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Multiple Ownership in HD!

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Digital (a/k/a "HD") radio has yet to captivate the consuming public as much as its promoters might have hoped. Still, that technology has opened up some opportunities for creative broadcasters looking to achieve results that might not otherwise be achievable under existing FCC rules and policies. One example surfaced recently, brought to our attention (and the Commission's) by an unhappy competitor.

It seems that Viacom, licensee of as many broadcast stations as any single licensee can own in the Los Angeles market , has been using one of the HD digital streams on its KTWV(FM) in that market to provide a country music format. No problem there, it would seem. But wait. The content for that country stream is apparently nothing more than a simulcast from a Viacom station in San Bernardino, a different market entirely. A country music competitor in LA – Mt. Wilson FM Broadcasters – sees a couple of problems with that, and has asked the Commission for a ruling declaring that Viacom's arrangement violates both the FCC's multiple ownership rules and its FM allocation scheme.

In adopting its HD Radio rules, the Commission recognized that the multi-stream nature of HD operation could potentially allow broadcasters to make an end-run around the ownership rules. (That could happen if, say, a licensee who had hit the ownership cap in a market were to arrange through, *e.g.*, a time brokerage deal, to secure one or more digital streams on stations owned by others in the market.) In an apparent attempt to prevent this, the Commission held that if a licensee (let's call it Licensee A) of a station in a market were to broker a multicast stream from another licensee's station in the same market, that brokered stream would count towards the local radio ownership cap for Licensee A. This would prevent a maxed-out licensee – such as Viacom – from programming using another licensee's in-market multicast channels.

But the situation in Los Angeles isn't quite that simple. According to Mount Wilson, Viacom is using a multicast stream on a station that Viacom already owns (KTWV) to simulcast the programming from another station that it owns in another market (*i.e.*, KFRG in the nearby San Bernardino market). Mount Wilson is urging the Commission to declare that, when a licensee uses the multicast stream of a station it owns to simulcast the signal of an out-of-market station it also owns, the licensee should be charged with an additional attributable interest in the multicast market.

While Mount Wilson's pique is understandable, its argument reduces to the odd and probably untenable notion that Viacom should be deemed to have multiple attributable interests in its own station. With the Commission's oft-stated desire to encourage the expanded acceptance – by both the industry and the listening public – of HD Radio, it seems unlikely that the Commission will adopt such a novel and potentially far-reaching approach to attribution of multicast streams. Still, Mount Wilson's request does raise some interesting questions, such as how the situation would differ if Viacom were to carry on its multicast stream either (a) the programming of an out-of-market station owned by an unaffiliated entity, or (b) the programming of a station it owns in a much more distant market, or (c) simply the same programming as on KFRG, but not to carry it as a simulcast.

Mount Wilson raises a second question about the geographic limits on use of an HD Radio multicast stream to simulcast another station. The Commission's rules have long held that a commercial licensee cannot use a commonly owned FM translator to expand the service area of a commonly-owned full-power FM station beyond the limits of the full-power station's 60 dBu contour. The rationale of that limitation on translator usage is based in significant part on the view that such use would undermine full-power FM service and the Commission's allocation scheme.

Mount Wilson picks that ball up off the translator field and tries to score with it on the HD radio field. In Mount Wilson's view, the simulcasting of a full-power FM station on the multicast stream of another outside the first's 60 dBu contour is the same thing as using a translator for that purpose. Since such use in the translator context is prohibited, so too should the multicasting gambit be. Mount Wilson does not limit its requested prohibition to commonly-owned stations: it urges the Commission to adopt a prohibition on the use of an HD Radio multicast stream to expand the service area of any other FM station.

If adopted, Mount Wilson's suggested prohibition would prevent an owner of multiple stations within a market from using the multicast streams of the strongest station to deliver the programming from a weaker station to a larger audience. Again, the FCC's stated desire to encourage multicasting and adoption of HD Radio would suggest a reluctance to adopt such limits.

Our best guess is that the Commission is unlikely to impose the requested limitations, at least through a declaratory ruling. A (somewhat) more likely outcome would be inclusion of the issue in a future notice of proposed rulemaking in HD Radio proceeding. If and when that occurs – or if any other opportunity to chip in your two cents' worth on the Mount Wilson proposal arises – we'll let you know.