

**FEDERAL COMMUNICATIONS COMMISSION**

**445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
May 4, 2005**

**DA 05-1284  
In Reply Refer to:  
1800B3-BSH**

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Mr. Paul Glover  
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Re: WTKO(AM), Ithaca, NY  
Facility ID No. 32391  
File No. BAL-20040603AAO

WQNY(FM), Ithaca, NY  
Facility ID No. 32390  
File No. BALH-20040603AAP

WHCU(AM), Ithaca, NY  
Facility ID No. 18048  
File No. BAL-20040603AAK

WYXL(FM), Ithaca, NY  
Facility ID No. 18051  
File No. BALH-20040603AAL

Applications for Assignment of Licenses

Dear Counsel and Mr. Glover:

We have before us the above-captioned applications (“Assignment Applications”) proposing: (1) to assign the licenses of WTKO(AM) and WQNY(FM), Ithaca, New York, from Eagle II Broadcasting

Corporation to Saga Communications of New England, LLC (“Saga”); and (2) to assign the licenses of WHCU(AM) and WYXL(FM), Ithaca, New York, from Eagle Broadcasting Company, Inc. (collectively with Eagle II Broadcasting Corporation, “Eagle”) to Saga. On August 20, 2004, the Finger Lakes Alliance for Independent Media (“FLAIM”) as well as a group of four Ithaca residents (“Four Residents”) filed petitions to deny the Assignment Applications.<sup>1</sup> On September 7, 2004, a second group of 59 Ithaca residents (“Fifty-Nine Residents”)<sup>2</sup> (collectively with FLAIM and the Four Residents, the “Petitioners”) filed an Informal Objection to the Assignment Applications. All of the Petitioners raise the same issues and assert a common objection, *i.e.*, that grant of these assignments would result in Saga having undue concentration of ownership in the Ithaca, New York, radio market. For the reasons stated below, we are denying the two petitions to deny as well as the Informal Objection, and we are granting the Assignment Applications.

Petitioners argue that we should apply an alternative market definition in the instant transaction in order to determine compliance with the local radio ownership rule. Use of an alternative definition is appropriate, Petitioners argue, due to unique terrain obstructions. Petitioners assert that terrain obstructions limit the number of stations that provide “listenable” service to Ithaca,<sup>3</sup> and that “[t]here is sound basis to determine that the number of radio stations effectively competing in Ithaca is only seven.”<sup>4</sup> In light of this limitation, Petitioners contend, Saga’s ownership of the four captioned stations would deprive the Ithaca market of diversity. Alternatively, Petitioners argue that we should consider the total number of stations in the relevant market to be only the five stations that are licensed to Ithaca.<sup>5</sup> Petitioners observe that Saga’s acquisition of the four captioned stations would not comply with the local radio ownership rule if the relevant market comprises at most seven stations.<sup>6</sup>

Saga asserts that the transaction fully complies with the new local radio ownership rule. Further, the stations that Eagle proposes to assign have existed as a commonly-owned combination since 1996, and Saga contends that their common ownership has harmed neither competition nor the public interest. In support, Saga states that a party to the two petitions to deny the instant transaction previously contested common ownership of the captioned stations, first when the stations were being assigned to Eagle, and again when the stations’ licenses were being considered for renewal. The Commission in both proceedings rejected those challenges. Thus, Saga claims, the Commission has consistently found the stations’ common ownership to be in the public interest.

After extensive consideration, the Commission revised the local radio ownership rule to best serve the public interest.<sup>7</sup> The United States Court of Appeals for the Third Circuit (“Court of Appeals”),

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<sup>1</sup> Eagle filed a Joint Consolidated Opposition to Petitions to Deny on September 2, 2004, and FLAIM filed a Reply on September 21, 2004. The individual who signed the “Four Residents” Petition (Joseph Wetmore) is also listed on the FLAIM pleadings.

<sup>2</sup> Paul Glover was the lead individual signing for this group of objectors.

<sup>3</sup> *See, e.g.*, FLAIM Petition to Deny at 2.

<sup>4</sup> *See, e.g., id.* at 16.

<sup>5</sup> *See, e.g.*, Fifty-Nine Residents Petition to Deny at 2.

<sup>6</sup> *See* 47 C.F.R. § 73.3555(a)(1)(iv) (in a market with 14 or fewer stations, one owner may hold up to five stations, no more than three of which are in the same service, except that no single entity may control more than 50 percent of the stations in such a market).

<sup>7</sup> *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, 18 FCC Rcd 13620 (2003), (“Ownership Report and Order”), *aff’d in part and remanded in part, Prometheus Radio Project, et al. v.*

however, stayed the effective date of the local radio ownership rule and other multiple ownership rules adopted in the *Ownership Report and Order*.<sup>8</sup> In response to the Commission's petition for rehearing of the *Prometheus Remand Order*, on September 3, 2004, the Court of Appeals partially lifted its stay such that the new local radio ownership rule took effect, including use of the Arbitron-based market definition where Arbitron data (as reported by BIA) are available.<sup>9</sup>

Under the new rule, the Arbitron's Ithaca Metro Survey Area ("Ithaca Metro") is the presumptive geographic market for determining compliance with the rule's numerical limits.<sup>10</sup> In the *Ownership Report and Order*, the Commission stated that "[b]y applying the numerical limits of the local radio ownership rule to a more rational market definition, we believe that, *in virtually all cases*, the rule will protect against excessive concentration levels in local radio markets that might otherwise threaten the public interest."<sup>11</sup> The burden is on the Petitioners to show that an alternative market definition is appropriate.

Petitioners fail to persuade us that application of the new radio ownership rule is inadequate to protect against competitive harm in this case. BIA reports nine commercial and noncommercial educational radio stations as "home" to the Ithaca Metro, including Eagle's current cluster -- WTKO(AM), WQNY(FM), WHCU(AM) and WYXL(FM). Staff review demonstrates that seven of the nine stations provide city grade strength coverage over the entirety of Ithaca, and the other two stations provide such coverage over virtually all of Ithaca. Petitioners' allegations concerning terrain obstructions thus lack merit. Moreover, Petitioners do not provide any objective methodology to support the use of any geographic market other than the Ithaca Metro. We find, therefore, that Petitioners have not sustained their burden to establish an alternative market that is consistent with the *Report and Order's* conclusion that "a local radio market that is objectively determined . . . presents the most rational basis for defining radio markets."<sup>12</sup> Accordingly, we analyze this transaction using the Ithaca Metro as the relevant geographic market.

Saga currently has no attributable interest in any station in the Ithaca Metro. Through its acquisition of Eagle's stations, Saga would own two FM and two AM stations in the Ithaca Metro -- the same number that Eagle now controls -- which complies with the local radio ownership rule.<sup>13</sup>

Based on the evidence presented in the record and available through the BIA database, we find that Petitioners have not raised a substantial and material question of fact warranting further inquiry. We further find that Saga is qualified as the assignee and that grant of the Assignment Applications is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the applications to assign the licenses of station WTKO(AM), Ithaca, New York (File No. BAL-20040603AAO) and station WQNY(FM), Ithaca, New York (File No. BALH-20040603AAP) from Eagle

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*F.C.C.*, 373 F.3d 372 (3d Cir. 2004) ("*Prometheus Remand Order*"), *stay modified on reh'g*, No. 03-3388 (3d Cir. Sept. 3, 2004) ("*Prometheus Rehearing Order*").

<sup>8</sup> See *Prometheus Radio Project, et al. v. F.C.C.*, No. 03-3388, slip op. at 3 (3d Cir. Sept. 3, 2003) (per curiam) (granting motion for stay); *Prometheus Remand Order*, 373 F.3d at 435.

<sup>9</sup> *Prometheus Rehearing Order*, *supra* note 7.

<sup>10</sup> See *Ownership Report and Order*, 18 FCC Rcd at 13724-28.

<sup>11</sup> *Id.* at 13813 (emphasis added).

<sup>12</sup> *Id.* at 13724.

<sup>13</sup> See *supra* note 6.

II Broadcasting Corporation to Saga, and the applications to assign the licenses of station WHCU(AM), Ithaca, New York (File No. BAL-20040603AAK) and station WYXL(FM), Ithaca, New York (File No. BALH-20040603AAL) from Eagle Broadcasting Company, Inc. to Saga, ARE GRANTED. IT IS FURTHER ORDERED, that the August 20, 2004, Petition to Deny filed by FLAIM, the August 20, 2004, Petition to Deny filed jointly by four Ithaca residents, and the September 7, 2004, Informal Objection filed jointly by 59 Ithaca residents ARE DENIED.

Sincerely,

Peter H. Doyle, Chief  
Audio Division  
Media Bureau