



**Federal Communications Commission
Washington, D.C. 20554**

April 13, 2007

DA 07-1701

In Reply Refer to: 1800B3-BSH

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In re: **KAAK(FM), Great Falls, Montana**
Facility ID No. 63872
File No. BALH-20060608AEE

**Application for Assignment of License
Informal Objection**

Dear Mr. Roberts, Mr. Schwartz and Mr. Dow:

We have before us the above-captioned application (the "Assignment Application") seeking approval for the proposed assignment of the license for Station KAAK(FM), Great Falls, Montana, from Fisher Radio Regional Group, Inc. ("Fisher") to CCR-Great Falls IV, LLC ("CCR"). On July 26, 2006, Munson Radio, Inc. ("MRI"), licensee of Station KEIN(AM), Great Falls, Montana, filed a pleading which it styled as a "Petition to Deny" the Assignment Application (the "MRI Petition").¹ For the reasons stated below, we dismiss the MRI Petition as a Petition to Deny, consider and deny it as an informal objection, and grant the Assignment Application.

Background. The MRI Petition was filed against the Assignment Application, as well as Fisher's applications seeking approval for its assignment to CCR of its licenses for FM translator Station K247BC, Black Eagle, Montana;² Station KIFK(FM), Cascade, Montana;³ and Stations KXGF(AM),⁴

¹ Fisher and CCR filed separate Oppositions to the MRI Petition on August 3, 2006. MRI did not reply to the Oppositions.

² File No. BAPFT-20060608ADU.

³ File No. BALH-20060608ADV.

⁴ File No. BAL-20060608ADQ.

KQDI(AM),⁵ KQDI-FM,⁶ and KINX(FM),⁷ all licensed to Great Falls, Montana. On October 17, 2006, however, the applications for assignment of all the station licenses other than that for KAAK(FM) were dismissed at Fisher's request. Accordingly, we address only the portion of the MRI Petition directed against the Assignment Application.

Discussion. Initially, we note that the MRI Petition was untimely filed.⁸ The Assignment Application was accepted for filing by Public Notice released on June 21, 2006.⁹ Pursuant to Section 73.3584(a) of the Commission's Rules (the "Rules"),¹⁰ petitions to deny were due on July 21, 2006, 30 days after the date of the Public Notice. Because the MRI Petition was filed 35 days after the Public Notice, on July 26, 2006, it was late-filed. Accordingly, the MRI Petition must be dismissed.¹¹ We will, however, treat and consider the pleading as an informal objection pursuant to Section 73.3587 of the Rules.¹²

The sole issue raised by MRI regarding the KAAK(FM) Assignment Application is that certain exhibits to the Purchase and Sales Agreement ("Agreement") between Fisher and CCR referred to in that application were not in the station's public file. In its Opposition, Fisher responds that, consistent with Commission policy, it was not required to place copies of these exhibits in the public file because the documents were not "relevant or material to a determination of whether a grant of the Assignment Application was consistent with the public interest."¹³ The Commission has recognized the longstanding staff practice of accepting assignment applications containing sales contracts that omit schedules and exhibits that are not material to the Commission's review of the application.¹⁴ In *LUI, Inc.*, the Commission noted that parties may have a legitimate reason for withholding certain ancillary contractual documents because they may contain proprietary information.¹⁵ The Commission found that an applicant's failure to submit such documents "is neither a material omission (that would otherwise be cause for not accepting and processing an application) nor grounds for finding that a particular transaction is not in the public interest."¹⁶ In a Public Notice released simultaneously with *LUI, Inc.*, the Media

⁵ File No. BAL-20060608ADS.

⁶ File No. BALH-20060608ADR.

⁷ File No. BALH-20060608ADT.

⁸ See 47 C.F.R. § 73.3584(a).

⁹ See *Broadcast Actions*, Public Notice, Report No. 26261 (rel. June 21, 2006).

¹⁰ 47 C.F.R. §73.3584(a).

¹¹ See 47 C.F.R. §73.3584(e) (untimely petitions to deny "are subject to return by the FCC's staff without consideration").

¹² 47 C.F.R. § 73.3587.

¹³ See Fisher Opposition at 8.

¹⁴ See *LUI, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 16980, 16982 (2002).

¹⁵ *Id.*, 17 FCC Rcd at 16983.

¹⁶ *Id.*

Bureau announced the procedures that applicants should follow when omitting transactional documents from broadcast assignment or transfer applications.¹⁷ Specifically, the Public Notice instructed those applicants that choose to omit such documents to respond “No” to the applicable item of the relevant Form and submit an exhibit describing each of the omitted documents. Applicants also were required to state both the specific reason(s) for the omission(s) and the basis for the determination that the omitted documentation is not material to the Commission consideration of the subject application.¹⁸

Fisher notes that, consistent with that directive, it responded “No” to Question 3 of Section II of the Assignment Application because it did not file all the exhibits, schedules, and related documents to the Agreement.¹⁹ Fisher also submitted a “Statement in Response to Question 3 of FCC Form 314,” which disclosed, “The parties have not submitted the exhibits and schedules to the Agreement with this application, nor have such exhibits and schedules been placed in the public file of the Stations involved.” It then provided the title and description of each such exhibit.²⁰ MRI has not challenged the appropriateness of this showing by Fisher. Based on our independent review of the Assignment Application, we conclude that Fisher was not required to file any of the withheld documents. We find, therefore, that Fisher has satisfactorily complied with this Commission policy. For this reason, we further find that MRI has failed to set forth specific allegations of fact sufficient to show that grant of the application would be prima facie inconsistent with the public interest.²¹ Accordingly, we deny the informal objection and grant the Assignment Application.

Conclusion/Actions. Based on the above, we find that the MRI has not raised a substantial and material question of fact warranting further inquiry. We further find that CCR is qualified to hold the Station KAAK(FM) license and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Petition to Deny filed by Munson Radio, Inc. IS DISMISSED, and, when treated as an informal objection, IS DENIED, and that the application for approval to assign the license for Station KAAK(FM), Great Falls, Montana (File No. BALH-20060608AEE) from Fisher Radio Regional Group, Inc. to CCR-Great Falls IV, LLC IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Elizabeth Hammond, Esq.
Clifford M. Harrington, Esq.

¹⁷ *Media Bureau Announces Interim Filing and Certification Requirements Regarding Submission of Contracts with Assignment/Transfer of Control Applications*, Public Notice, 17 FCC Rcd 16166 (2002).

¹⁸ *Id.*

¹⁹ See Fisher Opposition at 8.

²⁰ See Assignment Application, Attachment 4; Fisher Opposition, Attachment A.

²¹ See 47 U.S.C. § 309(d)(1).