



Federal Communications Commission  
Washington, D.C. 20554

March 27, 2015

**DA 15-384**

*In Reply Refer To:*

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In re: **KCRR(FM), Grundy Center, IA**  
Facility ID No. 25471

**KKHQ-FM, Oelwein, IA**  
Facility ID No. 28472

**KOEL-FM, Cedar Falls, IA**  
Facility ID No. 66780

File No. BALH-20140825ABD

**Application for Consent to  
Assignment of Licenses**

Dear Counsel:

We have before us the referenced application ("Assignment Application") seeking approval for a proposed assignment of licenses for radio stations KCRR(FM), Grundy Center, IA, KKHQ-FM, Oelwein, IA, and KOEL-FM, Cedar Falls, IA (the "Stations") from The Cedar Rapids Divestiture Trust, Allen L. Blum, Trustee ("Licensee") to Townsquare Media Waterloo License, LLC ("Townsquare"). For the reasons stated below, we dismiss the Assignment Application as inadvertently accepted for filing, pursuant to Sections 1.3 and 73.3566(a) of the Commission's Rules (the "Rules").<sup>1</sup>

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<sup>1</sup> 47 C.F.R. §§ 1.3, 73.3566(a).

**Background.** From 1970 through the first half of 2012, Arbitron rated the Waterloo-Cedar Falls market as a separate radio market and the Stations were in that market. Townsquare states that in 2012, the sole Arbitron subscriber in the market (Bahakel Communications) did not renew its Arbitron subscription and Arbitron then stopped treating the Waterloo-Cedar Falls market as a separate market.<sup>2</sup> From the Fall 2012 ratings period until the Spring 2014 ratings period, Arbitron classified the Stations as “home” to the Cedar Rapids radio market. During this period, Townsquare consummated transactions with Cumulus Media, Inc. and Peak II Holding, LLC to acquire 71 stations in 15 markets, including the Stations and four other stations that were either in the Cedar Rapids radio market or classified by Arbitron as “home” to that market. In order to comply with Section 73.3555(a) of the Commission’s rules (the “Local Radio Ownership Rule”), Townsquare placed the Stations in a trust controlled by the Licensee.<sup>3</sup> After consummating these transactions, Townsquare entered into an agreement with Arbitron to have Arbitron restore the Waterloo-Cedar Falls market as a separate radio market, effective as of the Spring 2014 ratings period.<sup>4</sup> Townsquare filed the Assignment Application on August 25, 2014, arguing that the transaction complies with the Local Radio Ownership Rule if we recognize the reinstatement of the historical Waterloo-Cedar Falls market as a separate market from the Cedar Rapids market.

When the Commission adopted the use of Arbitron Metro markets (combined with the BIA database) as the basis for defining local radio markets for purposes of the Local Radio Ownership Rule, it adopted a policy for demonstrating compliance with that rule when there have been recent changes to a market.<sup>5</sup> That policy imposes a two-year waiting period for parties to take advantage of (i) geographic boundary changes to an Arbitron radio market, (ii) inclusion of a radio station as “home” to an Arbitron radio market, or (iii) removal of a radio station as “home” to an Arbitron radio market.<sup>6</sup> The elimination or creation of a Metro market is considered to be in the first category, *i.e.*, a change in Metro boundaries that triggers the two-year waiting period.<sup>7</sup> The purpose of this waiting period is “ensure that changes in Arbitron Metro boundaries and home market designations will be made to reflect actual market conditions and not to circumvent the [Local Radio Ownership Rule].”<sup>8</sup>

Townsquare requests a waiver of the two-year waiting period.<sup>9</sup> Townsquare argues that its proposed transaction does not involve a manipulation of the Arbitron Metro boundaries, but restoration of

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<sup>2</sup> Assignment Application, Ex. 18 at 1.

<sup>3</sup> See 47 C.F.R. § 73.3555(a); Assignment Application, Ex. 18 at 1.

<sup>4</sup> Assignment Application, Ex. 18 at 2.

<sup>5</sup> See 2002 Biennial Regulatory Review of the Commission’s Broadcast Ownership Rules, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13726 (2003), *aff’d in part and remanded in part sub nom. Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004), *cert. denied*, 545 U.S. 1123 (2005) (“*Definition of Radio Markets*”).

<sup>6</sup> *Id.*

<sup>7</sup> *John M. Pelkey, Esq.*, Letter, 23 FCC Rcd 17978, 17981 (MB 2008); *Clear Channel Broadcasting Licenses, Inc.* Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14078, 14085 (MB 2009).

<sup>8</sup> *Definition of Radio Markets*, 18 FCC Rcd at 13726.

<sup>9</sup> Townsquare also argues that the second sentence of Worksheet 3 to FCC Form 314 suggests that the waiting period would not apply to this case because the Stations were listed by BIA as “home” to the Waterloo-Cedar Falls  
(footnote continued)

a market that Arbitron recognized from 1970 to 2012. Townsquare argues that it had nothing to do with Arbitron's geographic market change in 2012 (although, as noted above, it acknowledges that it triggered Arbitron's subsequent decision to reinstate the Waterloo-Cedar Falls Metro market). Townsquare further argues that there is no public interest benefit from treating the 2012 market change as dispositive and that the public interest would be better served by allowing the Stations to be removed from the constraints of the current trusteeship.<sup>10</sup>

The Commission's Rules may be waived only for good cause shown.<sup>11</sup> The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"<sup>12</sup> and must support its waiver request with a compelling showing.<sup>13</sup> Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.<sup>14</sup> In deciding waiver requests on a case-by-case basis, the Commission has broad discretion in determining whether a situation presents unanticipated circumstances that make it more appropriate to create an exception than to apply the rule.<sup>15</sup>

We recognize that the Waterloo-Cedar Falls market had a long history of existence up to 2012, but we do not believe Townsquare has presented a compelling case for a waiver. Townsquare acknowledges that its actions triggered the reinstatement of the Waterloo-Cedar Falls market, but argues that its actions were merely intended to restore a historical market, not to manipulate market boundaries.<sup>16</sup> However, we necessarily focus primarily on whether the applicant is deriving a benefit from Arbitron's decision to modify a market, not on the underlying motivation for the action.<sup>17</sup> It would be impossible to

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Arbitron radio market as of September 3, 2004, when the Local Radio Ownership Rule took effect. Assignment Application, Ex. 18 at 3-4. We reject this interpretation of Worksheet 3. Townsquare is ignoring the fact that the second sentence begins with "In addition, . . ." This means the second sentence is additive and does not override the first sentence, which states: "To demonstrate compliance with the numerical limits in the [Local Radio Ownership Rule], applicants may not rely on a change in a Metro's geographic boundaries that has occurred since September 3, 2004, unless such change has been in effect for at least two years." FCC Form 314, Worksheet 3.

<sup>10</sup> Assignment Application, Ex. 18 at 3-5.

<sup>11</sup> 47 C.F.R. § 1.3.

<sup>12</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

<sup>13</sup> *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

<sup>14</sup> *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>15</sup> See *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015); *New Orleans Channel 20, Inc., v. FCC*, 830 F.2d 361, 365-66 (D.C. Cir. 1987) (stating that "so long as the agency does not display evident disregard for its precedents, no violation occurs" when the agency refuses to exercise its discretion and denies a waiver request).

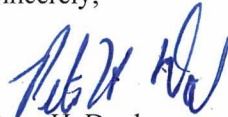
<sup>16</sup> Townsquare also cites the distance between Waterloo and Cedar Rapids. Assignment Application, Ex. 18 at 2. However, this is not an unusual circumstance. It is common for a station that is "home" to a market but not within the geographic boundaries of the market to be located a considerable distance from the cities in that market and not provide a strong signal to those cities. The distance between Waterloo and Cedar Rapids, and the related circumstances cited by Townsquare, are not meaningful factors in our waiver analysis.

<sup>17</sup> See, e.g., *Forever Broadcasting, LLC*, Letter, 23 FCC Rcd 17978 (MB 2008) (two-year rule applies to party seeking to acquire additional stations based on Arbitron's decision to terminate a radio market following the party's cancellation of its Arbitron subscription).

apply a clear, predictable waiver standard if we attempted to grant or deny waivers based on our subjective interpretation of why a party entered into an agreement with Arbitron or decided to cancel its Arbitron subscription.<sup>18</sup> Given that Townsquare precipitated Arbitron's decision to reinstate the market and would benefit from that decision by being enabled to acquire the Stations from the Licensee, this is clearly the type of situation the Commission had in mind when it adopted the two-year waiting period. Under the facts presented here, we cannot find that special circumstances exist or that the public interest would be best served by waiving the two-year waiting period. Accordingly, the proposed transaction is inconsistent with the Local Radio Ownership Rule and the Assignment Application will be dismissed.

**Conclusion/Actions.** Based on the above, we find that the Assignment Application is patently defective and must be dismissed as inadvertently accepted for filing. Accordingly, IT IS ORDERED, That the application for approval to assign the licenses for radio stations KCRR(FM), Grundy Center, IA, KKHQ-FM, Oelwein, IA, and KOEL-FM, Cedar Falls, IA (File No. BALH-20140825ABD) IS DISMISSED as inadvertently accepted for filing, pursuant to 47 C.F.R. §§ 1.3 and 73.3566(a).

Sincerely,



Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>18</sup> The precedents cited above support our interest in applying clear, consistent standards when evaluating waiver requests by applicants. See *Mary V. Harris Found. v. FCC*, 776 F.3d at 28; *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 365-66.