

FCC MAIL SECTION

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

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DISPATCHED BY MAIL Docket No. 93-56

In re Applications of

CHESTNUT BROADCASTING COMPANY File No. BRH-900604YE

For Renewal of License of
Station KBER-FM,
Ogden, Utah

STREET STRYDER File No. BRH-900601A3

For Renewal of License
of Station KUJJ-FM¹
Spanish Fork, Utah

STREET STRYDER File No. BALH-940119GE
Assignor

and

BAJAMAR BROADCASTING, L.L.C.
Assignee

For Consent to Assignment of
Station KUJJ-FM
Spanish Fork, Utah

MEMORANDUM OPINION AND ORDER

Adopted: October 19, 1994; Released: October 26, 1994

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority,² has before it a Petition for Distress Sale Relief filed January 18, 1994, by Street Stryder ("Stryder"); and an Application for Consent to the Assignment of Station KUJJ-FM from Stryder to Bajamar Broadcasting, L.L.C. ("Bajamar"). Stryder seeks permission to assign the KUJJ-FM license to Bajamar pursuant to the Commission's minority distress sale policy. We will grant Stryder's request.

BACKGROUND

2. By *Hearing Designation Order and Notice of Forfeiture*, 8 FCC Rcd 2493 (1993), the Commission designated for hearing the applications for renewal of license of C. Devine Media, Inc.³ ("Devine") and of Stryder, on the following issues:

(a) to determine whether Devine and Stryder violated Section 73.3555(a)(2) of the Commission's Rules by engaging in a sham assignment of the license of Station KQOL-FM, Spanish Fork, Utah, from Devine to Stryder;

(b) To determine whether Stryder violated Section 73.3540 of the Commission's Rules and Section 310(d) of the Communications Act by engaging in an unauthorized assignment of the license of Station KQOL-FM to Steve Evans, the brother-in-law of Chris Devine, one of the principals of C. Devine Media, Inc.,

(c) To determine whether Devine and Stryder violated Sections 73.1015 and 1.17 of the Commission's Rules by making misrepresentations to the Commission concerning the foregoing;

(d) To determine, in light of the evidence adduced under the foregoing issues, whether Devine and Stryder possess the requisite qualifications to warrant the grant of the applications for renewal of the licenses of Station KBER-FM and KQOL-FM.

3. The Commission's general policy is that, where, as here, character qualifications issues have been designated against a licensee in a renewal or revocation hearing, the license cannot be assigned until the licensee is found qualified. *Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964). In *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978), the Commission established an exception to that proscription to allow distress sales to minority controlled entities. In order to qualify for distress sale relief, an applicant must satisfy three main criteria: 1) that the hearing has not yet commenced; 2) that the proposed transferee is minority controlled; and 3) that the station to be conveyed is sold at a maximum of 75% of its fair market value. *See Broadcasting Corp.*, 76 FCC 2d 462 (1980); *Clarification of Distress Sale Policy*, 44 RR 2d 479 (1978); *Statement of Policy*. The buyer and seller are each required to submit an appraisal of the fair market value of the station. *See Broadcasting Corp.*

DISCUSSION

4. The parties have met the threshold criteria for relief by distress sale. First, the hearing has not yet commenced. Second, Bajamar, the assignee, is minority controlled. Bajamar is a limited liability company organized under the laws of the state of Utah. Such a company affords its principals the same legal protections as a corporation, but is treated like a partnership for income tax purposes. Bajamar's manager and 21% owner, William J. Garcia, is Hispanic. Garcia has 51% voting control of Bajamar. *See*

¹ Formerly KQOL-FM.

² *See Faith Center, Inc.*, 54 RR 2d 1286, 1287 n.11 (1983); *Minority Ownership in Broadcasting*, 92 FCC 2d 849, 859 (1982).

³ C. Devine Media, Inc. later changed its name to Chestnut Broadcasting Company ("Chestnut"). Chestnut has petitioned for distress sale relief as well. That petition is pending.

Minority Ownership in Broadcasting, at 854. Finally, the parties have shown that the sale price for KUJJ-FM is 75% of its fair market value.

5. The parties have submitted two appraisals of the stations by recognized media brokerage firms. One appraisal is by Blackburn & Co., Inc., and the other is by Star Media Group, Inc. Both value the station at \$500,000 on the date of designation of the above-captioned proceeding for hearing. The total consideration to be paid under the sales contract is \$375,000, which is 75% of the appraised value.

6. Stryder will provide seller financing for two-thirds of the \$375,000 purchase price through a promissory note to be executed by Bajamar at closing. The rate of interest on the note is 10%. Both appraisals indicate that this interest rate is reasonable. Moreover, the contract provides that the seller will not retain a right of reversion, and will not have a right to reassignment of the station or a right to use the facilities. Under such circumstances, we do not consider execution of the promissory note to be a bar to approval of distress sale relief in this case.

7. The parties have disclosed all the facts and circumstances regarding the distress sale agreement, including the negotiations relating thereto and the consideration to be exchanged. *KND Corp.*, 48 RR 2d 631, 634 (1980). The assignment application has been processed. The assignee has been found fully qualified to be a Commission licensee.

ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, That the Petition for Distress Sale Relief filed January 18, 1994, by Street Stryder IS GRANTED; And That the Application for Consent to the Assignment of Station KUJJ-FM from Stryder to Bajamar Broadcasting, L.L.C. (File No. BALH-940119GE) IS GRANTED. IT IS FURTHER ORDERED, That the application for renewal of license of KUJJ-FM (BRH-900601A3) IS GRANTED and this proceeding IS TERMINATED, as it pertains to Stryder and KUJJ-FM only, provided that if the pending assignment to Bajamar is not consummated within 90 days, the action taken herein shall be void and the renewal application for KUJJ-FM will be returned to hearing status.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau