

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
CBS Radio Stations, Inc. (Assignor))
and)
Entercom Memphis License Inc. (Assignee))
)
For Consent to Assignment of Licenses of)
Stations)
)
WMC-FM, Memphis, Tennessee) Facility ID No. 59449
) File No. BALH-20060825ADA
)
)
WMC(AM), Memphis, Tennessee) Facility ID No. 19185
) File No. BAL-20060825ADB
)
)
CBS Radio Inc. of Illinois (Assignor))
and)
Entercom Cincinnati License, LLC)
)
For Consent to Assignment of Licenses of)
Station)
)
)
WMFS(AM), Bartlett, Tennessee) Facility ID No. 4653
) File No. BAL-20060825ACV
)
)
CBS Radio Stations, Inc. (Assignor))
and)
Entercom Cincinnati License Inc. (Assignee))
)
For Consent to Assignment of Licenses of)
Stations)
)
)
WYGY(FM), Fort Thomas, Kentucky) Facility ID No. 40915
) File No. BALH-20060825ACW
)
)
)
WGRR(AM), Hamilton, Ohio) Facility ID No. 72126
) File No. BAL-20060825ACX
)
)
)
WKRQ(AM), Cincinnati, Ohio) Facility ID No. 11276
) File No. BAL-20060825ACY
)
)
)
WUBE-FM, Cincinnati, Ohio) Facility ID No. 10140
) File No. BALH-20060825ACZ
)

| | | |
|---|---|---------------------------|
| Texas CBS Radio L.P. (Assignor) |) | |
| and |) | |
| Entercom Austin License, LLC (Assignee) |) | |
| |) | |
| For Consent to Assignment of Licenses of |) | |
| Stations |) | |
| |) | |
| KAMX(FM), Luling, Texas |) | Facility ID No. 48651 |
| |) | File No. BALH-20060825ADD |
| |) | |
| KJCE(AM), Rollingwood, Texas |) | Facility ID No. 1243 |
| |) | File No. BAL-20060825ADE |
| |) | |
| KKMJ-FM, Austin, Texas |) | Facility ID No. 66489 |
| |) | File No. BALH-20060825ADF |
| |) | |
| CBS Radio Stations, Inc. (Assignor) |) | |
| and |) | |
| Entercom Austin License Inc. (Assignee) |) | |
| |) | |
| For Consent to Assignment of Licenses of |) | |
| Station |) | |
| |) | |
| KXBT(FM), Austin, Texas |) | Facility ID No. 63201 |
| |) | File No. BALH-20060825ADI |
| |) | |
| CBS Radio Stations, Inc. (Assignor) |) | |
| and |) | |
| Entercom Rochester License Inc. (Assignee) |) | |
| |) | |
| For Consent to Assignment of Licenses of |) | |
| Stations |) | |
| |) | |
| WCMF-FM, Rochester, New York |) | Facility ID No. 1905 |
| |) | File No. BALH-20060901ABO |
| |) | |
| WPXY-FM, Rochester, New York |) | Facility ID No. 53966 |
| |) | File No. BALH-20060901ABP |
| |) | |
| WRMM-FM, Rochester, New York |) | Facility ID No. 1907 |
| |) | File No. BALH-20060901ABQ |
| |) | |
| WZNE(FM), Brighton, New York |) | Facility ID No. 6859 |
| |) | File No. BALH-20060901ABR |

MEMORANDUM OPINION AND ORDER

Adopted: November 21, 2007

Released: November 21, 2007

By the Chief, Media Bureau:

1. This Memorandum Opinion and Order (“*Order*”) grants the above-captioned applications (collectively, the “Applications” and each, an “Application”) for consent to assign the broadcast licenses of the referenced stations (the “Stations”) from subsidiaries of CBS Corporation (“CBS”) to subsidiaries of Entercom Communications Corporation (“Entercom”). Also on file are: (1) the September 28, 2006, Petition to Deny (the “Petition”) the Applications filed by Royce International Broadcasting Company (“Royce”);¹ (2) Royce’s January 24, 2007, “First Supplement to Petition to Deny” (the “First Supplement”);² and (3) Royce’s March 15, 2007, “Second Supplement to Petition to Deny” (the “Second Supplement”). In the Application regarding the Rochester, New York market stations, Entercom requests a temporary waiver of the local radio ownership rules³ in connection with its proposed acquisition of those stations from CBS.⁴ For the reasons set forth below, we dismiss the Royce filing as a petition to deny, consider and deny it as an informal objection, and grant the Applications, subject to the conditions described below.

2. **Background.** The Applications seek consent for the assignment of licenses of: Stations WMC(AM) and WMC-FM, Memphis, Tennessee, from CBS Radio Stations Inc. to Entercom Memphis License, LLC; Station WMFS(AM), Bartlett, Tennessee, from CBS Radio Inc. of Illinois to Entercom Memphis License, LLC; Stations WQAZ(AM), Fort Thomas, Kentucky, and WGRR(AM), Hamilton, Ohio, WKRQ(AM) and WUBE-FM, both Cincinnati, Ohio, from CBS Radio Stations Inc. to Entercom Cincinnati License, LLC; Stations KAMX(AM), Luling, KJCE(AM), Rollingwood, and KKMJ-FM, Austin, Texas, from Texas CBS Radio L.P. to Entercom Austin License, LLC; Station KXBT(AM), Taylor, Texas, from CBS Radio Stations Inc. to Entercom Austin License, LLC; and Stations WCMF-FM, WPXY-FM, WRMM-FM, all Rochester, New York, and WZNE(AM), Brighton, New York, from CBS Radio Stations Inc. to Entercom Rochester License, LLC (the “Rochester Stations”). The purchase price for the Stations is two hundred twenty million dollars (\$220,000,000). Royce argues that Entercom lacks the basic financial and character qualifications to be a licensee and, therefore, that the Commission should deny the Applications.

3. **Discussion. Procedural Issue: Standing.** Royce asserts that it has the requisite standing to file the instant Petition. In support of this contention, Royce states that it “will suffer significant economic injury” if the Commission grants the Applications. Specifically, Royce contends that Entercom acquired the license and assets of Royce’s Sacramento, California, Station KWOD-FM, in 2003, and “has yet to pay Royce any part of the outstanding purchase price.” Royce submits that Entercom is a company “on the verge of financial collapse,” and that “it will have to borrow money, money it may not be able to repay” to acquire the Stations. Royce also states that “in addition to the money it owes Royce,”

¹ Entercom filed an Opposition to the Petition on October 12, 2006, to which Royce filed a Reply on October 24, 2006.

² On February 20, 2007, Entercom filed an Opposition to this pleading, to which Royce filed a Reply on March 5, 2007.

³ 47 C.F.R. 73.3555(a)(1). See File No. BALH-20060901ABO, Exhibit 15. This application was amended on March 26, 2007, to supplement the waiver request.

⁴ See File Nos. BALH-20060901ABO/ABP/ABQ/ABR (the “Rochester Stations Assignment Application”).

Entercom's liabilities also include "likely" future judgments and forfeitures. Thus, Royce argues, it has standing to file the instant Petition "as a creditor" that would be "economically injured" if the Commission consents to the proposed license assignments.

4. Royce does not claim to hold any interest in a station in any of the markets in which the Stations are located. Moreover, it has not otherwise demonstrated that it is a party in interest, as required by Section 309(d)(1) of the Communications Act of 1934, as amended (the "Act"). It is well established that standing is accorded to persons not for the protection of their private interests, but only to vindicate the public interest.⁵ Consistent with this principle, creditors are generally not permitted to participate in an application proceeding solely on the ground that they have a financial stake in the survival of the parties.⁶ Accordingly, the Petition will be treated an informal objection (the "Objection") under Section 73.3587 of the Rules.⁷

5. *Substantive Issues. Financial Qualifications.* Royce states that, prior to the filing of the Applications, Entercom informed the Securities and Exchange Commission ("SEC") that Entercom had "substantial indebtedness" and that it had "no assurances that [it] will be able to obtain other funding, additional financing or the approvals, if necessary, for these transactions." Royce maintains that this indebtedness "could impair" Entercom's ability to obtain financing to acquire the Stations.⁸ Royce adds that Entercom has "unquantifiable" financial obligations, including "a significant debt to Royce." Moreover, Royce contends that the Attorney General of the State of New York (the "NYAG") has demanded that Entercom "disgorge" the alleged bribes it solicited from record companies, an amount that Royce estimates could reach \$120 million, not including Commission forfeitures.⁹

6. Entercom responds in its Opposition that it is financially qualified to acquire and operate the stations as prescribed by the Commission, notwithstanding its reports to the SEC. It indicates that it is no more highly "leveraged" than other broadcast companies¹⁰ and that its corporate bond ratings are "within the range of ratings of other publicly traded broadcast companies"¹¹ Entercom argues

⁵ See *Arizona Mobile Telephone Company*, Memorandum Opinion and Order, 80 FCC 2d 87 (1980), citing *Office of Communication of the United Church of Christ v. F.C.C.*, 123 U.S. App. D.C. 328, 335, 359 F. 2d 994, 1001 (1966) ("*Arizona*"). Also see *Rainbow/Push Coalition*, 330 F.3d 539, 356 (2003) (standing is accorded to persons not for the protection of their private interest but only to vindicate the public interest).

⁶ *Arizona*, *supra*, citing *Hertz Broadcasting of Birmingham, Inc.*, Memorandum Opinion and Order, 46 FCC 2d 350 (Rev. Bd. 1974) (financial interests of major creditor of applicant do not constitute adequate basis to qualify petitioner as a "person aggrieved").

⁷ 47 C.F.R. § 73.3587.

⁸ Objection at 6. Royce states that Entercom advised the SEC that it has "pledged substantially all of its stock or equity interest to its lenders," and that Entercom has liabilities of \$ 919 million and shareholder equity of only \$ 785 million. Objection at 4. Additionally, Royce states that, according to Entercom's filing with the SEC for the quarter ending June 30, 2006, its Bank Revolver had only \$282.2 million in available funds. Reply at 4, citing Entercom's SEC Form 10-Q for the quarterly period ending June 30, 2006.

⁹ Royce states that, in January 2005, Entercom received a subpoena from the NYAG in connection with its investigation of Entercom's alleged solicitation and acceptance of commercial bribes. Objection at 8.

¹⁰ It states that its "leverage ratio" *pro forma* for the acquisition of the Stations *i.e.*, the ratio of its indebtedness to its earnings before interest, taxes, depreciation, and amortization ("EBITDA") of 5.2 is actually less than that of Emmis Communications Corporation (6.0), Radio One, Inc. (6.8), Citadel Broadcasting Corporation (7.1), and Cumulus Broadcasting, Inc. (7.8). Opposition at 4.

¹¹ *Id.* at 3-4.

that, if its lenders, “a syndicate consisting of some of the largest and most sophisticated financial institutions in the United States,” approve the advance of the funds, and if the incurrence of that debt “does not cause Entercom to breach any of the carefully crafted financial covenants in its credit facility,” the Commission should refrain from involving itself in Entercom’s internal financial affairs.¹²

7. In Reply, Royce states that, although Entercom indicates that its leverage ratio may be similar to that of other broadcast companies, the acquisition of the Stations would result in a breach of Entercom’s Bank Revolver covenant limiting its leverage ratio to 5.0. Thus, states Royce, Entercom will not be able to close on the transaction unless it convinces its existing lender to waive the maximum leverage ratio provision of the lending agreement. Royce concludes that Entercom has failed to demonstrate its financial qualifications to consummate the proposed transaction.

8. Royce’s financial objection is grounded on its private contractual dispute with Entercom concerning Entercom’s payment to Royce of the purchase price for Royce’s Station KWOD-FM, Sacramento, California. The Commission is not the proper forum for the resolution of this matter.¹³ Moreover, Entercom has met the Commission’s financial qualifications requirement by certifying in the Applications that it has sufficient net liquid assets on hand or available from committed sources to consummate the transactions and operate the stations for three months without revenue.¹⁴ Nothing further typically is required of assignees. The Commission generally refrains from second-guessing a lending institution’s determination that an entity is creditworthy or that a buyer’s business model or financing strategy is sound.¹⁵ We decline to do so here.

9. *Character Qualifications.* Royce asserts that Entercom has repeatedly violated the Commission’s indecency guidelines, and the sponsorship identification rule and prohibition against “payola” contained in Sections 317 and 508 of the Act¹⁶ and Section 73.1212 of the Rules¹⁷ (collectively, the “Sponsorship Identification Rules”). In its Opposition, Entercom argues that Royce has failed to

(...continued from previous page)

¹² *Id.* at 5-6.

¹³ The Commission has consistently held that private disputes are beyond its regulatory jurisdiction and must be resolved in a local court of competent jurisdiction. See *John R. Kingsbury*, Memorandum Opinion and Order, 71 FCC 2d 1173 (1979); *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR 2d 773 (1976); *Transcontinent Television Corp.*, Memorandum Opinion and Order, 21 RR 945 (1961).

¹⁴ See FCC Form 314, Section III, Item 10 (proposed assignee must certify that it has sufficient funds on hand or available from committed sources to consummate the transaction and operate the stations for three months without revenue); *1998 Biennial Regulatory Review: Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056 (1998); *Financial Qualifications Standard*, Public Notice, 87 FCC 2d 200 (1981); see also *HLT Corporation and Hilton Hotels Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 18144, 18151 (1997) (pursuant to Section 308(b) of the Act, the Commission has required an applicant to demonstrate that it has a reasonable assurance that the necessary funds will be available to construct or acquire the station and to operate the station for three months).

¹⁵ *Stockholders of CBS, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 3733, 3746 (1995) (in response to petitioner’s contention that merger will over-leverage applicant so as to affect its ability to operate stations, Commission emphasized that it generally refrains from interfering with a company’s capital structure or from questioning a lending institution’s determination that the merged entity will be financially able to repay loans).

¹⁶ See 47 U.S.C. §§ 317 and 508.

¹⁷ See 47 C.F.R. §73.1212.

submit any specific allegations of fact sufficient to show that grant of the Applications is *prima facie* inconsistent with the public interest, convenience, and necessity or to raise a substantial and material question of fact concerning Entercom's qualifications to be an FCC licensee. Rather, states Entercom, Royce has made only general allegations based on other proceedings and has failed to present any specific facts regarding these claimed violations. Moreover, Entercom argues that, even if Royce's "vague claims" regarding indecency and Sponsorship Identification Rule violations were found to be valid, we would not deem Entercom unfit to hold broadcast licenses.

10. Sponsorship Identification Rules. Royce states that, on March 8, 2006, the NYAG filed an action against Entercom alleging that "Entercom's stations have traded airplay for revenue, with the knowledge of Entercom's corporate leadership."¹⁸ Royce also notes that, on April 19, 2006, the Commission sent Entercom a formal Letter of Inquiry regarding such matters.¹⁹ Royce maintains that there is "ample evidence" in the record that establishes that Entercom willfully and repeatedly violated the Sponsorship Identification Rules. Royce relies on the settlements (the "Settlements") that Sony BMG Music ("Sony BMG"), Warner Music Group Corp. ("Warner"), and UMG Recordings ("UMG") have entered into with the NYAG regarding alleged "pay-for-play" schemes. Royce asserts that the Settlements "demonstrate that Entercom was a willing partner in the record companies' criminal scheme, to violate state and federal laws," and also that CBS was actively involved in soliciting and accepting illegal bribes.²⁰

11. The Sponsorship Identification Rules require a broadcast station to disclose that it has received or been promised consideration for the broadcast of material, including musical selections, and identify the party that has provided or promised the consideration in an announcement aired when the paid-for material is broadcast.²¹ On April 13, 2007, the Commission released an order that adopted a Consent Decree between it and Entercom, on behalf of itself and its subsidiaries.²² In that Consent Decree, Entercom agreed to make a voluntary contribution of \$4,000,000 to the U.S. Treasury and adopt and implement a Compliance Plan and in order to ensure the company's compliance in the future with Sections 317 and 508 of the Act and Section 73.1212 of the Rules, and/or any Commission policy relating to sponsorship identification or "payola" or "plugola." After reviewing that Consent Decree and the matters under investigation, the Commission approved the Consent Decree and found that nothing in the record created a substantial and material question of fact in regard to those matters as to whether Entercom and its direct or indirect subsidiaries that hold FCC authorizations possess the basic qualifications, including character qualifications, to hold or obtain any FCC licenses or authorizations.

¹⁸ Objection at 9, referencing *The People of the State of New York v. Entercom Communications Corp.*, Complaint (Sup. Ct. N.Y. County). The Complaint and concomitant Press Release are available on the website of the Office of the NYAG, http://www/oag.state.ny.us/press/2006/mar/mar08_06.html.

¹⁹ Objection at 9.

²⁰ Objection at 12-13. Royce does not identify any connection between the Warner, Sony BMG, and UMG Settlements and Entercom or CBS. We note that, on December 27, 2006, Entercom entered into a Consent Judgment with the NYAG that resolved the NYAG's pending investigation of Entercom concerning "pay-for-play" matters. Although, under the Consent Judgment, Entercom agreed to make certain payments and undertake business reforms, the Consent Judgment did not find that it violated any laws, nor did Entercom admit to any such wrongdoing. See http://www.oag.state.ny.us/press/2006/dec/dec27b_06.html.

