

Essential Information is a nonprofit, tax-exempt organization involved in a variety of projects to encourage citizens to become active and engaged in their communities. We provide information to the public on important topics neglected by the mass media and policymakers. Essential Information also publishes books and reports and operates a monthly magazine. It sponsors investigative journalism conferences and provides writers and citizen activists with grants to pursue investigations on public policy matters. We also operate information clearinghouses which disseminate information to grassroots organizations in the United States and the Third World. Essential Information is based in Washington, DC.

Essential Information files this informal objection to urge the Commission to deny the application for license renewal for radio stations owned by Clear Channel Communications on grounds that Clear Channel violates the character, technical, and financial requirements set forth under the Communications Act of 1934 and the Commission's rules and policies.

Clear Channel Communications is a San Antonio, Texas-based radio operator that owns more than 1,200 radio stations nationwide. Its other businesses include television stations, a concert promotion company and an outdoor advertising firm.

### **Public Interest Standard**

The Communications Act (hereinafter “Act”) requires the Commission to deny renewal of broadcast licenses if the licensee fails to further the “public interest, convenience, and necessity” (hereinafter *public interest* or *public interest standard*).<sup>1</sup> In 17 U.S.C. §§ 309(a), 312(a)(2) (2000).

determining whether a licensee is operating in the public interest, the Act requires, *inter alia*, an examination of the licensee's "character."<sup>2</sup> The Act also requires an examination of the licensee's "financial" and "technical" capability to determine whether it can operate successfully in the public interest.<sup>3</sup> Specifically, the Act states that, "All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station."<sup>4</sup>

For the purposes of evaluating character, FCC regulations require licensees to report to the Commission any "adverse finding" or "adverse final action" taken by any court or administrative body.<sup>5</sup> These reports to the Commission must be made within one year of such finding or action.<sup>6</sup> The Commission defines the terms "adverse finding" and "adverse final action" as "adjudications made by an ultimate trier of fact, whether a government agency or court...."<sup>7</sup> In fact, failure to report such violations to the Commission is grounds for license revocation.<sup>8</sup>

In addition, the license renewal application specifically requires the licensee to certify that "there have been no violations by the licensee of the Communications Act of 1934, as amended, or the rules or regulations of the

---

2 *Id.*, at § 308(b).

3 *Id.*

4 *Id.*

5 5 F.C.C. Rcd. 3252 (1990).

6 *Id.*

7 *Id.*

8 *See, e.g., In Re Application of Center for Study and Application of Black Economic Development*, 10 F.C.C. Rcd. 2836 (1995) (failure to report felony conviction on renewal application constitutes grounds for denial of license renewal).

Commission during the preceding license term.”<sup>9</sup> Furthermore, if a licensee has any such violations, it must submit “an explanatory exhibit providing complete descriptions of all violations.”<sup>10</sup>

### **Character Standard**

The purpose of the character rule is to determine whether a licensee can be considered “truthful” or “reliable.”<sup>11</sup> Thus, evaluating character involves examining the “specific traits which are predictive of an applicant's propensity to deal honestly with the Commission and comply with the Communications Act or the Commission's rules or policies.”<sup>12</sup>

In evaluating whether a licensee possesses the character required to hold a broadcast license, the Commission considers misconduct which violates (1) the Commission's rules or policies (i.e. “FCC-related” misconduct) or (2) laws or regulations which do not fall under the Commission's jurisdiction (i.e. “non-FCC related” misconduct).<sup>13</sup>

### **FCC-Related Misconduct**

The Commission considers the following types of FCC-related misconduct to have a bearing on a licensee's character relating to “truthfulness”: (1) Violations of

---

9 F.C.C. Form 303S, Application for Renewal of Broadcast Station License, Section II, Question 4.

10 Id.

11 Policy Regarding Character Qualifications In Broadcast Licensing, 102 F.C.C. 2d 1179 (1986), *modified*, 5 F.C.C. Rcd. 3252 (1990), *recon. granted in part*, 6 F.C.C. Rcd. 3448 (1991), *modified in part*, 7 F.C.C. Rcd. 6564 (1992) (hereinafter *Policy Regarding Character Qualifications*).

12 102 F.C.C. 2d at 1189.

13 Id. at 1183.

the Act or Commission rules or policies; (2) Deception or defrauding of the broadcast public (including “fraudulent contests, deceptive advertising, news staging and news distortion”); (3) Misrepresentation or lack of candor to the Commission; (4) Abuse of broadcast facilities through fraudulent or anticompetitive commercial practices; (5) Employee misconduct occurring during the course of employment; or (5) Misconduct committed by the parent or subsidiary company of the licensee.<sup>14</sup>

The Commission has stated that it will “treat any violation of any provision of the [Communications] Act, or of [its] Rules or policies, as possibly predictive of future conduct and, thus, as possibly raising concerns over the licensee's future truthfulness and reliability, without further differentiation.”<sup>15</sup>

#### **Non-FCC related misconduct**

Non-FCC related misconduct describes behavior which may be a violation of law but does not necessarily contravene the Communications Act or a specific Commission rule or policy. Non-FCC misconduct involves (1) adjudicated fraudulent statements to another governmental unit; (2) criminal convictions involving false statements or dishonesty; or (3) adjudicated violations of anticompetitive or antitrust laws in connection with station-related misconduct.<sup>16</sup> This non-FCC misconduct “may include broadcast station related misconduct not specifically proscribed by the Act or the Commission.”<sup>17</sup>

Although most adjudications are settled by consent decree, the

---

14 Id. at 1209-1224.

15 Id. at 1209-1210.

16 Id. at 1195.

17 Id. at 1183, n.11.

Commission refuses to consider non-FCC violations settled in this way. Instead, only convictions or final judgments by courts or administrative bodies are considered by the Commission when evaluating non-FCC related misconduct.<sup>18</sup>

