



Federal Communications Commission
Washington, D.C. 20554

November 13, 2018

Newport Investment Group, LLC
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Suite 200
Washington, DC 20007

Philadelphia Television Network, Inc.
c/o Richard H. Glanton
26 Snowden Lane
Princeton, NJ 08540

Re: WEFG-LD, Philadelphia, Pennsylvania
Fac. ID No. 167606
File No. BALDTL-20180502ACB

Counsel:

The Video Division (Division) has before it an application for assignment of license for low power television station WEFG-LD, Philadelphia, Pennsylvania (WEFG-LD) from Philadelphia Television Network, Inc. (PTN) to Newport Investment Group, LLC (Newport). On behalf of PTN, minority shareholders (Petitioners) filed a Request for Dismissal on June 5, 2018.¹ Applicants filed an Opposition to Request for Dismissal on June 20, 2018 (Opposition),² with an addendum on June 28, 2018. PTN filed a Rely on June 29, 2018, and an Opposition to Unauthorized Pleading on July 11, 2018 (collectively, Replies). For the reasons stated below, we will dismiss the application pursuant to Section 73.3566 of the Commission's rules.

Background. PTN has four shareholders, Richard H. Glanton (Glanton), Eugene L. Cliett (Cliett), Walter Moxley (Moxley), and Ethel Wister (Wister).³ On April 30, 2018, the California Superior Court ordered Glanton to assign his stock and, upon FCC approval, the license and assets for station WEFG-LD, and proceeds related to operation of the station, to Newport.⁴ The court entered a default judgment based on two secured promissory notes entered into on April 16, 2016, one of which was between PTN and Luxury Asset Lending, LLC (LAL), and a second which was between both PTN and Glanton, in his individual capacity, and LAL.⁵ The right, title, and interest to the judgement has been assigned to

¹ Request for Dismissal by Philadelphia Television Network, Inc. (PTN) (filed Jun. 5, 2018) (Petition). The pleading was incorrectly filed as a dismissal but meets the requirements for a petition to deny.

² Opposition to Request for Dismissal by Newport Investment Group, LLC and Richard H. Glanton (filed Jun. 20, 2018) (Opposition).

³ Petition at 3.

⁴ Opposition at 3.

⁵ Petition at Exhibit F.

President,²⁰ and provide further insight on Moxley's estate to affirm that the executrix's signature is not fraudulent.²¹

Discussion. Section 310(d) of the Act requires the Commission to determine whether the proposed transfer or assignment of a broadcast license would be in the public interest.²² The Commission's long-standing policy is to accommodate the actions of state courts, thereby avoiding conflicts between state and federal authority, unless a public interest determination under the Act would compel a different result.²³ The U.S. Supreme Court has stated that "the principle of fair accommodation between State and federal authority . . . *should* be observed" if the state's laws "can be effectively respected while at the same time reasonable opportunity is afforded for the protection of that public interest" which underlies licensing decisions.²⁴ The Commission defers to judicial determinations in many areas, including bankruptcy matters, private disputes, and the interpretation and enforcement of contracts for the sale of a broadcast station. The Commission, in contrast, retains exclusive authority to license broadcast stations.²⁵ Thus, the Commission has exclusive authority over a station's license, but it is also charged with the responsibility of accommodating state law, where appropriate. When, however, a state court's decision is contrary to Commission policy, the Commission is neither bound by the state court order nor need recognize it.²⁶

It is well established that a broadcast license does not confer a property right, but rather is a valuable privilege to utilize the airwaves, subject to certain limitations, including restrictions on the right to assign licenses.²⁷ As the Commission has stated, "[t]he extraordinary notion that a station license issued by this Commission is a mortgageable chattel in the ordinary commercial sense is untenable."²⁸ Rather the Commission has repeatedly observed that a "license, as distinguished from a station's physical assets, is not subject to a mortgage, security interest, or lien, pledge, attachment, seizure, or similar property right."²⁹

While the Commission generally defers to state court orders, we cannot do so here because the April 16, 2016, Promissory Note between PTN and LAL listed, as collateral, the license for station WCFG-LD. Pursuant to Section 73.3541 of the Commission rules, the assignment of a license to a trustee, receiver, or other court-appointed temporary license holder is an involuntary transaction subject to *pro forma* procedures.³⁰ The parties needed to file an FCC Form 316 sending the license to a court-appointed trustee, receiver, or debtor-in-possession. While precedent and Section 310(d) of the Act prevent a lender from directly collecting a license as collateral for a loan, staff have accommodated state court decisions in such cases where an FCC Form 316 is filed sending the license and related assets to a court-appointed trustee or receiver.³¹ A lender can then collect from proceeds of sale of the license, after

²⁰ Opposition To Unauthorized Pleading by PTN (filed Jul. 11, 2018) at 3.

²¹ *Id.* at 5-7.

²² 47 U.S.C. § 310(d).

²³ *Charles W. Cherry, II Caswell Capital Partners, LLC*, 24 FCC Rcd 2894, 2896 (2009) (*2009 Cherry Order*) (citing *Radio Station WOW v. Johnson*, 326 US 120 (1945) ("*Radio Station WOW*"); *Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985) ("*Arecibo Radio*").

²⁴ *Id.* at 2896 (citing *Radio Station WOW*, 326 US at 132).

²⁵ See e.g. *Arecibo Radio*, 101 FCC 2d at 549 (honoring court order requiring licensee to execute assignment application in favor of another party).

²⁶ See, e.g., *Kirk Merkley*, Memorandum Opinion and Order, 94 FCC 2d 829 (1983) ("*Merkley I*"), recon. denied, 56 RR 2d 413 (1984) ("*Merkley II*"), *aff'd sub nom.*, *Merkley v. FCC*, 776 F.2d 365 (1985) (declining to recognize court order based on contract with a prohibited reversionary interest that was tantamount to a vested security interest in a license).

²⁷ 47 U.S.C. § 310(d).

²⁸ *Radio KDAN*, Memorandum Opinion and Order, 11 FCC 2d 934, n.1, recon denied, 13 RR 2d 100 (1968), *aff'd on procedural grounds sub nom.*, *W.H.Hansen v. FCC*, 413 F.2d 374 (D.C. Cir. 1969) ("*Radio KDAN*").

²⁹ *Merkley II*, 56 RR 2d at 416 (emphasis added).

³⁰ 47 C.F.R. § 73.3541.

³¹ We note that in the *2009 Cherry Order* the staff reached the same conclusion as we do here with respect to the permissibility of a security interest in a license, but held that the Commission "does permit trustees or receivers to

Newport.⁶ The promissory note between PTN and LAL included as collateral “all assets, licenses, furniture, fixtures Borrower owns on behalf of itself PTN, including WCFG-LD. . . .”⁷ On May 11, 2016, the Court of Common Pleas of Philadelphia County, Pennsylvania, similarly issued an Assignment Order requiring that Glanton assign all of his stock to Newport, and upon FCC approval, all control, possession and ownership of the license for station WCFG-LD to Newport.

Petitioners argue that Glanton does not have proper authorization to file the assignment application.⁸ The Petition asserts that Glanton, on behalf of PTN, improperly entered into secured promissory notes and security agreements with Luxury Asset Lending (LAL), and then defaulted on those loans.⁹ Petitioners also allege they were not properly served notice in the California proceeding since the complaint and other filings were mailed to Glanton’s home address instead of the addresses listed on the Articles of Incorporation, or alternate appropriate addresses.¹⁰ The Petition further asserts that the PTN bylaws did not grant Glanton the authority to execute the agreement to transfer the license.¹¹ Finally, Petitioners allege that a bankruptcy court lacks statutory authority to enforce and foreclose on an FCC license based on an impermissible security interest, and thus cannot require the assignment of the license to a third party.¹²

In the joint Opposition of Glanton and Newport (Applicants), Applicants explain that Glanton filed for Chapter 11 Bankruptcy in United States Bankruptcy Court - District of New Jersey, and that Glanton and PTN are jointly liable for a judgment in favor of LAL from the California Superior Court.¹³ Applicants call into question PTN’s assertions of ownership, maintaining that there are only two, not four, shareholders with an attributable interest in PTN. Applicants claim that the *Partial Written Consent of PTNI’s Shareholders (Partial Consent)*, where three shareholders removed Glanton as an officer and director, does not comply with PTN’s bylaws and is ineffective because it was entered into after the assignment application was filed. Applicants claim that regardless of control, the Petition should be denied as an attempt to avoid payment of PTN’s debt to its creditors.¹⁴ Finally, the Applicants claim that the Petitioners do not have standing because as minority shareholders, they are not a party-in-interest.¹⁵ In the addendum, Applicants claim that Cliett’s representation as co-CEO of PTN is false, because he represented himself as President and Manager in his FCC filings.¹⁶ The Applicants question the validity of the signature of the executrix for Moxley’s estate on the *Partial Consent*.

In the Reply, the Petitioners reassert that Glanton is not the majority shareholder, and argue that there has been no bankruptcy or other involuntary disposition of WCFG-LD, but instead a foreclosure on an impermissible security interest, and that in these instances the FCC does not defer to state court decisions.¹⁷ Petitioners assert they have standing because Glanton is not a majority shareholder, and that the majority of the shareholders in PTN have participated in the submission of the Petition.¹⁸ In terms of ownership, Petitioners defend the validity of the *Partial Consent* and maintain that bylaw procedures were followed.¹⁹ In the Opposition to Unauthorized Pleading, PTN asserts that the Opposition and its addendum were untimely filed. Petitioners also assert that Cliett had multiple titles, including CEO and

⁶ Opposition at Exhibit 1.

⁷ Petition at Exhibit F, April 16, 2016, Secured Promissory Note between PTN and Luxury Asset Lending, LLC, ¶ 7(a) (emphasis added).

⁸ *Id.* at 1.

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 6-7.

¹¹ *Id.* at 8.

¹² *Id.* at 9.

¹³ Opposition at 2-3.

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 9.

¹⁶ Addendum No. 1 to Opposition to Request for Dismissal by Richard H. Glanton (filed Jun. 28, 2018) at 2.

¹⁷ Reply by PTN (filed Jun. 29, 2019) at 3, 7.

¹⁸ *Id.* at 8.

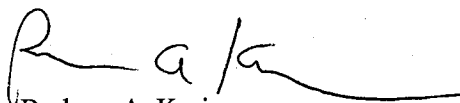
¹⁹ *Id.* at 9.

the Commission has approved the assignment and/or transfer of the license to the ultimate buyer pursuant to Section 310(d) of the Act.³² We encourage the parties to take the necessary steps to permit Commission action consistent with the state court resolution of this case.

According to Section 73.3566, “[a]pplications which are determined to be patently not in accordance with the FCC rules, regulations or other requirements . . . will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed.”³³ Having reviewed the application, pleadings, and other facts before us, we find that the grant of the assignment application is patently defective because the state courts at issue held that PTN defaulted on loans that contained provisions prohibited by the Act and Commission policy. We will, therefore, dismiss without prejudice the instant application. We further find that, on this basis, the other arguments raised in this proceeding are moot.³⁴

Accordingly, IT IS ORDERED, that the Request for Dismissal IS GRANTED in part, and otherwise DISMISSED as moot. IT IS FURTHER ORDERED, that the application for consent to assign the license for WCFG-LP, Philadelphia, Pennsylvania, from Philadelphia Television Network, Inc. to Newport Investment Group, LLC (File No. BALDTL-20180502ACB), IS DISMISSED.

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

hold licenses on a temporary basis pending disposition of station assets,” and that such an accommodation serves the public interest “because, as the Commission has acknowledged, ‘these assets would be of comparatively little value if the Commission did not permit the operating authorization to accompany them pending ultimate passage of all [assets] to a qualified buyer.’” *2009 Cherry Order*, 24 FCC Rcd at 2898 (citing *O.D.T International et. al.*, Memorandum Opinion and Order, 9 FCC Rcd 2575, 2576).

³² *In re Application of Bill Welch*, Memorandum Opinion and Order, 3 FCC Rcd 6502 (1988) (permitting security interest in the proceeds of sale of a license as opposed to the license itself).

³³ 47 C.F.R. § 73.3566.

³⁴ The Commission generally defers to state courts to resolve issues as to whether the execution and filing of an application was *ultra vires*. *KAXT, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 9638, 9639 (2017). We are not reaching this issue as we find that the security interest in the license, which in part provided the basis for the default judgment, violated the Act and Commission policy.