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PLANNING THE NON-COMMERCIAL LICENSE TRANSFER

by

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It has been observed, with great insight, that divorces, as well as marriages, can fail. So too the transfer of an existing non-commercial broadcast station is full of many possibilities for failure as well as success.

Based on my 30 years of experience, I would like to offer the following suggestions as to how one can go about maximizing the successful outcome of a license transfer. My starting assumptions are that 1) at least one party has decided that a license transfer is desirable, and 2) even major modifications to the status quo will not permit the current arrangement to survive and operate for the long term.

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I. Don't Make This Into An Adversarial Activity

Notwithstanding what some attorneys will tell you, I believe that bitter conflict is vastly overrated as a mechanism for achieving necessary change in a licensee/broadcast station context. Basically, neither party can ever hope to convincingly win a public argument where the licensee is considered to have absolute legal power and authority by the Federal Communications Commission and yet where the station has a direct, high visibility channel to the general public. While the broadcast licensee can always win such an all out fight legally, it may be at the expense of receiving two black eyes and an avalanche of bad publicity and public ill will. From the station point of view, public martyrdom may have a certain perverse appeal but is highly unlikely to provide any usable basis for a transition. To put it another way, both parties have a lot to lose by fighting in public, including credibility, political and financial support.

In a sense, it is too bad that this is where experience brings us. After all, many university administrators consider it a matter of sacred honor to publicly assert their authority over any wayward part of the university empire. This can be not only psychologically satisfying for the administrator, but also a useful warning to other university enterprises operating at the periphery of the academic function. From the station point of

view, visions of David vs. Goliath are certain to make hearts race faster, with mental visions of the French Revolution, barricades and thousands of listeners coming to rescue freedom of the press.

Both parties should purge themselves of all such fantasies, as well as from the knee-jerk reactions that can encourage such fantasies. Clearly in a situation involving the potential transfer of a broadcast station license that you should always turn toward compromise and cooperation.

II. The Station and Its Licensee Should Develop A Joint Strategy

Even though the impetus for change will usually come from one party, it is important that development of a transfer strategy be made into a cooperative, two-party process.

Don't reinvent the wheel and do make every effort to tap into existing expertise at the national level.

III. Take Stock of What Both Parties Have To Gain And Try To Appreciate The Other Party's Point of View

A broadcast station leaving an institutional licensee could expect to gain:

- . Lessened bureaucracy;
- . Freedom to seek funding/support from the entire range of community entities;

- . Freedom from civil service and similar employment restrictions;
- . Flexibility of governance, usually not found in large, complex bureaucracies.

From an institutional standpoint, the transfer of a license can offer the following advantages:

- . The prospect of saving significant funds in the long term;
- . Freedom from the oversight requirements imposed by the Federal Communications Commission;
- . The lessening of tension in the university community over support and resources allocated to non-primary functions such as a broadcast station;
- . The opportunity to take credit for a successful spinoff.

IV. Plan An Orderly Transition

Absent a full scale emergency, a transition period of 2-3 years is often optimum.

Ideally, during that time the institution should provide continuing, but perhaps declining support. This could be cash but can also be a wide variety of in-kind support, including office space or other support services.

V. Prepare The New Board of Directors Properly

The new Board of Directors should have three additional characteristics beyond competence: 1) they should be caring, 2) policy oriented, and 3) hands off on a day-to-day basis.

VI. Conclusion

We began this discussion with the observation that there are many pitfalls associated with transferring a non-commercial license and that there are as many ways to do it wrong as there are right. Nevertheless, the stakes are high and the public benefit considerable, with a successful effort. Perhaps the least we can hope for is that the transition to a new license will permit both parties to feel that they won as the result of a transfer. As New York newspaperwoman, Liz Smith, once said in a different context, "the marriage didn't work out but the separation is great".