



December 20, 2007

## MEMORANDUM TO CLIENTS

**Re: FCC Revises Newspaper/Broadcast Cross-Ownership Rule, Proposes Rules Supporting Broadcast “Localism,” and Adopts Rules to Promote Minority Ownership**

At yet another contentious meeting of FCC commissioners, the FCC adopted a series of measures affecting television and radio broadcasters. First, the FCC relaxed the newspaper/broadcast cross-ownership rule to permit common ownership in the largest 20 U.S. markets, subject to certain conditions. The FCC also released a Notice of Proposed Rulemaking designed to increase local programming content and diversity (the “Localism Notice”). Finally, the FCC adopted a Report and Order intended to increase opportunities for minority and female entrants to own media properties. The FCC has not yet released the full text of any of these items; accordingly, additional details will be forthcoming.

### **I. Newspaper-Broadcast Cross-Ownership Rule**

As part of the Commission’s statutory obligation to periodically review its ownership rules and eliminate those it finds no longer to be in the “public interest,” the FCC has revised the existing newspaper-broadcast cross-ownership rule, which flatly prohibits common ownership of a broadcast station and a daily newspaper in the same market. (Existing combinations had been permissible via waiver). The FCC did not make any changes to the local radio ownership rule, the local television (“TV duopoly”) ownership rule or the national television ownership rule.

Under the new rule, common ownership of a single broadcast station and a single daily newspaper will be permissible, but only if: (1) the market at issue is one of the top 20 Nielsen DMAs; (2) the TV station is not one of the top four ranked stations in the market; and (3) at least 8 independent “voices” (*i.e.*, full-power TV stations and major newspapers) would remain in the market post-closing.

All other proposed newspaper/broadcast combinations would be presumed not to be in the public interest. However, applicants could overcome this negative presumption if one of the properties in a proposed transaction is “failing” or “has failed,” meaning: (a) the station has an all-day audience share of 4 percent or lower; (b) the newspaper or station has had a negative cash flow for the previous three years; (c) the combination will produce public interest benefits; and (d) the in-market buyer is the only reasonably-available candidate willing and able to operate both properties. In addition, a party could overcome the negative presumption if the proposed

transaction is predicted to create a new source of local news in the market, *i.e.*, one that would yield seven hours of new local news programming per week on a station that previously had not aired local news.

The FCC also will continue to evaluate requests to overcome a negative presumption under the existing criteria used to evaluate requests for waiver of the existing rule (*i.e.*, that the combination will increase the amount of local news disseminated; that each media outlet will exercise its own independent news judgment; that the level of media concentration will not be negatively impacted; and that the station or newspaper are in poor financial shape).

A coalition of approximately 25 U.S. Senators, led by Sen. Byron Dorgan (D-ND), has indicated its opposition to the rule revision and promised to take action to nullify it. In addition, certain consumers groups have indicated their intention to appeal the FCC's decision in federal court.

## **II. Broadcast Localism Proceeding**

Although the details of the Localism Notice have not yet been released, the FCC has indicated that it would seek comment on whether: (a) qualified low power television stations should be upgraded to "Class A" status, which would require them to air three hours per week of locally-produced programming, presumably in exchange for greater interference and displacement protection; (b) radio and TV stations should be required to establish permanent "advisory boards" that would provide guidance on community needs and issues; and (c) to adopt license renewal application processing guidelines that would streamline approvals only for those stations that broadcast a certain amount of local programming.

The broadcast industry will almost assuredly register its objection with respect to item (b), which it may view as a return to the "community ascertainment" regime, under which licensees were required to meet with community leaders every six months to determine the issues important to the community that would be reflected in the station's programming. That process was eliminated in 1984. There also likely will be opposition to item (c), since stations may feel coerced into broadcasting specific types of programming or else have their license renewal applications subject to additional scrutiny.

Apart from those three items, the Localism Notice also is reported to propose: (a) a manner in which radio stations would have to provide the FCC with information on how they select the music that is aired; and (b) a requirement that all "main studios" be located in the community of license (rather than within 25 miles of such community under the current rule) and that they be staffed during all hours of operation. The Localism Notice also reportedly will investigate whether: (a) the nature and amount of political programming being aired is sufficient; (b) there are any audiences whose needs are not being addressed; (c) network-affiliate relations

are an impediment to a station's decision-making on the programming actually broadcast; (d) the sponsorship identification rules need to be modified; and (e) adding new channels would increase the diversity of voices.

In conjunction with the release of the Localism Notice, television broadcasters also are reminded that the FCC last month adopted a Report and Order requiring TV stations to file their quarterly issues/programs lists on a standardized form, rather than on individualized forms created by the stations themselves. That Report and Order also will contain rules requiring TV stations to make their entire public files available online (if they have websites) and to notify audiences twice daily about the location of the public file. As with the Localism Notice, neither the full text of the "issues/programs list" Report, nor the standardized form itself, have been released.

### **III. Minority Ownership Proceeding**

The FCC also adopted twelve proposals – and sought comment on an additional thirteen – advanced by the Minority Media & Telecommunications Council that are designed to expand ownership opportunities by new entrants, including minorities and women. Among other items, the FCC indicated that it will change its rules to: (a) allow "eligible entities" that acquire expiring construction permits additional time to build out the facility; (b) revise the Commission's equity/debt plus attribution standard – from 33% to a reported 49% – to facilitate investment in eligible entities; (c) modify the Commission's distress sale policy to allow a licensee – whose license has been designated for a revocation hearing or whose renewal application has been designated for a hearing on basic qualifications issues – to sell its station to an "eligible entity" prior to the commencement of the hearing; and (d) require broadcasters renewing their licenses to certify that their advertising sales contracts do not discriminate on the basis of race or gender.

The Commission's minority ownership proceeding is expected to seek comment on the following proposals, among others: (a) allowing a community's only radio station to relocate when the departing licensee starts up an LPFM in that community; (b) ways to foster ownership of DTV and FM subchannels; (c) granting must carry status to Class A LPTVs; (d) replacing TV Channels 5 and 6 with FM stations; (e) treating all LMAs as "attributable" under the multiple ownership rules; and (e) allowing minorities to own station combinations equal to the largest combination in a market.

### **IV. Sponsorship Identification**

A separate item, which would have proposed rules on the manner and extent to which advertisers place products in television shows in return for consideration, was pulled from the Commission's agenda before the start of the meeting. Three nationwide advertising trade

Memorandum to Clients  
December 20, 2007  
Page 4

associations successfully argued that the Commission should instead commence a fact-finding inquiry, rather than propose rules. Such a “Notice of Inquiry” may be released at a future FCC monthly meeting.

As indicated above, the full text of the FCC Reports and Notices have not yet been released. We will keep you posted in that regard. In the meantime, please call us with any questions concerning the FCC’s media ownership or “localism” rules and policies.

**FLEISCHMAN AND HARDING LLP**

197295.1