

Rob

#148345

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

2013 SEP 16 A 5:50

In re Application of)
)
Clear Channel Broadcasting Licenses, Inc.)
)
For a New FM Translator on)
Channel 288 at Charlottesville, VA.)
)
)

File No. BNPFT-20130821ABF
Facility ID No. 148345

RECEIVED

ACCEPTED/FILED

SEP 12 2013

Federal Communications Commission
Office of the Secretary


To: Secretary
Attn: Chief, Audio Division
Media Bureau

NOTICE OF FILING

Monticello Media LLC hereby provides notice of the filing of the attached revised
Petition to Deny to reflect the service of the Petition to Deny on September 11, 2013 on the
contact representative of Clear Channel Broadcasting Licenses, Inc. There are no other changes
to the Petition to Deny.

Respectfully submitted,

Pillsbury Winthrop Shaw Pittman LLP
2300 N Street NW
Washington, DC 20037
Tel: (202) 663-8184
Tel: (202) 663-8166
Email: lew.paper@pillsburylaw.com
Email: lauren.lynch.flick@pillsburylaw.com

By: 
Lewis J. Paper
Lauren Lynch Flick

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ACCEPTED/FILED

SEP 12 2013

Federal Communications Commission
Office of the Secretary

In re Application of)
)
Clear Channel Broadcasting Licenses, Inc.) File No. BNPFT-20130821ABF
) Facility ID No. 148345
For a New FM Translator on)
Channel 288 at Charlottesville, VA)
_____)

To: The Secretary
Attn: Chief, Audio Division
Media Bureau

PETITION TO DENY

Monticello Media LLC ("Monticello"), acting pursuant to Sections 73.5006(b) and 74.1233(d)(4) of the Commission's rules, 47 C.F.R. §§ 73.5006(b) and 74.1233(d)(4), hereby files this Petition to Deny the above-captioned Form 349 long-form Auction No. 83 application (the "Application") for a new FM translator station (the "Translator") on Channel 288 filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel").¹

Summary

The Application should be denied for two related reasons.

First, on July 30, 2008 (after the filing deadline for the Form 175 and Tech Box Form 349 applications for Auction No. 83 had passed), a transfer of control of Clear Channel Communications, Inc., Clear Channel's parent, was consummated, and that transfer of control resulted in Thomas H. Lee Equity Fund VI, L.P. ("T.H. Lee") and Bain Capital (CC) IX, L.P. ("Bain Capital") acquiring the majority of the shares of Clear Channel Communications, Inc. *See Existing Shareholders of Clear Channel Communications, Inc.*, 23 FCC Rcd 1421 (2008). That transfer of control constitutes a prohibited major change which should have been reported in an

¹ This Petition to Deny is timely filed within fifteen (15) days of the Public Notice on August 27, 2013 accepting the Application for filing. *See Public Notice*, Report No. 28061 (August 27, 2013).

amendment (which would have then required the dismissal of Clear Channel's Form 175 application (the "short form application") and Clear Channel's Tech Box Form 349 application). See *Public Notice*, 18 FCC Rcd 1565, 1571 (2003) (the "*Public Notice*") ("[a]pplicants will not be permitted to make major modifications to their applications (e.g. change their license selections or proposed service areas, *change the certifying official or change control of the applicant . . .*)") (emphasis added). Clear Channel apparently did not file any such amendment but, having now been advised, the Commission should dismiss the Application.

Second, Clear Channel lacks the requisite character qualifications necessary to hold the license for the Translator because Clear Channel apparently failed to file an amendment to disclose to the Commission the change in control of Clear Channel Communications, Inc. in violation of Section 1.2105(b)(4) of the Commission's rules. 47 C.F.R. § 1.2105(b)(4) ("[a]pplicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications"). The facts and circumstances plainly show that Clear Channel withheld information from the Commission's processing staff in the hope that the Application could be granted without the transfer of control issue being addressed. Such conduct constitutes an independent and separate basis for dismissing or denying the Application.

I. Standing

Monticello is the licensee of the following radio stations in the Charlottesville, Virginia market: WCHV(AM) in Charlottesville, Virginia, WCHV-FM in Charlottesville, Virginia, WCYK-FM in Staunton, Virginia, WHITE-FM in Ruckersville, Virginia, WKAV(AM) in Charlottesville, Virginia, and WZGN(FM) in Crozet, Virginia. Monticello is also the licensee of FM translator station W285EF in Charlottesville, Virginia, which carries the signal of WHITE-FM, and FM translator station W231AD in Charlottesville, Virginia, which carries the signal of

WZGN. Monticello acquired these stations from other subsidiaries of Clear Channel Communications, Inc.

Neither Clear Channel Communications, Inc. nor any of its subsidiaries owns any radio stations today in the Charlottesville, Virginia market. Accordingly, the Application proposes to rebroadcast the programming of WCNR(FM) in Keswick, Virginia, which is licensed to Saga Communications of Charlottesville, LLC and also located in the Charlottesville, Virginia market. In short, the Translator will be used to compete with Monticello's radio stations.

As a competitor in the same market, Monticello's interests will be adversely affected by a grant of the Application and the implementation of service on the Translator. Monticello is therefore a "party in interest" under Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(d)(1).² See *Waterman Broadcasting*, 17 FCC Rcd 15742 n.2, citing *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 477 (1940).

II. Transfer of Control Requires Dismissal or Denial of Application

Participation in Auction No. 83 for FM translators required an applicant to file a short form application and a Tech Box Form 349 application by March 17, 2003. *Public Notice*, 18 FCC Rcd at 1566, 1567, as amended, *Public Notice*, 18 FCC Rcd 3275 (2003). See 47 C.F.R. § 73.5002(b). Section 1.2105(b)(2) of the Commission's rules governed the filing of modifications to those applications. See 47 C.F.R. § 73.5002(c). That section states, in pertinent part, as follows:

Major amendments cannot be made to a short-form application after the initial filing deadline. Major amendments include *changes in ownership of the applicant that would constitute an assignment or transfer of control*, changes in an applicant's size which would affect eligibility for designated entity provisions, and changes in the license service areas identified on the short-form application on which the applicant intends to bid. . . . *An application will be considered to be*

² This Petition to Deny is supported by the attached Declaration of George R. Reed, Monticello's President.

newly filed if it is amended by a major amendment and may not be resubmitted after application filing deadlines.

47 C.F.R. § 1.2105(b)(2) (emphasis added). In short, Section 1.2105(b)(2) prohibits an applicant from filing any amendment to the auction applicant's short form application after the initial filing deadline that would constitute a major change.

In accordance with Section 1.2105(b)(2), the *Public Notice* advised prospective applicants that they “will not be permitted to make major modifications to their applications (e.g. change their license selections or proposed service areas, *change the certifying official or change control of the applicant . . .*”). *Public Notice*, 18 FCC Rcd at 1571 (emphasis added).

Clear Channel timely filed its short form and Tech Box applications. File No. BNPFT-20030317APS. In accordance with the *Public Notice* and Section 1.2105(b)(2), Clear Channel was prohibited from making any major change to the information in the short-form application, including any change that reflected a transfer of control of Clear Channel. If Clear Channel did undergo a change of control, it would have been required to so advise the Commission through an amendment, and, at that juncture, the Application would have been deemed to be “newly filed” and would have to be dismissed.

On July 30, 2008, T.H. Lee and Bain Capital consummated the transfer of control of Clear Channel Communications, Inc., Clear Channel's ultimate parent. *See Existing Shareholders of Clear Channel Communications, Inc., supra*. The transfer of control constituted a major change under Section 1.2105(b)(2) of the Commission's rules.

If that consummation had been reported to the Commission through an amendment (as it should have been under Section 1.2105(b)(4) of the Commission's rules), Section 1.2105(b)(2) would have required that the Application be treated as newly-filed as of July 30, 2008 – well after the March 17, 2003 filing deadline. In that event, the Application would have been dismissed. *See e.g. McKissick Enterprises*, 22 FCC Rcd 18596 (WTB 2007) (post-filing

assignment of an AM station required dismissal of auction application in Auction No. 84 for a major change to station); *Lee Peltzman*, 22 FCC Rcd 13523 (WTB 2007) (post-filing assignment of low power television station required dismissal of auction application in Auction No. 85 for a low power television digital companion channel). No amendment was apparently filed, and, accordingly, the Application was not dismissed. However, the Application should be dismissed or denied now.³

III. Application Should Be Dismissed for Failure to Disclose Change in Control

Section 1.2105(b)(4) of the Commission's rules required Clear Channel to amend its pending short-form application to report the transfer of control of Clear Channel Communications, Inc. More specifically, that section states as follows:

Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications. *Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable event occurs, whichever is later.* An applicant's obligation to make such amendments or modifications to a pending application continues until they are made.

47 C.F.R. § 1.2105(b)(4) (emphasis added). In accordance with this section, Clear Channel was obligated to report the transfer of control of Clear Channel Communications, Inc. by August 6, 2008.

It appears that Clear Channel did not amend the short-form application as required to apprise the Commission of that transfer of control. Had Clear Channel done so, the

³ It should also be noted that Clear Channel also changed the certifying official in Section VI of the Application in derogation of the *Public Notice* requirements. There was no certification in Section II of the 2003 Form 349 Tech Box application, and Section VI of the 2003 Form 349 Tech Box application included a certification from Kenneth Wyker as Senior VP and General Counsel. Section II of the Application now includes a certification by Stephen G. Davis, Senior VP, Facilities and Capital Management, and Mr. Wyker's name has been removed from Section VI (which now says "N/A").

Commission's staff would have dismissed the short-form application pursuant to Section 1.2105(b)(2) of the Commission's rules.⁴

A failure to update a pending application as required by Commission rules generally results in an admonishment to the applicant rather than a disqualification of the applicant. *See e.g. Mary V. Harris Foundation*, 22 FCC Rcd 16948, 16949 (MB 2007) (broadcast applicant's failure to amend pending application warranted only an admonishment because, *inter alia*, "reporting the [new] ownership interests would not have changed the outcome of this proceeding"). The instant matter stands on a different footing. Clear Channel's failure to amend the Application does not, as in the case of the applicant in *Mary V. Harris Foundation*, reflect an inadvertent oversight where the amendment would have no adverse impact on the applicant. Rather, Clear Channel's failure to amend the short-form application in a timely manner appears to be a calculated decision to avoid the inevitable dismissal of the short-form application (as well as the dismissal of numerous other applications Clear Channel filed in the Auction No. 83 proceeding for other translators).

Clear Channel obviously knew about the transfer of control of Clear Channel Communications, Inc. And while that transfer of control may have been reported and known to other elements of the Commission, it is not in any way clear that the staff processing the Auction No. 83 applications, including the Application, was aware of the event. Stated another way, this appears to be a situation where Clear Channel knowingly concealed that transfer of control from the processing staff in the hope that Clear Channel could skate by without notice and have the

⁴ Monticello made inquiries with the Commission's staff about obtaining a copy of Clear Channel's short form application but has been told that they are not available. Monticello was advised, however, that Clear Channel filed a waiver request on or about August 14, 2013 – long after the August 6, 2008 deadline. Monticello has requested a copy of that waiver request and will oppose it if and to the extent it requests a waiver of Section 1.2105(b)(2).

Application granted.⁵ That kind of conduct requires disqualification of Clear Channel with respect to the Translator covered by the Application. *See Valley Broadcasting Co.*, 4 FCC Rcd 2611, 2618 (Rev. Bd. 1989) (a violation of Section 1.65 of the Commission’s rules to update a broadcast application will warrant disqualification upon the presence of “suitable evidence of an intent to conceal pertinent information from the Commission”); *Character Qualifications*, 102 FCC2d 1179, 1210 and n. 77 (1986) (the Commission may “treat even the most insignificant misrepresentation as disqualifying” because “[t]he fact of concealment may be more significant than the facts concealed”).

[Remainder of page intentionally left blank]

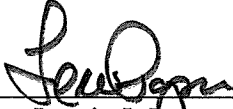
⁵ This apparent strategy appears to have borne fruit. Clear Channel filed other translator applications in Auction No. 83 which have been granted. See e.g. File Nos. BNPFT-20130304AAS & BNPFT-20130312ABA.

Conclusion

WHEREFORE, in view of the foregoing and the entire record herein, it is respectfully requested that the Application be dismissed or denied.

Respectfully submitted,

Pillsbury Winthrop Shaw Pittman LLP
2300 N Street NW
Washington, DC 20037
Tel: (202) 663-8184
Tel: (202) 663-8166
Email: lew.paper@pillsburylaw.com
Email: lauren.lynch.flick@pillsburylaw.com

By: 
Lewis J. Paper
Lauren Lynch Flick

DECLARATION

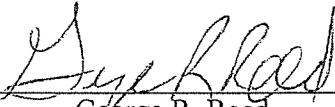
George R. Reed hereby declares as follows:

1. I am the President of Monticello Media LLC ("Monticello"), which holds licenses from the Federal Communications Commission (the "FCC") for radio stations WCHV(AM) in Charlottesville, Virginia, WCHV-FM in Charlottesville, Virginia, WCYK-FM in Staunton, Virginia, WHITE-FM in Ruckersville, Virginia, WKAV(AM) in Charlottesville, Virginia, and WZGN(FM) in Crozet, Virginia, as well as translator W285EF in Charlottesville, Virginia, and translator W231AD in Charlottesville, Virginia.

2. This Declaration is being prepared in support of the Petition to Deny which Monticello will file with the FCC against the application filed by Clear Channel Licenses, Inc. for a new translator on Channel 288 in Charlottesville, Virginia.

3. I have reviewed the Petition to Deny, and all statements of fact in that Petition to Deny are true and correct to the best of my information and belief.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



George R. Reed

9/11/13

Date

AMENDED CERTIFICATE OF SERVICE

I, Sylvia Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that a copy of the foregoing **“PETITION TO DENY”** was served via first class U.S. mail, postage paid, on this 11th day of September, 2013 to the following:

Marissa G. Repp, Esq.
Repp Law Firm
Suite 300
1629 K Street NW
Washington, DC 20006

Troy Langham
Clear Channel Broadcasting Licenses, Inc.
Suite A
2625 S. Memorial Drive
Tulsa, OK 74129

Lisa Scanlan, Assistant Chief*
Audio Division
Media Bureau
Federal Communications Commission
455 12th Street SW
Washington, DC 20554

Robert Gates*
Audio Division
Media Bureau
Federal Communications Commission
455 12th Street SW
Washington, DC 20554



Sylvia Davis

* By email

CERTIFICATE OF SERVICE

I, Sylvia A. Davis, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that a copy of the foregoing “**NOTICE OF FILING**” was served via first class U.S. mail, postage paid, on this 12th day of September, 2013 to the following:

Marissa G. Repp, Esq.
Repp Law Firm
Suite 300
1629 K Street NW
Washington, DC 20006

Troy Langham
Clear Channel Broadcasting Licenses, Inc.
Suite A
2625 S. Memorial Drive
Tulsa, OK 74129

Lisa Scanlan, Assistant Chief*
Audio Division
Media Bureau
Federal Communications Commission
455 12th Street SW
Washington, DC 20554

Robert Gates*
Audio Division
Media Bureau
Federal Communications Commission
455 12th Street SW
Washington, DC 20554



Sylvia Davis

* By email.