

## 2018 Quadrennial Review Concludes With Mostly Status Quo

The FCC has concluded its 2018 Quadrennial Regulatory Review of Broadcast Ownership Rules by adopting a *Report and Order* (FCC 23-117) in Docket 18-349 to retain the existing media ownership framework with only slight alterations. A divided Commission adopted this *Report and Order* by a party-line 3 to 2 vote.

Section 202 of the Telecommunications Act of 1996 requires the FCC to conduct periodic reviews of the local radio ownership rule, the local television ownership rule and the dual network rule to determine whether these regulations “are necessary in the public interest as the result of competition” and to “repeal or modify any regulation [the Commission] determines to be no longer in the public interest.” The statute originally called for these reviews to be conducted biennially. However, the review period has now been lengthened to quadrennial. The resolution of this proceeding has taken more than six years because of extensive litigation. An exhaustive record has been developed over multiple rounds of public comment.

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## Priority Processing Proposed for Applicants Who Provide Local Programming

The FCC has proposed an application processing priority for broadcast applicants who certify that they broadcast local programming. This action, which the agency calls a proposal to support local journalism, is embodied in a *Notice of Proposed Rulemaking* (“NPRM”) (FCC 24-1) in Docket 24-14. The Commission says that the purpose for such a rule would be to provide additional incentive to broadcasters to provide programming that responds to the needs and interests of the communities they are licensed to serve.

The FCC is charged under the Communications Act

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## Group Owner Consents to \$500K Penalty for Political Programming Violations

The FCC’s Media Bureau and radio station group owner Townsquare Media, Inc. have agreed to a *Consent Decree* (DA 24-54) to resolve the FCC’s investigation of violations of the rules about political programming broadcast on stations owned by a Townsquare subsidiary, KLIX(AM), Twin Falls, Idaho; and KIDO(AM), Nampa, Idaho. A notable provision of the agreement is that Townsquare will pay a civil penalty of \$500,000.

The Media Bureau’s investigation revealed that during the 18-month period between October 2021 and March 2023, the stations had broadcast a weekly one-hour program initially entitled “Red Wave Radio,” and later renamed as “Keep Idaho Red,” along with periodic 30-second announcements promoting the program. The format of each episode appeared to resemble a news interview / public affairs

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# Mandatory Reporting of TV Carriage Blackouts Proposed

The FCC has adopted and released a *Notice of Proposed Rulemaking* (FCC 23-115) in Docket 23-427 to propose that multichannel video programming distributors (“MVPDs”), i.e. cable television systems and direct broadcast satellite television providers, report to the FCC when broadcast television carriage blackouts occur due to a breakdown in retransmission consent negotiations.

Television broadcasters and MVPDs are obligated to negotiate retransmission consent agreements in good faith. The FCC will entertain and rule on complaints from one of the parties that the other one is not negotiating in good faith. However, the Commission has no authority to require parties to resolve retransmission disputes or to force carriage in the absence of an agreement. When the Commission rules on a complaint, there is presently no formal mechanism for the agency to learn the outcome of the negotiations about which it issued an order.

The Commission cites research by S&P Capital IQ indicating that in 2019 there were 18 retransmission consent impasses that resulted in 272 station blackouts scattered among 205 television markets, affecting 26.5 million MVPD subscribers. The average length for these blackouts was 171 days. Data for later years suggests that audiences are experiencing even more time when broadcast television signals are not being delivered to subscribers by MVPDs during retransmission consent disputes. Both members of Congress and members of the public frequently contact the FCC during these episodes seeking relief, or at least information. The Commission is unable to respond to these queries in real time with information about the circumstances or prospects for resolution. The Commission says that it usually learns of blackouts on MVPD platforms through reports of disputes in the media or from the parties during informal communications with agency staff. This ad hoc process does not provide the Commission, Congress or the public with timely or specific information about service disruptions. Consequently, the Commission believes it would be in the public interest to gather data about the number, frequency, and duration of these blackouts resulting from retransmission consent disputes.

The Commission proposes to establish an online portal for receiving reports of blackouts that would be modeled after the agency’s Network Outage Reporting System. The electronically filed data would generally be available to the public except for sensitive information regarding subscribers, which reporting entities could designate as confidential.

