

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

In the Matter of)	
)	
Susquehanna Radio Corp. and)	
Whitley Media, LLC)	
)	
Application for Consent to Assignment of License)	File No. BALH-20130701ADA
)	
and)	
)	
Cancellation of License)	File. No. BLH-20050309AAI
)	
For DKTDK(FM) ¹ , Sanger, Texas)	Facility ID No. 26146

MEMORANDUM OPINION AND ORDER

Adopted: November 18, 2015

Released: November 19, 2015

By the Commission:

1. The Commission has before it a November 19, 2014 Petition for Reconsideration (“Petition”) filed jointly by Whitley Media, LLC (“Whitley”) and North Texas Radio Group, L.P. (“North Texas”) (collectively “Petitioners”).² Petitioners challenge the Commission’s October 20, 2014 dismissal of their Application for Review for lack of standing to request the reinstatement and assignment of the license of DKTDK(FM), Sanger, Texas (the “Station”).³ The Media Bureau (“Bureau”) cancelled that license at the request of the Station’s licensee, Susquehanna Radio Corp. (“Susquehanna”).⁴ Susquehanna also notified the Commission that it and Whitley had terminated their agreement providing for an assignment of the Station’s license from Susquehanna to Whitley (the “Whitley Agreement”).⁵ Petitioners seek reinstatement of the Station’s license and consent to the assignment of the license from Susquehanna to Whitley and then, ultimately to a corporation to be formed by North Texas and another

¹ The “D” before KTDK reflects deletion of the call sign.

² Also before us is an Opposition to Petition for Reconsideration (“Opposition”) filed December 1, 2014, by First IV Media, Inc. (“First IV”), which participated in this proceeding at the Bureau level and is the licensee of KGAF(AM), Gainesville, Texas. Petitioners filed a Reply to Opposition to Petition for Reconsideration on December 11, 2014 (“Reply”). First IV subsequently sought to withdraw its Opposition after reaching a settlement agreement with Petitioners pursuant to which any rights North Texas may acquire from Whitley would inure to a new jointly-held corporation formed by North Texas and First IV, in which each party would hold a 50% ownership and voting interest. *See* Joint Request for Approval of Agreement to Withdraw and Withdrawal of Pleadings (Feb. 27, 2015).

³ *See* *Susquehanna Radio Corp.*, Memorandum Opinion and Order, 29 FCC Rcd 13276 (2014) (“*Order*”).

⁴ *See* Letter to Marlene H. Dortch, Secretary, FCC (Sep. 30, 2013).

⁵ *See* Notice of Withdrawal of Petition for Reconsideration (Oct. 17, 2013) (“The parties terminated the Amended Asset Purchase Agreement underlying that [assignment] application as of October 7, 2013.”).

entity, as described in note 2.

2. The Bureau and Commission each found that Petitioners lacked standing to challenge the Bureau's actions, although their reasoning differed somewhat. The Bureau observed that Petitioners were merely an applicant and potential licensee, with no rights to the Station's license that could be adversely affected by its surrender and cancellation.⁶ The Commission affirmed the Bureau's analysis and, in response to Whitley and North Texas' new contention in their Application for Review that the Bureau had erroneously ignored their contractual rights,⁷ reasoned additionally that the Whitley Agreement was terminated prior to the October 21, 2013 and November 22, 2013 dates when Petitioners filed their two joint petitions challenging dismissal of the assignment application and cancellation of the license. Thus, the Commission found that Whitley, in fact, no longer had any right to acquire the license and neither it nor North Texas had a legally cognizable injury resulting from the Bureau's actions.⁸

3. Petitioners argue that a petition for reconsideration is permitted here, because the "primary basis" for its submission is the Commission's "newly articulated finding" that the termination of the Whitley Agreement extinguished any basis for standing by the Petitioners due to their lack of any contractual interest in the Station or its license.⁹ It is a close question whether this is a new argument unknown to the Petitioners. The *Bureau Letter* stated that Petitioners lacked standing because they "have no rights with regard to the Station's license and therefore no interest which could be adversely affected by the surrender and cancellation of the Station license."¹⁰ Also, the Commission's conclusion that the termination of the Whitley Agreement extinguished Petitioners' basis for asserting a legally cognizable injury necessarily entails a rejection of Petitioners' standing argument, *i.e.*, that either Whitley's status as a former applicant and/or the agreements with respect to the Station license to which Susquehanna was not a party are sufficient to confer standing. These are simply two sides of the same logical coin. However, the *Bureau Letter* did not specifically refer to the termination of the Whitley Agreement as the reason the Petitioners had no rights with regard to the license. Because the Commission's *Order* for the first time specifically found that the termination of the Whitley Agreement was fatal to Petitioners' standing to contest the dismissal of the assignment application and license cancellation, we will assume *arguendo* that Petitioners have cleared the procedural hurdle to file the Petition. We will dismiss all other arguments raised in the Petition against the *Order* as procedurally barred.¹¹

