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**Federal Communications Commission
Bureau / Office**

April 22, 2014

Peter H. Doyle
Chief, Audio Division, Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Mr. Doyle:

This letter relates to the pending Application for Consent to Assign the License (FCC File No. BALED-20130919ABI hereinafter referenced as the "Assignment Application") of FM Station WSPM (the "Station"). Specifically, we herein respond to the Audio Division Staff request for a discussion of the necessary elements of licensee control that Assignor, Hoosier Broadcasting Corporation ("HBC") has retained throughout the term of its Time Brokerage Agreement (the "TBA") with Inter Mirifica ("IM"), and, to respond to the four specific items set forth in correspondence received electronically from the Audio Division Staff on April 9, 2014.

BACKGROUND

The basic terms for a TBA and a purchase option were set forth in a letter dated May 29, 2003, which was written as a follow up to a meeting between the two parties. The initial TBA commenced in March 2004 to run for 24 months with an option for an additional 12 months. The TBA included a Purchase Option giving IM the right to exercise the option at any time during the initial 24 month agreement, or at any time during the 12 month extension. The Purchase Option gave IM the right to exercise the Option at a Purchase Price of \$2,250,000.00. The Purchase Option in the Agreement stated that all monthly payments will apply to the station purchase price. An extended agreement was signed in November 2006 to commence March 1, 2007 to run for 72 months until February 28, 2013. In 2004, IM began airing the programming of EWTN, and, some locally originated programming, and the programming on WSPM has not changed since that time.

This letter was occasioned by a dialogue initiated in electronic correspondence by the legal counsels to HBC and IM and the Audio Division Staff, wherein the question was raised as to when processing of the Assignment Application might be expected. The Staff at that time inquired as to whether legal counsels to HBC or IM were aware of any published cases addressing the potential for a premature assignment or assumption of

control of a broadcast license where substantially all of the purchase price had been paid (pursuant to crediting of the TBA brokerage fee payments) prior to closing. Neither counsel was aware of any such published cases.

The parties to the TBA nonetheless agreed to provide this Letter responsive to the concerns raised by the Staff. HBC and IM wish to cooperate with the Audio Division Staff and to allay any concerns that might exist. Thus, in an abundance of caution, we provide the requested discussion of the features of licensee control of WSPM throughout the term of the TBA.

In ascertaining whether a transfer of control has occurred, the Commission has stated many times that it looks to three essential areas of station operation: programming, personnel and finances. A licensee may delegate certain functions on a day-to-day basis to an agent or employee, but such delegation cannot be wholesale. The standard by which the Commission measures control are equally applicable in situations involving time brokerage or management agreements. *Choctaw Broadcasting Corporation*, 12 FCC Rcd 8534, 8538 (1997). We therefore briefly address, each in turn, the ways in which HBC has retained control over the policies that determine decision-making regarding, respectively, finances, personnel, and programming.

FINANCES

We begin with a discussion of finances inasmuch as it was in this particular realm that the Staff raised its concerns. As a preliminary matter, and by sheer happenstance while researching another matter altogether, counsel to IM discovered an instance, just a few months prior to the submission of the Assignment Application, wherein the agency issued consent to a proposed assignment of license within two months of the parties' submission of an assignment application. The case involved a Nashville station, and at the time consent was issued, *substantially all of the purchase price had been received by the proposed assignor pursuant to payments in a TBA*. See FCC File No. BAL - 20130515AAU. The Media Bureau's "CDBS" database reveals no evidence that this fact prompted any special scrutiny by the staff, due either to an objection raised by another party or to the agency's own initiative. This suggests that as recently as a few months prior to the submission of the subject Assignment Application, the Audio Division Staff was not applying special scrutiny to assignment applications that had attracted no third party opposition but in which little consideration remained to be exchanged at closing.¹

1.

The TBA there called for 8 payments of \$37,500 beginning 09/2011 and ending 06/2013—a total of \$300,000 which was to be applied to the purchase price. The purchase price in the APA was \$300,100. By the time the assignment was filed 05/15/2013, only one TBA payment remained. By the time the staff granted the assignment in July, the last payment had been made leaving only \$100 yet to be paid. The fact that this transaction secured FCC consent when more than 99% of the purchase price had already been paid by crediting TBA payments, suggests that prepayment of consideration standing alone does not raise questions of premature assignment or assumption of control.

At any rate, HBC has adhered to the Commission's standards regarding the policies that govern Station finances throughout the operation of the TBA. It has retained title to all station equipment, furniture, fixtures, transmitters. Both parties to the TBA are eager to see HBC assign those rights to IM at closing, but they have not yet been assigned. For example, the tower lease with SBA Towers has not been transferred to IM and HBC has been making the monthly rental payments on the WSPM tower since the inception of the TBA, and, has continued to do so despite the fact that the purchase price has been fully paid. In addition, HBC continues, at its cost, to have two paid contract engineers available to respond to IM requests concerning any equipment malfunctions. From 2004 to the present, IM has relied on HBC to do all of the work involved in maintaining the transmitter and antenna. On the question of Risk of Loss raised by the staff, HBC has carried, and still carries, insurance on the equipment including the tower.

The parties admittedly did not anticipate, and their TBA did not contemplate, TBA payments continuing to be necessary some seven months following submission of the Assignment Application. Since the last TBA payment contemplated thereunder was supplied in December of 2013, HBC and IM have been operating on a "month to month" basis. A formal extension of the TBA term did not seem necessary or appropriate, and the parties to the TBA have been negotiating the precise relationship between the additional payments due to HBC and IM's desire for HBC to authorize the upgrading of certain key equipment necessary for Station operations. If and when a formal extension of the TBA is executed in writing, if the Assignment Application remains pending, such an extension will of course be supplied to the agency as an amendment to the Assignment Application. In the interim, we simply note that the parties have verbally agreed that HBC will authorize the purchase of a new transmitter and that IM will provide the necessary funds for such a purchase, provided IM receives a corresponding credit toward additional TBA brokerage fees due. This arrangement is still further evidence that HBC retains control of the policies that determine financial decision-making. After all, had an assignment of control been effected prematurely, IM would have simply purchased the new transmitter without first obtaining the agreement of HBC.

PERSONNEL

The policies that determine key personnel decision-making also remain under the control of HBC. For example, a "trouble-shooting" Memorandum is posted and directs IM personnel, in the event WSPM goes off-air, to *"call Marty Hensley, the engineer at Hoosier Broadcasting Corporation (the licensee of WSPM) and the owner of WSPM transmitter and let him know. If you can't get ahold of Marty, then call Bill Shirk, the CEO of Hoosier Broadcasting Corp."*

In addition, IM must request permission from HBC if it seeks to make any changes or upgrades of existing equipment. As explained above, IM does not automatically receive authorization to purchase additional equipment. IM must make its case for the upgrade, and HBC evaluates the request accordingly. Also, HBC continues, at its cost, to make

available two contract engineers who are charged with responding to IM requests regarding equipment malfunctions.

HBC also coordinated all required broadcast public notices following the filing of the WSPM license renewal application in 2012 and the Assignment Application in 2013. Moreover, HBC employees have retained custody and control of the WSPM local public inspection file since the inception of the TBA, and that has continued to the present despite the completion of the purchase payments under the Purchase Option.. IM's personnel e-mails the quarterly issues and answers to HBC for review and placement in the local public inspection file.

PROGRAMMING

In analyzing licensee control, the Commission looks to the ability of the licensee to reject or preempt programming. The Commission has stated that under a TBA, the licensee should be ready to and able to operate independently from the broker at any time it believes the arrangement does not fulfill its public interest responsibilities. *WGPR, Inc.*, 10 FCC Rcd 8140, 8145 (1995).

Since the inception of the TBA, HBC has had the technical capability of controlling the WSPM transmitter. It has always been, and still is, capable of preempting any programming or completely shutting down the WSPM transmitter and substituting the programming of its station WIRE on WSPM.

HBC has also arranged, at its expense, for the presentation of two public service programs on WSPM, *People Helping People*, and, *Indiana This Week*. Both programs were produced for HBC at HBC expense and HBC ran them on WSPM for several years during the TBA.

Two employees of HBC -- including HBC's President -- monitor the programming aired by IM on WSPM on a daily basis at various times of the broadcast day to ensure compliance by IM with HBC and Commission standards. In addition, those two employees are in regular daily contact with IM staff at WSPM. HBC has been asked on numerous occasions by IM to record PSA announcements and underwriting announcements for WSPM using HBC personnel.

CONCLUSION

In summary, HBC employees have done the following under the TBA: (1) monitored IM programming to ensure compliance with licensee standards; (2) maintained and filed all public file documents; (3); worked with IM employees on engineering issues to ensure FCC compliance and have done routine maintenance on the WSPM transmitter; (4) paid all costs related to the licensee's personnel and tower rent; and (5) produced public service programming and arranged for it to be aired on WSPM. The forgoing activities by HBC have continued despite the fact that the parties now find themselves in a

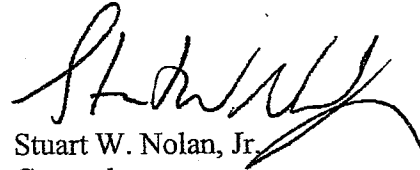
situation the TBA had not contemplated – a protracted wait for FCC consent to the proposed assignment.

In view of the foregoing, HBC and IM have maintained the features of a legitimate licensee-broker relationship, with HBC retaining control of WSPM in all areas required by the Commission. The mere fact that consideration has been fully paid under the Purchase Option does not support a conclusion that HBC prematurely ceded control of WSPM. Accordingly, we hereby request processing of the Assignment Application and the issuance of agency consent to the proposed transaction.

Respectfully submitted,



J. Richard Carr
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Hoosier Broadcasting Corporation



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