The Commission proposes to make the MVPD responsible for mandatory reports to be submitted via the portal. The Commission reasons that it is the MVPD which must take action to remove a broadcast signal from its platform if retransmission consent has been terminated. The Commission observes that it is therefore the MVPD who has the most ready access to and first-hand knowledge of when

and where a broadcast station blackout occurs and which subscribers are affected. Hence, the Commission tentatively concludes that it would be least burdensome on MVPDs to report this information promptly and accurately.

Nonetheless, the Commission also asks whether there are circumstances in which the broadcaster takes an active role in removing its signal from the MVPD platform rather than merely waiting to be removed. If so, the Commission wants to know if that would be reason to assign reporting responsibility to the broadcaster. The Commission suggests and invites comment on other scenarios as well, such as a joint reporting responsibility, or giving the broadcaster an opportunity to supplement a MVPD’s report which it believes to be incomplete or inaccurate.

For the purposes of this reporting rule, a “Broadcast Station Blackout” would be defined as anytime a MVPD ceases retransmission of a commercial television broadcast station’s signal due to a lapse of the broadcast station’s consent for retransmission. In this context, commercial broadcast stations would include full power, Class A, and low power television stations. The Commission says it would be appropriate to include Class A and LPTV stations in this rule because they are subject to the requirements to negotiate for carriage with MVPDs in good faith just as are full power stations.

A blackout would be subject to the reporting requirement when it lasts for at least 24 hours. Thereupon, the reporting entity would be required to submit its Initial Blackout Notification within 48 hours of when the blackout began. The Notification would include the following information: (1) the name of the reporting entity, (2) the station or stations no longer being retransmitted, including network affiliations of each primary and multicast stream, (3) the identity of the station licensee and ownership, (4) the Designated Market Areas in which affected subscribers reside, (5) the date and time of the initial interruption of programming, and (6) the number of subscribers affected (which could be shielded from public disclosure with a request for confidentiality).

A Final Blackout Notification would be due within two business days of the resumption of carriage of the broadcast signal(s) to subscribers. As an update to the Initial Blackout Notification, the Commission envisions that reporting entities could easily supplement information in the reporting portal for each station as it resumes retransmission. The Commission proposes that the Final Blackout Notice would be publicly available, but asks if there is any reason why that should not be so. The Commission also asks whether there is a point at which a blackout should be considered permanent in the absence of a Final Blackout Notification from the parties.

The FCC solicits public comment on these proposals. The filing deadline will be 30 days after publication of notice of this proceeding in the Federal Register. The due date for reply comments will be 60 days after that publication.

# Customer Rebates Proposed for Undelivered Video Programming

The FCC has initiated a rulemaking proceeding to consider requiring cable television systems and direct broadcast satellite (“DBS”) providers (i.e., multichannel video programming distributors, or MVPDs) to rebate to their subscribers the subscription fees attributable to broadcast station programming that is blacked out during a retransmission consent dispute. This proposal is set out in a *Notice of Proposed Rulemaking* (FCC 24-2) in Docket 24-20. The Commission invites comment on whether and how it should address what it identifies as a “customer service shortcoming” on the part of the MVPDs.

The Commission raises this topic now due to data it cites indicating that the number of blackouts resulting from unsuccessful retransmission consent negotiations has increased dramatically in recent years. Retransmission consent agreements often include a cost per subscriber which the MVPD then typically passes on to the subscriber. While the channel is blacked out, the MVPD may or may be rebating this fee to the subscriber or reducing the subscriber’s bill.

The Commission seeks public comment about whether it should and/or could adopt such a rebate mandate, including whether it has the authority to do so, and how such a requirement would be enforced. Commenters are

asked to provide information about how MVPDs address this issue currently, if indeed they do.

The FCC tentatively concludes that it has the authority to adopt a mandatory rebate rule for both cable and DBS providers. Section 335(a) of the Communications Act gives the Commission authority to adopt “public interest or other requirements for providing video programming” by direct broadcast satellite. Similarly, Section 632 directs the FCC to “establish standards by which cable operators may fulfill their customer service requirements.” The Commission acknowledges that the statute limits its authority to regulate cable system rates. However, citing several court decisions where cable system rebates and refunds were deemed to be customer service issues rather than rate setting, the FCC found that this proposal should not be considered rate regulation.

Commissioners Carr and Simington dissented from this action in separate statements, arguing that the FCC does not have the legal authority to impose an obligation to rebate subscription fees, and that in any event, it would be impractical and unnecessary.

Comments will be due 30 days after notice of this proceeding is published in the Federal Register. The deadline for reply comments will be 60 days after that publication.

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## FM6 LPTV Filings Due January 29

The FCC’s Media Bureau has released a *Public Notice* (DA 23-1209) to announce that the recently adopted rules for FM audio broadcasting by channel 6 LPTV stations (known as “FM6”) became effective on December 28, 2023. All FM6 stations must notify the Media Bureau by January 29, 2024, of their intent to continue to provide FM6 service and to confirm their FM6 operational parameters. This notification is to be made in a letter sent by conventional postal mail to the FCC’s Office of the Secretary, Attention: Chief, Video Division, Media Bureau. An electronic copy of the letter should also be sent via email to [Barbara.Kreisman@fcc.gov](mailto:Barbara.Kreisman@fcc.gov).

Until now, FM6 operations were authorized by way of Special Temporary Authorities (“STAs”). Stations with unexpired STAs and pending requests for STA extensions will be deemed to be rule-compliant if they otherwise

comply with the FM6 rules. Upon receipt of the statement of intention to continue FM6 operations, the Media Bureau will add a notation to the station’s license that it is authorized to continue FM6 operations as an ancillary supplementary service. STAs will no longer be necessary.

FM6 stations must maintain online public inspection files as of December 28.

FM6 LPTV stations that offer feeable ancillary or supplementary services must file annual reports and pay fees by December 1 for the 12-month period ending on the preceding September 30. The Media Bureau will provide guidance at a future date for FM6 LPTV stations that have provided feeable services but did not pay the fee pending the resolution of this proceeding.



# DEADLINES TO WATCH



## License Renewal, FCC Reports & Public Inspection Files

January 10	Deadline to place quarterly Issues and Programs List in Public Inspection File for all full service radio and television stations and Class A TV stations.	February 1	Deadline to place EEO Public File Report in Public Inspection File and on station's Internet website for all nonexempt radio and television stations in <b>Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York, and Oklahoma.</b>
January 10	Deadline for noncommercial stations to place quarterly report regarding third-party fundraising in Public Inspection File.	February 1	Deadline for all broadcast licensees and permittees of stations in <b>Arkansas, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, New York, and Oklahoma</b> to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).
January 10	Deadline for Class A TV stations to place certification of continuing eligibility for Class A status in Public Inspection File.	February 1	Mid-Term EEO review begins for certain radio stations in <b>Arkansas, Louisiana, and Mississippi.</b>
January 31	Deadline to file Children's Television Programming Reports for all commercial full service and Class A television for 2023.		
January 31	Deadline for all commercial full service and Class A television stations to place verification of compliance with the commercial limitations in children's programming for 2023 in Public Inspection File.		

**DEADLINES TO SUBMIT CLAIMS FOR REIMBURSEMENT  
FROM C-BAND RELOCATION PAYMENT CLEARINGHOUSE  
FOR C-BAND TRANSITION COSTS**

**February 5, 2024**      **For costs incurred before December 31, 2023**  
**July 1, 2024**         **For costs incurred after December 31, 2023**

**DEADLINE TO BEGIN AUDIO DESCRIPTION  
SERVICES FOR ABC, CBS, FOX, and NBC TV  
AFFILIATES IN MARKETS 91-100**

**JANUARY 1, 2024**

**DEADLINE FOR FM6 LPTV STATIONS  
TO FILE NOTICE OF INTENT  
TO CONTINUE FM OPERATIONS**

**JANUARY 29, 2024**



# DEADLINES TO WATCH



## Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)		
Docket 23-405; NPRM (FCC 23-106) MVPD billing practices	Feb. 5	Mar. 5
Docket 23-427; NPRM (FCC 23-115) TV carriage blackouts	FR+30	FR+60
Docket 24-14; NPRM (FCC 24-1) Locally originated programming	FR+30	FR+60
Docket 24-20; NPRM (FCC 24-2) Rebates for MVPD customers	FR+30	FR+60

*FR+N means the filing deadline is N days after publication of notice of the proceeding in the Federal Register.*

## Paperwork Reduction Act Proceedings

The FCC is required by the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection with certain rules, policies, applications, and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

TOPIC	COMMENT DEADLINE
Telemetry, tracking, and command earth station operators	Feb. 5
Communications Disaster Information Reporting Service	Feb. 20
Digital audio notification, Form 2100, Schedules 355-AM, 355-FM	Feb. 20
AM station modulation level dependent carrier level, Form 338	Mar. 5

## Proposed Amendments to the FM Table of Allotments

The FCC is considering requests to amend the FM Table of Allotments by adding and/or substituting the channels described below. The deadlines for submitting comments and reply comments are shown. Counterproposals must be filed by the deadline for comments.

COMMUNITY	PRESENT CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Counterproposal in Docket 23-197: Kekaha, HI	284C3	104.7		Feb. 2
Counterproposal in Docket 23-198: Waimea, HI	273C3	102.5		Feb. 2





# DEADLINES TO WATCH



## Lowest Unit Charge Schedule for 2024 Political Campaign Season

During the 45-day period prior to a primary election or party caucus and the 60-day period prior to the general election, commercial broadcast stations are prohibited from charging any legally qualified candidate for elective office (who does not waive his or her rights) more than the station's Lowest Unit Charge ("LUC") for advertising that promotes the candidate's campaign for office. Lowest-unit-charge restrictions are or will soon be in effect in the following jurisdictions. Some of these dates may be subject to change.

STATE	ELECTION EVENT	DATE	LUC PERIOD
South Carolina	Dem. Pres. Primary	Feb. 3	Dec. 20 – Feb. 3
Nevada	Dem. Pres. Primary	Feb. 6	Dec. 23 – Feb. 6
Nevada	Rep. Pres. Caucus	Feb. 8	Dec. 25 – Feb. 8
Virgin Islands	Rep. Pres. Caucus	Feb. 8	Dec. 25 – Feb. 8
South Carolina	Rep. Pres. Primary	Feb. 24	Jan. 10 – Feb. 24
Michigan	Presidential Primaries	Feb. 27	Jan. 13 – Feb. 27
Idaho	Rep. Pres. Caucus	Mar. 2	Jan. 17 – Mar. 2
Missouri	Rep. Pres. Caucus	Mar. 2	Jan. 17 – Mar. 2
North Dakota	Rep. Pres. Caucus	Mar. 4	Jan. 19 – Mar. 4
Alabama	Pres. & State Primaries	Mar. 5	Jan. 20 – Mar. 5
Alaska	Rep. Pres. Caucus	Mar. 5	Jan. 20 – Mar. 5
Arkansas	Pres. & State Primaries	Mar. 5	Jan. 20 – Mar. 5
California	Pres. & State Primaries	Mar. 5	Jan. 20 – Mar. 5
Colorado	Presidential Primaries	Mar. 5	Jan. 20 – Mar. 5
Maine	Presidential Primaries	Mar. 5	Jan. 20 – Mar. 5
Massachusetts	Presidential Primaries	Mar. 5	Jan. 20 – Mar. 5
Minnesota	Presidential Primaries	Mar. 5	Jan. 20 – Mar. 5
North Carolina	Pres. & State Primaries	Mar. 5	Jan. 20 – Mar. 5
Oklahoma	Presidential Primaries	Mar. 5	Jan. 20 – Mar. 5
Tennessee	Presidential Primaries	Mar. 5	Jan. 20 – Mar. 5
Texas	Pres. & State Primaries	Mar. 5	Jan. 20 – Mar. 5
Utah	Presidential Primaries	Mar. 5	Jan. 20 – Mar. 5
Vermont	Presidential Primaries	Mar. 5	Jan. 20 – Mar. 5
Virginia	Presidential Primaries	Mar. 5	Jan. 20 – Mar. 5
Georgia	Presidential Primaries	Mar. 12	Jan. 27 – Mar. 12
Hawaii	Rep. Pres. Caucus	Mar. 12	Jan. 27 – Mar. 12
Mississippi	Pres. & State Primaries	Mar. 12	Jan. 27 – Mar. 12
New Hampshire	Presidential Primaries	Mar. 12	Jan. 27 – Mar. 12
Washington	Presidential Primaries	Mar. 12	Jan. 27 – Mar. 12
Arizona	Presidential Primaries	Mar. 19	Feb. 3 – Mar. 19
Florida	Presidential Primaries	Mar. 19	Feb. 3 – Mar. 19
Illinois	Pres. & State Primaries	Mar. 19	Feb. 3 – Mar. 19
Kansas	Pres. & State Primaries	Mar. 19	Feb. 3 – Mar. 19
Ohio	Pres. & State Primaries	Mar. 19	Feb. 3 – Mar. 19
Louisiana	Pres. & State Primaries	Mar. 23	Feb. 7 – Mar. 23
Missouri	Dem. Pres. Primary	Mar. 23	Feb. 7 – Mar. 23
Connecticut	Presidential Primaries	Apr. 2	Feb. 17 – Apr. 2
Delaware	Presidential Primaries	Apr. 2	Feb. 17 – Apr. 2
New York	Presidential Primaries	Apr. 2	Feb. 17 – Apr. 2
Wisconsin	Presidential Primaries	Apr. 2	Feb. 17 – Apr. 2
Alaska	Dem. Pres. Primary	Apr. 6	Feb. 21 – Apr. 6
Hawaii	Dem. Pres. Primary	Apr. 6	Feb. 21 – Apr. 6
North Dakota	Dem. Pres. Primary	Apr. 6	Feb. 21 – Apr. 6
Wyoming	Dem. Pres. Caucus	Apr. 13	Feb. 28 – Apr. 13
Pennsylvania	Pres. & State Primaries	Apr. 23	Mar. 9 – Apr. 23
Rhode Island	Presidential Primaries	Apr. 23	Mar. 9 – Apr. 23
Indiana	Pres. & State Primaries	May 7	Mar. 23 – May 7
Maryland	Presidential Primaries	May 14	Mar. 30 – May 14
Nebraska	Pres. & State Primaries	May 14	Mar. 30 – May 14
West Virginia	Pres. & State Primaries	May 14	Mar. 30 – May 14
Kentucky	Pres. & State Primaries	May 21	Apr. 6 – May 21
Oregon	Pres. & State Primaries	May 21	Apr. 6 – May 21
Idaho	Dem. Pres. Caucus	May 23	Apr. 8 – May 23
Montana	Pres. & State Primaries	June 4	Apr. 20 – June 4
New Jersey	Pres. & State Primaries	June 4	Apr. 20 – June 4
New Mexico	Pres. & State Primaries	June 4	Apr. 20 – June 4
South Dakota	Pres. & State Primaries	June 4	Apr. 20 – June 4

Source: National Conference of State Legislatures

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The Commission explained that it would continue to use its previously adopted operational definition of the phrase, “necessary in the public interest.” The agency said it is a “plain public interest” standard under which “necessary” means “convenient,” “useful,” or “helpful,” and not “essential,” or “indispensable.” Further, the Commission does not operate with a presumption in favor of repealing or modifying the ownership rules, but rather that it has the discretion, in addition to retaining the status quo, to make the rules more stringent or less stringent. The Commission explicitly declined the request of the National Association of Broadcasters to adopt a presumption in favor of deregulation, and to find that the statute only allows for the repeal or relaxation of a rule. Citing a ruling from the Third Circuit Court of Appeals, the Commission said that the review process is not a “one-way ratchet.” Accordingly, the Commission says that it undertakes this review with a focus on determining whether there is a reasoned basis for retaining, repealing, or modifying each rule consistent with its long-standing public interest goals of competition, localism, and viewpoint diversity.

## **Local Radio Ownership Rule**

The Commission left intact the current local radio ownership rule, found in Section 73.3555(a) of the agency’s Rules. Under this rule, an entity is limited to having an attributable ownership interest in:

(1) up to eight commercial radio stations in markets with 45 or more radio stations, no more than five of which may be in the same service (AM or FM);

(2) up to seven commercial radio stations in markets with 30-44 radio stations, no more than four of which may be in the same service;

(3) up to six commercial radio stations in markets with 15-29 radio stations, no more than four of which may be in the same service; and

(4) up to five commercial radio stations in markets with 14 or fewer radio stations, no more than three of which may be in the same service, provided that the entity does not own more than 50% of the radio stations in the market unless the combination comprises not more than one AM and one FM station.

All full power commercial and noncommercial radio stations are included in the station count to determine the market size. Markets are defined by the Nielsen Audio Metros. If a station’s community of license lies outside of any rated Nielsen market, the contour overlap methodology is used to define the market. Under that method, a station’s market is considered to consist of all of the stations whose principal community contour overlaps its own principal community contour. For 20 years, the contour overlap method for stations outside of the markets defined by Nielsen has not been incorporated into the rules and was employed merely on an interim basis. The Commission has now adopted that methodology as a permanent regulation.

Broadcasters asserted in this proceeding that a greater level of station ownership in individual markets is necessary to survive in the competitive environment that includes

nonbroadcast audio services, which they argued should be considered part of the radio marketplace. The Commission rejected those arguments, noting among other things, that the U.S. Department of Justice (“DOJ”) continues to find broadcast radio advertising to constitute a distinct product market for purposes of antitrust analysis.

The Commission also said that broadcast radio is unique within the audio landscape in having an obligation to the local community. Radio programming includes locally focused content which is absent in other audio services. Furthermore, broadcast radio is free. The audience can use it without subscription fees or the need for an internet connection. Comparing broadcast radio to nonbroadcast audio, the Commission observed that there are significant differences in the availability reach, consumer engagement, and cost of these services such that they offer consumers different value propositions. The Commission found that the existing rule promotes competition among local radio stations through competition for advertising dollars, quality of programming, choice of offerings, and innovation. The Commission concluded that within the broader audio media landscape, “free over-the-air broadcast radio maintains a unique place and that radio stations compete primarily with other radio stations for listeners.”

The Commission concluded that allowing greater concentration of station ownership within a market and thereby reducing the number of competitors in a local market puts quality of service at risk, threatens viewpoint diversity, and may reduce the amount of local programming available. It explained that the purpose of the rule is to ensure competition among broadcasters within a market so that station owners are motivated to provide the highest level of service to the public.

Broadcasters asserted that elimination of the AM subcap within the market ownership limitations would provide some relief to the struggling AM band without risking harm to competition. The Commission disagreed, predicting that the most likely results would be (1) the migration of AM station owners to the FM band and/or (2) aggregation of AM stations by large group owners. The Commission does not believe that either result would be likely to foster competition among AM stations. The existing formula for subcaps was retained.

## **Local Television Ownership Rule**

The FCC retained, with some minor modifications, the existing local television ownership rule in Section 73.3555(b). The rule provides that an entity may have attributable ownership interests in up to two television stations in the same Nielsen Designated Market Area (“DMA”) if: (1) the digital noise limited service contours of the two stations do not overlap; or (2) at the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top-four stations in the DMA. Nonetheless, in special circumstances, the Commission will consider waiving the rule on a case-by-case basis and permit common ownership of two top-four stations.

Until now, the ranking of the top four stations was based

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on the most recent all-day (9:00 a.m.-midnight) audience share as measured by Nielsen Media Research (or by a comparable ratings service). In this *Report and Order*, the Commission has changed the basis for the rankings so as to rely on a more consistent longer-term record of viewing, and to prevent gamesmanship by applicants deliberately timing applications to follow a known aberration in a one-time measurement. The basis for the audience share metric is revised to be the average of all measurements conducted during the 12-month period preceding the application, measuring audiences Sunday through Saturday, 7:00 a.m. to 1:00 a.m. These measurements are to include data for the main channel and, and to the extent available, for all of the multicast streams owned and/or operated by the station.

As with radio, broadcasters proposed that the market for assessing competition should include nonbroadcast video services in addition to broadcast television. Again, the FCC noted that the DOJ considers local broadcast television to be its own market for antitrust analysis. The Commission said that the record in this proceeding supports the conclusion that nonbroadcast programming is not a substitute for broadcast programming, which is unique. Over-the-air television is free to receive, a distinction which the Commission believes is an important factor that precludes nonbroadcast video services with cable, satellite, and/or subscription fees from being a comparable alternative in the competition for viewers. Furthermore, nonbroadcast providers of video programming do not compete with broadcasters for retransmission consent fees, network affiliations, or the provision of local programming – which the Commission says is the hallmark of local broadcast television and an area where viewers benefit directly from competition among local broadcast stations.

The Commission affirmed the general prohibition on common ownership of two stations among the top four in a market, and alluded to evidence in the record that this rule fosters viewpoint diversity. The agency expressly reversed a prior Commission conclusion that the rule is not necessary to promote viewpoint diversity. It explained the rule serves to maintain diffuse ownership of local television stations among a wide variety of types of owners, thereby promoting the multiplicity of speakers, especially with respect to local issues.

However, the Commission affirmed its willingness to consider on a case-by-case basis combinations of highly ranked stations in unique circumstances. Commenters in this proceeding recommended the adoption of a presumption that a combination of top-four ranked stations would be acceptable under certain given circumstances. The Commission declined to adopt a presumption standard, but did reiterate a sample list of information that applicants seeking to combine top-four ranked stations should consider providing for the agency's consideration. These include (1) ratings data for the stations and the market, (2) revenue data for the stations and the market, (3) market characteristics, (4) the likely effect on programming meeting the needs and interests of the community, and (5) any other circumstances impacting the market, especially disparities affecting small and mid-sized markets.

The FCC upgraded the existing restriction in its Rules

about circumventing the prohibition on owning multiple top-four ranked stations. Note 11 of Section 73.3555 of the Commission's Rules prohibits certain types of acquisitions of a network affiliation by one station from another in the same market that have been found to be the functional equivalent of the purchase of a station in violation of the rule. An owner with a top-four ranked station and a lower rated station in the same market cannot acquire a network affiliation from another top-four station for its lower-rated station. Because major network affiliations are closely correlated to top-four rankings, the formerly lower-rated station would be artificially boot-strapped into a top-four position, just as if the buyer had acquired the other affiliated station instead of merely acquiring the network affiliation contract.

The Commission has observed situations where similar scenarios are unfolding in ways not strictly prohibited by Note 11. The station buying the affiliation agreement is placing the new network programming on one of its multicast channels, or on a co-owned LPTV station. The rule did not previously address multicast streams or LPTV stations. The Commission has amended Note 11 to prevent such transactions.

This revision to Note 11 is not intended to inhibit organic growth, expansion, or changes in station programming. The organic improvement of a station so that it grows into the group of the top-four ranked stations in a market is not considered a violation of this rule. Affiliation changes that are initiated by the network rather than by the station likewise are not deemed to result in a rule violation.

## Dual Network Rule

The dual network rule has the practical effect of preventing the merger of any of the four major television networks (ABC, CBS, Fox, and NBC) with each other by prohibiting a broadcast station from affiliating with such a merged network entity. The rule or prior versions of it has been in effect since the 1940s. The Commission received little comment on this topic in this proceeding. The FCC concluded, after "careful review," that this rule remains necessary in the public interest because it continues to foster the agency's core policy goals of competition and localism. It promotes competition in providing television programming for large national audiences and the sale of national advertising. The Commission said that the rule furthers localism in maintaining a balance among the networks on their local affiliates.

## Dissenting Statements

In separate dissenting statements, Commissioners Carr and Simington objected to the Commission's finding that the statute requiring these periodic reviews does not also require the FCC to deregulate its ownership rules. They asserted that changes in the media environment since 1996 required relaxation of the ownership restrictions. Commissioner Carr wrote that the "Commission has consistently ignored Congress's deregulatory mandate under the statute, the realities of the modern marketplace, and the many ways that Americans now consume news, information, and entertainment programming."



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to determine whether the public interest, convenience, and necessity will be served by granting any individual broadcast application. The Commission says that it has consistently interpreted this requirement to mean that licensees must air programming that serves their local community. The previously abolished main studio and local program origination rules were originally adopted to ensure that broadcasters fulfill these obligations. In successive deregulatory actions that relaxed these requirements, the FCC has noted that programming addressing local needs and interests need not be locally produced. Nonetheless, the Commission has continued to reaffirm the obligations of all broadcast licensees to provide issue-responsive programming. Broadcasters who maintain online public inspection files are obligated to document the broadcast of such programming in their public files.

Now the FCC proposes to offer broadcast applicants the opportunity to benefit from voluntarily airing locally produced programming. The benefit would be priority processing for applications for license renewal, assignment, or transfer of control in cases where the applicant certifies that it provides locally originated programming. Such applications would be the first to be reviewed by Commission staff, which would likely result in quicker action, and if the application is granted, quicker approval. The Commission assumes that programming produced locally will be geared to the community's interests and therefore would be an indicator of the station's efforts to address local needs.

The Commission has tentatively concluded that this priority treatment would pertain only to applications for which prompt processing is not otherwise immediately available because the application is subject to a hold, petition to deny, or other pending matter that requires further staff review. Applications that are free of such complications (which the Commission labels as "simple" applications) would be processed consistent with current routine processing procedures. Review of the more "complex" applications accompanied by a local programming certification would get the staff's first attention. Notwithstanding that commitment, the Commission states that this priority treatment will not delay the processing of simple applications while complex applications with local programming certification are pending. Broadcasting locally originated programming and certification of that practice would be completely voluntary. The Commission says that applications that do not include the certification would not be scrutinized in any substantive manner about the failure to certify.

Although the FCC proposes priority application processing for applicants who provide "locally originated" programming, the NPRM does not define "local." Instead, the Commission solicits public comment on that topic. One option would be parameters similar to those in the former main studio rule where the broadcaster was required to

maintain the station's main studio (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM or TV station licensed to the station's community of license; or (3) within 25 miles of the reference coordinates of the center of the station's community of license. Another option would be to define "local" as anywhere within the station's primary service contour. The Commission asks whether the term should be defined for radio differently than for television, and whether there should be a difference between full power television stations and low power television stations.

As for what it would mean for programming to be "originated" locally, the Commission suggests any kind of activity involved in creating radio or television programming within the "local" market as defined in this proceeding would be sufficient. Production activities could include scripting, recording at a studio or other location within the local market, or editing. Recordings made outside of the local market would not disqualify a program which includes some other element of local production. The Commission invites comment on what other elements of production would qualify as local origination, and whether there should be an established minimum amount of locally produced content for a program to qualify. The Commission asks whether to qualify as local, the pertinent elements of audio and video television programming should be simultaneous and connected.

The NPRM does not specify the amount of local programming that would be necessary to support an applicant's certification. Reference is made, as an example but not necessarily as a proposal, to the present requirement for Class A television stations to broadcast at least three hours per week of locally originated programming to qualify for Class A status. The Commission asks whether repeat broadcasts of the same program should count toward qualification, whether the amount of programming required to qualify should be prorated for stations that are on the air less than 24 hours per day, and whether minimums should be different for radio and television, or for commercial and noncommercial stations. Comment is also solicited as to whether applicants should be required to have met the minimum qualification standard for any set period of time prior to filing the application.

This priority processing arrangement is not proposed for modification applications, waiver requests, or requests for Special Temporary Authority.

In separate statements, Commissioners Carr and Simington dissented from the adoption of this proposal, mostly on the grounds that it seems like an unnecessary and perhaps inappropriate throwback to the former main studio rule.

Comments on this proposal will be due 30 days after notice of this proceeding is published in the Federal Register. Reply comments can be filed up to 60 days after that publication.

# Group Owner Consents to \$500K Penalty for Political Programming Violations

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program produced and presented by the stations. However, it came to light that, in fact, all episodes of the program were paid political programs. The stations were paid to air the programs and related promotional announcements by and on behalf of the Idaho Republican Party, and later by Tom Luna on behalf of a company doing business as Tom Luna and Associates. Tom Luna and Victor Miller, chairman of the Ada County, Idaho, Republican Party, hosted the series. They were solely responsible for producing the program, selecting guests to be interviewed, and determining content.

Most of these programs and promotional announcements were aired without identifying for the audience their true nature or the sponsor. Further, a number of episodes of the program included appearances that were used by legally qualified candidates for public office and communicated messages relating to political matters of national importance. Neither station uploaded any records of such candidate uses or messages to its online public inspection file.

It is a long-standing tenant of broadcast law that stations must identify the sponsor of programming that has been paid for or provided by an outside party, whether or not the program is political in nature. However, there are additional requirements for political programming. Records concerning paid political programming must be promptly displayed in the station's online public inspection file. In addition to candidates' uses of airtime, stations must document in the public file each request for the purchase of airtime that communicates a message relating to any political matter of public importance, including (1) a legally qualified candidate; (2) an election to federal office; and/or (3) a national legislative issue of public importance.

In exchange for the Bureau's termination of the proceeding, Townsquare admitted liability for the violations

as alleged by the FCC, agreed to pay a civil penalty of \$500,000 in quarterly installments of \$30,000 each, and agreed to the imposition of a compliance plan.

Townsquare must retain of an independent corporate governance, consulting, law, or accounting firm to serve as a compliance officer and to preside over the compliance plan. The compliance officer must not have had any professional relationship with Townsquare during any time between August 26, 2020, and August 15, 2023. The compliance plan must include adoption of operating procedures designed to ensure compliance with the sponsorship identification rules and the political file rules. The compliance plan also includes development of a compliance manual to be distributed to all covered employees, and a program for training all covered employees about the sponsorship identification rules and the political file rules. The term "covered employees" means all managers, supervisors, employees, contractors, and agents of Townsquare at all of its 350+ radio stations who perform, supervise, oversee, or manage the performance of Townsquare's responsibilities under the sponsorship identification rules, the political file rules, and this *Consent Decree*.

Townsquare is required to submit a compliance report to the Media Bureau 90 days after the effective date of the *Consent Decree*, and annually thereafter until the next license renewal applications for KLIX and KIDO are granted. The current licenses for these stations expire on October 1, 2029. The compliance reports are to inform the Media Bureau about the company's activities in implementing and performing the compliance plan, and about any incidents of noncompliance with the sponsorship identification rules or the political file rules at any of Townsquare's stations nationwide.

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