DOCKET FILE COPY ORIGINAL

LEVENTHAL SENTER & LERMAN PLLC

DUPLICATE

RECEIVED

OCT 2 1 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 21, 2003

BRIAN M MADDEN
(202) 416-6770

E-MAIL
BMADDEN@LSL-LAW COM

Via Hand Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Entercom Communications Corp.
Reply to Comments on Petition for Reconsideration and Clarification
MB Docket No. 02-277
MM Docket No. 01-235
MM Docket No. 01-317
MM Docket No. 00-244
MB Docket No. 03-130

Dear Ms. Dortch

On behalf of Entercom Communications Corp., there is transmitted herewith an original and eleven (11) copies of its *Reply to Comments on Petition for Reconsideration and Clarification* submitted in connection with the above-referenced proceedings.

If any additional information is desired in connection with this matter, please contact the undersigned counsel

Very truly yours,

Brian M. Madden

Enclosures
cc: Nina Shafran
Nandan Joshi

189344 v1

DUPLICATE

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

OCT 2 1 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of The Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	
Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area	)	MB Docket No. 03-130

To: The Commission

REPLY TO COMMENTS ON PETITION FOR RECONSIDERATION AND CLARIFICATION

Entercom Communications Corp. ("Entercom"), by its attorneys and pursuant to Section 1 429(g) of the Commission's Rules, hereby submits this response to the comments filed October 6, 2003 by Vinson & Elkins, LLP ("V & E") on behalf of various unidentified clients (the "V & E Comments") with respect to Entercom's *Petition for Reconsideration and Clarification*, submitted in the above-captioned proceeding. Entercom submits that the V & E Comments misconstrue Entercom's central concerns in its *Petition for Reconsideration and Clarification*, as explained herein.

In the *Petition for Reconsideration and Clarification*, Entercom requested that the Commission reconsider and clarify its revision of Note 4 to Section 73.3555 of the

Commission's Rules ("Note 4") contained in the Report and Order and Notice of Proposed Rulemaking in the above-captioned proceedings released on July 2, 2003. *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, FCC 03-127, slip op. (rel. July 2, 2003) ("*Report and Order*"). Specifically, Entercom proposed that the Commission reconsider and clarify its changes to Note 4 by adding to Note 4 the italicized language indicated below:

> **Note 4 to § 73.3555**: Paragraphs (a) through (c) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy, if no new or increased concentration of ownership would be created among commonly owned, operated or controlled media properties. Paragraphs (a) through (c) will apply to all applications for new stations, to all other applications for assignment or transfer, ***and, with the exception of applications to change a community of license from one community within a radio Metro market to another community within the same Metro or for changes in facilities of existing radio stations which do not create new or increased contour overlap with commonly owned, operated or controlled radio stations located outside of a Metro,*** 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 or create new or increased concentration of ownership among commonly owned, operated or controlled media properties. Commonly owned, operated or controlled media properties that do not comply with paragraphs (a) through (c) of this section may not be assigned or transferred to a single person, group or entity, except as provided above in this Note or in the Report and Order in Docket No. 02-277, released July 2, 2003 (FCC 03-127).

DISCUSSION

Without explanation, the Commission expanded the scope of Section 73.3555 of its rules through the addition of new provisions to Note 4 that make the section applicable to all applications "that implement an approved change in the FM radio station's community of license or create new or increased concentration of ownership among commonly owned, operated or

controlled media properties."[1] 47 C.F.R. § 73.3555, Note 4. Despite the Commission's general decision to grandfather existing combinations, this status would be eliminated if one of the identified types of facility change applications were to be filed for any of the stations in an established group. The effect of this seemingly routine revision is so broad that it would terminate the grandfathered status of an ownership combination that seeks to change the community of license of one of its stations to a different community within the same Metro or to modify the facilities of one of its stations within a Metro without creating a new or increased overlap with a commonly owned station located outside of the Metro – changes that are without significance under the ownership rules because they would not alter the number of stations the group owner has in the market, the total number of stations in the Metro, or otherwise effect any cognizable change to the Metro's characteristics.

As Entercom explained in the *Petition for Reconsideration and Clarification*, the change to Note 4 neither advances the Commission's ownership goals nor furthers the fulfillment of the Commission's established allotment priorities. The only effect of the change to Note 4 in such a case is to rescind grandfathered status, which the Commission recognizes is appropriate to protect station group acquisitions made in good faith reliance with the then-existing local radio ownership rule, *Report and Order* at ¶ 484, upon implementation of a change in technical facilities that is without relevance to the application of the new ownership rules. Under the new ownership rules, the degree of overlap among commonly owned stations within a Metro has no particular regulatory significance – indeed, the ownership rules apply whether or not *any* overlap exists among any stations within the same Metro, and without regard to the class of stations

[1] Under the prior version of Note 4, the rules were not applicable to minor change applications filed for existing stations

involved [2] The only relevant factor is the *number* of stations owned in common within the Metro – where the number of stations owned in a Metro does not change, despite the filing of an application to expand a station's coverage area, a licensee should not be threatened with the loss of its cluster's grandfathered status.

The V & E Comments mischaracterize Entercom's concerns. V & E contends that "if the Commission were to adopt the limited solution proposed by Entercom...[i]t would grandfather only certain long-pending community of license changes while failing to address others that are no different in any pertinent respect." V & E Comments at 2-3. This assertion is incorrect. Contrary to V & E's assertion, Entercom's proposed revision to Note 4 does not distinguish on the basis of *when* a particular change in facilities is proposed: Entercom's modification would apply to all changes in facilities that leave Metro ownership conditions unchanged, whether such changes were requested before the adoption date of the new ownership rules, or at any time in the future

As Entercom explained in the *Petition for Reconsideration and Clarification*, the unfairness that arises from a strict application of Note 4, as written, in the context described by Entercom is not limited to cases involving a group owner's "reliance on the previous rules," as V & E asserts.[3] Rather, the unfairness arises from the failure of revised Note 4 to align appropriately with the goals of the new ownership rules when applied to the types of changes described by Entercom, without inhibiting the fulfillment of the Commission's long-standing allotment priorities Entercom proposed language to modify Note 4 to harmonize the goals of

[2] Only where a facility change application proposes new or increased overlap between a Metro station and a commonly owned non-Metro station would the degree of overlap be relevant; in that instance, a licensee would have to demonstrate compliance with the ownership rules both within the Metro and under the interim contour overlap rules outside of the Metro *Report and Order* at ¶ 286

[3] V & E Comments at 3

the Commission's new ownership rules with the maintenance of grandfathered status when licensees undertake to implement a change in community of license and/or technical facilities that advances the allotment priorities but is without relevance to the application of the new ownership limitations. Entercom's proposed language would treat similarly situated applicants equally, without regard to the timing of the filing of an application. By contrast, the proposal set advanced by V & E focuses solely on the timing of a petition, counterproposal, or application implicating revised Note 4, V & E Comments at 3, and fails to address the substantive policy concerns which form the basis of Entercom's proposal.

CONCLUSION

For the foregoing reasons, Entercom respectfully restates its request that the Commission reconsider and clarify its changes to Note 4 to Section 73.3555 of the Commission's Rules by the adoption of the suggested language set forth at page 2 of this Reply.

Respectfully submitted,

ENTERCOM COMMUNICATIONS CORP.

By: Brian M. Madden

Brian M. Madden
Jean W. Benz
John W. Bagwell

Leventhal Senter & Lerman PLLC
2000 K Street, N W. Suite 600
Washington, DC 20006-1809
(202) 429-8970

October 21, 2003

Its Attorneys

CERTIFICATE OF SERVICE

I, Genevieve F. Edmonds, hereby certify that a copy of the foregoing "Reply to Comments on Petition for Reconsideration and Clarification" was mailed, first class postage prepaid, this 21st day of October, 2003 to the following:

Mark N. Lipp
J. Thomas Nolan
Vinson & Elkins, LLP
The Willard Office Building
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1008

Dennis P. Corbett
Jean W. Benz
John W. Bagwell
Leventhal Senter & Lerman PLLC
2000 K Street, NW
Suite 600
Washington, DC 20006

*Nina Shafran
Federal Communications Commission
445 12th Street, S.W.
Room 2-A267
Washington, DC 20006

*Nandan Joshi
Federal Communications Commission
445 12th Street, S.W.
Room 8-A820
Washington, DC 20006

*By Hand Delivery

Genevieve F. Edmonds