



Federal Communications Commission  
Washington, D.C. 20554

March 20, 2013

DA 13-512  
In Reply Refer to:  
1800B3-PPD  
Released: March 20, 2013

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**In re:** WVIN-FM, Bath, NY  
Facility ID No. 52121  
WABH(AM), Bath, NY  
Facility ID No. 52119  
WQRW(FM), Wellsville, NY  
Facility ID No. 165995  
Richard A. Foreman, Receiver, as Transferor  
and Robert J. Pfuntner, as Transferee  
File No. BTCH-20121109AAS

**Informal Objection**

Dear Counsel:

We have before us an Informal Objection filed by Great Radio, LLC ("Great Radio") to the above-captioned application ("Application"). The Application seeks consent for the transfer of control of Pembroke Pines Mass Media N.A. Corp. ("Pembroke Pines"), licensee of stations WVIN-FM, WABH(AM), and WQRW(FM) (collectively, the "Stations"), from Richard A. Foreman ("Foreman"), Receiver to Robert J. Pfuntner ("Pfuntner"). For the reasons discussed below, we deny Great Radio's Informal Objection and grant the Application.

**Background.** The Application essentially seeks to return transfer of control of Pembroke Pines and the Stations to Pfunter, the sole stockholder of Pembroke Pines. In March 2012, in a lawsuit brought by a creditor against Pembroke Pines and Pfunter, a Court Order required Pfunter to transfer control of Pembroke Pines to Foreman, who was appointed as Receiver and directed to take control of and seek buyers for the Stations to satisfy the financial obligations of Pembroke Pines and Pfunter. Accordingly, Foreman filed an application on FCC Form 316 for consent to the involuntary transfer of control of Pembroke Pines and the Stations from Pfunter to Foreman. The Commission granted that application.<sup>1</sup>

Later, in August 2012, Foreman held an auction for the Stations. Great Radio was the winning bidder for stations WVIN-FM and WABH(AM) (“Bath Stations”), and Pfunter was the winning bidder for WQRW(FM). Thereafter, in September 2012, before the Court approved Great Radio’s acquisition of the Bath Stations, Pfunter informed the Court that he had satisfied the financial obligation to the creditor, allowing him to re-acquire control of the Bath Stations from Foreman. On November 6, 2012, the Court approved Pfunter’s motion to re-acquire control of the Bath Stations, discharged the Receiver, and ordered the parties to file an application with the Commission for consent to transfer control of Pembroke Pines from Foreman back to Pfunter. On November 9, 2012, Foreman and Pfunter filed the Application on FCC Form 316 for consent to transfer control of Pembroke Pines from Foreman to Pfunter.<sup>2</sup> Great Radio filed its Informal Objection to the Application on November 20, 2012, and Pfunter filed an Opposition to Informal Objection on December 20, 2012.

**Discussion.** An informal objection must set forth facts to support its concerns and a basis for the remedy it seeks.<sup>3</sup> For the reasons discussed below, we find that Great Radio has failed to meet this standard.

Great Radio’s only objection to the Application is the use of the short form application, Form 316, instead of a long form application, Form 315.<sup>4</sup> Great Radio argues the use of Form 316 was inappropriate because the transfer of control in this instance does not meet any of the criteria for using the short form as detailed in Section 73.3540(f) of the Rules<sup>5</sup> or the instructions to Form 316.<sup>6</sup> Great Radio further argues that use of Form 316 is prohibited because Foreman is transferring all voting rights to Pfunter.<sup>7</sup> According to Section B of the instructions, use of Form 316 “[g]enerally...is prohibited if the previously approved principals of the licensee/permittee will not retain **more than 50 percent** of the station’s voting rights or when more than 50 percent of the station’s voting rights is being assigned or transferred, irrespective of whether or not the recipient(s) are already holders of such stock.”<sup>8</sup>

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<sup>1</sup> See FCC File No. BTCH-20120314ADD. Foreman filed a notice of consummation on April 30, 2012, indicating that transfer of control had been consummated as of March 22, 2012.

<sup>2</sup> In the application, Pfunter identified the transfer as an involuntary transfer of control.

<sup>3</sup> See *Astroline Communications Co. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988).

<sup>4</sup> Great Radio advocates the use of Form 315 to allow the Commission to evaluate the qualifications of Pfunter.

<sup>5</sup> See 47 C.F.R. §73.3540(f).

<sup>6</sup> In addition to the six situations described in Section 73.3540(f) as appropriate for use of a short-form application, the instructions to Form 316 identify two additional such situations. Great Radio has also argued that the transfer of control at issue here is not involuntary.

<sup>7</sup> Great Radio notes that Section III, Item 5 of the Application indicates that the effect of a grant of the transfer of control would result in Pfunter holding 100 percent of the votes and total assets of Pembroke Pines and Foreman holding zero percent of the votes and total assets. Informal Objection at 3.

<sup>8</sup> Instructions for FCC 316, Application For Consent To Assign Broadcast Station Construction Permit Or License Or Transfer Of Control Of Entity Holding Broadcast Station Construction Permit Or License (emphasis in original).

We find no merit to Great Radio’s objections. The Commission has allowed the use of short-form application procedures previously where a court has ordered that control of a licensee be transferred back from a court-approved fiduciary to a party previously passed upon as a controlling principal of a licensee. *See Canton 67, Ltd., Debtor-in-Possession*, Memorandum Opinion and Order, 7 FCC Rcd 736 (1992) (“*Canton 67*”).

*Canton 67* involved a limited partnership comprised of three general partners: Morton Kent (“Kent”) (33% equity interest); Media Central, Inc., controlled by Kent (22% equity interest); and David R. Vaughn (1% equity interest). The remaining equity was held by limited partners. Over time, Media Central, Inc. sought federal protection from creditors under Chapter 11 of the U.S. Bankruptcy Code for its television stations. The Commission approved the Form 316 application for the involuntary assignment of license of one station from *Canton 67, Ltd.* to *Canton 67, Ltd., Debtor-in-Possession*. Thereafter, following consummation, the parties filed a Form 316 application for consent to assign the license of this station to Kent, as an individual. Franklin L. Lavin, who had attempted to purchase the station at issue, argued the use of Form 316 was inappropriate because the assignment of license from *Canton 67, Ltd., Debtor in Possession* to Kent was a substantial change requiring the filing of a long-form application. The Commission noted that Kent was passed on in a previous long-form application. The Commission also concluded that less than 50% of equity was changing hands, which was not a substantial change.<sup>9</sup> Considering these two factors, the Commission permitted Kent to change his interest from 55% equity to 100% equity and 100% control through a short-form application.

Based on the Commission’s decision in *Canton 67*, the conclusion here is straightforward. Pfuntner’s qualifications have previously been approved in a long-form application.<sup>10</sup> The transfer to Pfuntner following the Receiver’s discharge and pursuant to court order<sup>11</sup> is a “corporate reorganization which involves no substantial change in the beneficial ownership of the corporation.”<sup>12</sup> Foreman, as Receiver, never acquired any beneficial interest in Pembroke Pines.<sup>13</sup> Rather, he was appointed as a fiduciary to take control of Pembroke Pines for the benefit of all parties with an interest in the litigation against Pembroke Pines and Pfuntner. The facts of this case are more favorable than those in *Canton 67* because Pfuntner has continuously held a 100% beneficial interest in Pembroke Pines. Because no equity is changing hands, the transfer of control does not involve a “substantial change” in the ownership of Pembroke Pines, thus the transfer may be approved pursuant to the Application.

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<sup>9</sup> The Commission analyzed the transaction as a whole rather than focusing only on the assignment of license from the Debtor-in-Possession to Kent. *See* 7 FCC Rcd at 738 n. 11.

<sup>10</sup> *See* Application at Exhibit 15.

<sup>11</sup> We disagree with Great Radio’s characterization of the Application as involving a voluntary transaction. The transaction is court-ordered and therefore involuntary, notwithstanding that Pfuntner requested the issuance of the order.

<sup>12</sup> 47 C.F.R. §73.3540(f)(4).

<sup>13</sup> Great Radio is correct that the Application indicates that Foreman holds 100% of the equity of Pembroke Pines. *See* n. 7 *supra* and Application, Section III, Question 5. There was a corresponding entry in the Form 316 application by which Foreman’s appointment as Receiver of Pembroke Pines was approved. These are clearly erroneous entries, as neither of the court orders provided for any transfer of stock in Pembroke Pines. Although we could ask the parties to amend the Application to correct this error, we find it unnecessary to do so due to the fact that the court order submitted with the Application clearly delineates the transaction.

**Conclusion.** Accordingly, IT IS ORDERED, that Great Radio, LLC's Informal Objection filed on November 20, 2012, IS DENIED. IT IS FURTHER ORDERED that Pembroke Pines Mass Media N.A. Corp.'s application for consent to transfer control of Pembroke Pines Mass Media N.A. Corp., licensee of stations WVIN-FM, WABH(AM), and WQRW(FM), from Richard A. Foreman to Robert J. Pfuntner, File No. BTCH-20121109AAS, IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau