



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer To:
1800B3-MM

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In re: KGEZ(AM), Kalispell, Montana
Facility ID No. 60575

File No. BAL-20090930ACB

**Involuntary Assignment of License
Application**

Dear Counsel:

We have before us the above-captioned application ("Application") for the involuntary assignment of the KGEZ(AM), Kalispell, Montana, license from Mr. John Stokes ("Stokes") to Mr. Richard J. Samson ("Samson"), trustee in bankruptcy, filed on September 30, 2009. Also before us are Stokes' Informal Objection ("Objection")¹ and Petition for Reconsideration ("Petition") filed on October 2 and November 23, 2009,² respectively, and Samson's Opposition to the Objection and Opposition to the Petition, filed on December 3 and 8, 2009, respectively. The Application was granted on October 20, 2009, before the Commission was aware of the Objection. Because the Commission set aside the grant and reinstated the Application upon discovery of the Objection, we dismiss the Petition as moot. On December 8, 2009, Stokes requested Commission approval to withdraw the Objection and Petition.³ For the reasons stated below, we dismiss the Objection and grant the Application.

Background. On September 21, 2009, Robert D. Miller, Jr., acting United States Trustee for the United States Bankruptcy Court for the District of Montana, appointed Samson interim trustee of the estate of Stokes.⁴ On September 30, 2009, Samson filed the Application which was granted by the

¹ This filing is titled, "Objection [sic] to Transfer and Control." We will consider it as an informal objection pursuant to Section 73.3587 of the Commission's Rules ("Rules"). 47 C.F.R. § 73.3587.

² See *Broadcast Applications*, Report No. 27124, Public Notice (Dec. 3, 2009).

³ See *Request for Approval of Withdrawal of Informal Objection and Petition for Reconsideration and Rescission of Consent to Assignment*, filed December 8, 2009 ("Withdrawal").

⁴ See *John Patrick Stokes*, Notice of Appointment of Trustee, United States Bankruptcy Court for the District of Montana, Case No. 09-60265-7 (Sept. 21, 2009) ("Stokes"). Samson will continue as trustee unless creditors elect another trustee at the meeting of creditors.

Commission on October 20, 2009.⁵ When the Commission became aware of the Objection, it rescinded the grant by Public Notice on November 27, 2009.⁶

On December 8, 2009, Stokes requested Commission approval to withdraw the Objection and Petition.⁷ Stokes has stated that there were no oral or written agreements related to the Withdrawal, and no consideration was received.⁸ We have reviewed the Objection, the Petition and the Withdrawal and Stokes' attestation regarding consideration, and we find that the Withdrawal complies with Section 73.3588 of the Commission's Rules.⁹

Even where a petition or objection is dismissed at the filing party's request, however, the Commission considers the merits of that submission.¹⁰ The Objection cites numerous problems with matters outside the Commission's purview, including the City of Kalispell's treatment of Stokes' real property and the inadequacy of his legal representation.¹¹ Stokes further argues that the station should remain under his ownership because it is family-owned and operated, serves the public and advertisers well, and is the primary emergency alert system station. He adds that he at least should maintain ownership while he appeals the court's ruling. Finally, Stokes requests that the Commission prevent the involuntary assignment to Trustee Samson and instead make him the licensee of the Station as debtor-in-possession.¹²

Discussion. Section 310(d) of the Communications Act of 1934, as amended ("Act"), requires the Commission to make a determination whether the proposed transfer or assignment of a broadcast license would be in the public interest. It is well-established that the Commission will accommodate court decrees, such as the appointment of a trustee in bankruptcy, unless a public interest consideration

⁵ *Broadcast Actions*, Report No. 47097, Public Notice (Oct. 23, 2009).

⁶ *Broadcast Actions*, Report No. 27120, Public Notice (Nov. 27, 2009).

⁷ See generally Withdrawal.

⁸ Withdrawal at 1.

⁹ 47 C.F.R. § 73.3588.

¹⁰ *Application of Detroit Public Schools*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13688, 13689 (MB 2006) (citing *Stockholders of CBS, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 3733, 3739 (1995) and *Booth American Company*, Memorandum Opinion and Order, 58 FCC 2d 553, 554 (1976)).

¹¹ See, e.g., *Pacific Land Sales, Inc.* 187 B. R. 302, 312 (1995) ("To the extent that [the party] disputes the rulings of the Bankruptcy Court, his remedy lies in an appeal to the appropriate federal court, and not to the Commission . . . grant of an involuntary transfer application will not prejudice the transferor's pursuit of appellate relief . . .") (citing *Overmyer Telecasting Co., Inc.*, 94 FCC 2d 117, 123-124 (1983) (other citations omitted)). See also *Arecibo Radio Corporation (Assignor) Hato Abajo*, Memorandum Opinion and Order, 101 FCC 2d 545, 545 (1985) (Commission seeks to preserve its exclusive authority to make public interest determinations on licensing matters while recognizing the role of state and local courts in adjudicating private contractual disputes). Stokes also objects to the fact that he was not served with the bankruptcy court's order until six days after it was issued. He claims that the City of Kalispell, Montana wants to take his land and terminate his easement to access the station's towers in order to expand the airport.

¹² See Objection at 4.

under the Act compels a different result.¹³ Here, the United States Bankruptcy Court, District of Montana ordered Stokes to allow Samson to secure all assets of his estate, including KGEZ(AM), and gave Samson authority to make filings with the Commission in order to “completely effectuate turnover of any and all FCC license(s) and authorities.”¹⁴ The record here shows that there is no public interest consideration under the Act preventing a grant of the Application.

Conclusion. Based on the above, we find that none of Stokes’ allegations demonstrate that grant of the Application would be inconsistent with the public interest. We also find that Samson is qualified to hold the KGEZ(AM) license and that grant of the Application is consistent with the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Stokes is DISMISSED as moot; the Objection IS DISMISSED; and the application (File No. BAL-20090930ACB) for approval to involuntarily assign the license for Station KGEZ(AM), Kalispell, Montana IS GRANTED.¹⁵

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: John Patrick Stokes
David A. O’Connor, Esq.
Bob Barr, Esq.
Richard J. Samson, Trustee

¹³ *Percy Squire, Esq. and Mark J. Prak, Esq.*, Letter, 24 FCC Rcd 10669, 10673 (MB 2009) (citing *Arecibo Radio Corp.*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 131-32 (1945)).

¹⁴ *Stokes*.

¹⁵ The Commission’s records reflect that the station KGEZ(AM), has been off the air since September 24, 2009. Therefore, the FCC Form 732 authorization for this grant will state that the license for this station will expire as a matter of law if the station does not resume broadcast operations by September 25, 2010. 12:01 AM. *See* 47 U.S.C. § 312(g).