

Is Clear Channel playing a "shell game"?

Critics of the radio-industry giant charge that it is skirting federal ownership rules with puppet competitors.

By Eric Boehlert

November 20, 2001 | Is Clear Channel Communications, the radio behemoth, playing a "shell game" with the Federal Communications Commission?

That's the charge an Ohio resident is bringing against the company, which, with nearly 1,200 radio stations, is far and away the radio industry's most powerful player.

Clear Channel became that big in a frenzy of consolidation in the last half of the 1990s, in the wake of the industry's deregulation brought about by the watershed 1996 Telecommunications Act. FCC rules limit companies from owning too many stations in one broadcast market, and the commission approved many of those consolidations on the condition that the ever-growing company divest itself of certain stations in some cities.

Now, voices are beginning to charge that Clear Channel may have in fact retained control of some of those stations -- an unprecedented flouting of commission rules.

In August of 1998, during the height of this dizzying deal making, the antitrust division of the U.S. Department of Justice reached an agreement with a company called Jacor Communications: It could complete its \$620 million purchase of a rival, Nationwide Communications, but only if Jacor agreed to sell off eight radio stations. This common DOJ requirement was to prevent Jacor, or any broadcaster, from dominating programming (and therefore advertising rates) in specific markets.

At the time, that sort of horse-trading was routine. Broadcast companies were figuring out how to acquire as many stations as possible without exceeding the FCC's station-ownership limits in any one market. (In big cities, broadcasters can own up to eight FM stations; the number goes down in smaller markets.) It was common for a company to agree to buy up a competitor's entire roster of stations, knowing it might have to shed some later in order to get a green light from the DOJ.

Jacor agreed to sell the eight stations to a competitor. One of the stations in question for Jacor was a country-music station with the call letters WKKJ in Chillicothe, Ohio, 40 miles south of Columbus. Later that year, Jacor itself was acquired by Clear Channel Communications, which agreed to honor the DOJ agreement concerning WKKJ.

Fast-forward to August 1999, when Concord Media, a small Florida-based radio company, entered into a time-brokerage agreement with WKKJ's new owners. The deal handed over

day-to-day control of the station -- programming, advertising, promotions, etc. -- to Concord, which in exchange paid the station's real licensee a fee.

Meanwhile, Clear Channel still owned three of Chillicothe's four commercially licensed stations.

But now, in what may be the first FCC filing of its kind, a Chillicothe advertiser has petitioned the Federal Communications Commission, charging that WKKJ's Concord Media "is nothing more than a shell company operated entirely for the benefit of Clear Channel." The petition also alleges that Clear Channel has been "playing an elaborate shell game with its radio station assets" to avoid antitrust prosecution.

In other words, one year after promising the DOJ it would not operate WKKJ, Clear Channel effectively took control of WKKJ via Concord Media, the petition alleges, and now controls four stations in the market.

As evidence, the petition charges that Clear Channel employees work at every one of Concord Media's stations and that, according to Clear Channel's own FCC filings, WKKJ employees are paid by Clear Channel, not Concord Media.

A Clear Channel spokesperson had no comment. The company has until Dec. 5 to file its response with the FCC. Concord Media president Mark Jorgenson did not return a phone call seeking comment. According to FCC filings, Concord Media owns nine radio stations. Most of them were purchased from Clear Channel at times when the company had to divest stations. Jorgenson also runs his own media brokerage company, often handling station sales for Clear Channel.

The FCC complaint gives voice to a widely held, if previously only murmured, belief inside the radio business that San Antonio-based Clear Channel, known for its aggressive expansion strategy, has been openly skirting ownership laws. One frustrated California broadcaster tells Salon he recently met with FBI officials to lodge that complaint in his market.

Another broadcast representative tells Salon he recently had a confidential meeting with Justice Department officials where the same accusation -- phony radio holding companies working on behalf of Clear Channel -- was detailed. "They were clearly concerned," says the source.

And last week, Inside Radio, a daily industry newsletter, published allegations that San Antonio-based Mercury Broadcasting operates as a "front for Clear Channel" in Charlotte, N.C., where the company is maxed out in terms of station ownership. Inside Radio's anonymous sources suggested Clear Channel, not Mercury, actually runs local station WFMX, complete with issuing paychecks to WFMX employees and operating its Web site.

Most of Clear Channel's nearly 1,200 radio stations were amassed in a frenzy of consolidation over the past three years. Critics suggest that the company is under enormous economic pressure to make its vast new radio holding work, and that the company as a consequence

cannot afford to divest stations it promised to. Clear Channel lost \$232 million during its recently concluded third quarter.

The Ohio petition, filed by Washington communications attorney Arthur Belenduik on behalf of a Chillicothe-area carpet dealer and radio advertiser, David Ringer, argues that the holding-company scheme is not isolated to Chillicothe, but that Concord Media, as well as other alleged shell companies, holds station licensees in name only while Clear Channel runs the stations and, presumably, pockets the revenues.

Either situation would be in clear violation of FCC ownership rules. The suit says that Ringer, as a radio advertiser, is concerned that the company will dominate the market and be able to hike advertising rates. Through his lawyer, Ringer declined comment for this story.

In some cases the alleged shell companies submitted employment report filings with the FCC that listed their corporate address as "200 East Basse Rd., San Antonio, TX"; that's the corporate home of Clear Channel. The documents, submitted under penalty of perjury, were signed by "Rick Wolf," as "VP, Corp Council" [sic]; Wolf is vice president and corporate counsel for Clear Channel.

Why, the petition asks the FCC, did Clear Channel apparently fill out employment records for radio stations it has no official connection with, and is in fact supposed to be competing against?

It was perhaps only a matter of time before someone inside radio raised an official objection to Clear Channel's practices, which have never been subtle. For instance, in 1998, when Clear Channel merged with Jacor, the company was ordered to divest itself of four stations in Jacksonville, Fla. They were sold to Concord Media.

Yet according to a June 15 article in Jacksonville's Florida Times-Union newspaper, Clear Channel-Jacksonville recently moved all its radio, TV and outdoor advertising businesses under a single, 120,000-square-foot, \$8 million roof. Among the radio stations moving inside were Concord Media's four local outlets.

Clear Channel sells those stations' advertising; they are overseen by a Clear Channel general manager, according to Clear Channel's Web site; and they share the same offices. But legally, the Concord Media stations are supposed to be operating independently.

Ringer's complaint notes that the Web site for Concord Media's Jacksonville stations includes an icon that reads "Clear Channel Jacksonville Media Family." Clicking on it opens a page detailing all of Clear Channel's media holdings in the area. "Listed on this page are four Jacksonville area stations supposedly owned and programmed by Concord Media," the petition says.

Clear Channel claims it simply sells advertising for Jacksonville's Concord Media stations. But the stations' Web sites, which are plainly marked as property of Clear Channel, include contact links for station programmers and disc jockeys, not just salespeople.

Ringer's FCC petition says that a Concord Media employment report, dated Sept. 16, 2000, suggests that the company is able to operate its four Jacksonville stations with just seven full-time and seven part-time employees. By contrast, Clear Channel's filing for the same period indicated it needed 220 full-time and 115 part-time employees to run its seven Jacksonville stations. The petition suggests to the FCC that Concord Media's Jacksonville stations are being manned by Clear Channel employees.

And then there's Concord Media and Clear Channel's partnership in upstate New York. Last year, after purchasing a small competitor, Clear Channel had to sell four stations in the region in order to comply with FCC ownership rules. The four stations were sold to Concord Media.

Once again in FCC filings the company listed its address as Clear Channel's San Antonio headquarters, and Clear Channel V.P. Rick Wolf signed them. And Concord Media reports that it operated the four stations with fewer than a dozen employees.

Recently, the FCC has hinted it might further relax ownership rules and Clear Channel felt confident buying back four Albany, N.Y., area stations from Concord Media. According to a Capital District Business Review article from Sept. 3, Concord's local manager downplayed any disruption the transaction might create, stressing, "Clear Channel and Concord work pretty closely together."

It's now up to the FCC to determine if the broadcasters work a bit too closely together.

(Click here to see all of Salon's stories on Clear Channel and the new payola in the radio industry.)

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About the writer

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