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May 22, 2003

Ex Parte Communication

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: MB Docket No. 02-277, Biennial Ownership Review

Dear Ms. Dortch:

Enclosed for filing in the record in the above-referenced proceeding is a memorandum concerning possible alternative approaches that the Commission might adopt for the local television rule.

Any questions concerning this matter should be directed to the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Jack N. Goodman". The signature is written in a cursive style with a large initial "J".

Jack N. Goodman

Attachment

Options for Addressing TV Duopoly Rules

Our first preference remains the “10/10” test which specifically addresses the two criteria for a new rule we discussed: (1) differentiation between bigger and smaller competitors, and (2) promotion of mergers that result in a more competitive market structure. However, we understand that it may be difficult at this stage to rewrite the item to adopt 10/10, so we will discuss alternatives to the top-4 merger bar now under consideration.

We suggest that the simplest approach would be to allow mergers among local TV stations, barring only combinations of the top two rated stations (averaged over one year of ratings books). This approach would dispense with any other “voice” test such as the present eight-voice limit since those tests inherently limit duopolies in the smallest markets where the need for relief is the greatest.¹ Although in the largest markets, this test alone might permit some combinations that would have substantially larger viewing shares than the market-leading station,² the antitrust laws would generally bar combinations among the largest stations in the big markets, so we do not view this as a practical problem. Applying the top-two prohibition to all markets creates a simple rule

¹ If, as is widely reported, a minimum of six separately-owned TV “voices” (including non-commercial stations) would be required to form a new duopoly, in the 100 largest markets, six would have no opportunities for the formation of a new combination and only one combination would be allowed in ten markets. In the 100 plus markets, where the need for relief is the greatest, *no* combinations would be permitted in 81 of those 110 markets, one possible combination could be formed in 23 of those markets, and in only four markets could there be two new combinations. Since the undisputed evidence shows that lower-rated affiliates were losing money in 2001, excluding the impact of DTV costs and the elimination of network compensation, a six-voice test would leave stations in most small markets without any ability to form an economically viable structure.

² We are attaching a spreadsheet that shows the shares of the top-4 commercial stations in each market (where there are 4 stations) and the combined shares of the 3rd and 4th ranked stations.

that does not rest on market size distinctions that, however reasonable, are always imperfect at the margins. Further, that rule would not result in changes in regulatory status if markets change position, as they do over time.

If the Commission would not be willing to use a top-two test generally, then we would suggest a tiered system where the permissible duopolies would vary by market size. Under this test, combinations among the top-four stations would be barred in markets 1-25; combinations among the top-three stations would not be allowed in markets 26-75; and combinations among the top-two stations would be prohibited in markets 76-210.

These lines are based on data concerning market size and station profitability that are in the record. While market revenues for markets 11-25 are substantially less than the top-ten markets, they are more than double the average revenues for markets 26-50 and more than three times the average revenues for markets 51-75. NAB *ex parte* submission, April 30, 2003. Stations' financial results reflect these market size differences. In 2001 (the last year for which data is available), the average affiliate and the average independent station in the 25 largest markets showed a pre-tax profit. This indicates that there are sufficient revenues in those markets to support separately-owned affiliates of each of the major networks which all provide a high level of local service. By contrast, the average affiliate in markets 26-50 had a pre-tax profit in 2001 that was only 9.2% of the profit level of affiliates in the largest markets, and the average non-affiliate in those markets lost money. Thus, it would be appropriate for the Commission to draw a line at market 25 and permit combinations of stations, excluding the top-three rated stations, in markets below that line.

Similarly, a distinction should be made between those medium-sized markets, and markets below the top 75. These relatively small markets typically have fewer non-affiliate stations, and the independent stations that exist are frequently weak and do not now have a local news presence. In many of these markets, there is one historic ratings leader, and even other affiliates trail that station significantly in audience share. In order to strengthen local service, combinations among weaker affiliates must be permitted.

The average market revenue for markets 76-100 is only about 60% of the station revenues in markets 51-75, and the average market revenue figure declines steeply from there.³ Stations in these small markets have had the most difficult time dealing with the heightened levels of competition to local stations. Most of these smaller markets do not yet have local-to-local satellite service and have lost audience (particularly in geographically widespread markets) to out-of-market network signals.⁴ The average low-rated affiliate in markets 76-100 experienced a 320% decline in pre-tax profits from 1993 to 2001, and the figure for low-rated stations in markets 101-125 was 581%. NAB *ex parte* submission, May 13, 2003. If either a six-voice test or a bar on combinations among the top-four stations is adopted by the Commission, local service in these markets will decline substantially in the next few years.⁵

³ For example, the average market revenues in markets 151-175 is only one fifth of the revenues in markets 51-75. That revenue is shared among 5.3 stations in markets 51-75 and 3.2 stations in markets 151-175.

