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In re: **WHNR(AM), Cypress Gardens, Florida**
Facility ID No. 21766
File No. BAL-20120316AAP

Petition for Reconsideration

Dear Counsel and Applicant:

We have before us a Petition for Reconsideration (“Petition”) filed by La Poderosa, LLC (“Poderosa”) and Carlos S. Guerrero (collectively, “Petitioners”) on September 4, 2012, seeking reconsideration of the August 3, 2012, grant of the above-referenced application of GB Enterprises Communications, Corporation (“GB”) for involuntary assignment of the license of AM broadcast station WHNR(AM), Cypress Gardens, Florida (the “Station”), to George R. Reed, Receiver (“Reed”) (the “Application”),¹ and related responsive pleadings.² For the reasons stated below, we grant the Petition.

Background. Martin Santos (“Santos”), former president and 100 percent stockholder of GB, the assignor in this case, defaulted on a personal debt to Edward Olivares (“Olivares”) in the amount of \$48,020.85.³ According to Petitioners, Santos also defaulted on a debt to Poderosa for around \$770,000,

¹ *George R. Reed, Receiver*, Letter, 27 FCC Rcd 9048 (MB 2012) (“*Letter Decision*”).

² On September 18, 2012, Reed filed an Opposition to Petition for Reconsideration (“Opposition”). On October 2, 2012, Petitioners filed a Reply to Opposition to Petition for Reconsideration (“Reply”), which largely restates arguments made in the Petition.

³ *Edward Olivares v. Martin Santos*, Case Number 2009CA-005214 (Fla. Cir. Ct. Feb. 15, 2012) (“*Emergency Motion*”).

which was secured against the assets of the Station.⁴ On August 8, 2011, Olivares procured a default judgment against Santos in the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida (the “Court”). On February 16, 2012, the Court granted an Emergency Motion filed by Olivares enjoining the proposed sale of the Station to a third party and appointing Reed as Receiver (“Emergency Grant”).⁵ The Emergency Grant consisted of a signed note, hand written by the judge on a copy of the Emergency Motion, stating: “Granted as to injunctive relief & appointment of Receiver.” On this authority, Reed filed the Application with the Commission, seeking to assign the Station’s license from GB to himself as Receiver. Petitioners objected, asserting that the Emergency Grant was vague as to the extent of Reed’s authority, which logically extended only to Santos’ personal assets (i.e., his stock in GB), not to the WHNR(AM) license, held directly by GB.

In the *Letter Decision*, the Bureau granted the Application, holding that the issue of the scope of Reed’s authorization should be resolved by the judge who issued the Emergency Grant. The Bureau stated that it would “honor and give effect to any such determination” but need not withhold action on the Application while Poderosa pursued its claim in state court.⁶ Accordingly, the assignment of the Station license from GB to Reed was consummated August 4, 2012.

Petitioners now seek reconsideration based on an Order of Proceedings Supplementary issued by the Court on June 12, 2012 (“June 12 Court Order”).⁷ Petitioners assert that the June 12 Court Order clarifies the Emergency Grant by unambiguously authorizing Reed to seize and sell only the *stock* of GB, not the Station license.⁸ Accordingly, Petitioners ask the Bureau to rescind the *Letter Decision* to the extent that it grants consent to the assignment of the Station, requiring Reed to instead apply for Commission consent to the transfer of control of GB.⁹ The difference between an assignment and a transfer of control is a “critical one,” according to Petitioners, because a sale of GB’s assets would eviscerate Poderosa’s rights as a secured creditor, whereas a stock transfer would take place subject to the corporation’s liabilities (including the debt to Poderosa).¹⁰ Petitioners also argue that Reed had an obligation to submit a copy of the June 12 Court Order under Section 1.65 of the Commission’s rules, which requires applicants to apprise the Commission whenever there has been a substantial change in the information provided in an application that may be of decisional significance to the proceeding.¹¹

In the Opposition, Reed contends that the Application was based on the authority given to him by the Emergency Grant, which, in his view, incorporated all the language of the underlying Emergency Motion. The directive in the June 12 Court Order for Reed to take possession of GB stock was “intended to supplement rather than supplant Reed’s authorization to acquire the Station’s FCC license and other assets.”¹² Because the June 12 Court Order did not modify or rescind the Emergency Grant, Reed argues, he had no obligation under Section 1.65 to submit a copy.

⁴ Petition at 2.

⁵ Edward Olivares v. Martin Santos, Case Number 2009CA-005214 (Fla. Cir. Ct. Feb. 16, 2012).

⁶ *Letter Decision* at 6.

⁷ Petition, Exhibit A. Although the Application was still pending when the June 12 Court Order was issued, neither party submitted a copy to the Commission to supplement the Application record.

⁸ *Id.* at 3.

⁹ *Id.* at 7.

¹⁰ *Id.* at 3.

¹¹ 47 C.F.R. § 1.65(a) (“Section 1.65”).

¹² Opposition at 3.

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.¹³ Here, reconsideration is appropriate based on the June 12 Court Order, which was not before us during the Application proceeding.

In the *Letter Decision*, we left open the question of whether Reed's powers as Receiver extend only to the stock of GB, deciding that this matter would best be resolved by the judge who issued the Emergency Order. If the Court did clarify this issue in a further order, we stated, we would "honor and give effect to such determination."¹⁴ Such a determination has now been made. Upon careful review of both Court documents, we agree with Petitioners that the June 12 Court Order thoroughly clarifies the nature and extent of Reed's authority as Receiver for Santos' assets, stating that "the Receiver is hereby authorized and directed, subject to any required prior approval of the Federal Communications Commission, to take control of *the Judgment Debtor's [Santos'] interest* in GB Enterprises Communications Corporation pending Sheriff's Sale of the same."¹⁵ The June 12 Court Order also authorizes Reed to "effectuate a transfer of the ownership of [Santos'] interest" in GB to Reed,¹⁶ specifically, to transfer all of Santos' stock in GB to Reed.¹⁷ Each of the ordering clauses in the June 12 Court Order expressly authorizes Reed to take control of *Santos' interest* in GB, which does not include the WHNR(AM) license. Mindful of the corporate form, we note that GB itself—the licensee—never entered receivership. Accordingly, we will abide by the Court's determination in accordance with our commitment in the *Letter Decision* and the Commission's longstanding policy of comity with state court actions.¹⁸ We believe that the appropriate vehicle to effectuate the Court's orders, particularly as stated in the June 12 Court Order, is a transfer of control application, not an assignment application. We therefore will grant reconsideration to the extent that Petitioners claim that the staff approved an application that erroneously characterized the Court proceeding and order the Receiver to promptly file a transfer of control application on an FCC Form 316.¹⁹

We disagree with Reed's claim that he was not required, under Section 1.65 of the rules, to provide the Commission with updated information regarding his court-granted powers as Receiver. For involuntary applications, the Bureau agrees to act in reliance on a court's authorization in lieu of the signature of an authorized officer of the licensee.²⁰ Here, the scope of Reed's authority as Receiver was a key point of contention in the proceeding. As our action taken today clearly illustrates, the June 12 Court Order was of decisional significance. Therefore, we admonish Reed for failure to timely apprise the Commission of a significant development regarding the information provided in its then-pending

¹³ See 47 C.F.R. § 1.106(c),(d). See also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

¹⁴ *Letter Decision* at 6.

¹⁵ June 12 Court Order ¶2 (ordering clauses) (emphasis added).

¹⁶ *Id.* ¶3.

¹⁷ *Id.* ¶4.

¹⁸ See, e.g., *Kirk Merkle, Receiver*, Memorandum Opinion and Order, 94 FCC 2d 829, 837-8 (1983), *recon denied*, FCC 84-305, 56 RR 2d 413 (1984), *aff'd sub nom Merkle v. FCC*, 776 F.2d 365 (1985).

¹⁹ As the 100 percent shareholder of the licensee, GB, Reed's ability to manage, protect and preserve the assets relating to Santos' interest in the Station will continue unimpaired, in keeping with the Court's instructions. We also note that, according to the Florida Division of Corporations database, Olivares has been appointed President of GB.

²⁰ See Instructions to Form 316 at 2-3, available at <http://transition.fcc.gov/Forms/Form316/316.pdf>.

Application, pursuant to Section 1.65.²¹ We also direct Reed to include a copy of the June 12 Court Order in lieu of a licensee signature in the application for transfer of control required above.

Conclusion/Actions. We find that Petitioners have raised facts not hitherto before the Commission that warrant reconsideration of the grant of the Application. Accordingly, IT IS ORDERED that the Petition for Reconsideration IS GRANTED to the extent indicated herein and the grant of the application for approval for assignment of the license for Station WHNR(AM), Cypress Gardens, Florida, from GB Enterprises Communications Corp. to George R. Reed, Receiver, (File No. BAL-20120316AAP), granted on August 3, 2012, IS RESCINDED.²²

IT IS FURTHER ORDERED, That the Application is reinstated to pending status and then DISMISSED.

IT IS FURTHER ORDERED, That Reed, as Receiver, promptly file a transfer of control application for Station WHNR(AM), Cypress Gardens, Florida, as instructed herein.

IT IS FURTHER ORDERED, that Reed IS ADMONISHED for his failure to file a copy of the June 12 Court Order, as required by Section 1.65 of the Rules.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

²¹ See, e.g., *Donald E. Martin, Esq.*, Letter, 28 FCC Rcd 00411 (MB 2013) (admonishing applicant for failure to update ownership information) (citing *Mary Harris Foundation*, Letter, 22 FCC Rcd 16948, 16951 (MB 2007); *KWQJ(FM), Anchorage, Alaska*, Memorandum Opinion and Order, 10 FCC Rcd 8774, 8775 (1995); *Sky Way Broadcasting Corp.*, Memorandum Opinion and Order, 42 RR 2d 1343 (1978)).

²² The remaining actions taken in the *Letter Decision* remain in full force and effect.