

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Chillicothe, Dublin, Hillsboro, and Marion,
Ohio)
MB Docket No. 02-266
RM-10557

MEMORANDUM OPINION AND ORDER

Adopted: July 31, 2013

Released: August 1, 2013

By the Commission:

1. The Commission has before it an Application for Review ("Application for Review") filed on July 25, 2006, by the Committee for Competitive Columbus Radio ("Committee") and various other pleadings. The Committee seeks review of the July 7, 2006, decision of the Media Bureau ("Bureau") in this proceeding. The Chillicothe Reconsideration Decision denied the Committee's Petition for Reconsideration of an earlier Bureau action, granting the reallocation, class downgrade, and change of community of license for Station WCGX(FM) from Channel 295B at Marion, Ohio, to Channel 294B1 at Dublin, Ohio. In the Chillicothe Reconsideration Decision, the Bureau found that the Chillicothe R&O correctly concluded that the policy of deferring consideration of multiple ownership issues to the application stage was settled policy that is intended to promote the "efficient and orderly transaction of both the rulemaking and application licensing processes." On reconsideration, the Bureau also found

1 The Committee includes the following Columbus area broadcasters: North American Broadcasting Co., Inc., licensee of Stations WBZX(FM) and WMNI(AM), Columbus, Ohio, and WEGE(FM), Westerville, Ohio; WCLT Radio, Inc., licensee of WCLT-AM-FM, Newark, Ohio; Associated Radio, Inc., licensee of WSMZ-FM, Johnstown, Ohio, and WODB-FM, Delaware, Ohio; and Franklin Communications, Inc., licensee of WVKO(AM) and WSNY(FM), Columbus, Ohio.

2 These pleadings include: (1) an Opposition to Application for Review ("Opposition"), filed on August 9, 2006, by Citicasters, L.P., licensee of Station WCGX(FM) (formerly WMNR-FM), Dublin, Ohio and CC Licenses, LLC, licensee of Station WQLX(FM) (formerly WSRW-FM), Chillicothe, Ohio (jointly "Clear Channel"); (2) a Supplement to Opposition to Application for Review filed by Clear Channel on November 29, 2007 ("Supplement to Opposition"); and (3) a Motion to Accept Supplement, also filed by Clear Channel on November 29, 2007, which we hereby grant. No further pleadings were filed in this proceeding.

3 Chillicothe, Dublin, Hillsboro, and Marion, Ohio, Memorandum Opinion and Order, 21 FCC Rcd 7263 (MB 2006) ("Chillicothe Reconsideration Decision").

4 See Chillicothe, Dublin, Hillsboro, and Marion, Ohio, Report and Order, 20 FCC Rcd 6305 (MB 2005) ("Chillicothe R&O"). To accommodate the relocation of Station WCGX(FM) to Dublin, Chillicothe R&O also downgraded the class of channel and changed the community of license for Station WQLX(FM) from Channel 294B at Hillsboro, Ohio, to Channel 293A at Chillicothe, Ohio. Id. at 6309.

5 See Chillicothe Reconsideration Decision, 21 FCC Rcd at 7265 quoting Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota, Memorandum Opinion and Order, 17 FCC Rcd 25055, 25059-60 (MB 2002) ("Detroit Lakes").

that it was appropriate to exclude ownership issues from a community of license change rulemaking process which focuses on “technical and demographic” factors.<sup>6</sup> Finally, the *Chillicothe Reconsideration Decision* concluded that Section 4(j) of the Communications Act of 1934, as amended,<sup>7</sup> affords the Commission broad discretion<sup>8</sup> to adopt processing rules “as will best conduce to the proper dispatch of business and to the ends of justice”<sup>9</sup> and that the challenged processing rule constitutes a reasonable exercise of that discretion.<sup>10</sup> On review, the Committee reiterates its argument that compliance with the multiple ownership rules should have been considered at the allotment, as opposed to the application, stage of this proceeding.<sup>11</sup>

2. We have carefully reviewed the *Chillicothe Reconsideration Decision* and the full record of this rulemaking proceeding. We conclude that the Committee has not demonstrated that the Bureau erred, and we uphold its decision for the reasons stated therein. The *Chillicothe Reconsideration Decision* properly applied our then-existing processing policies.<sup>12</sup> The modification of the WCGX(FM) license to specify Dublin as the station’s community of license<sup>13</sup> was explicitly conditioned on the filing of an implementing minor modification application within 90 days.<sup>14</sup> Moreover, no physical relocation of the WCGX(FM) transmission system could occur prior to the grant of this application demonstrating that the

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<sup>6</sup> See *Detroit Lakes*, 17 FCC Rcd at 25059 (cited in *Chillicothe R&O*, 20 FCC Rcd at 6311).

