10 FCC Rcd 8769

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

In re Application of

AMERICAN MUSIC RADIO
(Assignor)

and File No. BAL - 930210ED

KHYM, INC.
(Assignee)

For Assignment of License of
KHYM(AM), Gilmer, Texas

MEMORANDUM OPINION AND ORDER

Adopted: July 31, 1995; Released: August 16, 1995

By the Commission:

1. The Commission has under consideration: (1) an Application for Review filed on March 31, 1994 by J.R. McClure ("McClure"); (2) a Joint Opposition to Application for Review ("Joint Opposition") filed on April 15, 1994 by American Music Radio ("AMR") and KHYM, Inc., the proposed assignor and assignee in the above-captioned application; and (3) a Reply to Joint Opposition to Application for Review ("Reply") filed on April 29, 1994 by McClure.

2. McClure requests review of an action by the Chief, Audio Services Division, approving the above-captioned application for assignment of license. By letter to Denise B. Moline dated February 23, 1994 ("Letter to Denise Moline"), the staff dismissed a petition to deny the above-captioned assignment of license filed by McClure, and considering the petition to deny as an informal objection pursuant to Section 73.3587 of the Commission's Rules, 47 C.F.R. § 73.3587, denied the informal objection and granted the license assignment application.[1]

3. In the Application for Review, McClure assigns as error two conclusions by the staff: (1) that there had been no unauthorized transfer of control of the license of KHYM from AMR to KHYM, Inc.; and (2) that the application did not propose assignment of a bare license in contravention of Commission policy. After considering the arguments raised in the Application for Review, together with the Joint Opposition and the Reply, we conclude that the staff did not err in its determinations. Therefore, we deny the Application for Review and affirm grant of the above-captioned application for assignment of license.

I. BACKGROUND

4. McClure is the former owner of KHYM, having operated the station between 1973 and 1985. McClure sold the station to Blount Communications in 1985, which then sold the station to Fairchild Communications, Inc. in 1987. AMR purchased the station from Fairchild Communications, Inc. in 1991, assuming a note payable to McClure. After AMR defaulted on the note, McClure obtained a default judgment against Al Petty and Vern Coldiron, the two general partners of AMR, on November 23, 1992. By the terms of the default judgment, Mr. Petty and Mr. Coldiron were held jointly and severally liable on the note in the amount of $290,563.89.[2]

5. KHYM went dark after AMR lost its transmitter site and broadcasting equipment in foreclosure proceedings in June 1992. In contemplation of a proposed station sale, AMR entered into two agreements with the proposed assignee, KHYM, Inc. On August 15, 1992, pursuant to a Construction and Rental Agreement, KHYM, Inc. agreed to construct technical and studio facilities for KHYM, and thereafter to lease the facilities to AMR for a monthly rental fee. On December 1, 1992, AMR and KHYM, Inc., entered into a Program Service Agreement, whereby KHYM, Inc. agreed to provide AMR with programming and to broker substantially all of KHYM's air time in exchange for a monthly fee paid to AMR.

6. AMR and KHYM, Inc. filed the above-captioned application to assign the license of KHYM on February 10, 1993.[3] A petition to deny the application was filed by the First National Bank of Gilmer ("First National"), a creditor of AMR, on March 24, 1993. McClure filed an informal objection, styled as a petition to deny, on the same date. First National and McClure both contended that the agreements for rental of facilities and time brokerage entered into between AMR and KHYM, Inc. had resulted in a *de facto* unauthorized transfer of control of the license of KHYM in violation of Section 310(d) of the Communications Act of 1934, as amended. Both also argued that AMR is proposing to transfer a bare license to KHYM, Inc. in light of First National's foreclosure action on all of the station's operating assets. The staff found that AMR had not abdicated control, but instead had maintained control over the basic operating policies of KHYM, including personnel, programming and finances. The staff also found that since KHYM, Inc. possesses the technical facility required to assure continuation of broadcast service, the proposed assignment does not contravene Commission policy by proposing the assignment of a bare license.

II. PLEADINGS

7. McClure argues in his Application for Review that KHYM, Inc. maintains control over KHYM, since AMR has no assets and, according to his interpretation of the relevant agreement, any termination of the Program Service Agreement would force the station off the air. McClure further argues that AMR has no immediate right to terminate the Program Service Agreement for compelling public interest reasons. McClure claims that, pursuant to

[1] In his Application for Review, McClure does not challenge the decision to dismiss his petition to deny and to treat it as an informal objection.

[2] *McClure v. Petty and Coldiron,* No. 384-92 (D. Ct. Upshur County, Tex. Nov. 23, 1992) (Final Summary Judgment).

[3] AMR and KHYM, Inc. report that, effective April 14, 1994, they consummated the sale of KHYM, conditioned upon final approval of assignment of the station license by the Commission.

the Construction and Rental Agreement, KHYM, Inc. has "absolute control" over how long "rent" is paid. McClure asserts that, in view of the circumstances surrounding the execution of both agreements, it is "hard to believe" that AMR maintains control over the finances of the station. McClure also states that he finds it "counterintuitive" and "too good to be true" that an outside party would enter into the agreements with AMR without exercising control. McClure also argues that this assignment falls into the "bare license" category because it is not a case where the buyer is acquiring a station license as well as operating assets from another separate entity. McClure asserts that, in the present assignment, the buyer is acquiring "*only* the license."

8. In their Joint Opposition, AMR and KHYM, Inc. respond that McClure's Application for Review fails to meet the procedural requirements of Section 1.115(b) of the Commission's rules, 47 C.F.R. § 1.115(b), governing applications for review. AMR and KHYM, Inc. assert that McClure has neither presented clearly and concisely the precise issues for determination by the Commission, nor has he indicated what factors, if any, would warrant the Commission's review of this matter, as required by 47 C.F.R. § 1.115(b).[4]

9. Concerning the alleged unauthorized transfer of control, AMR and KHYM, Inc. contend that McClure's claims that the disputed contractual provisions create *de facto* control in KHYM, Inc. through KHYM, Inc.'s asserted power to terminate the agreement and take the station off the air at any time are mere speculation. AMR and KHYM, Inc. assert that AMR has the power to reject programming, and that AMR maintains control of its own and station accounts, and is solely responsible for payment of utilities, maintenance, insurance and repair expenses, and equipment rental. Furthermore, AMR and KHYM, Inc. point out that AMR's general partner, Vern Coldiron, is present on a day-to-day basis and manages and supervises all station operations. AMR and KHYM, Inc. dispute McClure's claim that KHYM, Inc. may terminate the existing agreements on a unilateral basis. AMR and KHYM, Inc. assert that while AMR may terminate the existing arrangements immediately and at any time, it is KHYM, Inc. that is bound to give 90 days' notice prior to termination, in order to enable AMR to seek alternative arrangements for continued operations. According to AMR and KHYM, Inc.'s interpretation of their agreement, AMR maintains the power to "pull the plug" on KHYM, Inc., but not vice versa.

10. Concerning the alleged transfer of a bare license, AMR and KHYM, Inc. argue that AMR proposes to transfer, in effect, an operating station with value as a going concern. They note that the station is presently broadcasting, and that assignment of the license will result in continued operation of the station.[5] AMR and KHYM, Inc. argue that the fact that the buyer in this instance already possesses the physical facilities to maintain the station, as opposed to acquiring the assets elsewhere, should not constitute a meaningful distinction that would preclude the proposed assignment. AMR and KHYM, Inc. state that the cases relied upon by McClure for the proposition that a bare license is being transferred are distinguishable as cases in which the Commission had no assurance whatsoever that the proposed assignees had access to the site and/or equipment necessary for resumption of station operations. By contrast, they argue, the Commission has demonstrated a willingness to grant an assignment of license without assets where it could be shown that assets were available and that the station would be returned to operation within a reasonable period of time.

11. In his Reply, McClure reiterates his contention that the contractual arrangements between the parties indicate that control lies with KHYM, Inc., asserting that "the contracts speak for themselves."[6] McClure replies that AMR and KHYM, Inc.'s position that AMR may terminate the existing agreements immediately and at any time is "totally unsupported by the agreements." McClure points to Section 1.2 of the Program Service Agreement, which he says gives AMR the right to terminate only on 90 days written notice -- not immediately and at any time as AMR and KHYM, Inc. contend. More significantly, McClure argues, if the termination by AMR is contested, any dispute is to be resolved by arbitration. McClure asserts that the arbitration clause is not limited to calculating damages, but provides specifically for determination of whether AMR has reasonably invoked the termination provision. Furthermore, McClure asserts that KHYM, Inc. maintains undue contractual control over AMR, since Section 1.3 of the Program Service Agreement allows KHYM, Inc. to terminate on 90-days' notice for any reason, and Section 1.4

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[4] While the Application for Review does not specify with particularity the factor(s) which warrant Commission consideration under 47 C.F.R. § 1.115(b), the pleading does generally suggest that the action taken by the staff pursuant to delegated authority is in conflict with case precedent and established Commission policy. Thus, we will consider the Application for Review as specifying that Commission review is warranted under 47 C.F.R. § 1.115(b)(2)(i). *See, e.g., Noble Syndications, Inc.*, 74 FCC 2d 124, 128 (1979) (finding sufficient particularity under 47 C.F.R. § 1.115(b)(2) where a fair reading of the pleading indicated that the applicant was attempting to argue that a ruling conflicted with case precedent or established Commission policy).

