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SUMMARY OF FCC MEDIA OWNERSHIP RULES

by

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The purpose of this monograph is to provide a summary of the current rules and policies promulgated by the Federal Communications Commission ("FCC") with respect to the ownership of television and radio broadcast stations as well as other media.

Attribution

In all of these rules and policies, the ultimate question is whether the ownership of a television station, radio station, or other media outlet will be attributed to a particular party. A party can be attributed with ownership of an entity even if that party does not own 100% of the voting equity.

In general, the following principles govern FCC attribution decisions:

- A party will be attributed with ownership of a corporation if it holds 5% or more of the voting stock (unless the party is the trust department of a bank, a mutual fund, or an insurance company, in which case the maximum is 20%). Non-voting stock is generally non-attributable.

- All general partners (whether in a limited partnership or a general partnership) and all voting members of a limited liability company will be attributed with ownership of the entity.

- Limited partners and non-voting members of a limited liability company will be exempt from attribution if the partnership agreement or, as the case may be, the operating agreement incorporates specified "insulation" criteria to assure the FCC that the party will not be involved in management of the enterprise.

- FCC rules incorporate an "Equity Debt Plus" or "EDP" rule which requires the attribution of ownership if a party (1) holds debt and/or equity instruments that reflect more than 33% of the enterprise value (debt plus equity) of the company and (2) has another media interest in the market, which could include an ownership interest in another television or radio station or a time brokerage agreement which entitles the party to provide more than 15% of the station's weekly programming.

- A "Time Brokerage Agreement" or "Local Marketing Agreement" will be deemed to be an attributable ownership interest in the party providing programming to another television or radio station if the party (1) has another television or radio station in the same market and (2) provides more than 15% of the other station's weekly programming.

Local Television Ownership

FCC rules generally allow a party to have an ownership interest in only one full-power commercial television station in a Designated Market Area ("DMA"). An exception is made to allow an ownership interest in two (2) full-power television stations in those markets where there will be at least eight (8) separate entities which own and operate full-power television stations in the post-acquisition market. The local television ownership rule is subject to the following qualifications:

- The limitation only applies to television stations whose Grade B contours overlap. If the Grade B contours of the stations do not overlap, they can be commonly owned even if they are in the same DMA.

- In determining the number of stations in a market, consideration is given to both commercial and noncommercial television stations but not to satellite stations.

- One of the two stations to be owned cannot be among the top four-rated stations in the market. To determine whether a station is among the top four rated stations, consideration will be given to the most recent all-day audience share as determined by Nielsen.

- The Commission is willing to allow common ownership of two television stations even in the absence of eight (8) independent voices in the post-acquisition market if one of the stations meets an applicable waiver standard. The waiver standards apply to "failed," "failing," or "unbuilt" stations." A "failed" station is one that has been dark for at least four (4) months or is involved in a court-supervised involuntary bankruptcy or other insolvency proceeding (such as a receivership); a "failing" station is one that has had a low all-day audience share (meaning 4% or lower) for a considerable time, is in poor financial condition, and will provide public interest benefits through a sale to another in-market station; and an "unbuilt" station involves a transaction that will result in the construction of a new station that would otherwise be unable to be constructed.

A Joint Sales Agreement ("JSA") – defined to mean the sale of more than 15% of a station's weekly advertising time – involving television stations will not (unlike the situation with radio) be deemed to result in an attributable ownership interest even if the two television stations are in the same DMA. However, a rulemaking proceeding is pending at the FCC to make JSAs an attributable ownership interest.

Local Radio Ownership

The FCC has not changed the ownership limitations created by the Telecommunications Act of 1996 (except to include noncommercial stations in the count). The limitations are as follows:

- In a market with 45 or more commercial and noncommercial radio stations, a single entity may own up to eight (8) stations as long as no more than five (5) are in the same service (AM or FM).

- In a market with between 30 and 44 commercial and noncommercial radio stations, a single entity may own up to seven (7) stations as long as no more than four (4) are in the same service.

- In a market with between 15 and 29 commercial and noncommercial radio stations, a single entity may own up to six (6) stations as long as no more than four (4) are in the same service.

- In markets with fourteen or fewer commercial and noncommercial radio stations, a single entity may own up to five (5) as long as no more than three (3) are in the same service and as long as the entity does not own more than 50% of the stations in the market.

Although the ownership caps have remained unchanged, the FCC did adopt new rules in 2003 to change the methodology by which a radio market is defined. More specifically, the new rules now use the Arbitron Metro markets where available. The use of Arbitron is subject to the following parameters:

- The FCC will rely on reports from BIA showing the number of radio stations in an Arbitron Metro. BIA, in turn, now generates reports for use in FCC proceedings.

- The number of radio stations in the market includes all of those commercial and noncommercial radio stations licensed to communities within the Arbitron Metro as well as all those stations which (according to BIA) are “home” to the Arbitron Metro. Under this approach, a radio station can be included in two separate markets if it is licensed to a community in one Arbitron Metro but “home” to another Arbitron Metro.

- A party will generally not be able to benefit from a change in the boundaries of an Arbitron Metro or a change in community of license for a station until that change has been in effect for two (2) years.

The FCC retained the existing methodology for defining a radio market in those areas where there is not an Arbitron Metro. The FCC did, however, adopt two qualifications to the pre-existing methodology:

● In order to eliminate anomalies created by the "Pine Bluff" problem, a station will not be included in the denominator (which reflects the number of radio stations in the "market") if it is a commonly-owned station of the buyer but not included in the numerator (which reflects the number of commonly-owned stations of the buyer in the "market").

● The transmitter of every station included within the "market" (which are the stations in the denominator) must be located within 92 kilometers (or 58 miles) from the perimeter of the boundary created by the overlap of the principal community contours of the stations to be commonly-owned in the market.

The FCC issued a notice of proposed rulemaking in 2003 seeking comment on whether and how the methodology for defining a market in unrated Arbitron markets should be changed. That proceeding is still pending.

Existing combinations that do not comply with the new rules are grandfathered. However, those non-compliant clusters cannot be sold unless (1) the combination will be in compliance with the rules at the time of sale, (2) the sale is to a small business (an "Eligible Entity") as defined by the Small Business Administration (which, in the case of radio groups, is currently defined as an entity with $6.5 million or less in annual revenue), or (3) the sale is to a buyer who simultaneously files an application to sell the excess station(s) to an Eligible Entity or to a divestiture trust that will sell the excess station(s) to an Eligible Entity within twelve (12) months of consummation . In addition to the revenue restriction, a party can qualify as an Eligible Entity only if it holds (1) 30% or more of the stock/partnership shares of the company and more than 50% of the voting power, (2) 15% or more of the ownership interest of the company and more than 50% of the voting power, with no other person or entity controlling more than 25% of the voting power, or (3) more than 50% of the voting power if the buyer is a publicly-traded company.

JSAs involving radio stations in the same market will constitute an attributable ownership interest. If attribution of an existing JSA would place an owner in violation of the new rules, the owner will have two (2) years from the effective date of the *Report and Order* to bring itself into compliance with the new rules.

Cross-Ownership

The FCC amended its rules in December 2007 to modify the prior ban on cross-ownership of a local daily newspaper and a radio station or a television station. The cross-ownership issue arises when (1) the newspaper's community of publication is located in the same DMA as a television station or (2) is completely encompassed by the 2 mV/m contour of an AM station or one 1 mV/m contour of an FM station. A daily newspaper is defined as one that is published at least four days per week and is in English or the primary language of the particular market (for those markets where English is not the predominant language). The 2007 modification would generally allow common ownership of a daily newspaper and a television or radio station if (1) the market is one of the 20 largest DMAs, (2) the common ownership would include only one television station or one radio station, (3) the post-acquisition market will include at least eight (8) independently owned and operated major media voices (defined to include major newspapers and full-power television stations), and (4) in the event of common ownership with a television station, the station is not among the top four-ranked stations in the DMA.

A party may own up to two (2) television stations (if otherwise permitted by FCC rules) and one radio station under any circumstance. This limit may be exceeded in the following circumstances:

- If the post-acquisition market will include at least 20 "independently owned media voices," a party can own two television commercial stations (if otherwise permitted by FCC rules) and six (6) radio stations (if otherwise permitted by FCC rules) or one commercial television station and seven radio stations (if otherwise permitted by FCC rules).

- If the post-acquisition market will include at least 10 "independently owned media voices," a party can own two commercial television stations (if otherwise permitted by FCC rules) and four (4) radio stations (if otherwise permitted by FCC rules).

For purposes of the cross-ownership rules, "independently owned media voices" means (1) a commercial or noncommercial television station whose Grade B contour overlaps with the television station(s) to be acquired, (2) radio stations located in the market or which have a minimum share of listeners in the market, (3) English-language newspapers published in the DMA and having a circulation that exceeds 5% of the DMA households, and (4) if cable television is generally available throughout the market, cable television will count as one "voice."

Dual Network Ownership

The FCC retained its existing rule prohibiting mergers or common ownership among the top four national broadcast television networks.

National Television Ownership

The FCC had increased the cap on national television ownership in 2003 to 45% of the television households in the United States (meaning that a party could not own television stations whose Grade B contours reached more than 45% of the country's television households. However, Congress enacted a law which lowered that percentage to 39).

In determining the party's ownership share of national ownership, (1) a party is credited with all of the television households in the DMA in which it has one or more television stations and (2) the FCC retained the 50 percent discount for UHF television stations for the time being. However, the UHF discount would be eliminated for stations owned by the top four television broadcast networks (CBS, NBC, ABC, and FOX) when the transition to digital television is completed in a particular market. The FCC stated in 2003 that it would continue to monitor the situation to determine whether the UHF discount should be terminated for other stations as circumstances change. However, the FCC has not given any indication of any intention to make any change as of this date.

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This Summary was prepared by the law firm of Dickstein Shapiro LLP, 1825 Eye Street, NW, Washington, D.C. 20006. The Summary does not constitute the provision of legal advice and should not be used for that purpose. Anyone with any questions concerning the Summary should contact Lew Paper at the foregoing address or by telephone (202-420-2265) or email (PaperL@dicksteinshapiro.com) or Andy Kersting at the foregoing address or by telephone (202-420-3631) or email (KerstingA@dicksteinshapiro.com).