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Federal Communications Commission
Office of Secretary

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Station KWOD(FM), Sacramento, California (Facility ID No. 57889)
File No. BALH-20021120ACE

Dear Ms. Dortch:

On behalf of Entercom Communications Corp, there are transmitted herewith an original and 14 copies of its *Opposition to Application for Review* submitted in connection with the above-referenced application.

If any additional information is desired in connection with this matter, please contact the undersigned counsel.

Very Truly Yours,

Jean W. Benz

Jean W. Benz

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In re Application of	)	
	)	
Royce International Broadcasting Company	)	
	)	
and	)	FCC File No. BALH-20021120ACE
	)	Facility ID No. 57889
Entercom Communications Corp.	)	
	)	
For Consent to Assignment of License of KWOD(FM), Sacramento, California	)	

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

Entercom Communications Corp. ("Entercom"), by its attorneys, hereby submits its opposition to the *Application for Review* ("AFR") filed September 20, 2005 by Royce International Broadcasting Company ("Royce").

Following a trial in the California Superior Court and a decision from the Court of Appeal of the State of California in and for the Third Appellate District in which it was ordered that Royce was contractually obligated to sell Station KWOD(FM) to Entercom,[1] the above-referenced application for assignment of the license of Station KWOD(FM) (the "Application") was granted by the Media Bureau on May 12, 2003, and the assignment was consummated on May 19, 2003. Royce now seeks Commission review of the decision by the Media Bureau ("Bureau") in which Royce's objection to the grant of the Application was rejected and the grant

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[1] Royce's Petition for Review of the Superior Court's decision was denied by the Supreme Court of California. This decision is final and not subject to further appeal.

of the Application affirmed. Royce's sole contention in its AFR is that the Application -- which had already been properly processed, granted, and consummated prior to *each of* the date of adoption, date of release, *and* the effective date of the ownership rules which Royce contends apply -- should now be "re-processed" under those ownership rules. As the Bureau correctly determined in its decision below, Royce's arguments are without merit and the AFR should be denied.

I. The Bureau Correctly Determined That the Application Was Not "Pending" Within the Context of the Grandfathering Provisions.

In the AFR, Royce claims that the Bureau did not address its argument that the Application was "pending" when the local radio ownership rules were adopted on June 2, 2003. Specifically, Royce contends that "the Bureau never resolved the issue of the 'pending' status of the Assignment Application pursuant to Section 1.65...." AFR at 5. To the contrary, the Bureau expressly resolved the issue, stating that "[b]ecause the grandfathering provisions [applicable to ownership clusters authorized and in existence at the effective date of the new rules] are controlling, Royce's reliance on Section 1.65 is misplaced." *Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau to Counsel, Royce International Broadcasting Company*, DA 05-2307 (rel. Aug. 22, 2005) ("Bureau Decision"). The Bureau Decision correctly noted that "[t]he grandfathering provisions provide that the new rules will not be applied to assignment applications that were granted and consummated under the previous rules." Bureau Decision at 2.

Royce's own arguments underscore the validity of the Bureau's actions. Royce frames its "singular issue" as "[w]hether the Bureau had failed to process the subject [Entercom] assignment application consistent with publicly announced application-processing guidelines that had been established by the Commission." AFR at 3. Royce cites the language of the *2003*

Order[2] to support its position, emphasizing the following language: "[A]pplications that are still pending as of [the effective date of the new rules] will be processed under the new multiple ownership rules...." AFR at 4, citing *2003 Order*, 18 FCC Rcd at 13813. The operative word in Royce's statement of the issue is the word "processed," which in context clearly refers to the action of the Commission and its staff in reviewing an application prior to its grant. In its challenges throughout this proceeding, Royce refuses to acknowledge that the Bureau did precisely as Royce asked: that is, the Bureau "process[ed] the subject [Entercom] assignment application consistent with publicly announced application-processing guidelines that had been established by the Commission." AFR at 3. The Bureau in fact processed the Application in accord with the guidelines and rules established by the Commission that were in effect on May 12, 2003, the date on which the application was granted. Based on the ownership rules in effect at that time (the "contour overlap" rules, which were applied to the acquisition as described in Exhibit 15 to the Application), the Bureau appropriately granted the Application – and the transaction was consummated – before the Commission adopted the new "geographic market" rules on June 2, 2003, before the text of the rules was released on July 2, 2003, and well before those rules became effective on September 3, 2004.

In an effort to sustain its argument, Royce grasps at the reference to the word "pending" in the definition set out in Section 1.65 of the Commission's rules. That rule requires applicants to advise the Commission when information set forth in an application "is no longer substantially accurate and complete in all significant respects," 47 C.F.R. §1.65. Royce contends that the use

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[2] 18 FCC Rcd 13620 (2003) ("*2003 Order*"), *aff'd in part and remanded in part, Prometheus Radio Project et al. v. FCC*, 373 F3d 372 (3d Cir. 2004), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004) (per curiam), *cert. denied*, 125 S. Ct. 2904 (2005). The stay imposed by the Third Circuit Court of Appeals was partially lifted as to the radio ownership rules on September 3, 2004, and those rules were effective on that day.

of "pending" in Section 1.65 of the Rules has the same as the meaning as the word "pending" when used in the *2003 Order*, 18 FCC Rcd at 13813, as set out in the preceding paragraph. In its continued attempt to force a square peg into a round hole, Royce omits a very important part of the quoted text of Section 1.65, which begins: "*For the purposes of this section*, an application is still 'pending' before the Commission..." 47 CFR § 1.65(a) (emphasis added). In the AFR, Royce omitted the italicized portion of the definition (as it was also omitted in Royce's Petition), doubtless because the language Royce seeks to ignore clearly limits any claim of general applicability of the definition that Royce contends applies in this case. As is true of most words, the word "pending" is capable of more than one meaning. Thus, although an application may be "pending" even after it has been acted upon by the Commission or the staff, in that it remains subject to the Commission's jurisdiction, once the application has been processed to grant by the staff or Commission, it is no longer "pending" as that term is used in the *2003 Order*, 18 FCC Rcd at 13813.

