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

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

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: July 5, 2006 **Released: July 7, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it: (1) a Petition for Reconsideration of a *Report and Order*[1] in this proceeding filed by the Committee for Competitive Columbus Radio ("Committee");[2] (2) an Opposition to Petition for Reconsideration jointly filed by Citicasters Licenses, L.P., licensee of Station WMRN-FM, Dublin (formerly, Marion) Ohio, and Clear Channel Broadcasting Licenses, Inc., licensee of Station WSRW-FM, Chillicothe (formerly, Hillsboro), Ohio (collectively, "Clear Channel");[3] (3) a Reply to Opposition to Petition for Reconsideration filed by the Committee; and (4) other related pleadings.[4] For the reasons discussed below, we deny the Committee's Petition for Reconsideration.

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[1] *Chillicothe, Dublin, Hillsboro, and Marion, OH,* Report and Order, 20 FCC Rcd 6305 (MB 2005) ("*R&O*").

[2] The Committee includes the following Columbus area broadcasters: North American Broadcasting Co., Inc., licensee of Stations WBZX(FM) and WMNI(AM), Columbus, Ohio, and WEGE(FM), Westerville, Ohio; WCLT Radio, Inc., licensee of WCLT-AM-FM, Newark, Ohio; Associated Radio, Inc., licensee of WSMZ-FM, Johnstown, Ohio, and WODB-FM, Delaware, Ohio; and Franklin Communications, Inc., licensee of WVKO(AM) and WSNY(FM), Columbus, Ohio.

[3] Citicasters Licenses, Inc., and Clear Channel Broadcasting Licenses, Inc., are indirect wholly owned subsidiaries of Clear Channel Communications, Inc.

[4] After the pleading cycle ended, the following pleadings were filed: (1) Motion to Accept Supplement and a Supplement filed by Clear Channel on August 2, 2005; (2) Opposition to Supplement filed by the Committee on August 11, 2005; (3) Reply to Opposition to Supplement filed by Clear Channel on August 22, 2005; (4) Comment on Citicasters' Supplement filed by Sandyworld, Inc., licensee of FM translator W294AH, Columbus, Ohio, on August 16, 2005 ; (5) Reply to Comment filed by Clear Channel on August 29, 2005; (6) Motion to Accept Supplement and Supplement filed by Clear Channel on November 8, 2005; (7) Opposition to Supplement filed by the Committee on November 17, 2005, and an attachment filed on November 18, 2005; (8) Reply to Opposition to Supplement filed by Clear Channel on December 1, 2005; (9) Motion for Leave to Supplement Petition for Reconsideration filed by the Committee on April 24, 2006; (10) Opposition to Motion for Leave to Supplement Petition for Reconsideration filed by Clear Channel on May 9, 2006; (11) Further Motion for Leave to Supplement Petition for Reconsideration filed by the Committee on May 12, 2006; (12) Opposition to Further Motion for Leave to Supplement Petition for Reconsideration filed by Clear Channel on May 19, 2006; and (13) Reply to Opposition

(continued....)

BACKGROUND

2. At the request of Clear Channel, the *Notice of Proposed Rule Making*[5] in this proceeding proposed the reallotment, downgrade, and change of community of license for Station WMRN-FM from Channel 295B at Marion, Ohio to Channel 294B1 at Dublin, Ohio, pursuant to the provisions of Section 1.420(i) of the Commission's rules [6] To accommodate the relocation of Station WMRN-FM to Dublin, the *NPRM* also proposed the reallotment, downgrade, and change of community of license for Station WSRW-FM from Channel 294B at Hillsboro, Ohio, to Channel 293A at Chillicothe, Ohio. Three parties[7] filed objections to these proposals, questioning, *inter alia,* whether the reallotments would result in a preferential arrangement of allotments and whether the relocation of Station WMRN-FM from Marion to Dublin would violate our multiple ownership rules or raise competitive concerns.

3. The *R&O* granted Clear Channel's rulemaking petition over these objections. First, the *R&O* determined that Clear Channel's proposed reallotments together constitute a preferential arrangement of allotments under our FM allotment priorities.[8] Specifically, the reallotment of Station WMRN-FM would result in a first local service to Dublin (pop. 31,392), triggering Priority 3. By way of contrast, the retention of Stations WSRW-FM at Hillsboro (pop. 6,386) and WMRN-FM at Marion (pop. 35,318) would maintain second and third local services, respectively in these communities, triggering less significant Priority 4. Second, the *R&O* concluded that the Committee's concentration of control and multiple ownership issues were prematurely raised because the Commission's policy is not to consider such issues in conjunction with an allotment rulemaking proceeding.[9] Rather, any issue with respect to compliance with Section 73.3555 of the Commission's rules will be considered in conjunction with applications to implement the reallotments.[10]

4. In its Petition for Reconsideration, the Committee seeks to raise three issues. First, it argues that the *R&O* erred in approving the relocation of Station WMRN-FM to Dublin, which is in the

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to Further Motion for Leave to Supplement Petition for Reconsideration filed by the Committee on May 31, 2006. In accordance with Section 1.429(d) of the Commission's rules, we will not consider these supplements and responsive pleadings. *See, e.g., Oakdale, Tioga, and West Monroe, LA,* Second Report and Order and Memorandum Opinion and Order, 4 FCC Rcd 6242, 6243 n.1 (MMB 1989). These pleadings, which attempt to raise multiple ownership issues as part of this rulemaking proceeding, are more appropriately considered in connection with Clear Channel's application for construction permit (File No. BPH-20050726ALM) to implement the reallotment and change of community of license for Station WMRN-FM to Dublin, Ohio.

[5] *Chillicothe, Dublin, Hillsboro, and Marion, OH,* Notice of Proposed Rule Making, 17 FCC Rcd 16345 (MB 2002) ("*NPRM*").

[6] This rule permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.

[7] These parties are the Committee, Sandyworld, Inc., and Infinity Broadcasting Operations, Inc. ("Infinity). Infinity did not file a petition for reconsideration. Sandyworld's late filed Comment is not being considered. *See supra,* note 4.

[8] The FM allotment priorities are (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] *See Revision of FM Assignment Policies and Procedures,* Second Report and Order, 90 FCC 2d 88, 91 (1982).

[9] *See Chillicothe and Ashville, OH,* 18 FCC Rcd 22410, 22414 (MB 2003), Memorandum Opinion and Order, *application for review pending. See also Detroit Lakes and Barnesville, MN, and Enderlin, ND,* Memorandum Opinion and Order, 17 FCC Rcd 25055, 25059-60 (MB 2002).

[10] *See* File Nos. BPH-20050726ALM for Station WMRN-FM and BPH-20050726AMD for Station WSRW-FM. An informal objection was filed against the application for Station WMRN-FM. Both of these applications are currently pending.

Columbus, Ohio, radio market, because Clear Channel cannot own any more stations in that market under the multiple ownership rules. The Committee acknowledges that the Commission has considered multiple ownership issues as part of its consideration of the implementing applications. The Committee, however, disagrees with this approach and contends that the issue should be confronted now. Second, the Committee argues that postponing consideration of the multiple ownership issue until the application stage is wasteful of Commission resources because under this policy, staff resources are expended on reallotments that may not be implemented. Third, the Committee notes that Clear Channel's proposal would downgrade both stations WMRN-FM and WSRW-FM, resulting in loss of service to the public, and would leave Hillsboro (pop. 6,368) with only one local daytime-only transmission service. Thus, argues the Committee, the *R&O* unjustly concentrated on Priorities (1) through (3) of the FM Allotment Priorities and virtually ignored Priority (4), and in so doing, incorrectly concluded that the Clear Channel proposal would create a preferential arrangement of allotments.

5. In its Opposition to Petition for Reconsideration, Clear Channel argues that that the Committee fails to raise any new factual or legal arguments. Clear Channel contends that the staff properly concluded that the multiple ownership issues are prematurely raised and that the proposal creates a preferential arrangement of allotments. In its Reply to Opposition to Petition for Reconsideration, the Committee reiterates that the multiple ownership issue should be considered at the present time because Clear Channel would have to divest itself of two FM stations in the Columbus, Ohio, radio market before it could own a station in Dublin and because no divestiture commitment has been submitted.

DISCUSSION

6. After careful review of the pleadings, we will deny the Committee's Petition for Reconsideration. Its first argument that compliance with the multiple ownership rules should be considered at the allotment, as opposed to the application, stage was previously raised by the Committee[11] and rejected in the *R&O* as explained above.[12] It is well established that the Commission will not reconsider arguments that have already been considered.[13] The *R&O*'s decision on this issue was supported by case law, and the Committee fails to cite any legal or factual error on this issue.

7. Although the Committee believes that postponing consideration of the multiple ownership issue until the application stage is wasteful of Commission resources, the Commission determined otherwise and adopted this policy " . . . in order to achieve an efficient and orderly transaction of both the rulemaking and the application process . . . ."[14] . Under Section 4(j) of the Communications Act of 1934, as amended, the Commission has the power to ". . . conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."[15] The Supreme Court has repeatedly held that this provision gives the Commission broad discretion to adopt its own procedures.[16] Determining whether a multiple ownership issue can be raised at the allocation or

[11] *See* Motion for Leave to Supplement Comments filed by the Committee on July 22, 2003 at 2-3; and Response to Supplement of Citicasters filed by the Committee on September 15, 2003, at 4-5.

[12] *See R&O,* 20 FCC Rcd at 6311.

[13] *See Eagle Broadcasting Co. v. FCC,* 514 F.2d 852 (D.C. Cir. 1975); and *WWIZ, Inc.,* Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC,* 351 F.2d 824 (D.C. Cir. 1965), *cert. denied,* 383 U.S. 967 (1966).

[14] *Chillicothe and Ashville, OH,* Memorandum Opinion and Order, 18 FCC Rcd at 22414, *app. for rev. pending.*

[15] 47 U.S.C. § 4(j).

[16] *See, e.g., FCC v. Pottsville Broadcasting Co.,* 309 U.S. 134, 138 (1940) (designating for comparative hearing an application for a new AM station after court remand is within the Commission's broad procedural powers under Section 4(j) of the Communications Act); *FCC v. WJR,* 337 U.S. 265, 282 (1949) (deciding whether to permit oral argument in connection with a petition for reconsideration is within the Commission's discretion under Section 4(j) (continued....)

application stage is the type of procedural matter that is within the Commission's discretion. Nothing in the record of this proceeding demonstrates that this policy is arbitrary or capricious or that the Commission abused its discretion.[17]

8. Finally, there is no error of fact or law regarding the staff's determination that Clear Channel's proposal would result in a preferential arrangement of allotments. Although Clear Channel's proposal would downgrade Stations WMRN-FM and WSRW-FM, resulting in loss of service to the public, and would leave Hillsboro with a local daytime-only AM station, these results are outweighed by the provision of a first local service at Dublin, which triggers higher allotment Priority (3). By way of contrast, retaining second and third local services at Hillsboro and Marion, respectively, triggers less significant Priority (4).[18]

9. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by the Committee for Competitive Columbus Radio IS DENIED.

10. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

11. For further information concerning this proceeding, contact Andrew J. Rhodes, Audio Division, Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
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Media Bureau

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of the Communications Act); and *FCC v. Schreiber,* 381 U.S. 279, 289-90 (1966) (rule requiring public disclosure at an investigatory hearing except where it is shown that public interest would be served by non-public disclosure is within the Commission's authority under Section 4(j) of the Communications Act).

[17] To the extent the Committee contends that the proposed reallotment to Dublin cannot be made because Clear Channel has not made a commitment to divest itself of any of its stations in the Columbus, Ohio, radio market, we disagree. There is no requirement that Clear Channel make a divestiture commitment before it files an application implementing this rulemaking. In any event, we take official notice that Clear Channel divested itself of Station WQIO(FM), Mt. Vernon, Ohio, which is located in the Columbus radio market. *See* File No. BalH-20050726ACU, which was granted on September 6, 2005, and consummated on October 1, 2005.

[18] *See, e.g., Crowell, Bonham, Bridgeport, et al., TX,* Report and Order, 19 FCC Rcd 5347 (MB 2004) (downgrading and realloting an FM station to Bennington, TX, as a first local service under Priority (3) outweighs retaining the station as a second local service at Bonham, TX, under Priority (4)). *See also Ravenswood and Elizabeth, WV,* Report and Order, 10 FCC Rcd 3181 (MMB 1995) (removing a community's second local service and leaving it with a daytime-only station is justified by providing a first local service at another community).