

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

In the Matter of)	
)	
2002 Biennial Regulatory Review – Review)	
of the Commission’s Broadcast Ownership)	MB Docket 02-277
Rules and Other Rules Adopted Pursuant to)	
Section 202 of the Telecommunications Act)	
of 1996)	
)	
Cross-Ownership of Broadcast Stations and)	MM Docket 01-235
Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket 01-317
Ownership of Radio Broadcast Stations in)	
Local Markets)	
)	
Definition of Radio Markets)	MM Docket 00-244
)	
Definition of Radio Markets for Areas Not)	MB Docket 03-130
Located in an Arbitron Survey Area)	

To: The Commission

PETITION FOR RECONSIDERATION

Mid-West Family Broadcasting (“Mid-West Family”),¹ by its attorneys, and pursuant to Section 1.429 of the Commission’s Rules, hereby petitions for reconsideration or clarification of one aspect of the new multiple ownership rules released in the above-captioned proceeding on July 2, 2003, FCC 03-127, 68 Fed. Reg. 46286, (August 5, 2003), 18 FCC Rcd 13620 (“*Report*

¹ Mid-West Family Broadcasting is a group of companies owning radio stations which share common owners, and have combined certain administrative functions, though ownership in each market is independent to allow for more ownership participation by employees in the station cluster with which they are involved. The Mid-West Family companies, and the geographical areas in which they operate, are as follows: Mid-West Management Inc. (Madison, Wisconsin), Family Radio, Inc. (LaCrosse Wisconsin), Long Nine, Inc. (Springfield, Illinois), MW Springmo, Inc. (Springfield, Missouri), and WSJM, Inc. (Southwestern Michigan).

& Order”). Specifically, Mid-West Family requests that the Commission clarify its rules on the question of grandfathering interests that may be noncompliant with the new rules, where a transfer of control is occasioned by the death or other departure of an existing owner, but the transfer is to other existing owners pursuant to contract, not by will or intestacy. While the Commission, at footnote 1045, states that it does not intend to restrict the transfer of a grandfathered combination “to heirs or legatees by will or intestacy if no new violation would occur,” Mid-West Family asks for clarification of this decision in the unique circumstances of closely-held entities where a transfer is caused by the death or other departure of a principal shareholder or shareholders, but where stock passes to other existing shareholders of the company by virtue of a contract rather than through will or intestacy. Mid-West Family believes that the exception provided by the Commission in footnote 1045 is intended to cover the situations that it describes herein, as the public policy basis appears clear, but asks that the Commission bring certainty to this question to avoid any future disputes.

Background

In its *Report & Order*, the Commission has recognized that the public interest does not favor breaking up existing combinations of stations upon the death of a majority shareholder. Specific provision is made for the continued grandfathering of existing combinations whose control passes pursuant to a will or by intestacy.

However, the *Report & Order* does not address a similar circumstance common in certain closely held businesses, where partners or shareholders have the right and the obligation, by contract, to buy out the interests of other owners upon their death, or upon their departure from the company for other reasons. These provisions insure that the businesses continue to be run by those already involved in their operations, so that the business does not have to deal with

absentee or uninvolved owners who may have inherited the interest through will or intestacy, or may have gone on to other activities competitive with the company or totally divorced from it.

For instance, all of the Mid-West Family companies have agreements among the shareholders which are intended to preserve the ownership of the companies in the hands of those actively involved in the business in some form or another. These agreements provide that, upon the death of a shareholder (or his becoming uninvolved with Mid-West properties), the stock that he owns in the company will be purchased by the company pursuant to an agreed-upon appraisal formula. In certain instances, the death of a long-term shareholder, or the death or departure of more than one such shareholder, and the subsequent repurchase of that stock by the company, could result in a long form transfer of control of the company, even though the company continued to be controlled by its employees and others active in the business. This would be true even though there was no real “sale” of the company and no real change in its operations and management.²

Mid-West Family has prided itself on giving opportunities to its long term employees to buy into ownership in the company for which they work, or into other companies within the group. It believes that this policy nurtures a spirit of “localism” at its facilities. Employee ownership creates an important bond between the employee and the company, and more importantly, promotes a better radio product as long-term employee-owners are concerned with developing radio properties that serve the communities in which they live. As owners, these

² This is not a hypothetical issue. William Walker, one of the founding shareholders of the Mid-West Family, passed away in July, soon after the new rules were adopted. As a shareholder for over 40 years, Mr. Walker had accumulated large blocks of stock in several of the Mid-West companies, at least one of which would not be complaint with the new multiple ownership rules. While his death did not cause a transfer event with respect to that company, the death or departure of another shareholder of any significance in that company, in connection with the repurchase of Mr. Walker’s stock, may result in such a transfer triggering the problems discussed herein.

employees have a personal stake in the service that their stations provide to local communities. When someone in a community complains about a radio station's operation, the employee can't blame that problem on some absentee owner if they are in fact an owner of the company. This ownership policy has resulted in companies with a real commitment to local service in their communities, and in employees with a long-term commitment to their stations and the communities that the stations serve. It has truly served the goals of localism.

