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

FCC MAIL SECTION

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MM Docket No. 93-265

DISPATCHED BY

In re Application of

PINE TREE
 MEDIA, INC.

File No. BR-900817UF

For Renewal of License of
 Station KARW
 Longview, Texas

**HEARING DESIGNATION ORDER AND
 NOTICE OF FORFEITURE**

Adopted: October 7, 1993;

Released: October 25, 1993

By the Commission:

1. The Commission has before it for consideration the above-captioned application and materials related thereto.¹ Because substantial and material questions of fact exist with respect to possible unauthorized transfers of control of the licensee, the accuracy of a representation as to the identity of the renewal applicant, the station's unwillingness to respond to official correspondence, and the station's compliance with Commission Rules, we will designate for hearing the application for renewal of license of Station KARW (formerly KLGV).

Background

2. The licensee of record for Station KARW is Pine Tree Media, Inc. ("Pine Tree"). On November 10, 1988, the Commission granted an application to transfer control of Pine Tree from Herbert Wren and Earl Jones to Kenneth Tuck (File No. BTC-880930EG). Tuck, Wren and Jones reportedly consummated the transfer on December 12, 1988.²

¹ Also before the Commission are staff letters of inquiry to the station dated September 9, 1992, September 23, 1992, December 3, 1992, and February 10, 1993, and an undated and unsigned letter purportedly from the station, which was received on January 26, 1993.

² Tuck never filed an ownership report (FCC Form 323) with the Commission to confirm consummation of the transfer of control.

³ Section 310(d) of the Communications Act provides:

No ... station license, or any rights thereunder shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily ... except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

⁴ Section 73.3540 of the Commission's Rules provides:

3. On August 17, 1990, an application for renewal of license was filed for the station. The application showed that it was filed on behalf of "KLGV - Ken Tuck - Pine Tree Media, Inc." The application was signed by Robert D. Murray, general manager. However, according to the Commission's records, Murray is not an officer of Pine Tree.

4. In response to a complaint, Commission personnel subsequently inspected the station. The inspection disclosed that the station was being operated by Messrs. H. E. Ferrell and Dub Murray on behalf of an entity identified as American Plastics. Documents at the station indicated that Ferrell and Murray paid employee wages and station utilities. Commission personnel learned that Tuck had died in May 1990, and that the lien which Wren and Jones had held with respect to a note made by Tuck in payment for the station had been transferred on May 17, 1990, to American Plastics. The inspection further revealed that the station's public file did not contain any materials concerning station activities subsequent to 1988, including the station's 1990 renewal application; that the tower needed painting; that the station had no operating logs; that the station had not properly maintained its Emergency Broadcast System equipment or assured that such equipment was functioning; and that the station may have operated with excessive power during nighttime hours.

5. By letter dated September 9, 1992, the Commission endeavored to ascertain the identity of the persons operating the station in order to determine whether an unauthorized transfer of control had occurred in violation of Section 310(d) of the Communications Act of 1934, as amended,³ and/or Sections 73.3540 and 73.3541 of the Commission's Rules.⁴ In addition, the Commission's letter sought information concerning the station's operating power (Section 73.1745(a) of the Commission's Rules), and its compliance with rules governing tower painting, (Sections 17.21 through 17.23 of the Commission's Rules), the Emergency Broadcast System (Section 73.932 of the Commission's Rules), station logs (Section 73.1800 and 73.1820 of the Commission's Rules), and the public inspection file (Section 73.3526 of the Commission's Rules). The Commission's letter requested a response within 30 days. Although a return receipt indicated that the Commission's letter was received on September 16, 1992, Pine Tree did not respond.

6. By letter dated September 23, 1992, the Commission notified Pine Tree that its renewal application for Station KARW was incomplete. The Commission's letter requested a response to Question 7 of the application to demonstrate that the station would pose no significant environmental

(a) Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control.

Section 73.3541 of the Commission's Rules provides:

(a) The FCC shall be notified in writing promptly of the death ... of ... a person directly or indirectly in control of a corporation which is a ... licensee.

(b) Within 30 days after the occurrence of such death ... an application on FCC Form 316 shall be filed requesting consent ... for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved.

impact from RF radiation to the public and to the station's workers. Also, the Commission's letter informed Pine Tree that the application was not properly certified in that it had not been signed by a corporate officer. The Commission's letter requested that Pine Tree submit its response by October 16, 1992. No response was received.

7. By letter dated December 3, 1992, the Commission informed Pine Tree that the Commission had not received a response to its September 9, 1992, letter. Thus, Pine Tree was requested to answer the September 9, 1992, letter, and was cautioned that failure to respond to official communications from the Commission could result in the imposition of administrative sanctions.

8. On January 26, 1993, the Commission received a written response from the station. The response attempted to answer some but not all of the questions posed in the Commission's September 9, 1992, letter. Among other things, the response indicated that Ferrell and Murray no longer managed the station. However, the response did not identify who does control the station or how they came to acquire such control. In addition, the response was not signed.

9. Because the station's submission was unsigned and not fully responsive, the Commission, by letter dated February 10, 1993, sought additional information from the station as well as a clarification of some of the information provided. In addition, this letter informed Pine Tree that it had failed to provide the information requested in the Commission's September 23, 1992, letter, concerning the station's 1990 renewal application. The February 10, 1993, letter enclosed copies of the September 9, September 23, and December 3, 1992, letters. Pine Tree was requested to provide a response within 15 days. Although the return receipt shows receipt of the letter on March 1, 1993, the station has never filed a response.

Discussion

10. Misrepresentation involves a false statement of fact. The seriousness of the offense depends on the facts and circumstances of the particular case. Crucial to a finding of misrepresentation is the existence of an intent to deceive. *Fox River Broadcasting, Inc.*, 93 FCC 2d 127, 129 (1983). Here, the renewal application submitted for Station KARW contains an apparent misrepresentation in that it was filed on behalf of Ken Tuck, who had died some three months earlier. Nowhere does the application reveal Tuck's death. Moreover, there is no evidence that the Murray who signed the application, had any legal authority to do so. Accordingly, an issue must be specified to determine whether the renewal application misrepresented the identity of the renewal applicant.

11. Section 73.1015 prescribes *inter alia*, that an applicant or licensee, when required by the Commission, must submit "written statements of fact relevant to a determination whether an application should be granted or denied, or to a determination whether a license should be revoked" Here, despite repeated attempts by the Commission to obtain information, the persons now operating Station KARW have refused to identify who is actually in control of the station and have refused to describe how such control was obtained. Moreover, it appears that one or more unauthorized transfers of control of Pine Tree have occurred. Pine Tree's owner of record, Kenneth Tuck, is deceased, and the Commission has not received any ap-

plication to transfer control of Pine Tree to anyone else or to assign the station's license. Accordingly, appropriate issues will be specified.

12. As a final matter, the station has not demonstrated that the apparent technical violations have been corrected. Accordingly, we will specify an appropriate issue.

13. Accordingly, IT IS ORDERED, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the captioned application of Pine Tree Media, Inc. for renewal of license of Station KARW IS DESIGNATED FOR HEARING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether one or more unauthorized transfers of control of Pine Tree Media, Inc. occurred in violation of Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 and/or Section 73.3541 of the Commission's Rules.

2. To determine whether Pine Tree Media, Inc. and/or persons acting on its behalf misrepresented facts in the station's 1990 renewal application.

3. To determine whether Pine Tree Media, Inc. and/or persons acting on its behalf violated Section 73.1015 of the Commission's Rules by failing to respond fully to Commission correspondence dated September 9, 1992, September 23, 1992, December 3, 1992, and/or February 10, 1993.

4. To determine whether Station KARW is in compliance with the following Commission rules: Section 1.1307(b) (environmental assessment); Sections 17.21 through 17.23 (tower painting); Section 73.932 (emergency broadcast equipment); 73.1745(a) (transmitter power); Sections 73.1800 and 73.1820 (station logs); and 73.3526 (public file).

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the application of Pine Tree Media, Inc. for renewal of license of Station KARW should be granted.

14. IT IS FURTHER ORDERED, that, if the hearing record does not warrant an Order denying the renewal application for Station KARW, it shall also be determined if Pine Tree Media, Inc., its successors or assigns, and/or those persons now in control of Pine Tree Media, Inc., American Plastics, and/or H. E. Ferrell and Robert Dub Murray, have willfully or repeatedly violated Section 310 of the Communications Act of 1934, as amended, and/or Sections 1.1307, 17.21 through 17.23, 73.932, 73.1015, 73.1800 and 73.1820, 73.3526, and/or 73.3540 and 73.3541 of the Commission's Rules. If so, it shall also be determined whether Orders for Forfeiture shall be issued pursuant to Section 503(b) of the Communications Act of 1934, as amended, in an amount up to \$250,000 for the willful or repeated violations of Section 310 of the Communications Act of 1934, as amended, and/or Sections 1.1307, 17.21 through 17.23, 73.932, 73.1015, 73.1800 and 73.1820, 73.3526, and/or 73.3540 and 73.3541 of the Commission's Rules, which occurred or continued within the applicable statute of limitations.

15. IT IS FURTHER ORDERED, that, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended.

16. IT IS FURTHER ORDERED, that, in accordance with Section 309(e) of the Communications Act of 1934, as amended, the burdens of proceeding and proof with respect to all issues shall be upon Pine Tree Media, Inc., its successors or assigns and/or those persons now in control of Pine Tree Media, Inc., as appropriate.

17. IT IS FURTHER ORDERED, that American Plastics, H. E. Ferrell and Robert Dub Murray ARE MADE PARTIES TO THIS PROCEEDING.

18. IT IS FURTHER ORDERED, that, to avail themselves of the opportunity to be heard, Pine Tree Media, Inc., its successors and assigns, American Plastics, H. E. Ferrell and Robert D. Murray shall, pursuant to Sections 1.221(c) and 1.221(e) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

19. IT IS FURTHER ORDERED, that Pine Tree Media, Inc., its successors and assigns and/or those persons now in control of Station KARW shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Commission's Rules.

20. IT IS FURTHER ORDERED, that the Secretary of the Commission send a copy of this Hearing Designation Order by *Certified Mail - Return Receipt Requested* to Pine Tree Media, Inc., American Plastics, H. E. Ferrell and Robert Dub Murray.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary