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

In the Matter of	)	
	)	
ESTATE OF LINDA WARE, CYNTHIA RAMAGE, EXECUTOR	)	File No. BALH-20040217AEJ Facility ID No. 37725
	)	
Application to Assign the License of Broadcast Station KZPO(FM), Lindsay, California	)	
	)	
ESTATE OF H.L. CHARLES, ROBERT WILLING, EXECUTOR	)	File No. BAPH-20040217AEI Facility ID No. 22030
	)	
Application to Assign the Construction Permit of Broadcast Station KZPE(FM), Ford City, California	)	
	)	
WILLIAM L. ZAWILA	)	File No. BAPH-20040217AEF Facility ID No. 72672
Application to Assign the Construction Permit of Broadcast Station KNGS(FM), Coalinga, California	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 10, 2014 **Released: December 11, 2014**

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. In this *Memorandum Opinion and Order*, we deny the November 5, 2010, Application for Review ("AFR") filed jointly by the Estate of Linda Ware, Cynthia Ramage, Executor ("Ware Estate"), the Estate of H.L. Charles, Robert Willing, Executor ("Charles Estate"), and William L. Zawila ("Zawila") (collectively "Applicants"). After having their authorizations designated for hearing for possible revocation,[1] Applicants all filed February 17, 2004, applications (collectively, the "Assignment Applications") to assign their respective license and construction permits to Lazer Broadcasting Corporation ("Lazer"), under the Commission's minority distress sale policy.[2] The Assignment Applications were dismissed under the Commission's "red light" policy,[3] as each applicant was delinquent in paying its station's annual regulatory fees. Applicants seek review of the Media Bureau's

[1] *See William L. Zawila, et al.*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 18 FCC Rcd 14938 (2003) ("*Zawila Order*").

[2] File No. BALH-20040217AEJ (Ware Estate application to assign license of station KZPO(FM)); File No. BAPH-20040217AEI (Charles Estate application to assign construction permit of station KZPE(FM)); and File No. BAPH-20040217AEF (Zawila application to assign construction permit of station KNGS(FM)).

[3] *See* 47 C.F.R. §§ 1.1910(b)(2), (b)(3).

October 5, 2010, orders dismissing Applicants' Petitions for Reconsideration of that dismissal as repetitious.[4]

2. On February 17, 2004, the Applicants filed the Assignment Applications for five of the six stations designated for hearing by the Commission.[5] Each of the three above-captioned Applicants, however, had delinquent regulatory fees, including late fees, for its commercial FM station to be assigned. Accordingly, on November 8, 2004, the Commission's Office of Managing Director ("OMD") sent each Applicant a letter (collectively, the "Red Light Letters") advising them of the debts,[6] and stating that action on the Assignment Applications would be withheld pursuant to Section 1.1910(b) of the Commission's Rules.[7] The Red Light Letters further advised that the Assignment Applications would be dismissed if full payment or satisfactory arrangement to pay the delinquent debts was not received within 30 days of the date of the letter. On January 7, 2005, after no payment was received, the Assignment Applications were dismissed.[8]

3. On February 11, 2005, the Applicants each sought reconsideration of the Assignment Applications' dismissal by filing a "Petition for Waiver of Regulatory Fees and for Reinstatement of Application" (the "Reinstatement Petitions"). Applicants each claimed they had not received the Red Light Letters prior to the Assignment Applications' dismissal, and further requested waiver of regulatory fees on the basis of financial hardship. On December 21, 2005, OMD denied the requests for reinstatement of the Assignment Applications, based on the delinquent debts and the staff's prior denial of Applicants' waiver requests.[9] On January 20, 2006, Applicants filed requests for reconsideration of the December 21, 2005, *Reinstatement Decisions*,[10] again asserting that the Red Light Letters were never

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[4] *Estate of Linda Ware, Cynthia Ramage, Executor*, Letter, Ref. No. 1800B3-TSN (MB Oct. 5, 2010) ("*Ware Reconsideration Decision*"); *Estate of H.L. Charles, Robert Willing, Executor*, Letter, Ref. No. 1800B3-TSN (MB Oct. 5, 2010) ("*Charles Reconsideration Decision*"); *William L. Zawila*, Letter, Ref. No. 1800B3-TSN (MB Oct. 5, 2010) ("*Zawila Reconsideration Decision*").

