

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.

FCC MAIL ROOM  
FCC 94-195

JUL 26 2 15 PM '94

In the Matter of )  
 )  
 )  
Amendment of the Commission's Rules ) GEN Docket No. 90-314  
to Establish New Personal Communications )  
Services in the 2 GHz Band )

**FURTHER ORDER ON RECONSIDERATION**

Adopted: July 22, 1994

Released: July 22, 1994

By the Commission:

1. In the Commission's Memorandum Opinion and Order in this proceeding, FCC 94-144 (released June 13, 1994) ("Memorandum Opinion and Order"), we reaffirmed our bright-line cross-ownership attribution standards, which apply to common ownership of licenses in the Domestic Public Cellular Radio Telecommunications Service ("cellular") and the Personal Communications Services in the 2 GHz band ("broadband PCS"). We also ruled that no entity would be permitted to hold broadband PCS licenses comprising more than 40 MHz of spectrum in a particular PCS service area. The purpose of both the broadband PCS/cellular cross-ownership rule and the broadband PCS spectrum cap rule is to ensure that broadband PCS licensees lack any incentive to impede the development of full competition with the cellular licensees or with other broadband PCS licensees in the same geographic area.

2. We determined that an interest of 20 percent or more in a cellular license will be attributable,<sup>1</sup> and that an interest of 5 percent or more in a broadband PCS license will be attributable. See Memorandum Opinion and Order at ¶¶ 109-110. Under the broadband PCS/cellular cross-ownership rule, entities with attributable ownership of a cellular license covering 10 percent or more of the population of a broadband PCS service area are limited to holding one 10 MHz broadband PCS license in that broadband PCS service area until January 1, 2000. See 47 C.F.R. § 24.204. Under the broadband PCS spectrum cap rule, parties are not permitted to hold attributable interests in licenses covering more than 40 MHz in the same PCS service area. See 47 C.F.R. § 24.229(c). In determining how to calculate a party's interest in a cellular licensee when it is held through multiple tiers of entities, we stated that the interest of a subsidiary is attributed in full to the parent. See Memorandum Opinion and Order at ¶ 116. The same rule would apply to interests held in broadband PCS

---

<sup>1</sup> Certain entities are permitted to hold up to a 40 percent interest in a cellular license without attribution. See 47 C.F.R. § 24.204(d)(2)(ii).

licenses through multiple tiers of entities.

3. Herein we reconsider, on our own motion, the issue of whether to use a "multiplier" to determine how interests in cellular and broadband PCS licensees held indirectly through intervening corporate entities should be attributed. A multiplier is currently used by the Commission in our attribution rules in the broadcast context. See 47 C.F.R. 73.3555, note 2(d). To determine the "true" ownership interest of a party whose interest in a broadcast licensee is held through intervening entities, each non-majority, non-controlling interest is multiplied together. For example, a party that owns a 25 percent non-controlling interest in a corporation that has a 10 percent non-controlling interest in a licensee would be deemed to have a 2.5 percent interest in the licensee. As we concluded in adopting a multiplier for broadcast attribution, use of a multiplier allows the Commission to accurately take account of a party's "actual involvement with the ultimate licensee" as well as its ability to exert control over the actions of the licensee. See Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities, 97 FCC 2d 997, 1018 (1984), recon., 58 RR 2d 604 (1985), further recon., 1 FCC Rcd 802 (1986). We concluded that "use of a multiplier would more realistically reflect a party's attenuated interest in a licensee where there are intervening corporations, than does the present practice of fully attributing any interest above the benchmark through each intervening corporation. Id.

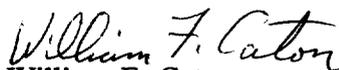
4. In the Memorandum Opinion and Order, we favored a bright-line test because we believed that it would result in a faster, less burdensome licensing process. Memorandum Opinion and Order at ¶ 113. On reconsideration, however, we have concluded that adding use of a multiplier will allow us to more effectively enforce the broadband PCS/cellular cross-ownership and broadband PCS spectrum cap rules consistent with their intent. We also conclude that using a multiplier is consistent with our policy goal of promoting full competition in wireless markets, because it will not cause the exclusion of firms that pose no threat to competition. Without a multiplier, parties that have neither the ability to exert control nor a substantial financial stake in the cellular or broadband PCS license could be unduly restricted in acquiring interests in such license. Furthermore, absent a multiplier, anomalous and unintended results occur. For example, if Company A holds a 21 percent non-controlling interest in Company B, which in turn holds a 30 percent non-controlling interest in Company X, a cellular licensee, Company A's attributable interest in Company X would be deemed to be 30 percent, in excess of the 20 percent threshold applicable to broadband PCS/cellular cross-ownership. Company A would thus be limited to acquiring a 10 MHz broadband PCS license in Company X's cellular service area, even though it has neither the ability to exert control or significant influence over the operations of Company X's cellular system nor a financial stake in Company X so substantial as to give rise to an incentive to engage in anticompetitive conduct. In comparison, by using a multiplier, Company A's attributable interest in Company X would be 6.3 percent ( $0.21 \times 0.3$ ), under the 20 percent attribution threshold, and Company A would not be restricted to 10 MHz broadband PCS licenses in Company X's cellular service area.

5. Considerations of "actual involvement" with, true economic interest in, and ability to control a licensee are crucial in determining whether a particular indirect ownership interest should be attributed to the holder for purposes of our cross-ownership and multiple ownership rules. These considerations apply with equal force in the broadcast, broadband PCS and cellular contexts; thus, we conclude that a multiplier similar to that used in applying our attribution rules in the broadcast area should be adopted for purposes of determining attributable interests in cellular and broadband PCS licensees. We therefore will amend Section 24.204 of our Rules to include use of a multiplier to determine whether an entity holding indirect non-controlling interests in a cellular licensee or a broadband PCS applicant or licensee has an attributable interest for purposes of our broadband PCS/cellular cross-ownership rule and our broadband PCS spectrum cap rule. For purposes of applying the multiplier, where an entity's ownership interest in any particular link in the ownership chain is greater than 50 percent or is controlling, the interest will be treated as if it were 100 percent.

6. Accordingly, IT IS ORDERED that Part 24 of the Commission's Rules is amended as set forth in the attached Appendix A.

7. IT IS FURTHER ORDERED that the rules changes made herein WILL BECOME EFFECTIVE 30 days after their publication in the Federal Register. This action is taken pursuant to Sections 4(i), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 309(j).

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton  
Acting Secretary

## APPENDIX A

### FINAL RULES

Part 24 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 24 continues to read as follows:

AUTHORITY: Secs. 4, 301, 302, 303, 309 and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 301, 302, 303, 309 and 332, unless otherwise noted.

2. Section 24.204 of the Commission's Rules is amended by adding subparagraph (d)(2)(viii):

#### § 24.204 Cellular eligibility

(d) \* \* \*

(2) \* \* \*

\* \* \* \* \*

(viii) Ownership interests in a cellular licensee or a broadband PCS applicant or licensee that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. [For example, if A owns 10 percent of Company X, which owns 35 percent of, and controls, Company Y, which owns 25 percent of Licensee, then Company X's attributable interest in Licensee would be 25 percent, and A's attributable interest in Licensee would be 2.5 percent (0.1 x 0.25).]