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Before the
Federal Communications Commission
Washington, D.C. 20554

In The Matter of The Applications of	)	
	)	
Mountain Wireless, Inc.	)	
Assignor	)	MB Docket No. 02-138
	)	
And	)	
	)	File Nos. BAL-20010918ABB
Clear Channel Broadcasting Licenses, Inc.,	)	and BALH-20010918ABC
Assignee	)	
	)	
For Consent to Assignment of Licenses of	)	
WSKW(AM) and WHQO(FM),	)	Facility ID Nos. 46351 and
Skowhegan, Maine	)	26388
	)	

HEARING DESIGNATION ORDER

Adopted: June 5, 2002 **Released: July 10, 2002**

By the Commission:

1. In this order, we consider the above-captioned applications to assign the licenses of stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain Wireless, Inc. ("Mountain") to Clear Channel Broadcasting Licenses, Inc. ("Clear Channel").[1] The applications are unopposed. Because these applications were pending when we adopted the Notice of Proposed Rulemaking in MM Docket No. 01-317 ("*Local Radio Ownership NPRM*"), we resolve the competition concerns raised by these applications pursuant to the interim policy adopted in that notice.[2] As discussed more fully below, we cannot find on this record that grant of these applications is consistent with the public interest. Accordingly, pursuant to Section 309(e) of the Communications Act of 1934, as amended, ("Communications Act") we hereby designate the applications for hearing.

I. INTRODUCTION

2. For much of its history, the Commission has sought to promote diversity and competition in broadcasting by limiting the number of radio stations a single party could own or acquire in a local market.[3] In March 1996, the Commission relaxed the numerical station limits in its local radio ownership

[1] Clear Channel currently provides programming for the two stations pursuant to a September 2001 Local Marketing Agreement ("LMA") with Mountain, and it sells advertising for the remaining Mountain station, WCTB(FM), pursuant to a September 2001 Joint Sales Agreement ("JSA").

[2] *See Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, 16 FCC Rcd 19861, 19894-97 ¶¶ 84-89 (2001).

[3] *See generally id.* at 19862-70 ¶¶ 3-18.

rule in accordance with Congress's directive in Section 202(b) of the Telecommunications Act of 1996.[4] Since then, the Commission has granted thousands of assignment and transfer of control applications proposing transactions that complied with the new limits. In certain instances, however, the Commission has received applications proposing transactions that would comply with the new limits, but that nevertheless would produce concentration levels that raised significant concerns about the potential impact on the public interest.

3. In response to these concerns, the Commission concluded that it has "an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local radio market and[,] thus, would be inconsistent with the public interest."[5] In August 1998, the Commission also began "flagging" public notices of radio station transactions that, based on an initial analysis by the staff, proposed a level of local radio concentration that implicated the Commission's public interest concerns.[6]

4. On November 8, 2001, we adopted the *Local Radio Ownership NPRM*. We expressed concern that "our current policies on local radio ownership [did] not adequately reflect current industry conditions" and had "led to unfortunate delays" in the processing of assignment and transfer applications.[7] Accordingly, we adopted the *Local Radio Ownership NPRM* "to undertake a comprehensive examination of our rules and policies concerning local radio ownership" and to "develop a new framework that will be more responsive to current marketplace realities while continuing to address our core public interest concerns of promoting diversity and competition."[8] In the *NPRM*, we requested comment about possible interpretations of the statutory framework, including whether the new numerical station ownership limits definitively addressed the permissible levels of radio station ownership, whether they addressed diversity concerns only, or whether they established rebuttable presumptions of ownership levels that were consistent with the public interest. We also requested comment on how we should define and apply our traditional goals of promoting diversity and competition in the modern media environment. The *NPRM* also sought comment on how we should implement our policies toward local radio ownership.

5. In the *Local Radio Ownership NPRM*, we also set forth an interim policy to "guide [our] actions on radio assignment and transfer of control applications pending a decision in this proceeding."[9] Although we recognized the need to "handle currently pending radio assignment and transfer applications and to address any future applications filed" while the *NPRM* is pending, we disavowed any intent to prejudge the "ultimate decision" in the rulemaking and rejected any "fundamental" changes to our

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[4] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), § 202(b); 47 C.F.R. § 73.3555(a)(1).

[5] *CHET-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13043 ¶ 8 (1999) (citing 47 U.S.C. § 309(a) and *KIXK, Inc.*, 13 FCC Rcd 15685 (1998)). *See also Shareholders of Citicasters, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 19135, 19141-43 ¶¶ 12-16 (1996).

[6] *See* Public Notice, Broadcast Applications, Rep. No. 24303 (Aug. 12, 1998). Under this policy, the Commission flagged proposed transactions that would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market. *See AMFM, Inc.*, 15 FCC Rcd 16062, 16066 ¶ 7 n.10 (2000).

[7] *Local Radio Ownership NPRM*, 16 FCC Rcd at 19870 ¶ 19.

[8] *Id.*

[9] *Id.* at 19894 ¶ 84.

current policy pending completion of the rulemaking.[10]

6. Under our interim policy, "we presume that an application that falls below the [50/70] screen will not raise competition concerns" unless a petition to deny raising competitive issues is filed. For applications identified by the 50/70 screen, the interim policy directs the Commission's staff to "conduct a public interest analysis," including "an independent preliminary competitive analysis," and sets forth generic areas of inquiry for this purpose.[11] The interim policy also sets forth timetables for staff recommendations to the Commission for the disposition of cases that may raise competitive concerns.

II. BACKGROUND

7. Clear Channel currently owns six stations in the Augusta-Waterville, Maine metropolitan market ("Augusta-Waterville metro"):[12] (1) WFAU(AM), Gardiner, Maine; (2) WABK-FM, Gardiner, Maine; (3) WCME(FM), Boothbay Harbor, Maine; (4) WIGY(FM), Madison, Maine; (5) WKCG(FM), Augusta, Maine; and (6) WTOS-FM, Skowhegan, Maine. It proposes to acquire WSKW(AM) and WHQO(FM), both in the Augusta-Waterville metro.

8. On October 3, 2001, the Commission issued a public notice indicating that the subject applications had been accepted for filing.[13] The public notice also "flagged" the applications pursuant to the Commission's "50/70" screen. Under this screen, the Commission flags proposed transactions for further competition analysis if the transaction would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market.[14] Based on Year 2001 revenue estimates from the BIA[15] database, the eight stations that Clear Channel proposes to own account for a 55.9 percent revenue share in the Augusta-Waterville metro. Post-consummation, Clear Channel and Citadel Communications Corporation ("Citadel"), the second largest group owner in the Augusta-Waterville metro, would collectively control 99.5 percent of the advertising revenue in the metro.

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[10] *Id.*

[11] *Id.* at 19895 ¶ 86.

[12] A metro is a metropolitan area defined by the Arbitron rating service, which is used by radio stations and radio advertisers in negotiating and determining advertising rates.

[13] *See* Public Notice, Broadcast Applications, Report No. 25083 (rel. October 3, 2001).

[14] *See generally Local Radio Ownership NPRM*, 16 FCC Rcd at 19870 ¶ 18. A flagged public notice includes the following language:

> Note: Based on our initial analysis of this application and other publicly available information, including advertising revenue share data from the BIA database, the Commission intends to conduct additional analysis of the ownership concentration in the relevant market. This analysis is undertaken pursuant to the Commission's obligation under Section 310(d) of the Communications Act, 47 U.S.C. Section 310(d), to grant an application to transfer or assign a broadcast license or permit only if so doing serves the public interest, convenience and necessity. We request that anyone interested in filing a response to this notice specifically address the issue of concentration and its effect on competition and diversity in the broadcast markets at issue and serve the response on the parties.

[15] BIA is a communications and information technology, investment banking, consulting, and research firm. BIA provides strategic funding, consulting and financial services to the telecommunications, Internet, and media/entertainment industries.

9. On January 29, 2002, the staff provided the parties an opportunity to update the record in light of competitive changes that might have occurred in the Augusta-Waterville market and in light of the interim policy.[16] Clear Channel responded by letter dated February 19, 2002.[17]

III. DISCUSSION

A. Framework for Analysis Under Interim Policy

10. Section 310(d) of the Communications Act requires the Commission to find that the public interest, convenience and necessity would be served by the assignment of Mountain's radio broadcast licenses to Clear Channel before the assignment may occur.[18] Under the interim policy set forth in our *Local Radio Ownership NPRM* we conduct a public interest analysis, including but not limited to an independent preliminary competition analysis of the proposed transaction based on publicly available information and information in the Commission's records.[19]

11. Under the interim policy, to decide whether a proposed assignment serves the public interest, we first determine whether it complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules, including our local radio ownership rules. If it does, we then consider any potential public interest harms of the proposed transaction as well as any potential public interest benefits to determine whether, on balance, the assignment serves the public interest.[20]

12. The Commission's analysis of public interest benefits and harms includes an analysis of the potential competitive effects of the transaction, as informed by traditional antitrust principles. While an antitrust analysis, such as that undertaken by the Department of Justice or the Federal Trade Commission, focuses solely on whether the effect of a proposed merger "may be substantially to lessen competition"[21] in the advertising market, our focus is different.[22] Our analysis of radio license assignments is informed

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[16] Letter from Peter Doyle, Chief, Audio Services Division, Mass Media Bureau, to Christopher L. Robbins, Esq., *et al.* (dated January 29, 2002).

[17] Letter from Christopher L. Robbins, Esq., Counsel for Clear Channel Broadcasting Licenses, Inc., to Peter H. Doyle, Chief, Audio Services Division, Mass Media Bureau (dated February 19, 2002) ("Clear Channel Response").

[18] 47 U.S.C. § 310(d).

[19] *Local Radio Ownership NPRM,* 16 FCC Rcd at 19895-96 ¶ 86.

[20] *Id.* at 19895 ¶ 85; *see VoiceStream Wireless Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9789 ¶ 17 (2001); *see also Chet-5 Broadcasting, L.P.*, 14 FCC Rcd at 13043 ¶ 8 (holding that the Commission has "an independent obligation to consider whether a proposed pattern of radio station ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local market and thus would be inconsistent with the public interest").

[21] 15 U.S.C. § 18.

[22] Although the Commission's analysis of competitive effects is informed by antitrust principles and judicial standards of evidence, it is not governed by them, which allows the Commission to arrive at a different assessment of likely competitive benefits or harms than antitrust agencies may find based solely on antitrust laws. *See FCC v. RCA Communications,* 346 U.S. 86, 96-97 (1953) ("To restrict the Commission's action to cases in which tangible evidence appropriate for judicial determination is available would disregard a major reason for the creation of administrative agencies, better equipped as they are for weighing intangibles by specialization, by insight gained through experience, and by more flexible procedure."). *See also RCA Communications,* 346 U.S. at 94; *United States v. FCC,* 653 F.2d 72, 81-82 (D.C. Cir. 1980) (*en banc*) (The Commission's "determination about the proper

by how those antitrust experts look at competition issues, yet our authority arises out of the Communications Act, which is not concerned solely with the potential impact of economic concentration on advertisers, but ultimately seeks to maximize the utility that the public derives from the public airwaves. The Commission's public interest evaluation is therefore not limited to competition concerns but necessarily encompasses the "broad aims of the Communications Act."[23] These broad aims include, among other things, ensuring the existence of an efficient, nationwide radio communications service available to everyone and promoting locally oriented service and diversity in media voices.[24] Our public interest analysis therefore includes assessing whether the transfer will affect the quality of radio services or responsiveness to the local needs of the community,[25] and whether it will result in the provision of new or additional services to listeners.[26]

13. Thus, under our interim policy, where a proposed transaction raises concerns about economic concentration, we will consider evidence that the particular circumstances of a case may mitigate any adverse impact that might otherwise result, as well as any evidence of benefits to radio listeners that might result from the proposed transaction. Ultimately, it is the potential impact of the transaction on listeners that will determine whether we can find that, on balance, grant of a particular radio station assignment or transfer of control application serves the public interest.

B. Local Radio Ownership Rules

14. The Commission's local radio ownership rules restrict the number of radio stations in the same service and the number of stations overall that may be commonly owned in any given local radio market.[27] A local radio market is defined by the area encompassed by the mutually overlapping principal community contours of the stations proposed to be commonly owned.[28] Under the rules, as amended by the Telecommunications Act of 1996,[29] in a local radio market with 45 or more commercial radio stations, a single entity may own up to eight commercial radio stations, no more than five of which are in the same service; in a market with 30 to 44 commercial radio stations, one owner may hold up to seven

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role of competitive forces in an industry must therefore be based, not exclusively on the letter of the antitrust laws, but also on the 'special considerations' of the particular industry."); *Teleprompter-Group W*, 87 FCC 2d 531 (1981), *aff'd on recon.*, 89 FCC 2d 417 (1982) (Commission independently reviewed the competitive effects of a proposed merger); *Equipment Distributors' Coalition, Inc. v. FCC*, 824 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agency to "analyze proposed mergers under the same standards that the Department of Justice . . . must apply.").

[23] *See AT&T Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 3160, 3168-69 ¶ 14 (1999); *WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-31 ¶ 9 (1998) ("*Worldcom-MCI Order*").

[24] For example, the Supreme Court has repeatedly emphasized the Commission's duty and authority under the Communications Act to promote diversity and competition among media voices: it has long been a basic tenet of national communications policy that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663 (1994) (*quoting United States v. Midwest Video Corp.*, 406 U.S. 649, 668 n.27 (1972)).

[25] *See Deregulation of Radio*, Report and Order, 84 FCC 2d 968, 994-97 (1981); *Sixth Report and Order*, Docket No. 8736, 1 RR 91:559, :624 (1952).

[26] *See, e.g., Worldcom-MCI Order*, 13 FCC Rcd at 18030-31 ¶ 9.

[27] 47 C.F.R. § 73.3555(a).

[28] *Id*; *see Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, 11 FCC Rcd 12368 (1996).

[29] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

commercial radio stations, no more than four of which are in the same service; in a market with 15 to 29 stations, a single owner may own up to six stations, no more than four of which are in the same service; and in a market with 14 or fewer stations, one owner may hold up to five stations, no more than three of which are in the same service, except that no single entity may control more than 50 percent of the stations in such a market.[30]

15. Clear Channel's multiple ownership showing indicates that, using the Commission's current definition of "radio market,"[31] the transaction creates three separate markets. Markets 1 and 3 each have a total of 29 radio stations, and Market 2 has a total of 20 radio stations. Therefore, in each of these markets, a single licensee may own up to 6 stations, not more than 4 of which are in the same service (AM or FM).[32] If the proposed transaction is approved and consummated, Clear Channel will own 4 stations (1 AM/3 FM) in Market 1, 3 stations (1 AM/2 FM) in Market 2, and 4 FM stations in Market 3. The proposed transaction therefore complies with the local radio ownership rules.

C. Public Interest Analysis Under Interim Policy

16. Having concluded that the proposed transaction is consistent with the numerical limits set forth in our ownership rules, we turn to our competition analysis. Here, we find that the proposed transaction would create a market in which the combined market share of the top two group owners in the market - Clear Channel and Citadel - would be 99.5%. We find that Clear Channel has failed to demonstrate particular circumstances in this market sufficient to overcome a concern that this level of economic concentration in this market will harm the public interest. To the extent Clear Channel presents generic arguments challenging the parameters of our current competition analysis, we will address such concerns in the context of the *Local Radio Ownership NPRM* and need not consider them here. Rather, we look only to the record of this case to determine whether there are unique facts that persuade us that grant of this assignment application would serve the public interest despite the apparent economic concentration it will create. We are unable to conclude on this record that the public interest would be served by a grant of this application. Accordingly, under Section 309(e), we must designate this matter for hearing.

17. In order to establish the foundation for the hearing in this case, we lay out below the specific market conditions that lead to our conclusion that the level of economic concentration in this market in the wake of this transaction would be contrary to the public interest. We recognize that Clear Channel may elect to forego a hearing and wait until the conclusion of the rulemaking proceeding where we will consider the generic arguments it has presented.

18. *Radio Advertising as the Relevant Product Market.* Pursuant to our interim policy, we presume that the relevant product market is radio advertising.[33] Standard competition analysis provides that where there is price discrimination, we look at those buyers that do not consider other media to be good substitutes for radio advertising.[34] However, we consider evidence from the parties that the relevant

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[30] *See supra* Note 4.

[31] *See Notice of Proposed Rule Making, In the Matter of Definition of Radio Markets*, 15 FCC Rcd 25077 (2000) ("*Definition of Radio Markets*").

[32] 47 C.F.R. § 73.3555(a)(1).

[33] *Local Radio Ownership NPRM*, 16 FCC Rcd at 19895 ¶ 86.

[34] *See e.g. Horizontal Merger Guidelines*, issued by U.S. Department of Justice & Federal Trade Commission, April 2, 1992, revised April 8, 1997, § 1.12 ("*Horizontal Merger Guidelines*"). Staff and DOJ analysis of radio transactions suggests that existing buyers of radio advertising differ significantly in their likelihood of switching to

product market in a specific case includes other forms of media advertising or should be based on listenership rather than advertising. In its response to the staff's January 29, 2002, letter, Clear Channel asserts that radio advertising is not the relevant product market. Clear Channel "stresses that all of its radio stations face vigorous competition for advertising revenues from all media, not just other radio stations."[35] However, Clear Channel provides no evidence to support its assertion that the relevant product market is broader than radio advertising in the Augusta-Waterville metro. Accordingly, for purposes of this order we continue to assume that radio advertising is the relevant product market.

19. *The Arbitron Metro as the Relevant Geographic Market.* Pursuant to our interim policy, we presume that the relevant geographic market is the Arbitron metro. Determining the relevant geographic market may be complicated in a product market such as radio advertising, where individually negotiated contracts facilitate price discrimination.[36] Therefore, we consider evidence from the parties that the relevant geographic market in a specific case may be larger, smaller, or otherwise different from the Arbitron metro. Clear Channel asserts that "Arbitron market areas are arbitrarily drawn and do not accurately reflect the geographical areas in which Clear Channel's stations compete for advertising revenue."[37] This is especially true, states Clear Channel, in the Augusta-Waterville metro. Clear Channel explains that Arbitron "identifies Kennebec County as comprising the Augusta-Waterville market, yet three of Clear Channel's six existing stations assigned to the market and both of the Mountain Wireless stations are licensed to communities in counties outside the Arbitron market."[38] Clear Channel argues that its stations assigned by Arbitron to the Augusta-Waterville metro are "widely dispersed, stretching from central Maine all the way to the coast."[39] Thus, Clear Channel contends, "the Arbitron boundaries are arbitrary and do not reflect the real-world competitive landscape."[40]

20. We treat as a geographic market an area where radio advertisers who seek to reach the listening audience only in that area will likely face the same competitive alternatives. We believe that, in most cases, the Arbitron metro, or its functional equivalent, is the relevant geographic market for assessing the competitive effects of a proposed transaction.[41] To date, we have consistently used this market definition in evaluating the competitive effects of radio mergers.[42] While Clear Channel

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other media in response to a "small but significant and non-transitory" price increase for radio advertising.

[35] Clear Channel Response at 2.

[36] *See Horizontal Merger Guidelines* § 1.22.

[37] Clear Channel Response at 2.

[38] *Id.*

[39] *Id.*

[40] *Id.* at 2-3.

[41] Our presumption regarding the Arbitron metro is consistent with the approach taken by the antitrust authorities. The DOJ has, in reviewing radio mergers, generally relied on the Arbitron metro as the appropriate geographic market. The DOJ recognized that stations outside Arbitron metros achieve listening share within the Arbitron metro and that firms within an Arbitron metro advertise on stations in adjacent Arbitron metros. While these observations suggest that some competition for radio advertising may extend beyond the geographic area defined by the Arbitron metro, the DOJ has consistently decided that stations outside the Arbitron metro would not provide effective competition in the local advertising market.

[42] Use of this definition appears consistent with the three factors that we believe are particularly critical in determining a relevant geographic market, namely, (1) industry recognition, (2) geographic coverage of broadcast signals, and (3) customer demand.

challenges the presumption that the Arbitron metro is the relevant geographic market for conducting the instant analysis and argues that Augusta-Waterville "cannot be viewed in isolation from other closely grouped markets,"[43] Clear Channel offers no specific alternative geographic market. As such, we find no persuasive reason to vary from the presumption in our interim policy that the Arbitron metro represents the appropriate geographic market.

21. *Market Participants*. In addition to Clear Channel and Citadel, the following commercial band radio stations are reported by BIA[44] as having their home market in the Augusta-Waterville metro: (1) WMDR(AM), Augusta, Maine, and (2) WWWA(FM), Winslow, Maine, both owned by Light of Life Ministries, Inc.; and (3) WCTB(FM), Fairfield, Maine, owned by Mountain. However, Clear Channel sells all advertising time on station WCTB(FM) pursuant to a JSA.[45] Additionally, two noncommercial educational stations are listed in the Augusta-Waterville metro: WMEW(FM), Waterville, Maine, owned by the Maine Public Broadcasting Corporation, and WMHB(FM), Waterville, Maine owned by Mayflower Hill Broadcasting Corporation. BIA lists 21 out-of-market stations that received listening share in the Augusta-Waterville metro. Clear Channel owns five of these stations, all located in Maine,[46] and Citadel owns seven.[47]

22. Clear Channel makes numerous arguments attempting to refute BIA data regarding market participants. Briefly, these arguments are as follows: (1) BIA's methodology is flawed because it counts all of a station's revenue only in its "home market" and as a result does not reflect the extent to which out-of-market stations with high audience share in the Augusta-Waterville metro garner advertising revenue there; (2) "substantial numbers" of people in the Augusta-Waterville metro listen to radio stations that are "home" to a different market – mostly Portland, Bangor, or Lewiston-Auburn;[48] (3) three Portland stations, Citadel's WBLM(FM)(FM) and WCYY(FM), as well as WTHT(FM), owned by WMTW Broadcast Group, have a listening share equal to or higher than Clear Channel's WTOS-FM, Clear Channel's second strongest Augusta-Waterville metro home market station and the overall fourth-highest Augusta-Waterville metro station; (4) WTOS-FM, although listed as "home" in the Augusta-Waterville metro, has a higher listening share in both Portland and Lewiston-Auburn than in Augusta-Waterville, and therefore could elect to have BIA report the station's revenue in either of the other two markets; and (5) BIA's station revenue data rely on estimates and do not differentiate between revenue earned from in-market versus out-of-market sources, and the estimates "are off by a significant amount" in the Augusta-Waterville metro.[49] Clear Channel also notes that 41 percent of the "Key Accounts" (clients representing the top 80 percent of a station's billing) for its Augusta-Waterville metro stations

[43] Clear Channel Response at 3.

[44] All references to BIA data throughout the remainder of this document mean the year 2001 data made available to the public by BIA on March 12, 2002.

[45] *See* n.1, *supra*.

[46] Clear Channel's out-of-market stations are: WWBX(FM), Bangor, WQSS(FM), Camden, WZFX(FM) Searsport, WBFB(FM), Belfast, and WMCM(FM), Rockland.

[47] Citadel's out-of-market stations are: WCLZ(FM), Brunswick, WBLM(FM), Portland, WJBQ(FM), Portland, WCYI(FM), Lewiston, WCYY(FM), Biddeford (all in Maine); and WPKQ(FM), North Conway, and WHOM(FM), Mount Washington, both in New Hampshire.

[48] Clear Channel states that, while the Augusta-Waterville metro has 17 home stations, there are 21 stations from the Portland, Bangor, or unrated areas that have reportable listening shares in the Augusta-Waterville metro. Clear Channel Response at 3.

[49] Clear Channel Response at 3-4.

are advertisers based outside the metro.[50] Moreover, Clear Channel claims, 60 percent of the "National Business" advertising on its Augusta-Waterville metro stations is based on the stations' performance in the Bangor, Portland, or Lewiston-Auburn markets.[51]

23. Staff analysis suggests that some out-of-market stations may receive revenue from advertisers located in the Augusta-Waterville metro, and some Augusta-Waterville stations may receive revenue from advertisers located outside the Augusta-Waterville metro.[52] However, "local" Augusta-Waterville businesses (*i.e.*, businesses that view listeners in the Augusta-Waterville metro to be potential customers and do not view listeners in Bangor, Portland or Lewiston-Auburn to be potential customers) may consider most of the out-of-market stations to be poor substitutes for stations home to the Augusta-Waterville metro. Moreover, BIA data show that two station groups, Clear Channel and Citadel, dominate both in-market and out-of-market radio advertising revenues and listening share. With respect to out-of-market stations, BIA data show that 21 out-of-market stations receive 32.6 percent listening share in the Augusta-Waterville metro. However, five of these out-of-market stations, receiving a 6.0 percent listening share, are owned by Clear Channel, and seven of these out-of-market stations, receiving an 18.5 percent listening share, are owned by Citadel. Together, Clear Channel's and Citadel's out-of-market stations garner a 24.5 percent listening share in the Augusta-Waterville metro, thus accounting for 75 percent of the total out-of-market listening share. As noted above, Clear Channel's and Citadel's in-market station groups account in the aggregate for over 99 percent of listening from in-market stations. This suggests that advertisers seeking to reach potential customers in the Augusta-Waterville metro and the surrounding areas have only two meaningful options: Clear Channel or Citadel.

24. *Market Share and Market Concentration.* According to the BIA database, radio stations that are home to the Augusta-Waterville metro generated $4,475,000 in radio advertising revenues in 2001. Using BIA data, the pre-transaction market structure in the Augusta-Waterville metro is as follows:[53]

	Market Revenue	Market Share
Clear Channel	$2,300,115	51.4%
Citadel	$1,951,100	43.6%
Mountain	$ 223,750	5.0%
Total market revenue	$4,475,000	100%

The proposed transaction would increase Clear Channel's market share of revenue in the Augusta-Waterville metro from 51.4 percent to 55.9 percent. Under the Herfindahl-Hirshman Index ("HHI"), this represents an increase in HHI of 454, and a post-transaction HHI of 5020.

25. Clear Channel argues that BIA's estimates are almost 25 percent higher than actual revenues for Clear Channel and Mountain stations.[54] While BIA shows that Clear Channel and Mountain stations earned a cumulative 2000 revenue total of $2,650,000, Clear Channel claims that the actual revenue garnered by the stations was $2,212,597.[55] With respect to the HHI calculation, Clear Channel contests

[50] *Id.* at 3.

[51] *Id.*

[52] Our analysis indicates that Clear Channel's WTOS-FM and WHQO(FM) may sell more regional advertising than other stations in the Augusta-Waterville metro.

[53] Radio stations with no reported revenue are not included in the chart.

[54] Clear Channel Response at 4.

[55] *Id.*

the product and geographic market definitions and the revenue data used to produce the HHI figures.[56] On this basis, Clear Channel argues that the HHI calculation does not provide reliable information regarding competition in the Augusta-Waterville metro.[57] As noted above, we are not persuaded that the presumptive product and geographic markets identified in our interim policy are inappropriate in this case. Moreover, Clear Channel does not proffer its own HHI calculation and does not present sufficient evidence to overcome our concern about the highly concentrated nature of the Augusta-Waterville radio market.

26. *Existing Facilities/Barriers to Entry.* Where market share and concentration data suggest the potential for competition concerns, we examine the number, class, and signal contour of all existing stations in the metro to determine their competitive significance. We recognize that there may be strong AM and FM facilities with low advertising revenues, and our analysis considers the potential for these stations to provide effective competition in the future. In some cases, there may be facilities remaining outside the largest group's (or two largest groups') control sufficient in number to provide a competitive challenge. In the Augusta-Waterville metro, there is only one commercial radio station that would not be owned by the two largest groups following the proposed transaction: WCTB(FM), a Class C3 FM station. However, Clear Channel currently sells the commercial advertising time on this station pursuant to a JSA, as noted above. In the Augusta-Waterville metro, there are also two non-commercial educational stations, both licensed to Light of Life Ministries, Inc., operating in the non-reserved radio band: WMDR, a Class C AM station; and WWWA(FM), Class A FM station.[58] Both of these stations could provide some competitive rivalry were they to convert from non-commercial to commercial facilities.

27. We also consider evidence regarding the possibility of entry by new stations, as well as any barriers to entry, and the timeliness, likelihood, and sufficiency of entry to counter any potential market power by the dominant station(s) in the market. Clear Channel asserts that, because radio station facilities are subject to change *via* minor technical modifications that upgrade, downgrade, or relocate transmitters, as well as through petitions to change a station's community of license, it is impossible to predict what modifications may result from such changes or what opportunities may arise in the future for a station to enter the Augusta-Waterville metro.[59] While new entry and station relocation is possible in some radio markets, we do not believe there is a basis on this record to conclude that timely entry would be likely and sufficient to restrain the exercise of market power.

28. *Potential Adverse Competitive Effects: Coordination and Unilateral Market Power.* Under the interim policy, relevant evidence concerning the potential adverse competitive effects of a proposed transaction may include direct proof of adverse competitive effects or facts that demonstrate that structural conditions (*e.g.*, a high market share and significant barriers to entry) will facilitate the exercise of market power. In evaluating the potential adverse competitive effects of a proposed transaction, under the interim policy, we also consider the effect on competition, if any, that may have resulted from a pre-existing LMA or JSA between the applicants. Clear Channel asserts that this

[56] *Id.* at 4-5.

[57] *Id.* at 5.

[58] WWWA(FM) has been converted to noncommercial educational status pursuant to a modification of license application (File No. BMLED-20001010ADB), granted on January 30, 2001. Any prospective competitor wishing to operate the station on a commercial basis would therefore need to file an application on FCC Form 302 pursuant to 47 C.F.R. §73.1690(c)(9) to convert the license back to commercial status.

[59] Clear Channel Response at 6.

transaction is a non-event for competition analysis purposes, as it currently provides programming to and sells advertising on the stations pursuant to the LMA.[60] Prior to Clear Channel's LMA, it notes, Mountain had the same arrangements with Cumulus, from whom Clear Channel acquired its other Augusta-Waterville metro stations.[61] Thus, the advertising revenue for the stations has been received by an entity other than Mountain for more than three years.[62] Moreover, Clear Channel argues that it has not used its supposed market power to raise advertising rates in an anticompetitive fashion, nor could it do so, given the extent to which the Augusta-Waterville metro is interconnected with other Maine markets.[63]

29. We are not persuaded by Clear Channel's argument that the present transaction is negligible in terms of its impact on competition because it has operated the stations it seeks to acquire pursuant to LMA and JSA agreements for some time. There is no substantial evidence on the record from which we might conclude that no adverse effects have resulted from the aggregation of economic power attributable to Clear Channel's LMA and JSA relationships. We note, in this regard, that this is the first opportunity the Commission will have had to consider any such effects because we do not currently review LMAs or JSAs when they are entered.

30. In addition, Clear Channel asserts that the Commission has previously approved, and the Department of Justice determined that it would not challenge,[64] the common ownership of stations WSKW(AM) and WCTB(FM) and the stations that comprise Clear Channel's existing cluster of Augusta-Waterville metro stations.[65] Clear Channel contends that the substitution of WHQO(FM) for WCTB(FM) in the subject transaction is of no consequence and that, therefore, the subject transaction should be granted. However, when the staff granted the applications permitting Cumulus to acquire WSKW(AM) and WCTB(FM) from Mountain on March 12, 2001, Cumulus did not own the stations that Clear Channel now owns in the Augusta-Waterville market. On December 19, 2000, the staff granted the applications to assign the licenses of stations WABK-FM, WCME(FM), WFAU(AM), WIGY(FM), WKCG(FM), and WTOS-FM from Cumulus to Citicasters Co., a wholly-owned subsidiary of Clear Channel, and the parties consummated that transaction on January 18, 2001.[66] Additionally, even if Cumulus had owned the same cluster of stations in the Augusta-Waterville market that Clear Channel now owns when the staff granted Cumulus's application to acquire WSKW(AM) and WCTB(FM), the facts surrounding the prior Cumulus application and the subject application differ in several material respects. For example, Clear Channel currently controls the advertising on station WCTB(AM) through a JSA and, if the proposed transaction is approved, Clear Channel would control the advertising on WSKW(AM), WHQO(FM), and WCTB(FM) in addition to its existing stations in the Augusta-Waterville metro. In contrast, when Cumulus sought to acquire stations WSKW(AM) and WCTB(FM), that transaction also involved the assignment of station WHQO(FM) to a third party, Maine Public

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[60] *Id.* at 5.

[61] *Id.*

[62] *Id.*

[63] *Id.* at 5-6.

[64] As noted *supra* at ¶ 12 and footnote 21, our focus is different than that of the Department of Justice.

[65] Clear Channel cites applications to assign the licenses of stations WSKW(AM) and WCTB(FM) from Mountain to Cumulus Licensing Corp. ("Cumulus") (File Nos. BAL/BALH-19990205EB-EC) which were granted on March 12, 2001. These transactions were never consummated and the parties have informed the Commission that they do not intend to consummate the transaction.

[66] File Nos. BALH-20000817ABZ; BAL/BALH-20000817ACA-ACE.

Broadcasting Corporation.[67] Therefore, we find Clear Channel's assertion that the Commission previously approved a similar transaction to be without merit.

31. Clear Channel's acquisition of WSKW(AM) and WHQO(FM) would essentially create a duopoly market in the Augusta-Waterville metro, with Clear Channel and Citadel owning twelve of the fifteen stations in the market and having a combined share of 99.5 percent of the in-market advertising revenues and 98.7 percent of the audience share attributable to in-market stations. Clear Channel and Citadel collectively would own all but one of the commercial radio stations in the Augusta-Waterville market and advertising on that remaining station, WCTB(FM), is sold by Clear Channel pursuant to a JSA. As noted above, the Augusta-Waterville market is highly concentrated and there are significant barriers to entry. This market structure increases the risk of coordinated behavior leading to price discrimination, division of advertising accounts, and lower quality programming. As the D.C. Circuit has stated, "[t]he combination of a concentrated market and barriers to entry is a recipe for price coordination. Where rivals are few, firms will be able to coordinate their behavior, either by overt collusion of implicit understanding, in order to . . . achieve profits above competitive levels. The creation of a durable duopoly affords both the opportunity and incentive for both firms to coordinate to increase prices. . . . . Tacit coordination 'is feared by antitrust policy even more than explicit collusion, for tacit coordination, even when observed, cannot be easily controlled directly by the antitrust laws. It is a central object of merger policy to obstruct the creation or reinforcement by merger of such oligopolistic market structures in which tacit coordination can occur.'"[68]

32. *Efficiencies and other public interest benefits.* Under the interim policy, we consider evidence of economic efficiencies that the proposed transaction would produce and public interest benefits the proposed transaction would provide listeners or advertisers, such as improvements in the quality, scope, and quantity of community responsive programming, improved community service, and the furtherance of localism. Parties asserting that a proposed transaction will produce efficiencies and other public interest benefits are required to show both how the transaction will produce those benefits and how those benefits will flow through to listeners or advertisers. Clear Channel asserts that operating efficiencies will be realized through sharing facilities, vehicles, engineering, and office administrative personnel, as well as consolidation of certain functions such as accounting, traffic, and receptionist duties.[69] These, state Clear Channel, constitute clear "social benefits" as they create the same or more output with fewer resources.[70] Additionally, advertisers have realized benefit from efficiencies through the existing LMA in the form of a better advertising product – utilizing Clear Channel's "vast expertise" in developing a high quality, creative product for the advertiser -- for the same price.[71] Local advertisers also benefit from the option of having big-market talent produce their spots.[72] Clear Channel also notes that its ownership of WSKW(AM) and WHQO(FM) will continue other public interest benefits currently flowing from its operation of the stations under the existing LMA arrangement. For example, Clear

[67] On September 29, 1999, the Commission granted the application to assign the license of station WHQO(FM) from Mountain to Maine Public Broadcasting Corporation (File No. BALH-19990521EO). That transaction was never consummated.

[68] *FTC v. Heinz*, 246 F.3d 708, 724-25 (quoting 4 Phillip E. Areeda, Herbert Hovenkamp & John L. Solow, *Antitrust Law*, ¶ 901b2 at 9 (rev. ed. 1998)) (other quotations and citations omitted).

[69] Clear Channel letter at 6.

[70] *Id.* at 6-7.

[71] *Id.* at 7.

[72] *Id.*

Channel notes that it has created a news/talk network using WHQO(FM) and its currently owned WCME(FM) and is dedicating significant time and energy toward the development of the "network's" new local news/talk morning show.[73] This type of labor-intensive programming, it claims, has generally not been available in central Maine.[74] Additionally, Clear Channel states that it is using the sports format on WSKW(AM) to devote additional time to the broadcast of local high school sports.[75]

33. To be cognizable, efficiencies must be *transaction specific i.e.*, "efficiencies likely to be accomplished with the proposed transaction and unlikely to be accomplished in the absence of either the proposed transaction or another means having comparable anticompetitive effects."[76] Any claimed efficiencies resulting from a radio transaction should be substantiated and susceptible to verification by the Commission. Efficiencies that are vague, speculative, and unverifiable will not be considered in evaluating the competitive effects of the proposed transaction. Merger-specific efficiencies that lower the marginal cost of production relative to one-time reductions in fixed costs are weighted much more heavily than fixed cost reductions as possible offsets to potential adverse effects on listeners and advertisers resulting from the merger. Merger-specific efficiencies that lower the marginal cost of production are likely to flow-through as benefits to listeners and advertisers in the form of improved programming and lower advertising prices, while reductions in fixed costs will not provide the same financial incentive for such flow-through of benefits. Any profit-maximizing firm, including a monopolist, will reduce the price of output in response to a reduction in the marginal cost of production. Reductions in fixed cost for the same firm will provide no incentive for such reductions in output price that would otherwise flow-through merger-specific benefits to listeners and advertisers. The record in this proceeding neither quantifies the magnitude of the merger-specific efficiencies nor clarifies whether the efficiencies are properly attributable to one-time changes in fixed cost or to permanent reductions in marginal cost that provide a financial incentive to flow-through such efficiencies as benefits to listeners and advertisers. Additional specificity and documentation of claimed efficiencies should be developed during the hearing of this case. With respect to public interest benefits and merger-specific efficiencies, we believe that there are material issues as to whether Clear Channel's asserted benefits would result from the transaction and would benefit the public. While Clear Channel appears to be using its current LMA arrangements with WSKW(AM) and WHQO(FM) to realize cost savings and invest in programming, we find the record in this proceeding insufficient to conclude that the claimed public interest benefits and merger-specific efficiencies of this transaction outweigh the potential for competitive harm.

IV. CONCLUSION

34. On the basis of the information before us, we are unable to make the required finding that the public interest, convenience and necessity will be served by granting the subject application. Accordingly, we will designate the assignment application for hearing to determine, pursuant to Section 309(e) of the Communications Act,[77] and based on the evidence to be adduced at hearing, whether the public interest, convenience and necessity will be served by the grant of the application.

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[73] *Id.* at 1.

[74] *Id.*

[75] *Id.*

[76] *Horizontal Merger Guidelines*, § 4.

[77] 47 U.S.C. § 309(e).

V. ISSUES TO BE DETERMINED AT HEARING

35. Implementing our analytical framework described in the foregoing paragraphs, we direct the Administrative Law Judge ("ALJ") to examine in an evidentiary hearing the particular circumstances of the Augusta-Waterville, Maine market to determine whether the factual assumptions in Paragraphs 16 through 32 above are correct. We further direct the ALJ to determine, in light of his conclusions, whether the transaction is likely to cause any anticompetitive harms, and to determine what, if any, public benefits would accrue from this transaction. Finally, we direct the ALJ to apply these findings to determine whether, on balance, grant of the application would serve the public interest. The ALJ should address the following specific issues.

36. Issue 1: *Product Market Definition.* Following our analytical framework and the *Horizontal Merger Guidelines,* the ALJ shall receive testimony, studies, and other relevant economic evidence that allows the determination of the relevant commercial radio product in the Augusta-Waterville metro. In the alternative, parties may stipulate that the relevant product market is "radio advertising," the presumptive product market definition in our analytical framework.

37. Issue 2: *Geographic Market Definition.* Following our analytical framework and the *Horizontal Merger Guidelines*, the ALJ shall receive testimony, studies, and other relevant economic evidence that allows the determination of the relevant commercial radio geographic market. In the alternative, parties may stipulate that the relevant geographic market is the Augusta-Waterville metro. Arbitron identifies Kennebec County, Maine as comprising the Augusta-Waterville metro.

38. Issue 3: *Market Participants.* Given the findings with respect to Issues 1 and 2, the ALJ shall receive testimony and other relevant economic evidence that identifies all firms that participate in the relevant product and geographic markets. Following the general methodology prescribed in the *Horizontal Merger Guidelines,* firms not currently producing or selling the relevant product in the relevant geographic market may be included if their inclusion reflects a probable supply response in reaction to a hypothetical increase in the price of the relevant product. Such firms are "uncommitted entrants" and may be induced to enter the relevant product and geographic markets within one year, and without the expenditure of significant sunk costs of entry and exit, in response to a small but significant and non-transitory increase in the price of the relevant product. If the parties stipulate that the relevant product and geographic markets are "radio advertising" and the "Arbitron metro," respectively, then market participants would include all operating commercial radio stations in the Augusta-Waterville metro plus any "dark" stations that might be expected to become operational in response to a small but significant and non-transitory increase in the price of radio advertising.

39. Issue 4: *Market Shares.* The ALJ shall receive testimony or other economic evidence that will facilitate the calculation of market shares for all firms identified as market participants under Issue 3 based on total sales generated within the relevant geographic market for the most recent year for which data are available. If uncommitted entrants may be expected to enter within a year, in response to a small but significant and non-transitory price increase in the relevant product, then such forecast market shares may also be included. In the alternative, parties may stipulate that market shares will be calculated using the most recent revenue data available in the BIA database.

40. Issue 5: *Market Concentration.* The extent of market concentration depends on the number of firms in the market and their respective market shares. Our analytical framework recognizes the Herfindahl-Hirschman Index ("HHI") as a measure of market concentration but finds that the HHI may have certain shortcomings when applied to the commercial radio industry. The ALJ shall receive testimony, studies, or other relevant economic evidence to determine the appropriate measure of market

concentration in the Augusta-Waterville metro. In the alternative, the parties may stipulate that the market shares developed in the record pursuant to Issue 4 will be taken as the indicator of market concentration.

41. Issue 6: *Potential Adverse Competitive Effects.* Following our analytical framework and the *Horizontal Merger Guidelines*, the ALJ shall receive testimony, studies and other relevant economic evidence that evaluates the nature and extent of any lessening of competition that might result from the transaction in the relevant product and geographic markets. Evidence should be developed concerning the potential lessening of competition by (1) coordinated behavior among competing firms and (2) unilateral effects attributable to the behavior of the post-merger firm. Both the examination of the issue and the ALJ's opinion will be informed by the findings developed with respect to Issues 1 through 5.

42. Issue 7: *Conditions of Entry.* The ALJ shall receive testimony, studies, and other relevant economic evidence concerning the conditions of entry into the relevant product and geographic markets in the Augusta-Waterville metro. A transaction is unlikely to create or enhance market power, or facilitate its exercise, if entry into the radio market is sufficiently easy such that market participants, following the transaction, could not profitably maintain an increase in the price of the relevant product following the transaction. In general, the development of the record addressing conditions of entry in the Augusta-Waterville metro should follow our analytical framework and the *Horizontal Merger Guidelines*. Thus, evidence concerning the timeliness, likelihood, and sufficiency of entry in the Augusta-Waterville metro are essential to reaching a judgment with respect to the efficacy of market entry as a way to offset potential adverse competitive effects that may be identified in the record pursuant to Issue 6. In the alternative, parties may stipulate that entry is so difficult such that it is unreasonable to view it as a factor that may have significant effect as an offset to any increase in market power resulting from the merger.

43. Issue 8: *Efficiencies.* The ALJ shall receive testimony, studies, and other relevant economic evidence with respect to possible efficiencies that the transaction may produce. In general, the record on efficiencies must show that such efficiencies are both transaction -specific and cognizable as indicated in our analytical framework and the *Horizontal Merger Guidelines.*

44. Issue 9: *Public Interest Benefits.* The ALJ shall receive testimony, studies, and other relevant evidence that documents public interest benefits that the instant transaction will provide listeners and advertisers in the Augusta-Waterville metro. Such public interest benefits shall be in addition to efficiencies, if any, documented in the record pursuant to Issue 8 and must be benefits that would not otherwise be realized but for the instant transaction. To count as a public interest benefit, efficiencies must be shown to "flow through" in a measurable way to listeners or advertisers or both. Public interest benefits other than efficiencies may include improvements in the quality, scope, and quantity of community-responsive programming, improved community service, and other commitments to strengthen programming and advertising services that support our long-standing policy of localism in broadcasting. The record on this issue should be of sufficient scope and specificity to enable the ALJ to reach a judgment whether the public interest benefits specific to the merger are sufficiently certain to result from the merger and quantitatively and qualitatively substantial enough to offset the adverse effects, if any, of the merger on competition in the Augusta-Waterville metro.

VI. ORDERING CLAUSES

45. Accordingly, IT IS ORDERED, That, in the event the parties elect to defer further consideration of the application to assign the licenses of Stations WSKW(AM) and WHQO(FM), Skowhegan, Maine from Mountain Wireless, Inc. to Clear Channel Broadcasting Licenses, Inc. in

accordance with the interim policy, Mountain Wireless, Inc. and Clear Channel Broadcasting Licenses, Inc. SHALL FILE a joint election to defer consideration of the application. Such election SHALL BE FILED within 15 days of the Order becoming effective.

46. IT IS FURTHER ORDERED, That, in the event the parties do not timely file the joint election set forth in the paragraph above, pursuant to Section 309(e) of the Communications Act, the applications to assign the licenses of Stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain Wireless, Inc. to Clear Channel Broadcasting Licenses, Inc. ARE DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, on the following issue:

47. To determine, in light of the evidence to be presented in the hearing, whether the public interest, convenience and necessity would be served by the grant of the above-captioned assignment applications (File Nos. BAL-20010918ABB/BALH-20010918ABC).

48. IT IS FURTHER ORDERED, That, pursuant to Section 309(e) of the Communications Act, 47 U.S.C. § 309(e), the burden of proof with the introduction of evidence and the burden of proof with respect to the issue specified in this Order shall be upon Mountain Wireless, Inc. and Clear Channel Broadcasting Licenses, Inc., the applicant parties in this proceeding.

49. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order SHALL BE SERVED on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service SHALL BE ADDRESSED to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B431, Washington, D.C. 20554.

50. IT IS FURTHER ORDERED, That the effectiveness of this Order IS STAYED for a period of 20 days from the date of its release, during the first 10 days of which the parties may amend their application or file such other information with the Media Bureau as they deem relevant to ameliorate the competition concerns identified in this Order.

51. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, Mountain Wireless, Inc. and Clear Channel Broadcasting Licenses, Inc., pursuant to Sections 1.221(c) and 1.221(e) of the Commission's Rules, 47 C.F.R. §§ 1.221 (c) and (e), in person or by their respective attorneys, SHALL FILE in triplicate, A WRITTEN APPEARANCE, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed within 20 days of this Order becoming effective pursuant to Paragraph 49 above. Pursuant to Section 1.221(c) of the Commission's rules, if the parties fail to file an appearance within the specified time period, the assignment application will be dismissed with prejudice for failure to prosecute.

52. IT IS FURTHER ORDERED, That the applicants, pursuant to Section 311(a)(2) of the Communications Act, 47 U.S.C. § 311 (a)(2), and Section 73.3594 of the Commission's rules, 47 C.F.R. § 73.3594, SHALL GIVE NOTICE of the hearing within the time and in the manner prescribed, and SHALL ADVISE the Commission of the publication of such notice as required by Section 73.3594(g) of the Commission's rules, 47 C.F.R. § 73.3594(g).

53. IT IS FURTHER ORDERED That, the applications to assign the licenses of stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain Wireless, Inc. to Clear Channel

Broadcasting Licenses, Inc. WILL BE HELD IN ABEYANCE PENDING THE OUTCOME OF THIS PROCEEDING.

54. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND copies of this Order to all parties by certified mail, return receipt requested.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary