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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

FEB - 1 2007

Federal Communications Commission
Office of the Secretary

In re Application of

Shareholders of Clear Channel Communications, Inc.
Transferor

and

Stockholders of BT Triple Crown MergerCo., Inc.
Transferee

For Transfer of Control of Licensee Entities

To: The Commission

File Nos:

BTCCT-20061212AVR

BTCH-20061212CCF

BTCH-20061212BYE

BTCH-20061212BZT

BTC-20061212BXW

BTCTVL-20061212CDD

BTCH-20061212AET

BTC-20061212BNM

BTCH-20061212CDE

BTCCT-20061212CEI

BTCCT-20061212CEO

BTCH-20061212AVS

BTCCT-20061212BFW

BTC-20061212CEP

BTCH-20061212CFF

MB Docket No. 06-226

OPPOSITION TO PETITION TO DENY

Clear Channel Communications, Inc. ("CCC"), by its attorneys, hereby opposes the Petition to Deny filed by Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson" or "Petitioner") against the above-captioned applications on January 19, 2007 (the "Petition"). In the application, the Shareholders of CCC seek Commission consent to transfer of control of all of the CCC licensee entities to Stockholders of BT Triple Crown MergerCo., Inc. In its Petition, Mt. Wilson seeks denial or designation for hearing of the transfer applications or, alternatively, conditions on the transfer "requiring the licensee's affirmative representation that it will immediately cease its anticompetitive conduct." As discussed below, Mt. Wilson's vague and baseless Petition is procedurally defective and substantively meritless, and should be dismissed or denied.

With respect to procedure, Mt. Wilson's vague and unsubstantiated pleading fails to meet the requirements of the Communications Act of 1934, as amended, which provides that a petition contain "specific allegations of fact sufficient to show that . . . a grant of the application would be *prima facie* inconsistent with [the public interest, convenience, and necessity]." ¹ In this instance, Petitioner requests denial of the applications because of alleged anticompetitive practices committed by CCC. To support its claim, however, it states only that on one occasion in 2003 and on six in 2006 unnamed "prospective new advertisers" apparently advised Mt. Wilson employees that the advertisers "were prohibited from advertising on any . . . Los Angeles radio market stations" other than CCC stations. Mt. Wilson submits three equally vague four-sentence affidavits, presumably from the employees who solicited the advertisements from the unnamed advertisers. As with the pleading, these affidavits are completely devoid of specific facts. ² The Communications Act demands far more than Mt. Wilson has supplied. Under established FCC and federal court precedent, it is clear that allegations that consist of "ultimate, conclusory facts or more general affidavits . . . are not sufficient." ³ Accordingly, the Commission has routinely dismissed petitions to deny where a party has failed to offer "specific, documented allegations of fact" to support its claims. ⁴ The same result is compelled here.

¹ 47 U.S.C. § 309(d)(1).

² Each of the affidavits contains only one sentence directly related to the allegation in the Petition. In one, the President of Mt. Wilson notes that he "has firsthand knowledge of the Clear Channel sales practice which occurred in 2003." In the other two, sales representatives note that in 2006 "they solicited new advertising" for Mt. Wilson-owned FM station KMZT-FM and that "[t]he Clear Channel sales practices and the facts set forth as to the reasons why advertisers would not purchase advertising time on KMZT-FM are true and correct to the best of my knowledge."

³ *Gencom, Inc. v. FCC*, 832 F.2d 171, n.11 (D.C. Cir. 1987).

⁴ See, e.g., *Southern Broadcast Corp.*, 16 FCC Rcd 3655, 3666-67 (2001) (denying application for review of Mass Media Bureau order that had dismissed a petition to deny a license renewal application because the petitioner "ha[d] not proffered specific, documented allegations of fact to" support its claims); *WFBM, Inc.*, 47 FCC 2d 1267 (1974) (dismissing petition to deny license

Even if the Commission reviews the Petition on its merits, the Petition lacks any substance and therefore warrants denial. Petitioner has not supplied enough facts to allow CCC to specifically address the seven alleged instances of anticompetitive behavior mentioned in the Petition. Jeff Thomas, CCC's Vice President and Director of Sales for the Los Angeles market, however, generally confirms that his staff has no policy—written or otherwise—of requiring advertisers to devote all of their radio advertising budget to the CCC stations. See attached declaration. At times advertisers do *choose* to spend their entire radio budget at a particular station or commonly owned group of stations. Although impossible to quantify how commonly this occurs because advertisers typically do not discuss with CCC the manner in which they apportion their advertising budget, occasionally CCC does learn that an advertiser (usually a smaller advertiser) has *chosen* to spend its entire radio advertising budget on CCC stations. Additionally, a few times each year, an advertising agency contacts CCC on behalf of a large advertising client who has *chosen* to allocate its entire radio advertising budget to CCC if the company can offer a better package than area competitors. Even where CCC wins this business, it does not prohibit the advertiser from ultimately choosing to advertise with non-CCC stations.⁵ Thus, Petitioner's sparse claims (to the extent they can be discerned) are baseless. Consequently, the Commission should deny the Petition.

(Continued . . .)

renewal application “because of its pervasive lack of specificity” and because “the factual predicates for the petitioner’s accusations [were] nowhere set forth,” and stating that “[i]t is well established that allegations of ultimate conclusory facts or mere general allegations are not sufficient to require an evidentiary hearing”) (citing *Stone v. FCC*, 466 F.2d 316, *reh’g denied*, 466 F.2d 331 (D.C. Cir. 1972)); see also *Danbury Cellular Telephone Co. (Assignor), Horizon Cellular Telephone Co. of Central Kentucky, L.P. (Assignee)*, 8 FCC Rcd 7047, 7048 (1993) (dismissing petition to deny a cellular license transfer application because of the petitioner “d[id] not plead with the specificity required under the statute and [the FCC’s] rules”).

⁵ See Exhibit 1, Declaration of Jeff Thomas.

Finally, even if a handful of advertisers *choose* to spend their entire advertising budget with CCC's Los Angeles stations, the facts provided in Mt. Wilson's own pleading attest to the absurdity of its conclusory argument that doing so has an anticompetitive impact on that market. As the Petition notes, the Los Angeles market is the second ranked Arbitron in the country. In 2005, according to Petitioner, the Los Angeles metro radio market generated revenues of \$1.080 billion dollars, of which CCC stations accounted for just one-fifth of the revenue.⁶ The claim that this behemoth market could be impacted by exclusive ad buys on the part of a few of the thousands and thousands of local area advertisers is ludicrous.

For all of these reasons, Mt. Wilson's Petition should be either dismissed summarily on procedural grounds or denied on the merits and the transfer of control applications granted.

Respectfully submitted,

CLEAR CHANNEL COMMUNICATIONS, INC.

By: 
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Dated: February 1, 2007

⁶ See Petition at Exhibit A.

EXHIBIT 1

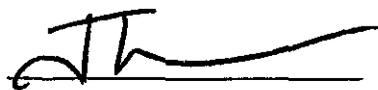
Declaration of Jeff Thomas

Declaration of Jeff Thomas

I, Jeff Thomas, make the following declaration under penalty of perjury:

1. Since 2005 I have served as Vice President/Director of Sales for Clear Channel Los Angeles. I joined Clear Channel in August 2000. In total, I have worked in radio sales since 1982, the past nine years in the Los Angeles market.
2. In my current position I oversee the Los Angeles Clear Channel sales team and all sales-related operations. I have read the Petition to Deny filed by Mt. Wilson FM Broadcasters, Inc. The Petition does not provide enough specific facts to allow me to research and address the seven encounters Mt. Wilson personnel allegedly had with certain local advertisers in 2003 and 2006. I can confirm that we do not have either an oral or a written policy of requiring advertisers to devote all of their radio advertising budget to our stations.
3. Occasionally I learn of a situation where an advertiser decides to spend its entire radio advertising budget on one or more of our stations. I cannot quantify how often this occurs because advertisers generally do not discuss with me or my staff how they will divide up their advertising budget. I can say that most often it is smaller advertisers who choose to place all of their ad buys on one station or on a few commonly-owned stations. Very rarely—perhaps once or twice a year—an advertising agency contacts us on behalf of a large advertising client who would like to allocate its entire radio advertising budget to our stations if we can offer a better advertising rates and promotions package than area competitors. Even when we win this business, we do not prohibit the advertiser from ultimately choosing to advertise with non-Clear Channel stations. The vast majority of our advertising business is shared with other area stations and my sales staff periodically encounters instances where an advertiser does not advertise on our stations because it has decided to spend all of its radio advertising budget with another broadcaster.

January 31, 2007

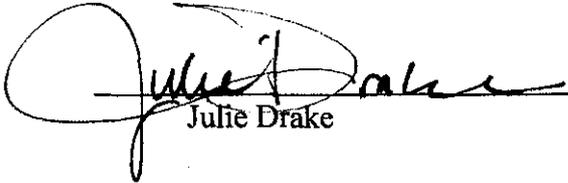


Jeff Thomas

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2007, a copy of the foregoing
“Opposition to Petition to Deny” was delivered via first class postage prepaid U.S. mail to the
following:

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Julie Drake