

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MSG Radio, Inc., Assignor)	
)	
and)	
)	
WIAC FM, Inc., Assignee)	
)	
Application for Assignment of License for:)	File No. BALH-20090206ACE
)	Facility ID No. 4936
WTOK-FM, San Juan, Puerto Rico)	

MEMORANDUM OPINION AND ORDER

Adopted: October 14, 2014

Released: October 15, 2014

By the Commission:

1. In this Memorandum Opinion and Order, we deny the Application for Review filed by RAAD Broadcasting Corporation (“RAAD”) on April 17, 2013. RAAD seeks review of a March 19, 2013, action by the Media Bureau (“Bureau”),¹ which denied RAAD’s Petition for Reconsideration of a June 20, 2012, Bureau letter decision granting the above-captioned application (“Application”) of MSG Radio, Inc. (“MSG”) to assign Station WТОK-FM, San Juan, Puerto Rico, to WIAC FM, Inc. (“WFI”).² The Application included a waiver request to permit WFI to demonstrate compliance with Section 73.3555(a) of the Commission’s rules using the contour-overlap methodology rather than the standard Arbitron Metro-based methodology (“Waiver Request”).³

2. RAAD’s arguments in the Application for Review are the same as those raised below. Specifically, RAAD claims that the Bureau’s grant of the Waiver Request was: (1) outside the scope of Bureau’s delegated authority; (2) anti-competitive and disassociated from market realities in Puerto Rico; (3) contrary to the Arbitron Metro-based methodology established in the *Ownership Order*; and (4) inconsistent with a similar waiver grant for Station WMIO(FM), Cabo Rojo, Puerto Rico.⁴ RAAD also

¹ Christopher D. Imlay, Esq., Letter, 28 FCC Rcd 2860 (MB 2013) (“*Reconsideration Decision*”).

² MSG Radio, Inc., Letter, 27 FCC Rcd 7066 (MB 2012) (“*Staff Decision*”). We also have before us a Joint Opposition to the Application for Review filed by MSG and WFI on May 9, 2013.

³ See 47 C.F.R. § 73.3555(a); 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13724-6 (2003) (“*Ownership Order*”), *aff’d in part and remanded in part sub nom., Prometheus Radio Project v. FCC*, 373 F.3d 372 (2004), *cert. denied*, 545 U.S. 1123 (2005). The contour-overlap methodology is generally permitted to define the local radio market only when a station’s community of license is located outside of an Arbitron Metro boundary. *Ownership Order*, 18 FCC Rcd at 13729. Here, the entire island of Puerto Rico is designated by Arbitron as a single Metro market, and therefore use of the Arbitron Metro-based methodology would normally be appropriate.

⁴ See Mr. Luis A. Soto, Letter, 22 FCC Rcd 2549 (MB 2007).

argues that Station WTOK-FM is under the unauthorized control of “the Soto family.”⁵ In both the *Staff Decision* and *Reconsideration Decision*, the Bureau thoroughly addressed and rejected each of these contentions.⁶ We agree with the Bureau’s analysis and conclusions. We also note that on March 31, 2014, the Commission adopted the Further Notice of Proposed Rulemaking in the *2014 Quadrennial Regulatory Review*, which sought comment on, *inter alia*, Arso Radio Corporation’s longstanding request that the Commission redefine local radio markets for Puerto Rico.⁷ In doing so, the Commission recognized that such waivers of the Arbitron Metro rule have been “consistently granted” and sought comment on their effectiveness.⁸ We emphasize that the Bureau’s grant of the WTOK-FM Waiver in no way prejudices the Commission’s ultimate disposition of this issue.

3. Upon review of the Application for Review and the entire record, we conclude that RAAD has not demonstrated that the Bureau erred. The Bureau, in the *Staff Decision* and *Reconsideration Decision*, properly decided the matters raised, and we uphold its decision for the reasons stated therein.⁹

4. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,¹⁰ and Section 1.115(g) of the Commission’s rules,¹¹ the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵ Application for Review at 19.

⁶ To the extent that the Application for Review challenges the Bureau’s approval of the 2008 assignment of WTOK-FM from Luis A. Mejia to MSG, that action is final and not subject to review. See *Reconsideration Decision*, 28 FCC Rcd at 2861, 2866, n. 8; *Staff Decision*, 27 FCC Rcd at 7068, 7070, n. 9.

⁷ *2014 Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4411-12 (2014).

⁸ *Id.*

⁹ Given our affirmance of the Bureau’s *Reconsideration Decision*, and *Staff Decision*, the Application for Review’s challenge to the Bureau’s delegated authority is moot.

¹⁰ 47 U.S.C. § 155(c)(5).

¹¹ 47 C.F.R. § 1.115(g).