Federal Communications Commission
Washington, D.C. 20554

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In re: KGNC(AM)/-FM, Amarillo, TX
File Nos. BR-20050401BAJ
BRH-20050401BAH
Facility ID Nos: 63159 and 63161

Dear Mr. Riehm:

We have before us the referenced applications (the "Renewal Applications") of MCC Radio, LLC ("Morris") for the renewal of the station licenses of KGNC(AM) and KGNC-FM, Amarillo, Texas. Also before us is a Morris "Statement Concerning Compliance With Local Ownership Rules." The Statement is filed in connection with a joint sales agreement (the "KXGL JSA") between Morris and JMJ Broadcasting Company, Inc. ("JMJ"), the licensee of KXGL(FM), Amarillo, Texas. For the reasons set forth below, we will defer the requirement to terminate the KXGL JSA or otherwise come into compliance with the Commission's ownership rules until six months after the outcome of the Commission's ownership proceeding now on remand from the Third Circuit.

Background. A Morris affiliate publishes the *Amarillo Globe-News.* In 1996, the Commission granted Morris a waiver to permit the temporary common ownership of KGNC(AM) and KGNC-FM (collectively, the "Stations") and the *Amarillo Globe-News.*[1] Subsequently, the Mass Media Bureau extended the waiver, conditioning any potential divestiture of the Stations on the outcome of a *Notice of Inquiry* on newspaper/radio cross-ownership.[2] Thereafter, the Commission terminated that proceeding but extended the Morris waiver and other similar cross-ownership waivers subject to the outcome of the newspaper/broadcast rule making commenced in 2001.[3]

Morris and JMJ entered in the KXGL JSA in 2002, prior to the Commission's 2003 order which made certain joint sales agreements ("JSAs") attributable for certain purposes.[4] Based on this *2002*

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[1] *See Stauffer Amarillo Radio Trust,* Memorandum Opinion and Order, 11 FCC Rcd 14865, 14868 (1996).

[2] *See Letter to James Bayes,* Ref. 1800-IB (MMB Aug. 11, 1997).

[3] *See Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy,* Order and Notice of Proposed Rule Making, 16 FCC Rcd 17283, 17286 n.16 (2001).

[4] *See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, 13746 (2003) ("*2002 Biennial Review Order*"), *aff'd in part and remanded in part, Prometheus Radio Project, et al. v. FCC*, 373 F.3d

Biennial Review Order and the Third Circuit's partial lifting of its stay on the effectiveness of the order a year later, radio stations must terminate non-rule compliant JSAs by September 3, 2006.[5] Morris contends that the KXGL JSA is not attributable for the purpose of the newspaper/broadcast cross-ownership restriction. Rather, it argues that the JSA rule, as set forth in Note 2(k) to Section 73.3555, applies only to the local radio ownership and the stayed cross-media limit rules. In this regard, Morris notes that it complies with the local radio ownership limit in Amarillo when the KXGL JSA is treated as such a cognizable interest. Morris holds interests in 2 FMs and 1 AM in the 28-station Amarillo market, significantly fewer than the six stations, including four same-service stations, permitted in this Arbitron-rated market.

Morris argues in the alternative that were the Commission to deem the KXGL JSA attributable for purposes of the current newspaper/radio cross-ownership rule, good cause exists to waive or stay the effective date of any termination deadline. It claims that the current rule is likely to be eliminated or relaxed in the near future, thus eliminating the need for contract termination. It also contends that a waiver or stay would promote localism and diversity, and that JSA termination would threaten the continued financial stability of KXGL(FM).

Discussion. It is undisputed that the KXGL JSA is attributable for the purpose of determining whether Morris's cognizable interests in the Amarillo market comply with our local radio ownership limits. We agree with Morris that when so treated, Morris complies with the rule. Thus, termination of the KXGL JSA on this basis is not required.

However, the pendency of the Renewal Applications creates an additional issue. The Renewal Applications provide the first opportunity to pass on the newly attributable cross-ownership interest. We find, consistent with the policy that the Commission has followed for over thirty years, that we should do so. Thus, grant of the Renewal Applications requires either termination of the JSA or a waiver of the rule prohibiting any party from holding an attributable interest in a daily newspaper and a radio station.[6]

A waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[7] Moreover, when the Commission waives a rule it must explain why the waiver would not undermine the policy served by the rule.[8] We are persuaded that a

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372 (2004) ("*Prometheus*"), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sep. 3, 2004) ("*Prometheus Rehearing Order*"), *cert. denied*, 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168, and 04-1177). The Commission recently issued a Further Notice of Proposed Rule Making in response to *Prometheus*. *See 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, FCC 06-93 (rel. July 24, 2006) (*"2006 Quadrennial Review NPRM")*.

[5] *See Prometheus Rehearing Order. See also Media Bureau Announces Requirement to File Certain Radio Joint Sales Agreements,* Public Notice, 20 FCC Rcd 1 n.8 (MB 2005).

[6] *See* 47 C.F.R. § 73.3555(d) (2002) (prohibiting the grant of any license if a party holds both an interest in the licensee entity and a daily newspaper published in the same community).

[7] *Northeast Cellular Telephone Co. v. FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*citing WAIT Radio v. FCC,* 418 F.2d 1153, 1157-59 (D.C. Cir 1969). *See also Industrial Broadcasting Co. v. FCC,* 437 F.2d 680 (D.C. Cir. 1970).

[8] *See WAIT Radio v. FCC,* 418 F.2d at 1157.

waiver would maintain a competitive local radio market, while promoting localism and diversity. The Amarillo radio market has three competitive, dominant owners: Clear Channel Communications Inc., with 4 FMs and one AM (23 percent market revenue share); Cumulus Media Inc., with 4 FMs and 2 AMs (29.2 percent), and Morris, with 1 FM, 1 FM JSA, and 1 AM (36.3 percent). Thus, waiver of the JSA termination requirement does not raise local radio market competitive concerns.

KXGL(FM) is the sole station owned by JMJ in the Amarillo market. JMJ entered into the KXGL JSA shortly after emerging from receivership. Since that time Morris states that the station has emerged as a strong, independent voice in the Amarillo market. JMJ is solely responsible for all programming decisions. It employs a full-time news correspondent and airs live newscasts twice hourly during both the morning and afternoon drive time programming segments. It employs a live announcer during all air shifts. Over the past four years it has an exemplary record of sponsoring and promoting a wide range of social service, fraternal, and charitable organizations and activities. We find credible Morris's contention that the JSA has permitted KXGL(FM) to become a significant voice in the Amarillo radio market and community.

Conclusion. Based on our review of the Renewal Applications, we find no evidence of serious violations of the Act or the Commission's Rules or of other violations that, when considered together, evidence a pattern of abuse. Further, we find that Stations KGNC(AM) and KGNC-FM have served the public interest, convenience, and necessity during their respective license terms. Thus, there is no need for further inquiry regarding grant of the Renewal Applications and we will grant those applications.[9]

Accordingly, IT IS ORDERED, that Section 73.3555(d) of the Commission's rules is waived to the extent indicated herein. IT IS FURTHER ORDERED, that the requirements that Morris Radio, LLC divest stations KNGC(AM) and KNGC-FM, and that Morris terminate the Joint Sales Agreement with JMJ Broadcasting Company, Inc. or otherwise come into compliance with the Commission's rules, ARE DEFERRED for a period up to six months after the effective date of the Commission's action in MM Docket Nos. 00-244, 01-317, 01-235, 02-277, and MB Docket No. 06-121. IT IS FURTHER ORDERED, that the applications for renewal of license for Stations KGNC(AM) (File No. BR-20050401BAJ) and KGNC-FM (File No. BRH-20050401BAH) ARE GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: JMJ Broadcasting Company, Inc.

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[9] *See* 47 U.S.C. § 309(k).