

The instant application seeks to transfer of control of Daily News Broadcasting Co., Inc. ("Daily News"), licensee of WDNS(FM) (FIN: 15258) and WKCT(AM) (FIN: 65589), Bowling Green, KY (the "Stations"), from the Estate of The Estate of John B. Gaines (J. Pipes Gaines, Mary Gaines Dunham and Mollie Gaines Smith, Co-Executors) (the "Estate") to J. Pipes Gaines, Mary Gaines Dunham and Mollie Gaines Smith individually (the "Gaines Children"). The Gaines Children each also own one-third of News Publishing LLC, the owner of the Bowling Green Daily News, a daily newspaper published in the Station's community of license.¹

Before Mr. Gaines death in 2007, he and the Gaines Children jointly held 58.26% of the stock in Daily News. Together, through a voting trust, Mr. Gaines controlled 59.70% of the stock in Daily News. Today, the Estate and the Gaines Children jointly hold the same 58.26% of the stock in Daily News and vote the same 59.70%. The instant application seeks to transfer the shares of stock held by the Estate to the Gaines Children equally. Thus, upon Commission approval, the Gaines Children will continue to hold the same 58.26% and control through the voting trust the same 59.70% of the stock of Daily News.

The combination of common ownership of an AM broadcast station, an FM broadcast station and a newspaper together in the same community of license is presently precluded by

¹ The shares of News Publishing LLC have already been transferred from the Estate to the Gaines Children. The Bowling Green Daily News is published 7 days a week in Bowling Green, KY.

Section 73.3555(d)(1) of the Commission's Rules.² However, Gaines family ownership of the combination preceded the implementation of the prohibition on radio/newspaper cross-ownership in 1975 and is thus, grandfathered.³

According the 1975 Broadcasting Yearbook, WDNS(FM) went on the air on March 12, 1973 and WKCT(AM) began broadcast operations on November 1, 1947. The Gaines family has owned both stations since their inception.⁴ The Bowling Green Daily News traces its roots back to 1854⁵ and the Gaines' family's ownership of the paper dates back to 1882.

When implementing the 1975 radio/newspaper cross ownership ban, an exemption to the divestiture requirement was carved out for heirs and legatees. Specifically, the *1975 Report and Order* stated, "[t]he rule will apply to new ownership patterns however created, whether by initial application and construction or by acquisition. ... Thus the rule will apply to all applications for assignment or transfer *other than those to heirs or legatees* or those for pro-forma changes in ownership." *1975 Report and Order*, at ¶ 103 (emphasis added).⁶ This

² 47 C.F.R. § 73.355(d)(1) (2006). The exculpatory presumption for the top 20 DMAs contained in Section 73.3555(d)(3) does not apply in the instant case. Bowling Green, KY is the 182nd Nielsen DMA. http://www.tvb.org/rcentral/markettrack/us_hh_by_dma.asp.

³ The predecessors rule sections to Section 73.3555(d), 73.34 and 73.240 were adopted in 1975. *See, Amendment of Section 73.34, 73.240, AND 73.636 of the Commission's Rules Related to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order*, 32 RR 2d 954, 50 FCC 2d 1046, (FCC 75-104, Docket No. 18110), January 31, 1975 (the "1975 Report and Order").

⁴ The Broadcasting Yearbooks referenced herein can be viewed at http://www.davidgleason.com/Broadcasting_Yearbook_Summary_Page.htm.

⁵ See <http://www.linkedin.com/companies/bowling-green-daily-news>.

⁶ See also 47 C.F.R. §73.34 Note 8 (1975) and 47 C.F.R. § 73.240 Note 8 (1975).

grandfathering clause has been carried through numerous changes to the radio/newspaper cross ownership ban in the more than 30 years since its implementation. The exception for heirs and legatees today resides in Note 4 to Section 73.3555 of the Commission's Rules. Specifically, Note 4 states "Paragraphs (a) through (d) of the section will not be applied to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy, if no new or increased concentration of ownership would be created among commonly owned, operated or controlled media properties." 47 C.F.R. §73.3555, Note 4.

The instant application retains the Gaines family's decade's long controlling interest in Daily News Broadcasting, Inc. – 59.70% before and after the transfer of control.⁷ The transfer of John B. Gaines 37.40% interest following his passing from his Estate to his three children under his will fits squarely within grandfathering exception to the cross ownership ban of 73.3555(d)(1) contained in Note 4.

Thus, Daily News Broadcasting Co., Inc., the Estate of John B. Gaines and the Gaines Children respectfully request that the Commission grant the instant application and allow the Gaines family to retain their decade's long record of public service to Bowling Green community providing local AM, FM and daily newspaper service to the citizens of Bowling Green.

⁷ A chart showing the interests of the Gaines Children before and after the transfer is attached hereto as Attachment 1.

Attachment 1
Exhibit 5

	Present				Proposed			
	Owned Shares	Owned %	Voted* Shared	Voting %	Owned Shares	Owned %	Voted* Shared	Voting %
The Estate of John B. Gaines (J. Pipes Gaines, Mary Gaines Dunham and Mollie Gaines Smith, Co-Executors)	1666	37.4%	0	0	0	0	0	0
J. Pipes Gaines	368**	8.26%	2659	59.70%	923.4	20.73%	2659	59.70%
Mary Gaines Dunham	368**	8.26%	0	0	923.3	20.73%	0	0
Mollie Gaines Smith	193**	4.33%	0	0	748.3	16.80%	0	0
Alan D. Cooper	44	0.98%	0	0	44	0.98%	0	0
Garland West	20	0.45%	0	0	20	0.45%	0	0
Forever Communications (a/k/a WRUS, Inc.)	1795	40.30%	1795	40.30%	1795	40.30%	1795	40.30%
TOTALS	4454	99.98% (due to rounding)	4454	100%	4454	99.99% (due to rounding)	4454	100%

* The shares of John B. Gaines, J. Pipes Gaines, Mary Gaines Dunham, Mollie Gaines Smith, Alan D. Cooper and Garland West are voted pursuant to a Voting Trust Agreement dated July, 2005. Upon the death of John B. Gaines, J. Pipes Gaines became the trustee and votes the shares.

**Plus those shares in the Estate of John B. Gaines as co-executors of the Estate.