

## Federal Communications Commission

DA 95-207

FCC MAIL SECTION

Before the  
 Feb 16 7 48 PM '95  
 Federal Communications Commission  
 Washington, D.C. 20554

DISPATCHED BY  
 MM Docket No. 93-56

In re Applications of

CHESTNUT LIMITED File No. BRH-900604YE  
 LIABILITY COMPANY<sup>1</sup>

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

CHESTNUT LIMITED File No. BALH-941110GH  
 LIABILITY COMPANY  
 (Assignor)

and

RADIOWEST  
 COMMUNICATIONS, L.P.  
 (Assignee)

For Consent to Assignment of License of  
 Station KBER-FM, Ogden, Utah

## MEMORANDUM OPINION AND ORDER

Adopted: February 8, 1995; Released: February 16, 1995

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority,<sup>2</sup> has before it: (a) a Petition for Distress Sale Relief, filed on November 10, 1994, by Chestnut Broadcasting, Inc. ("CBI"); (b) an Application on FCC Form 314 for Consent to the Assignment of License of Station KBER-FM, Ogden, Utah, from CBI to Radiowest Communications, L.P. ("Radiowest"), also filed on November 10, 1994; and (c) amendments to the above referenced application, filed on January 10 and 25, 1995.<sup>3</sup>

2. The current licensee of KBER-FM, CLLC, seeks to avoid a hearing in this proceeding by availing itself of the Commission's minority distress sale policy and assigning the license for KBER-FM to Radiowest. See *Statement of*

*Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978) ("*Minority Distress Sale Policy*"). For the reasons that follow, we will grant the requested relief.

3. By *Hearing Designation Order and Notice of Forfeiture*, 8 FCC Rcd 2493 (1993), the Commission designated for hearing the applications of C. Devine Media, Inc. ("Devine"), for renewal of license of KBER-FM, and of Street Stryder ("Stryder"), for renewal of license of KQOL-FM, Spanish Fork, Utah. The Commission specified 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 Stations KBER-FM and KQOL-FM.

4. It is the Commission's general policy not to permit the assignment of station licenses in cases, like the instant one, where issues involving the basic character qualifications of the licensee have been specified and remain unresolved. *Jefferson Radio Co. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964). In *Minority Distress Sale Policy*, however, the Commission established an exception to its general policy to allow distress sales to qualified minorities. In order to qualify for distress sale relief, an applicant must satisfy three requirements: (a) the hearing must not have yet commenced; (b) the proposed assignee must be minority controlled; and (c) the station to be conveyed must be sold at no more than 75% of its fair market value. *Lee Broadcasting Corp.*, 76 FCC 2d 462 (1980); *Clarification of Distress Sale Policy*, 44 RR 2d 479 (1978). Additionally, the buyer and seller are each required to submit an appraisal of the fair market value of the station. *Lee Broadcasting Corp.*, 76 FCC 2d 462 (1980).

5. In the instant case, the parties appear to have satisfied all of the requirements for relief pursuant to the Commission's *Minority Distress Sale Policy*. First, the hearing has

<sup>1</sup> The licensee was formerly Chestnut Broadcasting, Inc., which, in turn, was formerly C. Devine Media, Inc.

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

<sup>3</sup> The captioned FCC Form 314 application proposing the assignment of license to Radiowest originally identified the licensee/assignor as CBI. However, subsequent to the filing of the FCC Form 314, CBI filed an application on FCC Form 316 (File No. BALH-941219GM) requesting, for tax-related purposes, au-

thority for consent to the assignment of license of KBER-FM from CBI to Chestnut Limited Liability Company ("CLLC"), a holding company with an ownership structure identical to CBI. The Commission granted the FCC Form 316 application on December 30, 1994, and the transaction was consummated that same day. The first of the two amendments seeks to conform the pending FCC Form 314 application and related documents to reflect that the licensee/assignor of KBER-FM has been changed to CLLC.

not yet commenced. Second, Radiowest, the proposed assignee, is minority controlled. Radiowest is a limited partnership. C. Harris, Inc. a Utah corporation, is the general partner with a 26% equity interest in Radiowest. Curtis Harris ("Harris"), an African-American, owns 80% of the voting stock in C. Harris, Inc. Since Harris controls C. Harris, Inc., which in turn is Radiowest's general partner, Radiowest qualifies as a minority-controlled entity under the *Minority Distress Sale Policy*. Finally, as discussed more fully below, the parties have adequately demonstrated that the proposed sale price for KBER-FM does not exceed 75% of the station's appraised fair market value.

6. The parties have submitted three appraisals of the stations. One appraisal, by Star Media Group, Inc., places the station's fair market value at \$2,260,702, as of April 1993, when the station license was designated for hearing. A second appraisal, by William R. Rice Co., places KBER-FM's April 1993 value at \$2,150,000. Because the difference between the two appraisals is more than 5% of the average of the two appraisals, the parties have submitted a third appraisal. The third appraisal, by Norman Fisher & Associates, Inc., places the fair market value of the station as of April 1993 at \$2,202,875. The average of the three appraisals -- and, thus, the fair market value of the station for distress sale purposes -- is \$2,204,526. Since the proposed sale price for KBER-FM is \$1,650,000, and this amount is less than 75% of the fair market value of the station ( $0.75 \times \$2,204,526 = \$1,653,394$ ), the proposed sale price satisfies the requirements for distress sale relief. *Patrick Henry*, 79 FCC 2d 393, 395 (1980), *clarifying Grayson Enterprises, Inc.*, 77 FCC 2d 156, 163-64 (1980).

7. The parties have represented that all facts and circumstances regarding the distress sale, including negotiations relating thereto and the consideration to be exchanged, have been disclosed. Furthermore, the assignment application and related documents have been processed, and the assignee, Radiowest, has been found to be basically qualified to be a Commission licensee.

8. ACCORDINGLY, IT IS ORDERED, that the Petition for Distress Sale Relief IS GRANTED.

9. IT IS FURTHER ORDERED, that the Application for Consent to the Assignment of License of Station KBER-FM, Ogden, Utah, to Radiowest Communications, L.P., as amended, IS GRANTED.

10. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED, provided, that if the pending assignment to Radiowest Communications, L.P. is not consummated within 90 days of the date of this *Memorandum Opinion and Order*, the action taken herein shall be void, and the renewal application for KBER-FM shall be returned to hearing status.

#### FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart  
Chief, Mass Media Bureau