

Commission consent to exchange the referenced stations. In order to keep station WNDR-FM¹ on the air during the pendency of the assignment application, the parties entered into the TBA. Because of Licensee's other stations in the Syracuse market, however, that TBA was treated as giving Licensee an attributable interest in station WNDR-FM, and that additional interest put Licensee temporarily over the multiple ownership limits as set out in Section 73.3555 of the Commission's rules. Accordingly, the parties sought a temporary waiver of the Commission's multiple ownership rules, one which would last only as long as the pendency of the assignment application, and counsel for Licensee immediately and repeatedly reached out to the Commission staff to seek guidance and feedback on this course of action.

Licensee had every reason to believe that the requested waiver would be granted in due course. First of all, the exceedingly temporary nature of the waiver requested was a factor weighing in favor of a grant. Indeed, under ordinary, expected circumstances, the total duration of the waiver would be only slightly in excess of 90 days, and perhaps less. Further, grant of the requested waiver would speed up the addition of a new voice to two stations in the market, thereby furthering the Commission's diversity goals. Additionally, the Commission has previously granted much longer twelve-month temporary waivers for similar situations. Many of those situations have included the licensee's pledging to divest an offending station in a "timely, efficient, and orderly manner." *Application of Sam Jones, Jr., Successor Liquidator for Forward of Kansas Assignor & Eagle Commc'ns, Inc. Assignee*, 10 F.C.C. Rcd. 5330, ¶ 21 (1995). In this case, Licensee had already taken the necessary steps to move forward with divesting the stations to comply with the multiple ownership limits. Furthermore, Commission precedent, with which Licensee was familiar and which was cited in the waiver request, supports grant of a short-term

¹ The call sign of WNDR-FM was changed to WOLF-FM effective April 14, 2016, after the filing of the assignment application. The NAL refers to the station as WNDR-FM, and, therefore, for the sake of consistency and clarity, the station's former call letters will be used herein as well.

waiver while a transaction is pending, or to allow an offending licensee to divest stations to comply with the ownership rules. *See e.g., Applications of Pyramid Commc'ns, Inc. (Transferor) & Evergreen Media Corp. (Transferee)*, 11 F.C.C. Rcd. 4898 (1995); *Application of Louis C. Dearias, Receiver (Assignor) & QueenB Radio, Inc. (Assignee)*, 11 F.C.C. Rcd. 3662 (1996); *Applications of Mlgal Partners, L.P., (Transferor) & Evergreen Media Corp. (Transferee)*, 10 F.C.C. Rcd. 5653 (1995); *Application of Sam Jones, Jr., Successor Liquidator for Forward of Kansas Assignor & Eagle Commc'ns, Inc. Assignee*, 10 F.C.C. Rcd. 5330 (1995). Licensee was not simply disregarding the rules and filing a waiver request to cover for it: these precedents, coupled with the unique facts of the instant case, gave Licensee a reasonable belief that the requested waiver would be granted under the circumstances.

The “exceptional circumstances” justifying the waiver and prompting Licensee’s requests for guidance were that the stations were being, in effect, “double-counted” against Licensee during the pendency of the application. The Licensee would be assigning to Family Life Ministries (“Family Life”) (and divesting attribution in) the two stations licensed to it but which it was not programming or managing day-to-day, but those stations were still attributed to Licensee. At the same time, Licensee (by virtue of the TBA with Family Life) was also counted with an attributable interest in WNDR-FM, which it did program (even while WNDR-FM was simultaneously still counted against the assignor Family Life). So for the period that the assignment application was pending, all of the stations being assigned in the planned exchange would be attributed to two different owners, but that double attribution and the multiple ownership dilemma would disappear once the applications were granted and the assignments were consummated. Even during the pendency of the assignment applications, however, from the perspective of *either* ultimate control or programming, Licensee did not exceed the cap: it

only did so as a result of the temporary TBA for station WNDR-FM *alongside* the assignment application. As described in the waiver request, there is ample precedent for such waivers. Licensee did begin operating pursuant to the TBA while the waiver request was pending. But, as discussed above, it did so in order to keep station WNDR-FM on the air.

Discussion

These facts mean that the actual impact of Licensee's violation was effectively none. From the practical perspective of the listening public, there was never an excessive concentration in this market. Because the TBA grew out of a cross-programming and swap agreement with Family Life, two stations controlled by Licensee were not airing Licensee's programming, and the station airing Licensee's programming was not controlled by Licensee. Therefore, there remained the same (or greater) diversity of content for the listening public as before, and no increase in the concentration of control of the market.

Further, there was never an attempt to hide or camouflage the temporary multiple ownership dilemma created by the double counting of station WNDR-FM during the pendency of the assignment application. Instead, Licensee made diligent efforts to keep the Commission fully apprised of the situation, both via the waiver request itself and the subsequent attempts at discussions with the Staff.

It is also worth noting, therefore that though the initial decision to operate under the TBA while the waiver was pending was Licensee's choice, the continuing nature of the violation could have been avoided if Licensee's counsel had been able to speak with the Staff. Licensee was still awaiting a reply to its repeated requests for guidance when the NAL was issued. At no time did the Commission Staff contact Licensee in response to its calls or otherwise warn Licensee that an NAL would be issued for operations pursuant to the TBA. During the entire time that the

assignment applications were pending, Licensee was prepared to immediately terminate the offending TBA and find an alternate means by which to keep station WNDR-FM on the air if Commission Staff had informed it that the waiver was not going to be granted. Otherwise, Licensee would have stopped the alleged violation far sooner.

It should also be noted that, immediately upon receipt of the NAL, Licensee terminated the offending TBA in order to be in full compliance with the Commission's rules, and counsel for Licensee again made efforts to communicate with the Commission Staff. This time counsel for Licensee was able to speak with Commission Staff and a suitable solution was crafted which enabled the parties to refile the assignments and keep station WNDR-FM on the air.

As further justification for its request for a reduction or elimination of its forfeiture, Licensee respectfully submits that it has not previously received any Notices of Violation or Notices of Apparent Liability. In keeping with established Commission precedent, the final forfeiture amount should be reduced by 20% for a good prior record, in addition to any reductions justified by the above. *See, e.g., Indiana Wesleyan University*, 28 FCC Rcd. 6208 (MB, 2013).

Conclusion

In light of the foregoing, and in accordance with the statutory instruction that the Commission must take into consideration "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses..., and such other matters as justice may require," 47 U.S.C. § 503(b)(2)(D), Licensee respectfully requests that the Commission substantially reduce or eliminate the proposed forfeitures.

Respectfully submitted,



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