



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

June 10, 2008

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In Reply Refer to:

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In re: **Southern Broadcasting of Athens, Inc.**
WRFC(AM), Athens, Georgia
Facility ID No. 1218
File No. BAL-20080206AAC

WPUP(FM), Royston, Georgia
Facility ID No. 3078
File No. BALH-20080206AAD

Southern Broadcasting Companies, Inc.
WXKT(FM), Washington, Georgia
Facility ID No. 51120
File No. BALH-20080206ABA

**New Broadcast Investment Properties,
Inc.**

WGMG(FM), Crawford, Georgia
Facility ID No. 48374
File No. BALH-20080206AAG

**Southern Broadcasting of Pensacola,
Inc.**

WGAU(AM), Athens, Georgia
Facility ID No. 11709
File No. BAL-20080206AAE

WNGC(FM), Toccoa, Georgia
Facility ID No. 60810
File No. BALH-20080206AAF

**Applications for Assignment of License
Informal Objection**

Dear Counsel and Objector:

We have before us the above-captioned applications (the “Assignment Applications”) seeking approval for the proposed assignment of the licenses for stations WRFC(AM), Athens, Georgia,¹ and WPUP(FM), Royston, Georgia,² from Southern Broadcasting of Athens, Inc. to Cox Radio, Inc. (“Cox”), station WXKT(FM), Washington, Georgia, from Southern Broadcasting Companies, Inc. to Cox,³ station WGMG(FM), Crawford, Georgia, from New Broadcast Investment Properties, Inc. to Cox,⁴ and stations WGAU(AM), Athens, Georgia,⁵ and WNGC(FM), Toccoa, Georgia,⁶ from Southern Broadcasting of Pensacola, Inc. to Cox. The four assignors shall be referred to collectively as “Assignors.” On March 13, 2008, Coosa Valley News, Inc. (“CVN”) filed an Informal Objection (“CVN Objection”) to the Assignment Applications.⁷ On April 15, 2008, Dr. Preston Coleman (“Coleman”) submitted a letter objecting to grant of

¹ File No. BAL-20080206AAC.

² File No. BALH-20080206AAD.

³ File No. BALH-20080206ABA.

⁴ File No. BALH-20080206AAG.

⁵ File No. BAL-20080206AAE.

⁶ File No. BALH-20080206AAF. The stations that are the subject of the Applications shall be referred to collectively as the “Assigned Stations.”

⁷ Assignors filed an Opposition to Informal Objection (“Opposition”) on March 21, 2008, and CVN filed a Reply to Opposition on April 2, 2008.

the Assignment Applications, signed by 18 area residents including Coleman (“Coleman Objection”).⁸ For the reasons discussed below, we deny the objections and grant the Assignment Applications.

Background. Paul C. Stone (“Stone”) is 100 percent shareholder and president of each of the Assignors. On May 10, 2007, CVN filed a Petition to Deny the post-auction long form application of Howard C. Toole (“Toole”), the winning bidder in FM Broadcast Auction No. 70 for a new FM construction permit at Plainville, Georgia.⁹ The gravamen of CVN’s petition in that case was that Toole was acting as an undisclosed agent for Stone. On October 18, 2007, the Audio Division, Media Bureau, denied CVN’s petition to deny and granted Toole’s application, finding that CVN failed to raise a substantial and material question of fact that Stone was the real party in interest in the Toole application.¹⁰ CVN filed a petition for reconsideration of the *Toole Decision* on November 19, 2007, which remains pending.

Discussion. *CVN Objection.* CVN’s informal objection to the Assignment Applications may be summarized thusly: Because CVN, in its petition to deny Toole’s application, raised issues regarding Stone’s status as an undisclosed real party in interest; because those allegations “clearly raised questions about the character and anti-competitive attitude” of Stone;¹¹ and because those issues are pending due to CVN’s filing a petition for reconsideration of the *Toole Decision*, Assignors were required to respond “no” to Section II, Item 5 of the Assignment Applications, in which the assignor is asked to certify that it has no interest in or connection with “any pending broadcast application in which character issues have been raised.”¹² Thus, alleges CVN, Assignors’ responses were “incorrect and misleading,” and Assignors’ failure to disclose the pending Toole proceeding “is material to the Commission’s decisions both in the Toole matter and with respect to the above-captioned assignment applications.”¹³ The issue before us, then, is whether a reportable obligation arose on Assignors’ part.

While Assignors, in their Opposition, contend that there is an insufficient nexus between the Assignment Applications and the Toole matter to warrant consideration of the CVN Objection,¹⁴ the resolution of this question is much simpler. In *Greater Muskegon Broadcasters, Inc., et al.*,¹⁵ the Commission ruled on a virtually identical question, regarding whether a transferor was obliged to report in its application the pendency of proceedings in which it had been alleged that the transferor, *inter alia*,

⁸ The Coleman Objection does not appear to have been served on the Assignors, and no opposition has been received. Because the Coleman Objection is a written presentation submitted by listeners of the Assigned Stations, it is exempt from the Commission’s prohibition against *ex parte* presentations. 47 C.F.R. § 1.1204(a)(8).

⁹ File No. BNPH-20070423AAS.

¹⁰ *Coosa Valley News, Inc. and Mr. Howard C. Toole*, Letter, 22 FCC Rcd 18600 (MB 2007), *petition for recon. pending* (“*Toole Decision*”).

¹¹ Objection at 2.

