

**MULTIPLE OWNERSHIP EXHIBIT**

**Local Radio Station Ownership.** This modification application is submitted to implement the Commission's Report and Order in MM Docket No. 05-133, which reallocated KSAJ-FM from Abilene, Kansas to Burlingame, Kansas as that community's first broadcast outlet. The proposed community of license, Burlingame, Kansas, is located within the Topeka, Kansas Arbitron Metro. In this Arbitron Metro there are, in addition to KSAJ-FM, 16 commercial and non-commercial educational full-power radio stations. *See* Attached BIA Market Report. According to the Commission's "tiered" local radio ownership limits, in a Metro reported by BIA as having between 15 and 29 (inclusive) "home" commercial and noncommercial educational full-power radio stations, a party may have a cognizable interest in up to 6 commercial full-power radio stations, not more than 4 of which are in the same service (AM or FM). This application complies with the local radio ownership portion of the multiple ownership rules set forth in 47 C.F.R. Section 73.3555(a) because only 3 full-power radio stations (2 FM and 1 AM) in the Topeka Metro will be attributable to MCC Radio, LLC ("MCC"), which, in addition to KSAJ-FM, is the licensee of WIBW(AM) and WIBW-FM, both licensed to Topeka, Kansas.

In addition, as indicated in the accompanying Unrated Market Analysis by Erik C. Swanson, the proposed KSAJ-FM contour will overlap with an attributable MCC station located outside any rated market: KBLS(FM), North Fort Riley, Kansas. As shown in Mr. Swanson's statement, however, there are at least 18 commercial and non-commercial

educational full-power radio stations in the relevant area, and the 1 AM/3 FM “cluster” attributable to MCC also complies with the Commission’s local radio limits.

**Newspaper/Radio Cross-Ownership.** As indicated in the engineering exhibits prepared by Mr. Swanson and included in this application, the predicted 1 m V/m contour of the proposed KSAJ-FM facility will encompass Topeka, Kansas. MCC is commonly owned with the publisher of the Topeka Capital-Journal, a daily newspaper published in Topeka, Kansas.<sup>1</sup> Accordingly, the proposed modification of the facilities implicates one of the provisions of the Commission’s newspaper/broadcast cross-ownership limitations, 47 C.F.R. §73.3555 (d)(2). By its terms, the cross-ownership provision is applicable to the issuance of licenses, not construction permits. Accordingly, MCC submits, requiring action to achieve compliance would not be appropriate until such time as a construction is completed, program tests are commenced, and an application for a license to cover the modified facilities is submitted. To the extent the Commission may deem it necessary, however, MCC respectfully requests that the Commission waive the cross-ownership limitation pending the outcome of the current rulemaking proceedings on remand from the Third Circuit<sup>2</sup> or, at a minimum, for a period of twelve (12) months following grant of

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<sup>1</sup> The current common-ownership of WIBW(AM), WIBW-FM, and the Topeka Capital-Journal is authorized by the Commission pursuant to a waiver pending the outcome of pending rulemaking proceedings relating to newspaper/broadcast cross-ownership. See *In re Application of Stauffer Amarillo Radio Trust*, 11 FCC Rcd 14866, 14868 (1996) (“*Stauffer*”) (granting 12 month waiver of newspaper/broadcast cross-ownership rule to permit, *inter alia*, common ownership of the Topeka radio stations and newspaper); *Letter from Roy J. Stewart, Chief, Mass Media Bureau to James Bayes, Wiley, Rein & Fielding*, Ref. 1800B-IB (MMB Aug. 11, 1997) (“*Aug. 11, 1997 Letter*”)(extending waiver until six months after the effective dated of the Commission’s action in MM Docket 96-197); *Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, 16 FCC Rcd 17283, 17286 n.16) (2001) (further extending waiver).

<sup>2</sup> 2006 *Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*; 2002 *Biennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to*

the requested construction permit. The requested waiver will have no appreciable impact on the Topeka radio market and will avoid burdening the applicant with the need for a forced sale to achieve compliance with a rule that will in all likelihood be changed in the near future.

Although the Commission has held that the mere fact that a rulemaking proceeding has been initiated will not alone justify waiver of the ownership rule under review in connection with a transaction,<sup>3</sup> the agency has made clear that it may still grant a waiver pending the outcome of a rulemaking in appropriate factual circumstances. For example, in 1997, the Commission granted a waiver of the “one-to-a-market rule,” pending completion of a rulemaking addressing that rule, and provided additional time after the completion of the rulemaking to accomplish any necessary divestitures.<sup>4</sup> Similarly, the Commission has granted several waivers of the newspaper/broadcast cross-ownership rule pending the outcome of proceedings examining that rule.<sup>5</sup>

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*Section 202 of the Telecomms. Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets, Further Notice of Proposed Rulemaking, 21 FCC Rcd 8834 (2006) (“Further Notice”).*

<sup>3</sup> *Stockholders of Renaissance Comm. Corp.*, 13 FCC Rcd 4717, 4718 (1998). According to the Commission, “. . . what is important is whether the public interest would be served by a grant of the waiver[, and w]hether the Commission specifically contemplates changing a rule in a manner that would provide relief to one party seeking the waiver is only one factor in the public interest calculus.” *Id.*

<sup>4</sup> *NewCity Communications, Inc.*, 12 FCC Rcd at 3957-58 (1997).

<sup>5</sup> *Stockholders of Renaissance Comm. Corp.*, 13 FCC Rcd 4717 (1998). See also *1998 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*, MM Docket 98-35, *Notice of Inquiry*, 13 FCC Rcd 11276, 11295 (1998) (“*1998 Biennial Regulatory Review Notice*”) (citing *Letter to Joel Rosenbloom* from Chief, Mass Media Bureau concerning ABC/Capital Cities merger, dated October 24, 1996). As noted above, Commission similarly authorized Morris’ continued ownership of WIBW-AM/FM and the *Topeka Capital-Journal* pending completion of its review of the newspaper/radio waiver policy and subsequent proceedings relating to the cross-ownership rule.

The Commission has expressly articulated the relevant factors supporting the grant of a waiver pending the outcome of a proceeding relating to ownership limits.<sup>6</sup> In particular, “the Commission has granted interim waivers or extensions where a pending proceeding is examining the rule in question, the Commission concludes that the application before it falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the Commission’s goals of competition and diversity.”<sup>7</sup> The Commission further noted that this standard would most likely be satisfied “where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate the rule” at issue.<sup>8</sup>

All of these factors are satisfied in the instant case, and grant of an interim waiver during the pendency of the omnibus proceeding is therefore warranted, if deemed necessary at the construction permit stage. Since The Third Circuit upheld the public interest determinations that caused the FCC to eliminate the blanket restriction on newspaper/broadcast cross-ownership, the cross-media limits on remand must be modified if not repealed outright.<sup>9</sup> Indeed, a change in the geographic scope of the

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<sup>6</sup> *Id.* at 11294.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Moreover, the public interest determinations made by the Commission in the *2002 Biennial Review* proceeding, and upheld in *Prometheus*, show that the rule at issue does not advance competition and diversity in any meaningful way. Against that backdrop, then, it is clear that waiver would be consistent with the Commission’s goals of competition and diversity. *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; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area*, Report and

restriction, elimination or relaxation of the newspaper/radio component, or revision of the Commission's previous standards for permanent waiver of the rule could suffice to permit common ownership of KSAJ-FM and the Topeka daily. In this connection, MCC notes that the Topeka Designated Market Area ("DMA") is the home market of at least four operational full-power televisions stations – commercial stations WIBW-TV,<sup>10</sup> KSNT(TV) and KTKA-TV, as well as noncommercial educational station KTWU. In addition, Commission records list a recently granted construction permit for another commercial TV station not yet on the air (Channel 22, File No. BNPCT-20060424ADV). MCC has no television interests. Consequently, under the three-tiered cross-media limits adopted by the Commission in 2003, MCC would have been permitted to own a daily newspaper and the full complement of six radio stations – twice the number involved here.

Moreover, the rule has been, and continues to be, the subject of protracted inquiries and rulemaking proceedings. Indeed, the Commission's consideration of the rule began in 1996, has continued through two biennial reviews and related proceedings, as well as a round of appellate review, and is now the subject of proceedings on remand and a further periodic review. Hopefully, the rule's future will be determined relatively quickly, but the date for final resolution cannot be predicted with certainty now. The record and findings of the agency and the Court of Appeals to this point, however, strongly indicate that the cross-ownership rule will be eliminated or significantly relaxed,

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Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620 (2003), *remanded in part, Prometheus Radio Project v. Federal Communications Commission*, 373 F.3d 372 (3d Cir 2004).

<sup>10</sup> Despite the common call sign, MCC has no interest in WIBW-TV, which is licensed to Gray Television.

particularly as it pertains to newspaper/radio cross-ownership. Accordingly, a waiver pending completion of the ongoing ownership proceedings would be entirely appropriate.

For the reasons set forth above, MCC believes that a waiver conditioned on the outcome of remand proceedings addressing the Commission's *2002 Biennial Review Order* would be warranted here if deemed necessary to permit grant of a construction permit for modified facilities. Should the Commission disagree, however, MCC submits that, at the very least, a temporary waiver of twelve (12) months following grant of the requested CP for modification of KSAJ-FM is appropriate in light of the current regulatory and legal uncertainty surrounding newspaper/broadcast cross-ownership. As discussed above, forcing Morris' hand now would require Morris to divest a media property in order to avoid violation of a rule that almost certainly will not survive the ongoing *2002 Biennial Review* proceeding in its current form, a result that would be arbitrary and inequitable. MCC further notes that its application requests reclassification of KXR(FM), Council Bluffs, Iowa as a Class CO facility. The process for that reclassification will take a minimum of several months. Moreover, when the requested CP for modification is granted, MCC will have three years to complete construction. The ownership proceedings should be completed well within that time frame, and no useful purpose would be served by requiring divestiture or other actions by MCC at this point.<sup>11</sup>

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<sup>11</sup> In the event the current (or a similar) newspaper cross-ownership restriction were to be retained at the end of the remand proceedings, MCC will be required to bring its existing Topeka holdings into compliance. Any necessary action with respect to KSAJ-FM could also be taken at that time.



## FCC Geographic Market Definition for Topeka, KS

Call Letters	AM/FM	Freq	Type Station	Format	Home Market	Market Designtn Date	Home Mkt Rank	Owner	City & State of License	County of License
KMKF	FM	101.5	C	Rock	Topeka, KS	07/02/2003	194	Manhattan Broadcasting Company Inc	Manhattan, KS	Riley
KDVV	FM	100.3	C	Clsc Rock	Topeka, KS	07/02/2003	194	Cumulus Broadcasting Inc	Topeka, KS	Shawnee
KLZR	FM	105.9	C	Hot AC	Topeka, KS	07/02/2003	194	Jayhawk Broadcasting Inc	Lawrence, KS	Douglas
KMAJ	FM	107.7	C	AC	Topeka, KS	07/02/2003	194	Kansas City Trust LLC	Shawnee, KS	Johnson
KMAJ	AM	1440	C	Nws/Tik/Spt	Topeka, KS	07/02/2003	194	Cumulus Broadcasting Inc	Topeka, KS	Shawnee
KTOP	AM	1490	C	ASt/Tik/Spt	Topeka, KS	07/02/2003	194	Cumulus Broadcasting Inc	Topeka, KS	Shawnee
KTPK	FM	106.9	C	Country	Topeka, KS	07/02/2003	194	JMJ Broadcasting Co Inc	Topeka, KS	Shawnee
KMXN	FM	92.9	C	Hip Hop	Topeka, KS	07/02/2003	194	Jayhawk Broadcasting Inc	Osage City, KS	Osage
WIBW	AM	580	C	Nws/Tik/Spt	Topeka, KS	07/02/2003	194	MCC Radio LLC	Topeka, KS	Shawnee
WIBW	FM	94.5	C	Country	Topeka, KS	07/02/2003	194	MCC Radio LLC	Topeka, KS	Shawnee
KWIC	FM	99.3	C	Oldies	Topeka, KS	07/02/2003	194	Cumulus Broadcasting Inc	Topeka, KS	Shawnee
KQTP	FM	102.9	C	Country	Topeka, KS	07/02/2003	194	Cumulus Broadcasting Inc	St. Marys, KS	Pottawatomie
KCVT	FM	92.5	C	Relgn/Talk	Topeka, KS	07/02/2003	194	Bott Radio Network	Silver Lake, KS	Shawnee
KBUZ	FM	90.3	NC	Christian	Topeka, KS	07/02/2003	194	American Family Association Incorporated	Topeka, KS	Shawnee
KJTY	FM	88.1	NC	Christian	Topeka, KS	07/02/2003	194	Joy Public Broadcasting Corp	Topeka, KS	Shawnee
KANV	FM	91.3	NC	NPR/Cls/Jaz	Topeka, KS	11/05/2004	194	University of Kansas	Olsburg, KS	Pottawatomie

**Number of Stations in Geographic Market 16**

**Previous Stations in Geographic Market**

"C" - Commercial Station; "NC" - Non Commercial Station

"p" indicates pending sale to owner listed