

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

In re Application of
JOSEPH W. BOLLINGER AND DONNA M.
BOLLINGER
and
FOUR HIM ENTERPRISES, L.L.C.
For Assignment of the License of Station
KHCR(FM), Potosi, Missouri
BALH-20000524ABD

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 2001

Released: December 20, 2001

By the Commission:

1. The Commission has before it an Application for Review filed by David L. Shepherd ("Shepherd") on November 22, 2000, and related responsive pleadings. Shepherd requests review of a November 2, 2000, staff decision (the "Potosi Staff Decision") by the Chief, Audio Services Division, Mass Media Bureau, which denied Shepherd's Petition to Deny an application to assign the license of station KHCR(FM), Potosi, Missouri from Joseph W. Bollinger and Donna M. Bollinger ("Bollingers") to Four Him Enterprises, L.L.C. ("FHE"). We find no error in the Potosi Staff Decision and, therefore, deny the Application for Review.

I. Background

2. In his Petition to Deny the subject assignment application, Shepherd asserted that the Bollingers should not be permitted to assign the license of station KHCR(FM) prior to resolution of issues raised by Shepherd in a Petition to Deny the Bollingers' construction permit application for a new station in Bismarck, Missouri (File No. BPH-950724MD) ("Bismarck Proceeding"). Shepherd did not raise any

1 On December 11, 2000, Joseph W. and Donna M. Bollinger filed a Motion to Accept Late Filed Opposition to Application for Review and an Opposition to Application for Review. Shepherd filed a Reply on December 21, 2000. Shepherd stated that he had no objection to the Commission's consideration of the Bollingers' Opposition to the Application for Review.

2 See Letter to Law Office of Lauren A. Colby, et al., Ref. No. 1800B3-JAM (Chief, Audio Services Division, Mass Media Bureau, November 2, 2000).

3 File No. BALH-20000524ABD.

4 Shepherd contended that the subject assignment application should be denied or designated for hearing to determine: (1) whether the Bollingers knowingly claimed a bidding credit to which they were not entitled in the Bismarck Proceeding; and (2) in light of the evidence found, whether the Bollingers are qualified to assign station KHCR(FM) to a third party.

issues regarding the operation of, or the Bollingers' stewardship of, station KHCR(FM), and he did not challenge FHE's qualifications to become the licensee of station KHCR(FM). The *Potosi Staff Decision* denied Shepherd's Petition to Deny the assignment application and granted the application,⁵ finding that it was not appropriate to designate for hearing, deny, or defer consideration of the assignment application based only on allegations raised in the Bismarck Proceeding when: (1) no issues concerning the Bollingers' basic qualifications had been designated for hearing in the Bismarck Proceeding; (2) no transferability restrictions had been placed on station KHCR(FM); and (3) in the Bismarck Proceeding, the staff had previously determined that, although the Bollingers were not eligible for the new entrant bidding credit claimed, there was no substantial and material question of fact regarding the Bollingers' qualifications to be Commission licensees.⁶

3. Shepherd filed an Application for Review of the *Potosi Staff Decision*, arguing that the staff erred in granting the assignment application when there was a pending Application for Review of the *Bismarck Proceeding Staff Decision* in which he raised misrepresentation issues involving the Bollingers' claim of a bidding credit.⁷ Shepherd asserts that, where there are questions concerning the qualifications of an assignor, an assignment application may not be granted until those questions are resolved. Shepherd contends that, in his Petition to Deny and Application for Review filed in the Bismarck Proceeding, he raised issues regarding the Bollingers' basic qualifications which warrant designation for hearing. Therefore, Shepherd argues, prior to acting on the station KHCR(FM) assignment application, the Commission must conduct a hearing to determine whether the Bollingers' claim of the bidding credit to which they were not entitled in the Bismarck Proceeding was intentional and raised issues regarding the Bollingers' basic qualifications. The Bollingers oppose Shepherd's Application for Review and contend that the staff properly granted their application to assign station KHCR(FM) to FHE.

