



Federal Communications Commission
Washington, D.C. 20554

December 7, 2012

DA 12-1979

In Reply Refer to:

1800B3-CEG

Released: December 7, 2012

David D. Burns, Esq.
Latham & Watkins LLP
555 Eleventh Street, N.W. Suite 1000
Washington, D.C. 20004

Gregory L. Masters, Esq.
Wiley Rein LLP
1776 K Street N.W.
Washington, D.C. 20006

Barry A. Friedman, Esq.
Thompson Hine LLP
1920 N Street, N.W. Suite 800
Washington, D.C. 20036

In re: WOR(AM), New York, New York
Facility ID No. 7710
File No. BAL-20120816AAQ

**Application for Assignment of License
Informal Objection**

WHTZ(FM), Newark, NJ
Facility ID No. 59953
File No. BRH-20060201AAU

**Application for Renewal
Informal Objection**

Dear Counsel:

We have before us the above-referenced application ("Assignment Application") seeking approval for the proposed assignment of the license for station WOR(AM), New York, New York, from Buckley Broadcasting/WOR, LLC ("Buckley") to AMFM Radio Licenses, LLC ("AMFM"), a subsidiary of Clear Channel Communications, Inc. ("Clear Channel").¹ Also before us is the above-referenced application of AMFM for renewal of the license for station WHTZ(FM), Newark, New Jersey (the "Renewal Application") (collectively, the "AMFM Applications"). On September 19, 2012, Connoisseur Media of Long Island, LLC ("Connoisseur") filed an Informal Objection to both AMFM Applications

¹ See File No. BAL-20120816AAQ, Exhibit 13.

(“Informal Objection”), raising issues related to the divestiture of a number of former Clear Channel stations currently held by Aloha Station Trust (“AST”). AST and AMFM each filed responsive pleadings.² For the reasons set forth below, we deny the Informal Objection and grant the Assignment Application.³

Background. In an order released January 8, 2008, the Commission granted consent to the transfer of control of Clear Channel from its public shareholders to two private equity funds.⁴ In order to ensure compliance with the multiple ownership rules, the Commission conditioned its consent on the divestiture of a number of Clear Channel stations (“Trust Stations”) to AST, a trust insulated from Clear Channel control.⁵ In the *Divestiture Order*, the Commission “encouraged [AST] to consummate the sale of all the stations within six months of the [transfer of control] consummation date.”⁶ Clear Channel consummated the assignments of the Trust Stations to AST on July 30, 2008, contemporaneously with the consummation of the transfer of control of Clear Channel.⁷

Connoisseur argues that Clear Channel and AST have failed to divest all the Trust Stations within six months as contemplated in the *Divestiture Order*.⁸ Stations held in prolonged trust, Connoisseur argues, do not compete aggressively with other stations and are merely “warehoused” to the detriment of the public interest.⁹ The remedy, according to Connoisseur, is for the Commission to establish a final divestiture period of six months, during which all remaining Trust Stations must be sold or risk the licenses being revoked for willful failure to comply with an express Commission order.¹⁰ Connoisseur also asks the Commission to postpone processing the AMFM Applications until the AST divestiture issues raised by the Informal Objection have been resolved.¹¹

AST responds that it has “acted with the requisite independence and has operated and controlled the Trust Stations, consistent with its duty to preserve the assets of the Stations and maintain the status

² On October 1, 2012, AMFM and AST filed separate letters opposing the Informal Objection (“AMFM Opposition” and “AST Opposition,” respectively) (collectively, the “Oppositions”). On October 12, 2012, Connoisseur replied to the Oppositions (“Connoisseur Reply”). On October 17, 2012, Buckley filed a Request for Expedited Consideration of the Assignment Application.

³ The Renewal Application is currently subject to an unrelated administrative hold.

⁴ *Existing Shareholders of Clear Channel Communications, Inc. (Transferors) and Shareholders of Thomas H. Lee Equity Fund VI, L.P., Bain Capital (CC) IX, L.P., and BT Triple Crown Capital Holdings III, Inc. (Transferees)*, Memorandum Opinion and Order, 23 FCC Rcd 1421 (2008) (“*Divestiture Order*”).

⁵ *Divestiture Order*, 23 FCC Rcd at 1425-27.

⁶ *Id.* at 1427.

⁷ AST Opposition, Exhibit A at 3; *See also, e.g.*, File Nos. BAL-20070619ABU (assignment of licenses to AST) and BTCH-20061212CCF (transfer of control of Clear Channel).

⁸ Informal Objection at 2, 7.

⁹ *Id.* at 3, 7.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 7-8.

quo . . .”¹² AST asserts that it has successfully divested the majority of the Trust Stations.¹³ Although it has actively sought to sell the Trust Stations, AST says, that “task [is] made more difficult by a persistent recessionary economy, a difficult lending environment, a shifting advertising marketplace, and the growth of competing media targeting the over-the-air listening market . . .”¹⁴ In this regard, AST submits a representative copy of the bi-annual status reports it has provided to the Commission regarding the ongoing divestitures.¹⁵

In reply to AST, Connoisseur suggests that if the terms of its recent offer to purchase one of the Trust Stations were made public, they would “constitute specific allegations of fact sufficient to make a *prima facie* case that AST is in violation of its obligations under the [Divestiture Order].”¹⁶ Connoisseur also takes issue with AST’s declaration that AST is operating the Trust Stations competitively, arguing that not only is AST prevented from taking “key actions such as entering into material contracts or changing station formats” but that the profit motive, “which drives competitive economic activity . . . is entirely absent in a trust situation . . . since all profits accrue to Clear Channel.”¹⁷

In its Opposition, AMFM contends that Connoisseur’s objection to both the AST divestiture process and the AMFM Applications is a “strange and incongruous pairing.”¹⁸ It notes that the AST divestiture process is the primary—nearly exclusive—focus of Connoisseur’s letter.¹⁹ Yet AST is not a party to either AMFM Application; it is not proposing to acquire WOR(AM) and it is not the licensee of WHTZ(FM).²⁰ Neither WOR(AM) nor WHTZ(FM) are among the stations that Connoisseur claims are “languish[ing]” in AST’s trusteeship.²¹ Moreover, AMFM observes, the Informal Objection “contains not a single allegation concerning the particulars of the WOR assignment, or the performance of WHTZ during the license term under review.”²² AMFM argues that Connoisseur has fabricated a connection between these matters through “speculation that ‘further investigation’ into its [AST] allegations ‘could result’ in information bearing upon Clear Channel’s truthfulness and candor.”²³ Therefore, AMFM

¹² AST Opposition at 2.

¹³ *Id.* at 2, n.5.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 2-3, Exhibit A.

¹⁶ Connoisseur Reply at 2.

¹⁷ *Id.* at 3.

¹⁸ AMFM Opposition at 1.

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ *Id.*

²² *Id.*

²³ *Id.*

contends, Connoisseur has provided “nothing to justify any delay in, let alone denial of, the two Clear Channel applications to which the letter purports to object.”²⁴

In reply to AMFM, Connoisseur argues that Clear Channel is directly involved in the AST divestiture because, under the Trust Agreement, Clear Channel sets the minimum sale price for the Trust Stations.²⁵ Furthermore, Connoisseur submits, Clear Channel participated as a party in the sale of at least one Trust Station (WURH(FM), Waterbury, Connecticut) in violation of the Divestiture Order.²⁶ In support, Connoisseur submits a copy of the WURH(FM) sale agreement, in which Clear Channel is identified as the “Seller.”²⁷ These activities, according to Connoisseur, raise issues that bear upon Clear Channel’s (and therefore, presumably, AMFM’s) qualifications as a Commission licensee.²⁸

Discussion. Informal objections, like petitions to deny, must allege properly supported facts that, if true, would establish a substantial and material question of fact that grant of the application would be inconsistent with the public interest.²⁹ In this case, Connoisseur has failed to meet this threshold burden with respect to the AMFM Applications. Connoisseur’s primary complaint is that AST has been dilatory in its duty under the Trust Agreement³⁰ to sell the Trust Stations “as soon as reasonably practicable.”³¹ We agree with AMFM that AST is not a party to either AMFM Application, since AST is not proposing to acquire WOR(AM) and it is not the licensee of WHTZ(FM). Nor are WOR(AM) and WHTZ(FM) among the Trust Stations at issue. Moreover, Connoisseur does not argue, nor do the facts suggest, that AMFM—as a subsidiary of the trust beneficiary Clear Channel—is impeding the expeditious divestiture of the Trust Stations or otherwise exercising improper influence over them. The Informal Objection does not address the particulars of either the WOR assignment or AMFM’s performance as licensee during the license term under review. Therefore, we decline to assess AST’s performance as a trustee in carrying out timely divestitures of the Trust Stations in the context of the AMFM Applications.

With respect to Connoisseur’s argument regarding Clear Channel’s alleged unlawful participation in the WURH(FM) sale, the evidence on record does not rise to the level of calling into question the overall qualifications of either AST or Clear Channel—much less the relevant licensee, AMFM.³²

²⁴ *Id.*

²⁵ Connoisseur Reply at 4.

²⁶ *Id.* at 5-6.

²⁷ *Id.*, Exhibit A, File No. BALH-20090224ABA.

²⁸ *Id.* at 5-6.

²⁹ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 note 10 (1990), *aff’d sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993) (*rehearing denied*); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (“[I]nformal objections like petitions to deny must also contain adequate and specific factual allegations sufficient to warrant the relief requested.”).

³⁰ See File No. BAL-20070619ABU, Exhibit 5.

³¹ Informal Objection at 4.

³² The Commission granted the WURH(FM) assignment of license from AST to Red Wolf Broadcasting Corporation on April 10, 2009. See *Broadcast Actions*, Public Notice, Report No. 46964 (Apr. 15, 2009). The parties consummated the transaction on May 13, 2009. No petitions to deny were filed against the transaction, nor were any reconsideration petitions filed against the grant. Therefore, to the extent that the Informal Objection (continued . . .)

Connoisseur argues that Clear Channel's participation in the sale of its formerly-owned station WURH(FM) amounts to an unauthorized, *de facto* transfer of control. To determine whether there has been an unauthorized transfer of control, the Commission examines whether an entity other than the licensee sets a station's basic operating policies with respect to personnel, programming, and finances.³³ Here, Connoisseur does not make any specific allegations regarding WURH(FM)'s personnel, programming, and finances, nor does the WURH(FM) sale agreement provide evidence regarding such day-to-day operational matters. Therefore, on the record before us, no substantial and material question of fact has been raised regarding Clear Channel's alleged control of station WURH(FM) or its qualifications to be a Commission licensee.³⁴ Moreover, Connoisseur's allegations regarding station WURH(FM) are highly attenuated from the matter before us: the AMFM Applications concern different stations and a different corporate licensee. Accordingly, we find that Connoisseur fails to establish any substantial or material question of fact whether AMFM is qualified to acquire or renew the licenses of stations WOR(AM) or WHTZ(FM), respectively, on the basis of its parent Clear Channel's alleged involvement in the sale of WURH(FM).³⁵ We therefore deny Connoisseur's Informal Objection to the AMFM Applications.

Conclusion/Actions. We find that Connoisseur fails to establish a substantial and material question of fact that grant of the AMFM Applications would be inconsistent with the public interest. We also find that AMFM is qualified to hold the WOR(AM) and WHTZ(FM) station licenses and that grant of the Assignment Application is consistent with the public interest, convenience, and necessity. Accordingly, IT IS ORDERED that the Informal Objection filed by Connoisseur Media of Long Island, LLC IS DENIED.

(Continued from previous page)

challenges the grant of the WURH(FM) assignment application, such a challenge is untimely. *See* 47 C.F.R. § 1.106(f).

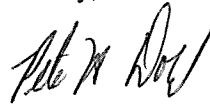
³³ *See WGPR, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142-46 (2005), *vacated on other grounds sub nom. Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998) ("WGPR"); *Choctaw Broadcasting Corporation*, Memorandum Opinion and Order, 12 FCC Rcd 8534, 8538-39 (1997).

³⁴ Should it come to our attention, however, that Clear Channel is impermissibly exercising *de facto* control over the operation of the Trust Stations in violation of the Commission's rules or the Divestiture Order, we are prepared to apply the full weight of available sanctions. *See Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14078, 14095-14097 (2009) (finding that Clear Channel exercised *de facto* control over an AST station and issuing a notice of apparent liability for forfeiture).

³⁵ *See, e.g.*, 47 U.S.C. § 309(d) (prohibiting the Commission from considering "whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.").

IT IS FURTHER ORDERED that the application to assign the license of station WOR(AM), New York, New York (FCC File No. BAL-20120816AAQ) from Buckley Broadcasting/WOR, LLC to AMFM Radio Licenses, LLC IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle". The signature is stylized with a large, looped "P" and a trailing flourish.

Peter H. Doyle
Chief, Audio Division
Media Bureau