

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rules and Policies Concerning)	
Multiple Ownership of Radio Broadcast)	MM Docket No. 01-317
Stations in Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	

**Reply Comments of the
Office of Advocacy, U.S. Small Business Administration
on the Notice of Proposed Rulemaking**

The Office of Advocacy of the United States Small Business Administration (“Advocacy”) submits these Reply Comments to the Federal Communications Commission (“FCC” or “Commission”) regarding its *Notice of Proposed Rulemaking* (“NPRM”)¹ in the above-captioned proceeding. In the *NPRM*, the Commission seeks to examine the effect that consolidation has had on the radio broadcast industry and to consider possible changes to its local radio ownership rules and policies to reflect the current radio marketplace.²

Advocacy agrees with the comments filed by the American Women in Radio and Television and recommends that the Commission treat the numeric limits of Section 202(b) of the Telecommunications Act³ as a presumption of acceptable levels of local radio ownership that can be rebutted by specific reasons to conclude that diversity or competition in a market would be harmed. Furthermore, any modifications to ownership rules should be guided by public interest values or promote viewpoint and source diversity, and increasing competition.

1. Advocacy Background

Congress established the Office of Advocacy to represent the views and interests of small business within the Federal government. Advocacy's statutory duties include serving as a focal point for concerns regarding the government's policies as they affect small business, developing proposals for changes in Federal agencies' policies, and communicating these proposals to the agencies.⁴ Advocacy also has a statutory duty to monitor and report to Congress on the Commission's compliance with the Regulatory Flexibility Act of 1980 ("RFA"),⁵ as amended by the Small Business Regulatory Enforcement Fairness Act, Subtitle II of the Contract with America Advancement Act.⁶ For a full discussion of the RFA, please see our earlier comment filing in this docket.⁷

2. Numerical Limits Should be a Rebuttable Presumption of Acceptable Levels of Local Ownership

The *NPRM* asked the commenters for recommendations on how to interpret Section 202(b) of the Telecommunications Act of 1996 ("1996 Act").⁸ Specifically, the *NPRM* asked whether or not the numerical limits presented in that section are definitive, address diversity only, or are presumptively consistent with the public interest.⁹ Advocacy agrees with the comments of the American Women in Radio and Television ("AWRT") that the numerical limits of Section 202(b) are rebuttable presumptions of acceptable levels of local radio ownership and the Commission should continue to consider the public interest mandate to preserve diversity and competition.¹⁰

The Commission has considered the public interest when formulating its rules in prior proceedings (e.g., including when determining radio broadcast ownership). As the Commission states in the *NPRM*, the local radio ownership rule is designed to achieve diversity, which both the Commission and the Supreme Court had determined was in the public interest.¹¹ Because of the Commission's statutory duty to consider the public interest, need and necessity, Advocacy

agrees with AWRT that Section 601(c)(1) of the 1996 Act is applicable,¹² and does not agree with commenters who argue that the FCC does not have the authority to consider other factors beyond compliance with numerical limits in Section 202(b).¹³ As Section 601(c)(1) states, nothing in the 1996 Act should be construed to modify, impair, or supersede existing law unless expressly provided by the 1996 Act.¹⁴ Therefore, Section 202(b) does not expressly eliminate the Commission's duty to consider the public interest mandate.

3. Source Diversity Is Crucial to Maintaining Viewpoint Diversity and Competition

Because the Commission should still consider the public interest when determining local radio broadcast ownership levels, the Commission should continue to protect source and viewpoint diversity while maintaining competition in the radio marketplace. Again, Advocacy agrees with AWRT that any modifications to ownership rules should be guided by public interest values or promoting viewpoint and source diversity and increasing competition.¹⁵

Advocacy believes that source diversity is important to maintain viewpoint diversity.

The radio spectrum is a limited resource and due to the limitations of technology, only a specific number of signals can operate before they start to interfere with each other. While there are other media that are similar, the Department of Justice classifies radio advertising as a separate market because of certain unique attributes, such as being exclusively sound-based and being able to reach mobile listeners.¹⁶ Advocacy agrees that radio broadcasting can be differentiated from other forms of media and that competition and diversity must occur within the radio broadcast market.

As stated by several small business commenters, diversity of ownership is crucial to insuring competition and a diversity of viewpoints.¹⁷ Diversity of ownership encourages competition within the marketplace, as each radio station will attempt to serve the public and satisfy market demands. If there are fewer owners, then competition is not as robust and the market stagnates. Diversity of ownership is also important for diversity of viewpoints. When a single person or entity has the final say over the viewpoints expressed on many radio stations, they speak with a single voice. Even if the radio stations are managed separately, there is the danger that a nationwide corporate decision is passed down to each individual station. The only way to truly ensure that a variety of viewpoints are presented is to ensure a variety of owners.

