

RECEIVED

OCT 16 1996

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

In the Matter of ) MM Docket No. 96-116  
HOMETOWN MEDIA, INC. )  
For Renewal of License ) File No. BR-950601B9  
for Station WAYB(AM) )  
Waynesboro, Virginia )

DOCKET FILE COPY ORIGINAL

To: The Commission

MASS MEDIA BUREAU'S EXCEPTIONS

1. On September 17, 1996, Administrative Law Judge Joseph Chachkin ("the Presiding Judge") released a *Summary Decision*, FCC 96D-06 ("*Summary Decision*") granting the license renewal application of Hometown Media, Inc. ("Hometown"), licensee of Station WAYB(AM), Waynesboro, Virginia. The Mass Media Bureau ("Bureau"), pursuant to Section 1.251 of the Commission's Rules, 47 C.F.R. §1.251, hereby seeks Commission review of the *Summary Decision*.

2. Background. The WAYB renewal application was designated for hearing on issues to determine whether the applicant has the capability and intent to expeditiously resume WAYB's broadcast operations; whether the applicant violated Sections 73.1740 and/or 73.1750 of the Commission's Rules and, in light of the preceding, whether grant of the renewal application would serve the public interest. *See Hearing Designation Order* in MM Docket No. 96-116, DA 96-813, released May 22, 1996 ("*HDO*").

No. of Copies rec'd  
List A B C D E

027

3. On July 11, 1996, Hometown filed a motion for summary decision seeking a favorable disposition of the designated issues.<sup>1</sup> Hometown stated that before the renewal application was designated for hearing, it agreed to assign the license to a group that formed Valley Communications L.C. ("Valley") for the purpose of constructing and then acquiring the station. Since that time, principals of Valley were in negotiations to: recover the equipment from the licensee's creditor; purchase any other needed equipment; and purchase a tower. Hometown further asserted that an agreement to transfer assets was signed two days after the renewal application was designated for hearing, and that the proposed assignee had prepared and would file an assignment application and return the station to the air. Hometown also pledged to: employ a principal of Valley as the General Manager of the station; enter into a Local Marketing Agreement ("LMA") with Valley until the assignment is approved; and lease a studio site and broadcast equipment from Hometown's major creditor until the assignment is approved. In the event the proposed assignment is not approved, Hometown stated that the equipment lease, studio lease and the LMA will continue in effect for a year, with an option to renew.

4. Hometown admits that it violated Section 73.1740(a)(4) of the Rules by failing to request authority to remain silent. According to Hometown, its principal "simply lost track of the time" and "was distracted by other matters." Nevertheless, Hometown claims that the issuance of a summary decision in its favor is warranted in light of its plan to resume service expeditiously.

---

<sup>1</sup> On July 17, 1996, Hometown filed a supplement to its motion.

5. On July 23, 1996, the Bureau filed an opposition to Hometown's motion for summary decision and a countermotion for summary decision. The Bureau argued that summary resolution of the issues in this proceeding was appropriate, but that Hometown had not met its burden under the issues and that its renewal application should be denied. The Bureau pointed out that prior to the designation of its application for hearing, Hometown had done virtually nothing to restore WAYB's operations. Moreover, the Bureau noted that Hometown's present plan to restore service was based on a proposed assignment application which was never filed and a plan to reconstruct the station directly related to that prospective assignment. The Bureau argued that Hometown's pre-designation conduct was dilatory at best, and that securing a potential assignee was not sufficient to meet its burdens under the issues.<sup>2</sup>

6. In granting summary decision, the Presiding Judge found that Hometown's plan will permit WAYB to return to the air expeditiously and thus resolved that issue in Hometown's favor. Addressing the Bureau's arguments in one footnote, the Presiding Judge stated that the Bureau's characterization of Hometown's predesignation efforts to restore WAYB operations as dilatory was not borne out by the facts. The Presiding Judge found that assignment of the license to others who would return the station to the air was sufficient to

---

<sup>2</sup> The Bureau also stated that Hometown's proposal was to use an LMA as a vehicle to transfer control of WAYB to Valley pending assignment of the station license to it. In this regard, the Bureau stated that while Hometown may seek to assign or transfer the WAYB license, it cannot do so before it has a renewed license to convey. See *Stereo Broadcasters, Inc. v. FCC*, 652 F. 2d 1026, 1027 (D.C.Cir. 1981).

meet the issue. In addition, he found Hometown's violation of Section 73.1740 of the Commission's Rules was not disqualifying. Thus, the Presiding Judge's ultimate conclusion was that the public interest would be served by the grant of Hometown's renewal application.

7. In concluding that the Bureau had failed to establish that Hometown's effort to restore WAYB to operational status was dilatory,<sup>3</sup> the Presiding Judge focuses on the post-designation actions taken by the licensee, while ignoring the licensee's pre-designation record that led the Bureau to designate this case for hearing. A licensee's record during its license term, however, is always a relevant consideration in evaluating its renewal application. Here, the Presiding Judge failed to consider that, except for a period of six months, WAYB has been off the air continuously since 1990 or 1991.<sup>4</sup> Thus, for over half a decade, the citizens of Waynesboro have received virtually no service from this station licensed to their community. While Hometown was not the licensee during all of this time, it is responsible for this station being off the air since March, 1995, and being off the air without authority since February 16, 1996. This record clearly raises questions as to the viability of WAYB in general as well as Hometown's intent to return the station to the air in specific.

8. The Presiding Judge notes that "issue (1) speaks to the present, not the past."<sup>5</sup> But, it is by examining the past that the Commission can make reliable predictions about the

---

<sup>3</sup> *Summary Decision*, at n.4.

<sup>4</sup> *Id.* para. 3.

<sup>5</sup> *Summary Decision*, at n.4.

future. Here we have a licensee that in its June 1, 1995, renewal application told the Commission that it was concluding negotiations "with a Waynesboro businessman who has the financial ability to put the radio station back on the air" and that "a FCC Form 315 application should be filed with the Commission requesting a transfer of control to this individual."<sup>6</sup> No such application was ever filed. In the meantime, the station remained silent. When the station failed to renew its special temporary authority ("STA") to remain silent, the Bureau designated Hometown's renewal application for hearing. The licensee's only excuse for not renewing its STA in a timely fashion was that its principal forgot. Now that the Bureau has expended resources preparing and issuing a designation order in this case, the licensee suddenly claims it has discovered a buyer. In light of the record of dilatoriness of this licensee, the Bureau submits that this is too little and too late.

9. Additionally, the *Summary Decision* serves to reward an otherwise dilatory licensee's post-designation efforts to return the station to the air by doing nothing other than securing another party to fulfill the functions and obligations of the licensee. After taking WAYB silent, Hometown did nothing to return the station to the air, other than seek a purchaser of the station. It is now too late to sell WAYB.

10. It is long-standing Commission policy that renewal applicants whose applications have been designated for hearing are not permitted to transfer the license; a licensee has nothing to assign or transfer unless and until it has established its own qualifications to merit

---

<sup>6</sup> *HDO*, para. 2.

license renewal. The Commission has stated:

[W]here an evidentiary hearing has been designated on a renewal application . . . , permitting the suspected wrongdoer to evade sanction by transferring his interest or assigning the license without a hearing will diminish the deterrent effect which revocation or renewal proceedings should have on broadcast licensees.<sup>7</sup>

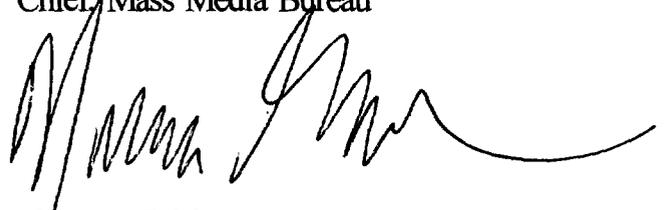
It is clear that had Hometown filed a post-designation application to assign the WAYB license to Valley, such an assignment could not be granted prior to the resolution of the hearing issues. Therefore, Hometown's efforts to assign the license should not provide the basis for the grant of its renewal application, which will then effectively permit the otherwise prohibited outright assignment of the WAYB license to Valley. A similar conclusion is warranted with regard to Hometown's proposal to enter into an LMA with the potential purchaser of WAYB. It appears that the sole purpose for Hometown's proposed LMA is to postpone the filing of an assignment application until after the station's license is renewed, in an attempt to avoid having to deal with the issues specified in the *HDO*. A renewal applicant designated for hearing should not be permitted to avoid a resolution of the hearing issues and achieve the same prohibited result of effectively assigning the license to others through the use of an LMA such as that proposed here and condoned in the *Summary Decision*.

---

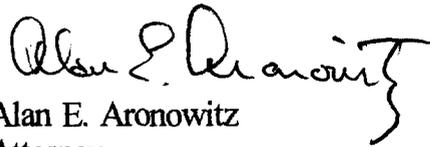
<sup>7</sup> *Northland Television, Inc.*, 42 RR 2d 1107, 1110 (1978).

11. Conclusion. In light of the above discussion, the Commission should reverse the *Summary Decision* and, upon further review, enter Summary Judgment for the Bureau, deny Hometown's renewal application, and terminate this proceeding.

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau



Norman Goldstein  
Chief, Complaints &  
Political Programming Branch



Alan E. Aronowitz  
Attorney  
Mass Media Bureau

Federal Communications Commission  
2025 M Street, N.W.  
Suite 7212  
Washington, D.C. 20554  
(202) 418-1430

October 16, 1996

CERTIFICATE OF SERVICE

Talya Lewis, a secretary in the Enforcement Division, Mass Media Bureau, certifies that she has on this 16th day of October 1996, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Exceptions**" to:

Hometown Media, Inc.  
c/o William D. Silva, Esq.  
5335 Wisconsin Ave., NW  
Washington, DC 20015-2003

  
Talya Lewis