June 4, 2021

FCC Adopts Order Reinstating 2017 Media Ownership Rule Changes and Issues Public Notice Seeking to

Refresh Record in 2018 Quadrennial Review

Earlier this afternoon—and approximately two months after the U.S. Supreme Court’s unanimous opinion in the *Prometheus* multiple ownership case—the FCC (1) released an [Order](https://docs.fcc.gov/public/attachments/DA-21-656A1.pdf) (the “Reinstatement Order”) formally reinstating, among other things, various 2017 multiple ownership rules changes; and (2) issued a [Public Notice](https://docs.fcc.gov/public/attachments/DA-21-657A1.pdf) (the “Notice”) seeking to update the record in the FCC’s open 2018 Quadrennial Regulatory Review proceeding (the “2018 Quadrennial Review”).

While the Commission’s adoption of the Reinstatement Order largely “checks some administrative and procedural boxes,” to put it colloquially, the issuance of the Public Notice provides broadcasters further opportunity to refresh the record in the 2018 Quadrennial Review in the hopes of persuading the FCC to make further changes (or not, depending on one’s viewpoint!) to its broadcast multiple ownership rules.

*The Reinstatement Order*. As broadcasters are well aware, in 2019 the Third Circuit Court of Appeals vacated and remanded the FCC’s 2017 Order on Reconsideration, as well as the Commission’s 2018 Incubator Order and the FCC’s “eligible entity” definition as adopted in its 2016 Second Report and Order. In the case of *FCC v. Prometheus Radio Project*, however, the Supreme Court reversed the Third Circuit’s decision regarding the Commission’s media ownership rules.

In its Reinstatement Order today, the Commission clarifies that, consistent with the Supreme Court’s *Prometheus* opinion, the Newspaper/Broadcast Cross Ownership Rule, the Radio/Television Cross-Ownership Rule, and the Television Joint Sales Agreement Attribution Rule are eliminated; and the Local Television Ownership Rule and Local Radio Ownership Rule are reinstated “as adopted in the [2017] Order on Reconsideration.” In other words, the Eight Voices Test is eliminated, and broadcasters may request that the Commission take a case-by-case approach to assessing assignment/transfer applications the grant of which would result in a Two Top-Four Duopoly situation in the same DMA.

Today’s Reinstatement Order also puts back in place the FCC’s changes adopted in its 2018 Incubator Order and its 2016 definition of “eligible entity.” Note that the amendments to the Commission’s Rules that are necessary, technically speaking, to reinstate the various Rules at issue (i.e., actually changing the regulatory language) will not be made until today’s Reinstatement Order is published in the *Federal Register*; we anticipate publication will happen soon.

*The 2018 Quadrennial Review Public Notice*. In the Notice, the Commission seeks to update the record in the FCC’s open 2018 Quadrennial Review proceeding. Because the 2018 Quadrennial Review in many ways built off of the FCC decisions listed above (and was initiated more than two years before the Supreme Court’s recent *Prometheus* decision), the Notice states that this “refresh” is designed “specifically to encourage the submission of new or additional information to update the record in the 2018 Quadrennial Review proceeding.” Broadcasters will recall that in the Quadrennial Review the FCC is looking at whether the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule remain “necessary in the public interest as a result of competition”; the Commission is supposed to evaluate these Rules to ensure that they continue to serve core policy goals of competition, localism, and diversity.

The comment period on the 2018 Quadrennial Review closed in May 2019. However, with the Notice the Commission is opening a new comment window in the proceeding. The Notice seeks comment and/or information regarding a number of topics, including, among other things:

* New or additional information regarding the media marketplace that commenters believe is relevant to the 2018 Quadrennial Review proceeding; specifically, information regarding the broadcast industry’s evolution since early 2019 and its current trajectory, including the effects, if any, of technological change, new entry, consolidation, or changing market conditions.
* Whether and, if so, how, the Commission should account for multicast streams, satellite stations, or low power television stations for purposes of the Local Television Ownership Rule—and how, if at all, the increased use of these platforms, and other innovations, such as the continued deployment and use of the ATSC 3.0 transmission standard by the broadcast television industry, should inform the Commission’s review.
* Additional trends that have been, or are being, observed within the broadcast industry or in related markets since the original comment period closed, including the growth of online audio and video sources, including as sources for news and information, as well as the continued strength and importance of broadcast radio and television stations in the local communities they serve.
* Other recent trends regarding broadcast industry ratings or revenues, including advertising, retransmission consent, and online revenues, that are relevant to the 2018 Quadrennial Review proceeding—and the ways in which such trends impact the evolution and the viability of the broadcast industry.
* In considering market trends since the comment period ended in May 2019, the impact that the COVID-19 pandemic has had on the issues under review in the proceeding.

Comments will be due 30 days after the Notice is published in the *Federal Register*, with reply comments due 60 days after such publication.

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*Tim Nelson, Editor*

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