FCC FACT SHEET: Review of the Commission's Broadcast Ownership Rules, Joint Sales Agreements, and Shared Services Agreements, and Comment Sought on an Incubator Program

Order on Reconsideration, MB Docket Nos. 14-50, 09-182, 07-294, 04-256, and
Notice of Proposed Rulemaking, MB Docket No. 17-289

Background: The FCC's broadcast ownership rules limit a single entity's ownership of television, radio, and newspaper properties within a local market. The Commission is required to review these rules every four years to determine whether they remain "necessary in the public interest as the result of competition" and to "repeal or modify any regulation [the Commission] determines to be no longer in the public interest." In August 2016, the Commission adopted by a 3-2 vote the Second Report and Order, which left the rules largely unchanged. The item also reinstated the television Joint Sales Agreement (JSA) attribution rule and the revenue-based eligible entity standard for ownership diversity purposes, and required the disclosure of shared services agreements (SSAs) for commercial television stations. In December 2016, several parties sought reconsideration of various aspects of the Second Report and Order. In addition, challenges to the item are pending in the U.S. Court of Appeals for the Third Circuit.

Newspaper/Broadcast Cross-Ownership Rule
The current rule prohibits common ownership of a full-power broadcast station (AM, FM, or TV) and a daily newspaper if the station's contour (defined separately by type of station) completely encompasses the newspaper's city of publication and the station and newspapers are in the same relevant Nielsen market, when defined. This prohibition does not apply if the newspaper or broadcast station is failed or failing.

Action: Eliminates Cross-Ownership Rules. The Order eliminates the antiquated rule prohibiting newspaper-broadcast cross-ownership and the rule restricting radio-television cross-ownership (discussed further below). These two rules are outdated considering the explosive growth of the number and variety of sources of local news and information in the modern marketplace.

Radio/Television Cross-Ownership Rule
The current rule prohibits an entity from owning more than two television stations and one radio station in the same market, unless the market meets certain size criteria. Specifically, if at least 10 independently owned media voices would remain in the market post-merger, an entity may own up to two television stations and four radio stations. If at least 20 independently owned media voices would remain in the market post-merger, an entity may own either: (1) two television stations and six radio stations, or (2) one television station and seven radio stations. In all instances, entities also must comply with the local radio and local television ownership limits.

Action: Eliminate the rule. Separate Local Radio Ownership and Local Television Ownership Rules continue to restrict the number of radio stations and television stations a single entity can own in a market.

Local Television Ownership Rule
According to the current rule, an entity may own up to two television stations in the same market if: (1) the digital noise limited service contours (NLSCs) of the stations do not overlap; or (2) at least one of the stations is not ranked among the top-four stations in the market and at least eight independently owned television stations would remain in the market following the combination.

Action: Eliminates Eight Voices Test. The Order eliminates the requirement that at least eight independently owned television stations must remain in the market following the combination of two television stations in a market. This test was unsupported by the record or any reasoned basis.

Eliminating the requirement will allow broadcasters, particularly in small and mid-sized markets, to realize the benefits of common ownership and better serve their local communities.

Action: Modifies Top-Four Prohibition. The Order also modifies the prohibition against common ownership of two top-four rated stations in a local market. While retaining the underlying prohibition, the Order adopts an option for applicants to seek case-by-case review of a transaction in order to account for circumstances in which strict application of the Top-Four Prohibition may be unwarranted.

Television JSA Attribution

Current rule, re-adopted in 2016, states that television JSAs that involve the sale of more than 15 percent of the weekly advertising time of a station (brokered station) by another in-market station (brokering station) are attributable under the Commission's ownership rules. (A JSA is an agreement that authorizes one station—the broker or the brokering station—to sell some or all of the advertising time on another station—the brokered station.)

Action: Eliminates JSA Attribution Rule. The Order eliminates the rule attributing certain television Joint Sales Agreements (JSAs), thereby preserving an important source of financing and tangible public interest benefits, particularly in small and medium-sized markets.

Local Radio Ownership Rule

Under the current rule, the total number of radio stations that may be commonly owned in a local radio market is tiered, depending on the total number of full-power commercial and noncommercial radio stations in the market. For example, in markets with 45 or more radio stations, an entity can own no more than 8 commercial radio stations, no more than 5 of which may be in the same service (AM or FM).

Action: No change to the rule. Adopts a narrow presumption in favor of a waiver of the rule in certain circumstances involving the New York City and Washington, DC markets.

Shared Service Agreements

SSAs involving commercial television stations must be placed in the stations' online public files.

Action: No change.

Diversity/Incubator Program

Creation of an incubator program is an important step in helping to promote ownership diversity in the broadcast industry. Such a program would seek to encourage new and diverse broadcast station owners by drawing on the technical expertise and/or financial assistance of existing broadcasters.

Action: Adopts Incubator NPRM. The Order finds that the Commission will adopt an incubator program and initiates a new proceeding in the accompanying NPRM to seek comment on how to structure and implement such a program.