



**Federal Communications Commission  
Washington, D.C. 20554**

May 4, 2018

In Reply Refer To:  
1800B3-ATS

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Mr. Chris Lash  
Whiplash Radio, LLC  
210 Morris Ford Road  
Estill Springs, TN 37330

**In re: Whiplash Radio, LLC**  
DWYCL(AM), Niles, OH  
Facility ID No. 73308  
File Nos. BL-10380, BAL-  
20131223ACK

DWHTX(AM), Warren, OH  
Facility ID No. 70531  
File Nos. BL-12985, BAL-  
20131223ACL

**Petitions for Reconsideration**

Dear Counsel and Mr. Lash:

We have before us the Petitions for Reconsideration (Petitions) filed by Sagittarius Communications, LLC (Sagittarius), seeking reinstatement of: 1) the surrendered licenses for Station DWYCL(AM), Niles, Ohio, and DWHTX(AM), Warren, Ohio (collectively, Stations), both of which were licensed to Whiplash Radio, LLC (Whiplash), and 2) the dismissed application for consent to assign the licenses for the Stations from Whiplash to Sagittarius (2013 Assignment Application).<sup>1</sup> For the reasons discussed below, we grant the Petitions, reinstate the licenses of the Stations, and return the 2013 Assignment Application to pending status.

**Background.** Whiplash and Sagittarius filed an application to assign the licenses of the Stations in October of 2012.<sup>2</sup> As noted in the 2012 Assignment Application, Whiplash and Sagittarius entered into an Asset Sale Agreement (Purchase Agreement) and Time Brokerage Agreement (TBA) on September 26, 2012.<sup>3</sup> The Media Bureau (Bureau) granted the 2012 Assignment Application on December 12, 2012. However, on May 6, 2013, Whiplash notified the Bureau that it would not consummate the transaction.<sup>4</sup>

<sup>1</sup> The Petitions were filed on February 28, 2018. Although a separate petition for reconsideration was filed for each station, the Petitions are substantively identical and will be addressed collectively. On March 7, 2018, Whiplash filed a pleading styled "Reply to Petition for Reconsideration," which we will treat as an Opposition. Sagittarius filed a Supplement on March 8, 2018.

<sup>2</sup> File No. BAL-20121003ABQ (2012 Assignment Application).

<sup>3</sup> 2012 Assignment Application at Attach. 5. *See also* 2013 Assignment Application at Attach. 5.

<sup>4</sup> *See Notice of Non-Consummation*, filed May 6, 2013.

Sagittarius states that Whiplash attempted to breach the Purchase Agreement in December of 2012, and Sagittarius filed suit for breach of contract against Whiplash and its president, Chris Lash, in the Court of Common Pleas of Trumbull County, Ohio.<sup>5</sup> Whiplash and Sagittarius reached a settlement agreement (Settlement Agreement) on October 25, 2013—which Sagittarius notes, “the terms of which are stipulated to be enforceable as though a judgment of the court”—and subsequently filed the 2013 Assignment Application on December 23, 2013.<sup>6</sup> However, the Bureau never acted on the 2013 Assignment Application because Whiplash owed unpaid regulatory fees. On February 14, 2018, Lash sent two letters to the Bureau staff surrendering the Stations’ licenses.<sup>7</sup> On February 20, 2018, the Bureau cancelled the Stations’ licenses, deleted their call signs, and dismissed the 2013 Assignment Application.<sup>8</sup>

In the Petitions, Sagittarius argues that it has standing to seek reconsideration of the surrender of the Stations’ licenses.<sup>9</sup> It notes that it is seeking to enforce contract rights to be the assignee of the licenses, and pursuant to the Settlement Agreement, it has a court endorsed contractual right to purchase the Stations.<sup>10</sup> On February 21, 2018, Sagittarius filed an “Emergency Motion to Enforce the Parties’ Settlement Agreement Motion for Temporary Restraining Order and Preliminary Injunction”, which the Trumbull County Court granted on February 22, 2018.<sup>11</sup> As Sagittarius notes, the Trumbull County Court issued an order (Emergency Order) requiring Whiplash to seek reinstatement of the Stations’ licenses, pay all regulatory fees, and refrain from interfering with the assignment of the Stations’ licenses to Sagittarius.<sup>12</sup>

In the Opposition, Whiplash states—without explanation—that Sagittarius “breached its contract in both the sale and the approved LMA for the Stations. There is no legal standing for their request.”<sup>13</sup> Whiplash further requests that the Station’s licenses remain cancelled.<sup>14</sup>

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<sup>5</sup> Petitions at 2. *See also Sagittarius Communications, LLC v. Chris Lash, et. al.*, Case No. 2013 CV 01084 (Court of Common Pleas, Trumbull County, Ohio). Sagittarius filed its civil suit on May 16, 2013. The complete history of the case is accessible through the website for the Trumbull County Clerk of Courts (<http://clerk.co.trumbull.oh.us/>).

<sup>6</sup> Petitions at 2. A copy of the Stipulation for Dismissal approving the Settlement Agreement is attached to the Petitions, which was approved by the Trumbull County Court on December 6, 2013. Although Sagittarius did not provide a copy of the Settlement Agreement with the Petitions, the Bureau has determined from reviewing the records of the Trumbull County Court that it is the “Addendum to Asset Sales Agreement Dated September 26, 2012 and Time Brokerage Agreement of Same Date” provided in the 2013 Assignment Application. *See* 2013 Assignment Application at Attach. 5.

<sup>7</sup> Letters from Chris Lash, Present [sic], Whiplash Radio LLC to Son Nguyen, Audio Division, Media Bureau, FCC (Feb. 14, 2018). Sagittarius characterizes these letters as “applications” that should not have been acted on by the Bureau staff because of Whiplash’s unpaid regulatory fees. Petitions at 3, n.5 (citing 47 CFR § 1.1910(b)). However, these filings were not formal applications. Moreover, Section 73.1750 of the FCC’s rules (Rules) provides that licensees should surrender their licenses directly to the Bureau staff. *See* 47 CFR § 73.1750.

<sup>8</sup> *Broadcast Actions*, Public Notice, Report No. 49182 (MB Feb. 28, 2012).

<sup>9</sup> Petitions at 1-2.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* A copy of the Emergency Order is attached to the Petitions.

<sup>13</sup> Opposition at 1.

<sup>14</sup> *Id.*

In the Supplement, Sagittarius provides a copy of a preliminary injunction issued by the Trumbull County Court on March 8, 2018 (Preliminary Injunction). The Preliminary Injunction finds that Lash violated the Purchase Agreement and the Settlement Agreement, and again orders him to refrain from: 1) further attempts to terminate the licenses for the Stations; 2) interfering with Sagittarius's rights under the Purchase Agreement and the Settlement Agreement; and 3) interfering with Sagittarius's effort to obtain consent for assignment of the Station's licenses.<sup>15</sup>

**Discussion.** Foremost, we find that Sagittarius has standing to pursue the Petitions. Section 405(a) of the Communications Act of 1934, as amended (Act), states that any party to an order, decision, report, or action, or any other person aggrieved or whose interests are adversely affected, may petition for reconsideration.<sup>16</sup> To determine if a party's interests have been adversely affected, the Commission frequently relies upon a three-pronged standing test under which a party must establish (1) a distinct and palpable injury-in-fact that is (2) traceable to the respondent's conduct and (3) redressable by the relief requested.<sup>17</sup> All three factors exist here.

As the proposed assignee, Sagittarius has challenged Whiplash's surrender of the Stations' licenses because this action resulted in the dismissal of the 2013 Assignment Application, and thus has prevented Sagittarius from obtaining consent to assign the Stations' licenses as agreed to in the Purchase Agreement and Settlement Agreement.<sup>18</sup> These circumstances establish the first two prongs for demonstrating standing. As for the third prong, reinstatement of Stations' licenses will allow the Bureau to grant the relief requested—consideration of the 2013 Assignment Application. Accordingly, we reject Whiplash's argument that Sagittarius lacks standing.<sup>19</sup>

Under longstanding Commission policy, a state court is the appropriate forum to address any claim by Petitioners to a contractual right in the Station or the Station's licenses.<sup>20</sup> The Commission considers any judgment rendered by a local court and seeks to make a fair accommodation between state authority over contractual disputes and federal authority over licensing matters.<sup>21</sup> Notably, Commission

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<sup>15</sup> Supplement at Preliminary Injunction.

<sup>16</sup> 47 U.S.C. § 405(a).

<sup>17</sup> See *AT&T Corp. v. Business Telecom, Inc.*, Order on Reconsideration, 16 FCC Rcd 21750, 21752, para. 7 (2001).

<sup>18</sup> See *Matter of Quests, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 29, para. 7 (MMB 1991) (proposed assignee has standing to seek reconsideration of a dismissed assignment application).

<sup>19</sup> Compare *Susquehanna Radio Corp.*, Memorandum Opinion and Order, 30 FCC Rcd 13978, 13979, para. 4 (2015) ("Petitioners cite no precedent to support the theory that a third party with no contractual right to acquire a station's license could have standing to seek reinstatement of the license after the licensee had surrendered the license for cancellation."); *New Jersey Public Broad. Auth.*, Letter Order, 24 FCC Rcd 9064 (MB 2009) (licensee of AM station did not have standing to seek reinstatement of surrendered translator license which it was interested in acquiring, but no contractual agreement existed or assignment application filed); *recon. denied*, Letter Order, 25 FCC Rcd 1325 (MB 2010), *rev. denied*, Memorandum Opinion and Order, 29 FCC Rcd 5558 (2014).

<sup>20</sup> See *Listener's Guild, Inc. and Classical Radio for Connecticut, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (recognizing Commission's policy of refusing to adjudicate private contractual claims for which a forum exists in state court).

<sup>21</sup> See, e.g., *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 131-32 (1945) (*Radio Station WOW*); *Arecibo Radio Corp.*, Memorandum Opinion and Order, 101 FCC 2d 545, 548, paras. 7-8 (1985) (*Arecibo*).

action on a proposed transaction pursuant to a court order is intended only to enable implementation of the court-ordered relief, and not to prejudice the ultimate outcome of the pending litigation.<sup>22</sup>

Here, the court-approved Settlement Agreement and the Preliminary Injunction establish that Sagittarius has a right to processing of the 2013 Assignment Application free from Whiplash's interference. Whiplash's actions are meant to frustrate the enforcement of the court-approved Settlement Agreement, in defiance of a state court. Allowing Whiplash to surrender the Station's licenses "put[s] it within a dissatisfied litigant's hands to circumvent court orders."<sup>23</sup> The Commission has further held that involuntary assignors should not be able to abuse the Rules to avoid compliance with a court order.<sup>24</sup> Accordingly, deference to the Trumbull County Court's rulings compels us to reinstate the Stations' licenses and the 2013 Assignment Application pending resolution of the proceeding before the court.<sup>25</sup>

**Conclusion.** Accordingly, for the reasons discussed above, IT IS ORDERED that the Petitions for Reconsideration filed on February 28, 2018 by Sagittarius Communications, LLC, ARE GRANTED.

IT IS FURTHER ORDERED that the licenses for Station DWYCL(AM), Niles, Ohio (File No. BL-10380) and Station DWHTX(AM), Warren, Ohio (File No. BL-12985) ARE REINSTATED.

IT IS FURTHER ORDERED that the assignment application for consent to assign the licenses for Station DWYCL(AM), Niles, Ohio, and Station DWHTX(AM), Warren, Ohio (File No. BAL-20131223ACK) IS REINSTATED AND RETURNED TO PENDING STATUS.

Sincerely,



Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>22</sup> Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations under Section 310(d) of the Communications Act of 1934*, 43 Fed. Comm. L.J. 277, 387 (1991). In this case, this interlocutory order to return the 2013 Assignment Application to pending status merely puts the Stations back in their original posture.

<sup>23</sup> *Peace Industries Corp. and Field Broad. Co.*, Memorandum Opinion and Order, 16 FCC 2d 1050, 1054, para. 7 (1959) (involuntary assignor lacks standing to file a petition to deny assignment application).

<sup>24</sup> *Arceibo*, 101 FCC 2d at 548-49, paras. 9-10 (waiving Section 73.3513 and permitting court marshal to sign assignment application where involuntary assignor refused to do so in defiance of a court order); *see also Peace Broad. Corp.*, 36 FCC 2d 675, 676 (1982) (Commission dismissing, without prejudice, unsigned assignment application pending state court order compelling filing of assignment application).

<sup>25</sup> We note that our reinstatement of the 2013 Assignment Application is granted pursuant to the Petitions, as Whiplash has taken no steps to comply with the Emergency Order or the Preliminary Injunction. We further note that the Trumbull County Court has not compelled the Commission to act on the 2013 Assignment Application, nor has the court in any way supplanted the Commission's licensing role. *Compare Radio Station WZZL*, 326 U.S. at 131 (state court cannot order Commission to rescind grant of license transfer application). Rather, the court has merely ordered Whiplash to comply with the Purchase Agreement and Settlement Agreement. The Bureau must still, of course, review the 2013 Assignment Application and take final action on that application in accordance with its responsibilities under the Act. Finally, we note that Whiplash still has unpaid regulatory fees which must be satisfied before any action is taken on the 2013 Assignment Application.