

Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562-8887.

Comments should reference the Peak Oil Superfund Site, Tampa, Florida, and EPA Docket No. CER-04-2002-3753. Written comments may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: August 8, 2002.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

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## FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 02-138; FCC 02-166]

### Mountain Wireless, Inc. and Clear Channel Broadcasting License, Inc.

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the FCC designates the applications to assign the licenses of radio stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain Wireless, Inc. ("Mountain") to Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"). The Commission cannot find, based on the record, that grant of these applications is consistent with the public interest, convenience, and necessity. Accordingly, pursuant to 47 U.S.C. 309(e), the Commission designates the applications for hearing to determine whether the public interest, convenience, and necessity will be served by grant of the applications.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for document filing dates.

**ADDRESSES:** Please file documents with the Investigations and Hearing Division, Enforcement Bureau, Federal Communications Commission, Room 3-B431, 445 12th Street, SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Kelley, Chief, Investigations and Hearing Division, Enforcement Bureau, at (202) 418-1420.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's Hearing Designation Order, MM Docket No. 02-138, adopted on June 5, 2002 and released on July 10, 2002. The full text

is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554. The full text may also be purchased from the Commission's copy contractor, Qualex International, Room CY-B402, 445 12th Street, SW, Washington, DC 20554, telephone (202) 863-2983, facsimile (202) 863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com), or may be viewed via the internet at: [http://www.fcc.gov/Document\\_Indexes/Media/2002\\_index\\_MB\\_Order.html](http://www.fcc.gov/Document_Indexes/Media/2002_index_MB_Order.html). Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

### Synopsis of the Order

1. In March 1996, the Commission relaxed the numerical station limits in its local radio ownership rule in accordance with Congress's directive in section 202(b) of the Telecommunications Act of 1996. Since then, the Commission has received applications proposing transactions that would comply with the new limits, but that nevertheless could produce concentration levels that raised significant concerns about the potential impact on the public interest. In response to these concerns, the Commission concluded that it has an independent obligation to consider whether a proposed pattern of radio ownership that complies with the local radio ownership limits would otherwise have an adverse competitive effect in a particular local radio market and thus would be inconsistent with the public interest. In August 1998, the Commission also began flagging public notices of radio station transactions that would result in one entity controlling 50 percent or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70 percent or more of the advertising revenues in that market. On November 8, 2001, we adopted the Notice of Proposed Rulemaking in MM Docket No. 01-317, 16 FCC Rcd 19861 (2001), 66 FR 63986, December 11, 2001 ("*Local Radio Ownership NPRM*"). We expressed concern that our current policies on local radio ownership did not adequately reflect current industry conditions and had led to unfortunate delays in the processing of assignment and transfer applications. Accordingly, we adopted the *Local Radio Ownership NPRM* to undertake a comprehensive examination of our rules and policies concerning local radio ownership and to develop a new framework that will be more responsive to current marketplace

realities while continuing to address our core public interest concerns of promoting diversity and competition. In the *Local Radio Ownership NPRM*, we also set forth an interim policy to guide our actions on radio assignment and transfer of control applications pending a decision in that proceeding. Under our interim policy, we presume that an application that falls below the 50/70 screen will not raise competition concerns unless a petition to deny raising competition issues is filed. For applications identified by the 50/70 screen, the interim policy directs the Commission's staff to conduct a public interest analysis, including an independent preliminary competition analysis, and sets forth generic areas of inquiry for this purpose. The interim policy also sets forth timetables for staff recommendations to the Commission for the disposition of cases that may raise competition concerns.

2. On September 18, 2001, Mountain and Clear Channel filed applications proposing to assign the licenses of WSKW(AM) and WHQO(FM) from Mountain to Clear Channel. The applications were unopposed. Clear Channel currently owns six stations in the Augusta-Waterville, Maine Arbitron metropolitan market ("Augusta-Waterville metro"): (1) WFAU(AM), Gardiner, Maine; (2) WABK-FM, Gardiner, Maine; (3) WCME(FM), Boothbay Harbor, Maine; (4) WIGY(FM), Madison, Maine; (5) WKCG(FM), Augusta, Maine; and (6) WTOS-FM, Skowhegan, Maine.

3. Section 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. 310(d), requires the Commission to find that the public interest, convenience and necessity would be served by the assignment of Mountain's radio broadcast licenses to Clear Channel before the assignment may occur. Under the interim policy set forth in our *Local Radio Ownership NPRM* we conduct a public interest analysis, including but not limited to an independent preliminary competition analysis of the proposed transaction based on publicly available information and information in the Commission's records. Under the interim policy, to decide whether a proposed assignment serves the public interest, we first determine whether it complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules, including our local radio ownership rules. If it does, we then consider any potential public interest harms of the proposed transaction as well as any potential public interest benefits to

determine whether, on balance, the assignment serves the public interest. The Commission's analysis of public interest benefits and harms includes an analysis of the potential competitive effects of the transaction, as informed by traditional antitrust principles. However, the Commission's public interest evaluation is not limited to competition concerns but necessarily encompasses the broad aims of the Communications Act. These broad aims include, among other things, ensuring the existence of an efficient, nationwide radio communications service available to everyone and promoting locally oriented service and diversity in media voices. Our public interest analysis therefore includes assessing whether the transfer will affect the quality of radio services or responsiveness to the local needs of the community, and whether it will result in the provision of new or additional services to listeners. Thus, under our interim policy, where a proposed transaction raises concerns about economic concentration, we will consider evidence that the particular circumstances of a case may mitigate any adverse impact that might otherwise result, as well as any evidence of benefits to radio listeners that might result from the proposed transaction. Ultimately, it is the potential impact of the transaction on listeners that will determine whether we can find that, on balance, grant of a particular radio station assignment or transfer of control application serves the public interest.

4. Having concluded that the proposed transaction is consistent with the numerical limits set forth in our ownership rules, we turn to our competition analysis. Here, we find that the proposed transaction would create a market in which the combined market share of the top two group owners in the market would be 99.5%. We find that Clear Channel has failed to demonstrate particular circumstances in this market sufficient to overcome a concern that this level of economic concentration in this market will harm the public interest. To the extent Clear Channel presents generic arguments challenging the parameters of our current competition analysis, we will address such concerns in the context of the *Local Radio Ownership NPRM* and need not consider them here. Rather, we look only to the record of this case to determine whether there are unique facts that persuade us that grant of these assignment applications would serve the public interest despite the apparent economic concentration it will create. On the basis of the information before us, we are unable to make the required

finding that the public interest, convenience and necessity will be served by granting the subject applications. Accordingly, we will designate the assignment applications for hearing to determine, pursuant to 47 U.S.C. 309(e), and based on the evidence to be adduced at hearing, whether the public interest, convenience and necessity will be served by the grant of the applications.

5. We direct the Administrative Law Judge ("ALJ") to examine in an evidentiary hearing the particular circumstances of the Augusta-Waterville metro to determine whether the factual assumptions in Section III.C. of the Hearing Designation Order are correct. We further direct the ALJ to determine, in light of his or her conclusions, whether the transaction is likely to cause any anticompetitive harms, and to determine what, if any, public benefits would accrue from this transaction. Finally, we direct the ALJ to apply these findings to determine whether, on balance, grant of the applications would serve the public interest.

6. To defer further consideration of the applications to assign the licenses of Stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain to Clear Channel in accordance with the interim policy, Mountain and Clear Channel must file a joint election to defer consideration of the applications. Such election must be filed by September 5, 2002.

7. In the event the parties do not timely file the joint election set forth in the paragraph above, pursuant to 47 U.S.C. 309(e), the applications to assign the licenses of Stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain to Clear Channel are designated for hearing at a time and place to be specified in a subsequent Order, to determine, in light of the evidence to be presented in the hearing, whether the public interest, convenience and necessity would be served by the grant of the above-captioned assignment applications (File Nos. BAL-20010918ABB/BALH-20010918ABC).

8. Pursuant to 47 U.S.C. 309(e), the burden of proof with respect to both the introduction of evidence and the issue specified in this Order shall be upon Mountain and Clear Channel, the applicant parties in this proceeding.

9. A copy of each document filed in this proceeding subsequent to the date of adoption of this Order must be served on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations and Hearings Division of

the Enforcement Bureau at (202) 418-1420. Such service must be addressed to the named counsel of record, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 3-B431, Washington, DC 20554.

10. The effectiveness of this Order is stayed until September 11, 2002, no less than 10 days prior to which the parties may amend their applications or file such other information with the Media Bureau as they deem relevant to ameliorate the competition concerns identified in this Order.

11. To avail themselves of the opportunity to be heard, Mountain and Clear Channel, pursuant to 47 CFR 1.221(c) and 1.221(e), in person or by their respective attorneys, must file, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Such written appearance shall be filed by September 11, 2002. Pursuant to 47 CFR 1.221(c) of the Commission's rules, if the parties fail to file an appearance within the specified time period, the assignment applications will be dismissed with prejudice for failure to prosecute.

12. The applicants, pursuant to 47 U.S.C. 311(a)(2) and 47 CFR 73.3594, must give notice of the hearing within the time and in the manner prescribed, and must advise the Commission of the publication of such notice as required by 47 CFR 73.3594(g).

13. The applications to assign the licenses of stations WSKW(AM) and WHQO(FM), Skowhegan, Maine, from Mountain to Clear Channel will be held in abeyance pending the outcome of this proceeding.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send copies of this Order to all parties by Certified Mail—Return Receipt Requested.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02-21302 Filed 8-20-02; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 02-139; FCC 02-165]

**Youngstown Radio License, L.L.C. and Citicasters Licenses, Inc.**

**AGENCY:** Federal Communications Commission.