⁴ For example, in markets 101+, only 39.7% of total day viewing is attributable to in-market broadcast stations. Over 60% of the viewing in these small markets goes to cable/satellite channels and to broadcast stations located in other markets.

⁵ A six-voice test for television would appear to be particularly unsupportable in light of reports that newspaper/TV combinations would be allowed in markets with only four television stations.

Competition in those markets will also be weakened. As noted above, the top station in many small markets currently has a strong lead in audience share. As its competitors are forced to reduce costs for news and other local programming, their shares and abilities to compete for advertising will decline. Thus, markets that now are competitive or have the potential to become competitive, will become dominated by one or two stations. Permitting the weaker stations to combine would allow them to develop the resources to remain competitive in those markets.

As the attached spreadsheet shows, combining the third and fourth ranked stations in markets 76-210 would not typically result in a combination that is stronger in terms of audience share than the strongest station in the market. In 18 of these 135 markets, the combined audience share of the two lower-rated affiliates would be higher than the top-rated station, but in only two markets (Colorado Springs and Ft. Wayne) would the lower-rated stations' combined share be significantly higher than the top stations', and in those markets there is also a strong second-place station. These figures show that permitting these duopolies in smaller markets would not result in a less competitive market structure.

In sum, the need for duopoly relief is the strongest in medium and small markets. In those markets, it is not only independent stations that need a more efficient structure, but also lower-rated affiliates.

RANK	MARKET	#1Share	#2Share	#3Share	#4Share	#3Plus#4 Share	NoOf Comm.V oices
1	New York, NY	11.75	10.25	7.25	7	14.25	12
2	Los Angeles, CA	11.5	10.5	7.75	6.25	14	15
3	Chicago, IL	13.5	11	8.5	8	16.5	10
4	Philadelphia, PA	14.25	12.5	9.25	7	16.25	14

5	San Francisco-Oakland-San Jose, CA	10	9	8	8	16	13
6	Boston, MA	13.75	9.5	9.5	6.5	16	12
7	Dallas-Ft. Worth, TX	12	11.75	9.5	6.75	16.25	12
8	Washington, DC	13	10	9.75	8.75	18.5	9
9	Atlanta, GA	14.5	10.5	10.25	7	17.25	10
10	Detroit, MI	15.75	14	10.25	6.75	17	7
11	Houston, TX	11.25	11	10.25	8.5	18.75	12
12	Seattle-Tacoma, WA	16	10.5	10.25	6.5	16.75	11
13	Minneapolis - St. Paul, MN	15	14.75	10.75	6.75	17.5	12
14	Tampa-St Petersburg-Sarasota, FL	12.75	10	9.75	6	15.75	6
15	Miami - Ft. Lauderdale, FL	10.5	8.75	8.5	8.25	16.75	11
16	Phoenix, AZ	12.25	10	9.75	7	16.75	11
17	Cleveland-Akron, OH	13.5	11.75	11.75	8.5	20.25	10
18	Denver, CO	15	9.75	9.5	8.25	17.75	12
19	Sacramento-Stockton-Modesto, CA	16	8.75	8.75	7.25	16	8
20	Orlando-Daytona Beach-Melbourne, FL	14.25	11	9.25	6.25	15.5	10
21	Pittsburgh, PA	15.25	14.25	11.75	4	15.75	5
22	St. Louis, MO	19.25	14	10.75	7.75	18.5	8
23	Portland, OR	15.25	10.75	10.5	6.5	17	8
24	Baltimore, MD	14.25	13.75	6.25	5.25	11.5	5
25	Indianapolis, IN	15.5	14.25	7.5	7.5	15	8
26	San Diego, CA	10	9.5	7.5	5.25	12.75	9
27	Charlotte, NC	12.75	11.25	9.25	5	14.25	6
28	Hartford-New Haven, CT	13.25	13	8.5	6.75	15.25	6
29	Raleigh-Durham, NC	14.25	12	8.25	5	13.25	7
30	Nashville, TN	14.25	13.5	9.25	5	14.25	9
31	Kansas City, KS-MO	12.5	12	11.75	8.25	20	9
32	Cincinnati, OH	14.5	12	11.5	8.25	19.75	5
33	Milwaukee, WI	16	11.75	11	6.25	17.25	7
34	Columbus, OH	15	14.5	8	7.5	15.5	5
35	Salt Lake City, UT	17.75	9.5	9.5	9.5	19	5
36	Greenville-Spartanburg, SC-Asheville, NC	18	14.5	10.5	5	15.5	12
37	San Antonio, TX	11.75	11	7.5	7.25	14.75	10
38	Grand Rapids-Kalamazoo-Battle Creek, MI	17.5	13.25	10.75	7	17.75	7
39	Birmingham, AL	13.25	10.25	6.75	5.5	12.25	7
40	West Palm Beach-Ft. Pierce, FL	17.5	10.25	8	5.75	13.75	7
41	Memphis, TN	12.25	12	10.5	5.5	16	7
42	Norfolk-Portsmouth-Newport News, VA	13	10	9.75	7	16.75	7
43	New Orleans, LA	18.75	10.5	7	6.5	13.5	6
44	Greensboro-High Point-Winston Salem, NC	13	12	11.75	4.75	16.5	7
45	Oklahoma City, OK	16.25	12.5	10.5	5.25	15.75	8
46	Harrisburg-Lancaster-Lebanon-York, PA	21.25	10	8.75	6.75	15.5	7
47	Buffalo, NY	13.25	11.5	10.75	5.75	16.5	6
48	Albuquerque-Santa Fe, NM	11.5	11	8.75	6.5	15.25	6
49	Providence, RI-New Bedford, MA	19	9.5	5.25	4.5	9.75	12
50	Louisville, KY	12.5	12.5	12.25	7.75	20	7
51	Las Vegas, NV	14.75	10	6.75	5.75	12.5	4
52	Wilkes Barre-Scranton, PA	17.5	14.25	9.25	4.5	13.75	7
53	Jacksonville, FL	16.25	13	5.25	5	10.25	6
54	Austin, TX	12.25	12	9.5	6.75	16.25	6
55	Fresno-Visalia, CA	12.5	11.25	10.75	10.25	21	6

56	Little Rock-Pine Bluff, AR	14.75	13.75	13	4.75	17.75	6
57	Albany-Schenectady-Troy, NY	19	15	11.5	5	16.5	9
58	Richmond-Petersburg, VA	14.75	10.5	10.25	5.75	16	5
59	Tulsa, OK	17	16.75	11.75	4.5	16.25	5
60	Dayton, OH	18	8.5	7.5	6.25	13.75	9
61	Charleston-Huntington, WV	20.75	7.75	7.25	4.75	12	6
62	Knoxville, TN	20.5	10.75	10	3.25	13.25	8
63	Mobile, AL-Pensacola, FL	13.5	11.75	9.75	9.25	19	8
64	Flint-Saginaw-Bay City, MI	16	14.25	9.75	5.25	15	5
65	Wichita - Hutchinson, KS	17	16.25	9.5	5	14.5	6
66	Lexington, KY	15	13	8.25	4.75	13	6
67	Roanoke-Lynchburg, VA	17.5	12.25	11.5	5	16.5	6
68	Toledo, OH	18	13	11.75	5.75	17.5	5
69	Green Bay-Appleton, WI	16.5	14	11	10.5	21.5	7
70	Des Moines-Ames, IA	23.25	18.75	7.25	5	12.25	5
71	Rochester, NY	17.25	14	13	7.25	20.25	8
72	Honolulu, HI						6
73	Tucson, AZ	16.75	12.25	11.75	6.5	18.25	6
74	Springfield, MO	21.25	14.25	6.5	5.75	12.25	7
75	Omaha, NE	18	14.5	12	7.75	19.75	6
76	Ft. Myers-Naples, FL	14.75	13.5	7.5	7.25	14.75	6
77	Paducah-Cape Girardeau-Harrisburg-Mt Vernon	17.75	15	7.5	3.25	10.75	4
78	Spokane, WA	16.25	12.25	10.5	4.25	14.75	5
79	Shreveport, LA	17.25	13	9.25	4	13.25	5
80	Portland-Auburn, ME	20.5	13.75	7.75	2.5	10.25	6
81	Syracuse, NY	16.75	12.75	12.25	5	17.25	6
82	Champaign-Springfield-Decatur, IL	16.75	15.75	10.25	5.25	15.5	5
83	Huntsville-Decatur-Florence, AL	13.75	13.5	9.5	5.25	14.75	6
84	Columbia, SC	22.5	14	7.5	6.25	13.75	5
85	Madison, WI	15.5	15.25	9.75	7.5	17.25	6
86	Chattanooga, TN	14.25	14	10	4.5	14.5	5
87	South Bend-Elkhart, IN	21.5	16.75	7.5		7.5	4
88	Jackson, MS	17.25	14.25	9	3	12	6
89	Cedar Rapids-Waterloo-Dubuque, IA	20.5	17.25	11.25	4.75	16	4
90	Burlington, VT-Plattsburgh, NY	16	15.75	3.25	2.75	6	5
91	Colorado Springs-Pueblo, CO	14.75	14	11.75	7.25	19	4
92	Davenport, IA-Rock Island-Moline, IL	24.25	9.75	9.25	7	16.25	4
93	Tri-Cities, TN-VA	21.75	14	3.5	3.5	7	4
94	Waco-Temple-Bryan, TX	13.5	12.25	7.75	6.5	14.25	4
95	Baton Rouge, LA	21.25	13.5	9.25	6	15.25	4
96	Johnstown-Altoona, PA	17.75	17	4.25	3.5	7.75	5
97	Evansville, IN	17.5	10.75	7.75	7.5	15.25	7
98	Youngstown, OH	18.5	15.5	9.5		9.5	5
99	Savannah, GA	18	9.75	6.5	5.75	12.25	5
100	Harlingen-Weslaco-McAllen-Brownsville, TX	14.5	11.25	10	8.75	18.75	3
101	El Paso, TX	12.5	12	10.25	7.5	17.75	6
102	Lincoln-Hastings-Kearney, NE	18.75	6.75	4.5	4.25	8.75	5
103	Tyler-Longview, TX	17.75	9.75	4.75		4.75	5
104	Ft. Wayne, IN	15.75	14.5	14	6.25	20.25	5
105	Springfield-Holyoke, MA	21.5	12				4

