



**Federal Communications Commission
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Richard A. Helmick, Esq.
Cohn & Marks
1920 N Street NW, Suite 300
Washington, DC 20036-1622

M. Anne Swanson, Esq.
Dow Lohnes PLLC
1200 New Hampshire Avenue NW, Suite 800
Washington, DC 20036-6802

Dennis P. Corbett, Esq.
Lerman Senter PLLC
2000 K Street NW, Suite 600
Washington, DC 20006-1809

Peter Gutmann, Esq.
Womble Carlyle Sandridge & Rice PLLC
1401 I Street NW, Seventh Floor
Washington, DC 20005

Howard M. Liberman, Esq.
Drinker, Biddle & Reath, LLP
1500 K Street NW, Suite 1100
Washington, DC 20005

Mr. Allen N. Blum
14 Windmill Place
Armonk, NY 10504

In re: **KJOX(AM), Yakima, Washington**
Facility ID No. 49875
File No. BAL-20101201APA

KARY-FM, Grandview, Washington
Facility ID No. 53674
File No. BALH-20101201APB

KBBO(AM), Selah, Washington
Facility ID No. 7918
File No. BALH-20101201APC

KHHK(FM), Yakima, Washington
Facility ID No. 36031
File No. BALH-20101201APD

KALE(AM), Richland, Washington
Facility ID No. 63359
File No. BALH-20101201APE

KIOK(FM), Richland, Washington
Facility ID No. 12455
File No. BALH-20101201APF

**KKSR(FM), Walla Walla,
Washington**
Facility ID No. 35717
File No. BALH-20101201APG

KOLW(FM), Basin City, Washington
Facility ID No. 51128
File No. BALH-20101201APJ

KEYW(FM), Pasco, Washington
Facility ID No. 68846
File No. BALH-20101201APK

KDBL(FM), Toppenish, Washington
Facility ID No. 64507
File No. BALH-20101201APL

KQMY(FM), Naches, Washington
Facility ID No. 88006
File No. BALH-20101201APM

KEGX(FM), Richland, Washington
Facility ID No. 53140
File No. BALH-20101201AOQ

KTCR(AM), Kennewick, Washington
Facility ID No. 53139
File No. BALH-20101201AOR

KUJ-FM, Burbank, Washington
Facility ID No. 77777
File No. BALH-20101201AOS

K232CB, Pendleton, Oregon
Facility ID No. 12456
File No. BALFT-20101201AOT

KRSE(FM), Yakima, Washington
Facility ID No. 49876
File No. BALH-20101201AOW

KXDD(FM), Yakima, Washington
Facility ID No. 7919
File No. BALH-20101201AOX

**Applications for Assignment of
License
Petitions to Deny**

Dear Counsel and Mr. Blum:

We have before us the above-captioned applications seeking approval for the proposed assignment of license for: (1) Stations KJOX(AM), Yakima, Washington, KARY-FM, Grandview, Washington, KBBO(AM), Selah, Washington, KHHK(FM), Yakima, Washington, KALE(AM), Richland, Washington, KIOK(FM), Richland, Washington, and KKSJ(FM), Walla Walla, Washington, from Revitalization Partners, LLC, General Receiver (“Receiver”) to The Tri-Cities/Yakima Divestiture Trust (“Divestiture Trust”); (2) Stations KOLW(FM), Basin City, Washington, and KEYW(FM), Pasco, Washington, from Townsquare Media Tri-Cities License, LLC (“TM Tri-Cities”) to the Divestiture Trust; (3) Stations KDBL(FM), Toppenish, Washington, and KQMY(FM), Naches, Washington, from Townsquare Media Yakima License, LLC (“TM Yakima” and, collectively with TM Tri-Cities, “TM”) to the Divestiture Trust; (4) Stations KEGX(FM), Richland, Washington, KTCR(AM), Kennewick, Washington, KUJ-FM, Burbank, Washington, and FM translator station K232CB, Pendleton, Oregon, from the Receiver to TM Tri-Cities; and (5) Stations KRSE(FM), Yakima, Washington, and KXDD(FM), Yakima, Washington, from the Receiver to TM Yakima.

These five simultaneously filed applications are part of a single Asset Purchase Agreement for 12 stations, and comprise one proposed transaction (“Assignment Applications” or “Proposed Transaction”). The Assignment Applications, if granted, would result in: (a) 11 stations being licensed to the Divestiture Trust, and only one additional station being licensed to TM; (b) TM holding an overall ownership interest (including beneficial ownership of stations in the Divestiture Trust) in 12 out of 28 stations in the Yakima, Washington, radio market, 11 out of 26 stations in the Richland-Kennewick-Pasco (“Tri-Cities”), Washington, radio market, and 23 out of 54 stations in these two small, adjacent markets; and (c) an unprecedented use of a divestiture trust to allow a group owner to re-shuffle its ownership interests by placing currently-owned stations into the trust while adding other stations from a seller to form a combined group with the maximum number of stations permitted by our local radio ownership limits.

On January 5, 2011, Sunnylands Broadcasting, LLC (“Sunnylands”), permittee of a new FM Station, Union Gap, Washington,¹ and CCR-Tri Cities IV, LLC (“CCR”), licensee of Stations KONA(AM), Richland-Kennewick-Pasco, Washington, KONA-FM, Kennewick, Washington, and KZHR(FM), Dayton, Washington,² each filed a Petition to Deny the Assignment Applications.³ For the reasons stated below, we

¹ Facility ID No. 183328. Union Gap is in the Yakima, Washington, radio market.

² These CCR stations are in the Tri-Cities, Washington, radio market.

dismiss the Petitions to Deny as moot, and dismiss the Assignment Applications as inadvertently accepted for filing, pursuant to Section 73.3566(a) of the Commission's Rules (the "Rules").⁴

Background. On May 28, 2010, the Media Bureau (the "Bureau") granted consent to the assignment of licenses of 31 New Northwest Broadcasters, LLC ("NNB") radio stations in Alaska, Oregon, and Washington, to the Receiver following insolvency proceedings in the Superior Court for the State of Washington for King County (the "Washington Court").⁵ The Assignment Applications request consent to the Proposed Transaction, including approval of the Divestiture Trust,⁶ to enable the Receiver to dispose of six Yakima, Washington, market and six Tri-Cities, Washington, market stations for the benefit of NNB's creditors, pursuant to an order from the Court.⁷

TM Yakima is the current licensee of Stations KDBL(FM), Toppenish, Washington; KATS(FM), Yakima, Washington; KFFM(FM), Yakima, Washington; KIT(AM), Yakima, Washington; KUTI(AM), Yakima, Washington; and KQMY(FM), Naches, Washington, all in the Yakima, Washington, Arbitron Metro. There are 28 stations listed in the Yakima, Washington, Arbitron Metro. In a radio market this size, a single entity may own, operate or control up to six stations, no more than four in the same service.⁸ Thus, TM currently owns the maximum number of stations permissible in the Yakima, Washington, radio market under the Commission's local radio ownership rule.⁹ TM Yakima proposes to acquire Stations KRSE(FM) and KXDD(FM) from the Receiver. In order to comply with the local radio ownership rule, TM Yakima proposes to assign currently owned Yakima market Stations KDBL(FM) and KQMY(FM) to the Divestiture Trust.

The Assignment Applications also propose to assign six stations in the Yakima, Washington, radio market to the Divestiture Trust. Thus, in addition to the two stations to be assigned by TM Yakima to the Divestiture Trust, as noted above, the Receiver proposes to assign Yakima market Stations KJOX(AM), KARY-FM, KBBO(AM), and KHHK(FM) to the Divestiture Trust.

TM Tri-Cities is the current licensee of Stations KEYW(FM), Pasco, Washington; KFLD(AM), Pasco, Washington; KOLW(FM), Basin City, Washington; KORD-FM, Richland, Washington; and KXRX(FM), Walla Walla, Washington, all in the Tri-Cities, Washington, Arbitron Metro. There are 26 stations listed in the Tri-Cities, Washington, Arbitron Metro. In a radio market this size, a single entity

³ On January 28, 2011, TM and the Receiver each filed a Consolidated Opposition, and on February 9, 2011, Sunnylands and CCR each filed a Reply.

⁴ 47 C.F.R. § 73.3566(a).

⁵ See File Nos. BAL-20100517ADY, *et seq.* Additionally, NNB assigned FM translator station K232CB to the Receiver.

⁶ The parties submitted with the Assignment Applications a copy of the Trust Agreement and related Engagement and Assignment Agreement. Allen N. Blum is the Designated Trustee.

⁷ See Assignment Applications, Exhibit 5, Agreements to Assignment.

⁸ See 47 C.F.R. § 73.3555(a)(1)(iii).

⁹ 47 C.F.R. § 73.3555(a).

may own, operate or control up to six stations, no more than four in the same service.¹⁰ Thus, TM may acquire one more AM station before reaching the maximum number of stations permissible in the Tri-Cities, Washington, radio market under the Commission's local radio ownership rule. TM Tri-Cities proposes to acquire Stations KEGX(FM) and KTCR(AM), and KUJ-FM from the Receiver. In order to comply with the local radio ownership rule, TM Tri-Cities proposes to assign currently owned Stations KEYW(FM) and KOLW(FM) to the Divestiture Trust.

The Assignment Applications also propose to assign five stations in the Tri-Cities, Washington, radio market to the Divestiture Trust. In addition to the two stations to be assigned by TM Tri-Cities to the Divestiture Trust, as noted above, the Receiver proposes to assign Tri-Cities market Stations KKSR(FM), KIOK(FM), and KALE(AM) to the Divestiture Trust.

Petitioners argue that the Proposed Transaction fails to comply with long-established Commission policy concerning the permissible use of divestiture trusts, and that the proposed structure of the Divestiture Trust at issue is substantially different than those previously approved by the Commission. CCR asserts that the Assignment Applications propose a "sea change" in the use of trusts¹¹ that would result in an "explosive extension of the Trust device, far exceeding anything previously sanctioned by the FCC."¹²

Discussion. As noted by the Receiver, "the Commission reviews divestiture trusts [on] a case-by-case basis and considers their acceptability based on a totality of the circumstances."¹³ Our review is informed by certain principles regarding trusts. First, "trusts are occasionally established specifically to effect compliance with the Commission's rules for holdings which would violate the rules if held outright."¹⁴ Because of our concern that divestiture trusts present a "potential for abuse,"¹⁵ that can "pose unacceptable risks to competition,"¹⁶ we have consistently found that insulated divestiture trusts "should be employed only where necessary, and then to as limited an extent as possible."¹⁷ Additionally, as noted by TM, the "Commission's long-standing policy is to accommodate the actions of state courts unless a public interest determination under the Communications Act would compel a different result."¹⁸ If, however, the Commission, in fulfilling its licensing obligations, determines that an action made pursuant

¹⁰ See 47 C.F.R. § 73.3555(a)(1)(iii).

¹¹ CCR Petition at 6.

¹² *Id.* at 10.

¹³ Receiver Opposition at 12 (citing *Shareholders of AMFM, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 16062, 16073 (2000)) ("*AMFM*").

¹⁴ *AMFM*, 15 FCC Rcd at 16072 (citations omitted).

¹⁵ *Id.* at 16073.

¹⁶ *Infinity Broadcasting Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 5012, 5041 (1996) ("*Infinity*").

¹⁷ *AMFM*, 15 FCC Rcd at 16073.

¹⁸ TM Opposition at 6 (citing *Arecibo Radio Corporation*, Memorandum Opinion and Order, 101 FCC 2d 545 (1985)).

to court authority is contrary to Commission policy, the Commission is not bound to accommodate such action.¹⁹ As discussed below, consistent with our obligation to make such determinations, based on the totality of circumstances, we find that the Proposed Transaction is against the public interest because it is patently not in accord with our policy concerning the acceptable use of divestiture trusts.

Incidental Nature of Trust - TM “submits that the use of a divestiture trust in this transaction is, in fact, incidental to a larger transaction and, therefore, entirely appropriate.”²⁰ We find, however, that the proposed use of this Divestiture Trust is not incidental to a larger transaction. Initially, the Receiver does not claim that grant of the Assignment Applications will facilitate the disposition of the 19 Oregon and Alaska radio stations that the Receiver had previously been assigned by NNB. Furthermore, the Assignment Applications’ proposed disposition of 12 stations in Washington will result in 11 stations being licensed to the Divestiture Trust and only one additional station being licensed to TM in a manner compliant with the multiple ownership rule. Such use of a divestiture trust is neither incidental nor consistent with precedent. Moreover, even the use of the Divestiture Trust for the assignment of 11 of the 31 stations would be unprecedented.²¹

Competition/Scale. Commission policy has consistently held that a licensee’s compliance with the local radio ownership numerical limits in a market where it owns the maximum number of stations and also holds a beneficial interest in additional stations through a trust, does not alleviate our concern regarding competition in that market.²² Furthermore, the two cases provided in the Assignment Applications as support for the Proposed Transaction certainly do not diminish our competition concerns with respect to the instant proposal. In *Nassau Broadcasting II, L.L.C.*,²³ a case that encompassed 52 radio stations in 24 markets, we approved the use of a divestiture trust when an existing licensee lost its grandfathered rights in two markets because of a transfer of control. The trust became the licensee of three stations in two separate markets, a limited scenario that did not pose a similar threat to competition. In *Applications of Regent Trust to the Fort Collins/Lafayette Divestiture Trust*,²⁴ we approved an unopposed application for assignment of one Louisiana station and one Wyoming station to a divestiture trust as part of a bankruptcy court-supervised restructuring that encompassed 63 radio stations in eleven markets. Such precedent simply does not support the Assignment Applications’ request for approval of TM’s combined ownership interest in 12 out of 28 stations in one market, 11 out of 26 stations in another market, and a combined ownership interest in 23 out of 54 stations in two small, adjacent markets.²⁵

¹⁹ *Charles W. Cherry, II, Receiver*, Letter, 24 FCC Rcd 2894, 2896 (MB 2009).

²⁰ TM Opposition at 6.

²¹ See *infra* nn. 23 & 24, and accompanying text.

²² See *Infinity*, 12 FCC Rcd at 5041 (although trusts may be effective in avoiding the influence which would trigger attribution, there could be an effect on competition in the relevant markets); see also *Jacor Communications, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 6867, 6894-95 (MB 1999) (“*Jacor*”) (use of trusts does not alleviate competitive concerns because it allows a station owner to own maximum number of stations at the same time that it holds beneficial interest in additional stations through trust); *AMFM*, 15 FCC Rcd at 16072.

²³ 25 FCC Rcd 1851 (MB 2010).

²⁴ See File Nos. BALH-20100323AIF, *et seq.* (granted June 30, 2010).

²⁵ The Tri-Cities market is ranked 190, and the Yakima market is ranked 201 by Arbitron.

Once-Removed Transaction. The Receiver argues that the circumstances for the proposed use of the Trust to acquire four stations that are currently licensed to TM “are substantially similar” to the circumstances in *Jacor* - - the one instance cited by the applicants where we approved “the use of a divestiture trust for transactions that are once-removed from a larger transaction.”²⁶ We disagree and find that the proposed use of the Divestiture Trust to allow TM to selectively replace its own stations is unprecedented and unacceptable. In *Jacor*, the Bureau found that placing two stations in the Louisville, Kentucky, radio market that were licensed to Cox Radio, Inc. (“Cox”) in a divestiture trust was a necessary component of a much broader transaction, which ultimately allowed for the disposition of 234 radio stations located throughout the country.²⁷ Although the Bureau found that the use of that divestiture trust “raised competitive concerns,” it allowed Cox to acquire two *Jacor* stations and to place two stations licensed to Cox in trust. The Bureau justified the use of a divestiture trust in a situation where Cox had “recently secured a buyer for its two Louisville stations” but that “waiting for the necessary FCC approvals would require postponement of the merger closing.”²⁸ The Bureau concluded that “based on the totality of the circumstances presented here, including the scale of the proposed merger” and “the merging entities’ showing of the need for the proposed Cox trust” that “approval of the Cox trust application is appropriate for the limited purpose of facilitating this transaction.”²⁹ We find that the circumstances in *Jacor* are clearly distinguishable from those in the Proposed Transaction, and, in fact, support our conclusion that grant of the Assignment Applications would not serve the public interest. We have never allowed a station owner to use a divestiture trust to re-shuffle its radio station portfolio as proposed here. This aspect of the Proposed Transaction presents even greater concerns about the competitive impact on these small radio markets.

