

POCKET FILE COPY ORIGINAL
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
EDDIE FLOYD)
)
Licensee of FM Translator Station K273AF,)
Carson City, Nevada)
EDDIE FLOYD)
and)
THE EVANS BROADCAST COMPANY, INC.)
)
For Assignment of License of FM Translator)
Station K273AF, Carson City, NV)

Facility ID No. 13529 10-159

MAILED
APR 19 2011

File No. BALFT-20110303AAJ FCC Mail Room

MEMORANDUM OPINION AND ORDER

Adopted: April 18, 2011

Released: April 18, 2011

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Chief, Audio Division, Media Bureau, acting pursuant to delegated authority,¹ has before it (1) a Petition for Extraordinary Relief (“Petition”), in the above-captioned proceeding filed on March 3, 2011, by Eddie Floyd (“Floyd”), licensee of FM translator station K273AF, Carson City, Nevada (“Station”); and (2) an application for consent to assignment of the license (“Assignment Application”) of the Station from Floyd to The Evans Broadcast Company, Inc. (“Evans”) (File No. BALFT-20110303AAJ). The applicants request approval of the proposed assignment of the Station’s license to Evans pursuant to the Commission’s *Second Thursday* policy.² For the reasons set forth below, we will grant the Petition in part, grant the Assignment Application, and deny the Petition in all other respects.

II. BACKGROUND

2. On August 5, 2010, the Commission released an Order to Show Cause, Hearing Designation Order and Notice of Apparent Liability for a Forfeiture with respect to Floyd and the Station.³ The Commission designated Floyd’s case for hearing when Floyd applied for consent to assign the Station’s

¹ See *NewSouth Broadcasting, Inc.*, Order, 8 FCC Rcd 1272, 1273 (1993) (“*NewSouth Broadcasting*”); see also *Walter S. Kelley*, Memorandum Opinion and Order, 9 FCC Rcd 1923, 1924 (MMB 1994) (“*Kelley*”).

² See *Second Thursday Corp.*, Memorandum Opinion and Order, 22 FCC 2d 515 (1970), *recon. granted*, 25 FCC 2d 112 (1970) (“*Second Thursday*”).

³ See *Eddie Floyd*, Order to Show Cause, Hearing Designation Order and Notice of Apparent Liability for a Forfeiture, 25 FCC Rcd 11348 (2010) (“*HDO*”).

license to Wilks License Company-Reno, LLC (“Wilks”), after Floyd was convicted of multiple felonies. Floyd certified that he had not been convicted of a felony in the application seeking consent to assign the Station’s license to Wilks. The Commission designated for hearing the questions of whether Floyd had misrepresented material facts to the Commission, whether Floyd’s felony convictions should preclude him from remaining a Commission licensee, and whether the license for the Station should be revoked.⁴

3. Floyd is also the debtor in an involuntary bankruptcy proceeding under Chapter 7 of the United States Code in United States Bankruptcy Court, District of Nevada.⁵ In light of his bankrupt status, Floyd informed the Administrative Law Judge (“ALJ”) assigned to the HDO proceeding that he was seeking approval from the Bankruptcy Court to sell the Station for the benefit of his creditors.⁶ Floyd further informed the ALJ that he would seek approval for consent to assignment of the Station’s license under the Commission’s *Second Thursday* policy.⁷ The ALJ stayed Floyd’s hearing pending a review of the Assignment Application and a review of Floyd’s eligibility for *Second Thursday* consideration by the Commission in an *Order* released on December 3, 2010.⁸

4. In his Petition, Floyd proposes the sale of the Station to Evans pursuant to an application filed concurrently with the Petition. Floyd asserts that neither he nor his wife or heirs will receive any of the proceeds of the Station’s sale.⁹ Floyd further asserts that he has no ownership interest in Evans,¹⁰ and in a Supplement to Petition for Extraordinary Relief, Floyd provided a signed declaration stating that he would play “no role in the operation of the station following the assignment.”¹¹ Evans concurrently filed a Minor change application to effectuate a minor modification of the Station’s license to enable it to serve as a “fill-in” translator for Evans’s existing station, KCMY(AM), Carson City, Nevada. Floyd seeks the grant of the Assignment Application and the termination of all matters contained in MB Docket No. 10-157 based on his Petition.

III. DISCUSSION

5. We will grant the Assignment Application to effectuate the Bankruptcy Court’s *Order* approving the sale of the Station to Evans. The Commission generally prohibits the assignment of a license by a licensee that has had its qualifications to remain a Commission licensee called into question.¹² The *Second Thursday* policy is an exception to this general prohibition. It is available to bankrupt licensees and calls for us to weigh potential benefits that could flow to the wrongdoer from assignment of a Commission license against the equitable considerations in favor of the innocent

⁴ *Id.* at 11351-52.

⁵ *See* Petition at Att. A and Att. B.

⁶ The Bankruptcy Court approved the sale of the Station on January 11, 2011. *See Order*, BK – 09-52653 (January 11, 2011 Bankr. D. Nev.); *see also* Petition at Att. B. The purchase agreement is attached to the Petition at Att. A.

⁷ *See* FCC 10M-21; *see also* Petition at Att. D.

⁸ *Id.*

⁹ *See* Petition at 3 and Att. A (“The entire Purchase Price payment shall be made to the Bankruptcy Court or to the U.S. Trustee in Bankruptcy for payment to Floyd’s creditors. No money shall be paid or distributed to Floyd, his wife or his heirs”).

¹⁰ *Id.* at 4.

¹¹ *See* Supplement to Petition for Extraordinary Relief at 2, March 16, 2011 (“Supplement”). Floyd’s Supplement was submitted in response to the Enforcement Bureau’s concern that Floyd’s Petition did not preclude his continued involvement with the Station. The Enforcement Bureau withdrew its objection to the Assignment Application in light of Floyd’s Supplement. *See* Enforcement Bureau’s Comments on Supplement to Petition for Extraordinary Relief, March 18, 2011.

¹² *See Jefferson Radio v. FCC*, 340 F.2d 781, 783 (D.C. Cir. 1964).

creditors.¹³ The Commission will grant the assignment “only if the individuals charged with misconduct will have no part in the proposed operations and will either derive no benefits from favorable action on the applications or only a minor benefit which is outweighed by equitable considerations in favor of innocent creditors.”¹⁴

6. Here, the interests of the innocent creditors outweigh the benefits that might flow to Floyd from assignment of the Station’s license. Neither Floyd nor his wife or heirs will receive any distribution from the sale of the Station. The purchase agreement indicates that Evans will pay \$20,000 in cash for the Station.¹⁵ Upon execution of the purchase agreement, Evans deposited \$2,000 into its attorney’s trust account, which is to be released upon payment of the balance of the purchase price at closing.¹⁶ At the closing, the proceeds will be paid to the Bankruptcy Trustee and distributed by the Trustee for the sole benefit of Floyd’s creditors.¹⁷ Furthermore, Floyd has no ownership interest in Evans, the proposed assignee,¹⁸ and will play “no role in the operation of the station following the assignment.”¹⁹ Therefore, we find that the interests of the creditors outweigh any benefits that might flow to Floyd, and we will grant the Assignment Application.

7. We also reviewed the minor change application filed for the Station by Evans. That application complies with the Commission’s Rules and we granted it on March 31, 2011.²⁰

8. Finally, the Bureau’s delegated authority is limited to “process[ing] those petitions that are consistent with established Commission policy and do not involve novel questions of fact, law or policy concerning the *Second Thursday* policy.”²¹ Under its delegated authority, the Bureau cannot address the issues raised by the HDO that reach beyond the scope of the Assignment Application and the related minor change application.²² Therefore, we will deny the Petition with regard to Floyd’s request that we terminate all matters contained in MB Docket No. 10-157.

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, that the March 3, 2011, Petition for Extraordinary Relief filed by Eddie Floyd IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

¹³ *Kelley*, 9 FCC Rcd at 1925.

¹⁴ *Second Thursday*, 22 FCC 2d at 516.

¹⁵ Petition at Att. A.

¹⁶ *Id.*

¹⁷ *See Order*, BK – 09-52653 (January 11, 2011 Bankr. D. Nev.). *See also* Petition at 3-4; Petition at Att. A.

¹⁸ Petition at 4. A check of the Commission’s ownership reports indicates that Evans is owned by Jerry and Leslie Evans with each holding 50 percent of the outstanding shares. *See* File No. BOS-20100825AAJ; Petition at Att. C.

¹⁹ Supplement at 2.

²⁰ *See* File No. BPFT-20110303AAK

²¹ *NewSouth Broadcasting*, 8 FCC Rcd at 1273.

²² In addition to the question of whether the license for the Station should be revoked, the HDO also raised the issues of whether Floyd misrepresented material facts to the Commission, whether Floyd made false certifications on applications filed with the Commission after his felony conviction, and whether Floyd remains qualified to be a Commission licensee. *See HDO*, 25 FCC Rcd at 11351-52.

10. IT IS FURTHER ORDERED, that the March 3, 2011, application for consent to assignment of license of FM translator station K273AF, Carson City, Nevada from Eddie Floyd to The Evans Broadcast Company, Inc. (File No. BALFT-20110303AAJ) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau