

Cumulus/Citadel: Is 40% Market Concentration the Threshold for JSAs and Station Group Deals?

BY MICHAEL P.A. COHEN, MATTHEW L. GIBSON & ERIC DODSON GREENBERG

On September 8, 2011, the U.S. Department of Justice (“DOJ”) Antitrust Division [announced](#)¹ that it would condition its approval of Cumulus Media Inc.’s proposed merger with Citadel Broadcasting on the divestiture of three radio stations in two overlap markets. In its court filings, the DOJ emphasized that the proposed transaction would result in Cumulus/Citadel controlling more than 40 percent of the radio advertising market in the Harrisburg-Lebanon-Carlisle, Pennsylvania, and Flint, Michigan, Arbitron Metros. The DOJ also stated that the proposed settlement would “preserve choices for advertisers” by preventing excessive market concentration through the divestitures that would bring market concentration to below 40 percent in both Metros.

For television broadcasters focused on permissible joint sales transactions with existing in-market stations, the DOJ’s position in the Cumulus/Citadel transaction may shed light on permissible market concentration levels for joint sales agreements (“JSAs”). In fashioning JSA arrangements, station operators—and their advisors—have had to consider, in the absence of specific guidance, permitted levels of ad market concentration created by a proposed JSA. As a result, analyses in this area have been largely speculative, and thresholds of 40 percent and lower have been used as benchmarks for permissible joint sales arrangements from an antitrust perspective.

Following the DOJ’s requirement that Cumulus and Citadel divest stations in the Harrisburg and Flint Metros to “reduce Cumulus’ share in advertising revenues . . . to less than 40 percent,” broadcast television operators and their counsel may now have a clearer indication from the DOJ that it regards the 40 percent threshold as operative for ad market concentration. While we continue to believe that the definition of the relevant ad market for broadcast television must be expanded to include cable television and potentially online advertising, the DOJ’s actions in the Cumulus-Citadel matter provide greater clarity and a more current understanding as new JSA opportunities are considered.

Naturally, the DOJ’s actions in the Cumulus-Citadel transaction also cast important light on the Antitrust Division’s views on overlap market concentration for potential broadcast television acquisitions where the Federal Communications Commission’s multiple-ownership rules might permit an acquisition creating a new duopoly. In such transactions—especially in station group deals where Hart-Scott-Rodino approval is needed—the 40 percent benchmark may be an important guidepost to buyers and sellers alike. It is, of course, always important to note that the Antitrust Division analyzes transactions on their individual merits, including market- or industry-specific facts and circumstances. Thus, while market-share thresholds may provide useful insights, they are neither bars to, nor safe harbors for, transactions. They are nonetheless useful and instructive to assessing JSA and station acquisition opportunities and we accordingly draw this most recent development to your attention.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington D.C. lawyers:

Michael P.A. Cohen
Global Chair, Antitrust and Competition Practice
1.202.551.1880
michaelcohen@paulhastings.com

Eric Dodson Greenberg
1.202.551.1343
ericgreenberg@paulhastings.com

¹ <http://www.justice.gov/opa/pr/2011/September/11-at-1153.html>