

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

In re Applications of
Nancy H. Grubbs
(Transferor)
and
John W. Barger
(Transferee)
Radio Ranch, LTD
(Assignor)
and
HBC License Corporation
(Assignee)
For Transfer/Assignment of License
Of Station KRNH(FM),1 Comfort, TX
File No. BTCH-20000110AAM
File No. BALH-20000601AEA

MEMORANDUM OPINION AND ORDER

Adopted: February 13, 2001

Released: February 16, 2001

By the Commission:

1. The Commission has under consideration an Application for Review filed October 6, 2000, by Ron Whitlock ("Whitlock"). Whitlock seeks review of an August 31, 2000 letter decision by the Mass Media Bureau ("Bureau").2 In that decision the Bureau: (a) denied Whitlock's petition for reconsideration of a May 1, 2000 action3 denying the objection of Whitlock and Media Properties, Ltd., Debtor in Possession, and granting the application to transfer control of Radio Ranch, Inc. ("RRI"), former licensee of Station KRNH(FM), Comfort, Texas, from Nancy H. Grubbs to John W. Barger ("Barger");4 and (b) denied Whitlock's petition to deny the subsequent application to assign the KRNH(FM) license from Radio Ranch, LTD5 to HBC License Corporation.6 For the reasons set forth below, we deny the application for review.

1 The station's call sign has been changed to KCOR-FM. For consistency, however, we continue to refer to it by its former call letters.

2 Letter to Lawrence M. Miller, Esquire from the Chief, Audio Services Division, Mass Media Bureau (reference 1800B3-JR).

3 Letter to Harry C. Martin, Esquire from the Chief, Audio Services Division, Mass Media Bureau (reference 1800B3-JR).

4 File No. BTCH-20000110AAM.

5 Radio Ranch LTD is the successor to RRI.

6 File No. BALH-20000601AEA.

2. During the period at issue, Whitlock controlled Media Properties Limited, LLC (“MPL”), the former licensee of Station KITE(FM),<sup>7</sup> Kerrville, Texas.<sup>8</sup> Whitlock argued below that RRI and Barger exercised unauthorized control of both KITE(FM) and KRNH(FM). Whitlock has no connection with KRNH(FM). On review, he argues that the staff concluded that RRI did not assume unauthorized control of KITE(FM) only because it failed to consider certain “egregious” conduct.<sup>9</sup> Whitlock points out that the staff actively investigated RRI’s actions pursuant to a Local Marketing Agreement (“LMA”) regarding KITE(FM) but that they ignored “major allegations” concerning RRI/Barger’s conduct during the LMA term.<sup>10</sup> According to Whitlock, if the staff had taken these allegations into account, it would have designated the KRNH(FM) applications for hearing to determine whether RRI and Barger are qualified to be Commission licensees.

3. Whitlock argues specifically that the staff failed to note that “RRI . . . abandoned the Station KITE(FM) main studio in favor of a studio without local origination capability, blocked supervision of operations by the licensee, ignored the licensee’s programming instructions, failed to document the broadcast of public interest programming . . . [and] opposed the licensee’s application for minor modification to change site to improve service.”<sup>11</sup> We disagree. While the staff did not enumerate every charge made by Whitlock, it clearly considered his allegations carefully and, nonetheless, found no basis for designating the KRNH(FM) applications for hearing. *See August 31, 2000 letter decision at note 7.* To the extent the staff did not mention certain RRI/Barger allegations characterized here by Whitlock as “egregious,” we note that, with one exception, the record lacks support for the allegations.

4. As to the single exception, the fact that RRI/Barger opposed a minor modification application filed by the KITE(FM) licensee, we believe that opposition, though one of the “triggers” for the staff inquiry letter,<sup>12</sup> is not, under the circumstances, evidence of an unauthorized assumption of control. We note that RRI, in its objection to the minor modification,

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<sup>7</sup> The station’s call letters have been changed to “KRNH.” However, for the sake of consistency, it is referred to herein as “KITE(FM).” *See* note 1, *supra*.

<sup>8</sup> MPL, on May 26, 1999, filed a Chapter 11 voluntary petition for relief with the United States Bankruptcy Court for the Western District of Texas, San Antonio Division. An application to assign the KITE(FM) license from MPL to Media Properties, Ltd., Debtor-in-Possession (File No. BALH-19900923AAC) was granted October 9, 1999. The bankruptcy court subsequently appointed a Chapter 11 Trustee to protect the interest of creditors and removed Media Properties, Ltd., Debtor-in-Possession, as licensee. An application to assign the license to a trustee (File No. BALH-20000331ABJ) was granted April 18, 2000.

<sup>9</sup> On review, Whitlock does not set forth arguments concerning the alleged unauthorized assumption of control over KRNH(FM). Rather, he limits his discussion to the KITE(FM) allegations.

<sup>10</sup> The staff sent an inquiry letter on July 8, 1999, to which RRI responded on August 19, 1999.

<sup>11</sup> MPL filed to change KITE(FM)’s antenna height, effective radiated power, and antenna location (File No. BPH-19990312IG). RRI filed an informal objection to the application. In addition to alleging defects in the application, RRI argued that it failed to meet the city coverage requirement of 47 C.F.R. § 73.315(a). The modification request was ultimately dismissed due to failure to file a corrective amendment indicating compliance with § 73.315(a). *See Letter to Jose C. Rodriguez, Chapter 11 Trustee from the Chief Audio Services Division, Mass Media Bureau, June 2, 2000* (reference 1800B3-JR).

<sup>12</sup> *See* ¶ 2, *supra*.

acknowledged its interest as party to an LMA with MPL and as holder of an option to purchase KITE(FM). RRI argued, *inter alia*, that MPL's application to relocate the KITE(FM) transmitter and increase HAAT would adversely impact its interest and asked the Commission to defer action on the application pending a judicial determination of its contract rights. The court ultimately ruled in favor of RRI.<sup>13</sup> Subsequently, in a separate bankruptcy proceeding,<sup>14</sup> the court removed MPL, Debtor-in-Possession, as KITE(FM) licensee, noting that Whitlock had "endangered the assets of the Debtor."<sup>15</sup>

5. In short, we believe the Bureau correctly determined that no substantial and material question of fact had been raised regarding RRI/Barger's qualifications as a Commission licensee. Thus it properly granted both the transfer and assignment applications.

6. ACCORDINGLY, IT IS ORDERED, That the Application for Review filed October 6, 2000 by Ron Whitlock IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Román Salas  
Secretary

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<sup>13</sup> RRI filed a civil lawsuit against MPL in Kerr County District Court, 216<sup>th</sup> Judicial District, Kerr County, Texas, *Radio Ranch, Inc. v. Media Properties Limited and Ron Whitlock*, Case No. 99-14-A. As noted, on September 16, 1999, a jury decided all issues in favor of RRI.

<sup>14</sup> See note 8, *supra*.

<sup>15</sup> The bankruptcy court cited Whitlock for failing to appear at a mediation hearing ordered by the court hearing his appeal from the state court judgment in favor of RRI and for submitting a memorandum to the Commission on the letterhead of MPL's former attorney without permission. See *Order Appointing Chapter 11 Trustee*, March 9, 2000, ¶¶ 2-4 and 7.