



Federal Communications Commission  
Washington, D.C. 20554

October 5, 2007

**DA 07-4169**

*In Reply Refer to:*  
1800B3-MJW

Released: October 5, 2007

Mark N. Lipp, Esq.  
Scott Woodworth, Esq.  
Wiley, Rein, LLP  
1776 K Street NW  
Washington, DC 20006  
Counsel for Citicasters Licenses, L.P. and Clear Channel Broadcasting Licenses, L.P.

Lauren A. Colby, Esq.  
10 East 4<sup>th</sup> Street  
P.O. Box 113  
Frederick, MD 21701  
Counsel for the Committee for Competitive Columbus Radio

Mr. Kurt Tuckerman  
President  
Sandyworld, Inc.  
P.O. Box 837  
Chokoloskee, FL 34138

In re: **Citicasters Licenses, L.P.**  
WMRN-FM, Marion, Ohio  
Facility ID No. 40170  
File No. BPH-200526ALM

**Application for Construction Permit  
for Minor Modification of License.**

**Informal Objections**

Dear Counsel and Mr. Tuckerman:

We have before us the above-captioned application (“Application”) of Citicasters Licenses, L.P., (“Citicasters” or “Clear Channel”)<sup>1</sup> for a minor modification of the license of Station WMRN-FM to relocate from its present site serving Marion, Ohio, to a site serving Dublin, Ohio.<sup>2</sup> We also have before us an Informal Opposition and related pleadings from the Committee for Competitive Columbus Radio

---

<sup>1</sup> Citicasters Licenses, L.P., and Clear Channel Broadcasting Licenses, L.P. are wholly-owned subsidiaries of Clear Channel Communications, Inc. Citicasters is the WNRN-FM licensee of record. However, consistent with the pleadings filed in this case, and unless otherwise required by context, we refer to the Dublin applicant as “Clear Channel” herein.

<sup>2</sup> The relocation was authorized pursuant to a Petition for Rulemaking submitted by Clear Channel. *See Chillicothe, Dublin, Hillsboro and Marion, Ohio*, Report and Order, 20 FCC Rcd 6305 (MB 2005), *aff’d*, 21 FCC Rcd 7263 (MB 2006), *app. for review pending* (“Dublin R&O”).

(“Committee”),<sup>3</sup> and an Informal Objection filed by Sandyworld, Inc. (“Sandyworld”).<sup>4</sup> For the reasons set forth below we grant the Application and dismiss, as moot, the Committee’s Informal Opposition and the Sandyworld Informal Objection.<sup>5</sup>

On July 26, 2005, Clear Channel filed an application for construction permit for minor modification of license to relocate the WMRN-FM facilities to a new location serving Dublin and to change channel from Channel 295B to Channel 294B1.<sup>6</sup> Dublin lies within the Columbus, OH Arbitron Metro (Columbus Metro). When the Application was filed, the Columbus Metro was a forty-four station market as reported by BIA.<sup>7</sup> In such markets, Section 73.3555 of the Commission’s rules<sup>8</sup> limits a single licensee to a cognizable interest in no more than four same-service stations.<sup>9</sup> The Committee and Sandyworld opposed grant of the Clear Channel application, contending that WNRN-FM thereby would become Clear Channel’s fifth cognizable interest in a same-service station within the Columbus Metro in violation of the Multiple Ownership Rules.<sup>10</sup>

Subsequently, BIA added one station to the Columbus Metro to reflect grant of an application for minor modification of license to Southeastern Ohio Broadcasting System, Inc. to relocate its station WHIZ-FM from Zanesville, Ohio - a community outside the Columbus Metro - to Baltimore, Ohio,

---

<sup>3</sup> The Committee is “a consortium of broadcasters, situated in the Columbus, Ohio market.” “Informal Objection of the Committee for Competitive Columbus Radio,” Aug. 10, 2005, at 1.

<sup>4</sup> Sandyworld, Inc. is the licensee of translator station W294AH, Columbus, Ohio. “Sandyworld Informal Objection,” August 25, 2005, at 1.

<sup>5</sup> The following additional pleadings were filed: Clear Channel “Opposition to Informal Objection” [of the Committee], August 24, 2005. Committee “Reply to Opposition to Informal Objection” [of Clear Channel], August 31, 2005. Committee “Reply to Opposition to Informal Objection of Sandyworld, Inc.,” September 14, 2005. Clear Channel “Opposition to Informal Objection of Sandyworld, Inc.,” September 6, 2005. Committee “Motion for Leave to Supplement Informal Objection,” November 17, 2005. Clear Channel “Comments on the Committee for Competitive Columbus Radio’s Motion for Leave to Supplement Informal Objection,” November 23, 2005. Committee “Reply to ‘Comments on the Committee for Competitive Columbus Radio’s Motion for Leave to Supplement Informal Objection,’” December 2, 2005. Committee “Objection to Amendment,” April 24, 2006. Sandyworld “Objection to Minor Amendment,” April 24, 2006. Clear Channel “Consolidated Opposition to Objections to Amendment,” May 4, 2006. Committee “Reply to Consolidated Opposition to Objections to Amendment,” May 12, 2006. Letter from Lauren A. Colby, Esq., counsel for the Committee for Competitive Columbus Radio, to Marlene H. Dortch, Secretary, FCC, July 5, 2006. Sandyworld “Reply to Opposition to Objections to Amendment,” July 6, 2006.

<sup>6</sup> Clear Channel supplemented the Application on August 2, 2005, to report that it had filed an application for assignment of the license of WQIQ(FM), Mount Vernon, Ohio, owned by a Clear Channel affiliate, to a third party. It amended the Application on November 17, 2005, to reflect consummation of the WQIQ(FM) transaction, and amended it again on April 10, 2006, to supply an additional “multiple ownership analysis” purporting to show that the Columbus Metro was a forty-five station market. Clear Channel’s multiple ownership analyses, which were filed while BIA still classified the Columbus Metro as a forty-four station market, are no longer relevant. *See infra* n.13.

<sup>7</sup> For Arbitron-rated markets, the Commission relies on BIA data in determining compliance with 47 C.F.R. § 73.3555(a). *See 2002 Biennial Regulatory Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1966, Cross Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13727 (2003), *aff’d in part and remanded in part sub nom., Prometheus Radio Project v. FCC*, 373 F.3d 372 (2004), *cert. denied*, 545 U.S. 1123 (2005) (“Definition of Radio Markets”).

<sup>8</sup> 47 C.F.R. § 73.3555 (“Multiple Ownership Rules”).

<sup>9</sup> The AM and FM band are considered separate services for purposes of the rule.

<sup>10</sup> *See supra* n.3-4.

within the Columbus Metro.<sup>11</sup> BIA's reclassification of the Columbus Metro mooted the question of Clear Channel's compliance with the Multiple Ownership Rules, because in forty-five (or more) station markets, a single licensee is allowed a cognizable interest in up to five same-service stations.<sup>12</sup> Accordingly, we are granting the Application and dismissing as moot the Committee's opposition and Sandyworld's objection.<sup>13</sup>

Accordingly, IT IS ORDERED, that the Informal Objection filed August 10, 2005, and the Objection to Amendment filed April 24, 2006, by the Committee for Competitive Columbus Radio, and the Objection to Amendment, filed August 25, 2005, by Sandyworld, Inc., and the Motion for Leave to Supplement Informal Objection, filed November 17, 2005, by the Committee for Competitive Columbus Radio ARE DISMISSED AS MOOT.

IT IS FURTHER ORDERED, pursuant to Section 308 (b) of the Communications Act of 1934, as amended, 47 U.S.C. § 308(b), and Sections 0.61 and 73.3555 of the Commission's rules, 47 C.F.R. §§ 0.61, 73.3555, that the Application for Construction Permit for Commercial Broadcast Station, FCC Form 301, Facility ID No. 40170, File No. BPH-200526ALM, filed by Citicasters Licenses, L.P on July 26, 2005, as amended November 17, 2005, and April 10, 2006, IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division, Media Bureau

cc: Marissa G. Repp, Esq.  
Hogan and Hartson, L.L.P.  
555 Thirteenth Street, N.W.  
Washington, DC 20004  
Counsel for Citicasters Licenses, L.P.

---

<sup>11</sup> The WHIZ-FM application, as amended, was granted on October 2, 2006. See File No. BPH 20060327AHM.

<sup>12</sup> When BIA classified the Columbus Metro as a forty-five or more station market, the Metro came within the ambit of Section 73.3555(a)(1)(i) that permits a single licensee to have a cognizable interest in not more than eight commercial stations in a Metro, but no more than five same-service stations. This allows Clear Channel to implement the Dublin allotment as its fifth same-service station in the Metro. (Prior to the increase in market size, the Columbus Metro was a forty-four station market and the implementation of the Dublin allotment was governed by Section 73.3555(a)(1)(ii) which limited Clear Channel to no more than four same-service stations.) We are allowing Clear Channel to implement the Dublin allotment without delay, notably because we see no evidence that Clear Channel influenced the WHIZ-FM relocation. We note, however, that pursuant to *Definition of Radio Markets* and under certain circumstances, applicants may not take advantage of a market size increase until two years after BIA has listed, as "home" to the Metro, the station that triggered the market size increase. See *Definition of Radio Markets*, 18 FCC Rcd at 13726, ¶ 278. The Commission imposed the two-year restriction to forestall licensees from manipulating market size to their advantage to evade the Multiple Ownership Rules. See *id.* The two-year restriction does not apply, however, if the triggering station is licensed to a community that is geographically within the Metro boundaries, as here. *Id.* WHIZ-FM --which is now licensed to Baltimore, Ohio, a community within the geographical boundary of the Columbus Metro -- triggered the market size increase. We believe that allowing Clear Channel to proceed pursuant to the exception and without delay is not inconsistent with the Commission's concerns about manipulation of market size as expressed in *Definition of Radio Markets. Id.*

<sup>13</sup> Given our disposition of the Multiple Ownership issue, it is unnecessary for us to decide whether the several pleadings submitted by the parties conform to the Commission's procedural rules or if any such pleading was interposed for the purpose of delay. See, e.g., *Radio Carrollton*, 69 F.C.C.2d 1139, 1150 (1978).