II. Discussion

4. We find that Shepherd's arguments were thoroughly considered and properly resolved by the staff and we uphold the *Potosi Staff Decision*. Shepherd's Application for Review of the *Potosi Staff Decision* is based entirely on his claims that: (1) he raised issues regarding the Bollingers' basic qualifications in the Bismarck Proceeding which warrant the designation of a hearing and which prohibit the grant of the subject assignment application; and (2) the staff erred in granting the assignment application when his Application for Review was pending in the Bismarck Proceeding. In general, when evaluating assignment applications, we do not re-evaluate the qualifications of the assignor unless issues related to the assignor's basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁸

⁵ Commission records indicate that the Bollingers and FHE consummated the transaction on January 12, 2001.

⁶ See *Letter to Law Office of Lauren A. Colby, et al.*, Ref. No. 1800B3-JAM (Chief, Audio Services Division, Mass Media Bureau, February 17, 2000) ("*Bismarck Proceeding Staff Decision*") (citing *Hicks Broadcasting of Indiana, LLC*, 13 FCC Rcd 10662, 10678 (1998); *Straus Communications, Inc., et al.*, 2 FCC Rcd 7469, 7470 (1987); *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1223-1225 (1986) (subsequent history omitted) ("*Character Qualifications*")).

⁷ On March 2, 2000, Shepherd filed an Application for Review of the *Bismarck Proceeding Staff Decision* which was still pending on November 2, 2000, when the *Potosi Staff Decision* addressing the Bollingers' application to assign station KHCR(FM) was issued.

⁸ See *Voicestream Wireless Corporation, et al.*, 16 FCC Rcd 9779, 9790 (2001); see also *Mobilemedia Corporation, et al.*, 14 FCC Rcd 8017, 8018 (1999), citing *Jefferson Radio Co. v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964); Stephen F. Sewell, *Assignment and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934*, 43 Fed. Comm. L.J. 277, 339-40 (1991); *Character Qualifications*, 102 FCC 2d at 1223-1225 (there should be no presumption that misconduct at one station is necessarily predictive of the licensee's operation of other stations).

5. No issues concerning the Bollingers' basic qualifications have been designated for hearing. Additionally, at the time the *Potosi Staff Decision* was issued, the staff had determined in the Bismarck Proceeding that: (1) although the Bollingers were not eligible for the bidding credit claimed, there was no substantial and material question of fact regarding whether they intended to deceive the Commission when they erroneously claimed the credit; (2) therefore, the act of claiming the credit was not disqualifying; (3) there were no other substantial and material questions of fact which required further inquiry; and (4) the Bollingers were otherwise qualified to be Commission licensees.⁹ The *Bismarck Proceeding Staff Decision* was effective on the date of its release and no action has been taken to stay the effectiveness of that decision. See 47 C.F.R. § 1.102(b). The fact that Shepherd filed an Application for Review of the *Bismarck Proceeding Staff Decision* does not stay the effect of that decision. *Id.* Therefore, the *Potosi Staff Decision* properly denied Shepherd's Petition to Deny and granted the assignment application. In any event, the Commission recently denied Shepherd's Application for Review in the Bismarck Proceeding and determined that no substantial and material questions regarding the Bollingers' basic qualifications had been raised, thus rendering this matter moot.¹⁰ Accordingly, the subject Application for Review is denied.

III. Conclusion

6. Accordingly, IT IS ORDERED that the Application for Review filed November 22, 2000, by David L. Shepherd IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁹ See *Bismarck Proceeding Staff Decision*.

¹⁰ See *Joseph W. Bollinger and Donna M. Bollinger*, Memorandum Opinion and Order, FCC 01-274, at ¶ 4 (released October 5, 2001) ("*Bismarck MO&O*") (finding that the Bollingers' erroneous declaration of eligibility to a bidding credit neither raised a substantial and material question that the declaration was deliberately false or lacked candor nor otherwise raised a question as to the basic qualifications of the Bollingers to be licensees). On November 1, 2001, Shepherd filed a Petition for Reconsideration of the *Bismarck MO&O* which the staff dismissed pursuant to 47 C.F.R. § 1.106(b)(2), (3).