



Federal Communications Commission  
Washington, D.C. 20554

January 29, 2008

**DA 08-180**

*In Reply Refer to:*

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In re: **WHRY(AM), Hurley, Wisconsin**  
Facility ID No. 5235  
File No. BTC-20061115AAW

**WUPM(FM), Ironwood, Michigan**  
Facility ID No. 5236  
File No. BTCH-20061115AAX

**Application for Transfer of Control  
Petition to Deny**

Dear Counsel:

We have before us the above-referenced applications (“Transfer Application”) for consent to transfer control of Big G Little O Inc., licensee of Station WHRY(AM), Hurley, Wisconsin, and Station WUPM(FM), Ironwood, Michigan (collectively, the “Stations”), from Charles H. Gervasio, Rochelle M. Gervasio, James J. Gervasio, John C. Gervasio, Judy Gervasio, and Norma T. Rigoni to Gerald J. Hackman (“Hackman”) and John J. Nix (“Nix”) (collectively, “Transferees”). On December 19, 2006, Heartland Communications Group, LLC (“Heartland”) filed a Petition to Deny the Transfer Application.<sup>1</sup> For the reasons stated below, we deny the Petition to Deny and grant the Transfer Application.

**Background.** On July 30, 2004, Hackman and Heartland entered into a Non-Competition Agreement<sup>2</sup> in connection with Hackman’s sale of four Wisconsin radio stations to Heartland. Under the

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<sup>1</sup> On April 9, 2007, the Transferees filed a Motion for Leave to File Opposition Out of Time and on April 12, 2007, the Transferees filed an Opposition to Petition to Deny.

<sup>2</sup> See Petition to Deny at 1-2; Attachment A.

terms of the Non-Competition Agreement, Hackman, *inter alia*, agreed that, for a period of four years, neither he nor his affiliates would engage in competitive activities within a 35-mile radius of the radio stations being sold.<sup>3</sup>

**Discussion.** Heartland argues that grant of the Transfer Application is inconsistent with the public interest because it would violate the Non-Competition Agreement between itself and Hackman. Heartland's Petition to Deny primarily relates to contractual claims between itself and Hackman. The issues raised by Heartland constitute a private controversy. The Commission has consistently held that it is not the proper forum for the resolution of such private disputes, and that the parties should seek redress for such matters in local courts of competent jurisdiction.<sup>4</sup> In this regard, we note that the Non-Competition Agreement specifically vests either the Cook County, Illinois courts or the Ashland County, Wisconsin courts with jurisdiction for all disputes that may arise.<sup>5</sup>

Heartland states that it intends to seek an injunction against the proposed sale.<sup>6</sup> Heartland, however, has not provided evidence of an injunction or a stay issued by a local court against the proposed sale.<sup>7</sup> In the absence of such an order from the local court, the Commission has routinely acted favorably on license assignment applications. We note, however, that Commission grant of an assignment or transfer of control application merely finds that the parties are qualified under, and the proposed transaction does not violate, the Communications Act of 1934, as amended, and the Commission's rules and policies. As such, it is permissive only and does not prejudice any relief to which the parties may ultimately be entitled.

Finally, the Petition to Deny states that "it is Heartland's understanding that Mr. Hackman and Mr. Nix are significantly involved not only in soliciting advertising, but also with dictating programming and managing operations at these stations, raising questions of whether a premature transfer of control has occurred."<sup>8</sup> Heartland provides no further information to support this allegation. The Opposition, supported by the sworn Declaration of Hackman,<sup>9</sup> states that Hackman and Nix do not control programming or operations at the Stations, but have only executed a written agreement, which is

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<sup>3</sup> On April 23, 2004, the Commission granted the applications to assign the licenses of Stations WNXR(FM), Iron River, Wisconsin (File No. BALH-20040311ACC); WBSZ(FM), Ashland, Wisconsin (File No. BALH-20040311ACF); WJH(FM), Ashland, Wisconsin (File No. BALH-20040311ACE); and WATW(AM), Ashland, Wisconsin (File No. BAL-20040311ACD), from Hackman to Heartland. The parties consummated the assignment transaction on August 2, 2004.

<sup>4</sup> See *John F. Runner, Receiver (KBIF)*, Memorandum Opinion and Order, 36 RR 2d 773, 778 (1976); *Decatur Telecasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 8622 (1992).

<sup>5</sup> See Non-Competition Agreement, §§ 2(c) and 7.

<sup>6</sup> Petition to Deny at 2.

<sup>7</sup> In the Opposition, Transferees indicate that, on November 21, 2006, Heartland filed an action in the Circuit Court of Ashland County, Wisconsin, seeking enforcement of the Non-Competition Agreement. See Opposition at 2. Transferees also note that, on November 13, 2006, Hackman filed a "Verified Complaint for Declaratory Judgment and Breach of Contract" in the Circuit Court of Cook County, Illinois, Chancery Division, Case No. 06CH24484.

<sup>8</sup> Petition to Deny at 2.

<sup>9</sup> Opposition, Exhibit B.

submitted with the Opposition, that relates to sales commissions.<sup>10</sup> Based on the above, we find that Heartland has not raised a substantial and material question of fact warranting further inquiry.

**Conclusion/Actions.** Accordingly, finding the Transferees qualified and that grant of the Transfer Application would serve the public interest, convenience and necessity, the Petition to Deny filed by Heartland Communications Group, LLC IS DENIED, and that the application for transfer of control of Big G Little O Inc., licensee of Station WHRY(AM), Hurley, Wisconsin (File No. BTC-20061115AAW) and Station WUPM(FM), Ironwood, Michigan (File No. BTCH-20061115AAX) from Charles H. Gervasio, Rochelle M. Gervasio, James J. Gervasio, John C. Gervasio, Judy Gervasio, and Norma T. Rigoni to Gerald J. Hackman and John J. Nix IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

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<sup>10</sup> *Id.* at 3; Exhibit B.