



**Federal Communications Commission
Washington, D.C. 20554
September 15, 2016**

In Reply Refer To:
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ms. Christina H. Burrow, Esq.
Cooley, LLP
Suite 700
1299 Pennsylvania Avenue, N.W.
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In re: WSRV(FM), Gainesville, GA
Facility ID No. 59970
File Nos. BRH-20031205ACS
BRH-20111128ESM

WALR-FM, Palmetto, GA
Facility ID No. 48728
File No. BRH-20111128ERH

WHKO(FM), Dayton, OH
Facility ID No. 14245
File Nos. BRH-20040601BNZ
BRH-20120530AOJ

WHIO(FM), Dayton, OH
Facility ID No. 14244
File No. BRH-20120530AOG

License Renewal Applications

Dear Ms. Burrow:

We have before us the above-referenced renewal applications (Renewal Applications) of Cox Radio, Inc.'s (Cox) license for Stations WSRV(FM), Gainesville, Georgia and WALR-FM, Palmetto, Georgia (collectively, Georgia Stations), and WHKO(FM), Dayton, Ohio and WHIO(FM), Dayton, Ohio (collectively, Ohio Stations). Cox has common ownership of (1) the Georgia Stations and the local daily newspaper *The Atlanta Journal-Constitution* and (2) the Ohio Stations and the local daily newspapers, the *Hamilton Journal-News* and the *Middletown Journal*.¹

Common ownership of a daily newspaper and a full-power broadcast station is generally not

¹ Cox also owns the daily newspapers *The Dayton Daily News* and the *Springfield News-Sun*, however, those newspaper/broadcast cross-ownership combinations previously were grandfathered. See *Amendment of Sections 73.34, 73.240, and 73.636 of the Comm'n's Rules Relating to Multiple Ownership of Standard, FM, and Television Broad. Stations*, Second Report and Order, 50 FCC 2d 1046 (1975).

permitted under the FCC's rules.² Consequently, Cox either sought a temporary waiver of the newspaper/broadcast cross-ownership (NBCO) Rule³ or the Commission granted Cox an extension to file a permanent waiver request to come into compliance with the NBCO rule.⁴ The Commission also deferred action on the Renewal Applications. The Commission took these actions in anticipation of the resolution of the Commission's quadrennial review of the broadcast ownership rules, including the NBCO Rule.

In light of the Commission's recent *2014 Quadrennial Review Order*,⁵ the staff invites Cox to amend the Renewal Applications to demonstrate compliance with the NBCO rule or refile a waiver request, consistent with the *2014 Quadrennial Review Order's* guidelines. Pertinent to the pending Renewal Applications is the Commission's decision to continue to generally prohibit common ownership of a broadcast station and daily newspaper in the same local market.⁶

Specifically, in areas designated as Nielsen Audio Metro markets, cross-ownership of a full-power radio station and a daily newspaper will be prohibited when: (1) the radio station and the community of publication of the newspaper are located in the same Nielsen Audio Metro market, and (2) the entire community in which the newspaper is published is encompassed within the service contour of the station, namely: (a) the predicted or measured 2 mV/m contour of an AM station, computed in accordance with section 73.183 or section 73.186; or (b) the predicted 1 mV/m contour for an FM station, computed in accordance with section 73.313. Both conditions need to be met in order for the cross-ownership restriction to apply, except when the community of publication of the newspaper and the community of license of the radio station are not located in a Nielsen Audio Metro market, then only the second condition need be met.⁷

However, the Commission determined also that certain NBCO combinations could serve the public interest and adopted new waiver procedures.⁸ The Commission will consider requests to waive the

² See 47 CFR § 73.3555(d).

³ See BRH-20031205ACS, Exh. 1 and BRH-20040601BNZ, Exh. 1.

⁴ See *2006 Quadrennial Regulatory Review - Review of the Comm'n's Broad. Ownership Rules & Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Order, 26 FCC Rcd 14159, paras. 1 and 3 (2011) and *2006 Quadrennial Regulatory Review - Review of the Comm'n's Broad. Ownership Rules & Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, Order, 27 FCC Rcd 231, paras. 1 and 3 (2012) (*Extension Order*) (extending the deadline to file the permanent waiver request "until 60 days after the release of an order in the ongoing media ownership quadrennial review that adopts a final newspaper/broadcast cross-ownership rule").

⁵ *Review of the Commission's Broad. Ownership Rules & Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 14-50, 09-182, 07-294, 04-256 Second Report and Order, FCC 16-107 (rel. August 25, 2016) (*2014 Quadrennial Review Order*).

⁶ *2014 Quadrennial Review Order*, para. 150.


⁷ *Id.* at para 171. A radio station will be counted as part of the Nielsen Audio Metro market in which the station's community of license is geographically located and any other Nielsen Audio Metro market in which the station is listed by BIA as "home" to that market.

⁸ *Id.* at para. 183.

NBCO Rule on a case-by-case basis.⁹ A waiver request must demonstrate that grant of the waiver will not unduly harm viewpoint diversity. Specifically, the Commission “will evaluate waiver requests by assessing ‘the totality of the circumstances for each individual transaction, considering each waiver request anew without measuring it against a set of defined criteria or awarding the applicant an automatic presumption based on a *prima facie* showing of particular elements.’”¹⁰ Waiver applicants should present their most compelling case as to why a waiver of the NBCO Rule would not unduly harm the Commission’s goal of viewpoint diversity in the local market.¹¹

With the release of the *2014 Quadrennial Review Order*, the staff is prepared to process the Renewal Applications. To do so, the staff requests that Cox submit its waiver requests, consistent with the *2014 Quadrennial Review Order*. Pursuant to the *Extension Order*, the waiver requests must be filed by October 24, 2016. The waiver requests may be filed electronically as an amendment to the Renewal Applications. Cox also should send a copy of its waiver request to Parul P. Desai at Parul.Desai@fcc.gov.

Sincerely,


Peter H. Doyle
Chief, Audio Division
Media Bureau

⁹ *Id.*

¹⁰ *Id.* at para. 184. The NBCO waiver standard is distinct from the traditional waiver standard under section 1.3, which requires a showing of “good cause” and applies to all Commission rules. 47 CFR § 1.3. *See also, Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Waiver of the Commission’s policies or rules under section 1.3 is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest). However, the NBCO waiver standard does not replace or limit a waiver applicant’s available options under section 1.3. While the NBCO waiver standard focuses on the impact of the proposed merger on viewpoint diversity in the local market, waiver requests under section 1.3 could include a broader public interest showing. Therefore, parties may still submit a request for waiver under section 1.3 to argue that other considerations warrant waiver of the rule, and the Commission will review such waiver requests in accordance with established precedent. *2014 Quadrennial Review Order*, para. 188.

¹¹ *Id.* at para. 184.