

Broadcast Ownership Rules Update

On May 30, 2000, the Commission announced the completion of its Biennial Review of its broadcast ownership rules and proposes to retain, but modify two rules that affect radio broadcasting:

(1) the definition of local radio markets and the methods of calculating the number of stations in a market and the number of radio stations a party owns in a particular market; and

(2) the newspaper/broadcast cross-ownership rule so that it is tailored to cover those situations where it is necessary to protect the public interest.

The Commission also proposes to eliminate its restriction on multiple ownership of experimental broadcast stations. The Commission will issue separate Notices of Proposed Rulemaking (NPRM) to seek public comment in each of these areas.

Local Radio Ownership Rules: The Commission concluded that the local radio ownership limits generally continue to serve the public interest. It stated that there currently are hundreds of fewer licensees, and in many communities far fewer radio licensees, competing against each other. It said the existing limitations remain necessary to prevent further diminution of competition and diversity in the industry.

Radio Market Definition: The Commission said it would issue an NPRM to address concerns about its administration of the local radio ownership rule, including its method of defining radio markets, counting the number of stations within them, and counting the number of stations owned by a party in a radio market. The NPRM will address whether the FCC should use Arbitron market definitions, rather than its current overlapping signal contours standard, to obtain a more accurate measure of radio markets. The NPRM will also address the FCC's counting methodology. The Commission also acknowledged that its current methodology may produce unrealistic results in certain circumstances where a station is counted as being in a market but is not counted against a licensee's cap on the number of stations it may own in that market.

Experimental Broadcast Station Rule: The Commission said that rules limiting multiple ownership of experimental radio stations, which are licensed to develop and advance new technology, could be eliminated. It said that existing rules requiring the stations to operate for research purposes and both barring imposition of charges for

transmitting programming or offering a regular program service are sufficient to provide safeguards against experimental station commercial abuses.

Newspaper/Broadcast Cross-Ownership Rule: The Commission concluded that the newspaper/broadcast cross-ownership rule should, as a general matter, be retained because it continues to serve the public interest by furthering the important public policy goal of viewpoint diversity. The Commission recognized that media markets have undergone changes since this rule was adopted, but found that these changes have been insufficient to justify repeal of the rule. In this regard, it observed that many of the new media outlets do not yet appear to be substitutes for newspapers or broadcast stations on the local level for diversity purposes. The Commission acknowledged that the efficiencies of combined newspaper/broadcast operation might produce more public affairs or news programming. It stated, however, that this result did not necessarily advance the Commission's goal of viewpoint diversity because, without a diversity of ownership or editors, there would be no real diversity of viewpoints.

Notwithstanding its general conclusion that the newspaper/broadcast cross-ownership rule should be retained, the Commission recognized that there might be situations in which the rule may not be necessary to protect the public interest in diversity and competition. There may be instances, for example, in which, given the size of the market and the size and type of the newspaper and broadcast station involved, sufficient diversity and competition would remain even if a newspaper/broadcast combination were allowed. The Commission indicated that it would examine in greater detail such situations.

Radio-Television Cross-Ownership Rule: Changes to the Radio-Television Cross-Ownership rule include permitting a party to own a television station and a second television station if permitted under the modified TV duopoly rule or television LMA grandfathering policy and any of the following radio station combinations in the same market:

- up to six radio stations (any combination of AM or FM stations, and to the extent permitted under the local radio ownership rules) in any market where at least 20 independent voices would remain post-merger;
- up to four radio stations (any combination of AM or FM stations, and to the extent permitted under the local radio ownership rules) in any market where at least 10 independent voices would remain post-merger; and
- one radio station (AM or FM) notwithstanding the number of independent voices in the market.

- In those markets where the revised rule will allow parties to own eight outlets in the form of two TV stations and six radio stations, a party can own one TV station and seven radio stations instead.

For purposes of the new radio-television cross-ownership rule, "independent voices" will include: (1) all independently owned, full-power, operational commercial and noncommercial television stations licensed to a community in the DMA in which the TV station in question is located; (2) all independently owned operational commercial and noncommercial radio stations licensed to, or with a reportable share in, the radio metro market where the TV station involved is located; (3) daily newspapers that are published in the DMA with a circulation exceeding five percent in the DMA; and (4) wired cable service (counted as a single voice), provided cable service is generally available in the DMA.

The Commission observed that in the cases of radio-television cross-ownership rule conditional waivers that were granted or on file as of July 29, 1999 a majority involve radio-television combinations that will now be permissible under the revised rule.

The Commission stated that existing conditional waivers, and those on file as of July 29, 1999, are not covered by the revised rule will be extended for an additional five-year period, after which they would be reviewed on a case-by-case basis in conjunction with the FCC's 2004 biennial ownership review.

The Commission observed that the broadcast media are facing increased competition from alternative video sources, including: 11,600 cable systems passing 94+ million homes and serving almost 65 million TV households; 240 Direct Broadcast Satellite (DBS) channels serving 7 million subscribers; 2 million households with Home Satellite dishes; 1 million MMDS subscribers; almost 1 million SMATV subscribers; and 66,000 Open Video Systems (OVS) subscribers.

The Commission said that the radio-television cross-ownership rule continues to be necessary to promote diversity in the broadcast media. It said it is including voice test components in the revised rule to ensure that the local market remains sufficiently diverse and competitive. The Commission said that the revised rule reflects the changes that have occurred in the local broadcast media marketplace, the growth in the availability of alternatives to broadcast television and radio, and efficiencies inherent in joint ownership and operation of both television and radio stations in the same market.

Broadcast Station Ownership Attribution: Over the past year, the Commission revised its broadcast and cable/MDS ownership attribution rules (MM Docket Nos. 94-150, 92-51, & 87-154). The attribution rules define what constitutes a "cognizable interest" for purposes of applying the ownership rules. A Report and Order (FCC 99-207) improves the precision of the attribution rules and makes them more clear to financial

markets. Regulatory certainty for the attribution rules is necessary to prevent disruptions in the flow of capital into broadcasting. Through these changes, the FCC and the industry will be better able to identify the real interests that companies hold in broadcast properties.

Key elements of this order include:

- adoption of a new "equity/debt plus" attribution rule which would function in addition to the current attribution rules. Under this new rule, a holder of a financial interest, whether equity or debt or both, in excess of 33% of a licensee's total assets will have an attributable interest in that licensee if it is either a major program supplier to that licensee (supplying more than 15 percent of a station's total weekly broadcast programming hours) or if it is a same market media entity (including broadcasters, cable operators and newspapers). All stock, both common and preferred, both voting and nonvoting, will be counted toward the 33% threshold;
- retention of the 5% voting stock benchmark while raising the voting stock benchmark for passive investors (bank trust department, mutual funds, and insurance companies) to 20% (from the existing 10% benchmark).
- elimination of current aspects of the cross-interest policy (i.e., key employee relationships, nonattributable equity interests, joint venture arrangements).
- no change in the treatment of joint sales agreements (JSAs).
- no change in the treatment of limited partnership interests as distinct from corporate voting equity interests.
- application of limited partnership insulation criteria to determine attribution of limited liability companies (LLCs).
- application of revised broadcast attribution criteria to cable/MDS and broadcast/cable cross-ownership rules.

Except for LMAs, any interests acquired on or after November 7, 1996, the date of FCC adoption of the Attribution Further Notice of Proposed Rulemaking, are subject to the current rules adopted by the Commission. If the interest was acquired before that date, it is grandfathered and not subject to these revised rules.

Competitive Bidding Procedures for Auctionable Broadcast Services: In July of last year, the Commission announced the procedures and minimum opening bids for the upcoming Closed Broadcast Auction. These procedures and opening bids were determined following a Public Notice seeking comment on the establishment of reserve prices or minimum opening bids for the auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits (Auction No. 25), in accordance with the Balanced Budget Act of 1997. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 25. The Bureaus received 39 comments and 7 reply comments in response to the *Closed Broadcast Auction Public Notice*.

For more information on any of these recent developments in the Federal Communications Commission's rules affecting the broadcasting industry, contact Edward S. Hammerman at 202-861-9139 or via email at HammermanT@dsmo.com.