

NAB's proposal to exclude from the market radio stations that are commonly owned with the stations in the numerator. This will prevent a party from "piggy-backing" on its own stations to bump into a higher ownership tier. The Commission also will adopt NAB's suggestion that we exclude from the market any radio station whose transmitter site is more than 92 kilometers (58 miles) from the perimeter of the mutual overlap area. This will alleviate some of the gross distortions in market size that can occur when a large signal contour that is part of a proposed combination overlaps the contours of distant radio stations and thereby brings them into the market.

198. The Commission will require parties proposing a radio station combination involving one or more stations whose communities of license are not located within an Arbitron Metro boundary to show compliance with the local radio ownership rule using the interim contour-overlap methodology. The interim methodology will be triggered even if a radio station is "home" to an Arbitron Metro, as long as its community of license is located outside of the Metro. In making that showing, parties should include in the numerator and denominator radio stations that meet the criteria for inclusion under that methodology (as modified by the preceding paragraph) regardless of whether they are included in Arbitron Metros. The Commission emphasizes, however, that the interim contour-overlap methodology may not be used to justify radio station combinations in Arbitron Metros that exceed the numerical limits of the local radio ownership rule; in all cases, parties must demonstrate—using the standards for Arbitron Metros described above—that they comply with those limits in each Metro implicated by the proposed combination.

199. *Modification to The Local Radio Ownership Rule.* Having discussed the relevant product and geographic markets for radio, the Commission now undertakes its obligation under Section 202(h) to determine whether the current limits on radio station ownership are necessary to promote the public interest in competition. With respect to the ownership tiers, the Commission concludes that the current rule meets that standard. The Commission finds, however, that the rule improperly fails to consider the effect that noncommercial stations can have on competition in the local radio market. Accordingly, the Commission modifies the rule to count noncommercial radio stations in determining the size of the radio market.

200. The Commission concludes that the ownership tiers in the current rule represent a reasonable means for promoting the public interest as it relates to competition. In radio markets, barriers to entry are high because virtually all available radio spectrum has been licensed. Radio broadcasting is thus a closed entry market, *i.e.*, new entry generally can occur only through the acquisition of spectrum inputs from existing radio broadcasters. The closed entry nature of radio suggests that the extent of capacity that is available for new entry plays a significant role in determining whether market power can develop in radio broadcasting. Numerical limits on radio station ownership help to keep the available capacity from becoming "locked-up" in the hands of one or a few owners, and thus help prevent the formation of market power in local radio markets.

201. Although competition theory does not provide a hard-and-fast rule on the number of equally sized competitors that are necessary to ensure that the full benefits of competition are realized, both economic theory and empirical studies suggest that a market that has five or more relatively equally sized firms can achieve a level of market performance comparable to a fragmented, structurally competitive market. The current tiers ensure that, in markets with between 27 and 51 radio stations, there will be approximately five or six radio station firms of roughly equal size. An analysis of the top 100 Metro markets indicates that many of them fall within this range.

202. The Commission finds that the concentration levels permitted by the current rule represent a reasonable and necessary balance for radio broadcasting that comports with general competition theory, and we decline to relax the rule to permit greater consolidation in local radio markets. The Commission acknowledges that many radio markets currently have more than 6 radio station firms. The Commission also considers, however, that radio stations are not all equal in terms of their technical capabilities (*i.e.*, each radio station covers a population with varying levels of signal quality), and that the technical differences among stations can cause radio stations groups with similar numbers of radio stations to have vastly different levels of market power. Thus, although the top 50 Metros have an average of 19.9 owners, the top station group in each of those Metros has, on average, 35.2% of the revenue share, and the top four groups receive, on average, 86.1% of the revenue share. The top four firms also dominate audience share. According to the Future

of Music Coalition, the top four firms receive 77.1% of the audience share in the top 10 Metros, 84.7% in Metros 11 to 25, and 85.8% in Metros 26–50. Bear Stearns' analysis also shows that, in the top 100 radio markets, the top three radio groups receive a median of 82.9% of the revenue share and 58.9% of the audience share. And MOWG Study No. 4 indicates that the increase in concentration in radio markets has resulted in an appreciable, albeit small, increase in advertising rates. This data suggests that the current numerical limits are not unduly restrictive. The Commission sees no significant benefit in tinkering with the basic structure of the tiers.

203. For markets with more than 51 radio stations, the number of radio station firms ensured by the rule increases as the size of the market increases. Because of this, some parties argue that we should raise the numerical limits to permit common ownership of more than eight radio stations in larger markets. The Commission rejects that argument. There is no evidence in the record that indicates that the efficiencies of consolidating radio stations increase appreciably for combinations involving more than eight radio stations. On the other hand, extremely large radio markets tend to cover a large area geographically and also tend to be more "crowded" in terms of radio signals. As a result, large markets may include a greater number of extremely small radio stations, as well as radio stations that are a significant distance from each other. Both of these phenomena may make a large market appear more competitive than it actually is. By capping the numerical limit at eight stations, we seek to guard against consolidation of the strongest stations in a market in the hands of too few owners and to ensure a market structure that fosters opportunities for new entry into radio broadcasting.

204. The Commission also declines to make the numerical limits more restrictive. In the smallest radio markets, the current rule provides that one entity may own up to half of the commercial radio stations in a market. Although this would be considered highly concentrated from a competitive point of view, greater levels of concentration may be needed to ensure the potential for viability of radio stations in smaller markets. Given these concerns, we find it reasonable to allow greater levels of concentration in smaller radio markets, but to require more independent radio station owners as the size of the market increases and viability concerns become less acute.