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In re: **KIJN-FM, Farwell, Texas**
Facility ID No. 65458
File No. BALH-20080430AAE

**Application for Assignment of License
Petition to Deny**

Dear Counsel:

We have before us the above-referenced application (the "Assignment Application") seeking approval for the proposed assignment of the license of Station KIJN-FM, Farwell, Texas (the "Station"), from Metropolitan Radio Group, Inc. ("MRG") to Joseph Walker ("Walker"). On June 9, 2008, Rooney Moon Broadcasting, Inc. ("Rooney" or "Petitioner") filed a Petition to Deny or Dismiss ("Petition to Deny") the Assignment Application.¹ Rooney is the licensee of Stations KRMQ-FM, Clovis, New Mexico; KSMX-FM, Clovis, New Mexico; KSEL(AM), Portales, New Mexico; and KSEL-FM, Portales, New Mexico. For the reasons stated below, we deny the Petition to Deny and grant the Assignment Application, as amended.

Background. The Assignment Application initially sought to assign Station KIJN(AM), Farwell, Texas, as well as Station KIJN-FM from MRG to Walker. On September 11, 2008, the parties amended the Assignment Application to delete KIJN(AM) as a facility being conveyed and provided an amended asset purchase agreement reflecting the parties' agreement to remove KIJN(AM) from the transaction and only proceed with Station KIJN-FM.²

¹ On June 16, 2008, Walker filed a Motion for Extension of Time to File Opposition to Petition to Deny or Dismiss. On July 16, 2008, Walker filed a Motion for Further Extension of Time to File Opposition to Petition to Deny or Dismiss. On August 7, 2008, Walker filed an Opposition to Petition to Deny or Dismiss. On August 19, 2008, Rooney filed a Reply to Opposition to Petition to Deny or Dismiss. On September 11, 2008, Walker filed a Motion for Leave to File and Supplement to Opposition to Petition to Deny or Dismiss. On September 24, 2008, Rooney filed a Response to Motion for Leave to File.

² The proposed assignment of Station KIJN(AM) from MRG to Walker (File No. BAL-20080430AAD) was removed from the Assignment Application on November 6, 2008, pursuant to the parties' request. Subsequently, the staff granted the uncontested application to assign Station KIJN(AM) from MRG to Unido Para Cristo, Inc. (File No. BAL-20081024ABR) on December 15, 2008.

Discussion. The Petition to Deny alleges that the Assignment Application, as originally filed, should not be granted because the multiple ownership exhibit failed to show compliance with the local radio ownership rule.³ In this regard, the Petitioner notes that Walker is also the president and managing member of Tallgrass Broadcasting LLC (“Tallgrass”), which is the licensee of two AM stations and three FM stations in the Clovis, New Mexico Arbitron Metro Survey Area (“Clovis Metro”). The Petitioner argues that permitting Walker to acquire Stations KIJN(AM) and KIJN-FM would result in his holding an attributable interest in three AM and four FM stations in the Clovis Metro. Pursuant to the Commission’s Rules, ownership of seven stations, four of which are in the same service, requires the applicant to demonstrate that there are at least 30 stations in the market.⁴ Because the Assignment Application fails to demonstrate the existence of 30 stations in the Clovis Metro, Rooney argues, it cannot be granted.

As initially filed, the Assignment Application demonstrated compliance with the local radio ownership rule by use of the contour overlap methodology. The multiple ownership exhibit submitted in the original Assignment Application states that the contour overlap methodology was appropriate to analyze the compliance of Walker’s commonly-owned stations, “as the stations are located outside of any Arbitron Market.”⁵ Rooney alleges, however, that Walker’s use of the contour overlap methodology and his certification on this issue were incorrect. On April 4, 2008, before the Assignment Application was filed, Arbitron had released a “Radio Presurvey Bulletin, Spring 2008,” announcing “that it had added, ‘effective with the Spring 2008 survey,’ the Clovis, New Mexico, market as a new Arbitron market.”⁶ Walker was fully aware of Arbitron’s recognition of the Clovis Metro, Rooney claims, because Tallgrass “agreed to subscribe to Arbitron’s diary service.”⁷ Rooney argues that Walker’s failure to disclose in the Assignment Application any information concerning the creation of the Clovis Metro demonstrates a lack of candor that warrants dismissal or designation for hearing of the Assignment Application.⁸

In the Opposition, Walker claims that his use of the contour overlap methodology, rather than Arbitron market information, to demonstrate compliance with the local radio ownership rule was not an attempt to mislead the Commission, but was necessitated by the lack of any available information in the BIA database concerning the Clovis Metro at the time the Assignment Application was filed.⁹ Additionally, Walker maintains that all certifications contained in the Assignment Application were truthful, and that he fully disclosed all of his ownership interests in the Assignment Application and was not attempting to conceal any information from the Commission.¹⁰

³ 47 C.F.R. § 73.3555(a).

⁴ See 47 C.F.R. § 73.3555(a)(1)(ii).

⁵ Assignment Application, Attachment 15 (“Radio Multiple Ownership Analysis”) at 1.

⁶ Petition to Deny at 4.

⁷ *Id.* at 4-5.

⁸ *Id.* at 7.

⁹ Opposition at 5. The Opposition further states that the BIA database had no available information for the Clovis Metro when the Opposition was filed on August 7, 2008. *Id.*

¹⁰ *Id.* at 3-4.

Multiple Ownership Analysis. Consistent with the Commission’s instructions, our assessment of an applicant’s compliance with the local radio ownership rule, and our conclusion as to whether any stations are “home” to an Arbitron Metro, will be determined by the data available in the BIA database at the time of our action on an application.¹¹ The staff has ascertained from BIA that information concerning the Clovis Metro first became available on BIA’s Media Access Pro database on August 15, 2008. Accordingly, the assignment of KIJN-FM to Walker must comply with the local radio ownership rule for the Clovis Metro.

Using the Clovis Metro as the relevant geographic market, a staff analysis establishes that BIA currently lists 21 commercial and noncommercial educational radio stations as “home” to that market. Walker presently owns five stations in the Clovis Metro.¹² Through his acquisition of KIJN-FM, Walker would own four FM and two AM stations in the Clovis Metro. Under Section 73.3555(a)(1)(iii) of the Commission’s rules,¹³ in a radio market with between 15 and 29 full-power, commercial and noncommercial radio stations, a person or single entity may have a cognizable interest in licenses for AM or FM radio broadcast stations for not more than six commercial stations in total, and not more than four commercial stations in the same service (AM or FM). Accordingly, the assignment of KIJN-FM to Walker complies with the local radio ownership rule for the Clovis Metro, based on information currently available in the BIA database.¹⁴

Lack of Candor. We find that Rooney’s lack of candor allegation is without merit. In particular, we credit Walker’s explanation that the absence of information in the BIA database concerning the Clovis Metro at the time he filed the Assignment Application required him to use the contour overlap methodology. As Walker asserts, when it adopted the use of Arbitron markets to determine compliance with the local radio ownership rule, the Commission specifically stated that it would rely on the BIA database to determine which stations are in a given Arbitron Metro.¹⁵ In adopting the use of Arbitron markets, the Commission stated:

The Commission traditionally has relied on BIA’s Media Access Pro database to obtain information about particular Arbitron Metros. The BIA database relies on Arbitron’s

¹¹ See *infra* nn. 15-16, and accompanying text.

¹² These stations are KMUL-FM, Muleshoe, Texas; KICA(AM), Clovis, New Mexico; KICA-FM, Farwell, Texas; KMUL(AM), Farwell, Texas; and KKYC(FM), Clovis, New Mexico.

¹³ 47 C.F.R. § 73.3555(a)(1)(iii).

¹⁴ Furthermore, we find that Walker has demonstrated that the proposed assignment of KIJN(FM) complies with the local radio ownership rule using the contour overlap methodology. Thus, Walker does not benefit from an Arbitron Metro-based analysis, rather than a contour overlap-based analysis, and is therefore not subject to the two-year waiting period that the Commission adopted to prevent applicants from benefiting from changes in Arbitron Metros. 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*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13726 (2003) (“*Ownership Report and Order*”), *aff’d in part and remanded in part, Prometheus Radio Project, et al. v. FCC*, 373 F. 3d 372 (3d Cir. 2004), *cert. denied*, 125 S. Ct. 2902 (2005). (Commission adopts policy deferring benefits from changes in Arbitron Metros to ensure that such changes will be made to reflect actual market conditions and not to circumvent the local radio ownership rule).

¹⁵ See *Ownership Report and Order*, 18 FCC Rcd at 13727.

market definitions and builds upon Arbitron's data to provide greater detail about the competitive realities in Metro markets. Given our experience with the BIA database and its acceptance in the industry, we will count as being in an Arbitron Metro above-the-line radio stations (*i.e.*, stations that are listed as "home" to that Metro), as determined by BIA.¹⁶

Absent such data, however, Walker correctly relied on the contour overlap methodology in the Assignment Application. Moreover, we find that at the time the Assignment Application was filed Walker correctly certified that his commonly-owned stations were not in any Arbitron market. Thus, Rooney has failed to raise a substantial and material question of fact concerning Walker's candor with the Commission or with his qualifications to be a licensee.

Conclusion/Actions. Based on the above, we find that no substantial and material question of fact has been presented. We further find that Walker is qualified as the assignee and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Petition to Deny filed by Rooney Moon Broadcasting, Inc. IS DENIED, and that the application to assign the license of Station KIJN-FM, Farwell, Texas (File No. BALH-20080430AAE) from Metropolitan Radio Group, Inc. to Joseph Walker IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁶ *Id.*