

May 16, 2003

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, David Benjamin of Triad Broadcasting; Steve Newberry of Commonwealth Broadcasting Corp.; Frank Osborne of Qantum Communications; Mary Quass of New Radio Corp.; and Henry Baumann, Jack Goodman, Karen Kirsch, John David and the undersigned of NAB met with Commissioner Martin, Catherine Bohigian, Commissioner Abernathy, Stacy Robinson, Commissioner Copps, Jordan Goldstein, Susan Eid and Johanna Mikes to discuss the definition of radio markets. We made the following points:

- No perfect method of defining radio markets can be devised. Any revised market definition methodology will create a different and unpredictable set of anomalies, and very probably more anomalies than the current contour overlap method.
- The adoption of any market definition system utilizing Arbitron metro markets raises very serious questions as to the treatment of the large number of radio stations in “unrated” markets. Concern was expressed that the real-world impact of imposing a geographic-based market definition on unrated markets remained almost wholly unknown.
- If a market definition methodology utilizing Arbitron metro markets were to be adopted, then the Commission must address the anomalies created by “embedded” markets in areas such as New England. Arbitron data and markets also generally lack the neutrality and consistency needed for regulatory tools.

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- If radio market definitions are changed so as to effectively reduce the degree of consolidation allowed in local markets in the future, then permanent competitive imbalances favoring the “early consolidators” would be created, hindering the ability of small and emerging radio groups to compete. To equalize competition in local markets where a grandfathered early consolidator exists, competitors in those markets should be permitted to acquire stations up to the level of the existing consolidator.
- Existing group owners acquired their stations in reliance on the Commission’s well-established market definition rules, and consolidated the operation of their stations in the reasonable expectation that the stations would be transferable as a group. To avoid disruption and adverse financial impacts in the radio marketplace (especially in the ability of radio station owners to obtain financing), these existing groups should remain freely transferable.

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)

Commissioner Kathleen Abernathy

Commissioner Michael Copps

Commissioner Kevin Martin

Susan Eid

Jordan Goldstein

Catherine Bohigian

Johanna Mikes

Stacy Robinson

Implications of Altering Radio Market Definition

- ❖ There is no “perfect” method of defining radio markets.
 - Due to the scattered location and widely varying signal strength of radio stations, any revised market definition will create a different and unpredictable set of anomalies, and likely a greater number of anomalies than the current system.
 - Adopting any market definition system utilizing Arbitron metro markets raises a serious question as to the treatment of the large number of radio stations in “unrated” markets.
 - If a market definition system utilizing Arbitron metro markets were to be adopted, then the Commission must address the anomalies created by “embedded” markets in areas such as New England.
- ❖ Changing market definitions at this juncture raises serious competition and fairness issues that must be addressed.
 - If radio market definitions are altered so as to effectively cut back on the level of consolidation permitted in the future, then permanent competitive imbalances favoring the “early consolidators” would be created in many areas. To equalize competition in local markets where there is a “grandfathered” early consolidator, competitors in those markets should be allowed to acquire stations up to the level of the early consolidator.
 - Existing group owners acquired stations in reliance on the FCC’s long-standing market definition rules, and consolidated the operation of their stations in the reasonable expectation that the stations would be transferable as a group. To avoid disruption and adverse financial impacts in the radio marketplace, these existing groups should be freely transferable.
 - Numerous proposed radio transactions were filed at the Commission under the existing market definition rules and remain pending. The Commission should process pending sales applications – especially those that have been pending for months or even years – under its existing market definitions.
- ❖ Once the Commission has resolved all the current questions concerning local radio ownership and radio market definition, there should be no need to continue its questionable practice of “flagging” proposed radio transactions that comply with the numerical ownership limits, particularly if the revised local radio rules are intended to ensure competition in local markets.