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Before the

Federal Communications Commission

Washington, D.C. 20554

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MAY 31 2006

Federal Communications Commission
Office of Secretary

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	
Table of Allotments,	)	MB Docket No. 02-266
FM Broadcast Stations	)	RM-10557
(Chillicothe, Dublin, Hillsboro, and	)	
Marion, Ohio)	)	

TO: Marlene Dortch, Secretary
Attn: Media Bureau

REPLY TO OPPOSITION TO FURTHER MOTION FOR LEAVE TO SUPPLEMENT PETITION FOR RECONSIDERATION

The Committee for Competitive Columbus Radio (the "Committee"), by its attorney, hereby respectfully replies to the "Opposition to Further Motion for Leave to Supplement Petition for Reconsideration" (the "Opposition"), filed in this proceeding on May 19, 2006, by Citicasters Licenses, L.P. ("Citicasters") and CC Licenses, LLC ("CC") (collectively, "Clear Channel"). In reply thereto, it is alleged:

1. In its Opposition, Clear Channel repeats the mantra that considerations of compliance with the Multiple Ownership Rules can only be raised in connection with Clear Channel's application to implement the change in location of Station WMRN-FM from Marion, Ohio to Dublin, Ohio. The validity - or the lack thereof – of that proposition, is, however, the very issue raised by the Committee's Petition for Reconsideration in this rulemaking proceeding.

2. In the proceedings below, the Committee argued that Clear Channel had not submitted a clear plan to comply with the Multiple Ownership Rules and that the

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Staff should not waste its time and resources, processing the rulemaking to move WMRN-FM from Marion, Ohio to Dublin, Ohio, unless and until Clear Channel submitted a workable plan to comply with the Rules. In a *Report and Order*, released in this proceeding on March 25, 2005, the Staff disagreed with the Commission stating that:

> "The Committee's concentration of control and multiple ownership issues are prematurely raised. It is established policy not to consider such issuesin conjunction with an allotment rulemaking proceeding. Rather, anyissue with respect to compliance with Section 73.3555 of the Rules will be considered in conjunction with the applications to implement the reallotment."

3. Clear Channel filed its implementing application on July 26, 2005. More than a year has passed since the Staff's *Report and Order* in this proceeding and, ten months have passed since the filing of the implementing application. During all of that time, Clear Channel has flailed around trying to find a theory under which it can comply with the Multiple Ownership Rules, once WMRN-FM is moved to Dublin. Thus, the Committee's original position, that compliance with the Multiple Ownership Rules should have been considered in connection with this rulemaking proceeding, has been fully vindicated. The Staff did, in fact, devote scarce resources to a rulemaking which, so far, has never been implemented because Clear Channel has never been able to demonstrate compliance with the Multiple Ownership Rules.

4. Clear Channel, itself, has recognized the relevance of these events to this rulemaking proceeding. In an "Opposition to Motion for Leave to Supplement Petition for Reconsideration," filed in this proceeding on May 9, 2006, Clear Channel attached its "Consolidated Opposition to Objections to Amendment," filed in connection with the implementing application. Clear Channel would not have attached pleadings, dealing

with the implementing application, if it did not believe that those pleadings were, in fact, relevant to the issues in this rulemaking.

5. The Committee's citation of the case of *Cumulus Licensing, LLC*, 21 FCC Rcd 2998 (Audio Div. 2006) is in no way inconsistent with any position which the Committee has taken in this proceeding. *Cumulus* simply stands for the proposition that the Commission defers to Arbitron and to BIA, in the matter of the definition of a radio market; that the Commission does not simply assume that because an Order has been issued purporting to modify the license of a station to move it to a different market, the size of the new market is automatically enlarged.

6. This rulemaking proceeding was the very first one in which the Commission's staff ruled, specifically, that considerations of compliance with the Multiple Ownership Rules would be deferred until after the filing of the implementing application. The issue here, raised by the Committee's Petition for Reconsideration, is whether that Staff decision was wise and consistent with public policy.

7. Here, when the FCC Staff issued its Order, purporting to modify the WMRN-FM license to move the station from Marion, Ohio to Dublin, Ohio, the Staff was aware that Clear Channel was already over its limit in the Columbus market. The Staff was also aware that Clear Channel is the largest chain operator in the United States and that Clear Channel can and does frequently dominate the markets in which it has stations. Nevertheless, the Staff chose not to address the matter of compliance with the Multiple Ownership Rules in this rulemaking proceeding. The issue is whether that was a wise decision.

8. Subsequent events demonstrate that the decision was not wise and not consistent with sound public policy. The difficulties being faced by Clear Channel in trying to achieve compliance simply confirm and validate the Committee's original contention that the rulemaking should never have been granted without a demonstration by Clear Channel that it could comply. Therefore, the Petition for Reconsideration should be granted and the Order, purporting to modify the license of Station WMRN-FM to change its location from Marion, Ohio to Dublin, Ohio should be vacated.

Respectfully submitted,

May 1, 2006

THE COMMITTEE FOR COMPETITIVE COLUMBUS RADIO

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CERTIFICATE OF SERVICE

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