### **Parent-subsidiary relationship**

Subsidiary companies are not automatically absolved of misconduct committed by the parent company. And parent companies are not absolved of misconduct of the subsidiary company. The Commission holds that “if the corporate parent is in any way involved in FCC-related misconduct, whether or not such misconduct involves the broadcast subsidiary, the bearing of that misconduct on the subsidiary's qualifications would be considered.”<sup>19</sup> In addition, “there should be no presumption that misconduct at one station is necessarily predictive of the operation of the licensee's other stations,” but “some behavior may be so fundamental to a licensee's operation that it is relevant to its qualifications to hold *any* station license” (emphasis added).<sup>20</sup> Whether misconduct at one station is “so fundamental” as to conclude that all licenses of the licensee should be revoked is “a question of fact which must be resolved by the Commission on a case-by-case basis.”<sup>21</sup> Thus, misconduct at one station does not necessarily mean that the parent company is not qualified to operate other stations unless the misconduct is “so fundamental” as to conclude that the parent company should not hold any license at all.

---

18 Id. at 1205.

19 102 F.C.C. 2d at 1218.

20 Id. at 1223.

21 Id. at 1223-1224.

### **Seriousness of misconduct**

Serious misconduct is given the greatest weight when determining a licensee's propensity to be truthful and law abiding. In evaluating whether misconduct violates the character rule, the Commission considers (1) the willfulness of the misconduct; (2) the frequency of such behavior; (2) its currency; (3) the seriousness of the misconduct; (4) efforts made to remedy the wrong; and (5) the record of compliance with Commission rules and licensee rehabilitation efforts.<sup>22</sup>

### **Clear Channel's record of misconduct**

In the three years since Clear Channel became the largest radio owner in the nation, the company and its subsidiaries have been penalized for a number of unacceptable activities which cast doubt on its propensity to deal truthfully with the Commission. Clear Channel and its subsidiaries have been penalized for the following:

- Misleading the public about the rules for radio contests in violation of 47 C.F.R. § 73.1216, which requires broadcasters to “fully and accurately disclose the material terms of [a] contest”;<sup>23</sup>
- Deceptive advertising in violation of Florida state law;<sup>24</sup>
- Broadcasting conversations without obtaining permission of the second party to the conversation, a violation of 47 C.F.R. § 1206;<sup>25</sup>

---

22 102 F.C.C. 2d at 1227-1228; 5 FCC Rcd. 3252, 3252 (1990).

23 In the Matter of Clear Channel Broadcasting Licenses, Inc.; Licensee of Station KPRR(FM) El Paso, Texas, 15 F.C.C. Rcd. 2734 (2000).

24 In the matter of Clear Channel Broadcasting, Inc. d/b/a Clear Channel Communications, No. L 99-3-1440, State of Florida, Office of Attorney General (April 28, 2000).

25 In the matter of AMFM Radio Licenses, LLC; Licensee of Station WWDC-FM, Washington, DC, 17 F.C.C. Rcd. 5032 (2002); In the Matter of Clear Channel Broadcasting Licenses, Inc., Licensee of Station WGBF(FM), Henderson, Kentucky, 17 F.C.C. Rcd. 5893 (2002); In the Matter of Clear

- Broadcasting obscene and indecent material during daylight hours when children are likely listening in violation of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999;<sup>26</sup>
- Illegally taking operational control of a radio station in violation of 47 U.S.C. § 310(d) and 47 C.F.R. § 73.3540;<sup>27</sup>
- Repeatedly flouting the rules pertaining to the testing of the emergency alert system (EAS)<sup>28</sup>, maintenance of station logs, and antenna construction;<sup>29</sup>
- Conviction for animal cruelty in violation of state law for the purpose of promoting an on-air personality;<sup>30</sup>
- Pleading guilty to criminal mischief in violation of state law for the purpose of promoting an on-air personality;<sup>31</sup>
- Disturbing the peace in violation of state law for the purpose of promoting an on-air personality;<sup>32</sup>
- Defacing public property in violation of state law for the purpose of promoting an on air personality;<sup>33</sup> and

---

Channel Broadcasting Licenses, Inc.; Licensee of Station WINZ(AM), Miami, Florida, 15 F.C.C. Rcd. 23839 (2000).

26 In the Matter of Capstar TX Limited Partnership; Licensee of Station WZEE(FM), Madison, Wisconsin, 16 F.C.C. Rcd. 901 (2001).

27 In the Matter of Citicasters Co., 16 F.C.C. Rcd. 3415 (2001).

28 *Infra* note 66.

29 F.C.C Enforcement Bureau Field Operations, List of Actions Taken.

30 People of Colorado vs. Steven Meade, No. 00M7340, Denver County District Court (Jan. 31, 2001); *see also* John C. Ensslin, *Denver dj guilty of chicken cruelty*, Scripps Howard News Service, Feb. 1, 2001.

31 People of Colorado vs. Steven Meade, No. 2000CR002447, Boulder County District Court (Dec. 18, 2000); *see also* *Djs pleade guilty to felony in off-road 'mudfest' case; both given probation, community service; deal pending on damages*, Rocky Mountain News, Sept. 20, 2001, at 28A.

32 *Id.*

33 *Id.*

- Falsely causing a public emergency to be reported for the purpose of promoting an on air personality.<sup>34</sup>

All of the violations of the Act and the Commission's regulations occurred during Clear Channel's current licensing term and therefore satisfy the Commission's criteria for "currency."

### **Misleading the public about the rules for radio contests**

The Commission in 2000 fined Clear Channel station, KPRR-FM in El Paso, Texas, for misleading the public about the rules for a radio contest in violation of the Act and Commission rules.<sup>35</sup> Under the station's "So You Want to Win 10,000" contest, the station offered listeners "10,000" if they could accurately answer 10 questions. The company, however, failed to inform listeners that the winning prize was "10,000 Lira" (or 53 dollars), not 10,000 dollars.

