

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

In the Matter of)
)
6 Johnson Road Licenses, Inc., Assignor) File No. BALH-20120509AER
) Facility ID No. 73256
and)
)
Cumulus Licensing LLC, Assignee) File No. BALH-20120509AES
) Facility ID No. 32946
)
Applications for Assignment of Stations)
WMEZ(FM), Pensacola, Florida and WXBM-FM,)
Milton, Florida)
)
Educational Media Foundation, Assignor) File No. BALH-20120709AFX
) Facility ID No. 70657
and)
)
Cumulus Licensing LLC, Assignee)
)
Application for Assignment of Station)
WABD(FM), Mobile, Alabama)
)

MEMORANDUM OPINION AND ORDER

Adopted: June 9, 2014

Released: June 10, 2014

By the Commission:

1. In this Memorandum Opinion and Order, we deny the Application for Review filed by ADX Communications of Escambia and ADX Communications of Pensacola (collectively, "ADX") on February 1, 2013. ADX seeks review of a January 2, 2013, action by the Media Bureau ("Bureau"), which granted the above-captioned applications for: (1) assignment of the licenses for stations WMEZ(FM), Pensacola, Florida, and WXMB-FM, Milton, Florida, from 6 Johnson Road Licenses, Inc. to Cumulus Licensing LLC ("Cumulus"); and (2) assignment of the license for station WABD(FM) (formerly WLVM(FM)), Mobile, Alabama, from Educational Media Foundation to Cumulus (collectively, the "Applications").

2. ADX raises two issues on review, both of which it also argued below. First, it contends that the Bureau erred by "mechanically" applying an Arbitron-Metro-based local radio market definition to the Mobile and Pensacola areas. This Arbitron-based definition fails to capture the unique market

1 Dan J. Alpert, Esq., Letter, 28 FCC Rcd 20 (MB 2013) ("Letter Decision"). On February 25, 2013, Cumulus filed an Opposition to the Application for Review ("Opposition"). On March 18, 2013, ADX filed a Reply to the Opposition to the Application for Review.

2 See 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620 (2003) ("Ownership Order"), 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).

realities in this case, according to ADX, because: (1) the Mobile and Pensacola Arbitron Metros are physically adjacent; and (2) each of the Class C, C0, and C1 stations that are listed by Arbitron as “home” to either Metro also provides substantial signal coverage to the other Metro, by virtue of centrally located transmitters. Because the use of Arbitron Metros is inappropriate in this circumstance, ADX urges, Cumulus should be required to demonstrate compliance with the multiple ownership rules using the interim contour-based methodology, which is usually applicable only to stations located outside the boundaries of an Arbitron Metro.³

3. Second, ADX argues that the Bureau erred in holding that the May 7, 2012, grant of a community of license change for Cumulus-owned Station WDLT-FM from Atmore, Alabama (located outside any Arbitron Metro market) to Saraland, Alabama (located within the Mobile Metro) did not trigger the requirement that a licensee must wait two years before taking advantage of a change in an Arbitron market.⁴ Rather, according to ADX, this community of license change is subject to the two-year waiting period under the “Commission’s general policy prohibiting manipulation of the multiple ownership rules” because, “before the city-of-license change, [Cumulus] was required to satisfy the contour overlap standard *as well as* the Arbitron standard; after the city-of-license change, it suddenly, instantaneously, wishes to be required *only* to satisfy the Arbitron standard.”⁵

4. In the *Letter Decision*, the Bureau fully addressed both of these issues. Regarding ADX’s arguments that an Arbitron-Metro-based ownership analysis should not apply to the Mobile and Pensacola markets, the Bureau observed that there is nothing new or unique about two adjacent Arbitron Metro markets “sharing” numerous stations—i.e., each Metro receiving substantial signal coverage from stations that are “home” to the neighboring Metro.⁶ Furthermore, we agree with the Bureau that redefining these two markets based solely on transmitter locations and signal contours would be precisely the approach that the Commission rejected when it adopted the Arbitron Metro standard in 2003.⁷ Finally, contrary to ADX’s assertions, the Bureau did not “mechanically” apply the numerical ownership limits; rather, it conducted a full public interest analysis and concluded that, post-transaction, competition for listeners would be preserved in the Mobile and Pensacola markets.⁸ We agree with this conclusion.

5. Regarding the two-year waiting period, we uphold the Bureau’s decision not to expand the established categories of changes covered by the restriction to include the community of license change at issue here.⁹ As the *Letter Decision* makes clear, such community of license changes do not “implicate the Commission’s underlying concern regarding the malleability of Arbitron Metro market definitions.”¹⁰ In this case, where the Applicant satisfies the numerical limits set out in Section 73.3555

³ Application for Review at 20; *see also Ownership Order*, 18 FCC Rcd at 13729-30.

⁴ Application for Review at 20-23; *see* File No. BPH-20120131AJS; *Ownership Order*, 18 FCC Rcd at 13726.

⁵ Application for Review at 21-23.

⁶ *Letter Decision*, 28 FCC Rcd at 27. For example, in its Opposition, Cumulus points out that the Orlando, Florida, and Melbourne-Titusville-Cocoa, Florida, Arbitron Metros share many of the characteristics of the Mobile and Pensacola Metros. Opposition at 10-12, Exhibit B.

⁷ *Letter Decision*, 28 FCC Rcd at 27.

⁸ *Id.* at 25.

⁹ *Id.* at 26 (explaining that the established categories include a change in the boundaries of the Arbitron Metro, a change in a station’s “home” designation status, and the creation or elimination of an entire Metro).

¹⁰ *Id.* (citing *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14078, 14085 (MB 2009)). The Commission has recently expressed concern, however, that “the licensee of a station currently located in an Arbitron Metro could . . . reduce the number of its stations listed as ‘home’ to that Metro, without triggering the two-year waiting period and without any change in physical coverage or market competition, merely by specifying a new community of license located outside the Metro.” *2014 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other*

(continued...)

of the Rules, the defined Arbitron Metro has not changed, the station is already designated as “home” to the relevant Metro, and the Applicant has not manipulated the Arbitron market definition,¹¹ the basic conditions are present that the Commission has determined will protect against excessive market concentration in “virtually all cases.”¹² Therefore, the Bureau properly authorized Cumulus to immediately acquire an additional station in the Mobile Metro market, relying only on its Arbitron-based ownership analysis.¹³

6. Upon review of the Application for Review and the entire record, we conclude that ADX has not demonstrated that the Bureau erred. The Bureau, in the *Letter Decision*, properly decided the matters raised, and we uphold its decision for the reasons stated therein.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,¹⁴ and Section 1.115(g) of the Commission’s rules,¹⁵ the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Further Notice of Proposed Rulemaking and Report and Order, FCC 14-28, ¶ 95 (rel. April 15, 2014). Therefore, the Commission proposes to clarify that the two-year waiting period applies in those circumstances. *Id.*

¹¹ See *Letter Decision*, 28 FCC Rcd at 25; *Ownership Order*, 18 FCC 2d at 13726.

¹² See 47 C.F.R. § 73.3555(a); *Ownership Order*, 18 FCC Rcd at 13813.

¹³ Nothing in this decision affects the basic rule that an applicant must satisfy the numerical ownership limits in both the Arbitron Metro market in which a station is listed as “home” and the market in which that station’s community of license is located, if different. See *Ownership Order*, 18 FCC Rcd at 13728 n.595.

¹⁴ 47 U.S.C. § 155(c)(5).

¹⁵ 47 C.F.R. § 1.115(g).