

Federal Communications Commission (FCC) Media Ownership Rules

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Federal Communications Commission (FCC) Media Ownership Rules

The Federal Communications Commission (FCC) aims, with its broadcast media ownership rules, to promote localism and competition by restricting the number of media outlets that a single entity may own or control within a geographic market and, in the case of broadcast television stations, nationwide. In addition, the FCC seeks to encourage diversity, including (1) the diversity of viewpoints, as reflected in the availability of media content reflecting a variety of perspectives; (2) diversity of programming, as indicated by a variety of formats and content; (3) outlet diversity, to ensure the presence of multiple independently owned media outlets within a geographic market; and (4) minority and female ownership of broadcast media outlets.

Two FCC media ownership rules have proven particularly controversial. Its national media ownership rule prohibits any entity from owning commercial television stations that reach more than 39% of U.S. households nationwide. Its “UHF discount” rule discounts by half the reach of a station broadcasting in the Ultra-High Frequency (UHF) band for the purpose of applying the national media ownership rule. In December 2017, the commission opened a rulemaking proceeding, seeking comments about whether it should modify or repeal the two rules. If the FCC retains the UHF discount, even if it maintains the 39% cap, a single entity could potentially reach 78% of U.S. households through its ownership of broadcast television stations.

An important issue with respect to the national ownership cap, which the FCC has not addressed in a rulemaking, is how the agency treats a situation in which a broadcaster manages, operates, or sells advertising for a television station owned by another. In some cases, the FCC has articulated its policy on an ad hoc basis in the context of merger reviews, while in other instances it has effectively consented to such arrangements through its silence. Thus, a single entity could comply with the national ownership cap while still influencing broadcast television stations it does not own, reaching more viewers than permitted under the cap. For example, in reviewing the now-cancelled proposed merger between Sinclair Broadcast Group and Tribune Media Company in 2018, FCC commissioners raised concerns that Sinclair’s proposed sale of Tribune’s Chicago station WGN-TV in order to comply with the national ownership cap could effectively be a “sham” transaction due to Sinclair’s relationships with the proposed buyer. Nevertheless, neither Sinclair’s application nor the FCC’s order for a designated hearing addressed whether Sinclair’s intention to operate four television stations owned by others within the Wilkes-Barre-Scranton-Hazleton, PA, television market might cause it to breach the national ownership cap.

In November 2017, acting in response to petitions from broadcast station licensees, the FCC repealed or relaxed several local media ownership rules. The repealed rules limited common ownership of broadcast television and radio stations within the same market, and of television stations and newspapers within the same market. The FCC also relaxed rules limiting common ownership of two top-four television stations (generally, ABC, CBS, FOX, and NBC stations) within the same market. In August 2018, the FCC issued rules governing a new “incubator” program designed to enhance ownership diversity. Parties, including the Prometheus Radio Project, have appealed these orders. The U.S. Court of Appeals for the Third Circuit is scheduled to hear arguments regarding the legal challenges to all of the FCC’s recent broadcast media ownership rule changes. The FCC plans to launch its next quadrennial media ownership review later this year.

These regulatory changes are occurring against the background of significant changes in media consumption patterns. Based on surveys conducted by Pew Research Center, the percentage of adults citing local broadcast television as a news source declined from 65% in 1996 to 37% in 2016. As broadcast stations face competition for viewers’ attention from other media outlets, and thereby financial pressures, some station owners have sought to strengthen their positions by consolidating. The extent to which such media consolidation can occur is directly related to the FCC media ownership and attribution rules in place at the time.

Contents

Why Regulate Media Ownership?.....	1
Authority and Directives	2
Quadrennial Reviews	2
National Ownership Rule.....	3
News Consumption Trends.....	3
Consolidation Trends.....	4
Application of Local Ownership Rules	5
Station Characteristics.....	5
Television Signal Contours	5
Television Markets.....	5
Radio Signal Contours	6
Radio Markets.....	6
Local Attribution Rules	6
Joint Sales Agreements	7
Application of National Ownership Rules	9
Households Within Television Markets	9
UHF Discount	9
Remote Shared Services, Joint Sales, Operating, and Financial Agreements.....	10
Ownership Rules Subject to Quadrennial Review	12
Local Television Ownership Rule (Television Duopoly Rule)	12
Relief from Rule	15
Local Radio Ownership Rule	15
Clarifications.....	17
Radio/Television Cross-Ownership Rule	17
Newspaper/Broadcast Cross-Ownership Rule	17
Dual Network Rule	17
Ownership Diversity.....	19
2016 FCC Diversity Order.....	19
Revenue-Based Eligible Entity Standard.....	20
Measures Specific to Small Businesses	20
Incubator Program.....	22

Figures

Figure 1. Trends in News Consumption, 1996-2016.....	4
--	---

Tables

Table 1. Local TV Ownership (Duopoly) Rule	14
Table 2. Local Radio Ownership Rule.....	16
Table 3. Summary of Public-Interest Rationales for Media Ownership Rules.....	19
Table 4. Measures Applying to Eligible Entities	21

Table A-1. Chronology of National Broadcast Ownership and UHF Discount Rules	23
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Appendixes

Appendix.	23
----------------	----

Contacts

Author Information.....	24
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Why Regulate Media Ownership?

From the earliest days of commercial radio, the Federal Communications Commission (FCC) and its predecessor, the Federal Radio Commission, have encouraged diversity in broadcasting.¹

The FCC's policies seek to encourage four distinct types of diversity² in local broadcast media:

- diversity of viewpoints, as reflected in the availability of media content reflecting a variety of perspectives;
- diversity of programming, as indicated by a variety of formats and content, including programming aimed at various minority and ethnic groups;
- outlet diversity, to ensure the presence of multiple independently owned media outlets within a geographic market; and
- minority and female ownership of broadcast media outlets.³

In addition to promoting diversity, the FCC aims, with its broadcast media ownership rules,⁴ to promote localism and competition by restricting the number of media outlets that a single entity may own or control within a geographic market and, in the case of broadcast television stations, nationwide.⁵ Localism addresses whether broadcast stations are responsive to the needs and interests of their communities. In evaluating the extent of competition, the FCC considers whether stations have adequate commercial incentives to invest in diverse news and public affairs programming tailored to serve viewers within their communities.⁶

¹ Johnson-Kennedy Radio Corp. (WJKS), Docket No. 1156, affirmed sub nom *F.R.C. v. Nelson Bros. Co.*, 289 U.S. 266, 270-271 (1933); *United States Broadcasting Corp.*, 2 FCC 208, 233 (1935). Louis Caldwell, "Legal Restrictions on the Contents of Broadcast Programs," *Air Law Review*, vol. 9, no. 3 (July 1938), pp. 229, 246-248.

² A fifth type, source diversity (the availability of media content from a variety of content producers), has been the focus of merger proceedings, but in 2002 the FCC determined that this type of diversity was not relevant to its media ownership rules. Federal Communications Commission, "Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area," 18 *FCC Record* 13620, 13633, July 2, 2003 (2002 Biennial Review).

³ The FCC first began to encourage minority ownership of broadcast stations in 1978, in response to an initiative by President Jimmy Carter. Federal Communications Commission, "Statement of Policy on Minority Ownership of Broadcasting Facilities, FCC 78-322," Public Notice, May 25, 1978, http://ftp.fcc.gov/pub/Bureaus/Mass_Media/Databases/documents_collection/78-322.pdf; Jimmy Carter, "Telecommunications Minority Assistance Program Announcement of Administration Program," January 31, 1978, online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=29917>.

⁴ 47 C.F.R. §73.3555.

⁵ 2002 Biennial Review, pp. 13621, 13627, 13818.

⁶ Federal Communications Commission, "2014 Quadrennial Regulatory Review, 2010 Quadrennial Regulatory Review, Promoting Diversification of Ownership in the Broadcasting Services, Rules and Policies Concerning the Attribution of Joint Sales Agreements in Local Television Markets, Second Report and Order, FCC 16-107," 31 *FCC Record*, 9864, 9873, August 25, 2016 (2014 Quadrennial Review 2nd R&O).

Authority and Directives

Quadrennial Reviews

Section 202(h) of the Telecommunications Act of 1996 (P.L. 104-104) directs the FCC to review its media ownership rules every four years to determine whether they are “necessary in the public interest as a result of competition,” and to “repeal or modify any regulation it determines to be no longer in the public interest.”⁷ Section 257(b) of the act directs the FCC to promote policies favoring the diversity of media voices and vigorous economic competition.⁸

In 2004, 2011, and 2016, the U.S. Court of Appeals for the Third Circuit directed the FCC to review its broadcast ownership diversity policies in conjunction with the media ownership rules.⁹

In August 2016, the FCC completed the 2014 Quadrennial Review of its media ownership rules and diversity policies (2016 Diversity Order).¹⁰ The decision contained rules related to (1) the determination and disclosure of media ownership (attribution rules); (2) limits on the type and number of media properties a single entity may own (media ownership rules); and (3) rules designed to enhance media ownership diversity. The new media ownership rules became effective December 1, 2016.¹¹ The National Association of Broadcasters, Nexstar Broadcasting Inc. (an operator of broadcast television stations), and Connoisseur Media (an operator of radio stations) filed petitions with the FCC requesting that the agency reconsider its 2016 decision by repealing and/or relaxing the media ownership rules, and adopting rules creating a new “incubator program” to enhance ownership diversity.¹²

In November 2017, acting in response to the reconsideration petitions, the FCC repealed and/or relaxed several rules and adopted rules creating an incubator program while asking for additional comments on how to implement it (2017 Reconsideration Order). Most of the changes became effective in February 2018,¹³ while others, related to the FCC’s collection of data, became effective in March 2018 following approval of the Office of Management and Budget (OMB).¹⁴ In August 2018, the FCC issued rules governing a new incubator program. Parties, including the

⁷ P.L. 104-104 §202(h), 257 (47 U.S.C. §303 note).

⁸ P.L. 104-104 §202(h), 257 (47 U.S.C. §257(b)).

⁹ *Prometheus Radio Project v. Federal Communications Commission*, 373 F. 3d 372, 420- 421, n. 59 (3d Cir. 2004) (Prometheus I); *Prometheus Radio Project v. Federal Communications Commission*, 652 F.3d 431, 471 (3d Cir. 2011) (Prometheus II); and *Prometheus Radio Project v. Federal Communications Commission*, 824 F. 3d 33, 54 n. 13 (3d Cir. 2016) (Prometheus III).

¹⁰ 2014 Quadrennial Review 2nd R&O.

¹¹ Federal Communications Commission, “2014 Quadrennial Regulatory Review,” 81 *Federal Register* 76220, November 1, 2016.

¹² Federal Communications Commission, “Matter of 2014 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 2010 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Promoting Diversification of Ownership In the Broadcasting Services, Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets, FCC 16-107, Order on Reconsideration and Notice of Proposed Rulemaking and Report and Order,” 32 *FCC Record* 9802, 9803, n. 3, November 20, 2017 (2017 Quadrennial Review Order on Recon and NPRM).

¹³ Federal Communications Commission, “2014 Quadrennial Regulatory Review, Final Rule,” 83 *Federal Register* 733, January 8, 2018.

¹⁴ Federal Communications Commission, “2014 Quadrennial Regulatory Review, Final Rule,” 83 *Federal Register* 12680, March 23, 2018.

Prometheus Radio Project, have appealed these orders.¹⁵ The U.S. Court of Appeals for the Third Circuit is scheduled to hear arguments regarding the legal challenges to all of the FCC's recent broadcast media ownership rule changes.¹⁶

The FCC's next quadrennial media ownership review is scheduled to begin in 2018.¹⁷

National Ownership Rule

The Consolidated Appropriations Act, 2004 (P.L. 108-199) directed the FCC to adopt rules that would cap the reach of a single company's television stations at 39% of U.S. television households.¹⁸ In addition, Congress exempted this national ownership cap from the FCC's required review of its media ownership rules every four years. In December 2017, the FCC initiated a rulemaking proceeding in which it proposed to eliminate or modify that national audience reach cap.¹⁹ In the proceeding, the FCC sought comments on whether the agency has the authority to modify or eliminate the national cap, and noted that previously the agency had rejected arguments that Congress precluded the FCC from making any adjustment. For more information about the history of the national ownership rule, see **Table A-1**.

News Consumption Trends

The debate over media ownership rules is occurring against the background of sweeping changes in news consumption patterns. **Figure 1** illustrates these general trends. Based on surveys conducted by Pew Research Center, the percentage of adults citing local broadcast television as a news source declined from 65% in 1996 to 37% in 2017. The percentage of respondents who stated that they "got news yesterday" from online sources grew from 2% in 1996 to 43% in 2017, marking the first time that online sources outranked local broadcast television. In contrast, those citing printed newspapers as a source they "read yesterday" or use regularly declined from 50% in 1996 to 18% in 2016. Broadcast radio also has declined in importance as a source of news. These trends raise questions as to whether common ownership of multiple media outlets in the same market might limit diversity of viewpoints as much today as two decades ago.

¹⁵ Prometheus Radio Project, "Public Interest Groups Appeal Third Federal Communications Commission Media Ownership Decision," September 4, 2018, <https://www.prometheusradio.org/public-interest-groups-appeal-third-federal-communications-commission-media-ownership-decision>.

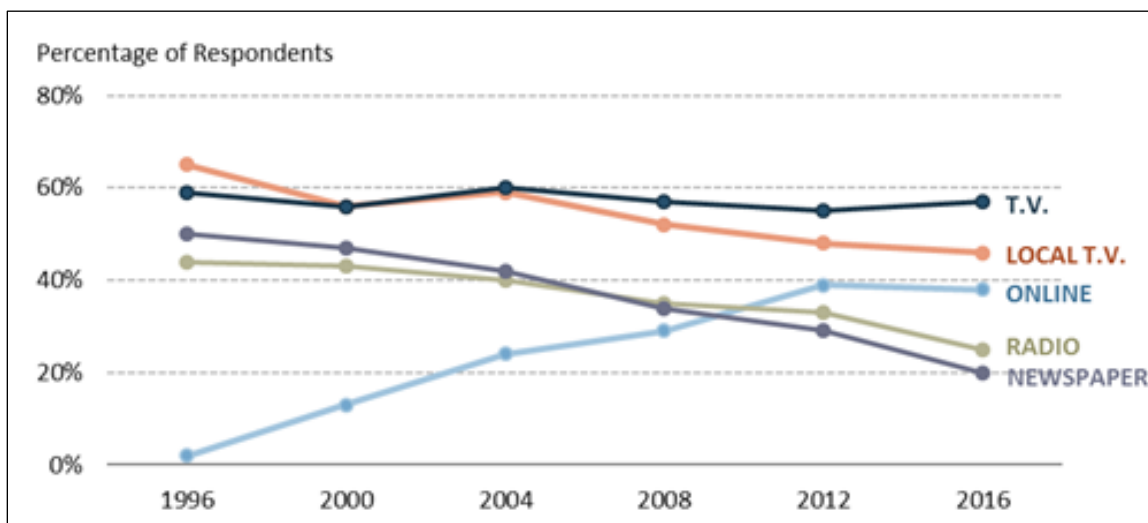
¹⁶ *Prometheus Radio Project v. FCC*, Nos. 17-1107, 18-1092, 18-1167, 2018 U.S. App. LEXIS 5512 (3d Cir. Feb. 7, 2018).

¹⁷ 2017 Quadrennial Review Order on Recon and NPRM, p. 9812, n. 56.

¹⁸ The FCC relies on estimates of the number of television households by the Nielsen Company.

¹⁹ Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Notice of Proposed Rulemaking, FCC 17-169," 32 *FCC Record* 10785, December 18, 2017.

Figure I. Trends in News Consumption, 1996-2016
 Percentage of Respondents Who Get News from Each Media Platform



Sources: 1996-2012 data: Pew Research Center, “In Changing News Landscape, Even Television is Vulnerable,” September 27, 2012, <http://www.people-press.org/2012/09/27/in-changing-news-landscape-even-television-is-vulnerable/>. 2016 data: Kristine Lu and Jesse Holcomb, “Digital News Audience: Fact Sheet,” in *State of the News Media 2016*, Pew Research Center, June 15, 2016, p. 45, <http://www.journalism.org/2016/06/15/digital-news-audience-fact-sheet/>.

Notes: Data from 1996 to 2012 show the percentage of adults who got news “yesterday” from each media platform, except that data on “Local TV” show the percentage of adults who “regularly watch.” Data from 2016 are based on the percentage of adults who get news “often” from each media platform. “TV” includes local broadcast television as well as cable networks and broadcast television networks. “Online” sources include online newspapers. Pew does not specify whether they include websites of television stations, radio stations, or television networks.

Consolidation Trends

As broadcast stations face competition for viewers’ attention from other media outlets, and thereby financial pressures, some have sought to strengthen their bargaining relative to program suppliers (i.e., broadcast networks), advertisers, and/or programming distributors (i.e., cable and satellite operators) by consolidating. For example, in an agreement that was subsequently rescinded, Sinclair Broadcast Group proposed to acquire Tribune Media Company, thereby making it the largest owner of broadcast television stations in the United States.²⁰ In November 2017, Entercom Communications completed its merger with CBS Radio Inc., making it the largest radio operator in the United States in terms of revenue.²¹ In June 2018, Gray Television announced that it would purchase Raycom Media Inc. in a \$3.65 billion transaction that would enable Gray to reach one-fourth of U.S. households.²² The extent to which such media

²⁰ Joe Flint, “Tribune Terminates \$3.9 Billion Merger with Rival Sinclair,” *Wall Street Journal*, August 9, 2018, <https://www.wsj.com/articles/tribune-media-terminates-merger-agreement-with-sinclair-broadcast-group-1533810907>.

²¹ Cherie Hu, “Entercom Finalizes Merger with CBS Radio, Becoming No. 2 Radio Operator in the U.S.,” *Billboard*, November 17, 2017, <https://www.billboard.com/articles/business/8039439/entercom-cbs-radio-merger-finalized-no-2-radio-operator>.

²² Austen Hufford, “Gray TV to Buy Raycom in \$3.65 Billion Deal,” *Wall Street Journal*, June 25, 2018, <https://www.wsj.com/articles/gray-tv-to-buy-raycom-in-3-65-billion-deal-1529932732>.

consolidation can occur is directly related to the FCC media ownership and attribution rules in place at the time.

Application of Local Ownership Rules

Station Characteristics

Two characteristics of broadcast television and broadcast radio stations determine whether or not the media ownership rules described in later sections of this report are triggered: (1) the geographic range (or *contours*) of their signals, and (2) the limits of their media markets as determined by the Nielsen Company, a market research firm. The FCC uses Designated Market Areas (DMAs) to determine the geographic regions that apply to the duopoly rule, and uses broadcast television signals to determine when the rules are triggered within DMAs.

Television Signal Contours

Following the transition of broadcast stations from analog to digital signals in 2009, the FCC modified the media ownership rules to reflect two digital television service contours:²³

1. The digital “principal community contour” (digital PCC). This contour specifies the signal strength required to provide television service to a station’s community of license. The FCC sought, when defining the digital PCC, to provide television stations with flexibility in siting and building their facilities while still preventing stations from straying too far from their respective communities of license.²⁴
2. The digital “noise limited service contour” (digital NLSC). The FCC designed this contour to define a geographic area in which at least 50% of residents can receive the signal a majority of the time.²⁵ The FCC wanted to ensure that after the digital transition, broadcasters would be able to reach the same audiences they served previously with analog transmissions.

Television Markets

The FCC uses DMAs created by the Nielsen Company to define local television markets. Nielsen has constructed 210 DMAs by assigning each county in the United States to a specific DMA, based on the predominance of viewing of broadcast television stations licensed to operate in a given metropolitan statistical area, defined by the OMB.

²³ 2014 Quadrennial Review 2nd R&O, pp. 9876-9877 (for local television ownership rule); pp. 9944-872 (for radio/television cross-ownership rule); p. 9931 (for newspaper-broadcast television cross-ownership rule).

²⁴ Federal Communications Commission, “Advanced Television Systems and their Impact on the Existing Television Broadcast Service,” 25 *FCC Record* 14588, 14634-14635, April 21, 1997 (1997 Sixth R&O). Federal Communications Commission, “2010 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Inquiry, FCC 10-92,” 25 *FCC Record* 6086, 6117, n. 150, May 25, 2010 (2010 Quadrennial NOI).

²⁵ 1997 Sixth R&O, pp. 14605-14607.

Radio Signal Contours

FM Primary Service Area

The 1 millivolt-per-meter (1 mv/m) contour for FM radio represents a signal that will result in satisfactory service to at least 70% of the locations on the outer rim of the contour at least 90% of the time.²⁶

AM Primary Service Area

In its rules for AM radio stations, the FCC delineates three types of service areas: (1) primary, (2) secondary, and (3) intermittent. Some classes of radio stations render service to two or more areas, while others usually have only primary service areas.²⁷ The FCC defines the primary service area of an AM broadcast radio station as the service area in which the groundwave is not subject to objectionable interference or fading.²⁸ The signal strength required for a population of 2,500 or more to receive primary service is 2 millivolts per meter (2 mv/m). For communities with populations of fewer than 2,500, the required signal strength is 0.5 mv/m.

When the FCC first proposed incorporating AM contour signals in its media ownership rules, it noted that “a one mv/m AM signal is somewhat less than the signal intensity needed to provide service to urban populations, but somewhat greater than the signal at the outer limit of effective non-urban service.”²⁹

Radio Markets

The FCC also relies on the Nielsen Company to define local radio markets. These markets, called “Metros,” generally correspond to the metropolitan statistical areas defined by the OMB, but are subject to exceptions based on historical industry usage or other considerations at the discretion of Nielsen.³⁰ In contrast to television markets, radio markets do not include every U.S. county.³¹ To determine the number of radio stations within a radio market, the FCC uses a database compiled and updated by BIA Kelsey, another market research firm.³²

Local Attribution Rules

Many licensees of commercial broadcast television and radio stations have relationships that allow others to exert substantial influence over the operation and finances of those licensees’

²⁶ Federal Communications Commission, “Standard, FM and Television Broadcast Stations: Multiple Ownership; Notice of Proposed Rulemaking,” 27 *Federal Register* 6946, 6847, July 19, 1962 (1962 Media Ownership NPRM). The FCC explained that although not precisely equivalent, this contour for FM broadcast radio represented the same general level of probability for the contour the FCC used (Grade A) to predict analog broadcast television service at that time.

²⁷ 47 C.F.R. §73.182(c).

²⁸ 47 C.F.R. §73.14.

²⁹ 1962 Media Ownership NPRM, p. 6847.

³⁰ The Nielsen Company, *Arbitron eBook Reference Guide*, 2009, p. 46, <http://www.nielsen.com/content/dam/corporate/us/en/docs/nielsen-audio/guide-to-understanding-and-using.pdf>.

³¹ Americanradiohistory.com, “Arbitron Reports and Data of Interest,” “Metropolitan Survey Area Maps,” “2013 Metro Radio Metro Areas Hi-Res,” http://www.americanradiohistory.com/Archive-Arbitron/2013_RadioMetroMap_hi-res.pdf.

³² 2014 Quadrennial Review 2nd R&O, pp. 9903-9904.

stations. FCC rules prohibit unauthorized transfers of control of licenses, including de facto transfers of control.³³

To help it enforce its media ownership rules, the FCC has developed attribution rules “to identify those interests in or relationships to licensees that confer 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.”³⁴ In such cases, the FCC may deem an entity to influence a broadcast station’s operations and finances to a degree that triggers the FCC’s media ownership rules, even when the FCC does not consider the entity to be the official licensee.

The following summarizes the media attribution rules, as described and modified in the 2017 Reconsideration Order, and related FCC policies.³⁵

Joint Sales Agreements

Joint sales agreements (JSAs) enable the sales staff of one broadcast station to sell advertising time on a separately owned station within the same local market. In 2016, the FCC adopted rules specifying that television JSAs allowing the sale of more than 15% of the weekly advertising time on a competing local broadcast television station are attributable as ownership or control.³⁶

Congress subsequently twice extended the period by which parties must terminate a television JSA in order to comply with the FCC’s rule limiting ownership of multiple television stations within a DMA (see “Local Television Ownership Rule (Television Duopoly Rule)”), ultimately extending the deadline to September 30, 2025.³⁷ The FCC’s rules also specified that stations must file copies of attributable television JSAs with the commission.³⁸

In its 2017 Reconsideration Order, the FCC eliminated the television JSA attribution rule.³⁹ The FCC determined that

JSAs can promote the public interest, and that this provides an independent reason for eliminating the Television JSA Attribution Rule.... [They] have created efficiencies that

³³ 47 U.S.C. §310(d); 47 C.F.R. §73.3540.

³⁴ Federal Communications Commission, “Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the Commission’s Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission’s Cross-Interest Policy, Report and Order, FCC 99-207,” 14 *FCC Record* 12559, August 6, 1999. §103 of P.L. 113-200, the Satellite Extension and Localism Reauthorization Act, also prohibits a television broadcast station from negotiating a retransmission consent contract jointly with another broadcast station in the same market, regardless of its audience size, unless the FCC considers the stations to be directly or indirectly owned, operated, or controlled by the same entity. Thus, the FCC’s attribution rules affect a station’s retransmission consent negotiations.

³⁵ Current broadcast attribution rules, which were not addressed in either the 2014 Quadrennial Review nor the 2017 Reconsideration, are listed in 47 C.F.R. §73.3555, Note 2.

³⁶ 2014 Quadrennial Review 2nd R&O, pp. 9888-9890. The FCC proposed attributing television JSAs in 2004, and revisited the issue in 2011, but did not make a final decision. Federal Communications Commission, “Attribution of TV JSAs, NPRM, FCC 04-173,” 19 *FCC Record* 15238, July 2, 2004; Federal Communications Commission, “2010 Quadrennial Review, NPRM, FCC 11-186,” 26 *FCC Record* 17489, 17565-17566, December 22, 2011.

³⁷ Consolidated Appropriations Act, 2016, §626, P.L. 114-113 (2015). The first extension was through December 19, 2016, per §104 of the 2014 Satellite Television Extension and Localism Act (P.L. 113-200).

³⁸ Once the media ownership and attribution rules become effective, 30 days after the FCC publishes them in the *Federal Register*, broadcast station licensees must file the JSAs with the commission. 2014 Quadrennial Review 2nd R&O, p. 9888-9989, n. 168.

³⁹ 2017 Quadrennial Review Order on Recon and NPRM, pp. 9846-9854.

benefit local broadcasters—particularly in small- and medium-sized markets—and have enabled these stations to better serve their communities.”⁴⁰

With the repeal of the JSA attribution rule, broadcast television stations are no longer required to file copies of their JSAs with the FCC.⁴¹ However, broadcast television stations must still make copies of JSAs available in their public inspection files.⁴² These files are available for review on the FCC website.⁴³ A JSA among commercial radio stations, whereby one station sells 15% or more of another same-market station’s advertising time, is attributable for the purpose of applying the local radio ownership rule.⁴⁴

Disclosure of Sharing Agreements

In August 2016, the FCC adopted new disclosure requirements for all joint operating agreements, broadly encompassed by the term *shared services agreements* (SSAs) among broadcast television stations.⁴⁵ In its 2017 Reconsideration Order, the FCC upheld the SSA disclosure rule,⁴⁶ which became effective in March 2018 following approval from the OMB.⁴⁷

The FCC defines an SSA as

any agreement or series of agreements, whether written or oral, in which

(1) a station provides any station-related services including, but not limited to, administrative, technical, sales, and/or programming support, to a station that is not directly or indirectly under common *de jure* control permitted under the [FCC’s] regulations; or

(2) stations that are not directly or indirectly under common *de jure* control permitted under the [FCC’s] regulations collaborate to provide or enable the provision of station-related services, including, but not limited to, administrative, technical, sales, and/or programming support, to one or more of the collaborating stations.

In this definition, the term *station* includes the licensee, including any subsidiaries and affiliates, and any other individual or entity with an attributable interest in the station.

Each station that is a party to an SSA, whether in the same or different television markets, must file a copy of the SSA in its online public inspection file.⁴⁸ The stations may redact confidential or proprietary information. The stations must also report the substance of oral SSAs in writing to the FCC. SSA disclosure requirements do not apply to noncommercial television stations, radio stations, and newspapers.

⁴⁰ 2017 Quadrennial Review Order on Recon and NPRM, p. 9852.

⁴¹ 2017 Quadrennial Review Order on Recon and NPRM, p. 9873 (Revising *Filing of Contracts* regulation 47 C.F.R. §73.3613(d)(2) to specify that only attributable broadcast radio JSAs need be filed with the FCC).

⁴² 47 C.F.R. §73.3526(3)(16). The rule applies to agreements involving stations in the same or different markets.

⁴³ FCC, “Public Inspection Files,” <https://publicfiles.fcc.gov/>.

⁴⁴ 47 C.F.R. §73.3555, Note 2. The FCC decided to attribute radio JSAs in 2003. Federal Communications Commission, 2002 Biennial Review, p. 13620.

⁴⁵ 2014 Quadrennial Review 2nd R&O, pp. 10008-10023.

⁴⁶ 2017 Quadrennial Review Order on Recon and NPRM, pp. 9855-9857.

⁴⁷ Federal Communications Commission, “2014 Quadrennial Regulatory Review, Final Rule,” 83 *Federal Register* 12680, March 23, 2018.

⁴⁸ 47 C.F.R. §73.3526(3)(18).

The FCC declined to make SSAs attributable, and emphasized that its action “was not a pretext for future regulation of SSAs.”⁴⁹ The FCC stated that any consideration of the regulatory status of these agreements in the future must reflect “significant study and understanding of the impact of these agreements on station operations and a complete account of the public interest benefits these agreements help facilitate.”

Rescission of Media Bureau's Sidecar Policy Statement

Broadcast stations that outsource management to other stations are known as *sidecars*.⁵⁰ In March 2014, the FCC's Media Bureau issued a public notice stating that it would closely scrutinize any proposed transaction that includes sidecar agreements in which two (or more) broadcast stations in the same market enter into an arrangement to share facilities, employees, and/or services, or to jointly acquire programming or sell advertising *and* enter into an option, right of first refusal, put/call arrangement, or other similar contingent interest, or a loan guarantee.⁵¹ In February 2017, the FCC's Media Bureau rescinded this guidance.⁵²

Application of National Ownership Rules

Households Within Television Markets

Nielsen ranks each DMA by the estimated number of television households. It estimated that as of January 2018, the New York DMA contained more than 7 million television households, reaching 6.309% of U.S. television households, making it the number one DMA in the country.⁵³ In contrast, Nielsen estimated that the Glendive, MT, market was the smallest DMA in the country (ranked number 210), with 4,030 television households, representing 0.004% of U.S. television households. The FCC uses Nielsen's estimates of television households to determine the national audience reach of broadcast television station group owners, for the purpose of applying the national ownership cap.

UHF Discount

In 1985 the FCC adopted a rule that, for the purpose of applying its national ownership rule, discounted the number of television households reached within a DMA by stations operating in the Ultra High Frequency (UHF) band by half in measuring a station owner's reach. This adjustment reflected the physical limitations of UHF signals, which generally provided poorer picture quality than signals in the Very High Frequency (VHF) band at the time the rule was adopted.⁵⁴

⁴⁹ 2017 Quadrennial Review Order on Recon and NPRM, p. 9857.

⁵⁰ Keach Hagey, “Market Share: ‘Sidecar’ Deals Test Law on TV Station Consolidation,” *Wall Street Journal*, October 21, 2013.

⁵¹ Federal Communications Commission, “Broadcast TV Applications Proposed Sharing Arrangements,” 29 *FCC Record* 2647, 2648, March 12, 2014.

⁵² Federal Communications Commission, “Public Notice, DA 17-130,” 32 *FCC Record* 1105, February 3, 2017.

⁵³ Chris Ariens, “San Francisco Market Drops Two Spots in 2018 Nielsen Rankings,” *TV Spy*, October 9, 2017, <https://www.adweek.com/tvspy/san-francisco-market-drops-two-spots-in-2018-nielsen-rankings/195162>.

⁵⁴ Federal Communications Commission, “Amendment of Section 73.3555 [formerly Sections 73.35, 73.240 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Memorandum Opinion and Order,” 100 *FCC Reports*, 2nd Series, 74, 92-94, February 1, 1985 (1985 TV Ownership

However, on June 12, 2009, broadcast television stations completed a transition from analog to digital service pursuant to a statutory mandate.⁵⁵ As a result of this switch, UHF stations had a technological advantage, and more broadcast television licenses began to operate on these frequencies. By December 2009, 73% of the 1,392 commercial stations operated in the UHF band.⁵⁶

In September 2013, under then-Acting FCC Chairwoman Mignon Clyburn, the FCC proposed eliminating the UHF discount, citing the completed transition to digital broadcasting.⁵⁷

In September 2016, the FCC, under then-Chairman Thomas Wheeler, eliminated the UHF discount effective November 2016.⁵⁸ In a dissenting statement, then-Commissioner Ajit Pai contended that the FCC lacked the authority to review the UHF discount without simultaneously reviewing the national audience cap.⁵⁹ In April 2017, after Commissioner Pai became chairman, the FCC reinstated the UHF discount.⁶⁰ With the discount, a single entity that owns exclusively UHF stations could effectively reach 78% of U.S. television households, or double the current national ownership cap of 39% of U.S. television households. In December 2017, the FCC launched a new rulemaking proceeding to examine whether to modify or rescind the UHF discount and national ownership cap.⁶¹ For more information about the history of the UHF discount and national ownership cap, see **Table A-1**.

Remote Shared Services, Joint Sales, Operating, and Financial Agreements

When parties request that the FCC allow them to transfer broadcast television licenses, they must ensure that they comply with all FCC rules, including the FCC's media ownership rules. In the event of a transfer of operational and financial agreements involving broadcast stations, rather than an actual license, the parties need not discuss how such arrangements relate to the national ownership rule. In contrast to its attribution rules regarding local media ownership, the FCC has not issued a formal rulemaking regarding its treatment of sharing, sales, operating, and financial agreements, with respect to national media ownership. Instead, it has either articulated its policy on an ad hoc basis in reviewing merger applications, or remained silent.

For example, in 2013, when Local TV LLC applied to the FCC to transfer control of its broadcast television station licenses to Tribune Media Company and Dreamcatcher Broadcasting LLC, Tribune proposed that Dreamcatcher would be the new licensee of Local TV's stations in the

Reconsideration).

⁵⁵ 47 U.S.C. §309(j)(14)(A). Full-power analog television service therefore has terminated.

⁵⁶ Federal Communications Commission, "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Fourteenth Report, FCC 12-81," 27 *FCC Record* 8610, July 20, 2012.

⁵⁷ Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's National Television Multiple Ownership Rule," 28 *FCC Record* 14324, September 26, 2013.

⁵⁸ Federal Communications Commission, "National Television Multiple Ownership Rule, Final Rule, FCC 16-116," 81 *Federal Register* 73035, October 23, 2016.

⁵⁹ Federal Communications Commission, "National Television Multiple Ownership Rule, Report and Order, FCC 16-116," 31 *FCC Record* 10213, 10247-10248, September 7, 2016 (2016 UHF Discount Order).

⁶⁰ Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Order on Reconsideration, FCC 17-40," 32 *FCC Record* 3390, April 21, 2017.

⁶¹ Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Notice of Proposed Rulemaking, FCC 17-169," 32 *FCC Record* 10785, December 18, 2017.

Norfolk-Portsmouth-Newport News, VA, and Wilkes Barre-Scranton-Hazleton, PA, television markets. Tribune, however, would operate the stations pursuant to shared services agreements (but not joint sales agreements). The FCC's media bureau (but not the full commission)

[d]isagree[d] with [opponents of the proposed arrangement] that the facts here show that Tribune will be operating the Dreamcatcher Stations as though it owned them outright. Dreamcatcher will be run by a highly experienced broadcaster, with established independence from Tribune.⁶²

Because Tribune already owned newspapers in those markets, it did not attempt to take control of the broadcast licenses in those markets in order to comply with the FCC's now-defunct rule prohibiting common ownership of newspapers and television stations within the same DMA (described in "Newspaper/Broadcast Cross-Ownership Rule"). FCC's Media Bureau staff did not, however, directly address how this determination applied to the national ownership rule.

Four years later, when Tribune applied to the FCC to transfer control of its broadcast licenses to Sinclair Broadcast Group, the FCC commissioners raised concerns, and in July 2018 they designated the proposed transaction for a hearing before an FCC administrative law judge. Among their concerns was that Sinclair's proposed sale of Tribune's Chicago station WGN-TV could effectively be a "sham" transaction because (1) the proposed buyer had no previous experience in broadcasting, (2) the proposed buyer served as CEO of a company in which Sinclair's executive chairman had a controlling interest, (3) the proposed buyer would have purchased the station at a price that appeared to be significantly below market value, (4) Sinclair would have had an option to buy back the station in the future, (5) Sinclair would have owned most of WGN-TV's assets, and (6) pursuant to a number of agreements, Sinclair would have been responsible for many aspects of the station's operation.

The FCC commissioners stated, "Such facts raise questions about whether Sinclair was the real party in interest under Commission rules and precedents and attempted to skirt the Commission's broadcast ownership rules."⁶³

The FCC commissioners were silent, however, with respect to how, post-transaction, Sinclair's potential remote operation of four television stations within the Wilkes-Barre-Scranton-Hazleton, PA, television market might cause it to breach the national ownership cap.

In Wilkes Barre-Scranton-Hazleton alone, Sinclair operates three stations remotely and Tribune operates one. While Sinclair's and Tribune's investor presentation about their transaction highlighted Wilkes Barre as a market common to the two companies,⁶⁴ the FCC's designated hearing order did not. As the FCC has been addressing attribution on a case-by-case basis, it is unclear how it would treat such relationships with respect to enforcing national ownership limits in the future. For example, this matter may arise again when the FCC reviews Gray Television's proposed acquisition of stations from Raycom. In the Ottumwa, IA-Kirksville, MO television market, Raycom operates, but is not the licensee of, a station that airs programming from the FOX and NBC networks.⁶⁵ Gray does not own any stations in the market. In Gray's investor

⁶² Federal Communications Commission, "Applications of Local TV Holdings, LLC, Transferor and Tribune Broadcast Company II, LLC, Transferee and Dreamcatcher Broadcasting, LLC, Transferee for Consent to Transfer of Control of Certain Licensee Subsidiaries of Local TV Holdings, LLC, Memorandum Opinion and Order, DA 13-2422," 28 *FCC Record* 16850, 16857, December 20, 2013.

⁶³ 2018 Sinclair Hearing Designation Order, pp. 1-2.

⁶⁴ Sinclair, Investor Presentation, May 8, 2017, p. 5, <http://sbgi.net/sinclair-tribune-media-investor-presentation/>.

⁶⁵ "CNHI Exploring Sale of Newspapers," *Ottumwa Courier*, June 25, 2018, http://www.ottumwacourier.com/news/cnhi-exploring-sale-of-newspapers/article_5280744a-78a7-11e8-9c90-4b86676d54a5.html. Raycom also owns the

presentation regarding its proposed merger with Raycom, it highlights Ottumwa as a “Raycom” market, thus implying that it intends to operate the station upon completion of the transaction.⁶⁶ It is unclear whether Gray’s operation of the station would cause control to be attributed to Gray if future transactions might enable Gray’s stations to reach 39% of all U.S. television households, the national limit for a single owner.

This issue also would have arisen had Sinclair pursued its proposed merger with Tribune. In Sinclair’s final amendment to its merger application, it offered to sell certain stations in order to comply with the national ownership cap (assuming the UHF discount remained in place).⁶⁷ Sinclair would nonetheless have reached more than 39% of U.S. television households if the four Wilkes Barre stations, which it would have operated but would not have owned, had been included in the calculation.⁶⁸

Ownership Rules Subject to Quadrennial Review

The FCC has five distinct sets of rules governing ownership of multiple media outlets in a single market: (1) local television ownership rules (known as the television duopoly rules); (2) local radio ownership rules; (3) radio/television cross-ownership rules; (4) newspaper/broadcast cross-ownership rules; and (5) the dual network rule.

Local Television Ownership Rule (Television Duopoly Rule)

The local television ownership rule (known as the television duopoly rule) limits common ownership of television stations serving the same geographic region. An entity may own or control two television stations in the same television market, so long as the overlap of the stations’ signals is limited and the joint control does not include two of the four most widely watched stations within the market. The FCC may, however, make exceptions to the “top four” prohibition on a case-by-case basis, depending on the conditions of a particular DMA.

The FCC initially adopted a TV duopoly rule in 1941, barring a single entity from owning two or more broadcast television stations that “would substantially serve the same area.”⁶⁹ In 1964, the FCC adopted the signal overlap component of the rules. The FCC sought to limit “future

Ottumwa Courier newspaper. As described in “Newspaper/Broadcast Cross-Ownership Rule,” until recently, FCC rules limited common ownership of a newspaper and television station within the same market.

⁶⁶ Gray Television, Inc. Investor Presentation, June 25, 2018, p. 2, <https://gray.tv/index.php?page=presentations>.

⁶⁷ Letter Amendment, MB Docket No. 17-179, Applications of Tribune Media Company and Sinclair Broadcast Group, Inc. for Consent to Transfer Control of Licenses and Authorizations from Miles Mason, Counsel to Sinclair Broadcast Group, and Mace Rosenstein, Counsel to Tribune Media Company, to Marlene H. Dortch, Secretary to the Federal Communications Commission, July 18, 2018, <https://ecfsapi.fcc.gov/file/10718878029145/Letter%20Amendment%20to%20Merger%20Applications%20-%20July%2018%202018.pdf>. Sinclair and Tribune claimed that their total reach would have been 38.86% of U.S. television households.

⁶⁸ All of the Wilkes Barre stations are UHF, and thereby subject to the discount. If those stations had been attributed to Sinclair, Sinclair’s post-merger reach would have been 39.09% of U.S. television households. The Nielsen Company, “Local Television Market Universe Estimates: Estimates as of January 1, 2018 and Used Throughout the 2017-2018 Television Season,” <http://www.nielsen.com/content/dam/corporate/us/en/public%20factsheets/tv/2017-18%20TV%20DMA%20Ranks.pdf>.

⁶⁹ Federal Communications Commission, “Part 4—Broadcast Services Other Than Standard Broadcast,” 6 *Federal Register* 2282, 2284-2285, May 6, 1941. This was the year that commercial television service first became available in the United States.

ownership to a maximum of two stations in most states and, thus ... act indirectly to curb regional concentrations of ownership as well as overlap itself.”⁷⁰

In 1999, the FCC adopted the “top four ranked/eight voice” test, under which it would approve a merger among two of the “top four” stations so long as at least eight independently owned and operating commercial or noncommercial full-power broadcast television stations would remain in the DMA after the proposed combination was consummated. It also adopted the waiver criteria.⁷¹ The “top four ranked” stations in a local market generally are the local affiliates of the four major English-language broadcast television networks—ABC, CBS, Fox, and NBC. The rules apply to the stations’ ranking at the time they apply for common ownership. While making some technical modifications, the FCC retained the television duopoly rules in 2016.⁷²

In its 2017 Reconsideration Order, the FCC eliminated the “eight voices” component of the test.⁷³ Furthermore, it decided that in applying the restriction on ownership of two top-four-ranked stations in the same market, it would conduct case-by-case evaluations to account for circumstances in which the application of the prohibition may be unwarranted. The FCC found that the modification to the television duopoly rule would not be likely to harm minority and female ownership of broadcast stations.

Table 1 summarizes the rules, including waiver circumstances.

⁷⁰ Federal Communications Commission, “Multiple Ownership of Standard, FM, and Television Broadcast Stations, FCC 64-445,” 29 *Federal Register* 7535, 7537, June 12, 1964.

⁷¹ Federal Communications Commission, “Review of the Commission’s Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, Report and Order, FCC 99-209,” 14 *FCC Record* 12903, 12931-12941, August 6, 1999 (1999 Media Ownership R&O).

⁷² 2014 Quadrennial Review 2nd R&O, pp. 9870-9896.

⁷³ 2014 Quadrennial Review Order on Recon and NPRM, pp. 9831-9840.

Table 1. Local TV Ownership (Duopoly) Rule
Permitted Combinations of TV Stations in a Market

Top-Four Prohibition	Signal Overlap	Waiver Criteria	Notes
Generally, at least one of the stations is not among the four highest-ranked stations in the DMA.	Or the digital noise limited service contours (NLSC) of the stations do not overlap.	On a case-by-case basis, the FCC will consider waivers if (1) one station failed/is failing. Applicants must demonstrate that an in-market buyer is the only entity ready, willing, and able to operate the station, and that sale to a buyer outside of the market would result in an artificially depressed price.^a or (2) the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so. The FCC may consider waivers to the top-four prohibition on a case-by-case basis. An applicant may request that the FCC determine whether permitting it to directly or indirectly own, operate, or control, two television stations licensed in the same DMA would serve the public interest, convenience, and necessity, due to specific circumstances in a local market or with respect to a specific transaction.^b	Stations cannot switch broadcast network affiliations if the switch would result in one party directly or indirectly owning, operating, or controlling two of the top-four-rated television stations within the DMA at the time of the agreement.

Sources: 47 C.F.R. §73.3555(b); 47 C.F.R. §73.3555, Note 7; 2014 Quadrennial Review 2nd R&O; 2017 Quadrennial Review Order on Recon and NPRM, pp. 9838-9839.

- a. A station is considered “failed” if it has not been in operation due to financial distress for at least four consecutive months immediately prior to the application, or is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application. A station is considered to be “failing” if it has an all-day audience share of no more than 4% and has had negative cash flow for three consecutive years immediately prior to the application. The Failed Station Solicitation Rule requires licensees seeking to apply for a failed station/failing station waiver of the television duopoly rules to notify the public that a failed/failing station is for sale and to demonstrate that it was unsuccessful in securing an out-of-market buyer for the station.
- b. Information that would make such a case could include, but is not limited to, the following: (1) station ratings share data; (2) station revenue share data, including advertising (on-air and digital) and

retransmission consent fees; (3) market characteristics, such as population and the number and types of broadcast television stations; (4) likely effects on programming meeting the needs and interests of the community; and (5) any other circumstances affecting the market.

Relief from Rule

In 2016, the FCC retained its “failed station/failing station” waiver test. Under this policy, to obtain a waiver of the local television (duopoly) rule, an applicant must demonstrate that (1) one of the broadcast television stations involved in the proposed transaction is either failed or failing; (2) the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station; and (3) selling the station to an out-of-market buyer would result in an artificially depressed price.⁷⁴ The FCC declined to relax its criteria for determining whether a station is failing or failed, stating that parties might be able to manipulate the data used to determine the criteria.⁷⁵

Local Radio Ownership Rule

The local radio ownership rule limits ownership of radio stations serving the same geographic area. In 2017, the FCC adopted a presumptive waiver of the local radio ownership rule in limited circumstances.⁷⁶ In contrast to the television duopoly rule, the FCC does not have failed/failing station waiver criteria for the local radio ownership rule.⁷⁷

FCC first adopted rules limiting ownership of FM radio stations serving “substantially the same service area” in 1940.⁷⁸ In 1943, the FCC adopted a rule limiting ownership of AM radio stations “where such station renders or will render primary service to a substantial portion of the primary service area of another [AM] broadcast station.”⁷⁹ In 1964, the FCC amended the rule to use the service contours of FM and AM stations to define the service area.⁸⁰ The FCC first adopted a rule

⁷⁴ 47 C.F.R. §73.3555, note 7.

⁷⁵ 2014 Quadrennial Review 2nd R&O, p. 9891.

⁷⁶ 2014 Quadrennial Review Order on Recon and NPRM, pp. 9841-9845. Specifically, the FCC adopted a presumption in favor of applying a two-pronged test involving existing “parent markets” with multiple “embedded markets” (i.e., New York and Washington, DC). An embedded market is a suburban radio market that Nielsen separately identifies as a radio market for which it reports ratings. Radio stations licensed to communities in embedded markets are also considered part of a larger “parent” market encompassing an entire metropolitan area. Under the two-pronged test, the FCC reviews (1) whether the ownership of the stations in question complies with the ownership rules in the embedded market to which they are home (using the Nielsen data for that market), and (2) whether the ownership of the stations in question complies with the ownership rules using the contour methodology that would apply in nonrated markets. (Petition for Reconsideration of Connoisseur Media, LLC, 2014 Quadrennial Review, December 1, 2016, pp. 3-4, 13.

⁷⁷ Pursuant to §202(b)(2) of the Telecommunications Act of 1996, however, the FCC may, notwithstanding any ownership limits, permit a person or entity to own, operate, or control, or have a cognizable interest in, radio broadcast stations if the FCC determines that such ownership, operation, control, or interest will result in an increase in the number of radio broadcast stations in operation.

⁷⁸ Federal Communications Commission, “Part 3—Rules Governing Standard and High Frequency Broadcast Stations,” 5 *Federal Register* 2382, 2384, June 25, 1940.

⁷⁹ Federal Communications Commission, “Part 3—Rules Governing Standard and High Frequency Broadcast Stations: Multiple Ownership of Standard Broadcast Stations,” 8 *Federal Register* 16065-16066, November 27, 1943.

⁸⁰ Federal Communications Commission, “Multiple Ownership of Standard, FM, and Television Broadcast Stations, FCC 64-445,” 29 *Federal Register* 7535-7537, June 12, 1964. At the time, the FCC used a 1 mv/m signal contour for both AM and FM stations in its local radio ownership rules, arguing that the standards for both services were roughly comparable, because a 1 mv/m signal provided adequate levels of service in less-populated areas where overlap between co-owned stations was more likely to occur.

limiting ownership of AM and FM stations serving the same area in 1970 and amended them in 1989.⁸¹

In 1992, to address the fact that many radio stations were facing difficult financial conditions, the FCC relaxed the radio ownership rule to establish numerical limits on radio station ownership based on the total number of commercial stations within a market, rather than on whether their signals overlapped.⁸² Congress directed the FCC to set new caps, according to instructions laid out in Section 202(b) of the Telecommunications Act of 1996. These limits, described in **Table 2**, remain in place today. In 2016, the FCC retained the local radio ownership rule, asserting the following:

This competition-based rule indirectly advances our diversity goal by helping to ensure the presence of independently owned broadcast radio stations in the local market, thereby increasing the likelihood of a variety of viewpoints and preserving ownership opportunities for new entrants.⁸³

Table 2. Local Radio Ownership Rule

Number of Commercial Radio Stations in Market	Number of Full Power Commercial and Noncommercial Radio Stations Under Common Ownership Permitted	Number of Stations Within Same Service (AM or FM) Under Common Ownership Permitted
45	8	5
30-44	7	4
15-29	6	4
14 or fewer	5	3

Source: 47 C.F.R. §73.3555(a).

Note: An entity may not own more than 50% of the stations in markets with 14 or fewer total stations, except that an entity always may own a single AM and single FM station in combination.

⁸¹ Federal Communications Commission, “Amendment of Sections 73.35, 73.240 and 73.636 of the Commission Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, FCC 70-310, First Report and Order,” 5 *FCC Reports* 306, March 25, 1970 (1970 Cross Ownership R&O). Federal Communications Commission, “Amendment of Section 73.3555 of the Commission’s Rules, the Broadcast Multiple Ownership Rules, Report and Order, FCC 88-343,” 4 *FCC Record* 1723, February 22, 1989.

⁸² Federal Communications Commission, “Revision of Radio Rules and Policies, Report and Order, FCC 92-97,” 7 *FCC Record* 2755, 2756-2757, 2757-2779, April 10, 1992.

⁸³ 2014 Quadrennial Review 2nd R&O, p. 9897; 2014 Quadrennial Review Order on Recon and NPRM, pp. 9841-9845. The petition to reconsider filed by Connoisseur Media sought to modify, rather than repeal, the local radio ownership rule. Therefore, the 2014 Order on Reconsideration addressed the proposed modification, rather than a general review of the rule.

Clarifications

In 2016, the FCC clarified certain aspects of its local radio ownership rule. One of the clarifications related to the application of the rule in cases when Nielsen changes the boundaries of radio markets (i.e., Nielsen Audio Metros).⁸⁴ In another clarification, the FCC stated that in Puerto Rico, the FCC will use radio station signal contour overlaps, rather than the Nielsen Audio Metro, to apply the local radio ownership rule due to topographical and market conditions.⁸⁵

Radio/Television Cross-Ownership Rule

In 2017, the FCC eliminated the radio/television cross-ownership rule.⁸⁶ This rule prohibited an entity from owning more than two television stations and one radio station within the same DMA, unless the DMA met certain criteria.

The FCC found that it could no longer justify retention of the rule in light of broadcast radio's diminished contributions to viewpoint diversity and the variety of other media outlets that contribute to viewpoint diversity in local markets. The FCC reaffirmed its previous conclusion in 2016 that the radio/television cross-ownership rule is not necessary to promote competition or localism. The FCC also determined that the elimination of the rule would not likely have a negative impact on minority and female ownership.

Newspaper/Broadcast Cross-Ownership Rule

The FCC repealed the newspaper/broadcast cross-ownership (NBCO) rule in 2017.⁸⁷ The rule prohibited common ownership of a daily print newspaper and a full-power broadcast station (AM, FM, or TV) if the station's service contour encompassed the newspaper's community of publication. The FCC found that prohibiting newspaper/broadcast combinations was no longer necessary to serve the agency's goal of promoting viewpoint diversity in light of the multiplicity of sources of news and information in the current media marketplace and the diminished role of daily print newspapers, and therefore did not serve the public interest. The FCC noted that given its conclusion in 2003 that the rule was not necessary to promote the goals of competition or localism, and could potentially hinder localism, viewpoint diversity had remained its principal rationale for maintaining the NBCO rule.

The FCC determined repealing the NBCO rule could potentially promote localism by enabling local news outlets to achieve efficiencies by combining resources needed to gather, report, and disseminate local news and information. Furthermore, the FCC concluded that eliminating the NBCO rule would not have a material impact on minority and female ownership.

Dual Network Rule

The dual network rule (described in detail at 47 C.F.R. §73.658(g)) prohibits common ownership of two of the "top four" networks but otherwise permits common ownership of multiple broadcast

⁸⁴ 2014 Quadrennial Review 2nd R&O, pp. 9905-9906. The clarification relates to safeguards that the FCC previously adopted to deter parties from attempting to manipulate Nielsen Audio Metro market definitions for purposes of circumventing the local radio ownership Rule.

⁸⁵ 2014 Quadrennial Review 2nd R&O, p. 9907. Nielsen considers Puerto Rico to be a single radio market.

⁸⁶ 2014 Quadrennial Review Order on Recon and NPRM, pp. 9824-9831.

⁸⁷ 2014 Quadrennial Review Order on Recon and NPRM, pp. 9806-9824.

networks.⁸⁸ Generally, the four broadcast networks covered by this definition are ABC, CBS, Fox, and NBC. The FCC did not address the dual network rule in its 2017 Reconsideration Order, and the rule therefore remains in effect.

The FCC first adopted this rule, which originally prohibited ownership of any two networks, with respect to radio in 1941, as part of the *Chain Broadcasting Report*.⁸⁹ The FCC directed the rule at NBC, the only company at that time with two radio networks. The FCC found that the operation of two networks gave NBC excessive control over its affiliated broadcast radio stations, and an unfair competitive advantage over other broadcast radio networks.⁹⁰ The FCC extended the dual network rule to television networks in 1946.⁹¹

Section 202(e) of the Telecommunications Act of 1996 directed the FCC to revise its dual network rule. Per the act, the FCC modified the rule to enable common ownership of two networks, as long as one of the networks was not among the top four networks (i.e., ABC, CBS, FOX, and NBC).⁹² In 2001, the FCC revised the rule to permit one of the four major networks to jointly own one of those emerging networks, which have since merged into the CW network.⁹³ Today, the CBS Corporation has a partial ownership interest in the CW broadcast network.⁹⁴ In 2016, the FCC retained the “dual network” rule without modification, in order to foster its goals of preserving competition and localism.⁹⁵

Table 3 summarizes the public-interest rationales for each of the media ownership rules.

⁸⁸ The rule provides the following: “A television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such dual or multiple networks are composed of two or more persons or entities that, on February 8, 1996, were ‘networks’ as defined in Section 73.3613(a)(1) of the Commission’s regulations (that is, ABC, CBS, Fox, and NBC).” 47 C.F.R. §73.658(g). Because the FCC does not directly regulate broadcast networks, the rule applies to the stations which affiliate with the networks.

⁸⁹ Federal Communications Commission, *Report on Chain Broadcasting*, Order No. 37, Docket No. 5060, May 1941, pp. 91-92, [https://babel.hathitrust.org/cgi/pt?id=uc1.\\$b78643;view=1up;seq=8](https://babel.hathitrust.org/cgi/pt?id=uc1.$b78643;view=1up;seq=8).

⁹⁰ Federal Communications Commission, *Report on Chain Broadcasting*, pp. 70-73. The FCC repealed the rules for radio in 1977. Federal Communications Commission, “Review of Commission Rules and Regulatory Policies Concerning Network Broadcasting by Standard (AM) and FM Broadcast Stations, Report, Statement of Policy, and Order, FCC 77-206,” 63 *FCC Reports, Second Series* 674, March 23, 1977.

⁹¹ Federal Communications Commission, “Part 3—Rules Governing Television Broadcast Stations,” 11 *Federal Register* 33, 37, January 1, 1946.

⁹² Federal Communications Commission, “Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations) 47 C.F.R. Sections 73.658(g) and 73.3555, Order, FCC 96-91,” 11 *FCC Record* 12374, 12376, March 8, 1996.

⁹³ Federal Communications Commission, “Amendment of Section 73.658(g) of the Commission’s Rules—The Dual Network Rule,” 16 *FCC Record* 11114, May 15, 2001.

⁹⁴ CBS Corporation, “Our Portfolio: The CW,” <https://www.cbcorporation.com/portfolio/the-cw/>.

⁹⁵ 2014 Quadrennial Review 2nd R&O, pp. 9952-9960.

Table 3. Summary of Public-Interest Rationales for Media Ownership Rules

	Local TV	Local Radio	Radio/TV Cross^a	Newspaper / Broadcast Cross^a	Dual Network
Necessary to promote competition?	Yes; for viewers and revenues	Yes; broadcast radio unique product market	No	No	Yes
Necessary to promote localism?	Consistent with; competition stimulates localism	No, but consistent with; may promote	No	No	Yes; preserves balance of bargaining power between networks and affiliates, enabling affiliates to influence networks' programming decisions in manner that serves affiliates' communities
Necessary to promote viewpoint diversity?	Will promote; ensures presence of independently owned TV stations	No, but consistent with; may promote	No	No	FCC does not discuss
Necessary to promote minority/female ownership of broadcast stations?	Consistent with; competition can indirectly promote; failed station solicitation rule promotes	Consistent with; competition can indirectly promote	No	No	No; no meaningful impact

Sources: 2014 Quadrennial Review 2nd R&O.

a. 2014 Quadrennial Review Order on Recon and NPRM.

Ownership Diversity

2016 FCC Diversity Order

The FCC has a long history of attempts to adopt rules to encourage diverse broadcast station ownership, including ownership by women and members of minority groups.⁹⁶

⁹⁶ The FCC's authorities to issue rules encouraging broadcast ownership diversity stem from the following provisions: §309(j)(3)(B) of the Communications Act of 1934 specifies that in awarding licenses and permits via competitive bidding, one of the FCC's objectives must be promoting opportunities for, among others, "businesses owned by members of minority groups and women." §309(j)(4)(D) of the Communications Act directs the FCC to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures."

Examples of the FCC's attempts are described within several of its past media ownership reviews, including the adoption of the Failed Station Solicitation Rule⁹⁷ and the establishment of a class of "eligible entities" that could qualify for relaxed ownership rules, attribution rules, and more flexible licensing policies than their counterparts.⁹⁸

As a result of this history, and appeals of previous FCC actions imposing rules to foster diversity of broadcast ownership, the Third Circuit Court of Appeals is overseeing the FCC's efforts to foster diversity of broadcast station ownership.⁹⁹

In 2016, the FCC adopted a new order (2016 Diversity Order) containing rules designed to increase broadcast ownership diversity.¹⁰⁰ In accordance with a Third Circuit directive, the agency submitted the rules to the court.¹⁰¹

Revenue-Based Eligible Entity Standard

In its 2016 Diversity Order, the FCC reinstated the revenue-based eligible entity standard, using the Small Business Administration's definition of a "small business." The FCC had also used this revenue-based eligible entity standard in its previous 2008 ownership diversity rulemaking (2008 Diversity Order).¹⁰² Under this definition, entities that own broadcast stations and have total annual revenue of \$38.5 million or less qualify for certain construction, licensing, transaction, and auction measures, described below.¹⁰³

Measures Specific to Small Businesses

The FCC adopted six measures in the 2016 Diversity Order that are designed to enable eligible entities to abide by less restrictive media ownership and attribution rules, and more flexible licensing policies, than their counterparts.¹⁰⁴ **Table 4** describes the six measures.

⁹⁷ 1999 Media Ownership R&O, p. 12937.

⁹⁸ Federal Communications Commission, "2002 Biennial Review Order, FCC 03-127," 18 *FCC Record* 13620, 13810-13812, July 2, 2003; Federal Communications Commission, "Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07-217," 23 *FCC Record* 5922, 5927, March 5, 2008 (2008 Diversity Order).

⁹⁹ The FCC issued an order creating rules intended to foster diversity of ownership in 2008. Promoting Diversification of Ownership in the Broadcasting Services, 2008 Diversity Order. The order was appealed and reviewed by the Court of Appeals for the Third Circuit. *Prometheus Radio Project v. FCC (Prometheus II)*, 652 F. 3d 431 (3d Cir. 2011). After reviewing the order, the Third Circuit remanded parts of the 2008 Diversity Order to the FCC for reconsideration in light of the court's analysis. *Ibid.* at 438. Five years later, the Third Circuit, noting the FCC's failure to act on its remand of the 2008 Diversity Order, concluded the FCC had unreasonably delayed action, ordered the agency to "act promptly" and retained jurisdiction over the issues it remanded to the agency. *Prometheus Radio Project v. FCC (Prometheus III)*, 824 F. 3d 33, 37 (3d Cir. 2016).

¹⁰⁰ See generally 2014 Quadrennial Review 2nd R&O.

¹⁰¹ *Prometheus III*, 824 F.3d at 37.

¹⁰² The Third Circuit Court of Appeals previously struck down a revenue-based eligible entity definition contained in the FCC's 2008 Diversity Order, finding that the agency had failed to explain how the definition would increase broadcast ownership by minorities and women. *Prometheus Radio Project v. FCC*, 652 F. 3d 431, 469-71 (3d Cir. 2011). In adopting the same definition in its 2016 Order, the FCC did not argue that the standard would increase minority and female ownership, but, instead, found that the definition would increase ownership diversity overall. 2014 Quadrennial Review 2nd R&O, pp. 9979-9882.

¹⁰³ 2014 Quadrennial Review 2nd R&O, pp. 9979-9984. The FCC stated that it would require the eligible entity meet one of three control tests to ensure that ultimate control over the licenses rests with it. Each of these three tests requires that more than 50% of the voting stock rest with the corporation or partnership that will hold the broadcast license.

¹⁰⁴ As directed by the Third Circuit in *Prometheus II*, the FCC discussed additional proposals set forth by commenters in the 2010 Diversity proceeding. The commission declined to adopt them.

Table 4. Measures Applying to Eligible Entities
FCC's Measures to Enhance Broadcast Ownership Diversity

Name of Measure	Description of Measure
Revision of Rules Regarding Construction Permit Deadlines	Revision of construction permit rules to allow the sale of an expiring construction permit to an eligible entity that pledges to build out the permit within the time remaining in the original construction permit or within 18 months, whichever period is greater.
Modification of Attribution Rule	Relaxation of the equity/debt plus (EDP) attribution standard for interest holders in eligible entities by allowing the holder of an equity or debt interest in a media outlet subject to the media ownership rules to exceed the 33% threshold set forth in [the EDP standard] without triggering attribution where such investment would enable an eligible entity to acquire a broadcast station provided (1) the combined equity and debt of the interest holder in the eligible entity is less than 50%, or (2) the total debt of the interest holder in the eligible entity does not exceed 80% of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity.
Modification of Distress Sale Policy	Modification of the distress sale policy by allowing a licensee that has been designated for a revocation hearing or has a renewal application that has been designated for hearing on basic qualification issues to sell the station to an eligible entity prior to the hearing.
Duopoly Priority for Companies That Finance or Incubate an Eligible Entity	Giving an applicant for a duopoly that agrees to finance or incubate an eligible entity priority over other applicants in the event that competing duopoly applications simultaneously are filed in the same market.
Extension of Divestiture Deadline in Certain Mergers	Consideration of requests to extend divestiture deadlines when applicants actively have solicited bids for divested properties from eligible entities. Entities granted such an extension must sell the divested property to an eligible entity by the extended deadline or have the property placed in an irrevocable trust for sale by an independent trustee to an eligible entity.
Assignment or Transfer of Grandfathered Radio Station Combinations	Permitting the assignment or transfer of a grandfathered radio station combination intact to any buyer so long as the buyer files an application to assign the excess stations to an eligible entity or to an irrevocable divestiture trust for the ultimate assignment to an eligible entity within 12 months after consummation of the purchase of the grandfathered stations.

Source: 2014 Quadrennial Review 2nd R&O, pp. 9866, 9982-9983, notes 857-862.

Similar to the reinstated definition of eligible entities, these measures are the same as those previously adopted in the FCC's 2008 Diversity Order.¹⁰⁵ To justify this decision, the FCC reasoned that "we continue to believe that enabling more small businesses to participate in the broadcast industry will encourage innovation and promote competition and viewpoint diversity."¹⁰⁶ It added that whether or not such measures would specifically lead to increased broadcast ownership by women and minorities has no bearing on whether the measures will promote small business participation in the broadcast industry.

Interested parties have appealed the 2016 Diversity Order to the Third Circuit.¹⁰⁷

¹⁰⁵ 2014 Quadrennial Review 2nd R&O, pp. 9866, 9982-9983, nn. 857-862.

¹⁰⁶ 2014 Quadrennial Review 2nd R&O, p. 9979.

¹⁰⁷ Petition for Review, *Prometheus Radio Project v. FCC*, No. 17-1107 (3d Cir. Jan. 16, 2018).

Incubator Program

As part of its reconsideration of the Quadrennial Media Ownership order in 2017, the FCC established a new incubator that provides a broadcast radio ownership rule waiver to a broadcaster that establishes a program to help facilitate station ownership for a certain class of owners. In addition, the FCC launched a new rulemaking proceeding seeking comment on how to implement the program.

The FCC issued rules governing the incubator program in August 2018.¹⁰⁸ Most of the rules became effective on September 27, 2018. Information collection requirements are subject to review by the OMB, pursuant to Section 3507(d) of the Paperwork Reduction Act of 1995 (P.L. 104-13).¹⁰⁹

Under the incubator program, an established radio broadcaster will provide financial and operational support, including training and mentoring, to a new or small radio broadcaster.¹¹⁰ At the end of a successful incubation relationship, the new or small broadcaster will either own and operate a new station independently, or be on a firmer financial footing. Once an incubation relationship is completed successfully, the established broadcaster will be eligible to receive a waiver of the FCC's Local Radio Ownership Rule, subject to certain requirements.

In the order, the FCC did not foreclose the possibility of eliminating or further relaxing its local radio ownership rule in the 2018 Quadrennial Review. The FCC noted that Congress would be able to adopt legislation either authorizing or mandating tax certificates and tax credits in the agency's incubator program, either in addition to or in lieu of the FCC local radio ownership rule waiver.

Furthermore, the FCC stated that following the completion of the 2018 Quadrennial Review, it might consider expanding the incubator program to apply to television stations. In addition, it stated that "were Congress to provide an alternative benefit for incubating broadcasters, we would be strongly inclined to expand the program to include television stations."

¹⁰⁸ Federal Communications Commission, "Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services, Report and Order, FCC 12-114," <https://www.fcc.gov/document/fcc-establishes-incubator-program-increase-broadcaster-diversity>. (2018 Incubator R&O)

¹⁰⁹ Federal Communications Commission, "Rules and Policies To Promote New Entry and Ownership Diversity in the Broadcasting Services, Final Rule, FCC 18-114," 83 *Federal Register* 43773, August 28, 2018.

¹¹⁰ Federal Communications Commission, "FCC Establishes Incubator Program Procedures to Increase Diversity in the Broadcast Industry," press release, August 2, 2018, <https://www.fcc.gov/document/fcc-establishes-incubator-program-increase-broadcaster-diversity>.

Appendix.

National Ownership Rule History

Table A-1. Chronology of National Broadcast Ownership and UHF Discount Rules

1941	FCC adopts national ownership ceiling of two broadcast television stations in its first rules authorizing television broadcasting as a commercial service.
1948	FCC freezes the processing of applications for television construction permits. Only a few television stations are operational, primarily in large and mid-sized cities.
1952	FCC revises Table of Television Allotments, assigning stations in the VHF band and the newly created UHF band to various communities.
1954	FCC adopts national ownership ceiling of seven broadcast television stations, including a maximum of five VHF stations. FCC states that encouraging group owners to own UHF stations would promote development of UHF service.
1956	Supreme Court upholds FCC's national ownership limits, finding them compatible with Communications Act and FCC's mandate to regulate broadcasting in the interest of the public. Holds that FCC can revisit the rules if time and circumstances reveal that they do not serve the public interest. [<i>United States v. Storer Broadcasting Company</i> , 351 U.S. 192]
1968	FCC adopts "top 50" policy, requiring licensees seeking to acquire a fourth television station or a third VHF station in the top 50 markets to make a "compelling public interest showing" that the presumed benefits would overcome the presumed detriment arising from the reduced number of information sources.
1979	FCC eliminates "top 50" policy, finding that the feared trend toward additional ownership concentration had not occurred.
1985	FCC raises TV ownership cap to 12 stations and 25% of national audience. For purposes of national audience calculation, FCC discounts reach of UHF stations by 50%.
1996	Congress enacts Telecommunications Act of 1996, P.L. 104-104. Act directs FCC to review its media ownership rules every two years and determine whether are "necessary in the public interest as a result of competition." Act directs the FCC to modify its national TV ownership cap to 35% of national audience and eliminates 12-station cap.
2000	FCC retains 35% ownership cap and UHF discount.
2002	U.S. Court of Appeals, D.C. Circuit, holds that the FCC's "wait and see" attitude regarding the effect of the 35% ownership cap was impermissible, given Congress's direction to evaluate whether the rules were "necessary in the public interest as a result of competition." It directs the FCC to justify the rule. [<i>Fox Television Stations, Inc. v. Federal Communications Commission</i> , 350 U.S. App. 79, 280 F.3d 1027 (D.C. 2002) (" <i>Fox I</i> "), modified on reh'g, 352 U.S. App. 260, 293 F.3d 537 (D.C. 2002) (" <i>Fox II</i> ")]
2003	FCC raises national TV ownership cap to 45% and retains UHF discount, concluding it is necessary to promote entry and competition among broadcast networks. FCC says it will phase out the UHF discount for stations owned and operated by the top four broadcast networks (ABC, CBS, FOX, and NBC) as the broadcast industry's transition from analog to digital technology is completed on a market-by-market basis.

2004	Congress enacts the 2004 Consolidated Appropriations Act, 2004 (P.L. 108-199), which directs the FCC to increase its national TV ownership cap to 39% of national audience, thereby preempting FCC's rule that would have raised the cap to 45%. The act also directs the FCC to review its media ownership rules every four years (instead of every two years), exempting rules related to the ownership cap from the review. U.S. Court of Appeals, 3rd Circuit, finds that new law makes challenges to the FCC's UHF discount moot. Court finds that barring congressional intervention, the FCC may decide the scope of its authority to modify or eliminate the UHF discount outside the context of its quadrennial media ownership review. <i>Prometheus Radio Project vs. Federal Communications Commission</i>, 373 F. 3d 372, 396-397 (3rd Cir. 2004).
2009	Full-power broadcast stations complete the congressionally mandated transition from analog to digital transmissions. [47 U.S.C. §309(j)(14)(A)]
2013	FCC proposes elimination of UHF discount.
2016	FCC eliminates UHF discount, concluding technological change has eliminated the justification for retaining it. FCC grandfathers combinations in existence on or proposed in applications before September 26, 2013. Any such grandfathered combination assigned or transferred to another broadcast television licensee must comply with the FCC's national ownership cap in existence at the time of the transaction. Rules set to become effective November 23, 2016 (30 days after publication in the <i>Federal Register</i>). Broadcast station group owners (ION Media Networks Inc. and Trinity Christian Center of Santa Ana Inc.) file petition for reconsideration with FCC.
2017	FCC reinstates UHF discount. FCC states it will launch a comprehensive rulemaking to determine whether to retain the UHF discount in conjunction with a review of the national ownership cap. FCC launches new rulemaking proceeding to examine whether to modify or rescind the UHF discount and national ownership cap.

Sources: Federal Communications Commission, "Multiple Ownership of AM, FM, and Television Broadcast Stations, Proposed Rule," 48 *Federal Register* 49438-49441, October 25, 1983; Herbert Howard, "Multiple Broadcast Ownership: Regulatory History," *Federal Communications Bar Journal*, vol. 27, no. 1 (1974), pp. 1-70; Federal Communications Commission, "2002 Biennial Review Order—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking," 418 *FCC Record* 13620, 13814, 13845-13847, July 2, 2003; *Prometheus Radio Project vs. Federal Communications Commission*, 373 F. 3d 372 (3rd Cir. 2004); *Fox Television Stations, Inc. v. Federal Communications Commission*, 350 U.S. App. 79 (D.C. 2002); Federal Communications Commission, "National Television Multiple Ownership Rule, Final Rule," 81 *Federal Register* 73035, October 24, 2016; Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Order on Reconsideration," 32 *FCC Record* 3390, April 21, 2017; Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Notice of Proposed Rulemaking, FCC 17-169," 32 *FCC Record* 10785, December 18, 2017.

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