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May 23, 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex parte* presentation in MB Docket Nos. 14-50 and 09-182

Dear Ms. Dortch:

On May 19, 2016, Jack Fritz, CEO of Results Radio, LLC (“Results”); Ron Castro, Results Chief Technical Officer; and Mace Rosenstein and the undersigned, counsel to Results, met in separate sessions with Jessica Almond, legal advisor for media to Chairman Tom Wheeler; Robin Colwell, chief of staff and senior legal advisor for media to Commissioner Michael O’Rielly; David Grossman, chief of staff and media policy advisor to Commissioner Mignon Clyburn; and Marc Paul, legal advisor for media to Commissioner Jessica Rosenworcel.

In each meeting, Results discussed the points raised in the attached handout regarding the Commission’s local radio ownership rules, and specifically the proposed revision of Note 4 to the Commission’s ownership rules discussed in paragraph 96 of the Commission’s Further Notice of Proposed Rulemaking in the 2014 Quadrennial Review proceeding.¹

Please direct any questions to the undersigned.

Sincerely,

/s/

Michael Beder
Counsel to Results Radio, LLC

cc: Ms. Jessica Almond
Ms. Robin Colwell
Mr. David Grossman
Mr. Marc Paul

Attachment

¹ 2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, FNPRM and R&O, 29 FCC Rcd 4371, 4411 ¶ 96 (2014)

Radio Intra-Market Community of License Changes

In the pending *2014 Quadrennial Review*, the Commission has proposed to make clear that when a radio station in a “grandfathered” cluster seeks to change its community of license to a different community within the same Metro, that minor change does not require the licensee to break up its grandfathered operations.

The Commission should affirm this common-sense interpretation of the radio ownership rules, which, as the *2014 Quadrennial Review FNPRM* recognized, simply allows changes that “have little or no impact on the state of competition within the local market.” The Commission also should make clear that the same analysis applies to all community of license changes in which the station will remain within or “home” to the same Metro or market. This approach best serves the public interest by giving licensees the flexibility to maximize service to listeners within their markets, while preserving existing competition within the market.

History

In 2003, the Commission determined that, going forward, it would apply the local radio ownership rule to stations located within Arbitron Metros based on the number of “above-the-line” stations in the relevant Metro, which includes both those stations located within the Metro and those stations located outside of the Metro but considered “home” to it because they compete with stations located within the Metro.¹ Compliance with the radio ownership limits for stations located outside of an Arbitron Metro would continue to be judged based on the number of other stations within a station’s “contour overlap” market, at least on an interim basis.

The Commission recognized that it would be disruptive and inequitable to force existing licensees to divest stations they had acquired under the Commission’s prior market definitions. Instead, the Commission struck a sensible balance that “grandfathered” existing combinations while prohibiting station transfers or modifications that would “create a new violation of the ownership rules.”² The Commission codified this balance in Note 4 of its broadcast ownership rules, which states in relevant part that the current radio ownership limits apply “to applications for minor changes to existing stations that implement an approved change in an FM radio station’s community of license or create new or increased concentration of ownership among commonly owned, operated or controlled media properties.”

Intra-Market Moves Should Not Affect the Status of Grandfathered Combinations

Neither the Commission’s 2003 ownership order nor the Notice of Proposed Rulemaking that preceded it even discussed, much less explained, why an FM station’s application to change its community of license, by itself, would end the station’s grandfathered status. But applying the general principles the Commission articulated in adopting the local radio ownership rule, the best reading of this provision is that it is intended to require a grandfathered cluster of FM stations to come into compliance with the current ownership rules when a station in the cluster seeks a community of license change that would result in a station entering or leaving a market. Such changes have the potential to create a new concentration of interests within the destination market.

Applications to change a station’s community of license to a community already within the station’s existing market do not raise any such concern. These intra-market changes have no effect on the concentration of radio ownership within the market at issue, regardless of whether the changes involve stations that are all physically located in the same Metro or include stations that are “home” to the Metro because they are deemed to compete with stations in the Metro. In either case, the change creates no new concentration of interests and has no effect on existing competition and diversity.

¹ See *2002 Biennial Regulatory Review, Report & Order*, 18 FCC Rcd 13620, 13725-26 (2003).

² See *id.* at 13809 n.1036.

Nonetheless, the Commission staff has taken the position that stations in grandfathered clusters may not undertake such intra-market changes without giving up their grandfathered status. This overly strict reading of the local radio ownership rules disserves the public interest by unduly restricting licensees' flexibility to tailor their stations' coverage to best serve local listeners. For instance, this interpretation of Note 4 has stymied Results Radio's efforts to improve its stations' coverage of Weaverville, California, by swapping the communities of license of two FM stations that are part of a five-station grandfathered cluster. Results's proposal would change the community of license of KNCQ (located within the Redding Metro) from Redding to Weaverville, change the community of license of KHRD (already considered "home" to the Redding Metro) from Weaverville to Redding, and move KHRD's transmitter approximately 12 kilometers to the east.

These intra-market changes would enable Weaverville to have, for the first time, a local transmission service that covers the entire community (as defined by the community boundaries first established in 2000 and revised after the 2010 census). In addition, the proposals would result in substantial improvements to the area's over-the-air FM radio service. Yet the Media Bureau's Audio Division, applying an overly strict reading of Note 4, dismissed Results's applications based on the Division's view that the proposed community swap would require Results to divest one of its stations in order to comply with the ownership rules. Results has filed a petition for reconsideration of that decision.³

Regardless of the resolution of Results's petition for reconsideration under the current rules, as a policy matter the Division's interpretation elevates form over substance, and as a result denies local listeners improved service while doing nothing to increase local competition. The Commission should make clear in its forthcoming 2014 Quadrennial Review order that Note 4 does not demand such a result, by amending the relevant portion of Note 4 to read as follows (insertion in italics):

Paragraphs (a) through (d) of this section will apply to all applications for new stations, to all other applications for assignment or transfer, to all applications for major changes to existing stations, and to applications for minor changes to existing stations that implement an approved change in an FM radio station's community of license (*excluding changes in which such station would remain either within or "home" to the same radio market*) or otherwise create new or increased concentration of ownership among commonly owned, operated or controlled media properties.

³ See File Nos. BPH-20140828ACE & BPH-20140828ACG, Petition for Reconsideration (filed Jan. 19, 2016).