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In re: **KNOE-FM, Monroe, Louisiana**
Facility ID No. 48976
File No. BALH-20071005ABA

**Application for Assignment of License
Petition to Deny**

Dear Counsel:

We have before us the above-captioned application (the "Assignment Application") seeking approval for the proposed assignment of license for Station KNOE-FM, Monroe, Louisiana (the "Station"), from Noe Radio Enterprises, LLC ("Noe") to Radio Monroe, LLC ("Radio Monroe"). On November 13, 2007, Opus Broadcasting Monroe, LLC ("Opus"), licensee of Stations KMYF(FM), Rayville, Louisiana; KQLQ(FM), Columbia, Louisiana; KXRR(FM), Monroe, Louisiana; and KZRZ(FM), West Monroe, Louisiana, filed a Petition to Deny ("Petition") the Assignment Application.¹ For the reasons stated below, we deny the Petition and grant the Assignment Application.

Background. In response to Section III, Question 4(a) of the Assignment Application, the assignee indicates that Clay E. Holladay is a member of Radio Monroe, holding 99 percent of the votes and 99 percent of the equity.² Clay's brother, Robert Holladay, is the principal member of Holladay Broadcasting of Louisiana, LLC ("Holladay Broadcasting"), which is the licensee of Stations KJLO-FM,

¹ Radio Monroe filed an Opposition to Petition to Deny on November 28, 2007, and Opus filed a Reply to Opposition to Petition to Deny Assignment of License on December 10, 2007.

² The other member, Norman Bradley Wilkinson, will hold one percent of the assets and one percent of the votes.

Monroe, Louisiana; KJMG(FM), Bastrop, Louisiana; KLIP(FM), Monroe, Louisiana; KNOE(AM), Monroe, Louisiana;³ KRJO(AM), Monroe, Louisiana; and KRVV(FM), Bastrop, Louisiana, all in the Monroe, Louisiana, radio market. The Monroe, Louisiana radio market has 23 stations. In a market this size, a single entity may own, operate or control up to 6 stations, no more than 4 in the same service.⁴ Holladay Broadcasting owns the maximum number of stations permissible in the Monroe, Louisiana, radio market under the Commission's multiple ownership rule.

Opus asserts that grant of the Assignment Application would violate the local radio ownership rule⁵ because Clay Holladay "shares an identity of interests with Robert Holladay . . . and will not be an independent competitor in the market."⁶ Indeed, Opus alleges that Holladay Broadcasting "is currently in violation" of the local multiple ownership rule.⁷ Opus argues that the broadcast interests of Holladay Broadcasting should be attributed to Radio Monroe, based on the relationship between the two brothers. Radio Monroe disagrees, arguing that Clay Holladay and Monroe Broadcasting are independent of Robert Holladay and Holladay Broadcasting.

Discussion. Section 309(d)(1) of the Communications Act of 1934, as amended (the "Act"), requires a two-step analysis for judging the adequacy of Opus' Petition. We must first determine whether Opus has made specific allegations of fact that, if true, would demonstrate that grant of the Assignment Application would be *prima facie* inconsistent with the public interest. These specific allegations must be supported by the affidavit of a person with knowledge of the facts alleged, except for those of which we may take official notice.⁸ If the specific allegations make a *prima facie* case, we next examine and weigh the evidence presented, to determine "whether the totality of the evidence arouses a sufficient doubt on the point that further inquiry is called for."⁹ We must also determine whether grant of the application would serve the public interest.¹⁰

Opus' contentions against Robert Holladay and Holladay Broadcasting, which constitute the greater part of its Petition, would be relevant to our evaluation of the Assignment Application if Opus

³ Holladay Broadcasting consummated the grant of its assignment application for the KNOE(AM) license on March 4, 2008 (File No. BAL-20061213AIW). Also on March 4, 2008, Holladay Broadcasting complied with a condition of that grant and surrendered the license for Station KMLB(AM), Monroe, Louisiana.

⁴ 47 C.F.R. § 73.3555(a)(1)(iii).

⁵ 47 C.F.R. § 73.3555(a).

⁶ Petition to Deny at i.

⁷ *Id.* at 14.

⁸ 47 C.F.R. § 309(d).

⁹ *Citizens for Jazz on WRVR v. F.C.C.*, 775 F.2d 392, 395 (D.C. Cir. 1985). *See also* 47 U.S.C. § 309(d)(1) ("The petition shall contain specific allegations of fact sufficient to show that . . . grant of the application would be *prima facie* inconsistent with [Section 309(a)]. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof."); 47 C.F.R. § 73.3584(b).

¹⁰ *Astroline Communications Co. v. F.C.C.*, 857 F.2d 1556, 1561 (D.C. Cir. 1988). *See also Rocky Mountain Radio Co., LLP*, Memorandum Opinion and Order, 15 FCC Rcd 7166, 7167 (1999).

could demonstrate that Robert Holladay is a real party in interest to the transaction, or that he has interests in or involvement with Radio Monroe. As discussed below, however, we find that Opus presents no basis under which Robert Holladay is a real party in interest, or has an attributable interest in the Assignment Application. Moreover, there is no factual basis to infer that Robert Holladay would be involved in the ownership or operation of Station KNOE-FM.

Under the Commission's family attribution policy, the media interests of other family members will not be attributed to the applicant where the applicant's disclosures confirm that the broadcast interests involved will be independently owned and operated, and are not subject to common influence or control.¹¹ In deciding attribution issues in the context of close family relationships, we are guided by seven factors enunciated in the Commission's *Attribution Policy Statement*. These seven factors are: (i) representations that the media interests of close family members will be independent and will not be subject to common influence or control; (ii) commingling of ownership or other interests in media businesses; (iii) participation by family members in the financial affairs, programming, and personnel decisions of each other's media interests; (iv) prior broadcast experience of the individual seeking to establish independent interests; (v) financial independence; (vi) sharing of personnel, equipment, contractors, or information regarding programming; and (vii) involvement by family members in the acquisition or application process.¹²

The Commission has explained that these seven factors are not components of a test which must be met in order to demonstrate familial independence, but are simply aspects of the relationship and the proposed transaction that should be considered when making an attribution determination.¹³ The weight afforded to any particular factor will vary from case-to-case, depending upon the record as a whole.¹⁴ Further, the existence or non-existence of one, or many, of the factors is not necessarily dispositive. Rather, in reaching a decision, the Commission instructs that we look at the totality of the circumstances, weighing all the evidence to determine whether or not the family member's media interests will be independent and not subject to common influence or control.¹⁵ We begin the analysis, however, by examining the seven factors expressed in the *Attribution Policy Statement*.

Representations that the media interests of close family members will be independent and will not be subject to common influence or control. Radio Monroe and Clay Holladay have certified that Robert Holladay has and will have no involvement in the ownership, operation, or control of the Station.¹⁶ While Opus questions these representations based on Clay and Robert's previous business dealings, we find that Opus offers no evidence demonstrating that these unequivocal certifications are untruthful or unreliable.

¹¹ See *Clarification of Commission Policies Regarding Spousal Attribution ("Attribution Policy Statement")*, Policy Statement, 7 FCC Rcd 1920, 1922-23 (1992).

¹² *Id.*

¹³ See *Sevier Valley Broadcasting, Inc. ("Sevier Valley")*, Memorandum Opinion and Order, 10 FCC Rcd 9795, 9796 (1995).

¹⁴ *Id.*, citing *Dorothy J. Owens*, Memorandum Opinion and Order, 5 FCC Rcd 6615 (1990).

¹⁵ *Sevier Valley*, 10 FCC Rcd at 9797.

¹⁶ See Assignment Application, Exhibit 13; and Opposition, Declaration of Clay Holladay.

Commingling of ownership or other interests in media businesses. Opus notes that Robert and Clay Holladay are co-owners of New South Radio, Inc., licensee of Stations WYOY(FM), Gluckstadt, Mississippi; WIIN(AM), Ridgeland, Mississippi; WJKK(FM), Vicksburg, Mississippi; and WUSJ(FM), Madison, Mississippi. Opus further states that Clay Holladay formerly owned Station KRVV(FM), Bastrop, Louisiana, until he sold his interest in that station to Robert Holladay in 1998 for one dollar. Opus asserts that this transaction demonstrates a propensity toward non-arm's-length dealings.¹⁷ Radio Monroe responds that Opus' speculative conclusion ignores the fact that Station KRVV(FM) had a net worth of negative \$292,948 at the time of the sale, that the licensee had sustained significant net losses in prior years, and that the sale required Robert Holladay to assume the personal guarantees of certain debt owed by the seller.

Opus further contends that "Robert and Clay Holladay have previously been involved in a number of business ventures, and served as officers, directors, and members of companies they have established."¹⁸ Radio Monroe replies that "it is natural for two brothers of roughly the same age who virtually 'grew up' in the radio business, their father being a long-time radio broadcaster, to have engaged in business ventures together."¹⁹ The Commission has stated "that where family members are involved, a petitioner seeking a real party-in-interest issue has a heavy burden, because even independent family relationships may have financial or business ties which would be persuasive indicia of common ownership or real party status in non-family situations."²⁰ Moreover, Opus has not alleged or demonstrated the existence of the types of parallel business structures or operations, such as similar articles of incorporation, bylaws, financial structure, proposed policies, programming, and consulting experts, which the Commission has found to raise real party in interest issues in the past.²¹ Accordingly, we agree with Radio Monroe's argument that the Commission has found that "such business relationships [as those alleged by Opus] are not unusual in a family setting and as a result do not raise suspicions where similar relationships in a non-family contest might."²² We find that the familial involvement in the ownership of other media interests in different markets does not demonstrate interdependence and common control in the Monroe, Louisiana, market.

Participation by family members in the financial affairs, programming and personnel decisions of each other's media interests. Notwithstanding Opus' contentions to the contrary, Radio Monroe represents that "Robert Holladay and Holladay Broadcasting of Louisiana, LLC are not, have not been, and will not be involved in the financial affairs, or programming or personnel decisions of Radio Monroe

¹⁷ Petition to Deny at 10-11.

¹⁸ *See id.* at 11 and Exhibit D.

¹⁹ Opposition at 4.

²⁰ *North Idaho Broadcasting Company*, Memorandum Opinion and Order, 8 FCC Rcd 1637, 1638 (1993) (citations omitted).

²¹ *See id.*

²² Opposition at 4 (citing, *Attribution Policy Statement*, 7 FCC Rcd at 1923; *Sevier Valley*, 10 FCC Rcd at 9798 ("Commission has long held that past involvement in a family member's business, even if substantial, does not necessarily demonstrate future involvement or a commingling of ownership interests.")).

or KNOE-FM.”²³ We find that Opus presents no evidence to disprove the veracity of Radio Monroe’s unambiguous representations on this issue.

Prior broadcasting experience of the individual seeking to establish independent interests. Radio Monroe affirms that Clay Holladay is an experienced broadcaster who has worked continuously on a variety of radio industry ventures since 1984.²⁴ In addition to the New South Radio, Inc. stations co-owned with Robert, Clay states that he “controlled and operated a group of 4 FM and 1 AM station in the Ft. Walton Beach, Florida market until I sold those stations to Cumulus Broadcasting, Inc. in 2003. I currently control companies that own 3 FM stations in the Dothan, Alabama market Robert Holladay has had no involvement in the ownership or operation of the Dothan or Ft. Walton Beach stations”²⁵ Thus, Clay Holladay’s broadcasting experience is a matter of Commission record.

Financial independence. Radio Monroe represents that Clay Holladay is a financially independent businessman who has not relied on Robert Holladay or any other family member to provide or arrange for financing for the acquisition of the Station. In particular, Radio Monroe asserts that “Clay Holladay has sufficient cash on hand to fund the acquisition of KNOE-FM by Radio Monroe without needing to make borrowings.”²⁶ Moreover, Radio Monroe states that “[t]o the extent that any such funds are borrowed, Robert Holladay will have no involvement in that process.”²⁷ Accordingly, Radio Monroe and Clay Holladay have demonstrated financial independence from Robert Holladay.

Sharing of personnel, equipment, contractors, or information regarding programming. Radio Monroe represents that there has been no sharing of personnel, equipment, or programming between Clay Holladay or itself with Robert Holladay or Holladay Broadcasting. Radio Monroe acknowledges that the law firm of Latham & Watkins, LLP, which is communications counsel for Radio Monroe, has also represented Holladay Broadcasting in the past. However, “in recent years [Holladay Broadcasting] has used separate communications counsel for most of its matters, and did so long before Opus’ Petition was filed.”²⁸ Latham & Watkins, LLP, has also been long-time counsel to members of the Holladay family in various radio ventures. We find that, under such circumstances, use of common counsel is at most of “minor significance.”²⁹

Involvement of family members in the acquisition or application process. Radio Monroe states that Robert Holladay had no involvement in the process of completing or filing the Assignment Application. Radio Monroe acknowledges that, in September 2007, “Robert Holladay contacted [Clay] about an opportunity to acquire KNOE-FM. He told [Clay] that while his company, Holladay Broadcasting of Louisiana, LLC was not permitted under FCC rules to own any additional radio stations

²³ Opposition at 5.

²⁴ *Id.* at 6.

²⁵ *Id.*, Declaration of Clay Holladay at 1.

²⁶ *Id.* at 7.

²⁷ *Id.*

²⁸ *Id.*

²⁹ See *Sevier Valley*, 10 FCC Rcd at 9798.

in the Monroe, Louisiana market, this might be an opportunity [Clay] would be interested in.”³⁰ Robert Holladay “also reviewed some due diligence materials regarding KNOE-FM in connection with his assessment of whether he could acquire the station, and had some brief discussions with Clay Holladay regarding the stations.”³¹ Robert Holladay, however, “had virtually no involvement in the negotiations for the acquisition, which were conducted by Radio Monroe.”³²

We recognize Robert’s marginal role in facilitating the acquisition of the Station by Radio Monroe. However, it would be highly speculative to conclude on this basis that there will be common influence or control of the Holladay brothers’ Monroe radio market stations. Significantly, under penalty of perjury, Clay Holladay has declared that he has instructed the employees of Radio Monroe that KNOE-FM should “be operated as an independent station and that my brother Robert was to have no involvement in the process of operating the station.”³³ Based on the record before us, we find that Robert is not involved in this transaction and that Clay Holladay is acting independently of Robert in the acquisition of KNOE-FM. We reiterate that long-standing Commission policy holds that past familial involvement is not necessarily indicative of future involvement or a present commingling of interests.³⁴ Accordingly, because there is no familial attribution, the acquisition of Station KNOE-FM by Radio Monroe does not violate our multiple ownership rule. Should it come to our attention, however, that, as operated, there is common influence or control of Clay and Robert Holladay’s Monroe radio market stations, we will apply the full weight of available sanctions.³⁵

Lastly, to the extent that Opus alleges that Holladay Broadcasting and Robert Holladay are “currently in violation of the multiple ownership rules,”³⁶ this matter is not germane to the Assignment Application before us because we find that Clay and Robert Holladay do not share an identity of interests, such that Robert’s other ownership interests should be attributed to Clay. We further note that, in addition to our finding that Holladay Broadcasting does not hold an attributable interest in Station KNOE-FM, Holladay Broadcasting has surrendered the license for Station KMLB(AM) in Monroe, as a condition of grant for its application to acquire Station KNOE(AM).³⁷

Conclusion/Actions. Based on the above, we find that Opus has not raised a substantial and material question of fact warranting further inquiry. We further find that Radio Monroe is qualified to hold the Station KNOE-FM license and that grant of the Assignment Application is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the Petition to Deny filed by Opus

³⁰ Opposition, Declaration of Clay Holladay at 1.

³¹ *Id.* at 8.

³² *Id.* See also Declaration of Clay Holladay.

³³ *Id.*, Declaration of Clay Holladay at 1.

³⁴ See *supra* note 22.

³⁵ See *Attribution Policy Statement*, 7 FCC Rcd at 1923.

³⁶ Petition to Deny at 14.

³⁷ See *supra* note 3.

Broadcasting Monroe, LLC IS DENIED, and that the application for approval to assign the license for Station KNOE-FM, Monroe, Louisiana (File No. BALH-20071005ABA) from Noe Radio Enterprises, LLC to Radio Monroe, LLC IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Charles L. Spencer, Esq.
Dan J. Alpert, Esq.