

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	
)	
Melvin N. Eleazer)	
(Transferor))	
)	
and)	File No. BTCTT-19980217IA
)	FIN: 65129
James Pridemore)	
(Transferee))	
)	
For Consent to the Transfer of Control of)	
BIP, Inc.)	
Licensee of Station W54BT)	
Roanoke, Virginia)	
)	
BIP, Inc.)	
(Assignor))	
)	
and)	File No. BALTT-19990312IA
)	FIN: 65129
Brunson/Ross Communications, LLC)	
(Assignee))	
)	
For Assignment of License of)	
Station W54BT)	
Roanoke, Virginia)	

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: April 27, 2001

Released: April 30, 2001

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it for consideration the above-captioned application seeking consent to transfer control of BIP, Inc., the licensee of television translator station W54BT, Roanoke, Virginia, from Melvin N. Eleazer to James Pridemore. Also before the Commission is the application whereby Brunson/Ross Communications, Inc. (Brunson/Ross) seeks to acquire the license for station W54BT. KVBM Television, Inc. and Caroline K. Powley (petitioners) jointly

petitioned to deny the BIP, Inc. transfer of control application.¹ Subsequently, petitioners also filed an objection to the W54BT license assignment application. Various opposition and responsive pleadings were also filed by the parties.

The W54BT Transfer of Control Application

2. By the instant transfer of control application, Messrs. Eleazer and Pridemore seek to correct an alleged inadvertent oversight on their part regarding the ownership of BIP, Inc. Specifically, on February 20, 1996, Television Marketing Co., Inc. (TMC), in which Mr. Eleazer was the sole officer, director and stockholder, filed a pro forma application seeking to assign the W54BT construction permit to BIP, Inc. As set forth in that application, Mr. Eleazer would hold an 85% stock interest and Mr. Pridemore the remaining 15% stock interest in BIP, Inc., with each individual being an officer and director of the corporation. The pro forma assignment application was granted by the Commission on March 25, 1996 and a month later, the Commission was notified that the transaction had been consummated. However, as set forth in the transfer of control application, Mr. Pridemore actually became BIP, Inc.'s sole officer and director and its 100% stockholder "in return for assumption of the obligations of TMC in connection with the proposed TV Translator."

3. In their petition to deny and various subsequently filed pleadings, petitioners argue that Messrs. Eleazer and Pridemore have not adequately supported their assertion that Pridemore is the sole stockholder of BIP, Inc. and that in accordance with the automatic stay provisions of the bankruptcy law, 11 U.S.C. § 362, action on the transfer of control application should be held in abeyance until such time as the bankruptcy court determines whether Mr. Eleazer has, as an asset, an ownership interest in BIP, Inc. or issues an order authorizing the transfer to Pridemore.

4. We are not persuaded, as argued by petitioners, that the bankruptcy proceeding involving Mr. Eleazer is an impediment to our acting on the transfer of control application. The bankruptcy court has issued its rulings with respect to the Chapter 11 and Chapter 13 aspects of that proceeding. Specifically, the Chapter 11 petition was dismissed and Ms. Powley's appeal was ultimately dismissed on January 9, 2001. While the Chapter 13 petition is still pending, that aspect of the proceeding has reached the stage where the bankruptcy court is considering Mr. Eleazer's plan for satisfaction of the claims against his assets. Petitioners have proffered no showing that Mr. Eleazer's schedule of assets before the bankruptcy court includes an interest in BIP, Inc. Moreover, based upon the documentation submitted in response to a staff directive, which included, for the first time, sworn affidavits from Messrs. Eleazer and Pridemore, we find that the applicants have demonstrated that, more than a year before the institution of any bankruptcy proceedings involving Mr. Eleazer, BIP, Inc. was reported as wholly owned by Mr.

¹ On March 25, 1998, KVBM Television, Inc. had filed an involuntary petition for Chapter 7 bankruptcy against Mr. Eleazer. Shortly thereafter that proceeding was converted into a Chapter 13, debtor-in-possession proceeding, and transferred to and consolidated with the Chapter 11 involuntary bankruptcy proceeding that Ms. Powley had instituted in the Danville, Virginia federal district court against Danville Television Partnership, which is the licensee of station WDRL-TV, Danville, Virginia and in which she claimed to be a 51% general partner and Mr. Eleazer a 49% general partner.

Pridemore. In federal and North Carolina income tax returns filed for calendar years 1996 and 1997 on behalf of BIP, Inc., Mr. Pridemore is listed as the president and 100% stockholder.² In addition, Mr. Eleazer avers that he has never held any interest or any position as an officer or director of BIP, Inc., whereas Mr. Pridemore avers that “[s]ince the original formation of BIP, Inc., I have been the sole shareholder, officer and director of BIP, Inc., although at the time the original application for transfer of control was filed, it was intended that Mel Eleazer hold an interest in the corporation.”³ Articles of Incorporation authorizing the issuance of 1,000 share of BIP, Inc. and a certificate designating Mr. Pridemore as the holder of 1,000 share of BIP, Inc. were also submitted, along with Mr. Pridemore’s certification that that stock certificate which was issued on March 5, 1996 within a week of the incorporation, was the only one issued by BIP, Inc.⁴ Under these circumstances and in accordance with our action below regarding the conduct of Messrs. Eleazer and Pridemore, we find that the applicants are fully qualified and that grant of the W54BT transfer of control application would be consistent with the public interest.

The Unauthorized Transfer of Control

5. Section 310(d) of the Communications Act of 1934, as amended, prohibits any transfer of control of a broadcast station permit or license without prior Commission approval. See 47 U.S.C. § 310(d); and 47 C.F.R. § 73.3540. This proscription pertains to de jure and de facto control. See Lorain Journal Co. v. FCC, 351 F. 2d 824, 828 (D.C. Cir.), cert. denied, 383 U.S. 967 (1966). From the information supplied here, it appears that Messrs. Eleazer and Pridemore violated Section 310(d) of the Act and Section 73.3540 of the Commission’s Rules by revising the contemplated ownership structure of BIP, Inc. during the pendency of the pro forma assignment application, with Mr. Pridemore becoming the president, sole director and 100% stockholder of that corporation.⁵ Moreover, information supplied in response to a letter of

² As a subchapter S corporation, BIP, Inc.’s operating losses pass through and have been claimed by its reported sole shareholder, Mr. Pridemore.

³ According to a “Certificate of Existence” dated May 7, 1998 from the Secretary of State of the State of North Carolina, BIP, Inc. was incorporated on February 26, 1996.

⁴ With respect to this stock certificate, petitioners submit excerpts from the testimony of Mr. Pridemore in a December 9, 1997 deposition session in a civil action involving Ms. Powley and Mr. Eleazer, wherein Mr. Pridemore stated that he had not gotten around to issuing BIP, Inc. stock to himself. Although seemingly inconsistent, it appears from a reading of the excerpted testimony that Mr. Pridemore was somewhat confused by the questioning with respect to the interrelated corporate and other business entities engaged in the activities of W54BT and Danville Television Partnership. Thus, we are not persuaded, without more, that this matter warrants further exploration at this time.

⁵ Petitioners submit that Mr. Pridemore’s excerpted testimony at the aforementioned December 9, 1997 deposition session reflects that Messrs. Eleazer and Pridemore intended “to withhold from the Commission the fact they intended to transfer the LPTV authorization to BIP, Inc. from the very beginning.” We disagree. A reading of the excerpted testimony, in its entirety, reveals that Mr. Pridemore was discussing the acquisition of the W54BT construction permit from the initial permittee in 1994 and the expectation that Mr. Eleazer, TMC or Broadcast Investment Partnership, which was comprised of Mr. and Mrs. Pridemore and Mr. Eleazer, would become the licensee depending on who furnished the money and put the station on the air. Thus, the excerpted testimony (continued....)

inquiry (LOI) from the Mass Media Bureau's then-Enforcement Division indicates that Mr. Pridemore controls W54BT's finances, equipment leases and purchases, technical operations, and necessary monitoring personnel for this automated translator station. As stated in their initial response to the LOI, "W54BT has been constructed by, and is owned de facto and de jure (sic) by BIP, Inc. and James Pridemore." Based upon the foregoing, we conclude, and the applicants acknowledge, that an unauthorized transfer of control of BIP, Inc. took place in early 1996 and has continued to date.

6. We believe that a forfeiture is warranted for Mr. Pridemore's assumption of control of the licensee of W54BT⁶ and his subsequent and continuing operation of that station without obtaining the Commission's prior approval. See Colorado West Broadcasting, Inc., 14 FCC Rcd 18354 (MMB 1999). His conduct in this regard was both "willful" and "repeated" within the meaning of 47 U.S.C. § 503(b)(1)(B).⁷ The guidelines set forth in the Commission's Forfeiture Policy Statement⁸ specify a base forfeiture amount of \$8,000 for the unauthorized transfer of control, which we believe is the appropriate forfeiture to be assessed under the circumstances of this case. See Kevin Hackler, 15 FCC Rcd 12928 (Enf. Bureau, 2000) and K.I.D.S.-TV6, 15 FCC Rcd 20212 (Enf. Bur. 2000). While Messrs. Eleazer and Pridemore maintain that they were unaware of the need for apprising the Commission of their change in plans regarding the actual ownership of BIP, Inc. and the operation of W54BT, ignorance of the Commission's rules does not excuse or mitigate their actions. See Empire Broadcasting Corp., 25 FCC 2d 68 (1970); and Victor Valley Broadcasting, Inc., 2 FCC 2d 495 (1966). Moreover, the completion and filing of the W54BT pro forma assignment application by Messrs. Eleazer and Pridemore attest to, at least, their general awareness of the need to obtain the Commission's prior approval and its interest in the disclosure of the parties comprising the applicant and the nature and extent of their ownership of and participation in the applicant. Nor does the voluntary reporting of the substantial revamping of the ownership of BIP, Inc. and Mr. Pridemore's operational control of W54BT in the 1998 transfer of control application justify any mitigation, especially in light of our concurrent finding in a separate proceeding that Messrs. Eleazer and Pridemore have also engaged in an unauthorized transfer of control of station WDRL-TV, Danville, Virginia. In sum, we believe that the nature of the apparent violation here requires the imposition of the base monetary amount.

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does not support petitioners' surmise that the transaction set forth in the 1996 pro forma assignment application did not reflect the applicants' intention at the time of filing of that application.

⁶ On March 2, 1998, the Commission granted the application of BIP, Inc., then wholly owned by Mr. Pridemore, for a license to cover the construction of the W54BT facilities (BLTT-19971001JC).

⁷ The Commission has held that an act or omission is "willful" if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule. See Southern California Broadcasting Company, 6 FCC Rcd 4387 (1991), recon. denied, 7 FCC Rcd 3453 (1992). Furthermore, a continuing violation is "repeated" if it lasts more than one day. Id., 6 FCC Rcd at 4388.

⁸ On October 14, 1997, the guidelines established by the Commission in its Report and Order. In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999), became effective.

The W54BT Assignment of License Application

7. Petitioners object to grant of the application executed by both Messrs. Eleazer and Pridemore and filed on behalf of BIP, Inc. seeking to assign the W54BT license to Brunson/Ross. In petitioners' view, the Commission proceedings involving the participation of Messrs. Eleazer and Pridemore in an alleged unauthorized transfer of station control not only at W54BT, but also at WDRL-TV warrant withholding action on the license assignment application. In their joint opposition, BIP, Inc. and Brunson/Ross disagree and submit that, in keeping with the spirit of the doctrine announced by the Commission in Second Thursday Corp., 22 FCC 2d 515, recon. denied, 25 FCC 2d 112 (1970), the Commission should grant the assignment to a corporation wholly owned and operated by an African-American.

8. The Commission proceedings regarding Messrs. Eleazer and Pridemore have been resolved. As set forth above, we believe that imposition of a monetary forfeiture is the appropriate sanction for the apparent violation of Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules by BIP, Inc. The WDRL-TV proceeding concerns the alleged unauthorized transfer of station control and various other accusations and countercharges of Ms. Powley and Messrs. Eleazer and Pridemore, all of which are concurrently being fully addressed therein and need not be repeated here. Suffice to say, the Bureau has also determined that the assessment of a monetary forfeiture is the appropriate sanction for the violations ascertained in that proceeding.⁹ Accordingly, we find that the applicants are fully qualified and that grant of the W54BT license assignment application would be consistent with the public interest.

9. Accordingly, IT IS ORDERED, That the "Petition to Deny" and the "Objection," filed by KVBM, Television, Inc. and Caroline K. Powley ARE DENIED.

10. IT IS FURTHER ORDERED, That the application for consent to the transfer of control of BIP, Inc. (BTCTT-19980217IA) IS GRANTED.

11. IT IS FURTHER ORDERED, That, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules, BIP, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of eight thousand dollars (\$8,000.00) for willfully and repeatedly violating Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice, BIP, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture may be made by mailing a

⁹ In view of the actions being taken by the Bureau today, we need not and do not address the arguments advanced by the applicants and disputed by the petitioners concerning the applicability of the Second Thursday doctrine and its underlying principles in this proceeding.

check or similar instrument, payable to the order of the Federal Communications Commission, and addressed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL number of this proceeding (NAL No. 118420005). Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

13. IT IS FURTHER ORDERED, That a copy of this Notice of Apparent Liability for a Forfeiture SHALL BE SENT by Certified Mail – Return Receipt Requested, to BIP, Inc.’s counsel of record: Denise B. Moline, Esq., 1212 So. Naper Blvd., Suite 119, Naperville, Illinois 60540.

14. IT IS FURTHER ORDERED, That the application for consent to the assignment of license for W54BT (BALTT-19990312IA) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

¹⁰ See 47 C.F.R. § 1.1914