

## FACT SHEET: UPDATING MEDIA OWNERSHIP RULES IN THE PUBLIC INTEREST

*Today, Chairman Wheeler is delivering on his commitment to Congress and the Third Circuit, circulating the 2010/2014 Quadrennial review and rules that, if adopted, will take into account the evolving media marketplace and the Commission's obligation to conduct timely review of the rules. Consistent with the Telecommunications Act of 1996, the Commission considers whether the rules continue to serve its goals of promoting competition, localism, and diversity – in particular, diversity of viewpoints in local markets, thereby enriching local communities.*

**Rules incorporate the comprehensive record.** In 2014, the Commission adopted a further notice of proposed rulemaking to establish a clear and transparent set of guidelines for media ownership, incorporating the record from the 2010 proceeding and initiating the 2014 review. The further notice also sought updated information on the state of the media ownership marketplace.

The substantial record developed evidences both the existence of a dynamic media marketplace and the continuing importance of traditional media outlets to their local communities. Thus, while advances have changed the ways in which many consumers access entertainment, news, and informational programming, traditional media outlets remain of vital importance to their local communities. Our analysis indicates that the ownership restrictions remain necessary in the public interest, though the realities of the media marketplace require some targeted modifications of a number of the rules.

The rules now circulated for vote by the full Commission:

- Preserve the existing ownership restrictions, with targeted modifications.
- Carry out the Third Circuit's remand of diversity issues, re-adopt the small business revenue-based eligible entity standard, address proposals submitted by MMTC, and decline to adopt race- or gender-based measures.
- Readopt the TV JSA attribution rule consistent with the court's guidance in *Prometheus III* and Congress's guidance on grandfathering.
- Adopt a definition of shared services agreements; require that these agreements be filed with the Commission and made publicly available; and do not attribute any such agreements, other than JSAs, at this time.

**The existing media ownership rules, with slight modification, remain in the public interest.** The order, if adopted, finds that the current media ownership rules remain necessary in the public interest but require minor updates to reflect current industry trends and marketplace realities. Given that the broadcast TV incentive auction is underway and its results will not be known for some time, the auction's effect on the marketplace is not yet clear. The Commission's future quadrennial ownership review will be able to assess the impact of marketplace changes resulting from the auction. The proposed order:

- **Local Television Ownership Rule:** (1) Retains the existing rule, with a minor technical modification to address the transition to digital broadcasting; (2) Extends the current ban on co-ownership of two top-four television stations in a market to network affiliation swaps, to prevent broadcasters from evading application of the rule; and (3) Declines to limit dual network affiliations via multicast at this time.
- **Local Radio Ownership Rule:** Retains the existing rule with minor clarifications to assist the Media Bureau in processing license assignment/transfer applications. (For example, the item adopts a new Puerto Rico market definition based on Commission precedent, and also clarifies the grandfathering rules applicable to community of license changes.)
- **Radio/Television Cross-Ownership Rule:** Retains the existing rule with a modification to address the transition to digital television broadcasting.
- **Newspaper/Broadcast Cross-Ownership Rule:** Retains the existing ban on cross ownership, but modestly relaxes the rule by providing an exception for failed or failing entities and states that the Commission will consider waivers. The trigger for the rule is also modified to consider the relevant Nielsen television or radio

market (if any) and to replace the prior analog television contour with a digital contour to reflect the transition to digital television broadcasting.

**Dual Network Rule:** Retains the existing rule, which prohibits mergers among any of the top four national television broadcast networks (ABC, CBS, NBC, and FOX).

### **We will continue to seek rules to promote a vibrant and diverse media marketplace.**

- **Eligible Entity Standard:** The proposal re-adopts a revenue-based eligible entity standard and the programs to which the standard applies, to promote small businesses and new entrants in the broadcast marketplace. An Eligible Entity is any entity, commercial or noncommercial, which would qualify as a small business consistent with Small Business Administration standards for the relevant industry groupings, based on revenue (currently \$38.5 million for television and radio).
- **Race- or Gender-Based Standard:** The Report & Order finds that the Commission does not have a basis for instituting race-based or gender-based preferences that would withstand the Supreme Court’s very high standard for such actions – known as “strict scrutiny.”

**Other Initiatives:** The Report & Order highlights other Commission actions intended to promote or provide information concerning diversity, including the television JSA attribution rule; AM Revitalization; proposed Foreign Ownership rules; ownership data workshops; improved data collection via Ownership Report Form 323; the Hispanic TV study; various OCBO diversity initiatives; and the SSA filing obligation.

### **Defines Shared Services Agreements (SSAs).**

- The proposal defines an SSA as any agreement in which (1) a station provides another station, not commonly owned, with any station-related services, including administrative, technical, sales, and/or programming support; or (2) stations not commonly owned collaborate to provide station-related services, including administrative, technical, sales, and/or programming support.
- Commercial television stations will be required to upload SSAs to the stations’ online public files to promote transparency and a fuller understanding of the breadth, number, and potential competitive impact of such agreements
- The proposal would not adopt an SSA attribution rule, at this time.

### **Background: Current Media Ownership Rules**

- **Local TV Ownership Rule:** A company may own two commercial TV stations in a DMA only if:
  - No more than one of the two stations is among the DMA’s top four rated stations, and at least eight independently owned television stations would remain after the merger (“eight voices test”); or
  - There is no Grade B contour overlap between the two stations sought to be commonly owned.
- **Local Radio Ownership Rule:** The number of radio stations in a radio market that may be commonly owned is tiered, depending on the total number of full-power commercial and noncommercial radio stations in the market:
  - **45 or more radio stations:** an entity can own no more than eight commercial radio stations, no more than five of which may be in the same service (AM or FM).
  - **30-44 radio stations:** an entity can own no more than seven commercial radio stations, no more than four of which may be in the same service.
  - **15-29 radio stations:** one entity can own no more than six commercial radio stations, no more than four of which may be in the same service.
  - **Less than 15 radio stations:** one entity can own up to five commercial radio stations, no more than three of which may be in the same service, provided, however that an entity cannot own more than 50 percent of the radio stations in the market. Despite the latter provision, the rules do allow common ownership of an AM and an FM station in the same market.

- **Newspaper/Broadcast Cross-Ownership Rule:** A full-service broadcast station (TV or radio) and a daily newspaper may not be commonly owned if the station's contour (defined separately by type of station) completely encompasses the newspaper's city of publication.
  - The order originally adopting the rule contemplated waivers: (1) where there is an inability to dispose of an interest to conform to the rules; (2) where the only possible sale is at an artificially depressed price; (3) where separate ownership of the newspaper and station cannot be supported in the locality; and (4) where the purposes of the rule would not be served by divestiture.
  - The previous order also grandfathered a number of NBCO combinations, which remain in existence today.
  
- **Radio/TV Cross-Ownership Rule:** The number of commercial radio and television stations an entity may own in the same market is tiered, with the amount of common ownership permitted depending on compliance with the local TV and radio ownership rules and the number of independently owned media voices (television and radio stations, cable systems, and newspapers) that would remain in the relevant market if the stations at issue are commonly owned:
  - **Regardless of market size:** up to two TV stations and one radio station.
  - **If at least 10 independently owned media voices remain:** up to two TV stations and four radio stations.
  - **If at least 20 independently owned media voices remain:** up to two TV stations and six radio stations, or one TV station and seven radio stations.
  
- **Dual Network Ownership Rule:** Mergers are prohibited among any of the top four national television broadcast networks (ABC, CBS, NBC, and FOX).