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

In the Matter of	)	
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

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To: The Commission

COMMENTS OF MAPLETON COMMUNICATIONS, LLC

Mapleton Communications, LLC ("Mapleton"), by counsel, respectfully submits these Comments in response to the Notice of Proposed Rule Making and Further Notice of Proposed Rule Making in the above-referenced proceeding, 16 FCC Rcd 19861 (2001) (the "Further Notice"). Mapleton urges the Commission, in crafting any new radio ownership rules or procedures, to carefully guard against unintended regulatory burdens on new competitors in the radio industry, particularly those based in smaller Arbitron metro markets ("metros"). In Mapleton's own experience, for example, the FCC staff's current use of BIA revenue estimates to screen cases dramatically understates the level of competition in smaller metros that are adjacent to larger ones, by ignoring the local ad revenue earned by powerful station groups based just across the county line. The burden placed on applicants to demonstrate the existence of such competition, resulting in additional expense and significant delays, creates a very real regulatory barrier to the creation of new local competition, at exactly the time that FCC policies should encourage such competition and additional investment in the radio industry.

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Background.

Mapleton is a new radio operator focusing on small to medium-sized metros in the western United States. It has already acquired radio stations in two metros and brokers time on stations in a third metro. Mapleton is the first radio venture of its founder, Marc Nathanson, after a long career in the cable television industry as the Chairman of Falcon Cable. Mapleton began life in the second half of 2001, perhaps the most difficult time in the past decade for any new operator to enter the radio industry. The economic slowdown forced new radio owners such as Mapleton to compete with existing group owners for fewer local ad dollars. The launch of new satellite-delivered radio services at the same time only added to the economic uncertainty in the industry.

The impact of an advertising recession is probably greatest on smaller radio operators. Many of the large radio companies that Mapleton must compete against are publicly financed and able to rely upon revenues from other sources, such as program networks, television stations, outdoor advertising and concert promotions. Indeed, these companies often can package sales of different media within the same geographic area, or use one type of local outlet to promote another. In addition, the larger established operators typically enjoy superior technical facilities and experienced sales staffs with which smaller radio owners must compete.

Nevertheless, Mapleton entered the radio industry knowing that it must compete against multifaceted media companies and willing to do so. Its strategy is essentially to offer a return to community-based service, in response to the national or regional approach to operations that the largest radio station owners often take. By acquiring the facilities of owners who no longer had the resources or desire to compete against large radio operators, Mapleton brought additional competition to their metros. Unfortunately, the same regulatory procedures crafted to address the perceived problems of ownership consolidation currently impose a significant burden on new entrants, such as Mapleton, that would create additional competition in a time of consolidation and additional investment after a long economic slowdown. The Commission should be careful to ensure that any new rules or procedures do not repeat the same regulatory mistakes. Indeed, Mapleton urges the Commission to remove its flawed existing procedures and policies as quickly as possible.[1]

BIA Revenue Estimates Do Not Accurately Portray Competition In Smaller Metros Adjacent To Larger Ones.

In revising its radio rules and procedures, the Commission must not continue to rely on BIA revenue estimates as a complete and accurate portrayal of competition for ad dollars in every metro, requiring applicants to disprove that assumption in cases where it is mistaken. Although the Further Notice asks for comment on the "disadvantages" of the 50/70 "screen" (Further Notice at ¶ 60), it also establishes an interim policy presuming that the BIA database is in fact an accurate reflection of actual market revenue shares, absent persuasive evidence for another measure by the applicant (id. at ¶ 86). The Further Notice also assumes that, in the event the Commission concludes that radio advertising is in fact the relevant "product market" for purposes of any competitive analysis it may ultimately adopt on a permanent basis, the Commission can "readily obtain" actual or estimated local ad revenue from a reporting service such as BIA. Id. at ¶ 45. In fact, the revenue estimates in BIA's published reports and database do not provide a complete picture of the competition for radio ad revenue in many smaller metros, as BIA itself has informed the Commission's staff in connection with individual license assignment applications.

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[1] Given the distorted results produced by the 50/70 "screen," as documented herein, the Commission should immediately modify the test or discontinue its use. The Communications Act imposes a mandate on the Commission to modify or repeal ownership rules that do not function in the public interest. 47 U.S.C. § 161(b).

Arbitron's radio metros do not exist only in isolated geographic areas. Often they are immediately adjacent to or even surrounded by other metros, separated by only a county line. In one situation, Mapleton has sought to acquire stations in a particular metro bordered by no fewer than three adjacent metros, all of which are larger. Unfortunately, BIA's revenue estimates for a metro such as this one do not include any of the radio ad revenues earned from the businesses within them by powerful stations that happen to be based in an adjacent metro. Rather, BIA reports all of the ad revenue earned by such stations in its reports for their "home" metros, regardless of how much revenue they earn across the county line.

As a result, the use of BIA revenue estimates to measure the extent of competition in a smaller metro may dramatically understate the total ad revenue earned there, and greatly overstate the shares of that revenue earned by the so-called "in-market" stations. Thus, proposed acquisitions in that metro are more likely to face "red flags" and regulatory delays, as the applicants are required to overcome a faulty presumption that the BIA reports do in fact include all of the relevant competitors with local revenue shares.

In Mapleton's experience, the exclusion of local revenue estimates for adjacent metro stations can have a very significant impact on the staff's current competitive analysis. If the adjacent metros are larger, they are more likely to be home to larger radio companies who already have assembled groups of stations with the strongest technical facilities, best signal coverage and biggest sales staffs in the area. Larger metro stations often dominate radio listening in a smaller adjacent metro. In one metro where Mapleton has sought to acquire radio stations, half of the top ten rated stations and three-quarters of all stations with reportable listening shares are actually based in the larger surrounding metros. These stations' sales forces cross the county line as easily as their signals, earning what Mapleton estimates to be at least one third of the radio ad revenues in the smaller metro they surround. In such cases, the staff's initial reliance on only BIA's reported revenue estimates presents a seriously distorted picture of competition -- in which a significant portion of the local radio ad revenue is never considered unless the applicant can document its existence, a costly and time-consuming process. Indeed, BIA itself has advised the Commission that the use of its database in these situations does not provide an accurate depiction of actual competition in such metros.[2] Thus, any regulatory framework assuming that BIA revenue estimates depict all of the competitors or the full extent of competition in every metro would clearly not be "responsive to marketplace realities," one of the stated goals in this proceeding. Further Notice at ¶ 19.

Recent Commission decisions have begun to recognize at least the possibility of meaningful competition from adjacent metros. For example, in Great Scott Broadcasting (Assignor) and Nassau Broadcasting II, LLC (Assignee), FCC 02-52, released March 19, 2002, the Commission recognized that the concentration levels indicated by BIA's published revenue estimates for the Trenton metro would be "overstated" to the extent that Philadelphia stations competed for advertisers within the Trenton metro. Id. at ¶ 34. In that particular case, however, the Commission was concerned with the likely rate differential between the Trenton metro and the Philadelphia metro, which is one of the five largest in the country.[3] Even so, it found that the disparity in rates was not an absolute barrier and provided at least potential competitive influence. Id. at ¶ 31.[4]

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[2]See, e.g., BIA Financial Network, An Economic Analysis Concerning the Acquisition of KBRE-FM, et al, February 14, 2002, p. 3, FCC File Nos. BALH-20010904ABH et al.

[3] The Commission did not discuss, however, whether stations with particular formats, such as Spanish-language, could charge such higher rates. Spanish-language stations are particularly significant in many western metros.

[4] Moreover, the Commission also concluded that the listening share of Philadelphia stations in Trenton mitigated against any potential harm to listeners, who were not a "captive" audience to Trenton metro stations. Id. at ¶ 37.

It is important to note that many adjacent metro situations will not involve the disparity in sizes between the Philadelphia metro (No. 5) and the Trenton metro (No. 139), and thus will not implicate the Commission's concern with the possibility of rate differentials. In any event, Mapleton submits that, in a situation where larger metro stations dominate both radio listening and ad sales in an adjacent smaller metro, the creation of stronger competition from within the smaller metro would serve the public interest. Stronger local operators would not only introduce additional competition, but also likely provide a more local service by maintaining studio and staff within their metro – not simply sending a sales force to call on businesses there. To effectively compete with the larger operators from adjacent metros, however, the new operator requires a competitive combination of stations.

Another anomaly in the revenue data used by the FCC staff is that BIA does not select the metro in which it will report a specific station's estimated ad revenue based upon economic analysis. Rather, BIA will report its revenue estimates for a station in whatever "home metro" that Arbitron has assigned the station for purposes of its audience ratings reports. In Mapleton's experience, Arbitron may report a competing station, licensed to a community in the same small metro, as part of an adjacent metro. Indeed, a station might request that Arbitron do so. BIA will assume that Arbitron's "home" metro designation is correct for purposes of reporting a station's ad revenue and calculating the total revenue in each metro, and the FCC staff will in turn initially assume that the BIA's reports provide a complete picture of competition in each affected metro.

The Commission considered a similar situation in the Great Scott decision. While the assignment applications were pending, Arbitron "moved" a station located in the Trenton metro to the Middlesex-Somerset-Union metro, although that station remained licensed to Trenton, placed a city grade signal over Trenton and continued to achieve significant ratings in Trenton. The Commission recognized that the station should properly be considered as a competitor in the Trenton metro for purposes of its competitive analysis, not the metro in which Arbitron and BIA reported it. FCC 02-52 at ¶ 25.

