Tricks of the trade in CCC-WSCI swap

Tax breaks and avoidance of crossownership entanglements: Allbritton's 'brilliant deal'

To some, the agreement in principle providing for the swap of Washington Star Communications Inc.'s WMAL-TV Washington for Combined Communications Corp.'s KOCO-TV Oklahoma City and $65 million in nonvoting preferred stock could provide a textbook lesson in dealing with the FCC's crossownership rules. To others, it involves an unusual situation that is not likely to be repeated. But most credit WSCI's Joe L. Allbritton with what is being called "a brilliant deal."

One official of a company with newspaper and broadcast holdings in the same city expressed particular interest in the use of nonvoting preferred stock as partial payment for WMAL-TV. "If that satisfies the commission's crossownership rules," he said, "a lot of people would like to use it."

Commission lawyers who know no more of the proposed transaction than they have read in news reports say the use of nonvoting preferred stock as partial payment presents a new, perhaps unprecedented question. But one commission staff member said he did not think ownership of preferred nonvoting stock in CCC would place WSCI in conflict with the crossownership rules barring the acquisition of broadcast and newspaper holdings in the same market. Those rules, he said, speak only of control.

Legality aside, there are other practical considerations. And one man with long experience as a high-ranking official of multimedia companies said the proposed CCC-WSCI transaction involves a special set of circumstances. "Most owners want to trade up," he said. Washington is in the eighth market, Oklahoma City the 37th. "But this is a forced sale"—a reference to the fact the commission permitted Mr. Allbritton to acquire the Washington Star company on condition he dispose of its Washington stations or the newspaper within three years. "I don't think many owners would take that kind of [preferred stock] issue in a company. I don't see this being repeated."

Beyond the FCC problems, the proposed transaction is being structured in a manner to provide tax benefits to both sides; it is shaping up as a classic "tax-free merger," under which the taxes WSCI would be required to pay on its proceeds would in the main be deferred and spread over a number of years, while CCC could indefinitely avoid paying taxes on its gain, WMAL-TV over KOCO-TV, for which CCC paid $6.5 million in 1970.

The contract and the FCC application have not yet been drafted, let alone executed and filed. And an Internal Revenue Service ruling on the proposal may be necessary. But tax lawyers working on the matter say it will resemble many other acquisitions structured as mergers.

Under the agreement as announced (BROADCASTING, April 4), the Evening Star Broadcasting Co., the WSCI subsidiary that is the licensee of WMAL-TV, would be merged into a subsidiary of CCC. In return, WSCI would receive 650,000 shares of a new class of nonvoting preferred stock with a redemption value of $100 a share and all of the stock of the CCC company that owns KOCO-TV.

WSCI would pay taxes on the $3.25 million in dividends it would earn on the preferred stock in each of the first five years. But as a corporation, it would pay taxes on only 15% of the preferred stock dividend income. It would not, however, begin paying capital-gain tax—30%—on the stock until the sixth year, when CCC would redeem $30 million of the stock. (To qualify as a tax-free merger, the stock must be held for at least a reasonable length of time.) Capital-gain tax would continue to be paid from the seventh through the 20th year, as CCC redeems $2.5 million annually. Still to be determined is the WMAL-TV cost against which the capital-gain tax would be figured.

Also still to be resolved by lawyers and accountants also is the value to be placed on KOCO-TV and the manner in which WSCI would propose that it be taxed. However, all of the lawyers involved said it will probably be treated as "ordinary income—a dividend." (Observers generally estimate the value of the station at about $25 million.)

As for CCC, it would pay no capital-gain tax on WMAL-TV unless it sold the station, at which time the tax would be figured against the station's cost to WSCI, subject to various adjustments.

Tax law does not require payment of taxes on property acquired in a merger on the theory that the nature of the business involved is not affected. The Supreme Court refers to such merged enterprises as the same business in the same corporate shell.

Estimates of the value of the transaction to WSCI have ranged upwards of $100 million. These estimates include the $65 million in nonvoting stock, $20-25 million as the value of KOCO-TV and the dividends to be paid on the stock. However, one observer said that, considering a 6% annual discount on the value of the $65 million WSCI would not be receiving immediately (the money WSCI could earn in $65 million if that sum were paid to it now), the total value is probably closer to $60-$70 million.

Still, he said, "it's a brilliant deal for Allbritton." Or as a commission staff member put it: "That Allbritton is some horse trader."

	Monday			Tuesday			Wednesday			Thursday			Friday			Saturday			Sunday		
	ABC	CBS	NBC	ABC	CBS	NBC	ABC	CBS	NBC	ABC	CBS	NBC	ABC	CBS	NBC	ABC	CBS	NBC	ABC	CBS	NBC
7:00 p.m.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	85	101	112
7:30 p.m.	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	92	96	106
8:00 p.m.	100	102*	108*	104	101	97	106	93	106*	102	108	88	104	98	102	121*	99	98*	91	92*	133*
8:30 p.m.	106*	95*	111*	102	97	102	110	77*	120*	97*	109	101	107	99	105*	106*	97	96*	90	94*	131*
9:00 p.m.	115*	77	111	94	106	108	98	119	115*	97	102	95*	122	104*	104*	103.	95	111	100	131*	111*
9:30 p.m.	120*	77	103	95	105	108	99	118	98*	95	101	95*	123	99*	103*	96	99	110	105	126*	101*
10:00 p.m.	121*	80*	104	99	95*	121	108	109	94	100	109	89	119	97*	96*	101*	105	102	108	139	100*
10:30 p.m.	120*	78*	108	97	98*	121	109	94	91	103	104	87	114	92*	96*	98*	108	100	109	137	94*

Sweep period: Feb. 2 through March 2. 1977. Base period: Jan. 2 through Feb. 1; March 3 through March 11. One-time-only specials not included in analysis. All data based on NTI multinetwork area shares. Performance in individual markets can differ significantly.

*Includes more than one regularly scheduled program.

ARF's caveat. The Advertising Research Foundation's so-called "antihypoing report" for the February local TV sweep measurements is shown here as issued by ARF last week. It shows, by prime-time half hour and by night, the extent to which network shares during the sweep period differed from those immediately before and after the sweep period. The idea is to alert prime-time spot buyers to instances where the shares during the sweep differed significantly from the norm. Where this happens, ARF recommends that the buyer "investigate the programing in the local market" to decide whether the February measurement is representative of network performance. The table here shows the sweep-period averages in relation to nonsweep averages, with the latter indexed at 100. Thus at 8 p.m. on Monday, ABC's sweep-period share average coincided exactly with its average for Monday at 8 p.m. immediately before and after the sweep period; CBS's were 2% higher than its before-and-after average and NBC's were 8% higher. Where there is a substantial increase during the sweep period, the implication is that programing having special audience appeal has been substituted for regular programing. In fact, ARF said, most of the time periods showing "major" share changes did indeed involve changes in regularly scheduled programing, while "only 14 of the 44 half-hours covered showed no programing changes." Erwin Ephron, chairman of ARF's TV audience measurement committee, cited the findings—as he has past findings—as evidence of the need for measurements longer than the current four-week term. The index, third of its kind from ARF, was developed by Nielsen to ARF specifications. It is being distributed by the American Association of Advertising Agencies and by Nielsen.