



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

In Reply Refer To:  
1800B3-PPD

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Mr. Kenneth E. Satten, Esq.  
Wilkinson Barker Knauer, LLP  
Suite 800N  
1800 M Street, NW  
Washington, DC 20036

**In re: WEZX(FM), Scranton, PA**  
Facility ID No. 66364  
File Nos. BRH-20060403CAO  
BRH-20140331AUC

**WBAX(AM), Wilkes-Barre, PA**  
Facility ID No. 66365  
File Nos. BR-20060403CAM  
BR-20140331ATV

**WFUZ(FM), Nanticoke, PA**  
Facility ID No. 66366  
File Nos. BRH-20060403CAK  
BRH-20140331AUH

**WEJL-FM, Scranton, PA**  
Facility ID No. 87530  
File No. BRH-20140331AUQ

**WPZX(FM), Pocono Pines, PA**  
Facility ID No. 88753  
File No. BRH-20140331AUI

**License Renewal Applications**

Dear Mr. Satten:

We have before us the above-referenced renewal applications (Renewal Applications) of The Scranton Times, L.P. (ST) license for Stations WEZX(FM), Scranton, Pennsylvania; WBAX(AM) Wilkes-Barre, Pennsylvania; WFUZ(FM),<sup>1</sup> Nanticoke, Pennsylvania; WEJL-FM, Scranton, Pennsylvania; and WPZX(FM), Pocono Pines, Pennsylvania (collectively, Stations). ST has common ownership of the Stations and the local daily newspaper, *The Citizens' Voice*.

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<sup>1</sup> WFUZ(FM) previously was assigned the call sign WQFM(FM).

Common ownership of a daily newspaper and a full-power broadcast station is generally not permitted under the FCC's rules.<sup>2</sup> Consequently, ST either sought a permanent waiver of the newspaper/broadcast cross-ownership (NBCO) Rule<sup>3</sup> or the Commission granted ST an extension to file a permanent waiver request to come into compliance with the NBCO rule.<sup>4</sup> 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*,<sup>5</sup> the staff invites ST 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.<sup>6</sup>

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.<sup>7</sup>

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

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<sup>2</sup> See 47 CFR § 73.3555(d).

<sup>3</sup> See BRH-2006-0403CAO at Attachment 9, BR-20060403CAM at Attachment 9, and BRH-20060403CAK at Attachment 9.

<sup>4</sup> 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").

<sup>5</sup> *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*).

<sup>6</sup> *2014 Quadrennial Review Order*, para. 150.

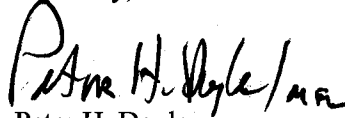
<sup>7</sup> *Id.* at para 171. A radio station will be counted as part of the Nielsen Audio Metro market in which the station's community of license is geographically located and any other Nielsen Audio Metro market in which the station is listed by BIA as "home" to that market.

<sup>8</sup> *Id.* at para. 183.

NBCO Rule on a case-by-case basis.<sup>9</sup> 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.’”<sup>10</sup> 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.<sup>11</sup>

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 ST 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. ST also should send a copy of its waiver request to Parul P. Desai at [Parul.Desai@fcc.gov](mailto:Parul.Desai@fcc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle / ma".

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>9</sup> *Id.*

<sup>10</sup> *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.

<sup>11</sup> *Id.* at para. 184.