRSVI or Community stations in the instant application because the Community station was not broadcasting and the MRSVI stations were about to be relinquished to his senior lender. Thus, he contends, the omission of these attributable interests was an “honest mistake.”¹⁹

9. Commission staff forwarded a copy of the *Russell Response* to Fuss and to counsel for Burr on February 17, 2009, providing 10 days for those parties to respond. Burr did not respond, but Fuss submitted a letter, received March 11, 2009, indicating that the *Russell Response* “continues the same pattern of deception that Mr. Russell has engaged in in the past.”²⁰ He observes that, although Russell claims to have agreed to assign the MSRVI stations to his senior lender, no assignment applications have been filed. He also states that he contacted Christopher L. Murray of purported buyer, Interstate Broadcasting Company, LLC (“IBC”) and was told that IBC had “walked away” from the potential acquisition when it discovered that the stations were all off the air and most of the assets are gone.”²¹

10. Because Russell did not respond to the inquiry letter regarding the operational status of his stations, the staff resent that letter on January 21, 2011.²² In his subsequent response, Russell acknowledges that all of the other stations in which he had an attributable interest had gone silent in 2006 and 2007 and their licenses had therefore expired pursuant to Section 312(g) of the Act.²³ He indicates that he believed he had properly notified the Commission of the stations’ status and further that he believed that, due to the expiration of the stations’ licenses, he had no further reporting obligations.²⁴

11. In light of Russell’s response, on May 2, 2011, the staff declared expired the licenses and cancelled the licenses for the following stations: KZEY(AM), Tyler, Texas (Facility ID No. 12809); Station KPBF-FM, Pine Bluff, Arkansas (Facility ID No. 52619); Station KZYP(FM), Pine Bluff, Arkansas (Facility ID No. 33726); KOTN(AM) Pine Bluff, Arkansas (Facility ID No. 4236); KCLA(AM), Pine Bluff, Arkansas (Facility ID No. 33725); KRKD(FM), Demott, Arkansas (Facility ID No. 86857); KZYQ(FM), Lake Village, Arkansas (Facility ID No. 16551); WRKG(FM), Drew, Mississippi (Facility ID No. 16552); WDTL-FM, Cleveland, Mississippi (Facility ID No. 16557); WZYQ(FM), Mound Bayou, Mississippi (Facility ID No. 43900); and WDSK(AM), Cleveland, Mississippi (Facility ID No. 16554).²⁵

Letter to Mr. Peter H. Doyle from Jerry Russell (rec’d Dec. 6, 2011). On February 29, 2012, the Bureau issued a letter announcing that the KOFY(AM) license had expired by operation of law pursuant to 47 U.S.C. § 312(g) and dismissing a pending license renewal application (File No. BR-20050408ABH) and STA extension request for that station. *Letter to Jerry Russell*, reference 1800B3-DW (MB Feb. 29, 2012). That action has not been appealed and has become final.

¹⁹ January 29, 2009, Russell response at 2.

²⁰ *Letter to Mr. Peter Doyle, Chief, Audio Division, Media Bureau from Larry G. Fuss* (rec’d Mar. 11, 2009) (“*Fuss Letter*.”)

²¹ *Fuss Letter* at 1-2. Fuss provides no extrinsic evidence to corroborate his hearsay discussion with IBC’s Murray. Fuss also notes that the Dr. Topham Letter indicates that Russell “is able to carry out full daily activities without difficulty” and “remains stable and fully active.” *Fuss Letter* at 2.

²² *Letter to Mr. Jerry Russell*, reference 1800B3-MFW (Jan. 21, 2011).

²³ *Letter to Peter H. Doyle, Chief, Audio Division, Media Bureau* (rec’d Feb. 22, 2011). Mr. Russell indicates that he had suffered serious health problems over the last several years and had been unable to monitor the stations’ activity and operations.

²⁴ *Id.* at 1.

²⁵ *Public Notice* of these Actions was released on May 5, 2011. See *Broadcast Actions*, Public Notice, Report No. 47480 (May 5, 2011), pp. 10-12. These actions are now final.

III. DISCUSSION

12. *Procedural Matter: Standing.* A party filing a petition to deny must demonstrate standing to do so by providing “specific allegations of fact sufficient to show that [it] is a party in interest.”²⁶ These allegations must show that 1) the petitioner would suffer a direct injury that is more than hypothetical or purely speculative;²⁷ 2) the injury is causally linked to the challenged action;²⁸ and 3) the relief sought will likely be remedied with the Commission’s denial of the pending application.²⁹ Moreover, “it is well established that ‘standing is accorded to persons not for the protection of their private interests but only to vindicate the public interest.’³⁰ Accordingly, creditors are not generally permitted to intervene as a matter of right solely on the ground that they have a financial stake in the survival of the parties.³¹ Finally, in order to file a petition to deny, the petitioner must provide an affidavit or declaration that establishes such standing.³²

13. Neither Fuss nor Burr has adequately demonstrated standing to file a Petition to Deny. Although Fuss provided an affidavit, he has failed to show how the injury that he claims he will suffer is causally linked to the challenged action or that denial of the Application would provide the relief he seeks. The harm Fuss claims he will suffer stems from a judgment he has against MRSVI and does not pertain to the Station or Licensee here. We agree with Hanszen that Fuss’s status as a Russell creditor is insufficient, of itself, to confer standing.³³ Burr did not provide an affidavit or declaration establishing his standing to file a Petition to Deny and alleges only that Burr and Russell are opposing litigants in a lawsuit. Therefore, he has not established that he has standing to file a Petition to Deny. We will, however, treat both the Fuss Petition and the Burr Petition as informal objections under Section 73.3587 of the Rules.³⁴

14. *Substantive Matters. Russell’s Other Broadcast Interests.* Russell responded to the question in the Application regarding his other broadcast interests by checking the box “N/A” and included an Exhibit 5 which stated “Assignor believes it is the licensee of KOFY-AM.” As he later admitted, Russell at the time held attributable interests in MRSVI and Community. However, Hanszen and Russell claim that Russell was under no obligation to report these interests because the stations licensed to these entities had been silent for more than 12 consecutive months and, accordingly, the

²⁶ 47 U.S.C. § 309(d)(1).

²⁷ See, e.g., *In re Conn-2 RSA Partnership*, Memorandum Opinion and Order, 9 FCC Rcd 3295, 3297 (1994) (injury cannot be hypothetical, but rather fairly traceable to whether the Commission decides to grant the license). See also *K Licensee, Inc.*, Letter, 23 FCC Rcd 7824, 7825 (2008).

²⁸ See *In re PCS 2000, L.P.*, Memorandum Opinion and Order, 12 FCC Rcd 1681, 1685-86 (1997) (petitioner did not meet the requirements of standing because although it provided sufficient facts to show an injury, it did not adequately explain how denying the pending license would remedy its injury). See also *Riverside Youth & Rehabilitation d/b/a Riverside Ministries*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10360, 10362-63 (2008).

²⁹ *Id.*

³⁰ *Office of Communication of the United Church of Christ v. FCC*, 123 U.S. App. D.C. 328, 335, 359 F. 2d 994, 1001 (1966).

³¹ See *Hertz Broadcasting of Birmingham, Inc.*, Memorandum Opinion and Order, 46 FCC 2d 350 (Rev. Bd. 1974).

³² *K Licensee, Inc.*, 23 FCC Rcd at 7825.

³³ See *CBS Radio Stations, Inc.*, 22 FCC Rcd 22058, 22061 (MB 2007), citing *Arizona Mobile Telephone Company*, Memorandum Opinion and Order, 80 FCC 2d 87 (1980); *Office of Communication of the United Church of Christ v. FCC*, 359 F. 2d at 1001; and *Hertz Broadcasting of Birmingham, Inc.*, 46 FCC at 352 (financial interests of major creditor of applicant do not constitute adequate basis to qualify petitioner as a “person aggrieved”).

³⁴ 47 C.F.R. § 73.3587.

station licenses had terminated pursuant to Section 312(g) of the Act. Although the staff had not been informed of the stations' silence and the staff had not taken the ministerial step of cancelling these licenses at the time the Application was filed, a license expires automatically when a station fails to transmit broadcast signals for a continuous twelve-month period.

15. Moreover, the record of this application proceeding is somewhat muddled by Russell's shifting explanations for not disclosing these interests. As noted, he initially agreed with Hanszen's contention that he did not need to disclose these interests because the station licenses had expired pursuant to Section 312(g) of the Act. Later, in response to the *Other Interests Letter*, Russell stated that he did not list the MRSVI or Community stations in the Application because the Community station was not broadcasting and the MRSVI stations were about to be relinquished to his senior lender. Still later, in response to the resent *Operational Status Inquiry Letter*, Russell reverted back to the license expiration theory. He indicated that all other stations in which he had an attributable interest had gone silent in 2006 and 2007 and their licenses had therefore expired pursuant to Section 312(g) of the Act and therefore that, due to the expiration of the stations' licenses, no further reporting obligation was required.

16. The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."³⁵ The Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.³⁶ Moreover, Section 1.17(a)(2) of the Rules provides that no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."³⁷ Thus, even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17 of the Rules if it is provided without a reasonable basis for believing that the statement is correct and not misleading.³⁸

17. Russell's failure to list any attributable broadcast interests apart from KOFY(AM), on the unique facts here, do not constitute either a misrepresentation, lack of candor, or a false certification. We find that, on June 17, 2009, when Russell filed the application listing only KOFY(AM), the licenses of all of his other broadcast stations -- including KOFY(AM) -- had expired by operation of law under Section 312(g). Accordingly, Russell was not required to report any ownership interest in those former stations. Thus, Russell's failure to do so, although clearly made without a reasonable factual basis because Russell at that time simply did not know whether his stations were on the air or the length of time any had been off the air, constituted a "true certification," not a false certification.

18. However, Russell's failure to provide timely notification and seek authority remain silent with respect to these other stations constitute serious, potentially actionable, offenses. Section 73.1740(a)(4) requires a licensee to notify the Commission when causes beyond the licensee's control make it impossible to adhere to the station's minimum operating schedule, and requires a licensee to seek

³⁵ See *Commercial Radio Service, Inc.*, Order to Show Cause, 21 FCC Rcd 9983, 9986 (2006) ("*CRS Order*") citing, e.g., *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) ("*Contemporary Media*"); and *Cumulus Licensing, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 13711, 13717 (MB 2007) ("[I]t is essential that licensees make full and clear disclosure of all material facts in every application. . .").

³⁶ *Contemporary Media*, 214 F.3d at 196.

³⁷ 47 C.F.R. § 1.17(a)(2).

³⁸ See *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4106, 4017 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004) (stating that the revision to Section 1.17 is intended to "prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive").

authorization for any period of limited or discontinued authorizations exceeding 30 days. It enables the Commission to remain informed about the operational status of a station and permits the Commission to monitor the service that station is providing to its community. This, in turn, enables the Commission to ensure that licensees broadcast in the public interest, a responsibility imposed by the Communications Act of 1934, as amended.³⁹ Russell's failure to notify the Commission that his each of his 12 separate stations was off the air evidences some combination of gross incompetence and wanton disregard of his disclosure obligations under Section 73.1740(a)(4) of the Rules. Although his conduct falls far short of minimum licensee conduct we decline to find a lack of candor for several reasons. Most importantly, Russell, himself raised the Section 312(g) issue, thereby undermining the argument that his incomplete answer was motivated by a desire to hide the operational status of these silent stations. In addition, if, *arguendo*, those licenses had not expired, Russell's disclosure of his interests would not have been an impediment to the grant of the Application. Nevertheless, we find Russell's conduct to be sufficiently egregious as to raise concerns about his ability and commitment to comply with Commission rules and policies regarding licensee disclosure requirements. Accordingly, Russell may not acquire an attributable interest in a Commission licensee without prior notice to the Commission and a full showing that he will fully meet all Commission obligations.

19. As a result, we find that Russell violated Section 73.1740(a) of the Rules by failing to seek special temporary authorization to remain silent for any of those 12 stations. The failure to do so would warrant a notice of apparent liability for forfeiture for each instance of unauthorized silence.⁴⁰ Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules, the base forfeiture amount for unauthorized discontinuance of service is \$5,000.⁴¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁴²

20. However, Section 503(b)(6)(B) of the Act prohibits the Commission from imposing a forfeiture penalty against a person that does not hold a broadcast license "if the violation occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability."⁴³ Because Russell is no longer the licensee of these 12 stations, we are statutorily barred from issuing a forfeiture for his apparent misconduct at those stations.

21. Additional Allegations. None of the remaining Fuss or Burr allegations warrant further inquiry. To the extent that Fuss raises allegations concerning stations other than KWRD(AM), the Commission has long held that misconduct at one station is not necessarily imputed to a licensee's other stations.⁴⁴ Nothing in the record warrants departure from that policy here.

³⁹ Renewal Reporting Requirements for Full Power, Commercial AM, FM and TV Broadcast Stations, Notice of Proposed Rulemaking, 8 FCC Rcd 49, 49 ¶ 5(1993).

⁴⁰ See, e.g., *South Seas Broadcasting, Inc.*, Forfeiture Order, 55 Communications Reg. (P&F) 997 (MB 2012) (affirming two \$5,000 forfeitures for two separate instances of unauthorized silence, one lasting for more than one month and the other more than two months).

⁴¹ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17113-15; 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

⁴² 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

⁴³ 47 U.S.C. § 503(b)(6)(B).

⁴⁴ See *Character Policy Statement*, 102 FCC 2d at 1223-25 (no presumption that misconduct at one station is necessarily predictive of the licensee's operation of other stations). See also *Citicasters Licenses, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 19234, 19336 (MB 2007) (allegations of misconduct by licensee at stations other than those at issue not relevant for consideration).

22. With regard to Fuss' allegations concerning Russell's, Community's and MRSVI's asserted unpaid forfeitures, only the 2007 Forfeiture relates to the Station.⁴⁵ However, this forfeiture has been paid. Similarly, Fuss has alleged that Russell, Community and MRSVI have been delinquent in the payment of regulatory fees. Because the instant application only involves Russell, we will not consider herein the allegation with respect to Community and MRSVI. Sections 9(c)(1)–(3) of the Act⁴⁶ provide that the penalties for late payment of regulatory fees can consist of a financial penalty, dismissal of applications or other filings, or license revocation. It appears, however, that the Station's regulatory fees were paid on September 18, 2008, and there is not currently a "red light" hold on KWRD(AM).

23. Finally, with respect to Fuss' allegation concerning how Russell, Community and MRSVI have engaged in "shoddy business practices" resulting in breaches of contracts, lawsuits, judgments, seizures of property, and evictions, Fuss has provided no evidence that these alleged business practices either violated the Act or the Rules or have resulted in a criminal conviction. Thus, none of those matters fit within the categories of Commission or non-Commission misconduct that the Commission has said would be relevant to determining an applicant's character qualifications.⁴⁷

24. Burr's allegations fail for the same reason. As Burr has acknowledged, the Commission has consistently held that parties should seek redress for private contractual disputes in courts of competent jurisdiction.⁴⁸ Burr has not provided evidence of an injunction or a stay issued by any court against the proposed sale. In the absence of such a court order, the Commission has routinely acted favorably on license assignment applications pending resolution of private disputes such as those at issue here.⁴⁹ 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 Act, the Rules or Commission policies. As such, it is permissive only and does not prejudice any relief to which the parties may ultimately be entitled.⁵⁰

25. *The Application.* We have evaluated the Application and find that the proposed transaction complies with all pertinent statutory and regulatory provisions and that a grant of the subject Application would serve the public interest, convenience, and necessity. Accordingly, pursuant to Section 310 of the Act,⁵¹ we will grant the application to assign the license of the Station from Russell to Hanszen as conditioned below.

IV. ORDERING CLAUSES

26. Accordingly, for the reasons set forth above, IT IS ORDERED, that the Petitions to Deny filed by Larry G. Fuss on July 17, 2008, and by Phillip Burr on August 12, 2008, treated herein as Informal Objections, ARE DENIED.

⁴⁵ See *Jerry Russell dba The Russell Company*, referenced in note 4 *supra*.

⁴⁶ 47 U.S.C. §§ 159(c)(1)-(3).

⁴⁷ The Commission-related misconduct alleged by Fuss pertains to other licensee entities in which Russell has an interest. Fuss merely repeats allegations made in previous complaints. In any event, Fuss has not shown that these matters are germane to the instant matter.

⁴⁸ 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).

⁴⁹ See *H. Edward Dillon*, Memorandum Opinion and Order, 94 FCC 2d 203 (1973) (Commission will not delay action on an involuntary assignment application where state appellate court refused to grant stay of receiver's appointment and specifically authorized the receiver to close the sale).

⁵⁰ See *Letter to Geraldine R. Miller and George R. Borsari, Jr., Esq.*, 24 FCC Rcd 11814, 11815 (MB 2009).

⁵¹ 47 U.S.C. § 310.

27. IT IS FURTHER ORDERED that, pursuant to Section 310 of the Communications Act of 1934, as amended, the application for Commission consent to the assignment of the license of Station KWRD(AM), Henderson, Texas, from Jerry Russell d/b/a The Russell Company and Hanszen Broadcasting for Station KWRD(AM) (File No. BAL-20080617ACD) IS GRANTED, subject to the conditions that: (1) Jerry Russell shall not in the future acquire an attributable interest in any Commission licensee or permittee without advance notice and a full showing that he will fully discharge all Commission obligations relating to such license or permit; (2) should Jerry Russell propose to hold an attributable interest in any applicant for a Commission authorization, he must submit this showing and a copy of this *Memorandum Opinion and Order* with the application.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau