

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Reply Refer To:
1800B3-AB

March 12, 2001

Mr. Dennis M. Crepps
Big Tree Communications
P.O. Box 1234
Mount Shasta, CA 96067

Peter Gutmann, Esq.
Pepper & Corazzini, LLP
1776 K Street, N.W., Suite 200
Washington, D.C. 20006

In Re: KWHO(FM), Weed, CA, Fac. ID 68152
File No. BALH-20001211ADX

Dear Parties:

Background. The staff has under consideration an application seeking consent to the assignment of the license for KWHO(FM), Weed, California from Tom F. Huth to Four Rivers Broadcasting, Inc. ("Four Rivers"). Also under consideration is a petition to deny filed by Dennis Crepps d/b/a Big Tree Communications ("Big Tree"), licensee of station KZRO(FM), Dunsmuir, California. Big Tree alleges that the proposed transaction violates the Commission's radio multiple ownership rules and that it would give Four Rivers an unfair economic advantage in Siskiyou County, California. Based on the reasons set forth below, we deny the petition and grant the assignment application.

The subject station is not located in an Arbitron radio metro market. Big Tree claims that the relevant geographic radio market is Siskiyou County for purposes of reviewing the potential competitive impact of the transaction. Big Tree claims that Siskiyou County is geographically isolated from any other radio market, and that the closest Arbitron markets, Redding, California and Medford, Oregon, both are at least 70 miles from Siskiyou County. Therefore, Big Tree concludes that the following six commercial stations comprise the Siskiyou County radio market: KWHO(FM), Weed, CA, KMJC-FM, Mount Shasta, CA, KMJC(AM), Mount Shasta, CA, KSYC-FM, Yreka, CA, KSYC(AM), Yreka, CA and KZRO(FM), Dunsmuir, CA. Four Rivers is currently the licensee of four of these stations. If the instant assignment application is approved, Four Rivers will own all of the stations except KZRO(FM).

As to its multiple ownership allegations, Big Tree claims that Four Rivers cannot own five of the six stations in Siskiyou County because the Commission's radio ownership rules prohibit an entity from owning more than 50% of the commercial radio stations in markets with

14 or fewer stations. In support of its argument that Four Corners would monopolize the local radio market, Big Tree claims that post-merger, Four Rivers would control 83.33% of the local advertising revenue in Siskiyou County which “would make fair and equitable competition in this market even more difficult.” Big Tree bases its argument on the assumption that the six stations each would control 16.66% of the local advertising revenue.

Four Corners disputes Big Tree’s claim that Siskiyou County should be considered a separate radio market. In addition to relying on the Commission’s standard methodology for calculating the number of stations in a market, *see infra*, it argues that at least seven additional commercial radio stations from areas such as Tulelake, California; Medford, Oregon; Phoenix, Oregon; and Klamath, Oregon have overlapping city grade contours with one or more of the stations that will be licensed to Four Corners. Finally, it claims that Siskiyou County receives additional broadcast signals from Redding, California and nearby communities.

Discussion. We disagree with Big Tree’s allegation that the transaction violates the Commission’s radio multiple ownership rules. Under our existing local ownership rules, a market is defined as the area encompassed by the principal community contours of the mutually overlapping stations proposing to have common ownership.¹ In determining how many stations are in a market, we count all stations whose principal community contours overlap any of the stations whose contours define the market.² In radio markets with 14 or fewer radio stations, a party may own up to five commercial radio stations, not more than three of which are in the same service, except that a party may not own more than 50% of the stations in such a market. *See* 47 C.F.R. §73.3555(a). Four Rivers satisfactorily demonstrated in its multiple ownership showing submitted with its application that post-merger, it would own 2 AM and 3 FM stations in a radio market consisting of at least 14 radio stations. Accordingly, the proposed ownership of these five stations complies with the numerical limits allowed under the Commission’s multiple ownership rules.

In considering the competitive impact of a proposed transaction, the Commission initially focuses on the pre- and post-merger advertising revenue in the relevant Arbitron radio metro, as reported in the BIA database. *See Shareholders of Jacor Communications, Inc.*, 14 FCC Rcd 6867 (MMB 1999). Here, the relevant stations are not reported in an Arbitron radio metro and Big Tree fails to offer any support or a source for its position that Siskiyou County is the relevant radio market for purposes of competition or, even if it were, that Four Corners would control over 80% of the advertising revenue in that market. In addition, we are unable to verify the arguments of the petitioner because revenue data are not available to us independently for non-

¹ This definition was established in *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992), *modified in part on recon.*, 7 FCC Rcd 6387 (1992), *further recon. granted in part*, 9 FCC Rcd 7183 (1994). The definition of radio market and calculation of the stations contributing to that market were not changed by the Telecommunications Act of 1996. *See also Implementation of Sections 202(a) and 202(b) of the Telecommunications Act of 1996*, 11 FCC Rcd 12368 (1996).

² The Commission recently released a Notice of Proposed Rulemaking seeking comment specifically on whether and how the Commission should modify the standard for defining radio markets and counting the number of stations in these markets. *In the Matter of Definition of Radio Markets*, MM Docket No. 00-244, FCC 00-427 (rel. Dec. 13, 2000). However, in the rulemaking, the Commission indicated that, with one narrow exception not relevant here, “we will continue to process applications under the existing standards, unless and until they are changed in this proceeding.” *See Id.* at ¶ 14.

Arbitron reported stations. Under these circumstances and based on our independent review of the record, we find that the petition fails to raise a substantial and material question of fact to warrant further inquiry.

Accordingly, IT IS ORDERED, That, the petition to deny filed by Dennis M. Crepps d/b/a Big Tree Communications IS DENIED. IT IS FURTHER ORDERED, That the application to assign KWHO(FM), Weed, CA (File No. BALH-20001211ADX) IS GRANTED.

Sincerely,

Linda B. Blair, Chief
Audio Services Division
Mass Media Bureau

cc: Dennis J. Kelly, Esq.