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# Federal Communications Commission (FCC) Media Ownership Rules

Updated June 1, 2021

**Congressional Research Service**

<https://crsreports.congress.gov>

R45338



R45338

June 1, 2021

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## Federal Communications Commission (FCC) Media Ownership Rules

The Federal Communications Commission (FCC) aims, with its broadcast media ownership rules, to promote localism and competition by restricting the number of media outlets that a single entity may own or control within a geographic market and, in the case of broadcast television stations, nationwide. In addition, the FCC seeks to encourage diversity, including (1) the diversity of viewpoints, as reflected in the availability of media content offering a variety of perspectives; (2) diversity of programming, as indicated by a variety of formats and content; (3) outlet diversity, to ensure the presence of multiple independently owned media outlets within a geographic market; and (4) minority and female ownership of broadcast media outlets.

In November 2017, acting in response to petitions from broadcast station licensees, the FCC repealed or relaxed several local media ownership rules. The repealed rules limited common ownership of broadcast television and radio stations within the same market and of television stations and newspapers within the same market. The FCC also relaxed rules limiting common ownership of two top-four television stations (generally, ABC, CBS, FOX, and NBC stations) within the same market. In August 2018, the FCC issued rules governing a new “incubator” program designed to enhance ownership diversity. Parties, including the Prometheus Radio Project, appealed these orders. In April 2021, the U.S. Supreme Court upheld the FCC’s changes to its media ownership rules.

Two FCC media ownership rules have proven particularly controversial: its national cap on the number of television households a single company can reach via television stations and its method for measuring that reach. Its national media ownership rule prohibits any entity from owning commercial television stations that reach more than 39% of U.S. television households nationwide. Its “UHF discount” rule discounts by half the reach, by percentage of households, of a station broadcasting in the Ultra-High Frequency (UHF) band when applying the national media ownership rule. In December 2017, the commission opened a rulemaking proceeding seeking comments about whether it should modify or repeal the two rules. If the FCC retains the UHF discount, even if it maintains the 39% cap, a single entity could potentially reach 78% of U.S. television households through its ownership of broadcast television stations. As of May 2021, this rulemaking proceeding remains open.

An important issue with respect to the national ownership cap, which the FCC has not addressed in a rulemaking, is how the agency treats a situation in which a broadcaster manages, operates, sells advertising for, and/or finances a television station owned by another company. In some cases, the FCC has articulated its policy on an ad hoc basis in the context of merger reviews, while in other instances it has effectively consented to such arrangements through its silence. Thus, a single entity could comply with the national ownership cap while still influencing broadcast television stations it does not own, reaching more viewers than permitted under the cap. In December 2020, Nexstar Media Group, the country’s largest local television company with 198 full-power stations (including partner stations) in 116 television markets, entered into financial and operating relationships with a third-party licensee of a station in the New York television market with the approval of the FCC’s Media Bureau. Counting the UHF discount, these relationships enable Nexstar to extend its reach beyond the 39% cap—to 44% of U.S. television households. A formal rulemaking by the commissioners could clarify how the agency would evaluate such relationships in judging compliance with the national ownership cap.

These regulatory changes are occurring against the background of changes in media consumption patterns. While local broadcast television news remains the most popular source of local news, the percentage of adults citing websites and social media as news sources continues to grow. In contrast to broadcast television and radio stations, these media are not regulated by the FCC. The extent to which station owners can respond to these market changes by consolidation depends upon the FCC’s media ownership and attribution rules.

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## Why Regulate Media Ownership?

From the earliest days of commercial radio, the Federal Communications Commission (FCC) and its predecessor, the Federal Radio Commission, have encouraged diversity in broadcasting.<sup>1</sup>

The FCC's policies seek to encourage four distinct types of diversity<sup>2</sup> in local broadcast media:

- diversity of viewpoints, as reflected in the availability of media content reflecting a variety of perspectives;
- diversity of programming, as indicated by a variety of formats and content, including programming aimed at various minority and ethnic groups;
- outlet diversity, to ensure the presence of multiple independently owned media outlets within a geographic market; and
- minority and female ownership of broadcast media outlets.<sup>3</sup>

In addition to promoting diversity, the FCC aims, with its broadcast media ownership rules,<sup>4</sup> to promote localism and competition by restricting the number of media outlets that a single entity may own or control within a geographic market and, in the case of broadcast television stations, nationwide.<sup>5</sup> Localism addresses whether broadcast stations are responsive to the needs and interests of their communities. In evaluating the extent of competition, the FCC considers whether stations have adequate commercial incentives to invest in diverse news and public affairs programming tailored to serve viewers within their communities.<sup>6</sup>

## Quadrennial Reviews: Local Media Ownership

Section 202(h) of the Telecommunications Act of 1996 (P.L. 104-104) directs 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

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<sup>1</sup> Johnson-Kennedy Radio Corp. (WJKS), Docket No. 1156, affirmed sub nom F.R.C. v. Nelson Bros. Co., 289 U.S. 266, 270-271 (1933); United States Broadcasting Corp., 2 FCC 208, 233 (1935). Louis Caldwell, “Legal Restrictions on the Contents of Broadcast Programs,” *Air Law Review*, vol. 9, no. 3 (July 1938), pp. 229, 246-248.

<sup>2</sup> A fifth type, source diversity (the availability of media content from a variety of content producers), has been the focus of merger proceedings, but in 2002 the FCC determined that this type of diversity was not relevant to its media ownership rules. Federal Communications Commission, “Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area,” 18 *FCC Record* 13620, 13633, July 2, 2003 (2002 Biennial Review).

<sup>3</sup> The FCC first began to encourage minority ownership of broadcast stations in 1978, in response to an initiative by President Jimmy Carter. Federal Communications Commission, “Statement of Policy on Minority Ownership of Broadcasting Facilities, FCC 78-322,” Public Notice, May 25, 1978, [ftp://ftp.fcc.gov/pub/Bureaus/Mass\\_Media/Databases/documents\\_collection/78-322.pdf](ftp://ftp.fcc.gov/pub/Bureaus/Mass_Media/Databases/documents_collection/78-322.pdf); Jimmy Carter, “Telecommunications Minority Assistance Program Announcement of Administration Program,” January 31, 1978, online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, at <http://www.presidency.ucsb.edu/ws/?pid=29917>.

<sup>4</sup> 47 C.F.R. §73.3555.

<sup>5</sup> 2002 Biennial Review, pp. 13621, 13627, 13818.

<sup>6</sup> Federal Communications Commission, “2014 Quadrennial Regulatory Review, 2010 Quadrennial Regulatory Review, Promoting Diversification of Ownership in the Broadcasting Services, Rules and Policies Concerning the Attribution of Joint Sales Agreements in Local Television Markets, Second Report and Order, FCC 16-107,” 31 *FCC Record*, 9864, 9873, August 25, 2016 (2014 Quadrennial Review 2<sup>nd</sup> R&O).

longer in the public interest.”<sup>7</sup> Section 257(b) of the act directs the FCC to promote policies favoring, among other things, the diversity of media voices and vigorous economic competition.<sup>8</sup> For decades, the FCC’s media ownership rules limited common ownership of broadcast radio stations, broadcast television stations, and daily newspapers within the same local market.

In 2017, as described in “Ownership Rules Subject to Quadrennial Review,” the FCC repealed two of these rules, thereby permitting common ownership of newspapers, radio stations, and television stations within the same local television market.<sup>9</sup> In addition, the FCC relaxed its rule limiting common ownership of television stations within the same market, as described in “Local Attribution Rules,” as well its standards of attributing television station “ownership.” In April 2021, the U.S. Supreme Court upheld the FCC’s decisions.<sup>10</sup>

## Links with Ownership Diversity

In 1999, the FCC relaxed several of its media ownership rules.<sup>11</sup> Acknowledging that various parties expressed concern that greater consolidation of broadcast ownership could make it more difficult for new licensees to enter the broadcasting industry, the FCC stated that (1) it was conducting studies that would enable it to address the requirement that its rules withstand the U.S. Supreme Court’s scrutiny of any rules selectively applied to organizations based on the race or gender of their owners, and (2) upon completion of the studies, it would examine steps it could take to expand opportunities for minorities and women to enter the broadcast industry.<sup>12</sup>

In addition, the FCC adopted a requirement that, before obtaining a waiver from the FCC’s rule limiting common local ownership of television stations, a licensee of a “failed/failing” station (described in **Table 1**) must notify the public that the station is for sale and demonstrate to the agency that the licensee’s attempt to secure an out-of-market buyer was unsuccessful. The commission reiterated that the FCC “has made a number of efforts separate from this proceeding to address minority and female ownership issues, and we hope to take further steps in this area.”<sup>13</sup>

In 2002, the FCC issued an order repealing and/or further relaxing several media ownership rules, including the failed station solicitation rule, arguing that “the efficiencies associated with operation of two same-market stations, absent unusual circumstances, will always result in the buyer being the owner of another station in that market.”<sup>14</sup> The FCC deferred consideration of

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<sup>7</sup> §202(h), 257 (47 U.S.C. §303 note).

<sup>8</sup> §202(h), 257 (47 U.S.C. §257(b)).

<sup>9</sup> Federal Communications Commission, “Matter of 2014 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 2010 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Promoting Diversification of Ownership In the Broadcasting Services, Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets, FCC 16-107, Order on Reconsideration and Notice of Proposed Rulemaking and Report and Order,” 32 *FCC Record* 9802, November 20, 2017 (2017 Quadrennial Review Order on Recon and NPRM).

<sup>10</sup> *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150 (2021).

<sup>11</sup> Federal Communications Commission, “Review of the Commission’s Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, Report and Order, FCC 99-209,” 14 *FCC Record* 12903, August 6, 1999 (1999 Media Ownership R&O).

<sup>12</sup> 1999 Media Ownership R&O, p. 12910. *Adarand Constructors v. Peña*, 515 U.S. 200 (1995).

<sup>13</sup> 1999 Media Ownership R&O, p. 12937.

<sup>14</sup> Federal Communications Commission, “2002 Quadrennial Report and Order and Notice of Proposed Rulemaking, FCC 03-127,” 18 *FCC Record* 13620, 13708, July 2, 2003 (2002 Quadrennial R&O and NPRM).

other proposals to advance minority and female ownership, stating that it would address them in a future rulemaking.<sup>15</sup>

For 15 years, the U.S. Court of Appeals for the Third Circuit repeatedly vacated and remanded the FCC's proposed changes to media ownership rules, stating that the agency's consideration of how the changes could affect minority and female ownership of broadcast stations was inadequate and in violation of the Administrative Procedure Act (APA).<sup>16</sup> For example, in 2019, the Third Circuit stated, "On remand the Commission must ascertain on record evidence the likely effect of any rule changes it proposes ... on ownership by women and minorities, whether through new empirical research or an in-depth theoretical analysis."<sup>17</sup>

### **Diversity Initiatives: Eligible Entities and Incubator Program**

As part of its quadrennial media ownership review, in 2016 the FCC adopted rules designed to increase broadcast ownership diversity in a way consistent with the Third Circuit's directives.<sup>18</sup> Rather than specifically target minorities and females, the FCC created a category of "eligible entities" that are subject to less restrictive media ownership rules than are other entities.<sup>19</sup> Furthermore, as part of its 2017 media ownership order, the FCC established a new incubator program that waives its broadcast radio ownership rules for established radio broadcasters that "incubate" new entrants and launched a new rulemaking proceeding seeking comment on how to implement the program.<sup>20</sup> The agency issued rules governing the incubator program in August 2018.

### **U.S. Supreme Court 2021 Review**

In April 2021, the U.S. Supreme Court, in a unanimous decision, upheld the FCC's media ownership rule changes, its "eligible entity" definition, and its incubator program.<sup>21</sup> The Supreme Court held that the agency's analysis did not violate the APA because it was "reasonable" and "reasonably explained."<sup>22</sup> It overturned the Third Circuit's judgment that the FCC violated the APA by relying on faulty or incomplete data in implementing its ownership rule changes, stating:

To be sure, in assessing the effects on minority and female ownership, the FCC did not have perfect empirical or statistical data. Far from it. But that is not unusual in day-to-day agency decisionmaking within the Executive Branch. The [APA] imposes no general obligation on agencies to conduct or commission their own empirical or statistical studies.... And nothing in the Telecommunications Act (or any other statute) requires the

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<sup>15</sup> Ibid. pp. 13636-13637.

<sup>16</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004). (*Prometheus I*) *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011) (*Prometheus II*). *Prometheus Radio Project v. FCC* (*Prometheus III*), 824 F.3d 33, 37 (3d Cir. 2016). *Prometheus Radio Project v. FCC*, 939 F.3d 567, 589 (3d Cir. 2019) (*Prometheus IV*).

<sup>17</sup> *Prometheus IV*, p. 587.

<sup>18</sup> Federal Communications Commission, "2014 Quadrennial Regulatory Review, 2010 Quadrennial Regulatory Review, Promoting Diversification of Ownership in the Broadcasting Services, Rules and Policies Concerning the Attribution of Joint Sales Agreements in Local Television Markets, Second Report and Order, FCC 16-107," 31 *FCC Record*, 9864, 9873, August 25, 2016 (2014 Quadrennial Review 2<sup>nd</sup> R&O and 2016 Diversity Order).

<sup>19</sup> As directed by the Third Circuit in *Prometheus II*, the FCC discussed additional proposals set forth by commenters in the 2010 Diversity proceeding. The commission declined to adopt them.

<sup>20</sup> 2017 Quadrennial Review Order on Recon and NPRM.

<sup>21</sup> *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1160 n.4 (2021).

<sup>22</sup> *Ibid.*, p. 1160.

FCC to conduct its own empirical or statistical studies before exercising its discretion under Section 202(h).<sup>23</sup>

## National Media Ownership: Television Stations

Section 629 of the Consolidated Appropriations Act, 2004 (P.L. 108-199) amended the Telecommunications Act of 1996<sup>24</sup> and directed the FCC to adopt rules that would cap the reach of a single company's television stations at 39% of U.S. television households.<sup>25</sup> In addition, Congress exempted this national ownership cap from the FCC's required review of its media ownership rules every four years. In December 2017, the FCC initiated a rulemaking proceeding in which it proposed to eliminate or modify that national audience reach cap.<sup>26</sup> In the proceeding, the FCC sought comments on whether the agency has the authority to modify or eliminate the national cap, and noted that previously the agency had rejected arguments that Congress precluded the FCC from making any adjustment. For more information about the history of the national ownership rule, see **Table A-1**.

## News Consumption Trends

In 1996, as part of the Telecommunications Act of 1996 (P.L. 104-104), Congress directed the FCC to regularly review and reassess its media ownership rules in order, as the U.S. Supreme Court stated, to “keep pace with industry developments and to regularly reassess how its rules function in the marketplace.”<sup>27</sup>

Since then, technological, financial, and regulatory developments have transformed the media landscape. In 1996, according to surveys conducted by Pew Research Center, 59% of respondents stated that they “got news yesterday” from television—including national broadcast and cable television networks as well as local television stations. Pew began to include online sources in its survey in 2004,<sup>28</sup> when 24% of respondents stated that they “got news yesterday” from these sources.<sup>29</sup>

In 2016, Pew changed the wording of its survey question to ask specifically about consumption of local television news and news from social media, as well as from other sources.<sup>30</sup> As **Figure 1** indicates, as of 2018, local TV news remained the news source most cited by survey participants, while newspapers were the least cited.

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<sup>23</sup> *Ibid.*, 1160 (internal citations omitted). For more information about the Administrative Procedure Act, see CRS Legal Sidebar LSB10558, *Judicial Review Under the Administrative Procedure Act (APA)*, by Jonathan M. Gaffney, and CRS In Focus IF10003, *An Overview of Federal Regulations and the Rulemaking Process*, by Maeve P. Carey.

<sup>24</sup> Telecommunications Act of 1996, as amended, §202(c) and (h). {47 U.S.C. §303 note.}

<sup>25</sup> The FCC relies on estimates of the number of television households by the Nielsen Company.

<sup>26</sup> Federal Communications Commission, “Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule, Notice of Proposed Rulemaking, FCC 17-169,” 32 *FCC Record* 10785, December 18, 2017.

<sup>27</sup> *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1156 (2021); P.L. 104-104 §202(h), (47 U.S.C. §303 note).

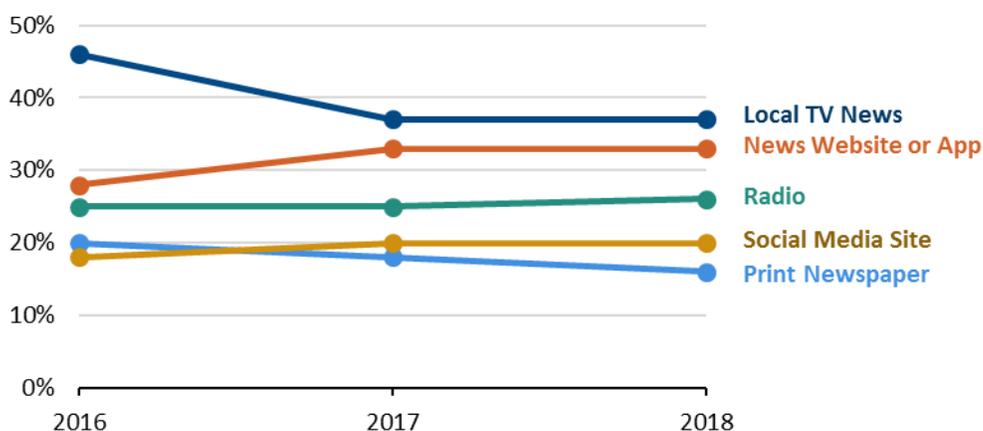
<sup>28</sup> In this survey, “online” sources include online content from television stations or networks, online newspapers, and online content from radio stations or networks.

<sup>29</sup> Pew Research Center, “U.S. Politics and Policy: 2012 Media Consumption Survey: Download Dataset,” at <https://www.pewresearch.org/politics/dataset/2012-media-consumption-survey/>.

<sup>30</sup> Pew Research Center, “Methods: American Trends Panel Wave 37: Download Dataset,” at <https://www.pewresearch.org/methods/dataset/american-trends-panel-wave-37/>.

**Figure I. News Consumption: 2016-2018**

Percentage of Respondents Who “Often” Got News from Each Media Platform



**Source:** Pew Research Center, “Methods: American Trends Panel Wave 37: Download Dataset,” at <https://www.pewresearch.org/methods/dataset/american-trends-panel-wave-37/>.

**Notes:** Examples of social media sites presented to respondents included Facebook and Twitter.

In 2020, following a year-long study in which Pew reassessed its methodology for measuring “news consumption in a digital era,”<sup>31</sup> it further modified the questions it asked in its audience survey. Its 2020 survey distinguished between “talk radio” and “public radio” programming on broadcast radio stations.

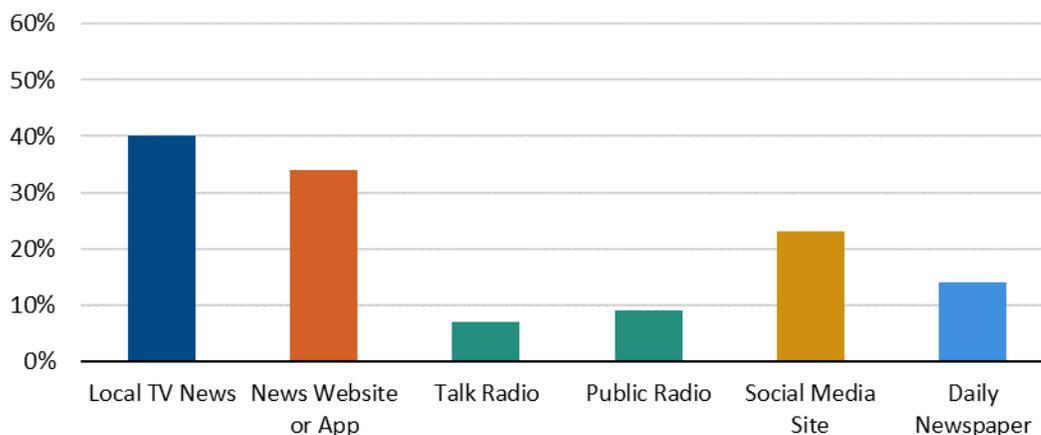
As **Figure 2** illustrates, in 2020 local television remained the principal medium from which respondents “often” got news, with 40% of respondents citing it. The survey results may have been affected by the widespread economic and social impact of the Coronavirus Disease 2019 (COVID-19) pandemic in 2020, which led to an increase in television viewing as people searched for news about it,<sup>32</sup> and a further decline in the number of newspapers, as advertisers cut back spending.<sup>33</sup>

<sup>31</sup> Michael Barthell, Amy Mitchell, and Dorene Asare-Mafo, et al., *Measuring News Consumption in a Digital Era*, Pew Research Center, Washington, DC, December 2020, at <https://www.journalism.org/2020/12/08/measuring-news-consumption-in-a-digital-era/>. The introduction states, “This report is the culmination of a yearlong study into Americans’ news consumption habits in an era of rapidly evolving media technology and a look at how researchers can measure those news habits.” *Ibid.*, p. 3. (Pew 2020 News Measurement Study.)

<sup>32</sup> Lillian Rizzo, “Local TV Sees Spike in Viewers, Drop in Ads in Coronavirus Crisis,” *Wall Street Journal*, April 3, 2020, at <https://www.wsj.com/articles/local-tv-sees-spike-in-viewers-drop-in-ads-in-coronavirus-crisis-11585915203> (quoting Kyle Evans, a media analyst at Stephens Inc., a financial services firm).

<sup>33</sup> Erika Bolstad, “COVID-19 is Crushing Newspapers, Worsening Hunger for Accurate Information,” Pew Charitable Trusts, September 8, 2020, at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/08/covid-19-is-crushing-newspapers-worsening-hunger-for-accurate-information>.

**Figure 2. News Consumption by Medium: 2020**  
Percentage of Respondents Who “Often” Get News from Each Media Platform



**Source:** Pew Research Center, “Journalism and Media: Datasets: American Trends Panel Wave 68,” at [https://www.journalism.org/?post\\_type=dataset](https://www.journalism.org/?post_type=dataset). Pew 2020 News Measurement Study.

**Notes:** Results based on self-reported responses to survey questions. Those who stated they get news from a given source “often” generally said they got news that way five to seven days per week.

Collectively, these survey trends raise questions as to whether common ownership of multiple media outlets in the same market might limit diversity of viewpoints as much today as it might have 25 years ago.

## Industry Consolidation Trends

As traditional broadcast television stations, radio stations, and newspapers face competition for consumers’ attention and advertising revenue, all three industries have consolidated. In the broadcast industry, consolidation has been facilitated by a changed economic and regulatory environment following enactment of the Telecommunications Act of 1996.

### Broadcast Radio

Prior to 1996, FCC rules stipulated that an entity could generally own no more than 40 radio stations (20 AM stations and 20 FM stations) nationwide.<sup>34</sup> The Telecommunications Act of 1996 eliminated the FCC’s restrictions on national radio station ownership.<sup>35</sup> In addition, the act increased the FCC’s prior limits on the number of stations a single entity could own within a local market.<sup>36</sup> With the new law in place, the number of stations sold nearly doubled from 1995 to 1996.<sup>37</sup>

<sup>34</sup> Federal Communications Commission, “Implementations of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996, Broadcast Radio Ownership, Order, FCC 96-90,” 11 *FCC Record* 12368, March 8, 1996. (1996 FCC Radio Ownership Implementation).

<sup>35</sup> Telecommunications Act of 1996, §202(a).

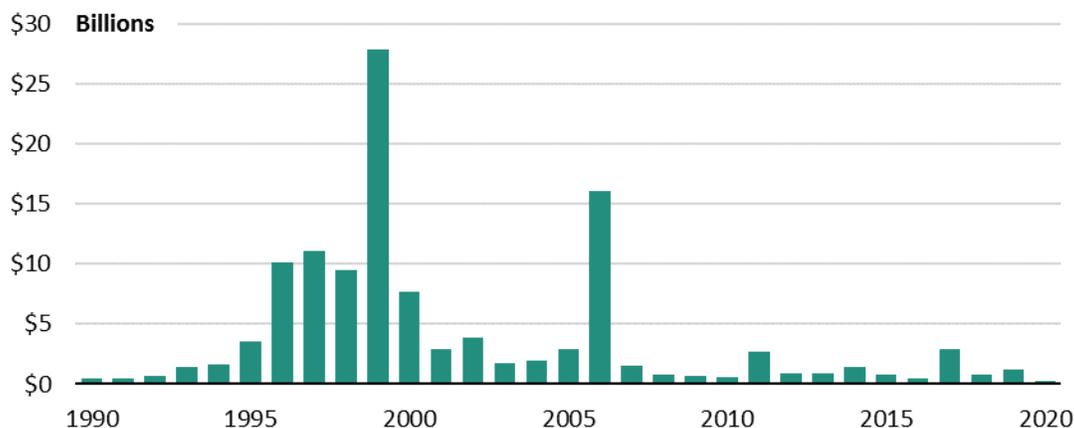
<sup>36</sup> Telecommunications Act of 1996, §201(b)(1); 1996 FCC Radio Ownership Implementation, p 12369.

<sup>37</sup> Kagan Research, LLC, *Radio Financial Databook, 7<sup>th</sup> Edition*, Monterey, CA, June 2006, p. 57.

The annual value of radio station transactions peaked in 1999 at \$27.8 billion (**Figure 3**). More recently, the value of individual broadcast radio transactions has declined, reflecting the relatively lower value of transactions involving smaller-market stations. In 2020, the average transaction size was \$1.2 million.<sup>38</sup>

**Figure 3. Broadcast Radio Industry Consolidation: 1990-2020**

Value of Broadcast Radio Transactions, by Year  
(in billions of constant FY2020 dollars)



**Source:** CRS analysis of data from S&P Global Marketplace. Bureau of Economic Statistics, Table I.1.9. Implicit Price Deflators for Gross Domestic Product.

**Notes:** Figures adjusted for inflation in 2020 dollars.

## Broadcast Television

Consolidation in the broadcast television industry reflects the changing regulatory and financial landscape as well strategic factors. In 1995, the year prior to enactment of the Telecommunications Act of 1996, the Walt Disney Company agreed to purchase the ABC television network and several broadcast stations from Capital Cities/ABC Inc.,<sup>39</sup> and Westinghouse Electric Corporation agreed to purchase CBS Inc., which owned the CBS television network and several stations.<sup>40</sup> The 1996 act's relaxation of the FCC's national television ownership rules enabled Westinghouse to keep all of the stations it had acquired from CBS.<sup>41</sup>

<sup>38</sup> Volker Moerbitz, "Databook: Radio Station Deals," *S&P Global Market Intelligence*, April 23, 2021.

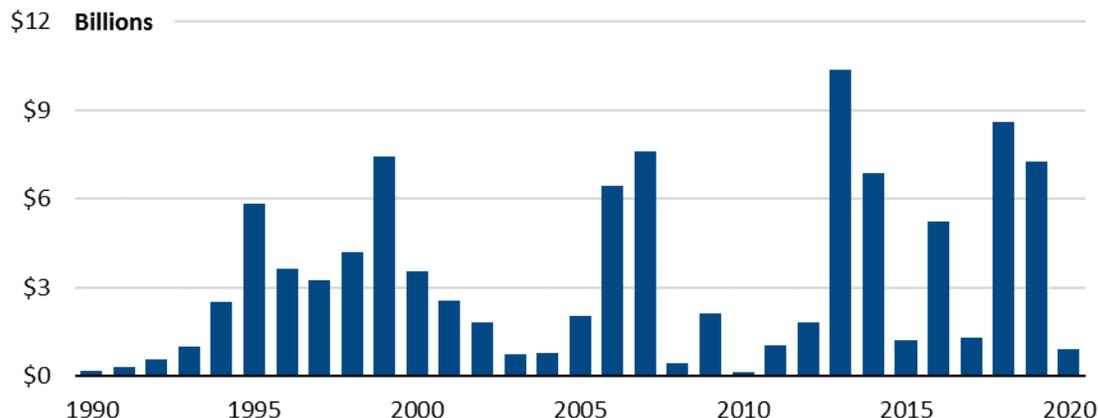
<sup>39</sup> Skip Wollenberg, "Disney Completes \$19 Billion Buyout of Cap Cities/ABC," *Associated Press*, February 6, 1996 at <https://apnews.com/article/936213bf16e84410ffbe97e2a78fc471>.

<sup>40</sup> Bloomberg Business News, "Purchase of CBS Completed Westinghouse is Now Biggest Broadcasters with \$5.4 Billion Deal," *Baltimore Sun*, November 25, 1995, at <https://www.baltimoresun.com/news/bs-xpm-1995-11-25-1995329069-story.html>.

<sup>41</sup> Among other conditions, the FCC required Westinghouse to divest television stations within 12 months of the agency's approval of the transaction, in order to comply with the agency's limits on nationwide television station ownership at that time. Federal Communications Commission, "Application for Stockholders of CBS Inc. (transferor) and Westinghouse Electric Corporation (transferee) for Transfer of Control of CBS, Inc., Licensee of WCBS-TV, New York, New York, et. al., Memorandum Opinion and Order, FCC 95-469," 11 *FCC Record* 3733, 3775-3776, November 22, 1995. Westinghouse changed its name to CBS Corporation in 1997. "Westinghouse RIP," *The Economist*, November 27, 1997 at <https://www.economist.com/business/1997/11/27/westinghouse-rip>.

**Figure 4. Broadcast Television Industry Consolidation: 1990-2020**

Value of Broadcast Television Transactions, by Year  
(in billions of constant FY2020 dollars )



**Source:** CRS analysis of data from S&P Global Marketplace. Bureau of Economic Statistics, Table I.1.9. Implicit Price Deflators for Gross Domestic Product.

**Notes:** Figures adjusted for inflation in 2020 dollars.

As **Figure 4** indicates, 1999 was a high point for sales of broadcast television stations, with stations worth \$7.4 billion changing hands. That year, the FCC’s relaxation of its local television ownership rules, described in “Local Television Ownership Rule (Television Duopoly Rule),” enabled Viacom Inc. to purchase CBS Corporation.<sup>42</sup>

From October 2005 through 2007, private equity firms, attracted by the perceived steady cash flows of broadcast television stations, bought some of the nation’s largest television broadcasters, including Clear Channel, Univision, Tribune, ION, and the New York Times TV group.<sup>43</sup> According to the research firm SNLKagan, “Nearly all broadcast public financing in 2006 occurred via debt, as broadcasters accessed the credit markets to reduce interest-rate costs, close deals and/or retire higher-cost public debt.”<sup>44</sup> The financial meltdown of 2008 caused the market for television transactions to come to an almost complete standstill, hitting the lowest number in recorded history (\$174.7 million) in 2010.<sup>45</sup> The industry underwent another wave of consolidation in 2013 and 2014 due in part to the consummation of deals left uncompleted in the wake of the 2008 financial crisis.<sup>46</sup>

In recent years, a few broadcast station owners increased their national reach by acquiring stations from counterparts exiting the industry. The increase in national and local scale enables broadcast television groups to increase their bargaining power when negotiating with broadcast networks for programming, with cable and satellite operators for rights to retransmit their

<sup>42</sup> Federal Communications Commission, “Application of Shareholders of CBS Corporation (transferor) and Viacom, Inc. (transferee) for Transfer of Control of CBS Corporation and Certain Subsidiaries, Licensees of KCBS-TV, Los Angeles, CA, et. al., Memorandum Opinion and Order, FCC 00-155,” 15 *FCC Record* 8230, 8236-8237, May 3, 2000.

<sup>43</sup> SNLKagan, *TV Station Deals and Finance Databook, 10<sup>th</sup> Edition*, Charlottesville Virginia, May 2007, p. 169.

<sup>44</sup> *Ibid.*, p. 170.

<sup>45</sup> SNLKagan, *TV Station Deals Databook, 2014 Edition*, Charlottesville Virginia, September 2014, p. 16.

<sup>46</sup> SNLKagan, *TV Station Deals Databook, 2017 Edition*, Charlottesville Virginia, April 2017, p. 2.

stations' signals, and with advertisers seeking to reach a large portion of U.S. television viewers.<sup>47</sup> As described in "Local Attribution Rules," the FCC's policies regarding whether or not to attribute local stations that share financing, assets, and personnel for the purpose of enforcing its media ownership rules also affect broadcast consolidation.

## Application of Local Ownership Rules

Two characteristics of broadcast television and broadcast radio stations determine whether or not the media ownership rules described in later sections of this report are triggered: (1) the geographic range (or *contours*) of their signals, and (2) the limits of their media markets as determined by the Nielsen Company, a market research firm.

### Television Stations

The FCC uses Designated Market Areas (DMAs) to determine the geographic regions that apply to the duopoly rule, and uses broadcast television signals to determine when combinations within DMAs trigger the rules.

### Television Signal Contours

Following the transition of broadcast stations from analog to digital signals in 2009, the FCC modified the media ownership rules to reflect two digital television service contours:<sup>48</sup>

1. The digital "principal community contour" (digital PCC). This contour specifies the signal strength required to provide television service to a station's community of license. The FCC sought, when defining the digital PCC, to provide television stations with flexibility in siting and building their facilities while still preventing stations from straying too far from their respective communities of license.<sup>49</sup>
2. The digital "noise limited service contour" (digital NLSC). The FCC designed this contour to define a geographic area in which at least 50% of residents can receive the signal a majority of the time.<sup>50</sup> The FCC wanted to ensure that after the digital transition, broadcasters would be able to reach the same audiences they served previously with analog transmissions.

### Television Markets

The FCC uses DMAs created by the Nielsen Company to define local television markets. Nielsen has constructed 210 DMAs by assigning each county in the United States to a specific DMA,

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<sup>47</sup> Cynthia Littleton, "Big Station Groups Bulk Up with Streaming Options, National Newscasts," *Variety*, October 7, 2020, at <https://variety.com/2020/tv/news/nexstar-sinclair-ew-scripps-streaming-newcasts-1234795342/>.

<sup>48</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 9876-9877 (for local television ownership rule); pp. 9944-872 (for radio/television cross-ownership rule); p. 9931 (for newspaper/broadcast television cross-ownership rule).

<sup>49</sup> Federal Communications Commission, "Advanced Television Systems and their Impact on the Existing Television Broadcast Service," 25 *FCC Record* 14588, 14634-14635, April 21, 1997 (1997 Sixth R&O). Federal Communications Commission, "2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Inquiry, FCC 10-92," 25 *FCC Record* 6086, 6117, n. 150, May 25, 2010 (2010 Quadrennial NOI).

<sup>50</sup> 1997 Sixth R&O, pp. 14605-14607.

based on the predominance of viewing of broadcast television stations licensed to operate in a given metropolitan statistical area, defined by the Office of Management and Budget (OMB).<sup>51</sup>

## Radio Stations

### Radio Signal Contours

#### *FM Primary Service Area*

The 1 millivolt-per-meter (1 mv/m) contour for FM radio represents a signal that will result in satisfactory service to at least 70% of the locations on the outer rim of the contour at least 90% of the time.<sup>52</sup>

#### *AM Primary Service Area*

In its rules for AM radio stations, the FCC delineates three types of service areas: (1) primary, (2) secondary, and (3) intermittent. Some classes of radio stations render service to two or more areas, while others usually have only primary service areas.<sup>53</sup> The FCC defines the primary service area of an AM broadcast radio station as the service area in which the groundwave is not subject to objectionable interference or fading.<sup>54</sup> The signal strength required for a population of 2,500 or more to receive primary service is 2 millivolts per meter (2 mv/m). For communities with populations of fewer than 2,500, the required signal strength is 0.5 mv/m.

When the FCC first proposed incorporating AM contour signals in its media ownership rules, it noted that “a one mv/m AM signal is somewhat less than the signal intensity needed to provide service to urban populations, but somewhat greater than the signal at the outer limit of effective non-urban service.”<sup>55</sup>

### Radio Markets

The FCC also relies on the Nielsen Company to define local radio markets. These markets, called “Metros,” generally correspond to the metropolitan statistical areas defined by OMB, but are subject to exceptions based on historical industry usage or other considerations at the discretion of Nielsen.<sup>56</sup> In contrast to television markets, radio markets do not include every U.S. county.<sup>57</sup>

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<sup>51</sup> Testimony of Executive Vice President and Chief Research Officer Paul Donato, the Nielsen Company, in U.S. Congress, House Subcommittee on Courts, Intellectual Property, and the Internet, Committee on the Judiciary, Satellite Television Laws in Title 17, hearings, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., September 10, 2013, H.Hrg. 113-48, p. 7 (Washington, DC: GPO, 2015).

<sup>52</sup> Federal Communications Commission, “Standard, FM and Television Broadcast Stations: Multiple Ownership; Notice of Proposed Rulemaking,” 27 *Federal Register* 6946, 6847, July 19, 1962 (1962 Media Ownership NPRM). The FCC explained that although not precisely equivalent, this contour for FM broadcast radio represented the same general level of probability for the contour the FCC used (Grade A) to predict analog broadcast television service at that time.

<sup>53</sup> 47 C.F.R. §73.182(c).

<sup>54</sup> 47 C.F.R. §73.14.

<sup>55</sup> 1962 Media Ownership NPRM, p. 6847.

<sup>56</sup> The Nielsen Company, *Arbitron eBook Reference Guide*, 2009, p. 46, at <http://www.nielsen.com/content/dam/corporate/us/en/docs/nielsen-audio/guide-to-understanding-and-using.pdf>.

<sup>57</sup> Americanradiohistory.com, “Arbitron Reports and Data of Interest,” “Metropolitan Survey Area Maps,” “2013 Metro Radio Metro Areas Hi-Res,” at [http://www.americanradiohistory.com/Archive-Arbitron/2013\\_RadioMetroMap\\_hi-res.pdf](http://www.americanradiohistory.com/Archive-Arbitron/2013_RadioMetroMap_hi-res.pdf).

To determine the number of radio stations within a radio market, the FCC uses a database compiled and updated by BIA Kelsey, another market research firm.<sup>58</sup>

## Local Attribution Rules

Many licensees of commercial broadcast television and radio stations have relationships that allow others to exert substantial influence over the operation and finances of those licensees' stations. FCC rules prohibit unauthorized transfers of control of licenses, including de facto transfers of control.<sup>59</sup>

To help it enforce its media ownership rules, the FCC has developed attribution rules “to identify those interests in or relationships to licensees that confer a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.”<sup>60</sup> In such cases, the FCC may determine that an entity influences a broadcast station's operations and finances to a degree that triggers the FCC's media ownership rules, even when the FCC does not consider the entity to be the official licensee.

The following summarizes the media attribution rules, as described and modified in the 2017 Reconsideration Order, and related FCC policies.<sup>61</sup>

## Joint Sales Agreements

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. In 2016, the FCC adopted rules specifying 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.<sup>62</sup>

Congress subsequently twice extended the period by which parties must terminate a television JSA in order to comply with the FCC's rule limiting ownership of multiple television stations within a DMA (see “Local Television Ownership Rule (Television Duopoly Rule)”), ultimately extending the deadline to September 30, 2025.<sup>63</sup> The FCC's rules also specified that stations must file copies of attributable television JSAs with the commission.<sup>64</sup>

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<sup>58</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 9903-9904.

<sup>59</sup> 47 U.S.C. §310(d); 47 C.F.R. §73.3540.

<sup>60</sup> Federal Communications Commission, “Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy, Report and Order, FCC 99-207,” 14 *FCC Record* 12559, August 6, 1999. §103 of the Satellite Extension and Localism Reauthorization Act, also prohibits a television broadcast station from negotiating a retransmission consent contract jointly with another broadcast station in the same market, regardless of its audience size, unless the FCC considers the stations to be directly or indirectly owned, operated, or controlled by the same entity. Thus, the FCC's attribution rules affect a station's retransmission consent negotiations.

<sup>61</sup> Current broadcast attribution rules, which were not addressed in either the 2014 Quadrennial Review nor the 2017 Reconsideration, are listed in 47 C.F.R. §73.3555, Note 2.

<sup>62</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 9888-9890. The FCC proposed attributing television JSAs in 2004, and revisited the issue in 2011, but did not make a final decision. Federal Communications Commission, “Attribution of TV JSAs, NPRM, FCC 04-173,” 19 *FCC Record* 15238, July 2, 2004; Federal Communications Commission, “2010 Quadrennial Review, NPRM, FCC 11-186,” 26 *FCC Record* 17489, 17565-17566, December 22, 2011.

<sup>63</sup> Consolidated Appropriations Act, 2016, §626, (2015). The first extension was through December 19, 2016, per §104 of the 2014 Satellite Television Extension and Localism Act ().

<sup>64</sup> Once the media ownership and attribution rules become effective, 30 days after the FCC publishes them in the *Federal Register*, broadcast station licensees must file the JSAs with the commission. 2014 Quadrennial Review 2<sup>nd</sup>

In its 2017 Reconsideration Order, which the U.S. Supreme Court upheld, the FCC eliminated the television JSA attribution rule.<sup>65</sup> The FCC determined that

JSA's can promote the public interest, and that this provides an independent reason for eliminating the Television JSA Attribution Rule.... [They] have created efficiencies that benefit local broadcasters—particularly in small- and medium-sized markets—and have enabled these stations to better serve their communities.”<sup>66</sup>

With the repeal of the JSA attribution rule, broadcast television stations are no longer required to file copies of their JSAs with the FCC.<sup>67</sup> However, broadcast television stations must still make copies of JSAs available in their public inspection files.<sup>68</sup> These files are available for review on the FCC website.<sup>69</sup> AJSA among commercial radio stations, whereby one station sells 15% or more of another same-market station’s advertising time, is attributable for the purpose of applying the local radio ownership rule.<sup>70</sup>

### *Disclosure of Sharing Agreements*

In August 2016, the FCC adopted new disclosure requirements for all joint operating agreements, broadly encompassed by the term *shared services agreements* (SSAs) among broadcast television stations.<sup>71</sup> In its 2017 Reconsideration Order, the FCC upheld the SSA disclosure rule,<sup>72</sup> which became effective in March 2018.<sup>73</sup> Because the Supreme Court upheld the FCC’s 2017 Reconsideration Order, the SSA disclosure rule remains in effect.

The FCC defines an SSA as

any agreement or series of agreements, whether written or oral, in which

- (1) a station provides any station-related services including, but not limited to, administrative, technical, sales, and/or programming support, to a station that is not directly or indirectly under common *de jure* control permitted under the [FCC’s] regulations; or
- (2) stations that are not directly or indirectly under common *de jure* control permitted under the [FCC’s] regulations collaborate to provide or enable the provision of station-related services, including, but not limited to, administrative, technical, sales, and/or programming support, to one or more of the collaborating stations.

In this definition, the term *station* includes the licensee, including any subsidiaries and affiliates, and any other individual or entity with an attributable interest in the station.

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R&O, p. 9888-9989, n. 168.

<sup>65</sup> 2017 Quadrennial Review Order on Recon and NPRM, pp. 9846-9854.

<sup>66</sup> 2017 Quadrennial Review Order on Recon and NPRM, p. 9852.

<sup>67</sup> 2017 Quadrennial Review Order on Recon and NPRM, p. 9873 (Revising *Filing of Contracts* regulation 47 C.F.R. §73.3613(d)(2) to specify that only attributable broadcast radio JSAs need be filed with the FCC).

<sup>68</sup> 47 C.F.R. §73.3526(3)(16). The rule applies to agreements involving stations in the same or different markets.

<sup>69</sup> FCC, “Public Inspection Files,” at <https://publicfiles.fcc.gov/>.

<sup>70</sup> 47 C.F.R. §73.3555, Note 2. The FCC decided to attribute radio JSAs in 2003. Federal Communications Commission, 2002 Biennial Review, p. 13620.

<sup>71</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 10008-10023.

<sup>72</sup> 2017 Quadrennial Review Order on Recon and NPRM, pp. 9855-9857.

<sup>73</sup> Federal Communications Commission, “2014 Quadrennial Regulatory Review, Final Rule,” 83 *Federal Register* 12680, March 23, 2018.

Each station that is a party to an SSA, whether in the same television market or different markets, must file a copy of the SSA in its online public inspection file.<sup>74</sup> The stations may redact confidential or proprietary information. The stations must also report the substance of oral SSAs in writing to the FCC. SSA disclosure requirements do not apply to noncommercial television stations, radio stations, and newspapers.

The FCC declined to make SSAs attributable, and emphasized that its action was “not a pretext for future regulation of SSAs.”<sup>75</sup> The FCC stated that any consideration of the regulatory status of these agreements in the future “must reflect significant study and understanding of the impact of these agreements on station operations and a complete account of the public interest benefits these agreements help facilitate.”

### ***Rescission of Media Bureau’s Sidecar Policy Statement***

Broadcast stations that outsource management to other stations are known as *sidecars*.<sup>76</sup> In March 2014, the FCC’s Media Bureau issued a public notice stating that it would closely scrutinize any proposed transaction that includes sidecar agreements in which two (or more) broadcast stations in the same market enter into an arrangement to share facilities, employees, and/or services, or to jointly acquire programming or sell advertising *and* enter into an option, right of first refusal, put/call arrangement, or other similar contingent interest, or a loan guarantee.<sup>77</sup> In February 2017, the FCC’s Media Bureau rescinded this guidance.<sup>78</sup>

## **Application of National Ownership Rules**

### **Counting Television Households**

Nielsen ranks each DMA by the estimated number of television households. Beginning in January 2021, Nielsen included “broadband-only” households for the purposes of estimating the number of “television households” within each DMA.<sup>79</sup> That is, it includes households that receive television only via the Internet as well as those that receive over-the-air broadcast transmission or subscribe to cable and/or satellite television services.<sup>80</sup>

The addition of broadband-only households in Nielsen’s local “television household” estimates means that some television markets are reported as having a larger “reach” than they did previously, while others have a smaller reach. For example, Nielsen estimated that as of January 2020, the Atlanta DMA contained about 2.3 million television households, reaching 2.12% of the

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<sup>74</sup> 47 C.F.R. §73.3526(3)(18).

<sup>75</sup> 2017 Quadrennial Review Order on Recon and NPRM, p. 9857.

<sup>76</sup> Keach Hagey, “Market Share: ‘Sidecar’ Deals Test Law on TV Station Consolidation,” *Wall Street Journal*, October 21, 2013.

<sup>77</sup> Federal Communications Commission, “Broadcast TV Applications Proposed Sharing Arrangements,” 29 *FCC Record* 2647, 2648, March 12, 2014.

<sup>78</sup> Federal Communications Commission, “Public Notice, DA 17-130,” 32 *FCC Record* 1105, February 3, 2017.

<sup>79</sup> Lisa Niemeyer, “Broadband Only Homes and Impression Buying in Spot TV,” *MMi*, March 23, 2021, at [https://www.mediaaudit.com/post/broadband-only-homes-and-impressions-buying-in-spot-tv#:~:text=Broadband%20Only%20Homes%20are%20TV,Cable%2FSatellite%20\(ADS\).&text=The%20Nielsen%20definition%20also%20includes,called%20%E2%80%9CBBO%20qualified%E2%80%9D%20homes](https://www.mediaaudit.com/post/broadband-only-homes-and-impressions-buying-in-spot-tv#:~:text=Broadband%20Only%20Homes%20are%20TV,Cable%2FSatellite%20(ADS).&text=The%20Nielsen%20definition%20also%20includes,called%20%E2%80%9CBBO%20qualified%E2%80%9D%20homes).

<sup>80</sup> *Ibid.* For the purposes of measuring viewership of local television stations, Nielsen will only include broadband only households that are able to receive *local television programming* via the Internet until October 2022.

107 million U.S. television households, making it the 10<sup>th</sup> largest DMA in the country.<sup>81</sup> In contrast, Nielsen estimated that as of January 2021, when it included broadband-only households, the Atlanta market was the seventh-largest DMA in the country, with 2.6 million television households, representing 2.19% of the 121 million U.S. television households.

The FCC uses Nielsen's estimates of television households to determine the national audience reach of a company's total broadcast television stations when applying the national ownership cap.

## UHF Discount

In 1985 the FCC adopted a rule that, for the purpose of applying its national ownership rule, discounted the number of television households reached within a DMA by stations operating in the Ultra High Frequency (UHF) band by half in measuring a station owner's reach. This adjustment reflected the physical limitations of UHF signals, which generally provided poorer picture quality than signals in the Very High Frequency (VHF) band at the time the FCC adopted the rule.<sup>82</sup> As of September 30, 1985, 41.2% of the 920 commercial stations operated in the UHF band.<sup>83</sup>

On June 12, 2009, however, broadcast television stations completed a transition from analog to digital service pursuant to a statutory mandate.<sup>84</sup> Following this switch, UHF stations had a technological advantage, and more broadcast television licenses began to operate on these frequencies. By December 2009, 73% of the 1,392 commercial stations operated in the UHF band.<sup>85</sup> As of March 2021, the percentage has remained stable: 72.5% of the 1,374 commercial stations in operation are in the UHF band.<sup>86</sup> Several licensees have successfully petitioned the FCC to change the channels of broadcast stations from VHF to UHF frequencies, and more may continue to do so.<sup>87</sup> For example, in May 2021, the FCC granted a petition filed by Gray Television to change the channel allotted to its station licensed to serve Lubbock, TX, noting that

Gray states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, and that many of [Gray's] viewers experience significant difficulty receiving [the station's] signal ... The [Media] Bureau believes the public interest would be served because it will result in improved service.<sup>88</sup>

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<sup>81</sup> CRS estimates of DMA household reach based on data from the Nielsen Company. The Nielsen Company, "Local Television Market Universe Estimates Comparisons of 2019-2020 and 2020-2021 Market Ranks," available at <https://azbroadcasters.org/2020/10/16/nielsen-releases-2021-tv-estimates-for-arizona/>.

<sup>82</sup> Federal Communications Commission, "Amendment of Section 73.3555 [formerly Sections 73.35, 73.240 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Memorandum Opinion and Order," 100 *FCC Reports, 2<sup>nd</sup> Series*, 74, 92-94, February 1, 1985 (1985 TV Ownership Reconsideration).

<sup>83</sup> Federal Communications Commission, *51<sup>st</sup> Annual Report: Fiscal Year 1985*, Washington, DC, 1985, p. 21.

<sup>84</sup> 47 U.S.C. §309(j)(14)(A). Full-power analog television service therefore has terminated.

<sup>85</sup> Federal Communications Commission, "Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Fourteenth Report, FCC 12-81," 27 *FCC Record* 8610, July 20, 2012.

<sup>86</sup> Federal Communications Commission, "Broadcast Totals as of March 31, 2021," available at <https://www.fcc.gov/edocs/search-results?t=advanced&titleText=broadcast%20station%20totals>.

<sup>87</sup> A search in the database "Lexis+" of FCC Reports and Orders featuring the search terms "Amendment of Section 73.622 (i)" and "Post-Transition Table of Allotments" from 2016 through 2021 results in a list of 23 such successful petitions in communities throughout the United States.

<sup>88</sup> Federal Communications Commission, "Television Broadcasting Services Lubbock, Texas," 86 *Federal Register*

In September 2013, under then-Acting FCC Chairwoman Mignon Clyburn, the FCC proposed eliminating the UHF discount, citing the completed transition to digital broadcasting.<sup>89</sup> In September 2016, the FCC, under then-Chairman Thomas Wheeler, eliminated the UHF discount effective November 2016.<sup>90</sup> In a dissenting statement, then-Commissioner Ajit Pai contended that the FCC lacked the authority to review the UHF discount without simultaneously reviewing the national audience cap.<sup>91</sup> In April 2017, after Commissioner Pai became chairman, the FCC reinstated the UHF discount.<sup>92</sup> In December 2017, the FCC launched a new rulemaking proceeding to examine whether to modify or rescind the UHF discount and national ownership cap.<sup>93</sup> As of May 2021, that proceeding remains open.<sup>94</sup>

With the discount, a single entity that owns exclusively UHF stations could effectively reach 78% of U.S. television households, or double the current national ownership cap of 39% of U.S. television households. Based on Nielsen's 2021 estimates of television households, the largest owner of broadcast television stations, Nexstar Media Group, Inc., reaches 62.0% of U.S. television households with its owned and operated stations without the UHF discount and 38.2% of U.S. television households with the discount.<sup>95</sup> For more information about the history of the UHF discount and national ownership cap, see **Table A-1**.

## Remote Shared Services, Joint Sales, Operating, and Financial Agreements

When parties request that the FCC allow them to transfer broadcast television licenses, they must ensure that they comply with all FCC rules, including the FCC's media ownership rules. In the event of a transfer of operational and financial agreements involving broadcast stations, rather than an actual license, the parties need not discuss how such arrangements relate to the national ownership rule. In contrast to its attribution rules regarding local media ownership, the FCC has not issued a formal rulemaking regarding its treatment of sharing, sales, operating, and financial agreements, with respect to national media ownership. Instead, it has either articulated its policy on an ad hoc basis in reviewing merger applications, or remained silent. The following summarizes past decisions by the FCC's Media Bureau and commissioners regarding these relationships.

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24339-24340, May 6, 2021.

<sup>89</sup> Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's National Television Multiple Ownership Rule," 28 *FCC Record* 14324, September 26, 2013.

<sup>90</sup> Federal Communications Commission, "National Television Multiple Ownership Rule, Final Rule, FCC 16-116," 81 *Federal Register* 73035, October 23, 2016.

<sup>91</sup> Federal Communications Commission, "National Television Multiple Ownership Rule, Report and Order, FCC 16-116," 31 *FCC Record* 10213, 10247-10248, September 7, 2016 (2016 UHF Discount Order).

<sup>92</sup> Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Order on Reconsideration, FCC 17-40," 32 *FCC Record* 3390, April 21, 2017.

<sup>93</sup> Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Notice of Proposed Rulemaking, FCC 17-169," 32 *FCC Record* 10785, December 18, 2017.

<sup>94</sup> Federal Communications Commission, "Search for Filings, Docket Number MB 17-318," at [https://www.fcc.gov/ecfs/search/filings?proceedings\\_name=17-318&sort=date\\_disseminated,DESC](https://www.fcc.gov/ecfs/search/filings?proceedings_name=17-318&sort=date_disseminated,DESC) (visited May 7, 2021).

<sup>95</sup> CRS estimates based on data from the Nielsen Company and Nexstar Media Group, Inc. company data. Nexstar Media Group, Inc., "Stations," at <https://www.nexstar.tv/stations/> (visited May 7, 2021).

## Tribune Operation of Stations in Virginia and Pennsylvania

In 2013, when Local TV LLC applied to the FCC to transfer control of its broadcast television station licenses to Tribune Media Company and Dreamcatcher Broadcasting LLC, Tribune proposed that Dreamcatcher would be the new licensee of Local TV's stations in the Norfolk-Portsmouth-Newport News, VA, and Wilkes-Barre-Scranton-Hazleton, PA, television markets. Tribune, however, would operate the stations pursuant to shared services agreements (but not joint sales agreements) with Dreamcatcher. The FCC's media bureau (but not the full commission)

[d]isagree[d] with [opponents of the proposed arrangement] that the facts here show that Tribune will be operating the Dreamcatcher Stations as though it owned them outright. Dreamcatcher will be run by a highly experienced broadcaster, with established independence from Tribune.<sup>96</sup>

Because Tribune already owned newspapers in those markets, in order to comply with the FCC's now-defunct rule prohibiting common ownership of newspapers and television stations within the same DMA (described in "Newspaper/Broadcast Cross-Ownership Rule"), it did not try to take control of the broadcast licenses in those markets. However, FCC's Media Bureau staff did not directly address how its determination that Tribune would not exercise control over the Dreamcatcher stations applied to compliance with the national ownership rule.<sup>97</sup>

## Sinclair Operation of Stations in Pennsylvania and Florida

In September 2013, Sinclair Broadcast Group and New Age Media announced that the companies had entered into an agreement whereby Sinclair would acquire New Age's television stations, including two stations in the Wilkes-Barre-Scranton-Hazleton, PA, and one station in the Gainesville, FL, markets.<sup>98</sup> In addition, the licensee of stations that New Age operated pursuant to joint sales and sharing agreements in those two markets, MPS, agreed to transfer the licenses of those stations to another company, which would then enter into joint sales and sharing agreements with Sinclair. This arrangement would have enabled Sinclair to, in effect, operate four stations in the Pennsylvania market and two in the Florida market.

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<sup>96</sup> Federal Communications Commission, "Applications of Local TV Holdings, LLC, Transferor and Tribune Broadcast Company II, LLC, Transferee and Dreamcatcher Broadcasting, LLC, Transferee for Consent to Transfer of Control of Certain Licensee Subsidiaries of Local TV Holdings, LLC, Memorandum Opinion and Order, DA 13-2422," 28 *FCC Record* 16850, 16857, December 20, 2013.

<sup>97</sup> In connection with Nexstar's 2018 merger agreement to acquire Tribune's stations and assets (described in "Nexstar Operation and Financing of Station in New York City"), Tribune exercised its options to purchase the licenses of WTKR(DT) and WGNT(DT) in the Norfolk-Portsmouth-Newport News, VA DMA, and WNEP-TV the Wilkes-Barre-Scranton-Hazleton, PA DMA. Concurrently with Tribune's exercise of the purchase option, it transferred control of the Virginia licenses to Scripps Broadcasting Holdings, Inc. and the Pennsylvania license to TEGNA Broadcasting, LLC. Federal Communications Commission, "Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee), et. al. for Transfer of Control of Tribune Media Company to Nexstar Media Group, Inc. and Assignment of Certain Broadcast Licenses and Transfer of Control of Certain Entities Holding Broadcast Licenses, Memorandum Opinion and Order, FCC 18-89," 34 *FCC Record* 8437, 8440-8441, September 16, 2019. (2019 Nexstar-Tribune Order.)

<sup>98</sup> Sinclair Broadcast Corporation, "Sinclair Broadcast Group Announces Agreement to Purchase New Age Media TV Stations," press release, September 25, 2013, <https://www.prnewswire.com/news-releases/sinclair-broadcast-group-announces-agreement-to-purchase-new-age-media-tv-stations-225233272.html>.

In October 2014, the parties requested that the FCC dismiss their applications for transfer of the stations' licenses.<sup>99</sup> The agency dismissed the applications in November 2014.<sup>100</sup> Nonetheless, Sinclair completed its purchase of non-license assets from New Age Media in November 2014.<sup>101</sup> In addition, Sinclair entered services agreements with New Age Media and other licensees of stations in the Wilkes-Barre–Scranton–Hazleton, PA, and Gainesville, FL, markets.<sup>102</sup> Because the purchase of the non-license assets did not require FCC approval, the agency did not issue a written statement regarding how it would view Sinclair's interests with respect to the national cap on broadcast station ownership.

### Proposed (and Rejected) Sinclair Operation of Station in Chicago, IL

Four years later, in June 2017, Sinclair and Tribune Media applied to the FCC to transfer control of Tribune's broadcast licenses to Sinclair.<sup>103</sup> In 2018, the companies filed a new set of applications to divest certain stations to third parties, in order to comply with the FCC's media ownership rules.<sup>104</sup> Among other stations, the companies proposed to divest WGN-TV, in the Chicago television market, to Steven Fader, the CEO of a car dealership group in which Sinclair's executive chairman, David Smith, holds a controlling interest and on whose board of directors he serves.<sup>105</sup> Under the terms of the parties' agreement, Steven Fader was to pay \$60 million for the station's license, while Sinclair would pay Tribune for WGN-TV's non-license assets, program the station, sell the station's advertising, and retain an option to purchase the station's license within an eight-year period.<sup>106</sup>

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<sup>99</sup> See, for example, Letter from Daniel A. Kirkpatrick, Counsel, New Age Media of Pennsylvania License, LLC; Fletcher, Health, and Hildreth, to Marlene H. Dortch, Secretary, Federal Communications Commission, October 31, 2014, at [http://licensing.fcc.gov/cgi-bin/prod/cdb/forms/prod/getimportletter\\_exh.cgi?import\\_letter\\_id=54340](http://licensing.fcc.gov/cgi-bin/prod/cdb/forms/prod/getimportletter_exh.cgi?import_letter_id=54340).

<sup>100</sup> See, for example, Federal Communications Commission, Licensing and Management System, File Number BALCDT-20130925AOH, at <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicAppSearchResults.html> (indicating the FCC dismissed the application for transfer of control of the license of WOLF-TV in the Wilkes-Barre–Scranton–Hazleton, PA television market from New Age Media to Sinclair on November 14, 2014).

<sup>101</sup> Sinclair Broadcast Group Inc., SEC Form 10-K for the Year Ended December 31, 2015, p. 41.

<sup>102</sup> Master Services Agreement between Sinclair Broadcast Group Inc. and New Age Media of Pennsylvania License, LLC signed October 31, 2014 at <https://publicfiles.fcc.gov/tv-profile/wolf-tv/time-brokerage-agreements/ecc896e7-6989-9096-f0f4-8b0558faafcf/>. Joint Amendment to Joint Sales and Shared Services Agreements between MPS Media of Gainesville License, LLC; MPS Media of Tallahassee License, LLC; MPS Media of Pennsylvania License, LLC; and Sinclair Television Group, Inc. made September 1, 2015 (referencing previous amendment made October 31, 2014) at <https://publicfiles.fcc.gov/tv-profile/wswb/joint-sales-agreements/1bed5250-3746-e553-1347-5e74f377b4db/>. Master Services Agreement between Sinclair Broadcast Group Inc. and New Age Media of Gainesville License, LLC signed October 31, 2014 at <https://publicfiles.fcc.gov/tv-profile/wgfl/time-brokerage-agreements/3b22effa-7844-769a-e100-db3fcd6b632/>.

<sup>103</sup> Federal Communications Commission, General Counsel, "Sinclair and Tribune, MB Docket 17-179," at <https://www.fcc.gov/transaction/sinclair-tribune>.

<sup>104</sup> Federal Communications Commission, "Media Bureau Establishes Consolidated Pleading Cycle for Amendments to the June 26, 2017, Applications to Transfer Control of Tribune Media Company to Sinclair Broadcast Group, Inc., Related New Divestiture Applications, and Top-Four Showings in Two Markets, Public Notice, DA 18-530" 33 *FCC Record* 4960, 4961 May 21, 2018.

<sup>105</sup> FCC Form 314 Application for Transfer of Control from WGN Continental Broadcasting Company, LLC to WGN Licensee, LLC, dated April 28, 2018, at <https://publicfiles.fcc.gov/api/service/tv/application/1783802.html>. (2018 WGN License Transfer Application) See also Joe Flint and John McKinnon, "Sinclair Faces Federal Resistance Over Proposed Purchase of Tribune Media," *Wall Street Journal*, April 10, 2018, at <https://www.wsj.com/articles/sinclair-faces-fcc-resistance-over-tribune-purchase-1523387359?mod=djemalertNEWS>.

<sup>106</sup> 2018 WGN License Transfer Application, Attachment 5.

In July 2018, the FCC found that the proposed transaction would not be in the public interest and voted to designate it for a hearing before an FCC administrative law judge.<sup>107</sup> According to the FCC, the proposal raised “significant questions as to whether those proposed divestitures were in fact ‘sham’ transactions.”<sup>108</sup> Specifically, the commissioners stated that the proposed divestiture of WGN-TV could effectively be a “sham” transaction because:

1. the proposed buyer had no previous experience in broadcasting,
2. the proposed buyer served as CEO of an automotive dealer holding company in which Sinclair’s executive chairman had a controlling interest,
3. the automotive dealer holding company was both a tenant and advertiser of Sinclair,
4. the proposed buyer would have purchased the station at a price that appeared to be significantly below market value,<sup>109</sup>
5. Sinclair would have had an option to buy back the station in the future,
6. Sinclair would have owned most of WGN-TV’s assets, and
7. pursuant to a number of agreements, Sinclair would have been responsible for many aspects of the station’s operation.<sup>110</sup>

Although the parties withdrew the divestiture applications prior to the FCC’s vote of its hearing designation order, the commissioners nonetheless found that material questions remained regarding whether “Sinclair engaged in misrepresentation and/or lack of candor in its applications with the Commission.”<sup>111</sup> As the FCC noted,

While each of the individual agreements discussed herein (e.g., JSAs, SSAs, options, and loan guarantees) would not, standing alone, give rise to a substantial and material question as to the issues of real party in interest, they do give rise to such a question when considered together and combined with the other factors discussed herein.<sup>112</sup>

In August 2018, Tribune terminated the merger agreement with Sinclair.<sup>113</sup>

## **Nexstar Operation and Financing of Station in New York City**

In December 2018, Tribune reached an agreement with Nexstar Broadcasting, Inc. to sell its broadcast licenses and assets. In order to comply with the FCC’s national media ownership rules, the parties filed an application with the FCC to divest several licenses, including WPIX in the

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<sup>107</sup> Federal Communications Commission, “Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) for Transfer of Control of Tribune Media Company and Certain Subsidiaries WDCW(TV), et. al. and for Assignment of Certain Licenses from Tribune Media Company and Certain Subsidiaries, Hearing Designation Order, FCC 18-200,” 33 *FCC Rcd* 6830, July 19, 2018.

<sup>108</sup> *Ibid.*

<sup>109</sup> For example, the FCC stated, in 2002 Fox Television Stations, Inc. purchased WPWR-TV, Chicago, IL, for \$425,000,000—over seven times the sales price for WGN-TV. *Ibid.*, p. 6837.

<sup>110</sup> *Ibid.*, pp. 6830-6831, 6833.

<sup>111</sup> *Ibid.*, pp. 6831, 6835.

<sup>112</sup> *Ibid.*, p. 6835, n. 41.

<sup>113</sup> Sinclair Broadcast Group, Inc., “Sinclair Tribune Merger Terminated; Sinclair Files with FCC to Withdraw Merger Application and Files a Motion to Terminate the Hearing Before the Administrative Law Judge,” press release, August 9, 2018, <https://sbgi.net/pr-news/sinclair-tribune-merger-agreement-terminated-sinclair-files-with-the-fcc-to-withdraw-the-merger-application-and-files-a-motion-to-terminate-the-hearing-before-the-administrative-law-judge/>.

New York television market—the largest in the country—to Scripps Broadcast Holdings, Inc.<sup>114</sup> The companies' asset purchase agreement (dated March 20, 2019) included an option for Nexstar to purchase all of WPIX's assets from Scripps at any time between March 31, 2020, and December 31, 2021.<sup>115</sup> Nexstar agreed to pay an option purchase price of \$75 million, plus an escalation amount per day from the date of the option agreement until the completion of the acquisition.<sup>116</sup> In September 2020, Nexstar assigned its rights under the option agreement to Mission Broadcasting, Inc., which in turn exercised the option to purchase WPIX's assets, including the license.

Scripps and Mission subsequently filed an application with the FCC to assign WPIX's license to Mission.<sup>117</sup> The FCC's Media Bureau granted approval in December 2020.<sup>118</sup> As Mission's FCC application and Nexstar's annual 10-K filing with the Securities and Exchange Commission note, Nexstar and Mission have the following relationships:

- Nexstar is a guarantor of Mission's senior credit facility.<sup>119</sup>
- Nexstar programs WPIX 24 hours per day, 7 days per week; sells the station's advertising time; and represents the station in retransmission consent negotiations.<sup>120</sup>
- Nexstar has an option to purchase WPIX's assets.<sup>121</sup>

Mission paid \$88.1 million in cash for WPIX's assets in December 2020, through a combination of borrowing from its revolving credit facility and cash on hand.<sup>122</sup> Research firm S&P Global estimates that WPIX generated about \$144.6 million in revenue in 2020. As a point of comparison, S&P Global estimates that WXTV, another New York station, generated \$173 million in 2020, and that an investor group purchased the station's assets for \$491.1 million in December 2020—more than 5.6 times what Mission paid for WXTV.<sup>123</sup> Thus, similarly to the instance described in “Proposed (and Rejected) Sinclair Operation of Station in Chicago, IL,” this price appears to be significantly below the station's market value.

Nonetheless, as Nexstar stated in its SEC Form 10-K, its relationship with WPIX in New York is not attributable when the FCC evaluates the company's national reach because Nexstar does not

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<sup>114</sup> 2019 Nexstar-Tribune Order, pp. 8441-8442. The other stations are in the Miami, FL, and Phoenix, AZ, television markets.

<sup>115</sup> WPIX, LLC FCC Form 314 Application for Consent to Assignment of Broadcast Station Construction Permit or Licensee, Attachment 5, Asset Purchase Agreement, Exhibit D, April 3, 2019, at <https://publicfiles.fcc.gov/api/service/tv/application/1802309.html>.

<sup>116</sup> *Ibid.*, Article I, §1.3(b).

<sup>117</sup> Scripps Media, Inc. FCC Form 314 Application for Consent to Assignment of Broadcast Station Construction Permit or Licensee, September 1, 2020, at <https://publicfiles.fcc.gov/api/service/tv/application/1819389.html>.

<sup>118</sup> Federal Communications Commission, “Public Notice, Broadcast Actions,” p. 2, December 4, 2020, at <https://docs.fcc.gov/public/attachments/DOC-368530A1.pdf>.

<sup>119</sup> *Ibid.*

<sup>120</sup> Local Programming and Marketing Agreement Between Mission Broadcasting, Inc. (Licensee) and Nexstar Inc., dated December 30, 2020, §2 (programming), §3 (revenues), at <https://publicfiles.fcc.gov/tv-profile/wpix/time-brokerage-agreements/3dd386c5-6769-392f-2afa-341d914cfb99/>.

<sup>121</sup> Nexstar Media Group, Inc. SEC Form 10-K for the Period Ended December 31, 2020, p. 51, at [https://www.sec.gov/ix?doc=/Archives/edgar/data/0001142417/0001142417000156459021009747/nxst-10k\\_20201231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/0001142417/0001142417000156459021009747/nxst-10k_20201231.htm). (Nexstar 2020 SEC Form 10-K.)

<sup>122</sup> *Ibid.*, p. F-30.

<sup>123</sup> S&P Global Marketplace database (available by subscription).

own a station in that market.<sup>124</sup> If the FCC were to consider WPIX attributable to Nexstar, the company's national ownership reach, based on Nielsen's 2021 estimates of U.S. television households, would be 44% with the UHF discount, and 68.1% without it, thereby exceeding the national ownership cap in either case.<sup>125</sup>

## Ownership Rules Subject to Quadrennial Review

The FCC has had five distinct sets of rules governing ownership of multiple media outlets in a single market: (1) local television ownership rules (known as the television duopoly rules); (2) local radio ownership rules; (3) radio/television cross-ownership rules; (4) newspaper/broadcast cross-ownership rules; and (5) the dual network rule.

### Local Television Ownership Rule (Television Duopoly Rule)

The local television ownership rule (known as the television duopoly rule) limits 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 include two of the four most widely watched stations within the market. The FCC may make exceptions to the "top four" prohibition on a case-by-case basis, depending on the conditions in a particular DMA.

The FCC initially adopted a TV duopoly rule in 1941, barring a single entity from owning two or more broadcast television stations that "would substantially serve the same area."<sup>126</sup> In 1964, the FCC adopted the signal overlap component of the rules. The FCC sought to limit "future ownership to a maximum of two stations in most states and, thus ... act indirectly to curb regional concentrations of ownership as well as overlap itself."<sup>127</sup>

In 1999, the FCC adopted the "top four ranked/eight voices" test, under which it would approve a merger among two of the "top four" stations so long as at least eight independently owned and operating commercial or noncommercial full-power broadcast television stations would remain in the DMA after the proposed combination was consummated. It also adopted waiver criteria.<sup>128</sup> 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. The rules apply to the stations' ranking at the time they apply for common ownership. While making some technical modifications, the FCC retained the television duopoly rules in 2016.<sup>129</sup>

In its 2017 Reconsideration Order, the FCC eliminated the "eight voices" component of the test.<sup>130</sup> Furthermore, it decided that in applying the restriction on ownership of two top-four-ranked stations in the same market, it would conduct case-by-case evaluations to account for

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<sup>124</sup> Nexstar 2020 SEC Form 10-K, p. 18.

<sup>125</sup> CRS estimates based on data from Nexstar Media Group corporate website and the Nielsen Company.

<sup>126</sup> Federal Communications Commission, "Part 4—Broadcast Services Other Than Standard Broadcast," 6 *Federal Register* 2282, 2284-2285, May 6, 1941. This was the year that commercial television service first became available in the United States.

<sup>127</sup> Federal Communications Commission, "Multiple Ownership of Standard, FM, and Television Broadcast Stations, FCC 64-445," 29 *Federal Register* 7535, 7537, June 12, 1964.

<sup>128</sup> Federal Communications Commission, "Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, Report and Order, FCC 99-209," 14 *FCC Record* 12903, 12931-12941, August 6, 1999 (1999 Media Ownership R&O).

<sup>129</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 9870-9896.

<sup>130</sup> 2014 Quadrennial Review Order on Recon and NPRM, pp. 9831-9840.

circumstances in which the application of the prohibition may be unwarranted. The FCC found that the modification to the television duopoly rule would not be likely to harm minority and female ownership of broadcast stations.

**Table 1** summarizes the rules, including waiver circumstances.

**Table 1. Local TV Ownership (Duopoly) Rule**  
Permitted Combinations of TV Stations in a Market

Top-Four Prohibition	Signal Overlap	Waiver Criteria	Notes
Generally, at least one of the stations is not among the four highest-ranked stations in the DMA.	Or the digital noise limited service contours (NLSC) of the stations do not overlap.	<p>On a case-by-case basis, the FCC will consider waivers if</p> <p>(1) one station failed/is failing. Applicants must demonstrate that an in-market buyer is the only entity ready, willing, and able to operate the station, and that sale to a buyer outside of the market would result in an artificially depressed price.<sup>a</sup></p> <p>or</p> <p>(2) the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so.</p> <p>The FCC may consider waivers to the top-four prohibition on a case-by-case basis. An applicant may request that the FCC determine whether permitting it to directly or indirectly own, operate, or control, two television stations licensed in the same DMA would serve the public interest, convenience, and necessity, due to specific circumstances in a local market or with respect to a specific transaction.<sup>b</sup></p>	Stations cannot switch broadcast network affiliations if the switch would result in one party directly or indirectly owning, operating, or controlling two of the top-four-rated television stations within the DMA at the time of the agreement.

**Sources:** 47 C.F.R. §73.3555(b); 47 C.F.R. §73.3555, Note 7; 2014 Quadrennial Review 2<sup>nd</sup> R&O; 2017 Quadrennial Review Order on Recon and NPRM, pp. 9838-9839.

a. A station is considered “failed” if it has not been in operation due to financial distress for at least four consecutive months immediately prior to the application, or is a debtor in an involuntary bankruptcy or

insolvency proceeding at the time of the application. A station is considered to be “failing” if it has an all-day audience share of no more than 4% and has had negative cash flow for three consecutive years immediately prior to the application. The Failed Station Solicitation Rule requires licensees seeking to apply for a failed station/failing station waiver of the television duopoly rules to notify the public that a failed/failing station is for sale and to demonstrate that it was unsuccessful in securing an out-of-market buyer for the station.

- b. Information that would make such a case could include, but is not limited to, the following: (1) station ratings share data; (2) station revenue share data, including advertising (on-air and digital) and retransmission consent fees; (3) market characteristics, such as population and the number and types of broadcast television stations; (4) likely effects on programming meeting the needs and interests of the community; and (5) any other circumstances affecting the market.

## Relief from Rule

In 2016, the FCC retained its “failed station/failing station” waiver test. Under this policy, to obtain a waiver of the local television (duopoly) rule, an applicant must demonstrate that (1) one of the broadcast television stations involved in the proposed transaction is either failed or failing; (2) the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station; and (3) selling the station to an out-of-market buyer would result in an artificially depressed price.<sup>131</sup> The FCC declined to relax its criteria for determining whether a station is failing or failed, stating that parties might be able to manipulate the data used to determine the criteria.<sup>132</sup>

## Local Radio Ownership Rule

The local radio ownership rule limits ownership of radio stations serving the same geographic area. In 2017, the FCC adopted a presumptive waiver of the local radio ownership rule in limited circumstances.<sup>133</sup> In contrast to the television duopoly rule, the FCC does not have failed/failing station waiver criteria for the local radio ownership rule.<sup>134</sup>

FCC first adopted rules limiting ownership of FM radio stations serving “substantially the same service area” in 1940.<sup>135</sup> In 1943, the FCC adopted a rule limiting ownership of AM radio stations “where such station renders or will render primary service to a substantial portion of the primary service area of another [AM] broadcast station.”<sup>136</sup> In 1964, the FCC amended the rule to use the

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<sup>131</sup> 47 C.F.R. §73.3555, note 7.

<sup>132</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, p. 9891.

<sup>133</sup> 2014 Quadrennial Review Order on Recon and NPRM, pp. 9841-9845. Specifically, the FCC adopted a presumption in favor of applying a two-pronged test involving existing “parent markets” with multiple “embedded markets” (i.e., New York and Washington, DC). An embedded market is a suburban radio market that Nielsen separately identifies as a radio market for which it reports ratings. Radio stations licensed to communities in embedded markets are also considered part of a larger “parent” market encompassing an entire metropolitan area. Under the two-pronged test, the FCC reviews (1) whether the ownership of the stations in question complies with the ownership rules in the embedded market to which they are home (using the Nielsen data for that market), and (2) whether the ownership of the stations in question complies with the ownership rules using the contour methodology that would apply in nonrated markets. (Petition for Reconsideration of Connoisseur Media, LLC, 2014 Quadrennial Review, December 1, 2016, pp. 3-4, 13.

<sup>134</sup> Pursuant to §202(b)(2) of the Telecommunications Act of 1996, however, the FCC may, notwithstanding any ownership limits, permit a person or entity to own, operate, or control, or have a cognizable interest in, radio broadcast stations if the FCC determines that such ownership, operation, control, or interest will result in an increase in the number of radio broadcast stations in operation.

<sup>135</sup> Federal Communications Commission, “Part 3—Rules Governing Standard and High Frequency Broadcast Stations,” 5 *Federal Register* 2382, 2384, June 25, 1940.

<sup>136</sup> Federal Communications Commission, “Part 3—Rules Governing Standard and High Frequency Broadcast Stations: Multiple Ownership of Standard Broadcast Stations,” 8 *Federal Register* 16065-16066, November 27, 1943.

service contours of FM and AM stations to define the service area.<sup>137</sup> The FCC first adopted a rule limiting ownership of AM and FM stations serving the same area in 1970 and amended them in 1989.<sup>138</sup>

In 1992, to address the fact that many radio stations were facing difficult financial conditions, the FCC relaxed the radio ownership rule to establish numerical limits on radio station ownership based on the total number of commercial stations within a market, rather than on whether their signals overlapped.<sup>139</sup> Congress directed the FCC to set new caps, according to instructions in Section 202(b) of the Telecommunications Act of 1996. These limits, described in **Table 2**, remain in place today. In 2016, the FCC retained the local radio ownership rule, and in 2017 adopted a presumptive waiver of the rule under limited circumstances.<sup>140</sup>

**Table 2. Local Radio Ownership Rule**

Number of Commercial Radio Stations in Market	Number of Full Power Commercial and Noncommercial Radio Stations Under Common Ownership Permitted	Number of Stations Within Same Service (AM or FM) Under Common Ownership Permitted
45	8	5
30-44	7	4
15-29	6	4
14 or fewer	5	3

**Source:** 47 C.F.R. §73.3555(a).

**Note:** An entity may not own more than 50% of the stations in markets with 14 or fewer total stations, except that an entity always may own a single AM and single FM station in combination.

<sup>137</sup> Federal Communications Commission, “Multiple Ownership of Standard, FM, and Television Broadcast Stations, FCC 64-445,” 29 *Federal Register* 7535-7537, June 12, 1964. At the time, the FCC used a 1 mv/m signal contour for both AM and FM stations in its local radio ownership rules, arguing that the standards for both services were roughly comparable, because a 1 mv/m signal provided adequate levels of service in less-populated areas where overlap between co-owned stations was more likely to occur.

<sup>138</sup> Federal Communications Commission, “Amendment of Sections 73.35, 73.240 and 73.636 of the Commission Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, FCC 70-310, First Report and Order,” 5 *FCC Reports* 306, March 25, 1970 (1970 Cross Ownership R&O). Federal Communications Commission, “Amendment of Section 73.3555 of the Commission’s Rules, the Broadcast Multiple Ownership Rules, Report and Order, FCC 88-343,” 4 *FCC Record* 1723, February 22, 1989.

<sup>139</sup> Federal Communications Commission, “Revision of Radio Rules and Policies, Report and Order, FCC 92-97,” 7 *FCC Record* 2755, 2756-2757, 2757-2779, April 10, 1992.

<sup>140</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, p. 9897; 2014 Quadrennial Review Order on Recon and NPRM, pp. 9841-9845. The petition to reconsider filed by Connoisseur Media sought to modify, rather than repeal, the local radio ownership rule. Therefore, the 2014 Order on Reconsideration addressed the proposed modification, rather than a general review of the rule. As of May 2021, neither the Third Circuit nor the U.S. Supreme Court has addressed this modification directly.

## Clarifications

In 2016, the FCC clarified certain aspects of its local radio ownership rule. One of the clarifications related to the application of the rule in cases when Nielsen changes the boundaries of radio markets (i.e., Nielsen Audio Metros).<sup>141</sup> In another clarification, the FCC stated that in Puerto Rico, the FCC will use radio station signal contour overlaps, rather than the Nielsen Audio Metro, to apply the local radio ownership rule due to topographical and market conditions.<sup>142</sup>

## Radio/Television Cross-Ownership Rule

In 2017, the FCC eliminated the radio/television cross-ownership rule.<sup>143</sup> This rule prohibited an entity from owning more than two television stations and one radio station within the same DMA, unless the DMA met certain criteria.

The FCC found that it could no longer justify retention of the rule in light of broadcast radio's diminished contributions to viewpoint diversity and the variety of other media outlets that contribute to viewpoint diversity in local markets. The FCC reaffirmed its previous conclusion in 2016 that the radio/television cross-ownership rule is not necessary to promote competition or localism. The FCC also determined that the elimination of the rule would not likely have a negative impact on minority and female ownership.

## Newspaper/Broadcast Cross-Ownership Rule

The FCC repealed the newspaper/broadcast cross-ownership (NBCO) rule in 2017.<sup>144</sup> The rule prohibited common ownership of a daily print newspaper and a full-power broadcast station (AM, FM, or TV) if the station's service contour encompassed the newspaper's community of publication. The FCC found that prohibiting newspaper/broadcast combinations was no longer necessary to serve the agency's goal of promoting viewpoint diversity in light of the multiplicity of sources of news and information in the current media marketplace and the diminished role of daily print newspapers, and therefore did not serve the public interest. The FCC noted that given its conclusion in 2003 that the rule was not necessary to promote the goals of competition or localism, and could potentially hinder localism, viewpoint diversity had remained the principal rationale for maintaining the NBCO rule.

The FCC determined repealing the NBCO rule could potentially promote localism by enabling local news outlets to achieve efficiencies by combining resources needed to gather, report, and disseminate local news and information. Furthermore, the FCC concluded that eliminating the NBCO rule would not have a material impact on minority and female ownership.

## Dual Network Rule

The dual network rule (described in detail at 47 C.F.R. §73.658(g)) prohibits common ownership of two of the "top four" networks but otherwise permits common ownership of multiple broadcast

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<sup>141</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 9905-9906. The clarification relates to safeguards that the FCC previously adopted to deter parties from attempting to manipulate Nielsen Audio Metro market definitions for purposes of circumventing the local radio ownership Rule.

<sup>142</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, p. 9907. Nielsen considers Puerto Rico to be a single radio market.

<sup>143</sup> 2014 Quadrennial Review Order on Recon and NPRM, pp. 9824-9831.

<sup>144</sup> 2014 Quadrennial Review Order on Recon and NPRM, pp. 9806-9824.

networks.<sup>145</sup> Generally, the four broadcast networks covered by this definition are ABC, CBS, Fox, and NBC. The FCC did not address the dual network rule in its 2017 Reconsideration Order, and the rule therefore remains in effect.

The FCC first adopted this rule, which originally prohibited ownership of any two networks, with respect to radio in 1941, as part of the *Chain Broadcasting Report*.<sup>146</sup> The FCC directed the rule at NBC, the only company at that time with two radio networks. The FCC found that the operation of two networks gave NBC excessive control over its affiliated broadcast radio stations, and an unfair competitive advantage over other broadcast radio networks.<sup>147</sup> The FCC extended the dual network rule to television networks in 1946.<sup>148</sup>

Section 202(e) of the Telecommunications Act of 1996 directed the FCC to revise its dual network rule. Per the act, the FCC modified the rule to enable common ownership of two networks, including either of the two emerging networks in existence at that time, as long as one of the networks was not among the top four networks (i.e., ABC, CBS, FOX, and NBC).<sup>149</sup> In 2001, the FCC revised the rule to permit one of the four major networks to jointly own one of those emerging networks, which have since merged into the CW network.<sup>150</sup> Today, the CBS Corporation has a partial ownership interest in the CW broadcast network.<sup>151</sup> In 2016, the FCC retained the “dual network” rule without modification, in order to foster its goals of preserving competition and localism.<sup>152</sup>

**Table 3** summarizes the public-interest rationales for each of the media ownership rules.

<sup>145</sup> The rule provides the following: “A television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such dual or multiple networks are composed of two or more persons or entities that, on February 8, 1996, were ‘networks’ as defined in Section 73.3613(a)(1) of the Commission’s regulations (that is, ABC, CBS, Fox, and NBC).” 47 C.F.R. §73.658(g). Because the FCC does not directly regulate broadcast networks, the rule applies to the stations which affiliate with the networks.

<sup>146</sup> Federal Communications Commission, *Report on Chain Broadcasting*, Order No. 37, Docket No. 5060, May 1941, pp. 91-92, at [https://babel.hathitrust.org/cgi/pt?id=uc1.\\$b78643;view=1up;seq=8](https://babel.hathitrust.org/cgi/pt?id=uc1.$b78643;view=1up;seq=8).

<sup>147</sup> Federal Communications Commission, *Report on Chain Broadcasting*, pp. 70-73. The FCC repealed the rules for radio in 1977. Federal Communications Commission, “Review of Commission Rules and Regulatory Policies Concerning Network Broadcasting by Standard (AM) and FM Broadcast Stations, Report, Statement of Policy, and Order, FCC 77-206,” 63 *FCC Reports, Second Series* 674, March 23, 1977.

<sup>148</sup> Federal Communications Commission, “Part 3—Rules Governing Television Broadcast Stations,” 11 *Federal Register* 33, 37, January 1, 1946.

<sup>149</sup> Federal Communications Commission, “Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations) 47 C.F.R. Sections 73.658(g) and 73.3555, Order, FCC 96-91,” 11 *FCC Record* 12374, 12376, March 8, 1996. As the FCC order states, the two networks were United Paramount Network (UPN) and Warner Brothers (WB).

<sup>150</sup> Federal Communications Commission, “Amendment of Section 73.658(g) of the Commission’s Rules—The Dual Network Rule,” 16 *FCC Record* 11114, May 15, 2001.

<sup>151</sup> CBS Corporation, “Our Portfolio: The CW,” at <https://www.cbcorporation.com/portfolio/the-cw/>.

<sup>152</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 9952-9960.

**Table 3. Summary of Public-Interest Rationales for Media Ownership Rules**

	Local TV	Local Radio	Radio/TV Cross <sup>a</sup>	Newspaper / Broadcast Cross <sup>a</sup>	Dual Network
Necessary to promote competition?	Yes; for viewers and revenues	Yes; broadcast radio unique product market	No	No	Yes
Necessary to promote localism?	Consistent with; competition stimulates localism	No, but consistent with; may promote	No	No	Yes; preserves balance of bargaining power between networks and affiliates, enabling affiliates to influence networks' programming decisions in manner that serves affiliates' communities
Necessary to promote viewpoint diversity?	Will promote; ensures presence of independently owned TV stations	No, but consistent with; may promote	No	No	FCC does not discuss
Necessary to promote minority/female ownership of broadcast stations?	Consistent with; competition can indirectly promote; failed solicitation rule promotes	Consistent with; competition can indirectly promote	No	No	No; no meaningful impact

**Sources:** 2014 Quadrennial Review 2<sup>nd</sup> R&O.

a. 2014 Quadrennial Review Order on Recon and NPRM.

## Ownership Diversity

### 2016 FCC Diversity Order

The FCC has a long history of attempts to adopt rules to encourage diverse broadcast station ownership, including ownership by women and members of minority groups.<sup>153</sup>

<sup>153</sup> The FCC's authorities to issue rules encouraging broadcast ownership diversity stem from the following provisions: §309(j)(3)(B) of the Communications Act of 1934, as amended, specifies that in awarding licenses and permits via competitive bidding, one of the FCC's objectives must be promoting opportunities for, among others, "businesses owned by members of minority groups and women." §309(j)(4)(D) of the Communications Act directs the FCC to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures."

Examples of the FCC’s attempts are described within several of its past media ownership reviews, including the adoption of the Failed Station Solicitation Rule<sup>154</sup> and the establishment of a class of “eligible entities” that could qualify for relaxed ownership rules, attribution rules, and more flexible licensing policies than their counterparts.<sup>155</sup>

Due in part to this history, and appeals of previous FCC actions imposing rules to foster diversity of broadcast ownership, the Third Circuit Court of Appeals reviewed the FCC’s efforts to foster diversity of broadcast station ownership.<sup>156</sup> In 2016, the FCC adopted a new order (2016 Diversity Order) containing rules designed to increase broadcast ownership diversity.<sup>157</sup> In response to a petition for review, the Third Circuit reviewed the FCC’s 2016 Diversity Order.<sup>158</sup>

## Revenue-Based Eligible Entity Standard

In its 2016 Diversity Order, the FCC reinstated the revenue-based eligible entity standard, using the Small Business Administration’s definition of a “small business.” The FCC had also used this revenue-based eligible entity standard in its previous 2008 ownership diversity rulemaking (2008 Diversity Order).<sup>159</sup> Under this definition, entities that own broadcast stations and have total annual revenue of \$38.5 million or less qualify for certain construction, licensing, transaction, and auction measures, described below.<sup>160</sup>

## Measures Specific to Small Businesses

The FCC adopted six measures in the 2016 Diversity Order that are designed to enable eligible entities to abide by less restrictive media ownership and attribution rules, and more flexible licensing policies, than their counterparts.<sup>161</sup> **Table 4** describes the six measures.

<sup>154</sup> 1999 Media Ownership R&O, p. 12937.

<sup>155</sup> Federal Communications Commission, “2002 Biennial Review Order, FCC 03-127,” 18 *FCC Record* 13620, 13810-13812, July 2, 2003; Federal Communications Commission, “Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07-217,” 23 *FCC Record* 5922, 5927, March 5, 2008 (2008 Diversity Order).

<sup>156</sup> The FCC issued an order creating rules intended to foster diversity of ownership in 2008. Promoting Diversification of Ownership in the Broadcasting Services, 2008 Diversity Order. The order was appealed and reviewed by the Court of Appeals for the Third Circuit. *Prometheus Radio Project v. FCC (Prometheus II)*, 652 F.3d 431 (3d Cir. 2011). After reviewing the order, the Third Circuit remanded parts of the 2008 Diversity Order to the FCC for reconsideration in light of the court’s analysis. *Ibid.* at 438. Five years later, the Third Circuit, noting the FCC’s failure to act on its remand of the 2008 Diversity Order, concluded the FCC had unreasonably delayed action, ordered the agency to “act promptly” and retained jurisdiction over the issues it remanded to the agency. *Prometheus Radio Project v. FCC (Prometheus III)*, 824 F.3d 33, 37 (3d Cir. 2016).

<sup>157</sup> See, generally, 2014 Quadrennial Review 2<sup>nd</sup> R&O.

<sup>158</sup> *Prometheus III*, 824 F.3d at 37.

<sup>159</sup> The Third Circuit Court of Appeals previously struck down a revenue-based eligible entity definition contained in the FCC’s 2008 Diversity Order, finding that the agency had failed to explain how the definition would increase broadcast ownership by minorities and women. *Prometheus Radio Project v. FCC*, 652 F. 3d 431, 469-71 (3d Cir. 2011). In adopting the same definition in its 2016 Order, the FCC did not argue that the standard would increase minority and female ownership, but, instead, found that the definition would increase ownership diversity overall. 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 9979-9882.

<sup>160</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 9979-9984. The FCC stated that it would require the eligible entity meet one of three control tests to ensure that ultimate control over the licenses rests with it. Each of these three tests requires that more than 50% of the voting stock rest with the corporation or partnership that will hold the broadcast license.

<sup>161</sup> As directed by the Third Circuit in *Prometheus II*, the FCC discussed additional proposals set forth by commenters in the 2010 Diversity proceeding. The commission declined to adopt them.

**Table 4. Measures Applying to Eligible Entities**  
FCC's Measures to Enhance Broadcast Ownership Diversity

Name of Measure	Description of Measure
Revision of Rules Regarding Construction Permit Deadlines	Revision of construction permit rules to allow the sale of an expiring construction permit to an eligible entity that pledges to build out the permit within the time remaining in the original construction permit or within 18 months, whichever period is greater.
Modification of Attribution Rule	Relaxation of the equity/debt plus (EDP) attribution standard for interest holders in eligible entities by allowing the holder of an equity or debt interest in a media outlet subject to the media ownership rules to exceed the 33% threshold set forth in [the EDP standard] without triggering attribution where such investment would enable an eligible entity to acquire a broadcast station provided <ul style="list-style-type: none"> <li>(1) the combined equity and debt of the interest holder in the eligible entity is less than 50%, or</li> <li>(2) the total debt of the interest holder in the eligible entity does not exceed 80% of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity.</li> </ul>
Modification of Distress Sale Policy	Modification of the distress sale policy by allowing a licensee that has been designated for a revocation hearing or has a renewal application that has been designated for hearing on basic qualification issues to sell the station to an eligible entity prior to the hearing.
Duopoly Priority for Companies That Finance or Incubate an Eligible Entity	Giving an applicant for a duopoly that agrees to finance or incubate an eligible entity priority over other applicants in the event that competing duopoly applications simultaneously are filed in the same market.
Extension of Divestiture Deadline in Certain Mergers	Consideration of requests to extend divestiture deadlines when applicants actively have solicited bids for divested properties from eligible entities. Entities granted such an extension must sell the divested property to an eligible entity by the extended deadline or have the property placed in an irrevocable trust for sale by an independent trustee to an eligible entity.
Assignment or Transfer of Grandfathered Radio Station Combinations	Permitting the assignment or transfer of a grandfathered radio station combination intact to any buyer so long as the buyer files an application to assign the excess stations to an eligible entity or to an irrevocable divestiture trust for the ultimate assignment to an eligible entity within 12 months after consummation of the purchase of the grandfathered stations.

**Source:** 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 9866, 9982-9983, notes 857-862.

Similar to the reinstated definition of eligible entities, these measures are the same as those previously adopted in the FCC's 2008 Diversity Order.<sup>162</sup> To justify this decision, the FCC reasoned that "we continue to believe that enabling more small businesses to participate in the broadcast industry will encourage innovation and promote competition and viewpoint diversity."<sup>163</sup> It added that whether or not such measures would specifically lead to increased broadcast ownership by women and minorities has no bearing on whether the measures will promote small business participation in the broadcast industry. The U.S. Supreme Court upheld the 2016 Diversity Order in 2021.<sup>164</sup>

<sup>162</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, pp. 9866, 9982-9983, nn. 857-862.

<sup>163</sup> 2014 Quadrennial Review 2<sup>nd</sup> R&O, p. 9979.

<sup>164</sup> FCC v. Prometheus Radio Project, 141 S. Ct. 1150, 1160 n. 4 (2021).

## Incubator Program

As part of its reconsideration of the Quadrennial Media Ownership order in 2017, the FCC established a new incubator program that provides a waiver of its broadcast radio ownership rules to a broadcaster that establishes a program to facilitate station ownership by a certain category of owners. In addition, the FCC launched a new rulemaking proceeding seeking comment on how to implement the program. The FCC issued rules governing the incubator program in August 2018.<sup>165</sup> Most of the rules became effective on September 27, 2018.<sup>166</sup>

Under the incubator program, an established radio broadcaster will provide financial and operational support, including training and mentoring, to a new or small radio broadcaster.<sup>167</sup> At the end of a successful incubation relationship, the new or small broadcaster will either own and operate a new station independently, or be on a firmer financial footing. Once an incubation relationship is completed successfully, the established broadcaster will be eligible to receive a waiver of the FCC's Local Radio Ownership Rule, subject to certain requirements. In 2021, the U.S. Supreme Court upheld the FCC's establishment of the incubator program.<sup>168</sup>

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<sup>165</sup> Federal Communications Commission, "Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services, Report and Order, FCC 12-114," at <https://www.fcc.gov/document/fcc-establishes-incubator-program-increase-broadcaster-diversity>. (2018 Incubator R&O)

<sup>166</sup> Federal Communications Commission, "Rules and Policies To Promote New Entry and Ownership Diversity in the Broadcasting Services, Final Rule, FCC 18-114," 83 *Federal Register* 43773, August 28, 2018.

<sup>167</sup> Federal Communications Commission, "FCC Establishes Incubator Program Procedures to Increase Diversity in the Broadcast Industry," press release, August 2, 2018, at <https://www.fcc.gov/document/fcc-establishes-incubator-program-increase-broadcaster-diversity>.

<sup>168</sup> *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1160 n.4 (2021).

## Appendix.

### National Ownership Rule History

**Table A-1. Chronology of National Broadcast Ownership and UHF Discount Rules**

1941	FCC adopts national ownership ceiling of two broadcast television stations in its first rules authorizing television broadcasting as a commercial service.
1948	FCC freezes the processing of applications for television construction permits. Only a few television stations are operational, primarily in large and mid-sized cities.
1952	FCC revises Table of Television Allotments, assigning stations in the VHF band and the newly created UHF band to various communities.
1954	FCC adopts national ownership ceiling of seven broadcast television stations, including a maximum of five VHF stations. FCC states that encouraging group owners to own UHF stations would promote development of UHF service.
1956	Supreme Court upholds FCC's national ownership limits, finding them compatible with Communications Act and FCC's mandate to regulate broadcasting in the interest of the public. Holds that FCC can revisit the rules if time and circumstances reveal that they do not serve the public interest. [ <i>United States v. Storer Broadcasting Company</i> , 351 U.S. 192]
1968	FCC adopts "top 50" policy, requiring licensees seeking to acquire a fourth television station or a third VHF station in the top 50 markets to make a "compelling public interest showing" that the presumed benefits would overcome the presumed detriment arising from the reduced number of information sources.
1979	FCC eliminates "top 50" policy, finding that the feared trend toward additional ownership concentration had not occurred.
1985	FCC raises TV ownership cap to 12 stations and 25% of national audience. For purposes of national audience calculation, FCC discounts reach of UHF stations by 50%.
1996	Congress enacts Telecommunications Act of 1996, P.L. 104-104. Act directs FCC to review its media ownership rules every two years and determine whether they are "necessary in the public interest as a result of competition." Act directs the FCC to modify its national TV ownership cap to 35% of national audience and eliminate 12-station cap.
2000	FCC retains 35% ownership cap and UHF discount.
2002	U.S. Court of Appeals, D.C. Circuit, holds that the FCC's "wait and see" attitude regarding the effect of the 35% ownership cap was impermissible, given Congress's direction to evaluate whether the rules were "necessary in the public interest as a result of competition." It directs the FCC to justify the rule. [ <i>Fox Television Stations, Inc. v. Federal Communications Commission</i> , 350 U.S. App. 79, 280 F.3d 1027 (D.C. 2002) (" <i>Fox I</i> "), modified on reh'g, 352 U.S. App. 260, 293 F.3d 537 (D.C. 2002) (" <i>Fox II</i> ")]
2003	FCC raises national TV ownership cap to 45% and retains UHF discount, concluding it is necessary to promote entry and competition among broadcast networks. FCC says it will phase out the UHF discount for stations owned and operated by the top four broadcast networks (ABC, CBS, FOX, and NBC) as the broadcast industry's transition from analog to digital technology is completed on a market-by-market basis.

- 2004 Congress enacts the 2004 Consolidated Appropriations Act, 2004 (P.L. 108-199), which directs the FCC to increase its national TV ownership cap to 39% of national audience, thereby preempting FCC's rule that would have raised the cap to 45%. The act also directs the FCC to review its media ownership rules every four years (instead of every two years), exempting rules related to the ownership cap from the review.  
U.S. Court of Appeals, 3<sup>rd</sup> Circuit, finds that new law makes challenges to the FCC's UHF discount moot. Court finds that barring congressional intervention, the FCC may decide the scope of its authority to modify or eliminate the UHF discount outside the context of its quadrennial media ownership review. *Prometheus Radio Project vs. Federal Communications Commission*, 373 F. 3d 372, 396-397 (3rd Cir. 2004).
- 2009 Full-power broadcast stations complete the congressionally mandated transition from analog to digital transmissions. [47 U.S.C. §309(j)(14)(A)]
- 2013 FCC proposes elimination of UHF discount.
- 2016 FCC eliminates UHF discount, concluding technological change has eliminated the justification for retaining it. FCC grandfathers combinations in existence on or proposed in applications before September 26, 2013. Any such grandfathered combination assigned or transferred to another broadcast television licensee must comply with the FCC's national ownership cap in existence at the time of the transaction. Rules set to become effective November 23, 2016 (30 days after publication in the *Federal Register*).  
Broadcast station group owners (ION Media Networks Inc. and Trinity Christian Center of Santa Ana Inc.) file petition for reconsideration with FCC.
- 2017 FCC reinstates UHF discount. FCC states it will launch a comprehensive rulemaking to determine whether to retain the UHF discount in conjunction with a review of the national ownership cap.  
FCC launches new rulemaking proceeding to examine whether to modify or rescind the UHF discount and national ownership cap.

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**Sources:** Federal Communications Commission, "Multiple Ownership of AM, FM, and Television Broadcast Stations, Proposed Rule," 48 *Federal Register* 49438-49441, October 25, 1983; Herbert Howard, "Multiple Broadcast Ownership: Regulatory History," *Federal Communications Bar Journal*, vol. 27, no. 1 (1974), pp. 1-70; Federal Communications Commission, "2002 Biennial Review Order—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking," 418 *FCC Record* 13620, 13814, 13845-13847, July 2, 2003; *Prometheus Radio Project vs. Federal Communications Commission*, 373 F. 3d 372 (3rd Cir. 2004); *Fox Television Stations, Inc. v. Federal Communications Commission*, 350 U.S. App. 79 (D.C. 2002); Federal Communications Commission, "National Television Multiple Ownership Rule, Final Rule," 81 *Federal Register* 73035, October 24, 2016; Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Order on Reconsideration," 32 *FCC Record* 3390, April 21, 2017; Federal Communications Commission, "Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Notice of Proposed Rulemaking, FCC 17-169," 32 *FCC Record* 10785, December 18, 2017.

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