

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

MM Docket No. 93-265

In re Application of

PINE TREE
MEDIA, INC.

File No. BR-900817UF

For Renewal of License of Station KARW
Longview, Texas

Appearances

Dennis J. Kelly, Esq. on behalf of Praise Media, Inc.;
Gary P. Schonman, Esq. and *Robert A. Zauner, Esq.* on
behalf of the Mass Media Bureau, Federal Communications
Commission.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN M. FRYSIAK

Issued: August 15, 1995;

Released: August 21, 1995

PRELIMINARY STATEMENT

1. By *Hearing Designation Order and Notice of Forfeiture*, 8 FCC Rcd 7591 (1993) ("*HDO*"), the Commission designated the application of Pine Tree Media, Inc. ("Pine Tree") for renewal of license of Station KARW(AM), Longview, Texas, for hearing on 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); Section 17.21 through 17.23 (tower painting); Section 73.932 (emergency broadcast equipment); Section 73.1745(a) (transmitter power); Sections 73.1800 and 73.1820 (station logs); and Section 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.

2. The *HDO*, at Section 16, placed the burden of proceeding with the introduction of evidence and the burden of proof on "Pine Tree Media, Inc., its successors or assigns, and/or those now in control of Pine Tree Media, Inc., as appropriate."

3. By *Order*, FCC 95M-64 (released March 2, 1995), the Presiding Judge added the following issues against Pine Tree:

- (1) To determine whether Pine Tree has the capability and intent to expeditiously resume broadcast operations of KARW(AM) consistent with the Commission's Rules.
- (2) To determine whether Pine Tree has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Pine Tree is qualified to be and remain the licensee of Station KARW(AM).

4. Hearings on all of the issues were held in Washington, D.C., on March 21-22, 1995. The record in this proceeding was closed on May 24, 1995. See *Order*, FCC 95M-132 (released May 26, 1995).

FINDINGS OF FACT

Transfer of Control Issue

5. On November 10, 1988, the Commission granted an application for consent to the transfer of control of Pine Tree Media, Inc. ("Pine Tree") from Herbert Wren ("Wren") and Earl Jones ("Jones") to Kenneth Tuck ("Tuck"). Wren, Jones, and Tuck consummated the transfer of control on December 12, 1988. No ownership report was filed. Tuck apparently died sometime in May 1990 (MMB Ex. 1, pp. 1 and 2).

6. Thereafter, on May 17, 1990, the promissory note made by Tuck in payment for the stock of Pine Tree and assets of KARW(AM) was transferred by Wren and Jones to American Plastics Products, Inc. ("American Plastics"). As consideration for the transfer of the Tuck note to American Plastics, Wren and Jones received a promissory note from American Plastics. American Plastics subsequently foreclosed on the Tuck note, acquired the stock of Pine Tree and the assets of KARW(AM), and commenced operating the station. No application for consent to the transfer of control of Pine Tree was filed with the Commission (MMB Ex. 1, p. 2).

7. On August 6, 1991, Wren and Jones foreclosed on the American Plastics note, reacquired the stock of Pine Tree and the assets of KARW(AM), and took over the operation of the station. No application for consent to the transfer of control of Pine Tree was filed with the Commission (MMB Ex. 1, pp. 2 and 3).

8. On February 10, 1992, Eugene Washington and Ray Lee Williams, acting on behalf of Praise Media Inc. ("Praise Media"), executed several documents evidencing

the purchase from Wren and Jones of certain real and personal property comprising KARW(AM) (Praise Ex. 2, p. 5; MMB Ex. 1, Attachment 5). After the transaction was consummated, Praise Media began operating KARW(AM) (Praise Ex. 2, pp. 6-7). No application for consent to the assignment of license of KARW(AM) to Praise Media was filed with the Commission (Praise Ex. 2, p. 6). It was then the belief of Janet Washington, Praise Media's third principal, that the license could be transferred to Praise Media at some unspecified time after Praise Media had paid off its note in full to Wren and Jones (Praise Ex. 2, p. 6).

