

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

FILED/ACCEPTED

SEP 30 2008

Federal Communications Commission
Office of the Secretary

In Re)	
)	
Cox Radio, Inc.)	
WSRV(FM), Gainesville, GA	)	FCC Facility ID No. 59970
WALR-FM, Greenville, GA	)	FCC Facility ID No. 48728
WHIO(AM), Dayton, OH	)	FCC Facility ID No. 14244
WHKO(FM), Dayton, OH	)	FCC Facility ID No. 14245
)	
Miami Valley Broadcasting Corp.)	
WHIO-TV, Dayton, OH	)	FCC Facility ID No. 41458
)	
Calvary, Inc.)	
KQV(AM), Pittsburgh, PA	)	FCC Facility ID No. 8445
)	
Bonneville Holding Company)	
KSL-FM, Midvale, UT	)	FCC Facility ID No. 54156
KRSP-FM, Salt Lake City, UT	)	FCC Facility ID No. 27462
KSFI(FM), Salt Lake City, UT	)	FCC Facility ID No. 60452
)	
The Scranton Times, L.P.)	
WEZX(FM), Scranton, PA	)	FCC Facility ID No. 66364
WQFM(FM), Nanticoke, PA	)	FCC Facility ID No. 66366
WBAX(AM), Wilkes-Barre, PA	)	FCC Facility ID No. 66365
)	
MCC Radio, LLC)	
WIBW(AM), Topeka, KS	)	FCC Facility ID No. 63169
WIBW-FM, Topeka, KS	)	FCC Facility ID No. 63174
KGNC(AM), Amarillo, TX	)	FCC Facility ID No. 63159
KGNC-FM, Amarillo, TX	)	FCC Facility ID No. 63161

MOTION FOR EXTENSION OF TIME

Cox Enterprises, Inc., Calvary, Inc., Bonneville Holding Company, The Scranton Times L.P., and Morris Communications Company, LLC ("Media Parties"), by their attorneys and pursuant to Section 1.46 of the Commission's rules, 47 C.F.R. § 1.46, hereby seek an extension of the October 7, 2008 date for their submissions addressing the effect that recent changes to the Commission's newspaper/broadcast cross-ownership rule, 47 C.F.R. § 73.3555(d) ("NBCO

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Rule”), might have on already pending waiver requests or existing waivers.¹ As explained in detail below, the Media Parties seek an extension of the deadline until ninety days after issuance of a final court order on pending judicial challenges to the recently reformulated NBCO Rule. In furtherance of the requested extension, the Media Parties request a thirty-day extension of the October 7, 2008 deadline to allow the Commission to act on this request. Good cause exists for grant of both extension requests.

In its 2006 Quadrennial Regulatory Review decision, the Commission directed five entities -- the Media Parties -- to address the effect that recent changes to the NBCO Rule might have on pending waiver requests or existing waivers.² Specifically, the Commission noted that “[w]here a pending waiver request involves an existing combination consisting of more than one newspaper and/or more than one broadcast station or an entity has been granted a waiver to hold such a combination pending the completion of this rulemaking, we will afford the licensee 90 days after the effective date of this order to either amend its waiver/renewal request or file a request for permanent waiver.”³ This aspect of the *QRR Decision* became effective on July 9, 2008, and the ninety-day deadline for such submissions falls on October 7, 2008.⁴

¹ The FCC also has authority under Section 1.41 of its rules, 47 C.F.R. § 1.41, to grant this request. *California Metro Mobile Communications, Inc. v. FCC*, 365 F.3d 38, 44 (D.C. Cir. 2004); *Nassau County Police Department*, 32 CR 692, 696 (Div. 2004); *JPJ Electronic Communications, Inc.*, 16 FCC Rcd 2902, 2904 (Div. 2001).

² 2006 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, *Report and Order and Order of Reconsideration*, 23 FCC Rcd 2010, ¶ 78 (2007) (“*QRR Decision*”).

³ *Id.* (footnotes omitted). The requirement that they file supplements pertained to the licensees and stations noted in the caption to this pleading. The Media Parties are the licensees or have cognizable interests in the licensees.

⁴ 2006 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, 73 Fed. Reg. 39269 (July 9, 2008).

The *QRR Decision* created a new hierarchy of legal presumptions and multiple standards for reversing or rebutting these presumptions and for securing waivers of the NBCO Rule. To that end, the *QRR Decision* directed the Media Parties to “address the factors considered in [the] order and the impact that the combination has on the diversity of independent voices in the market, particularly as it affects news and information programming.”⁵ Many of the factors considered in the *QRR Decision* are highly fact-intensive, involving extensive data collection and, in at least one instance, may require the retention of experts and preparation of expert testimony to address.

