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A Defining Moment in Radio?

Permitted *Ex Parte* Presentation
MB Docket No. 02-277; MM Docket Nos. 01-235, 01-317, 00-244

Key Points

*** FCC Likely to Change Radio Market Definition. The FCC is considering changing the way it defines a radio market to one centered on Arbitron's Metro concept rather than one based on signal contours. Some at the FCC and Congress are concerned with the inconsistency of the "contour" approach and this method's contribution to significant concentration in some radio markets.

*** A Defining Moment for Radio? We believe that the FCC is committed to finding a "market-based" approach to defining radio markets and that the FCC wants changes to lead to as little disruption of the current structure of the radio marketplace as possible.

*** Chairman for the Day? In rated markets, we suggest that the FCC 1) use Arbitron's Metro market areas and BIA Financial Network data, 2) count all commercial and non-commercial stations, 3) permit "grandfathering" and transferability of non-compliant clusters and 4) make revisions to current ownership tiers. Our proposal considers the FCC's competition, diversity and localism goals.

*** Jamming Radio's Signals? Minimally. We analyzed the top 3 radio operators in the top 200 radio markets and found that in 66 markets, radio operators would theoretically have to sell 136 stations. This would represent approximately 1.7% of the 8,111 radio stations in the top 200 radio markets.

*** Should FCC Change a Successful Policy? Nearly 9,700 radio stations have sold for $125 billion-plus since 1996's Telecom Act with little agitation from listeners. Additionally, the radio industry is now quite healthy. Radical changes to the market definition could disrupt the acquisition and dispositions of radio stations, various markets' competitive positions and the debt and equity markets.

Please read the important disclosure information on the last page of this report.

Our Proposal to Change the Radio Market Definition – If a Change in the Rule is Necessary. Today, we are submitting a proposal addressing how the Commission might address changes to the radio market definition, if indeed, the Commission is committed to doing so.

Our Summary Assumptions

- **We are Assuming the FCC Wishes to Make Changes to its Market Based Definition.** Our assumption is that the FCC is considering changing the way it defines a radio market to one centered on Arbitron's Metro concept rather than one based on signal contours. Some at the FCC are concerned with the inconsistency of the "contour" approach and this method's contribution to significant concentration in some radio markets. Also, we believe that the "contour-based" solutions do not resonate with "the Hill".
- **We are Assuming that the FCC Wants to Minimize Disruption to the Current Marketplace.** We believe that the FCC is committed to finding a "market-based" approach to defining radio markets that will lead to as little disruption to the current marketplace as possible.

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- **We are Trying to Acknowledge the FCC's Diversity, Competition and Localism Goals.** In developing our approach on the radio market definition, we also tried to keep the FCC's bedrock diversity, localism and competition goals in mind.
- **Under New Ownership Rules, Radio May Again be at a Disadvantage.** With good prospects for significant relaxation for newspaper-broadcast, TV duopoly and national station ownership caps ahead, radio stations, which capture only approximately 14% of measured media dollars, may feel more pressure from a consolidating broadcast television (which captures 33% share of measured media) and newspaper (which captures 36% share of measured media) business. Any change to radio ownership rules should not make radio worse off competitively. It could be argued that radio ownership rules should add more flexibility of ownership, not less.

Our Summary Proposal – Defining the Market and its Players. Given the assumption stated above, we would propose that the FCC consider the following proposal in rated markets:

- **Rely on Metro Concept to Define Each Rated Market.** Radio is arguably the most local of any media. Local stations capture a disproportionate share of local market listening and revenue. Metros generally reflect the same geographic areas the U.S. Government reflects in the census. For all these reasons, we believe a distinct local market approach, using Arbitron's Metro concept, is appropriate.

- **Use BIA Data for Measuring Number of Stations in a Given Market.** We recommend using BIA – Media Access Pro data to determine how many stations are in a particular radio Metro market. BIA relies on Arbitron-defined markets for analysis. BIA includes all commercial and non-commercial stations in its database. BIA has been publishing its Investing in Radio publication for 15+ years and has had its Media Access Pro database in place for nearly 8 years.

- **Use a "Metro Market" Approach.** In our analysis, we blend the Arbitron and BIA data into a concept we refer to as the "Metro market" approach. This relies on Arbitron's Metro definitions and BIA's interpretation of the number of radio stations that effectively reside in each Metro. BIA assigns every radio station to just one market. Hence, the Metro (Arbitron) market (BIA) approach. A station is assigned to a Metro by BIA if a) it is licensed to a county in the Metro, b) is designated by a broadcaster to be a part of a specific Arbitron Metro (and therefore in the eyes of BIA as well) or c) because BIA believes that a particular station has influence in a specific Metro.

- **Count all Commercial and Non-Commercial Stations in a Market.** We believe that the FCC should count all commercial and non-commercial radio stations in each Metro market. Counting all stations reflects the real radio diversity in the market and is consistent with current TV duopoly rules.

- **Results of Our Proposal.** In the top 100 markets, we believe that an operator will be able to own up to eight radio stations in 41 markets, own up to seven radio stations in 43 markets, up to six radio stations in 12 markets and 5 or less in 4 markets.

- **Impact to Radio Operators.** If we use a tier structure similar to that used currently, which was based on a contour test to calculate the number of radio stations in the "market", we believe that there would be "non-complying clusters" in 66 of the top 200 radio markets, which would theoretically involve 136 stations owned by 32 different radio broadcasters. These stations represent approximately 1.7% of all commercial and non-commercial radio stations (8,111) in the top 200 markets.

Our Summary Proposal – Adjust the Ownership Tiers. In addition to basic "market-based" changes, we believe that the Commission should also consider the following policy considerations:

- **Create a New Top Ownership Tier for Markets with 55+ Radio Stations.** We would recommend that the Commission create a new top ownership tier in radio for markets with 55+ radio stations. We believe that radio owners should be able to own up to ten radio stations and six of any one service in these markets. We believe that approximately 20 radio markets (out of 286 Metros) would qualify for this new tier.

- **Adjust the Tiers to Reflect Significant Change in Market Station Counts Under Contour Based-Tests Relative to Market-Based Tests.** Since 1992, the Commission has used a contour-based test to determine how many radio stations competed in a radio marketplace. In general, these contour-based tests led to extremely large numbers of radio stations being recognized in many radio markets. Under our Metro-market approach, stations counts in each market fall significantly relative to contour tests, in general, we believe. In 33 markets in which we compared the "contour-based" count relative to the Metro-market approach, on average, the Metro-market approach had nearly 48% fewer radio stations than did the contour-based approach.

It would seem inconsistent to leave static ownership tiers in place while dramatically altering the station base count (the denominator). To adjust to this much smaller station count, we suggest adjusting each existing tier downward by 5 stations.

- **Impact to Radio Operators.** If we use our adjusted tier proposal, we believe that there would be "non-complying clusters" in 64 of the top 200 radio markets, which would theoretically involve 107 stations owned by 30 different radio broadcasters. These stations represent approximately 1.3% of all commercial and non-commercial radio stations (8,111) in the top 200 markets. This is the least disruptive proposal to the industry.

Our Summary Proposal – Permit "Grandfathering" and "Transferability". In addition to basic "market-based" changes and proposal to adjust the ownership tiers in radio, believe that the Commission should "grandfather" non-compliant station groups and allow for these clusters to be transferred intact (permit transferability).

- **Existing Transactions Were Done Legally.** When all of the current radio transactions were negotiated, approved, funded and now, operated, the radio operators did transactions that were fully compliant with the FCC's own internal standards for radio market definitions and Congress' tacit approval of that standard as adopted in the Telecommunications Act of 1996.

- **Changes Would be Disruptive to Radio Marketplace and Capital Markets.** We believe a significant change to the radio market definition would be disruptive to the acquisition market, the relative competitive position of broadcasters in a given market, the disposition marketplace and the capital markets (bank debt, bonds and equity). "Normal course of business" activities, such as a public offering, a merger between two companies and the death of a majority stockholder should not trigger divestitures.

Our Proposal – Other Issues. Lastly, as we ran through the various likely scenarios that we could conceive of in the marketplace, we would also propose the following:

- **Have Different Ownership Options in Radio's Four Major Embedded Markets.** There are only four major market radio Metros (out of 286 total radio Metros) that have "embedded" radio markets within them. These include the New York City, San Francisco, Washington, D.C. and Providence-Warwick-Pawtucket markets. [For information, there is a fifth radio market, Portsmouth-Dover-Rochester, NH's (market 116) which has an embedded market. We will not include this market in our discussion given its size.] In embedded markets, we believe that the Commission should allow operators to choose whether they want to have consolidation opportunities in the large "parent" market (New York City, for example) or middle/small markets that are embedded in the "parent" market (Middlesex-Somerset-Union, NJ, Monmouth County, Westchester, Morristown and Stamford-Norwalk). Our proposal would allow an operator to own stations in the "parent" market but severely restrict that operator's ability to own stations in the "embedded" markets. Operators that wanted to focus on the mid to small "embedded" markets could own a full complement of stations in each embedded market.

- **Allow Operators to Fully Compete with "Grandfathered" Clusters.** When a market-based test is applied, by its nature (since it has fewer stations in the market than would contour tests), some markets will "tighten-up" and operators will theoretically be able to own fewer stations under market-based tests than they were under "contour-based" tests. We have identified 10 such markets in the top 75 markets alone (Cleveland, OH, Orlando, FL, Austin, TX, New Orleans, LA, West Palm Beach, FL, for example). However, "grandfathered" operators will potentially have permanent competitive advantage relative to all station group owners who are not "grandfathered". We believe that the Commission should permit broadcasters in a "grandfathered" market to compete fully by allowing other radio operators in the market to assemble station groups of equal size as the "grandfathered" cluster.

- **Allow Pending Transactions to Proceed Under Existing Rules.** The acquisition marketplace is extremely active and there are many negotiated transactions pending in front of the Commission. Companies have invested substantial time and effort in deals that might be prevented if the FCC changes its rules in midstream. We believe that the FCC should "grandfather" existing radio transactions that are already pending.

Background: The Issue Confronting the Federal Communications Commission – How to Deal with Contour-Based Tests.

FCC Contemplates Change in Radio Market Definition. The Federal Communications Commission is considering changing the way it defines a radio market to address some Commissioners' concerns that the consolidation of radio has created questionable levels of ownership concentration and anomalies in the numbers of radio properties some companies have been able to amass in some radio markets.

In February 1996, the Congress passed the Telecommunications Act of 1996, which liberalized the national and local ownership rules for the radio industry.

As part of the Telecommunications Act of 1996, nationally, radio operators' ownership limits were eliminated. The industry faced no national ownership caps, which marked quite a change from pre-Telecommunications Act levels of 40 nationwide.

On a local basis, rules were modified dramatically as well.

On a local basis, the Telecom Act allowed the following:

- In markets with 45 or more radio stations, an operator can own up to 8 commercial stations (up to five FM or AM stations as part of that group of 8 stations),
- In markets with 30-44 stations, an operator can own up to 7 commercial stations (up to four FM or AM stations as part of that group of 7 stations),
- In markets with 15-29 stations, an operator can own up to 6 commercial stations (up to four FM or AM stations as part of that group of 6 stations),
- In markets with 14 or fewer stations, an operator can own up to 5 commercial stations (up to three FM or AM stations as part of that group of 6 stations) or 50% of the market's radio properties, whichever is less.

As the Commission enters its sixth year with the Telcom Act as its guiding light in radio, questions have arisen as to:

- The methodology by which radio markets are determined and measured,
- Whether the current structure in some radio markets is acceptable,
- What to do to measure radio markets in the future and
- Whether or not changes in the definition of the radio market would be disruptive to the current structure of the radio industry and the capital markets that support the industry.

Obviously, the change in market definition has been "on-the-table" for some time, with little momentum. However, some FCC Commissioners would like to see changes to this definition addressed as part of the media rulemaking that is expected on June 2, 2003.

A Long-Standing Issue: FCC Proposed Changes to Market Definitions as Part of December 13, 2000 Notice of Proposed Rulemaking. On December 11, 2000, we first wrote about this subject in 4Q 2000's research piece, "FCC Tries to Make a Market in Radio". The issue of the definition of a radio market was part of the FCC's December 2000 Notice of Proposed Rulemaking (NPRM) which sought comments on proposals to:

- Significantly modify its method of defining radio markets,
- Significantly modify the method of counting the number of radio station in a market, and

- Significantly modify the method of counting the number of stations an entity can own in a marketplace.

On Friday December 13, 2000, the FCC issued a press release notifying the public of a Notice of Proposed Rulemaking (NPRM) adopted on December 6, 2000 which sought comments on whether and how the FCC should "modify its existing definition of radio markets and the methods it uses in counting radio stations for purposes of applying its ownership rules."

The FCC had first hinted at addressing this topic in the Commission's Biennial Review which was issued on May 30, 2000 (please see our note issued on May 31, 2000 entitled "FCC Issues Biennial Review. Newspapers, Hurry Up and Wait.")

In the May 2000 Biennial Review, the FCC said it would undertake an NPRM to determine how to prospectively determine how many local radio signals there were in a particular market to determine how many stations a local radio operator may own. This concern was initially formerly addressed in the December 6, 2000 NPRM.

You may recall that at that time, we had expected that the Commission would take up this issue at an open meeting of the Commission on December 7, 2000. We had arranged a conference call on the issue and cancelled it when we had heard that the Commission had pulled the item from the Agenda the night before the meeting.

When the Commission failed to hold a formal public meeting on the issues, we then expected that the Commission would agree to vote on the NPRM on "circulation" (the Commission circulates an item, and agrees on an issue outside of the formal open meeting structure) and issue press releases on the matter on Friday, December 8, 2000. However, a final vote and order was never issued.

In 2000, the radio market definition issue was particularly important to Commissioners Gloria Tristani and Susan Ness. In fact, in Commissioner Tristani's statement she stated that she had first wanted to address the issue of changing the definition of radio markets on August 14, 1998 when she and Commissioners Ness made a joint statement concerning the lack of a consistent definition of a radio market.

Commissioner Tristani 's December 7, 2000 statement evidenced her frustration with the current radio market definition. She said "real listeners in real communities have been harmed by a consolidation of the airwaves that should not have been permitted to take place."

She cited the markets of Omaha, Wichita, Youngstown, Portland, ME, Pine Bluff, AR and Augusta, ME, writing, "listeners have been deprived of the broadcast diversity to which they are entitled and which the Commission is duty-bound to ensure."

The entire Commission concurred that the definition of a radio market should be improved so that it was more reflective of appropriate market conditions. However, then Commissioner Powell expressed some concern that the FCC not undermine Congressional intent.

Then Commissioner [now Chairman] Powell "cautioned the Commission to avoid using the rulemaking process as a means to circumvent specific statutory provisions and effectuate a different result than Congress intended." While Commissioner Powell concurred in seeking to correct "what may be an arbitrary *counting* methodology", he appeared concerned that the numerical limits that Congress put in place should prevail.

Let us use a real life example, Pine Bluff, Arkansas to illustrate the FCC's concerns.

A Problem of the Numerator and the Denominator? When it comes right down to it, some members of the Commission believe that in certain radio markets, operators have been able to accumulate significant levels of radio properties because of anomalies in the FCC's current treatment of how to count the number of radio properties in a marketplace.

The current view of the definition of a radio market came from the Federal Communications Commission itself. In 1992, the Commission, in its response to the declining prospects of the radio industry (it was estimated that 60% of all radio stations were losing money in 1991), instituted its first duopoly rules.

These rules allowed an operator to own up to 2 AM stations and 2 FM stations in the same market and own up to 40 stations nationwide. In 1992, as part of these rule changes, the FCC adopted changes in how it defines radio markets, taking an engineering/signal contour approach to the market, choosing not to adopt a standard based on an advertising/business approach to the market.

In the creation of its market test, to which all future radio transactions would be tested for compliance, the FCC had to determine three simple things:

- What constituted a radio market?
- How many radio stations were in the radio market?
- How many radio stations can a broadcaster have in a particular market?

While these questions may seem simple, the task is more daunting than one might think.

The Numerator: Defining a Radio Market. In order to determine how many radio stations an operator can own, the FCC must first assess how many radio stations are in a particular market.

In its rules, the FCC, under Section 73.3555(a)(1) defines a radio market as the area encompassed by commonly controlled radio stations having overlapping principal community contours.

In order to better understand the practical application of this approach, we use a "real-life" example of the Pine Bluff, Arkansas radio market, one of the radio markets which has caused the FCC to reassess its definition of the radio market itself.

Citing a section of a memorandum written on the subject written by one of the nation's pre-eminent communications law firms, Wiley, Rein & Fielding:

"Citing the Pine Bluff case (Pine Bluff Radio Inc., 14 FCC Rcd 6594 (1999), the Commission states its belief that this methodology (relying on overlapping principal community contours) sometimes understates the number of stations owned by a party.

In Pine Bluff, Seark Radio, Inc., which had an attributable interest in 3 stations in the Pine Bluff, Arkansas area (depicted in Exhibit One as stations SR1, SR2 and SR3), sought to purchase from Pine Bluff Radio Inc., 3 more radio stations in the same area (depicted in Exhibit One as PB1, PB2 and PB3).

The contours of 5 other stations overlapped with one or more of the stations involved in the transaction (Exhibit One depicts these stations collective as X).

A petitioner, who objected to the acquisition, argued that by having an attributable interest in 6 (i.e. S1, S2, S3, PB1, PB2 and PB3) out of 11 radio stations in the market, the combination violated the 50% rule (since the radio market had less than 14 radio stations, an operator is allowed to own up 5 radio stations or 50% of the markets stations, whichever is less. In essence, the petitioner argued that the combined companies should only be allowed to own 5 radio properties).

In denying the petition, the Commission noted that under its radio market definition the 6 stations formed 3 separate markets, each which complied with the rules."

Lets look at how the Commission reached its determination.

As Exhibit One suggests, the Pine Bluff market was, under existing FCC rules, comprised of 3 distinct radio markets:

- Market One is comprised of the following stations: S1, PB1, PB2, PB3, X1, X2, X3, X4 and X5. All of these stations' signal contours overlap. So in this radio market, there are 9 radio stations. So an owner could own up to 4 radio stations in this market (50% rule comes into play again). Seark Radio's proposed ownership of four radio

stations (S1, PB1, PB2 and PB3) in this part of the Pine Bluff, AK radio market was therefore compliant with FCC rules.

- Market Two is comprised of PB3, S2, X1, X2, X3, X4 and X5. All of these stations' signal contours overlap. So in this radio market, there were 7 stations. So an owner could own up to 3 radio stations in this market (50% rule). Seark Radio's proposed ownership of two radio stations (PB3 and S2) in this part of the Pine Bluff, AK radio market was therefore compliant with FCC rules.

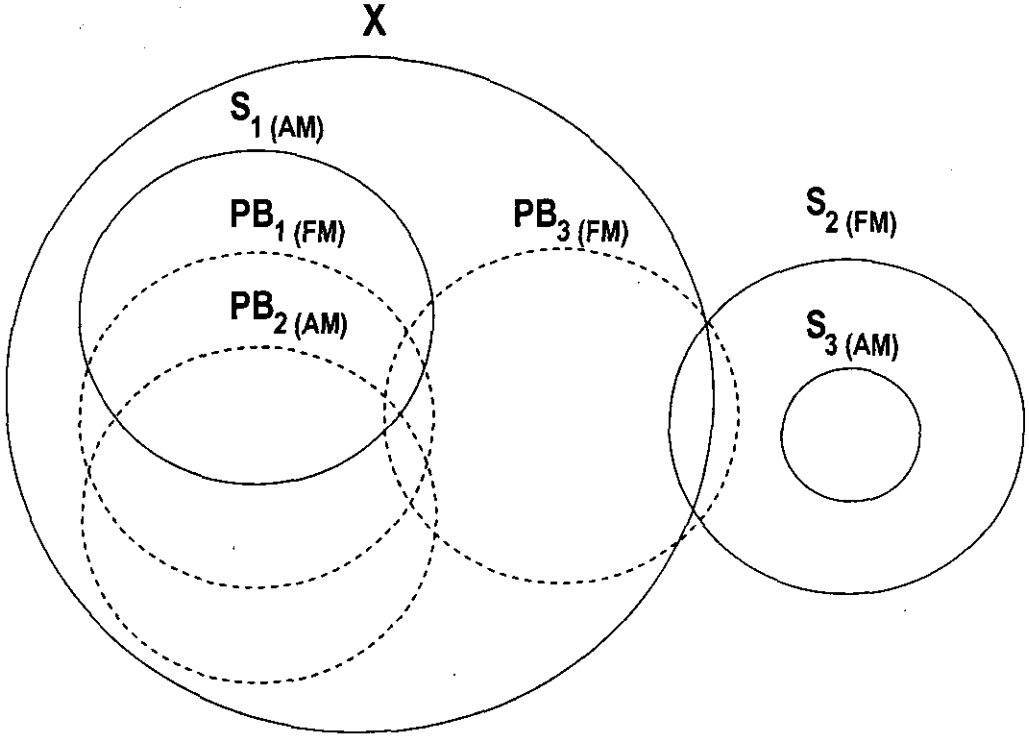
- Market Three is comprised of S2, S3, PB3 and one of the other five radio stations in the market, X1. So in this radio market, there were 4 stations. So an owner could own up to 2 radio stations in this market.

And now for some additional complexity.

As the Wiley, Rein & Fielding memo continues: "Particularly in Market 3 (consisting of S2 and S3), however, the Commission expressed concern that an anomalous result had been achieved. In Market 3, because the PB3 contour overlapped that of only one of the Seark-owned stations forming the market, PB3 was considered a station "in the market" (i.e., in the denominator), but not as one of the proposed Seark-owned stations in that market (i.e., in the numerator) for purposes of determining compliance with the 50% rules.

As a result, Seark was deemed to have an attributable interest in only 2, not 3, of the 4 stations in the market and therefore could own S2, S3 and PB3 (in a market with only four radio stations).

Exhibit One



S = Station already – attributable to Seark	**Market 1:** $S_1/PB_1/PB/_2PB_3$
PB = Station being purchased by Seark from Pine Bluff Radio, Inc.	**Market 2:** PB_3/S_2
	Market 3: S_2/S_3

The FCC has been referring to this counting consistency (or should we say inconsistency) issue, where an applicant's station is counted as being "in the market" because its contour overlaps the contour of at least one of the stations that

create the market, but is not counted as a station owned by the applicant in the market because its contour does not overlap the contours of *all* of the stations that define the market, as the "Pine Bluff problem" or the numerator/denominator problem."

The Denominator: Determining the Number of Radio Stations in a Particular Radio Market. Again, we quote from the Wiley, Rein & Fielding memo and use yet another example radio market to make our point: "Section 73.3555(a)(3) of the rules counts a station "in the market" if its principal community contour overlaps with that of one or more of the commonly owned stations whose contours form the market.

In Exhibit Two, "radio stations 1-3 and D are in the ABC market because their contours overlap with those of one or more of the stations forming the ABC market because their contours *overlap with one or more of the commonly owned stations whose contours form the market.* Stations A, B and C are also counted in the ABC market, thus the number of radio stations in that market (ABC) totals 7.

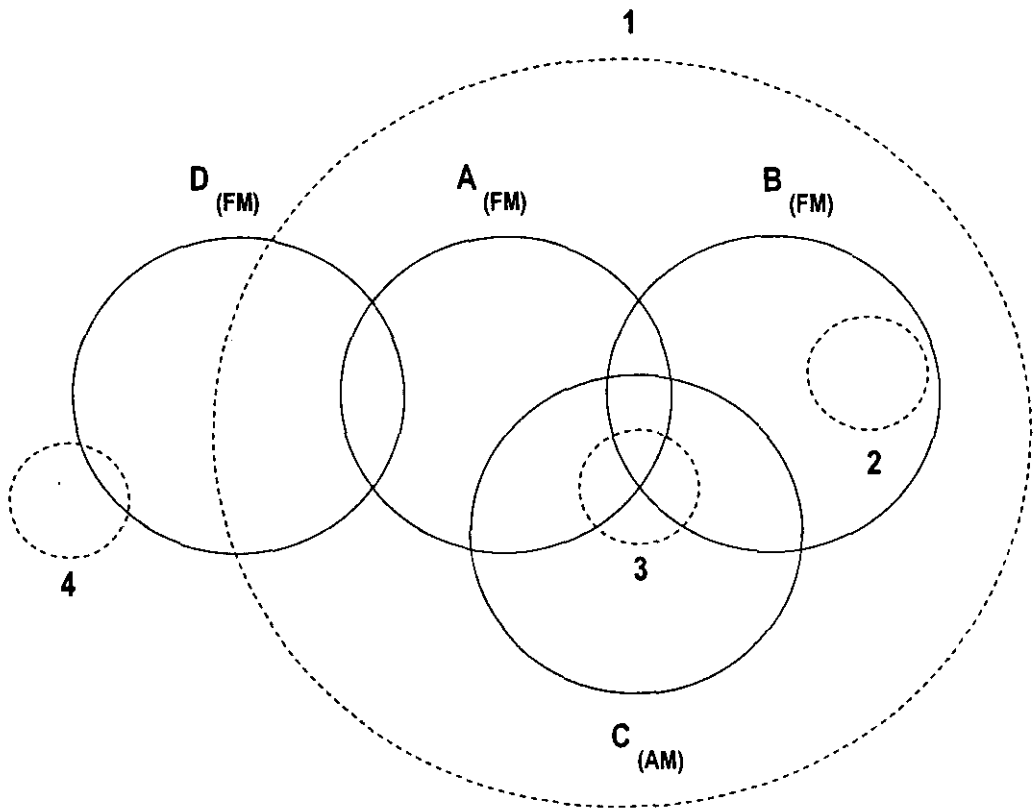
Stations A-D, 1, 3 and 4 are counted in the AD [radio] market. [Again, this implies that there are 7 radio stations in the AD radio market.]

Common ownership of A, B, C and D thus comports with the 50% rule because in the ABC market the applicant will own 3 of 7 stations [own A, B and C in a market which consists of A, B, C, D, 1, 2 and 3) and in the AD market the application will own 2 of 7 stations (own A and D in a market which consists of A, B, C, D, 1, 3 and 4).

This counting methodology, asserts the Commission, "sometimes leads to results that are completely at odds with commercial market definitions and economic reality, and may undermine the structure of the statute to allow levels of ownership that increase commensurately with the size of the market." In particular, this method of defining a market overstates the number of stations "in the market" (i.e., the denominator).

The agency notes several instances in which Arbitron included in a market substantially fewer stations than were included using the Commission's counting methodologies.

Exhibit Two



Time for a Change? The Federal Communications Commission Considers Moving to a Market-Based Test Rather Than Relying on One Based on Signal Contours.

The FCC's Goals to Adopt a New Radio Market Definition are Laudable: Goal is to Move to a Market-Based View of Radio While not Disrupting the Current Marketplace. We believe that the Michael Powell-led Commission is interested in finally dealing with an issue that has been "bubbling under the surface" of the FCC for more than three years.

In addition to the numerator/denominator issues, we believe that FCC is also trying to deal with the inconsistencies that the "contour" approach created in determining how many radio stations existed in any given market.

In the past, under the "contour" approach, companies were required to submit engineering studies which showed the FCC that stations were to be acquired and how many stations were in the market.

Since this analysis was based on the contours of radio properties, each acquisition in a market could generate different determinations on how many radio properties were in the very same market; acquirers of large signals (Class A AM stations or Class C FM stations) often concluded that there were far more radio stations (as measured by overlapping signal contours) than did the acquirers of smaller radio properties in the same market, which had smaller signal contours.

This led to inconsistencies in station counts in the same market (one operator that owns a large AM signal in Denver represented there were 121 relevant stations in Denver, while another operator, which did not operate a large AM station in Denver reported only 72 stations in the market – that's a 49 station disparity in the same market).

Perversely, this allowed radio operators with stronger signals more flexibility in owning radio properties. Also, it suggested that a particular radio market had a range of stations in it, not a specific number of stations. This caused frustration within the Commission, we believe.

In addition, we believe that the "contour approach" to defining the radio market definition is too cumbersome for the Congress to grasp easily. The contour test seems unpopular with the "Hill".

With this in mind, we believe that this Commission seeks two central goals in clarifying radio ownership rules:

- **Find a Market-Based View of the Radio Industry.** Ideally, we believe that the Powell Commission would like to permanently move away from the reliance on station contours to determine the number of radio properties in a marketplace. We believe that the Commission would like to move to a market-based approach rather than a contour-based approach, in general.

- **Adopt Changes that Will Generally Not Disrupt the Current Radio Marketplace.** We believe that the current Michael Powell led Commission would ideally like to adopt rules that will be as least disruptive to the current marketplace as is feasible.

If We Were Chairman of the FCC for the Day: Offering a Market-Based Proposal

If We Were Chairman for the Day, and If Changes to the Radio Market Definition are Necessary, We Offer the Following Market-Based Solution. Ultimately, we do believe that the Commission is committed to make changes to its radio market definition, moving from a reliance on radio contours to a definition that relies on standards that are more market (radio markets) driven.

Our Assumptions:

- **We are Assuming the FCC Wishes to Make Changes to its Market Based Definition.** Our assumption is that the FCC is considering changing the way it defines a radio market to one centered on Arbitron's Metro concept rather than one based on signal contours. Some at the FCC are concerned with the inconsistency of the "contour" approach and this method's contribution to significant concentration in some radio markets. Also, we believe that the "contour-based" solutions do not resonate with "the Hill".
- **We are Assuming that the FCC Wants to Minimize Disruption to the Current Marketplace.** We believe that the FCC is committed to finding a "market-based" approach to defining radio markets that will lead to as little disruption to the current marketplace as possible.
- **We are Trying to Acknowledge the FCC's Diversity, Competition and Localism Goals.** In developing our approach on the radio market definition, we also tried to keep the FCC's bedrock diversity, localism and competition goals in mind.
- **Under New Ownership Rules, Radio May Again be at a Disadvantage.** With good prospects for significant relaxation for newspaper-broadcast, TV duopoly and national station ownership caps ahead, radio stations, which capture only approximately 14% of measured media dollars, may feel more pressure from a consolidating broadcast television (which captures 33% share of measured media) and newspaper (which captures 36% share of measured media) business. Any change to radio ownership rules should not make radio worse off competitively. It could be argued that radio ownership rules should add more flexibility of ownership, not less.

Our Proposal – Defining the Market and its Players. Given the assumption stated above, we would propose that the FCC consider the following proposal in rated markets:

- **Rely on Metro Concept to Define Each Rated Market.** Each Metro contains an economic "core" city/town and a group of counties that are associated with that Metro "core" city/town. In many cases, the Metro reflects the same geographic areas the U.S. Government reflects in the census and is reasonably linked to the geographic areas identified by the Office of Management and Budget (OMB) and Metros in a sense are "self-correcting". Here is why we like the Metro radio market concept:

  - **Metros are "Self-Correcting".** Here's what we mean by "self-correcting". Arbitron Metros can differ from OMB Metros in two respects:

    - **Census Data Can Change Metro.** New Census data can change the shape of a Metro market in the eyes of the OMB, so a Metro can be influenced by changes at the Census level. Local stations can choose to alter the Arbitron Metro to be consistent with the Census. [See the next point.]

