

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

In the Matter of the Applications of)	
)	
Shareholders of CBS Corporation, (Transferor))	File Nos. BTCCT-19991116ABA, <i>et al.</i>
)	
and)	
)	
Viacom, Inc., (Transferee))	
)	
For Transfer of Control of CBS Corporation and Certain Subsidiaries, Licensees Of KCBS-TV, Los Angeles, CA, <i>et al.</i>)	

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: August 10, 2001

Released: August 21, 2001

By the Commission:

1. The Commission has before it a petition filed by Al Westcott, Glenn C. Benfield and Kathleen Benfield (“Petitioners”), seeking reconsideration of our decision in *Shareholders of CBS Corporation*, 15 FCC Rcd 8930 (2000)(“*CBS-Viacom*”). Petitioners ask that we set aside our previous decision granting the transfer of control of CBS Corporation and its subsidiaries, which were the licensees of 182 television and radio broadcast stations, to Viacom, Inc. For the reasons stated below, we deny the petition for reconsideration.

2. Petitioners claim that the Commission’s grant of the transfer of control application in *CBS-Viacom* violated the doctrine of *Jefferson Radio Co., Inc. v FCC*, 350 F.2d 781 (D.C. Cir. 1964)(“*Jefferson Radio*”). They base their argument on the fact that the application was granted while the license renewal application of the CBS station WXRK(FM), New York, New York was still pending.¹ Petitioners claim that it was error to grant the overall transfer before the license renewal application was granted.

3. Contrary to Petitioners’ claim, *Jefferson Radio* does not prohibit the Commission from acting on a transfer of control application while a renewal application is pending for a station included in the transfer. The Commission repeatedly has held that, in multi-station transactions, it will grant the transfer of control application while the renewal application is pending as long as there are no basic qualification issues pending against the transferor or transferee that could not be resolved in the context of

¹ The license renewal application has since been granted.

the transfer proceeding, and the transferee explicitly assents to standing in the stead of the transferor in the pending renewal proceeding.² In the transfer of control application, Viacom stated that it was willing “to assume the consequences associated with succeeding to the place of CBS (and any of its license subsidiaries) in any renewal applications that may remain pending” at the time the merger is consummated.³

Therefore, the only remaining matter is whether there were any outstanding basic qualification issues which could not have been resolved in the context of the transfer proceeding.

4. In the *CBS/Viacom* transfer proceeding, Petitioners claimed that certain broadcasts of the Howard Stern show carried on CBS owned stations were indecent and, therefore, that CBS is unqualified to be a licensee. One of the Petitioners, Mr. Westcott, relied on the same arguments and some of the same evidence as the basis to file a petition to deny the renewal of WXRK(FM).⁴ As we noted in *CBS/Viacom*, the Commission had already considered the complained of broadcasts in connection with other proceedings and found them not to be indecent as alleged.⁵ In each of those other proceedings, the Commission determined that these broadcasts, therefore, did not implicate the qualifications of the licensees that had aired the material.⁶ Because the same allegedly indecent broadcasts form the basis of Petitioners claims here and Mr. Westcott’s petition against WXRK(FM), there were no unresolved qualifications issues outstanding at the time the merger was approved.⁷

5. ACCORDINGLY, IT IS ORDERED, That the petition for reconsideration filed by by Al Westcott, Glenn C. Benfield and Kathleen Benfield IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

² See, e.g., *Stockholders of CBS, Inc.*, 11 FCC Rcd 3733 (1995), aff’d, *Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998); *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841 (1996).

³ See, Application for Transfer of Control of CBS Corporation and Its License Subsidiaries from Shareholders of CBS Corporation to Viacom, Inc., Files Nos. BTCCT-19991116 AAX, *et al.*, Assignee’s Portion, Exhibit II, pp. 4-5.

⁴ See, Petition to Deny Application for Transfer of Control of CBS Corporation and Its License Subsidiaries from Shareholders of CBS Corporation to Viacom, Inc filed by Al Westcott, *et. al.* at 9.

⁵ *CBS/Viacom*, 15 FCC Rcd at 8246.

⁶ *Id.*

⁷ Petitioners have also sought reconsideration based on a May 18, 2000 press release by Commissioner Gloria Tristani. Commissioner Tristani’s press release was issued after the transfer applications were approved and in a wholly different context. It is not related to this proceeding and provides no basis on which to reverse our earlier decision.