

markets, and the local radio ownership rule is not triggered. If one or more areas of contour overlap exist, however, the rule is triggered, and the Commission must determine whether the proposed combination complies with the limits specified in the rule.

172. The Commission first asks how many stations a party would own in the relevant radio market (*i.e.*, the “numerator” of the fraction upon which the numerical limits in the local radio ownership rule are based). Under our current methodology, the Commission deems the radio stations whose principal community contours mutually overlap to be in the same market, and it deems those stations to be the only stations owned by the common owner in that market. In some instances, a radio station’s principal community contour will overlap some, but not all, of the principal community contours of other commonly owned radio stations. In those cases, separate radio markets will be formed from the mutual contour overlaps of different subsets of commonly owned radio stations. We nevertheless apply the same rule: In each of those separate markets, it deems the radio stations whose principal community contours mutually overlap to be in the same market, and it deems those stations to be the only stations owned by the common owner in that market.

173. After calculating the numerator for a particular radio market, the Commission next determines the size of the market. To do this, the Commission again relies on principal community contours. The Commission counts as being in the relevant radio market the radio stations that are included in the numerator. We add to this number every other commercial radio stations whose principal community contour overlaps the principal community contour of at least one of the stations counted in the numerator. The total represents the size of the market against which the number of commonly owned stations is evaluated to determine whether the proposed combination complies with the local radio ownership rule.

174. One significant problem with the current contour-overlap system is what is known as the “Pine Bluff” problem, or the “numerator-denominator” inconsistency. A party is deemed to own only those stations that are represented in the numerator. In calculating the denominator, however, any radio station whose principal community contour overlaps the principal community contour of at least one of the radio stations in the numerator is counted as being in the market, regardless of who owns that

station. As a result, the denominator may include radio stations that are owned by the same party that owns the radio stations represented in the numerator. Because those stations are counted in the denominator, they are by definition “in” the market, but they would not count against the party’s ownership limit in that market unless their principal community contours overlap the principal community contours of all of the radio stations in the numerator.

175. The numerator-denominator inconsistency has two potential and interrelated effects that highlight the problems with our current methodology. First, by counting commonly owned stations in the denominator that are not counted in the numerator, a party may be able to use its own radio stations to increase the size of the radio market and thereby “bump” itself into a higher ownership tier. Second (and more commonly), the inconsistency enables a party to own radio stations that are in the relevant radio market (as determined by our rules) without having those stations count against the party’s ownership limit in that market. The current system of counting radio stations thus enables a party, by taking advantage of the effects of the numerator-denominator inconsistency, to circumvent our limits on radio station ownership, which are intended to protect against excessive concentration levels in local radio markets.

176. The Commission cannot fix the problems associated with our current methodology merely by excluding commonly owned stations from the denominator or including those stations in the numerator. If the Commission excludes commonly owned stations from the denominator, then it would be determining which radio stations are in the market based on who owns those stations, a distinction that would be both unprincipled and unprecedented in the history of competition analysis. If the Commission includes in the numerator commonly owned stations represented in the denominator, a party’s ownership level in a particular market may be overly inflated by outlying stations far from the area of concentration. Each of these proposals thus would create new “reverse” anomalies to cancel out the effects of the numerator-denominator inconsistency.

177. The Commission’s experience with the current contour-overlap methodology leads us to the conclusion that it is flawed as a means to preserve competition in local radio markets, and that the Commission should take an entirely new approach to market definition. As is clear from our

description of the current market definition and counting methodologies, the size of a radio market under our current system is unique to the proposed combination being evaluated. A different combination of radio stations, or the addition or subtraction of a radio station from the combination, has the potential to change the area covered by the principal community contours of the combination and, thus, to change the number of commercial radio stations that are counted as being in the market. This is a singular and unusual method for determining the size of a market. Under traditional antitrust principles, the “relevant geographic market” is used to identify the parties that compete in that market. Our contour-overlap methodology, in contrast, uses the outlets of one party—commonly owned stations with mutually overlapping principal community contours—to define the local radio market and identify other market participants. This is an inherent aspect of the contour-overlap methodology that is not in line with coherent and accepted methods for delineating geographic markets for purposes of competition analysis.

178. The conceptual problems with the contour-overlap methodology have significant implications for our ability to guard against undue concentration in local radio markets. Because radio stations with larger signal contours are more likely to reach a wider audience, consolidation of these radio stations in the hands of one or a few owners increases the potential for market power in local radio markets. Yet the contour-overlap system actually encourages consolidation of powerful radio stations because stations with larger signal contours are more likely to create larger radio markets, which make it more likely that a party would be able to acquire additional radio stations in that market. Thus, by creating this perverse incentive, the contour-overlap methodology may undermine the primary public interest rationale for the local radio ownership rule.

179. Other aspects of our contour-overlap methodology also limit its usefulness in protecting and promoting competition. The method for determining which stations are in a market often does not reflect the area of true competition among radio stations. The Commission currently counts a radio station as being a competitor in a radio market if its principal community contour overlaps any one of the principal community contours that form the market boundary. Those radio stations may be too distant to serve effectively either the listeners or the