[5] The hearing proceeding, EB Docket No. 03-153, remains ongoing before Chief Administrative Law Judge Richard L. Sippel.

[6] *Estate of Linda Ware, Cynthia Ramage, Trustee*, Letter (OMD Nov. 8, 2004); *Estate of H.L. Charles, Robert Willing, Trustee*, Letter (OMD Nov. 8, 2004); *William L. Zawila*, Letter (OMD Nov. 8, 2004). A courtesy copy of each letter was mailed to the Applicants' common communications counsel, who was representing them in the ongoing hearing, at his address of record.

[7] 47 C.F.R. § 1.1910(b).

[8] *Estate of Linda Ware, Cynthia Ramage, Trustee*, Letter (MB Jan. 7, 2005); *Estate of H.L. Charles, Robert Willing, Trustee*, Letter (MB Jan. 7, 2005); *William L. Zawila*, Letter (MB Jan. 7, 2005).

[9] *William L. Zawila, Counsel for Estate of Linda Ware*, Letter (OMD Dec. 21, 2005); *William L. Zawila, Counsel for Estate of H.L. Charles*, Letter (OMD Dec. 21, 2005); *Mr. William L. Zawila,* Letter (OMD Dec. 21, 2005) (collectively "*Reinstatement Decisions*"). *See also Debt Collection Decisions of the Managing Director Available to the Public*, Public Notice, 21 FCC Rcd 2902, 2903 (OMD 2005); 47 C.F.R. § 1.1910(b). The *Reinstatement Decisions* were based on OMD's June 6, 2005, denial of Petitioners' requests for waiver of the delinquent regulatory fees (*see William L. Zawila, Counsel for Estate of H.L. Charles*, Letter (OMD June 6, 2005); *William L. Zawila, Counsel for Estate of Linda Ware*, Letter (OMD June 6, 2005); *Mr. William L. Zawila*, Letter (OMD June 6, 2005), and separate OMD denial of Applicants' July 5, 2005, requests that they be allowed to pay the outstanding regulatory fees for their respective stations from the proceeds of the proposed stations' sale (July 5, 2005 letter from William Zawila, Counsel for Estate of H.L. Charles, to Judith Haley, OMD). *See William L. Zawila*, Letters (OMD Jan. 19, 2006) ("*January Decisions*") (OMD sent three letters, one for each station, each addressed to Zawila as counsel for Applicants). OMD staff informed the Applicants that the Commission's Rules do not permit deferment of delinquent regulatory fees based on a pending sale but that, in appropriate circumstances, OMD could consider a request to pay the outstanding debt in installments. *January Decisions* at 1-2.

[10] Applicants' requests for reconsideration were filed with the Commission on January 20, 2006, but bore the date of January 19, 2006. It appears that the requests for reconsideration crossed in the mail with the *January Decisions* denying Applicants' requests that they be allowed to pay the delinquent fees upon the sale of the stations.

received and claiming the Commission sent them to partial and incomplete addresses.[11] The Media Bureau ("Bureau") dismissed these petitions under Section 1.106(k)(3) of the Rules,[12] finding that the Reinstatement Petitions were, in fact, petitions for reconsideration of the January 7, 2005, dismissals of the Assignment Applications and were treated as such by OMD,[13] and thus that the further requests for reconsideration were repetitious.[14] Applicants then filed the AFR, in which they rely solely on the argument that the "staff error" of mailing the Red Light Letters to the wrong addresses denied them due process, as well as the notice required by Sections 1.1910 and 1.1911 of the Rules.[15]

II. DISCUSSION

4. Upon review of the AFR and the entire record, we conclude that Applicants have not demonstrated that either OMD or the Bureau erred. Applicants sought reconsideration of the Assignment Applications' dismissal, *inter alia*, on the ground that they did not receive the Red Light Letters which, they assert, were incorrectly addressed. Upon denial of these challenges, Applicants again filed petitions for reconsideration asserting the same grounds. The Bureau correctly dismissed these petitions as repetitious.[16]