Throughout their careers, employees can accumulate stock in the companies for which they work. Some life-long employees may end up with significant blocks of stock in some of these companies. Upon their death or departure from the company, that stock is to be repurchased by the company. In some cases, the death or departure of a shareholder with significant holdings, and the subsequent repurchase of that stock by the company, may cause a transfer event. Thus, if the Commission does not extend the protections afforded to interests that pass through contract, as opposed to through wills or estates, the younger shareholders of these companies, whose interests grow as older shareholder die or retire, will be severely impacted by forcing unplanned divestitures of existing radio properties held by the group. Mid-West Family submits that this forced divestiture is not in the public interest, may well injure the localism that these employee ownership plans engender. This simply was not the type of sale that the Commission intended to cover by its rules requiring divestiture. Thus, Mid-West Family submits that these rules should be clarified or reconsidered.

Discussion

In its *Report & Order* in this proceeding, the Commission stated that it was adopting its grandfathering rules, as forced divestiture would "unfairly penalize parties who in good faith bought stations in accordance with the Commission rules." *Report & Order* at ¶ 484. The

Commission went on to say that parties should be given the opportunity to retain the value of the investments made in good faith reliance on the rules that were in existence at the time of those investments. In prohibiting the transfer of non-compliant groups, the Commission found that, in the normal case, this would not work an undue hardship. In reaching this conclusion, it looked at the ability of prospective buyers, who are now aware of the provisions of the new rules, to be able to plan their business strategies to comply with these new rules. Thus, they are not harmed if stations must be divested to bring them into compliance with the new rules.

The situation of the closely held business, where the owners have shareholders agreements or similar contracts allowing, and in fact often compelling, the repurchase of their business associate's interest in the broadcast company upon death or departure, is not like that of the new owner, purchasing a group of stations fully aware of the provisions of the new rules and able to structure their business deal accordingly. Instead, the owners already in the business, who will be enjoying an increase in their percentage of ownership because of the repurchase of their departing associate's interests, have already made their investment decision – they have bought their existing interest in the company and, made the investment decision to spend their time and money developing a particular cluster of stations. Because of the actions of another – often the involuntary actions of their associates (e.g. upon their death) – the remaining investors have not had the opportunity to plan their future ownership based on the new rules. Instead, they are thrust into a situation where, contractually, they or their companies must repurchase the interest of the departing associate. Such repurchase may be at a fixed price determined based on the value of the existing cluster, a value which may well adversely change if some forced divestiture is required. It would be unfair to these remaining owners to force them to suffer the financial strains of a repurchase of a departing shareholder's interest and an unplanned

divestiture of an existing property at the same time. This will upset existing business relationships and investment expectations.

In allowing parties who acquire interests through a will or by intestacy to retain those interests even if they are non-compliant with the new rules, the Commission has recognized the unfairness of forced divestitures in these circumstances. The same logic that applies to those situations should apply to the contractual passing of stock or other ownership interests to other existing owners in closely held corporations. In both cases, the transfer, with respect to the remaining shareholders, was not caused by a voluntary act on their part.³ Forced divestitures in this context would not serve the public interest, and would be inconsistent with the objective of industry stability that the Commission has tried to achieve through the grandfathering provisions of the new rules.

Therefore, the Commission should expand its stated exceptions to the required divestiture of non-compliant interests to permit closely-held companies to retain ownership of existing interests, even though there has been a long form transfer of control, if control is retained by exiting owners, pursuant to a contractual buy-out provision triggered by the death or other severing of the departing owner's ties to the broadcast licensee company.

³ Commission precedent supports this conclusion. *See, e.g., Rose Broadcasting Co.*, 68 FCC 2d 1242 (1978), where the Commission found that the distribution of stock to an estate, and its subsequent sale by the estate to an existing owner of the applicant company, was the equivalent of the stock passing from the estate directly to its beneficiaries. In that case, the transfer out of the estate was treated as “involuntary” for purposes of permitting an application to retain its cut-off status after the death of a principal shareholder.

Conclusion

For the reasons set forth herein, Mid-West Family respectfully requests that the Commission clarify or reconsider its rules in the manner set out above.

Respectfully submitted,

MID-WEST FAMILY BROADCASTING

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