

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

In re Applications of)	
)	
MUSIC BROADCASTING, INC.)	
(ASSIGNOR))	
)	
and)	File Nos. BAL-20000427AAL
)	and BALH-20000427AAM
VITAL LICENSES, LLC.)	
(ASSIGNEE))	
)	
For Assignment of License of Stations)	
WVAM(AM) and WPRR(FM),)	
Altoona, Pennsylvania)	
Facility ID Nos. 47089 and 47090)	

MEMORANDUM OPINION AND ORDER

Adopted: February 22, 2001

Released: March 9, 2001

By the Commission:

1. The Commission has under consideration an October 6, 2000 Application for Review filed by Altoona Trans Audio Corporation, Inc. ("ATAC"), the licensee of WRTA(AM), Altoona, Pennsylvania and related pleadings. ATAC seeks review of a September 7, 2000 letter ruling by the Chief, Audio Services Division, Mass Media Bureau which denied ATAC's petition to deny the above captioned applications for assignment of license. ATAC argues that the staff erred in treating the proposed transaction as consistent with policies on family attribution and economic concentration and ignored information that ATAC believes demonstrates that a father and his adult daughter would jointly control six radio stations and 77.3% of the market's advertising revenue.

2. The Commission grants its consent to the assignment of broadcast licenses only upon a finding that the public interest, convenience, and necessity would be served thereby. See 47 U.S.C. Section 310(d). One consideration is whether a proposed radio station combination would affect economic competition, which generally is expressed in terms of advertising revenue share in the relevant Arbitron radio metro market. See *Shareholders of AMFM, Inc.*, FCC 00-296 (September 1, 2000) at para. 15 citing *KIXK, Inc.*, 13 FCC Rcd 15685, 15687 (1998). We find that ATAC's arguments were properly resolved by the staff, which found that the respective interests of an adult daughter (acquiring an existing two-station combination which garners 18.8 % of the advertising revenue in the Altoona, Pennsylvania market) and of her father (with existing minority interests in four stations that garner a 58.5 % revenue share in the same market) are to be viewed as separate from and

non-attributable to each other pursuant to our established policies on family attribution.¹

Accordingly, the revenue shares of the father's stations and those being acquired by his daughter will not be aggregated and this transaction thus raises no concerns of economic concentration. *See Clarification of Commission Policies Regarding Spousal Attribution*, 7 FCC Rcd 1920 (1992). Under our family attribution policy, the media interests of a family member will not be attributed where the family member's disclosures confirm that such media interests are independently held and are not subject to common influence or control. *Id.* at 1922-23.² Market conditions, such as the level of alternative service, are not relevant to determining common influence or control in family relationships. *Id.* at 1923.

3. Contrary to ATAC's contention that the staff gave insufficient weight to ATAC's submissions while allegedly considering non-record evidence from the applicants, we find that the staff's decision was based exclusively on its thorough consideration of the record. The allegedly non-public information at issue was contained in a May 18, 2000 amendment to the subject applications, submitted in response to a May 4, 2000 staff letter. The staff requested the information as part of a routine and random audit conducted several weeks prior to the June 7, 2000 submission of the petition to deny.³ The information, bearing a May 2000 date stamp, has been available in its entirety in our public reference room and the assignee states that the information has also been available locally in the stations' public inspection files. Similarly, it was well within the staff's discretion to give persuasive weight to timely filed evidence from the assignee directly addressing the matters at issue, rather than to ATAC's submissions, which urged the staff to make speculative intermediate assumptions needed to connect its evidence with its conclusions⁴ and which were submitted in part through an unauthorized pleading. Accordingly, we

¹ Kristin Cantrell controls the assignee Vital Licenses, LLC, as the company's sole member. It is undisputed that her father, Kerby E. Confer, has attributable minority interests in four radio stations in the Altoona, Pennsylvania radio metro market: WFBG(AM)/WFGY(FM), Altoona, WMAJ(FM), Hollidaysburg, and WALY(FM), Bellwood. We have examined ownership reports on file in our public reference room, which confirm that the father and daughter have no reportable ownership interests in each other's companies.

² There are seven factors that we consider relevant to matters of family attribution, not all of which were of concern to ATAC, but all of which the staff considered in this proceeding. We note that the staff, when initially identifying the seven factors, inadvertently did not list one factor that ATAC did not challenge, "financial independence," but the staff adequately addressed that factor in the body of its discussion. Looking at the totality of the circumstances, the staff determined that the daughter's media interests would be independent and not subject to common influence or control with her father's interests.

³ Applications are randomly selected for audit pursuant to *1998 Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules, and Processes*, 13 FCC Rcd 23056 (1998). The requested documentation and information is used to confirm various applicant certifications and compliance with Commission rules and policies.

⁴ For example, ATAC established through affidavits from other broadcasters that a business associate of the father had in the past unsuccessfully tried to negotiate the acquisition of other Altoona-area stations that are not at issue here. It then asked the staff to accept its extrapolation that the same associate must have negotiated the present transaction for the daughter at the father's behest. The staff, however, credited the direct sworn statements of the

uphold the staff's decision for the reasons stated therein. *See* 47 C.F.R. Section 1.115. Our decision and the staff decision that we affirm rely upon representations of the father and daughter that the stations will operate independently⁵ with no cooperative efforts, and we expect that they will continue to act in a manner that is fully consistent with those material representations.⁶ To the extent that ATAC asks us to change our policies on family attribution, such changes would be more properly raised in a petition for rulemaking, and not in the context of these applications.

4. Accordingly, IT IS ORDERED that Application for Review filed by Altoona Trans Audio Corporation, Inc. IS DENIED and that the grant of the applications for assignment of license of WVAM(AM) and WPRR(FM) ARE AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

father and daughter stating that the father was not involved in any way in the daughter's acquisition of the stations.

⁵ The father and daughter had joint media interests in the past, but those interests were severed approximately five years ago. Past involvement in a family member's business does not necessarily demonstrate future involvement or commingling of ownership interests. *Sevier Valley Broadcasting*, 10 FCC Rcd 9795 (1995). *See Dorothy J. Owens*, 5 FCC Rcd 6615 (1990).

⁶ *See* Opposition, Exhibit 1 *Declaration under Penalty of Perjury of Kristin Elizabeth Cantrell* (June 20, 2000) ("I am not involved in the management or operation of any my father's media stations or media interests anywhere and there are no agreements, arrangements or understanding, either written or oral, between me, my father, or anyone at Forever of Johnstown, Inc. or Forever Broadcasting, Inc. regarding financial affairs, commercial practices, programming, employment practices, sales policies or any other aspect of my proposed operation of Radio Stations WVAM(AM) and WPRR(FM)."), and Opposition, Exhibit 9 *Declaration under Penalty of Perjury of Kerby E. Confer* (June 3, 2000) ("There are no agreements, arrangements, or understandings either written or oral between myself, Forever of PA, LLC, and Forever of Johnstown, Inc. and my daughter and Vital Licenses, LLC regarding the financial affairs, commercial practices, programming or employment practices of any of those entities respective radio stations including joint sales agreements, local marketing agreements or any arrangements to share facilities or personnel.").