Therefore, we further disagree with the view that “. . .consolidation has also led to an increase in the variety of the formats programmed on radio stations, which is the only true measure of diversity in today's media marketplace and radio industry.”¹⁸ Does format diversity equate with viewpoint diversity? We do not believe it does. We do, however, concur with AWRP's view that “. . .it does not make sense to conclude that consolidation has led to greater diversity in local radio markets.”¹⁹

Advocacy is not persuaded by the claim that increased concentration has not had a deleterious effect on diversity or competition.²⁰ According to the *NPRM*, since the passage of the 1996 Act when the Commission eliminated the national ownership limit on radio stations, the number of independent radio owners decreased by 25 percent.²¹ This noticeable constriction of owners was discussed at length in “Whose Spectrum Is It Anyway?” – a paper prepared for the FCC’s Office of General Counsel. This paper noted the consolidation that resulted from the 1996 Act,²² and posited that deregulation and industry consolidation have both formed barriers to new entry and precipitated the decision to sell for a considerable number of small broadcasters.²³

Small broadcasters inherently cover a specific area and target an audience that is local or a niche market. Diversity would be the outcome of a multitude of such broadcasters targeting local audiences, all over the country. Based on what we know about the effects of consolidation, it would be unlikely that a big media company with many stations can either achieve such diversity, or want to target all localities and audiences. Overall, small broadcasters can be a source of information for localities, but a conglomerate media company cannot achieve that for all localities. Something would be lost in the shift from many small broadcasters to a few big broadcasters. That “something” is viewpoint diversity.

Advocacy believes that loosening the local radio broadcast ownership limits does nothing to abate the trend created by the 1996 Act. If anything, Advocacy believes that the trend would continue if the local radio broadcast ownership rules are relaxed even further. The radio broadcast market would continue to consolidate, which would squeeze out small broadcasters and raise market entry barriers for new businesses. A smaller number of broadcasting entities will restrict the number of viewpoints and jeopardize the Commission’s goal of promoting diversity in the radio broadcasting market.

Conclusion

Advocacy recommends that the Commission treat the numeric limits of Section 202(b) of the 1996 Act as a presumption of acceptable levels of local radio ownership that can be rebutted by specific reasons to conclude that diversity or competition in a market would be harmed. In addition, the Commission should continue to allow small businesses a role in radio broadcasting by protecting source and viewpoint diversity while maintaining competition in the radio marketplace.

Respectfully submitted,

/s/ Shawn C. McGibbon for
Thomas M. Sullivan
Chief Counsel for Advocacy

/s/ _____
Eric E. Menge
Assistant Chief Counsel for Telecommunications

Office of Advocacy
U.S. Small Business Administration
409 3rd Street, S.W.
Suite 7800
Washington, DC 20416

May 7, 2002

¹ *In re* Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, *Notice of Proposed Rulemaking*, MM Dkt. Nos. 01-317, 00-244, FCC 01-329 (rel. Nov. 9, 2001).

² *NPRM* at para. 1.

³ Pub. L. No. 104-104, § 202(b), 110 Stat. 110.

⁴ 15 U.S.C. § 634(c)(1)-(4).

⁵ Pub. L. No. 96-354, 94 Stat. 1164 (1980)(codified at 5 U.S.C. § 601 et seq.).

⁶ Pub. L. No. 104-121, 110 Stat. 857 (1996)(codified at 5 U.S.C. § 612(a)).

⁷ Comments of the Office of Advocacy, U.S. Small Business Administration, to the *Notice of Proposed Rulemaking* in MM Dkt. Nos 01-317, 00-244 (March 27, 2002).

⁸ Pub. L. No. 104-104, § 202(b), 110 Stat. 110.

⁹ *NPRM* at paras. 25-7.

¹⁰ Comments of American Women in Radio and Television, to the *Notice of Proposed Rulemaking* in MM Dkt. Nos 01-317, 00-244, at 5, 7 (March 27, 2002).

¹¹ *NPRM* at para. 29.

¹² *AWRT* at p. 5.

¹³ Comments of Clear Channel Communications, Inc., to the *Notice of Proposed Rulemaking* in MM Dkt. Nos 01-317, 00-244, at 2 (March 27, 2002).

¹⁴ Pub. L. No. 104-104, § 601(c)(1), 110 Stat. at 143.

¹⁵ *AWRT* at p. 1.

¹⁶ *NPRM* para 42.

¹⁷ Comments of Nickolaus E. Leggett, N3NL Amateur Radio Operator, to the *Notice of Proposed Rulemaking* in MM Dkt. Nos 01-317, 00-244 (November 14, 2001); Comments of Mapleton Communications, LLC, to the *Notice of Proposed Rulemaking* in MM Dkt. Nos 01-317, 00-244 (March 27, 2002); Comments of Blackeney Communications, Inc., to the *Notice of Proposed Rulemaking* in MM Dkt. Nos 01-317, 00-244 (March 27, 2002); Comments of Dick Broadcasting Company, to the *Notice of Proposed Rulemaking* in MM Dkt. Nos 01-317, 00-244 (March 27, 2002).

¹⁸ *Clear Channel* at pp. 23-4.

¹⁹ *AWRT* at p. 10.

²⁰ *Clear Channel* at p. 3.

²¹ *NPRM* at para. 36.

²² Ivy Planning Group, LLC, *Whose Spectrum Is It Anyway? Historical Study of Market Entry Barriers, Discrimination, and Changes in Broadcast and Wireless Licensing*, p. 68 (December 200)

²³ *Whose Spectrum Is It Anyway?* at p. 70.