



Federal Communications Commission  
Washington, D.C. 20554

April 13, 2018

In Reply Refer to:  
1800B3-KV

Andrew Sutor, Esq.  
Entercom Communications Corp.  
401 E. City Avenue  
Bala Cynwyd, PA 19004

In re: Applications for *Pro Forma* Assignment of Broadcast  
Station Licenses held by Subsidiaries of Entercom  
Communications Corp.  
File Nos. BAL-20180201ACH *et. al.* and  
BALH-20180201ACG

Dear Mr. Sutor,

We have before us the following applications of Entercom Communications Corp. (Entercom) subsidiaries (Entercom Subsidiaries or Licensee), filed on February 1, 2018, for consent to *pro forma* assignment of eight broadcast station licenses (Applications): 1) from CBS Radio East Inc. to CBS Radio East, LLC, File No. BAL-20180201ACH *et. al.* (CBS Radio East Applications);<sup>1</sup> and 2) from CBS Radio Inc. of Boston Inc. to CBS Radio of Boston, LLC, File No. BALH-20180201ACG (CBS Radio Boston Application).<sup>2</sup> Licensee seeks *nunc pro tunc* grant of the Applications for the unauthorized *pro forma* assignments that occurred on December 31, 2017. For the reasons set forth below, we grant the Applications and admonish Entercom Subsidiaries for violation of Section 310 of the Communications Act of 1934, as amended (the Act)<sup>3</sup> and Section 73.3540 of the Commission's Rules (Rules).<sup>4</sup>

**Background.** The parent company of CBS Radio East and CBS Radio of Boston merged with Entercom, receiving Commission approval on November 9, 2017.<sup>5</sup> On December 19, 2017, in a group of

---

<sup>1</sup> The CBS East Applications are: File No. BAL-20180201ACH for Station WRVA(AM), Richmond, VA; File No. BALH-20180201ACI, for Station WXRL(FM), Richmond, VA; File No. BALH-20180201ACJ, for Station WTVR(FM), Richmond, VA; File No. BALH-20180201ACK, for Station WRVQ(FM), Richmond, VA; File No. BALH-20180201ACL, for Station WBTJ(FM), Richmond, VA; File No. BALFT-20180201ACM for Station W241AP(FX), Midlothian, VA; and File No. BALFT-20180201ACN for Station W253BI(FX), Glen Allen, VA.

<sup>2</sup> The CBS Boston Application, File No. BALH-20180201ACG, is for Station WUSY(FM), Cleveland, TN.

<sup>3</sup> 47 U.S.C. § 310.

<sup>4</sup> 47 CFR § 73.3540.

<sup>5</sup> See *Entercom Commc'ns and CBS Radio Seek Approval to Transfer Control and Assign FCC Authorizations and Licenses to Subsidiaries of CBS Corp. and Shareholders of Entercom Commc'ns Corporation*, Memorandum Opinion and Order, 32 FCC Rcd 9380 (2017), *application for review pending*.

four applications for consent to assignment of licenses, CBS Radio East, Inc. acquired Stations WRVA(AM), WRVQ(FM), WTVR-FM, WRXL(FM), W241AP(FX), WBTJ(FM), and W253BI(FX), and CBS Radio of Boston, Inc. acquired Station WUSY(FM) (collectively, the Stations), from subsidiaries of Clear Channel Communications, Inc.<sup>6</sup> On December 21, 2017, as part of a corporate reorganization, Licensee filed, *inter alia*, applications for Commission consent to *pro forma* assignment of broadcast station licenses, from CBS Radio East Inc. to CBS Radio East, LLC;<sup>7</sup> Licensee, however, failed to include the recently acquired Stations in the 2017 Applications. The 2017 Applications were granted on December 28, 2017, and the parties consummated the transaction on December 31, 2017. On that same date, Entercom implemented the conversion of CBS Radio Inc. of Boston Inc. to CBS Radio of Boston, LLC, for which it had filed no prior applications.<sup>8</sup>

On February 1, 2018, Entercom Subsidiaries filed the Applications requesting *nunc pro tunc* consent to the unauthorized *pro forma* assignments of the Stations. In the Applications, Licensee stated:

[These] *pro forma* assignment application[s] request *nunc pro tunc* approval in association with application file number BAL-20171221ADK (original application), which was granted on December 28, 2017. The licenses that are the subject of the present applications[s] were inadvertently omitted from the original application. The original application was filed in connection with an LLC conversion, pursuant to which the proposed assignee was converted from a corporation to a limited liability company.

[T]he proposed assignment does not involve any changes to the ultimate ownership of the licensees.<sup>9</sup>

**Discussion.** Section 310(d) of the Act, provides in pertinent part:

No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.<sup>10</sup>

It is undisputed that the December 31, 2017, *pro forma* assignments of the Stations to Entercom Subsidiaries were unauthorized and in violation of the Act and Section 73.3540 of the Rules. For an unauthorized *pro forma* assignment, the Commission's *Forfeiture Policy Statement* sets a base forfeiture

---

<sup>6</sup> See File Nos. BAL-20171102AAO, BALH-20171102AAP, BALH-20171102AAQ, BALH-2017AAR BALH-20171102ABD, BALFT-20171102ABE, BALFT-20171102ABI, and BALH-20171102ABC. The staff granted the applications on December 18, 2017, and the parties consummated the transaction on December 19, 2017.

<sup>7</sup> See, e.g., File No. BAL-20171221ADK *et al.* (2017 Applications), referenced in Applications, Exh. 12 (requesting consent to assignment of 37 station licenses from CBS Radio East Inc. to CBS Radio East, LLC). See File No. BAL-20171221ADK *et al.* (2017 Applications). Licensee stated that, pursuant to the reorganization, certain indirect subsidiaries of the ultimate parent company would become direct subsidiaries and then convert from corporations to limited liability companies with ultimate control remaining with ECC.

<sup>8</sup> The only station currently owned by CBS Radio Inc. of Boston is WUSY(FM). See the CBS Boston Application, Exh. 14, p.2.

<sup>9</sup> Applications, Exh. 12. In the Applications ECC remains the ultimate parent company.

<sup>10</sup> 47 U.S.C. § 310(d). See also 47 CFR § 73.3540.

of \$1,000 per violation.<sup>11</sup>

The Commission, however, is a regulatory agency with broad prosecutorial discretion in enforcement proceedings,<sup>12</sup> and its exercise of that discretion with respect to enforcement investigations is within the agency's jurisdiction.<sup>13</sup> The Supreme Court has repeatedly recognized that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."<sup>14</sup> Such considerable discretion is necessary because, among other reasons, "[t]he agency is far better equipped ... to deal with the many variables involved in the proper ordering of its priorities."<sup>15</sup>

On the facts presented here, we find that a forfeiture for Entercom Subsidiaries' unauthorized *pro forma* transfer of control is unwarranted. We agree with Entercom Subsidiaries that their failure to include the Stations, acquired a mere two days prior to the filing of the 2017 Applications, was an inadvertent error. Additionally, we note that Licensee properly filed 16 separate *pro forma* applications seeking consent for similar minor organizational changes for many of its stations, and the eight Stations involved in the unauthorized *pro forma* assignments comprise a small number compared to the 37 stations that were the subject of the 2017 Applications and the other 15 properly filed *pro forma* assignment applications. Entercom Subsidiaries seek consent to the *pro forma* assignments from a corporate indirect subsidiary of Entercom to a limited liability company indirect subsidiary of Entercom, the same scenario involved in the 2017 Applications. Moreover, Licensee took prompt corrective action by filing the Applications approximately one month after the December 31, 2017, consummation.

Therefore, considering the record as a whole and consistent with our discretion in enforcement proceedings, we find that an admonishment, rather than a forfeiture, is appropriate for the unauthorized *pro forma* assignments of the station licenses in this case,<sup>16</sup> and we caution Entercom Subsidiaries to be more punctilious regarding any future reorganizations. We further find CBS Radio East Inc. and CBS Radio Inc. of Boston to be fully qualified to assign, and CBS Radio East, LLC and CBS Radio of Boston, LLC, fully qualified to be, the licensees of the Stations and that grant of the Applications will further the public interest, convenience, and necessity. We decline, however, to grant the Applications *nunc pro tunc*.<sup>17</sup>

---

<sup>11</sup> See *Forfeiture Policy Statement and Amendment of Section 1.80 (b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied 15 FCC 303 (1999), 47 CFR § 1.80(b)(8), Section I.

<sup>12</sup> See *Radio One Licenses, LLC*, Forfeiture Order, 19 FCC Rcd 23922, 23932, para. 24 (2004) (citing *Emery Telephone*, Memorandum Opinion and Order, 15 FCC Rcd 7181, 7186 (1999)).

<sup>13</sup> See 47 U.S.C. § 403. See also *Viacom Inc., ESPN Inc.*, Forfeiture Order, 30 FCC Rcd 797, 804, para. 18 (2015); *Spanish Broad. Sys. Holding Co., Inc.*, Forfeiture Order, 27 FCC Rcd 11956, 11959, para. 8 n. 30 (EB 2012) (Section 403 provides broad discretion as to the type of misconduct the Commission may investigate and subject to enforcement action).

<sup>14</sup> *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (citing *United States v. Batchelder*, 442 U.S. 114 (1979); *United States v. Nixon*, 418 U.S. 683 (1974); *Vaca v. Sipes*, 386 U.S. 171 (1967); *Confiscation Cases*, 7 Wall. 454 (1869)).

<sup>15</sup> *Heckler v. Chaney*, *id.*

<sup>16</sup> See Note to 47 C.F.R. § 1.80(b)(8). See also *Tabback Broad. Co.*, 15 FCC Rcd 11899, 11900, para. 5 (2000) (Commission finds that staff "appropriately exercised its discretion" in admonishing Licensee, rather than issuing a forfeiture, for public file and accessibility violations).

<sup>17</sup> See e.g., *Time Warner Cable, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 879, 904, n.121 (MB, WCB, WTB, IB 2009).

**Conclusions/Actions.** Accordingly, IT IS ORDERED, that Entercom Communications Corp. and its subsidiaries, CBS Radio East, LLC, and CBS Radio of Boston, LLC ARE ADMONISHED for their apparent violations of Section 310(d) of the Act and Section 73.3540 of the Rules

IT IS FURTHER ORDERED, that the Applications (File No. BAL-20180201ACH for Station WRVA(AM), Richmond, Virginia; File No. BALH-20180201ACI, for Station WXRL(FM), Richmond, Virginia; File No. BALH-20180201ACJ, for Station WTVR(FM), Richmond, Virginia; File No. BALH-20180201ACK, for Station WRVQ(FM), Richmond, Virginia; File No. BALH-20180201ACL, for Station WBTJ(FM), Richmond, Virginia; File No. BALFT-20180201ACM for Station W241AP(FX), Midlothian, Virginia; and File No. BALFT-20180201ACN for Station W253BI(FX), Glen Allen, Virginia) for consent to assignment of station licenses from CBS Radio East Inc. to CBS Radio East, LLC ARE GRANTED.

IT IS FURTHER ORDERED, that the Application (File No. BALH-20180201ACG) for consent to assign the license of WUSY(FM), Cleveland, Tennessee from CBS Radio CBS Radio Inc. of Boston and CBS Radio of Boston, LLC IS GRANTED.

Sincerely,



Albert Shuldiner  
Chief, Audio Division  
Media Bureau