

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

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| In the Matter of |) | |
| |) | |
| Urban Radio I, L.L.C., Debtor-in-Possession |) | |
| and YMF Media, New York Licensee LLC for |) | |
| Consent to Assign Licenses |) | File Nos. BAL-20120430ADH, <i>et seq.</i> |
| |) | |
| WBL5(FM), New York, NY |) | Facility ID No. 28203 |
| WLIB(AM), New York, NY ¹ |) | Facility ID No. 28204 |

MEMORANDUM OPINION AND ORDER

Adopted: June 9, 2014

Released: June 10, 2014

By the Commission:

1. In this Memorandum Opinion and Order, we dismiss in part and deny in part the October 12, 2012, “Application for Review” (“AFR”)² filed *pro se* by Bob Law, Michael D. North, Betty Dopson and New York City Councilman Charles Barron (collectively, the “Petitioners”).³ Petitioners seek review of the Media Bureau’s (the “Bureau”) September 12, 2012, decision denying their May 29, 2012, Petition to Deny (“Petition”) and approving the captioned applications (collectively, the “Applications”) to assign two New York radio stations (collectively, the “Stations”), as well as 13 others in South Carolina, Mississippi and California from the commonly-controlled assignors (collectively, “Urban Radio”) to the commonly-controlled assignees (collectively, “YMF”).⁴

2. Under Section 1.115(a) of the Commission’s rules (“Rules”) and Section 5(c)(4) of the Communications Act of 1934, as amended (the “Act”), an applicant for review must be a “person

¹ The license assignments for the captioned stations proposed in the captioned applications were consummated on October 22, 2012. See October 26, 2012, “Opposition to Application for Review” of YMF Media New York Licensee LLC (“Opposition”) at 1. Currently, pending are applications for the further assignment of those licenses stations from YMF Media, New York Licensee LLC (“YMF Media New York”) to WBL5-WLIB License LLC. See File Nos. BAL-20140221AAQ, *et seq.*

² 47 C.F.R. §1.115(f) provides that applications for review “shall not exceed 25 double-space typewritten pages.” Here, the AFR is 34 double-spaced pages, not including its Table of Contents, Summary of the Argument, or the attached Declarations and Exhibits. See 47 C.F.R. §1.48(a). Petitioners request a waiver of the page-limit rule in the A4R because the AFR addresses “important public policy issues”² AFR at 1. Because we consider below and reject all the arguments raised in the AFR on other grounds, we need not address the waiver request.

³ On October 26, 2012, YMF New York filed its “Opposition.” On November 16, 2012, Petitioners untimely filed a “Reply to Opposition to Application for Review” (“Reply”). In the Reply, Petitioners requested “an exception to the ten-day reply provision of 47 C.F.R. § 1.115(d) by reason of the interruption in electricity to . . . [Bob Law] caused by Hurricane Sandy.” Reply at 1. Because we are dismissing the AFR for reasons not addressed in the Reply, we need not rule on this request.

⁴ See *Staff Decision*. The *Staff Decision* also denied the June 4, 2012 “Petition to Deny” filed by New York resident Lloyd Douglas, who did not appeal this Decision.

aggrieved” by an action taken pursuant to delegated authority.⁵ To show that it is “aggrieved” by an action, an applicant for review must demonstrate a direct causal link between the challenged action and the alleged injury to the applicant, and show that the injury would be prevented or redressed by the relief requested.⁶ In the broadcast regulatory context, standing is generally obtained in one of three ways: (1) as a competitor in the market suffering signal interference; (2) as a competitor in the market suffering economic harm; or (3) as a resident of the station's service area or regular listener of the station. Although the caption of the AFR references only the applications for approval of the assignment of New York Stations WBLS(FM) and WLIB(AM), the text of the pleading also seeks review of the *Staff Decision* as it relates to the applications for assignment of the remaining 13 stations, located in South Carolina, Mississippi and California, from Urban Radio affiliates (as debtors-in-possession) to YMF Media New York affiliates.⁷ Although, in the AFR, each of the Petitioners represents that he or she resides within the city grade contours of the New York stations,⁸ there is no showing of standing to seek review of the Bureau’s approval of the assignment of the South Carolina, Mississippi or California stations: none of the Petitioners alleges competitive harm or signal interference, or claims to be a listener of the station. Moreover, Petitioners have failed to demonstrate a causal link between any claimed injury and the grants at issue. For all of these reasons, Petitioners have failed to identify a direct economic or other connection between their interests and the Bureau’s grants of the South Carolina, Mississippi or California assignment applications. Therefore, we dismiss, for lack of standing, the Application for Review to the extent that it challenges the Bureau’s grant of those applications.

3. In the AFR, Petitioners improperly raise for the first time⁹ that the *Staff Decision* violates the United States Constitution’s Equal Protection Clause; the Fifth Amendment; the United States Court of Appeals for the Third Circuit decision in *Prometheus Radio Project v. FCC*;¹⁰ and ignores the alleged disparate racial impact caused by grant of the Applications.¹¹ Petitioners have failed to provide any explanation as to why they did not raise these arguments previously before the Bureau. Because

⁵ 47 U.S.C. § 155(c)(4); 47 C.F.R. § 1.115(a) (“Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission . . . Any application for review which fails to make an adequate showing in this respect will be dismissed.”).

⁶ See, e.g., *Applications of AT&T Inc. and Deutsche Telecom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 27 FCC Rcd 4423, 4425 (2012); *Applications of WINV, Inc. and WGUL-FM, Inc. for Renewal and Assignment of License of WINV(AM), Inverness, Florida*, Memorandum Opinion and Order, 14 FCC Rcd 2032, 2033 (1998).

⁷ See Urban Radio II, L.L.C., Debtor-in-Possession and YMF Media South Carolina Licensee, LLC for Consent to Assign Licenses for Stations WOIC(AM), Columbia, SC (Facility ID No. 73370), WARQ(FM), Columbia, SC (Facility ID No. 58400), WHXT(FM), Orangeburg, SC (Facility ID No. 50522), WMFX(FM), St. Andrews, SC (Facility ID No. 19471), and WWDM(FM), Sumter, SC (Facility ID No. 58398), File Nos. BAL-20120430ADJ, *et seq.*; Urban Radio II, L.L.C., Debtor-in-Possession and YMF Media Mississippi Licensee, LLC for Consent to Assign Licenses for Stations WOAD(AM), Jackson, MS (Facility ID No. 50404), WJQS(AM), Jackson, MS (Facility ID No. 50409), WJMI(FM), Jackson, MS (Facility ID No. 50408), WKXI-FM, Magee, MS (Facility ID No. 50407), WJNT(AM), Pearl, MS (Facility ID No. 7691), WKRS(FM), Pickens, MS (Facility ID No. 29512), File Nos. BAL-201202430ADO, *et seq.*; and Urban Radio III, L.L.C., Debtor-in-Possession and YMF Media California Licensee, LLC for Consent to Assign Licenses for KVTO(AM), Berkeley, CA (Facility ID No. 28681), KVVN(AM), Santa Clara, CA (Facility ID No. 28438), File Nos. BAL-20120430ADU, *et seq.*

⁸ AFR at 8.

⁹ See 47 C.F.R. § 1.115(c) (“No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”).

¹⁰ *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3rd Cir. 2011).

¹¹ See AFR at 13-15.

Petitioners did not afford the Bureau an opportunity to address these arguments, we dismiss the AFR to the extent that it makes these contentions.¹²

4. Moreover, with regard to Petitioners' remaining arguments concerning the Applications, we affirm the *Staff Decision* for the reasons stated therein. Petitioners' arguments below and on review¹³ are conclusory and unsupported, at least with regard to these transactions, and Petitioners have failed to raise a substantial and material question of fact regarding the qualifications of Urban Radio or YMF Media New York or shown that grant of the Applications was contrary to the public interest.¹⁴

5. We agree with Petitioners that promoting broadcast ownership diversity is an important Commission goal.¹⁵ However, as observed by the Bureau, the scope of the Commission's review of an assignment application such as those at issue here is statutorily limited to the transaction before it; we cannot consider whether the public interest, convenience, and necessity might be served by the assignment or transfer of the station license to any other than the proposed assignee or transferee.¹⁶ The Bureau properly found in the *Staff Decision*, on the basis of the Applications and pleadings, that grant of the Applications is in the public interest,¹⁷ *i.e.*, that the parties are qualified under, and the proposed transactions do not violate, the Act, the Rules or Commission policies.¹⁸ The transactions here, which carry out the determination of the bankruptcy court that, subject to the Commission's approval, each station noted herein should be assigned to the assignee named in its assignment application, involve steps taken in accordance with longstanding Commission policies of protecting creditors' interests.¹⁹

¹² See *e.g.* *BDPCS*, 351 F.3d at 1184 (it is an "open-and-shut case: the Commission's rules do not permit the Commission to grant an application for review 'if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.'"); *Spectrum IVDS, L.L.C.* Memorandum Opinion and Order, 25 FCC Rcd 10457, 10463 (2010) ("Because Spectrum IVDS failed to present this argument to the Bureau, the argument cannot now provide Spectrum IVDS with a basis for relief."); and *Fireside Media*, Memorandum Opinion and Order, 25 FCC Rcd 7754, 7757 (2010).

¹³ Petitioners argued that grant of the Applications: (1) would result in an unlawful reduction of programming geared toward Black and local audiences; (2) promote further consolidation of media into the hands of "corporate elite"; and (3) that transaction documents disclose that Fortress Investment Group has control of the assignees so as to constitute an attributable interest; prematurely assumed control over the Stations; lacked the qualifications to be a Commission licensee because it was in violation of the alien ownership restrictions set forth in Section 310(b) of the Act; had not been candid with the Commission about the degree of control it exercises over certain Ohio, Florida, and Texas stations; and had engaged in a pattern of predatory and racially discriminatory lending practices that has led to the demise of numerous locally and Black-owned stations. See *Staff Decision* at 3.

¹⁴ The *Staff Decision* contains a complete description of the facts underlying this case, which we incorporate by reference herein. See *Staff Decision* at 2- 4.

¹⁵ See *e.g.* *Promoting Diversification of Ownership in the Broadcasting Services*, Sixth Further Notice of Proposed Rulemaking, 28 FCC Rcd 461, 463 (2013) ("It has been a longstanding goal of the Commission to promote diverse ownership of broadcast stations, including ownership by women and minorities.").

¹⁶ *Staff Decision* at 5. See 47 U.S.C. § 310(d). See, *e.g.*, *Shareholders of Stop 26 Riverbend, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 6516, 6522 n. 47 (2012).

¹⁷ *Staff Decision* at 7.

¹⁸ See 47 U.S.C. § 310(d). See also *Jerry Russell d/b/a the Russell Company and Hanszen Broadcasting*, Memorandum Opinion and Order, 27 FCC Rcd 8323, 8330 (MB 2012).

¹⁹ See *e.g.* *LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974) (Commission is obligated to protect innocent creditors so long as the transaction in question does not unduly interfere with objectives of the Act); *Dale J. Parsons, Jr.*, Memorandum Opinion and Order, 10 FCC Rcd 2718, 2720 (1995); and *Shell Broadcasting, Inc.*, Memorandum Opinion and Order, 38 FCC 2d 929, 931 (1973).

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,²⁰ and Section 1.115 (a), (c) and (f) of the Commission's rules,²¹ the Application for Review IS DISMISSED IN PART AND DENIED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁰ 47 U.S.C. § 155(c)(5).

²¹ 47 C.F.R. §§ 1.115(a),(c), (f).