²¹ See 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212(a). See also *Commission Warns Licensees About Payola and Undisclosed Promotion*, Public Notice, 4 FCC Rcd 7708 (1988); *Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141 (1963).

²² *Entercom Communications Corp.*, Order, 22 FCC Rcd 7121 (2007).

Based on our review of the record and the Consent Decree, we conclude that the Consent Decree contains appropriate terms and conditions to ensure that Entercom complies with Sections 317 and 508 of the Act and Section 73.1212, and/or any Commission policy relating to sponsorship identification or “payola” or “plugola” in the future. Therefore, we conclude that there are no substantial and material questions of fact at issue relating to Entercom’s compliance with the Sponsorship Identification Rules relating to our grant of the Applications and deny the Sponsorship Identification Rule allegations in Royce’s Objection, subject to the specific representations and commitments contained in the Consent Decree.

12. Indecency. Royce also claims that Entercom has engaged in “repeated violation of the [Commission’s] indecency rules.” In support of this contention, Royce presents no specific information concerning any broadcast of indecent programming by Entercom, nor does it reference any specific sanction levied by the Commission against Entercom for airing indecent programming.²³ Rather, it merely cites to Entercom’s SEC filing, noting that Entercom acknowledges that “it could lose one or more [of its] broadcast licenses as a result of its broadcast of indecent material,” and “any forfeitures Entercom is obligated to pay will further strain its weakened finances.”²⁴ Royce’s general and unsupported allegations alone do not warrant further inquiry.

13. *The First Supplement*. In its First Supplement, Royce alleges that Entercom is responsible for the death of Jennifer Strange, a participant in a contest conducted by Entercom Station KDND(FM), Sacramento, California. Royce contends that this conduct provides further evidence that Entercom lacks the character qualifications necessary to be a broadcast licensee.²⁵ Royce states that the Commission requires licensees to conduct contests “with due regard for the public interest. This is especially true when the contest poses ‘hazards to life and health.’”²⁶ Royce states that the Commission has revoked or denied renewals of licenses, issued short-term renewals, and levied forfeitures in cases in which stations engaged in improper, fraudulent, or dishonest contest practices; here, it states, the licensee was repeatedly warned that the contest was dangerous, yet took no action “other than to mock concerned callers.”²⁷

14. The qualifications of Entercom Sacramento License, LLC, an Entercom subsidiary, to retain its license for Station KDND(FM), Sacramento, California, arising from the KDND(FM) contest

²³ See, e.g., *Entercom Kansas City License, LLC*, Notice of Apparent Liability, 19 FCC Rcd 25011 (2004), response pending (notice of apparent liability in the aggregate amount of \$220,000 levied against two Entercom stations for broadcasting apparently indecent material); *Entercom Sacramento License, LLC*, Notice of Apparent Liability, 19 FCC Rcd 20129 (2004), response pending (notice of apparent liability of \$55,000 for airing apparently indecent material); *Entercom Seattle License, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 9069 (2004), petition for reconsideration pending (denial of Application for Review of issuance of \$12,000 forfeiture for airing indecent material).

²⁴ Petition at 11.

²⁵ According to Royce, Ms. Strange, a 28-year-old mother of three, participated in a contest staged by KDND(FM) entitled “Hold Your Wee for a Wii,” in which contestants were required to drink as much water as possible without micturating in order to win a Nintendo “Wii” gaming console. Citing to a January 8, 2007, article in the *Sacramento Bee*, Royce states that station employees permitted the contest to continue despite receiving explicit warning regarding the dangers of “water intoxication.” and that Ms. Strange herself was feeling ill. The article states that, ultimately, Ms. Strange died of water intoxication three hours after leaving the station.

²⁶ First Supplement at 4-5, citing *Policy Statement and Order*, 57 RR 2d 939 (1985), and *Public Notice*, 2 FCC 2d 464 (1966).

²⁷ First Supplement at 5.

matter are under review in both that station's license renewal proceeding²⁸ and an investigation by the Enforcement Bureau.²⁹ Our action here regarding Entercom's proposed acquisition of the Stations is taken without prejudice to whatever enforcement or other action, if any, the Enforcement Bureau, the Media Bureau, and/or the Commission may take in those other proceedings.

15. *The Second Supplement.* On March 15, 2007, Royce filed a "Second Supplement to Petition to Deny" alleging that: (a) certain CBS stations currently broadcast the "Opie and Anthony Show"; (b) Opie and Anthony promote their website on those broadcasts; and (c) websites displaying pornographic material and promoting prostitution can be accessed through links provided on the Opie and Anthony website. The Second Supplement does not present any allegation of an actual or potential violation of the Act or the Rules. The Commission does not regulate the non-broadcast activities of station personnel or announcers.³⁰ Accordingly, these allegations are not relevant to determining CBS's character qualifications.

16. *The Rochester Stations Assignment Application.* As noted above, the Rochester Stations Assignment Application contains a request for waiver of the Commission's local radio ownership rules, Section 73.3555(a)(1) of the Rules.³¹ This Rule permits an entity to own, operate, or control (1) up to eight commercial radio stations, not more than five of which are in the same service (*i.e.*, AM or FM), in a radio market with 45 or more radio stations; (2) up to seven commercial radio stations, not more than four of which are in the same service, in a radio market with between 30 and 44 (inclusive) radio stations; (3) up to six commercial radio stations, not more than four of which are in the same service, in a radio market with between 15 and 29 (inclusive) radio stations; and (4) up to five commercial radio stations, not more than three of which are in the same service, in a radio market with 14 or fewer radio stations, except that an entity may not own, operate, or control more than 50 percent of the stations in such a market.³²

17. Entercom currently holds licenses for four stations in the Rochester Arbitron Metro Market ("Rochester Metro").³³ Its acquisition of the four Rochester Stations here would result in its ownership of seven FM stations and one AM station in the Rochester Metro. Arbitron lists 48 radio

²⁸ See File No. BRH-20050728AUU.

²⁹ See Case No. EB-07-IH-3992.

³⁰ See *Eagle Radio, Inc.*, Memorandum Opinion and Order, 9 FCC Rcd 1294, 1294-95 (1994); *Dale A. Owens*, Memorandum Opinion and Order, 54 FCC 2d 375, 378-79 (1975).

³¹ 47 C.F.R. 73.3555(a)(1). On July 2, 2003, the Commission issued its 2002 *Biennial Review Order*, in which it replaced all existing broadcast cross-ownership rules with new Cross-Media Limits, and modified the local radio ownership rule by, among other things, replacing the contour-overlap approach with Arbitron Metros, where Arbitron markets exist. See *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunication Act of 2002*, 18 FCC Rcd 13620 (2003) ("*2002 Biennial Review 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) ("*Prometheus Remand Order*"), stay modified on rehearing, (3d Cir. Sept. 3, 2004) ("*Prometheus Rehearing Order*"). On September 3, 2003, the U.S. Court of Appeals for the Third Circuit stayed the effective date of the rule changes contained in the *2002 Biennial Review Order*, stating that the "prior ownership rules [will] remain in effect pending resolution of these proceedings." *Prometheus Radio Project v. Federal Communications Commission*, No. 03-3388 (3d Cir. Sept. 3, 2003) (*per curiam*). In the *Prometheus Remand Order*, the U.S. Court of Appeals for the Third Circuit lifted its stay with respect to certain aspects of the local radio ownership rules. *Prometheus Remand Order*, 373 F.3d at 423.

³² See Telecommunications Act of 1996, § 202(b); 47 C.F.R. §73.3555(a) (2002).

³³ The stations are WFKL(FM), Fairport, New York, and WBEE-FM, WBZA(FM), and WROC(AM), all Rochester, New York.

stations in the Rochester Metro. Under Section 73.3555(a)(1) of the Rules, an entity, or entities under common control, may have a cognizable interest in up to eight radio stations, and up to five stations in a single service (AM or FM) in a market of 45 or more stations. Consequently, the proposed transaction would result in Entercom owning two more FM stations than permitted under the Rules. Entercom seeks a temporary ownership waiver of six months “while it pursues a divestiture of two or more of the FM stations” it would own.³⁴

18. In support of the waiver request, Entercom states that the Rochester Stations Assignment Application is “effectively part of a multi-station, multi-market transaction” among affiliates of CBS and affiliates of Entercom. It argues that the Commission has previously found that grant of temporary waivers of its multiple and cross-ownership rules for as long as 12 months serve the public interest in multiple-station transactions, because in such cases “the overall benefits of allowing time for an orderly divestiture will outweigh any temporary impact on diversity and competition from common ownership.”³⁵ Entercom also argues that, in addition to the short duration of the waiver requested, other factors weigh in favor of the grant of a brief temporary waiver, including: (1) the desirability of providing Entercom with sufficient time to effect a sale of the non-complying stations in an orderly fashion and at a fair market price; (2) the high level of competition among the multiplicity of media outlets currently existing in the Rochester Metro which would not be significantly adversely affected by the proposed transaction;³⁶ and (3) the fact that Entercom has already taken steps toward divesting the non-complying stations, having retained the brokerage firm of Starr Media to conduct a search for a buyer of at least two of the FM stations in what it terms the “combined group” of stations it will own post-consummation.

19. On March 26, 2007, Entercom amended its waiver request, stating that on October 31, 2006, Entercom, CBS, and the United States Department of Justice (“DOJ”), subsequent to DOJ review of the proposed transaction, entered into an agreement pursuant to which Entercom agreed to “pursue a divestiture” in the Rochester Metro of three FM stations.³⁷ Under that agreement, states Entercom, if such divestiture has not been completed within four months after Entercom acquires the Stations, the DOJ may

³⁴ Waiver request, at 2.

³⁵ *Id.*, citing *Telemundo Communications, Group, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 6958, 6978 (2002). Entercom also cites the following cases: *Shareholders of Ackerley Group, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 10828 (2002) (12-month waiver of radio-TV cross-ownership rule in transfer of 20 TV and radio stations); *UTV of San Francisco, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 14975 (2001) (6-month waiver of TV duopoly rule in transfer of 10 TV stations); *Shareholders of CBS Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8230 (6-month waiver of radio-TV cross-ownership rule in transfer of 17 TV stations); *Counterpoint Communications, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15044 (6-month waiver of TV-newspaper cross-ownership rule); *NBC WTVM License Company*, Memorandum Opinion and Order, 21 FCC Rcd 6805 (MB 2006) (6-month waiver of TV duopoly rule), *University of Notre Dame Du Lac*, Memorandum Opinion and Order, 21 FCC Rcd 1748 (MB 2006) (6-month waiver of TV-newspaper cross-ownership rule); *Liberty Corporation*, Memorandum Opinion and Order, 21 FCC Rcd 244 (MB 2006) (6-month waiver of TV duopoly rule); and *LINT Co.*, Memorandum Opinion and Order, 15 FCC Rcd 18130 (MMB 2000) (6-month waiver of TV duopoly rule in transfer of 13 TV stations).

³⁶ Entercom states that, in addition to 48 radio stations, the Rochester Metro is served by five full-power and seven low power television stations. It claims that cable television is available to “nearly all households in the Rochester market,” and that Echostar and DirecTV both provide direct broadcast satellite television service, including “local-into-local” service. Waiver Request at 3. XM and Sirius satellite radio service is available in the market as well, according to Entercom, and one daily newspaper, the *Democrat and Chronicle*, serves the area. *Id.* at 3-4.

³⁷ March 26, 2007 Amendment, Exhibit 15, at 2. The stations for which divestiture is to be pursued are WRMM-FM, WZNE(FM), and WFKL(FM) (the “Divestiture Stations”).

file in the U.S. District Court for the District of Columbia a Consent Decree and a Hold Separate Order,³⁸ each in a form already agreed to by CBS, Entercom, and DOJ. Entercom states that the Consent Decree requires that the divestiture be completed within 30 days of its filing (subject to an extension at DOJ discretion not to exceed an additional 60 days); if the divestiture has not been completed within that time, the court is empowered to compel the placement of the Divestiture Stations into an insulated divestiture trust administered by an independent court-appointed trustee.

20. Generally, the Commission has not granted temporary waivers of local radio ownership rules, instead requiring licensees to place stations in divestiture trusts to ensure compliance with the multiple ownership rules.³⁹ However, given the greater assurances of rapid divestiture provided by the October 31, 2006, agreement entered into by Entercom, CBS and DOJ, and the fact that diversity and competition will not be unduly compromised as a result of this temporary waiver, we will grant Entercom's request for a six-month temporary waiver, subject to the conditions described below.⁴⁰ Entercom shall come into compliance with this Rule within 6 months of consummation of the proposed transaction by divesting at least two FM radio stations it currently owns or will acquire in the Rochester market. To ensure that Entercom no longer owns or controls properties in excess of the numerical ownership limit of the radio ownership rule following expiration of the 6-month period, it shall file an application seeking to assign at least two such FM station licenses to a divestiture trust, along with a copy of the trust agreement, within 60 days of release of this *Order*, which the Commission shall grant, if the applicants are so qualified, and if full compliance with the radio ownership rule has not been achieved within 6 months of consummation.⁴¹

21. **Conclusion/Actions.** We have examined the referenced Applications and find that they comply with all pertinent provisions of the Act and the Rules, except as noted above. Additionally, for the reasons set forth above, we find that no substantial and material question of fact has been presented and we find that grant of the Applications would further the public interest, convenience, and necessity.

22. Accordingly, pursuant to Section 309(e) of the Communications Act of 1934, as amended,⁴² IT IS ORDERED, that the September 28, 2006, Petition to Deny filed on behalf of Royce

³⁸ According to Entercom, the Hold Separate Order requires that, following its acquisition of the Rochester Stations, Entercom operate the Divestiture Stations as a competitive business separate from Entercom's other operations. Among other things, it will be required to (1) preserve, maintain, and operate the Divestiture Stations as economically viable, competitive, and ongoing businesses, with management, sales, and operations held distinctly separate from its other operations; (2) not coordinate the marketing or sales of the Divestiture Stations with those of any other Entercom station; (3) keep separate the decision-making processes and records regarding marketing and pricing for the Divestiture Stations; and (4) provide sufficient capital for the Divestiture Stations to operate as an economically viable and competitive operation. *Id.* at 7.

³⁹ See, e.g., *Citadel Broadcasting Company*, 22 FCC Rcd 2083 (2007).

⁴⁰ This action comports with prior Commission and Bureau precedent. See, e.g., *Shareholders of Univision Communications, Inc.* 22 FCC Rcd 5842 (2007); *Shareholders of Jacor Communications, Inc.*, 14 FCC Rcd 6867 (MMB 1999).

⁴¹ The trustee shall have no family relationships with the principals of Entercom and no past business relationship with Entercom, its affiliates or principals, except to the extent required to establish the trust. The trust, which shall have as its sole purpose the divestiture of at least two radio stations in the Rochester Metro, shall place the exclusive authority to manage and operate the station in the hands of a trustee. While the trust is in effect, revenue in excess of expenses may be remitted periodically to Entercom. The trust shall comport with the insulation standards applicable to such mechanisms under Commission practice, including the restriction barring certain communications between the beneficiary and the trustee, and the prohibition on the parties entering into certain contractual and other relationships. See *Twentieth Holdings Corporation*, Memorandum Opinion and Order, 4 FCC Rcd 4052 (1989).

⁴² 47 U.S.C. § 309(3).

International Broadcasting Company IS DISMISSED as a petition to deny and, treated as an informal objection, IS DENIED.

23. IT IS FURTHER ORDERED, that the January 24, 2007, "First Supplement to Petition to Deny" and the March 15, 2007, "Second Supplement to Petition to Deny" filed by Royce International Broadcasting Company ARE DENIED.

24. IT IS FURTHER ORDERED, that the Applications (File Nos. BALH-20060825ADA, BAL-20060825ADB, BAL-20060825ACV, BAL-20060825ADD, BAL-20060825ADE, BALH-20060825ADF, BALH-20060825ADI, BAL-20060825ACW, BAL-20060825ACX, BAL-20060825ACY, and BALH-20060825ACZ) to assign the referenced broadcast licenses from CBS Radio Stations Inc., CBS Radio Inc. of Illinois, and Texas CBS Radio L.P., to subsidiaries of Entercom Communications Corporation ARE GRANTED.

25. IT IS FURTHER ORDERED, that the Applications (File Nos. BALH-20060901ABO/ABP/ABQ/ABR) for consent to assign the referenced broadcast stations from CBS Radio Stations Inc. to Entercom Rochester License, LLC IS GRANTED, subject to the following conditions: Entercom shall come into compliance with the radio ownership rule (47 C.F.R. § 73.3555(a)(1)) in the Rochester market by divesting at least two FM radio stations within 6 months of consummation of the instant transaction. To ensure that Entercom no longer owns or controls properties in excess of the numerical ownership limit of the radio ownership rule following expiration of the 6-month period, it shall file an application seeking to assign at least two FM station licenses in the Rochester market to a divestiture trust, along with a copy of the trust agreement, within 60 days of release of this *Order*, which the Commission shall grant, if the applicants are so qualified, and if full compliance with the radio ownership rule in the Rochester market has not been achieved within 6 months of consummation. These actions are taken pursuant to Sections 0.61 and 0.283 of the Commission's Rules.⁴³

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau

⁴³ 47 C.F.R. §§ 0.61, 0.283.