Broadcast LAW BLOG

PUBLISHED BY
Davis Wright Tremaine LLP

# FCC Says TV Shared Services Agreement and a Combination of Two Top 4 Network Affiliates in One Market is Permissible - For Now

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November 27, 2011

In an eagerly anticipated case involving TV stations in the Honolulu market, the FCC's Media Bureau determined that a programming swap that permitted one company to hold the licenses of both the NBC and CBS affiliates in a single market, and to also provide technical and office services and news programming to a third station in the market, was permissible under current rules. However, the Commission warned that it would consider in its upcoming Notice of Proposed Rulemaking in its Quadrennial Review of the multiple ownership rules whether similar situations should be permitted in the future, and seemingly implied that even this combination could be subject to further review in future licensing proceedings. The permissibility of shared services agreements has been a question raised by public interest groups for quite some time (see our post here), and has also been raised by certain cable and satellite television operators as such combinations can result in one broadcaster negotiating carriage agreements for multiple stations in a market. Based on this case, and the issues raised in connection with previous decisions, this will no doubt be a very controversial topic when the Commission considers the upcoming multiple ownership proceeding.

The Honolulu case began with one owner - Raycom - holding two licenses in the market - one an NBC affiliate, and the other an affiliate of the MyTV Network. As there are 8 independently owned television stations serving Honolulu, the combination of these two stations, only one of which is a Top 4 station in the market, was permissible. Raycom then entered into a deal with the owner of the local CBS affiliate, where the parties swapped call letters and network affiliations. Raycom also purchased many of the non-license assets of the station, and received an option to purchase the station, and agreed to pay the licensee, over time, $22 million. Raycom also entered into a shared services agreement with the owner of the station that had become the MyTV affiliate where Raycom would provide back office services, sales personnel, and a physical location for the station's studio and transmitting antenna, in exchange for 30% of the stations revenues, and a flat monthly payment. As detailed below, the Commission determined that the swap of call letters and network affiliations was not subject to review at this time as there was no licensing transaction before the FCC, and the shared services agreement did not violate current FCC policies.

The Media Bureau's decision on the purchase of the CBS affiliation was based on the analysis of the rules that currently prevent the combination of any of the Top 4 rated stations in a market. As the FCC noted, the rule prohibiting the combination looks at the situation at the time of the acquisition of a station. The FCC, when it adopted the Top 4 rule, specifically stated that it would not penalize stations that grew their audience. Thus, an owner with a Top 4 TV station could acquire another low rated station in the market, and if that second station eventually grew its audience so that it also became a Top 4 station in that market, the owner would not be penalized for its success. The review is limited to occurring at the time of the proposed acquisition of the second station. As no acquisition was proposed in this case (Raycom already owned the second station), the Bureau determined that there was nothing to review. The Commission did note, however, that in connection with subsequent licensing decisions (e.g. a sale of the combined operation), the situation could be reviewed again - specifically stating that the combination could not be sold together should both stations remain in the Top 4 and the rules remain unchanged.

The shared services agreement with the new MyTV affiliate was also found to be within the FCC's previous decisions approving such agreements (see, e.g. our summaries of cases here and here). The licensee was deemed to have an economic interest in the success of the station, as it received 70% of station revenues (from which it would have to pay it's operational costs, plus a $208,333 monthly payment to Raycom for the services that Raycom provides). The public interest groups contended that the reality of the situation was that the licensee of the MyTV station would probably receive little money from station operations, as the potential profits would be eaten up by the monthly payments to Raycom. The Media Bureau rejected that assertion, finding that the 70% share from which a payment to the shared service provider was within the scope of prior agreements approved by the FCC.

The FCC also found that the licensee of the MyTV station was in control of the station - that there was no unauthorized transfer of control. Some of the specific factors looked at by the FCC in determining that the licensee maintained control included the following:

- The licensee had a full-time General Manager and General Sales Manager, and leased 4 employees from Raycom, and those 4 employees were specifically supervised and answered directly to the station's employees and performed services only for the station (and not for Raycom's stations)
- The General Manager helped produce the news run on the station (produced with Raycom), and, on a daily basis, vetoed programming offered by the MyTV Network
- The General Manager scheduled station programming, bid for syndicated programming, and negotiated agreements for local programming
- The General Manager produced two editorials each week, that were run on the station
- The General Manager produced a weekly programming report, sent to the station's owner

Based on these facts, and the financial arrangements set out above, the Bureau concluded that the licensee maintained sufficient control over the station based on prior precedent.

As we wrote last month, Commissioner Copps already stated, when it began its online public inspection file proceeding, that these agreements were an evasion of the ownership rules. In this case, the Bureau did not seem very comfortable in making the decisions it did, promising to revisit these issues in the upcoming Notice of Proposed Rulemaking on the revisions of the FCC's multiple ownership rules. Recent press reports indicate that that notice is circulating among the Commissioners now, and will probably be released for public comment soon - probably without any relief from the local TV duopoly rules being proposed. With the NPRM set to examine shared services agreements, these issues are bound to be matters of serious contention for the next year, as the ownership proceeding makes its way through the Commission. And this case may not be at an end either, as an appeal to the full Commission is possible. So look for the very contentious arguments on this very contentious issue to continue.

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