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Re: KZZL-FM, Pullman, Washington, and
WRAO-FM, KMAX, and KCLX, Colfax,
Washington
Facility ID Nos. 26412, 15269, 15270, and
13569
File Nos. BAL/H-20040806ABA, ABB,
ABC, and ABD

**Applications for Consent to Assignment of
Licenses
Petition for Reconsideration**

Dear Counsel:

We have before us a June 8, 2005, Petition for Reconsideration ("Petition") filed by Radio Palouse, Inc. ("RPI") concerning our May 9, 2005, *Initial Ruling* in the above-noted proceeding.¹ That action granted applications for consent to assign the four above-referenced stations from Palouse Country, Inc. to Inland Northwest Broadcasting, LLC ("Inland"), over RPI's objection.² For the reasons discussed below we deny the Petition and affirm our *Initial Ruling*.

¹ See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, to Kenneth E. Satten, Esq., 20 FCC Rcd 8841 (MB 2005) ("*Initial Ruling*"). RPI had filed a Petition to Deny the application.

² Inland filed an Opposition to the Petition on June 22, 2005, to which RPI filed a Reply on July 6, 2006.

The stations at issue are not located within any Arbitron-rated market. Our *Initial Ruling*, analyzed the transaction applying the interim contour-overlap market definition identified in the Commission's *Ownership Order* for use in evaluating transactions involving stations situated outside of Arbitron markets, pending resolution of the rulemaking proceeding to determine the appropriate geographic definitions of such areas.³ The *Initial Ruling* concluded that, under that interim analysis, the four stations were located in three separate radio markets and, in each market, the transaction satisfied the numerical limits of the Commission's local radio ownership rule.⁴ In its Petition to Deny the applications, RPI had urged us instead to consider the relevant market as the "Moscow-Pullman-Colfax" market, a market of its own design consisting of the nine radio stations licensed to the communities of Pullman and Colfax, Washington and Moscow, Idaho.⁵ In the *Initial Ruling*, we rejected that argument, finding that RPI had failed to provide any objective methodology for the establishment of such a market. We found RPI's supporting information, consisting of statements by RPI's own officials and one advertising agency representative, to be "opinions and estimates" that did not sustain the burden of proof required to objectively establish an alternate market definition.⁶

On reconsideration, RPI argues that the *Initial Ruling* erroneously interprets the Commission's *Ownership Order* as barring the staff from considering alternative markets, and that such an interpretation is arbitrary, given that the Commission itself has acknowledged flaws in the contour-overlap method. RPI further argues that it had submitted factual statements from experts that, it contends, were sufficient to make a *prima facie* showing that the contour-overlap method overstated the number of stations in the market, that these alleged facts were unrebutted, and that the *Initial Ruling* did not adequately explain how these facts lacked objectivity. RPI maintains that we mischaracterized its presentation of expert testimony as mere opinions and estimates.⁷ It suggests that the Commission require the applicants to submit revenue data, which RPI believes will corroborate the information that it has provided. RPI also renews arguments, raised below, that the facts of this case are similar to those in *Air Virginia*.⁸ In that case, the Commission designated an assignment application for hearing because the proposed transaction would have eliminated a

³ See 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13729-30 and 13870-73 (2003) ("*Ownership Order*"), *aff'd in part and remanded in part*, *Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (3d Cir. 2004) ("*Prometheus Remand Order*"), *cert. denied*, 125 S. Ct. 2902, 2903, 2904 (2005). See also *Prometheus Radio Project, et al. v. FCC*, No. 03-3388 (3d Cir. Sept. 3, 2003) (granting motion for stay of effective date of new rules), *stay modified on reh'g*, No. 03-3388 (3d Cir. Sept. 3, 2004). Under the interim methodology, the relevant radio market is defined by the area encompassed by the mutually overlapping principal community contours of the stations proposed to be commonly owned. The Commission is using this method pending the outcome of an ongoing rulemaking proceeding which seeks comment on methods to establish geographic boundaries for non-rated markets. See *Ownership Order*, 18 FCC Rcd at 13729-30 and 13870-73.

⁴ See 47 C.F.R. § 73.3555(a)(1). Each market, so defined, contained 37, 32, or 26 stations, of which Inland would own 6 or 7.

⁵ RPI argued that Inland's interests would exceed those permissible because Inland would have attributable interests in six of the nine commercial stations in that "market" and would create a "duopoly."

⁶ See *Initial Ruling*, 20 FCC Rcd at 8843.

⁷ Petition at 5. The facts alleged are that only nine stations provide primary service to Pullman, Colfax, and Moscow; that these nine stations garner at least 90 percent of their revenues from advertisers within these communities; that, except for local universities, advertisers in these three communities do not advertise on stations located outside these communities; and that the assignment will create a duopoly. *Id.* at 2.

⁸ *Air Virginia, Inc.*, Hearing Designation Order, 17 FCC Rcd 5423 (2002) ("*Air Virginia*").

third competitive owner to create a “duopoly market” in which two owners would control 94.2 percent of advertising revenue share.

The Commission and Media Bureau have acknowledged that the contour-overlap method has some problems, even as modified, but have concluded that “its temporary use during the pendency of the rulemaking proceeding cannot be avoided.”⁹ Our *Initial Ruling* did not, as RPI alleges, interpret the *Ownership Order* as barring consideration of markets other than those derived by the contour-overlap method. Rather, we quoted the *Ownership Order*’s conclusions that “a local radio market that is objectively determined . . . presents the most rational basis for defining radio markets,” that use of a “case-by-case analysis would create significant regulatory uncertainty,” and that any party proposing a market derived by a method other than provided therein, therefore, bears the burden to provide adequate information to demonstrate a unique geographic market.¹⁰ The *Initial Ruling* found that RPI had not sustained that burden.

The Commission has declined to rely on a party’s own estimates where the party has provided no evidence as to how these figures were determined.¹¹ The Commission has also found, as insufficient, data derived from a survey without an objective methodology.¹² As explained in the *Initial Ruling*, RPI’s allegations relied primarily on the statements by its own management. Moreover, these sources did not provide any objective methodology explaining how they had derived their numbers. The *Initial Ruling* gave several examples of the problems with this information provided by RPI’s officials. For example, RPI’s President stated that he had “estimated” gross revenues for three companies but did not explain how he had arrived at those numbers. Similarly, RPI’s Sales Manager provided only his “understanding” of business revenues and market shares of other companies. The *Initial Ruling* likewise explained that the statement of an advertising agency representative concerning the local advertising revenue presented by RPI was based on his “estimate.” We reject RPI’s contention that such estimates, if based on a party’s business expertise, are the equivalent of reliable facts. Even assuming *arguendo* the expertise alleged, the bare opinions and estimates of knowledgeable people do not provide factual data derived through an objective methodology, as required to support an alternative market definition.

In light of these deficiencies in RPI’s data, RPI’s reliance on the *Air Virginia* decision is misplaced. The petitioner in *Air Virginia*, under an interim policy in effect prior to the *Ownership Order*, made a *prima facie* showing of a duopoly market using the Arbitron metro as the relevant geographic market and objective revenue data available from BIA, Inc. The *Air Virginia* applicant, in contrast, had provided no information to support its assertion that the Arbitron metro was not the appropriate market.¹³ Assuming *arguendo* that *Air Virginia* is a relevant precedent despite its having been decided under a different policy, RPI’s unsupported claims in the present case are more analogous to those presented by the *Air Virginia* applicant that the Commission rejected therein. RPI has not made a *prima facie* showing that a “Moscow-Pullman-Colfax” market exists and would be the appropriate market for evaluating the proposed transaction, nor has it submitted objective data for that alleged “market.” RPI’s claim that the so-called

⁹ *Ownership Order*, 18 FCC Rcd at 13729; see also *Brookhaven Broadcasting, Inc.*, Letter, DA 07-50 (MB rel. Feb. 27, 2007).

¹⁰ See *Initial Ruling*, 20 FCC Rcd at 8843; *Ownership Order*, 18 FCC Rcd at 13724, 13729, and 13737. The *Ownership Order* similarly found that use of a case-by-case approach could produce unforeseeable distortions and impose substantial burdens on small-market radio broadcasters. *Id.* at 13729.

¹¹ See *Whitehall Enterprises, Inc.*, Hearing Designation Order, 17 FCC Rcd 17509, 17519 (2002).

¹² See *Media One Group II, LLC*, Letter, 20 FCC Rcd 8869, 8871 (2005).

¹³ *Air Virginia*, 17 FCC Rcd at 5429.

“Moscow-Pullman-Colfax” market will become a duopoly therefore does not present a substantial and material question of fact similar to that at issue with respect to the objectively determined geographic market in *Air Virginia*. For these reasons, we find that the *Initial Ruling* correctly concluded that the transaction proposed in the applications complied with the ownership rules and rejected RPI’s contentions to the contrary.

Accordingly, the June 8, 2005, Petition for Reconsideration filed by Radio Palouse, Inc. IS DENIED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau