

EXHIBIT COPY 00001

LAW OFFICES

COHN AND MARKS LLP

SUITE 300

1920 N STREET N.W.

WASHINGTON, D.C. 20036-1622

TELEPHONE (202) 293-3860

FACSIMILE (202) 293-4827

HOME PAGE WWW.COHNMARKS.COM

OF COUNSEL

MARCUS COHN (1913-2001)

LEONARD H. MARKS (1916-2006)

JOEL H. LEVY

ELLEN MANDELL EDMUNDSON

ROBERT B. JACOBI
ROY R. RUSSO
RONALD A. SIEGEL
LAWRENCE N. COHN
RICHARD A. HELMICK
J. BRIAN DE BOICE
JEROLD L. JACOBS
SUSAN V. SACHS

FILED/ACCEPTED

FEB 12 2007

Federal Communications Commission
Office of the Secretary

DIRECT DIAL: (202) 452-4810

EMAIL ADDRESS:

February 12, 2007

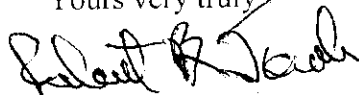
VIA HAND DELIVERY

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

Dear Ms. Dortch

On behalf of Mt. Wilson FM Broadcasters, Inc., licensee of stations KMZT-FM, Los Angeles, California and KKGO(AM), Beverly Hills, California, there are herewith transmitted an original and four copies of its "Reply to Clear Channel Opposition to Petition to Deny" (MB Docket No. 06-226).

Yours very truly


Robert B. Jacobi

RBJ:mck

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)

No. of Copies rec'd 0 + 4
List ABCDE

ORIGINAL

BEFORE THE

Federal Communications Commission

FILED/ACCEPTED

FEB 12 2007

Federal Communications Commission
Office of the Secretary

In re Application of	)	File Nos.:
)	
Shareholders of Clear Channel	)	BTCCT-20061212AVR
Communications, Inc.	)	BTCH-20061212CCF
Transferor	)	BTCH-20061212BYE
	)	BTCH-20061212BZT
and	)	BTC-20061212BXW
	)	BTCTVL-20061212CDD
Stockholders of BT Triple Crown	)	BTCH-20061212AET
MergerCo., Inc.	)	BTC-20061212BNM
Transferee	)	BTCH-20061212CDE
	)	BTCCT-20061212CEI
For Transfer of Control of Licensee	)	BTCCT-20061212CEO
Entities	)	BTCH-20061212AVS
	)	BTCCT-20061212BFW
	)	BTC-20061212CEP
	)	BTCH-20061212CFF
)	
	)	MB Docket No. 06-226

To: The Commission

**MT. WILSON REPLY TO CLEAR CHANNEL
OPPOSITION TO PETITION TO DENY**

Mt. Wilson FM Broadcasters, Inc., licensee of radio stations KMZT-FM, Los Angeles, California and KKGO(AM), Beverly Hills, California (hereinafter "Mt. Wilson") filed a Petition to Deny (hereinafter, the "Petition") the above-referenced applications for transfer of control of Clear Channel Communications, Inc. (hereinafter "Clear Channel"). Clear Channel filed an Opposition on February 1, 2007. Mt. Wilson, by and through its counsel, respectfully replies to the Clear Channel Opposition.

The facts underlying the Clear Channel anticompetitive conduct are set forth in the Mt. Wilson Petition. Two of the affidavits (pertaining to the solicitation of new advertisers) are from Mt. Wilson employees (General Sales Manager and Sales Representative). The affidavit pertaining to a then-existing advertiser is from Saul Levine, the President of Mt. Wilson. All of the affidavits attest to the facts set forth in paragraphs 2 and 3 of the Petition, the relevant portions of which state,

“The Clear Channel modus operandi allows the advertisers 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.” (paragraph 2);

“As in the 2003 instance [involving an existing advertiser who would no longer buy time on the Mt. Wilson AM station due to an advertising agreement with a Clear Channel station that required 100% of the advertiser’s radio budget to be spent on Clear Channel stations], 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 station.” (paragraph 3).

The referenced events (supported by the affidavits) describe anticompetitive conduct (i.e., requiring 100% of the radio advertising budget to be spent on Clear Channel Los Angeles market stations as a condition for Clear Channel offering better advertising rates and promotions) which occurred as set forth in the Petition. As a practical “real world” matter, the Commission should recognize advertisers cannot afford to be identified in a market economically dominated by Clear Channel, in effect, the “800 pound gorilla.”

The numerical instances of advertisers who affirmatively described the Clear Channel “quid pro quo” modus operandi are consistent and logical (better advertising rates and promotions). While the Thomas Declaration denies that Clear Channel has a policy of requiring an advertiser to devote all of its radio advertising budget to Clear Channel stations, the Declaration acknowledges that “smaller advertisers . . . choose to place all of their ad buys on one station or on a few commonly-owned stations. . . . [and] 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.” The facts are that some advertisers do allocate all of their radio advertising budget to Clear Channel stations and, further, that some advertisers understand that the “better advertising rates and promotion packages” are conditioned upon the advertiser devoting 100% of its radio advertising budget to Clear Channel stations.

Thomas serves as Vice President/Director of Sales for Clear Channel Los Angeles and oversees the Los Angeles sales team and all sales related operations. Clear Channel operates commercially three AM stations, five analog FM stations, five digital (HD-2) stations, four XM satellite stations¹ and outdoor advertising facilities in the Los Angeles market. Irrespective of the Thomas denial of a Company policy requiring 100% of the radio advertising budget to be devoted to Clear Channel stations, the facts demonstrate that at least at some Clear Channel stations, Clear Channel employees led advertisers to

¹ See Exhibit A.

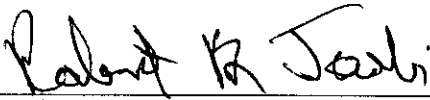
believe/understand that the benefits/discounts offered by Clear Channel were conditioned upon the advertiser devoting 100% of its radio advertising budget to Clear Channel stations. Considering the scope of the Clear Channel sales empire consisting of no less than 17 different formatted commercial stations/channels, the outdoor advertising and the hundreds of Clear Channel employees engaged in sales-related operations, knowledge of anticompetitive conduct and/or enforcement of all Company policies at all employment levels by a single individual was and is a virtual impossibility. The events described in paragraphs 2 and 3 occurred irrespective of the Company policy, irrespective of Thomas' knowledge and irrespective of the doubts cast by the Clear Channel Opposition.

The Mt. Wilson Petition was filed singularly based upon competition. Clear Channel economically dominates the market. Mt. Wilson has three outlets in the Los Angeles market (including a digital FM HD-2 channel). Clear Channel has 17 outlets (including at least five FM HD-2 channels and four XM satellite channels), plus outdoor advertising facilities. The disparity in numbers is further exacerbated by the Clear Channel anticompetitive conduct. The fact that Clear Channel does not have a policy requiring an advertiser to devote 100% of its radio advertising budget to Clear Channel stations does not dispute the facts set forth in the Mt. Wilson Petition and does not resolve the problem. The fact is, such anticompetitive conduct occurred and Mt. Wilson was adversely affected. Clear Channel is responsible for the conduct of all of its employees. Whether the Commission should investigate the adequacy of Clear Channel employee supervision through the Hearing process or should include a condition on the grant to the effect that future anticompetitive conduct will result in FCC sanctions

(the latter is preferable) is the ultimate responsibility of the Commission. To ignore the Mt. Wilson Petition would be irresponsible and politically, defenseless.

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: February 12, 2007

EXHIBIT A

DETROIT NEWS ARTICLE

[Return to regular web page](#)

This is a printer friendly version of an article from **The Detroit News**
To print this article open the file menu and choose Print.

February 1, 2007

Ads invade satellite radio

Commercials rile some subscribers of XM Radio, Sirius

Eric Morath / The Detroit News

Consumers can run, but they can't hide from the almighty ad.

Satellite radio listeners are the latest to be irked by the omnipresence of marketing pitches.

Last year, advertisements began popping up on four XM Radio music channels, even though thousands of customers signed up under the promise of commercial-free listening.

Some analysts predict current satellite advertising is just the start of the trend.

Frustrated XM subscribers join the ranks of cable TV viewers and Internet surfers, who once enjoyed less commercialized playgrounds but now have spam-filled inboxes and movies chopped up into 15-minute segments.

"I bought XM radio because I wanted something that wasn't clogged with commercials," said Alfred Lupercio of Chesterfield Township. "But now there seems to be more and more and I figure it's not worth the money."

Lupercio plans to cancel his XM subscription, which costs about \$142 a year, and buy an iPod for his car.

Ironically, XM is a somewhat unwilling participant in the latest frontier of commercial infringement.

Like its main rival, Sirius, XM has always had commercials on its talk stations and, before 2004, had some commercial music stations. But to match Sirius it went to commercial-free music.

Then, one-time XM investor and terrestrial radio station operator Clear Channel sued, and won the right to play commercials on the four XM stations it controls.

XM, in response, added four new commercial-free channels in similar formats to the Clear Channel stations. For example, XM's Flight26 on channel 26 is an ad-free mirror of Clear Channel-owned Mix on channel 22.

"We have the most commercial free music on satellite radio," said Chance Patterson, XM vice president of corporate affairs. "We have more commercial-free channels now than we had total channels when we started."

But XM can no longer market itself as all commercial-free music, as Sirius often does.

The change boils the blood of subscribers like Lupercio, who swear there are more commercials on XM talk channels as well. XM officials say talk commercials have not changed, and often follow the format of the content provider, such as CNN.

Balancing the damage

Satellite radio listeners still have plenty of commercial-free options, but that's likely to change in the long run, said telecom analyst Jeff Kagan.

"As they grow and gain subscribers, I can't imagine them giving up the millions in revenue they could take in from advertisers," he said. XM Radio has 7.6 million subscribers and Sirius has more than 6 million.

"The key is doing it in a way that's not offensive to listeners. Marketing yourself as commercial-free, and then suddenly adding commercials, is offensive."

Both advertisers and media providers need to balance the "collateral damage" of angering some customers with the benefits of reaching new audiences or increasing revenues, said Dave Regan, an instructor in Michigan State University's Advertising, Public Relation and Retail department.

"If many people are using the product, chances are good they'll eventually sell out and start selling advertisements," he said. "My father still grumbles that he subscribed to cable because they promised him less commercials."

Sirius officials, however, say they have no intention to add commercials to its music stations and XM says it has no plans to expand its number of ad-supported music channels.

Commercials are inevitable

A decade or so ago, some basic cable movie channels, such as American Movie Classics (AMC), did not interrupt films with commercials and Internet users read e-mail without sifting through spam.

Even terrestrial radio was commercial free at the beginning of the last century, but the Radio Act of 1927 allowed networks to take on advertisers, rather than rely on government support.

The commercials, however, don't bother everyone. XM subscriber Matt Nowaczok said he signed up for the wider variety of music and the availability of more news-talk outlets. He said commercials are a minor annoyance compared to how much he enjoys the service.

"I don't even listen to CDs in my car anymore," the Georgia resident said. "It's great for road trips, and I drive a lot for my job."

No doubt some newspaper readers grumbled when, in 1856, the New York Ledger newspaper ran the first-ever full-page ad.

Most satellite radio users won't bail out simply because a few more channels have commercials on them, said industry analyst April

Horace with Janco Partners Inc. She said most users pick their services based on programming, such as Howard Stern's Sirius stations or Major League Baseball on XM.

As far as advertng, the bottom line is, if thousands or millions come in contact with a new form of media, brands are likely to follow.

"The masses get on board so quickly," said MSU's Regan, arguing that advertisers must keep pushing the envelope to reach customers.

"What wowed you 15 minutes ago doesn't wow you 15 minutes from now."

You can reach Eric Morath at (313) 222-2504 or emorath@detnews.com.

Sirius vs. XM

Here's how the two dominate Satellite radio providers break down:

Attribute Sirius / XM

Cost: \$12.95 per month/ \$12.95 per month

Major personalities: Howard Stern, Martha Stewart / Opie & Anthony, Oprah Winfrey

Major sports: NFL, NBA/ MLB, NHL

Subscribers: 6 million/ 7.2 million

Commercials: Only on talk/ Talk and 4 of 73 music channels

Sources: Sirius, XM

[Return to regular web page](#)

CERTIFICATE OF SERVICE

I, Monica King, hereby certify that on this 12th day of February, 2007, a copy of the foregoing "Mt. Wilson Reply to Clear Channel Opposition to Petition to Deny" was delivered via first class U.S. mail, postage prepaid **OR** via e-mail where indicated to the following:

Dorann Bunkin, Esq.
Wiley Rein & Fielding, LLP
1776 K Street, NW
Washington, DC 20006

John S. Logan, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802

Best Copy and Printing, Inc. **
The Portals II
445 – 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Stephen Svab **
Media Bureau
Federal Communications Commission
The Portals II
445 – 12th Street, S.W.
Room 2-B418
Washington, D.C. 20554

Erica Porter **
Media Bureau
Federal Communications Commission
The Portals II
445 – 12th Street, S.W.
Room 2-A110
Washington, D.C. 20554