Directors, the corporation's governing entity, and the limited partner's ability to vote out the partnership's governing entity, the general partner. Even though limited partners of widely-held limited partnerships generally can vote out the general partner with or without cause, there are considerable practical restraints on their exercise of that power. Specifically, in order to remove a general partner, a limited partner would have to organize and direct a voting coalition of limited partners. The limited partner would have to ascertain the identities of the other investors, convince them that a general partner should be removed, and then orchestrate the vote. All of these activities are time consuming and expensive, and the typical small investor in a limited partnership is usually unwilling and unable to conduct these sorts of activities.

Further, in widely-held limited partnerships, the general partner in most cases must make a financial investment in the partnership and assume complete and direct control over the partnership's management and operations. If the multiple limited partners of a widely-held limited partnership were to collectively vote out the general partner, generally the limited partners not only would have to return the general partner's equity investment, but also would have to find and vote in a new general partner which

is willing to both assume the partnership's management and make the necessary equity investment in the partnership.

These factors make it unlikely that the limited partners of a widely-held limited partnership will take such drastic action unless the general partner acts in a grossly improper or illegal manner in violation of its fiduciary duties.[25/] Such situations are unlikely to occur on any regular basis.

A corporate stockholder's exercise of the power to vote out the Board of Directors is not nearly as restricted. The practical impediments in the limited partnership context simply do not exist in the corporate setting, and the replacement of directors may be accomplished fairly easily.

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25/ An additional factor making it unlikely that limited partners will vote out the general partner is that most limited partners do not negotiate to have the power of removal over general partners when they enter a limited partnership. Instead, the power of removal is mandated by state law and regulation. The opinion of state regulators on requiring the power of removal in limited partnership agreements has been expressed in guidelines issued by the North American Securities Administrators Association ["NASAA"], a nationwide association of state securities regulators. These recently issued guidelines state that a majority of the then outstanding [limited partners] may, without the necessity for concurrence by the [general partner], vote to: . . . remove the [general partner] and elect a new [general partner]. . . . Omnibus Guidelines, NASAA Reports (CCH) ¶ 2321 at 1389-11, 89-12 (Mar. 29, 1992). Limited partners in widely-held, public limited partnerships do not ask for the power of removal over general partners, and, consequently, the power that they do have is essentially void of meaning because, as a practical matter, they are both unwilling and unable to exercise the power.

It is not extremely burdensome for a large corporation's stockholders to recruit persons to serve on the Board of Directors because doing so necessitates neither a substantial financial investment nor involvement in the day-to-day management of the company.

Further evidence of the fact that the "no material involvement" standard in the widely-held limited partnership context is unrealistic is found in the inconsistency between the Commission's attribution criteria and the state securities laws which govern such partnerships. Like publicly-held corporations, widely-held public limited partnerships must register their partnership interests with the SEC and the various state securities commissions and comply with their rules. A basic requirement of the states is that limited partners of a widely-held limited partnership must have the right to vote out the general partner with or without cause. See KMP Petition at 11-12. The Commission's current attribution rules permit limited partners to vote out the general partner only in highly restrictive circumstances,[26/] and thus are clearly

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26/ These circumstances are: the general partner is subject to bankruptcy proceedings; 2) the general partner is adjudicated incompetent by a court of competent jurisdiction; or 3) the general partner is removed for cause and the determination of the general partner's liability is determined by a neutral arbiter. See Attribution Proceedings.

inconsistent with state securities laws.[27] This inconsistency should be resolved by exempting widely-held limited partnerships from attribution or, at a minimum, applying an attribution benchmark rather than the "no material involvement" standard to these partnerships.

In sum, limited partners of a widely-held limited partnership have less ability to control the partnership's management than a corporation's individual stockholders. Moreover,

> [b]ecause these partnerships are nationwide, publicly-offered, widely-held limited partnerships, with thousands of potential limited partners each owning very small percentages of the total equity, the likelihood that the limited partners will join together and use their collective removal and appointment powers to exert influence over the general partner and thereby control the management or operations of the partnerships' media interests is slight.

Notice at ¶ 15. Investors make investments in widely-held limited partnerships based on the management skill and experience of the general partner. Therefore, limited partners have no incentive to remove a general partner and thus indirectly affect the management of the partnership absent malfeasance by the general partner. The limited partnership interests are not easily alienable because there

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27/ See KMP Petition at 14.

is generally no public market in the partnership shares.[28/] To the extent a particular investment is not performing according to expectations, there would be little incentive for a new general partner to buy its way into the partnership at the behest of the limited partners, assuming the thousands of limited partners could agree on the selection of a new general partner.

Because an investor in a widely-held limited partnership generally does not have the right to direct or influence the management or day-to-day operations of a Commission licensee under a typical limited partnership agreement, holds limited partnership shares which lack the liquidity of stock, and generally can only remove the general partner without cause at the risk of the partnership's liquidation, there is no practical incentive for either an individual or institutional investor to choose a widely-held limited partnership as an investment vehicle

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28/ Although an estimated $1 billion of interests change hands annually in the limited partnership secondary market, Jill Bettner, Regulators Probe Partnership Markups, Wall St. J., Jan. 30, 1989, at C1, most limited partnerships are not freely transferable and, as a result, are illiquid. Real Estate Limited Partnerships, NASAA Reports (CCH) ¶ 8223 at 8206-07. Because of the general illiquidity of limited partnership shares, investors tend to hold their shares until forced to sell. Karen Slater, Reselling Your Limited Partnership Unit, Wall St. J., Feb. 26, 1991, at C1, C11. The illiquidity of limited partnership shares also has another effect: institutional and large investors tend to stay out of public limited partnerships because they are illiquid investments with a low degree of investor control.

and to acquire a sufficient number of limited partnership interests which would permit it to effect any control or management over the partnership.[29/] The FCC should accordingly either completely exempt widely-held limited partnerships from attribution or apply the same benchmark used with respect to individual corporate stockholders.

As an alternative, the FCC could apply the attribution benchmarks for passive investors to widely-held limited partnerships. Institutional investors such as insurance companies and banks are considered "passive" because of their inherent lack of interest in the management and

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29/ Recent efforts in Congress, the SEC, and the National Association of Securities Dealers, Inc. to reform limited partnership "roll-ups" illustrate both the illiquidity and lack of investor control that are inherent in limited partnership investments. See, e.g., The 1992 Limited Partnership Roll-up Reform Act, S. 1423, 102nd Cong., 1st Sess. (1991); 17 C.F.R. § 231.6900, ¶ 71.125 (1991). "Roll-ups" involve the reorganization of two or more limited partnerships into a single entity, usually with changes in the relative rights of limited and general partners. The supposed benefits of roll-ups to limited partners include greater liquidity and reduced operating costs, but historically, share prices of rolled-up entities have plunged after introduction to the stock market, resulting in large losses to limited partners. Kenneth R. Hillier, Rolling Down the Curtain on "Roll-Ups": The Case for Federal Legislation to Protect Limited Partners, 90 Mich. L. Rev. 155, 156-57 (1991). Because of their relative lack of bargaining power, limited partners who have objected to proposed roll-up transactions have had no legal or equitable alternatives. In response, members of Congress introduced the 1992 Limited Partnership Roll-up Reform Act, designed to curb the abuses associated with limited partnership roll-ups.

control of the media companies in which they invest.[30/] Moreover, their goal in investment is capital appreciation and income but nothing more.

Like institutional investors, limited partners in widely-held limited partnerships generally do not exercise direct influence over the general partner (and in fact usually are strictly prohibited from doing so by the mandates of the limited partnership agreement). In addition, their investment goal is merely the appreciation of their investment and not day-to-day management of the partnership's media interests. The potential for their influence on the general partner therefore "is considerably more speculative and remote than the direct influence exercisable by non-passive investors." See Notice at ¶ 10. It would thus be appropriate for the Commission to treat these limited partners as "passive investors" and apply the same attribution benchmark as that to which "traditional" passive investors are subject.[31/]

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30/ Attribution Report, 97 FCC 2d at 1001.

31/ If the Commission is unwilling to exempt widely-held limited partnerships from attribution or to apply the attribution benchmarks for individual stockholders or passive investors, it should at a minimum adopt a 1 percent attribution benchmark for these partnerships. Prior to the 1984 change in its attribution benchmarks, the Commission attributed cognizable interests in corporations having more than 50 voting shareholders to all stockholders owning 1 percent or more of a media entity's voting stock. When considering increasing the benchmarks for individual

(continued...)

## CONCLUSION

The Joint Parties endorse the Commission's proposals to modify its attribution standards. The Commission is correct that the realities of today's economy and the state of competition in the communications marketplace compel the proposed modifications. The attribution benchmarks, as they apply to corporate shareholders and institutional investors, should be raised to 10 percent and 20 percent, respectively. Further, limited partner interests in widely-held, public limited partnerships should be exempt from attribution, or,

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31/ (...continued)
stockholders to 5 percent in its 1984 Report and Order, the Commission recognized that the 1 percent shareholder is the "least" among all other shareholders and that "a shareholder with 1% of a corporation's stock is not in a preeminent position among stockholders and is unlikely to have much influence among them on the basis of his stockholding, or to measurably affect the outcome of elective or discretionary corporate decisions." Attribution Report, 97 FCC 2d at 1005 [emphasis added]. Limited partners in a widely-held limited partnership are virtually identical to a 1 percent corporate shareholders. Most hold less than 1 percent of the partnership's total equity and neither control nor influence the partnership's business. Taken together with limited partners' restricted voting and removal powers and the existence of thousands of limited partners, it is highly unlikely that such limited partners can exercise the control or even influence partnership activities to a degree which requires attribution. At the very minimum, it would thus be appropriate to apply an attribution benchmark of 1 percent to widely-held limited partnerships.

in the alternative, should be subject to the new benchmarks for individual corporate shareholders or passive investors.

Respectfully submitted,

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