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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Broadcast Television National Ownership Rules	)	MM Docket No. 96-222
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

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MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: November 13, 2000 **Released:** January 19, 2001
By the Commission:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we deny a petition seeking reconsideration in part of the *Report and Order* released in this proceeding on August 6, 1999.[1] In the *Report and Order*, we modified the national television ownership rule to clarify how to calculate a broadcast television station group owner's aggregate national audience reach for purposes of determining compliance with the 35% limit on such reach.[2] The national ownership cap itself was at issue in the 1998 Biennial Review of Broadcast Ownership Rules. In

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[1] *See Report and Order*, In the Matter of Broadcast Television National Ownership Rules, Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, MM Docket Nos. 96-222, 91-221, & 87-8, *Report and Order*, 15 FCC Rcd 20,743 (1999) (*Report and Order*). On the same day, the Commission also released its companion Reports and Orders in the television local ownership proceeding, In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, MM Docket Nos. 91-221 and 87-8, *Report and Order*, 14 FCC Rcd 12,903 (1999) (*TV Local Ownership Report and Order*) and in the attribution proceeding, 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, Reexamination of the Commission's Cross-Interest Policy, MM Docket Nos. 94-150, 92-51, & 87-154, *Report and Order*, 14 FCC Rcd 12,559 (1999) (*Attribution Report and Order*).

[2] In 1996, pursuant to Section 202(c)(1) of the 1996 Act, the Commission eliminated the 12-station cap and raised the 25% aggregate national audience reach limit to 35%. *See* Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (1996) (the 1996 Act); In the Matter of Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996, National Broadcast Television Ownership and Dual Network Operations, 47 C.F.R. §§ 73.658(G) and 73.3555, 11 FCC Rcd 12374 (1996) (*1996 National TV Ownership Order*). As the 1996 Act did not address the issue of the measurement of audience reach for the purposes of the new limits, the Commission initiated this proceeding. *See Notice of Proposed Rule Making* in MM Docket Nos. 87-8, 91-221, and 96-222, 11 FCC Rcd 19949, 19954-56 (1996) (*Notice*).

our recently released *Report* in that proceeding we decided to retain the current 35% limit on a broadcast television station group owner's aggregate national audience reach.[3]

2. In the *Report and Order*, we concluded that the public interest would be served by counting a market only once when calculating an entity's national ownership reach, even if that entity has an attributable interest[4] in more than one television station in that market.[5] Specifically, we narrowed the general "satellite exemption"[6] to our ownership rules to exempt from the national ownership rule only satellite television stations in the same market as their parents; decided not to incorporate same-market local marketing agreements (LMAs)[7] into the calculation of the brokering station's national audience reach; and replaced the Commission's use of Arbitron's Areas of Dominant Influence (ADIs) to define geographic television markets with the use of Nielsen's Designated Market Areas (DMAs).[8] Consequently, owners of television stations that have an attributable interest in another TV station in the same market, or that operate a satellite station in the same market, do not have to double count those markets in calculating their national aggregate television audience reach. However, a station owner with an attributable interest in a station in a separate market (including satellite stations[9] and LMAs[10]) would have to count that additional audience as part of its national aggregate audience.

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[3] In the *Report*, we stated that several considerations motivated that decision, including our belief that the effects of our recent change to the local television ownership rule should be observed and assessed before making any alteration to the national limit, and that the trend of many group owners acquiring large numbers of stations nationwide since the cap was increased to 35% in 1996 should be further observed prior to any change in the cap. *See Report*, In the Matter of 1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, FCC 00-191, ¶¶ 25-30 (2000) (*1998 Biennial Regulatory Report*).

[4] An attributable interest is an interest that is cognizable under our ownership rules. *See Attribution Report and Order*, FCC 99-207 at ¶ 2.

[5] *See Report and Order*, FCC 99-208, at ¶ 1. The Commission deferred the issue of whether it should eliminate or modify the "UHF discount," by which UHF stations are attributed with only 50% of the audience within their market for purposes of the national rule, to the 1998 Biennial Review of Broadcast Ownership proceeding. *Id.* In our *1998 Biennial Regulatory Report* we decided to retain the UHF discount, but to propose a phased-in elimination of the discount near the completion of the transition to digital television. *See 1998 Biennial Regulatory Report*, MM Docket No. 98-35, FCC 00-191 (2000).

[6] In 1985, the Commission exempted TV satellites stations from the multiple ownership rules. *See Memorandum Opinion and Order* in Gen. Docket No. 83-0009, 100 FCC 2d 74, 79 (1985) (*Reconsideration of the 1984 Multiple Ownership Report and Order*).

[7] A local marketing agreement (LMA) or time brokerage agreement is a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. *See Attribution Further Notice* in MM Docket Nos. 94-150, 92-51, 87-154, 11 FCC Rcd. 19895, 19908 (1996) ("*Attribution Further Notice*").

[8] *See Report and Order*, FCC 99-208, at ¶ 1. The total number of television households in each DMA in which an entity's stations are located is used to calculate that entity's national audience reach. *See id.* at ¶¶ 30, 34.

[9] *See Report and Order*, FCC 99-208, at ¶¶ 4, 20-23.

[10] *See id.* at ¶¶ 28-29.

II. DISCUSSION

3. The Office of Communication, Inc. of United Church of Christ *et al.* (UCC *et al.*)[11] seek reconsideration of the Commission's decision to count a market only once when calculating an entity's national ownership reach.[12] UCC *et al.* argue that the Commission should instead attribute between 50% and 100% of the DMA households to an entity's second station in a market for purposes of calculating the national audience reach.[13] Although they argue this specifically in the context of TV duopolies, they also contend that intramarket satellites and LMAs should be attributed similarly.[14]

4. We reaffirm our decision to count a market only once when calculating an entity's national ownership reach. We discussed this decision in detail in the context of satellites and LMAs, and also noted that the concept is equally applicable to any situation in which an entity has an attributable interest in more than one TV station in a television market.[15] We stated that when two stations in a market are commonly owned by virtue of the local television ownership rule (*i.e.*, a duopoly), that market's audience reach will be counted only once when calculating the group owner's national aggregate audience reach.[16] We explained that, regardless of a station's actual viewership, a licensee is attributed with all of the viewership in the entire DMA. Therefore, increasing actual viewership by adding a second station does not affect the audience reach calculation, as that calculation already includes all the viewers in that DMA.[17]

5. UCC *et al.* have not raised any arguments that persuade us to revisit this decision. Indeed, many of UCC *et al.*'s criticisms appear to be directed not at the national cap itself, but at limiting consolidation in local markets.[18] The issue of how much consolidation should be permitted in local markets is addressed in our local ownership proceeding.[19]

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11 The Office of Communication, Inc. of United Church of Christ filed jointly with 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 Women's Institute for Freedom of the Press (UCC *et al.*). *See* Petition of UCC *et al.* at 1.

12 *See id.* at 1-3.

13 *See id.*

14 *See* Petition of UCC *et al.* at 3, n. 1.

15 *See Report and Order*, FCC 99-208, at ¶¶ 10, 13.

16 *See id.* at ¶ 13.

17 *See id.* at ¶ 12.

18 *See, eg.*, Petition of UCC *et al.* at 8-9 ("Counting second stations toward the national ownership cap will prevent the largest license holders from consolidating in the largest and most profitable markets. This will preserve diversity and allow new entrants to these markets to compete.").

19 *TV Local Ownership Order*, MM Docket Nos. 91-221 and 87-8, FCC 99-209 (1996). UCC *et al.* did file a petition for reconsideration in that proceeding.

III. CONCLUSION

6. For the above reasons, we decline to grant UCC *et al.*'s request to attribute between 50 and 100% of the DMA households to an entity's second station in a market, whether it is a duopoly, an LMA or an intramarket TV satellite station. In this *Memorandum Opinion and Order on Reconsideration* we reaffirm our decision to count a market only once when calculating an entity's national ownership reach, even if that entity has an attributable interest in more than one television station in that market.

IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

7. Authority for issuance of this *Memorandum Opinion and Order on Reconsideration* is contained in Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 405.

8. Accordingly, IT IS ORDERED that the Petition for Reconsideration in this proceeding IS DENIED pursuant to Sections 4(i), 303(r),and 405 of the Communications Act of 1934, as amended, and Section 1.429(i) of the Commission's rules, 47 C.F.R. § 1.429(i).

9. IT IS FURTHER ORDERED that, upon release of this *Memorandum Opinion and Order on Reconsideration*, this proceeding is hereby terminated.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas

Magalie Roman Salas
Secretary