

Statement With Respect To Non-Competition Agreement

The instant application is one of three concurrently-tendered applications seeking the Commission's consent to the assignment of the FCC licenses held by three licensees that ultimately are owned by common shareholders. The three stations WRZE(FM), Nantucket, MA; WPXC(FM), Hyannis, MA; and WCIB(FM), Falmouth, MA, are all located on Cape Cod or Nantucket Island. Under the terms of the Purchase Agreement providing for the sale of the three stations to the proposed assignee, the shareholders in the licensees' holding companies will enter into a non-competition agreement whereby they will agree not to hold certain ownership interests in FM radio stations that are licensed to communities within Bristol, Plymouth, Barnstable, Dukes or Nantucket Counties, Massachusetts. All of these counties are located on Cape Cod or Nantucket or, in the case of Plymouth County, are immediately adjacent to Cape Cod.

Because the area in which the non-competition agreement is in effect might in some circumstances extend beyond the service contours of the stations being sold, the non-competition agreement could be construed to not comply with Question 6 of Worksheet No. 2 of the instructions to the FCC Form 314. The non-compete agreements in the present case are not contrary to Commission policy, however, inasmuch as they do not unduly inhibit competition.

The use of service contours to define the area within which a party entering into a non-competition agreement cannot compete does not take into account the fact that a competing station can be located outside of the service contours of the stations being purchased and still place a primary service contour over the area served by one of the stations being purchased. The use of a specific geographic area, such as a prescribed county, to delineate the area within which a non-competition agreement is to be in effect eliminates this problem and thus better describes the area of legitimate business concern than does the primary service contour. Moreover, using a defined geographic area to describe the area within which a non-competition agreement is to be in effect lends itself to greater certainty and clarity than does the use of service contours and thus has less of an inhibiting effect than does the use of service contours, which are subject to varying engineering interpretations. In sum, the use of prescribed counties to define the area within which the non-competition agreement is to be in effect more accurately defines the area of legitimate concern and thus better protects the buyer's legitimate business interests without unduly restricting competition. As a result, the non-competition agreement contemplated by the parties in the present case actually better serves the public interest than it would if it merely relied upon the use of the service contours of the three stations.