[5] KHYM resumed operation in December 1992, and is currently on the air.

[6] McClure also questions Mr. Coldiron's claimed continued presence and operation of KHYM in light of local litigation pending between AMR and KHYM, Inc. as recently as March 1994. McClure attaches as Exhibit 1 two pleadings related to settlement of a civil action between KHYM, Inc. and AMR. *KHYM, Inc. v. American Music Radio*, No. 2-93CV202 (E.D. Tex. filed 1993) (Joint Motion to Dismiss filed by KHYM, Inc. and AMR ("Joint Motion"); Response to Joint Motion to Dismiss filed by First National and McClure ("Response")). In the Joint Motion, KHYM, Inc. and AMR request court approval of a settlement agreement and request release of money deposited by KHYM, Inc. in escrow to Al Petty. In the Response, First National and McClure request the court to deny the Joint Motion and to direct payment of such monies to First National and McClure.

It is not clear how these motions call into question Mr. Coldiron's representation of continued presence at and operation of KHYM. There is no evidence that Mr. Coldiron ceased to maintain a daily presence at the station in the wake of this litigation or that he abdicated control of station operations. Consequently, we do not agree that the existence of such litigation between KHYM, Inc. and AMR suggests that an unauthorized transfer of control has occurred.

provides that on such termination, all leases for land, buildings or other broadcast equipment between AMR and KHYM, Inc. will also terminate.

12. McClure also notes that the instant facts are uniquely consistent with precedent describing the assignment of a bare license, since all station assets, other than the license, belong to the assignee, KHYM, Inc. Furthermore, McClure asserts, the Commission should give weight to the fact that any value of the station as a going concern was created, in this case, by the assignee.

III. DISCUSSION

A. Unauthorized Transfer of Control

13. Section 310(d) of the Communications Act states in pertinent part:

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.

47 U.S.C. § 310(d). Section 73.3540(a) of the Commission's Rules provides that the "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control." 47 C.F.R. § 73.3540(a).

14. In ascertaining whether a prohibited transfer of control has occurred, we have traditionally looked beyond legal title to see whether a new entity or individual has obtained the right to determine basic operating policies of the station. *See WHDH, Inc.,* 17 FCC 2d 856, 863 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC,* 444 F.2d 841 (D.C. Cir. 1970), *cert. denied,* 403 U.S. 923 (1971). Although a licensee may delegate certain functions to an agent or employee on a day-to-day basis, ultimate responsibility for essential station matters, such as personnel, programming and finances, is nondelegable. *Southwest Texas Public Broadcasting Council,* 85 FCC 2d 713, 715 (1981). The existence of a time brokerage or local marketing agreement will not constitute an unauthorized transfer of control under Section 310(d) of the Act unless the contract vests a disproportionate degree of control in the broker. *Roy R. Russo,* 5 FCC Rcd 7586, 7587 (MMB 1990).

15. In the instant case, the staff determined that AMR had maintained ultimate control over KHYM's personnel, programming and finances despite the existence of time brokerage and facilities rental agreements. After reviewing the agreements and considering the pleadings in this matter, we affirm the determination of the staff that there has not been an unauthorized transfer of control of the license of KHYM from AMR to KHYM, Inc.

16. *Personnel.* The staff found, on the record before it, that AMR had maintained control over the basic operating policies of the station. In this connection, the staff found it significant that AMR's general partner Vern Coldiron has served as general manager of KHYM on a daily basis since the station returned to the air.[7] Although KHYM's staff consists entirely of volunteers, the Commission staff decision found no evidence that the volunteers report to anyone other than Mr. Coldiron. Nothing in the application for review contradicts these findings and we here affirm them. We also concur in the staff's conclusion, based on these facts, that AMR maintained adequate control over personnel at its station.

17. *Programming.* The staff also found that the disputed provisions of the subject time brokerage agreement were similar to programming arrangements which afford brokers certain programming responsibilities but which we have nonetheless found acceptable because they reserve to the licensee the right to reject programming that it believes would disserve the public interest, and to preempt programming when circumstances warrant. *See* Program Service Agreement at paras. 2.1, 4. Further supporting the conclusion that the licensee retained control over programming in this case was the fact that under the agreement, AMR had reserved to itself one hour of programming each Sunday morning for the presentation of public affairs and other non-entertainment programming. Program Service Agreement at para. 3.[8]

18. McClure argues that the facts of this case are similar to *Weston Properties XVIII Ltd. Partnership,* 8 FCC Rcd 1783 (MMB 1993), in which the Mass Media Bureau assessed a forfeiture against the licensee of WKBR(AM), Manchester, New Hampshire for an unauthorized transfer of control. McClure notes that, as in this case, the programmer in *Weston* established the station format and provided all programming for the station. However, the Mass Media Bureau has determined that reservation in the broker of some power over programming, advertising and sales is characteristic of all time brokerage agreements and is permissible where it does not convey to the broker the ability to make the ultimate decisions in those areas. *See Roy R. Russo,* 5 FCC Rcd at 7587. Furthermore, the instant Program Service Agreement is replete with provisions reserving ultimate control over the broadcasting content of KHYM to AMR.[9] Although similar provisions were included in the management contract in *Weston,* the Mass Media Bureau rejected the licensee's argument that it had maintained control by virtue of its management contract. The Bureau found that the terms of the management contract in *Weston* were specifically contradicted by other terms in the contract and by the totality of circumstances, including the facts that the manager collected all the revenues, paid all the expenses, selected all the programming, and hired the employees, if any. *Weston,* 8 FCC Rcd at

[7] *Cf. Salem Broadcasting, Inc.,* 6 FCC Rcd 4172 (MMB 1991) (station lease/sale agreement resulted in unauthorized transfer of control where, *inter alia,* licensee failed to maintain daily management presence at station).

[8] This is consistent with Commission precedent that the Commission will not set limits on the amount of time a brokered station is permitted to sell. *See Brian M. Madden,* 6 FCC Rcd 1871 (MMB 1991).

[9] *See* Program Service Agreement at para. 2.1 (entitled "Control Vested in AMR") and para. 4 ("AMR shall have the right to reject or refuse programs which it reasonably believes to be contrary to the public interest.").

1785. Here, McClure has not adduced any facts sufficient to show that AMR and KHYM, Inc. were operating outside the terms of the Program Service Agreement or that these other countervailing considerations present in *Weston* are present here. Furthermore, we concur that the Program Service Agreement did not vest an impermissible degree of authority in KHYM, Inc.

19. *Finances.* The staff also determined that AMR had retained control over finances, since it was responsible for paying all station expenses. McClure states that it is "hard to believe" that AMR controls the finances of the station, but he does not provide any evidence to the contrary. To the extent that McClure finds it "counterintuitive" and "too good to be true" that an outside party would enter into the agreements with AMR without exercising control, we find his opinion to be merely speculative and unsupported by any facts presented on the record in this case.

20. With respect to finances, McClure again argues that this case is similar to *Weston* in that the licensee in *Weston* was paid a monthly lease fee and had no real financial responsibility for the station. But in *Weston,* the Mass Media Bureau found an unauthorized transfer of control where, pursuant to a management contract, the manager collected all revenues and paid all expenses, exercising complete control over station finances. *Weston,* 8 FCC Rcd at 1785. Here, AMR has demonstrated that it has maintained responsibility for payment of utilities, maintenance, insurance and repair expenses, and equipment rental. This is not a case in which a licensee has been reduced to a mere "lessor" of the station. *See Benito B. Rish, M.D.,* 6 FCC Rcd 2628 (1991), *forfeiture ordered,* 7 FCC Rcd 6036 (1992), *recon. granted in part, denied in part,* FCC 95-103 (released Mar. 16, 1995); *Salem Broadcasting, Inc.,* 6 FCC Rcd at 4173. Instead, the payment of a monthly fee to AMR is consistent with consideration that has historically supported time brokerage agreements. *See United Broadcasting Co. of New York, Inc.,* 4 RR 2d 167, 173 (1965).

21. *Contractual Control.* As evidence of KHYM, Inc.'s undue contractual control, McClure cites Section 1.2 of the Program Service Agreement, which states in the *second* sentence of subsection (b) that AMR will give KHYM, Inc. ninety (90) days written notice of its intent to terminate. McClure also assigns special significance to the fact that, under subsection (d), if the termination is contested, any dispute is to be resolved by arbitration. But the *first* sentence of subsection (b) provides that "AMR shall have the right, which will not be unreasonably invoked, to terminate this Agreement at any time for reasons of compelling public interest." We note that the agreement does not provide KHYM, Inc. with a corresponding right. The licensee's agreement to give 90-days advance notice for termination does not unduly restrict its control over the station because the agreement itself contains an exception to the requirement to give such prior notice if such provision were otherwise contrary to law. On the other hand, KHYM, Inc. is compelled to provide 90-days notice to the licensee before termination, thus providing the licensee with a period of time in which it could arrange for alternative facilities. McClure has cited no precedent suggesting that such contractual provisions are tantamount to *de facto* control in the time broker, and we see no basis in these arrangements to find such a transfer here.[10]

22. The assignor and assignee have sufficiently demonstrated that AMR has maintained control over the basic operating policies of KHYM, including personnel, programming, and finances. The decision of the staff in this respect is therefore affirmed.

B. Bare License

23. The Commission will not permit a price to be placed on the transfer of a bare license. *Donald L. Horton,* 10 FCC 2d 271, 273 (1967). *Accord Edward B. Mulrooney,* 13 FCC 2d 946 (1968); *Bonanza Broadcasting Corp.,* 10 FCC 2d 906 (1967). Because the Commission's bare license policy emphasizes the ability of a silent station to return to the air quickly, the Commission has not considered the license "bare" if the licensee can assign its rights to the accompanying station facilities under a lease to the buyer. *Public Service Enterprises, Inc.,* 69 FCC 2d 967, 972-73 (1978). The Commission has also viewed separate transactions involving transfer of a license and equipment to the assignee as constituting a single transaction for purposes of applying the bare license policy. *Van Schoick Enterprises, Inc.,* 58 FCC 2d 341 (1976); *see also Arecibo Radio Corp.,* 101 FCC 2d 545 (1985) (finding no transfer of bare license where physical assets and license assigned to the same buyer in two separate, court-ordered transactions, subject to prior Commission approval).

24. The staff concluded that, even if AMR had only KHYM's license to convey to KHYM at closing, KHYM possessed the technical facility required to assure continuation of broadcast service. Accordingly, the staff found that the proposed assignment did not contravene Commission policy, citing *Van Schoick.*

25. McClure contends that the instant assignment here is similar to that denied in *Mulrooney,* 13 FCC 2d at 946, where the licensee had lost title to and possession of its broadcasting equipment, and the real property for its transmitter site had been repossessed. However, unlike the in-

[10] The arbitration clause, para. 1.2(d), provides for binding arbitration by a panel of three arbitrators: one selected by AMR, one by KHYM, Inc., and one by mutual consent. The clause governs any dispute between the parties concerning termination by AMR based on public interest grounds, including: (1) whether AMR has reasonably invoked Section 1.2; (2) whether AMR's grounds for terminating constitute a compelling public interest other than changes in FCC rules and/or policies; and (3) whether KHYM, Inc. has satisfied its obligations to correct the situation or to take steps in good faith to promptly correct the situation and provide assurances reasonably adequate to AMR that it will correct the situation. Section 1.2(a) recites that "[t]he parties recognize that changes in the rules and regulations and/or the policies of the [FCC] may necessitate modification and/or cancellation of any or all parts of [the Program Service Agreement]."

The staff found that the arbitration clause represented a private contractual mechanism for affixing liability for damages arising from termination rather than the preemption of AMR's right to invoke such remedy in connection with its continuing responsibility as a Commission licensee. We agree that the arbitration clause should not inhibit the ability of AMR to exercise control over the basic operating policies of KHYM, including personnel, programming and finances. The arbitration clause appears designed merely to ensure the reasonableness, and thus, the good faith, of any decision by the licensee to terminate the time brokerage agreement on public interest grounds.

stant case, the buyer in *Mulrooney* had not demonstrated the availability of equipment or a site from which to operate the station. Here, the buyer, KHYM, Inc., leases the transmitter site and equipment to AMR. Subsequent to termination of the lease agreement, KHYM, Inc. will enjoy possession of the transmitter site as well as equipment and studio/office space for continued operation of KHYM.

26. McClure also attempts to distinguish *Van Schoick* on the basis that in *Van Schoick,* the buyer was acquiring a station license as well as operating assets from another separate entity, whereas here, the buyer is acquiring only the license. McClure's analysis ignores the fact that under the terms of the instant lease, AMR is entitled to immediate possession of the operating assets. Thus, this case is similar to *Public Service Enterprises,* in which the Commission allowed a licensee to assign its rights to a station's facilities under a lease to the buyer.[11] It is of no consequence that, in the present case, the buyer's right to possession of the proposed facilities arises from the termination, and not the transfer, of an existing lease. We also find it significant that the buyer will acquire operating assets along with the license so that it will be able to continue station operations subsequent to the assignment.[12]

IV. OTHER MATTERS

27. McClure filed a complaint with the Commission on March 23, 1995, alleging that KHYM, Inc. had failed to place on file with the Commission a copy of a contract for further sale of the station from KHYM, Inc. to Wayne Shultice, in violation of Section 73.3613 of our Rules, 47 C.F.R. Section 73.3613, and that KHYM, Inc. had failed to place a copy of this contract in the station's public inspection file, in violation of 47 C.F.R. Section 73.3526. KHYM, Inc. has responded with affidavits from Don Werlinger, President of KHYM, Inc., and Shultice, parties to the sales contract, attesting that the contract never became effective because both parties understood pursuant to an oral side agreement that the contract would only become effective if the Commission denied McClure's instant Application for Review, thus finalizing the assignment from AMR to KHYM, Inc. KHYM, Inc. concedes that such a contract, if effective, would be required to be filed under our rules. The contract was terminated by KHYM, Inc. on April 15, 1995, because Shultice had defaulted on payments due under a separate program service agreement. KHYM, Inc. asserts that as of April 20, 1995, no contract for further sale of the station exists, and there are no other agreements or understandings that affect present ownership or control of the station. Although we find that based on these facts no further action is warranted concerning this matter, parties are cautioned to refrain from entering into agreements that, construed in the absence of side agreements, appear to implicate our rules.

28. McClure's complaint also alleges that the licensee is in violation of the main studio rule and may have engaged in an unauthorized transfer of control based on the apparent absence of station employees observed at the main studio during a "regular business hours" visit by Van Bullock, McClure's former employee. In response, the licensee explains that the apparent temporary absence of the licensee's staffers was in response to a transmitter site emergency and does not demonstrate a *per se* violation of our main studio policy or an unauthorized transfer of control respecting the time broker (Shultice), who happened to be at the station when McClure's former employee visited. We agree. Moreover, we find McClure's implication that no management presence was maintained for a substantial period of time to be both speculative and based upon unreliable hearsay, *i.e.,* Bullock allegedly overheard a local postmaster tell Shultice that mail could not be delivered at the station for several days in late November, 1994. Accordingly, we find that McClure's complaint fails to raise issues warranting further inquiry respecting the station's operation.

V. CONCLUSION

29. After carefully examining the arguments raised in the Application for Review, together with the Joint Opposition and the Reply, we conclude that the staff did not err in determining: (1) that there had been no unauthorized transfer of control of the license of KHYM from AMR to KHYM, Inc.; and (2) that the application did not propose assignment of a bare license in contravention of Commission policy. We have carefully examined the assignment application and affirm the staff's determination that KHYM, Inc., based upon its representations, is otherwise qualified to be a Commission licensee.

30. Accordingly, IT IS ORDERED, That pursuant to Section 1.115(g) of the Commission's Rules, the "Application for Review" filed on March 31, 1994 by J.R. McClure IS HEREBY DENIED. IT IS FURTHER ORDERED, That the Complaint filed by J.R. McClure on March 23, 1995 IS HEREBY DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[11] Under the Contract of Sale between AMR and KHYM, Inc., for consideration of $17,500, AMR will assign to KHYM, Inc. the license for KHYM, use of the station's call sign, the station's goodwill, any ongoing programming or advertising contracts, rights to the studio/office lease, and rights to a transmitter site ground lease.

[12] The bare license cases McClure relies upon involved silent stations with no equipment available to resume station operations. *See Mulrooney,* 13 FCC 2d at 947; *Radio KDAN, Inc.,* 11 FCC 2d 934, 935 (1968), *aff'd sub nom. W.H. Hansen v. FCC,* 413 F.2d 374 (D.C. Cir. 1969). Earlier cases also involved silent stations without equipment available to "return to the air within a reasonable time." *Bonanza,* 10 FCC 2d at 906; *Horton,* 10 FCC 2d at 273.