

FCC's New Loopholes

Changes in Radio Rules Mean Clear Channel Can Stay Big—And in Some Places Expand

By ANNA WILDE MATHEWS

THE FEDERAL Communications Commission tightened radio ownership rules in June after giant Clear Channel Communications Inc. became the focus of complaints about rapid consolidation in the radio industry.

But Clear Channel may fare better than its rivals under the new rules and may still be able to grow.

Radio companies generally can keep their current stations under a grandfather clause in the FCC's new guidelines. As a result, Clear Channel, the San Antonio company that is by far the nation's biggest owner of radio stations, can hang onto just about every station it rolled up under the old rules. Yet competitors say the tougher new standards will make it harder for them to replicate Clear Channel's potent collection of stations.

"All [the FCC] did was further entrench them, and gave them more running room," says Lew Dickey, chief executive of Cumulus Media Inc., a radio company based in Atlanta. "It makes it more difficult for the rest of us to line up and compete against them on a national level."

Clarke Brown, chief executive of radio operations for Jefferson-Pilot Corp. in Greensboro, N.C., says Clear Channel "should be very pleased.... They're already in a maximum position. This is going to disallow almost anyone from achieving clusters like Clear Channel's in many markets."

But Clear Channel's senior vice president for government affairs, Andrew Levin, says the change, which Clear Channel opposed, doesn't favor his company. "Clear Channel had much more latitude under the old rules than we do today," he said.

The change comes as Clear Channel continues to draw a spotlight—last week, a top Justice Department antitrust official said the agency had two continuing investigations into Clear Channel, but declined to go into detail. The company said it is "cooperating fully" and is "confident the DOJ will find, as it has in the past, that our company is managed with the highest degree of integrity."

Some aspects of the FCC's new media-ownership regulations—which generally made rules for owning radio stations stricter, even while easing those for TV stations—are being challenged in Congress, and radio-industry officials are debating whether to oppose them in court. But if they stand, they seem likely to allow some station-buying opportunities for Clear Channel, along with other radio-station owners.

The buying opportunities are the result of changes in how the FCC defines a radio market. A station's market used to be defined by the area covered by its signal. The new rules rely on market definitions maintained by industry-rating service Arbitron Inc., New York, which don't directly take a station's signal strength into account.

That may make it possible for radio companies to buy some stations that would have been tough to acquire before, particularly when two markets are close together. Under the old rules, when a strong signal reached more than one city, it effectively could count against ownership caps in multiple markets. But under the new rules, the owner of the powerful signal might be able to buy more nearby stations because they are considered to be in completely separate markets. Also, companies might be able to pick up stations when Arbitron guidelines for a market change, but the FCC said they would have to wait two years after such an adjustment.

Clear Channel could find some benefits in adjacent-market stations because it has traditionally bought stations in both large and small markets. It also tends to blanket areas with

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John Lehman

Shifts for Small TV Markets

By YOCHI J. DREAZEN

SIOUX FALLS, S.D., has five commercial television stations, and a population of 124,000. Detroit has nine commercial stations and a population of nearly one million. So why have federal regulators made it easier to buy television stations in Sioux Falls than in Detroit?

The answer lies in an obscure loophole to the new media ownership rules that a divided Federal Communications Commission approved last month. For decades, the FCC has held that public-television stations that all broadcast the same programming in sparsely populated areas only counted as one station.

But in a little-noticed change that has surprised and angered many station owners, Democratic FCC commissioners, public-television executives and consumer advocates, the new FCC rules count those stations separately, boosting the number of stations in scores of small markets in states like Iowa, Ohio, Kentucky, Michigan, Nebraska, New York, and Vermont.

The point isn't academic. Sioux Falls is considered to have a total of 11 stations, even though five of them are operated by the statewide South Dakota Public Broadcasting system and broadcast the same signal. Many viewers flipping from channel 2 to channel 23 there, for instance, will see the same shows at the same times.

Since the new FCC rules lift cross-ownership restrictions entirely in cities with more than nine TV stations, a single company in Sioux Falls can now buy two of the five commercial TV stations. A company also could own twice as many radio stations there as it could have under the earlier FCC definition.

The loophole illustrates how small changes buried in the footnotes of a long and dense set of new regulations can have significant real-world impact. It also comes as another embarrassment for the FCC, and its embattled chairman, Michael Powell, whose effort to relax media-ownership rules is under siege in Congress.

Last week, the House overwhelmingly passed a spending bill rolling back the biggest of the FCC's rule changes, which allowed media companies to control TV stations reaching 45% of the national television market instead of the current 35%. The Senate has passed a separate measure reversing all of the rule changes approved by the FCC earlier this summer, and is expected to write a spending bill that mirrors the House's approach this fall. President Bush has threatened a veto, but both bills have broad Republican support.

"It's a real 'devil-is-in-the-details' type of situation," says FCC Commissioner Jonathan Adelstein, a South Dakota native

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who is trying to persuade officials at the agency to close the loophole. "These rules expose people to domination by a new local Citizen Kane."

The move particularly alarms public-television broadcasters. Currently, in many rural states and regions, where TV broadcasters have to beam their signals great distances to reach isolated viewers, public-broadcasting systems operating a few low-power stations in a given region relay the exact same programming so that everyone living in that area has access to the system's news, music and other programming.

Under the old rules each of those stations were only counted once by the FCC when it measured the size and competitiveness of a given market.

The new rules change that: In South Dakota, the FCC considers the entire eastern half of the state to be part of the Sioux Falls market, which means that numerous South Dakota Public Television affiliates are counted as separate Sioux Falls stations. Watertown, N.Y., is now considered to have a total of four stations, even though two are public-television outlets broadcasting the same signal. The new FCC rules would allow a company to combine the commercial stations with the town's only newspaper or a large number of its radio stations.

If left in place, the loophole would be a boost for companies that own local affiliates in small and midsize markets like San Antonio media giant Clear Channel Communications Inc.; Sinclair Broadcast Group Inc., Hunt Valley, Md.; and Emmis Communications Corp. of Indianapolis. All are widely expected to be among the first wave of companies to take advantage of the new, looser federal media ownership rules, though Andrew Levin, senior vice president for government affairs for Clear Channel, said the loophole would have little impact on the company because it was "not actively seeking to expand" its television holdings. A spokesman for Sinclair didn't return calls seeking comment. An Emmis spokeswoman also didn't return calls.

The FCC move has attracted little public attention, but it worries public-interest activists who fear it opens the door to near-monopolies in many small towns. Gene Kimmelman, the co-director of the Consumers Union, said the oversight illustrated FCC carelessness in crafting the entire set of new media regulations it approved on June 2. "They were goal-oriented, and what they ended up with simply doesn't re-

flect the realities of the media market."

It's unclear whether the change was intentional or inadvertent as FCC staffers rewrote numerous, complicated media regulations. Mr. Adelstein is convinced it was a mistake, but other FCC officials said the change was deliberate. FCC spokesman Richard Diamond declined to comment. The FCC's silence on the matter indicates the agency's wariness with the media in the wake of months of withering attack from commentators and members of Congress. Compounding the confusion: Mr. Powell is on vacation at a location that wasn't disclosed, leaving no one to speak for the commission's action.

However, other FCC officials defend the new rules as ensuring a more accurate count of television stations in each market. Even if two or more public-TV stations broadcast the same signal in a certain area today, some argue, that didn't mean each station couldn't broadcast its own programming in the future. "Noncommercial stations can be bought and have their programming changed into something else," an official said.

That reasoning doesn't reassure many in the public-television industry. "These are not different stations by any normal definition," says John Lawson, the president of the Association of Public Television Stations. "The record needs to reflect the reality of what these stations are doing and what they're not doing."

The city's commercial broadcasters still are trying to calculate the full impact of the loophole, but worry that it could help the networks increase their control over Sioux Falls' market by allowing them to own more local affiliates than they could under the earlier FCC definition.

"Local broadcasters need to maintain their independence," says Mark Antonitis, general manager of KELO-TV, the city's CBS affiliate. "We're worried about the networks gaining too much control over access to the public in cities like ours."

Mr. Adelstein hopes he can persuade a majority of his fellow commissioners to close the loophole when the FCC begins reviewing challenges to the new media rules later this year. Even if loophole is eliminated, however, some analysts say that additional loopholes will probably be uncovered. "To be honest, my guess is this isn't the only one," says Blair Levin, a Legg Mason analyst and a former senior FCC official.

FCC Changes Also Touch Radio

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stations so it can achieve operating efficiencies and sell regional advertising packages across a swath of cities and suburbs.

According to analysis by BIA Financial Network, Clear Channel may be able to buy as many as five strong stations in Trenton, N.J., where currently Clear Channel has none, and two more than the four it owns in Wilmington, Del. Previously, people with knowledge of the matter say, the reach of Clear Channel's Philadelphia stations restricted the company in Trenton and Wilmington. Similarly, Clear Channel could have new opportunities to buy strong stations in Daytona Beach, Fla., where it currently owns none and could now have six. Under the old rules, its cluster in nearby Orlando limited what it could buy in Daytona, according to the people with knowledge of the matter.

Clear Channel's Mr. Levin says that even under the old rules the company could have purchased more stations in Wilmington, Trenton and Daytona Beach. Their signals simply would have had to be configured so as not to overlap too much with the company's big nearby station clusters.

In addition, companies are extremely limited in their ability to resell station clusters that don't conform to the new rules, sharply reducing the value of those

holdings, he says. In Clear Channel's case, a large number of stations could be affected. Clear Channel also is likely to have to reduce its station counts in markets where it has cooperative agreements giving it a role in operating stations it doesn't own—such as in San Diego, where it operates some Mexican-owned stations.

According to an analysis by Bear Stearns Cos., fewer than 2% of the commercial stations in the top 285 markets, or only about 215 stations, are "noncompliant," meaning the current owners couldn't acquire them under the new rules.

Of those, 82 are owned or partially operated by Clear Channel, representing about 6.7% of the company's stations, the report says. The publicly traded company with the next-highest number is Cumulus, with 17, or 6.4% of its total, and New York's Viacom Inc. has four, or 2.2%.

The FCC says the radio rules weren't designed to help any particular company. By grandfathering, "we tried to balance two important goals," an FCC official says. "One was respecting the reasonable expectations of companies that had acquired stations lawfully under the old rules, and the other was the policy goal of protecting consumers by promoting competition in radio markets."

—Mark Wigfield contributed to this article.