



Virginia Association of Broadcasters Legal Review



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January 16, 2020

Legal Memorandum

Update on FCC's Multiple Ownership Rules: "Old" Rules Back in Effect for Assignment, Transfer, and License Renewal Filings; Pending Applications Must Be Updated by **January 21, 2020**

We write today with an update regarding where things stand in terms of the FCC's multiple ownership rules, as well as to highlight for you an upcoming deadline—**January 21, 2020**—by which certain pending assignment, transfer, and license renewal applications must be updated.

You'll recall that one of the biggest FCC-related stories of 2019 centered around the Third Circuit Court of Appeals' decision to vacate and remand back to the Commission various multiple ownership rule changes and definitions that the Commission had established in its 2017 ownership [Order on Reconsideration](#) (and its [2018 Incubator Order](#)). The Third Circuit's decision officially took effect in late November, and, just before Christmas, the FCC [formally reinstated](#) its 2016 multiple ownership rules—and repealed the rules that the Third Circuit's opinion vacated.

Along with the formal reinstatement of its prior (i.e., circa 2016) multiple ownership rules, the Commission reminded broadcasters that the reinstated rules, of course, apply to all future [assignment and transfer of control applications](#). The Commission also explained that the reinstatement of the rules directly impacts pending commercial radio [license renewal applications](#).

Multiple Ownership Rules Currently in Effect. So, what multiple ownership rules are in effect as we speak? Here's a quick list:

- The Newspaper/Broadcast Cross-Ownership Rule, which the FCC had abolished in 2017, is again in effect.
- The Radio/Television Cross-Ownership Rule, which the FCC had abolished in 2017, is again in effect.
- The Local Television Ownership Rule's "Eight Voices" test, which the FCC had abolished in 2017, is again in effect.

- The Local Television Ownership Rule’s prohibition on combinations of two Top-Four stations in the same market remains in effect; however, the Commission’s policy (adopted in 2017) of analyzing assignment applications seeking a “two Top-Four” combination on a “case-by-case” basis has been vacated.
- The Local Radio Ownership Rule remains in effect (it was unchanged by the 2017 Order on Reconsideration).
- The Television Joint Sales Agreement Attribution Rule, which the FCC had abolished in 2017, is again in effect.

Please let us know if you’d like more information regarding any of the above rules.

Will the Commission Ask the Supreme Court to Weigh In? The Commission still has the option to seek review of the Third Circuit’s decision by the United States Supreme Court. By our calculations, the FCC has until February 18, 2020, to petition (i.e., to ask) the Supreme Court to review the Third Circuit’s opinion. While we do expect the Commission to file such a petition to the Supreme Court, whether the Court would hear the case is highly uncertain—only approximately 1% of such cases are heard by the Justices. And, even if the case were to be heard by the Supreme Court, it would almost certainly be many months before a decision would issue. Accordingly, it’s likely that the reinstated rules will be in effect for the foreseeable future.

Effect of Reinstated Rules on Future Assignment and Transfer of Control Applications for Commercial Stations. Now that the 2016 multiple ownership rules are again in effect, any licensee seeking assignment or transfer of control of a commercial broadcast license must certify its compliance with *those* rules as part of its assignment/transfer application.

As you may recall, FCC Forms 314 and 315—the assignment and transfer of control applications, respectively—require that an applicant certify its compliance with the Commission’s multiple ownership rules. Such certification now covers all the reinstated rules we have listed above. Accordingly, applicants must ensure compliance with the reinstated rules in order to truthfully make that general certification.

Effect of Reinstated Rules on Pending Assignment and Transfer of Control Applications for Commercial Stations. Notably, the reinstatement of the 2016 rules also affects currently pending assignment and transfer applications for commercial stations. Any applicant with a pending application must, **by January 21, 2020**, file an amendment to its application that includes, as an exhibit, a statement certifying whether each assignee or transferee complies with the Commission’s currently effective multiple ownership rules. To the extent the assignee or transferee cannot certify compliance, it should file an explanation. Broadcasters who find themselves with pending applications would be well advised to consult with legal counsel to ensure necessary steps are taken in a timely manner.

The FCC advises that no action will be taken on a pending assignment or transfer application until such an amendment is made, so affected assignees and transferees should file such an amendment as soon as possible.

Effect on License Renewal Applications (Both Future and Pending). Note that a licensee seeking to renew a broadcast license must certify its compliance with the reinstated multiple ownership rules as part of its renewal application. The Commission is waiting on approval from the Office

of Management and Budget before it can add the appropriate compliance certification to the current license renewal application form (Form 2100, Schedule 303-S) to cover the newspaper/broadcast and radio/television cross-ownership rules. Until the FCC obtains such approval and updates its form to account for the reinstated cross-ownership rules, all licensees must use the “FCC Violations During the Preceding License Term” question in the “Renewal Certification” section of the renewal application to report any violation of the cross-ownership rules. Renewal applicants with specific questions regarding this item should reach out to legal counsel for guidance.

In addition, the reinstatement of the 2016 rules affects currently pending license renewal applications for commercial radio stations. Any licensee with such a currently pending license renewal application must, **by January 21, 2020**, file an amendment to its renewal application that includes an attachment certifying whether the station licensee (and each party with an attributable interest in the licensee) complies with the Commission’s cross-ownership rules. The FCC advises that such amendment should state:

“The station licensee (and each party with an attributable interest in the licensee) hereby certifies it is in compliance with the Newspaper/Broadcast and Radio/Television Cross-Ownership rules in revised 47 CFR § 73.3555.”

To the extent the licensee cannot certify compliance, it should file an explanation. Again, broadcasters would be well advised to consult with legal counsel if they need to amend a pending license renewal application. As with pending assignment and transfer applications, the Commission advises that no action will be taken on a pending license renewal application until such an amendment is made, so affected licensees should file such an amendment as soon as possible.

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