



Federal Communications Commission
Washington, D.C. 20554

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DA 05-1318
In Reply Refer to:
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Media One Group II, LLC
c/o David D. Oxenford, Esq.
Shaw Pittman, LLP
2300 N Street, NW
Washington, DC 20037

Vox Allegany, LLC
c/o David G. O'Neil, Esq.
Rini Coran, P.C.
1501 M Street, NW, Suite 1150
Bethesda, MD 20815

Cross Country Communications, LLC
c/o Donald E. Martin, Esq.
P.O. Box 8433
Falls Church, VA 22041

Re: WKSN(AM), Jamestown, NY
Facility ID No. 65592
File No. BAL-20040601BHA

WHUG(FM), Jamestown, NY
Facility ID No. 65591
File No. BALH-20040601BHB

WQFX-FM, Russell, PA
Facility ID No. 39622
File No. BAL-20040601BNJ

Applications for Assignment of Licenses

Dear Counsel:

We have before us the above-captioned applications (the "Assignment Applications") proposing to: (1) assign the licenses of stations WKSN(AM) and WHUG(FM), Jamestown, New York, from Vox Allegany, LLC ("Vox") to Media One Group II, LLC ("Media One"); and (2) assign the license of station WQFX-FM, Russell, Pennsylvania, from Southbridge Radio Corporation ("Southbridge") to Media One. On July 6, 2004, Cross Country Communications, LLC ("Cross"), licensee of station WKZA(FM), Lakewood, New York, filed a Petition to Deny the Assignment Applications.¹ For the reasons stated below, we are denying the Petition to Deny and granting the Assignment Applications.

¹ Media One filed an Opposition on July 26, 2004, and Cross filed a Reply on August 27, 2004.

Cross argues that grant of the Assignment Applications would be contrary to the public interest by harming competition. Media One is currently the licensee of two stations in Jamestown, WJTN and WWSE(FM). If allowed to purchase the three stations in question, Cross contends, Media One will assume a near-monopoly position as the predominant seller of radio advertising in the market. Cross claims that the proposed transaction requires a higher level of scrutiny, particularly because the Commission's omnibus proceeding to examine certain multiple ownership rules is still on appeal.²

The market in question is not rated by Arbitron. Cross argues that market participants should be determined using a case-by-case approach. Cross maintains that the mere overlap of technical contours -- using the contour-overlap methodology for market definition -- does not necessarily indicate that a station is actually a market participant. To determine what stations should be considered participants in the Jamestown/Warren market, Cross states that it "conducted a survey of some 30 experienced radio advertising buyers in the market to find out what stations they consider to be competitive players in the market for their advertising budgets."³ Cross concludes that six stations should be excluded from the market because they were identified by "90% to 100% of the survey participants as uncompetitive in the market"⁴ Cross further concludes that only nine stations remain as market participants. If the proposed transaction were to transpire, five of these nine stations would be under common control, and such a concentration of market power, Cross asserts, is contrary to the public interest.

Based on an extensive review of its broadcast ownership rules, the Commission revised, *inter alia*, the local radio ownership rule.⁵ The United States Court of Appeals for the Third Circuit ("Court of Appeals"), however, stayed the effective date of the various ownership rules adopted in the *Ownership Report and Order*.⁶ In response to the Commission's petition for rehearing of the *Prometheus Remand Order*, on September 3, 2004, the Court of Appeals partially lifted its stay such that the new local radio ownership rule, as set forth in the *Ownership Report and Order*, took effect.⁷ The Commission explained that, where transactions involve non-Arbitron markets, it would continue to apply its contour-overlap methodology, with certain modifications, pending the outcome of a *Notice of Proposed Rulemaking* which seeks comment on how to establish geographic boundaries for non-rated markets.⁸ "Conducting a case-by-case analysis would create significant regulatory uncertainty, and adopting an ill-considered 'proxy' geographic market could produce unforeseeable distortions," the Commission stated.⁹ The Commission reasoned that the appropriate course is to develop market definitions for non-rated markets through the rulemaking process.¹⁰

² Petition to Deny at 4. *See infra* note 5.

³ *Id.* at 6.

⁴ *Id.* at 7.

⁵ *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*, 18 FCC Rcd 13620 (2003) ("*Ownership Report and Order*"), *aff'd in part and remanded in part, Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (3d Cir. 2004) ("*Prometheus Remand Order*"), *stay modified on reh'g*, No. 03-3388 (3d Cir. Sept. 3, 2004) ("*Prometheus Rehearing Order*").

⁶ *See Prometheus Radio Project, et al. v. F.C.C.*, slip op. at 3, No. 03-3388 (3d Cir. Sept. 3, 2003) (*per curiam*); *Prometheus Remand Order*, 373 F.3d at 475.

⁷ *Prometheus Rehearing Order*, *supra* note 5.

⁸ *See Ownership Report and Order*, 18 FCC Rcd at 13729-30 and 13870-73.

⁹ *Id.* at 13729.

¹⁰ *Id.*

On November 8, 2004, Media One amended the Assignment Applications to show compliance with Section 73.3555(a) using the prescribed interim contour-overlap methodology. Cross's Petition to Deny antedated September 3, 2004 -- the date the new radio ownership rule took effect -- and did not address the Commission's decision regarding non-rated markets nor the modifications to the prior contour methodology. The rulemaking proceeding regarding non-rated markets is still ongoing. In light of the Commission's concerns articulated in the *Ownership Report and Order* and discussed above, we reject Cross' proposed proxy for selection of market participants. Cross' methodology for selecting certain businesses and excluding others for survey purposes appears to be inherently subjective, and its claims regarding projected ad revenues cover only a few of the stations in its proposed Jamestown/Warren market. Cross provides insufficient data even were we to accept these types of data and undertake a case-by-case analysis in the instant proceeding. We therefore analyze the transaction under the current rule, *i.e.*, by applying the interim contour-overlap methodology.

As noted, Media One currently owns stations WJTN(AM) and WWSE(FM), Jamestown, New York. These stations along with the three captioned stations create a single market, and Media One's exhibit, as amended, demonstrates that there are 20 stations in this market. In a local radio market with 15 to 29 stations, a single owner may own up to six commercial stations, no more than four of which are in the same service.¹¹ Post-acquisition, Media One would own two AM and three FM stations in a 20-station market, which complies with the rule.

Based on the evidence presented in the record, we find that Cross has not raised a substantial and material question of fact warranting further inquiry. We further find that Media One is qualified as the assignee and that grant of the Assignment Applications is consistent with the public interest, convenience and necessity. Accordingly, IT IS ORDERED, that the application to assign the licenses of stations WKSN(AM), Jamestown, New York (File No. BAL-20040601BHA) and WHUG(FM), Jamestown, New York (File No. BALH-20040601BHB) from Vox Allegany, LLC to Media One Group II, LLC and station WQFX-FM, Russell, Pennsylvania (File No. BALH-20040601BNJ) from Southbridge Radio Corporation to Media One Group II, LLC ARE GRANTED. IT IS FURTHER ORDERED, that the July 6, 2004, Petition to Deny filed by Cross Country Communications, LLC IS DENIED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

¹¹ 47 C.F.R. § 73.3555(a)(1)(iii).