



Federal Communications Commission
Washington, D.C. 20554

February 6, 2013

DA 13-157

In Reply Refer to:

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In Re: **KCOH(AM), Houston, TX**
Facility ID No. 33737
File No. BAL-20121109ADD

Application for Assignment of License

Informal Objections

Dear Counsel:

We have before us the referenced application (“Application”) seeking approval for the proposed assignment of the license for Station KCOH(AM), Houston, Texas (“Station”), from KCOH, Inc. (“Assignor”) to La Promesa Foundation (“Assignee”). The Honorable Sheila Jackson Lee (“Congresswoman Lee”), whose congressional district includes the city of Houston, and the Reverend Jesse L. Jackson, Sr. (“Reverend Jackson”), each filed informal objections to the Assignment Application on December 13, 2012.¹ For the reasons stated below, we consider and deny the informal objections, and grant the Application.

Background. The parties filed the Application on November 9, 2012. Subsequently, Congresswoman Lee and Reverend Jackson filed their objections. Both Congresswoman Lee and Reverend Jackson acknowledge that the Assignor is “qualified” but express concern about the “potential disappearance of KCOH’s existing format,” which is geared toward Houston’s African American community. They also express broader concerns related to diversity of media ownership.

Discussion. Procedural Issue. Pursuant to Section 1.1208 of the Commission’s rules,² our consideration of the Application is a restricted proceeding in which *ex parte* presentations are prohibited. The informal objections appear to be impermissible *ex parte* presentations as neither objection indicates that it was served on the Assignee, the Assignor or their counsel. In these circumstances, we normally would notify the objecting parties of this issue, remind them of their obligations to serve any future

¹ Letter from The Honorable Sheila Jackson Lee to Marlene Dortch, Secretary, Federal Communications Commission (rec’d Dec. 13, 2012) (“Lee Objection”); Letter from Reverend Jesse L. Jackson, Sr., to Marlene Dortch, Secretary, Federal Communications Commission (rec’d Dec. 13, 2012) (“Jackson Objection”). The Assignor and Assignee filed an Opposition to Informal Objections (“Opposition”) on December 21, 2012.

² 47 C.F.R. § 1.1208.

correspondence with the Commission on the parties, and inform them that we have forwarded copies of their objections to the parties. In this instance, however, it is clear that the parties – who filed an Opposition to both objections – received copies of the correspondence we received from Congresswoman Lee and Reverend Jackson. Accordingly, we find no further action necessary and will consider the objections.

Substantive Issues. Both Congresswoman Lee and Reverend Jackson characterize the Station as “a trusted source of news, music and talk radio for Houston, Texas’ African American citizens.”³ They express concern about the “potential disappearance” of the Station’s programming format.⁴ While the Commission appreciates that the Station’s programming has attracted a devoted listenership, it is well-settled policy that the Commission does not scrutinize or regulate programming, nor does it take potential changes in programming formats into consideration in reviewing assignment applications. In 1976, the Commission issued a Policy Statement in which it concluded that review of program formats was not required by the Communications Act of 1934, as amended, would not benefit the public, would deter innovation, and would impose substantial administrative burdens on the Commission.⁵ The Supreme Court of the United States has upheld this policy and the Commission’s determination that “the public interest is best served by promoting diversity in entertainment formats through market forces and competition among broadcasters . . .” and that a change in programming is not a material factor that should be considered by the Commission in ruling on applications for license transfer.⁶

Additionally, as Congresswoman Lee and Reverend Jackson acknowledge, the Commission is not authorized to deny a proposed assignment based on the comparative service that a party other than the proposed assignee might provide to the public.⁷ Notwithstanding these Commission policies, we emphasize that licensees are required to operate in accord with the terms of their authorization, and in the public interest. In any event, it appears the Station’s programming will continue to be available. A group has entered into an agreement to broadcast the Station’s legacy programming on another Houston radio station, KQUE(AM).⁸ In addition, the group has acquired the right to employ the Station’s call sign and to occupy its historic studio.⁹ The group will begin broadcasting the Station’s legacy programming on KQUE(AM) on March 1, 2013.¹⁰

Finally, we turn to the broader policy concerns expressed by Congresswoman Lee and Reverend Jackson. They argue that this transaction reflects “the failure of the market to provide public radio that caters to minorities.”¹¹ They note that “[b]roadcast stations that serve African American communities across the nation are struggling to survive” and explain that several factors, such as a lack of access to

³ Lee Objection at 1; Jackson Objection at 1.

⁴ Lee Objection at 2; Jackson Objection at 2.

⁵ See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 FCC2d 858, 865-66 (1976), *recon. denied*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev’d sub nom.*, *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev’d*, 450 U.S. 582 (1981).

⁶ *FCC v. WNCN Listener’s Guild*, 450 U.S. 582, 585 (1981).

⁷ See 47 U.S.C. § 310(d) (in acting on a proposed assignment, Commission may not consider whether the public interest will be served by assignment of license to a person other than the proposed assignee); Lee Objection at 1; Jackson Objection at 1.

⁸ Opposition at 2 and Exh. A.

⁹ *Id.*

¹⁰ *Id.* at Exh. A.

¹¹ Lee Objection at 2; Jackson Objection at 2.

capital, contribute to this failure.¹² These concerns, while valid, are not specific to this particular transaction. Both Congresswoman Lee and Reverend Jackson acknowledge this, stating that “the Commission might be precluded from intervening in this specific license assignment matter.” They go on to note that the pending media ownership proceeding “presents a substantial opportunity for the Commission to promulgate policies that aim to remedy market failure.”¹³ We agree that these concerns are beyond the scope of this specific transaction and, while we will not further address them here, we will enter their objections into the record in that proceeding so that their concerns may be considered there.

Conclusion/Actions. We find that neither Congresswoman Lee nor Reverend Jackson have raised a substantial and material question of fact warranting further inquiry. We further find that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Informal Objections submitted by The Honorable Sheila Jackson Lee and Reverend Jesse L. Jackson, Sr., ARE DENIED, and that the application for approval to assign the license for KCOH(AM), Houston, Texas (BAL-20121109ADD) from KCOH, Inc. to La Promesa Foundation IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: The Honorable Sheila Jackson Lee
Reverend Jesse L. Jackson, Sr.

¹² Lee Objection at 2-3; Jackson Objection at 2-3.

¹³ Lee Objection at 3; Jackson Objection at 3.