

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

In re Applications of

QUINCY D. JONES                      File No. BTCCT-941214KG  
(Transferor)

and

QWEST BROADCASTING L.L.C.  
(Transferee)

For Transfer of Control of  
Quincy Jones Broadcasting Inc.,  
Licensee of WNOL-TV,  
New Orleans, Louisiana

FOX TELEVISION                      File No. BALCT-941214KH  
STATIONS INC.  
(Assignor)

and

QWEST BROADCASTING L.L.C.  
(Assignee)

For Assignment of License of  
WATL(TV), Atlanta, Georgia

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 12, 1995; Released: December 12, 1995**

By the Commission: Commissioner Ness concurring and issuing a statement.

1. The Commission has before it for consideration the above-captioned applications, one seeking consent for the transfer of control of Quincy Jones Broadcasting Inc. (Quincy Jones Broadcasting), licensee of WNOL-TV, Channel 38 (Fox), New Orleans, Louisiana, from Quincy D. Jones to Qwest Broadcasting L.L.C. (Qwest), and another for the assignment of license of WATL(TV), Channel 36 (Fox), Atlanta, Georgia, from Fox Television Stations Inc. (Fox) to Qwest. Qwest seeks nonattribution of the interests of its nonvoting investor by invoking the interim exception for minority-controlled limited liability companies (LLCs) established by the Commission in its pending rule making on attribution. *Review of the Commission's Regulations Governing Attribution of Broadcast Interests* in MM Docket No. 94-150 (*Attribution Review*), 10 FCC Rcd 3606, 3638 (1995). The transferors of WNOL-TV and the assignor of WATL(TV) request issuance of tax certificates under Section 1071 of the Internal Revenue Code. BBC License Subsidiary, L.P. (Burnham), then the licensee of television station WVUE(TV), New Orleans, timely filed a petition to deny the New Orleans application. Qwest opposed that

petition, and Burnham replied. On July 13, 1995, the staff sent a letter of inquiry to the applicants, to which Qwest responded. Burnham replied to Qwest's response, but on August 28, 1995 sought consent to withdraw its petition. Qwest filed six amendments to its proposal, on February 16, May 1, August 15, September 20, October 20, and November 2, 1995.

**BACKGROUND**

2. Qwest is a newly formed limited liability company (LLC), whose two members are QwestCom L.P. (QwestCom) and Tribune Broadcasting Company (Tribune). QwestCom is composed of one limited partner and four general partners, all of whose principals are African-American or Hispanic. The limited partner of QwestCom is All Pro Qwest, Inc., wholly owned by Willie Davis, and the general partners are: QuinSonic L.L.C., ultimately owned and equally controlled by both Quincy Jones and Sonia Gonsalves Salzman; Maravilla Broadcasting, Inc., wholly owned by Geraldo Rivera; All Pro Qwest Inc.; and STI, Incorporated, ultimately wholly owned by Donald Cornelius. QwestCom is effectively controlled equally by Jones and Salzman, through their joint control of QuinSonic L.L.C., the managing general partner of QwestCom. All of the minority owners of QwestCom have been actively involved in broadcasting and/or television programming production and other business ventures. In addition to his current ownership in and control of the licensee of WNOL-TV, Jones is CEO and president of Quincy Jones Entertainment, co-CEO of Quincy Jones/David Salzman Productions and Quincy Jones/David Salzman Entertainment, and executive producer of the television program "The Fresh Prince of Bel Air." Salzman holds an ownership interest in and is a director of the permittee of Channel 32, Kansas City, Missouri. Davis is single majority shareholder, president and a director of All Pro Broadcasting, Inc., which is the direct or indirect licensee of KACE(FM), Inglewood, KCKC(AM), San Bernardino, and KABE(FM), Lake Arrowhead, all in California, as well as WMCS(AM), Greenfield, and WLUM-FM, Milwaukee, both in Wisconsin. In addition, Davis sits on the board of nine companies, including Sara Lee Corporation, Dow Chemical Company, K-Mart Corporation, MGM Grand Inc., and the Green Bay Packers. Rivera is a television journalist, producer, author, and host of "Rivera Live" on cable channel CNBC. He also owns and manages *Two River Times*, a weekly newspaper serving Red Bank, New Jersey. And Don Cornelius is a broadcast executive who created, hosted and for three decades has produced "Soul Train," the longest continuous first-run production in television syndication. He also created and co-produces the annual "Soul Train Music Awards."

3. Tribune, the other member of Qwest, is a wholly owned subsidiary of the Tribune Company, a publicly held corporation, and is the licensee of several television stations, including one in New Orleans, WGNO(TV), and one in Atlanta, WGNX(TV), and several radio stations. The Tribune Company publishes daily newspapers in Illinois, California, Florida and Virginia, and owns Tribune Entertainment, Tribune Media Services, Inc., and the Chicago Cubs.

4. Since the filing of the applications for consent to acquire control of WNOL-TV, New Orleans, and WATL(TV), Atlanta, and the filing of Burnham's petition to deny, Qwest has substantially modified its proposed

capitalization and governance, as well as its planned operations of the two stations. What follows is a description of Qwest's proposal, as modified.

#### Capitalization of the Qwest

5. Qwest indicates that approximately \$170 million will be needed to fund the acquisition of both the New Orleans and Atlanta television stations. That amount, according to Qwest's amendment of September 20, 1995, will be composed of 15 percent equity (\$25 million), 48 percent bank debt (\$82 million), and 37 percent convertible debt (\$63 million). Of the 15 percent derived from equity sources, QwestCom will contribute 67 percent, or \$17 million, \$10.5 million of which it will borrow from the First National Bank of Boston (Bank of Boston). That loan will be guaranteed by Tribune. In exchange for its contribution, QwestCom will receive all of the outstanding Class A, voting shares of Qwest. The remaining 33 percent of Qwest's equity will be contributed by Tribune, in exchange for all of the outstanding Class B, nonvoting shares of Qwest.

6. The senior debt, the \$82 million bank debt incurred by Qwest, will be obtained from a consortium of four banks led by Bank of America National Trust and Savings Association. Qwest's \$63 million in convertible debt will be issued to Tribune and will be evidenced by 6% Series A and Series B Subordinated Convertible Notes.<sup>1</sup> The Series A notes, to be issued for most of the Tribune-held debt, are convertible, in whole or in part, into Class B shares of Qwest at the option of Tribune upon the later to occur of June 30, 2000 and the date when Tribune would be legally permitted to own a controlling equity interest in Qwest without any required divestitures.<sup>2</sup> The Series B notes, to be issued for the remaining portion of the Tribune-held debt, and paid-in-kind notes issued to Tribune as interest payment, may be converted into Qwest equity when Tribune is legally permitted to own a controlling equity interest in Qwest without any required divestitures.<sup>3</sup>

7. Under the terms of the convertible notes to be held by Tribune, which are unsecured and subordinate in right of payment to Qwest's senior bank lender, Tribune may proceed, in an "event of default" to protect and enforce its creditor rights against Qwest by suit in equity, action at law or "other appropriate proceeding." Events of default of the notes, under the Note Purchase Agreement, include failure to pay principal or interest under the notes when due, failure to pay indebtedness under the senior bank loan or under any other loan having a principal amount of \$75,000 or more when due, and failure to perform or observe any

of the affirmative or negative covenants contained in the notes or the purchase agreement accompanying those notes. The negative covenants generally preclude Qwest from merging with another entity, making distributions beyond permitted tax distributions, incurring debt for capital lease obligations and equipment acquisition in excess of \$15 million in the aggregate, and disposing of its property or licenses. Affirmative covenants generally obligate Qwest to repay the notes and interest, to maintain its existence and its property, and to fulfill the ongoing duties of any business.

#### Governance of Qwest

8. All of the voting rights in Qwest shall rest with QwestCom, through its Class A shares. Tribune's Class B shares entitle it to no voting rights, except with respect to extraordinary company actions. Complete and exclusive discretion in the management and control of the business and affairs of Qwest, under Section 7.3 of the Qwest Amended and Restated Limited Liability Company Agreement (LLC Agreement), is delegated to the Qwest board of directors. The Qwest board, under the First Amendment to the LLC Agreement, will consist of seven directors,<sup>4</sup> all to be designated by QwestCom.<sup>5</sup> The Qwest directors, according to Qwest's Amended Bylaws, may be removed, with or without cause upon the affirmative vote of the Class A shareholders, and vacancies on the board are filled by the Class A shareholders. QwestCom principal Jones is to be the initial chairman of the board and QwestCom principal Davis is to be the initial vice-chairman.

9. While the Qwest board directs the management and control of the business and affairs of the enterprise, under Section 7.4 of the LLC Agreement, a super-majority vote of all of the members, including the nonvoting members, is required before the board can make expenditures or take action with respect to several enumerated events. Those events include: (1) the sale or other disposition of any material portion of the LLC assets, other than in the ordinary course; (2) any merger or consolidation involving the LLC; (3) any voluntary liquidation, dissolution or termination of the LLC; (4) the declaration or payment of any distributions; (5) the issuance of any additional LLC shares or incurrence of debt in excess of \$250,000 individually or \$1 million in the aggregate; (6) any initial registered public offering of any LLC equity interests; (7) any change of Qwest's name or any amendment of the certificate of formation or the LLC agreement which adversely affect the rights of any LLC member; (8) the entry by the LLC into

<sup>1</sup> Both series of notes will bear a six percent annual interest rate, but the interest on the Series A notes will be payable with paid-in-kind (PIK) notes or in cash, if the senior bank lenders permit, while the interest on the Series B notes will be payable only in PIK notes. The PIK notes on the Series A notes are not convertible, but those on the Series B notes are convertible.

<sup>2</sup> However, Qwest may redeem, or prepay, the Series A notes upon the later to occur of June 30, 2000 and thirty days after the date when the FCC or FCC counsel determine that Tribune would be legally permitted to own a controlling equity interest in Qwest without any required divestitures.

<sup>3</sup> Qwest may redeem the Series B notes only when it redeems the Series A notes.

<sup>4</sup> If the aggregate shares held by QwestCom drop to below 50% of the total outstanding shares, then the Class A and Class B (Tribune) members have the right to designate that percentage

of directors corresponding to their percentage of shares. See First Amendment to LLC Agreement at Section 2. However, in no event shall the Class A members have the right to designate fewer than two directors. See *id.* Each member will then also have removal and vacancy rights with respect to its designated directors. See Amended Bylaws at Section 9. Tribune's exercise of these rights, of course, is subject to the prior approval of the Commission.

<sup>5</sup> Six of the seven initial directors already have been designated by QwestCom, according to Qwest's application. Those designees include the five principals of QwestCom, Jones, Salzman, Rivera, Davis, and Cornelius, and a personal friend of Jones, Clarence Avant, who is neither a QwestCom nor a Qwest principal. The seventh member of the board, according to Qwest's July 18, 1995 filing, will be designated by QuinSonic L.L.C., QwestCom's managing general partner.

any agreement with a shareholder; (9) the creation of any subsidiary of the LLC; and (10) any acquisition or any agreement to acquire any entity.

10. Finally, the Class A, voting shares held by QwestCom are subject to put/call rights, as provided in the Qwest Shareholders Agreement. Specifically, commencing on the later of the fifth anniversary of the execution of the Shareholders Agreement, which occurred on December 12, 1994, and the date on which Tribune is permitted under law or Commission rules to own all of the Class A and Class B shares, QwestCom can require Tribune to purchase all of its Class A shares at fair market value. Additionally, Tribune can require Qwest to sell to Tribune all of the Class A shares at a price which is the greater of QwestCom's contribution for those shares plus a six percent annual return and the fair market value. Upon exercise of either the put or call right, Tribune may assign its rights and obligations thereunder to any third party. The put/call period expires three years from the commencement date, which, as noted, is the later of the fifth anniversary of the execution of the Shareholders Agreement and the date on which Tribune can own both Class A and Class B shares.

#### Broadcasting activities of Qwest and its members

11. Pursuant to the LLC Agreement, the day-to-day business of Qwest will be managed by the officers, who are chosen by, and serve at the pleasure of, the QwestCom-appointed directors. The chief executive officer, a position initially to be held by Jones, shall have, under the Qwest bylaws, "general supervision, direction and control of the business, affairs and the officers" of Qwest.

12. As for Tribune, in addition to its financial interest in Qwest, it owns a limited partnership interest in WB Television Network, the network with which WNOL-TV and WATL(TV) will affiliate. Currently, Tribune owns an 11.125 percent limited partnership interest in WB and holds options to acquire an additional 11.125 percent of such interest. The network, according to Tribune, is and will be controlled by WB Communications, the network's general partner and a division of Time Warner Entertainment Company, L.P., which will also own the balance of the equity in the network. The WB Network Partnership Agreement (Partnership Agreement), Tribune states, vests sole and exclusive right in WB Communications to direct the day-to-day operations of the network and grants to Tribune no approval, veto or consent rights over these operations. Moreover, states Tribune, the Partnership Agreement provides that WB Communications, as general partner, only "consult" with Tribune before taking certain extraordinary actions, not that it obtain Tribune's consent

or approval of those actions.<sup>6</sup> Further, Tribune asserts that it is entitled to no seat on the WB Network affiliates' committee. Tribune contends, in sum, that its limited partnership interest in WB Network does not enable it to influence in any way the operations of the WB Network or any WB-affiliated station, including WNOL-TV and WATL(TV).

13. Additionally, Tribune has agreed with Qwest to participate in a joint internship program for colleges and universities with significant minority enrollments. Under the internship program Qwest interns will have access to positions at all of the Tribune stations.

#### Request for Nonattribution of Tribune

14. An LLC is an unincorporated business organization that provides limited liability protection to all of its owners, or "members," from the debts, obligations and liabilities of the entity, regardless of the extent of their participation in the management. Created by state laws modeled largely upon limited partnership statutes, members of LLCs under most state laws, as partners in partnerships, are vested with the right to participate in the management of the entity. Unlike limited partners, however, members of an LLC may participate in the management of a business without risking the loss of limited liability protection. Accordingly, members, unlike shareholders in corporations, have wide latitude in organizing the structure of their LLC management. Treatment of this relatively new type of hybrid business form, for purposes of the Commission's attribution rules, is the subject of an ongoing rule making proceeding. *Attribution Review*, 10 FCC Rcd at 3638-42. In that proceeding, the Commission tentatively proposed to treat LLCs as limited partnerships. *Id.* at 3640. Thus, a member's LLC interest is to be cognizable unless the applicant certifies that that member is not materially involved, directly or indirectly, in the management or operation of the media-related activities.<sup>7</sup> *Id.* However, the Commission proposed as an interim exception to this proposal to not attribute any "uninsulated" LLC interest, "on a case-by-case basis," where doing so would "advance our policy of enhancing opportunities for broadcast station ownership by minorities." *Id.* at 3638, 3640.

15. Tribune has not certified, pursuant to the criteria established for limited partners, that it will not be materially involved in the management or operation of Qwest. Therefore, Qwest invokes the minority exception, requesting that none of its media properties be deemed attributable to Tribune, its Class B, nonvoting member. Although structured as a limited liability company for tax purposes, Qwest maintains that it should be viewed as a

<sup>6</sup> Those actions include: major changes in key management personnel, dissolution or sale of the partnership, formulation of the annual budget, admission of new limited partners, material changes in the rollout schedule of the network's programming and/or the timing or amount of net cash distributions.

<sup>7</sup> The specific criteria for insulating a limited partner are: (1) The limited partner cannot act as an employee of the partnership if its functions directly or indirectly relate to the media enterprises of the company; (2) The limited partner may not serve in any material capacity as an independent contractor or agent with respect to the partnership's media enterprises; (3) The limited partner may not communicate with the licensee or general partners on matters pertaining to the day-to-day operations of the business; (4) The rights of the limited partner to

vote on the admission of additional general partners must be subject to the power of the general partner to veto any such admissions; (5) The limited partner may not vote to remove a general partner except where the general partner is subject to bankruptcy proceedings, is adjudicated incompetent by a court or is removed for cause as is determined by an independent third party; (6) The limited partner may not perform any services for the partnership materially relating to its media activities, except that a limited partner may make loans to and act as a surety for the business; and (7) The limited partner may not become actively involved in the management or operation of the media businesses of the partnership. *Attribution Reconsideration*, 58 RR 2d at 618-20, on further recon., 1 FCC Rcd at 802-03.

corporation rather than as a limited partnership on four grounds. First, asserts Qwest, control is vested in a board of directors. Second, Qwest notes that its members, like shareholders, cannot act for or bind the LLC. Like shareholders in a corporation, adds Qwest, its members have the right to vote only on specified actions. Third, Qwest states that its officers, like corporate officers, are appointed by its board of directors. And finally, Qwest notes that by its terms, the LLC agreement among the members is not to be construed to constitute Qwest a partnership or joint venture except for tax purposes. Because it is organized like a corporation, Qwest concludes, relying upon attribution rules for corporations, that the television stations it seeks to acquire should not be deemed attributable to Tribune, which will own only nonvoting shares in Qwest.

#### BURNHAM PETITION TO DENY/DISCUSSION

16. Burnham, the former licensee of WVUE(TV), New Orleans, opposed Qwest's New Orleans application essentially on two grounds<sup>8</sup> and requested that the Commission deny the application or defer action on it until resolution of the ongoing rule making proceeding related to attribution rules, *Attribution Review*, 10 FCC Rcd 3606.<sup>9</sup> First, Burnham argued that Tribune should be deemed to hold a cognizable interest in Qwest and that Qwest LLC be denied use of the minority exception established in *Attribution Review*. An attributable interest in the Qwest stations would render Tribune in violation of the Commission's duopoly rule in both New Orleans and Atlanta, because it owns and controls a television station in each market. The duopoly rule, Section 73.3555(b)(2), proscribes common ownership of two stations whose Grade B contours overlap. Second, Burnham contended that even if the Qwest stations were not attributable to Tribune, Tribune's nonattributable interest in the Qwest stations would violate the Commission's cross-interest policy. That policy mandates scrutiny of relationships not governed by the multiple ownership rules, but which may impair diversity and economic competition in a given market.

17. Preliminarily, we note that upon the sale of its New Orleans television station in August 1995, Burnham requested withdrawal of its petition, noting that it no longer had standing to pursue its petition. The requisite affidavit has been filed by Burnham, in satisfaction of Section 73.3588, which governs dismissal of petitions. We shall, therefore, grant Burnham's request to withdraw, but we remain obligated, under *Booth American Company*, 58 FCC 2d 553, 554 (1976), to consider the merits of allegations it has raised. With regard to Burnham's first allegation, we find, for reasons specified below, which include expanded minority participation and ownership of the stations and

the longstanding broadcast and/or television programming production experience of the minority participants, that the Qwest television stations will not be deemed attributable to Tribune. However, because this result is predicated upon the Commission's interim policy, as enunciated in *Attribution Review*, 10 FCC Rcd 3606, the rules ultimately adopted in that proceeding will be applied to this case. We have taken similar conditional action in recent cases. See, e.g., *BBC License Subsidiary L.P. (WLUK-TV)*, 10 FCC Rcd 7926 (1995); *BBC License Subsidiary L.P.*, 10 FCC Rcd 10968 (1995). As to Burnham's allegations that the proposed transaction would violate the Commission's cross-interest policy, we find that Tribune's relationships to Qwest implicate the cross-interest policy. The cross-interest policy is also a matter under evaluation in *Attribution Review*. Accordingly, as discussed below, in light of the diversity and competition in the affected markets, the fact that all of the stations involved are less powerful UHF's, and the Commission's interest in promoting minority ownership, we shall defer the cross-interest issue in this case until resolution of *Attribution Review*. Accordingly, we shall condition our cross interest finding here upon the ultimate outcome of the attribution rule making proceeding.

#### Attributable Status of Tribune

18. Citing *Attribution Review*, 10 FCC Rcd at 3640, Burnham asserted that the Commission's interim processing policy is to treat LLC's as limited partnerships, exempting from attribution only those interests that are insulated, that is, those interests precluding "material involvement" in the media activities of the LLC. Tribune's interests in Qwest, contended Burnham, pointing to Tribune's ownership of Qwest equity and convertible debt, are not properly insulated.<sup>10</sup> Further, Burnham argued that granting an LLC processing exception to minority-controlled Qwest would be "grossly unfair, discriminatory and unlawful" for several reasons. First, Burnham argued that the net gain to minority ownership resulting from Qwest's proposed transfer of already minority-controlled WNOL-TV "would be zero." (Emphasis in original.) Second, according to Burnham, Qwest has made no showing of financial hardship so as to justify its "extraordinary request" for an exception to the Commission's ownership rules. Third, contended Burnham, the extent of the public interest benefits proposed by Qwest are operating efficiencies and the "empty suggestion" of initiating a local news operation. Burnham concluded that the "only" advantage in the transaction will be for the existing WNOL-TV owners, who seek a tax certificate, and for Tribune, which will acquire an interest

<sup>8</sup> Burnham also contended that Qwest's application was incomplete because it failed to include a number of "essential" documents relating to the Qwest-Tribune relationship. Qwest has since furnished several documents, by amendment, in response to Burnham's petition, or in response to the staff's letter of July 13, 1995. With the submission of these documents, we find that the applications are complete and that they provide information sufficient for us to make a public interest finding.

<sup>9</sup> Because Tribune's interests in WNOL-TV, New Orleans, are identical to its interests in WATL(TV), Atlanta, the ensuing discussion of the merits of the Burnham allegations applies with equal force to the Atlanta application.

<sup>10</sup> Burnham also assailed Tribune's proposed "active involve-

ment" in WNOL-TV's operations through the Cost-Sharing and Services Agreement. That agreement, entered into between Qwest and Tribune, would have consolidated operations between Tribune's WGNO(TV), Channel 26 (Ind.), New Orleans, and WGNX(TV), Channel 46 (Ind.), Atlanta, and Qwest's stations in those two markets through the sharing of transmission and studio facilities and the sharing of eight categories of services, including news, public affairs and local programming, other programming, promotion, sales, and engineering/operations, traffic and business. However, by amendment of October 20, 1995, Qwest reported that the parties had withdrawn the Cost-Sharing and Services Agreement. Accordingly, any Burnham allegations concerning the agreement are moot.

in a second New Orleans station, which will affiliate with WB, a network in which Tribune holds an ownership interest.

19. Burnham added that even if the Commission were to grant an exception to minority-controlled LLC's, such that they are treated as corporations rather than limited partnerships, the nature and character of Tribune's collective interests should still render Tribune attributable. Burnham pointed to the covenants running with the Qwest convertible notes held by Tribune, arguing that they afford Tribune the opportunity to exercise "total control" over the financial, legal and operating procedures and practices of Qwest. "In short," Burnham contended, "Tribune should not and cannot be permitted to insulate and shield its "extensive influence and control" over the operations of WNOL-TV.

20. This case marks the first application of the LLC minority exception contemplated in our attribution rule making proceeding. As noted above, the exception constitutes a departure from the Commission's interim LLC policy, that is, treating LLCs as limited partnerships. See *Attribution Review*, 10 FCC Rcd at 3640. We believe the availability of such an exception will attract investors by offering them, under certain circumstances, noncognizable status within the framework of the LLC. An LLC, as previously discussed, combines the flexibility of a partnership along with the limited liability of corporate shareholders.<sup>11</sup> Most advantageous to investors, however, is the beneficial "flow-through" federal tax status accorded LLCs, so long as they are structured pursuant to Internal Revenue Service criteria.<sup>12</sup> Thus, as with partnerships, items of income, gain, loss, deduction and credit generally may flow through, or be allocated, to the individual LLC members.<sup>13</sup> There is not, as with corporations, also taxation at the entity level. This avoidance of the so-called corporate "double taxation," in tandem with flexibility of organization and limited liability for its members, provides a powerful economic incentive for investing in an LLC, particularly where attribution also may be avoided. Affording an attribution exception for minority-controlled LLCs may assist in overcoming what the Commission has described as "the single greatest obstacle" to minority entry into the broadcast sector: inaccessibility to capital. See *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting (Minority Ownership in Broadcasting)*, 92 FCC 2d 849, 853 (1982). Securing capital will enhance minority acquisition of broadcast stations, which, in turn, will result in a greater diversity of broadcast voices, a crucial underpinning of our ownership rules.<sup>14</sup>

21. At a threshold level, therefore, in evaluating requests for application of the interim minority LLC exception, we shall first determine the ownership and control of the LLC, because "[f]ull minority participation in the ownership and

management of broadcast facilities" is essential to the underlying justification for the exception -- fostering "a more diverse selection of programming." *Statement of Policy on Minority Ownership of Broadcasting Facilities (1978 Policy Statement)*, 68 FCC 2d 979, 981 (1978). To assess "full minority participation," we shall borrow the guidelines established for the Commission's minority tax certificate policy. Although the tax certificate program contained in that policy has been abolished by Congress, see paragraph 38, *infra*, we believe the minority ownership and control criteria remain valid tools for our analysis here. While we acknowledge Qwest's attempts to emulate a corporate structure within its particular LLC organization, we have, at least on an interim basis, concluded that LLCs should generally be regarded for attribution purposes as partnerships. See *Attribution Review*, 10 FCC Rcd at 3640. In evaluating minority control and participation in LLCs, therefore, we shall borrow from our tax certificate guidelines developed for limited partnerships. Thus, to qualify for the minority LLC exception, the controlling member or members of the LLC must be minority individuals or minority-controlled entities and those minorities must hold more than 20 percent of the equity of the LLC. *Minority Ownership in Broadcasting*, 92 FCC 2d at 854. A significant factor in assessing the locus of control in the context of the minority exception to the interim LLC policy will be the broadcast and related experience of the participating minorities.

22. The second part of our evaluation will focus on the objective of the Commission's attribution rules, that is, to identify those interests in or relationships to an applicant which confer on its holders a degree of "influence" such that the holders have "a realistic potential to affect the programming decisions of licensees." *Attribution of Ownership Interests*, 97 FCC 2d 997, 999, 1005 (1984), *recon. granted in part*, 58 RR 2d 604 (1985), *further recon. granted in part*, 1 FCC Rcd 802 (1986). Consequently, in lieu of strictly applying the limited partnership rules, as is required under the Commission's interim LLC policy, we shall for purposes of the minority exception examine LLC agreements and other pertinent documents to determine whether the level of "influence" of the members seeking the exception is consistent with such treatment. That is, we shall determine whether the influence of LLC members seeking nonattributable status, even though not fully insulated, has been sufficiently attenuated such that our interest in facilitating minority ownership outweighs our concern with such influence.

23. Here, we find that QwestCom, composed of five African-American or Hispanic owners, holds all of the Class A, voting interests of Qwest and, therefore, will wield *de jure* control of the entity and the broadcast stations licensed to it. We are persuaded that the minority owners

<sup>11</sup> Limited liability means that members are liable only to the extent of their investments.

<sup>12</sup> The IRS has applied the entity classification criteria set forth in Treasury Regulation Section 301.7701-2 to determine whether an LLC should be classified as a partnership for federal income tax purposes. See, e.g., Revenue Ruling 88-76, 1988-2 C.B. 360. Under that regulation, in order for an LLC to be classified as a partnership it must avoid two of the following criteria: centralized management, limited liability, free transferability of ownership interests, and continuity of life. This standard is not utilized by the Commission in evaluating whether an interest in a licensee is cognizable.

<sup>13</sup> Flow-through tax status is also applicable to S corporations, but S corporations lack the flexibility of an LLC. For example, an S corporation may not have more than one class of stock, have more than 35 shareholders, have as a shareholder a party who is not an individual, and have as shareholders non-resident aliens. See Section 1361(b) of the Internal Revenue Code, 26 U.S.C. §1361(b).

<sup>14</sup> Our decision in this case in no way prejudices the outcome of the attribution rule making proceeding.

will also exercise *de facto*, or actual, control of Qwest, because there is no evidence that Tribune will have the power to "dominate" that entity's management. *See, e.g., BBC License Subsidiary L.P. (WLUK-TV)*, 10 FCC Rcd at 7931 (quoting *Benjamin L. Dubb*, 16 FCC 274, 289 (1951)). Those conclusions are supported by the provisions of the Qwest Agreement, which endow the Class A members with the exclusive power to manage the business and affairs of Qwest through the board of directors, whose members are elected and removed solely by Class A interests. Not only does ultimate control of Qwest rest with the Class A members, but the day-to-day control of its business, that is the operation of the broadcast stations, also rests with those members in that the chief executive officer, a Class A member charged with the authority to carry out the daily business, is appointed and may be removed only by the board.

24. Equally significant to our determination that control of the new licensee will rest with QwestCom, the Class A member of Qwest, is the extensive broadcasting, television programming and other business and management experience of the minority owners. *See* paragraph 2, *supra*. In light of their substantial experience in the business field, we are persuaded that QwestCom and its minority owners, rather than Tribune, will wield control of Qwest and its television stations. *See, e.g., BBC License Subsidiary (WLUK-TV)*, 10 FCC Rcd at 7932 ("Augmenting the credibility of [a joint venturer's] control of a newly formed broadcasting company is its management, comprising longtime and active players in motion pictures and television programming. . . ."). Moreover, the five minority individuals who own QwestCom, the controlling entity of Qwest, will collectively contribute one-third of the total capital contributions of Qwest, well in excess of the 20-percent benchmark we shall require of minority members of an LLC. In sum, therefore, we believe that there is "full participation" by minorities in the management and ownership of Qwest so as to warrant application of the LLC minority exception.

25. We reject Burnham's suggestion that with respect to WNOL-TV, New Orleans, Qwest is not entitled to the LLC exception because that station is currently controlled by Jones, has not been shown to be suffering a financial hardship, and will offer what Burnham asserted are to be few public interest benefits. While it is true that Jones currently controls WNOL-TV, under the proposed transaction both Jones and Salzman will control Qwest, through their joint control of QuinSonic, L.L.C., the managing partner of QwestCom, and a total of five minority individuals, including Jones and Salzman, as well as Rivera, Davis and Cornelius, will collectively own QwestCom, the controlling entity of Qwest. Thus, minority participation in the control of WNOL-TV will be expanded, to also include Salzman, an Hispanic individual, and minority participation in the ownership of that station will be augmented, to include the five minority individuals who own QwestCom. The pool of minority participants in broadcasting is thereby advanced. More importantly, however, the proposed transaction involving WNOL-TV facilitates the Qwest purchase of WATL(TV), Atlanta, propelling minority ownership to a top-ten television market. The record indicates that Jones has committed to using all of the proceeds he realizes from the sale of his stock in the current licensee of WNOL-TV to purchase the main studio building and related assets of WATL(TV). Application of the minority exception to this case, therefore, increases net

minority ownership of television stations by enabling Qwest's African-American and Hispanic owners to own and control not only WNOL-TV, a station located in the nation's forty-first largest television market, but to own and control WATL(TV), a station located in the nation's tenth largest television market. Moreover, we note that the LLC minority exception was not crafted to aid financially troubled stations, but to expand minority ownership through the elimination of barriers to minority access to capital for the financing of broadcast station acquisition. Finally, the most significant and substantial benefit inuring to the public interest from application of the minority exception will be an enhanced diversity of broadcast voices.

26. As to the second prong of our analysis, considering those interests in or relationships of Tribune to the applicant which result in Tribune having a degree of "influence" such that there is "a realistic potential to affect the programming decisions" of the applicant, we determined in *Attribution Review* that LLC members shall be treated as limited partners pending resolution of that rule making proceeding. 10 FCC Rcd at 3640. Application of the interim policy would render the Qwest stations attributable to Tribune because Tribune's interests are not insulated from the LLC's media activities pursuant to our limited partnership criteria. *See* note 7, *supra*. Qwest, however, requests that we utilize the minority exception to the interim LLC policy in determining whether Tribune's interest is attributable. In employing the minority exception we balance our interest in advancing minority ownership of broadcast facilities with our interest in recognizing those relationships which rise to a level of influence over the licensee such that those relationships are deemed attributable.

27. Here, Qwest is organized as an LLC, a business organization which, under most state statutes, vests control of the entity in all members. We acknowledge Qwest's attempts to limit the influence of Tribune by structuring its management according to the corporate model. It has done so through the Qwest LLC Agreement, which deems minority-owned and -controlled QwestCom, like a corporate voting stockholder, the sole voting member and endows it with exclusive control over the selection and removal of the "board of directors," the group delegated to manage and direct Qwest. Class B member Tribune, under the Qwest LLC Agreement, like a corporate nonvoting stockholder, will have no voting rights except with respect to "extraordinary" LLC actions. We do not agree that an LLC, even one structured such as Qwest, is the legal or functional equivalent of a corporation. The lines between managing and non-managing investors in an LLC are more blurred than those in a limited partnership, where a limited partner who attempts to manage the entity is confronted with the loss of limited liability. *See Ribstein & Keatinge on Limited Liability Companies* §8.14 (1993). Indeed, because the structure of Qwest is governed entirely by the Qwest LLC Agreement, a contractual arrangement among the members of the LLC, our decision here is based upon the agreement as submitted by the parties. We will require, therefore, that copies of all amendments to the Qwest Agreement be furnished to the Mass Media Bureau and that any substantial and material modification to the agreement may not be implemented without the Commission's prior approval.

28. However, in assessing Qwest's efforts to limit Tribune's influence over its affairs through its corporate-like organization, it is appropriate to use those attribution

standards developed for corporate forms of businesses. In so evaluating Tribune's interests, we note that it has no voting rights in Qwest except on extraordinary LLC actions, but it has a right to call QwestCom's voting Class A shares, possibly five years from December 12, 1994, if Commission rules so permit. This call right, in essence, provides Tribune with the eventual opportunity to own and control all of Qwest and its broadcast stations, so long as FCC rules or laws so permit. Further, Tribune will hold convertible debt, constituting 37 percent of the total capitalization of Qwest and enabling Tribune, possibly on June 30, 2000, to augment its equity ownership through conversion of that debt into nonvoting Class B shares. Additionally, Tribune is guaranteeing that portion of QwestCom's equity contribution deriving from the Bank of Boston loan. Finally, Tribune will own more than 20 percent of the equity, through a limited partnership interest, in WB Network, which is slated to provide both Qwest stations with their television network programming.<sup>15</sup>

29. Taken individually, nonvoting interests, unexercised future interests, and debt interests are not cognizable under our attribution rules for corporations. See 47 C.F.R. §73.3555, Note 2(f). The right to participate in matters involving extraordinary corporate actions, whether in the form of an investor voting right derived from its equity interest or in the form of a licensee obligation derived from its debtor status, also does not ordinarily undermine the nonattributable character of otherwise noncognizable interests, so long as the voting rights or licensee obligations are narrowly circumscribed. *E.g.*, *News International PLC*, 97 FCC 2d 349, 354 (1984). Here, the litany of Qwest matters over which Tribune has approval rights is consistent with those rights we have in the past permitted noncognizable investors to hold.<sup>16</sup> *E.g.*, *National Broadcasting Company, Inc.*, 6 FCC Rcd 4882, 4883 n.2 (1991); *News International*, 97 FCC 2d at 354. And even a party wholly owning and controlling a programmer is not attributable simply by providing network programming for the television station of a licensee in which it invests. See *NBC, Inc.*, 6 FCC Rcd at 4883. Accordingly, none of Tribune's links to Qwest, when viewed in isolation, implicates our attribution rules.

30. When assessed cumulatively, see, e.g., *BBC License Subsidiary L.P. (WLUK-TV)*, 10 FCC Rcd 7926, *BBC License Subsidiary L.P.*, 10 FCC Rcd 10968 (1995). Tribune's interests and relationships raise questions as to whether the level of influence conveyed by these multiple relationships should be deemed nonattributable. Indeed, whether and under what circumstances multiple relationships should be considered attributable in the aggregate is, as Burnham indicated, an issue we have raised in the pending rule making proceeding on attribution. Rather than deny or defer action on Qwest's applications before us, we believe it would best serve the public interest to allow transfer and assignment of the New Orleans and Atlanta stations so as to permit their current owners to divest those broadcast properties and to allow Qwest to own and operate them, in recognition of both the increased participation in New Orleans and the new ownership in Atlanta by minority

individuals who are experienced broadcasters, television programming producers and business persons. Accordingly, based upon the record before us, we shall deem Tribune's interests in Qwest to be nonattributable, but we shall condition our decision upon the outcome of *Attribution Review*. Should we determine in that proceeding that the interests and relationships presented here are cognizable, we shall then attribute the interests to Tribune. Alternatively, Tribune and Qwest could modify their relationships to conform with our decision or could elect to provide a showing as to why these interests should not be attributed to Tribune.

#### Applicability of Commission's cross-interest policy

31. Asserting that the cross-interest policy was designed to guard against the potential for impairment of competition in a given market, Burnham argued that Tribune's "substantial" financial interest in the Qwest stations, in tandem with the Cost-Sharing and Services Agreement between Qwest and Tribune, see note 10, *supra*, the licensee of television stations in both New Orleans and Atlanta, was "clearly anticompetitive on its face."

32. In light of the elimination of the Cost-Sharing and Services Agreement, as well as the reformulated capitalization of Qwest and Tribune's nonvoting status, Qwest contends that the transaction, as modified, does not conflict with the Commission's cross-interest policy. That policy generally prohibits parties from having "meaningful" interests in two broadcast stations in the same market. See *Notice of Inquiry* in MM Docket No. 87-154, 2 FCC Rcd 3699, 3699 (1987), *Further Notice of Inquiry/Notice of Proposed Rulemaking*, 4 FCC Rcd 2035 (1989), *Further Notice of Proposed Rule Making*, 10 FCC Rcd 3606 (1995). Qwest likens its structure to that in *Cleveland Television Corp.*, 91 FCC 2d 1129 (Rev. Bd. 1982), *rev. denied*, FCC 83-235 (May 18, 1983), *aff'd Cleveland Television Corp. v. FCC*, 732 F.2d 962 (D.C. Cir. 1984), where the licensee of a broadcast station in the Cleveland market was permitted to hold equity and other interests in the applicant of a television station in the same market. Here, Qwest notes, Tribune owns a one-third equity interest in Qwest, has no voting rights except with respect to extraordinary corporate actions, and cannot convert its interest to voting shares unless Commission rules permit it to do so.

33. The cross-interest policy was developed to scrutinize relationships not proscribed by the multiple ownership rules but which nevertheless might trigger Commission concerns relating to diversity of viewpoint and economic competition. See *Minnesota Broadcasting Corp.*, 13 FCC 672 (1949); *United Community Enterprises, Inc.*, 37 FCC 2d 953 (Rev. Bd. 1972). Thus, where a party holds an attributable interest in or controls one media outlet in a market and holds a nonattributable interest in another media outlet in the same market, the Commission evaluates the ties between the media outlets to insure there is no diminution of diversity or competition. Here, the Burnham allegations predicated upon the existence of the Qwest-Tribune Cost-Sharing and Services Agreement have been rendered moot by the effective elimination of that agreement. Yet, there

<sup>15</sup> The minority internship program is one we do not find to be relevant to our attribution or cross-interest analyses.

<sup>16</sup> This finding is based upon our interpretation of the Tribune's approval right over the sale or other disposition of "any material portion of [Qwest's] assets, other than in the

ordinary course of business." We take this to mean that Tribune has the right to participate where all or substantially all of the assets of Qwest are to be sold. See, e.g., *NBC, Inc.*, 6 FCC Rcd at 4883 n.2 (nonattributable investor had the right to approve the sale of "essentially all" of the licensee's assets).

remain several Tribune relationships to Qwest: a one-third equity interest, a future ownership and control interest, approval rights over extraordinary corporate actions, a substantial convertible debt interest, and guarantee of a substantial portion of QwestCom's equity contribution. Further, Tribune will own more than 20 percent of the television network, WB Network, with which the Qwest stations will affiliate.

34. Notwithstanding Qwest's contention to the contrary, Tribune's links here exceed those present in *Cleveland Television*. There, the Commission deemed less than "meaningful," so as to preclude raising a cross-interest inference, a one-third nonvoting equity interest in the licensee of another station in the same market, a right to convert that interest into voting stock in five years if Commission rules so allowed, a right to vote on certain extraordinary corporate acts of the licensee, the lease to the licensee of three pieces of studio equipment, and the guarantee of one-third of a \$217,000 bank loan to one of the licensee's voting shareholders. *Id.* at 1132-33. Based upon Tribune's substantial financial contribution and its other interests, we cannot find that the case before us is consistent with Commission precedent. Specifically, Tribune is capitalizing 42 percent of Qwest through its one-third equity stake and its convertible debt interest, it has the right to call all the Qwest voting stock when Commission rules permit, it is entitled to vote on extraordinary corporate acts, and it is guaranteeing that portion of QwestCom's contribution deriving from a bank loan. Moreover, while we agree with Tribune that its interest in the WB Network is not an active one, we observe that it is not completely insulated from that enterprise. Thus, its interest in the television network with which the Qwest stations are to affiliate is a relationship that we cannot ignore in a cross-interest analysis.

35. While Tribune's interests may constitute a "meaningful" interest in Qwest under our current policy, we note that the cross-interest policy is under consideration by the Commission in *Attribution Review*, 10 FCC Rcd at 3642-53. To defer action on Qwest's applications until resolution of that proceeding would delay the augmented minority participation in WNOL-TV and the initiation of service on WATL(TV) by minorities. Such delay would not serve the public interest in increased minority ownership of broadcast stations or the viewing audiences in New Orleans and Atlanta. However, to grant those applications without adequate assurance of continued economic competition in those markets would equally disserve the public interest.

36. We observe that the markets in which are located the Tribune and Qwest stations are competitive and diverse. New Orleans, the forty-first largest television market in the nation<sup>17</sup> is served, according to Qwest, by six commercial and noncommercial television stations in addition to the Tribune and Qwest stations. Further, Qwest states, and we have verified, that the Grade B contours of two Baton Rouge stations cover a substantial portion of the city of New Orleans.<sup>18</sup> Atlanta, the tenth largest television market

in the country,<sup>19</sup> is served by eleven commercial and noncommercial television stations, other than the Tribune and Qwest stations. Additionally, we note that the Qwest and Tribune stations in New Orleans, WNOL-TV, Channel 38, and WGNO(TV), Channel 26, and in Atlanta, WATL(TV), Channel 36, and WGNX(TV), Channel 46, are all UHF's, less powerful than the multiple VHF stations in the same market. While the competitive and diverse nature of these markets somewhat assuage our cross-interest concerns, to insure continued competition and diversity in New Orleans and Atlanta we shall require that no Tribune employee or representative may serve in any capacity with Qwest or the Qwest broadcast stations.<sup>20</sup> Finally, should we determine in the pending attribution rule making that the interests and relationships presented here are within the scope of the cross-interest policy as determined in that proceeding, we shall then apply the policy to Tribune's interests. Alternatively, Tribune and Qwest could modify their relationships to conform with the policy or could elect to provide a showing as to why the cross-interest policy should not be applied to their relationships.

#### REQUEST FOR TAX CERTIFICATE

37. The licensee of WNOL-TV, Quincy Jones Broadcasting, is wholly owned by QJP Inc., which, in turn, has two owners, Quincy D. Jones and Warner Communications Inc. (WCI). Fox is the licensee of WATL(TV). Jones, WCI and Fox request that the Commission issue tax certificates to them pursuant to Section 1071 of the Internal Revenue Code, 26 U.S.C. §1071, simultaneously with the grant of the applications for transfer and assignment now before us.

38. Preliminarily, we note that that portion of Section 1071 of the Internal Revenue Code under which the Commission administers the tax certificate program was repealed as of January 17, 1995. *See Self-Employed Health Insurance Act, H.R. 831 at §2(d)*. Therefore, we may consider only those requests for tax certificates filed before that date. *See id.* at §2(d)(2)(A). In addition, the contract for sale or exchange of the broadcast station must have been "binding" prior to that date. *Id.* A contract is binding if the sale contemplated by the contract, or the material terms of such contract, are not "contingent" on the issuance of a tax certificate. *Id.* at §2(d)(B)(i). Material terms are deemed to be "contingent" where a provision in the contract calls for an increase of more than ten percent of the sales prices in the event that a tax certificate is not issued. *Id.* at §2(d)(B)(ii).

39. The separate tax certificate requests before us are not subject to the repeal of the Section 1071 provision pertaining to FCC tax certificates. They were each filed on December 14, 1994, nearly a full month before the effective date of the repeal, and each of the sales contracts was "binding" prior to January 17, 1995 within the meaning of that term under the Act. With respect to the sale of WNOL-TV, Section 2 of the letter agreement underlying that transaction, executed on October 24, 1994, sets the

<sup>17</sup> This rank is based upon the 1994-1995 Nielsen DMA U.S. Television Household Estimates. *See Television & Cable Factbook*, 1995.

<sup>18</sup> Those stations are WAFB, Channel 9, and WBRZ, Channel 2.

<sup>19</sup> This rank is based upon the 1994-1995 Nielsen DMA U.S. Television Household Estimates. *See Television & Cable Factbook*, 1995.

<sup>20</sup> The internship program may be effectuated and Qwest and Tribune may share college/university interns, but the interns, when working at the Qwest stations, must be paid by, and under the complete control of, Qwest.

price at \$17 million. While Section 20 of the agreement provides that in the event no tax certificate is issued, Qwest must pay to Jones an amount equal to \$750,000 and to WCI an amount equal to \$300,000, this additional \$1.05 million amounts to only approximately six percent of the sales price. As for the sale of WATL(TV), the letter agreement involving that station was executed on November 14, 1994. Section 3 of that agreement specifies the sales price as \$150 million and Section 10(b)(ii) provides that if no tax certificate is issued, Qwest must pay to Fox an additional \$12 million, or eight percent of the sales price. Thus, the agreements for the sale of the two stations are binding, as defined in the Self-Employed Health Insurance Act, H.R. 831, and we may consider pursuant to our minority tax certificate policy the timely requests for tax certificates filed by Jones and WCI, with respect to WNOL-TV, and by Fox, with respect to WATL(TV).

40. Under the Commission's minority tax certificate policy, a party may receive a tax certificate where it is a broadcast station owner seeking to sell the station to a minority-controlled entity, or where it is an investor providing "start-up" financing to a minority-controlled broadcaster. *Minority Ownership in Broadcasting*, 92 FCC 2d at 853-854, 857-58; *1978 Policy Statement*, 68 FCC 2d at 983. As to the former, the Commission has ruled that a broadcast owner is eligible for a tax certificate where the minority purchaser formed as a limited partnership is controlled by a minority serving as general partner and is more than 20-percent owned by that general partner. *Minority Ownership in Broadcasting*, 92 FCC 2d at 854. Jones, WCI and Fox all assert that the sales of WNOL-TV and WATL(TV) to Qwest are qualified minority tax certificate transactions, because Qwest is minority-controlled and at least 20-percent owned by minorities.

41. Although the Commission has not specified criteria for a qualified minority LLC, we conclude that the Commission's interim policy with respect to LLCs, that is, to treat them as limited partnerships, is applicable in this context. As determined above, *see* paragraphs 23-24, *supra*, Qwest's controlling member is wholly minority-owned and -controlled QwestCom, which owns 67 percent of its equity. Accordingly, the sale of both WNOL-TV and WATL(TV) to Qwest renders those stations' present owners eligible for minority tax certificates. That WNOL-TV is currently controlled by Jones, one of QwestCom's principals, does not alter this conclusion.

42. The transactions before us will promote goals central to the Commission's minority tax certificate policy, that is "[f]ull minority participation in the ownership and management of broadcast facilities" and "an increase in ownership by minorities [which] will inevitably enhance the diversity of control of a limited resource, the spectrum." *1978 Policy Statement*, 68 FCC 2d at 981. While Jones, an African-American individual, currently controls the licensee of WNOL-TV, control of that station through Qwest will be expanded to include Salzman, an Hispanic individual, who will hold negative control with Jones through their joint control and ownership of QuinSonic, the managing general partner of Qwest. Further, while Jones is presently the only minority owner of WNOL-TV's licensee, five African-American or Hispanic individuals, including Jones,

will own WNOL-TV's proposed licensee, thereby increasing the number of minorities participating in the operation and ownership of WNOL-TV. We have previously granted tax certificates for the sale of a broadcast station to a minority-controlled entity where the seller is also a minority, *see* Letter to John Lamar Hill, FCC 79-489 (adopted August 1, 1979), and for the sale of a station to a minority-controlled entity where the seller will also have an interest in the buyer, *see* *Martin J. Gaynes, Esquire*, 68 RR 2d 967 (1990). This case involves the sale of broadcast facilities to a minority-owned and -controlled entity and is, therefore, consistent with Commission precedent.<sup>21</sup>

43. Moreover, Jones has committed to contribute all of the \$4.5 to \$5 million proceeds realized from the sale of his stock in QJP to Qwest, which, in turn, will be utilized to purchase the main studio building and related assets of WATL(TV), enabling Qwest to acquire an additional broadcast outlet. Thus, not only will Jones' partition of his control and ownership in WNOL-TV permit increased minority participation in the ownership and management of that broadcast facility through Qwest, but there will also be a net gain in minority ownership of broadcast stations as a result of its purchase of WATL(TV). Operation of that station will now be directed and controlled by minority-owned and -controlled Qwest. Again, these results are consistent with goals central to the Commission's minority tax certificate policy. *1978 Policy Statement*, 68 FCC 2d at 981, and we find that a tax certificate should be issued to each of Jones, WCI and Fox.

#### CONCLUSION

44. We find that Qwest is fully qualified to be a Commission licensee and that a grant of the applications would serve the public interest. This conclusion is based upon application of the minority exception to our interim policy with regard to the attributable status of members of LLCs and also upon the resulting increased participation in New Orleans and the new ownership in Atlanta by minority individuals who are experienced broadcasters, television programming producers and business persons.

45. Accordingly, IT IS ORDERED that the petition to deny, filed by BBC License Subsidiary, L.P., raises no substantial and material question of fact and IS DISMISSED.

46. IT IS FURTHER ORDERED that the application for the transfer of control of Quincy Jones Broadcasting Inc., the licensee of WNOL-TV, New Orleans, from Quincy D. Jones to Qwest Broadcasting L.L.C. IS GRANTED and the application for the assignment of license of WATL(TV), Atlanta, from Fox Television Stations Inc. to Qwest Broadcasting L.L.C. IS GRANTED, subject to:

1. there being no substantial and material changes to the Qwest L.L.C. Agreement, except as may be approved in advance by the Commission. Copies of all insubstantial amendments to the Qwest Agreement must be filed promptly, within 10 days of the date of execution, with the Mass Media Bureau.

<sup>21</sup> Sale of a broadcast facility to an entity not owned and controlled by a minority would not qualify for a tax certificate. *See R. Clark Wadlow, Esquire*, 4 FCC Rcd 5262 (1989).

2. the resolution of the rule making proceeding relating to attribution rules, *Attribution Review*, 10 FCC Rcd 3606 (1995) with respect to the attributable status of Tribune and the applicability of the cross-interest policy to Tribune's interests in Qwest.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary