



GEORGETOWN UNIVERSITY LAW CENTER  
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October 4, 2000

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room TW-A325  
445 Twelfth Street, SW  
Washington, DC 20554

ORIGINAL

Re: Ex Parte Presentation  
In the Matter of Review of the Commission's Regulations Governing  
Television Broadcasting, MM Docket No. 91-221

Dear Ms. Salas:

On Tuesday, October 3, 2000, Fernando Bohorquez, Christopher Day, and Emily Roskey of the Institute for Public Representation at Georgetown University Law Center met with Susan M. Eid of Commissioner Powell's legal staff and David R. Goodfriend of Commissioner Ness's legal staff. During the meeting, issues raised in the Petition for Reconsideration filed by the Institute for Public Representation in the above-referenced proceeding were discussed. In addition, the attached documents were distributed at the meeting.

In compliance with the Commission's rules regarding *ex parte* presentations, an original and one copy of the above-referenced materials are being filed with the Commission for inclusion in the public record. Should you have any questions, please feel free to contact the undersigned.

Sincerely,

Christopher R. Day

Enclosures

cc: Susan M. Eid (w/o attach.)  
David R. Goodfriend (w/o attach.)

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List A B C D E

# THE PROBLEMS WITH A DMA BASED DUOPOLY RULE

Presentation by the Institute for Public Representation, Georgetown University Law Center  
October 3, 2000

## I. GENERAL ISSUES

### A. Threshold Problem with DMA Based TV Local Ownership Rule

1. **Improper delegation of critical governmental responsibility to private company.**
2. **Practically speaking, it is extremely difficult for public to review ratings and DMA composition formula--information is proprietary, expensive, and FCC itself does not even have it.**

### B. Some DMAs artificially inflate the number of voices available to a community by including stations that cannot be considered local to the relevant viewing area.

1. **Not all voices included in a DMA are truly local.**
2. **This results in an overstatement of viewing options in main city in DMA through the inclusion of stations that do not reach and have no ratings in the main city.**
3. **Large DMAs also allow small cities with two or three stations to be "subsumed" into the larger DMA. Accordingly, one owner could take over only two stations in a small market within a large DMA.**
4. **End result -- DMA based rule frustrates the goals of diversity, competition, and localism.**
5. **A DMA based rule even contradicts the FCC's reasoning for modifying the broadcast ownership rules in the first place -- to "relax to some extent our local ownership restrictions where the public interest benefits resulting from same-market common ownership outweigh the threat to diversity and localism." *Local Ownership Order* at ¶ 7.**

## II. EXAMPLES

### **III. SOLUTIONS**

- A. The best solution would be a return to old Grade B Contour Standard.**
- B. In the alternative, FCC can remedy the infirmities of the DMA/Voice Test in the following ways:**
- 1. Similar to the FCC's treatment of daily newspapers under the radio/tv cross ownership rule, the Commission should only count local stations that "are widely available throughout the DMA and that provide coverage of issues of interest to a sizeable percentage of the population." *Local Ownership Order* at ¶ 113.**
    - FCC can accomplish this by only counting a station as a local independent voice when the station's ratings exceed a certain percentage of the households in the DMA. *See Local Ownership Order* at ¶ 113 ("we will include all independently owned daily newspapers that are published in the DMA that have a circulation exceeding 5 percent of the households in the DMA.")**
  - 2. Partition Large DMAs that contain non-overlapping Grade B Contours.**
    - This would address the sprawling DMAs characterized by such anomalies as the Denver, Salt Lake City and Lexington DMAs.**
  - 3. Non-commercial educational stations should not be included in the local voice count.**
  - 4. Instead of using the eight voice test for all markets, FCC should use a sliding scale pegged to the number of TV households in the DMA.**
    - This would address the arbitrary results of the one size fits all policy that equates the diversity needs of New York, NY to Glendive, MT.**
  - 5. Finally, FCC should take steps to make the DMA records accessible to the public.**

# Albuquerque/Santa Fe DMA

## 14 Broadcast Television Stations in Albuquerque/Santa Fe DMA

(Not including satellite stations)

KAPX – Albuquerque  
 KNME – Albuquerque  
 KRQE – Albuquerque  
 KNAT – Albuquerque  
 KLUZ – Albuquerque

KASY – Albuquerque\*  
 KAZQ – Albuquerque  
 KOAT – Albuquerque  
 KOB – Albuquerque

KASA – Santa Fe  
 KWBQ – Santa Fe\*  
 KCHF – Santa Fe  
 KENW – Portales  
 KRPV – Roswell

\* operate under LMA

## 13 Independent Voices Under the FCC's DMA-based Duopoly Rule

Ramar Communications (KWBQ)\*  
 Entravision Holdings (KLUZ)  
 Hearst-Argyle TV Inc. (KOAT)  
 Prime Time Christian (KRPV)  
 Trinity Broadcasting Network (KNAT)  
 Eastern N.M. University (KENW)  
 Regents, University of New Mexico (KNME)

Raycom Media Inc. (KASA)  
 Emmis Communications (KRQE)  
 Son Broadcasting Inc. (KCHF)  
 Hubbard Broadcasting Inc. (KOB)  
 Roberts Broadcasting Co. (KAPX)  
 Alpha-Omega Broadcasting (KAZQ)  
 Acme Television (KASY)\*

\* operate under LMA

## 12 Stations with Grade B Contours Inclusive of Albuquerque/Santa Fe

<u>STATION</u>	<u>JULY 2000 MARKET SHARE</u>
KASA	6
KOB	12
KNME	3
KOAT	15
KCHF	
KRQE	11
KAPX	
KWBQ*	2
KNAT	
KAZQ	
KLUZ	3
KASY	2

\* estimated Grade B contour based on licensing location

## 6 Independent Voices with Grade B Contours Inclusive of Albuquerque/Santa Fe and a Reportable Market Share\*

Raycom Media (KASA)                      Hubbard Broadcasting (KOB)  
 Hearst-Argyle TV (KOAT)              Entravision (KLUZ)  
 Emmis Communications (KRQE)      University of N.M. (KNME)

\* Reportable market share defined as market share greater than 2%

# Lexington DMA

## 11 Broadcast Television Stations in Lexington DMA

(Not including satellite stations)

WLEX – Lexington	WKSO – Somerset	WKMR – Morehead
WKLE – Lexington	WDKY – Danville	WAOM – Morehead
WKYT – Lexington	WYMT – Hazard	WLJC – Beattyville
WTVQ – Lexington	WKHA – Hazard	

## 7 Independent Voices Under the FCC's DMA-based Duopoly Rule

Evening Post Publishing (WLEX)	Gray Communications (WKYT, WYMT)
Media General (WTVQ)	Sinclair Broadcasting Group (WDKY)
Hour of Harvest (WLJC)	Paxson Communications Corp. (WAOM)
KY Educational TV (WKSO, WKHA, WKMR, WKLE)	

## 5 Stations with Grade B Contours Inclusive of Lexington

<u>STATION</u>	<u>JULY 2000 MARKET SHARE</u>
WLEX	9
WKYT	16
WTVQ	11
WKLE	
WDKY	5

## 4 Independent Voices with Grade B Contours Inclusive of Lexington and a Reportable Market Share\*

Evening Post Publishing (WLEX)	Gray Communications (WKYT)
Media General (WTVQ)	Sinclair Broadcast Group (WDKY)

\* Reportable market share defined as market share greater than 2%

# Denver DMA

## 15 Broadcast Television Stations in Denver DMA

(Not including satellite stations)

KWGN – Denver	KCNC – Denver	KDEN – Longmont
KRMA – Denver	KMGH – Denver	KMAS – Steamboat Springs
KUSA – Denver	KCEC – Denver	KBDI – Broomfield
KTVD – Denver	KDVR – Denver	KTVJ – Boulder
KPXC – Denver	KRMT – Denver	KWHD – Castle Rock

## 15 Independent Voices Under the FCC's DMA-based Duopoly Rule

Tribune Broadcasting Co. (KWGN)	CBS TV Stations (KCNC)
McGraw-Hill Broadcasting (KMGH)	Gannett Co. Inc. (KUSA)
Roberts Broadcasting Co. (KTVJ)	NewsWeb Group (KTVD)
Telemundo Group Inc. (KMAS)	Colorado Broadcasters (KDEN)
Fox Television (KDVR)	Entravision Holdings (KCEC)
LeSea Broadcasting (KWHD)	Paxson Communications (KPXC)
Front Range Educ. (KBDI)	Marcus D. Lamb (KRMT)
Rocky Mtn. Public Broadcasting (KRMA)	

## 14 Stations with Grade B Contours Inclusive of Denver

<u>STATION</u>	<u>JULY 2000 MARKET SHARE</u>
KWGN	6
KCNC	11
KRMA	3
KMGH	10
KUSA	12
KBDI	2
KTVJ	
KTVD	5
KDEN	
KDVR	7
KRMT	
KCEC	2
KWHD	
KPXC	1

## 7 Independent Voices with Grade B Contours Inclusive of Denver and a Reportable Market Share\*

Tribune Broadcasting (KWGN)	CBS TV Stations (KCNC)
McGraw-Hill Broadcasting (KMGH)	Gannett Broadcasting (KUSA)
NewsWeb Corp. (KTVD)	Fox Television (KDVR)
Rocky Mtn. Public Broadcasting (KRMA)	

\* Reportable market share defined as market share greater than 2%

# Phoenix DMA

## 15 Television Broadcast Stations in Phoenix DMA

(Not including satellite stations)

KTVK – Phoenix	KAET – Phoenix	KBPX – Flagstaff
KSAZ – Phoenix	KPAZ – Phoenix	KNAZ – Flagstaff
KASW – Phoenix	KNXV – Phoenix	KUSK – Prescott
KTVW – Phoenix	KUTP – Phoenix	KMOH – Kingman
KPHO – Phoenix	KPPX – Tolleson	KPNX – Mesa

## 11 Independent Voices Under the FCC's DMA-based Duopoly Rule

Belo Corp. (KTVK, KASW)	Meredith Corp. (KPHO)
Gannett Co. Inc. (KMOH, KPNX, KNAZ)	KUSK Inc. (KUSK)
Fox Television (KSAZ)	Univision TV Group (KTVW)
Scripps Howard Broadcasting (KNXV)	Chris-Craft Industries (KUTP)
Trinity Broadcasting Network (KPAZ)	Arizona State University (KAET)
Paxson Communications Corp. (KPPX, KPBX)	

## 11 Television Stations with Grade B Contours Inclusive of Phoenix

<u>STATION</u>	<u>JULY 2000 MARKET SHARE</u>
KTVK	13
KPHO	8
KAET	5
KSAZ	10
KPNX	11
KASW	5
KNXV	7
KPAZ	
KTVW	3
KUTP	5
KPPX	2

## 8 Independent Voices with Grade B Contours Inclusive of Phoenix and a Reportable Market Share\*

Belo Corp. (KTVK, KASW)	Gannett Broadcasting (KPNX)
Fox Television (KSAZ)	Meredith Broadcasting (KPHO)
Scripps Howard Broadcasting (KNXV)	Arizona State University (KAET)
Chris-Craft Industries (KUTP)	Univision (KTVW)

\* Reportable market share defined as market share greater than 2%

# Salt Lake City DMA

## 14 Broadcast Television Stations in Salt Lake City DMA

(Not including satellite stations)

KUTV – Salt Lake City	KSTU – Salt Lake City	KUPX – Provo
KUED – Salt Lake City	KUWB – Ogden	KBYU – Provo
KSL – Salt Lake City	KULC – Ogden	KUSG – St. George
KTVX – Salt Lake City	KAZG – Ogden	KCSG – Cedar City
KJZZ – Salt Lake City		KENV – Elko, NV

## 11 Independent Voices Under the FCC's Duopoly Rule

CBS TV Stations (KUTV, KUSG)	Bonneville Int'l Corp. (KCSG, KSL)
Fox Television (KSTU)	Larry H. Miller Broadcasting (KJZZ)
Paxson Communications Corp. (KUPX)	Utah Television (KAZG)
Acme Communications (KUWB)	Sunbelt Broadcasting (KENV)
Chris-Craft Industries (KTVK)	Brigham Young University (KBYU)
University of Utah (KUED, KULC)	

## 11 Stations with Grade B Contours Inclusive of Salt Lake City

<u>STATION</u>	<u>JULY 2000 MARKET SHARE</u>
KUTV	10
KTVX	12
KSL	12
KUED	4
KULC	
KBYU	4
KSTU	12
KJZZ	7
KUPX	2
KAZG	
KUWB	3

## 8 Independent Voices with Grade B Contours Inclusive of Salt Lake City and a Reportable Market Share\*

CBS TV Stations (KUTV)	Chris-Craft Industries (KTVX)
Bonneville International Corp. (KSL)	Fox Television (KSTU)
Larry H. Miller Broadcasting (KJZZ)	Acme Communications (KUWB)
University of Utah (KUED)	Brigham Young University (KBYU)

\* Reportable Market share defined as market share greater than 2%

Sources:

Broadcasting & Cable Yearbook 2000, (Donald V. West et al., eds., Reed Elsevier, Inc. 2000).

Investing in Television 2000, (BIA Research, Inc., 3d ed. 2000).

Television and Cable Factbook vol. 68 (Albert Warren, ed.) 2000.