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

MAY 23 2006

Federal Communications Commission
Office of Secretary

In re Application of:)
)
 LIBERTY PRODUCTIONS,)
 A LIMITED PARTNERSHIP)
 (Assignor))
)
 SAGA COMMUNICATIONS OF)
 NORTH CAROLINA, L.L.C.)
 (Assignee))
)
 For Assignment of)
 License of)
 Station WOXL-FM)
)
 and)
)
 LIBERTY PRODUCTIONS,)
 A LIMITED PARTNERSHIP)
)
 For Construction Permit)
 for a New FM Station)
)
 For License to Cover)
 for Station WOXL-FM)
)
 Facility No. 37242)
)
 Biltmore Forest,)
 North Carolina)
)
 To: The Secretary
 Attention: Chief, Media Bureau

File No. BALH-20040116ACT

MM Docket No. 88-577

File No. BPH-870831MI

File No. BLH-20020220AAL ✓

COMMENTS ON SUPPLEMENT OF LIBERTY AND MOTION TO DISMISS

Respectfully submitted,

WILLSYR COMMUNICATIONS, LIMITED PARTNERSHIP

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May 23, 2006

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COMMENTS ON SUPPLEMENT OF LIBERTY AND MOTION TO DISMISS

Willsyr Communications, Limited Partnership ("Willsyr"), by its counsel, pursuant to 47 CFR 1.41, submits its "Comments on Supplement of Liberty and Motion to Dismiss." On May 11, 2006, Liberty Productions, a Limited Partnership ("Liberty"), filed a "Supplement to Opposition to Section 1.41 Request for Commission Action." Therein, Liberty submitted what it styled as a "Clarification of Consent Judgment RE Equitable Distribution," dated May 4, 2006. In response, Willsyr requests the immediate dismissal of Liberty's applications for assignment (BALH-20040116ACT) and for grant of construction permit (BPH-870831MI and BLH-20020220AAL), which are now pending on reconsideration.

Statement of the Facts

On December 27, 2005, Willsyr submitted to the Commission a copy of a "Consent Judgment Equitable Distribution," dated August 19, 1997, Buncombe County District Court (Case No. 95-CVD-5049, between Valerie Klemmer (now Watts), the General Partner of Liberty, and her husband, Robert Dungan. Therein, Klemmer (Watts) and Dungan voluntarily agreed that the Liberty partnership entity was marital property, that they each had a 50% ownership interest in the partnership as an entity, and that Dungan would receive 50% of the future profits of the partnership.

The 1997 Consent Judgment was never reported to the Commission by Liberty, as required by 47 CFR 1.65, although of probable decisional significance as to the ownership and control of Liberty's then pending application for construction permit.

In a "Section 1.41 Request for Commission Action," filed March 21, 2006, David T. Murray ("Murray"), the 65% limited partner in Liberty at the time of filing its application in 1987, contended that the 1997 Consent Judgment raised troubling questions as to misconduct by Klemmer (Watts) in her dealings with the Commission. In response to Murray's request for Commission action, Klemmer (Watts) and Dungan "clarified" the 1997 Consent Judgment in a re-submission to the state court on May 4, 2006.

In its Supplement, at p. 2, Liberty contends that the 1997 Consent Judgment does not actually mean what it says in plain English on the face of this judicial decree. According to Liberty, what Klemmer (Watts) and Dungan had really intended was not put into words in the 1997 Consent Judgment.

The Clarified Consent Judgment Does Not Alter Dungan's Status as a General Partner and Owner of Liberty

The Clarified Consent Judgment, dated May 4, 2006, does not alter Dungan's status as a general partner and owner of Liberty under the 1997 Consent Judgment. Pursuant to the Clarified Consent Judgment, at Sections 1-4, Dungan is still to receive 50% of the future profits of Liberty. He also still remains at risk for the failure of re-payment of any "loans" that he made to Liberty.

Pursuant to the Uniform Partnership Act and N.C. General Statutes 59-37 (4), a sharing of profits is a "prima facie" presumption of a general partnership. The actual receipt of a

profit is not a necessary prerequisite to consider one a general partner. Anticipation of a future profit suffices. Reddington v. Thomas, 262 S.E.2d 841 (1980).

This presumption of a general partnership is further demonstrated by the fact that Dungan was the "moving force" in the creation of the Liberty partnership in 1987. He introduced Klemmer (Watts) to Murray and struck the business deal between them. Dungan has been intimately and continuously involved in the financial affairs of Liberty since then by "fronting" most of the funding for the application for construction permit. See, Klemmer (Watts) deposition testimony, October 30, 2003, pp. 6-7, 23-30, 68, 76, 78, 96-101; and 1989 hearing testimony. This includes, as acknowledged in Section 4 of the Clarified Consent Judgment, "loans" made to Liberty where Dungan is "at risk" for failure of re-payment, and not Klemmer (Watts) or Liberty.

The 1997 Consent Judgment, at Section 6 (k), in its Findings of Fact, found that the Liberty partnership was "owned" by Dungan and Klemmer (Watts); at Section 9, that the Liberty partnership was part of their "marital estate"; and at Section 12, that Plaintiff (Dungan) had made "investments" in the partnership. Nothing in the Clarified Consent Judgment, dated May 4, 2006, changes any of these admitted facts. This further demonstrates that Dungan remains a general partner and owner of Liberty.

Under North Carolina law, a general partnership is created whenever two or more persons combine their property (including

money) in a common business or venture under an agreement to share the profits (or losses) in equal or specified portions. Johnson v. Gill, 68 S.E.2d 788 (1952); Wike v. Wike, 445 S.E.2d 406 (1994). Here, the Clarified Consent Judgment, dated May 4, 2006, at Section 4, acknowledged that Dungan had put money into the partnership where he was and remains "at risk."

It is noteworthy that the Clarified Consent Judgment, dated May 4, 2006, makes no finding of fact or conclusion of law that Dungan is not and never was a general partner and owner of Liberty. Rather, it states that the 1997 Consent Judgment had "sought to equitably divide the marital property of the parties, including the future value of any interest in Liberty" and that under the clarification such "value may be derived from future profits, distributions, or liquidations, and to repay Dungan for any loans or advances made to Liberty."

Accordingly, the Clarified Consent Judgment, dated May 4, 2006, actually changes nothing as to Dungan's involvement in and relationship to Liberty as a general partner and owner. He is still to be paid a share of the profits in return for his investment in which he was and remains "at risk." This is the sine qua non of being a general partner and owner.

In its Supplement, at p. 2, Liberty misstates what is said in the Clarified Consent Judgment, dated May 4, 2006. According to Liberty, it says that Dungan does not have "any ownership interest in the partnership."

However, there is nothing said to that effect. In fact, the preamble, at para. 2, states that the purpose is the same as the 1997 Consent Judgment, which is to "divide marital property of the parties, including the future value of any interest in Liberty."

In its Supplement, at p. 2, Liberty contends that assignment of a 50% general partnership interest to Dungan could not have occurred because it would have required Klemmer (Watts) obtaining the consent of Murray, the 65% limited partner. However, Liberty's contentions are disingenuous.

In sworn deposition testimony taken on October 30, 2003, pp. 81-82, Klemmer (Watts) stated that after 1990, she did not consider Murray to be a partner and did not treat him as a partner. Thus, by her own admission, she would have had no reason to obtain Murray's consent for Dungan to become a general partner.

Liberty's Applications are Required to be Dismissed

Because Dungan has been a general partner and owner since at least 1997, the pending applications of Liberty (for assignment and for grant of construction permit, now on reconsideration) are required to be dismissed. Dungan's undisclosed involvement as a 50% general partner and owner, after filing of the application for construction permit in 1987, resulted in a transfer of control of Liberty and a major change. See, 47 CFR 73.3573(a)(1) and Grace Missionary Baptist Church, 80 FCC2d 330 (1980). This would have mandated immediate dismissal of Liberty's application for construction permit, at least by 1997, before its grant in 2001.

In its Form 175 to participate in the September 1999 auction for the Biltmore Forest frequency, Liberty failed to disclose its actual ownership and real parties in interest by not noting Dungan's 50% general partnership and ownership interest that had been acknowledged in 1997 to a North Carolina court, or even noting that Dungan has a future interest in the partnership profits, as required by 47 CFR 1.2112 (a)(1).

Dungan's 50% general partnership and equity ownership made Liberty ineligible to participate in the 1999 auction for the Biltmore Forest frequency. Under 47 USC 309 (1)(2), this was a closed auction that was open only to the original applicants for the comparative hearing with their original controlling parties, as stated in their applications. Because the Biltmore Forest auction was won by Liberty, an ineligible bidder, the 1999 auction must be invalidated and a new auction conducted.

Conclusions

WHEREFORE, Willsyr requests that the pending applications of Liberty be immediately dismissed because Dungan's undisclosed involvement as a 50% general partner and owner since 1997 (or before) resulted in a transfer of control from Klemmer (Watts) and a major change in the ownership of Liberty's application for construction permit, as originally filed in 1987. The Clarified Consent Judgment, dated May 4, 2006, does not alter Dungan's status as a general partner and owner of the Liberty partnership, as acknowledged in the 1997 Consent Judgment.

Respectfully submitted,

WILLSYR COMMUNICATIONS,
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May 23, 2006

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney licensed to practice in the District of Columbia, do hereby certify that on this 23rd day of May, 2006, I have caused to be hand-delivered or mailed, U.S. Mail, first-class, postage prepaid, a copy of the foregoing "Comments on Supplement of Liberty and Motion to Dismiss" to the following:

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