This type of FCC-related misconduct satisfies the Commission's criteria for scrutinizing a licensee's propensity to be truthful, i.e., the misconduct was a willful violation of the Act and the Commission's rules and was deceptive because it deceived the public about the true value of the winning prize for the contest. The Commission has specifically held that "fraudulent contests" reflect on the lack of truthfulness of a licensee and its inability to comply with the Act and Commission rules in the future.<sup>36</sup>

---

34 People of California vs. Joseph Lopez, No. NM306518A, San Mateo County Superior Court (Sept. 26, 2000); *see also* Matthew B. Stannard, *Disc jockey's prank to land him in jail*, San Fran. Chron., Feb. 24, 2001, at A15.

35 In the Matter of Clear Channel Broadcasting Licenses, Inc., Licensee of Station KPRR(FM), El Paso, Texas, 15 F.C.C. Rcd. 2734 (2000); *see also* St. Petersburg Times, May 2, 2000.

36 102 F.C.C. 2d at 1211.

Furthermore, the misconduct was “anti-competitive” because it created an unfair advantage against the company's competitors who had not been offering “10,000” to its listeners.

In another example of FCC-related misconduct involving contests, Clear Channel agreed to pay an \$80,000 fine to the state of Florida to settle a deceptive advertising complaint.<sup>37</sup> The state alleged the company deceived its radio listeners about the rules for a radio contest. The contest promised a \$5,000 giveaway each day for six weeks. The state charged that Clear Channel failed to properly and clearly disclose that winners of the contest would be chosen from listeners across the country, not just the local Florida market, a fact that would greatly affect the odds of winning. The settlement agreement required Clear Channel to disclose on the air that the contest was “multi-state.”

Failure to inform the broadcast public about the true value of prizes as well as the total population of listeners who can compete for such prizes indicates that Clear Channel has a propensity to engage in deceptive behavior. The Commission has held that “fraudulent contests” and “deceptive advertising” adversely reflect on a licensee's character and its qualifications to serve the public interest.<sup>38</sup> Clear Channel's deception with regards to radio contests, when combined with other acts of deception by the company, demonstrates its propensity for untruthfulness and its inability to comply with the Act and the Commission's rules.

---

37 In the matter of Clear Channel Broadcasting, Inc. d/b/a Clear Channel Communications, No. L 99-3-1440, State of Florida, Office of Attorney General (April 28, 2000).

38 102 F.C.C. 2d at 1211.

### **Broadcasting indecent material during daylight hours**

In 2001, Clear Channel station, WZEE-FM in Madison, Wisconsin, was fined \$7,000 for “willfully” violating the ban on indecency and obscenity.<sup>39</sup> The station willfully aired an unedited version of a rap song which contained “unmistakable offensive sexual references.”<sup>40</sup>

The indecency violation, when considered along with Clear Channel's other violations, demonstrates that the company is not rehabilitated after sanctions are imposed. Sanctions against Clear Channel have not diminished the company's propensity to violate the law. Instead, Clear Channel continued to commit new violations after being sanctioned or negotiating a settlement.

### **Broadcasting conversations without obtaining permission**

In 2000, the Commission fined Clear Channel station, WINZ-AM in Miami, Florida, for willfully broadcasting a conversation without giving notice to the other party of its intent to broadcast the conversation, a violation of 47 C.F.R. § 73.1206<sup>41</sup>

In 2002, the Commission fined Clear Channel station, WWDC-FM in Washington, DC, for willfully broadcasting a telephone conversation without first informing the other party of its intention to do so, a violation of 47 C.F.R. § 73.1206.<sup>42</sup> The company violated Commission rules again when the station failed to report this

---

39 In the Matter of Capstar TX Limited Partnership, Licensee of Station WZEE(FM), Madison, Wisconsin, 16 F.C.C. Rcd. 901 (2001).

40 Id. at 902.

41 In the Matter of Clear Channel Broadcasting Licenses, Inc.; Licensee of Station WINZ(AM), Miami, Florida, 15 F.C.C. Rcd. 23839 (2000).

42 In the matter of AMFM Radio Licenses, LLC; Licensee of Station WWDC-FM, Washington, DC, 17 F.C.C. Rcd. 5032 (2002).

violation on its 2003 license renewal form.<sup>43</sup>

In 2002, the Commission fined Clear Channel station, WGBF-FM in Henderson, Kentucky, for willfully broadcasting taped conversations without obtaining permission from the second party to the conversation, a violation of 47 C.F.R. § 73.1206.<sup>44</sup>

This type of FCC-related misconduct satisfies the Commission's criteria for scrutinizing a licensee's propensity to be truthful and to comply with the Act and Commission rules. Each violation was adjudicated to be “willful” and was a form of deception because Clear Channel failed to inform the listeners that their voices were being broadcast over the airwaves.

These examples of illegal deceptive behavior indicate the company is not rehabilitated. Previous sanctions against Clear Channel's stations have not diminished the company's propensity to engage in deceptive behavior. Instead, Clear Channel has continued to engage in deceptive behavior after being sanctioned or negotiating a settlement. There is no reason to believe that Clear Channel is capable of complying with the ban on airing conversations without obtaining permission.

These violations are part of a company-wide pattern of misconduct which support the conclusion that Clear Channel lacks the propensity to deal “truthfully” and “reliably” with the Commission or to comply with the Act and Commission regulations.

---

43 See WWDC-FM's Application for Renewal of Broadcast License, FCC Form 303-S, Section II, Question 4, filed on June 12, 2003, in which Clear Channel's AMFM subsidiary falsely certifies that “there have been no violations” by the licensee of the Act or the Commission's rules during the preceding license term.

44 In the Matter of Clear Channel Broadcasting Licenses, Inc., Licensee of Station WGBF(FM), Henderson, Kentucky, 17 F.C.C. Rcd. 5893 (2002).

### **Illegally taking operational control of a radio station**

In 2001, the Commission fined Clear Channel's subsidiary, Citicasters, \$25,000 for “willfully and repeatedly” usurping control of a radio station not owned by Clear Channel.<sup>45</sup> Specifically, Citicasters assumed control of WBTJ-FM in Hubbard, Ohio without obtaining prior approval from the Commission.<sup>46</sup>

Clear Channel violated Section 310(d) of the Act and section 47 C.F.R. § 73.3540 of the Commission's rules when it failed to obtain approval to control and program the station.<sup>47</sup> In fact, the Commission denied Clear Channel's application to control the station.<sup>48</sup> Nevertheless, Clear Channel continued to violate the Act and the Commission's rules on grounds that an Ohio state court approved of its control of the station under state contract law.<sup>49</sup> Clear Channel, in conforming with its repeated disregard for federal law, ignored the Act and the Commission under the pretext that an Ohio court approved of Clear Channel's control.<sup>50</sup> The company justified its control over the station under the erroneous assertion that Ohio contract law trumps federal law.<sup>51</sup>

This FCC-related misconduct shows a “lack of candor” toward the Commission because, as the Commission said, “Citicasters is an experienced

---

45 In the Matter of Citicasters, 16 F.C.C. Rcd. 3415 (2001), *recon. denied*, 17 F.C.C. Rcd. 1997 (2002).

46 16 F.C.C. Rcd. 3415 (2001).

47 16 F.C.C. Rcd. at 3416 n.7 (On Sept. 7, 2000, the Commission denied an assignment application that would have transferred control of WBTJ to Citicasters. But Citicasters continued to illegally operate the station until Nov. 12, 2000 under the guise of a private assignment agreement which an Ohio state court had enforced).

48 *Id.*

49 *Citicasters Co. vs. Stop 25-Riverbend, Inc.*, No. 00-CV-1582 (Mahoning Cty Ct. of Common Pleas, Sept. 21, 2000).

50 16 F.C.C. Rcd. at 3416, 3420.

51 16 F.C.C. Rcd. at 3417 (Citicasters claimed the Ohio state courts, not the Commission, have jurisdiction to enforce an agreement to transfer control of the station to Clear Channel).

broadcaster which should have been aware that its actions with respect to WBTJ(FM) required prior Commission approval.”<sup>52</sup>

The Commission found that the misconduct was “willful” because “an act or omission is 'willful' if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule.”<sup>53</sup>

The misconduct occurred over a near three-month period, indicating that it would be judged as “serious” misconduct by the Commission.<sup>54</sup>

The misconduct took place during the current licensing term where similar types of misconduct occurred. It is therefore “current” misconduct under the Commission's Policy on Character Qualifications.

Clear Channel's illegal control of a radio station is one example in a long list of transgressions involving dishonesty and violation of law. It must be considered within the totality of Clear Channel's violations because it demonstrates a propensity toward untruthfulness and an inability to comply with the Act or the Commission's regulations.

**Convictions for felony mischief, defacing public property, falsely causing a public emergency to be reported and animal cruelty**

In 2001, Clear Channel disc jockeys Steven Meade and Darren McKee were found guilty of felony charges of promoting a four-wheeling "Mudfest" on station KBPI in Denver. The mudfest involved 200 monster trucks and sport utility vehicles that

---

52 16 F.C.C. Rcd. at 3420

53 Id.

54 Id.

damaged 25 acres of sensitive wetlands and habitat for endangered species near Nederland, Colorado.<sup>55</sup> The disc jockeys were convicted of felony criminal mischief and defacement of public property. The misconduct occurred during the course of employment with Clear Channel by promoting and organizing the event through Clear Channel's radio station.

In 2001, Clear Channel disc jockey, Joseph Lopez, was convicted for “falsely causing a public emergency to be reported,” a misdemeanor, in order to promote his radio show.<sup>56</sup> Lopez was sentenced to 45 days in jail for dressing up as an escaped convict and roaming the streets of Millbrae, California.<sup>57</sup> On August, 30, 2000, Lopez wore an orange jump suit lettered with the word “Jail” on the back and knocked on neighborhood doors asking residents to offer to help remove his handcuffs. The illegal conduct was carried out during the disc jockey's course of employment with Clear Channel's subsidiary. This type of “news staging” was carried out to promote Clear Channel. The Commission has stated that the violation of “news staging”<sup>58</sup> will be scrutinized when it considers the propensity of licensees to be truthful.

In 2001, Clear Channel disc jockey, Steven Meade, was found guilty of a misdemeanor for animal cruelty when he dropped a live chicken from an office building window during his radio show.<sup>59</sup> When the chicken survived the fall, it was carried to a

---

55 People of Colorado vs. Steven Meade, No. 2000CR002447, Boulder County District Court (Dec.. 18, 2000); *Djs plead guilty to felony in off-road 'mudfest' case; both given probation, community service; deal pending on damages*, Rocky Mountain News, Sept. 20, 2001, at 28A.

56 People of California vs. Joseph Lopez, No. NM306518A, San Mateo County Superior Court (Sept. 26, 2000); Matthew B. Stannard, *Disc jockey's prank to land him in jail*, San Fran. Chron., Feb. 24, 2001, at A15.

57 Id.

58 Policy Regarding Character Qualifications, *supra* note 11.

59 People of Colorado vs. Steven Meade, No. 00M7340, Denver County District Court (Jan. 31, 2001); *see also* John C. Ensslin, *Denver dj guilty of chicken cruelty*, Scripps Howard News Service, Feb. 1, 2001.

higher floor and dropped again.<sup>60</sup>

The Commission has long held that licensees are responsible for employees' conduct.<sup>61</sup> "[Only] by holding a licensee responsible for the operation and management of a station ... can there be any reasonable assurance of responsible station operation and management."<sup>62</sup>

According to the Commission, employee "[c]onvictions for misconduct constituting felonies are most relevant to our evaluation of an applicant's character."<sup>63</sup> Furthermore, "[a] pattern of on-air [employee] conduct that results in misdemeanor convictions ... might be probative of a licensee's qualifications."<sup>64</sup> Clear Channel employees have shown a "pattern of on air conduct" which not only involves misdemeanors and violations of the Act and Commission rules, but felonies as well. Employee criminal conduct, when considered with other forms of misconduct by the corporate parent, shows that Clear Channel lacks the character required to be a licensee. There is no reason to assume that such on-air misconduct will be abated. As Clear Channel has shown, violation of the law is followed by more violations even after an on air personality is convicted or the corporate parent is found liable for violations.

These criminal convictions of employees are additional examples which

---

60 Id.

61 *In re* Application of the Trustees of the University of Pennsylvania Radio Station WXPN(FM) Philadelphia, Pennsylvania for Renewal of License, 69 F.C.C. 2d 1394 (1978).

62 *Eleven-Ten Broadcasting Corp. (KRLA)*, 32 F.C.C. 706, 708 (1962); *Immaculate Conception Church Los Angeles v. F.C.C.*, 320 F.2d 795 (D.C. Cir.), *cert denied* 375 U.S. 904 (1963). *See also* *Leflore Broadcasting Co., Inc.*, 65 F.C.C. 2d 556, 568 (1977); *Gaffney Broadcasting, Inc.*, 23 F.C.C. 2d 912, 913 (1970); *KWK Radio, Inc.*, 34 F.C.C. 1039 (1963), *aff'd* 337 F.2d 540 (D.C. Cir.), *cert denied* 380 U.S. 910 (1964).

63 *In re* Application of Secret Communications II, LLC (Assignor) and Clear Channel Broadcasting Licenses, Inc. (Assignee) For Assignment of License of Station WFCB(FM), Chillicothe, Ohio, 18 F.C.C. Rcd. 9139 (2003).

64 Id.

show Clear Channel “lacks the character traits of 'truthfulness' and 'reliability' that ... [the Commission has] ... found relevant to the qualifications to operate a broadcast station in accordance with the requirements of the Communications Act and of [FCC] rules and policies.”<sup>65</sup>

### **Failure to comply with emergency alert system**

The emergency alert system (EAS) is used by federal, state and local governments to alert the public about national, state, or local emergencies.<sup>66</sup> It requires broadcasters like Clear Channel to adequately maintain EAS equipment and to follow testing procedures on a regular basis.<sup>67</sup> Clear Channel has, however, regularly violated this basic provision of Commission rules.

- On January 11, 2001, station KFZX in Gardendale, Texas was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61,<sup>68</sup>
- On January 11, 2001, station KCRS in Midland, Texas was issued a noticed of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.51,<sup>69</sup>

---

65 102 F.C.C. 2d, at 1195.

66 47 C.F.R. § 11.1 et. seq. (2002) (“This part contains rules and regulations for an Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency .... The EAS may be used to provide the heads of State and local governments, or their designated representatives, with a means of emergency communication with the public in their State or Local Area”).

67 47 C.F.R. §§ 11.35, 11.61 (2002).

68 F.C.C Enforcement Bureau Field Operations, List of Actions Taken.

69 Id.

- On January 12, 2001, station KCHX in Midland, Texas was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>70</sup>
- On January 12, 2001, station KMRK in Odessa, Texas was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>71</sup>
- On February 6, 2001, station KHBZ in Honolulu, Hawaii, was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>72</sup>
- On June 28, 2001, station WCFR-FM in Springfield, Massachusetts was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>73</sup>
- On June 29, 2001, station WMXR-FM in Woodstock, Vermont was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>74</sup>
- On September 5, 2001, station KHVH-FM in Honolulu, Hawaii was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47

---

70 Id.

71 Id.

72 Id.

73 Id.

74 Id.

C.F.R. § 11.61;<sup>75</sup>

- On September 24, 2001, station KSMA-AM in Santa Maria, California was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>76</sup>
- On September 24, 2001, station KSMY-FM in Lompoc, California was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>77</sup>
- On September 24, 2001, station KXFM in Santa Maria, California was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>78</sup>
- On September 24, 2001, station KSNI-FM in Santa Maria, California was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>79</sup>
- On October 29, 2001, station KTSM in El Paso, Texas was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>80</sup>

---

75 Id.

76 Id.

77 Id.

78 Id.

79 Id.

80 Id.

- On October 29, 2001, station KHEY-FM in El Paso, Texas was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>81</sup>
- On October 29, 2001, station KPRR in El Paso, Texas was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61;<sup>82</sup> and
- On September 24, 2001, Clear Channel's central office in San Antonio, Texas was issued a notice of violation for its failure to comply with regulations regarding the testing of the emergency alert system in violation of 47 C.F.R. § 11.61.<sup>83</sup>

The Commission has stated that it will “treat any violation of any provision of the [Communications] Act, or of [its] Rules or policies, as possibly predictive of future conduct and, thus, as possibly raising concerns over the licensee's future truthfulness and reliability, without further differentiation.”<sup>84</sup> The EAS violations, when considered with the other violations in this complaint, are predictive of future conduct and indicate that Clear Channel lacks the requisite character to be a licensee.

## **Conclusion**

Financial strains on Clear Channel may contribute to the company's

---

81 Id.

82 Id.

83 Id.

84 102 F.C.C. 2d at 1209-1210.

inability to operate in the public interest. Since 1996, Clear Channel has gone from a small radio company with less than \$1 billion in total liabilities and shareholders equity to a \$28 billion radio conglomerate that owns more than 1,200 radio stations.<sup>85</sup> Its long term debt jumped from \$237 million in 1996 to \$7 billion in 2003.<sup>86</sup> Company earnings have declined in three of the last four quarters.<sup>87</sup> Clear Channel's audience share is either declining or flat in nearly half of its top 20 markets.<sup>88</sup>

Clear Channel may not be able to afford to operate in the public interest. It may be violating the Act, Commission regulations and policies, and criminal statutes in order to cut costs, obtain cheap exposure for on-air personalities, and increase audience size. This is not a company with a few minor transgressions over a three year period. This is a company attempting to maintain audience share, satisfy investors, and survive with \$7 billion in debt while its profits wane.

Indeed, financial strains may have contributed to Clear Channel's failure to be make its broadcast stations available during a public emergency in Minot, North Dakota. Minot experienced a public emergency involving a train derailment at 1 a.m. on January 18, 2002. The train spilled a vast white cloud of suffocating anhydrous ammonia fertilizer over Minot.<sup>89</sup> One person died. Clear Channel owns all six commercial radio

---

85 Securities and Exchange Commission filings of Clear Channel, Form 10-Q, filed Aug. 6, 2003, May 2, 2003 and Aug. 14, 1996; Form 10-K, filed March 11, 2003.

86 Securities and Exchange Commission filings of Clear Channel, Form 10-Q filing, Aug. 14 1996 and Aug. 6, 2003.

87 Securities and Exchange Commission filings of Clear Channel, Form 10-Q, filed Aug. 6, 2003 and May 2, 2003; Form 10-K, filed March 11, 2003 (diluted per share earnings decreased from \$0.34 in the third quarter of 2002 to \$0.30 in the fourth quarter of 2002 to \$0.12 in the first quarter of 2003. Earnings increased to \$0.41 in the second quarter of 2003).

88 Securities and Exchange Commission filing, Form 10-K, Aug. 6, 2003 (Clear Channel stated, "Audience reach is an important part of our ability to set rates .... our ratings improved in twelve of the twenty [top] markets, were down in six of the twenty markets and were flat in the other markets as compared to the summer of 2001.").

89 Jennifer Lee, *On Minot, N.D., Radio, A Single Corporate Voice*, N.Y. Times, March 31, 2003, at C7.

stations in Minot, but the police could not reach company employees at the stations in order to broadcast emergency response measures. Station employees had been replaced with machines, “voice tracking” and “piped-in” audio from company offices located thousands of miles from Minot. If live, human employees had been available at the station during the morning hours, the police could have requested that local station employees broadcast the public emergency alert over the public's airwaves.

The Commission has stated that violating the Act is “predictive of future conduct”<sup>90</sup> and could raise doubts about a licensee's character traits for truthfulness and reliability. Clear Channel has violated the Act on more than 30 occasions since 2000 (see appendix). These violations must be part of the Commission's license renewal process for all of Clear Channel's radio licenses.

Clear Channel is a recidivist violator, proving its poor character and that it remains unfit to hold *any* broadcast license. The record shows the company's efforts, if any, “to remedy the wrong” are met with future violations of other laws and regulations. If one Clear Channel station violates the law and is punished, it does not deter Clear Channel from ensuring that other stations refrain from violating the law at a later date. And the cycle of violations and criminal conduct continues.

The pattern of violations over a three-year period show the company cannot be trusted to operate honestly or to comply with the Act or the Commission's rules or policies. Furthermore, its \$7 billion debt and declining earnings and audience share may increase the likelihood that Clear Channel will fail to deploy resources to improve its character and comply with the Act and Commission rules.

---

90 Policy Regarding Character Qualifications, *supra* note 11.

The Commission should conclude that Clear Channel's poor character constitutes a “fundamental,” company-wide, and continuing problem in its ability to operate successfully in the public interest. The Act requires it. It also requires the Commission to deny *all* license renewal applications of Clear Channel. Essential Information urges the Commission to deny the license renewal applications in this complaint.

## Appendix

- (1) Feb. 10, 2000 – The FCC fined Clear Channel station, KPRR-FM in El Paso, Texas for deceiving the public about a radio contest in violation of 47 C.F.R. § 73.1216. The contest offered listeners “10,000” if they could accurately answer 10 questions. But the company willfully failed to inform listeners that the winning prize was “10,000 Lira” (or 53 dollars), not 10,000 dollars. Clear Channel was fined \$4,000. FCC Notice of Apparent Liability of Forfeiture, In the Matter of Clear Channel Broadcasting Licenses, Inc., Licensee of Station KPRR(FM), El Paso, Texas, 15 F.C.C. Rcd. 2734 (2000).
- (2) March 14, 2000 – The FCC issued a notice of violation against WHAM in Rochester, NY, for violating 47 C.F.R. § 11.61, requirements for testing the emergency alert system. FCC Buffalo, NY Office.
- (3) May 12, 2000 - Clear Channel paid an \$80,000 fine to the State of Florida to settle a deceptive advertising complaint. The company advertised a contest on its country music stations in Florida promising a \$5,000 giveaway each day for six weeks. The State complained that Clear Channel failed to properly and clearly disclose that winners of the contest would be chosen from listeners across the country, not just a local market, a fact that would greatly affect the odds of winning. A settlement agreement required Clear Channel to disclose on the air that contests are multi-state. In the matter of Clear Channel Broadcasting, Inc. d/b/a Clear Channel Communications, No. L 99-3-1440, State of Florida, Office of Attorney General (April 28, 2000); St. Petersburg Times, May 2, 2000.
- (4) July 27, 2000 – The FCC issued a notice of violation against Clear Channel's Citicasters subsidiary. Its KIIS-FM station violated regulations requiring adequate antenna structure registration (47 C.F.R. § 17.4). Los Angeles, CA District Office.
- (5) Sept. 5, 2000 – FCC issued a notice of violation for failure to comply with 47 C.F.R. Part 17, regulations regarding the construction, marking & lighting of antenna structures. Tampa, FL District Office.
- (6) Nov. 30, 2000 – The FCC issued a \$4,000 fine against Clear Channel because its station, WINZ-AM in Miami, Florida violated the ban on airing taped conversations without obtaining the permission of the second party. Clear Channel violated 47 C.F.R. § 73.1206 by calling a second party and broadcasting the conversation without giving the party prior notice of its intent to broadcast such conversation. In the Matter of Clear Channel Broadcasting Licenses, Inc., Licensee of Station WINZ(AM), Miami Florida, 15 F.C.C. Rcd. 23839 (2000).
- (7) Jan. 11, 2001 – The FCC issued a notice of violation against Clear Channel's KFZX radio station in Gardendale, TX for failing to comply with equipment requirements of the emergency alert system (EAS) under 47 C.F.R. § 11.61. Dallas, TX District Office.

(8) Jan. 11, 2001 – The FCC issued a notice of violation against Clear Channel's KCRS-FM station in Midland, TX for failing to comply with regulations requiring the transmission and testing of the emergency alert system under 47 C.F.R. § 11.51. Dallas, TX District Office.

(9) Jan. 12, 2001 – The FCC issued a notice of violation against Clear Channel's Capstar TX Limited Partnership and KCHX station in Midland, TX for violations of regulations regarding the testing of the emergency alert system under 47 C.F.R. § 11.61. Dallas, TX District Office.

(10) Jan. 12, 2001 – The FCC issued a notice of violation against Clear Channel Broadcasting, Inc. and KMRK station in Odessa, TX for violations of regulations regarding the testing of the emergency alert system under 47 C.F.R. § 11.61. Dallas, TX District Office.

(11) January 16, 2001 – The FCC issued a \$7,000 fine against Clear Channel station, WZEE-FM in Madison, Wisconsin for broadcasting indecent language in violation of 18 U.S.C. § 1464 and 47 C.F.R. § 73.3999. The station aired the CD known as “The Real Slim Shady” which contains obscene language. In the matter of Capstar TX Limited Partnership, Licensee of Station WZEE(FM), Madison, Wisconsin, 16 F.C.C. Rcd. 901 (2001).

(12) Feb. 6, 2001 – The FCC issued a notice of violation against Clear Channel's Capstar TX Limited Partnership subsidiary. Its station, KHBZ, violated testing procedures of the emergency alert system in violation of 47 C.F.R. § 11.61. Honolulu, HI Resident Agent Office.

(13) Feb. 13, 2001 – The FCC issued a \$25,000 fine against Clear Channel because it illegally assumed control of WBTJ-FM in Hubbard, Ohio without prior consent of the FCC in violation of § 310(d) of the Communications Act and 47 C.F.R. § 73.3540. In the Matter of Citicasters Co., 16 F.C.C. Rcd. 3415 (2001).

(14) February 22, 2001 -- Clear Channel disc jockey, Joseph Lopez, was sentenced to 45 days in jail for dressing up like an escaped convict and roaming the streets of Millbrae, California. On August, 30, 2000, Lopez wore an orange jump suit with the word “Jail” on the back and knocked on neighborhood doors asking residents to offer help to remove his handcuffs. Lopez was found guilty of falsely causing a public emergency to be reported and disturbing the peace. People of California vs. Joseph Lopez, No. NM306518A, San Mateo County Superior Court (Sept. 26, 2000); Matthew B. Stannard, *Disc jockey's prank to land him in jail*, San Fran. Chron., Feb. 24, 2001, p. A15; Radio and Records, February 27, 2001.

(15) March 30, 2001 – Clear Channel disc jockey Steven Meade was convicted of animal cruelty in January of 2001 for dropping a live chicken from an office building

window during his radio show. When the chicken survived the fall, it was carried to a higher floor and dropped again. *People of Colorado vs. Steven Meade*, No. 00M7340, Denver County District Court (Jan. 31, 2001); John C. Ensslin, *Denver dj guilty of chicken cruelty*, Scripps Howard News Service, Feb. 1, 2001; Environmental News Service, March 30, 2001.

(16) March 30, 2001 – The FCC issued a notice of violation against Clear Channel's Capstar TX Limited Partnership for failing to comply with regulations on construction, marking, or lighting of antenna structures in violation of 47 C.F.R. § 17.57. San Francisco, CA District Office.

(17) June 19, 2001 – The FCC issued a notice of violation against Clear Channel's WMGR-FM in Bainbridge, Georgia, for failing to make the station available for inspection by the FCC in violation of 47 C.F.R. § 73.1225.

(18) June 28, 2001 – The FCC issued a notice of violation against Clear Channel station WCFR-FM in Springfield, Massachusetts for failing to comply with rules for alerting its audience about public emergencies. The company violated rules regarding the maintenance of broadcasting equipment, station identification, emergency test procedures, or local inspection files. Boston, MA District Office.

(19) June 29, 2001 – The FCC issued a notice of violation against Clear Channel's WMXR-FM in Woodstock, VT for failing to comply with rules for alerting its audience about public emergencies. The company violated rules regarding the maintenance of broadcasting equipment, station identification, emergency test procedures, or local inspection files. Boston, MA District Office.

(20) Aug. 8, 2001 – The FCC issued a notice of violation against Clear Channel's Capstar TX Limited Partnership subsidiary because KKKI radio in Widefield, Colorado violated station identification requirements under 47 C.F.R. § 73.1201. Denver, CO District Office.

(21) Sept. 5, 2001 – The FCC issued a notice of violation against Clear Channel's KHVH-FM in Honolulu, HI for failing to comply with equipment requirements of the emergency alert system (EAS), including regulations on testing of the EAS procedures. Honolulu, HI Resident Agent Office.

(22) Sept. 24, 2001 – The FCC issued a notice of violation against Clear Channel's KSMA-AM station in Santa Maria, CA for failing to comply with equipment requirements of the emergency alert system (EAS), including regulations on testing of the EAS procedures. A notice of violation was also issued for violating regulations requiring stations to designate a person to serve as the station's chief operator to monitor and inspect the transmission system. Los Angeles, CA District Office.

(23) Sept. 24, 2001 – The FCC issued a notice of violation against Clear Channel's KSMY-FM station in Lompoc, California for failing to comply with equipment

requirements of the emergency alert system (EAS), including regulations on testing of the EAS procedures. A notice of violation was also issued for violating regulations requiring stations to designate a person to serve as the station's chief operator to monitor and inspect the transmission system. Los Angeles, CA District Office.

(24) Sept. 24, 2001 – The FCC issued a notice of violation against Clear Channel's KXFM station in Santa Maria, CA for failure to comply with equipment requirements of the emergency alert system (EAS), including regulations on testing of the EAS procedures. A notice of violation was also issued for violating regulations requiring stations to designate a person to serve as the station's chief operator to monitor and inspect the transmission system. Los Angeles, CA District Office.

(25) Sept. 24, 2001 – The FCC issued a notice of violation against Clear Channel's central office in San Antonio, Texas for violating regulations requiring the testing of the emergency alert system and for violating regulations requiring employees to maintain a station log to accurately and legibly reflect the station's operations. A notice of violation was also issued for violating regulations requiring stations to designate a person to serve as the station's chief operator to monitor and inspect the transmission system. Dallas, TX District Office.

(26) Sept. 24, 2001 – The FCC issued a notice of violation against Clear Channel's KSNI-FM station in Santa Maria, CA for failing to comply with equipment requirements of the emergency alert system (EAS), including regulations on testing of the EAS procedures. A notice of violation was also issued for violating regulations requiring stations to designate a person to serve as the station's chief operator to monitor and inspect the transmission system. Los Angeles, CA District Office.

(27) Sept. 28, 2001 -- Two Clear Channel disc jockeys of KBPI-FM in Denver pleaded guilty to felony charges of destroying wetlands and sensitive habitat. The disc jockeys promoted and organized a four-wheeling "mudfest" which consisted of 200 monster trucks and sport utility vehicles. The vehicles tore up 25 acres of sensitive wetlands and habitat near Nederland, Colorado. *People of Colorado vs. Steven Meade*, No. 2000CR002447, Boulder County District Court (Dec. 18, 2000); *Rocky Mountain News*, Sept. 20, 2001, p. 28A; *Associated Press*, Sept. 28, 2001.

(28) Oct. 19, 2001 – The FCC issued a notice of violation against Clear Channel's KTSM radio station in El Paso, TX for failing to comply with regulations requiring stations to install and operate equipment capable of receiving and decoding codes from the emergency alert system and emergency messages. Dallas, TX District Office.

(29) Oct. 19, 2001 – The FCC issued a notice of violation against Clear Channel's KHEY-FM radio station in El Paso, TX for failing to comply with regulations requiring stations to install and operate equipment capable of receiving and decoding codes from the emergency alert system and emergency messages. Dallas, TX District Office.

(30) Oct. 19, 2001 – The FCC issued a notice of violation against Clear Channel's KPRR station in El Paso, TX for failing to comply with regulations requiring stations to install and operate equipment capable of receiving and decoding codes from the emergency alert system and emergency messages. Dallas, TX District Office.

(31) March 12, 2002 – The FCC issued a notice of apparent liability and a \$10,000 fine against Clear Channel's Citicasters subsidiary. Its station, KACD-AM in Thousand Oaks, CA, violated regulations on antenna structure construction, marking, and lighting (47 C.F.R. § 17.47). The station also failed to adequately record antenna lighting inspections (47 C.F.R. § 17.49), comply with regulations on monitoring and controlling transmission systems (47 C.F.R. § 73.1400), maintain a main studio location (47 C.F.R. § 73.1125), and employ a chief operator (47 C.F.R. § 73.1870). Los Angeles, CA District Office.

(32) March 18, 2002 – The FCC issued a notice of violation against Clear Channel subsidiary, Dame Media in Utica, NY, for failing to adequately post antenna structure registration numbers in violation of 47 C.F.R. § 17.4(g). Buffalo, NY Resident Agent Office.

(33) March 19, 2002 – The FCC issued a \$6,000 fine against Clear Channel station WWDC-FM in Washington, DC, for broadcasting a telephone conversation without first informing the other party of its intention to do so, a violation of 47 C.F.R. § 73.1206. In the Matter of AMFM Radio Licenses, LLC; Licensee of Station WWDC-FM, Washington, DC, 17 F.C.C. Rcd. 5032 (2002).

(34) March 28, 2002 – The FCC issued a \$6,000 fine against Clear Channel station WGBF-FM in Henderson, KY, for violating the ban on airing taped conversations without obtaining permission of the other parties to the conversation. In the Matter of Clear Channel Broadcasting Licenses, Inc., Licensee of Station WGBF(FM), Henderson, Kentucky, 17 F.C.C. Rcd. 5893 (2002).

(35) Nov. 7, 2002 – The FCC issued a notice of apparent liability and a \$10,000 fine against Clear Channel stations in Utica, New York for failing to clean and repaint antenna structures in violation of 47 C.F.R. § 17.50. Buffalo, NY Resident Agent Office.

(36) Dec. 30, 2002 – The FCC issued a notice of apparent liability and a \$5,000 fine against Clear Channel's Capstar Radio Operating Company. Its radio station, KIXW-AM in Apple Valley, CA failed to adequately post its antenna structure registration number at the base of its antenna in violation of 47 C.F.R. § 17.4(g). The station also violated 47 C.F.R. § 17.57 which requires reporting of antenna construction, alteration, and/or removal. Los Angeles, CA District Office.