

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
2014 Quadrennial Regulatory Review –	)	
Review of the Commission’s Broadcast	)	MB Docket No.14-50
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	
2010 Quadrennial Regulatory Review –	)	MB Docket No. 09-182
Review of the Commission’s Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

**COMMENTS OF THE MID-WEST FAMILY STATIONS**

The Mid-West Family Stations (“Mid-West Family”) hereby submits comments in response to the Commission’s Notice of Proposed Rule Making in the above-referenced proceeding (the “NPRM”).<sup>1</sup> In its NPRM, the Commission set forth its proposals regarding the media ownership and cross-ownership rules, and requested comments about its tentative conclusions. The NPRM also solicits suggestions regarding changes or revisions that may be advisable to the broadcast multiple ownership rules in order to further the Commission’s goals of competition, localism, and diversity. Mid-West Family, by these comments, addresses one issue that it has raised with the Commission before, and on which the Commission specifically requested comments in the NPRM – whether all stations in a market, no matter what their authorized power and coverage, should be counted equally for multiple ownership

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<sup>1</sup> *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, MB Docket No. 14-50, FCC 14-28 (2014).*

purposes. As set forth in more detail below, Mid-West submits that stations equal treatment cannot be sustained under any rational review of the competitive situation in the radio marketplace.

As detailed herein, the Commission should revise its Arbitron-based radio market definition to reflect marketplace realities and differences between the coverage of stations in a market. As discussed below, there are real and substantial differences between the coverage of radio stations based on their Class of service. FM Class A stations, limited to 6 kw of power, simply are not an equal marketplace competitor with a full Class C station, operating with 100 kw of power from a Height Above Average terrain over three times the maximum allowed a Class A station. The failure of the rules to recognize these differences significantly impacts Mid-West Family and other similarly situated broadcast companies, especially in small and mid-sized markets. Accordingly, Mid-West Family urges the Commission to carefully consider in its review of its media ownership rules the weight to be accorded to stations with lesser coverage in a local radio multiple ownership analysis.

## **I. BACKGROUND**

Mid-West Family is a group of related companies that operate over 40 radio stations, licensed to a number of Midwestern communities, operating in seven regional clusters. Mid-West Family prides itself on having integrated its local management into station ownership, so that the responsiveness of the licensee to local concerns is highlighted. Thus, in almost every market, a different business entity holds the station licenses.<sup>2</sup> The owners of each company are either station employees or others with some direct involvement in the management and

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<sup>2</sup> The Mid-West Family companies, and the geographical areas in which they operate, are as follows: Mid-West Management Inc. (Madison, Wisconsin and Eau Claire, Wisconsin), Mid-Way Radio (Rockford, Illinois), Family Radio, Inc. (LaCrosse, Wisconsin), Long Nine, Inc. (Springfield, Illinois), MW Springmo, Inc. (Springfield, Missouri), and WSJM, Inc. (Southwestern Michigan).

operation of the stations. If a shareholder no longer has any involvement with the operation of the Mid-West Family stations, he or she is contractually obligated to sell their stock to the company or to other qualified shareholders. Senior management in each local station is given an opportunity, and encouraged, to make an investment in their own stations, thereby giving them a direct stake in making their stations truly responsive to their communities. By almost any objective measure, the Mid-West Family stations are characterized by their strong commitment to covering local events and being integral participants in their local communities.

## **II. THE COMMISSION’S USE OF ARBITRON RADIO MARKETS IN ITS LOCAL RADIO OWNERSHIP RULE FAILS TO FULLY CONSIDER MARKETPLACE REALITIES.**

The NPRM tentatively concludes that the current market definition of a radio market should be retained, along with the existing market size tiers and numerical limits.<sup>3</sup> Mid-West Family submits that the Commission should revise its current market definition to better reflect marketplace realities, particularly the coverage differences among stations. Such an approach would more accurately “reflect the actual options available to listeners and will reflect market conditions facing the particular stations in question,”<sup>4</sup> a goal previously espoused by the Commission in connection with its ownership rules. In defining “markets” for multiple ownership purposes based on Arbitron-defined radio markets, the Commission’s approach overlooks distinctions in the size, revenue, and audience share of radio stations. Moreover, it is inconsistent with the guidance provided by the United States Court of Appeals for the Third Circuit in *Prometheus Radio Project, et al. v. Federal Communications Commission*<sup>5</sup> that the

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<sup>3</sup> NPRM at ¶¶ 79-93.

<sup>4</sup> *Revision of Radio Rules and Policies, Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 7 FCC Rcd 6387 (1992) at ¶ 10.

<sup>5</sup> *Prometheus Radio Project, et al. v. Federal Communications Commission*, 373 F.3d 372 (3d Cir. 2004) (“*Prometheus I*”).

Commission must consider marketplace realities in setting ownership rules -- it cannot blindly assume that all stations are equal.

The Commission's current market definition fails to consider the real-world differences that exist among the various classes of radio stations. For example, under the Commission's market definitions, a small Class A FM station licensed to an outlying community counts exactly the same as a large Class C FM station located in the heart of the market, though clearly such signals are not equal in terms of their signal strength or their impact on marketplace competition and diversity. Undoubtedly, the Commission is fully aware that Class A and Class C stations have very different coverage characteristics. Simply stated, Class A stations reach fewer listeners. Accordingly, the Commission's market definition and any numerical limitations on the combination of stations in a market should take these fundamental differences into account.

The Third Circuit emphasized Commission's oversight in this regard, as it repeatedly faulted the Commission in the *Prometheus I* case for failing to utilize "actual-use data" or "actual market share" to inform its drawing of lines as to permissible and impermissible media combinations.<sup>6</sup> Among the issues that gave rise to the court's remand of the Commission's radio ownership rules in 2004 was the failure to take actual market share into account. In the context of the local radio ownership caps, the court expressly noted that the Commission "does not explain why it could not take actual market share into account when deriving the numerical limits," and that "the Commission's reliance on the fiction of equal-sized competitors, as opposed to measuring their actual competitive power, is even more suspect in

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<sup>6</sup> *Prometheus I*, 373 F.3d 408-09, 419-420, and 434.

the context of the local radio rule.”<sup>7</sup> As a result, the court remanded the local radio numerical limits “for the Commission to develop numerical limits that are supported by rational analysis.”<sup>8</sup> Despite the Court’s admonition, this review has never been done in any of the subsequent proceedings.

While seeking comment on Mid-West’s proposal is a step in the right direction, the Commission appears to be willing to refuse to conduct that analysis yet again, stating in its current review that it is inclined to refuse to adopt Mid-West’s proposal as to do so “would permit potentially significant consolidation in local radio markets,” and hence be inconsistent with the Commission’s proposal to keep the ownership limits as they are.<sup>9</sup> This does not provide any rationale for the decision, but instead seems to reflect nothing but results driven decision making – rejecting the Mid-West proposal simply because it does not lead to the result that the Commission appears to prefer. The Commission cannot base its decision on presumed outcomes, but instead must engage in reasoned decision making based on the facts. And the fact is that one owner owning the maximum number of Class C FM stations in a market has a far greater impact on competition and diversity in that market than an owner of the same number of Class A stations. Thus, as part of its current review and reformulation of its radio ownership rules, it is incumbent upon the Commission to take the court’s instructions

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<sup>7</sup> *Id.* at 434-444.

<sup>8</sup> *Id.* at 434.

<sup>9</sup> NRPM at ¶ 88 (“We seek comment on Mid-West Family’s assessment . . . . Our preliminary view is that adopting Mid-West Family’s approach would permit potentially significant consolidation in local radio markets, which would be inconsistent with the rationale for our proposal, discussed in greater detail below, to retain the existing numerical ownership limits.”) (citations omitted).

in *Prometheus I* into account and to create a market approach that reflects the realities of the particular market.<sup>10</sup>

Unlike in the television context, where cable and satellite carriage may offset a weak over-the-air signal to some degree, in radio, the signal alone determines whether or not a station can be heard. In many geographically large markets, it may take multiple low-power radio facilities to cover a market that could easily be covered by a single high-power station. Yet the Commission's Arbitron methodology considers each station to be identical, regardless of its coverage area or market share. The Commission's previous contour-overlap methodology allowed for these differences by focusing on the actual signal coverage of the stations at issue. Two Class A stations, which did not overlap, would not be twice counted against a licensee under the old contour-overlap methodology, as they are under the current method of computing radio ownership.

The threat to competition is made far worse by not taking audience reach into account under the Arbitron market definition. For example, a single media conglomerate could own all four Class C stations in a given market, while a smaller competitor could not own five Class A stations, despite the fact that the Class A stations might not cover the area of a single Class C station. Punishing smaller broadcasters, who cannot necessarily afford to purchase the limited number of large Class C stations in a market, but who still wish to provide diversity and

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<sup>10</sup> The Commission also suggests that Mid West's reading of the *Prometheus I* decision as requiring the consideration of different classes of stations differently might be moot as the Court did not overturn the Commission's numerical rules on radio ownership, readopted by the Commission after the *Prometheus I* decision, despite it not addressing the issues herein raised by Mid-West. NPRM at ¶ 90 (citing *Prometheus Radio Project v. Federal Communications Commission*, 652 F.3d 431, 462 (3d Cir. 2011) ("*Prometheus II*"). Mid-West did not appeal that issue in *Prometheus II*, nor did any other party, thus the issue was not before the Court in that second case. Therefore, as the issue was neither argued before the court nor addressed in its decision, the failure of the Court in *Prometheus II* to address the issue does not justify the Commission's failure to address it in subsequent decisions.

competition in the market via smaller stations, is contrary to the public interest and the Commission's goals of competition, localism, and diversity.

As noted in previous comments,<sup>11</sup> one possible approach to account for the disparity in the geographic reach of stations would be to assign a value for a station based on its geographic coverage or class of station. For instance, a large Class C station would count as one full station for purposes of determining compliance with the applicable cap, whereas two small Class A stations, each covering approximately half of the geographic area of the market, would each count as half a station or together as one full station. In this way, the Commission's counting of stations for purposes of the radio multiple ownership rules would consider the reality of a station's reach.

Midwest submits that the current situation cannot stand, as the ownership of technically weaker stations is not the same as the ownership of large stations designed for wide-area coverage. The rules must be adjusted to take into account these differences, either by a simple across-the-board methodology as suggested above, or by a case-by-case analysis of the population coverage of owners of stations in a market. Where one owner holds stations covering a given number of people in the market, a competitor owning Class A stations (or low power AMs) should be able to acquire additional stations, beyond the numerical station limit that might otherwise apply in that market, so that its population reach equals that of the competitive cluster in the market. Only by allowing competitors to reach the same size of an audience will the Commission allow for true competition in programming and advertising to thrive in the radio marketplace.

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<sup>11</sup> See Comments of the Mid-West Family Stations, MD Docket Nos. 09-182 & 07-294, 12-13 (filed March 5, 2012).

### **III. CONCLUSION**

For the reasons set forth above, Mid-West Family respectfully requests that the Commission include these changes or clarifications in its radio ownership rules.

Respectfully submitted,

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