



Federal Communications Commission
Washington, D.C. 20554

May 31, 2023

In Reply Refer to:
1800B3-CRC

Maple Knoll Communities, Inc.
c/o Howard Liberman
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In re: WMKV(FM), Reading, OH
Facility ID No. 61575
File No. 0000210353

Application for Non Pro Forma Transfer of Control

Dear Counsel:

We have before us an application (Application) for Commission consent to a non pro forma transfer of control of Maple Knoll Communities, Inc. (Maple Knoll), the licensee of noncommercial educational station WMKV(FM), Reading, Ohio (facility ID no. 61575).¹ The Application seeks consent for a transfer of control that occurred on July 1, 2022, when BHI Retirement Communities, Inc. (BHI) acquired control of Maple Knoll without prior FCC authorization.² For the reasons discussed below, we grant the Application and admonish the parties for the unauthorized transfer of control.³

Background. Maple Knoll and BHI filed the Application on February 6, 2023, and we accepted it for filing the same day.⁴ No one filed a petition to deny or informal objection to the Application.

On the Application Maple Knoll and BHI disclosed that the transfer of control occurred prior to the date they filed the Application.⁵ The applicants state that the transfer of control resulted from changes that occurred on July 1, 2022, pursuant to an affiliation agreement whereby BHI became the sole member of Maple Knoll, which previously had no members.⁶ According to the Applicants, BHI will remain a separate entity with its own board of directors but will fill vacancies on the Maple Knoll board going forward.⁷

¹ Application File No. 0000210353 (Application).

² *Id.*, Description of Transfer and Agreements Exhibit.

³ 47 U.S.C. § 310(d); 47 CFR § 73.3540.

⁴ *Broadcast Applications*, Public Notice, Report No. PN-1-230208-01 (MB Feb. 8, 2023).

⁵ Application, Description of Transfer and Agreements Exhibit.

⁶ *Id.*

⁷ *Id.*

The applicants state that Maple Knoll is a 174 year-old non-profit corporation that owns and operates two continuing care communities in the Cincinnati, Ohio area, with hundreds of independent living, assisted living, memory care, and skilled nursing residences.⁸ The applicants state that BHI similarly is a faith-based non-profit organization that opened its first full-service retirement community in 1952 and has since “grown to be one of the most well-respected senior living organizations in the Midwest,” with seven senior living communities and two active adult communities.⁹ The applicants assert that the radio station “is a relatively small part of Maple Knoll’s overall operations and, as a result, the FCC regulatory implications of the changes to its governing board were inadvertently overlooked at the time of the BHI transaction.”¹⁰ The applicants further assert that “[u]pon discovering this error, Maple Knoll promptly filed the [Application].”¹¹

On February 14, 2023, Maple Knoll and BHI amended the Application to make minor corrections to the voting interest percentages reported in the Changes in Interest and Parties to the Application section.¹² The applicants filed another amendment on March 20, 2023, to provide copies of the affiliation agreement and an amendment to the agreement.¹³

Discussion. Section 310(d) of the Communications Act of 1934, as amended (the Act), provides in pertinent part:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.¹⁴

It is undisputed that consummation by the applicants of the affiliation agreement without prior FCC approval resulted in an unauthorized non pro forma transfer of control in violation of section 310(d) of the Act and section 73.3540 of the Commission’s rules.¹⁵ Pursuant to section 1.80(b)(10) of the Commission’s rules, the base forfeiture for such unauthorized transfers of control is \$8,000 per violation.¹⁶

The Commission, however, is a regulatory agency with broad prosecutorial discretion in enforcement proceedings,¹⁷ and its exercise of that discretion with respect to enforcement investigations is

⁸ Application, Description of Transfer and Agreements Exhibit.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*, Purpose of Amendment 2-13-2023.

¹³ *Id.*, Purpose of Second Amendment.

¹⁴ 47 U.S.C. § 310(d). *See also* 47 CFR § 73.3540 (“Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control.”).

¹⁵ 47 U.S.C. § 310(d); 47 CFR § 73.3540.

¹⁶ 47 CFR § 1.80(b)(10), Tbl. 1.

¹⁷ *See Radio One Licenses, LLC*, Forfeiture Order, 19 FCC Rcd 23922, 23932, para. 24 (2004) (citing *Emery Telephone*, Memorandum Opinion and Order, 15 FCC Rcd 7181, 7186 (1999)).

within the agency's jurisdiction.¹⁸ The Supreme Court has repeatedly recognized that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."¹⁹ Such considerable discretion is necessary because, among other reasons, "[t]he agency is far better equipped . . . to deal with the many variables involved in the proper ordering of its priorities."²⁰

On the facts presented here, we find that an \$8,000 forfeiture for the applicants' unauthorized transfer of control would be unwarranted and excessive. Considering the record as a whole and consistent with our discretion in enforcement proceedings, we find that an admonishment, rather than a forfeiture, is appropriate for the unauthorized transfer of control in this case.²¹ We caution Maple Knoll and BHI to be more diligent regarding any future actions requiring prior Commission authorization. We further find that Maple Knoll and BHI are fully qualified to hold the station license and that grant of the Application will further the public interest, convenience, and necessity.

Conclusions/Actions. Accordingly, IT IS ORDERED that Maple Knoll and BHI ARE ADMONISHED for their apparent violation of section 310(d) of the Act, 47 U.S.C. § 310(d), and section 73.3540 of the Commission's rules, 47 CFR § 73.3540.

IT IS FURTHER ORDERED that the application (file no. 0000210353) for consent to transfer control of Maple Knoll to BHI IS GRANTED.

IT IS FURTHER ORDERED that pursuant to section 73.3527(e)(11) of the Commission's rules, 47 CFR § 73.3527(e)(11), a copy of this letter order and as otherwise required all related investigatory materials SHALL BE RETAINED in the above-captioned Station's online public inspection file until grant of the next license renewal application.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

¹⁸ See 47 U.S.C. § 403. See also *Viacom Inc., ESPN Inc.*, Forfeiture Order, 30 FCC Rcd 797, 804, para. 18 (2015); *Spanish Broad. Sys. Holding Co., Inc.*, Forfeiture Order, 27 FCC Rcd 11956, 11959, para. 8, n.30 (EB 2012) (Section 403 provides broad discretion as to the type of misconduct the Commission may investigate and subject to enforcement action).

¹⁹ *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (citing *United States v. Batchelder*, 442 U.S. 114 (1979); *United States v. Nixon*, 418 U.S. 683 (1974); *Vaca v. Sipes*, 386 U.S. 171 (1967); *Confiscation Cases*, 7 Wall. 454 (1869)).

²⁰ *Heckler v. Chaney*, 470 U.S. at 831.

²¹ See Note to 47 C.F.R. § 1.80(b)(8). See also *Tabback Broad. Co.*, 15 FCC Rcd 11899, 11900, para. 5 (2000) (Commission finds that staff "appropriately exercised its discretion" in admonishing Licensee, rather than issuing a forfeiture, for public file and accessibility violations).