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

In re Applications of S.E. LICENSEE G.P. (ASSIGNOR) and CLEAR CHANNEL RADIO LICENSES, INC. (ASSIGNEE) For assignment of licenses of WREC(AM), Memphis, Tennessee WEGR(FM), Memphis, Tennessee WRXQ(FM), Olive Branch, Mississippi;	)	File Nos. 960514GM 960514GN 960514GO
AND KWAM, INC. (ASSIGNOR) and CLEAR CHANNEL METROPLEX LICENSES, INC. (ASSIGNEE) For assignment of licenses of KWAM(AM), Memphis, Tennessee KJMS(FM), Memphis, Tennessee	)	File Nos. 960524EA 960524EB

MEMORANDUM OPINION AND ORDER

Adopted: November 26, 1996 **Released: November 27, 1996**

By the Commission:

1. The Commission has under consideration: (1) the above-captioned applications for assignment of license of WREC(AM) and WEGR(FM), Memphis, Tennessee and WRXQ(FM), Olive Branch, Mississippi, from S.E. Licensee G.P. to Clear Channel Radio Licenses, Inc. ("Clear

Channel"); (2) the above-captioned applications for assignment of license of KWAM(AM) and KJMS(FM), Memphis, from KWAM, Inc. to Clear Channel Metroplex Licenses, Inc. ("Metroplex"); and (3) a related request for waiver of 47 C.F.R. Section 73.3555(c), the Commission's one-to-a-market rule.[1] The applications are unopposed. For the reasons set forth below, we grant a one-to-a-market waiver[2] during the pendency of and subject to the outcome in our ongoing rulemaking proceedings involving television ownership and the attribution of broadcast interests[3] and grant the assignment applications.

Background

2. Clear Channel is the proposed assignee of WREC(AM) and WEGR(FM), Memphis, and WRXQ(FM), Olive Branch, Mississippi, which is in the Memphis market. Clear Channel controls Clear Channel Communications of Memphis, Inc. ("Clear Channel-Memphis"), which is the licensee of WHRK-FM and WDIA(AM), Memphis, and which controls Metroplex, the proposed assignee of KWAM(AM) and KJMS(FM), Memphis. Clear Channel-Memphis also controls Clear Channel Television Licenses, Inc., which is the licensee of WPTY-TV, Memphis (UHF; ABC affiliate), and which brokers more than 15% of the weekly broadcast hours of WLMT-TV (UHF, Independent), Memphis, pursuant to a local marketing agreement (LMA). Clear Channel was granted a waiver of the one-to-a-market rule in order to allow common ownership of WHRK(FM), WDIA(AM) and WPTY-TV in Memphis. *See US Radio Stations, L.P.,* 11 FCC Rcd 5772 (1996). Clear Channel requests a waiver of the one-to-a-market rule to allow common-ownership of WPTY-TV with the three additional FM stations and two AM stations in the above-captioned applications because the Grade A contour of WPTY-TV encompasses the entire community of license of each station to be acquired in these transactions.

3. Clear Channel bases its request on the waiver standards adopted in the *Second Report and Order* in MM Docket No. 87-7, 4 FCC Rcd 1741 ("*Second Report and Order*"), *recon. granted in part, denied in part,* 4 FCC Rcd 6489 (1989) ("*Second Report and Order Recon.*").

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[1] Section 73.3555(c) of the Commission's Rules prohibits the common ownership of radio and television stations in the same market if the 2 mV/m contour of an AM station or the 1 mV/m contour of an FM station encompasses the entire community of license of a television station or, conversely, if the Grade A contour of a television station encompasses the entire community of license of an AM or FM station.

[2] The Mass Media Bureau has delegated authority to act on uncontested one-to-a-market waiver requests that involve stations in the top 100 television markets and that present no new or novel issues. See Louis C. DeArias, 11 FCC Rcd 3662, 3667 (1996). Although the instant waiver request involves a "top 100" market, delegated authority is not appropriate in this instance because this waiver request involves the application of our one-to-a-market waiver policy in combination with the recently revised local radio multiple ownership rules, and because the applications involve the ownership of a television station and the programming of another television station in the same market pursuant to an LMA.

[3] *See Second Further Notice of Proposed Rulemaking* in MM Docket Nos. 91-221 and 87-8 (television ownership), FCC 96-438 (released November 7, 1996) and *Further Notice of Proposed Rulemaking* in MM Docket Nos. 94-150, 92-51 and 87-154 (attribution), FCC 96-436 (released November 7, 1996).

Under these criteria, the Commission presumptively favors waiver requests involving station combinations serving the top 25 markets where there remain at least 30 separately owned, operated and controlled broadcast licenses or "voices" after the proposed combination is consummated ("top 25 market/30 voice standard").[4] The Commission also favors requests involving "failed" broadcast stations, that is, stations that have not been operating for a substantial period of time, *e.g.,* four months, or that are involved in bankruptcy proceedings. *See* 47 C.F.R. Section 73.3555 note 7. Waiver requests not eligible for consideration under either the "top 25 market/30 voice standard" or the "failed" station standard are evaluated under the more rigorous case-by-case standard, as set forth in the *Second Report and Order.*

4. Memphis is the 42nd largest Designated Market Area (DMA), according to Nielsen, and there is no indication that this waiver request involves a "failed" station. In any event, Clear Channel's request must be evaluated under the case-by-case standard because the proposed transaction involves the common ownership of more than one same service radio station with a television station.[5] Under the case-by-case standard, the Commission makes a public interest determination based upon the following criteria: (1) the potential public service benefits of joint operation of the facilities, such as the economies of scale, cost savings and programming and service benefits; (2) the types of facilities involved; (3) the number of media outlets owned by the applicant in the relevant market; (4) the financial difficulties of the stations involved; and (5) the nature of the relevant market in light of the level of competition and diversity after the joint operation is implemented. *Second Report and Order*, 4 FCC Rcd at 1753. We also note that not all five of the factors mentioned are necessarily relevant in each case. *See Second Report and Order Recon.*, 4 FCC Rcd at 6491. In support of its request, Clear Channel submits a showing which addresses each of the five case-by-case factors.

Waiver Showing

5. Benefits of Joint Operation. Clear Channel estimates $ 275,400 in savings annually from common ownership of the television station and the seven radio stations, including $150,000 in engineering and administrative salaries from combining personnel at WREC, WEGR and WRXQ. Clear Channel also states that combined use of production, programming, and news

[4] The Commission has been directed to "extend its [one-to-a-market] waiver policy to any of the top 50 markets, consistent with the public interest, convenience, and necessity." See Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(d), 110 Stat. 56 (1996). A proposal to implement this extension of our waiver policy is pending. *Second Further Notice of Proposed Rulemaking* in MM Docket Nos. 91-221 and 87-8, FCC 96-438 (released November 7, 1996) at para. 66.

[5] We require evaluation of the waiver request under the case-by-case standard, regardless of the size of the market involved, because Clear Channel's proposed acquisition involves the ownership of same service radio stations with overlapping principal community contours. See Revision of Radio Rules and Policies (Recon.), 7 FCC Rcd 6387, 6394 n.40 (1992) (noting that consideration of one-to-a-market waivers under the case-by-case standard is appropriate where a transaction implicates the revised local radio ownership limits, pending possible revision of the one-to-a-market rule in television ownership proceeding under consideration). See also Moosey Communications, Inc., 8 FCC Rcd 5247, 5247 (1993).

gathering facilities of these three stations would eliminate the need for future expansion by all three of these stations, and that such combined use is expected to result in a savings of $85,000 over the next five years. Clear Channel plans to collocate the facilities of KWAM and KJMS-FM with WHRK-FM and WDIA, which will result in annual savings to KWAM and KJMS-FM of approximately $50,000 from administrative salaries and $50,400 from rent. Clear Channel states that these four stations could save more than $25,000 in long-term equipment costs by pooling currently-owned equipment. Clear Channel also states that it expects to save approximately $25,000 per year through cross-promotion of its stations, joint promotion of public service campaigns and other community events, and advertisements for job openings at other owned stations. Clear Channel asserts that the total cost savings derived from common ownership of the television station and radio stations will make it possible to hire a full-time public affairs and community relations director, thereby enhancing the public affairs programming of WREC, WEGR and WRXQ. Clear Channel envisions that a person in this position full-time would be able to visit with every community leader, to pinpoint the changing needs of communities served by the stations, and to develop programming to address those issues. In addition, Clear Channel states that KWAM and KJMS-FM will be able to share the news and public affairs resources of the other Clear Channel stations in the market, which will enable those two stations to benefit listeners by improving news and public interest programming, and by sponsoring additional community events, which the two stations would otherwise be unable to undertake.

6. Other Media Outlets/Types of Facilities. UHF station WPTY-TV (ABC affiliate) operates on channel 24, with authorized power of 3,020 kW maximum visual and 600.6 kW maximum aural from a 1.011-foot antenna height above average terrain. WHRK(FM) is a 100 kW Class C1 station operating on 97.1 MHz from a 530-foot antenna, and WDIA(AM) is a Class II station operating on 1070 kHz with authorized power of 50 kW daytime and 5 kW nighttime using a directional antenna. WREC(AM) is a 5 kW Class III station operating on 600 kHz using a directional antenna. WEGR(FM) is a 100 kW Class C1 station operating on 102.7 MHz from a 970-foot antenna, and WRXQ(FM) is a 6 kW Class A station operating on 95.7 MHz from a 459-foot antenna. KJMS-FM is a 100 kW Class C1 station operating on 101.1 MHz from a 450-foot antenna, and KWAM(AM) is a Class II station operating on 990 kHz with authorized power of 10 kW daytime and 450 watts nighttime using directional antennas.

7. WPTY-TV competes with four VHF stations licensed to Memphis. In addition, Clear Channel asserts that the radio facilities that it owns and proposes to own are comparable to other stations in the Memphis market. Specifically, Clear Channel points out that, like WHRK-FM, WEGR and KJMS-FM, there are five FM stations with authorized power of at least 100 kW that will not be under Clear Channel's control. With regard to the AM facilities, there are two AM stations with the same authorized power as WDIA (50 kW), two AM stations with the same authorized power as KWAM (10 kW), and three AM stations with the same authorized power as WREC (5 kW), none of which will be under Clear Channel's control.

8. Aside from the stations listed above, Clear Channel owns no other media outlets in the Memphis market. Clear Channel does have an LMA with independent UHF station WLMT-

TV (Channel 30), whose audience share is a "5". Clear Channel states that three other television stations in the market, not owned by Clear Channel, have substantially higher audience shares: WMC-TV (VHF; NBC affiliate; "22" share); WREG-TV (VHF; CBS affiliate; "20" share); and WHBQ-TV (VHF; Fox affiliate; "10" share).[6] WPTY-TV's market share is an "8." Thus, Clear Channel asserts that the market share of the lowest-rated commercial VHF station is a "10", which is larger than WPTY-TV's share, and twice as large as the share of Clear Channel's LMA station, WLMT-TV.

9. Economic Status. Clear Channel states that none of the broadcast stations at issue is in financial distress.

10. Competition and Diversity in the Market. Clear Channel asserts that its acquisition of WREC, WEGR, WRXQ, KWAM and KJMS will have no significant effect on either the diversity of available media outlets or the distribution of economic power in the highly competitive Memphis market. The Memphis market is the 42nd largest DMA television market, with 605,930 television households. Clear Channel has provided a showing which indicates that there are 17 AM stations and 17 FM stations licensed in the Memphis television metro market and 4 VHF stations and 4 UHF stations licensed in the Memphis DMA. These 34 radio stations and 8 television stations are licensed to 27 separate owners. Clear Channel states that a wide variety of other media are available, including local newspapers, VCRs, cable television, and three low power television stations. In particular, Clear Channel has submitted data indicating that the market is served by 34 cable operators, reaching 58.1% of total households. In addition, there are 453,800 VCR households (78% penetration rate), and print media include nine daily newspapers and 27 weekly publications.

Discussion

11. We turn first to Clear Channel's compliance with our local radio ownership rules. Clear Channel has submitted the required contour overlap showing which indicates that the relevant radio market contains 39 stations. Under our rules, in a radio market with 30-44 commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service. *See* 47 C.F.R. Section 73.3555(a)(1)(ii), as amended by *Broadcast Radio Ownership*, FCC 96-90 (released March 8, 1996).[7] Clear Channel proposes to own, operate, or control seven commercial radio stations, four of which are in the same service. Accordingly, the proposed transaction complies with the numerical local radio ownership limits. In addition, staff analysis indicates that the Clear Channel stations combined will garner 40.4% of radio advertising revenues in the market. This level does not raise a concern that Clear Channel will be able to impede competition in the

[6] Shares based on February 1996 Nielsen data.

[7] This order implemented the new local radio ownership limits adopted by Congress in the *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996).

Memphis radio market. *See* paragraphs 18-20, *infra*, and *Shareholders of Citicasters, Inc.*, FCC 96-380 (released September 17, 1996) ("*Citicasters*"). We conclude that, with respect to local radio ownership, nothing in the record in this case suggests that Clear Channel's acquisition of WREC(AM), WEGR(FM), KWAM(AM), KJMS(FM) and WRXQ(FM) would be inconsistent with the public interest.

12. Before considering Clear Channel's request for a waiver of the one-to-a-market rule, we must determine what weight, if any, we should accord Clear Channel's existing LMA with WLMT-TV in assessing that request. Currently, television LMAs are not attributable to the brokering station, nor, taken alone, are they considered a "meaningful" relationship within the scope of the cross-interest policy. At present, therefore, we will not accord significance to Clear Channel's existing television LMA in evaluating its ownership waiver request. Our decision here in no way prejudges the issues in our ownership and attribution proceedings. We have proposed to attribute television LMAs to the brokering station where, as in Memphis, the stations involved are in the same market and the brokerage arrangement includes more than 15 percent of the brokered station's weekly broadcast hours. *Further Notice of Proposed Rulemaking* in MM Docket Nos. 94-150, 92-51 and 87-154, FCC 96-436 (Attribution proceeding) (released November 7, 1996), at para. 27. Further, we have proposed that any LMA which would be attributable for duopoly rule purposes under this approach "would also count in applying our other ownership rules, including, for example . . . the one-to-a-market rule (or radio-television cross-ownership rule)." *Id.* (footnotes omitted). And, while we have proposed to grandfather those LMAs -- such as the LMA here -- that were entered into prior to November 5, 1996, the adoption date of the *Second Further Notice of Proposed Rulemaking* in MM Docket Nos. 91-221 and 87-8, FCC 96-438 (Television Ownership proceeding), (released November 7, 1996), we have also indicated that we would "reserve the right . . . to invalidate an otherwise grandfathered LMA in circumstances that raise particular competition and diversity concerns, such as those that might be presented in very small markets." *Id.* at para. 88. Thus, if we establish final rules for attributing and grandfathering LMAs, we would also assess whether the class of transactions involving radio, television and LMA interests such as those involved in this case should be permitted to continue. Because this is a pending issue, we will condition the one-to-a-market waiver we grant here on the ultimate result reached in the pending rulemaking proceedings in attribution and television ownership concerning the significance and the grandfathering of television LMAs.

13. Turning to the substance of Clear Channel's one-to-a-market waiver request, we note that the Commission has recently considered waivers of the one-to-a-market rule where the radio combinations involved were governed by the ownership standards adopted in the *Telecommunications Act of 1996*. *See Citicasters*. In *Citicasters*, we declined to grant a requested permanent waiver of the one-to-a-market rule where an applicant would own more radio stations than we permitted prior to passage of the *Telecommunications Act of 1996*. We stated that issues related to radio-television combinations remain in the pending rulemaking proceeding concerning broadcast ownership and concluded that a permanent, unconditional waiver of the one-to-a-market rule was not therefore appropriate. We also concluded, however, that a temporary waiver of the one-to-a-market rule pending our resolution of the one-to-a-market issues

raised in the broadcast ownership rulemaking proceeding was justified, and would not, given its limited duration, unduly affect competition and diversity in the relevant markets. For the same reasons, we conclude that a permanent, unconditional waiver would not be appropriate here, but that, as in *Citicasters*, the applicant has justified grant of a temporary waiver pending our resolution of the issues raised in the broadcast ownership rulemaking. Our view that a temporary waiver is warranted is based in part upon our analysis of Clear Channel's case-by-case showing in support of its permanent waiver request.

14. Clear Channel has demonstrated substantial cost savings and economic benefits to be derived from joint ownership of WPTY-TV, WHRK(FM) and WDIA(AM) with KWAM(AM), KJMS(FM), WREC(AM), WEGR(FM) and WRXQ(FM). Clear Channel estimates total savings of $275,400 annually from common ownership of the television station and the seven radio stations, including $150,000 in engineering and administrative salaries from combining personnel at WREC, WEGR and WRXQ. In addition, Clear Channel will realize a cost savings of $85,000 over the next five years from combined use of production, programming, and news gathering facilities of these same three stations. Collocation of the facilities of KWAM and KJMS with WHRK and WDIA will result in annual savings to KWAM and KJMS of approximately $50,000 from administrative salaries and $50,400 from rent, and these four stations will save an additional $25,000 in equipment costs by pooling currently-owned equipment. Finally, Clear Channel states that the stations will be able to cross-promote, which is an advantage we have recognized as "one of the most significant benefits of joint ownership of radio and television stations in the same market." *Second Report and Order*, 4 FCC Rcd at 1747 (footnote omitted). Clear Channel estimates annual savings of $25,000 through cross-promotion, joint promotion of public service campaigns and other community events, and advertisements for job openings at other owned stations.

15. The Commission has stated that combinations involving UHF stations "may provide relatively greater public interest benefits and impose relatively fewer public interest costs." *See Second Report and Order*, 4 FCC Rcd at 1753. *See also Moosey Communications, Inc.*, 8 FCC Rcd at 5248. The combination for which the instant waiver is requested involves a UHF station, WPTY-TV, which competes with four VHF stations in the Memphis market, all of which have a higher audience share than WPTY-TV's "8" share. Although 3 FMs in Clear Channel's proposed combination are authorized to operate at 100 kW, Clear Channel has shown that there are 5 FMs in the market with authorized power of at least 100 kW that will not be under Clear Channel's control. Additionally, the proposed combination involves a 5 kW AM station, a 10 kW AM station, and a 6 kW FM station. "[A]s the level of competition and diversity in a market increases, [the Commission's] concerns grounded in the technical strength of the combining facilities decrease." *Louis C. DeArias*, 11 FCC Rcd 3662, 3666 (1996). Thus, while the technical facilities of some of the stations involved are significant, we find, given the substantial competing facilities in the Memphis market, that the proposed combination does not present issues of market dominance inconsistent with the public interest.

16. Although Clear Channel states that none of the broadcast stations at issue is in financial distress, we have previously indicated that not all five factors need be present to justify

grant of a waiver. *See Second Report and Order Recon.*, 4 FCC Rcd at 6491; *Great American Television and Radio Co., Inc.*, 4 FCC Rcd 6347, 6349 (1989). We have also granted a number of one-to-a-market waivers where there was no finding that any of the stations were in financial distress. *See, e.g., Louis C. DeArias*, 11 FCC Rcd at 3666; *Atla Gulf FM, Inc.*, 10 FCC Rcd 7750, 7751 (1995); *Secret Communications, L.P.*, 10 FCC Rcd 6874, 6877 (1995).

17. Finally, Clear Channel has shown that the proposed combination will not create any undue concentration of ownership or control of the broadcast media in the Memphis market.[8] There are 17 AM stations and 17 FM stations licensed in the Memphis television metro market and 4 VHF stations and 4 UHF stations licensed in the Memphis DMA, which is the 42nd largest DMA. These 34 radio stations and 8 television stations are licensed to 27 separate owners. A wide variety of other media are available, including 34 cable systems, which reach 58.1% of total households, VCRs with a penetration rate of 78%, nine daily newspapers, 27 weekly publications, and three low power television stations. Under these circumstances, grant of this waiver request is in accord with waivers that we have previously approved under our former multiple ownership rules. *See, e.g., Louis C. DeArias*, 11 FCC Rcd at 3666 (31 separate voices, 2 daily newspapers, and 57.9% cable penetration); *Moosey Communications, Inc.*, 8 FCC Rcd 5247, 5249 (1993) (24 separate voices, 1 daily newspaper, and 73% cable penetration); *Liggett Broadcast, Inc.*, 7 FCC Rcd 7124, 7125-26 (1992) (28 separate voices, 7 daily newspapers, and 51% cable penetration); *South Central Communications Corp.*, 5 FCC Rcd 6697, 6698-99 (1990) (26 separate voices, 2 daily newspapers, and 61.9% cable penetration).