106	Greenville-New Bern-Washington, NC	16.75	15.25	9.25	4.5	13.75	2
107	Ft. Smith-Fayetteville-Springdale-Rogers, AR	15.5	13.5	9		9	4
108	Charleston, SC	18.5	15.25	8	7	15	4
109	Florence-Myrtle Beach, SC	23.25	7.75	4		4	3
110	Reno, NV	13.25	12	8.75	6	14.75	4
111	Lansing, MI	16.75	14.75	5.75	5.25	11	5
112	Sioux Falls-Mitchell, SD	25.75	11	10.25	3.75	14	5
113	Tallahassee, FL-Thomasville, GA	22.25	5.75	5.5	4.75	10.25	4
114	Montgomery, AL	23.75	15.25	5	4.5	9.5	7
115	Augusta, GA	16.75	15	10.5	6.75	17.25	4
116	Peoria-Bloomington, IL	21.25	14.25	9	5	14	8
117	Traverse City-Cadillac, MI	23.25	14	6.25	3.25	9.5	5
118	Monterey-Salinas, CA	18	8.5	7	5.75	12.75	4
119	Fargo-Valley City, ND	18	14.25	12.5	6	18.5	6
120	Santa Barbara-Santa Maria-San Luis Obispo, CA	14.75	8	8		8	4
121	Boise, ID	26	10	9	7.5	16.5	5
122	Macon, GA	28	6.25	5	3.25	8.25	5
123	Eugene, OR	16.25	10.75	9.75	5	14.75	4
124	Lafayette, LA	23	11.5	6.5		6.5	5
125	Yakima-Pasco-Richland-Kennewick, WA	13.75	10.5	9		9	3
126	Columbus, GA	16	13.25	6.75	6.25	13	5
127	La Crosse-Eau Claire, WI	19.25	13	10.75	7.25	18	4
128	Amarillo, TX	15.25	12.75	11.5	5	16.5	4
129	Corpus Christi, TX	16	15.5	9.5	6.75	16.25	5
130	Bakersfield, CA	14.75	8.5	7	3.5	10.5	4
131	Columbus-Tupelo-West Point, MS	20.25	15	6.75	2	8.75	4
132	Rockford, IL	17.5	13.75	9.75	7.25	17	4
133	Chico-Redding, CA	12.5	11.25	9.75	7.25	17	5
134	Monroe, LA-El Dorado, AR	23.25	11.25	4.25	3	7.25	5
135	Duluth, MN-Superior, WI	18.25	14	11.5	4	15.5	4
136	Beaumont-Port Arthur, TX	24	10.5	10.5		10.5	4
137	Wausau-Rhineland, WI	18.75	16.5	9.75	5	14.75	3
138	Topeka, KS	19	15.5	5.75		5.75	3
139	Columbia-Jefferson City, MO	19.5	17.25	7		7	4
140	Medford-Klamath Falls, OR	13.75	11	9.25	5.25	14.5	4
141	Wichita Falls, TX -Lawton, OK	16	11.25	11	5	16	5
142	Joplin, MO-Pittsburg, KS	16.75	15.25	12.75		12.75	4
143	Erie, PA	17	15.75	14.75	4.5	19.25	4
144	Sioux City, IA	22.25	10.5	8.5	7.25	15.75	3
145	Terre Haute, IN	19.5	16.5	3.5		3.5	3
146	Wilmington, NC	23.5	11.25	5.5		5.5	3
147	Albany, GA	27.75	7				4
148	Lubbock, TX	21.75	12.5	10.5	7.5	18	4
149	Bluefield-Beckley-Oak Hill, WV	18.75	8	2.75		2.75	4
150	Wheeling, WV- Steubenville, OH	22.75	14.5				2
151	Rochester, MN-Mason City, IA-Austin, MN	18.25	14	10.75	4.25	15	2
152	Minot-Bismarck-Dickinson, ND	26.75	14.75	3.75	3.25	7	4
153	Salisbury, MD	24.5	8.75				3
154	Odessa-Midland, TX	14.25	11.25	9.5	5.5	15	3
155	Anchorage, AK	25.5	9	6.75	6	12.75	4

