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## Media Ownership Rules, Diversity, and Sinclair-Tribune Merger

On November 16, 2017, the Federal Communications Commission (FCC) is expected to vote on whether to retain, relax, and/or repeal regulations that restrict the number of media outlets that a single entity may own or control within a local geographic market. The vote represents a reconsideration of rules the FCC adopted in August 2016, and marks a new phase in a long-running debate over the federal government's role in fostering competition, localism, and diversity in the media.

Federal law (47 U.S.C. §257(b)) directs the FCC to promote policies favoring a diversity of media voices and vigorous economic competition. The FCC has sought to achieve these goals by limiting common ownership of television stations within the same geographic market and restricting common ownership of television or radio stations and newspapers within the same region.

Since 2004, the law (47 U.S.C. §303(h)) has directed 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.” Under a separate statutory directive (47 U.S.C. §309(j)(3)(B)), the FCC, when awarding new broadcast licenses, must promote opportunities for businesses owned by members of minority groups and women. The U.S. Court of Appeals, Third Circuit, has repeatedly directed the FCC to review its broadcast ownership diversity and media ownership rules simultaneously.

In August 2016, the FCC completed the 2014 Quadrennial Review of its media ownership rules. Following this review, the agency made narrow changes to its rules limiting the type and number of media properties a single entity may own (media ownership rules). In addition, the FCC adopted new rules related to the determination and disclosure of media ownership (attribution rules), as well as the enhancement of media ownership diversity. The changes to be considered on November 16 would repeal or significantly alter some of the media ownership and attribution rules.

### News Consumption

The debate over media ownership rules occurs against the background of sweeping changes in news consumption patterns. **Table 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, and the proportion describing newspapers as a news source declined from 50% in 1996 to 18% in 2017. In 2017, for the first time in the survey's history, the percentage of adults citing “online” as a news source exceeded the percentage of adults citing “local T.V.”

**Table 1. News Consumption Trends**

Percentage of Adults Who Get News from Each Platform

Year	T.V.	Local T.V.	Radio	Newspaper	Online
1996	59%	65%	44%	50%	not available
2000	56%	56%	43%	47%	not available
2004	59%	59%	40%	42%	24%
2008	57%	52%	35%	34%	29%
2012	55%	48%	33%	29%	39%
2016	57%	46%	25%	20%	38%
2017	50%	37%	25%	18%	43%

**Source:** 1996-2012 data: Pew Research Center for the People & the Press, “Biennial Media Consumption Survey 2012,” September 27, 2012; 2016-2017 data: Jeffrey Gottfried and Elisa Shearer, “Americans’ Online News Use Is Closing in on TV News Use,” September 7, 2017.

**Notes:** Data from 1996 to 2012 show the percentage of adults who got news “yesterday” from each source, except that data on “Local TV” are based on the percentage of adults who “regularly watch.” Data from 2016 and 2017 are based on the percentage of adults who get news “often” from each media platform. “T.V.” includes broadcast and cable networks, as well as “Local T.V.”

The FCC’s draft proposal cites changes in radio listenership and newspaper readership as evidence that some ownership rules are no longer necessary to achieve the agency’s goals of viewpoint diversity. In addition, the draft proposal states that while the video marketplace has changed substantially since the FCC adopted rules limiting common ownership of television stations in 1999, “broadcast television stations still play a unique and important role in their local communities.” For this reason, the draft proposal concludes that rules focused on preserving competition between stations are still warranted.

### Current Rules and Proposed Revisions

The changes expected to be considered on November 16 would address several distinct media ownership rules and create a new program to enhance ownership diversity.

#### Media Ownership

**Local television ownership rules** limit 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 violate the “top four/eight voices test.”

Per this test, an entity may own two stations within a local television market if (1) at least one of the stations is not among the four highest-ranked stations in the market *and* (2) at least eight independently owned and operating commercial or noncommercial full-power broadcast television stations remain in the market after the purchase. 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.

Under the draft proposal, the FCC would remove the “eight voices” component, and incorporate a case-by-case review option in the top-four prohibition, allowing it to evaluate the competitive conditions in a specific market when the operator of one station seeks to acquire another.

**Cross-ownership rules** limit the common ownership of broadcast television stations with radio stations and of broadcast radio or television stations with newspapers within the same geographic market. The draft proposal would eliminate all cross-ownership rules.

### Attribution Rules

Many owners of commercial broadcast stations have relationships that fall short of the FCC’s definition of common ownership, yet allow the owner of one station to exert substantial influence over the operation and finances of another station. To minimize such behavior, the agency has developed attribution rules.

The FCC’s attribution rules also impact a station’s ability to negotiate compensation from cable and satellite operators for the retransmission of its broadcast signal. The Satellite Extension and Localism Reauthorization Act (P.L. 113-200) prohibits a television broadcast station from negotiating a retransmission consent contract jointly with another broadcast station in the same market, unless the FCC considers the stations to be directly or indirectly owned, operated, or controlled by the same entity.

**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. Current FCC rules specify 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. Under the draft proposal, the FCC would eliminate the attribution rule for television JSAs. Thus, per statute, stations involved in JSAs, including those that sell more than 15% of another station’s advertising time, would be prohibited from jointly negotiating retransmission consent because they would no longer be considered jointly controlled.

**Shared services agreements** (SSAs) allow stations in a local market to combine certain operations, personnel, and/or facilities, with one station effectively performing functions for multiple, independently owned stations. In 2016, the FCC adopted a requirement that commercial television stations disclose SSAs by placing them in their online public inspection files. The requirement remains subject to approval from the Office of Management and

Budget. The draft proposal would retain the SSA disclosure requirement.

Prior to becoming FCC Chairman, Ajit Pai (who at the time was an FCC commissioner), contended that JSAs and SSAs have enabled broadcast stations to reduce costs, secure bank financing, attract advertising revenue, produce original programming, including news, and modernize their facilities. Furthermore, he has contended that such arrangements promote minority and female ownership of broadcast television stations.

### Diversity Policies

In 2016, the FCC adopted rules designed to increase broadcast ownership diversity. Entities that own broadcast stations and have total annual revenue of \$38.5 million or less (“eligible entities”) qualify for exemption from the media ownership rules. The agency also adopted six measures to enable eligible entities to abide by less restrictive media ownership and attribution rules, and more flexible licensing policies, than their counterparts.

Under the draft proposed rules, the FCC would create an “incubator” program that would provide an ownership rule waiver or similar benefits to an established station owner that helps facilitate station ownership for a certain class of new owners. For example, a broadcasting company could assist a new broadcast owner by providing “management or technical assistance, loan guarantees, direct financial assistance through loans or equity investments, training, or business planning assistance.”

Thus, under the proposed rules, exemption from media ownership regulations could apply to a larger company that facilitates station ownership of an eligible entity, as well as the eligible entity itself.

In establishing the parameters of an incubator program, the FCC may analyze how such a program could affect its goals of promoting competition and localism as well as diversity.

### Potential Impact on Sinclair-Tribune Transaction

On May 8, 2017, Sinclair Broadcast Group Inc. announced that it agreed to acquire the Tribune Media Company for \$6.6 billion. The transaction would make Sinclair the nation’s largest television broadcast company and give it a presence in far more local markets than any other television station owner. In 10 television markets where Sinclair owns television stations, current FCC duopoly rules would preclude Sinclair from purchasing Tribune stations absent divestitures. Absent divestitures, Sinclair would own two top-four-rated stations in each of these 10 markets. In addition, both Tribune and Sinclair operate JSAs and SSAs in dozens of television markets. Absent intervention from the U.S. Department of Justice pursuant to antitrust statutes, the FCC’s rule changes would enable Sinclair to acquire these Tribune stations as well as take over Tribune’s JSAs and SSAs.

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