Although the FCC staff ultimately may be able to correct anomalies in the BIA revenue data on a case-by-case analysis, as it did in Great Scott Broadcasting, the delay inherent to this approach is itself a very significant regulatory burden. Such delays only benefit the large radio operators that already have assembled powerful combinations of stations, often through large multi-market mergers that the Commission previously approved. (Ironically, the ad revenue share held by an existing radio combination within a local metro often leads to the flagging of a proposed new combination that would provide stronger competition, under the 70% prong of the 50/70 "screen.") These existing combinations already enjoy the benefits of consolidated operations, while a "flagged," would-be competitor must wait indefinitely to enjoy the same operating efficiencies. Regulatory delays also provide the existing operators with additional time to blunt the new competition, through format changes, employment offers to the sellers' staffs, and long-term packages to their most favored advertisers. Nor is it equitable to adopt a procedure that requires applicants to refute mistaken regulatory assumptions again and again, through time-consuming and costly economic studies.

If the Commission ultimately does decide to use BIA revenue estimates as a measure of economic competition generally, Mapleton proposes that it not apply this analysis to any metro in which BIA reports a significant share of "lost listening" to so-called "out of market" stations. According to BIA's Radio Yearbook 2001 (at vi), the national average for lost listening was 27% last year, a figure that may even be higher today. A higher percentage of lost listening – for example, 35% – is a strong indicator that adjacent metro stations are receiving not only significant ratings in the metro at issue, but also significant local ad revenues that are unreported by BIA. In one of Mapleton's metros, BIA reports over 40% lost listening. In a subsequent analysis for Mapleton, BIA estimated that adjacent metro stations accounting for that lost listening actually earn at least a third of the local ad revenue.

The Commission's Absolute Product Market Definition Understates The Market Power Of Radio Operators Owning Other Types Of Local Media.

In fashioning any framework for analysis, the Commission should recognize the competitive strength that flows from a radio operator owning other types of local media. The Commission tentatively takes the position that other media are not a sufficient substitute for radio ad sales to be considered in its competitive analysis of the relevant "market." Further Notice at ¶ 42. On the contrary, the ownership of other types of media locally allows a radio operator to assemble and maintain a larger sales staff, offer packages of different types of media, and utilize one type of media to promote another – in short, to be a much stronger competitor.

In Mapleton's experience, it is most often the largest radio operators that own such other types of media. For example, in one of Mapleton's metros, a significant radio competitor also sells billboard ads through one of the largest outdoor advertising companies in the country. While the Further Notice in this proceeding reasons that radio may be "unique" in its ability to reach consumers in cars (id.), outdoor advertising has exactly the same benefit. An owner with local outlets in both media can offer advertisers two different channels to reach the same commuters. Indeed, such "cross-platform promotions" are only likely to increase in the future.[5]

[5] Viacom recently announced that various media divisions in that company, including radio programming and outdoor advertising, will participate in a cross-platform promotion of Snapple drink products. According to Broadcasting & Cable, March 4, 2002, at 8, "[e]ven in a down economy – or perhaps because of it – all the broadcast networks are brewing such deals . . ."

Moreover, if empty billboards are used to promote a sister radio station, a significant competitive advantage is realized. In another Mapleton metro, the leading radio operator has proposed to acquire ownership of one local television station and an LMA with a second, in a DMA with just three English-language TV stations. Apart from the radio-TV cross ownership rule, which imposes numerical limits, the FCC staff apparently would not normally consider this operator's resulting ability to leverage television ad sales for half the local stations into radio ad sales.

If the Commission does elect to retain some type of ad revenue benchmark under in its radio rules and procedures, it should allow a proposed new competitor to exceed that benchmark in cases where a competing radio operator already owns significant interests in other types of media locally. While such media may not be an exact substitute for radio, they do provide a local radio operator with additional competitive strength that the Commission should not ignore in any market analysis.

Conclusion.

In adopting any new radio ownership rule or procedure, the Commission must be careful not to place undue regulatory burdens on new entrants to the radio industry. In particular, the current use of BIA revenue estimates dramatically understates the true level of competition for ad revenue in many smaller metros by ignoring the revenue earned locally by radio stations in larger adjacent metros. In fact, neither their signals nor their sales forces arbitrarily stop at the county line. Although the FCC staff may be able to resolve such anomalies on a case-by-case basis, the resulting expense to applicants and regulatory delays hinder the formation of stronger competitors to existing radio operators. This is exactly the time that FCC policies should encourage new competition and investment, not burden them.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michelle Gorman Dixon, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that copies of the foregoing "Comments of Mapleton Communications, LLC" were served this 27th day of March, 2002 via hand delivery, upon the following:

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