    - **Radio Companies Can Petition Arbitron.** Radio companies can also petition Arbitron, as part of Census changes or in an attempt to add counties to a Metro by arguing that the local market meets certain listenership (55% of the proposed county's radio listening is within the proposed Metro) and commuting (15% of the county commutes into the proposed Metro) tests. Also, 75% of subscribers also must also agree to any change in the Metro definition. So the definition of the Metro can change with the reality of the marketplace.

    These two methods allow a certain "self-correcting" aspect to the Metro, reflecting changes in population and a Metro's influence on counties near the Metro.

  - **Top Owners of Local Stations Capture Disproportionate Share of Audience.** Another supporting argument for our "Metro market" view is that the largest groups of local radio stations capture the

disproportionate share of the local markets' listening shares. Exhibit 3 lists the top 100 radio markets and the top three players in each market. In the summary statistic box included at the bottom of the Exhibit implies, we believe that these players capture approximately 58.9% [the mean] of the local markets' audience share.

- **Top Owners of Local Stations Capture Disproportionate Share of Ad Revenue.** Another supporting argument for our "Metro inclusive" view is that the largest groups of local radio stations capture a disproportionate share of the local markets' advertising shares. Exhibit 3 lists the top 100 radio markets and the top three players in each market. In the summary statistic box included at the bottom of the Exhibit implies, we believe that these players capture approximately 82.9% [the mean] of the local markets' audience share.

Exhibit Three: 100 Largest Radio Markets - Revenue and Audience Share of Top Three Players

	Top Three Total Cluster Revenue Shares	Top Three Total Cluster Audience Shares	Top Three Total Cluster Oversell
Median	82.9%	58.9%	132.3%
Average	81.1%	55.5%	146.1%

Source: BIA - Investing in Radio; Bear, Stearns & Co., Inc.

Note: *The mean is the average of the mid-points of all of the revenue, audience and oversell data.*

These data imply two conclusions, in our estimation:

a. "In-market" operators capture a disproportionate amount of revenue from a given radio market, implying that there is proportionately not as much revenue left for other players outside the market. In other words, "out-of-market" players are probably not as significant in competing for local dollars as are "in-market" players.

b. As Exhibit 3 suggests, the median ratio of advertising revenue share to audience share for the top 100 radio markets approximates 1.32 (132%), implying that the top three "in-Metro" radio players' revenues approximated 132% of their audience share. This ratio is called the "oversell" ratio (the ratio of ad share to audience share). High "in-Metro" oversell ratios could imply that local audiences are more valuable to local advertisers than are out-of-Metro listeners.

- **Radio is the Media Most Dependent on Local Business.** While it is true that there is significant "out-of-market" listening in within some radio markets, the radio business, more than any other measured media, is a local medium. Industry wide, 78% of the radio industry's revenues are derived from local advertisers. So we believe a "Metro market" approach has credibility from this angle as well.

- **Metro Market View Would be Consistent with Current TV Rules' Precedence.** To a certain extent, the Commission also has to deal with precedent. In the TV marketplace, for ownership purposes, each television property is assigned to only one DMA. Obviously, there are TV markets that have out-of-market viewing as well.

For example, in the Baltimore TV market, approximately 5% of TV viewing (and 8% of over-the-air broadcasting when adjusted for cable network viewing) comes in from the Washington D.C. DMA. However, the Washington D.C. TV stations do not count in Baltimore's TV DMA count.

Essentially, we are asking whether a radio station can have two home markets. If a station carries "below the line" influence in a given Metro, this could imply that the radio station should count as a station in both the Metro in which the station's city of licensee is located and in another adjacent market.

Can one station have equal weight in both radio markets? It seems doubtful that a radio station has equal influence in two completely different marketplaces.

Lastly, the Commission argued in its August 1999 rulemaking that TV stations with overlapping Grade B contours which operate in different DMAs should be allowed to combine because it was concluded that the two TV stations do not compete in the same DMA. Our "Metro market" approach for radio would be consistent with this approach.

- **Isolating Metro Makes Sense: If FCC Counts "Out-of-Metro" Radio Stations, The Numerator-Denominator Issue Will Likely Raise its Head.** Another practical reason to isolate one radio Metro market from another is to avoid the numerator/denominator issue that currently plagues the radio contour method of measuring the number of radio signals in a market. [See discussion on Pine Bluff for review of issue in the section entitled "The Numerator; Defining a Radio Market."]

  If all "out-of-market" radio signals are counted [stations from an area outside a given Metro which capture some listening share in another adjacent Metro], we believe that the attributable number of radio stations that one owner would own in adjacent markets and within the Metro combined, could lead to significant divestiture.

  Our assumption is that any station that would be counted in the denominator would also be included in the numerator for compliance with the new rules.

  For example, if an operator has 7 stations in a given Metro and owns another 6 stations that earn Arbitron "below the line" status or minimal listenership tests (some propose using all stations that earn a 0.1 share or more in a given radio market), then we would assume that that operator would have to put 13 stations in the denominator and also include the same 13 stations in the numerator.

  If our assumption is true, it could lead to major theoretical disruption in the radio market. For example in our limited survey of markets 1-25 (large market sample) and 76-100 (mid-market view), we found that there will be "non-complying" clusters that would theoretically lead to divestitures (if grandfathering and transferability are not permitted) in 36 of these 50 markets and over 160 radio stations would be at risk. 15 operators would have "theoretical non-complying stations" under this approach. And remember, this is an analysis in only 50 of the top 200 radio markets.

  This approach contrasts starkly with the results of our proposal, which affects 136 stations in 66 markets owned by 32 different owners; but our proposal includes *the top 200 markets, not just 50 markets* (1-25 and 75-100).

  As Exhibit Four summarizes, Clear Channel would have divest over 120 stations "non-compliant" stations in the 50 markets we reviewed under this standard (again assuming the FCC does not permit transferability, which we believe it should).

  This analysis is also a proxy for the ability for future consolidation opportunities for other radio operators. Clearly, this count-it-in-the-numerator/count-it-in-the-denominator approach would be quite disruptive to the acquisition market as well, we believe.

Exhibit 4: 50 Market Sample Summary - Impact to Radio Industy Structure of Our Understanding of Original FCC Plan (Metro + 0.1Share)

Markets with Non-Compliant Clusters (of 50 Surveyed)	36
Potential Theoretical "Non-Compliant" Clusters Under Original FCC Plan (Our Understanding)	
Clear Channel	122
Viacom	8
Univision	1
Cox Radio	3
Mapleton	1
Cumulus	4
Regent	1
Galaxy	4
Citadel	8
Guaranty	2
Beasley	1
Next Media	2
Archway	1
Asterisk	1
Journal Broadcasting	1
Total Theoretical "Non-Compliant Clusters"	160

Source: Bear, Stearns & Co., Inc., BIA - Investing in Radio

The problem with the "inclusion of below the line" method is that it creates co-dependence between two or more radio markets. Since the numerator of a given market will include the stations owned by a particular broadcaster in the Metro itself and in another market, any broadcaster which has a full complement of stations in any market will suddenly be "non-compliant" of existing rules when any stations in any other market are added.

We believe this approach will only add to the disruption in the marketplace.

If the Commission is willing to support a standard that would strike the "out-of-market" stations from both the numerator and denominator for an individual applicant, then this may alleviate these issues.

In summary, radio is arguably the most local of any media. Local stations capture a disproportionate share of local market listening and revenue. Metros generally reflect the same geographic areas the U.S. Government reflects in the census. For all these reasons, we believe a distinct local market approach, using Arbitron's Metro concept, is appropriate.

In addition, current FCC convention suggests that media properties belong to a distinct marketplace, whether it's a TV station (DMA), a newspaper (DMA/region) or a radio station (Metro). Counting a single radio station in multiple markets implies that radio station has equal influence in each market in which it appears in an Arbitron rating book, which seems improbable.

Additionally, adding stations into a Metro can cause numerator/denominator issues. For all these reasons, we think the Commission should adopt a "Metro market" view of the world.

- **Use BIA Data for Measuring Number of Stations in a Given Market.** Currently, in a typical radio station merger, the FCC requires parties to submit studies that help the FCC to determine the size of a radio market and how many radio stations are in that market. Currently, this submission is based on signal contours, not Metro data.

  However, this obviously is likely to change and signal contours will "give-way" to the Metro-market concept.

To address the need for a master list of radio stations in the various Metro markets, we recommend using BIA – Media Access Pro technology for the following reasons:

a. BIA is a well-known industry source.

b. BIA relies on Arbitron's radio market definition for its analysis.

c. BIA's Media Access Pro includes lists of all commercial and non-commercial stations in each Metro.

d. BIA assigns each radio station to one discreet marketplace based on a particular radio station's influence in the various marketplaces in which a radio station can be heard.

e. BIA includes all stations within an Arbitron county in its Media Access Pro database.

f. BIA includes all stations that have declared themselves to be a part of a specific Arbitron market as a part of its database for that Metro market.

g. BIA also makes its own determination in adding stations, or not adding stations, to a particular Metro market based on whether a particular station is deemed to have particular influence in a radio market to which it is not technically licensed (city of licensee).

h. BIA has been consistently applying this methodology for years.

i. BIA has been operating for over 20 years, publishing its Investing in Radio publication for 15+ years and has had its Media Access Pro database in place for nearly 8 years.

j. BIA is independent from the radio industry.

- **Use a "Metro Market" Approach.** In our analysis, we blend the Arbitron and BIA data into a concept we refer to as the "Metro market" approach. This relies on Arbitron's Metro definitions and BIA's interpretation of radio stations that effectively reside in each Metro.

- **Include All Commercial AM and FM Stations in the Metro.** We believe that the FCC should count all the commercial AM Stations and FM Stations in a particular Metro, regardless of whether these stations qualified for the minimum listening requirements needed to be included in Arbitron's ratings books.

  For information, to be included in a particular Arbitron Metro rating book, a station has to achieve 10 mentions in the ratings diary during a particular ratings period, a 0.5 minimum cumulative rating ("Cume") and 0.05 average quarter hour rating [AQH rating].

  We believe that the FCC should count all viable radio stations and all those that could become competitors in the local radio market.

  And many religious, ethnic, community, school/education-oriented and special interest formatted stations, which add diversity to the marketplace, should be counted as sources of diversity in their markets, we would argue.

  None of these types of stations would ever likely be represented in Arbitron's ratings books but do add to a local radio market's diversity.

- **Include All Non-Commercial AM and FM Stations in the Metro.** We believe that the FCC should also count all the non-commercial AM and FM stations in a Metro in its station counts as well.

  From a diversity standpoint, it is hard to ignore the fact that public radio enjoys significant local market listenership.

Additionally, counting non-commercial stations is quite appropriate to be consistent with local television ownership rules that count non-commercial stations as part of the Commission's "8-voice test" used for duopoly purposes.

For review, in the August 1999, rulemaking which permitted TV duopolies, the FCC stated that a TV operator could own one of the top four rated TV stations in a market and another station that is not among the market's four highest rated stations as long as eight different commercial and non-commercial TV voices (separate owners) remained in the market after the combination was put in place.

- **Include All Foreign Stations That Provide Additional Source of Diversity in Border Markets.** While we do not know whether this is a part of the FCC's consideration, we believe that the FCC should recognize the radio stations that are an active part of some of the border radio markets near Canada and Mexico.

  We believe that this is a legitimate approach because:

  - Border stations capture significant listening share. For example, in San Diego, the stations licensed that come in from Mexico capture nearly 25% of San Diego's entire audience share.
  - Border stations capture significant revenue share. For example, in San Diego, the stations licensed that come in from Mexico capture nearly 20% of San Diego's entire revenue share.
  - According to BIA "Media Access Pro", which licenses each radio station to one marketplace, these border stations are an active participant in the San Diego market and included in the software's line-up of stations in that market.

- **Proposed Change to Radio Market Definition Leads to Better Measurement and Little Marketplace Disruption.** As Appendix One shows the outcome of proposed changes to the radio market definition.

  This analysis shows:

  - A list of the top 200 Metro markets, which are based on Arbitron's Metro definition and BIA Media Access Pro data.
  - A list of how many commercial radio stations BIA's Media Access Pro recognizes in the Metro market.
  - A list of how many non-commercial stations BIA's Media Access Pro recognizes in the Metro market.
  - A list of how many total commercial and non-commercial stations there are in each Metro market.
  - A list of how many radio properties one owner could theoretically own in a particular market according to the Telecommunications Act of 1996.
  - A list of the maximum number of AM or FM stations that are permitted to be owned in a particular Metro.
  - A list of the top two revenue producers in a particular Metro (the report itself will include a list of the top three – the chart could not fit the confines of this report's template).
  - A list of how many radio stations these two top revenue producers own in the Metro (the first number represents the number of AM stations an operators owns, the second number represents the number of FM stations owned and the third number represents the number of stations that the local radio station operator would have to divest upon transfer of assets. [We are assuming that "non-compliant clusters" under our proposal would be "grandfathered" until these assets are sold. We also support the transferability of station assets as well – more on this later.]

- Station groups that would theoretically exceed existing ownership limits (the total number of radio stations permitted in a local market and/or those that own too many AM or FM stations as permitted by the revised definition) are in bold typeface.

We believe that if this framework is used, we believe that:

- Upon sales of clusters (we are assuming that current theoretical "non-complying clusters" will be "grandfathered" and we also argue later in our piece that the FCC should allow existing clusters to be transferred), we would expect that station sales would be required in over 66 markets within the top 200 radio markets.

- If the FCC does not permit transferability, then theoretically, upon sales of clusters, we expect that approximately 136 stations (approximately 1.7% of all commercial and non-commercial radio stations in the top 200 markets, which approximate 8,111 stations) within the aforementioned 66 markets would need to be sold.

- In Exhibit 5, we summarize the impact to public radio companies. For the public companies, we would find 92 "non-compliant" stations in the top 200 markets. For the private companies, we believe there are an additional 44 "non-compliant" stations in the top 200 markets spread among 21 different radio owners.

- As one can see Clear Channel and Cumulus would most likely be at risk upon sales of clusters. If transferability is not considered by the FCC, Clear Channel would technically have to divest 48 stations (nearly 4% of the company's 1,206 total stations), while Cumulus would have to theoretically part with 12 stations (4.6% of the company's 263 total stations) upon a sale and transfer of assets. Additionally, Citadel, which currently is not public but has aspirations to be public, would theoretically have to part with over 7% of its stations if transferability were not permitted.

Exhibit 5: Summary of "Non-Compliant" Stations Under Bear Steams' Proposal - By Market - Public Companies [Excludes Puerto Rico]

Market	Market Rank	Clear Channel "Non-Compliant" Stations	Entercom "Non-Compliant" Divestitures	Citadel "Non-Compliant" Divestitures	Cox "Non-Compliant" Divestitures	EmmisVi "Non-Compliant" Divestitures	acom "Non-Compliant" Divestitures	Radio One "Non-Compliant" Divestitures	Cumulus "Non-Compliant" Divestitures	NextMedia "Non-Compliant" Divestitures	Regent "Non-Compliant" Divestitures	Beasley "Non-Compliant" Divestitures	Total "Non-Compliant" Divestitures
Los Angeles	1	3											3
San Francisco	4	1											1
Atlanta	11	1											1
San Diego	17	1											1
Cleveland	25	1											1
Kansas City	29		2										2
Providence-Warwick	34			2									2
Orlando	38	1			1								2
Austin	42	1				1							2
New Orleans	44	1											1
West Palm Beach	47	2					1						3
Jacksonville	50	1											1
Oklahoma City	53			1									1
Louisville	55	3						2					5
Dayton	58	2											2
Grand Rapids	66	1											1
Ft. Meyers	67	1											1
Fresno	68	1											1
Wilkes-Barre	69		1	3									4
Albuquerque	71	3		1									4
Sarasota	77	1											1
Syracuse	80	1											1
Toledo	82								1				1
Greenville-New Bern	84									2			2
Little Rock	85	1		3									4
Charleston, SC	89			1									1
Lafayette, LA	100			1							1		2
Lexington-Fayette	102	1											1
Chattanooga, TN	105	1											1
Augusta, GA	109	1										2	3
Roanoke-Lynchburg	110	3											3
Youngstown-Warren, OH	112	1							2				3
Portsmouth-Dover-Rochester, NH	116	1											1
Modesto, CA	122			1									1
Saginaw Bay City-Midland	130			1									1
Peoria, IL	143										1		1
Salisbury-Ocean City	*148*	2											2
Montgomery, AL	150								1				1
Fayetteville (North West Arkansas)	151								1				1
Huntington-Ashland	152	3											3
Macon	154	1							2				3
Killeen-Temple, TX	155								1				1
Evansville	157										2		2
Savannah	158								1				1
Utica-Rome	159	2											2
Poughkeepsie, NY	163	2											2
Portland, ME	165			2									2
Myrtle Beach, SC	167								2				2
Columbus, GA	181	2											2
Odessa-Midland, TX	188								1				1
Santa Barbara, CA	199	1											1
Totals		**48**	**3**	**16**	**1**	**1**	**1**	**2**	**12**	**2**	**4**	**2**	**92**
Company Station Totals		**1,207**	**103**	**216**	**76**	**27**	**182**	**63**	**263**	**60**	**75**	**42**	**2,314**
Percent of "Non-Compliant" Stations		**4.0%**	**2.9%**	**7.4%**	**1.3%**	**3.7%**	**0.5%**	**3.2%**	**4.6%**	**3.3%**	**5.3%**	**4.8%**	**4.0%**

Source: BIA - Media Access Pro; Bear, Stearns & Co., Inc.

Even with these disturbances, we believe that the Commission will have found a market-based solution that provides consistency and clarity to the radio market, yet, which very modestly theoretically impacts the existing structure of the radio industry.

Proposal Acknowledges Diversity, Competition and Localism Goals of Commission. In developing our approach on the radio market definition, we also tried to keep the FCC's bedrock goals in mind as well and we think that diversity, localism and competition goals are met with our proposal.

- **Diversity – Conservative Approach in In-Market Diversity.** In our approach to the radio market definition, we argued that the Commission should isolate each Metro market; essentially assigning each radio station to one market.

While this approach suggests there is an average of 44 radio stations in the top 100 markets, which already suggests significant diversity, our approach also ignores the reality that many Metros have significant "out-of-market" listening.

In other words, if we counted every radio station that had any kind of listenership in any market as if it were a participant in a given radio Metro, the average number of stations available to listeners in the top 100 markets would approach 58 per Metro, 32% higher than our Metro market approach.

If we wanted to take the most liberal interpretation of the rules, it would clearly suggest that listeners have significantly more choice (and are indeed choosing to listen to stations outside) in a given Metro than our numbers represent. In essence, we "undercount" true market diversity.

- **Competition - A Good Balance of Ownership Limits Within Markets.** Another potential benefit of our proposal is that there is a balance of concentration permitted in various markets that should appeal to the FCC's competition sensibilities.

  For example, in an analysis of the top 100 radio markets, it is apparent that our proposal does not lead to the ability to own the maximum number of radio stations in every market.

  In our attempt to fashion a proposal, we tried to keep the FCC's diversity goals in mind, trying to find a market-based test that would reflect the true nature of the competitive landscape of a given Metro and fitting statute-based limits that would encourage competition.

  As Exhibit 6 illustrates, we reviewed proposed local-market ownership "caps" in each Metro in the largest 100 radio markets and believe that under our test that in 59% of the top 100 markets, local station ownership would not "top-out" at the highest permissible level.

  In the top 100 markets, a radio operator could own:

  - Up to eight radio properties (and 5 of any one service) in 41 markets in the top 100,
  - Up to seven radio properties (and 4 of any one service) in 43 market in the top 100,
  - Up to six radio properties (and 4 of any one service) in 12 markets in the top 100, and
  - Four to five radio properties in 4 markets within the top 100.

Exhibit 6: Radio Ownership Tiers - Top 100 Markets - Bear, Stearns Proposal - With Existing Telecom Act's 1996 Specified Tier Structure

Markets With 45+ Stations - Can Own Up to 8 Stations	Market Rank	Markets With 30-44 Stations - Can Own Up to 7 Stations	Market Rank	Markets With 15-29 Stations - Can Own Up to 6 Stations	Market Rank	Markets With 14 or Fewer Stations - Can Own Up to 5 Stations	Market Rank
New York City	1	Nassau-Suffolk, NY	18	San Jose, CA	30	Middlesex-Somerset-Union, NJ (4)	36
Los Angeles	2	Baltimore, MD	19	Monmouth-Ocean, NJ	52	Westchester, NY (5)	60
Chicago	3	Cleveland, OH	25	Allentown - Bethlehem, PA	70	Akron, OH (5)	73
San Francisco, CA	4	Riverside-San Bernardino, CA	28	Wilmington, DE	76	Stockton, CA (5)	88
Dallas - Ft. Worth, TX	5	Kansas City, MO-KS	29	Sarasota - Bradenton, FL	77		
Philadelphia, PA	6	Milwaukee - Racine, WI	33	Baton Rouge, LA	83		
Houston-Galveston, TX	7	Providence-Warwick-Pawtucket, RI	34	Columbia, SC	90		
Washington, DC	8	Columbus, OH	35	Mobile, AL	93		
Boston, MA	9	Orlando, FL	38	Daytona Beach, FL	94		
Detroit, MI	10	Las Vegas, NV	39	Colorado Springs, CO	96		
Atlanta, GA	11	Indianapolis, IN	41	Lakeland-Winter Haven, FL	98		
Miami-Ft. Lauderdale-Hollywood, FL	12	Austin, TX	42	Melbourne-Titusville-Cocoa, FL	99		
Puerto Rico, PR	13	New Orleans, LA	44				
Seattle-Tacoma, WA	14	West Palm Beach-Boca Raton, FL	47				
Phoenix, AZ	15	Hartford-New Britain-Middletown, CT	49				
Minneapolis - St. Paul, MN	16	Buffalo-Niagara Falls, NY	51				
San Diego, CA	17	Oklahoma City, OK	53				
St. Louis, MO	20	Louisville, KY	55				
Tampa-St. Petersburg-Clearwater, FL	21	Richmond, VA	56				
Denver - Boulder, CO	22	Dayton, OH	58				
Pittsburgh, PA	23	Honolulu, HI	61				
Portland, OR	24	Tucson, AZ	62				
Cincinnati, OH	26	McAllen-Brownsville-Harlingen, TX	63				
Sacramento, CA	27	Tulsa, OK	65				
San Antonio, TX	31	Grand Rapids, MI	66				
Salt Lake City - Ogden, UT	32	Ft. Myers-Naples-Marco Island, FL	67				
Charlotte-Gastonia-Rock Hill, NC	37	Albuquerque, NM	71				
Norfolk-Virginia Beach-Newport News, VA	40	Omaha - Council Bluffs, NE-IA	74				
Greensboro-Winston Salem-High Point, NC	43	Monterey-Salinas-Santa Cruz, CA	75				
Nashville, TN	45	El Paso, TX	78				
Raleigh - Durham, NC	46	Harrisburg-Lebanon-Carlisle, PA	79				
Memphis	48	Syracuse, NY	80				
Jacksonville, FL	50	Springfield, MA	81				
Rochester, NY	54	Toledo, OH	82				
Birmingham, AL	57	Little Rock, AR	85				
Greenville-Spartanburg, SC	59	Gainesville - Ocala, FL	86				
Albany-Schenectady-Troy, NY	64	Bakersfield, CA	87				
Fresno, CA	68	Charleston, SC	89				
Wilkes Barre - Scranton, PA	69	Des Moines, IA	91				
Knoxville, TN	72	Spokane, WA	92				
Greenville-New Bern-Jacksonville, NC	84	Wichita, KS	95				
		Madison, WI	97				
		Lafayette, LA	100				

Source: BIA - Media Access Pro; Bear, Stearns & Co., Inc.

- **Localism – Why We Use the "Metro-Market" Approach.** In our approach to the radio market definition, we advocated a "Metro-market" approach that essentially isolates each radio market from others.

  This essentially assigns each radio station to one primary Metro that assumes that each radio station has more influence in one local Metro relative to another. This "influence" manifests itself in the audience and revenue share a particular station takes from a marketplace. We believe that by isolating Metros from each other, we get the most accurate view of what the "core" of the local market looks like. And since radio is the most local of media (78% of the industry's revenue is local), we believe this view should be useful from the FCC's standpoint as well.

Our Proposal: The FCC Should Consider Adjusting the Ownership Tiers. In our proposal, we are also suggesting the FCC consider adjusting the ownership tiers.

In the first case, we believe that the FCC should consider adding a new ownership tier for radio markets with significant levels of radio stations.

In the second case, we would argue that the FCC should harmonize the existing ownership tiers, which relied on station counts based on contour-overlaps with that of a new market-based test. Since the market-based test generally generates smaller radio station counts in a typical market, we would recommend that the Commission slightly lower the Statute's current ownership tiers to reflect the significantly smaller base of stations generally recognized in market-based tests.

- **Create a New Top Ownership Tier for Markets with 55+ Radio Stations – Could be Solution for Pressure from the Courts?** Although this is true with any change to the radio marketplace definition that the FCC is contemplating, we believe that our proposal could run afoul of the courts. Here's our concern; the courts could be very concerned that a change to a market-based definition will de-facto create policy that is more regulatory than current rules.

  The Telecom Act of 1996, which de-facto relied on the FCC's 1992 contour definition in each radio market, created different tiers which would allow radio consolidators to own 8 stations in a market with 45 or more radio stations, 7 stations in markets with 30-44 radio stations, 6 stations in markets with 15-29 stations and up to 5 stations in markets with 14 or fewer signals.

  If the Commission adopts a "market-based" concept similar to that which we proposed, there will be several markets which, when adopting the new definition, will suddenly become more regulatory in the sense that the station limits permitted in the market will decline.

  We tried to make an assessment of how many markets would see a decline in ownership tiers relative to the Telecommunications Act of 1996. We inferred each market's current tier (an owner can own 8, 7, 6, or fewer stations etc.) by looking at the number of stations that the largest owner(s) of stations operated in a given market.

  We then we compared the calculated tier under our proposal with the level the marketplace says is relevant today under the current Telecom Act contour-based test.

  For example, in the top 75 radio markets, it could be argued that our proposal may be "tighter" by one station/tier in markets such as:

  - Cleveland, Ohio – Market Rank 25 - Clear Channel owns 5 FM's inferring the market would permit total station ownership of 8 stations; our proposal derives total of 7 stations permitted,
  - Orlando, Florida - Market Rank 38 - Clear Channel and Cox Radio own 5 FM's inferring the market would permit total station ownership of 8 stations; our proposal derives total of 7 stations permitted
  - Austin, TX – Market Rank 42 - Clear Channel and Emmis own/will own 5 FM's inferring the market would permit total station ownership of 8 stations; our proposal derives total of 7 stations permitted)
  - New Orleans, Louisiana – Market Rank 44 - Clear Channel owns 5 FM's inferring the market would permit total station ownership of 8 stations; our proposal derives total of 7 stations permitted)
  - West Palm Beach, Florida - Market Rank 47 – Viacom and Clear Channel own 5 FM's/6FM's respectively, inferring the market would permit total station ownership of 8 stations; our proposal derives total of 7 stations permitted)
  - Oklahoma City, Oklahoma - Market Rank 53 – Citadel owns 5 FM's inferring the market would permit total station ownership of 8 stations; our proposal derives total of 7 stations permitted)
  - Grand Rapid, Michigan - Market Rank 66 – Clear Channel owns 5 FM's inferring the market would permit total station ownership of 8 stations; our proposal derives total of 7 stations permitted)

- Ft. Myers-Naples-Marco Island, Florida - Market Rank 67 – Clear Channel owns 5 FM's inferring the market would permit total station ownership of 8 stations; our proposal derives total of 7 stations permitted)

- Albuquerque, New Mexico - Market Rank 71 – Citadel, Clear Channel (9 stations) and American Media General own 5 FM's inferring the market would permit total station ownership of 8 stations; our proposal derives total of 7 stations permitted)

- Omaha – Council Bluffs, Nebraska/Iowa - Market Rank 74 – Journal Broadcast Group owns 5 FM's and 3 AM's, inferring market would permit total station ownership of 8 stations; our proposal derives total of 7 stations permitted)

Considering the language of the Telecom Act calls for modification or repeal of rules that are "no longer necessary in the public interest", it would be hard to conceive that the Telecom Act's intent was to be more restrictive. So any market-based test is likely to actual constrict ownership options in many markets. This will prove to be a challenge for the FCC to address.

One solution to the reality that some markets will see reduction in the number of stations that any operator could be permitted to own would be to create a new upper tier permitting a radio operator in a very large radio market to own 10 radio stations and as much as 6 of any service (AM or FM) as long as the market had at least 55 stations in the market.

As Exhibit 7 suggests, under this scenario, we believe that approximately 20 markets would enjoy the status of being 55-plus station markets.

Exhibit 7: Markets with 55 or More Radio Stations - Eligible for a New Tier?

Market	Rank	All Commercial Stations (BIA)	All Non-Commerical Stations (BIA)	Total Stations for Statute/FCC Purposes
New York, NY	1	98	49	147
Los Angeles, CA	2	74	15	89
Chicago, IL	3	89	38	127
San Francisco, CA	4	47	18	65
Dallas - Ft. Worth, TX	5	65	12	77
Philadelphia, PA	6	42	24	66
Houston-Galveston, TX	7	55	13	68
Washington D.C.	8	52	9	61
Boston, MA	9	62	27	89
Detroit, MI	10	43	20	63
Atlanta, GA	11	71	12	83
Miami, FL	12	46	9	55
Puerto Rico, PR	13	94	0	94
Seattle-Tacoma, WA	14	55	17	72
Minneapolis-St. Paul	16	44	12	56
St. Louis, MO	20	52	17	69
Pittsburgh, PA	23	52	12	64
Salt Lake City - Ogden, UT	32	48	12	60
Nashville, TN	45	48	14	62
Albany-Schenectady-Troy, NY	64	45	10	55

Source: BIA - Media Access Pro; Bear, Stearns & Co., Inc.

An increase in the upper tier to allow ownership of more stations in larger markets could also be helpful with the courts, which already have a bias for more deregulation, not more regulation.

- **Adjust the Tiers to Reflect Significant Change in Market Station Counts Under Contour-Based Tests Relative to Market-Based Tests.** Another weakness in our market-based proposal is that the current Statutory station ownership limits (can own 8 stations in a market with 45 or more radio stations, 7 stations in markets with 30-44 radio stations, 6 stations in markets with 15-29 stations and up to 5 stations in markets with 14 or fewer signals) have a basis in the FCC's 1992 decision to use contour tests as the basis for determining how many radio stations there are in a given market [please see out discussion on this topic in the section entitled "Radio Market Definition Was Created by FCC in 1992".

  If and when the FCC makes the transition to using a market-based definition to determine radio ownership limits in different radio markets, it will essentially be using a "base" (denominator) of stations which will in some cases be significantly lower than the "base" of stations used under the contour test.

  For example, we obtained data on how many radio stations were currently counted in a sampling of radio markets primarily relying on Viacom's May 1, 2003 filing "Data in Support of Modified Methodology for Counting The Number of Stations in a Radio Market". We also obtained data from Wiley, Rein & Fielding (WRF).

  The data supplied by Viacom and WRF show the number of radio stations considered to be the relevant marketplace under the existing contour approach (the current test does not include non-commercial stations).

  We compare this data with our market-based test station counts.