¹² *Id.*

¹³ *Id.*

¹⁴ Opposition at 3-4.

¹⁵ *Memorandum Opinion and Order*, 11 FCC Rcd 15464 (1996) (“*Greater Muskegon Broadcasters*”).

had misrepresented facts to the Commission and had prematurely assumed control of a station prior to grant of license assignment. The Commission's holding was unequivocal:

[W]e find that KQDSI did not fail to report any "unresolved character issues against the applicant." No issues had been designated against KQDSI or Fant; rather, the objector in the KNLD(TV) license proceeding had only made allegations of possible misconduct. *Until such allegations are determined to have merit and are designated for hearing, no "unresolved" issue is pending "against" the applicant.*¹⁶

As noted above, CVN has yet to prevail with regard to its allegations against Stone, Assignors' principal. Therefore, no reportable obligation arose, and the pendency of the Toole matter does not require a negative response to Section II, Item 5 of the Assignment Applications.

We are concerned both with the tone of the CVN Objection and its failure to cite or even acknowledge *Greater Muskegon Broadcasters*, Commission-level precedent that unequivocally negates the CVN Objection's sole allegation. We caution CVN regarding the potential misuse of Commission procedures merely to advance a vendetta against a business competitor. Therefore, we take this opportunity to remind CVN that the Commission is not a venue for the airing of personal grievances against a party's competitors. We advise CVN that any further pleadings it files must comply with all applicable statutes and Commission Rules.¹⁷ Moreover, any such filings must be supported by evidence, properly pleaded,¹⁸ or matters of which the Commission may take official notice, and must further either cite or distinguish relevant precedent.

Coleman Objection. Coleman and his co-signers state two grounds for objecting to grant of the Assignment Applications. First, they express a strong desire for local station ownership, as opposed to ownership by what they term "a large media conglomerate."¹⁹ Second, they raise concerns "regarding the programming standards and practices that could be reflected on [their] local airwaves,"²⁰ based on incidents occurring on Cox's station WSB(AM), Atlanta, Georgia, on the Neal Boortz program. Coleman cites incidents in which host Boortz reportedly ridiculed individuals: a father and his child from approximately the same area as the Assigned Stations, based on their regional accents; a 13-year-old girl who was the victim of a shark attack; and two teenaged drivers involved in fatal automobile accidents. Coleman also cites an incident in which Boortz reportedly encouraged personnel at a military recruiting office to shoot war protestors picketing the office. Coleman and his fellow objectors express concern that Cox may introduce similar programming to their communities, which they assert have markedly different standards regarding appropriate programming than does the Atlanta metropolitan area.²¹

¹⁶ *Id.* at 15472 (emphasis added).

¹⁷ *See, e.g.*, 47 U.S.C. § 309(d); 47 C.F.R. §§ 1.17, 1.41 – 1.77, 73.3584, 73.3587, 73.5006, 73.7004.

¹⁸ *See, e.g.*, 47 C.F.R. §§ 1.52, 73.3584(b).

¹⁹ Coleman Objection, first unnumbered page.

²⁰ *Id.*, second unnumbered page.

²¹ *Id.*, second-third unnumbered pages.

While Coleman and other area residents might desire another assignee, we are nonetheless precluded from considering a buyer other than the one proposed in the Applications.²² With regard to Coleman's concerns about programming, Coleman's complaints center around one program broadcast by a Cox station in Atlanta, and it would constitute unwarranted speculation to assume that (a) Cox's other programming is similarly objectionable, or (b) Cox would broadcast the complained-of Neal Boortz program on any of the Assigned Stations.²³ In any event, we are precluded from taking programming decisions or formats into consideration when determining whether the Assignment Applications should be granted.²⁴

Conclusion/Actions. Based on the foregoing, we find that CVN and Coleman have failed to raise a substantial and material question of fact warranting further inquiry. We further find that Cox is fully qualified as licensee of the Assigned Stations, and that grant of the Applications is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Informal Objection filed by CVN IS DENIED, the informal objection filed by Dr. Preston Coleman IS DENIED, and that the applications for consent to assignment of the licenses for Stations WRFC(AM), Athens, Georgia,²⁵ WPUP(FM), Royston, Georgia,²⁶ WXKT(FM), Washington, Georgia,²⁷ WGMG(FM), Crawford, Georgia,²⁸ WGAU(AM), Athens, Georgia,²⁹ and WNGC(FM), Toccoa, Georgia,³⁰ ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Lewis J. Paper, Esq. and Andrew S. Kersting, Esq., Counsel for Howard C. Toole

²² See 47 U.S.C. § 310(d); *Dorothy J. Owens, Debtor-in-Possession*, Memorandum Opinion and Order, 5 FCC Rcd 6615 (1990).

²³ Cf. *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1223-25 (1986) (there should be no presumption that misconduct at one station is necessarily predictive of the licensee's operation of other stations).

²⁴ See *Entertainment Formats*, Memorandum Opinion and Order, 60 FCC 2d 858 (1976), *recon. denied*, 66 FCC 2d 78 (1977), *rev'd sub nom. WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1978), *rev'd*, 450 U.S. 582 (1981).

²⁵ File No. BAL-20080206AAC.

²⁶ File No. BALH-20080206AAD.

²⁷ File No. BALH-20080206ABA.

²⁸ File No. BALH-20080206AAG.

²⁹ File No. BAL-20080206AAE.

³⁰ File No. BALH-20080206AAF.