



Federal Communications Commission
Washington, D.C. 20554

August 22, 2005

DA 05-2307
In Reply Refer to:
1800B3-BSH

Royce International Broadcasting Company
c/o William H. Crispin, Esq.
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Washington, D.C. 20004

Entercom Communications Corp.
c/o Brian M. Madden, Esq.
Leventhal Senter & Lerman PLLC
2000 K Street, N.W., Suite 600
Washington, D.C. 20006-1809

RE: KWOD(FM), Sacramento, CA
Facility ID No. 57889
File No. BALH-20021120ACE

Petition for Reconsideration

Dear Counsel:

This letter refers to the June 11, 2003, Petition for Reconsideration filed by Royce International Broadcasting Company ("Royce"). Royce requests reconsideration of the May 12, 2003, staff decision ("Staff Decision") denying Royce's December 20, 2002, Petition to Deny and granting the above-captioned application to assign the license ("Assignment Application") of station KWOD(FM), Sacramento, California, from Royce to Entercom Communications Corp. ("Entercom").¹ For the reasons stated below, we deny the Petition for Reconsideration.

BACKGROUND

On reconsideration, Royce notes that the June 2, 2003, *Public Notice*² announcing adoption that day of new multiple ownership rules³ states that certain pending applications will be processed under the

¹ Entercom filed an Opposition to Petition for Reconsideration on June 24, 2003, and Royce filed a Reply on July 7, 2003. Entercom filed a Motion for Leave to File and Supplement Opposition on July 22, 2003. Royce filed a Response to Motion for Leave to File and Supplement Opposition on July 30, 2003. Entercom filed untitled submissions on September 16, 2003, and August 5, 2003. We grant the Motions and consider all the above-referenced submissions.

² *Public Notice, Media Bureau Announces Processing Guidelines for Broadcast Station Applications* ("Public Notice"), 18 FCC Rcd 11319 (2003).

³ See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules

new rules. Royce argues that the Assignment Application was “pending” at the time the *Public Notice* was released because it was still subject to appeal. On this basis, Royce contends that Entercom must amend the Assignment Application to show compliance with the new local radio ownership rule. In support, Royce cites language in Section 1.65 of the Commission’s rules⁴ as well as a Commission decision and an unpublished court decision.⁵

Entercom counter-argues that the wording of the *Public Notice* makes clear that it applies only to those pending applications for which no action has yet been taken.⁶ Entercom asserts that, had the Media Bureau intended to include within the ambit of the *Public Notice* those applications that had already been granted but remained subject to appeal, it would have stated so explicitly and also would have addressed treatment of post-grant appeals, such as petitions for reconsideration, in its discussion regarding the processing of petitions to deny and informal objections.⁷

DISCUSSION

The *Ownership Order* addresses the applicability of the new ownership rules in the section entitled “Grandfathering and Transition Procedures.”⁸ The grandfathering provisions provide that the new rules will not be applied to assignment applications that were granted and consummated under the previous rules. As the Commission stated in the *Ownership Order*, “[w]e are persuaded by the record to grandfather existing combinations of radio stations As such, we will not require entities to divest their current interests in stations in order to come into compliance with the new ownership rules.”⁹ Specifically with regard to radio ownership, the *Ownership Order* concluded that the decision to grandfather existing combinations reflected “the substantial equitable considerations” which outweighed the Commission’s “interest in improving the precision of our radio market definition in these particular cases.”¹⁰ The Commission has since stated that “[w]e do not generally apply changes in ownership rules retroactively so as to require divestiture of existing combinations, and we did not do so when we revised the local radio rule.”¹¹ The Assignment Application was granted on May 12, 2003, and was

Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd 13620 (2003) (“*Ownership Order*”), *aff’d in part and remanded in part, Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (3d Cir. 2004), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied*, 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168 and 04-1177).

⁴ 47 C.F.R. § 1.65.

⁵ See Reply at 3-4 (citing *Premier Broadcasting, Inc.*, 7 FCC Rcd 867 (1992) (“*Premier*”) and *Edens Broadcasting, Inc. v. FCC*, No. 91-1387 (D.C. Cir., June 17, 1992) (“*Edens*”).

⁶ Opposition at 4.

⁷ *Id.*

⁸ *Ownership Order*, 18 FCC Rcd at 13807-14 (Section VI(D)).

⁹ *Id.*, 18 FCC Rcd at 13808.

¹⁰ *Id.*, 18 FCC Rcd at 13809.

¹¹ *Golden Triangle Radio, Inc. et al.*, 20 FCC Rcd, 4396, 4397-98 (2005) (citing to *Ownership Order*’s grandfathering provisions, 18 FCC Rcd at 13807-09).

consummated on May 19, 2003. Therefore, KWOD(FM) was part of Entercom's existing combination of radio stations on June 2, 2003.

Because the grandfathering provisions are controlling, Royce's reliance on Section 1.65 is misplaced. Furthermore, shortly after the United States Court of Appeals for the Third Circuit stayed the effective date of the ownership rules adopted in the *Ownership Order*,¹² the Commission issued a *Public Notice* on September 10, 2003, abandoning, as it was required to do, the "new rules" application processing procedures set forth in the June 2, 2003 *Public Notice*.¹³

For the reasons stated above, we find Royce's arguments to be without merit. Accordingly, the June 11, 2003, Petition for Reconsideration filed by Royce International Broadcasting Company IS DENIED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

¹² 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).

¹³ See *Public Notice, Media Bureau To Terminate Temporary Broadcast Station Application Freeze; Revised Processing Guidelines Announced* (DA 03-2867), 18 FCC Rcd 18631 (2003).