9. Praise Media was incorporated on March 19, 1992 in the state of Texas. Initially, Eugene Washington was President, Ray Lee Williams was Vice President and Janet Washington was Treasurer. Although the company never issued any stock certificates, the planned ownership structure was for Mr. Washington to own 60 percent of Praise Media, Ms. Washington to own 15 percent of Praise Media and Williams to own 25 percent upon contributing cash or allowing the station to retain his commissions for any advertising sales made by him. Williams made no cash contributions under either option, and he is no longer considered a Praise Media shareholder. Mr. Williams was voted out of his position as Vice President in December, 1992 (Praise Ex. 3, p. 1).

10. At present, Ms. Washington is the only active owner, officer or director of Praise Media. Mr. Washington was incarcerated on drug charges (Praise Ex. 3, p. 1). On July 22, 1994 he gave to Ms. Washington a "Power of Attorney" giving her plenary authority over his property situated *inter alia* in Longview, Gregg County, Texas, and further authorized her to operate and conduct the business of Praise Media and KARW(AM) Radio Station, situated in Longview, Gregg County, Texas (Praise Ex. 12, p. 2). A quit claim deed was filed in Gregg County, Texas conveying Mr. Washington's interest in the station to Ms. Washington (Tr. 71-72), and Mr. Washington is being formally removed as an officer of Praise Media (Praise Ex. 3, p. 1; Tr. 72).

11. Ms. Washington, the only individual to testify at the hearing, has no personal knowledge about events which preceded Praise Media's involvement in KARW(AM). Neither Wren nor Jones nor any principal of Pine Tree or American Plastics offered any testimony or other evidence under this issue.

Misrepresentation Issue

12. On August 17, 1990, the captioned application for renewal of license of KARW(AM) was filed with the Commission. The applicant in the renewal application is identified as "KLGTV - Ken Tuck - Pine Tree Media, Inc."¹ The application bears the signature of "Robert D. Murray" who is identified on the form as "General Manager" of the station (Praise Ex. 6, Attachment A).

13. Although the renewal application references "Ken Tuck" and "Pine Tree," Tuck apparently had died several months before the renewal application was filed, and American Plastics, not Pine Tree, was operating KARW(AM) at the time the renewal application was submitted to the Commission. Murray was never a principal of Pine Tree, and the record is silent as to the nature of his role in American Plastics beyond that of General Manager of KARW(AM). Praise Media disavows any knowledge

about events surrounding the filing of the renewal application, and neither Murray nor anyone else associated with American Plastics offered any evidence under this issue (Praise Ex. 6).

Failure to Respond to Commission Correspondence

14. On September 9, 1992, the Commission directed a letter of inquiry to Mr. H. E. Ferrell, c/o Pine Tree Media, Inc., regarding KARW(AM). The letter sought, among other things, to ascertain whether an unauthorized transfer of control of KARW(AM) had occurred. Praise Media was operating KARW(AM) at the time, and Janet Washington received the letter of inquiry. Because the letter was addressed to Pine Tree rather than Praise Media, and it pertained to activities at KARW(AM) which preceded Praise Media's involvement at the station, Janet Washington decided it was unnecessary to respond to the letter (Praise Ex. 4, p. 1; MMB Ex. 1, pp. 45-47).

15. On September 23, 1992, the Commission directed a second letter of inquiry to Pine Tree. The second letter notified Pine Tree of a deficiency in the pending renewal application for KARW, and it requested the station to submit "appropriate corrective amendments." It also noted that prior attempts to communicate with the licensee had been unsuccessful and requested information as to whether the station was still operating. Janet Washington received the second letter of inquiry and forwarded it to Eugene Washington in Chicago. Praise Media did not respond to this letter (Praise Ex. 4, p. 2; MMB Ex. 1, pp. 49-50).

16. On December 3, 1992, the Commission directed a third letter to Pine Tree regarding KARW(AM). In its third letter, the Commission requested a response to the first (September 9, 1992) letter, and advised that failure to respond to that letter within 15 days could result in the imposition of sanctions. The Commission also noted that it views a failure to respond to official correspondence as a serious matter. Janet Washington received the third letter of inquiry and forwarded it to Eugene Washington in Chicago. Nearly two months later the Mass Media Bureau ("MMB") received a letter, dated January 26, 1993, from Praise Media. In addition to being unsigned, Praise Media's letter failed to respond to several of the questions that the licensee had been directed by the Commission to answer in the three letters of inquiry (Praise Ex. 4, pp. 2 and 3; MMB Ex. 1, pp. 52-53 and 55-78).

17. On February 10, 1993, the Commission sent a fourth letter of inquiry to Pine Tree regarding KARW(AM). The fourth letter included copies of the previous three, and it identified the specific deficiencies in Praise Media's January 26, 1993, correspondence. It noted, for example, that in response to a request to identify the principals of Pine Tree, Praise Media had responded "See enclosed letter." But no letter was enclosed. Pine Tree was warned that failure to respond within 15 days to the Commission's fourth letter could result in the imposition of administrative sanctions, including designation for hearing. Praise Media did not respond to this fourth letter. According to Janet Washington, she did not respond because she had no additional information to provide (Praise Ex. 4, p. 3; MMB Ex. 1, pp. 80-82).

¹ The station's call sign was formerly KLGTV.

Technical Issues

18. Praise Media presented no evidence to meet its burdens under this issue insofar as the licensee's compliance with Section 1.1307(b) (Environmental Assessment) is concerned. Praise Media does maintain, though, that it has properly painted its tower, in compliance with Section 17.21 through 17.23 of the Commission's Rules; installed Emergency Broadcast System equipment, in compliance with Section 73.932 of the Commission's Rules; monitored and regulated (until such time as the station went off the air) KARW(AM)'s transmitter power, in compliance with Section 73.1745(a); and ensured that KARW(AM)'s transmitter logs (until such time as the station went off the air) and public inspection file comply with Section 73.1800, 73.1820 and 73.3526 of the Commission's Rules (Praise Ex. 5, p. 1).

Resumption of Operations Issue

19. On September 13, 1994, KARW(AM) went off the air because of vandalism and equipment problems (Tr. 220-222). Station KARW(AM) returned to the air at the end of September or the beginning of October. After a few weeks, the station went off the air again because of mechanical problems. On November 18, 1994, before the problems could be rectified, Southwestern Electric Power Company ("SWEPCO") disconnected electric power to the station because of non-payment by Praise Media of its electric bills (MMB Ex. 3). Thus, KARW(AM) has remained silent ever since.

20. Janet Washington estimates that to put the station back on the air Praise Media will require at least \$30,000 to purchase a replacement transmitter and other materials (Tr. 240, 242). Initially, Janet Washington testified that she had already placed money in escrow to purchase the necessary equipment (Tr. 93). However, she subsequently testified that she did not have money in escrow with which to put the station back on the air (Tr. 237). Janet Washington also testified that Praise Media had already received a loan from a lending institution (Tr. 224-225). However, documents relating to this loan establish that Praise Media has only applied for a loan (Praise Exs. 9-11). Janet Washington also testified that she has arranged for a loan from an undisclosed friend (Tr. 237). However, she has received nothing in writing from the friend indicating his willingness to provide Praise Media with any money. Other than Janet Washington's testimony, Praise Media offered nothing to support the availability of this loan (Tr. 239). Furthermore, Janet Washington concedes that neither she nor Praise Media has any present intention of spending any money for the purpose of putting KARW(AM) back on the air until the status of the station's license is resolved in Praise Media's favor (Tr. 93, 222, 241).

Silent Station Rules Issue (Section 73.1740 and 73.1750)

21. Although Janet Washington on September 12, 1994, prepared a brief letter notifying the Commission that "due to vandalism and theft of equipment," KARW(AM) was off the air and would remain silent until the stolen equipment was replaced (Praise Ex. 7), the correspondence was never filed with the Commission. Janet Washington also telephoned the Commission in an attempt to orally inform the agency that KARW(AM) had ceased operations. Although she spoke with Commission employees in several different offices, Janet Washington was not successful in finding the correct office to inform (Tr. 83-90; Praise Ex. 7).

Lack of Candor/Misrepresentation

22. The MMB advances that misrepresentation and lack of candor findings regarding Janet Washington's testimony at the hearing should be made. The MMB maintains that Janet Washington lacked candor in her testimony about the availability of a loan to help restore KARW(AM) to operational status and dissembled concerning KARW(AM)'s silent status, her lawsuit against electric company official and her husband's incarceration.

23. Although no misrepresentation/lack of candor issues had been specified against Praise Media and Janet Washington, it is axiomatic that the credibility of a witness is always at issue. No issue need be specified in this respect. See *RKO General, Inc.*, 78 FCC 2d 104 (1980). A misrepresentation is a false statement of fact made with the intent to conceal. Lack of candor involves concealment, evasions and other failures to be fully informative. See *Fox River Broadcasting, Inc.*, 93 FCC 2d 127 (1983).

24. *Availability of Loan.* At Tr. 224-225, Janet Washington alleged that she had a loan in place to help restore KARW(AM) to operational status. However, the documents she produced in support of this assertion (Exhibits 9, 10 and 11) indicate only that Janet Washington applied for a loan. At Tr. 92 and 95, Janet Washington alleged that she had invested nearly \$200,000 in the radio station since taking it over. Later in her testimony she disclosed that of the \$200,000 mentioned, \$20,000 came from Don Grant who gave her the money in a single lump sum which she counted out (Tr. 192-95). However by letter dated May 19, 1995, counsel for Praise Media stated that Don Grant's loan was not made all at once, but over time (MMB Ex. 10, p. 1; Tr. 320-21).

25. *KARW(AM)'s Silent Status and Lawsuit Against Birdsong.* At Tr. 149-150, Janet Washington testified that KARW(AM) continued to receive electric power after November 18, 1994. She claimed to have had personal knowledge that the electricity was on when she visited KARW(AM) in December 1994 (Tr. 142-143). After testifying that the station had power in December, Janet Washington was shown a letter, dated January 26, 1995, from B. M. Birdsong, Area Manager for SWEPCO. In his letter Mr. Birdsong stated that electric power to KARW(AM) had been off continuously since November 18, 1994 (MMB Ex. 3). Janet Washington claimed that the letter was "totally incorrect:" she attacked Birdsong personally, asserting that "this is why Mr. Birdsong is going to court;" and she testified unequivocally that Birdsong "is currently being sued" by her for informing the Commission that the station was off the air because of lack of electricity. The next day, however, Janet Washington returned to the witness stand and conceded that KARW(AM) was in fact without any electric power during the month of December (Tr. 132, 158). Further, she testified that she has no lawsuit pending against the SWEPCO official (Tr. 290).

26. *Eugene Washington's Incarceration.* Janet Washington indicated that Eugene Washington was unavailable to testify in this proceeding because he is incarcerated. When pressed as to why her husband is in prison, Janet Washington claimed that she did not know the reason for his incarceration. However, in direct written testimony given months earlier, Janet Washington had represented that Eugene Washington is serving time in a federal prison on drug-related charges (Praise Ex. 3, p. 1). The next day, while still claiming she did not know the "exact reason"

for Eugene's incarceration, she testified that the charge was "[a] drug conspiracy, wire tapping or something like that." (Tr. 290).

CONCLUSIONS OF LAW

Transfer of Control Issue

27. Pine Tree is the licensee of record. It is undisputed that an unauthorized transfer of control occurred in 1990 when American Plastics took over KARW(AM) and in 1991 when Wren and Jones reacquired the station. Praise Media acquired control of KARW(AM) on February 10, 1992 and it readily concedes that the Commission never approved this transfer.

28. Section 310(d) of the Communications Act of 1934, as amended, states in pertinent part:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit for license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

29. It follows that each of the above cited transfers was made in violation of Section 301(d) of the Communications Act of 1934, as amended. The transfer of control must be and IS RESOLVED against Pine Tree and against Praise Media.

Misrepresentation Issue

30. The misrepresentation issue deals with the allegations made in the renewal application for KARW(AM) filed on August 17, 1990. Pine Tree did not appear in this proceeding and did not otherwise respond to this issue. This issue IS RESOLVED against Pine Tree.

31. This misrepresentation issue specified in the HDO does not concern Praise Media since Praise Media was in no way involved in the preparation or filing of the renewal application for KARW(AM).

Failure to Respond to Commission Correspondence

32. The record reflects that the Commission directed mailings to Pine Tree Media on September 9, 1992, September 23, 1992 and December 3, 1992. Janet Washington disregarded the first mailing because it was not addressed to her even though Praise Media claims to be a successor in interest to Pine Tree Media. She forwarded the other two mailings to Eugene Washington in Chicago. Praise Media finally filed a response, though incomplete, on January 26, 1993. A fourth Commission letter was sent February 10, 1993, but Praise Media did not respond to this letter.

33. Section 73.1015 of the Commission's Rules provides:

The Commission or its representatives may, in writing, require from any applicant, permittee, or licensee 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, or to any other matter within the jurisdiction of the Commission

34. All of the Commission's letters addressed important and urgent matters. They also warned the addressee of dire consequences upon failure to respond. Praise Media as successor to Pine Tree Media was grossly negligent in failing to respond promptly and correctly to the Commission's inquiries. Janet Washington's failure to respond to official Commission inquiries manifests that she is unreliable and renders Praise Media unfit to hold the KARW(AM) license. The issue IS RESOLVED against Praise Media.

Technical Issue

35. Praise Media's allegations that it has complied with Sections 17.21 through 17.23 (tower painting); Section 73.932 (emergency broadcast equipment); Section 73.1745(a) (transmitter (power)); Sections 73.1800 and 73.1820 (station logs); and Sections 73.3526 (public file) have not been challenged. Praise Media, however, has failed to provide the Environmental Assessment required by Section 1.1307(b) of the Commission's Rules and the MMB requests that any grant herein should be conditioned on Praise Media submitting a proper Environmental Assessment. The issue IS RESOLVED favorably except that the Environmental Assessment is still outstanding.

Resumption of Operations Issue

36. Station KARW(AM) has been off the air since at least November 18, 1994, in part, because Praise Media could not afford to pay the station's electric bill. The record shows that Praise Media does not have the present wherewithal to restore station operation nor is Janet Washington inclined to restore station operation pending the resolution of the license status. Praise Media is in no position to expeditiously return KARW(AM) to the air. The issue IS RESOLVED against Praise Media.

Silent Station Rules Issue

37. The record is clear that although she may have tried, Janet Washington failed to notify the Commission that KARW(AM) went off the air on September 13, 1994. Furthermore at no time did Praise Media request authority from the Commission for KARW(AM) to remain silent beyond 30 days. These failures are clearly in violation of the Commission's Rules. Section 73.1740(a)(4) of the Commission's Rules provides that:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the

allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuation of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation.

The issue IS RESOLVED against Praise Media.

Testimony - Misrepresentation/Lack of Candor

38. The record indicates that Janet Washington has made numerous false statements during her testimony. The statements were made to mislead the Commission into acting favorably on the issues specified in this proceeding. Although some false statements were recanted or modified, the overall demeanor of this witness manifested that she cannot be relied upon to be at all times truthful. In light of this, it is concluded that Janet Washington d/b/a Praise Media is not qualified to be a Commission licensee.²

ULTIMATE CONCLUSIONS

39. Pine Tree has not appeared in this proceeding to address the issues specified against it. The record is clear that Pine Tree, without Commission authority transferred control of its license twice; once to American Plastics and then to Praise Media. The record also contains ample evidence that Praise Media, the alleged successor to Pine Tree, is not qualified to be a Commission licensee.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the decision on its own motion in accordance with Section 1.276 of the Rules, the renewal application of Pine Tree Media, Inc. (File No. BR-900817UF) and its alleged successor in interest, Praise Media, Inc. IS DENIED.³

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
Administrative Law Judge

² Praise Media argues that Praise Media's rule violations should be overlooked because they are no more egregious than the violations of applicants in certain other cases where the Commission resolved the specified issues favorably. The cases cited in support are totally inapposite. None bear the least resemblance to the fact situation herein. Praise Media's argument is

deemed specious and is rejected.

³ In the event exceptions are not filed within 30 days after the release of this Supplemental Initial Decision and the Commission does not review the case on its own motion, this Supplemental Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).