

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	MM DOCKET NO. 96-116
)	
HOMETOWN MEDIA, INC.)	File No. BR-950601B9
)	
For Renewal of License)	
for Station WAYB(AM))	
Waynesboro, Virginia)	

DECISION

Adopted: November 26, 1996 ; Released: November 27, 1996

By the Commission:

1. By this action, we deny the Exceptions, filed October 24, 1996, by the Mass Media Bureau, and affirm Administrative Law Judge Joseph Chachkin's Summary Decision, 11 FCC Rcd 11413 (ALJ 1996), granting Hometown's renewal application for Station WAYB(AM) in Waynesboro, Virginia, subject to the condition that WAYB must resume broadcast operations before January 15, 1996. We also grant the Motion to Expedite, filed November 1, 1996, by Hometown so as to facilitate resumption of service before the February 8, 1997 deadline by which a silent station must return to the air or lose its authorization pursuant to 47 U.S.C. § 312.

2. By Hearing Designation Order, DA 96-813 (Audio Serv. Div. May 22, 1996) Hometown's June 1995 renewal application was designated for hearing to determine whether Hometown has the capability and the intent to expeditiously resume the broadcast operations of Station WAYB consistent with the Commission's Rules, and whether Hometown violated 47 C.F.R. §§ 73.1740 and/or 73.1750 of the Commission's Rules, which provide, respectively that a licensee may not discontinue operation for more than thirty days without Commission authorization, and that the licensee must notify the Commission of permanent discontinuance of operation. The HDO further provided that in the event it is determined that the grant of Hometown's renewal application serves the public interest, the grant shall be conditioned on the expeditious resumption of broadcast operations.

3. In the Summary Decision, the ALJ disagreed with the Bureau that Hometown's efforts to restore service on WAYB were dilatory. 11 FCC Rcd at 11415 n.4. The ALJ noted that negotiations to assign the license to Brenda Merica and Randall Fields began in August 1995, that the parties signed a contract to transfer assets two days after the HDO, that they have now agreed to a plan that will return WAYB to the air within ninety days, and that

the proposed arrangement is very similar to a proposal approved by the Commission in American Music Radio, 10 FCC Rcd 8769 (1995). Id. at 11415-17 ¶¶ 5, 12. Under its plan, Hometown will restore service and assign the license to Valley Communications L.C. (a company formed by Merica & Fields), while employing Fields as General Manager and entering a one-year-renewable Local Marketing Agreement (LMA) with Valley. Id. at ¶¶ 7, 12. In concluding that the plan will permit expeditious resumption of service consistent with the Commission's rules, the ALJ determined that Hometown would have access to the studio site and needed broadcast equipment pursuant to lease agreements with its major creditor, that it continues to have a valid tower lease, and that the agreements provide that Hometown retains ultimate authority until the Commission approves the assignment of the license to another entity. Id. at ¶ 12. With regard to the second issue, whether Hometown violated sections 73.1740(a)(4) and/or 73.1750, the ALJ determined that Hometown did not violate section 73.1750, and that its violation of section 73.1740 was inadvertent, of short duration, and did not involve a flouting of the Commission's rules. Id. at ¶¶ 13-15. Under these circumstances, he determined that the violation was not disqualifying. Id. at 11417 ¶¶ 13-15. Having resolved both issues in the licensee's favor, the ALJ denied the Mass Media Bureau's counter-motion for summary decision and conditionally granted the renewal application.

4. In its Exceptions, the Bureau maintains that the licensee's efforts to restore service were dilatory, and that the ALJ erred in focusing on the licensee's post-designation activities and ignoring the licensee's pre-designation record. In the alternative, the Bureau submits that, even if the licensee's post-designation actions are pertinent, Hometown has done nothing to return to the air beyond seeking a purchaser for WAYB. It claims that this is insufficient to meet its burden under the silent station issue. The Bureau also objects to the use of the LMA as a stratagem to postpone assignment until after the grant of the renewal application. It argues that this is contrary to long-standing precedent prohibiting a licensee that has been designated for hearing from assigning the license until its basic qualifications are established.

5. We will deny the Bureau's Exceptions. We find no factual or legal error in the ALJ's analysis. Notwithstanding the Bureau's contention that Hometown did nothing prior to the May 1996 HDO to restore service, the ALJ noted that the licensee began negotiating to assign WAYB to Merica & Fields in August 1995. Id. at 11415 ¶ 5. Moreover, to the extent that the Bureau faults the ALJ for relying on the licensee's post-designation actions, for the reasons set forth in Southwestern Broadcasting Corporation, FCC 96-443, ¶ 3 (Nov. 15, 1996), we have rejected the Bureau's views regarding this question, expressly holding that "it is not fatal even if the steps taken by the licensee [of a silent station] occur after the HDO" Here, as a result of the lease agreements with its major creditor and the LMA with Valley, Hometown has access to the studio site and to all necessary broadcast equipment, and can expeditiously return the station to the air while retaining ultimate control over station operations. While no assignment application has been filed, the ALJ found that the parties have prepared and are ready to file the assignment application. SD, 11 FCC Rcd at 11415 ¶5. In any event, the proposal to resume service is not contingent on approval of

the assignment of the station to Valley. Both the lease agreements and the LMA will remain in effect for a year, with an option to renew, even if the assignment is disapproved. By permitting the expeditious resumption of service on WAYB, the steps taken by the licensee meet Hometown's burden of establishing the requisite intent and capability to expeditiously restore broadcast operations, thereby justifying favorable resolution of the issues and the conditional grant of Hometown's renewal application.

6. ACCORDINGLY, IT IS ORDERED. That, pursuant to 47 C.F.R. § 1.276(a), the Exceptions, filed October 24, 1996, by Mass Media Bureau ARE DENIED; that the Motion to Expedite, filed November 1, 1996, by Hometown Media, Inc. IS GRANTED to the extent reflected herein; and that the Summary Decision, 11 FCC 11413 (ALJ 1996), IS AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary