

a specific radio station application and present evidence that makes the necessary *prima facie* showing that a proposed combination is contrary to the public interest.

212. *Localism*. The Commission's localism goal stems from our interest in ensuring that licensed broadcast facilities serve and are responsive to the needs and interests of the communities to which they are licensed. In a competitive market, the efficiencies arising out of consolidation will be passed on to listeners through greater innovation and improved service quality, which in this context contemplates programming that is responsive to the needs and interests of the local community. In a concentrated market, radio station firms have diminished incentive to compete vigorously. Smaller firms, moreover, may have insufficient resources to compete aggressively with the dominant firms in the market, which makes smaller firms less effective in meeting the needs and interests of their local communities. Thus, by preserving a healthy, competitive local radio market, the local radio ownership rule also helps promote our interest in localism.

213. Aside from the positive effect on localism that ensues from a competitive radio market, we see little to indicate that the local radio ownership rule significantly advances our interest in localism. In prior rulemaking proceedings, the Commission has not emphasized localism as one of the justifications for the local radio ownership rule, and the record suggests no reason for adopting a different view here. Although some parties suggest that localism has suffered as a result of consolidation, the source of the alleged harm appears to be the overall *national* size of the radio station group owner rather than the number of radio stations commonly owned in a local market. National radio ownership limits are outside the scope of this proceeding.

214. *Viewpoint Diversity*. Viewpoint diversity "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press v. United States*, 326 U.S. 1 (1945). Many outlets contribute to the dissemination of diverse viewpoints, and provide news and public affairs programming to the public. Elsewhere in the R&O, the Commission discusses in exacting detail the various sources of local news and information that are available to the public. Here, it is sufficient to say that media other than radio play an important role in the

dissemination of local news and public affairs information.

215. That, of course, does not mean that radio broadcasting is irrelevant to viewpoint diversity. The Commission recognizes that radio can reach specific demographic groups more easily than other forms of mass media. Because of this, and because of its relative affordability compared to other mass media, radio remains a likely avenue for new entry into the media business, particularly by small businesses, women, minorities, and other entrepreneurs seeking to meet a market demand or provide programming to underserved communities. Our competition-based limits on local radio ownership thus promote viewpoint diversity, not only by ensuring a sufficient number of independent radio voices, but also by preserving a market structure that facilitates and encourages entry into the local media market by new and underrepresented parties.

216. *Programming Diversity*. In theory, program diversity promotes the public interest by affording consumers access to a greater array of programming choices. The difficulty is in finding a way to measure program diversity in a coherent and consistent manner so that we can determine how it is affected by concentration. The record indicates that different measures of format diversity produce strikingly different results. Overall, the results suggest that consolidation in the radio industry neither helped nor hindered playlist diversity between radio stations.

217. The studies on program diversity also do not draw a sufficiently reliable causal link between ownership concentration and the purported increase in format diversity. After a careful review of the economic literature, however, the Commission cannot confidently adopt the view that we should encourage more consolidation in order to achieve greater format diversity.

218. In light of this record, the Commission cannot conclude that radio ownership concentration has any effect on format diversity, either harmful or beneficial. Accordingly, we do not rely on it to justify the local radio ownership rule.

219. *Attribution of Joint Sales Agreements*. A typical radio Joint Sales Agreements (JSAs) authorizes the broker to sell advertising time for the brokered station in return for a fee paid to the licensee. Because the broker normally assumes much of the market risk with respect to the station it brokers, JSAs generally give the broker authority to hire a sales force for the brokered station, set advertising prices, and make

other decisions regarding the sale of advertising time, subject to the licensee's preemptive right to reject the advertising. Currently, JSAs are not attributable under the Commission's attribution rules. Therefore, radio stations subject to JSAs do not count toward the number of stations the brokering licensee may own in a local market.

220. Based on the record in this proceeding, and on its experience with JSAs and local radio ownership rules, the Commission will now count the brokered station toward the brokering licensee's permissible ownership totals under the revised local ownership rules. Where an entity owns or has an attributable interest in one or more stations in a local radio market, joint advertising sales of another station in that market for more than 15 percent of the brokered station's advertising time per week will result in counting the brokered station toward the brokering licensee's ownership caps. The Commission does not believe that out-of-market JSAs pose the same economic concerns. Therefore, JSAs will not be attributable when a party does not own any stations or have an attributable interest in stations in the local market in which the brokered station is located.

221. In considering revisions to our attribution rules, the Commission has always sought to identify and include those positional and ownership interests that convey a degree of influence or control to their holder sufficient to warrant limitation under our ownership rules. The Commission finds that the use of in-market JSAs may undermine its continuing interest in broadcast competition sufficiently to warrant limitation under the multiple ownership rules.

222. The Commission finds that where one station owner controls a large percentage of the advertising time in a particular market, it has the ability potentially to exercise market power. Many times, the broker will sell advertising packages for the group of stations, offer substantial discounts and create incentives not available to other broadcasters in the market. In any given radio market, a broker may own or have an ownership interest in stations, operate stations pursuant to a local marketing agreement, or sell advertising time for stations pursuant to a JSA. Control over spot sales by one station affords significant power over the other. Thus, JSAs raise concerns regarding the ability of smaller broadcasters to compete, and may negatively affect the health of the local radio industry generally. JSAs put pricing and output decisions in the hands of a single firm.