On the merits, Petitioners allege that the Commission erred in finding no injury stemming from the Bureau's actions because they claim that the legal status of the Whitley Agreement "has no logical relevance to the question of whether the cancellation of the [Station's] license and dismissal of the

⁶ See *Lewis Paper, Esq.*, Letter, 29 FCC Rcd 1905, 1908 (MB 2014) ("*Bureau Letter*") (citing *Scott R. Flick, Esq.*, Letter, 24 FCC Rcd 9064, 9065 (MB 2009), *recon. denied*, 25 FCC Rcd 13725 (MB 2010)).

⁷ Application for Review of Whitley Media, Inc. and North Texas Radio Group, L.P. (Mar. 26, 2014) at 4 ("Whitley was, in fact, a party to the Assignment Application and has a contractual right to purchase the license from Susquehanna. Likewise, North Texas has further contractual rights to purchase the station from Whitley after his acquisition of the station.").

⁸ See *Order*, 29 FCC Rcd at 13277.

⁹ Petition at 2; see 47 C.F.R. § 1.106(b)(2)(ii) (a petition for reconsideration of a Commission decision will be allowed if it "relies on facts or arguments unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity.").

¹⁰ *Bureau Letter*, 29 FCC Rcd at 1908.

¹¹ See 47 C.F.R. § 1.106(b)(2)(ii).

assignment application caused injury to parties that continued to seek authority to assign the [Station's] license"¹²

4. We disagree. Petitioners cite no precedent to support the theory that a third party with no contractual right to acquire a station's license could have standing to seek reinstatement of the license after the licensee had surrendered the license for cancellation.¹³ Here, the October 7, 2013 termination of the Whitley Agreement reported by Susquehanna, the licensee here, extinguished Whitley's contractual rights to acquire the Station license and, consequently, any right of North Texas to then acquire the license from Whitley. Petitioners' vague, unsupported and unexplained assertions to the contrary fail to demonstrate that they held such rights when the Commission cancelled the Station license and dismissed the assignment application.¹⁴ The relief that Petitioners seek could not have been accomplished without Susquehanna actively entering into a new agreement with Petitioners. Accordingly, Susquehanna's inaction is fatal to Petitioners' standing claim. We affirm our holding that Petitioners have not suffered an injury directly traceable to an action by this agency and have no standing in this proceeding.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Whitley Media, LLC and North Texas Radio Group, LP IS DENIED IN PART and DISMISSED IN PART, and the Joint Request for Approval of Agreement to Withdraw and Withdrawal of Pleadings filed by Whitley Media, LLC, North Texas Radio Group, L.P., and First IV Media, Inc. IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹² Petition at 1.

¹³ Under longstanding Commission policy, a state court would be the appropriate forum to address any claim by Petitioners to a contractual right in the Station or the Station's license. *See Listener's Guild, Inc. and Classical Radio for Connecticut, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (recognizing Commission's policy of refusing to adjudicate private contractual claims for which a forum exists in state court). The Commission would have considered any judgment rendered by a local court and sought to make a fair accommodation between state authority over contractual disputes and federal authority over licensing matters. *See, e.g., Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 131-32 (1945); *Arecibo Radio Corp.*, Memorandum Opinion and Order, 101 FCC 2d 545, 548 (1985). In this case, because Petitioners failed to submit a court decision establishing their contractual rights with respect to the Station or the Station's license, our actions in the *Decision* and those of the Bureau below were appropriate.

¹⁴ Thus, Petitioners maintain that "while the written Asset Purchase Agreement may have been terminated, an agreement for assignment of the License from Susquehanna to Whitley nevertheless remains in place." *See Reply* at 5. Susquehanna has merely indicated that it would have no objection if the Commission independently acted in accordance with Petitioners' wishes, provided that there would not be any negative consequences to Susquehanna or related companies as a result of the ownership matter. *See Bureau Letter*, 29 FCC Rcd at 1907. We reject Petitioners' factually untethered characterization of this lack of objection by Susquehanna as establishing an "agreement among the parties, contingent only upon the Commission's grant of necessary approvals, to move forward with the transaction as had been proposed." *See Petition* at 6.