Federal Communications Commission
Washington, D.C. 20554

June 29, 2018

In Reply Refer to:
1800B3-IB

Barry D. Wood, Esq.
Counsel to La Poderosa and Carlos Guerrero
Wood, Martin & Hardy, P.C.
3300 Fairfax Dr., Suite 202
Arlington, VA 22201-4400

K. Patrick Meehan, Esq.
Counsel to CATCO and Walco
Holland & Knight LLP
100 North Tampa St., Suite 4100
Tampa, FL 33602

Re: WHNR(AM), Cypress Gardens, Florida
Facility ID No. 21766
File No. BAL-20171130ABB
Informal Objection

Dear Counsel:

The Media Bureau, Audio Division (Bureau) has before it an application for consent to assign the license of broadcast station WHNR(AM), Cypress Gardens, Florida (Station) from CATCO Communications, LLC (CATCO) to Walco Enterprises, LLC (Walco) (collectively, Assignment Parties).[1] Carlos S. Guerrero (Guerrero) and La Poderosa, LLC (Poderosa) (collectively, Objectors) jointly filed an informal objection.[2] For the reasons discussed below, we deny the Objection and grant the Application.

Background. The dispute in this proceeding stems from a 2007 personal loan by Guerrero to Martin Santos (Santos), who used the funds to acquire control of the Station's then-licensee, GB Enterprises Communications Corporation (GB).[3] In subsequent years: Santos defaulted on the loan; Guerrero formed Poderosa, which obtained a right of first refusal to acquire the Station from GB; and Objectors initiated arbitration and litigation to enforce their alleged contractual and financial interests.[4] A 2012 arbitration ruling for Objectors was vacated when a personal creditor of Santos, Edward Olivares (Olivares), received a judgment against Santos for default on a different loan, leading to court

[1] File No. BAL-20171130ABB (filed Nov. 30, 2017) (Application).

[2] *See* La Poderosa and Guerrero Informal Objection (filed Jan. 22, 2018) (Objection). CATCO and Walco have filed two joint pleadings opposing the Objection. *See* CATCO and Walco Opposition to Informal Objection (filed Jan. 29, 2018) (Opposition); CATCO and Walco Further Opposition to Informal Objection (filed Apr. 30, 2018) (Further Opposition).

[3] *Cf.* File No. BTC-20061122AEH (granted Jan. 9, 2007) (application to transfer control of GB to Santos).

[4] The state court litigation has been held before the Circuit Court of the Tenth Judicial Circuit in Polk County, Florida (Court). Objectors claimed a right to acquire the assets of the Station without additional cost because monies owed to them exceeded the agreed-upon option price. *See* Objectors' Notice of Exercise of Option (Feb. 24, 2010) (submitted as Opposition, Composite Exh. G, Court Order Granting Motion to Set Aside, Attach. E).

appointment of a Receiver for GB, and Olivares's purchase of GB's stock at a sheriff's sale in 2013.[5] Olivares assigned his interests in GB's assets to CATCO, a company formed by Olivares's attorney in 2013, and CATCO paid off a court-ordered lien on those assets to satisfy the Receiver's fees. In 2016, the Bureau approved GB's application for consent to assignment of the Station's license to CATCO over Objectors' petition to deny, without prejudice to any relief Objectors might obtain under state law or federal bankruptcy law.[6] A more detailed history can be found in Bureau and arbitration decisions and need not be repeated for purposes of addressing the merits of the pending Application and Objection.[7]

Objectors do not challenge the qualifications of either of the Assignment Parties. However, Objectors characterize the Application as a "tactic" and "trick" by CATCO's principal to place key assets of Santos and GB beyond the jurisdiction of the Court, and argue that Bureau action on the Application would frustrate Objectors' rights to arbitrate their claims and the Court's ability to grant relief.[8] Subsequent to the filing of the Objection, arbitration resulted in an April 20, 2018 Arbitration Order unfavorable to Objectors on contractual and financial issues.[9]

Discussion. Informal objections, like petitions to deny, must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.[10] We find that Objectors have raised no such question.

Objectors do not argue that Walco is not qualified to become a Commission licensee or that the proposed transaction violates the public interest. Instead, their allegations concern a private dispute over Objectors' financial interests in the Station. 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.[11] Absent a court's issuance of an injunction or stay against a sale, the Commission has routinely granted assignment applications that are the subject of private legal disputes.[12] When a court has acted, however, the Commission will generally accommodate

---

[5] *See* Order of Proceedings Supplementary, *Olivares v. Santos*, Case No. 2009CA-005214 (Fla. Cir. Ct., 10th Cir. June 12, 2012) (submitted as Opposition, Composite Exh. F). The Bureau approved an involuntary transfer of control from Santos to the Receiver. *See* File No. BTC-20130628AAD (granted July 31, 2013).

[6] *See* File No. BAL-20140820AAE, granted in *GB Enterprises Comm. Corp.*, Order, 31 FCC Rcd 1985, 1990 (MB 2016) (*CATCO Grant*).

[7] *E.g., CATCO Grant,* 31 FCC Rcd at 1985-87, paras. 2-10; *Lewis J. Paper, Esq.,* Letter Decision, 28 FCC Rcd 4550, 4550-51 (MB 2013).

[8] *See* Objection at 9-10, 12.

[9] *See* Arbitration Order, *Santos v. Guerrero* (Apr. 20, 2018) (submitted as Further Objection, Exh. A) (2018 Arbitration Order).

[10] *See, e.g., WWOR-TV, Inc.,* Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990); *cf.* 47 U.S.C. § 309(d)(1).

[11] *See, e.g., Birach Broad. Corp.,* Letter Decision, 23 FCC Rcd 4780, 4781 (MB 2008) (Commission not appropriate forum to resolve contractual, property, and bankruptcy issues), citing *John F. Runner, Receiver, Memorandum Opinion and Order,* 36 RR 2d 773, 778 (1976) (local court of competent jurisdiction, not FCC, is proper forum to resolve private disputes).

[12] *See, e.g., Jerry Russell d/b/a The Russell Co.,* Memorandum Opinion and Order, 27 FCC Rcd 8323, 8330, para. 24 (MB 2012); *Estate of Peggy Haley,* Letter Order, 23 FCC Rcd 12687, 12688 (MB 2008).

the court's ruling, absent a public interest reason to do otherwise.[13] The primary point of contention between the Objectors and the Assignment Parties is whether a Court injunction enjoins the proposed assignment.[14]

Objectors present a 2012 Court Injunction which bars Santos and GB from assigning the Station's license or other assets "pending completion of arbitration."[15] The Assignment Parties contend that the 2012 Injunction is long expired and is, in any event, inapplicable to CATCO.[16] The Assignment Parties further argue that the Bureau rejected Objectors' similar arguments when it allowed the assignment to CATCO, and that the 2018 Arbitration Order has since resolved all of Objectors' arguments in favor of CATCO.[17]

When the Bureau granted an application for consent to assign the license to CATCO in 2014, it was aware of the 2012 Injunction. The Bureau declined to defer action, however, because the Court had also authorized the parties to file that application for Commission approval.[18] The 2012 Injunction provides even less of a basis to defer action on the current Application. In 2018, Objectors sought Court action to enjoin CATCO specifically, and the Court denied that request based, in part, on the Arbitrator's determination that CATCO is not a successor in interest to GB (the original party enjoined by the 2012 Injunction).[19] Additionally, the Court's 2012 Injunction was to end upon "completion of arbitration," which appears now to have occurred.[20] Objectors asked the Bureau to withhold action "pending resolution of the arbitration and court proceedings in Florida" which would rule on the "paramount" issue of their claimed right to acquire the Station's license.[21] That matter was resolved in the 2018 Arbitration Order, which rules that CATCO "holds the license free and clear of any claim against that license by [Objectors.]."[22]

---

[13] *See, e.g., Inforum Communications, Inc.,* Memorandum Opinion and Order, 20 FCC Rcd 820, 827, para. 12 (2005).

[14] *See* Objection at 12-13; Opposition at 3-6.

[15] *See* Order Granting Motion to Compel and Injunction, *Santos v. Guerrero*, Case No. 53-2011 CA-001681-000-LK (Fla. Cir. Ct., 10th Cir. Jan. 24, 2012) (2012 Injunction) (submitted as Objection, Exh. 1).

[16] CATCO contends that the 2012 Injunction concerned arbitration ongoing at that time which was completed shortly thereafter. It also argues that CATCO neither existed nor was a party to the litigation at the time the 2012 Injunction was issued, and that it is not a successor in interest to GB, the party enjoined. *See* Opposition at 3, Exh. C.

[17] *Id.* at 4-5. Further Opposition at 2-3, Exh. A.

[18] The Bureau stated that it would be for the Court, not the Commission, to resolve any conflict between the Court's 2012 and 2014 actions. *See CATCO Grant*, 31 FCC Rcd at 1989-90, para. 14.

[19] *See* Order on Motion for Substitution or in the Alternative Joinder, and Motion to Enjoin CATCO and Thomas C. Saunders, *Santos v. Guerrero*, Case No. 2011CA-001681 (Fla. Cir. Ct., 10th Cir. Apr. 18, 2018) (submitted as Further Opposition, Exh. B). If, as Objectors opined earlier in their Objection, the 2012 Injunction against GB extended to CATCO, one would have expected the Court to dismiss Objectors' request as unnecessary. Rather, the Court ruled that there was no basis to enjoin CATCO because it was neither a party to the original litigation nor a successor in interest. *Id.; see also Santos v. Guerrero,* Order on Contention that CATCO is a Successor in Interest to GB (Apr. 6, 2018) (submitted as Further Opposition, Exh. A).

[20] Regardless of the parties' disagreement over whether arbitration referenced in the 2012 Injunction was "completed," we now have a 2018 Arbitration Order ruling on the merits of their underlying disputes.

[21] *See* Objection at 12-13.

[22] 2018 Arbitration Order at 7.

We find that the parties to the assignment are qualified, that the proposed transaction is consistent with Commission's rules and policies, and that the Application should be granted. Our grant does not prevent Objectors from pursuing any additional legal recourse that might be available to them, and we note, as we did in the *CATCO Grant,* that grant of the Application does not prejudice any relief to which any party may ultimately be entitled.[23]

Accordingly, IT IS ORDERED that the Informal Objection filed by La Poderosa, LLC and Carlos Guerrero on January 22, 2018 IS DENIED and the application for consent to assignment of license for WHNR(AM), Cypress Gardens, Florida (File No. BAL-20171130ABB) from CATCO Communications, LLC to Walco Enterprises, LLC IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

[23] *See CATCO Grant*, 31 FCC Rcd at 1990 n.49, citing *Contel Cellular,* Memorandum Opinion and Order, 9 FCC Rcd 5309, 5310, para. 9 (MSD 1994).