

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
Sunburst Media L.P.	)	
(Assignor)	)	
	)	
and	)	
	)	
Clear Channel Broadcasting Licenses, Inc.	)	
(Assignee)	)	
	)	
For Assignment of Licenses of:	)	
	)	
Station KSLI(AM), Abilene, Texas	)	File No. BAL-20000719ABA
Station KEAN(AM), Abilene, Texas	)	File No. BAL-20000719ABI
Station KEAN-FM, Abilene, Texas	)	File No. BALH-20000719ABJ
Station KULL(FM), Abilene, Texas	)	File No. BALH-20000719ABK
Station KEYJ-FM, Abilene, Texas	)	File No. BALH-20000719ABL
Station KHYS(FM), Abilene, Texas	)	File No. BALH-20000719ABM

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 28, 2001**

**Released: January 11, 2002**

By the Commission:

1. The Commission has under consideration an Application for Review filed April 23, 2001 by Dove Media, Inc. (“Dove”), licensee of station KORQ(FM), Winters, Texas, and a related pleading.<sup>1</sup> Dove requests review of a March 23, 2001 decision by the Chief, Audio Services Division, Mass Media Bureau<sup>2</sup> (“Staff Decision”) that denied Dove’s December 20, 2000 Petition for Reconsideration of a November 15, 2000 staff ruling<sup>3</sup> denying Dove’s September 5, 2000 Petition to Deny and granting the above-captioned application assigning the licenses for stations KSLI(AM) (formerly KBBA(AM)), KEAN(AM), KEAN-FM, KULL(FM), KEYJ-FM and KHYS(FM), Abilene, Texas, from Sunburst Media, L.P. to Clear Channel Broadcasting Licenses, Inc. (“Clear Channel”). We find no error in the Staff Decision and, therefore, deny the Application for Review.

2. **Background.** Prior to the above-captioned assignment, Clear Channel did not own radio stations in the Abilene market. The transaction assigned six radio stations to Clear Channel, the maximum number of commercial radio stations an entity may own, operate or control in the Abilene market, pursuant to the

<sup>1</sup> Clear Channel Broadcasting Licenses, Inc. filed an opposition on May 8, 2001.

<sup>2</sup> *Letter to Dennis J. Kelly, Esq., Peter Gutmann, Esq., and Richard J. Bodorff, Esq.*, Ref. No. 1800B3-BSH (Mass Media Bureau, March 23, 2001).

<sup>3</sup> *Letter to Dennis J. Kelly, Esq.*, Ref. No. 1800B3-AB (Mass Media Bureau, November 15, 2000).

radio contour overlap provision of the Commission's broadcast multiple ownership rule.<sup>4</sup> *See* 47 C.F.R. § 73.3555(a)(1)(iii). Dove argues that, in addition to the six stations being assigned, a seventh radio station in Abilene should also be considered attributable to Clear Channel. Dove states that while KWKC(AM), Abilene, Texas, is licensed to a non-Clear Channel entity, Dynamic Broadcasting Company, it broadcasts nine hours of programming per weekday, pursuant to its network affiliation with Premiere Radio Networks ("PRN"), a Clear Channel subsidiary. Based on this contractual relationship, Dove asks the Commission to attribute KWKC(AM) to Clear Channel for purposes of the multiple ownership rules. Attribution of a seventh radio station in the Abilene market would render Clear Channel in violation of Section 73.3555(a)(1)(iii). In support of its position, Dove maintains that the network / affiliate relationship can be viewed as a form of time brokerage and argues that a fair reading of 47 C.F.R. § 73.3555, Note 2, paragraph (k) should create an attributable interest for the network entity in the affiliate station.

3. **Discussion.** Note 2, paragraph (k) of Section 73.3555 of the Commission's rules defines time brokerage as "the sale by a licensee of discreet blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it." 47 C.F.R. § 73.3555, Note 2, paragraph (k). Recognizing that time brokerage agreements afford the broker significant influence over the brokered station, the Commission's rules provide that time brokerage of another radio station in the same market for more than fifteen percent of the brokered station's weekly broadcast hours results in attribution of the brokered station to the brokering licensee for purposes of applying the multiple ownership rules.<sup>5</sup> Unlike time brokerage, however, network / affiliate relationships are not treated as attributable interests under the Commission's rules or precedent. Dove requests that, in the context of the subject assignment application, we expand current policy to attribute such network affiliation agreements for purposes of the local radio multiple ownership rule.

4. Dove argues that the Application for Review is appropriate because the issue involves a policy question previously unresolved by the Commission. *See* 47 C.F.R. § 1.115(b)(2)(ii). Dove's position is premised on an assumption that the disparate treatment of time brokerage and network affiliation results from the Commission's failure to address whether the latter should be recognized as an attributable relationship. We disagree. Indeed, recently, the Commission comprehensively reviewed its attribution rules and expressly addressed whether network affiliation agreements should be deemed attributable interests.<sup>6</sup>

5. In the Broadcast Attribution Proceeding, the Commission sought to identify *all* interests relevant to the underlying purposes of the multiple ownership rules and which should, therefore, potentially be counted in applying those rules. It specifically opted to attribute certain television time brokerage *per se* and to count such interests toward the brokering licensee's local ownership limits,<sup>7</sup> noting that the existing radio time brokerage rule has operated successfully to ensure that the goals of competition and diversity are not undermined by the existence of unattributed influence over radio stations in the same market. The

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<sup>4</sup> The assignment was consummated on December 15, 2000.

<sup>5</sup> Note 2, paragraph (k)(1) of Section 73.3555 states that where a party with an attributable ownership interest in one station in a radio market "brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station ..." 47 C.F.R. § 73.3555, Note 2, paragraph (k)(1).

<sup>6</sup> *In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; and Reexamination of the Commission's Cross-Interest Policy, Report and Order*, 14 FCC Rcd 12559, 12599-600, ¶ 89 (1999) ("Attribution Report and Order"); *Memorandum Opinion and Order on Reconsideration*, 16 FCC Rcd 1097 (2001) ("Attribution Reconsideration Order") ("Broadcast Attribution Proceeding").

<sup>7</sup> *Attribution Report and Order*, 14 FCC Rcd at 12597-598, ¶¶ 83-84.

Commission explicitly declined to treat network affiliation as a cognizable interest.<sup>8</sup> Instead, the Commission provided that, to the extent it might be appropriate to address concerns about a particular radio or television network affiliation agreement, the Commission would do so in the context of an equity/debt plus (“EDP”) analysis.<sup>9</sup> The Commission thus concluded that “... where the program supply agreement takes the form of a network affiliation agreement, the network ... will have its interest in its affiliate attributed if it invests in the affiliate above the EDP threshold.” *Attribution Report and Order*, 14 FCC Rcd at 12599-600, ¶ 89. Dove does not argue that Clear Channel has an attributable interest in station KWKC(AM) under our EDP analysis, nor does it present any evidence that Clear Channel has the requisite financial investment to trigger the EDP rule.

6. To the extent that Dove is asking us to change our policy with respect to whether certain network affiliation agreements should be *per se* attributable, we note that it has long been Commission practice to make decisions that alter fundamental components of broadly applicable regulatory schemes in the context of rule making proceedings, not adjudications. *See, e.g., In re Application of Pine Bluff Radio, Inc.*, 14 FCC Rcd 6594, 6599 (1999) (any changes in methodology for determining “radio markets,” for purposes of the multiple ownership rule, are best addressed in the context of a rule making); *Great Empire Broadcasting, Inc.* 14 FCC Rcd 11145, 11148 (1999) (it is generally inappropriate to address arguments for a change in rules “where third parties, including those with substantial stakes in the outcome, have had no opportunity to participate, and in which we, as a result, have not had the benefit of a full and well-counseled record,” citing *Capital Cities/ABC, Inc.*, 11 FCC Rcd 5841, 5888 (1996)); *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983) (“rulemaking is generally better, fairer, and more effective method of implementing a new industry wide policy than the uneven application of conditions in isolated [adjudicatory] proceedings”). Thus, the better forum in which to assess Dove’s argument is not an adjudicatory proceeding, where the many parties potentially affected by the proposition lack opportunity to participate. Rather, Dove’s argument is more appropriately addressed in a notice and comment rule making, with the benefit of an extensive and well-counseled record developed therein. In fact, as noted above and in the Staff Decision, the same argument raised by Dove in this proceeding was examined and resolved by the Commission in the Broadcast Attribution Proceeding.

7. Accordingly, IT IS ORDERED that the April 23, 2001 Application for Review filed by Dove Media, Inc. IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>8</sup> *See id.* at 12599-600, ¶¶ 88-89.

<sup>9</sup> *Id.* at 12579, ¶ 36; 47 C.F.R. § 73.3555, Note 2, paragraph (j). Specifically, we apply a two-pronged test to determine whether an interest is attributable under EDP. Under the first prong, we ask whether the investor is either a major program supplier that supplies over 15 percent of a station’s total weekly broadcast programming hours, or a same-market media entity subject to the broadcast multiple ownership rules. The second prong looks at the extent of the financial interest. A major program supplier’s or a same-market media entity’s interest in a licensee or other media entity in that market will be attributed if that interest, aggregating both debt and equity holdings, exceeds 33 percent of the total asset value (equity plus debt) of the licensee or media entity.