

Weighing in on a Debate: The Audio Division Finds No Consent Needed for Gradual Changes in Governing Boards

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For many years, attorneys who represent public broadcasters and other non-commercial educational licensees (NCEs) have debated whether an application for Federal Communications Commission (FCC or Commission) consent must be filed when there is a 50% or greater change in a licensee's board of directors over time. (Yes, we really know how to have a good time! Inquire about our availability for parties. Spoiler alert: we're available.) The debate is based on a 1989 Notice of Inquiry in which the Commission tentatively concluded that gradual changes in the governing board of a membership organization do not constitute a transfer of control, so long as a majority of the organization's directors are not replaced at one time. However, the Commission did not formally adopt that conclusion, causing some attorneys to recommend in an abundance of caution that consent be sought for gradual changes.

A recent decision by the Audio Division of the FCC's Media Bureau, however, provides some clarity. Earlier this year, the Audio Division proposed a \$20,000 fine against Northwest Rock N Roll Preservation Society (NWR) for unauthorized operations and false certifications in connection with a license application for FM translator facility changes. Among the claims made by parties who filed objections was a claim that NWR, a nonprofit organization governed by its board, underwent an unauthorized transfer of control. Specifically, the objectors noted that NWR's board had undergone numerous changes (which included adding and replacing board members) since NWR applied for a construction permit for the translator, without NWR ever having sought FCC approval.

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The Audio Division rejected these claims, asserting that, while it is not bound by the tentative conclusion set forth in the Notice of Inquiry, it was appropriate to follow it here. Thus, because NWR's board changes were gradual, no FCC approval was required, despite the current board differing from that which had initially been approved by the FCC.