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Arbitron Analysis for
Management, Mergers and Acquisitions

Breen Broadcast

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Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Media Ownership Policy Reexamination Proceeding 02-277
Comments of Julian H. Breen

To Whom It May Concern:

By way of introduction, I am a longtime radio broadcast executive with stints at ABC, Avco Broadcasting and Greater Media where I was Vice President/Radio Programming for twenty years. Since 1995, I have operated my own firm providing consultation and ratings analysis services to the radio industry.

I have watched the developing media ownership policy reexamination with great interest as a student of mass media as well as someone who was affected by the radio consolidation spawned by the Telecommunications Act of 1996.

Going forward, it is clear to me the process of counting outlets in one form or another as the foundation of the FCC's media ownership policies is inherently flawed because it makes the tacit assumption of media equality— ergo, that one station in a given service is approximately equal to another in providing voices to the public.

The truth is just the opposite since there is a vast difference between the coverage, and resulting influence, of a one kilowatt daytime AM station and a 50,000 watt AM station or a Class B or C FM. Even though the Commission has recognized these differences in television in its calculation of the population coverage of VHF television stations vs. UHF television stations, the actual effect in the marketplace is very difficult to quantify because of the distortions wrought by cable carriage and other factors.

So, in my opinion a new approach is needed which is not related to the number of physical outlets, but to some other measurable attribute which is flexible enough to be applied across markets both large and small and which recognizes the interaction of media as diverse as newspapers, radio stations, television stations, cable television, and newer media such as the Internet which are clearly in a developing mode. At the same time, such an approach should allow a reasonable degree of growth in media ownership among economically healthy companies while still preserving enough diversity of ownership to prevent a small number of interests from monopolizing the news and information presented to the public and to promote competition for advertising dollars.

For that purpose I propose considering total revenue as the measurement of choice since, both generally and specifically, total revenue is an excellent index of the influence of a given medium as well as the influence of a company owning multi-media assets. Revenue in media is related to circulation which, in turn, is related to influence in the society.

In order to frame potential rules, it is necessary to at least suggest an underlying principle as a goal. To that end, I recommend considering the ancient principle of "two's company, three's a crowd" and recommend three economically healthy competitors as the absolute minimum level of competition among ownerships in a market in each media sector.

To flesh out the notion in real world terms, in any market no one entity would be permitted to control more than 33% of the revenue generated in the media sector or sectors in which it chooses to compete.

For example:

1. An entity which chooses to compete only in radio would be permitted to acquire as many stations as it pleased, AM and/or FM, so long as its control of the radio revenue in the market did not exceed 33%.

2. For entities choosing to compete in both radio and television, the limit of 33% of revenue would be applied to the combined radio and television revenue in the market with no limit on the number of stations.

3. For radio, television and daily newspaper competitors, the 33% limit would be applied to the combined total radio, television and daily newspaper revenue in the market with no limit on the number of outlets.

4. A cable company could also join the party on the same basis and could own newspapers, radio stations, television stations, and cable systems without limit so long as its total revenue from all sources did not exceed 33% of the total revenue of the combined media sectors.

This proposal has great flexibility. If, perhaps, the revenue of network-affiliated television stations decreases over time as circulation decreases, as many observers expect, television station owners could buy additional stations so long as they stayed under the 33% revenue cap for the media sector or sectors in which they choose to compete.

Now, let us consider the problem of market definition. The radio and television ratings services, responding to the needs of their customers, have done an excellent job of defining markets, and I recommend those market definitions be used by the Commission insofar as possible.

1. For radio markets: The Arbitron Metro. If there is no Arbitron Metro, then the county in which the station's city of license is located plus all contiguous counties.

2. For television Markets: The Nielsen Designated Market Area. If no DMA, same as radio.

3. For daily newspapers: Any county in which the newspaper offers home delivery.

4. For combinations: All counties included in the market definition of each medium.

Should any of these market definitions produce illogical results, as they would for radio stations with directional or limited coverage, the Commission could entertain petitions for exceptions.

On the national level, the same broad principles could be applied, so that companies owning television networks could own as many television stations as they pleased so long as they remained under the 33% total revenue cap for the media sectors which they chose to enter.

My recommendation for implementation is to grandfather all existing combinations for five years. This would also probably allow time for the inevitable litigation to run its course through the courts.

At the end of five years, any combinations generating revenue in excess of the cap would have to come into compliance through either acquisition or divestiture. A radio-only company which is over the 33% revenue cap in radio might buy a poorly performing television station and would drop below the cap on a television and radio combined revenue basis. The same company could also choose to divest radio assets to come into compliance.

Any new combinations would need to be in compliance at formation.
All combinations would be evaluated at five year intervals going forward and would be required to come into compliance by acquisition or divestiture.

The FCC would need to be empowered to collect any data needed for the implementation of these rules.

Obviously, additional consideration and case law would flesh out the precise application of these ideas in varying circumstances. This is not a one-size-fits-all proposal.

It is, however, a proposal for the adoption of broad principles of permitting the growth of media firms across media sectors while simultaneously limiting their market power based on their revenue in the media sector or sectors in which they choose to compete, thus promoting diversity for both the public and for those who buy advertising.

Sincerely,

Julian H. Breen
Proprietor

JHB/