National Association of
NAB
BROADCASTERS

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Notice of Ex Parte Communication

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: MM Docket No. 00-244

Dear Ms. Dortch:

Yesterday, Henry Baumann, Jack Goodman, Karen Kirsch and the undersigned of NAB; David Kennedy of Susquehanna Radio Corp.; Richard Ferguson of Cox Radio, Inc.; and Scott Royster of Radio One, Inc. met with Chairman Powell and Susan Eid; Commissioner Copps and Jordan Goldstein; Commissioner Adelstein and Sarah Whitesell; and Commissioner Martin and Catherine Bohigian to discuss the definition of radio markets. We made the following points:

- Due to the scattered location and widely varying signal strength of radio stations, any method of defining radio markets will produce a certain number of anomalies. The current market definition method has produced only a small number of anomalies in comparison to the large number of radio transactions since 1996. Adopting a revised market definition will only create a different and unpredictable set of anomalies.

- Since 1996, thousands of radio stations have been bought and sold and significant consolidation in the radio industry has occurred. If the FCC were at this juncture to alter its radio market definition so as to effectively cut back on the level of consolidation permitted in the future, then permanent competitive imbalances would be created. Owners who had not consolidated prior to the rule changes would not be permitted to obtain in the future as many stations in an area as the owner(s) who fully consolidated before the change in market definition. This result would freeze significant competitive imbalances in a number of radio markets, would be unfair to owners who were not the early consolidators, and would inhibit vigorous competition in the industry.

- If the Commission were to alter its radio market definitions, then additional problems would be created with regard to transferability of existing station groups. Requiring the break up of station groups upon their transfer because they no longer comply with new and more restrictive FCC rules would cause substantial difficulty for owners because commonly owned stations have consolidated facilities, operations, personnel and equipment. Limiting the transferability of existing radio groups would also seriously negatively impact the market valuation of radio stations. The forced separation of commonly owned stations could also negatively affect service to the public in local markets because the economic efficiencies associated with joint ownership – and the programming and other benefits made possible by those cost savings – would be lost. Existing group owners who acquired their stations in reliance on the FCC's current rules, and who consolidated the operation of their stations in the reasonable expectation that the stations would be transferable as a group, should be allowed to transfer existing groups, so long as the transfer creates no new, additional consolidation.

At this meeting, the attached handout was also distributed. Please direct any questions concerning this matter to the undersigned.

Respectfully submitted,

Attachment

cc:
(w/o attachment)

Chairman Michael Powell
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Kevin Martin
Susan Eid
Jordan Goldstein
Sarah Whitesell
Catherine Bohigian

Radio Market Definition

- FCC should not alter its radio market definition in a manner contrary to congressional intent.

  - When it adopted the 1996 Telecommunications Act, Congress made no change to the FCC's methodology for defining radio markets in use since 1992, so the current methodology is, and should be regarded as, the one intended by Congress.

- There is no "perfect" method of defining radio markets.

  - The FCC's current market definition method has produced a very small number of anomalies in comparison to a very large number of transactions.

  - Any revised market definition will create a different and unpredictable set of anomalies, due to the scattered location and widely varying signal strength of stations.

- The existing contour overlap method of defining markets best identifies the stations that have the potential to compete against each other.

  - The principal community contour that is used to define markets is a conservative measure of where stations compete. Radio signals serve a far broader area and thus overlap with many more stations than the current rule recognizes.
  - Current method of determining the "numerator" may be a superior method of gauging the true level of competition in local markets, as it reflects service areas, not listener tastes, promotional campaigns or programming decisions.

- Arbitron market definitions should not be used.

  - Over 40% of commercial radio stations are not located in Arbitron metro markets, requiring another, separate new definition of markets for these stations, which will have its own different set of anomalies.

  - Arbitron data lacks the neutrality and consistency needed for a regulatory tool. In particular, Arbitron market designations are susceptible to inexplicable fluctuations, and can be manipulated by subscribing stations. Separate arrangements would need to be made for access by all parties to Arbitron data.

- If alterations in market definition methodology are made at this juncture, existing combinations should be grandfathered and freely transferable, or the economic valuations of existing combinations will be substantially affected, causing disruption in the marketplace.