key employee who is President of the licensee and a member of its-three member board; another former employee in a key decision-making capacity at the licensee; a 10-year affiliation agreement with the station; and approval rights over certain major decisions of the licensee. BBC License Subsidiary L.P., FCC 95-179 (released April 27, 1995) (Separate Statement of Commissioner Susan Ness).

In that context, to say that Fox will not have substantial influence over the conduct of that licenses is nonsensical. Indeed, there is a strong argument that, through the cumulation of these factors, Fox will exercise de facto control over that station. In any event, it makes a complete mockery of the attribution rules to say that Fox should not at least be attributed with that interest.

Another example is NBC's 49% interest in WKYC-TV in Cleveland. That interest is not attributable under the Commission's rules, even though NBC also provides 18 hours of programming per day to that station.

These examples demonstrate the potential abuses that the single majority shareholder exemption makes possible. It invites networks and other large broadcasters to structure deals which they will effectively control but which will involve a nominal single majority shareholder in order to extend their

nationwide or local reach, without it being counted against the ownership limits. This is reminiscent of the types of abuses which occurred under the Commission's former comparative hearing proceedings in which the Commission repeatedly discounted or refused to credit integration claims made by limited partnership applicants under the nominal control of a female or minority general partner. In those cases, the Commission ruled that the limited partners had sufficient influence or control that they should be considered to be part of the control group for purposes of evaluating the comparative standing of the applicant.

The same type of approach is warranted in the attribution area. Companies or individuals should not be permitted to hide behind a sweeping exemption which simplistically assumes that large minority shareholders have no influence whatsoever over station operations when there is a single majority shareholder. Accordingly, AFLAC submits that this exemption should be eliminated.

B. TELEVISION LMAS AND TIME BROKERAGE AGREEMENTS SHOULD BE DEFINED AS ATTRIBUTABLE INTERESTS.

For many of the same reasons, AFLAC also believes that television LMAs (Local Management or Marketing Agreements) or time brokerage agreements should be attributable. Many LMAs raise serious concerns as to whether one station has impermissibly ceded de facto control to the station providing the

programming. But even in instances where the licensee is found to properly have maintained control, there is no question that the programming station has a significant amount of influence over the other station -- even if the role of the brokering station is only to provide programming.

More and more, of course, these agreements are not simply programming arrangements but involve sharing of facilities and personnel, as well as financing. For example, in a recent instance with which AFLAC is familiar, an assignment application proposed the sale of a station to a party who then proposed to immediately enter into an LMA with another station in the market. That station agreed to lend the purchaser the entire purchase price for the station, to pay a substantial salary to the principal of the purchaser for several years and had an option to acquire the station from the purchaser for a specified price. In the interim, of course, the other station would provide virtually all the programming on the station and would sell most of the advertising time.

Plainly, this type of arrangement, and television LMAs generally, should be defined as an attributable interest. The failure to do so would invite the continued abuse of this type of agreement as a gaping loophole in the Commission's local and national ownership limits.

Moreover, in order to ensure the enforceability of this attribution requirement, AFLAC believes that stations should be required to file copies of all LMAs and time brokerage agreements with the Commission -- or at least to place them in their public inspection files. In this way, members of the general public and other stations may function as "private attorneys general" and bring any perceived attribution issues or abuses to the attention of the Commission.

C. IN ORDER TO DEAL WITH NEW TYPES OF INTERESTS AND UNANTICIPATED COMBINATIONS OF RECOGNIZED INTERESTS, THE COMMISSION SHOULD CREATE A NEW CATEGORY OF "DE FACTO" ATTRIBUTION.

Finally, in order to permit the Commission sufficient flexibility to deal with new types of ownership and other interests in broadcast stations, AFLAC suggests that the Commission specifically create a new category of "de facto" attributable interests. This would be analogous to the idea of "de facto" control and would permit the Commission on a case-by-case basis to conclude that a particular combination of interests which, individually might not confer the opportunity to exercise influence over a broadcast licensee, would in that instance and, accordingly, should be considered as attributable.[5/]

[5/]Although the Commission arguably has that authority, it has displayed a notable reluctance to utilize it. See, e.g., BBC License Subsidiary L.P., at ¶¶ 42-43; compare the separate statement by Commissioner Ness: "In this case, considering the entire web of relationships, it stretches the imagination to believe that the potential for influence does not exist."

The need for such a method of attribution analysis is well-illustrated by the Commission's recent decision conditionally approving the sale of WLUK-TV in Green Bay, Wisconsin. There, notwithstanding the presence of the various factors noted above (supra at 17 - 18), the Commission declined to rule that Fox has an attributable interest in Savoy Fox. As Commissioner Ness stated in her Separate Statement to that Decision, "And yet, anomalously, we are not finding attribution here, but would do so if the sole relationship were ownership of five percent of the licensee's voting stock!"

AFLAC agrees with Commissioner Ness that with these various interests, Fox plainly will have substantial influence over the licensee and station operation. The Commission's difficulty was that, individually, none of these interests would be considered to be attributable. Notwithstanding that fact, as Commissioner Ness wrote in her Separate Statement in the WLUK-TV proceeding, "we need to apply an awareness of business realities to the transactions we review." Thus, in such cases, the Commission must find a mechanism that will enable it to analyze and determine whether, in its own words, the cumulative impact of these various interests "convey[s] a realistic potential to affect [the] programming and other core operational decisions [of the licensee]." Notice in the Attribution Proceeding at ¶ 4.

Accordingly, AFLAC believes that such a mechanism lies in the Commission's articulation of a de facto attribution policy which would supplement the bright line attribution standards set forth in its rules. Such a policy would provide the Commission with the flexibility to address new and unanticipated situations on a case-by case basis, without the need to resort to complex and time consuming rulemaking proceedings. Specifically, in Commissioner Ness's words, it would permit the Commission to take into account the ever changing "business realities" of the transactions that it reviews.

CONCLUSION

For the foregoing reasons, AFLAC submits that the Commission should make the following changes in its ownership and attribution rules: (1) eliminate the numerical station limit but retain the present 25% limit on national audience reach; (2) eliminate the single shareholder exemption to its attribution rules; (3) provide that television LMAs and time brokerage agreements will be attributable and require that they be filed with the Commission or placed in station public inspection files; and (4) create a new category of "de facto" attribution to permit the Commission to rule that there is an attributable interest in a particular case, based upon the degree of influence exercised or potentially exercisable with respect to a broadcast licensee,

even though the particular factor or factors are not de jure attributable under the Commission's rules.

Respectfully submitted,

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