

Special Bulletin to Broadcasters

200 I PENNSYLVANIA AVENUE, NW
SUITE 400
WASHINGTON, D.C. 20006-1851

Telephone (202) 659-3494

Email: fwclz@fwclz.com

Facsimile (202) 296-6518

SB No. 99-13

Website: www.fwclz.com

August 5, 1999

FCC Makes Extensive Changes to Its Multiple Ownership Rules

At its monthly open meeting this morning, the FCC modified its rules regarding TV duopolies, TV local marketing agreements (LMAs), radio/TV cross-ownership, and ownership attribution. Determinations as to whether the rule changes are favorable to broadcasters will likely vary widely, depending on the particular circumstances in each case.

As the texts of the three separate decisions are not yet available, this **Special Bulletin** reports on highlights of the FCC action based on statements made at the meeting and the press release that followed.

Local TV Ownership Rules

Citing the growth in the number and variety of media outlets in local markets, including cable TV and DBS, as well as the desire to allow broadcasters to enjoy the economic efficiencies of common ownership, the FCC adopted the following rule changes:

Changes to TV Duopoly Rule

- ▶ The FCC modified the rule to allow common ownership of two TV stations, regardless of signal contour overlap, as long as the stations are in two different Nielsen Designated Market Areas (DMAs). The Commission will continue its existing practice of allowing

common ownership in the same DMA if there is no Grade B overlap.

- ▶ The FCC will allow common ownership of two TV stations in the same DMA as long as eight separately-owned full-power TV stations (commercial and noncommercial) will remain after the transaction, provided that at least one of the stations in the transaction is not among the top-four rated stations in the market.
- ▶ The FCC will consider duopoly rule waivers to permit common ownership of two TV stations in the same market where a same-market licensee is the only reasonably available buyer, and the station being purchased is either "failed" (defined as being off the air for at least four months prior to the waiver request or involved in bankruptcy or insolvency proceedings), "failing" (defined as having less than a four percent audience share and a negative cash flow for the previous three years) or "unbuilt" (a facility for which there is a construction permit, but which has not been constructed).

Changes to LMA Policies

- ▶ LMAs will be attributable for multiple ownership rule purposes where the brokered and brokering stations are in the same market, and the amount of time brokered is more than

15% of the brokered station's weekly broadcast hours.

- ▶ For a period of five years, the FCC will not attribute LMAs that were begun before November 5, 1996. At the end of the five-year grandfathering period, the FCC will review grandfathered LMAs on a case-by-case basis to determine whether they should be deemed an attributable ownership interest. Parties that do not wish to wait until 2004 will be able to seek review beginning one year from the publication of the *Report and Order* in the *Federal Register*. During the five-year period, the holder of an LMA may transfer the LMA, subject to the time remaining in the five-year period.
- ▶ Those LMAs that were begun after November 5, 1996 will not be considered an attributable ownership interest for a period of two years, after which they must be brought into compliance with the new TV local ownership rules or be terminated.

Changes to Radio/TV Cross-Ownership Rule

- ▶ The FCC will allow a party to own a TV station (and a second TV station, if otherwise permitted under the modified TV duopoly rule or the TV LMA grandfathering policy), along with any of the following radio station combinations in the same market: (a) up to six radio stations (any combination of AM and FM that complies with the local radio ownership rules) if at least 20 independent media voices would exist in the market after the transaction; (b) up to four radio stations (again, with local radio ownership rule compliance) if at least 10 independent media voices would exist in the market after the transaction; and (c) one radio station (AM or FM) regardless of the number of independent media voices remaining in the market after the transaction. In those markets where a party owns only one TV station, and there will be at least 20 independent media voices in the market after the transaction, the new rule will allow common ownership of the TV station and seven radio stations.
- ▶ The FCC decided that for purposes of the radio/TV cross-ownership rule only, independent media voices include (a) all independently owned, full-power, operational

commercial and noncommercial TV stations in the DMA in which the TV station in question is located; (2) all independent, operational commercial and noncommercial radio stations licensed to, or with a reportable rating share in, the radio metro market; (3) daily newspapers (issued at least four days per week) that are published in the English language in the DMA involved and that have a circulation exceeding five percent (presumably of the DMA population); and (4) wired cable TV systems (counted as a single media voice regardless of the number of systems in the DMA), provided that cable TV service is generally available in the DMA.

- ▶ The FCC will allow waivers of the radio/TV cross-ownership rule in cases where one of the stations in a proposed transaction is a failed station.
- ▶ The FCC decided that existing conditional waivers of the rule, along with grants of waiver requests that were on file with the FCC as of July 29, 1999, will be extended for an additional five-year period, at which point they will be reviewed on a case-by-case basis as part of the biennial ownership rule review scheduled for the year 2004. Parties who do not want to wait until 2004 for Commission review will be allowed to seek such review beginning one year from the publication of the *Report and Order* in this proceeding in the *Federal Register*. This temporary waiver is not transferable, *i.e.*, noncomplying station groups cannot be sold as a group.

National TV Ownership Rule

In a separate *Report and Order*, the FCC is revising its national TV ownership rule to clarify that even if a party owns two television stations in a market, the market will be counted only once in calculating whether a group owner complies with the 35% aggregate national audience reach limitation. The Commission also formally adopted use of the Nielsen Company's Designated Market Area (DMA) to define the relevant market. The DMA replaces the Arbitron Company's ADI (Area of Dominant Influence), which is no longer available from that company.

Ownership Attribution Rule

The Commission also revised its broadcast, cable and multipoint distribution service (MDS) ownership attribution rules, which define what is a "cognizable interest" in those services for purposes of the multiple ownership rules. Highlights of the FCC action include:

- ▶ The FCC adopted a new "equity/debt plus" attribution rule, which will make attributable the interests of any party that holds a financial interest, whether equity or debt or some combination thereof, in excess of 33% of a station's total capital, if such holder is either a significant program supplier to the licensee (providing more than 15% of the station's total weekly broadcast programming hours) or if it has other media interests (including another broadcast station, a cable system or a newspaper) in the same market.
- ▶ The FCC retained the five percent voting stock benchmark for ownership attribution of active investors, but raised the benchmark for passive investors (*e.g.*, bank trust departments, mutual funds, and insurance companies) from 10% to 20%.
- ▶ The FCC adopted a new rule for TV LMAs, so that time brokerage of another station in the same market for more than 15% of the brokered station's broadcast hours per week will result in attribution of the brokered station to the brokering station.
- ▶ The FCC eliminated the cross-interest policy (regulating key employee relationships, nonattributable equity interests, and joint venture arrangements).
- ▶ The FCC declined to change its treatment of Joint Sales Agreements (JSAs) and limited partnership interests. The FCC did, however, adopt limited partnership insulation criteria as the standard for determining the ownership attribution of limited liability companies (LLCs).
- ▶ The FCC also decided that, except for LMAs, any interests acquired on or after November 7, 1996 are subject to the new rules adopted in the *Report and Order*, and that any interest acquired before that date is grandfathered and not subject to the new rules.

We will report further regarding these FCC actions as more information becomes available. To discuss how these complex rule changes may apply to your competitive situation, please contact the firm.

FISHER WAYLAND COOPER LEADER
& ZARAGOZA L.L.P.

Editors: David D. Oxenford, Esq.
Robert C. Fisher, Esq.
Scott R. Flick, Esq.
Lara Strayer Meisner, Esq.

Managing Editor
and Principal Writer: Ricky A. Pursley

Special Bulletin to Broadcasters is published by the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., Suite 400, 2001 Pennsylvania Avenue, NW, Washington, D.C. 20006-1851, Telephone (202) 659-3494, Facsimile (202) 296-6518, Email: fwclz@fwclz.com, Website www.fwclz.com. The **Special Bulletin** is a service to the firm's clients and friends, and is intended to provide general information only. The contents should not be construed as legal or business advice. Legal and business advice should always be obtained for specific facts and circumstances as the need arises. For more information on any of the subjects discussed in the **Special Bulletin**, please contact the Editors or any of the firm's other attorneys. Copyright © 1999, Fisher Wayland Cooper Leader & Zaragoza L.L.P. All rights reserved.

The FCC has announced the filing window period for Fiscal Year 1999 annual regulatory fees. The fees must be paid during the period from September 13 to September 22, 1999 at the Mellon Bank in Pittsburgh, Pennsylvania. For more information on the fees, please contact the firm.

RAP080599