



Federal Communications Commission
Washington, D.C. 20554

February 26, 2010

In Reply Refer to:
1800B3-BSH

James H. Hooker
Richard F. Rambaldo
c/o Andrew S. Kersting, Esq.
Dickstein Shapiro LLP
1825 I Street, N.W.
Washington, D.C. 20006-5403

NM Licensing LLC
c/o Joseph A. Belisle, Esq.
Leibowitz & Associates P.A.
4400 Biscayne Boulevard
Miami, FL 33137

In re: **KBAY(FM), Gilroy, California et al.**
Facility ID Nos. 35401 et al.
File Nos. BALH-20091221ADX-
BALH-20091221AFG

**Application for Involuntary
Assignment of Licenses**

Informal Objection

Dear Mr. Hooker, Mr. Rambaldo and Counsel:

We have before us the above-referenced application (the "Assignment Application") seeking approval for the proposed involuntary assignment of 36 station licenses from NM Licensing LLC ("NML") to NM Licensing LLC, Debtor in Possession ("NML/DIP").¹ On January 6, 2010, James H. Hooker and Richard F. Rambaldo (collectively, the "Objectors") filed a pleading captioned as an Informal Objection (the "Informal Objection") to the involuntary assignment of Station KBAY(FM), Gilroy, California.² For the reasons stated below, we dismiss Objectors' pleading as an informal objection, and also dismiss the pleading as a petition for reconsideration.

Background. On December 20, 2009, NextMedia Investors LLC ("NextMedia"), ultimate parent of NML, filed a voluntary petition with the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court") under Chapter 11 of the Bankruptcy Code.³ As a result of the filing of the Petition for Chapter 11 Bankruptcy, on December 21, 2009, NML filed the above-referenced *pro forma*

¹ The Assignment Application seeks Commission consent to the involuntary assignment of the 36 station licenses held by NML. The Informal Objection, however, only references the lead Station, KBAY(FM), Gilroy, California, in the caption of the pleading.

² On January 12, 2010, NML filed an Opposition to Informal Objection.

³ Case No. 09-14466.

application seeking consent for the involuntary assignment of the station licenses from NML to NML/DIP. On December 28, 2009, the staff granted the Assignment Application.⁴ As noted above, the Informal Objection was filed on January 6, 2010, nine days after grant of the Assignment Application. Objectors' pleading states that the Objectors are Class C members of NextMedia. Objectors argue that the Commission should deny the Assignment Application because it is inconsistent with a May 6, 2009, decision of the Court of Chancery of Delaware ("Chancery Court").⁵ The Chancery Court's Decision granted a petition for summary judgment with respect to a Petition for Dissolution of NextMedia, and ordered that NextMedia be dissolved and that the NextMedia board of managers liquidate the company.

Discussion. Procedural Issues. Under Section 73.3587 of the Commission's Rules (the "Rules"), an informal objection must be filed before action on an application.⁶ We dismiss Objectors' pleading, treated as an informal objection, as untimely. Moreover, Objectors' pleading, when treated as a petition for reconsideration, is also procedurally defective. Section 1.106(b)(1) of the Rules states, *inter alia*, that a petition for reconsideration filed by a person who is not a party to the proceeding must state with particularity the manner in which that party's interests are adversely affected by the action taken, and must "show good reason why it was not possible for him to participate in the earlier stages of the proceeding."⁷ Objectors have not made such a showing. Additionally, Objectors do not contend that any of the facts alleged in their pleading were not known to them prior to the grant of the Assignment Application. Therefore, we find that Objectors also fail to meet the requirements of Section 1.106(c) of the Rules,⁸ which governs petitions for reconsideration that rely on facts not previously presented to the Commission. Accordingly, we dismiss the Objectors' pleading as a petition for reconsideration as procedurally improper.

Substantive Issues. Moreover, were we required to consider Objectors' pleading, we would deny it. The Bankruptcy Court, not the Commission, is the proper venue to challenge NextMedia's reorganization efforts. The Commission has long-recognized that a bankruptcy court is the appropriate forum to adjudicate the claims of parties with interests which are subject to the pertinent bankruptcy proceeding.⁹ Consideration of policies underlying the Bankruptcy Code requires rejection of the Informal Objection and the Objectors' efforts to adjudicate bankruptcy matters before the Commission.

Furthermore, the issues raised by Objectors constitute a private controversy. The Commission has consistently held that it is not the proper forum for the resolution of such private disputes, and that parties should seek redress for such matters in courts of competent jurisdiction.¹⁰ Objectors have not

⁴ See *Broadcast Actions*, Public Notice, Report No. 47150 (MB Jan. 12, 2010).

⁵ *In re NEXTMEDIA INVESTORS, LLC*, C.A. No. 4067-VCS, 2009 WL 1228665 (Del. Ch. May 6, 2009) ("Chancery Court's Decision").

⁶ See 47 C.F.R. § 73.3587.

⁷ 47 C.F.R. § 1.106(b)(1).

⁸ 47 C.F.R. § 1.106(c).

⁹ See *La Rose v. FCC*, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1975) (Commission is obligated to accommodate bankruptcy law policies when making public interest determinations).

¹⁰ See *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976); *Decatur Telecasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 8622 (1992).

provided evidence of an injunction or a stay issued by any court blocking the proposed license assignments. We note, however, that Commission grant of an assignment or transfer of control application merely finds that the parties are qualified to consummate the proposed transaction and that the transaction does not violate the Communications Act of 1934, as amended, or the Commission's Rules and policies. As such, it is permissive only and does not prejudice any relief to which the Objectors may ultimately be entitled.

Conclusion/Actions. Based on the above, IT IS ORDERED, that James H. Hooker and Richard F. Rambaldo's January 6, 2010, Informal Objection IS DISMISSED, and when treated as a petition for reconsideration, IS DISMISSED.

Sincerely,

Risa Scanlon
for

Peter H. Doyle
Chief, Audio Division
Media Bureau