



NEWS

Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News Media Information: (202) 418-0500
Internet: <http://www.fcc.gov>
TTY: (888) 835-5322

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See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

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CONTACT:
Matthew Berry (202) 418-2005
Email: Matthew.Berry@fcc.gov

STATEMENT OF FCC COMMISSIONER AJIT PAI ON THE MEDIA BUREAU'S NEW GUIDANCE ON SHARING ARRANGEMENTS AND CONTINGENT INTERESTS

Today, the Media Bureau warns broadcasters that it “will closely scrutinize” any transaction that involves both a sharing agreement and a contingent financial interest.¹ When I objected, I was told that the Public Notice merely clarified existing Commission policy. It does not.

How so? The Public Notice does not cite any Commission (or even Bureau) precedent involving both a sharing agreement and a contingent financial interest. And for good reason. In response to a request from my office, the Bureau was unable to cite any order where the Commission or the Bureau denied a license transfer because the transaction involved both a sharing agreement and a contingent financial interest. To the contrary, the Bureau has issued numerous orders approving such transfers. Indeed, just three months ago, the Bureau explained: “The Commission has approved applications for consent to television station transactions involving a combination of joint sales agreements, other types of shared services agreements, options, and similar contingent interests and guarantees of third-party debt financing, and has found these cooperative arrangements not to rise to the level of an attributable interest.”² It is impossible to square what was said then with what is being said now.

¹ *Processing of Broadcast Television Applications Proposing Sharing Arrangements and Contingent Interests*, Public Notice, DA 14-330, at 2 (Med. Bur. Mar. 12, 2014).

² *Applications for Consent to Transfer of Control from Shareholders of Belo Corp. to Gannett Co., Inc., Applications For Consent to Assignment of Licenses from Subsidiaries of Belo Corp. to Subsidiaries of Sander Media, LLC and Tucker Operating Co., LLC*, MB Docket No. 13-189, File Nos. BTCCDT - 20130619AAY *et seq.*, Memorandum Opinion and Order, 28 FCC Rcd 16867, 16878, para. 27 (Med. Bur. Dec. 20, 2013); *see also, e.g., Applications of Local TV Holdings, LLC, Transferor & Tribune Broad. Co. II, LLC, Transferee & Dreamcatcher Broad., LLC, Transferee For Consent to Transfer of Control of Certain Licensee Subsidiaries of Local TV Holdings, LLC*, MB Docket No. 13-190, File Nos. BTCCDT-20130715AER *et al.*, File Nos. BTCCDT-20130715AGP *et al.*, Memorandum Opinion and Order, 28 FCC Rcd 16850, 16857, para. 17 (Med. Bur. 2013) (noting, where a shared service agreement (SSA), lease, and option were at issue, that the agreements were “fully compliant with our precedent and [did] not implicate our attribution rules”); *J. Stewart Bryan III & Media Gen. Commc'ns Holdings, LLC (Transferor), Shareholders of New Young Broadcasting Holding Company, Inc., and Its Subsidiaries (Transferor) and Post-Merger Shareholders of Media General, Inc. (Transferee) For Consent to Transfer Control of Licenses*, MB Docket No. 13-191, File No. BTCCDT-20130703ABQ *et al.*, Memorandum Opinion and Order, 28 FCC Rcd 15509 (Med. Bur. 2013) (approving transfer where SSA, joint sales agreement (JSA), and loan guarantee were at issue); *Saga Broad., LLC c/o Gary S. Smithwick, Esq. H3 Commc'ns, LLC c/o David Tillotson, Esq.*, File No. BALCDT - 20120501ACQ, Facility ID No. 25236, Letter, 28 FCC Rcd 399 (Med. Bur. 2013) (approving transfer where SSA and loan guarantee were at issue); *Sagamorehill of Corpus Christi Licenses, LLC c/o Todd Stansbury, Esq. Eagle Creek Broad. of Corpus Christi, LLC c/o Dennis Corbett, Esq. Channel 3 of Corpus Christi,*

So make no mistake about it: Today's Public Notice announces a new policy. This abuse of delegated authority is all the more unfortunate because it is entirely unnecessary. At our March 31 meeting, the Commission will vote on an item addressing sharing agreements. If the majority of the Commission wanted to turn the screws still further on broadcasters, the substance of today's Public Notice easily could have been included in that item. Instead, our policy has been changed without a Commission vote. That's not the way we should do business.

Inc. c/o Robert B. Jacobi, Esq., File No. BALCT-20080730AKQ, Letter, 25 FCC Rcd 2809 (Med. Bur. 2010) (approving transfer where SSA, JSA, option, studio lease, and loan guarantee were at issue); *Piedmont Television of Springfield License LLC c/o Joseph Di Scipio, Esq., Perkin Media, LLC c/o Dawn M. Sciarrino, Esq., EBC Harrison, Inc. c/o Peter Tannenwald, Esq., Koplak Communications International, Inc. c/o Charles R. Naftalin*, Letter, 22 FCC Rcd 13910 (Med. Bur. 2007) (approving transfer where SSA, JSA, option, studio lease, loan guarantee, and sale of non-license assets were at issue); *Chelsey Broad. Co. of Youngstown, LLC c/o William Fitz, Esq. Parkin Broad. of Youngstown License, LLC c/o Howard M. Liberman, Esq. Elizabeth A. Hammond, Esq. Paula M. Olson*, File No. BALCT-20070205ACH, Letter, 22 FCC Rcd 13905 (Med. Bur. 2007) (approving transfer where SSA, option, and loan guarantee were at issue); *Malara Broad. Grp. of Duluth Licensee LLC c/o Stuart A Shorenstein, Esq., NVG-Duluth II, LLC c/o Elizabeth Hammond, Esq., KQDS Acquisition Corp & WDIO-TV, LLC c/o Marvin Rosenberg, Esq.*, File No. BALCT-20040504ABU, Letter, 19 FCC Rcd 24070 (Med. Bur. 2004) (approving transfer where SSA, JSA, option, lease, and loan guarantee were at issue).