Conclusion/Actions. Based on the above, we find that the Assignment Applications were inadvertently accepted for filing, pursuant to Section 73.3566(a) of the Rules. Accordingly, IT IS ORDERED, That the Petition to Deny filed by Sunnylands Broadcasting, LLC IS DISMISSED AS MOOT and the Petition to Deny filed by CCR-Tri Cities IV, LLC IS DISMISSED AS MOOT.

IT IS FURTHER ORDERED That the applications for approval to assign the licenses for Stations KJOX(AM), Yakima, Washington (File No. BAL-20101201APA), KARY-FM, Grandview, Washington (File No. BALH-20101201APB), KBBO(AM), Selah, Washington (File No. BAL-20101201APC), KHHK(FM), Yakima, Washington (File No. BALH-20101201APD), KALE(AM), Richland, Washington (File No. BAL-20101201APE), KIOK(FM), Richland, Washington (File No. BALH-20101201APF), and KKSr(FM), Walla Walla, Washington (File No. BALH-20101201APG), from Revitalization Partners, LLC, General Receiver to The Tri-Cities/Yakima Divestiture Trust ARE DISMISSED as inadvertently accepted for filing, pursuant to Section 73.3566(a) of the Rules.

IT IS FURTHER ORDERED That the applications for approval to assign the licenses for Stations KOLW(FM), Basin City, Washington (File No. BALH-20101201APJ), and KEYW(FM), Pasco, Washington (File No. BALH-20101201APK), from Townsquare Media Tri-Cities License, LLC to The Tri-Cities/Yakima

²⁶ Receiver Opposition at 13. Receiver uses the term “once-removed” to describe the Proposed Transactions’ use of the Trust as a “spin off” receptacle for stations currently licensed to TM.

²⁷ *Jacor*, 14 FCC Rcd at 6897-98.

²⁸ *Id.*

²⁹ *Id.* at 6898.

Divestiture Trust ARE DISMISSED as inadvertently accepted for filing, pursuant to Section 73.3566(a) of the Rules.

IT IS FURTHER ORDERED That the applications for approval to assign the licenses for Stations KDBL(FM), Toppenish, Washington (File No. BALH-20101201APL), and KQMY(FM), Naches, Washington (File No. BALH-20101201APM), from Townsquare Media Yakima License, LLC to The Tri-Cities/Yakima Divestiture Trust ARE DISMISSED as inadvertently accepted for filing, pursuant to Section 73.3566(a) of the Rules.

IT IS FURTHER ORDERED That the applications for approval to assign the licenses for Stations KEGX(FM), Richland, Washington (File No. BALH-20101201AOQ), KTCR(AM), Kennewick, Washington (File No. BAL-20101201AOR), KUJ-FM, Burbank, Washington (File No. BALH-20101201AOS), and FM translator station K232CB, Pendleton, Oregon (File No. BALFT-20101201AOT), from Revitalization Partners, LLC, General Receiver to Townsquare Media Tri-Cities License, LLC ARE DISMISSED as inadvertently accepted for filing, pursuant to Section 73.3566(a) of the Rules.

IT IS FURTHER ORDERED That the applications for approval to assign the licenses for Stations KRSE(FM), Yakima, Washington (File No. BALH-20101201AOW), and KXDD(FM), Yakima, Washington (File No. BALH-20101201AOX), from Revitalization Partners, LLC, General Receiver to Townsquare Media Yakima License, LLC ARE DISMISSED as inadvertently accepted for filing, pursuant to Section 73.3566(a) of the Rules.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau