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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	MM Docket No. 96-223
)	
Quality Broadcasting, Inc.)	File No. BR-951130C7
)	
For Renewal of License)	
for Station WNEX(AM))	
Macon, Georgia)	
To: Administrative Law Judge		
Arthur I. Steinberg		

MASS MEDIA BUREAU'S COMMENTS
IN SUPPORT OF MOTION BY QUALITY BROADCASTING, INC
FOR SUMMARY DECISION

1. On February 4, 1997, Quality Broadcasting, Inc. ("Quality") filed a motion for summary decision. The Mass Media Bureau submits the following comments in support.

2. Quality seeks favorable summary decision of the following issues specified in the Hearing Designation Order (HDO), DA 96-1833, released November 7, 1996:

- (1) To determine whether Quality Broadcasting Company, Inc. has the capability and intent to expeditiously resume the broadcast operations of WNEX(AM), consistent with the Commission's Rules.
- (2) To determine whether Quality Broadcasting, Inc. 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 preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

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Background

3. Quality is the licensee of WNEX(AM), Macon, Georgia. On June 19, 1996, Quality requested special temporary authorization ("STA") to remain silent. In its request, Quality informed the Commission that fire had destroyed the station's studio in August 1994, and that, since then, the station had been vandalized several times. Quality also stated that a prospective buyer had refused to consummate an assignment subsequent to Commission grant of the application (File No. BAL-940629EA, granted August 28, 1994). Quality further related that because all subsequent attempts to sell the station had failed, it planned to sell the station to the son of the licensee's principal. Quality finally stated that it would submit a status report outlining a timetable for the filing of an assignment application. On September 16, 1996, Quality filed a letter indicating that an assignment application would be filed by September 30, 1996. However, no such application was filed. Moreover, the staff did not grant the STA to remain silent.

Quality's Motion

4. Quality states that it resumed operations on Station WNEX on November 22, 1996, and that it will remain on the air for the foreseeable future. Further, it reports that on December 13, 1996, an application to assign the license of Station WNEX from Quality to TM Communications, Inc. was filed (File No. BAL-961213GJ). Quality relates its understanding, resulting from a conversation with a Commission employee, that no objection

was lodged against the assignment application. From the foregoing, Quality contends that summary decision in its favor is appropriate.

Discussion

5. Section 1.251 of the Commission's Rules provides that the presiding judge may grant a motion for summary decision only in the absence of a genuine issue of material fact for determination at the hearing. See New Broadcasting Corp., 44 FCC 2d 386 (Rev. Bd. 1973); Salem Broadcasting Co., 30 RR 2d 995 (ALJ 1974). In order to sustain such a motion, the burden is on the moving party to demonstrate that no genuine issue as to any material fact remains and that it is otherwise entitled to summary decision. Telecorpus Inc., 30 RR 2d 1641, 1644 (ALJ 1974). Therefore, it must be established that "the truth is clear," that "the basic facts are undisputed," and that "the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts." Big Country Radio, Inc., 50 FCC 2d 967 (Rev. Bd. 1975). It is the Mass Media Bureau's position that no genuine issues of any material fact remain.

6. Issue (1) seeks to determine whether Quality has the capability and intent to expeditiously resume the broadcast operations of the station consistent with the Commission's Rules. Given that Quality has resumed broadcasting, has operated for nearly 3 months, and has submitted an assignment application, it should be concluded that Quality has the capability and intent to resume broadcasting. Issue (1) should be resolved in Quality's favor.

7. Issue (2) seeks to determine whether Quality has violated Section 73.1740 and/or Section 73.1750 of the Commission's Rules. Pursuant to Section 73.1740, Quality was obligated to submit an informal written request to remain silent when it was unable to continue station operations due to circumstances beyond its control. Pursuant to Section 73.1750, Quality should have notified the Commission of permanent discontinuance of station operation and forwarded the station's license to the Commission for cancellation if Quality intended to permanently discontinue operation of WNEX(AM).

8. With respect to Quality's compliance with Section 73.1740 of the Commission's Rules, the Bureau submits that the proper conclusion is that willful and repeated violations occurred. In this regard, Quality's June 1996 STA request indicates that the station went off the air nearly two years earlier (August 1994) but that previous notification of that fact had never been sent to the Commission. Moreover, the Commission did not grant the STA. Thus, from August 1994 until November 22, 1996, Quality was off the air without authority. In any event, Quality has submitted no evidence regarding its compliance with Section 73.1740. See Victorson Group, Inc., 6 FCC Rcd 1697, 1701 (Rev. Bd. 1991). Accordingly, it should be concluded that Chester violated Section 73.1740 from August 1994 to November 22, 1996.

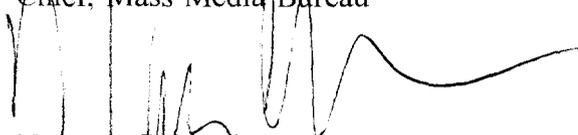
9. Concerning Section 73.1750 of the Commission's Rules, Quality's return to the air and its submission of an assignment application, indicate that Quality never intended to

discontinue operation of WNEX(AM). Furthermore, Quality's application for a renewal of license as opposed to turning in its license is indicative of its intent to resume broadcasting as soon as a buyer could be found. It therefore appears that Quality did not violate Section 73.1750 of the Rules.

10. Issue (3) seeks to determine whether Quality is qualified to be and remain the licensee of WNEX(AM). Quality's resumption of broadcasting on WNEX(AM) indicates that it is qualified to be and remain the station's licensee. The ultimate decision for summary decision in this case is whether Quality's license to operate WNEX(AM) should be renewed. Quality willfully and repeatedly violated Section 73.1740 of the Commission's Rules, but the violations, when considered in light of Quality's returning Station WNEX(AM) to the air, do not justify denial of renewal. Therefore, the license renewal application should be granted.

11. In sum, the Bureau supports summary decision of the issues, grant of the above-captioned renewal application, and termination of this proceeding.

Respectfully submitted,
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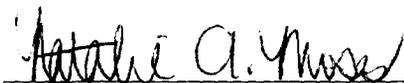
February 18, 1997

CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Complaints & Political Programming Branch, Mass Media Bureau, certifies that she has on this 18th day of January 1997, sent by regular United States mail, copies of the foregoing "Mass Media's Comments in Support of Quality Broadcasting, Inc.'s Motion for Summary Decision" to:

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