18. With respect to economic concentration and competition, our independent analysis indicates that Clear Channel's seven radio stations will garner a 40.4% share of the radio advertising revenue in Memphis, while WPTY-TV garners 15.5% of television advertising revenue. Together, the television and radio stations receive a combined television and radio advertising share of 24.2%. Given the limited duration of the waiver, we do not believe that these figures are so significant as to raise a concern that diversity and competition in Memphis will be unduly affected for the waiver period.

19. We conclude, based on the record, that granting a conditional, temporary waiver will not unduly affect competition or diversity in the Memphis market. *See Shareholders of Citicasters, Inc.*, FCC 96-380 (released September 17, 1996) (granting temporary waivers of one-to-a-market rule to Jacor in Cincinnati and Tampa for a period of six months from issuance of an Order in pending television ownership proceeding). The market is both diverse and highly competitive, and this transaction involves a UHF television station that is not dominant.

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[8] As to the market definition within which to count the number of broadcast stations in the context of a one-to-a-market waiver, the Commission considers "the relevant TV metro market for radio stations and the relevant ADI [Arbitron Area of Dominant Influence] TV market for TV stations." Second Report and Order, 4 FCC Rcd at 1760 n.101. However, since Arbitron no longer compiles television ADI data, we will accept instead Clear Channel's showing using the Nielsen DMA in determining the number of broadcast "voices" in the Memphis market. See Media/Communications Partners L.P., 10 FCC Rcd 8116, 8116 n.3 (1995); see also Further Notice of Proposed Rule Making, MM Docket Nos. 91-221 & 87-8, 10 FCC Rcd 3524, 3539 n.59 (1995).

Furthermore, three of the radio stations are relatively small, and while Clear Channel's commonly-owned facilities will be significant in technical terms, comparable competing facilities do exist. Moreover, Clear Channel has demonstrated that there are economic efficiencies to be gained that support grant of a temporary waiver.

20. Accordingly, IT IS ORDERED, That the request for a waiver of the one-to-a-market rule, 47 C.F.R. Section 73.3555(c), to permit common ownership of Stations WPTY-TV, KWAM(AM), KJMS(FM), WREC(AM) and WEGR(FM), Memphis, Tennessee and WRXQ(FM), Olive Branch, Mississippi., IS HEREBY GRANTED, subject to the outcome in the pending television ownership rulemaking proceeding, *Second Further Notice of Proposed Rulemaking* in MM Docket Nos. 91-221 & 87-8, FCC 96-438 (released November 7, 1996), and in the pending broadcast attribution proceeding, *Further Notice of Proposed Rulemaking* in MM Docket Nos. 94-150, 92-51 and 87-154, FCC 96-436 (released November 7, 1996). Should divestiture be required as a result of those proceedings, Clear Channel is directed to file an application for Commission consent to sell the necessary station(s) within six months from the release of the Orders in those proceedings.

21. IT IS FURTHER ORDERED, That the above-captioned applications to assign the licenses of WREC(AM) and WEGR(FM), Memphis, Tennessee and WRXQ(FM), Olive Branch, Mississippi, from S.E. Licensee G.P. to Clear Channel Radio Licenses, Inc. (File Nos. 960514GM, 960514GN & 960514GO), ARE HEREBY GRANTED.

22. IT IS FURTHER ORDERED, That the above-captioned applications to assign the licenses of KWAM(AM) and KJMS(FM), Memphis, from KWAM, Inc. to Clear Channel Metroplex Licenses, Inc. (File Nos. 960524EA & 960524EB), ARE HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary