

Instead of stations competing against one another, a single firm sells packages of time for all stations, eliminating competition in the market.

223. The Commission has not previously attributed JSAs based on its earlier conclusion that JSAs do not convey sufficient influence or control over a station's core operations to be considered attributable. Upon reexamination of the attribution issue, the Commission finds that, because the broker controls the advertising revenue of the brokered station, JSAs convey sufficient influence over core operations of a station to raise significant competition concerns warranting attribution. Licensees of stations subject to JSAs typically receive a monthly fee regardless of the advertising sales or audience share of the station. Therefore, licensees of stations subject to JSAs have less incentive to maintain or attain significant competitive standing in the market.

224. Although the Commission continues to believe that JSAs may have some positive effects on the local radio industry, it finds that the threat to competition and the potential impact on the influence over the brokered station outweighs any potential benefits and requires attribution. The Commission finds that modification of its regulation also is warranted given the need for attribution rules to reflect accurately competitive conditions of today's local radio markets. It would be inconsistent with its rules to allow a local station owner to substantially broker a station that it could not own under the local radio ownership limits.

225. The Commission believes that a 15 percent advertising time threshold will identify the level of control or influence that would realistically allow holders of such influence to affect core operating functions of a station, and give them an incentive to do so. At the same time, a 15 percent threshold will allow a station the flexibility to broker a small amount of advertising time through a JSA with another station in the same market without that brokerage rising to an attributable level of influence. The Commission believes that the 15 percent threshold (which is the same threshold used for determining attribution of radio and television LMAs) balances these interests.

226. Under the Commission's modified rules, JSAs currently in existence will be attributable. Parties with existing, attributable JSAs in Arbitron Metros under the new rules will be required to file a copy of the JSA with the Commission within 60 days of the effective date of this R&O. Both the licensee and the broker should submit

copies of their JSAs as supplements to their Ownership Reports on file at the Commission. For JSAs involving stations located outside of Arbitron Metros, the Commission will require such JSAs to be filed within 60 days of the effective date of our decision in Docket No. 03-130, unless a different date is announced in that decision. In addition, the Commission is modifying FCC Application Forms 314 and 315 to require applicants to file attributable JSAs at the time an application is filed, regardless of whether the markets implicated by the application are located in Arbitron Metros.

227. *Existing JSAs.* The Commission is aware that attribution of in-market radio JSAs may affect licensees' compliance with the modified local radio ownership rules. In addition, the Commission does not want to unnecessarily adversely affect current business arrangements between licensees and brokers. Therefore, the Commission will give licensees sufficient time to make alternative business arrangements where they have in-market JSAs entered into prior to the adoption date of this R&O that would cause them to exceed relevant ownership limits. In such situations, parties will have 2 years from the effective date of this R&O to terminate agreements, or otherwise come into compliance with the local radio ownership rules adopted herein. However, if a party sells an existing combination of stations within the 2-year grace period, it may not sell or assign the JSA to the new owner if the JSA causes the new owner to exceed any of our ownership limits; the JSA must be terminated at the time of the sale of the stations. JSAs that do not cause a party to exceed the modified local radio rules may continue in full force and effect and may be transferred or assigned to third parties. Finally, parties are prohibited from entering a new JSA or renewing an existing JSA that would cause the broker of the station to exceed our media ownership limits.

228. *Waiver Standards.* The Commission declines at this time to adopt any specific waiver criteria relating to radio station ownership. Parties who believe that the particular facts of their case warrant a waiver of the local radio ownership rule may seek a waiver under the general "good cause" waiver standard in our rules.

C. Cross Ownership

229. In this section the Commission addresses (1) the newspaper/broadcast cross-ownership rule and (2) the radio-television cross-ownership rule to determine whether they are necessary in

the public interest pursuant to section 202(h). Based on the record in this proceeding, the Commission finds that neither its current nation-wide prohibition on common ownership of daily newspapers and broadcast outlets in the same market nor its cross-service restriction on commonly owned radio and television outlets in the same market, is necessary in the public interest. With respect to both rules, the Commission concludes that the ends sought can be achieved with more precision and with greater deference to First Amendment interests by modifying the rules into a single set of cross-media limits.

230. *Newspaper/Broadcast Cross-Ownership Rule.* Adopted in 1975, the newspaper/broadcast cross-ownership rule prohibits in absolute terms common ownership of a full-service broadcast station and a daily newspaper when the broadcast station's service contour encompasses the newspaper's city of publication.¹³ The rule was intended to promote media competition and diversity. Upon review, the Commission now concludes that (1) the rule cannot be sustained on competitive grounds, (2) the rule is not necessary to promote localism (and may in fact harm localism), and (3) most media markets are diverse, obviating a blanket prophylactic ban on newspaper-broadcast combinations in all markets. Instead, the Commission will review proposed license transfers and renewals involving the combination of daily newspapers and broadcast properties only to the extent that they would implicate the cross-media limits.

231. *Competition.* The Commission first defines the relevant product and geographic markets in which broadcasters and newspapers compete, and then assess whether the rule is necessary to promote competition in these markets. As the Commission noted in the newspaper/broadcast proceeding, its focus is on the primary economic market in which broadcast stations and newspapers compete: advertising. The Commission concludes, based on the record in this proceeding, that most advertisers do not view newspapers, television stations, and radio stations as close substitutes. The Department of Justice and several federal courts have concluded that the local newspaper market is distinct from the local

¹³ For AM radio stations, the service contour is the 2mV/m contour, 47 CFR 73.3555(d)(1); for FM radio stations, the service contour is the 1mV/m contour, 47 CFR 73.3555(d)(2); for TV stations, the service contour is the Grade A contour, 47 CFR 73.3555(d)(3). A daily newspaper is one that is published in the English language four or more times per week. 47 CFR 73.3555 n.6.