156	Binghamton, NY	21.25	6.5	5.5		5.5	6
157	Biloxi-Gulfport, MS	24	4				2
158	Bangor, ME	19.75	19.25	7.75		7.75	7
159	Panama City, FL	18.5	12.25	4		4	5
160	Sherman, TX - Ada, OK	18.5	7.5				2
161	Palm Springs, CA	11.25	10.25				2
162	Abilene-Sweetwater, TX	14.25	12	10.75	3.5	14.25	3
163	Quincy, IL-Hannibal, MO-Keokuk, IA	21.5	17.25				5
164	Gainesville, FL	18.75	6.5	3.5		3.5	3
165	Clarksburg-Weston, WV	17.5	13.25	3		3	5
166	Idaho Falls-Pocatello, ID	20.5	10.75	10	3.75	13.75	3
167	Hattiesburg-Laurel, MS	28	8				3
168	Utica, NY	23.25	7.75	3.75		3.75	2
169	Missoula, MT	19.25	14.5	4		4	4
170	Billings, MT	20	16.75	7.25	4.5	11.75	5
171	Yuma, AZ-El Centro, CA	12.5	7	5.25	4.25	9.5	3
172	Dothan, AL	20.5	6.5	4.25		4.25	5
173	Elmira, NY	18	6.75	4.25		4.25	3
174	Lake Charles, LA	27	5				2
175	Rapid City, SD	14.5	9	5.75	5.25	11	5
176	Watertown, NY	24.5	5				2
177	Marquette, MI	23.25	10.5	5.5		5.5	5
178	Harrisonburg, VA	17.75					1
179	Alexandria, LA	28	5.5	4.75		4.75	3
180	Jonesboro, AR	23.75					2
181	Bowling Green, KY	23	4.25				2
182	Greenwood-Greenville, MS	18	12.75				3
183	Jackson, TN	22.25	2				2
184	Grand Junction-Montrose, CO	18	11.25	10.25	3.75	14	4
185	Meridian, MS	22.75	7.75	6		6	3
186	Parkersburg, WV	23.5					1
187	Great Falls, MT	16.75	10.5	9.75		9.75	4
188	Twin Falls, ID	18.5	3.5				1
189	St. Joseph, MO	18.75					1
190	Lafayette, IN	19					4
191	Lima, OH	27					2
192	Charlottesville, VA	26.25					4
193	Butte-Bozeman, MT	17.75	16	4.75		4.75	2
194	Laredo, TX	24	11	9.75	4.5	14.25	2
195	Eureka, CA	18.75	8.5	8.5	4.75	13.25	3
196	Mankato, MN	18.5					3
197	Cheyenne, WY-Scottsbluff, NE	14.5	5	3.25		3.25	4
198	Ottumwa, IA-Kirksville, MO	18	4.5				2
199	San Angelo, TX	22	9.25	6.5		6.5	1
200	Casper-Riverton, WY	21.5	6.5	6.5		6.5	4
201	Bend, OR	21.75					1
202	Zanesville, OH	20.25					1
203	Fairbanks, AK						4
204	Victoria, TX	15.25	4.75				2
205	Presque Isle, ME	24.5					1
206	Juneau, AK						2
207	Helena, MT	20.25					2

208	Alpena, MI	19.25					1
209	North Platte, NE	27.75	5				2
210	Glendive, MT	18.75					1