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

In the Matter of)	
)	
2002 Biennial Regulatory Review of the)	MB Docket 02-277
Commission's Broadcast Ownership 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 Arbitron Survey Areas)	

To: Full Commission

PETITION FOR RECONSIDERATION

Pursuant to Section 405 of the Communications Act, 47 U.S.C. Section 405, Bennco, Inc. ("Bennco"), by its attorney, respectfully requests the full Commission to reconsider and set aside its Report and Order, released July 2, 2003 and published in the Federal Register on August 5, 2003¹, to the extent that the Rules adopted in such Report and Order require Bennco to dissolve a Joint Sales Agreement which exists between Bennco and Clear Channel, in the Parkersburg, WV/ Marietta, OH radio market. In support thereof, it is alleged:

¹ 68 FR 46286.

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I. Petitioner and its Interest in this Proceeding:

1. Bennco, Inc., is one of a number of companies whose CEO is William E. Bennis, III, of Norfolk, VA (collectively, the "Bennis companies"). For a number of years, these companies owned and operated a number of broadcast stations in the Parkersburg, WV/Marietta, OH, radio market. By 2001, the number of stations owned and operated in that market by the Bennis companies had grown to five: two AMS and 3 FMS. In that same year, however, the Bennis companies sold all five stations to Clear Channel².

2. Following the sale to Clear Channel, Mr. Bennis and his associates began looking for another radio property for Bennco to acquire, in order to accomplish a tax deferred exchange, under the Internal Revenue Act. It happened that FM Broadcast Station WVVV, Williamstown, WV, was available. It also happened that the then owner of Station WVVV, Williamstown Broadcasting, LLC, had a joint sales agreement with Clear Channel. This made it an attractive vehicle for the tax shelter. Bennco would have to program the station, but this was a fairly easy task; good programmers are readily available. Bennco would not have to do any selling - a task which is very difficult because it requires skilled sales people, which are very scarce.

3. Now, however, the FCC has adopted rules which make JSAs attributable. Furthermore, it has decreed that in markets like Parkersburg/Marietta, where the existence of a JSA would cause Clear Channel to exceed its maximum limit under the Multiple Ownership Rules, any such JSAs must be dissolved, within two years. *In the Matter of 2002 Biennial Regulatory review,*

² The sale agreement was actually executed in 1999, but FCC approval of the sale was delayed for 18 months, because of a Petition to Deny.

29 Communications Reg. (P&F) at paragraphs 317-325. This presents Bennco with a problem - a big problem. If the JSA is dissolved, the very survival of Station WVVV will require Bennco to establish a sales staff - a task which, as will be demonstrated, will be next to impossible to accomplish.

II. It Will be Almost Impossible for Station WVVV to Survive Without a JSA:

4. It has been said that 90% of the policies of life insurance sold in the U.S. are sold after the customer has said "no." Selling radio advertising may not be quite that difficult but it's still very difficult, indeed. Seldom, if ever, does someone come into a radio station and ask to buy advertising. To the contrary, the advertising has to be sold by skilled personnel. These individuals are rare, and various advertising media, including radio, TV, cable TV and newspapers compete for their services.

5. With a 2000 population of 150,200, the Parkersburg/Marietta market ranks 282 out of the 286 markets rated by Arbitron. Despite its small size, it is an extremely competitive market. Parkersburg and Marietta each have two daily newspaper, three of which are owned by Ogden and one by Gannet. Marietta has, in addition, two weekly newspapers, and Parkersburg has a television station. Marietta and Parkersburg each have some of the highest cable penetration rates in the country and both local cable systems sell advertising on an aggressive basis.

6. Radio broadcasting in the market is dominated by two groups: Clear Channel with five stations, and the Galli group, also with five stations. It is going to be extremely difficult to lure skilled sales people away from either of these groups, or, for that matter, the newspapers, TV station or cable systems, to work for a stand alone FM station, e.g, WVVV. At the very least, Bennco will be unable to continue to produce the present high quality of programming which it offers to the

public, once the stream of revenue from the JSA disappears.

III. The Decision Not to “Grandfather” JSAs was Arbitrary and Capricious:

7. The Commission’s decision to require that JSAs be dissolved within two years stands in stark contrast to the treatment the Commission has given to stations actually owned and operated by group owners. As a result of the redefinition of radio markets, contemplated by the Report and Order, many group owners now have more stations in a market than are permissible under the new rules. The Commission, however, has decided not to require that these combinations be broken up. They can remain in place forever, so long as they are not sold as a group. Does it really make any sense to treat JSAs any differently? We respectfully submit that it does not.

8. It is an axiom of administrative law that an agency must base its decisions upon a complete record and explain the basis for its conclusions. *Motor Vehicle Manufacturers Ass’n v. State Farm Mutual Insurance Co.*, 463 U.S. 29 (1983). The agency must examine the relevant data and articulate a satisfactory explanation for its action including a “rational connection between the facts found and the choice made. *Burlington Truck Lines, Inc. v United States*, 371 U.S. 156 (1962). Here, the Commission failed to determine just how many markets might be affected by its decision to require dissolution of JSAs, or to do any sort of cost/benefit analysis to determine whether the benefits, if any, of dissolution are outweighed by the damage to the public, resulting from the creation of small stand alone stations, deprived of the revenues needed to provide quality programming. Thus, the Commission had no record upon which to base its decision to require that JSAs such as those between Bennco and Clear Channel be dissolved.

9. In truth, Bennco believes that the number of markets where JSAs will have to be dissolved is very small. Bennco’s counsel made inquiry at BIA and was told that their records show

JSAs in only 12 markets, but they are unwilling to certify that number because their records may be incomplete. Even if there are 24 markets, however, they would constitute less than 10% of all the Arbitron markets in the country. Furthermore, in some of these markets, dissolution won't be necessary because the group owner isn't over its limits.

10. If the Commission's intention was to punish group owners and, in particular, Clear Channel, its actions were wide of the mark. In Parkersburg, for example, the market is already divided between two powerful group owners: Clear Channel and Galli. Neither of these groups is going to be significantly affected if the Bennco/Clear Channel JSA goes away. Each group has its own staff of skilled sales people, who will go right on selling exactly what they have been selling. Only Bennco will suffer, because it won't be able to attract sales people to sell for a stand alone station. These sales people want to sell for a group, simply because the revenues involved are necessarily larger, resulting in bigger commissions.

IV. Conclusion:

11. Petitioner doesn't question the Commission's decision to make JSAs attributable in the future and to prohibit future JSAs which, given the decision to make them attributable, cause a group owner to exceed its limits in a market. But the decision to require dissolution of existing JSAs is a different matter. It was taken with no fact finding, whatsoever. The FCC didn't even trouble to find out how many markets would be affected. Hence, the agency acted without an adequate record.

12. Interestingly, the agency elected to specify a two year grace period, during which existing JSAs could continue to exist. Clearly, it thought that these existing JSAs were not a major threat to competition, or it would have required immediate dissolution. Bennco believes that if the FCC investigates the issue, it will conclude that the number of offending JSAs is so small that far more

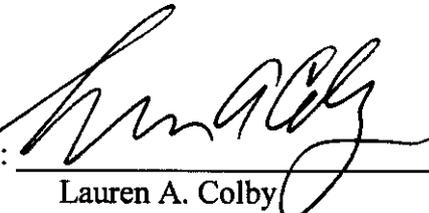
harm would be done by requiring them to be dissolved than would be done by letting them remain in place. Such conclusion will be consistent with, if not mandated by the treatment afforded to clusters of stations owned by a single company, which exceed the numerical limits specified by the new Multiple Ownership Rules. Those clusters are grandfathered. Parity of treatment requires that pre-existing JSAs also be grandfathered. *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir., 1965).

August 29, 2003

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Respectfully submitted,

BENNCO, INC.

By: 

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