



Federal Communications Commission
Washington, D.C. 20554

August 24, 2020

Marshall Broadcasting Group, Inc.
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1300 N. 17th Street, Suite 1100
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Mission Broadcasting, Inc.,
c/o Tom Davidson
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1333 New Hampshire Ave NW
Washington, D.C. 20036¹

Re: KLJB, Davenport, Iowa
Fac. ID No. 54011
File Nos. BALCDT-20200408AAL, *et al.*

Dear Counsel:

The Video Division has before it assignment applications (Applications) seeking consent to assign the full-power television broadcast stations KLJB, Davenport, Iowa (Fac. ID No. 54011; File No. BALCDT-20200408AAL), KMSS-TV, Shreveport, Louisiana (Fac ID No. 12525; File No. BALCDT-20200408AMM), and KPEJ-TV, Odessa, Texas (Fac. ID No. 12524; File No. BALCDT-20200408AAN) (collectively, the Stations) from Marshall Broadcasting Group, Inc. (Marshall), to Mission Broadcasting, Inc. (Mission) (collectively, the Applicants). Three pleadings were subsequently filed in opposition to the proposed assignment of the Stations (collectively, Opposition Pleadings). For the reasons discussed below, we grant the Applications and dismiss the Opposition Pleadings as procedurally defective.

Background. On December 3, 2019, Marshall filed a petition for voluntary relief under Chapter 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas (Bankruptcy Court).² On April 1, 2020, the Bankruptcy Court approved the sale of the Stations from Marshall, as debtor-in-possession, to Mission, the buyer (Sales Order).³ Pursuant to the Sales Order, Marshall was directed to execute the terms of the Asset Purchase Agreement (APA)⁴ upon receipt of Federal Communications Commission (Commission) approval to assign the Stations.⁵ The Applicants have entered into an Asset Purchase Agreement wherein Marshall agreed to sell its assets and transfer its liabilities, and Mission concurrently agreed to purchase Marshall's assets and assume Marshall's

¹ Copies of this Letter have also been sent via electronic mail to Randall and Associates, Attorneys at Law, the National Newspaper Publishers Association, and the Congress of Racial Equality.

² See Applications, Attachment 13, Description of Transaction (Description of the Transaction).

³ See Applications, Attachment 13, Sales Order (Sales Order).

⁴ *Id.*

⁵ See *id.* at 12.

liabilities, which included the Stations subject to the Applications.⁶ Thereafter, in accordance with the Sales Order, the Applicants filed the Applications seeking the Commission's consent to assign the Stations from Marshall to Mission.

Three comments were subsequently filed opposing the proposed assignment of the Stations. The comments were filed by: (1) Randall and Associates, Attorneys at Law (Randall)⁷; (2) the National Newspaper Publishers Association (NNPA)⁸; and (3) the Congress of Racial Equality (CORE) (collectively, Opponents).⁹

Randall alleges that the information contained in the Applications appears to differ from both Nexstar's April 3, 2020, Form 8-K filed with the U.S. Securities and Exchange Commission (Form 8-K filing) and an investment advisory service report that Nexstar issued on April 6, 2020.¹⁰ Specifically, Randall states that while "there may be nothing unusual or improper with such a practice," it nevertheless believes that "Nexstar is apparently using an affiliate company, specifically Mission, to complete the asset purchase of [the Stations]."¹¹ Based on this alleged potential discrepancy among filings, Randall contends that if "Mission is, in effect, a proxy for Nexstar[,] it could be argued that the asset purchases of KLJB [in Davenport, Iowa] and KMSS [in Shreveport, Louisiana] run counter to stated FCC policy objectives regarding ownership and competition" because Nexstar already owns two television stations in Davenport, Iowa, and one in Shreveport, Louisiana.¹²

NNPA's filing refers to an agreement that Nexstar and Marshall entered into in a previous sale of stations, alleging that the Nexstar-Marshall Joint Services Agreement¹³ was a "ploy to sidestep concerns

⁶ See Applications, Attachment 13, Asset Purchase Agreement (APA), Recital D.

⁷ See Letter from Chere D. Lott, Esq., Randall and Associates, to Barbara A. Kreisman, Chief, Video Division dated May 5, 2020 (Randall's Comment).

⁸ Letter from Dr. Benjamin F. Chavis, Jr., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated May 10, 2020 (NNPA's Comment).

⁹ Letter from Niger Innis, National Chairman, Congress of Racial Equality, to Barbara Kreisman, Chief, Video Division, dated May 11, 2020 (CORE's Comment).

¹⁰ Randall's Comment at 2. According to Randall, in contrast to the Applications, Nexstar's April 6, 2020, investment advisory service report states, "Nexstar Media Group Inc. has disclosed that its Mission Broadcasting entered an asset purchase agreement covering three TV stations" and that "Mission will acquire certain assets of [the Stations]." *Id.* Additionally, according to Randall, Nexstar's April 3, 2020, Form 8-K filing where it disclosed, "On April 3, 2020, Mission Broadcasting Inc. ("Mission"), an entity consolidated by Nexstar Media Group Inc. ("Nexstar") announced that on March 30, 2020 it had entered into an asset purchase agreement to acquire certain assets of the three television stations currently owned by Marshall Broadcasting Group: KMSS serving the Shreveport, Louisiana market, KPEJ serving the Odessa, Texas market and KLJB serving the Davenport, Iowa market." *Id.* Randall did not provide a copy of either document to the Commission.

¹¹ *Id.* at 3.

¹² *Id.* at 3-4.

¹³ Though not specified in the pleading, we assume the Nexstar-Marshall "Joint Services Agreement" referenced by NNPA alludes to the Sale of Commercial Time (JSA) and Shared Services Agreement (SSA) entered into by Nexstar and Marshall as part of a 2014 sale of stations to Marshall where, among other things, Marshall agreed to sell Nexstar up to 15% per week of its time available for commercial announcements on the Stations and Nexstar agreed to produce news and other programming not to exceed 15% of the Stations' weekly programming. The executed JSAs and SSAs are on file in the Stations' on-line public files. The agreements were accompanied by a Joint Declaration of Thomas E. Carter and Pluria Marshall, Jr., that stated in part: "[t]he term loan that will be the source of [Marshall's] acquisition financing and line of credit for station operations, which while will include a

over the efficacy of such ‘joint service agreements’ and, ultimately, manipulate and sidestep federal guidelines and FCC ownership limits to get [the] larger deal done.”¹⁴ NNPA further alleges that, upon gaining Commission approval, Nexstar “obviously had little further use for Marshall and, thus, began to undermine [Marshall’s] station operations in an effort to squash the minority-owned company.”¹⁵ Lastly, NNPA contends that “any action taken during this current COVID19 crisis would not receive the same diligent process that it would were the Commission at full strength and were staff not separated and unable to perform their duties to the fullest extent.”¹⁶

Finally, CORE requests that the Commission deny the Applications,¹⁷ alleging that Nexstar is essentially acquiring the stations itself and, because of this, the “proposed license transfer of [the Stations] violates both the letter and spirit of the duopoly rule.”¹⁸ It also contends that the Applicants have failed to show that granting the Applications would be in the public interest and that granting the Applications would be contrary to the Commission’s longstanding policy of encouraging black ownership of broadcast stations.¹⁹

On June 1, 2020, Mission filed its “Consolidated Opposition” in response to the Opponents’ comments contending that the comments of NNPA and CORE should be dismissed for lack of standing.²⁰ Mission likewise argues that Randall’s filing should be dismissed as procedurally defective, because it does not disclose the person or entity on whose behalf the submission is being made, set forth clearly the relief sought or the regulatory provisions under which relief is sought, or identify the interest of the person submitting the request.²¹ Additionally, Mission contends that the Opponents all failed to file the Opposition Pleadings in accordance with various Commission procedural requirements. Specifically, Mission notes that the Opposition Pleadings were not served on Mission, were not filed in hard copy with

Nexstar guarantee, will be for a term of no more than five (5) years after the date of closing.” *See, e.g.*, BALCDT-20140605ADO (granted Dec. 9, 2014) (grant conditioned upon the representations contained in the revised joint declaration and JSA).

¹⁴ NNPA’s Comment at 1. The “larger deal” mentioned by NNPA presumably refers to the applications filed by Nexstar, Communications Corporation of America (CCA), White Knight Holdings, Inc. (White Knight), and Mission in 2013 seeking the assignment of 14 television stations. Pursuant to those transactions, Nexstar sought to divest the Stations, and, as such, Mission filed applications to acquire the Stations. Thereafter, however, applications for consent to assign the Stations to Marshall were filed. The Bureau subsequently dismissed Mission’s applications to acquire the Stations and granted Marshall’s applications, effectively assigning the Stations to Marshall. *See* Federal Communications Commission, Broadcast Actions, Public Notice, Report No. 48270, 2014 WL 2905839 at *1 (June 27, 2014) (dismissing applications for consent to assign the licenses of KMSS-TV and KPEJ-TV from Comcorp of Texas License Corp. to Mission Broadcasting, Inc., File Nos. BALCDT-20130503ACK, BALCDT-20130503ACL and dismissing application for consent to assign the license of KLJB(DT) from Quad Cities Television Acquisition Licensing, LLC to Mission Broadcasting, Inc., File No. BALCDT-20131120ADX).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See generally* CORE’s Comment.

¹⁸ *Id.* at 2.

¹⁹ *Id.* CORE also disputes whether Mission is a bona fide minority-owned company because it only has one woman among its ownership group. *Id.* at 2-3. We find, however, that Mission’s minority status is irrelevant to whether grant of the Applications is in the public interest.

²⁰ *Id.* at 5-6.

²¹ *Id.* at 6.

the Commission Secretary's Office or electronically through CDBS or ECFS, and were not supported by affidavits from persons with first-hand knowledge of the facts alleged.²²

Mission further states that its "responses, certifications and information supplied in the Applications demonstrates that [it] complies with the FCC's television duopoly and other multiple ownership rules and is otherwise financially and legally qualified under the [Communications Act of 1934, as amended,] and the [Commission's] Rules to hold the Licenses."²³ Additionally, Mission contends that the grant of the Applications is in the public interest because it "will enable the Stations to exit from bankruptcy and thus will further the Commission's policy of supporting the bankruptcy laws."²⁴

On June 4, 2020, CORE filed a reply to Mission's Consolidated Opposition (CORE's Reply).²⁵ In response to Mission's argument that CORE's Comment is procedurally defective, CORE argues that it "did indeed submit [its] via certified mail to the Secretary's Office on May 13th."²⁶ CORE also reiterates its general concern regarding the lack of black-owned television stations, stating that "[i]n a nation where African Americans spend some \$45 billion annually on cable-TV service, Blacks reportedly watch about 77.4 hours of television each week and watch 40 percent more television than any other ethnic group, the paucity of Black-owned television stations has been troubling to many industry observers."²⁷

Discussion. For the reasons discussed below, we find that the assignment of the Stations from Marshall to Mission is in the public interest and therefore grant the Applications. In so doing, we dismiss the Opposition Pleadings as procedurally defective for lack of standing. Specifically, we find that Opponent failed to meet the pleading requirements of section 309(d)(1) of the Communications Act of 1934, as amended (the Act).

Section 310(d) of the Act provides that no station license shall be transferred or assigned until the Commission (or the Bureau under delegated authority), upon application, determines that the public interest, convenience, and necessity will be served thereby.²⁸ In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act, other applicable statutes, and the Commission's rules.²⁹ If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.³⁰ If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact as to whether the transaction serves the public interest, section 309(e) of the Act requires that the applications be designated for hearing.³¹

²² *Id.* at 5-6.

²³ *Id.* at 6-7.

²⁴ *Id.* at 9.

²⁵ See CORE's Reply. Neither NNPA nor Randall filed a response to Mission's Consolidated Opposition.

²⁶ *Id.* at 2.

²⁷ *Id.* at 3.

²⁸ 47 U.S.C. § 310(d).

²⁹ See, e.g., *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300 para. 16 (2005).

³⁰ *Id.*

³¹ 47 U.S.C. § 309(e); see also *General Motors Corporation and Hughes Electronics Corporation, Transferors, and the News Corporation Limited, Transferee*, 19 FCC Rcd 473, 483, para. 15 n.49 (2004); *Application of EchoStar*

Upon review of the record, we find that the proposed assignment would be in the public interest. Specifically, we find that the proposed transaction complies with the Act, other applicable statutes, and the Commission's rules, including the Commission's ownership rules. Moreover, it is the Commission's longstanding practice to "support the bankruptcy laws, and where possible to accommodate them in a manner that is consistent with the Act."³² The Bankruptcy Court found that the "[a]pproval of the APA and consummation of the [s]ale are in the best interests of [Marshall], its creditors, its estate, and other parties in interest," and that the "APA was negotiated, proposed, and entered into by [Marshall] and [Mission] without collusion, in good faith, and on an arms'-length basis."³³ The public interest is further served because prompt emergence from bankruptcy is critical to the continued operation of the Stations, and facilitating prompt emergence "advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors."³⁴ For these reasons, we find that the assignment of the Stations from Marshall to Mission is in the public interest, and we therefore grant the Applications.

We further find that none of the Opponents has demonstrated standing. Section 309(d)(1) provides that only a "party in interest" has standing to file a petition to deny. The petition must contain specific allegations of fact sufficient to show that the petitioner is, in fact, a party in interest, as well as specific allegations of fact showing that a grant of the application would be prima facie inconsistent with the public interest.³⁵ Such allegations of fact, except for those of which official notice may be taken, must be supported by an affidavit of someone with personal knowledge thereof.³⁶

In the context of broadcast applications, the Commission has generally accorded party-in-interest status to petitioners that demonstrate they are: (1) competitors in the market suffering signal interference; (2) competitors in the market suffering economic harm; or (3) residents of the station's service area or regular listeners or viewers of the station.³⁷ An organization can establish standing on behalf of its members if it provides an affidavit or declaration "of one or more individuals entitled to standing indicating that the group represents local residents and that the petition is filed on their behalf."³⁸ Standing to challenge the Commission's regulation of a broadcast station "is accorded to persons not for

Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation and EchoStar Communications Corporation, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 211 (2002).

³² *Stanford Springel As Chapter 11 Trustee for the Bankruptcy Estate of Innovative Communication Corporation, Transferor and Assignor, and National Rural Utilities Cooperative Finance Corporation and Its Subsidiaries, Transferees and Assignees, 24 FCC Rcd 14360, 14369, para. 19 (WCB/MB/WTB/IB 2009); see also LaRose v. FCC, 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974) (in applying its policies where an application arises from bankruptcy, the Commission should consider "the public interest in the protection of innocent creditors").*

³³ Sales Order at 7.

³⁴ *Worldcom, Inc.*, 18 FCC Rcd 26484, 26503, para. 29 (2003).

³⁵ 47 U.S.C. § 309(d)(1); *see also* 47 CFR § 73.3584.

³⁶ 47 U.S.C. § 309(d)(1); 47 CFR § 1.16 (allowing unsworn declaration under penalty of perjury in lieu of a sworn affidavit in certain circumstances).

³⁷ *See, e.g., Entercom License, LLC, Hearing Designation Order, 31 FCC Rcd 12196, 12205 (2016) (Entercom); Sagittarius Broadcasting Corp., Memorandum Opinion and Order, 18 FCC Rcd 22551 (2003); CHET-5 Broadcasting, L.P., Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999); Office of Communications of the United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966) (United Church of Christ).*

³⁸ *Entercom*, 31 FCC Rcd at 12206.

the protection of their private interest but only to vindicate the public interest.”³⁹

Here, we find that Randall, NNPA, and CORE have all failed to establish that they are parties in interest. Specifically, as argued in the Consolidated Opposition, the Opponents each failed to support their pleadings with an affidavit of someone with personal knowledge as to why the grant of the applications would be *prima facie* inconsistent with the public interest.⁴⁰ Thus, in the absence of any filed affidavits or declarations, the Opponents, as organizations, have failed to establish that they are parties in interest.⁴¹

In any event, we also find that the Opponents fail to allege specific facts that, if true, would show that the grant of the Applications would be *prima facie* inconsistent with the public interest, as is also required by section 309(d)(1) of the Act.⁴² The Opponents provide no specific support for their allegations that the transfer to Mission would violate the Commission’s rules or otherwise not be in the public interest.⁴³ Accordingly, because Opponents have failed to establish standing consistent with the requirements of section 309(d)(1), we therefore dismiss the Opposition Pleadings as procedurally defective.

ACCORDINGLY, IT IS ORDERED that the Opposition Pleadings filed by Randall and Associates, Attorneys at Law, the National Newspaper Publishers Association, and the Congress of Racial Equality **ARE DISMISSED**. **IT IS FURTHER ORDERED** that the applications seeking consent to assign the full-power television broadcast stations KLJB, Davenport, Iowa, KMSS-TV, Shreveport, Louisiana, and KPEJ-TV, Odessa, Texas, from Marshall Broadcasting, Inc., to Mission Broadcasting, Inc., file nos. BALCDT-20200408AAL-AAN, **ARE GRANTED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁹ *United Church of Christ*, 359 F.2d at 1003 (citing *FCC v. Sanders Radio Station*, 309 U.S. 470 (1940)); *see also Rainbow/Push v. FCC*, 330 F.3d 539, 543 (D.C. Cir. 2003).

⁴⁰ *See* Consolidated Opposition at 5-6.

⁴¹ Notably, although in CORE’s Reply it states that it did, in fact, submit its comment via certified mail to the Commission Secretary’s Office, it does not dispute that it failed to include an affidavit or declaration of one or more individuals entitled to standing indicating that the group represents local residents and that the petition is filed on their behalf.

⁴² 47 U.S.C. § 309(d)(1) (“The petition shall contain specific allegations of fact sufficient to show that . . . a grant of the application would be *prima facie* inconsistent with [the public interest].”).

⁴³ For example, Randall’s allegation as to a potential inconsistency in Nexstar’s public filing does not constitute a specific allegation of fact as to whether the proposed transaction is *prima facie* inconsistent with the public interest. Similarly, NNPA conclusory allegations against Nexstar appear similar to claims raised in an ongoing civil case between Marshall and Nexstar and are not relevant here. *See Area Christian Television, Inc.*, Decision, 60 RR 2d 862 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested); *see also WFBM, Inc.*, 47 FCC 2d 1267 (1974).