FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Reply Refer To:
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Re: WACL(FM), Elkton, VA, Fac. ID 63491
WKCY(AM), Harrisonburg, VA, Fac. ID 41815
WKCY-FM, Harrisonburg, VA, Fac. ID 41811
File Nos. BAL/BALH-20001204AIX-AIZ

Dear Counsel:

Background. The staff has under consideration an application seeking consent to the assignment of the licenses for WACL(FM), Elkton, VA, WKCY(AM), and WKCY-FM, Harrisonburg, VA from Mid Atlantic Network, Inc. ("Mid Atlantic") to Capstar TX Limited Partnership, an indirect wholly owned subsidiary of Clear Channel Communications, Inc. ("Clear Channel"). Also under consideration is a petition to deny filed by HJV Limited Partnership and M. Belmont VerStandig, Inc. ("HJV/MBV"), two commonly controlled entities. Based on the reasons set forth below, we deny the petition and grant the assignment application.

HJV/MBV allege that grant of the proposed transaction would be inconsistent with the Commission's statement, set forth in the pending rulemaking on radio markets, that it would defer action on certain radio merger cases. *See In the Matter of Definition of Radio Markets*, MM Docket No. 00-244, FCC 00-427 (rel. Dec. 13, 2000) ("*NPRM*"). In addition, they argue that if the Commission grants Clear Channel's assignment application, then it also should grant HJV's pending application seeking consent to acquire station WLTK(FM), Broadway, VA, also located in the Harrisonburg, VA market (File No. BALH-19991215AAY).[1] HJV/MBV allege

[1] HJV proposes to sell station WBHB-FM, New Market, VA to Massanutten Broadcasting Company, Inc. In return it will acquire station WLTK(FM) and pay Massanutten an additional cash payment. Both stations are in the Harrisonburg market. Mid Atlantic filed a petition to deny the proposed swap arguing that it likely would have an anticompetitive effect on the market for radio advertising in Harrisonburg.

that the transactions raise similar local concentration issues and thus the Commission is compelled to act on the applications in a like manner.

Discussion. In the *NPRM* cited by HJV/MBV, the Commission sought comment on whether and how to modify the current definition of a "radio market" and the methodology it uses to count the number of stations in a market. The Commission stated that during the pendency of the rulemaking, it would defer any decisions "in cases raising concerns about how we count the number of stations a party owns in a market until the conclusion of the proceeding." *NPRM* at ¶14. However, contrary to HJV/MBV's argument, this transaction does not fall into the category of applications that we believe the Commission intended to defer.

As the Commission explained in the *NPRM*, it evaluates whether a proposed transaction complies with statutory numerical ownership caps[2] by first determining the boundaries of each market created by the transaction. Specifically, it looks to all stations that will be commonly owned after the proposed transaction is consummated and groups these stations into "markets" based on which stations have mutually overlapping signal contours. It then determines the total number of stations in a market by counting all stations whose principal community contours overlap the principal community contours of *any* one or more of the stations whose contours define the market. *See NPRM* at ¶¶3-4.

One of the issues raised in the *NPRM* is that, based on our current methodology, a station owned by an applicant might not count as an attributable interest in determining whether the applicant will comply with the numerical ownership cap in a market because it does not overlap all of the stations the applicant seeks to own in that market. Nonetheless, that same station may count for purposes of determining the total number of stations in that market because it overlaps the contour of at least one station which defines the market. It was anomalous cases-- where an applicant's *own* existing holdings make a dispositive contribution to the total number of stations in the market, thereby "bumping" the applicant into a tier of permissible ownership that it could not otherwise reach -- that proved especially troubling to the Commission in past proceedings and that it specifically focused on in the *NPRM*.[3] Likewise, it is these anomalous cases which we believe the Commission intended to hold in abeyance pending the outcome of the rulemaking. The Clear Channel transaction is not in this category of cases. Specifically, there are a sufficient number of stations in each of the five radio markets created by the transaction to permit Clear Channel to attain the level of ownership it seeks without counting any of Clear Channel's commonly owned stations as contributing to the total number of stations in the market

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[2] *See* Section 202(b)(1) of the Telecommunications Act of 1996, establishing four tiers of permissible ownership. Specifically, in a radio market with 45 or more commercial stations, a party may own up to 8 commercial radio stations, not more than 5 of which are in the same service; in a radio market with between 30 and 44 commercial stations, a party may own up to 7 commercial radio stations, not more than 4 of which are in the same service; in a radio market with between 15 and 29 commercial radio stations, a party may own up to 6 commercial radio stations, not more than 4 of which are in the same service; and in a radio market with 14 or fewer commercial radio stations, a party may own up to 5 commercial radio stations, not more than 3 of which are in the same service, except that a party may not own more than 50% of the stations in such a market.

[3] *See Pine Bluff Radio, Inc.*, 14 FCC Rcd 6594 (1999) (Commissioners Susan Ness and Gloria Tristani, dissenting); *see also NPRM* at ¶¶8-9 (proposing to "exclude from the count of the number of stations in a market, any stations owned by the applicant, except the commonly owned stations that form the market").

unless they also count toward Clear Channel's ownership cap. Therefore, the application will not be deferred pursuant to the *NPRM*.[4]

We also note that there is no substantial and material question of fact concerning the impact of this transaction on competition in the Harrisonburg radio market. Mid Atlantic proposes only to transfer an existing group of stations to Clear Channel. Current information in the BIA database shows that the Mid Atlantic stations have a combined advertising revenue share of 38.0%. The transfer will not increase the advertising revenue share of the existing group or result in increased levels of ownership concentration in the radio market. *See Shareholders of AMFM, Inc.,* 15 FCC Rcd 16062, 16068 (2000). Therefore, under these circumstances and based on our independent review of the record, we find that the petition fails to raise a substantial and material question of fact to warrant further inquiry.

Finally, we need not reach HJV/MBV's argument that we are compelled to act simultaneously on HJV's application in order to treat the parties in a consistent manner because we are today granting its application to sell WBHB-FM, New Market, VA and acquire WLTK(FM), Broadway, VA. *See Letter to David M. Silverman, Esq. from Linda Blair, Chief, Audio Services Div., MMB (1800B3-TSN).* We therefore dismiss as moot HJV/MBV's petition to deny to the extent it argued for such action.

Accordingly, IT IS ORDERED, That the petition to deny filed by HJV Limited Partnership and M. Belmont VerStandig, Inc. IS DISMISSED AS MOOT to the extent indicated above, and is otherwise DENIED. IT IS FURTHER ORDERED, That the application to assign WACL(FM), Elkton, VA, WKCY(AM), Harrisonburg, VA and WKCY-FM, Harrisonburg, VA (File Nos.BAL/BALH-20001204AIX-AIZ) IS GRANTED.

Sincerely,

Linda Blair, Chief
Audio Services Division
Mass Media Bureau

cc: David M. Silverman, Esq.

[4] We also are unpersuaded by the argument that Clear Channel's multiple ownership showing is inadequate and misleading. Clear Channel provided sufficient information to show compliance with the Commission's multiple ownership rules and to determine whether the transaction triggered paragraph 14 of the *NPRM*.