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September 19, 2013

ACCEPTED/FILED

SEP 19 2013

Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Federal Communications Commission
Office of the Secretary

**Re: File No. BAL – 20130815ACK
Application for Consent to Assignment of Broadcast Station Licenses for WCLG (Facility ID No. 3) and WCLG-FM (Facility ID No. 6553) to AJG Corporation**

I write on behalf of IMG College, LLC ("IMGC"), to voice our concern regarding the potential assignment and transfer of the broadcast licenses associated with WCLG and WCLG-FM in Morgantown, Monongalia County, West Virginia to AJG Corporation.

By way of background, IMGC produces and distributes radio broadcasts associated with West Virginia University athletics, including play-by-play accounts and descriptions of football games, men's and women's basketball games, and other sports, as well as periodic (often weekly) coaches' shows associated with the head coaches of the football and basketball teams at West Virginia University (collectively the "WVU Athletics Radio Broadcasts"). IMGC has the rights, and the obligation, to produce the WVU Athletics Radio Broadcasts pursuant to a license agreement dated July 11, 2013, which has an initial term of 12 years through June 30, 2025 (the "WVU Multi-Media Rights Agreement"). Under the WVU Multi-Media Rights Agreement, IMGC is obligated to broadly distribute the WVU Athletics Radio Broadcasts, including in Monongalia County, West Virginia.

IMGC was among a group of proposers in an RFP process seeking to be awarded the right to represent WVU's multi-media rights relating to WVU athletics beginning in the 2013/14 season. IMGC was named by WVU as the winning bidder over the other competing proposers, including West Virginia Radio Corporation ("WVRC"), which reportedly had held radio broadcast rights for WVU athletics for over 70 years. WVRC has publicly opposed WVU selecting someone other than WVRC as the multi-media rights holder and has even filed suit against the University's Board of Governors, its athletic director, and others (including IMGC) seeking to reverse WVU's award of the multi-media rights to IMGC.

Before WVU awarded the multi-media rights to IMGIC pursuant to the WVU Multi-Media Rights Agreement, and while the Athletic Director for WVU (Oliver Luck) was uncertain about how WVU would arrange to have WVU Athletics Radio Broadcasts produced, distributed, and available for fans throughout the state of WVU, he began discussions with Linda Bowers and Debbie Lofstead at Bowers Broadcasting Corporation about whether WCLG stations would carry WVU football game broadcasts during the 2013 college football season, not knowing whether WVU would complete a multi-media contracting process or who would produce or carry the football game broadcasts. Shortly after WVU entered the WVU Multi-Media Rights Agreement, Mr. Luck advised IMGIC of his previous discussions with Bowers Broadcasting and asked that IMGIC give serious consideration to using WCLG stations to carry the IMGIC-produced WVU Athletics Radio Broadcasts for the 2013/14 and 2014/15 seasons.

On July 17 and 18, 2013, IMGIC representatives travelled to Morgantown, WV and met with Bowers Broadcasting (including Ms. Bowers and Ms. Lofstead) to continue the previous discussions that occurred with WVU. Bowers Broadcasting made it clear to IMGIC that it considered its discussions essentially complete regarding a two-year agreement for the WCLG stations to carry WVU football game broadcasts on a live basis beginning with the 2013 college football season, and it expressed anxiousness to execute such an agreement with IMGIC related to the WVU Athletics Radio Broadcasts, as the beginning of the 2013 football season was steadily approaching. The discussions continued and on Friday July 26, Debbie Lofstead pleaded with me to send a contract for Bowers Broadcasting to sign. Since a formal contract was not yet finalized, a contract template was emailed by IMGIC to Ms. Lofstead on Saturday July 27 to speed up the review process. Then, on Monday July 29, IMGIC sent by email a formal agreement to Ms. Lofstead at Bowers Broadcasting for review and signature. On both that Monday and the immediately following Thursday, IMGIC was informed by Bowers Broadcasting that the agreement was being reviewed by its legal department. However, on Friday, August 2, Bowers Broadcasting informed IMGIC in a telephone conversation that it would not be able to move forward with an agreement with IMGIC (even after its extensive discussions with IMGIC, as well as the prior negotiations with WVU). Bowers Broadcasting stated its reason as being the pending sale of the station, and that Bowers Broadcasting could not enter into any agreements relating to the WCLG stations at that time.

I have reviewed certain portions of agreements that AJG Corporation has filed with the FCC. In one, it appears that AJG has asserted that Bowers Broadcasting remains in full control of the Station until the FCC gives approval for such a transfer. However, under the terms of paragraph 2 of the separate Time Brokerage Agreement dated August 9, 2013, AJG has purchased certain "air time on the Station" and then continues to explain that AJG "shall transmit to Licensee [Bowers Broadcasting Corporation] programming that it produces or owns (the "Program" or "Programs") for broadcast on the Station twenty-four (24) hours per day, seven (7) days per week (the "Broadcasting Period"). The Broadcasting Period shall exclude the period from 6:00 am to 8:00 am each Sunday morning, which Licensee shall program." Thus, it appears that Bowers Broadcasting controls selection of programming and sale of advertising for two hours each Sunday morning, while AJG Corporation now controls the rest.

WVRC has apparently made the decision that they do not want any of their radio stations to carry the WVU Athletics Radio Broadcasts produced by IMGIC, at least for the 2013/14 seasons. Our IMGIC team made several efforts to work with WVRC stations. In fact, there was a pre-existing multi-year agreement between WVRC and WVU (and its Mountaineer Sports Network) related to broadcast of football and men's basketball games on WSWW-FM in Summersville, WV, a copy of which is attached. The agreement had one year remaining, for the 2013/14 seasons. WVU asked that IMGIC continue to use WSWW as an affiliate for these broadcasts in Summersville, WV (our radio network carrying WVU 2013 football game radio broadcasts produced by IMGIC now includes over 40 stations throughout the state of West Virginia). IMGIC employees repeatedly tried to confirm with WVRC and the WSWW station whether it would continue to honor this agreement and carry the game broadcasts from "commencement to conclusion" as provided in this agreement, but WVRC indicated it would not carry the WVU football (and presumably men's basketball when that season starts) game broadcasts, in spite of this contractual right and obligation to do so. To confirm, WSWW has not carried the WVU football game broadcasts for the first 3 weeks of the 2013 football season.

While I am not personally familiar with the ownership of AJG Corporation, based on our experiences and based on what we have learned about control of the station, I believe the FCC should closely review all aspects of ownership and operation of AJG Corporation and all of its interactions and associations with WVRC.

For example, the application filed with the FCC for consent to assign the license of WCLG and WCLG-FM declares that AJG Corporation, which already owns two FM stations in Monongalia County's FCC Geographic Market, is owned in equal parts by two trusts, created for the benefit of the descendants of John R. Raese and David A. Raese, respectively. The Raese brothers are also directors of WVRC. 47 C.F.R. § 73.3555(a)(1)(iii) limits the number of radio stations that any person or entity may have a "cognizable interest" in within a market the size of the one including Monongalia County, West Virginia. And Note 2(d) to 47 C.F.R. § 73.3555 makes clear that the voting stock interests in trusts are attributed, *inter alia*, to anyone who "has the right to revoke the trust at will or replace the trustee at will," or to the grantor or beneficiary of a trust who has "a familial, personal or extra-trust business relationship" with the trustee. At a minimum, it seems that the FCC should investigate the trusts that own AJG Corporation and the ownership interests of the Raese brothers to determine whether either or both violate 47 C.F.R. § 73.3555(a)(1)(iii).

In addition, based on reports I have seen, it appears that there are very close connections and operational control between AJG Corporation and WVRC. For reference, I am attaching an article that appeared in the Charleston Gazette on August 15, 2013 entitled "Morgantown Broadcasting: Radio sale may attract FCC attention; Stations, companies apparently share a lot." The author of that article assembled numerous sources, evidently many of them public records, demonstrating the interrelationship between WVRC, which already owns numerous stations in the Morgantown area, and AJG Corporation. In examining applications for consent assignment or transfer of a station license under 47 U.S.C. § 310(d), the FCC has noted that "the ultimate responsibility for essential station operations, such as personnel, programming, and

finances, is non-delegable.” See *MSG Radio, Inc. c/o Lewis J. Paper, Esq., et al.*, Letter, 27 FCC Rcd 7066, 7070 (MB June 20, 2012). I feel it is important for you to take all of these issues into consideration in your decision, and to think about how greatly this decision will impact the radio market of the Morgantown, WV area.

Based on our conversations and meetings with Bowers Broadcasting, and based on all that was going on in July and August 2013, it is my opinion that representatives associated with WVRC asked Bowers Broadcasting not to execute the agreement with IMG to carry any of the WVU Athletics Radio Broadcasts. I was personally in meetings where Bowers Broadcasting gave verbal assurances and commitments to be an affiliate carrying such WVU Athletics Radio Broadcasts on WCLG in Morgantown during the 2013/14 and 2014/15 seasons. Something then changed, and they were asked not to execute the contract they so earnestly asked us to send. I believe that change was WVRC assuming control or trying to block the WCLG stations from being affiliates on WVU football game broadcasts. I sincerely hope that you will take a close look at the connections between WVRC and AJC Corporation, and that, if they are as connected as we believe them to be, you evaluate the assignment and transfer of WCLG and WCLG-FM as if WVRC, and not AJG Corporation, is the buyer.

Sincerely,



Joe Potter
SVP, Broadcast Operations
IMG College, LLC



RADIO AFFILIATE AGREEMENT

This Agreement, made and entered into on July 8, 2011 by and between the West Virginia University Board of Governors on behalf of West Virginia University for the Mountaineer Sports Network (MSN and/or WVU) and West Virginia Radio Corporation d/b/a radio station WSWW-FM (Affiliate) for the 2011-12, 2012-13 and 2013-14 seasons.

Radio Programs/Local Advertising Time:

- West Virginia University Football: 16 minutes
- West Virginia University Men's Basketball: 16 minutes

1. MSN will furnish to Affiliate and Affiliate will broadcast on FM station 95.7 the programs designated on the terms and conditions herein set forth. The following provisions will apply only to said programs.
2. Affiliate is granted exclusive local radio broadcast rights from MSN for Nicholas County, West Virginia.
3. MSN will furnish the program to Affiliate via satellite. Affiliate will be responsible for cost of downlinking (including receiver) the broadcasts via satellite.
4. Affiliate must broadcast live, in its entirety, all scheduled programs as long as the Affiliate station is on the air. In the event of postseason play, Affiliate must continue to broadcast such programs originated by MSN. Affiliate will be required to pay up to three (3) times the station's highest one-minute commercial rate as published in the most current edition of Standard Rate and Data, or a minimum of Two Hundred Dollars (\$200.00).
5. Affiliate will carry on station the program precisely as provided by MSN from commencement to conclusion including, without limitation, all commercial announcements therein contained. MSN will provide affiliate with commercial formats.
6. Affiliate will be restricted with commercial inventory as follows: a) No products or services competing with protected MSN sponsors may be advertised during the program. MSN retains exclusive rights to the following advertising categories: beer/ale, insurance, cellular telephone service and soft drinks. MSN reserves the right to change the protected sponsor categories with forty-five (45) days notice prior to each season. Affiliate may not sell announcements to a competing sponsor in said program or related programs. MSN will also retain product exclusivity in the pregame and postgame shows. b) In compliance with NCAA rules and regulations, no drugs, alcoholic beverages or feminine hygiene products may be advertised during the program. c) No other broadcast similar to the program may be promoted during each broadcast.
7. Affiliate promotions or advertising involving West Virginia University's intercollegiate athletic program and/or MSN must be approved in advance by WVU.

MSN RADIO AFFILIATE AGREEMENT

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8. Immediately following the end of each broadcast, Affiliate will furnish to MSN, on forms provided by MSN, complete and accurate affidavits by Affiliate setting forth proof of broadcasting of said program on station. Should any discrepancy occur during the broadcast, the station will make good the commercial time.
9. Affiliate will be required to air a minimum of forty (40) 60-second or eighty (80) 30-second promotional announcements with network sponsor identification each week. These promos will be provided by MSN and will contain space for local message. Affidavits will be required for these announcements.
10. Affiliate will provide to WVU and/or MSN a minimum of twenty (20) 60-second or forty (40) 30-second commercial announcements each week between August 1 and May 30 which can be used for ticket promotions or branding opportunities, including the use of corporate sponsor recognition. These commercials will be provided by WVU and/or MSN. Affidavits will be required for these announcements.
11. Affiliate, in any advertising or promotion, either on the air or in print, in connection with the program will provide identification credit to MSN as the entity furnishing same.
12. Affiliate is authorized to use the name and/or logos for West Virginia University and/or Mountaineers to assist in promoting broadcasts. This authorization is limited in scope and duration to this Agreement and shall not be construed as an assignment to Affiliate of any rights, title or interest in said name and/or logos. The manufacture by Affiliate of any promotional product bearing the West Virginia University name and/or logos in association with this Agreement must be under license from West Virginia University Trademark Licensing Services. Enlistment by Affiliate by a third party manufacturer for the purpose of producing any promotional product bearing the West Virginia University name and/or logos in association with this Agreement is limited to those manufacturers licensed by West Virginia University Trademark Licensing Services. Current listings licensed manufactures will be provided by WVU.
13. In consideration of services provided by MSN, Affiliate grants permission to MSN for pickup and rebroadcast of Affiliate's signal by any other Affiliate designated by MSN, provided the said permission shall apply only to broadcasts of the MSN programs.
14. Affiliate is prohibited from streaming any MSN programming via the Internet, live or delay, or to archive any MSN programming on Affiliate's Internet site.
15. The program is exclusive property of MSN and is intended for the broadcast only as specified herein: any other use of the program, in whole or in part, without the expressed written consent of MSN is strictly prohibited.
16. Affiliate agrees to notify MSN of any anticipated change in ownership and further agrees to bind its successors to the terms of this Agreement. This Agreement, including the rights and responsibilities under it, may not be assigned or transferred by Affiliate without first obtaining the consent of MSN in writing.
17. MSN shall not be liable to Affiliate, if, due to public emergency or necessity, force majeure, restrictions imposed by law, acts of God, labor disputes or for any other cause, including

MSN RADIO AFFILIATE AGREEMENT

Page 3 of 4

mechanical or electrical breakdowns, beyond MSN's control, there is an interruption, suspension, or omission of any scheduled program contracted herein to be furnished to Affiliate.

18. MSN may terminate this Agreement by providing Affiliate notice of termination if Affiliate violates any provision of this Agreement and fails to cure such violation within ten (10) days after MSN gives Affiliate notice thereof.
19. The term of this Agreement is three (3) years. However, MSN may, upon mutual agreement, extend the term an additional one (1) or two (2) years under the same term with written notice by May 15, 2014.
20. Neither this Agreement nor any provision thereof shall be binding on MSN or Affiliate until this Agreement is signed by both parties.

I hereby agree to the terms of this Agreement

West Virginia Radio Corporation

d/b/a WSWW-FM

812 Northside Drive, Suite 1

Summersville, WV 26651

By

Name

Title

Mountaineer Sports Network

West Virginia University

PO Box 0877

Morgantown, WV 26507-0877

By

Mike Parsons

Deputy Director of Athletics

Affiliate will receive broadcast by: Satellite

MSN RADIO AFFILIATE AGREEMENT

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Appendix A

1. During the term of the Agreement, Affiliate will promote a link from its web site to WVU's official athletic web site.
2. During the term of the Agreement, Affiliate will provide a 52-week promotional schedule for WVU's official athletic web site which will include a minimum of five (5) 30-second commercials per day on its station between 6:00 a.m. and 7:00 p.m.
3. During the term of the Agreement, Affiliate will air any WVU women's basketball games produced by MSN live and in its entirety which do not conflict with WVU men's basketball or football radio broadcasts or any Nicholas County high school basketball broadcasts produced by Affiliate.
4. During the term of the Agreement, Affiliate will air a minimum of five (5) WVU baseball broadcasts produced by WAJR-AM and/or MSN each Agreement Year.
5. During the term of the Agreement, Affiliate will provide a minimum of Four Thousand Dollars (\$4,000.00) in outdoor billboard space in the Nicholas County area to promote MSN football broadcasts during August, September and October each Agreement Year. Affidavits of purchases will be provided to MSN at the conclusion of each Agreement Year.
6. During the term of the Agreement, Affiliate will provide a minimum of Four Thousand Dollars (\$4,000.00) in outdoor billboard space in the Nicholas County area to promote MSN men's basketball broadcasts during December, January and February each Agreement Year. Affidavits of purchases will be provided to MSN at the conclusion of each Agreement Year.

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CHIP ELLIS | Gazette

MORGANTOWN BROADCASTING

Radio sale may attract FCC attention

Stations, companies apparently share a lot

By Phil Kabler
Staff writer

In a market dominated by West Virginia Radio Corp. stations, news that Morgantown radio stations WCLG AM and FM are being sold is drawing attention.

The stations, locally owned by Bowers Broadcasting, are to be sold to an entity called AJG Corp. — if the Federal Communications Commission approves the sale.

That could be critical, since FCC rules restrict the number of radio stations any one company may own in a market. If AJG Corp. had not been spun off from West Virginia Radio Corp. — owned by Morgantown businessman and frequent political candidate John Raese — then the original company might not meet those restrictions.

In a market the size of Morgantown-Clarksburg, the FCC ownership limit is seven commercial stations, with no more than four in either AM or FM.

Incorporated in 2007, AJG operates three former West Virginia Radio Corp. stations: WKKW-FM in Fairmont, WFGM-FM in Barrackville, and WFBY-FM in Weston. If AJG bought WCLG-FM, it would have four FM stations in the market.

However, business filings with the Secretary of State's Office and FCC records show that, at the very least, AJG is closely aligned with West Virginia Radio Corp.:

■ AJG's office address, according to business filings

with the Secretary of State's Office, is 1251 Earl Core Road in Morgantown — the same address as West Virginia Radio Corp. offices and Morgantown radio stations, and also the location of the Dominion Post newspaper, owned by the Raese family.

(FCC records list AJG's office address as 279 June Road, Stamford, Conn. A search on the real estate site Zillow shows that address is a private residence, with an estimated market value of \$2.69 million.)

■ Vice president and general manager of AJG is Jack Murphy Jr., who used to be sales manager for West Virginia Radio Corp. The contact number listed for Murphy at AJG is the same as the main number for the WVRC business office.

On Wednesday evening, Murphy referred questions to the company's law firm, Fletcher, Heald and Hildreth of Arlington, Va.

■ The agent of process for both AJG and West Virginia Radio is James M. Troy, according to the business filings. Troy also is vice president and CEO of Greer Industries, West Virginia Radio and the West Virginia Newspaper Publishing Co., which publishes the Dominion Post.

■ The president of AJG is Lauren M. Kelley of Stamford, Conn. Kelly is also trustee of Descendants Trust, a trust fund set up by John Raese and his brother, Dominion Post Publisher David

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stabbed at the home of his parents, who were asleep at the time. Detective J.S. Hedrick found blood on the porch and

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The sheriff said deputies have responded to complaints of domestic disputes at the Thomas Drive home at least eight times in the last few years.

aigned in the western regional Jail on Wednesday morning by teleconference on a charge of first-degree murder. He is being held without bond.

RADIO

FROM PAGE 1C

Raese, for the benefit of their children.

According to the FCC ownership report for AJG, assets in the trust include radio stations WKKW, WFGM and WFBY.

The filing notes, "Ownership of the licensee [AJG] is divided equally between the two trusts, each of which is voted on by Lauren Kelley."

The telephone number listed for Kelley in the FCC ownership report was not in service. Kelley did not respond to an email inquiry.

■ Kelley replaced Dale Miller as AJG president in December 2008, according to records with the Secretary of State's Office. Miller is the longtime president of West Virginia Radio.

The 2008 filing also indicates that John and David Raese were removed as directors of AJG at that time. The Raeses remain as directors of West Virginia Radio, according to business filings.

■ The latest annual report for AJG, filed May 15 with the Secretary of State's Office, lists the company email address as Simpson@GreerIndustries.com. The 2013 annual report for West Virginia Radio, also filed on May 15, lists the identical company

email address.

■ Although licensed to their respective cities (Fairmont and Barrackville), WKKW and WFGM operate out of West Virginia Radio's headquarters on Earl Core Road, along with West Virginia Radio affiliates WAJR-AM and WVAQ-FM. WKKW and WFGM websites also list Earl Core Road in Morgantown as their office address.

The other AJG affiliate, WFBY-FM Weston, lists its office address as 1065 Radio Park Road, Mount Clare, an unincorporated area south of Clarksburg in Harrison County. West Virginia Radio affiliate WWLW-FM Fairmont lists the same address for its office.

■ According to its annual report, AJG has only 16 employees, or barely more than five employees per station. WVRC has 65 employees, according to its annual report.

■ AJG stands for Agnes Jane Greer, the matriarch of the Greer empire, who incorporated West Virginia Radio Corp. in 1940. (The call letters of the company's flagship station, WAJR, are her initials before she was married.)

FCC spokeswoman Janice Wise said she could not discuss specific market ownership issues, including any pending sales of stations.

Reach Phil Kabler at philk@wvgazette.com or 304-348-1220.

LESSON

address some of the unions' concerns, but teachers urged

She said she understands some counties have more fund-

Mingo County's school system under state control.

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