



Federal Communications Commission
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In Reply Refer to:

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Tim Alexander
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Clay E. Holladay, President
Gulf South Communications, Inc.
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Dothan, AL 36303

Stage Door Development, William C. Carn, III, Trustee
c/o Lee & Mcinish, P.C.
P.O. Box 1665
Dothan, AL 36301

In re: **WUSD(FM), Geneva, Alabama**
Facility ID No. 62206
File No. BALH-20080718ANP

**Application for Assignment of License
Informal Objections**

Dear Mr. Mizell, Mr. Alexander, Mr. Holladay, and Mr. Carn:

We have before us the above-referenced application (the "Assignment Application") seeking approval for the proposed assignment of license of Station WUSD(FM) (formerly WRJM-FM), Geneva, Alabama (the "Station"), from Stage Door Development, William C. Carn, III, Trustee ("Trustee") to Gulf South Communications, Inc. ("Gulf South"). On September 8, 2008, H. Jack Mizell ("Mizell"), President of Stage Door Development, Inc. ("Stage Door"), filed an Informal Objection, and on September 17, 2008, Tim Alexander ("Alexander") filed an Informal Objection to the Assignment Application.¹ For the reasons stated below, we deny the Informal Objections and grant the Assignment Application.

Background. On January 10, 2008, the United States Bankruptcy Court, Middle District of Alabama ("Bankruptcy Court") appointed William C. Carn, III as Trustee in Bankruptcy of Stage Door.²

¹ On September 24, 2008, the Trustee filed an Opposition to "Informal Objection" and on September 29, 2008, Gulf South filed an Opposition to Informal Objection. Mizell filed a Response to Opposition to "Informal Objection" on September 30, 2008.

² See *Stage Door Development, Inc.*, Case No. 07-11638-DHW (Bankr. M.D. Ala. Jan. 10, 2008).

The Commission granted an involuntary assignment of the Station's license to the Trustee on February 5, 2008.³ On July 3, 2008, the Bankruptcy Court approved the sale by the Trustee of Stage Door's assets.⁴ The Trustee filed the Assignment Application on July 18, 2008. On September 11, 2008, the Bankruptcy Court denied Mizell's motion to block the sale of Stage Door's assets by the Trustee.⁵

Discussion. In the Informal Objection, Mizell alleges that the Station's Ozark, Alabama, main studio fails to comply with the Commission's main studio rule.⁶ Mizell also alleges that "Gulf South Communications and its manager Ron Eubanks ("Eubanks") have confessed to eleven criminal acts by failure to comply and non-response to an opportunity to cure the complaints."⁷ Alexander's Informal Objection alleges that Gulf South has been providing programming to the Station since September 6, 2008, although the sale of the Station to Gulf South has not been consummated.

Main Studio Allegation. In response to the allegation raised in the Informal Objection, on December 17, 2008, the staff sent a letter to Gulf South, requesting that it demonstrate the manner in which it would comply with the Commission's main studio rule.⁸ In its February 17, 2009, response ("Main Studio Response") Gulf South explains that the Station's main studio had failed to comply with the main studio rule because the appropriateness of its location had been based on use of an alternative propagation method, but "that the geographical area in question did not meet the standards under Commission policy for use of that method for purposes of compliance with the main studio rule."⁹ The Main Studio Response states that the Station relocated its main studio to a location near the base of its transmitter site, which is within the Station's predicted 70 dBu contour, based on the Commission's standard propagation method. Also included in the Main Studio Response was a copy of a February 4, 2009, letter from the Trustee's counsel informing the Commission of the address of the Station's new main studio, effective February 1, 2009. Additionally, the Main Studio Response states that the new main studio is staffed with two employees of the Trustee, a full time managerial employee and a full time administrative employee, and that this main studio is capable of originating and broadcasting programming. Accordingly, based on the Main Studio Response and the record before us, we find the Station's main studio to be in compliance with the main studio rule.

Character Allegations. Mizell's Informal Objection includes photocopies of information from Alabama state courts with respect to Eubanks. Eubanks is an officer and shareholder of Gulf South.¹⁰ The material that Mizell submits does not demonstrate that Eubanks was found guilty of any felony or of

³ File No. BALH-20080130AAA.

⁴ See Gulf South Opposition, Exhibit A.

⁵ *Id.*

⁶ 47 C.F.R. § 73.1125.

⁷ Informal Objection at 2.

⁸ See *David D. Burns, Esq.*, Letter, Ref. 1800B3-RBG (Dec. 17, 2008).

⁹ Main Studio Response at 1.

¹⁰ See Gulf South Opposition at 2, note 4.

any type of criminal misconduct of which the Commission takes cognizance in making a determination as to character qualifications.¹¹ Thus, this issue fails to raise a substantial and material question of fact.

Programming Provided by Gulf South. The Trustee's Opposition states that Gulf South has been providing programming to the Station under a Local Marketing Agreement ("LMA") dated September 7, 2008, which was duly filed with the Commission.¹² While Alexander alleges that Gulf South has been providing programming to the Station since September 6, 2008, the one-day difference between these dates raises no substantial and material question of fact. Moreover, Alexander provides no affidavit or other evidence to support the accuracy of the date he alleges that such programming began. Accordingly, we find that Gulf South's provision of programming to the Station pursuant to the LMA does not violate any Commission rule or policy.

Conclusion/Actions. Based on the above, we find that no substantial and material question of fact has been presented. We further find that Gulf South is qualified as the assignee and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Informal Objections filed by H. Jack Mizell and Tim Alexander ARE DENIED, and that the application to assign the license of Station WUSD(FM), Geneva, Alabama (File No. BALH-20080718ANP) from Stage Door Development, William C. Carn, III, Trustee to Gulf South Communications, Inc. IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: John Trent, Esq.
David D. Burns, Esq.

¹¹ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1196-98 (1986), *recons. granted in part on other grounds*, Memorandum Opinion and Order, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom., National Association for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987), *modified*, Policy Statement and Order, 5 FCC Rcd 3252 (1990), *on reconsideration*, Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991), *modified in part*, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992).

¹² Trustee Opposition at 3.