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2007 JAN 22 A 11: 57

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January 19, 2007

**VIA HAND DELIVERY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals II  
445 - 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

**FILED/ACCEPTED**

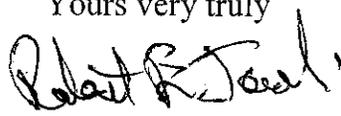
**JAN 19 2007**

Federal Communications Commission  
Office of the Secretary

Dear Ms. Dortch

On behalf of Mt. Wilson FM Broadcasters, Inc., licensee of stations KMZT-FM, Los Angeles, California and KKG0(AM), Beverly Hills, California, there are herewith transmitted an original and four copies of its Petition to Deny directed against the Clear Channel transfer of control applications (MB Docket No. 06-226).

Yours very truly



Robert B. Jacobi

RBJ:btc

Enclosures

- cc: Best Copy and Printing, Inc. (via e-mail)
- Stephen Svab (via e-mail)
- Erica Porter (via e-mail)
- Erin McGrath (via e-mail)
- Joel Rabinovitz (via e-mail)

FILED/ACCEPTED

JAN 19 2007

Federal Communications Commission  
Office of the Secretary

BEFORE THE

# Federal Communications Commission

In the Matter of	)	
	)	
Clear Channel Communications, Inc.	)	
Thomas H. Lee Equity Fund VI, L.P. and	)	BTCH-20061212BYE
Bain Capital (CC) IX, L.P.	)	BTCH-20061212BYP
	)	BTC-20061212BYZ
Transfer of Control of Licensee Entities	)	BTCH-20061212BZD
and Other Authorizations	)	BTCH-20061212BZM
	)	BTC-20061212AGI
	)	BTCH-20061212AYC
	)	BTC-20061212BAK
	)	
	)	MB Docket No. 06-226

2007 JAN 22 A 11:57

## PETITION TO DENY

Applications for transfer of control of Clear Channel Communications, Inc. (hereinafter "Clear Channel") were filed on December 12, 2006 and were listed on a Commission Public Notice released December 20, 2006. Mt. Wilson FM Broadcasters, Inc., licensee of stations KMZT-FM, Los Angeles, California and KKG0(AM), Beverly Hills, California (hereafter "Mt. Wilson"), by and through its counsel, respectfully petitions to deny the above-referenced Transfer of Control applications on the basis that Clear Channel has and continues to engage in anticompetitive conduct adversely bearing upon the Company's character qualifications or, in the alternative, grant the applications with a condition.

### **Standing**

1. Mt. Wilson owns and operates two stations, KMZT-FM, Los Angeles, California and KKGQ(AM), Beverly Hills, California – both of which are located in the Arbitron Los Angeles radio market. Clear Channel, directly and/or through its subsidiaries, owns and operates eight stations (KBIG-FM, KHHT-FM, KFI(AM), KIIS-FM, KLAC(AM), KOST-FM, KTLK(AM) and KYSR-FM), all of which are located in the Arbitron Los Angeles radio market (see Exhibit A). Consequently, and pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended and Section 73.3584 of the FCC Rules, Mt. Wilson as the licensee of competing and economically affected AM and FM stations in the same radio market, is a party in interest and has standing to petition to deny the Clear Channel applications. See FCC v. Sanders Brothers Radio Station, 309 U.S. 470, 476 (1940); Transcontinent Television Corp., 21 RR 945 (1961).

### **Clear Channel Anticompetitive Conduct**

2. The Clear Channel stations in the Arbitron Los Angeles radio market have and continue to engage in anticompetitive conduct, the purpose of which is twofold, (a) require advertisers to place 100% of their radio advertising budget on Clear Channel stations; and (b) stifle the competition. The Clear Channel modus operandi allows the advertiser to utilize any one or all of the Clear Channel stations and, further, to receive discounts. The “quid pro quo,” however, requires the advertiser to devote all of its radio advertising budget to Clear Channel stations and to refrain from placing advertisements

on any other Los Angeles radio market station. The obvious and intended purpose of the Clear Channel methodology is to stifle competition.

3. Mt. Wilson has encountered the above-described situation on two occasions: (a) in 2003 involving an existing Mt. Wilson advertiser who would no longer buy time on the Mt. Wilson AM stations due to an advertising agreement with Clear Channel which required 100% of the advertiser's radio budget to be spent on Clear Channel stations and (b) in the fall of 2006, in connection with the solicitation of new advertisers for station KMZT-FM. As in the 2003 instance, the prospective new advertisers all advised that they now advertised on Clear Channel stations and were prohibited from advertising on any other Los Angeles radio market stations. The fall 2006 experience occurred no less than six times.

4. As is readily apparent from the Clear Channel sales methodology (specifically, the condition which requires the advertiser to place 100% of its radio budget on Clear Channel stations), such anticompetitive practice adversely affects the ability of Mt. Wilson (as well as other stations in the Los Angeles radio market) to retain existing advertisers and to compete for new advertisers. The Clear Channel sales practices of prohibiting advertisers to use other market radio stations is a prime example of anticompetitive conduct adversely affecting competition and should not be condoned by the FCC.<sup>1</sup>

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<sup>1</sup> Obtaining timely Justice Department action is not a viable option. Considering the workload and the priorities of the Los Angeles DOJ office and the nature/overall significance of such a complaint, the likelihood of DOJ intervention is infinitesimal.

5. *The Clear Channel anticompetitive conduct warrants denial or designation for hearing of the transfer applications.* Pragmatically, however, a grant of the transfer applications hopefully will eliminate the anticompetitive sales practices of the present owners. Accordingly, and as an alternative (should the Commission grant the transfer applications), Mt. Wilson requests that such grant (at least, applicable to the Clear Channel stations in the Arbitron Los Angeles radio market) include a condition requiring the licensee's affirmative representation that it will immediately cease its anticompetitive conduct and that future anticompetitive conduct will result in FCC sanctions. The necessity for such a condition is further mandated by the fact that some transferors holding significant management-level positions will remain in significant management-level positions as a part of the new licensee ownership.

Respectfully submitted

MT. WILSON FM BROADCASTERS, INC.

By:



Robert B. Jacobi  
Cohn and Marks LLP  
1920 N Street, N.W.  
Suite 300  
Washington, DC 20036  
(202) 239-3860

Its Attorneys

Dated: January 19, 2007

**EXHIBIT A**

**IDENTIFICATION OF STATIONS IN LOS ANGELES**  
**RADIO MARKET**

# In 2005, the L.A. Metro Radio Market had revenues of \$1.080 billion.\*

## Clear Channel (20.6)\*\*

KBIG-FM  
KHHT-FM  
KFI-AM  
KIIS-FM  
KLAC-AM  
KOST-FM  
KTLK-AM  
KYSR-FM

## CBS Radio (18.4)\*\*

KCBS-FM  
KFWB-AM  
KLSX-FM  
KNX-AM  
KROQ-FM  
KRTH-FM  
KTWV-FM

## Univision Radio (13.4)\*\*

KLVE-FM  
KRCD-FM/KRCV-FM  
KSCA-FM  
KTNQ-AM

## W Radio (0.1)\*\*

XTRA -AM

## Radio One (1.6)\*\*

KKBT-FM

## Emmis (4.8)\*\*

KPWR-FM  
KZLA-FM

## ABC/Disney (5.6)\*\*

KABC-AM  
KDIS-AM  
KLOS-FM  
KSPN-AM

## Lieberman (4.7)\*\*

KBUE-FM/KBUA-FM/  
KEBN-FM  
KHJ-AM  
KWIZ-FM  
KMXN-FM (simulcast with KBUE)

## Spanish B'est (6.1)\*\*

KLAX-FM  
KXOL-FM

## Salem (2.2)\*\*

KXMX-AM  
KKLA-FM  
KRLA-AM  
KFSH-FM

## Taxi P'dtms (1.5)\*\*

KJLH-FM

## Entravision (3.8)\*\*

KLYY-FM  
KSSE-FM  
KSYY-FM  
KVYY-FM  
KDLD-FM  
KDLE-FM

## Mt. Wilson FM (1.4)\*\*

KMZT-FM  
KSUR-AM

## Styles Media (0.7)\*\*

KDAY-FM

## Lotus Kalmenson (0.8)\*\*

KIRN-AM  
KWPA-AM  
KWKW-AM

## 830AM (0.3)\*\*

KMXE-AM

## Multicultural (0.9)\*\*

KALI-AM  
KALI-FM  
KAZN-AM  
KMNY-AM  
KMRB-AM  
KYP-AM  
KBLA-AM

## Hi Favor (0.5)\*\*

KLTX-AM

## Sporting News (0.2)\*\*

KMPC-AM

## Calvary Chappel (0.8)\*\*

KWVE-FM

Source: \*SCBA Reporting Stations Jan.-Dec. 2005 for 59 Radio stations in L.A. and Orange Counties.  
\*\*Shares based on Spring 2006, Arbitron Los Angeles Metro Ratings, Monday-Sunday, 6A-12M, P12+.

07/25/06

State of California  
County of Los Angeles

}  
} SS:  
}

**AFFIDAVIT OF SAUL LEVINE**

I, Saul Levine, being first duly sworn, depose and state as follows:

1. I am the President of Mt. Wilson FM Broadcasters, Inc.
2. I have firsthand knowledge of the Clear Channel sales practice which occurred in 2003 (described in Paragraph 3(a)). I have read the Mt. Wilson Petition to Deny and the facts stated therein are true and correct to the best of my knowledge.

*Saul Levine*

Subscribed and sworn to before me

this 18 day of January, 2007

*Lori C. Roodhuyzen*  
Notary Public

My commission expires: 1/1/09

State of California ss  
County of Los Angeles

On January 18, 2007 before me, LORI C. ROODHUYZEN  
personally appeared SAUL LEVINE, personally known to me to be  
the person whose name is subscribed to the within instrument and acknowledged to me that he executed  
the same in his authorized capacity, and that by his signature on the instrument the person, or the entity  
upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

*Lori C. Roodhuyzen*  
Notary's Signature



State of California )  
County of Los Angeles ) SS:

AFFIDAVIT OF

I, Kane Biscaya, General Sales Manager, being first duly sworn, depose and state as follows:

1. I am a sales representative for Mt. Wilson FM Broadcasters, Inc. In that capacity, I (in 2006) solicited new advertising for Station KMZT-FM.

2. I have read the Mt. Wilson "Petition to Deny". The Clear Channel sales practices and the facts set forth as to the reasons why advertisers would not purchase advertising time on Station KMZT-FM are true and correct to the best of my knowledge.

[Signature]

Subscribed and sworn to before me this 18 day of January, 2007

[Signature]  
Notary Public

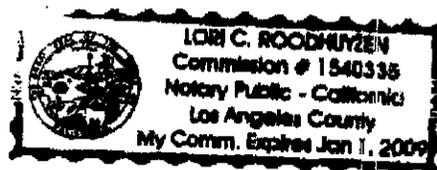
My commission expires: 1/1/09

State of California ss  
County of Los Angeles

On January 18, 2007 before me, LORI C. ROODHUYZEN personally appeared KANE BISCAYA, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

[Signature]  
Notary's Signature





**CERTIFICATE OF SERVICE**

I, Brenda Chapman, hereby certify that on this 19<sup>th</sup> day of January, 2007, a copy of the foregoing "Petition to Deny" was delivered via first class, U.S. mail, postage prepaid **OR** via e-mail where indicated to the following:

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Brenda Chapman

**\*\* VIA E-MAIL**