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In Reply Refer to:

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David D. Oxenford, Esq.
Wilkinson Barker Knauer LLP
2300 N Street N.W. Suite 700
Washington, D.C. 20037

David D. Burns, Esq.
Latham & Watkins, LLP
555 Eleventh Street, N.W. Suite 1000
Washington, D.C. 20004

Charles L. Spencer, Esq.
Hebert, Spencer, Cusimano & Fry, LLP
701 Laurel Street
Baton Rouge, LA 70802

Lewis J. Paper, Esq.
Dickstein Shapiro LLP
1825 Eye Street, N.W.
Washington, D.C. 20006

In re: **WBBK-FM, Blakely, Georgia**
Facility ID No. 41207
File No. BALH-20110216AAB

WESP(FM), Dothan, Alabama
Facility ID No. 6891
File No. BALH-20110216AAC

WDBT(FM), Headland, Alabama
Facility ID No. 10666
File No. BALH-20110216AAD

WLDA(FM), Slocomb, Alabama
Facility ID No. 60591
File No. BALH-20110216AAE

WJRL-FM, Fort Rucker, Alabama
Facility ID No. 63945
File No. BALH-20110216AAF

WKMX(FM), Enterprise, Alabama
Facility ID No. 73179
File No. BALH-20110216AAG

WTVY-FM, Dothan, Alabama
Facility ID No. 73639
File No. BALH-20110216AAH

Petition for Reconsideration

Dear Counsel:

We have before us a Petition for Reconsideration (“Petition”) filed by Leigh Simpson, now Leigh Thomas (“Thomas”), filed December 30, 2011, seeking reconsideration of the grant of applications for the assignment of: (1) station WBBK-FM, Blakely, Georgia, from Magic Broadcasting Alabama Licensing, LLC (“Magic”) to Alabama Media Investments, LLC (“AMI”); (2) stations WESP(FM), Dothan, Alabama, and WDBT(FM), Headland, Alabama, from Gulf South Communications, Inc. (“Gulf South”) to Southeast Alabama Broadcasters, LLC (“SAB”); (3) stations WLDA(FM), Slocomb, Alabama, and WJRL-FM, Fort Rucker, Alabama, from Magic to SAB; and (4) stations WKMX(FM), Enterprise, Alabama, and WTVY-FM, Dothan, Alabama, from Magic to Gulf South (the “Stations”).¹ These seven simultaneously-filed applications (“Assignment Applications”) comprised one interrelated transaction.² For the reasons stated below, we deny the Petition.

Background. In 2010, Magic contacted Clay Holladay, president and majority shareholder of Gulf South, regarding the possible purchase of Magic’s five radio stations in the Dothan, Alabama, market.³ At the time, Gulf South already owned the maximum number of stations permissible in that market. However, Gulf South agreed to sell two of its existing stations in order to buy two of the Magic stations, and to help Magic locate buyers for the remaining stations.

Gulf South located two buyers: Georgia Edmiston (“Edmiston”), a former business associate of Clay Holladay, and Alisha Cummings (“Cummings”), the daughter of two of Clay Holladay’s employees. On December 30, 2010, Cummings formed AMI, and on February 7, 2011, Edmiston formed SAB. On February 16, 2011, the various parties filed the captioned Assignment Applications.

On March 25, 2011, Thomas filed a Petition to Deny or Request for FCC Investigation (“Thomas Petition to Deny”) against all seven Assignment Applications, arguing that the assignments could result in an “anti-competitive situation.”⁴ The Bureau denied the Thomas Petition to Deny and granted the Assignment Applications by a letter dated November 25, 2011.⁵ On November 30, 2011, the assignments to SAB were consummated. That same day, SAB entered into a local marketing agreement (“LMA”) and asset purchase agreement (“APA”) with Alabama Media, LLC (“Alabama Media”), a company controlled

¹ *David D. Oxenford, Esq. et al.*, Letter, Ref. 1800B3-BSH (Nov. 25, 2011), at 2 (“November Letter Decision”). Public notice of this decision was given November 30, 2011, so the Petition is timely. *See Broadcast Actions*, Public Notice, Report No. 47623 (Nov. 30, 2011).

² Also before us are two Oppositions to Petition for Reconsideration, filed January 11, 2012, by SAB and Gulf South, respectively. Thomas filed a Reply to Oppositions to Petition for Reconsideration on January 24, 2012.

³ *Applications for Consent to Assignment of WKMX(FM), Enterprise, Alabama, WTVY-FM, Dothan, Alabama, WESP(FM) Dothan, Alabama, and WDBT(FM), Headland, Alabama*, Opposition to Petition to Deny or Request for FCC Investigation of Gulf South Communications, filed Apr. 7, 2011, at 2.

⁴ *Applications for Consent to Assignment of Broadcast Station License WBBK-FM, Blakely, Georgia, WKMX(FM), Enterprise, Alabama, WTVY-FM, Dothan, Alabama, WESP(FM), Dothan, Alabama, WDBT(FM), Headland, Alabama, WLDA(FM), Slocomb, Alabama, WJRL-FM, Fort Rucker, Alabama*, Petition to Deny or Request for FCC Investigation, filed Mar. 25, 2011, at 2.

⁵ November Letter Decision, *supra* note 1.

by Robert Holladay, Clay Holladay's brother. On December 20, 2011, pursuant to the APA, SAB sought Commission consent for the sale of its four newly-acquired stations ("SAB Stations") to Alabama Media.⁶ A copy of the LMA was filed with the SAB Stations assignment applications.⁷ On December 30, 2011, Thomas sought reconsideration of the November Letter Decision.⁸

In her Petition, Thomas argues that, during the pendency of the Assignment Applications, SAB should have disclosed its future plans to broker and sell the SAB Stations.⁹ She surmises that negotiating the sale, drafting the agreements, and coordinating employees to start work immediately must have taken more than three business days. Therefore, Thomas reasons, there must have been at least an "understanding" regarding the proposed transaction with Alabama Media while the Assignment Applications were still pending. According to Thomas, SAB was therefore required by Section 1.65 of the rules¹⁰ and the Bureau's decision in *MSG Radio, Inc.*¹¹ to amend the Assignment Applications to disclose any such "understanding" to subsequently broker or sell the SAB Stations.¹² Failure to do so, Thomas argues, resulted in Commission approval of the Assignment Applications "based on the false assumption that Georgia Edmiston was the ultimate assignee proposed for these stations."¹³

Thomas also points out that the Form 314 worksheets specifically ask if any family member was involved in making financial arrangements for the sale of any of the stations to be assigned.¹⁴ Because the sale from Magic to SAB ultimately enabled Clay Holladay to purchase two Magic stations, and because Robert Holladay immediately entered into the LMA with SAB, Thomas argues that some disclosure of these relationships should have been provided in the Assignment Applications.¹⁵ Underlying Thomas' objections is the alleged potential for anti-competitive collusion by the Holladay brothers to dominate the Dothan market.¹⁶ Specifically, she alleges that the purpose of the sale to SAB was "keeping the seat warm for Clay Holladay's brother."¹⁷

In response, SAB and Gulf South contend that the Petition largely reiterates arguments made in the Thomas Petition to Deny the Assignment Applications.¹⁸ SAB argues that Thomas raises only two

⁶ File Nos. BALH-20111220AFW-AFZ.

⁷ See File No. BALH-20111220AFW, Exhibit 5.

⁸ SAB and Gulf South each filed an Opposition to Petition for Reconsideration on January 11, 2012, to which Thomas responded in a January 24, 2012, Reply to Oppositions to Petition for Reconsideration.

⁹ Petition at 3.

¹⁰ 47 C.F.R. § 1.65.

¹¹ *Luis A. Mejia and MSG Radio, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 11444 (MB 2011) ("*MSG Radio, Inc.*").

¹² Petition at 6-10.

¹³ Petition at 10.

¹⁴ Petition at 8.

¹⁵ *Id.*

¹⁶ Petition at 1-2.

¹⁷ Petition at 3.

¹⁸ Gulf South Opposition at 2; SAB Opposition at 2.

new arguments on reconsideration arising from the post-consummation execution of the LMA and APA: that SAB had an obligation to amend the Assignment Applications to reflect the LMA and APA under Section 1.65 of the Commission's rules, and that SAB failed to accurately certify the Assignment Applications with respect to the interests of family members.¹⁹ SAB rejects Thomas' arguments, contending that the applicable rule provision governing disclosure of the agreements with Alabama Media is Section 73.3613,²⁰ which requires agreements to be filed with the Commission within 30 days after execution.²¹ SAB argues that Thomas' reliance on *MSG Radio, Inc.* is misplaced. SAB distinguishes *MSG Radio, Inc.* by stating that in that case the relevant agreements were part of a single transaction without which the assignment would have constituted a prohibited sale of a "bare" license.²² Finally, SAB states that the Assignment Application forms were accurate with respect to the familial relationships of Edmiston, the relevant assignee.²³

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts, not known or existing at the time of the petitioner's last opportunity to present such matters.²⁴

Here, Thomas alleges that the Media Bureau's approval of the Assignment Applications was in error because it was "based on partial and incomplete information" regarding SAB's apparent plans to sell the SAB Stations to Alabama Media. She speculates that "[h]ad the Media Bureau been properly informed . . . that SAB was not to be a competitor in the market, but instead the stations were being flipped to Clay Holladay's brother, it may have acted differently."²⁵ However, Thomas has not demonstrated that Clay Holladay exercised *de facto* control over either SAB or Alabama Media in support of her basic argument that SAB and Alabama Media were acting as "straw men" for Clay Holladay to acquire stations that he could not hold otherwise.

With respect to SAB, we have already considered and rejected Thomas' contentions that Clay Holladay controls SAB in the November Letter Decision, and the Petition does not challenge that finding. As for Alabama Media, we do not generally examine the qualifications of potential future licensees when considering an assignment application.²⁶ The Commission has reviewed each transaction independently. In a companion letter decision being simultaneously released with this one (the "SAB-Alabama Media Assignment Letter") we evaluate Robert Holladay/Alabama Media's independence from Clay Holladay. Therein, we find that Thomas fails to raise a *prima facie* case that Clay Holliday exercises influence or

¹⁹ SAB Opposition at 2.

²⁰ 47 C.F.R. § 73.3613.

²¹ SAB Opposition at 3.

²² SAB Opposition at 4.

²³ SAB Opposition at 5.

²⁴ See 47 C.F.R. § 1.106(c) and (d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

²⁵ Petition at 10.

²⁶ See 47 U.S.C. § 309(d) (prohibiting the Commission from considering "whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.")

control over Robert Holladay or the SAB Stations.²⁷ Accordingly, in the SAB-Alabama Media Assignment Letter, we grant the applications to assign the four SAB Stations to Alabama Media.

Even if we accept Thomas' contention that some "understanding" must have existed prior to execution of the LMA and APA, our rules do not require disclosure of such negotiations or inchoate understanding. We agree with SAB that the relevant rule provision regarding disclosure of the executed APA and LMA is Section 73.3613.²⁸ We find that the agreements were properly filed with the Commission pursuant to Section 73.3613 within 30 days of their execution.²⁹ By its terms, Section 73.3613 does not require the filing at any time of an *unexecuted*, or draft, agreement. Nor were the two agreements required to be filed as part of the Assignment Applications, as was the case in *MSG Radio, Inc.*³⁰ In that case, the missing (unfiled) agreements were: (1) already executed; and (2) germane to the transaction at issue, as they formed part of a single integrated transaction wherein the station license was to be sold to one party and the tangible assets to another party. All of the documents were necessary to understand the entire transaction, and without them, the proposed transaction would have been construed as a prohibited assignment of a bare license.³¹ Here, the LMA and APA were not part of a single transaction and therefore should be considered separately. Finally, we note that the agreements were appropriately filed in the SAB Stations assignment applications to Alabama Media.

Because we find, in the SAB-Alabama Media Assignment Letter, that SAB retained the required degree of control over the SAB Stations, neither the execution of the LMA and APA, nor any "understanding" that existed prior to their execution, triggered an obligation under Section 1.65 to amend Edmiston's earlier declaration that she would operate the SAB Stations independently and competitively.³² This declaration addressed the issue of whether Clay Holladay exerted impermissible control over SAB or the Stations in the context of the Magic-Gulf South-SAB transaction. It is not inconsistent with SAB later entering into an LMA or seeking to sell the SAB Stations to a third party. On the facts presented, we find that Edmiston operated the SAB Stations in accordance with her earlier statements and with her obligations as a licensee. Nor did SAB have a general obligation under Section 1.65 to file any unexecuted, draft agreements during the pendency of Assignment Applications, particularly those relating to a separate successive transaction. Finally, in the context of the Assignment Applications, we confirm that the relevant familial relationships for the purpose of the Form 314 worksheets are those of Edmiston, the then-proposed assignee.

²⁷ *David D. Oxenford, Esq. et al*, Letter, DA 12-1715 (MB Oct. 24, 2012).

²⁸ *See* 47 C.F.R. §§ 73.3613(b)(3), (d)(1).

²⁹ *Id.*

³⁰ *MSG Radio, Inc.*, 26 FCC Rcd, at 11445.

³¹ *Luis A. Mejia and MSG Radio, Inc*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11902, 11906 (MB 2008).

³² *Applications for Consent to Assignment of Broadcast Station License WBBK-FM, Blakely, Georgia, WKMX(FM), Enterprise, Alabama, WTVY-FM, Dothan, Alabama, WESP(FM), Dothan, Alabama, WDBT(FM), Headland, Alabama, WLDA(FM), Slocomb, Alabama, WJRL-FM, Fort Rucker, Alabama*, Joint Opposition to Petition to Deny or Request for FCC Investigation, filed Apr. 14, 2011 (attachment entitled "Declaration of Georgia Edmiston").

Conclusion/Actions. We find that grant of the Assignment Applications was not in error and was consistent with the public interest, convenience, and necessity. Accordingly, IT IS ORDERED that Thomas' Petition for Reconsideration IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau