



Virginia Association of Broadcasters Legal Review



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May 25, 2016

Legal Memorandum

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Developments: [Court of Appeals Rejects TV JSA Attribution Proposal to Eliminate Public Correspondence Files](#)

Third Circuit Court of Appeals Vacates FCC's TV JSA Attribution Rule

Today, May 25, the Third Circuit Court of Appeals issued a decision vacating the FCC's decision to make certain television JSAs (joint sales agreements) attributable. As we have reported previously, the [FCC in 2014 voted](#) to make TV station JSAs that allow for the sale of 15% or more of the advertising time on a competing local station attributable to the TV station as an ownership interest under the Commission's media ownership rules. (JSAs are financial arrangements between local TV broadcasters where one station sells advertising time for another. These agreements have become increasingly popular in recent years among broadcasters in small and medium-sized markets across the country, and the financial savings have helped to expand the diversity, localism, and competition of programming.)

The rule adopted in March 2014 both prohibited stations from entering into new JSAs that would result in a violation of the ownership limits and required broadcasters to unwind existing agreements in markets where the effect of the JSA would be to violate the ownership rules because duopolies (or triopolies) are not allowed. Television broadcasters with JSAs in existence at the time the 2014 rule was adopted were given until June 2016 to unwind them, a period which was extended by six months by Congress as part of the STELA reauthorization legislation. Later, Congress further extended the deadline for unwinding pre-March 2014 television JSAs for a period of 10 years.

In its decision issued today, the Third Circuit determined that the 2014 adoption of the JSA attribution rule was improper because when the FCC adopted it, the FCC had not yet determined (as part of the its “quadrennial review” of media ownership rules) whether the then-existing ownership rules were in the public interest. A succinct statement by the Court sums up the crux of the problem:

Attribution of television JSAs modifies the Commission’s ownership rules by making them more stringent. And, unless the Commission determines that the preexisting ownership rules are sound, it cannot logically demonstrate that an expansion is in the public interest. Put differently, we cannot decide whether the Commission’s rationale—the need to avoid circumvention of ownership rules—makes sense without knowing whether those rules are in the public interest. If they are not, then the public interest might not be served by closing loopholes to rules that should no longer exist.

While today’s decision is an important development, it is, unfortunately, not the final word. The Court of Appeals “remanded” the matter to the FCC, which means the FCC will have another opportunity to consider and adopt the exact same (or, possibly different) rule again, presumably in the context of its quadrennial review of the media ownership rules. The issue also remains alive in Congress, which means there may be further legislative action before the issue is resolved with finality. In any event, there is more to come, and we will keep you apprised.

FCC Proposes to Eliminate Public Correspondence Files for Commercial Stations

At its open meeting today, May 25, the FCC adopted a Notice of Proposed Rule Making (“Notice”) relating to broadcast station public inspection files. The principal proposal in the Notice would, if adopted, eliminate the requirement that commercial radio and television stations maintain letters and emails from the public in the “Correspondence” section of the paper public inspection file. If adopted, this proposal would effectively eliminate the final vestige of *paper* public inspection files for broadcasters because the FCC has already previously adopted rules requiring stations to transition public inspection files to the FCC’s online public inspection file database system.

In adopting the Notice, various Commissioners expressed an interest in completing the modernization of public inspection file and observed that the original rationale underlying the requirement adopted more than 40 years ago in 1973—namely that correspondence from the public was a crucial way for stations to learn the needs and interests of their communities so that stations could serve the public interest—has become anachronistic. Indeed, in the current era, members of the public have numerous ways to communicate with stations over a wide variety of platforms, and, in addition, the FCC considers input from the public at license renewal time. Moreover, the proposal would further regulatory parity because only commercial stations have been required to

maintain public correspondence as part of a public inspection file while other providers—including MVPDs, satellite radio providers, and noncommercial broadcasters—have not.

The Notice also proposes to eliminate the requirement that cable operators identify in their public files the location of their principal headend(s). Commissioners referred to the current requirement as a security risk and as a requirement that serves no purpose because consumers neither need nor want to know where a system’s principal headend is. Of course, cable operators will still be required to make principal headend information available to the FCC and local television stations, and according to an FCC News Release, the Notice will seek comment on how principal headend information should be collected and made available to entities that need it.

The text of the Notice has not yet been released, and comment dates for the proposals have not yet been established.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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