



**Federal Communications Commission
Washington, D.C. 20554**

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**DA 05-1314
In Reply Refer to:
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Re: KZZL-FM, Pullman, WA
Facility ID No. 26412
File No. BALH-20040806ABA

KRAO-FM, Colfax, WA
Facility ID No. 15269
File No. BALH-20040806ABB

KCLX(AM), Colfax, WA
Facility ID No. 15270
File No. BAL-20040806ABC

KMAX(AM), Colfax, WA
Facility ID No. 13569
File No. BAL-20040806ABD

Applications for Assignment of Licenses

Dear Counsel:

We have before us the above-captioned applications (the "Assignment Applications") proposing to assign the licenses of stations KZZL-FM, Pullman, Washington, and KRAO-FM, KCLX(AM), and KMAX(AM), Colfax, Washington, from Palouse Country, Inc. ("PCI") to Inland Northwest Broadcasting, LLC ("Inland"). On September 10, 2004, Radio Palouse, Inc. ("RPI"), licensee of stations KQQQ(AM) and KHTR(FM), Pullman,

Washington, 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.

RPI argues that the transaction does not comply with the Commission's multiple ownership rule if we consider the relevant market to be "the Moscow-Pullman-Colfax market."² There is no Arbitron Metro designated as "Moscow-Pullman-Colfax." Moreover, none of the subject stations is licensed to a community in an Arbitron Metro or reported by BIA as "home" to any Arbitron Metro. RPI defines the "small, unrated [Moscow-Pullman-Colfax] market" in terms of the number of commercial stations licensed to these three communities.³ According to RPI, Inland's principals would have attributable interests in six of the nine commercial stations in that "market."⁴ RPI further argues that "[a]pproval of the assignment will create a 'duopoly market' and will result in two owners receiving over 90% of the revenues in the Moscow-Pullman-Colfax market."⁵

On October 28, 2004, Inland amended the Assignment Applications to show compliance with Section 73.3555(a) as now in effect.⁶ Inland's Opposition rejects RPI's proposed Moscow-Pullman-Colfax market. Inland notes that RPI "acknowledges that 'numerous other stations [in addition to stations licensed to Moscow, Pullman or Colfax] provide listenable signals' in Moscow, Pullman and Colfax."⁷ In fact, Inland argues, "there are at least 15 radio stations licensed to communities *other than* Pullman, Moscow, and Colfax providing protected service to all or parts of the three communities."⁸ Moreover, Inland asserts, RPI's claims concerning which stations compete in the relevant market are "wholly without foundation other than a conclusory statement found in the [RPI President William] Weed Declaration."⁹ Finally, Inland asserts, "[t]he Commission has previously refused to rely on a party's 'own estimates of advertising revenue' where it 'provides no evidence as to how these figures were determined.'"¹⁰

Based on an extensive review of its broadcast ownership rules, the Commission revised, *inter alia*, the local radio ownership rule.¹¹ The United States Court of Appeals for the Third Circuit ("Court of Appeals"),

¹ Inland filed an Opposition on October 4, 2004, and RPI filed a Reply on October 15, 2004.

² Petition to Deny at 2. Moscow is in Idaho.

³ *Id.*

⁴ RPI argued in its Petition to Deny that there were eight commercial stations in this market. RPI's Reply, however, noted that a ninth commercial station began operating in this market after the Petition to Deny was filed. *See* Reply at 1-2, n.1.

⁵ Petition to Deny at 5.

⁶ *See infra* notes 11-16 and accompanying text.

⁷ Opposition at 7 (citing Petition to Deny at 3).

⁸ *Id.* at 7 (emphasis in original) and Exhibit C.

⁹ *Id.* at 8. Inland references the one Declaration by RPI's President submitted in the Petition to Deny. RPI's Reply submitted the Declarations of two additional individuals, discussed *infra*, which Inland did not have the opportunity to address.

¹⁰ *Id.* (citing *Whitehall Enterprises, Inc.*, 17 FCC Rcd 17509, 17519 (2002)).

¹¹ *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").

however, stayed the effective date of the various ownership rules adopted in the *Ownership Report and Order*.¹² 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.¹³ 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 the *Notice of Proposed Rulemaking* which seeks comment on how to establish geographic boundaries for non-rated markets.¹⁴ "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.¹⁵ The Commission reasoned that the appropriate course is to develop market definitions for non-rated markets through the rulemaking process.¹⁶

We find that Petitioners have not sustained their burden to establish an alternative market that is consistent with the *Ownership Report and Order*'s conclusion that "a local radio market that is objectively determined . . . presents the most rational basis for defining radio markets."¹⁷ RPI fails to provide any objective methodology for the establishment of a market that includes only stations licensed to Moscow, Pullman, or Colfax. RPI relies entirely on opinions and estimates by company officials and one ad agency representative. For example, RPI President Weed has "estimated" gross revenues for RPI, PCI, and Inland, but does not explain how he arrives at these numbers.¹⁸ Likewise, RPI's sales manager's assertion regarding ad revenues is based solely "upon [his] experience selling time on Stations KQQQ and KHTR."¹⁹

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 as inadequately supported RPI's definition of a "Moscow-Pullman-Colfax market" to determine compliance with Section 73.3555(a) in this case. We therefore analyze the transaction under the current rule, *i.e.*, by applying the interim contour-overlap methodology.

Staff review confirms that the proposed transaction forms three separate radio markets and complies with the local radio ownership limits in all three. In one of these, Inland would own four FM and three AM stations in a 37-station market. In another, Inland would own four FM and two AM stations in a 32-station market. In a local radio market with 30 to 44 radio stations, one owner may hold up to seven commercial radio stations, no more than four of which are in the same service.²⁰ In the third market, Inland would own three FM and three AM

¹² 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.

¹³ *Prometheus Rehearing Order*, *supra* note 11.

¹⁴ See *Ownership Report and Order*, 18 FCC Rcd at 13729-30 and 13870-73.

¹⁵ *Id.* at 13729.

¹⁶ *Id.*

¹⁷ *Id.* at 13724. See also *id.* at 13737 (citing 47 U.S.C. § 309(d)).

¹⁸ Petition to Deny, Declaration of William Weed. See also Declaration of Roderick Schwartz ("Schwartz Declaration"), submitted with RPI's Reply (stating "it is [his] *understanding* that the nine radio stations" . . . would garner 90% of their revenues from businesses located in these communities (emphasis added)).

¹⁹ See Schwartz Declaration, *supra* note 20. See also Declaration of Charles M. Christopher, submitted with RPI's Reply (stating that he "*estimate[s]* that the nine commercial stations" . . . receive in excess of 90% of the radio advertising dollars spent by businesses and organizations located in Moscow, Pullman, or Colfax (emphasis added)).

²⁰ 47 C.F.R. § 73.3555(a)(1)(ii).

stations out of a total of 26 stations. 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.²¹

Based on the evidence presented in the record, we find that RPI has not raised a substantial and material question of fact warranting further inquiry. We further find that Inland 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 station KZZL-FM, Pullman, Washington (File No. BAL-20040806ABA) and stations KRAO-FM (File No. BALH-20040806ABB), KCLX(AM) (File No. BAL-20040806ABC) and KMAX(AM) (File No. BAL-20040806ABD), Colfax, Washington, from Palouse Country, Inc. to Inland Northwest Broadcasting, LLC ARE GRANTED. IT IS FURTHER ORDERED, that the September 10, 2004, Petition to Deny filed by Radio Palouse, Inc. IS DENIED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

²¹ 47 C.F.R. § 73.3555(a)(1)(iii).