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In re: **KNCQ(FM), Redding, CA**
Facility ID No. 40828
File No. BPH-20140828ACE

KHRD(FM), Weaverville, CA
Facility ID No. 82720
File No. BPH-20140828ACG

Dear Counsel:

We have before us the above-referenced contingent applications ("Applications") for minor changes to stations KNCQ(FM), Redding, California, and KHRD(FM), Weaverville, California ("Stations"), both filed on August 28, 2014, by Results Radio of Redding Licensee, LLC ("Results"). The applications are accompanied by requests for waiver of Note 4 of the Commission's local radio ownership rules, Section 73.3555 ("Note 4").[1] For the reasons stated below, we deny the waiver request and dismiss the Applications.

Background. Results seeks consent to: (1) change the community of license of Station KNCQ from Redding to Weaverville, California; (2) change the community of license of Station KHRD from Weaverville to Redding; and (3) move KHRD's transmitter east approximately 12 kilometers toward Redding.[2] Redding is located within the boundaries of the Redding Nielsen Audio Metro market ("Metro"). Weaverville is located in an unrated market—i.e., a contour overlap-defined market—outside the boundaries of the Redding Metro ("Weaverville Market").[3] Both Stations are listed by BIA as "home" to the Metro. In total, Results owns five FM radio stations in the Metro—one more than is

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[1] 47 C.F.R. § 73.3555, Note 4.

[2] Applications, Exhibit 5, at 1. Results does not propose to modify KNCQ's presently licensed technical facilities.

[3] *See 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, 13729 (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).

permitted under the Commission's multiple ownership rules.[4] In the Weaverville Market, whether analyzed based on the current KHRD or the proposed KNCQ contours, Results is likewise over limit.[5]

Both station combinations are currently grandfathered under Note 4.[6] Note 4 permits existing over-limit station combinations to continue until certain events occur, in which case grandfathering terminates and the licensee must come into compliance with the multiple ownership limits of Section 73.3555(a).[7] One of these triggering events is applying for a minor change to an existing station that implements an approved change in an FM radio station's community of license.[8]

Results argues that the Applications may be granted "without affecting the grandfathered status of the Results radio stations" because the above provision of Note 4 tacitly exempts *intra-market* community of license changes.[9] Results states that the Commission intended Note 4 to apply only to inter-market moves—i.e., "community of license changes that would result in a station entering or leaving a market—because only these types of moves would create a potential for a "new concentration of interests."[10] In contrast, Results explains, the instant Applications propose intra-market changes that will have no effect on the concentration of radio ownership already within the market at issue.[11] In this situation, Results urges, "Note 4 should be interpreted to allow continued grandfathering."[12]

In the alternative, Results requests a waiver of Note 4. As grounds for waiver, Results points out that the Commission has sought public comment on a proposal to "exempt from the requirements of Note 4 'intra-Metro' community of license changes."[13] Results also claims that a waiver would provide a "vastly superior local transmission service" to KHRD's community of license, admitting that its current principal community contour covers only about 25 percent of Weaverville.[14] Finally, Results claims that the transmitter move is in the public interest because it will result in a net service gain of 25,403 more listeners within KHRD's 60 dBμ contour. Therefore, Results concludes, grant of the Applications will bring "clear public interest benefits" without any "countervailing competitive harms."[15]

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[4] *See* 47 C.F.R. § 73.3555(a)(1)(ii). The other Results stations designated as "home" to the Redding Metro are: KKXS(FM), Shingletown, California; KEWB(FM), Anderson, California; and KESR, Shasta Lake, California.

[5] Applications, Exhibit 5, at 2. Results requests that the Weaverville Market station combination continue to be grandfathered after the proposed changes for the same reasons as the Redding Metro combination. *Id*. at 2.

[6] *See* 47 C.F.R. § 73.3555, Note 4.

[7] *Id.*

[8] *Id.*

[9] Applications, Exhibit 5, at 1, 3-5.

[10] Applications, Exhibit 5, at 4.

[11] *Id*. Results argues that the Applications also do not trigger another Note 4 condition, "creat[ing] new or increased concentration of ownership among commonly owned, operated or controlled media properties." *Id*. at 3. Because we find that Results must comply with the multiple ownership limits in accordance with the community of license provision of Note 4, we need not reach this issue.

[12] Applications, Exhibit 5, at 5.

[13] Applications, Exhibit 5, at 6 (citing *2014 Quadrennial Regulatory Review*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4411 (2014) ("*2014 Quadrennial*")).

[14] Applications, Exhibit 5, at 6; 47 C.F.R. § 73.315.

[15] Applications, Exhibit 5, at 7.

Discussion. We decline to read an exemption into the plain language of Note 4 in this instance. Results proposes to change the community of license for Station KNCQ from the Redding Metro to the contour-overlap-defined Weaverville Market. At the same time, Results proposes to change the community of license for Station KHRD from the Weaverville Market to the Redding Metro. Neither Note 4 nor its adopting *Ownership Order* provides that a licensee may, as Results proposes, "backfill" a community of license with another station's community of license in order to retain its grandfathered status. Moreover, we have applied Note 4 to community of license changes even within the same Metro.[16] Therefore, we find that Results must demonstrate compliance with the numerical ownership limits of Section 73.3555(a), in accordance with Note 4. Because Results is over-limit in both the Redding Metro and Weaverville Market, neither Application is grantable without a waiver.[17]

Waiver. The Commission's rules may be waived only for good cause shown.[18] The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"[19] and must support its waiver request with a compelling showing.[20] Waiver is appropriate only if both: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation

[16] *WTKV(FM), Oswego, NY*, Letter Order, 21 FCC Rcd 2994 (MB 2006) (*Galaxy*).

[17] A licensee must comply with the numerical ownership limits in any market (whether a Nielsen Audio Metro or contour overlap-defined unrated market) in which its community of license is located, as well as any Metro market in which it is designated as "home." *Ownership Order*, 18 FCC Rcd at n.595, 594 ("[W]e always count a station as participating in the market in which its community of license is located.").

[18] 47 C.F.R. § 1.3.

[19] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

[20] *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

better serves the public interest.[21] In evaluating a request for waiver of the multiple ownership rules, the Commission weighs public interest concerns on a case-by-case basis to insure that the waiver does not unduly compromise the twin purposes of fostering diversity and economic competition that underlie the multiple ownership rules.[22] Results has failed to meet this burden.

As an initial matter, we reject Results' assumption that the perpetuation of an existing grandfathered combination is inherently harmless. The numerical limits approach is designed to promote competition by assuring that a sufficient number of rivals are actively engaged in competition for listening audiences.[23] Grandfathered combinations, by definition, exceed the numerical limits that we find promote the public interest as related to competition and are therefore are inimical to "the twin purposes of fostering diversity and economic competition."[24] These combinations are permitted because the alternative—compulsory divestiture—can "unfairly penalize parties who bought stations in good faith in accordance with the Commission's rules" and can be "disruptive to the industry," not because they have no anticompetitive effects.[25] Balancing these competing interests, the Commission adopted a prospective rule that enhances competition through gradual, voluntary divestitures in certain specific circumstances, such as community of license changes.

Results has not demonstrated "special circumstances" that warrant departure from this established approach. The Commission has repeatedly stated that the mere initiation of a rulemaking is insufficient grounds for waiver, and in any case—as discussed above—the community of license changes at issue here are not "intra-Metro" moves as proposed in the *2014 Quadrennial*.[26] There is nothing special or unique about Results' proposal to provide signal coverage to a greater population, on which it also relies as a standard factor in its Section 307(b) showing.[27] Moreover, even if its historic failure to serve its community of license could be characterized as a "special circumstance," Results has not made a

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[21] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) ("*NetworkIP*"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[22] *See, e.g.*, *Multimedia, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 4883, 4884-4885 (1995).

[23] *See, e.g., Clear Channel Broadcasting Licenses, Inc.*, Letter, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14078, 14084 (MB 2009) (citing *Ownership Order*, 18 FCC Rcd at 13716).

[24] *Ownership Order*, 18 FCC Rcd at 13810.

[25] *Ownership Order*, 18 FCC Rcd at 13808.

[26] *See, e.g.*, *New Rushmore Radio Inc.*, Letter, 29 FCC Rcd 3265, 3267 (MB 2014) ("The Commission does not routinely waive rules merely because they could be modified in the future as a result of a pending rulemaking."); *Shareholders of Tribune Company*, Memorandum Opinion and Order, 22 FCC Rcd 21266, 21276 (2007) (holding that speculation regarding the likelihood of compliance with a proposed future rule is "not sufficient to overcome our long-standing policy against granting waivers pending the outcome of rulemakings…"); *RKO General*, Memorandum Opinion and Order, 3 FCC Rcd 5262, 5263 (1988).

[27] Applications, Exhibit 36; 47 U.S.C. § 307(b); *see also, e.g., Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974) ("[A] mere increase in population served is not sufficient to warrant waiver when the area is presently neither unserved nor underserved.").

"compelling showing" sufficient to justify waiver on this basis alone, including, for example, discussing how the public interest might be served by other, rule-compliant, approaches to improving signal coverage to Weaverville. Finally, we have rejected a Note 4 waiver request that argued that an intra-market community of license change does not implicate competitiveness concerns, finding instead that "[t]o grant a waiver under the circumstances presented here would eviscerate the plain language of Note 4."[28] For these reasons, Results' request for a waiver of Note 4 is denied and the Applications are dismissed as patently defective for failure to comply with the multiple ownership rules.[29]

Conclusion/Actions. For the reasons stated above, IT IS ORDERED that the request for waiver of 47 C.F.R. § 73.3555, Note 4, IS DENIED and the Applications filed by Results Radio of Redding Licensee, LLC, on August 28, 2014 (File Nos. BPH-20140828ACE and BPH-20140828ACG), ARE DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

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[28] *Galaxy*, 21 FCC Rcd at 2996.

[29] *See* 47 C.F.R. § 73.3555(a).