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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investments in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities	)	MM Docket Nos. 94-149 and 91-140

To: The Commission

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

The Mid West Family ("Mid West") hereby offers its Comments on the Notices of Proposed Rulemaking in the interrelated proceedings referenced above. Mid West has been an interested party in this proceeding, previously offering its comments on the Commission's Further Notice of Proposed Rulemaking in MM Docket 91-140, which gave rise to the rulemaking now before the Commission in MM Docket 94-149. As set forth in detail below, while the Commission's aims in the above-referenced proceedings may appear, at first, blush to be meritorious, upon careful examination the proposals for a more inclusive attribution standard and a policy to encourage the incubation of minority owned properties are contradictory and self-defeating. These policies will create a processing morass that would make even the simplest application virtually impossible to review. Therefore, Mid West suggests that the Commission retain its simple, bright line, attribution standard which focuses on the legal control of a licensee,

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allows for certainty as to attribution, and provides a mechanism for encouraging minority investment.

Background

Mid West is a group of stations organized in a somewhat atypical manner. Rather than having a single corporate ownership structure owning all of the stations within the group, each of the stations is owned by a different legal entity.[1/] The ownership of the licensee entities, while sharing certain common individual investors, is different in each case. This structure allows Mid West to provide investment opportunities to many managerial employees, providing valued employees incentives to remain with the group. This also promotes localism by having local station employees involved in corporate decision making for the licensees of their stations and encourages local solutions to local problems. In essence, the Midwest ownership structure is its own incubator program, introducing numerous individuals to their first broadcast ownership interests.

In several instances, individual investors in Mid West stations have gone on to purchase their own stations, or even start their own station groups. In some instances, Mid West or certain of its principal investors have provided financial and operational

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1/ Entities considered part of the Mid West Family are licensees of the following stations: WTDY(AM) and WMGN(FM), Madison, Wisconsin; WJJO(FM), Watertown, Wisconsin; WIZM(AM/FM), La Crosse, Wisconsin; WOSH(AM) and WVBO(FM), Oshkosh, Wisconsin; WFDL(FM), Lomira, Wisconsin; WSJM(AM) and WIRX(FM), St. Joseph, Michigan; WIXC(FM), Essexville, Michigan; WMAY(AM) and WNNS(FM), Springfield, Illinois; WQLZ(FM), Taylorville, Illinois; KOSP(FM), Williard, Missouri; WEAQ(AM) and WIAL(AM), Eau Claire, Wisconsin and WECL(FM), Elk Mound, Wisconsin.

assistance to these independent groups. Where these investments have proved successful, the backing from the Mid West for subsequent investments by these independent entities has been unnecessary. These situations have provided the group with the practical experience in incubator programs necessary to evaluate the Commission proposals.

In adopting regulations for any sort of incubator program, the Commission must take into account economic realities. If the Commission adopts too many rules and restrictions on investments in "incubated" stations, such stations will be unable to attract investors and, despite the best intentions of the Commission, this exercise will have been one in futility. Even outside the context of a formal "incubator" program, if the Commission adopts new rules imposing attribution standards more restrictive than those currently in effect, the practical effect may be to make investments, such as those made by certain Mid West investors in new broadcast owners, difficult or impossible. Thus, Mid West respectfully requests that the Commission refrain from making any unnecessary changes in its current attribution policies.

Attribution Rules

In its Notice of Proposed Rulemaking concerning possible revisions to the attribution policies for purposes of the Multiple Ownership Rules, the Commission's main focus seems to be on identification of indicia which give an entity the ability to "influence" station operations. In identifying such indicia, it appears to be the Commission's intent to then proceed to create some sort of evaluation criteria which would allow the identification of interests which should be attributable. The hope

appears to be that by identifying these indicia, and by setting out the combinations of such indicia which would together justify attribution, the Commission could achieve greater predictability, certainty, and ease of processing when considering attribution issues. Mid West believes that these goals are misguided, and are, in fact, a solution in search of a problem. The Commission's current rules, focusing on where actual legal control rests in determining whether or not an interest is attributable, best serves the Commission's goals of predictability, certainty, and ease of processing.

The Commission's focus on indicia which can give an entity "influence" over the decision making of a licensee is far too encompassing in its scope. For example, it is clear that the party with perhaps the greatest degree of influence in most broadcast transactions is the lender of acquisition financing. The Commission has seemingly recognized this fact in its Notice, as it inquires as to whether debt financing should, in some instances, be attributable.

The mere fact that an entity, such as a bank, has influence over the actions of the licensee through its decisions as to whether or not to lend to the licensee, and on what terms such loan will be made, does not in and of itself mean that the influence necessarily gives rise to an interest which must be considered attributable. While such a relationship does give influence, it is still those ultimately in legal control of the licensee who will have the decision making power with respect to station operations. If the bank is requiring conditions on its loan that are too onerous, then the licensee has the choice of going elsewhere for its acquisition financing. If the financing is already in place, and the conditions become too burdensome, the licensee can attempt to

refinance, or can decide to sell its station. In any event, it is those with the legal control over the licensee who are making the conscious decision to enter into the relationship with the lender that imposes the conditions. This conscious decision is no different in kind than any of the thousands of licensee decisions made every day that influence the ultimate shape of the broadcast product put out by that licensee -- e.g. whether to hire a particular announcer, whether to engage the services of a programming or sales consultant, whether to affiliate with a network -- decisions which may confer some degree of influence over the ultimate content of the broadcast product on some other person or entity. Yet while these licensee decisions give "influence" over broadcast content to some third party -- whether it be the announcer, the consultant, the network, or the bank -- these third parties are all ones chosen by the licensee in the exercise of its reasonable discretion.

It is this ability to choose the parties or entities with which the licensee will affiliate which should be the focus of the attribution analysis, not the mere "influence" over activities of the broadcast station that may be conferred on those who are chosen by the licensee. Licensee choice in all of these matters -- such as which lender to use, which programming consultant to hire, or which network to affiliate with -- is analyzed with the most certainty by looking not at the results of such decisions, but instead by looking at who made such decisions. Such an analysis will by definition focus on those with legal authority to make decisions on behalf of the licensee, the very focus of the current attribution rules. Thus, it seems to Mid West requiring a routine inquiry into the results of the decision making, or the influence conferred by certain business

relationships, is unnecessary.

On a practical level as well, the focus on "influence" rather than legal control leads to a host of problems. The Commission is looking at numerous results of licensee decision making to determine whether or not a party has an attributable interest in a licensee. The list of possible criteria identified by the Commission as indications of influence over a licensee -- including factors such as shared studio space, common business or familial ties, programming or sales connections, and financial relationships -- can come in innumerable combinations, and can vary greatly in scope or degree. For the Commission to make any sort of reasoned analysis in every case of all of the potential means of influence, and whether or not such influence will have such an effect on licensee behavior so as to require attribution, will require the adoption of rules so complex that licensees will need armies of lawyers to determine whether a particular arrangement is attributable or not. Moreover, it will vastly increase the amount of information that the Commission will have to gather from applicants and licensees in connection with the processing of routine applications, and will probably require that the FCC become more involved in decisions that it has heretofore left to the licensee's discretion.[2/]

The question really should be why any new attribution criteria are necessary.

[2/] For instance, a licensee can now relocate its main studio anywhere within its city grade contour without prior FCC approval. If the Commission were to adopt attribution criteria which included whether or not the main studio was co-located with that of another licensee, the Commission might have to require the filing of an application to relocate studios, an unnecessary regulatory burden.

The Commission may be concerned about abuses of its present criteria, believing that there may be instances where the reality of the situation is such that those with legal control cannot or do not exercise such control. That should not drive a wholesale revision of the attribution criteria, interfering in all sorts of licensee business decisions, as the Commission always retains the ability to investigate such cases if there is truly evidence of abuse. Such instances are rare, and can be dealt with best through the use of the Commission's enforcement powers, rather than through the use of broad, blanket criteria which constrain all broadcasters from entering into legitimate business relationships. The simpler the criteria, the better for ease of enforcement and certainty. Those criteria presently in place, focusing on legal control and not some amorphous concept of "influence", are simple, straightforward, and have served the Commission well over the last ten years. Without a compelling reason for the adoption of new criteria, none should be adopted.

Incubator Provisions

For any incubator proposal to be successful, it must be economically realistic, and provide true incentives to the existing broadcaster -- incentives which may actually be useful to the broadcaster and entice him into entering into such a relationship. If the program is established with too many safeguards to prevent "abuse", the Commission may well foreclose "use" as well.

Initially, the Commission has recognized that the greatest barrier to entry into broadcast ownership -- whether it be by minorities or by any other potential new owner -- is financing. The principal problem in raising such financing is the previous lack of

experience in ownership and management. It is this track record that the established broadcaster can often lend to the new entrant to assist that entrant in its initial acquisition. However, such assistance will not be provided unless the existing broadcaster stands to gain some benefit from its investment. In its previous experience in "incubating" new entrants into broadcast ownership, Mid West has entered into relationships where it has lent its name and credit history to new entrants. However, in taking the financial risk in such a move, the group was rewarded with an equity interest in that new entrant. Moreover, to make the contribution, there had to be at least some involvement in the management and operation of the new entrant to ensure that the investment was being well managed. Such involvement need not rise to the level of attribution under current Commission policies, but nevertheless needs to exist to encourage the initial investment. As discussed above, the Commission's attribution rules should not be so amended that they would effectively prohibit such investment, and the accompanying "influence", in new entrants into broadcast ownership.

In the previous experience of Mid West in such incubator-like projects, the investment has been made in companies establishing operations in markets smaller than those in which the group would normally operate stations. The group made such investments believing that the smaller scale of operation planned by the new entrant would justify such an investment, and would promise some economic return in the future. Even with the incentives proposed for incubation, such as the ability of the existing broadcaster to exceed applicable multiple ownership caps in exchange for its investment, the investment is likely to be made in a market smaller than the ones in

which the existing broadcaster would itself invest. After all, if the existing broadcaster wanted to take a financial risk in a market of the size in which it would normally invest, it would do so itself, relying on its own expertise, and not that of some unproven new entrant into broadcast ownership. Similarly, if the existing broadcaster has to incubate two separate projects in order to qualify for any benefit, the chances of the broadcaster entering into any project at all is significantly reduced, as the broadcaster would be more likely to expend its financial capital in its own projects rather than by incubating two projects for others.

Finally, the Commission must recognize that there is a high probability that some of the new entrants will not be successful in their broadcast operations. Again, by definition, any new entrant, minority or not, will not have had experience owning and operating a broadcast station. Some, perhaps many, will fail. The Commission must recognize that fact, and allow the existing broadcaster to take steps in the case of an imminent failure to shore up the station, not only to protect the broadcaster's financial interest, but to preserve a high quality service to the public. Such service will not be provided by a failed or failing station. In a case where a new entrant's station is not meeting its financial commitments, the existing broadcaster should be able to take steps to preserve the station, including the assumption of control (following the receipt of any necessary FCC approval), without attribution consequences. Such non-attribution should be allowed to continue for a reasonable period of time (for perhaps two years), to allow the station to re-establish its financial health, and be sold or returned to the new entity on a more stable footing.

Only through the adoption of real incentives will existing broadcasters step up to the plate to assist minorities and other to become new entrants into broadcast ownership. Even with such incentives, however, the existing broadcaster needs assurances that it will be able to take steps to protect its financial investment without penalty. Without the incentives and the financial protections, any incubator program will not succeed. Thus, the proposals discussed above should be adopted.

Conclusion

For the reasons set forth above, Mid West respectfully requests that the Commission go slow in modifying its current attribution rules, and adopt the proposals outlined in these comments to help establish a realistic incubator problem that can be successful.

Respectfully submitted,

The Mid West Family Stations

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