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May 23, 2003

Ex Parte Communication

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Re: MB Docket No. 02-277; MM Docket No. 01-317; MM Docket No. 00-244, Radio
Ownership Rules*

Dear Mr. Chairman,

In recent meetings between Commissioners, their staffs, other FCC staff and radio broadcasters, concerns have been raised about the impact of proposals to change the way the Commission defines radio markets on radio companies and the capital market that supports them. As you know, we believe that the record does not support any conclusion that the Commission's existing method of establishing market definitions and its implementation of the radio ownership limits mandated by Congress in 1996 have done anything other than benefit the public interest.

The contour-based definition of a radio market has been in place since 1992, the entire time in which the FCC has defined local radio markets. The radio industry has changed extensively in these 11 years, and radio companies have been built on the foundation of your contour-based market definition. Changing that definition at this point could result in significant disruption. In particular, a radical shift in market definitions would have unpredictable effects on stations in unrated markets.

Nonetheless, recognizing that many believe that some change to the existing rules is warranted, the NAB Radio Board submits the following proposal that we think addresses the problems that are perceived with the existing market definition but does not impose unintended penalties on companies which assembled their existing station complements in good faith.

We believe that adoption of the following proposal would address concerns that have been presented to the Commission, avoid widespread disruption to the capital markets and to investor expectations, and treat existing groups fairly. We think that this proposal can be

justified based on the record. Further, unlike proposals that rely on the use of ratings-based market definitions, this approach does not result in markets that are affected by past and potential future “gerrymandering” by ratings service subscribers.

The NAB Radio Board thus proposes that the Commission:

- Retain for all markets the contour overlap method of defining radio markets and determining whether a proposed combination falls within the local ownership limits, modified by
 - Addressing the so-called “Pine Bluff” anomaly by not including in the count of stations making up a radio market those stations owned by a proposed transferee that would not be counted towards that entity’s local ownership limits;
 - Addressing the “large signal” anomaly by excluding from the count of stations in a market any station – irrespective of service – whose transmitter site is more than 92 kilometers (58 miles) from the area of common overlap of the stations being acquired;
- Grandfather all existing station clusters as long as they remain under their present ownership;
- Permit pre-existing station clusters that would no longer be in compliance with the revised rules to be transferred freely; and
- Apply any new market definition prospectively, so that pending applications will be evaluated based on the market definition existing at the time those applications were filed.

The need for grandfathering and transferability are particularly acute. Every existing station cluster was formed in reliance on the Commission’s existing rules and each transfer needed to create those clusters received Commission approval. It would be strikingly unfair to now change the rules and require those stations to be divested or to limit their owners’ ability to transfer them for full market value. Indeed, limiting transferability could reduce station values and access to capital across the industry.

Adoption of this proposal would be particularly important for owners of radio stations outside of rated markets. Even if the Commission could conclude – and we believe that such a conclusion is not justified – that ratings should be used to establish an economic marketplace for stations in rated markets, there is no basis for believing that various government definitions of general economic market areas accurately reflects competition in local radio. Departing from a contour overlap method of market definition for stations outside of rated markets would have unpredictable effects on stations that are least able to economically weather them. The issue of unrated markets has received little attention in the record, apart from a recognition that an ratings-based system could not be used in unrated markets. Certainly, the Commission should not adopt any wholesale change to the way in which unrated markets are established without a

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further proceeding in which the impact of specific proposals could be evaluated. We note that the Commission in the past has adopted different market definitions for rated and unrated markets. *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755, 2780 (1992).

We will be contacting your office, and those of the other Commissioners, to discuss this proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric Felt". The signature is written in a cursive, flowing style with some loops and flourishes.

cc: The Honorable Kathleen Q. Abernathy
The Honorable Michael J. Copps
The Honorable Kevin J. Martin
The Honorable Jonathan S. Adelstein
Kenneth Ferree
Paul Gallant