

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

In the Matter of)
Shareholders of Univision Communications) BTCCT-20060718AGO et al.
Inc.)
(Transferor))
and)
Broadcasting Media Partners, Inc.)
(Transferee))
For Transfer of Control of Univision)
Communications, Inc., and Certain Subsidiaries,)
Licensees of KUVB-TV, Green Valley, Arizona et)
al.)

MEMORANDUM OPINION AND ORDER

Adopted: February 8, 2008

Released: February 12, 2008

By the Commission: Commissioner Copps concurring and issuing a statement. Commissioner Adelstein approving in part, concurring in part, and issuing a statement at a later date.

I. INTRODUCTION

1. The Commission has before it requests filed by Providence Equity Partners, Inc. ("PEP") and Thomas H. Lee Partners, L.P. ("Lee") seeking clarification of Paragraph 47 of the March 27, 2007 order conditionally approving the acquisition of Univision Communications, Inc. ("Univision") by Broadcasting Media Partners, Inc. ("BMPI"), an investor group that includes funds controlled by PEP and Lee. For the reasons set forth below, we modify the requirement that PEP divest its interest in Freedom Communications Holdings, Inc. ("Freedom") as set forth in Paragraph 47 of the 2007 Univision Order to permit PEP to restructure its interest in Freedom into a form that is non-attributable under the Commission's multiple ownership rules. We further hold that Lee's restructuring of its interest in BMPI into a form that is not attributable under the Commission's multiple ownership rules has resulted in compliance with Section 73.3555(c) (the "radio/television cross-ownership rule") and Section 73.3555(a) (the "local radio ownership rule") of the Commission's Rules. For the reasons discussed below, we will modify the condition set forth in Paragraph 47 to provide that such actions bring Lee and BMPI into compliance with the 2007 Univision Order.

1 See Shareholders of Univision Communications, Inc., Memorandum Opinion and Order, 22 FCC Rcd 5842, 5860-5861 (2007) ("2007 Univision Order"). As described in the 2007 Univision Order, PEP and Lee were two of the five entities that invested in BMPI, which was created to purchase Univision.

II. BACKGROUND

2. The Commission's attribution rules seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.² While the focus of the attribution rules is on issues of influence and control, they are also intended to "permit arrangements in which a particular ownership or positional interest involves minimal risk of influence, in order to avoid unduly restricting the means by which investment capital may be made available to the broadcast industry;" "provide reasonable certainty and predictability to allow transactions to be planned, ensure ease of processing, and provide for reporting of all the information [the Commission] need[s] to make [a] public interest finding with respect to broadcast applications."³ Such interests, which are set forth both in Note 2 to Section 73.3555 of the Commission's Rules and Commission precedent,⁴ will be attributed to their holders and deemed cognizable for purposes of determining compliance with the Commission's multiple ownership rules.

3. As a result of the *2007 Univision Order*, PEP and Lee hold approximately 19% and 23.3% interests in Univision, respectively. In addition, as further noted in the *2007 Univision Order*, PEP holds a 16% interest in Freedom, and Lee holds a 25% interest in Cumulus Media Partners, LLC ("Cumulus"). Pursuant to Note 2(a) of Section 73.3555, "any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee" is attributable to its holder.⁵ PEP's interests in Univision and Freedom were, therefore, both attributable and resulted in violation of Section 73.3555(d) of the Commission's Rules (the "newspaper/broadcast cross-ownership rule") in five markets,⁶ while Lee's interest in Univision and Cumulus were both attributable and resulted in violation of the radio/television cross-ownership rule and the local radio ownership rule in three markets. In Paragraph 47 of the *2007 Univision Order* the Commission required PEP to take specific steps to come into compliance with the newspaper/broadcast cross-ownership rule within six months of consummation of the Univision/BMPI transaction. The post-merger Univision was given the choice of divesting, within six months of consummation, either the necessary broadcast stations in those markets where PEP's interest in Freedom resulted in violation of the broadcast/newspaper cross-ownership rule, or divesting PEP's minority interest in Freedom.⁷ Likewise, the post-merger Univision was given the choice of divesting within six months of consummation, the necessary radio and/or television stations in those markets where Lee's interest in Cumulus resulted in violation of the radio/television cross-ownership and/or the local radio ownership rules, or divesting Lee's interest in Cumulus.⁸

² *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559 (1999) ("*1999 Attribution Order*").

³ *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Notice of Proposed Rulemaking, 10 FCC Rcd 3606, 3610 (1995).

⁴ 47 C.F.R. §73.3555, Note 2.

⁵ *Id.* at Note 2(a).

⁶ Grant of the applications resulted in violations of the newspaper/broadcast cross-ownership rule in the following five markets: Los Angeles, California; Phoenix, Arizona; Fresno-Visalia, California; Harlingen-Weslaco-Brownsville-McAllen, Texas; and Odessa-Midland, Texas.

⁷ *2007 Univision Order*, 22 FCC Rcd at 5860 ("(1). The post-merger Univision shall come into compliance with the newspaper/broadcast cross-ownership rule in the affected markets within 6 months of consummation by Providence Equity Partners, Inc. either divesting its interest in Freedom Communications Holdings, Inc., or the post-merger Univision divesting those broadcast station licenses implicating the newspaper/broadcast cross-ownership rule in the Los Angeles, Phoenix, Fresno-Visalia, Harlingen-Weslaco-Brownsville-McAllen and Odessa-Midland markets.")

⁸ *Id.* at 5860-5861 ("(2). The post-merger Univision shall come into compliance with the radio/television cross-ownership and radio ownership rules in the affected markets within 6 months of consummation by Thomas H. Lee

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4. On November 8, 2007, PEP filed a Request for Clarification seeking a determination that it will have complied with Paragraph 47 of the *2007 Univision Order* by conversion of its current voting interest in Freedom “into a non-voting interest that is classified as ‘nonattributable’ under Section 73.3555 of the rules and Notes thereto.”⁹ In its Request, PEP explained that, at the time of the *Order*, certain principals of PEP, through commonly-controlled investment funds, held a limited noncontrolling but attributable interest in Freedom, a closely-held family-controlled entity that is the parent of television station licensees and the publisher of English-language daily newspapers. BMPI, indirectly through Univision, has attributable interests which, if held in common with an attributable interest in Freedom, would result in nonconforming combinations under the newspaper/broadcast cross-ownership rule in certain of the Univision markets. The *Order* granted a temporary waiver of the rule, therefore, subject to the condition set forth above. PEP stated that it “initially intended to comply with the [condition] by way of the redemption of its attributable interest in Freedom by the company,” but that “due to extraordinarily volatile conditions in the credit market and the newspaper industry in general,” it has been unable to obtain the necessary financing.¹⁰ Accordingly, PEP proposed to make its interest in Freedom nonattributable. “Specifically, PEP intends to eliminate its minority attributable interest by (i) the exchange of its voting shares in Freedom for non-voting shares; (ii) the relinquishment of its right to designate any member of the board of directors of Freedom; and (iii) the resignation of any board member of Freedom who formerly had been designated by PEP. Once these steps are fully implemented, PEP will no longer hold any interest in Freedom that is attributable under the Rules, and, thus, it will have achieved full and complete compliance with the newspaper/broadcast cross-ownership rule.”¹¹ PEP also pointed out that “the FCC’s rules, policies and past precedent would not have required BMPI to seek [] a waiver had PEP’s interest in Freedom been ‘nonattributable’ under the rules,” and that “holding of a nonattributable interest in Freedom would not even have been reportable.”¹²

5. As noted above, Lee’s concurrent interests in Univision and Cumulus at the time of consummation failed to comply with the Commission’s radio/television cross-ownership and radio ownership rules. On October 22, 2007, however, BMPI notified the Commission that Lee had converted its voting stock in BMPI into non-voting stock; and relinquished its right to designate members of the BMPI Board of Directors or any of its subsidiaries, including Univision. BMPI also stated that members of the BMPI and Univision boards previously designated by Lee had resigned.¹³ On November 16, 2007,

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Partners, L.P. either divesting its interest in Cumulus Media LLC, or the post-merger Univision divesting those broadcast station licenses in the Dallas, San Francisco, and Houston-Galveston markets that exceed the numerical ownership limit of the radio/television cross-ownership and radio ownership rules.”) The original six-month deadline for compliance with the divestiture conditions in Paragraph 47 was September 29, 2007. On September 25, 2007, PEP was granted a 30-day extension of its deadline to October 29, 2007. PEP filed an additional Motion for Extension of Time on October 31, 2007. Lee requested and obtained an extension of the original six-month deadline through October 31, 2007.

⁹ PEP Request for Clarification, at 1-2. Both PEP’s and Lee’s Requests are attached to the Media Bureau’s November 20, 2007 Public Notice inviting comment regarding the Requests. *Media Bureau Seeks Comment On Proposed Change to Condition Contained in Paragraph 47 of Univision Communications, Inc.*, Public Notice, 22 FCC Rcd 20004 (2007) (“Public Notice”).

¹⁰ PEP Request for Clarification at 2, note 3.

¹¹ *Id.* at 2.

¹² *Id.* at 2.

¹³ Letter from Mace J. Rosenstein, Esq., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated October 22, 2007. The Letter stated specifically that, effective October 19, 2007, Lee “eliminated its minority attributable interest in Univision by (1) the exchange of its voting shares in BMPI for non-voting shares; (2) the relinquishment of its right to designate any members of the board of directors of BMPI or any of its subsidiaries, including Univision; and (3) the resignation of the three board members of BMPI and its subsidiaries, including

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Lee filed a Request for Clarification seeking a determination that these actions comply with Paragraph 47 of the *2007 Univision Order* since Lee no longer has an attributable interest in Univision. Lee explained that “it held an attributable voting stock interest of 23.314% in BMPI, the proposed transferee of Univision, and that certain of its affiliates also held a minority attributable interest in Cumulus, which owns and controls radio stations in certain markets in which Univision also operates.”¹⁴ “[Lee] is one of four limited liability company members of [Cumulus] -- the other three members are Bain Capital (‘Bain’), Cumulus Media, Inc., and Blackstone Capital (or their affiliates) -- each of which holds a 25% minority attributable interest in [Cumulus]. The contractual arrangements among [Cumulus] members prevent any [Cumulus] member from selling or disposing of its membership interest, or even placing such interest in a trust, without the consent of the other [Cumulus] members. As of the end of the six-month waiver period specified in the *Univision Order*, [Lee] had not concluded negotiations with the other members of [Cumulus] to address THL’s attributable interest in [Cumulus]. [Lee] therefore sought and obtained from the Commission a thirty-day extension of the waiver period. Because [Lee] had not been able to render its [Cumulus] interest non-attributable and because [Lee], as a minority shareholder then holding a voting interest in BMPI of approximately 16%, could not cause BMPI to take any action (such as sell Univision stations), [Lee] divested its attributable interest in BMPI to come into compliance with the media ownership rules.”¹⁵ More specifically, as set forth in the October 22, 2007 Letter, Lee stated “that, by virtue of a conversion of voting stock to non-voting stock, [Lee] and its affiliates no longer held any attributable interest in BMPI or Univision. In connection with that conversion, [Lee] also relinquished its right to designate members of the boards of directors of BMPI or of any of its subsidiaries, including Univision; and members of the BMPI and Univision boards formerly designated by [Lee] resigned. As a consequence, [Lee] no longer has any attributable interest in BMPI, Univision, or any Univision subsidiary.”¹⁶ Lee submitted that, by rendering its interest in BMPI nonattributable, it “eliminated the factual predicate on which the *Univision Condition* was based and thereby fully resolved the concerns identified by the Commission in the *2007 Univision Order*.”¹⁷ Lee requested confirmation that this understanding was correct.¹⁸ In the alternative, Lee requested an appropriate modification of the condition.¹⁹

6. On November 20, 2007, the staff issued a Public Notice opening for comment PEP’s and Lee’s Requests for Clarification.²⁰ The Commission received one comment, which was filed by the National Association for Black Owned Broadcasters (“NABOB”) on December 4, 2007. NABOB opposes any finding that the restructuring of PEP’s and Lee’s interests would meet the specific condition set forth in the *2007 Univision Order*. NABOB argues that PEP and Lee “each seeks to retain all of the equitable ownership that prompted” the specific condition set forth in the *2007 Univision Order*; that the specific condition was imposed against the “backdrop of rising concentration of control of broadcast

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Univision, who formerly had been designated by [Lee]. As a result of these actions, the voting interests of the remaining four attributable owners of BMPI increased on a *pro rata* basis. ([Lee] holds a residual nonattributable 3.67% voting preferred stock interest in Broadcast Media Partners Holdings, Inc., a controlled intermediate subsidiary between BMPI and Univision, of which BMPI is the 82.62% single majority voting shareholder.)” The Letter is also attached to the November 20, 2007 Public Notice.

¹⁴ Lee Request for Clarification, at 4.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at i.

¹⁸ *Id.* at 6.

¹⁹ *Id.*

²⁰ *Public Notice*, 22 FCC Rcd at 20004.

licensees by a handful of private equity firms;” and that the “restructuring proposed here would not be adequate to protect the public interest from the potential abuses that can result from a handful of private equity firms controlling huge equity interests in licensees holding multiple competing stations in many markets.”²¹

III. DISCUSSION

7. We grant the requests to the extent described herein. The Commission has long recognized that nonvoting stock interests are noncognizable for purposes of determining compliance with the multiple ownership rules²² if, as is the case here, the interest does not meet the threshold of the Equity/Debt Plus (EDP) attribution standard.²³ “[N]on-voting stock by its specific nature precludes the means to influence or control the activities of the issuing corporation, and this relationship is knowingly and intentionally entered into by the corporation and by the stockholder... Moreover, the availability of an unattributable non-voting stock investment mechanism provides significant benefits. This device, for example, appears to be an invaluable means by which existing and prospective licensees raise new capital without diluting their control over their companies. It can also contribute significantly to relieving the dilemma faced by venture capital companies. Through non-voting stock, these companies can obtain the equity deemed necessary to compensate their risk, while avoiding any implication of the control prohibited by our rules and other federal regulation. Such vehicles are thus particularly significant in promoting the diversity of ownership at which the multiple ownership rules are directed. Accordingly, we will continue to consider non-voting stock interests to be non-cognizable for purposes of the multiple ownership rules.”²⁴ Thus, the exchange of PEP’s and Lee’s current voting stock for non-voting stock would insulate their respective interests in Freedom and BMPI under existing rules and precedent and, thus, result in compliance with the Commission’s multiple ownership rules. The proposed resignation of current board members designated by PEP and Lee and relinquishment of their right to name future board members, further evince that the parties’ converted interests would not convey the degree of influence or control necessary to make them attributable under the Commission’s rules.²⁵

²¹ NABOB Comments, at 3-4.

²² *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, Report and Order, 97 FCC 2d 997 (1984).

²³ Under the EDP standard, the Commission will attribute financial interests amounting to over 33% of the total assets of a mass media entity where the interest holder is either a major program supplier to the entity or a same-market media entity. *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Report and Order, 14 FCC Rcd 12559, 12579 (1999). The Commission has explained that the bright-line EDP standard “is intended to resolve our concerns ... that multiple nonattributable business interests could be combined to exert influence over licensees. As we stated in the *Attribution Notice*, we are concerned that our nonvoting stock, single majority shareholder, and debt attribution exemptions can permit nonattributable investments that could carry the potential for influence such that they implicate diversity and competition concerns and should be attributed.” *Id.* at 12581. The EDP standard embodies a targeted approach that addresses the FCC’s concerns as to the underinclusiveness of the attribution rules, and reflects its judgment “as to the appropriate balance between our goal of maximizing the precision of the attribution rules by attributing all interests that are of concern, and only those interests, and our equally significant goals of not unduly disrupting capital flow and of affording ease of administrative processing and reasonable certainty to regulatees in planning their transactions.” *Id.*

²⁴ *Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, 97 FCC 2d at para. 45.

²⁵ *Cf. Corporate Ownership Reporting and Disclosure by Broadcast Licensees*, 97 FCC 2d at para. 34 (application of distinct benchmark for “passive” institutional investors “presumes, of course, that the party using it maintains a truly passive role in the affairs of the licensee. This would include refraining from contact or communication with the licensee on any matters pertaining to the operation of its stations and no representation on the board or among officers of the licensee corporation by persons professionally or otherwise associated with the institution.”). We

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8. We modify the requirement to “divest” referenced in paragraph 47 of the *2007 Univision Order* to include actions that would render PEP’s and/or Lee’s interests in Freedom and Cumulus non-attributable, and further modify the *2007 Univision Order* to permit Lee to come into compliance by rendering its interest in BMPI non-attributable. The *2007 Univision Order* states that PEP and Lee must “divest” their respective interests in Freedom and Cumulus, or that the post-merger Univision must “divest” the broadcast properties necessary to comply with the Commission’s multiple and cross-ownership rules.²⁶ Contrary to NABOB’s assertions, the *2007 Univision Order* does not provide any public interest reason for why PEP’s actions must go beyond what is necessary to come into compliance with the multiple ownership rules.²⁷ Because the Commission’s Rules define a cognizable interest based on the degree of influence that the interest conveys, there is no substantive difference for purposes of determining compliance with the multiple ownership rules between transfer of the interest to a third party and conversion of that interest to a form that is non-attributable. In light of these facts, we see no potential abuse by these funds arising from the conversion of their respective interests to non-attributable form that would raise public interest concerns. We, therefore, under the particular circumstances of this case, modify the requirement to “divest” referenced in Paragraph 47 of the *2007 Univision Order* to include those actions that would bring PEP and/or Lee into compliance with the Commission’s multiple ownership rules either by transferring the interests identified in Paragraph 47 to a third party or converting those interests to non-attributable form. Thus, PEP may achieve compliance with the divestiture condition in Paragraph 47 by converting its Freedom interest to non-attributable form under the Commission’s Rules.²⁸

9. Lee’s request differs from PEP’s in that Lee converted its interest in BMPI rather than Cumulus, the entity specified in the *2007 Univision Order*. As noted above, Lee has requested, in the alternative, that the Commission modify the divestiture condition to include the actions undertaken on or about October 22, 2007. We find that modification is warranted in this case because examination of the *2007 Univision Order* reveals no policy reason for requiring Lee to divest its Cumulus interest, as opposed to its interest in BMPI, to achieve compliance.²⁹ As pointed out by Lee, the absence of any

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note, moreover, that no waiver of the Commission multiple and cross-ownership rules would have been required had PEP and Lee taken the proposed actions prior to filing of the above-captioned transfer of control applications.

²⁶ *2007 Univision Order*, 22 FCC Rcd at 5860-5861.

²⁷ *See id.* at 5848, 5852, and 5860-5861.

²⁸ As noted above, on October 31, 2007, PEP filed a Motion for Extension of Time requesting an extension of its September 29, 2007 deadline for compliance with its divestiture condition to permit the Commission to consider the proposed restructuring discussed herein. We hereby grant the Motion. Under the circumstances, we conclude that no sanctions are warranted against PEP for its filing of the Motion two days after expiration of its September 29, 2007 deadline, nor are sanctions warranted against Lee for its filing of its Request for Clarification 16 days after expiration of its October 31, 2007 deadline. We find that the parties were diligent in their efforts to achieve compliance with the conditions imposed by the *2007 Univision Order*. Among other things, examination of the record reflects that the parties were in constant communication with the staff regarding the obstacles that they were encountering in attempting to comply, as well as their efforts to develop solutions that would satisfy both the conditions of the *2007 Univision Order* and the Commission’s multiple ownership rules, throughout the relevant period. Further, although PEP’s Motion for Extension was filed two days late, it had informed the staff of its situation prior to the deadline’s expiration. And despite Lee’s delay in seeking clarification or modification of Paragraph 47, it took action prior to the expiration of its deadline to bring itself into compliance with the multiple ownership rules.

²⁹ In any event, we also note that implementation of certain corporate changes proposed in a recently granted Cumulus application would render Lee’s interest in Cumulus non-attributable. *See* Broadcast Actions Report No. 46658 (*rel.* Jan. 24, 2008) (File No. BTCH-20071012AQH et al. (KCFX(FM), Harrisonville, MO, *et al.*)). Accordingly, implementation of these changes would provide an alternate means for Lee to bring its interests into compliance with the Commission’s multiple ownership rules.

specific statement that Lee could achieve compliance by rendering its BMPI interest non-attributable is not surprising because the ultimate conclusion of the *2007 Univision Order* was that Lee could acquire this interest. Thus, we will modify Paragraph 47 of the *2007 Univision Order* to permit Lee to render its interest in BMPI non-attributable in order to achieve compliance with the Commission's multiple ownership rules.

IV. ORDERING CLAUSES

10. Accordingly, pursuant to Section 1.2 of the Commission's Rules,³⁰ **IT IS ORDERED**, that the Requests for Clarification of the *2007 Univision Order* filed by Providence Equity Partners, Inc., and Thomas H. Lee Partners, L.P., **ARE GRANTED**, to the extent described herein.

11. **IT IS FURTHER ORDERED**, that the Motion for Extension of Time filed by Providence Equity Partners, Inc., on October 31, 2007, **IS GRANTED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁰ 47 C.F.R. §1.2 ("The Commission may, in accordance with Section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.").

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: *In the Matter of Shareholders of Univision Communications, Inc. and Broadcasting Media Partners, Inc. for Transfer of Control of Univision Communications, Inc., et al., BTCCT-200607718AGO et al.*

The underlying premise of today's Order is that having **no** interest in a media entity is identical to having a **non-attributable** interest for purposes of our media ownership rules. Technically, that may be true. Our ownership rules restrict only attributable interests, so whether an interest is non-attributable or non-existent typically is immaterial as far as our rules are concerned. That is the basic conclusion in today's Order and I concur in its bottom line.

But simply because divestiture and non-attribution may be interchangeable for purposes of our rules does not mean they are always interchangeable in reality. If Company A has no interest at all in Company B, we can be relatively certain that Company A cannot influence Company B's affairs. By contrast, if Company A has a non-attributable interest in Company B, the risk of influence is almost certainly higher. For instance, where there is a single majority shareholder and the investor is not a major program supplier or same-market media entity, an investor could hold 49 percent of a broadcaster's voting stock and 100 percent of its debt and still not have an "attributable" interest under our rules.

Our attribution rules attempt to strike a balance—trying on the one hand not to discourage investment in media companies, while on the other hand trying to identify those investments that actually could bestow influence. This is not an exact science. Like any regulation, attribution rules will not be perfect. They may mistakenly preclude some investments that would not bestow influence and mistakenly permit others that would. To the extent that mistakes fall into the latter category, non-attribution could have a significantly different real-world impact than divestiture.

The question then becomes how rigorous our broadcast attribution rules are and how close they come to capturing the influence-bestowing relationships that can and should be captured. The last comprehensive review of our rules was initiated more than a decade ago and concluded in 2001. Our insulation criteria for limited partnerships have been largely unchanged since 1984. I have no doubt that parties have learned to structure their deals to avoid tripping the attribution rules we have in place. But that begs the question of whether that means they are unable to exert influence or are simply finding ways to exert influence that the Commission's rules don't anticipate.

It's time for the Commission to take a fresh look at our broadcast attribution rules. How we determine which broadcast properties "count" against a particular company is as important as the substantive rules themselves. We cannot focus solely on reinforcing the front door against harmful media consolidation and leave the back door unlocked.