

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In reply refer to:
1800B3-VEK

May 31, 1996

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In re: KIFM(FM), San Diego, CA
KIFM Broadcasting Limited Partnership
BALH-960206GI
Application to Assign License

Dear Counsel:

The staff has before it a "Petition to Withdraw or Dismiss" ("petition") filed on March 14, 1996 by Josie Calderon, Elida Chavez and Marta Concha, (the "Limited Partners"), limited partners in KIFM Broadcasting Limited Partnership ("KIFM"), licensee of radio station KIFM(FM), San Diego, California. See Footnote 1. The limited partners object to the above-referenced application for assignment of the license and sale of the assets of the station from KIFM to Jefferson-Pilot Communications Company ("Jefferson-Pilot"). As set forth below, the petition will be denied and the assignment application will be granted.

The limited partners contend that they have a contractual right under the Partnership Agreement to approve the proposed sale of the station to Jefferson-Pilot and that they have neither given their consent to the sale nor authorized the general partner to file the assignment application on their behalf. Thus, the limited partners request that the assignment application be withdrawn or dismissed. Alternatively, the limited partners request that any grant of the assignment be conditioned on the outcome of the civil litigation they have instituted against KIFM.

Discussion. The issue of whether the general partners of station KIFM had the authority to sell the station without the prior approval of the limited partners or whether the limited partners have the right to disapprove the sale of the station is a matter of state corporate law and is beyond our jurisdiction. See *John R. Kingsbery*, 71 FCC 2d 1173 (1979). The Commission has traditionally

deferred to the judgment of competent courts on such matters, because the Commission has neither the authority nor the machinery to adjudicate alleged claims arising out of private contractual agreements. *Transcontinent Television Corp.*, 21 RR 945 (1961). Thus, the Commission has consistently held that it is not the proper forum for the resolution of private disputes and that interested parties should seek redress in a local court of competent jurisdiction. *See Decatur Telecasting, Inc.*, 7 FCC Rcd 8622 (1992); *John F. Runner, Receiver (KBIF)*, 36 RR 2d 773, 778 (1976). See Footnote 2.

In the instant case, the limited partners indicate that they are seeking relief in connection with the sale of the station in violation of the Partnership Agreement in the Superior Court of the District of Columbia (see Footnote 3); the limited partners also filed an action in the United States District Court for the District of Columbia against the assignee, Jefferson-Pilot, seeking a declaratory judgment that the Purchase Agreement is null and void. See Footnote 4. Additionally, KIFM has filed an action against the limited partners before the Superior Court of the State of California for the County of San Diego. See Footnote 5. The Commission recognizes that it must balance its jurisdiction over licensing with the power of state and local courts to adjudicate contractual disputes. *See Arecibo Radio Corp.*, 101 FCC 2d 545, 548 (1985). The Commission therefore can and will take whatever steps it deems appropriate to accommodate a local court's ruling on a matter within its jurisdiction. *See Dale J. Parsons, Jr.*, 10 FCC Rcd 2718, 2719-20 (1995) *appeal filed sub nom. Dale J. Parsons, Jr. v. FCC*, No. 95-1191 (D.C. Cir. April 4, 1995). Similarly here, only if a local court of competent jurisdiction resolves the issues of state corporate law would the Commission be in a position to determine whether any action is required on our part. Deferral or dismissal of the instant assignment application based on the pending civil proceedings is therefore inappropriate. *See, e.g., Sonderling Broadcasting Co.*, 46 RR 2d 890, 895 (1979). In this regard, we note that the limited partners have not obtained a court-issued injunction enjoining the sale from going forward.

With respect to the limited partners' contention that the Commission should condition the grant of the assignment application on the outcome of the civil actions, we note that Commission grant of an assignment application merely finds that the parties are qualified under, and that the proposed transaction does not violate, the Communications Act of 1934, as amended, and the Commission's rules and policies. As such, it is permissive only and does not compel the transaction to go forward. It therefore does not prejudice any relief that the parties ultimately may be entitled to under civil suit. Therefore, a grant made without an express condition pertaining to the litigation does not afford the applicants any greater rights than they would otherwise be entitled to and does not limit the Commission from taking any appropriate future action based on the final outcome of the civil suits.

For the foregoing reasons, we find that the petition filed by the limited partners is without merit. We also find that KIFM and Jefferson-Pilot are fully qualified under the Act and Commission rules and policies, and that approval of this sale would serve the public interest, convenience and necessity.

Accordingly, the Limited Partners' Motion for Leave to File Supplement to the Reply to the Opposition to the Petition to Withdraw or Dismiss" IS DENIED, and the attached Supplement IS DISMISSED. Additionally, the Limited Partners' "Petition to Withdraw or Dismiss" IS

HEREBY DENIED and the above-referenced application (File No. BALH-960206GI) for consent to assign KIFM(FM), San Diego, California from KIFM Broadcasting Limited Partnership to Jefferson-Pilot Communications Company IS HEREBY GRANTED. Again, we emphasize that the Commission's grant of the assignment application is not intended to prejudice any relief to which a court of competent jurisdiction may ultimately determine that any person is entitled.

Sincerely,

Linda Blair, Chief
Audio Services Division
Mass Media Bureau

cc: Daniel K. McAlister, Esq.

Footnotes:

Footnote 1: Other pleadings in this matter include: (1) a March 27, 1996 Opposition to "Petition to Withdraw or Dismiss" filed by KIFM; (2) an April 8, 1996 Reply to the Opposition to the Petition to Withdraw or Dismiss filed by the limited partners; (3) a May 22, 1996 Request for Leave to File Supplement to the Reply to the Opposition to the Petition to Withdraw or Dismiss and attendant Supplement filed by the limited partners; and (4) a May 28, 1996 Opposition and Motion to Strike filed by KIFM. The latter pleadings are unauthorized under 47 C.F.R. § 1.45(c) and will not be considered. The Limited Partners do not demonstrate why the arguments stated in its Supplement could not have been raised previously and none of those arguments would alter our determination as set forth below. *See, e.g., Contemporary Communications*, FCC 96-168, 11 FCC Rcd 5230, note 6 (released April 30, 1996), and *Joppa Associates, L.P. d/b/a/ Consolidated Cablevision*, 10 FCC Rcd 13,103, note 4 (C.S.B. 1995).

Footnote 2: *See also Horizon Communications Corp.*, 38 RR 2d 1585 (1976) ("If the licensee has not violated any Commission rule or policy [the Commission] will not interfere with contractual negotiations between the licensee and a prospective buyer").

Footnote 3: *Josie Calderon, Elida Chavez and Marta Concha v. KIFM Broadcasting Limited Partnership et. al.*, Superior Court of the District of Columbia, Case Number 96ca002240 (filed March 20, 1996).

Footnote 4: *Josie Calderon, Elida Chavez and Marta Concha v. Jefferson-Pilot Communications Company*, United States District Court for the District of Columbia, Case Number 1:96CV00551 (filed March 20, 1996).

[Footnote 5](#) *KIFM Broadcasting Limited Partnership v. Marta Concha, et. al.*, Superior Court of the State of California for the County of San Diego, Case Number 698334 (filed March 19, 1996).