

to "... count noncommercial radio stations in determining the size of the market."

Report and Order, 18 F.C.C. Rcd. 13620, Para. 287; see also Paras. 241, 280, 287.

2. The bases for the Commission action are set forth in numerous paragraphs throughout the above-referenced Report and Order, i.e., paragraphs 1, 238, 246, 264 – 272. Previous ownership rulemaking proceedings were incorporated into the instant Rulemaking Proceeding (Paras. 1, 238). The underlying purpose of the instant Rulemaking is set forth in the referenced Report and Order at Para. 246 below:

"246. Preserving competition for listeners is of paramount concern in our public interest analysis. Although competition in the radio advertising market and the radio program production market indirectly affects listeners by enabling radio broadcasters to compete fairly for advertising revenue and programming – critical inputs to broadcasters' ability to provide service to the public – it is the state of competition in the listening market that most directly affects the public. When that market is competitive, rivals profit by attracting new audiences and by attracting existing audiences away from competitors' programs. Monopolists, on the other hand, profit only by attracting new audiences; they do not profit by attracting existing audiences away from their other programs. Because the additional incentives facing competitive rivals are more likely to improve program quality and create programming preferred by existing listeners, it is critical to our competition policy goals that a sufficient number of rivals are actively engaged in competition for listening audiences. Limits on local radio ownership promote competition in the radio listening market by assuring that numerous rivals are contending for the attention of listeners." (Footnote omitted.)

Paragraphs 264-272 of the Report and Order (under the heading of "Statutory Authority")

address arguments that the Commission lacks the statutory authority to revise rules.

"264. Before explaining our modified market definition and counting methodologies, we address arguments that we lack the statutory authority to revise those methodologies in a way that would prohibit radio station combinations that are permissible under the current framework. After reviewing the relevant statutory provisions, we find that argument to be without merit."

Paragraph 265 affirmatively states that the Communications Act grants authority to the Commission to “[m]ake such rules and regulations. . . not inconsistent with law, as may be necessary to carry out the provisions of the Act. . . The Supreme Court has held that these broad grants of rulemaking power authorize us to adopt rules to ensure that broadcast ownership is consistent with the public interest.” (Footnotes omitted.) As set forth in Paragraph 246, preserving competition specifically includes limits on local radio ownership and is of paramount concern in the Commission’s public interest analysis.

Paragraph 265 states as follows:

“265. The Communications Act grants us the authority to ‘[m]ake such rules and regulations, . . .not inconsistent with law, as may be necessary to carry out the provisions of’ the Act. We also are authorized to ‘make such rules and regulations. . . not inconsistent with [the] Act, as may be necessary in the execution of [our] functions.’ The Supreme Court has held that these broad grants of rulemaking power authorize us to adopt rules to ensure that broadcast station ownership is consistent with the public interest. We find nothing in the 1996 Act or its legislative history that diminishes that authority. To the contrary, Section 202(b) contemplated that we would exercise our rulemaking authority to make the revisions to the rule that Congress required, and Section 202(h) contemplates that we will exercise our rulemaking authority to repeal or modify ownership rules that we determine are no longer in the public interest. We accordingly find that we have the authority to revise the local radio ownership rule in a manner that serves the public interest.” (Footnotes omitted.)

Further modification of the rules to permit the counting of noncommercial radio broadcast stations entailing Joint Sales Agreements, Time Brokerage Agreements, Local Market Agreements as cognizable interests attributable to a commercial radio broadcast entity is clearly within the Commission’s statutory authority. The proposed

modifications pertain to limits on commercial radio local ownership – expressly recognized as a significant factor in preserving competition.

3. Bonneville also asserts (p. 5) that the Mt. Wilson proposal “could force statewide non-commercial television systems to divest stations in larger DMAs.” The Mt. Wilson proposal does not remotely suggest (much less propose) ownership limits of any nature either on noncommercial radio or television broadcast entities. Indeed, the multiple ownership rules (both radio and television) are not applicable to noncommercial entities. The Mt. Wilson proposal pertains solely to commercial radio interests in noncommercial radio broadcast stations. Moreover, the Mt. Wilson proposal is not intended to ban such interests – but only to count such interests in determining compliance with the radio multiple ownership rules.

4. The Bonneville Opposition is nothing more than a rehash of arguments previously set forth attacking the Commission’s statutory authority, arguments previously rejected. For the reasons discussed above, the Bonneville Opposition should be dismissed.

Respectfully submitted



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CERTIFICATE OF SERVICE

I, Brenda Chapman, hereby certify that on this 16th day of October, 2003, a copy of the foregoing "Mt. Wilson Reply to Bonneville Opposition" was mailed via first-class U.S. mail, postage prepaid to Kenneth E. Satten, Wilkinson, Barker, Knauer, LLP, 2300 N Street, N.W., Suite 700, Washington, D.C. 20037.

A handwritten signature in black ink that reads "Brenda Chapman". The signature is written in a cursive style and is positioned above a solid horizontal line that extends to the right, ending in a small arrowhead.