APPENDIX A

PETITIONS FOR RECONSIDERATION

1. The Minority Media Telecommunications Council (MMTC)
2. National Association of Broadcasters (NAB)
3. Sinclair Broadcast Group, Inc. (Sinclair)
4. Office of Communications, Inc. of United Church of Christ *et al.* (UCC)
   Black Citizens for a Fair Media
   Center for Media Education
   Civil Rights Forum
   League of United Latin American Citizens
   Philadelphia Lesbian and Gay Task Force
   Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights
   Wider Opportunities for Women, and the Women's Institute for Freedom of the Press
5. Wells Fargo Communications Finance, Division of Norwest Bank MN, NA (Wells Fargo)

OPPOSITITIONS TO PETITIONS FOR RECONSIDERATION

1. NAB
2. UCC

REPLIES TO OPPOSITIONS

1. NAB
2. UCC

APPENDIX B
Rule Changes

Parts, 21, 73, and 76 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

Part 21-DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for Part 21 continues to read as follows:

AUTHORITY: Secs. 1, 2, 4, 201-205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070-1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201-205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 47 U.S.C. 552, 554.

2. Section 21.912 is amended by:
(a) designating Note 1 as "Note 1 to § 21.912";
(b) removing paragraph Note 1(b);
(c) redesignating paragraphs Note 1(c) through Note 1(l) as paragraphs Note 1(b) through Note 1(k);
(d) revising redesignated paragraphs Note 1(c) and Note 1(e);
(e) revising the first and second sentence of redesignated paragraph Note 1(f)(2);
(f) revising redesignated paragraph Note 1(h)(3);
(g) revising the introductory text to redesignated paragraph Note 1(i), and redesignated paragraph Note 1(i)(2); and
(h) designating Note 2 as "Note 2 to § 21.912".
The revisions read as follows:

§ 21.912 Cable television company eligibility requirements and MDS/cable cross-ownership.

* * * * *

Note 1 to § 21.912: * * *

(c) Attribution of ownership interests in an MDS licensee or cable television system 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 wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph (i) of this Note, attribution of ownership interests in an MDS licensee or cable television system that are held indirectly by any party through one or more intervening organizations 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, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph (i) of this Note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1x0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable. For purposes of paragraph (i) of this Note, X's interest in "Licensee" would be 15% (0.6x0.25) and A's interest in

"Licensee" would be 1.5% (0.1x0.6x0.25). Neither interest would be attributed under paragraph (i) of this Note.]

* * * * *

(e) Subject to paragraph (i) of this Note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this Note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f) * * *

(2) For a licensee or system that is a limited partnership to make the certification set forth in paragraph (f)(1) of this Note, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership. For a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (f)(1) of this Note, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the MDS or cable television activities of the LLC or RLLP. * * *

* * * * *

(h) * * *

(3) The sum of the interests computed under paragraph (h)(1) of this Note plus the sum of the interests computed under paragraph (h)(2) of this Note is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and (f) of this Note, the holder of an equity or debt interest or interests in an MDS licensee or cable television system subject to the MDS/cable cross-ownership rule ("interest holder") shall have that interest attributed if:

* * * * *

(2) the interest holder also holds an interest in an MDS licensee or cable television system that is attributable under paragraphs of this Note other than this paragraph (i) and which operates in any portion of the franchise area served by that cable operator's cable system.

* * * * *

Note 2 to § 21.912: * * *

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Part 73-RADIO BROADCAST SERVICES

3. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334 and 336.

4. Section 73.3555 is amended by:
(a) designating Note 1 as "Note 1 to § 73.3555";
(b) designating Note 2 as "Note 2 to § 73.3555";
(c) removing paragraph Note 2(b) to Section 73.3555;
(d) redesignating paragraphs Note 2(c) through Note 2(k) to Section 73.3555 as paragraphs Note 2(b) through Note 2(j) to Section 73.3555;
(e) revising redesignated paragraphs Note 2(c) and Note 2(e) to Section 73.3555;
(f) revising the first and second sentence of redesignated paragraph Note 2(f)(2) to Section 73.3555;
(g) revising redesignated paragraph Note 2(h)(3) to Section 73.3555;
(h) revising the introductory text to redesignated paragraph Note 2(i) to Section 73.3555, and redesignated paragraph Note 2(i)(2)(i) to Section 73.3555;
(i) designating Note 3 as "Note 3 to § 73.3555";
(j) designating Note 4 as "Note 4 to § 73.3555";
(k) designating Note 5 as "Note 5 to § 73.3555";
(l) designating Note 6 as "Note 6 to § 73.3555";
(m) designating Note 7 as "Note 7 to § 73.3555";
(n) designating Note 8 as "Note 8 to § 73.3555";
(o) designating Note 9 as "Note 9 to § 73.3555"; and
(p) designating Note 10 as "Note 10 to § 73.3555".

The revisions read as follows:

§ 73.3555 Multiple Ownership

* * * * *

Note 1 to § 73.3555: * * *

* * * * *

Note 2 to § 73.3555: * * *

(c) Attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper 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 wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph (i) of this Note, attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening organizations 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, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph (i) of this Note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1x0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable. For purposes of paragraph (i) of this Note, X's interest in "Licensee" would be

15% (0.6x0.25) and A's interest in "Licensee" would be 1.5% (0.1x0.6x0.25). Neither interest would be attributed under paragraph (i) of this Note.]

* * * * *

(e) Subject to paragraph (i) of this Note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this Note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f) * * *

(2) For a licensee or system that is a limited partnership to make the certification set forth in paragraph (f)(1) of this Note, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. For a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (f)(1) of this Note, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the media activities of the LLC or RLLP. * * *

* * * * *

(h) * * *

(3) The sum of the interests computed under paragraph (h)(1) of this Note plus the sum of the interests computed under paragraph (h)(2) of this Note is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and(f) of this Note, the holder of an equity or debt interest or interests in a broadcast licensee, cable television system, daily newspaper, or other media outlet subject to the broadcast multiple ownership or cross-ownership rules ("interest holder") shall have that interest attributed if:

* * * * *

(2)(i) The interest holder also holds an interest in a broadcast licensee, cable television system, newspaper, or other media outlet operating in the same market that is subject to the broadcast multiple ownership or cross-ownership rules and is attributable under paragraphs of this Note other than this paragraph (i); or

* * * * *

Note 3 to § 73.3555: * * *

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Note 4 to § 73.3555: * * *

* * * * *

Note 5 to § 73.3555: * * *

* * * * *

Note 6 to § 73.3555: * * *

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Note 7 to § 73.3555: * * *

* * * * *

Note 8 to § 73.3555: * * *

* * * * *

Note 9 to § 73.3555: * * *

* * * * *

Note 10 to § 73.3555: * * *

5. Section 73.3613 is amended by revising paragraph (d) and revising paragraph (e) to read as follows:

§ 73.3613 Filing of contracts.

* * * * *

(d) *Time brokerage agreements*. Time brokerage agreements involving radio stations, where the licensee (including all parties under common control) is the brokering entity, there is a principal community contour overlap (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) with the brokered station, and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving television stations where licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both licensed to the same market as defined in the local television multiple ownership rule contained in § 73.3555(b), and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving radio or television stations that would be attributable to the licensee under § 73.3555 Note 2(i). * * *

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: contracts relating to the joint sale of broadcast advertising time that do not constitute time brokerage agreements pursuant to § 73.3555 Note 2(j); subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

6. Section 73.3615 is amended by revising the second sentence in paragraph (a)(3)(iii)(B) to read as follows:

§ 73.3615 Ownership reports.

* * * * *

(a) * * *
(3) * * *
(iii) * * *
(B) * * * If X has a voting stockholder interest in the licensee, only those voting interests of X that are cognizable after application of the "multiplier" described in Note 2(c) of § 73.3555 of the rules, if applicable, shall be reported. * * *

* * * * *

Part 76-MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

7. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

8. Section 76.501 is amended by:
(a) designating Note 1 as "Note 1 to § 76.501";
(b) designating Note 2 as "Note 2 to § 76.501";
(c) designating Note 3 as "Note 3 to § 76.501";
(d) designating Note 4 as "Note 4 to § 76.501";
(e) designating Note 5 as "Note 5 to § 76.501";
(f) designating Note 6 as "Note 6 to § 76.501"; and
(g) revising paragraph Note 6.

The revisions read as follows:

§ 76.501 Cross-ownership

Note 1 to § 76.501: * * *

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Note 2 to § 76.501: * * *

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Note 3 to § 76.501: * * *

* * * * *

Note 4 to § 76.501: * * *

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Note 5 to § 76.501: * * *

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Note 6 to § 76.501: In applying paragraph (a) of § 76.501, for purposes of paragraph Note 2(i) of this section, attribution of ownership interests in an entity covered by this rule that are held indirectly by any party through one or more intervening organizations 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. The ownership percentage for any link in the chain that exceeds 50% shall be included. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would 15% (0.6x0.25), and A's interest in "Licensee" would be 1.5% (0.1x0.6x0.25).]

APPENDIX C
Supplemental Final Regulatory Flexibility Analysis
Memorandum Opinion and Order on Reconsideration

As required by the Regulatory Flexibility Act (RFA),[132] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in Appendix A of the *Notice of Proposed Rulemaking* (*Notice*)[133] and Appendix A of the *Further Notice of Proposed Rule Making* (*Further Notice*) in this proceeding.[134] The Commission sought written public comment on the proposals in the *Notice* and *Further Notice*, including comment on the IRFAs. The comments received were discussed in the Final Regulatory Flexibility Analysis (FRFA) contained in the *Report and Order* (*R&O*) in this proceeding.[135] As described below, this *Memorandum Opinion and Order on Reconsideration* (*MO&O*) grants reconsideration of one action taken in the *R&O* and provides clarification of other issues. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) addresses the rule modifications on reconsideration and conforms to the RFA.[136]

Need For, and Objectives of, the *Memorandum Opinion and Order*

The attribution rules seek to identify those interests in licensees or media entities that confer on their holders a degree of influence or control such that the holders have the potential to affect the programming decisions of licensees or other core operating functions. The attribution rules are used to implement the Commission's broadcast multiple ownership rules. The Commission's goals in this proceeding are to improve the precision of the attribution rules, avoid disruption in the flow of capital to broadcasting, afford clarity and certainty to regulatees and markets, and facilitate application processing. While its focus is on the issues of influence or control, the Commission must also tailor the attribution rules to permit arrangements where an ownership or positional interest involves minimal risk of influence to avoid unduly restricting the means by which investment capital may be made available to the broadcast industry. The rule revisions and clarifications contained in this *MO&O* meet these goals.

Summary of Significant Issues Raised by the Public

The comments in response to the IRFAs that addressed small business issues were discussed in the FRFA contained in the *R&O* in this proceeding. We received no petitions for reconsideration in direct response to that FRFA. In its petition for reconsideration, however, the Office of Communications, Inc. of United Church of Christ *et al.* (UCC) asked the Commission to eliminate the single majority shareholder exemption for broadcast stations, arguing that it is arbitrary and capricious to eliminate the exemption for

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[132] *See* 5 U.S.C. § 603. Congress amended the RFA, *see* 5 U.S.C. § 601 *et. seq.*, by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[133] The IRFA in Appendix A of the *Notice of Proposed Rule Making*, 10 FCC Rcd 3606, 3655-56 (1995), was incorporated pursuant to Pub. L. No. 96-354, § 603, 94 Stat. 1165 (1980).

[134] *Further Notice*, 11 FCC Rcd 19895, 19919-27 (1996).

[135] *Report and Order*, 14 FCC Rcd 12559, 12642-55 (1999).

[136] *See* 5 U.S.C. § 604.

cable systems and not broadcasters.[137] Under the single majority shareholder exemption from attribution, in a corporation in which a single shareholder owns more than 50 percent of the voting stock of the corporation, the interests of minority shareholders are not attributable. The Commission grants UCC's request, finding no rational basis to distinguish between cable and broadcasting that would justify eliminating the exemption for the cable ownership rules while retaining it for the broadcast ownership rules. Any minority interest in a company with a single majority shareholder will be grandfathered if the interest was acquired before the adoption date of this *MO&O*. Grandfathered minority interests in companies with single majority shareholders, however, remain subject to the equity/debt plus (EDP) rule.[138]

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The rules revisions contained in this *MO&O* will apply to full service television and radio licensees and permittees, potential licensees and permittees, cable services or systems, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service, and newspapers. These entities are discussed in detail in the FRFA contained in the *R&O* at Section III.[139]

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *MO&O* clarifies various aspects of the EDP rule adopted in the *R&O*. One clarification is to use the "multiplier" in calculating an EDP interest. Specifically, the Commission will multiply the successive percentage interests, aggregating both equity and debt, in each intervening entity where a party holds an indirect interest in the licensee or other media outlet. In calculating an EDP interest, however, the Commission will not apply the pass-through exception, which applies to indirect voting stock interests in corporations where a link in the ownership chain that represents a percentage interest exceeding 50 percent is treated as a 100 percent interest. Thus, the Commission will multiply successive interests for purposes of EDP, even where the interest exceeds 50 percent.[140] The decision not to apply the pass-through exception is less restrictive than the traditional application of the multiplier on all entities, including small businesses.

The *MO&O* also eliminates the single majority shareholder attribution exemption. Elimination of the single majority shareholder attribution exemption does not affect grandfathered small entities. Moreover, elimination of the single majority shareholder exemption does not affect the Commission's ownership reporting requirements. The reporting requirements for non-grandfathered licensees may increase, however, because those licensees will be required to report interests that are newly attributable as a result of elimination of the exemption. Those entities are already required to file ownership reports with the Commission, so any additional cost associated with this reporting requirement is nominal.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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[137] UCC Petition at 12-13.

[138] *See supra* at ¶¶ 40-44.

[139] *Report and Order*, 14 FCC Rcd at 12643-49.

[140] *See supra* ¶¶ 33-35.

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[141]

Under the Commission's pass-through exception to the multiplier rule, a link in the ownership chain that represents a percentage interest exceeding 50 percent is treated as a 100 percent interest, when calculating the successive links in the ownership chain. The *MO&O* clarifies that the Commission will not apply the pass-through exception in using the multiplier to calculate interests under the EDP rule. An alternative to this decision is to apply the pass-through exception for purposes of EDP, which would make the calculation of attributable EDP interests as restrictive on all entities, including small businesses, as those calculated under the traditional application of the multiplier.

The *MO&O* eliminates the single majority shareholder attribution exemption. To minimize the disruptive effect of this attribution rule change, the *MO&O* grandfathers entities, subject to the EDP rule, relying on the single majority shareholder exemption whose interests were acquired before the adoption date of the *MO&O*. An alternative to eliminating the exemption would be to leave the rule as is. In addition to assuring consistency with the prior decision to eliminate the exemption for cable operators, however, the Commission believes that eliminating the exemption from the broadcast attribution rules will promote one of its primary goals to improve the precision of the Commission's attribution rules in identifying cognizable interests for purposes of the ownership rules.

Report to Congress: The Commission will send a copy of the *MO&O*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to SBREFA.[142] In addition, the Commission will send a copy of the *MO&O*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.[143]

[141] 5 U.S.C. § 603(c).

[142] *See* 5 U.S.C. § 801(a)(1)(A).

[143] *See* 5 U.S.C. § 604(b).

STATEMENT OF CHAIRMAN WILLIAM E. KENNARD

Re: In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests Order on Reconsideration, MM Docket Nos. 94-150, 92-51, 87-154.

I write separately to explain my decision to concur in today's *Reconsideration Order* on the attribution of broadcast and cable interests.

In our *Attribution Report and Order*, we acknowledged the very real influence that the brokering party to a Local Marketing Agreement (LMA) exercises over the brokered station and concluded that certain LMAs should be attributable in order to reduce incentives to use LMAs to circumvent our ownership rules. We also required that these attributable LMAs be filed with the Commission. While I strongly agree that these steps were necessary and appropriate, I continue to believe that other troubling aspects of LMAs still need be addressed.

I have long held the view that LMAs represent a sort of artifice that raise substantial concerns about who actually controls the brokered station and who is actually responsible and accountable for the station's programming during brokered time. When we relaxed the broadcast ownership rules in 1999, I noted that "we need to consider more broadly the role of LMAs in broadcasting. . . .[W]e need to consider whether the benefits of LMAs could be attained through other arrangements, such as actual joint ownership that do not raise questions concerning the responsibility and accountability of the actual licensee of a station."[1]

More recently, this issue was raised in a Commission order released just two days ago, in which the Commission denied a request for a stay of the grant of an assignment of licenses in transactions implicating two LMAs in the Columbus, Georgia market.[2] Although I voted to affirm the Mass Media Bureau's decision in that case, I wrote separately to express my doubts about the terms of the particular LMAs involved. I said that I believe that the rights and entitlements contained in the agreements presented a significant risk that an unauthorized transfer of control of the brokered station may occur.

Given these concerns, I urged my colleagues to support a narrowly tailored expansion of the LMA filing requirement[3]. Like Commissioner Tristani, I believe that we cannot make fully informed decisions about whether to continue to allow LMAs or whether to impose additional restrictions on their use unless we have more information about their use. For example, how extensively are LMAs being used in the industry? Are the brokers usually the prospective buyers of the brokered station? Do the

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[1] *Statement of Chairman William E. Kennard, Attribution Report and Order*, at 2.

[2] In the Matter of Applications of Cumulus Licensing Corp. and Clear Channel Broadcasting Licenses, Inc., File Nos. BAL/BALH-20000728ACS-ADT (rel. Jan. 17, 2001).

[3] Under existing Commission rules, only LMAs that cover more than 15% of a station's broadcast week and are brokered by a same-market station or a party meeting our EDP attribution standard must be filed with the Commission. We could have modestly expanded this filing obligation by requiring a brokered station to forward LMAs to the Commission if the station is a party to multiple LMAs that, taken together, cover more than 15% of the station's weekly broadcast schedule, even if no single LMA covers more than 15% of the brokered station's weekly schedule.

terms of the LMA make clear distinctions between the rights of the broker and the licensee? Are the 10- and 15-year terms in the Columbus agreements typical?

Today, the Commission refused to solicit answers to these critical questions, citing the burden of such a requirement. But, the burden would have been marginal. Broadcasters are already required to maintain copies of these agreements in their local public inspection files. I simply cannot agree with the majority that this modest first step toward a fuller consideration of these quasi-ownership arrangements between broadcast stations was unwarranted.

STATEMENT OF COMMISSIONER SUSAN NESS, DISSENTING IN PART

Re: Review of the Commission's Regulations Governing Attribution of Broadcast Interests

While I support most of the *Order's* conclusions, particularly elimination of the single majority shareholder exemption, *see Order* at ¶¶ 40-44, I would have preferred narrowly crafting an exemption to the equity-plus-debt ("EDP") rule to better reflect the realities of the banking industry. Specifically, I believe that a bank whose lending arm extends credit to a broadcaster does not implicate our diversity concerns when its equity investment arm invests in a different broadcaster in the same market. In practice, the lending and equity groups in a modern bank do not coordinate their efforts. When our attribution rules contemplate treating such disparate groups as the same source of ownership and influence, the rules misconstrue marketplace realities. As one commenter in this proceeding pointed out, when our rules codify such inaccurate reflections of the financial industry, banks can be discouraged from making investments in the broadcasting industry. *See Petition for Reconsideration of Wells Fargo Communications Finance, Division of Norwest Bank MN, NA* at 2-3 (October 18, 1999).

Thus, I would have supported a narrowly crafted exemption to the EDP rule for banks and other institutional investors, where the practices of lending institutions demonstrate that our policy interest in viewpoint diversity is not threatened by the investments of a bank's equity and lending entities. I therefore respectfully dissent in part. *See Order* at ¶¶ 19-22.

STATEMENT OF COMMISSIONER HAROLD W. FURCHTGOTT-ROTH, DISSENTING IN PART AND CONCURRING IN PART

I respectfully dissent in large part from this Memorandum Opinion and Order on Reconsideration, which generally affirms the decisions made in the original Report and Order on attribution rules for mass media entities. I do so for the reasons given in my separate statement in that Report and Order.[1] I join, however, the portion of today's item that maintains the Commission's elimination of the cross-interest policy,[2] a regulatory repeal that I supported on the first go-round.

[1] *See* Statement of Commissioner Harold W. Furchtgott-Roth, Dissenting in Part and Concurring in Part. *Report & Order, In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; and Reexamination of the Commission's Cross-Interest Policy*, 14 FCC Rcd. 12559 (1999).

[2] *See supra* at ¶¶ 50-55.

STATEMENT OF COMMISSIONER GLORIA TRISTANI, DISSENTING IN PART

Re: Reconsideration of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, MM Docket Nos. 94-150, 92-51 and 87-154.

I write separately to state my deep discomfort with the continued prevalence of LMAs in the broadcasting industry. Too often, I believe, LMAs are used to achieve a *de facto* change in control of a broadcast license where such a change would otherwise be impermissible -- either because the transfer would violate the Commission's ownership rules or because the Commission has not yet formally acted on a transfer application. In both cases, LMAs have the harmful effect of separating the entity that programs a broadcast station from the entity responsible for ensuring that the station serves the public interest.

As with many problems before the Commission, one of the main barriers to sensible decision-making is the lack of factual information. We simply do not know how many LMAs exist, what the terms are, and whether those terms serve the public interest. For this reason, I dissent from the majority's decision not to require the filing of non-attributable LMAs with the Commission. I would have required that *all* LMAs be filed. Under the majority's approach, a licensee could enter into ten LMAs, each covering ten percent of its programming hours, and yet because none of the individual LMAs reached the fifteen percent level, the Commission would never know that the licensee was no longer programming its own station. Only when we know the true scope of the problem can we properly assess whether and how it should be addressed.