<sup>7</sup> 47 U.S.C. § 4(j).

<sup>8</sup> See, e.g., *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940) (cited in *Chillicothe Reconsideration Decision*, 21 FCC Rcd at 7265 n.16).

<sup>9</sup> 47 U.S.C. § 4(j).

<sup>10</sup> See *Chillicothe Reconsideration Decision*, 21 FCC Rcd at 7265.

<sup>11</sup> See Application for Review at 2-3.

<sup>12</sup> See *Chillicothe and Asheville, Ohio*, Memorandum Opinion and Order, 24 FCC Rcd 7876, 7878 (2009) (agreeing with the continued application of the established policy of not considering multiple ownership issues in conjunction with an allotment rule making proceeding). Approximately four months after the *Chillicothe Reconsideration Decision* was released, the Commission replaced the two-step processes in the Rules with a streamlined procedure allowing a licensee or permittee to change its community of license by filing a minor modification application, instead of a petition for rulemaking. See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212 (2006), *recon. pending*. Thus, both allotment and multiple ownership issues are now considered in the same application proceeding.

<sup>13</sup> See n.16, *infra*.

<sup>14</sup> See *Chillicothe R&O*, 20 FCC Rcd at 6311. The implementing application for Channel 294B1 at Dublin, File No. BPH-20050726ALM, was granted on October 5, 2007, and was conditioned on the outcome of this rule making proceeding. See *Citicasters Licenses, L.P.*, Letter, 22 FCC Rcd 17788 (MB 2007 (“*Citicasters Letter*”). On November 2, 2007, Sandyworld, Inc. (“Sandyworld”), licensee of FM Translator Station W294AH, Columbus, Ohio, filed a Petition for Stay of the construction permit pending resolution of the rule making proceeding due to interference with its translator. Sandyworld’s stay request is moot in light of our action herein and will be dismissed.

proposed facilities would comply with the multiple ownership rules.<sup>15</sup> Under these circumstances, we conclude that no error occurred.<sup>16</sup>

3. ACCORDINGLY, IT IS ORDERED, that the Application for Review filed by the Committee for Competitive Columbus Radio IS DENIED, pursuant to Section 5(c)(5) Communications Act of 1934, as amended,<sup>17</sup> and Section 1.115(g) of the Commission's Rules.<sup>18</sup>

4. IT IS FURTHER ORDERED, that the Petition for Stay filed by Sandyworld, Inc., in File No. BPH-20050726ALM IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>15</sup> See, e.g., *Galaxy Communications, L.P.*, Letter, 21 FCC Rcd 2994, 2996 ((MB 2006), *app. for review pending* (dismissing a minor modification application to implement a change of community of license adopted through a rule making and denying waiver of local radio ownership rule). The Committee devotes much of its Application for Review to the argument that the relocation of Station WCGX(FM) to Dublin would violate the ownership rules. As noted by Citicasters in its Supplement to Opposition, to which the Committee did not reply, in granting Citicasters' modification application to effectuate the relocation and the other changes to the stations authorized in this proceeding, the Bureau concluded that such relocation of WCGX(FM) would be consistent with those rules. See *Citicasters Letter*, 22 FCC Rcd at 17789-90. Because no petition for reconsideration or application for review was filed, that action has become final.

<sup>16</sup> The Committee also argues that the Bureau erred in the *Chillicothe Reconsideration Decision* when it referred to Station WCGX(FM) as "formerly" licensed to Marion because this modification could not properly occur prior to Clear Channel demonstrating compliance with the local radio ownership rule. See Application for Review at 3. We disagree. The *Chillicothe R&O* explicitly modified the WCGX(FM) license to specify Dublin. See *Chillicothe R&O*, 20 FCC Rcd at 6311. This argument is, at most, a semantic quibble. As explained above, this license modification had no immediate impact on competition in the Columbus radio market and did not prejudice the issue whether the station relocation would comply with the multiple ownership rules.

<sup>17</sup> 47 U.S.C. § 155(e)(5).

<sup>18</sup> 47 C.F.R. § 1.115(g).