



Federal Communications Commission
Washington, D.C. 20554

April 22, 2011

In Reply Refer to:
1800B3-BSH

William Johnson, President
Urban One Broadcasting Network
2128 SW Main Blvd., Suite 105
Lake City, FL 32025

Sovereign City Radio Services, LLC
c/o Denise B. Moline, Esq.
358 Pines Blvd.
Lake Villa, IL 60046

Newman Media, Inc.
c/o Donald E. Martin, Esq.
Donald E. Martin, P.C.
P.O. Box 8433
Falls Church, VA 22041

In re: **New (AM), Lake City, Florida**
Facility ID No. 160813
File No. BAP-20091027ADO

**Application for Assignment of
Construction Permit
Petition to Deny**

Dear Mr. Johnson and Counsel:

We have before us the above-referenced application (the "Assignment Application") seeking approval for the proposed assignment of construction permit for a new AM station, Lake City, Florida (the "Station"), from Sovereign City Radio Services, LLC ("SCRS") to Newman Media, Inc. ("Newman"). On November 12, 2009, Urban One Broadcasting Network ("Urban") filed a Petition to Deny ("Petition") the Assignment Application.¹ For the reasons stated below, we deny the Petition and grant the Assignment Application, as conditioned.

Background. On September 10, 2009, Urban and SCRS executed an Option to Purchase Agreement ("Option Agreement")² that provided, *inter alia*, for: (1) an exclusive option for one year in which Urban could exercise its option to purchase the Station if a Condition Precedent was met; (2) payment of \$4,000 from Urban to SCRS, to be paid within three days of the execution of the Option Agreement; (3) a total purchase price of \$40,000 (toward which the \$4,000 payment would be credited) if

¹ On November 25, 2009, SCRS and Newman filed separate Oppositions. Urban filed a Reply on December 22, 2009, and an Amended Reply on December 28, 2009. We also have a Petition for Clarification of Applicable Regulation and to Conduct an Expedited Evidentiary Hearing, filed October 21, 2009, by Urban. This pleading addresses issues that are also contained in the Petition, and we consider it as a part of the Petition.

² See Petition, Exhibit A.

the option was exercised; and (4) a Condition Precedent requiring Urban to complete construction of the Station, place the Station into operation, and prepare an application for the Station's license on or before December 1, 2009. On October 7, 2009, SCRS sent a letter to Urban stating that it had received no consideration for the option from Urban, and declaring that "for lack of the required consideration, the Option is null and void, and hereby immediately terminated."³ SCRS and Urban never executed an Asset Purchase Agreement for the permit. Subsequently, on October 27, 2009, SCRS and Newman executed an Asset Purchase Agreement and filed the Assignment Application. On November 12, 2009, Urban filed the instant Petition.

Discussion. Urban makes three arguments in its Petition: (1) SCRS has engaged in "Price Fixing Discrimination" against Urban based on race;⁴ (2) the Option Agreement violated Section 73.3597(c)(2) of the Commission's Rules (the "Rules")⁵ because it called for SCRS to receive more than the expenses it incurred in preparing, filing, and advocating the grant of the Station's construction permit; and (3) grant of the Assignment Application would result in a violation by Newman of the Commission's multiple ownership rule.⁶

Discrimination Allegation: Urban's allegation that SCRS has engaged in "Price Fixing Discrimination" against Urban is based on the fact that Urban principal William Johnson is African-American and Urban's assertion that its Option Agreement with SCRS called for a total \$40,000 payment, while SCRS "is now selling the same Construction Permit to a White Broadcaster for the total sum of \$3000.00."⁷ SCRS responds that "[SCRS principal] Mr. Krusinski unequivocally states under penalty of perjury that he was never aware, nor made aware, that Petitioner was a minority company."⁸ Additionally, SCRS asserts that it was "extremely patient" with Urban, waiting for "nearly a month" to terminate the Option Agreement pursuant to its terms, although Urban "was required to make a \$4,000 payment to SCRS for the Option within 3 days of the execution of the Option."⁹ SCRS states that "[I]t was only after the termination of its Option Agreement with Petitioner that SCRS entered into an agreement with [Newman] for the sale of the construction permit."¹⁰ Concerning the amount of payment that Urban was obligated to pay pursuant to the Option Agreement, SCRS states that Urban "offered to pay \$40,000 for the station," and that SCRS accepted this amount because it was the highest offer that it

³ See Opposition, Exhibit 2.

⁴ Petition at 2-3.

⁵ 47 C.F.R. § 73.3597(c)(2).

⁶ *Id.* § 73.3555(a).

⁷ Petition at 2.

⁸ Opposition at 4; Exhibit 1 (Declaration of Scott Krusinski).

⁹ *Id.* at 4; Petition, Exhibit A, ¶ 2.

¹⁰ Opposition at 4.

received.¹¹ SCRS contends that it neither forced Urban to make a higher offer, nor has it tried to hold Urban to its agreement to pay \$40,000 for the Station.¹²

We find Urban's allegation that SCRS has engaged in "Price Fixing Discrimination" against Urban based on race to be speculative. Urban does not provide any evidence to demonstrate that any SCRS conduct concerning the transaction was based on, or influenced by race. Accordingly, on this issue Urban fails to provide the specific allegations of fact sufficient to show that grant of the Assignment Application would be *prima facie* inconsistent with the public interest, as required by Section 309(d)(1) of the Communications Act of 1934, as amended.¹³ Moreover, the contractual issues raised by Urban 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 local courts of competent jurisdiction.¹⁴

Furthermore, Urban has not provided evidence of an injunction or a stay issued by a local court against the proposed sale. In the absence of such an order from a local court, the Commission has routinely acted favorably on license assignment applications. We note, however, that Commission grant of an assignment or transfer of control application merely finds that the parties are qualified under, and the proposed transaction does not violate, the Act, or the Commission's rules and policies. As such, it is permissive only and does not prejudice any relief to which the parties may ultimately be entitled.

Section 73.3597(c)(2) Allegation. Urban argues that the proposed assignment of the Station's construction permit by SCRS to Urban would have violated Section 73.3597(c)(2) of the Rules, because the \$40,000 sale price exceeded the expenses incurred by SCRS in prosecuting the construction permit. Initially, we note that this argument, which concerns the terms of SCRS' Option Agreement with Urban, does not pertain to the Assignment Application. Moreover, since no Asset Purchase Agreement between SCRS and Urban was ever executed, Urban's claims of illegality of that arrangement are irrelevant to the proposed transaction. Furthermore, Urban misreads Section 73.3597(c). In 1998, the Commission adopted a change in the rule governing consideration for the assignment of construction permits.¹⁵ Specifically, the Commission added subsection 73.3597(c)(1)(iii), which now applies the restrictive regulation concerning consideration for unbuilt stations to a very small category of noncommercial educational FM construction permits.¹⁶ Accordingly, there is currently no restriction for the consideration paid for commercial AM construction permits for unbuilt stations, such as the permit that is the subject of

¹¹ *Id.* at 3-4 (emphasis in original).

¹² *Id.*

¹³ 47 U.S.C. § 309(d)(1). Nor does Urban cite to or provide a basis for dismissal under 47 C.F.R. § 73.2090.

¹⁴ 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).

¹⁵ See *In the Matter of 1998 Biennial Regulatory Review - - Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Report and Order, 13 FCC Rcd 23056 (1998).

¹⁶ See 47 C.F.R. § 73.3597(c)(1)(iii), which provides: "The provisions of paragraphs (c) and (d) of this section apply only to mutually exclusive noncommercial educational applications filed on or after the release of the Report and Order in MM Docket 98-43, where the construction permit is issued pursuant to settlement agreement."

the instant Assignment Application. Therefore, Urban's allegation on this issue is misplaced, and is not relevant to our consideration of the Assignment Application.

Section 73.3555(a) Allegation. Urban provides two arguments to support its assertion that grant of the Assignment Application would violate Section 73.3555(a) of the Rules.¹⁷ First, Urban asserts that the relevant market has six stations. Second, Urban argues that three stations in the market are currently attributable to Newman, and that acquisition of the Station's construction permit would leave Newman with an impermissible interest in more than 50 percent of the stations in the market, in violation of Section 73.3555(a)(1)(iv) of the Rules.¹⁸ A study by the staff reveals, however, that the relevant radio market, which is not a part of any Arbitron Metro and reported by BIA, has nine stations.¹⁹ We note that a radio market that is not in an Arbitron Metro is defined as the area encompassed by the principal community contours of the stations that are both mutually overlapping and proposed to be commonly attributable post-transaction,²⁰ and not by a community of license, as Urban appears to believe. Pursuant to Section 73.3555(a)(1)(iv) of the Rules, in a market this size, a single entity may own, operate or control up to five stations, no more than three in the same service, provided, however, that no entity may have a cognizable interest in more than 50 percent of the stations in the market.²¹

Newman is currently the licensee of two stations in this market: Station WNFB(AM), Lake City, Florida, and Station WOSR(AM), Lake City, Florida. Urban argues that a third station in the market, WJKT(FM), Columbia City, Florida, "seems to be controlled by a member of [Newman principal] John Newman's family" and should also be attributable to Newman.²² Commission records reveal that Station WJKT(FM) is licensed to Newman Broadcasting, Inc., which is 100 percent owned by Dr. Cesta D. Newman ("Dr. Newman"). Newman states that Dr. Newman is John Newman's wife.²³ However, under long-standing precedent, Commission policy concerning spousal attribution provides a presumption that the broadcast interest of one spouse is not attributed to the other spouse.²⁴ This presumption is rebuttable. We find, however, that Urban fails to provide any evidence to rebut the presumption of non-attribution. Furthermore, as noted by Newman, "even if WJTK were to be considered under common control with Newman's two existing stations, a fourth station would not violate the multiple-ownership rule."²⁵ We

¹⁷ 47 C.F.R. § 73.3555(a).

¹⁸ 47 C.F.R. § 73.3555(a)(1)(iv) (in a market with 14 or fewer stations, no single entity may have a cognizable interest in more than 50 percent of the stations in such market).

¹⁹ The nine Florida stations that comprise the market are: New(AM)(BNP-20040129ADT), Lake City; WGRO(AM), Lake City; WQHL(AM), Live Oak; WDSR(AM), Lake City; WOLR(FM), Lake City; WNFB(FM), Lake City; WQHL-FM, Live Oak; WQLC, Watertown; and WLVO(FM), Live Oak.

²⁰ See 47 C.F.R. § 73.3555, Notes.

²¹ See *Id.*, § 73.3555(a)(1)(iv).

²² Petition at 5.

²³ Newman Opposition at 2.

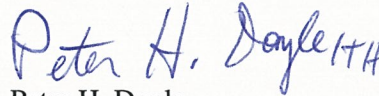
²⁴ See *Clarification of Commission's Policies Regarding Spousal Attribution*, Policy Statement, 7 FCC Rcd 1920 (1992).

²⁵ *Id.* at 2-3.

concur that common ownership of even four stations in a nine-station market would be permissible, and therefore we find that the proposed transaction complies with the relevant rule, Section 73.3555(a)(1)(iv).

Conclusion/Actions. Based on the above, we find that Urban has not raised a substantial and material question of fact warranting further inquiry. We further find that Newman is qualified to hold the construction permit for the new AM station, Lake City, Florida, and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that Urban One Broadcasting Network's November 12, 2009, Petition to Deny IS DENIED, and that the application for approval to assign the construction permit for a new AM station, Lake City, Florida (File No. BAP-20091027ADO) from Sovereign City Radio Services, LLC to Newman Media, Inc. IS GRANTED, as conditioned.

Sincerely,

A handwritten signature in blue ink that reads "Peter H. Doyle" followed by a stylized "1+4".

Peter H. Doyle
Chief, Audio Division
Media Bureau