

The Purpose of This Application (FM #3)

This Form 316 application seeks Commission approval, nunc pro tunc, for the transfer of control of Southwest FM Broadcasting Co., Inc. (“Southwest FM”), licensee of Station KAHM(FM), Spring Valley (previously, Prescott), Arizona¹ from the Mulligan Trust, a revocable trust established in 1975 by Lou Silverstein (who died on January 18, 2014) and his wife, Nancy (Lee) Silverstein (hereafter the “Silversteins”), with the Silversteins as the co-trustees, to the Mulligan Trust, with Nancy Silverstein as sole trustee, and with Ayn Rand Institute (“ARI”) having the right to designate a co-trustee of the Mulligan Trust, subject to the veto of Nancy Silverstein and her right to dismiss any ARI-designated co-trustee at any time for any reason. ARI’s contingent right to designate a co-trustee of the Mulligan Trust came into existence at the execution of the Sixth Amendment to the Mulligan Trust (believed to have been in 2006, but exact execution date not currently known), which provided that ARI would have such right upon the death of Lou Silverstein if, and only if, he predeceased Nancy Silverstein (and subject to the veto of Nancy Silverstein and her right to remove any subsequently-designated ARI co-trustee at any time for any reason). ARI’s contingent right remained inchoate until the death of Lou Silverstein (predeceasing Nancy Silverstein) on January 18, 2014.

This application is one of three Form 316 applications which Southwest FM is filing concurrently to obtain Commission approval, nunc pro tunc, for actions which, based on Commission interpretations of Section 310(d) of the Communications Act, as amended, constituted “pro forma” transfers of control of Southwest FM (and for which applications have

¹ See BPH-20100813BHN, granted January 11, 2013; reconsideration denied April 29, 2014; application for review pending).

not previously been filed). These applications are being filed as the result of informal communications between the licensee's communications counsel and members of the Commission's staff responsible for reviewing assignment and transfer of control applications. As these applications are sequential and therefore interrelated, and they will presumably be reviewed concurrently by the Commission's staff.² A summary of these applications is provided below:

1. December 16, 1982. The first application ("FM #1") pertains to the Silversteins' placement of their stock in Southwest FM, which they held jointly, and in their personal capacities, in the Mulligan Trust, with Lou Silverstein as sole trustee.
2. Between 1982 and March 10, 2004 (specific date unknown). The second application ("FM #2") pertains to the designation of Nancy Silverstein as a co-trustee of the Mulligan Trust (with Lou Silverstein remaining as co-trustee of the Trust).
3. January 18, 2014. The third application ("FM #3) pertains to the coming into existence, upon the death of Lou Silverstein on January 18, 2014, of the formerly inchoate right of Ayn Rand Institute ("ARI") to designate a co-trustee of the Mulligan Trust upon the death of Lou Silverstein, but only if Lou Silverstein predeceased Nancy Silverstein (and subject to the veto of Nancy Silverstein, and her right to replace any ARI-designated trustee at any time for any reason), pursuant to a provision in the Sixth Amendment to the Mulligan Trust (execution date unknown).³⁴ (The instant application seeks nunc pro tunc approval for this event.)

In addition, and based on the assumption that the foregoing Form 316 applications will be considered and approved concurrently, Southwest FM will also be filing an FCC Form 315 "long form" application requesting Commission approval to transfer control of the licensee from the Mulligan Trust as described in the third-stage Form 316 transfer of control application (see above) to the Lou Silverstein Family Trust and the Nancy Silverstein Trust (together the "Sub-

² It is also noted that three additional FCC Form 316 "pro forma" transfer of control applications are being filed concurrently for Southwest's sister entity, Southwest FM Broadcasting Co., Inc. ("Southwest FM"), licensee of Station KAHM(FM), Spring Valley (previously, Prescott), Arizona.

³ An abstract of the Sixth Amendment to the Mulligan Trust is provided elsewhere in this application.

⁴ As all of the stock of the licensee is currently held by the Mulligan Trust, and is not within the Estate of Lou Silverstein, no Form 316 application is being filed to transfer control of the licensee to the local court (and Personal Representatives) which is responsible for the Estate of Lou Silverstein.

Trusts”), with Nancy Silverstein and James Hancock as the co-trustees of the Sub-Trusts, and also ARI, and with each Sub-Trust holding 50% of the stock of Southwest FM.⁵

The Grant of These Form 316 Applications Would Serve the Public Interest

In 1979, when Southwest FM obtained a construction permit for Station KAHM, Lou and Nancy Silverstein were approved as the 100% joint owners of Southwest’s stock. Since that time, the Silverstein have at all times owned the majority (or all) of the stock of Southwest FM, and have controlled Southwest FM and Station KAHM. Regardless of the exact legal status of the ownership of Southwest FM’s stock, at all times since 1979 the Silversteins, whether Lou Silverstein alone, or the Silversteins together, and whether in their personal capacities or as trustees of the Mulligan Trust, have controlled both Southwest FM and the operation of Station KAHM.

Further, as a practical matter, the Silversteins have exercised actual control over Station KAHM since Southwest FM constructed it in the early 1980s. Until shortly before he passed away on January 18, 2014, Lou Silverstein was at all times President of Southwest FM, lived in the Prescott area, worked on a regular basis at Station KAHM (and its separately-licensed sister station KYCA) and exercised overall supervisory responsibility and control over every aspect of Southwest FM and Station KAHM operations.

The matters which have led to the filing of these Form 316 applications relate to “transfers of control” of Southwest FM and Station KAHM in name only, and raise no significant issues in terms of the public interest. These applications, including the instant one pertaining to the right of ARI to appoint a co-trustee of the Mulligan Trust, which came into existence upon the death of Lou Silverstein earlier this year, is filed solely to obtain approval for

⁵ Southwest FM will also ask the Commission to dismiss its pending Form 315 transfer of control application (BTCH-20140502AAM).

ARI to hold this right, and is filed pursuant to the direction of the Commission's staff. As noted above, a Form 315 application is being filed concurrently to obtain approval for ARI's designee (James Hancock) to act as a co-trustee of the Sub-Trusts established by the Mulligan Trust, and which will ultimately hold all the stock of Southwest FM (and Southwest).

Accordingly, grant of these applications would serve the public interest and should be approved.