

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
A.L.Z BROADCASTING, INC.
Application for Renewal of License
For Station KKYZ(FM)
Sierra Vista, Arizona
File No. BRH-970530E7
Facility ID # 2185

MEMORANDUM OPINION AND ORDER

Adopted: October 23, 2000

Released: October 27, 2000

By the Commission:

1. The Commission has before it an Application for Review filed July 15, 1998 by Nationwide Communication Specialists ("Nationwide").

2. Background/Arguments. In its informal objection, Nationwide contended that: (1) ALZ has made misrepresentations in previous filings to the Commission; and (2) ALZ is seeking to renew a bare license.

1 ALZ Broadcasting responded on January 27, 2000, pursuant to an informal staff request. The Commission, in its discretion, can consider this information to the extent necessary to resolve the instant allegations.

2 Letter to Henry E. Crawford, Esq., reference 1800B3-BSH (M.M. Bur., June 10, 1998).

3 Under WWOR-TV, 6 FCC Rcd 193, 197 n.10 (1990) the Commission, in evaluating an informal objection under 47 C.F. R. Section 73.3587, will review the objectors' pleadings "to determine whether it has alleged properly

3. Discussion. Initially, we note that this case centers primarily on a private dispute between the parties concerning payment for acquisition and construction of the KKYZ(FM) transmission tower. Specifically, Nationwide claims that it spent substantial funds on acquisition of an antenna tower, “tower shelter” (for housing the station’s transmitter), and a length of coaxial cable on behalf of ALZ, while ALZ disavows any contractual obligation to pay Nationwide for these items.⁴ Such disputes are within the province of a local court of competent jurisdiction, not the Commission. See Kirk Merkley, Receiver, 94 FCC 2d 829, 828 (1983); D.H. Overmyer, 94 FCC 2d 117, 123 (1983).

4. That said, we find that Nationwide’s arguments were thoroughly considered and properly resolved by the staff. In particular, we reject Nationwide’s argument that the Bureau misapplied the legal standard for evaluating informal objections set out in WWOR-TV, Inc., supra. Nationwide claims that the Bureau disregarded allegations of fact supported by affidavits and documentary evidence, drawing its own “plainly incorrect inferences” even in the absence of any rebuttal evidence from ALZ. Nationwide is incorrect. In the staff decision, the Bureau pointed out that Nationwide had failed to present sufficient information to raise a substantial and material question of fact concerning grant of ALZ’s application, noted deficiencies in Nationwide’s presentation, and accordingly rejected its arguments.

5. *Misrepresentation*. Nationwide alleged three instances of misrepresentation by ALZ: (1) ALZ misrepresented in an application for extension of the KKYZ(FM) permit that “\$100,000 has now been spent” to build its tower, indicating that ALZ had incurred that expense, when in fact Nationwide had incurred the expense for the tower and attendant coaxial cable;⁵ (2) ALZ misrepresented in its original construction permit application that it would “install emergency generators as required to operate the station upon failure of the commercial power supply,” when in fact no emergency generator had been installed; and (3) ALZ misrepresented that it was financially qualified to construct the station because ALZ principal Zumuano has not paid the money Nationwide claims it is owed by ALZ.

6. Regarding the first allegation, as the Bureau noted, the phrase “[money] has been expended” does not “specifically aver” that ALZ, not Nationwide, made the expenditure. In any event, ALZ clearly indicated in an exhibit to the application that Nationwide was arranging for

supported facts that, if true, would establish a substantial and material question of fact that a grant of the application would be inconsistent with the public interest.”

⁴ See, e.g., Informal Objection, Exhibit 1 (July 25, 1997 Declaration of Cheryl L. Wood, General Partner, Nationwide), and January 27, 2000 filing containing the declaration of Edward Bolding, Esq., ALZ’s counsel.

⁵ The parties engage in a debate concerning a Nationwide invoice for \$5,032.24 which has a stamp indicating “PAID” with the handwritten notation “In Full.” Nationwide claims that it, not ALZ paid this bill but that ALZ wrote “PAID” on the invoice and then submitted it to the Commission to demonstrate that ALZ had spent money to construct the station. ALZ contradicts the implication that it improperly wrote “PAID” on the document by submitting a photocopy of a three-page facsimile sent from Nationwide’s Cheryl Wood to ALZ’s Counsel Edward Bolding “paid receipt for your records” and the invoice in question.

the acquisition and installation of KKYZ(FM) tower and transmission facilities, submitting a letter from Nationwide to Zumuano to that effect as part of the application. We agree with the Bureau that with this letter ALZ adequately disclosed the financial arrangement at issue and thus that misrepresentation allegations surrounding the issue are properly rejected. Regarding the second allegation, concerning ALZ's statement that emergency generators would be installed "as required," the Bureau correctly noted that the statement was not of decisional significance in the award of the KKYZ(FM) permit to ALZ. The ALZ permit resulted from a joint settlement⁶ and therefore ALZ was not compelled to implement the pledge. See Ruarch Associates, 103 FCC 2d 1178 (1986) (it is permissible for applicants to depart from their comparative commitments in an application that was granted as part of a universal settlement);⁷ Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 FCC Rcd 3403 (1991) (Commission amends 47 C.F.R. §73.1620(g) to require report of deviation from certain comparative proposals only when grant resulted from post-designation settlement or favorable decision on comparative grounds). In any event, Nationwide does not provide evidence that ALZ never intended to honor its auxiliary power representation. Regarding the third allegation, concerning ALZ's financial qualifications, the Bureau again correctly concluded that ALZ's alleged failure to pay a bill, even if true, does not establish that ALZ's certification that it was financially qualified to construct KKYZ(FM) was a misrepresentation.

7. Turning to Nationwide's bare license allegation, and setting aside the question of whether the allegation is properly raised in the renewal context,⁸ we note that Nationwide's claim that ALZ does not own its tower or tower-related equipment is insufficient to establish that ALZ has no other assets to accompany the KKYZ(FM) license. The Commission has not considered a transaction as proposing the sale of a "bare license" if the licensee holds rights to the accompanying station facilities under a lease. See American Music Radio and KHYM, Inc., 10 RCC Rcd 87269, 8772 (1995); Public Service Enterprises, Inc., 69 FCC 2d 967, 972-3 (1978). ALZ has recently submitted an inventory of equipment it claims to own for use in Station KKYZ-FM operations and states that it has leased a studio and business offices for the last three years for the administration of Station KKYZ-FM.⁹ This list constitutes evidence of sufficient assets to counter Nationwide's allegation.

⁶ Letter to Ana L. Zumano and Karol E. George, reference 8920-MT (M.M. Bur., August 27, 1990).

⁷ Nationwide cites Rem Malloy Broadcasting, 5 FCC Rcd 3988 (Rev. Bd. 1990) as authority that ALZ's statements concerning emergency generators were of decisional significance in the award of the KKYZ(FM) permit to ALZ. However, Rem Malloy Broadcasting is inapposite. In Rem Malloy Broadcasting, the issue was whether the pledge resulted in a comparative advantage during a hearing. In the instant case, the license for WWYZ was not granted as part of a hearing. Letter to Ana L. Zumano and Karol E. George, reference 8920-MT (M.M. Bur. August 29, 1990).

⁸ Nationwide cites no cases, and we are aware of none, in which the Commission discussed the "bare license" policy in the context of the license renewal of an operating station. See e.g., Edward B. Mulrooney, 13 FCC 2d 946 (1968), Donald L. Horton, 10 FCC 2d 271, 273 (1967), and Bonanza Broadcasting Corp., 10 FCC 2d 906 (1967).

⁹ See January 25, 2000 filing containing the Declaration of Edward P. Bolding and Exhibit K.

8. Accordingly, in light of the above discussion, IT IS ORDERED, pursuant to authority granted by Section 5(c)(5) of the Communications Act, 47 U.S.C. Section 155(c)(5), and Section 1.115(g) of the Commission's Rules, 47 C.F.R. Section 1.115(g), that the application for review filed July 15, 1998 by Nationwide Communication Specialists IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Román Salas
Secretary