

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In re

DWNB(AM)  
Meridian, MS  
Facility ID No. 22294

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) File No. BR-20120210ABF  
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*Accepted / Filed*

*FEB 26 2020*

*Federal Communications Commission  
Office of the Secretary*

To: Office of the Secretary  
Attn: The Commission

**PETITION FOR RECONSIDERATION**

Eddie J. Rackley, Administrator, and Jimmie L. Hopson, by their attorney, seek reconsideration of the January 28, 2020 Memorandum Opinion and Order, FCC 20-4, denying an October 1, 2019 Application for Review. In support, the following is submitted:

**Background**

Pursuant to a Letter Ruling of June 20, 2018, the Renewal Application for Station WNB(AM), filed on February 10, 2012, was dismissed on grounds that the Application was improperly filed because the Application for Renewal of License was filed in Frank Rackley, Jr.'s name over one (1) year after his death without acknowledging his death or otherwise notifying the Commission in an amendment to the Application. Thus, the Commission concluded that the license had expired by its own terms on June 1, 2012. Shortly after the issuance of the June 20, 2018 Letter Order, undersigned counsel was retained by Mr. Jimmie L. Hopson, a minority individual residing in Meridian, Mississippi, who, unfamiliar with Commission rules or

procedures, had, nevertheless, entered into a transaction to acquire WNBC. Shortly after being retained on behalf of Mr. Hopson, reconsideration was sought with respect to the June 20, 2018 Letter Ruling. In that petition, it was conceded that the Commission was correct that the licensee, Frank Rackley, Jr., had died on January 25, 2011. Moreover, the renewal filed on February 10, 2012 did not reflect his passing. However, the renewal was signed by Eddie Rackley. All of this was done without the benefit of counsel.

On December 7, 2017, an FCC Form 316 Application was filed, seeking the assignment of WNBC from Frank Rackley, Jr. to Eddie Rackley, Administrator. Included with that submission were several testamentary documents: Judgment Approving Final Accounting, Authorizing Sale of Property, and Closing Estate, Bill of Sale. Collectively, these documents would indicate that the Court approved a sale of WNBC to Jimmie L. Hopson.

The Commission, on April 19, 2018, pursuant to FCC Form 732, approved the FCC Form 316 Application, Consent to Assignment from Frank Rackley, Jr. to Eddie L. Rackley, Administrator. However, due to lack of experience with FCC matters and with no assistance of counsel, the consummation of that assignment was never filed with the Commission.

The licensee, Frank Rackley, Jr., died on January 25, 2011. This is undisputed. Despite being unfamiliar with Commission procedures, a renewal was filed. Yes, the renewal was filed in the name of the deceased, but it was signed by the decedent's brother, Eddie Rackley, who would ultimately be approved by the Court as the Administrator of the estate. Thus, there was no attempt to "pull the wool" over the Commission's eyes.

In approving the testamentary papers, the Judge was obviously unaware of the need for FCC approval. Thus, in the Petition for Reconsideration, it was requested that the renewal be reinstated to allow an amendment to reflect the death of Frank Rackley, Jr., the filing of the

consummation of BAL-20171207ABE and, finally, allow for the filing of an FCC Form 314 to assign WNBC to Jimmie L. Hopson.

Not so incidentally, because the renewal had been dismissed and the license cancelled, nothing has been able to be filed in CDBS. Thus, in the Petition for Reconsideration, it was requested that an STA be permitted to be filed to permit the continued operation of the station until all these matters are resolved. This latter request, it should be noted, was never addressed in the September 4, 2019 ruling.

### **Miscellaneous Matters**

After the submission of the Petition for Reconsideration, undersigned counsel entered into several discussions and negotiations with various Audio Division counsel. Specifically, Audio Division counsel wished to ascertain the operating status of WNBC and to verify that it was operating consistent with its obligations. Accordingly, several emails containing pictures were provided.<sup>1</sup> Ultimately, a representative of the Audio Division agreed that a Consent Decree would be an appropriate resolution of the matter.

As the Commission is aware, Consent Decrees essentially consist of stock paragraphs. A Consent Decree is, for all intents and purposes, a contract of adhesion. The only real negotiation are the amounts that would be required to be paid.<sup>2</sup> The issue of a payment plan had been raised and Mr. Hopson determined that he would be able to make the voluntary contribution to pay the requisite amount. Thus, a check for \$12,000 was submitted to undersigned counsel for deposit in counsel's IOLTA Account.

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<sup>1</sup> It was counsel's understanding that the Bureau would not consider a settlement if the station was not operating legally.

<sup>2</sup>The Audio Division representative and counsel agreed that \$10,000 to \$12,000 would be appropriate.

In a conversation with Audio Division counsel virtually concurrent with counsel's receipt of the payment amount, counsel was advised that the Consent Decree had been taken off the table with little explanation as to why. Accordingly, while counsel does not dispute the right of the Bureau to change its mind, it, nevertheless, questions whether in this case it wouldn't be more in the public interest to enter into a Consent Decree than to terminate an AM voice in a community with sparse AM service. In this regard, the Commission should look at the fact that WNBN(AM) is a well-entrenched, long-standing station in Meridian, Mississippi. If its license is cancelled, there will not be another AM station to take its place. Moreover, WNBN will be owed by a minority owner -- something that is clearly in the public interest.<sup>3</sup> Furthermore, Mr. Hopson is an innocent party. In this regard, the Commission has historically bent over backwards in order to assist parties who were ignorant of the rules and allowed them to "sort matters out" with Commission assistance.

### **Discussion**

The MO&O dismisses the argument presented that the parties were acting without the benefit of counsel predicated on there being no error in the Bureau's analysis.

With respect to the arguments presented that Mr. Hopson is an innocent party, the Commission stated as follows:

"Whether or not Hopson is an innocent third party, or whether the Licensee or the Administrator engaged in an unauthorized transfer of control to Hopson, or whether a transfer of control to Hopson might have served the public interest if there had been a license to

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<sup>3</sup> See *Prometheus Radio Project v. FCC*, slip opinion, filed September 23, 2019. Therein, the United States Court of Appeals for the Third Circuit expressed concerns with respect to ownership safeguards for minorities. The Court held "...promoting ownership diversity is but one of the policy goals the FCC must consider."

transfer, this provides no basis for allowing acceptance or amendment of a renewal application that was not properly signed.”

With respect to the matter of the consent decree, the Commission stated:

“We also reject the arguments concerning negotiation of a possible consent decree. As an initial matter courts have found that ‘the FCC’s...decision to enter into [a] Consent Decree [is] committed to the agency’s nonrenewable discretion...’ Here, there was no basis for a consent decree that would allow the Administrator or Hopson to continue to operate the Station because the Station’s license expired by its own terms on June 1, 2012 due to the defective Renewal Application.”

The Commission has made short shrift of the arguments presented. While the fact that the parties were acting without counsel does not excuse the misdeed, it nevertheless should be taken into consideration.

There is no dispute that Mr. Hopson was an innocent party. As such, this fact should have been considered and not be related to the “Catch-22” reasoning.<sup>4</sup> The Commission does not provide a reasoned analysis. In this regard, attached to the Application for Review was documentation referencing the Commission’s willingness to protect innocent victims. *See* Attachment H to Application for Review.

Reconsideration is also warranted predicated on the Commission’s failure to explain why the public interest would not be better served by allowing the operation of a minority owned

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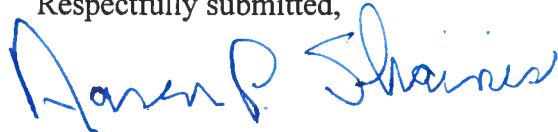
<sup>4</sup> See MO&O at paragraph 9.

station. Why is the public interest better served by cancelling the license? In this regard, resolution of the matter pursuant to a consent decree shall enable the Commission to ensure that a party innocent of any wrongdoing can continue operating the Station and continue service to the public. Clearly, this is a result in the public interest.

**Conclusion**

In view of the foregoing, it is urged that the Commission reconsider and permit a consent decree to assure the continued operation of the Station.

Respectfully submitted,



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and Jimmie L. Hopson

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Date: February 26, 2020

**CERTIFICATE OF SERVICE**

I, Malinda Markland, certify that on this 26<sup>th</sup> day of February, 2020, I caused to be sent, via electronic mail, copies of the foregoing PETITION FOR RECONSIDERATION to the following:

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Malinda Markland