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**Before the
Federal Communications Commission
Washington, DC 20554**

2015 APR 23 A 9:59

In the Matter of)	
)	
Application for Consent to)	File Nos.
Assignment of the Licenses of)	
)	
KCRR(AM), Grundy Center, IA)	BALH-20140825ABD
)	
KKHQ-FM, Oelwein, IA)	BALH-20140825ABE
)	
KOEL-FM, Cedar Falls, IA)	BALH-201425ABF
)	Accepted / Filed

To: The Secretary

Attn: Chief, Audio Division
Media Bureau

APR 27 2015

Federal Communications Commission
Office of the Secretary

PETITION FOR RECONSIDERATION

Townsquare Media Waterloo License, LLC (“Townsquare”), by its attorneys, hereby submits this Petition for Reconsideration regarding the March 27, 2015 decision of the Chief, Audio Division, Media Bureau (“Decision”) in the above-captioned matter. For the reasons stated in this Petition, the Decision should be reversed and the above-captioned application (“Application”) should be granted or returned to pending status.

Background

The licensee of the above-captioned three stations (collectively, the “Stations”) is The Cedar Rapid Divestiture Trust (the “Trust”). Townsquare is the beneficiary of the Trust and is the licensee of AM broadcast station KOEL, Oelwein, Iowa. All four stations – that is, the three Stations licensed to the Trust and KOEL(AM) – serve the Waterloo-Cedar Falls, Iowa market.

The Trust became the licensee of the Stations as part of a complex, multimarket transaction between Townsquare's parent, Townsquare Media, and Cumulus, which owned all four stations at the time of the transaction. When the parties entered into the agreement for the transaction, Cumulus owned stations in both the Waterloo-Cedar Falls, Iowa market and the Cedar Rapids, Iowa market. Shortly before Townsquare Media and Cumulus entered into their agreement, Arbitron (now known as Nielsen Audio but referred to herein as Arbitron) ceased rating the Waterloo-Cedar Falls market and the Stations started being listed as part of the Cedar Rapids market, even though they never have served that market. At that point, Cumulus owned more stations listed in the Cedar Rapids Arbitron market than permitted by the Commission's multiple ownership rules. Therefore, in order to obtain approval for the Cumulus-Townsquare transaction, the parties requested that the Commission allow the Stations to be placed in a divestiture trust.

The Audio Division approved the creation of the divestiture trust in a letter decision released on November 8, 2013 (DA 13-2142). Pursuant thereto, the Trust became the licensee of the Stations on November 14, 2013.

The November 8, 2013 letter decision of the Audio Division included a condition that "the licenses for the Stations must be assigned by the ... Trust to a new licensee or licensees pursuant to a long-form assignment of license application within two years of the closing of this transaction." Because the closing took place on November 14, 2013, the Trust is under an obligation to divest the Stations by November 14, 2015. The Application was submitted on August 8, 2014, in an effort to comply with that condition. It was unopposed.

Shortly after the November 14, 2013 closing on the Cumulus-Townsquare transaction and the related acquisition of the Stations by the Trust, Townsquare realized that the Stations did

not serve the Cedar Rapids market and that instead they served, and always had served, the Waterloo-Cedar Falls market. Therefore, Townsquare requested that Arbitron resume its ratings of the Waterloo-Cedar Falls market. Subsequently, after consultations with Audio Division staff, the Trust and Townsquare submitted the present application for consent to assign the Stations' licenses from the Trust to Townsquare.

**Basis for Reconsideration of Decision
and
Reinstatement and Grant of Application**

In a brief submitted to the U.S. Court of Appeals for the District of Columbia Circuit on February 3, 2015, the Commission stated that the Commission created the two-year waiting period at issue in the present case “to deter licensees from manipulating Arbitron’s market definitions....”¹ In that brief, the Commission explained to the Court of Appeals the background of the two-year hold period:

The [Commission] ... declared that it would “not allow a party to receive the benefit of the inclusion of a radio station as “home” to a Metro unless such station’s community of license is located within the Metro or such station has been considered home to that Metro for at least two years.” The Commission adopted these safeguards to “ensure that changes in Arbitron Metro boundaries and home market designations will be made to reflect actual conditions and not to circumvent the local radio ownership rule.”²

The present application complies completely with these stated purposes of the rule. Townsquare is not in any way attempting to manipulate Arbitron’s market definitions. And the Stations were considered home to the Waterloo-Cedar Falls Arbitron Metro for *42 years*, until Arbitron ceased rating the market suddenly in 2012. Townsquare did not request deletion of the

¹ Brief for Appellee, Federal Communications Commission, in *ADX Communications of Pensacola v. FCC*, Case No. 14-1131.

² *Id.* at p. 11, citing *2002 Biennial Regulatory Review*, 18 FCC Rcd 13620, 13726 (2003).

40-year-old Waterloo-Cedar Falls market and did not seek to enlarge or otherwise modify the market after the Trust acquired the Stations. Townsquare merely sought to reinstate the market to the same status it held from 1970 to 2012.

Grant of this application is in the public interest for a number of reasons, one of which is that it will place the Stations in the hands of a permanent licensee. The Stations currently are licensed to a divestiture trust and the Commission's overall policy disfavors such temporary licensees. Furthermore, Townsquare is already the beneficial owner of the Stations, as the beneficiary of the Trust.

The Decision relies on a 2015 decision of the U.S. Court of Appeals for the D.C. Circuit, *Mary V. Harris Foundation v. FCC*, 776 F.3d 21 ("Harris"). The Decision cites Harris for the principal that "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." However, *Harris* did not overturn or negate Section 1.925(b)(3) of the Commission's rules, which articulates the Commission's standards for granting waivers of its rules. The portion of *Harris* that dealt with the appellant's waiver argument stated that the Commission had denied the waiver request because "adhering to the [rule] was necessary in order to encourage applicants to expand service to communities non-contiguous to well-populated areas...." 776 F.3d at 28. Thus, the Commission had looked at the *purpose* of the rule in determining whether a waiver was appropriate. The Court held that the Commission did not "abuse its discretion by applying a bright-line rule consistently in order both to preserve incentives for compliance and to realize the benefits of easy administration that the rule was designed to serve." *Id.*

Thus, Harris did not change the Commission's general rule on waivers, which continues to be applied by other components of the Commission. See, e.g., *The District of Columbia's Office of Unified Communications*, DA 15-457, released April 14, 2015 (Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau):

To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest.... [Citations omitted.]

Based on this – the actual, current standard for waivers – the Audio Division should reconsider the Decision. Townsquare is not in any way “gaming” market definitions, which is what the rule was intended to prevent. The Stations were part of the rated Waterloo-Cedar Falls market for over 40 years, and continued to serve that market during the less than two-year period when that market was not rated by Arbitron. When Townsquare requested that Arbitron resume its ratings of the market, it was restoring the stations to their historic market status and, in effect, correcting an error. The Stations never were Cedar Rapids stations, except in name only for a short time.

Conclusion

THEREFORE, for the reasons stated herein, the Audio Division should reconsider the Decision and either: (1) reinstate and grant the Application; or (2) reinstate the Application and hold it in abeyance until November 21, 2015 – and then grant the Application because that is the two-year anniversary of the date Townsquare contracted with Arbitron to resume ratings for the Waterloo-Cedar Falls market.

Respectfully submitted,

**TOWNSQUARE MEDIA WATERLOO
LICENSE, LLC**

By: 
Howard M. Liberman

Lee Petro
Drinker Biddle & Reath LLP
1500 K Street, NW
Suite 1100
Washington, DC 20005
(202) 842-8800

Its Attorneys

April 27, 2015

CERTIFICATE OF SERVICE

I, Nellie Martinez, a secretary at the law firm of Drinker Biddle & Reath LLP, certify that on this 27th day of April 2015 I caused the foregoing "Petition for Reconsideration" to be hand-delivered to:

Richard A. Helmick
Cohn and Marks LLP
1920 N Street, NW
Suite 300
Washington, DC 20036-1622
Attorneys for the Cedar Rapids Divestiture Trust


Nellie Martinez