Not only is this construction consistent with plain meaning and common sense, the wording of the *2003 Order* itself makes clear that it applies only to those "pending applications" for which no action has yet been taken. The Commission there determined that applications which had been filed but had not yet been the subject of processing to grant and therefore remained "pending ... will be processed under the new multiple ownership rules." *2003 Order*, 18 FCC Rcd at 13813. In other words, those applications that had not been processed to grant by the effective date of the new rules adopted on June 2, 2003 would be processed under the new rules, regardless of the date on which the application was filed. In this case, not only had the Application been processed to grant by the date of adoption of the new rules, the assignment of

the license had already been *consummated* prior to both the date of adoption and release of the new rules, and before those rules became effective more than a year later.

As Royce observes by its explanation in the AFR of how the grandfathering provisions with respect to the new rules would be applied, the Commission stated that "[b]uyers will be on notice that ownership combinations must comply at the time of acquisition of the stations." It is commonly understood that "the time of acquisition of the stations" is the date of consummation. As the Commission's reasoning makes clear, the new rules do not act to unwind or undo a consummated transaction. And, as the Bureau Decision reiterated, the Commission does "not generally apply changes in ownership rules retroactively so as to require divestiture of existing combinations, and [it] did not do so when [it] revised the local radio rule." Bureau Decision at 2, citing *Golden Triangle Radio, Inc. et al.*, 20 FCC Rcd 4396, 4397-98 (2005). Because the Application had been granted and the transaction consummated before the new rules were even adopted, the grandfathering provisions clearly apply in this case.

Therefore, as the language used in the *2003 Order* and the plain meaning of Section 1.65 establish, the Bureau's action was correct, and Royce's reliance on Section 1.65 of the Rules has been misplaced. The Application was processed properly and granted, and thereafter was consummated. Royce's equivocation and sophistry cannot serve to undo what was properly completed in this instance.

II. Royce's Continued Challenges to the Application Are an Exercise in Frivolous Delay – There Is No Evidence to Suggest That the Application Would Not Comply With the New Rules.

As discussed above, the adoption of the ownership rules on June 2, 2003 does not act to undo the grant and consummation of the Application. Even if Royce were correct in its position,

however, and the grant of the Application was subject to re-processing under the new ownership rules, Royce fails to show that acquisition by Entercom of Station KWOD violates those rules.

Indeed, the AFR never once asserts that Royce has any good faith basis to believe that the Application does not comply with the new rules. At the time Royce filed its Petition, it acknowledged that there were 37 commercial radio stations in the Sacramento Metro. Petition at 2-3, citing *Royce Petition to Deny,* pp. 8-9; Appendix B, Engineering Statement of Roy P. Stype, III, at 5, and Table 1.2. As was evident from information readily available to the Commission and Royce in June of 2003, as compiled by BIA Financial Network, Inc., there were 11 noncommercial stations in the Sacramento Metro, *see Entercom Opposition to Royce Petition for Reconsideration* at 5. As a result, by Royce's count there would have been 48 stations in the market at the time, and, had the rules applied, Entercom would have been permitted under the new rules to own up to a maximum of eight stations in the Sacramento Metro, five of which could be in the same service. The acquisition of Station KWOD was Entercom's fifth FM station in the market, accompanying its single AM station, and the total of six stations is therefore well within the allowable limits under the Commission's Rules.[3]

But it is not the re-processing of the Application under the new rules that Royce actually seeks by the filing of the AFR. Instead, its arguments can only be understood to assert that, so long as it continues to lodge appeals, any *potential future change* in the ownership rules which might preclude the grant of the Application would be relevant to the Application, no matter how many years after the date of consummation that might occur. As the Bureau has already correctly determined when it granted the Application, and again in its denial of the Petition, the processing of the Application has been completed, Entercom is (and has been) qualified to hold

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[3] This result would not change if a multiple ownership analysis were conducted today.

the license of the station; this transaction was appropriately consummated and is no longer subject to being unwound because of the subsequent June 2003 change in the ownership rules. The same outcome applies as to any other, as yet not even proposed, change in the ownership rules that might occur in the future. Royce's continued efforts at delaying the ultimate outcome of this matter are without merit and should be rejected.

III. Conclusion.

For the foregoing reasons, Entercom respectfully requests that the Application for Review, filed by Royce on September 20, 2005, be denied.

Respectfully submitted,

ENTERCOM COMMUNICATIONS CORP.

By: _____

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Its Attorneys

October 5, 2005

CERTIFICATE OF SERVICE

I, Genevieve F. Edmonds, hereby certify that a copy of the foregoing "Opposition to Petition to Deny" was mailed, first class postage prepaid, this 5th day of October, 2005 to the following:

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