

Statement With Respect To Non-Compete Agreements

The instant application is one of four concurrently-tendered applications seeking the Commission's consent to the transfer of control of four Commission licensees which, through an intermediate entity, are wholly-owned by Aurora Communications, LLC ("Aurora"). Upon consummation of the transaction, all of the membership interests in Aurora will be held by Cumulus Media, Inc., and its subsidiaries. The four Aurora licensees are licensees of a total of 18 radio stations located in Eastern New York State and Connecticut (the "Aurora Stations").

Voting control of Aurora ultimately has resided with Frank D. Osborn. Day-to-day management of the Aurora Stations has been in the hands of Vincent Cremona. Upon consummation of the transfer of control, non-compete agreements will become effective that will, among other things, prevent Mr. Osborn and Mr. Cremona from competing with the Buyer. In the case of Mr. Osborn, his non-compete agreement will prevent him from competing with the buyer within 75 miles of the tower of any of the Aurora Stations. In the case of Mr. Cremona, his non-compete agreement prevents him from competing with the buyer within Fairfield County, Connecticut and Dutchess County, Westchester County, Orange County and Putnam County, New York, all of which are counties within which the Aurora Stations operate and solicit advertisers.

Because the area in which the two non-compete agreements are in effect will in some circumstances extend beyond the primary service contours of the Aurora Stations, the non-compete agreements could be construed to not comply with Question 6 of Worksheet No. 2 of the instructions to the FCC Form 315. 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 the primary service contour 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 primary service contour of the station being purchased and still place a primary service contour over the area served by the station being purchased. The use of a specific geographic area, such as a mileage zone or a prescribed county, to delineate the area within which a non-competition agreement is to be in effect eliminates this problem with using primary service contours 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-compete agreement is to be in effect lends itself to greater certainty and clarity than does the use of primary service contours and thus has less of an inhibiting effect than does the use of primary service contours, which are subject to varying engineering interpretations. In sum, the use of a mileage zone or prescribed counties to define the area within which the non-compete agreements are 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-compete agreements contemplated by the parties in the present case actually better serve the public interest than they would if they merely relied upon the use of the primary service contours of the Aurora Stations.