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## The FCC Modifies Its TV Ownership and Mass Media Attribution Rules

The FCC recently issued *Memorandum Opinions and Orders* ("MO&O") that addressed several *Petitions for Reconsideration* filed with respect to FCC Orders released in August, 1999 that amended the local and national television ownership and mass media attribution rules. The FCC generally affirmed its original Orders, but it also adopted some significant changes to the ownership and attribution rules. A general summary of those changes follows.

### 1. Mass Media Attribution Rules.

In its August, 1999 Orders, the FCC made several important changes to the ownership attribution rules applicable to mass media licensees. Most significantly, the FCC adopted an Equity/Debt Plus ("EDP") rule that applies a two-pronged test to determine if certain interests are attributable for purposes of applying the FCC's ownership rules:

- first, the FCC determines whether a station investor is also either a major program supplier or a same-market media entity subject to the broadcast ownership rules (a program supplier that supplies over 15% of a station's total weekly broadcast programming hours is considered to be a "major program supplier", and an investor is considered a "same-market media entity" if it already holds an existing attributable interest under the FCC's attribution rules, other than the EDP rule, in either a broadcast station, newspaper, or cable system in a given market);
- second, the FCC examines the extent of the investment or financial interest.

Any interest a major program supplier has or wants to have in a station to which it supplies programming, and any interest an existing media entity acquires or wants to acquire in another media entity in the same market, will be treated as attributable under the EDP rule if such interest, aggregating both equity and debt holdings, exceeds 33% of the total asset value of the additional media entity.

In the MO&O, the FCC clarified several points about the current rules, and confirmed that:

- the "total assets" of a licensee are defined as the sum of all debt (short term and long term) plus equity, and that all equity, in whatever manner or amount held, including stock, non-stock partnership, or any other form of equity, will be included in the calculation of that sum;
- for the purposes of the EDP rule, an applicant may base the valuation of a station on either the book value or some other value, including the fair market value, provided that the valuation is reasonable, and that the applicant uses the valuation relevant at the time the application or ownership report is filed; however, if an issue concerning valuation arises in connection with a transfer or assignment application or an ownership report filed after consummation of a transfer or assignment, the applicant must use the sales price of that transfer or assignment as the total asset value;
- a licensee must maintain compliance with the attribution rules when any changes in a firm's assets occur, but where sudden, unforeseeable changes take place, the parties will be afforded a reasonable time, not to exceed 12 months, to come into compliance;
- the amount of consideration paid for options or warrants and any security deposit or financial contribution made by a guarantor for the guarantee of a loan will be considered in determining whether an interest is attributable under the EDP rule;
- the FCC will use a "multiplier" in applying EDP, meaning that interests in successive percentage links in a vertical ownership chain will be multiplied to determine whether an indirect interest in the licensee is attributable under the EDP rule;
- an investor in an entity that owns several stations in one market or multiple stations in several markets will be deemed to have an attributable interest under the EDP rule only in markets where the investor has the relationship which triggered application of the EDP rule in the first place (i.e., the investor is a major program supplier to a station in the market in which the investment is being made, or the investor has an attributable interest in a station in the same market); and
- the officers and directors of a company are individually attributed with the company's full equity and debt interests in a licensee for purposes of applying the EDP rule (for example, if a bank loan to a licensee amounts to 35% of the total assets of the licensee, and the bank has no other attributable interest in the market, then the bank would not hold an attributable interest in the licensee; however, if an officer of the bank individually owns a same-market media entity, the officer would be deemed to hold an attributable interest in the licensee).

In the MO&O, the FCC also eliminated the "Single Majority Shareholder Exemption", which previously provided that where a single shareholder owns more than 50% of a corporation's voting stock, the interests of minority shareholders are not attributable. The FCC, however, ruled that all current minority interests in companies with single majority shareholders will be grandfathered until the related grandfathered interest is

assigned or transferred (although such minority interests remain subject to the EDP rule) if the interests were acquired before the adoption date of the MO&O.

## 2. Local Television Duopoly Rules.

The duopoly rules currently provide that an entity can own television stations licensed to communities in different Designated Market Areas ("DMA") without regard to contour overlap, and can own two television stations in the same DMA if at least one of the stations is not among the four highest-ranked stations in the market, and if at least eight independently owned and operating full-power broadcast television stations (i.e. "eight independent voices") would remain in the DMA once the proposed combination is consummated. In addition, it is presumed to be in the public interest to waive the rule if one of the stations in a proposed combination is a failed or failing station, or is not yet constructed, provided that the waiver applicant or (in the case of an unbuilt station) the permittee satisfies certain stringent waiver tests. Once formed, whether pursuant to the rules or waiver, a combination may not be transferred unless it meets the rule or waiver standard in effect at the time of transfer. In the MO&O, the FCC changed or modified the current rules in several important respects.

In its most significant change, the FCC modified the standard for counting the number of independently owned and operating full-power stations in a DMA for purposes of the "eight independent voices" test. Under the modification, only those stations whose Grade B signal contour overlaps with the Grade B contour of at least one of the stations in the proposed combination will be counted. Previously, all independently owned and operated full-power television stations in a DMA counted towards the eight-station minimum. Therefore, under the new rules, some stations previously counted towards the required "eight independent voices" in a DMA will no longer be counted, and in some markets, therefore, it will be more difficult to obtain approval for a duopoly. The impact of this change will be greatest in DMAs that encompass large geographic regions and contain many stations with no mutual Grade B overlap.

In another change, the FCC relaxed the required showing that a waiver applicant seeking to acquire a station with which it formed an LMA prior to the adoption of the rules is required to make under the current rules. Such an applicant will not be required to prove that it was the only buyer willing and able to operate the station, and that the sale of the station to an out-of-market buyer would result in an artificially depressed price. The applicant will, however, still be required to prove the other elements of the required waiver standard. See our Memorandum to All Broadcast Clients dated September 30, 1999.

The FCC also affirmed the requirement that at least one of the two television stations in a duopoly must not be among the top four ranked stations in the DMA, but clarified that, in determining the top four ranked stations in the DMA, where two stations have the same Nielsen audience share, as reported using whole numbers, the duopoly applicant will be required to submit more detailed information on audience share (i.e.

estimates with a sufficient number of decimal places) in order to resolve the tie.

### 3. Radio/Television Cross Ownership Rules.

This rule currently provides that if the 1 mV/m contour of an FM station or the 2 mV/m groundwave contour of an AM station encompasses the entire community of license of a commonly-owned television broadcast station, or if the Grade A contour of the television station encompasses the entire community of license of the AM or FM station, then the entity may own, operate or control up to two commercial television stations (if permitted by the duopoly rules) and at least one commercial radio station in the market. An entity may own additional stations in the market as follows: (i) if at least 20 independently owned media voices would remain in the market, an entity can operate or control up to two commercial television and six commercial radio stations, or one commercial television and seven commercial radio stations in the market; and (ii) if at least 10 independently owned media voices would remain in the market, an entity can operate or control up to two commercial television and four commercial radio stations in the market.

Significantly, in the MO&O, the FCC modified the rule as it did for the television duopoly rule to provide that in counting the number of independently owned "media voices" in a market for purposes of determining the number of television and radio stations that can be owned in a particular market, only independently owned and operating full-power television stations in the same DMA as the television stations at issue that have a Grade B signal contour that overlaps with the Grade B contour of the television stations at issue, will count as additional "media voices" in the market. Previously, all independently owned and operated full-power television stations in a DMA counted towards the count of "media voices". This change may impact an operator's ability to acquire or transfer stations in certain markets where the number of independent "media voices" decreases because some stations' Grade B contours do not overlap with those of other stations in the DMA.

Also in the MO&O the FCC clarified that, for purposes of the radio/television cross ownership rules, radio stations located in one Arbitron radio market are generally not counted toward the limits on the number of radio stations a party may own in a second Arbitron radio market, even when the communities of license of the radio stations in the market fall within the Grade A contour of a commonly owned television station in the second market. However, radio stations located in one Arbitron radio market will be counted toward the limits on the number of radio stations a party may own in a second Arbitron market in which a commonly owned television station is located if the contours of the radio stations trigger application of the radio/television cross-ownership rule (i.e., if the 1 mV/m contour of an FM station, or 2 mV/m groundwave contour of an AM station encompasses the entire community of license of such television station). Therefore, it is important to recognize that the FCC might, in some instances, consider radio stations located in one market to have a presence in a distant market, and therefore be counted against a licensee's radio/television ownership cap limits, if the radio stations' contours reach into the distant market and trigger the cross-ownership rule.



Finally, the FCC confirmed that in the radio/television cross-ownership context, neither LPTV stations, including Class A stations, nor low power FM stations may be included in determining the number of media owners that will remain in a market post-combination.