While the Media Parties have been diligently preparing their submissions, the pending litigation over the *QRR Decision* and its amendment to the NBCO Rule has called into serious question, among other things, precisely what criteria the Commission ultimately will use to conduct its waiver analyses and whether it will be able to apply those factors with reasonable certainty. The *QRR Decision* was challenged in five different United States Courts of Appeals by numerous parties, and there is no certainty as to how these issues will be resolved.⁶

The appeals of the *QRR Decision* have all been transferred to the United States Court of Appeals for the Ninth Circuit under procedures employed by the United States Judicial Panel on Multidistrict Litigation.⁷ Since that transfer, the various appellate parties have filed numerous pleadings addressing the appropriate venue for the appeals. The United States Court of Appeals for the Ninth Circuit has yet to release a decision on this preliminary procedural matter, and briefing and argument will be scheduled after the venue question is resolved. The merits briefing will thereafter involve a myriad of substantive concerns as to whether the *QRR Decision*

⁵ *QRR Decision* at ¶ 78.

⁶ Four of the five Media Parties are participating in the court review proceedings.

⁷ *In re FCC, In the Matter of 2006 Quadrennial Regulatory Review*, RTC No. 95 (J.P.M.L. Mar. 11, 2008) (consolidation order).

improperly liberalized the NBCO Rule standards; whether, on the other hand, it was insufficiently deregulatory; and, at base, whether any NBCO restriction can survive constitutional muster, on its face or as applied.

With this litigation uncertainty, the legal standards and criteria by which the Commission will actually judge any waiver showings made on October 7, 2008 remain in doubt. At a minimum, the FCC will not know for some time whether the factors it articulated will survive judicial challenge. Moreover, any waiver decisions the Commission makes prior to a court determination, if it requires the parties to meet the October 7, 2008 deadline, stand a high probability of requiring modification if even minor changes are made to the relevant standards and criteria on appeal. If more substantial changes are required by whatever court ultimately addresses the merits, any decision the Commission makes in the interim on the waivers might need to be drastically revised. Even if the Commission required the Media Parties to file on October 7, 2008, but did not act on the filings until after judicial proceedings are complete, the Media Parties would need to update and revise their October 7 showings once it became clear exactly what factors are to guide FCC review and also to reflect the competitive and other changes in the markets that are certain to occur while the waiver requests are pending. Processing and evaluating extensive supplemental showings in this period of high uncertainty would unnecessarily waste Commission and Commission staff resources.

Given the uncertainty, fundamental fairness and administrative efficiency strongly suggest it would be prudent to delay action on the amended waiver requests until after court review is complete. These existing newspaper/broadcast combinations have been in place for a number of years; therefore, the requested extension would simply preserve the *status quo*. No public interest benefit would be advanced by requiring the submission of waiver showings prior to court direction on the matter. FCC administrative resources are likely to be wasted, and the Media Parties are likely to expend resources preparing submissions that would later be rendered

outdated, at a minimum, or completely obsolete. The Media Parties' resources are better spent advancing the delivery of news and implementing localism initiatives in their individual markets.

Postponing the submission of waiver filings until after the legal landscape is clarified would be consistent with the manner in which the FCC has approached cross-ownership changes in the past. For example, when the FCC adopted the NBCO Rule in January 1975, it identified sixteen instances in which divestiture of existing properties might be appropriate under the newly formulated rule.⁸ Although the FCC said such divestiture, if eventually ordered, would not have to occur until January 1, 1980, it required those same parties to submit waiver requests within six months of publication of the 1975 decision in the *Federal Register*.⁹ On further review, however, the FCC stated that "no useful purpose would be served by insisting" that parties comply with the six-month filing deadline. Instead, the FCC determined that waiver requests would be due sixty days after judicial review was complete.¹⁰

⁸ Amendment of Sections 73.34 [sic], 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, *Second Report and Order*, 50 FCC 2d 1046, 1084-86 (1975), *recon.* 53 FCC 2d 589 (1975) ("1975 Reconsideration Order"), *modified by Nat'l Citizens Committee for Broad. v. FCC*, 555 F.2d 938 (D.C. Cir. 1977), *aff'd in part and rev'd in part, FCC v. Nat'l Citizens Committee for Broad.*, 436 U.S. 775 (1978).

⁹ *Id.* at 1086.

¹⁰ 1975 *Reconsideration Order*, 53 FCC 2d at 594.

Likewise, "no useful purpose" would be served by ordering the Media Parties to file waiver submissions on October 7, 2008. Extending the deadline for such filings until ninety days after resolution of the pending *QRR Decision* appellate challenges would serve the interests of the Commission and the parties and advance the public interest. In furtherance of this request, the Media Parties also request that the Commission delay the October 7, 2008 deadline for submission of waiver supplements for thirty days to allow the Commission to review the request that the filing deadline be delayed until ninety days after issuance of a final court order on the pending judicial challenges to the NBCO Rule.

Respectfully submitted,

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September 30, 2008

CERTIFICATE OF SERVICE

I, Tammi Foxwell, a secretary at the law firm of Dow Lohnes PLLC, do hereby certify that on this 30th day of September, 2008, I caused a copy of the foregoing "Motion for Extension of Time" to be delivered by hand to the following:

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A handwritten signature in cursive script that reads "Tammi Foxwell". The signature is written in black ink and is positioned above a horizontal line.

Tammi Foxwell

* Additional service by email.