5. Even if we were to consider Applicants' argument on the merits, as an alternative and independent basis for our decision, we find it to be unpersuasive. As the staff noted in the *Reinstatement Decisions*, "Red light notices are mailed to the address recorded in the Commission Registration System."[17] In the AFR Applicants state, albeit not supported by affidavit, declaration, or otherwise under penalty of perjury, that the addresses on the Red Light Letters were "partial and incomplete."[18] However, nowhere in the AFR or in any of the prior-filed pleadings do any of the Applicants indicate that they provided their correct addresses to the Commission Registration System ("CORES"). It is incumbent upon registrants to keep their information current, either by updating the information online at the CORES link on the Commission's main Web page, or by filing FCC Form 161.[19] Thus, while Applicants contend that the addresses on the Red Light Letters were incorrect, they have not established that they provided the correct addresses to CORES in a timely manner so that the Commission could communicate

[11] Because Applicants had not yet received the staff's January 19, 2006, denials of their request for deferment of the outstanding fees pending consummation of the station sales, they also argued that reconsideration should be granted because those requests remained outstanding and had not been addressed in the December 21, 2005, decision.

[12] 47 C.F.R. § 1.106(k)(3).

[13] *See*, *e.g.*, *Charles Reinstatement Decision* at 1 ("This is in response to your February 10, 2005 request on behalf of Estate of H.L. Charles . . . for reconsideration of the action of January 7, 2005, dismissing the application for assignment of KZPE(FM) . . . because of failure to pay unpaid delinquent debts owed to the Commission.").

[14] *Ware Reconsideration Decision* at 3; *Charles Reconsideration Decision* at 3; *Zawila Reconsideration Decision* at 3.

[15] AFR at 2-6. *See* 47 C.F.R. §§ 1.1910 – 1.1911.

[16] "Absent extraordinary circumstances, '[i]f the "tacking" of petitions were permitted, Commission actions might never become final and the rule would become nugatory.'" *Great Lakes Broadcast Academy, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 11655, 11656 (2004) (citing *Brainerd Broadcasting Co*., Memorandum Opinion and Order, 25 R.R. 297, 298 (1963) ("*Brainerd*")). *See also Iola Broadcasting Co.*, Memorandum Opinion and Order, 2 FCC Rcd 439, 439 (1966) ("[I]t is not in the interests of orderly procedure to permit repeated petitions for reconsideration.") (also citing *Brainerd*).

[17] *Reinstatement Decisions* at 1.

[18] AFR at 2-3.

[19] 47 C.F.R. § 1.8002(b)(2) ("Information provided when registering for an [FCC Registration Number] must be kept current by registrants either by updating the information on-line at the CORES link at www.fcc.gov or by filing FCC Form 161 (CORES Update/Change Form).").

with them.[20] Absent such evidence, we reject Applicants' argument that the Assignment Applications must be reinstated.[21] Were we to hold otherwise, registrants could avoid operation of the red light rule simply by providing erroneous or incomplete addresses to the Commission through CORES.

6. Upon review of the AFR and the entire record, we conclude that Applicants failed to demonstrate that either the Bureau or OMD erred. The Bureau, in its October 5, 2010, orders, properly decided the matters raised, and we uphold its decision for the reasons stated therein.

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, that the Application for Review filed jointly by the Estate of Linda Ware, Cynthia Ramage, Executor, the Estate of H.L. Charles, Robert Willing, Executor, and William L. Zawila, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[20] Although Applicants state that "the Commission had complete and accurate addresses for each of the three applicants" (AFR at 2), they do not explain how the Commission allegedly obtained these addresses or whether, how, and when Applicants submitted them. If, for example, Applicants submitted different or supplemental address information to the Media Bureau through applications filed in the Consolidated Database System, this would not have complied with 47 C.F.R. § 1.8002(b)(2), which requires that accurate and current information be maintained with OMD through CORES.

[21] We also note that the Assignment Applications were dismissed without prejudice, and Applicants were under no time constraints preventing them from re-filing. Even assuming, *arguendo*, that Applicants did not receive the Red Light Letters as alleged, they cannot claim at this point that they were or are unaware of the existence of the delinquent regulatory fees. OMD staff have been available, at any time during the nine years since the Assignment Applications were dismissed, to advise Applicants of the amounts necessary to bring their fee accounts current. Therefore, Applicants could have mitigated their claimed damages at any time, simply by paying the delinquent regulatory fees and penalties and re-filing the Assignment Applications.