



Federal Communications Commission  
Washington, D.C. 20554

February 8, 2007

DA 07-608

In Reply Refer to:  
1800B3-TSN

Mr. Scott M. Knoblauch  
1 Aviation Lane  
Unit 8  
Greenville, SC 29607

In re: **Broadcast Auction No. 70**  
Form 175 Application of  
Scott M. Knoblauch

Dear Mr. Knoblauch:

The Commission has received your short-form application (FCC Form 175) to participate in the upcoming FM Broadcast Auction ("Auction No. 70"). In this letter we address your request for waiver of Section 73.5007 of the Commission's Rules.<sup>1</sup> Specifically, we consider whether your sole membership and management interest in Kansas City Trust, LLC ("KCT"), licensee of broadcast stations KCHZ(FM), Ottawa, Kansas, and KMAJ-FM, Topeka, Kansas, should be attributed to you for purposes of qualifying for the new entrant bidding credit ("NEBC"). You argue that KCHZ(FM) and KMAJ-FM should not be attributed to you, and thus grant of the requested waiver would enable you to claim eligibility for a 35 percent NEBC in Auction No. 70. For the reasons discussed below, we deny the waiver request.

**Background.** According to your application, you are the sole member and manager of KCT, the licensee of record of KCHZ(FM) and KMAJ-FM. The KCHZ(FM) license was assigned to KCT by CMP Houston-KC, LLC,<sup>2</sup> and the KMAJ-FM license was assigned to KCT by Cumulus Licensing LLC.<sup>3</sup> Both assignment applications were granted March 3, 2006, and both transactions were consummated May 3, 2006. Pursuant to separate Trust Agreements dated November 17, 2005, and other simultaneously executed documents, KCT agreed to exercise sole, independent control over KCHZ(FM) and KMAJ-FM, in order to enable the assignors, both subsidiaries of Cumulus Media Inc. (collectively "Cumulus") to avoid attribution of those stations to Cumulus.<sup>4</sup> Absent these arrangements, Cumulus would have held

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<sup>1</sup> 47 C.F.R. § 73.5007. Although you have requested waiver of Section 73.5007, we view your request as one for waiver of 47 C.F.R. § 73.5008(c), which defines an attributable interest in a medium of mass communications.

<sup>2</sup> File No. BALH-20051118ADN.

<sup>3</sup> File No. BALH-20051118ADJ. In this particular context, Cumulus was in the process of acquiring radio stations owned by and licensed to Susquehanna Radio Corporation.

<sup>4</sup> See, e.g., *Shareholders of AMFM, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 16062, 16072 (2000) (in connection with a merger, stations assigned to an "insulated divestiture trust," as Clear Channel had not yet secured third-party buyers acceptable to the U.S. Department of Justice; non-attribution of broadcast stations allowed because the licenses were held by the trustee and operation was properly insulated from the grantors and beneficiaries).

attributable interests in five stations in the Kansas City Arbitron Metro, exceeding by one the number of stations in which it could hold attributable interests for the purpose of compliance with the radio multiple ownership rule, Section 73.3555 of the Commission's Rules.<sup>5</sup> Thus, KMAJ-FM and KCHZ(FM) are no longer attributable to Cumulus as a result of the consummation of the assignments of these licenses to KCT.

**Discussion.** To obtain a waiver of the Commission's competitive bidding rules,<sup>6</sup> an applicant must show: (i) that the underlying purpose of the rule would not be served, or would be frustrated, by its application in this particular case, and that grant of the requested waiver would be in the public interest; or (ii) that the unique facts and circumstances of the particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, or that the applicant has no reasonable alternative.<sup>7</sup>

Based on the record before us, you have not satisfied the Commission's criteria for granting a waiver of the competitive bidding rules or the rules governing NEBC eligibility. You argue, in your request, that waiver is warranted because you are only an interim trustee of KCHZ(FM) and KMAJ-FM for purposes of sale and will not benefit from the stations' sale, and thus that the ownership of these stations should not be attributed to you. However, eligibility for the 35 percent NEBC is available only to an applicant with no interests, in any media of mass communications, that are considered attributable. Attributable interests, in turn, are those interests in Commission licensees or permittees that confer "a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions."<sup>8</sup> Both the KCHZ(FM) and KMAJ-FM trust agreements vest "exclusive control over the operation and management" of those stations in KCT, including the transfer of "all of the Beneficiaries' right, title, interest, and obligations in and to all of the Station Assets" save for certain defined exceptions.<sup>9</sup> As a result, KCT has the right to operate the stations "as separate, independent, ongoing, economically viable competitor[s] to the Beneficiaries," managed separate and apart from the Beneficiaries, and is expressly empowered, *inter alia*, to hire employees, act as Commission licensee, and use all reasonable efforts to maintain and increase advertising sales of the stations.<sup>10</sup>

Clearly, the effect of the trust agreements is to vest "absolute and complete control"<sup>11</sup> over the operations of KCHZ(FM) and KMAJ-FM in KCT, and this, in turn, permits the Commission to treat Cumulus' beneficial interests in these stations as non-attributable.<sup>12</sup> Thus, we find that allowing you to

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<sup>5</sup> 47 C.F.R. § 73.3555(a)(1).

<sup>6</sup> *Id.* § 1.2105(b)(2).

<sup>7</sup> *Id.* § 1.925.

<sup>8</sup> *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12560 (1999).

<sup>9</sup> *See* KMAJ Trust Agreement and KCHZ Trust Agreement ("Trust Agreements"), §§ 2(a), (b), 5(e).

<sup>10</sup> *Id.* §§ 5(a)(ii)-(v).

<sup>11</sup> *Id.* § 5(a)(i).

<sup>12</sup> *See supra* note 4.

avoid attribution would lead to an anomalous result: the stations are not attributable to Cumulus because sole control over the licenses and operations is held by KCT, and if your requested waiver is granted the stations would not be attributable to KCT. The end result would be two radio stations in which no party, including the licensee and operator, holds an attributable interest. This result would not serve the public interest.

Having agreed to operate KCHZ(FM) and KMAJ-FM, and thus to enable Cumulus to avoid attribution of those stations, you may not now disclaim attribution of those two stations. Had you wished to divest KCT of those licenses in order to qualify for the full 35 percent NEBC, the procedure and time frame for doing so are set forth in the *Auction No. 70 Procedures Public Notice*.<sup>13</sup> “Applicants intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the NEBC must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline – December 19, 2006.”<sup>14</sup> As you did not divest KCT’s interests before the Auction No. 70 short-form application filing deadline, we find the two licenses must be attributed to you, and thus that you are not qualified to claim a 35 percent NEBC.<sup>15</sup>

**Conclusion.** The Commission's Rules and the integrity of the competitive bidding process are best served by applying the attribution rules in a fair and consistent manner. Your waiver request is therefore DENIED. Your short-form application has been accepted. Based on your attributable interest in two media of mass communications, and our denial of your waiver request, we have changed your short-form application to indicate that you are claiming a 25 percent NEBC, pending any subsequent changes in your status that would diminish your eligibility.<sup>16</sup> We remind you that you are required, as are all auction applicants, to immediately notify the Commission of any changes that would reduce your NEBC eligibility.<sup>17</sup>

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

Margaret W. Wiener  
Chief, Auctions and Spectrum Access Division  
Wireless Telecommunications Bureau

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<sup>13</sup> See “Auction of FM Broadcast Construction Permits Scheduled for March 7, 2007: Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 70,” *Public Notice*, 21 FCC Rcd 12957, 12972 (WTB/MB 2006).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* § 73.5007(a) (a 25 percent NEBC will be given to a winning bidder with an attributable interest in no more than three mass media facilities).

<sup>16</sup> *Id.*

<sup>17</sup> *Auction No. 70 Procedures Public Notice*, 21 FCC Rcd at 12972.