

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

In re Applications of)	
)	
STAUFFER AMARILLO RADIO TRUST)	
(ASSIGNOR))	
)	
and)	File Nos. BAL - 960322EA
)	& BALH - 960322EB
STAUFFER COMMUNICATIONS, INC.)	
(ASSIGNEE))	
)	
For assignment of licenses of)	
KGNC(AM) and KGNC-FM, Amarillo, Texas;)	
)	
)	
and)	
)	
STAUFFER TOPEKA RADIO TRUST)	
(ASSIGNOR))	
)	
and)	File Nos. BAL - 960322EC
)	& BALH - 960322ED
STAUFFER COMMUNICATIONS, INC.)	
(ASSIGNEE))	
)	
For assignment of licenses of)	
WIBW(AM) and WIBW-FM, Topeka, Kansas))	

MEMORANDUM OPINION AND ORDER

Adopted: October 29, 1996

Released: November 13, 1996

By the Commission:

1. The Commission has before it for consideration unopposed requests for temporary waivers of the daily newspaper cross-ownership rule, 47 C.F.R. Section 73.3555(d).¹ Specifically,

¹ 73.3555(d)(1) of the Commission's rules provides that no license for an AM broadcast station will be granted to any party who owns, operates or controls a daily newspaper if the grant of such license would result in the predicted or measured 2 mV/m contour of the AM station encompassing the entire community in which such newspaper is published. See 47 C.F.R. Section 73.3555(d)(1). Section 73.3555(d)(2) of the Commission's rules

Stauffer Communications, Inc. ("Stauffer") requests: (1) an 18-month waiver of the radio-newspaper cross-ownership rules, 47 C.F.R. Section 73.3555(d)(1)-(2), to allow common ownership of WIBW-AM-FM and the Topeka Capital Journal in Topeka, Kansas; and (2) an 18-month waiver of the radio-newspaper cross-ownership rules to allow common ownership of KGNC-AM-FM and the Amarillo Daily News-Globe Times in Amarillo, Texas.

2. Background. Stauffer, the assignee in the proposed above-captioned transactions, is also the licensee of WIBW-TV, Topeka, Kansas. Last year, the Commission approved a transfer of control of Stauffer to Morris Communications Corp. ("Morris") in connection with Stauffer's ownership of broadcast television stations, and granted a temporary waiver of the television-newspaper cross-ownership rule² to allow combined ownership by Morris, of WIBW-TV, Topeka, Kansas and the Topeka Capital Journal. See Stauffer Communications, Inc., 10 FCC Rcd 5165 (1995).

3. Prior to the Commission's grant of transfer of control of Stauffer to Morris, radio stations KGNC-AM-FM, Amarillo, Texas, and WIBW-AM-FM, Topeka, Kansas, previously controlled by Stauffer, were placed in trust.³ Stauffer now seeks to reacquire these radio stations.

4. Stauffer's common ownership of the television station, radio stations and newspaper in Topeka, Kansas, became grandfathered when the Commission adopted its cross-ownership restrictions in 1975, but this grandfathered status does not survive a transfer of control under the Commission's rules. See 47 C.F.R. Section 73.3555 note 4. Although Stauffer has recently sold WIBW-TV,⁴ the common ownership of the Topeka Capital Journal and WIBW-AM-FM would violate Section 73.3555(d) of our rules in the absence of a waiver. Additionally, in light of the ownership of the Amarillo Daily News-Globe Times by Morris in Amarillo, Texas, the proposed ownership of KGNC-AM-FM would also result in a violation of Section 73.3555(d) of our rules. Stauffer has expressed its intention to sell the four above-captioned radio stations and requests 18-month waivers to allow combined ownership of the radio stations with the newspapers.

provides that no license for an FM broadcast station will be granted to any party who owns, operates or controls a daily newspaper if the grant of such license would result in the predicted 1 mV/m contour of the FM station encompassing the entire community in which such newspaper is published. See 47 C.F.R. Section 73.3555(d)(2). We have recently released a Notice of Inquiry in order to explore possible revisions to our policies concerning waiver of these rules. See Newspaper/Radio Cross-Ownership Waiver Policy, Notice of Inquiry in MM Docket No. 96-197, FCC 96-381 (released October 1, 1996).

² 47 C.F.R. Section 73.3555(d)(3).

³ Authorizations were granted for the pro forma assignments of WIBW(AM) and WIBW-FM, Topeka, Kansas (File Nos. BAL-950221GE and BALH-950221GG) and KGNC(AM) and KGNC-FM, Amarillo, Texas (File Nos. BAL-950221GF and BALH-950221GH) on April 12, 1995.

⁴ An application to assign the license of WIBW-TV, Topeka, to Benedek Broadcasting Corporation was granted on April 12, 1996 (File No. BALCT-960111IX). The transaction was consummated on June 6, 1996.

Stauffer notes that these waivers will serve the public interest by permitting an orderly disposition of the Topeka and Amarillo broadcast properties.

5. Radio-Newspaper Cross-Ownership Waiver. The Commission generally considers permanent and temporary waivers of the daily newspaper cross-ownership rule in four instances: (1) where there is an inability to dispose of an interest in order to conform to the rules; (2) where the only sale possible is at an artificially depressed price; (3) where separate ownership and operation of the newspaper cannot be supported in the locality; and (4) where, for whatever reason, the purposes of the rule would be disserved by divestiture. Fox Television Stations, Inc., 8 FCC Rcd 5341, 5348 (1993) *aff'd sub nom. Metropolitan Council of NAACP Branches v. FCC*, 46 F.3d 1154 (D.C. Cir. 1995); Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order, 50 FCC 2d 1046, 1085, *recon.*, 53 FCC 2d 589 (1975), *aff'd sub nom. Federal Communications Commission v. National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978). In addition, as we have previously stated, "[w]here mergers or transfers of multiple stations are involved, in general we believe that the benefits derived from such transactions support grant of a reasonable waiver period to effectuate the merger and permit time to come into compliance with our rules." See Multimedia, Inc., 11 FCC Rcd 4883, 4885 (1995) (quoting Stockholders of CBS Inc., 11 FCC Rcd 3733, 3755 (1995)). The proposed above-captioned transactions relate back to and are part of the merger of Stauffer into Morris, and we find that the same public interest factors that supported grant of a temporary waiver of the television-newspaper cross-ownership rule also support grant of the temporary radio-newspaper waivers that are requested here. See Stauffer Communications, Inc., 10 FCC Rcd at 5165-66.

6. Stauffer states that if the requested temporary waivers are granted, the staffs of the Topeka radio stations will not be involved in the day-to-day operations of the Topeka Capital Journal. Similarly, Stauffer states that the Amarillo Daily News-Globe Times will be operated on a day-to-day basis with a staff different from the staff that will operate KGNC-AM-FM. Stauffer submits that this separation of the day-to-day operational staffs will serve to promote the goal of diversity that underlies the Commission's multiple ownership rules. Furthermore, Stauffer claims that the Topeka and Amarillo markets are well-served by a number of independent media voices and would continue to be so served even if these temporary waivers were to be granted. Stauffer points out that in approving waivers of the "one-to-a-market" rule and the television-newspaper cross-ownership rule last year, we found that Stauffer's combined ownership of two radio stations, a television station and a newspaper in Topeka had "existed for several years without undue adverse effects on the public interest." Stauffer Communications, Inc., 10 FCC Rcd at 5165-66. Stauffer has submitted a showing which indicates that the Topeka-Lawrence-Osage City radio market is served by 15 radio stations. Stauffer states that Topeka is the 142nd largest Designated Market Area (DMA) according to Nielsen, and includes four television stations licensed to Topeka, as well as four low power television stations. Stauffer has also provided a showing that the Amarillo-Canyon, Texas radio market is served by 26 radio stations; and that the Amarillo DMA (the 130th largest DMA in the country) is served by at least six television stations (five of which are licensed to Amarillo), at least six low-power television stations (all licensed to Amarillo), and at least one television translator station.

7. Based on the representations provided by Stauffer, we conclude that a temporary period within which to come into compliance with Section 73.3555(d) of our rules is consistent with the public interest and Commission precedent. See, e.g., Multimedia, Inc., 11 FCC Rcd at 4891; Stauffer Communications, Inc., 10 FCC Rcd at 5165-66. The primary goals of our multiple ownership rules are to promote diversity of ownership and viewpoint, as well as to prevent any undue concentration of economic power contrary to the public interest. Stauffer Communications, Inc., 10 FCC Rcd at 5165. We find that temporary waivers of the radio-newspaper cross-ownership rules will not appreciably affect diversity or competition in either the Topeka or the Amarillo markets under the circumstances presented in this case. As we have found previously, the Topeka market hosts a multiplicity of alternative media services. See id. at 5165-66. Furthermore, the entire Morris-Stauffer merger will eventually lead to the termination of grandfathered newspaper-television-radio cross-ownerships in Topeka, which will increase diversity and competition in that market. See id. at 5166. Stauffer has provided a showing which indicates that Amarillo also hosts a multiplicity of alternative media services.

8. We have stated in recent cases that a temporary waiver of twelve months from the date of consummation of a merger or other multiple-station transaction provides ample time to locate potential purchasers and to negotiate purchase agreements for the station(s) to be divested. Multimedia, Inc., 11 FCC Rcd at 4885; see Capital Cities/ABC, Inc., 11 FCC Rcd 5841, 5895 & n.62 (1996); Stockholders of CBS Inc., 11 FCC Rcd at 3755-56 ("today's economic climate appears to be robust" and thus a 12-month waiver provides the "transferee with ample time to locate potential purchasers and to negotiate purchase agreements for the stations to be divested."). There is no indication that prevailing market conditions are such that requiring disposal of a broadcast station in twelve months would result in a "forced" sale, and Stauffer has not proffered any factors that would support a departure from this recent line of cases. See Multimedia, Inc., 11 FCC Rcd at 4885; Stockholders of CBS Inc., 11 FCC Rcd at 3755. Therefore, we will grant temporary waivers of the radio-newspaper cross-ownership rules for a period of twelve (12) months from the date of consummation of this transaction to allow Stauffer to own the Topeka Capital Journal and WIBW-AM-FM in Topeka, and the Amarillo Daily News-Globe Times and KGNC-AM-FM in Amarillo.

9. Accordingly, IT IS ORDERED, That the above-captioned applications to assign the licenses of KGNC(AM) and KGNC-FM, Amarillo, Texas, from the Stauffer Amarillo Radio Trust to Stauffer Communications, Inc. (File Nos. BAL-960322EA & BALH-960322EB), ARE GRANTED.

10. IT IS FURTHER ORDERED, That the request for temporary waiver of Sections 73.3555(d)(1)-(d)(2) IS GRANTED, subject to the condition that within twelve months of the date of consummation of the proposed transfer of KGNC-AM-FM from the Stauffer Amarillo Radio Trust to Stauffer Communications, Inc., Stauffer has filed an application for Commission consent to assign KGNC-AM-FM to a new party.

11. IT IS FURTHER ORDERED, That the above-captioned applications to assign the licenses of WIBW(AM) and WIBW-FM, Topeka, Kansas, from the Stauffer Topeka Radio Trust

to Stauffer Communications, Inc. (File Nos. BAL-960322EC & BALH-960322ED), ARE GRANTED.

12. IT IS FURTHER ORDERED, That the request for temporary waiver of Sections 73.3555(d)(1)-(d)(2) IS GRANTED, subject to the condition that within twelve months of the date of consummation of the proposed transfer of WIBW-AM-FM from the Stauffer Topeka Radio Trust to Stauffer Communications, Inc., Stauffer has filed an application for Commission consent to assign WIBW-AM-FM to a new party.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary