

F.C.C. 69-209

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D.C. 20554

In the Matter of
ASSIGNMENT AND TRANSFER OF CONSTRUCTION
PERMITS FOR NEW BROADCAST STATIONS.
(SECTION 1.597 OF THE COMMISSION'S RULES) } Docket No. 18305

REPORT AND ORDER

(Adopted March 5, 1969)

BY THE COMMISSION: COMMISSIONER BARTLEY ABSENT.

1. In a notice of proposed rulemaking, released September 4, 1968 (F.C.C. 68-889), the Commission proposed to adopt rules containing limitations on assignments and transfers involving construction permits for new standard, FM and television broadcast stations which have not yet commenced broadcast operations.

2. Construction permits for new standard, FM and television broadcast stations are granted only to qualified applicants who have the capacity and bona fide intention to place the proposed station on the air and to render the proposed broadcast service. In making such grants, the Commission relies, among other things, upon the applicant's showings of such capacity and intention. If unforeseen circumstances later prevent the holder of a construction permit from putting the proposed station on the air, the Commission, if it finds that the public interest would be served thereby, may consent to the assignment of the construction permit or transfer of control of the permit holder to a new applicant which is prepared to build and operate the proposed station.

3. The new rules adopted herein seek to preclude trafficking in construction permits for unbuilt stations by barring the use of such permits as a means of obtaining financial gain from their transfer before the original grantee builds and operates the station. They in part codify existing policies, and supplement the provisions of paragraphs (a) through (d) of section 1.597 of the rules (which generally require the permittee to provide at least 3 years of broadcast service, once station operation has started). Under the new rules the permittee of an unbuilt station may retain an equity interest, after the transfer, if he meets stated requirements for contributing that share of the station's capital which is proportionate to his equity.

4. No oppositions were filed. Storer Broadcasting Co., in the sole comment received, suggested that the requirement that assignors or transferors retaining a partial interest in the station make capital contributions proportionate to their equity be revised to make clear

16 F.C.C. 2d

that the requirement applies to loan capital as well as to equity capital. The rules adopted herein so provide.

5. The new rules adopt the essence of the rules as proposed. Their text has been further developed to make clear the intent of the more generally worded proposed text, and to add procedural provisions.

6. New paragraph (e) of section 1.597 opens with definitions of the terms "unbuilt station" and "seller," which are applicable to those terms wherever they are used in the new paragraphs (e) and (f) of section 1.597. For the purposes of these rules, "unbuilt station" refers to any standard, FM, or television broadcast station for which a construction permit has been granted, but for which program test authority has not been issued. The term thus includes reference to a station on which construction may have commenced, but which has not been authorized to commence operation under program test authority. The term "seller" includes the assignor(s) of a construction permit for an unbuilt station, the transferor(s) of control of the holder of such construction permit, and any principal of such assignor(s) or transferor(s) who retains or later acquires an interest in the permittee. The use of these terms conveniently avoids the necessity for repetitious verbiage in the operative portions of the new rules.

7. New paragraph (e) of section 1.597 goes on to state that the Commission will not consent to the assignment of permit or transfer of control of an unbuilt station if the agreements or understandings between the parties provide for or permit payment to the seller of a sum in the excess of the aggregate amount clearly shown to have been legitimately and prudently expended, and to be expended, by the seller solely for preparing, filing, and advocating the grant of the construction permit for the station, for proceeding with construction of the station, and for other steps reasonably necessary toward placing the station in operation.

8. Paragraph (e) next provides, in subparagraph (3), that applicants for consent to the assignment of permit or transfer of control shall, in the case of unbuilt stations, file declarations that—except as clearly disclosed in detail in the applications—there are no agreements, arrangements, or understandings for reimbursement of the seller's expenses or for other payments to the seller, for the seller's retention of any interest in the station, or for options or for any other means by which the seller may acquire such an interest, or for any other actual or potential benefit to the seller in the form of loans, the subsequent purchase of the seller's retained interests, or otherwise. It is also required that, where the seller is to receive reimbursement of expenses, the applications shall include an itemized accounting of the expenses, together with factual information relied upon to show that they represent legitimate and prudent outlays made solely for the allowable purposes.

9. New paragraph (f) of section 1.597 declares that whenever the seller retains an interest in the station or enjoys any of the other kinds of benefits mentioned in the previous paragraph, the question is raised as to whether the transaction involves actual or potential gain to the seller over and above reimbursement of the expenses allowable under

paragraph (e), and states that in such cases the Commission will designate the assignment or transfer for evidentiary hearing.

10. There are certain exceptions to the above-mentioned mandatory hearing requirement. Retained interests will not automatically require a hearing, if, during the period ending 1 year after the issuance of program test authority, the seller with a retained interest participates in the provision of capital for the station to the full extent which is proportionate to the seller's equity share in the station. Equity capital, loan capital, or guarantees put up by the seller prior to the assignment or transfer may be taken into account in determining the seller's compliance with these conditions, which will be satisfied:

(i) in the case of equity capital: by paid-in cash capital contributions proportionate to the seller's equity share;

(ii) in cases where any person who has an equity interest in the permittee provides loan capital: by the seller's provision of that part of the total loan capital provided by equity holders which is proportionate to the seller's equity share; and

(iii) in cases where any person cosigns or otherwise guarantees payments under notes given for loan capital provided by nonequity holders: by similar guarantees by the seller covering that part of such payments as is proportionate to the seller's equity share; Provided: That this condition shall not be deemed to be met if the guarantees given by persons other than the seller cover, individually or collectively, a larger portion of such payments than the ratio of the combined equities of persons other than the seller to the total equity.

The proviso in subdivision (iii) is intended to insure observance of the principle that the seller participate—proportionately to his equity share—in the provision of loan guarantees. Without it, the intention of proportionate participation by the seller could be nullified by cosignatures or other forms of guarantees by other equity holders covering the entire amount of a loan of sums to be used for station capital, even if the seller additionally guaranteed a portion of the loan. The seller, while not obliged to match, proportionately, loan capital furnished by banks or other persons who are not equity holders, will be required to participate, in the proportion of his equity interest, in the furnishing of guarantees covering payments of interest or principal under loans obtained from such other sources.

11. Subparagraph (3) of new paragraph (f) of section 1.597 provides that the assignee's or transferee's application must include a showing of the anticipated capital needs of the station through the first year of its operation, and of the seller's financial capacity to comply with the foregoing requirements. It provides also that the Commission will determine, from its review of the applications, whether a hearing is necessary to insure compliance; states that compliance will be subject to review by the Commission at any time; and calls for reports to the Commission enabling it to ascertain compliance.

12. Subparagraph (4) of new paragraph (f) provides that evidentiary hearings will be held in all cases in which the seller of an unbuilt station has an option to acquire equity interest or to increase a retained equity interest, and wherever there is provision, under options or otherwise, for the subsequent acquisition of the seller's retained or subsequently acquired equity interests in the station.

13. For the reasons discussed and under authority conferred by sections 4 (i) and (j), 303(r) and 310(b) of the Communications

Act of 1934, as amended, *It is ordered*, That, effective April 14, 1969, section 1.597 of the Commission's rules *Is amended*.

14. *It is further ordered*, That this proceeding *Is terminated*.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

16 F.C.C. 2d