Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

Atlantic Morris Broadcasting, Inc. Assignor — File Nos. BAL-950331GV, BALH-950331GW

and

Crystal Communications Corporation
Assignee

For Assignment of License
WALL(AM) and WRRV(FM)
Middletown, New York

MEMORANDUM OPINION AND ORDER

Adopted: March 29, 1996; Released: April 24, 1996

By the Commission:

1. The Commission has under consideration an application for review filed by Charles A. Stewart ("Stewart"), a listener to the above-captioned stations, of an action by the Chief, Audio Services Division, Mass Media Bureau ("Bureau").[1] That action denied Stewart's reconsideration of the Bureau's earlier denial of Stewart's petition to deny the above-captioned assignment from Atlantic Morris Broadcasting, Inc. ("Atlantic") to Crystal Communications Corporation ("Crystal").[2] Also on file is Atlantic's opposition and a subsequent pleading filed by Stewart styled as a Motion to Add Misrepresentation Issue ("Motion").[3] As set forth below, we affirm the Bureau's action.

2. The Bureau denied Stewart reconsideration after carefully reviewing the three arguments raised by Stewart.[4] Stewart first had argued that the Bureau committed an error of law in failing to consider whether the above-captioned assignment would result in an "undue concentration of media control in the area."[5] The Bureau disagreed, stating that the relevant contours of the subject Middletown stations did not overlap the relevant contours of any other station in which Crystal had an attributable interest and that Stewart's allegations were essentially an untimely request for reconsideration of 47 C.F.R. § 73.3555, the Commission's multiple ownership rule.[6] The Bureau cited Revision of Radio Rules and Policies, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making,* 7 FCC Rcd 6387, 6399 n.77 (1992) (Commission staff authorized to grant assignment application without further consideration of the concentration issue where the proposed combination complies with the station numerical limits, the proposed combination does not exceed a 25 percent market share and where the application is otherwise acceptable). The Bureau also rejected Stewart's reliance upon *Sam Jones Jr.,* 10 FCC Rcd 5330 (1995), noting that the case offers no support for Stewart's argument that the Commission must consider mere allegations of undue concentration of control even though the proposed assignment fully complies with 47 C. F. R. § 73.3555.

3. Stewart had also contended that the Bureau committed an error of law in not finding that Atlantic had prematurely transferred control of the subject stations to Crystal. The Bureau, however, found that Crystal provided services to the stations pursuant to a conforming time brokerage agreement,[7] and that Crystal's and Atlantic's affidavits of compliance with the Commission's Rules were more persuasive on this issue than the unsupported hearsay statements offered by Stewart. Specifically, the Bureau noted that the principals of Atlantic and Crystal averred that, pursuant to the time-brokerage agreement, Atlantic remained in control over the subject stations' personnel, programming and finances. Although Stewart now contends that Atlantic's principal is not the "on-site" or "on-premises" manager for purposes of the time brokerage agreement, he provides no evidence to indicate that Atlantic is violating the Commission's policies with respect to main studio staffing requirements. *See Petition for Reconsideration and/or Clarification of Jones Eastern of the Outer Banks, Inc.,* 7 FCC Rcd 6800, 6802 (1992) (Compliance with main studio rule, 47 C.F.R. § 73.1125, requires during normal business hours a manager that utilizes studio as a "home base" and a staff person that may share responsibilities with another business).

4. Regarding Stewart's EEO allegations concerning other stations controlled by Crystal's principals,[8] the Bureau carefully explained Commission practices with respect to our EEO rules, and Stewart fails to establish that the Bureau erred in not finding that a grant of the application would be *prima facie* inconsistent with the public interest. In this regard, our review of the stations' annual employment

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[1] Letter from Larry D. Eads, Chief, Audio Services Division, Mass Media Bureau, to Robert Lewis Thompson, Esquire *et al,* 1800B3-RRC, (September 15, 1995).

[2] Letter from Larry D. Eads, Chief, Audio Services Division, Mass Media Bureau to Marvin Roslin *el al,* 1800B3-PHD, (June 26, 1995).

[3] In accordance with 47 C.F.R. § 1.45, we will treat Stewart's Motion as a reply pleading.

[4] These are essentially the three arguments that Stewart had raised in his petition to deny the subject assignment applications.

[5] Crystal's principals also control stations WEOK(AM)/WPDH(FM), Poughkeepsie, New York and WCZK(FM), Hyde Park, New York.

[6] At the time of the subject application's filing, Section 73.3555 provided, in pertinent part, that a market is defined by the overlapping contours of the proposed commonly-owned stations and in a market of 15 or more stations, a single entity cannot hold attributable interests in more than two FM stations and two AM stations and the proposed combination cannot exceed a 25% audience share. 47 C.F.R. § 73.3555(a)(1)(ii). Congress subsequently directed the Commission to revise Section 73.3555, eliminating the audience share cap and raising the number of commonly-owned stations that a licensee may hold in a single market. *See* Section 202, Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996).

[7] *See* 47 C.F.R. § 73.3555(a)(2)(ii) (setting forth the requirements for licensee certifications of compliance with the Commission's time-brokerage policies).

[8] *See* note 5, *supra.*

reports indicates that WCZX(FM) and WEOK/WPDH(FM) have employed minorities during the period in which Crystal's principals controlled the stations. Moreover, we do not find any other evidence of discrimination, or that the stations' current EEO records disqualify Crystal as a Commission licensee. We conclude that the Bureau correctly applied our policy to review the assignee's EEO program at renewal time. *Cf. In re Application of WWOR-TV, Inc.*, 6 FCC Rcd 6569, 6574 (1991); *Metromedia Inc.*, 98 FCC 2d 300, 302 n. 2 (1984). Accordingly, review of the Bureau's action with regard to Crystal's EEO performance is not warranted, pursuant to 47 C.F.R. § 1.115(g).

5. Stewart's application for review essentially reiterates arguments previously made and rejected in theDabove-noted staff rulings. We affirm the Bureau's action, finding that Stewart raises no substantial and material question of fact that grant of the above-captioned assignment would contravene the public interest.

6. Accordingly, IT IS ORDERED that the October 4, 1995, application for review filed by Charles A. Stewart IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary