

Quadrennial Ownership Reviews Finally Completed

A sharply divided FCC has adopted a *Second Report and Order* in Docket 14-50, the 2014 Quadrennial Regulatory Review of the Commission's broadcast ownership rules. As foreshadowed by a tentative outline of the decision released in June by Chairman Wheeler, this order leaves intact most of the agency's existing multiple ownership and cross ownership rules, with only minor updates and technical changes. The Telecommunications Act of 1996 requires the Commission to conduct this review every four years. Nevertheless, the 2010 Review had not been completed and that docket was consolidated with the 2014 Review.

The statute mandates the FCC to review these rules to determine whether they "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." In a 2004 decision known as *Prometheus I*, the U.S. Third Circuit Court of Appeals explained that "necessary in the public interest" is a "'plain public interest' standard under which 'necessary' means 'convenient,' 'useful,' or 'helpful,' and not 'essential,' or 'indispensable'". The court said that there is no "pre-

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Auction Stage 1 Unsuccessful; Stage 2 Announced

Stage 1 of the FCC's Television Spectrum Incentive Auction has come to an unsuccessful conclusion. The forward auction in which spectrum was offered to prospective wireless service providers failed to raise enough capital to match the aggregate minimum needed (1) to pay television licensees for the spectrum rights they agreed to sell in the reverse auction, (2) to reimburse remaining television licensees for their post-auction repacking expenses, and (3) to cover the Commission's costs in conducting the auction. The shortfall was some \$66 billion.

In accord with the procedures set out when the Incentive Auction was established, the Commission will conduct new reverse and forward auctions in Stage 2. The reverse auction will begin September 13. The clearing target for the Stage 2 reverse auction will be 114 megahertz (as compared to 126 megahertz in Stage 1). That will encompass all of the present television channels from 32 to 51 (except for channel 37, which will remain allocated to radio astronomy). For the forward

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FY 2016 Regulatory Fees Due September 27

The FCC has released a *Report and Order* in Docket 16-166 to announce the figures set for Regulatory Fees for fiscal year 2016 – the 12-month period ending September 30, 2016. The Communications Act requires the agency to collect these fees from the entities that it regulates to offset the Commission's operating costs. The total amount to be collected this year is approximately \$384 million. The 2015 fees totaled just under \$340 million. Most of the increase is due to a one-time charge of about \$44 million to cover what the Commission characterizes as "facilities reduction costs." These are expenses that will be incurred as the Commission seeks to reduce its office space footprint and/or to relocate its facilities.

The 2016 fees for most types of authorizations of interest to broadcasters are shown in the accompanying tables. Most of them are substantially the same as the Commission proposed earlier this summer in a *Notice of Proposed Rulemaking*.

Responding to these proposals, several commenters asserted that the fee structure was particularly burdensome for small stations. Some suggested that station revenue should be a factor in setting the regulatory fees. The Commission said that it does not

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sumption in favor of repealing or modifying the ownership rules.” According to the court, the Commission has the discretion to increase or relax the stringency of the rules.

Commissioners Pai and O’Rielly objected to the Third Circuit’s interpretation of the statute under which there is no presumption in favor of repealing or modifying the rules. They issued forceful dissenting statements to the FCC’s *Second Report and Order*, criticizing the majority for retaining outmoded rules that no longer address the practical realities of the current broadcasting business. They argued that Congress intended the ownership rules to be pared down quadrennially.

Local Television Ownership Rule

The limits on owning multiple television stations in the same market remain essentially unchanged. An entity may own a maximum of two full power television stations in a designated market area (“DMA”) if: (1) the digital noise limited service contours (“NLSCs”) do not overlap, or (2) at least one of the two stations is not among the top four rated stations in the market and at least eight independently owned television stations would remain in the DMA aside from the combination. In calculating the number of independent stations that would remain after the transaction, only stations whose NLSCs overlap with the digital NLSC of at least one of the stations in the proposed combination will be counted.

Under the old rule, the signal overlap was based on the analog Grade B contour. That outmoded metric has been replaced with its digital counterpart, the NLSC. In most cases, from the same antenna site, the two contours would cover essentially the same territory. However, in the rare circumstance where this rule change would create a duopoly that violates the rule with the NLSC when it was rule-compliant with the Grade B, the combination will be grandfathered and allowed to remain intact. When such stations are sold to new owners in the future, they will be subject to the rules in effect at that time.

A new element to the rule is the prohibition of network affiliation swaps that would result in an owner having two of the top four stations in the market. The FCC concluded that such affiliation swap transactions would otherwise circumvent the intent of the top-four prohibition rule.

Commenters in the proceeding argued that the rise of non-broadcast video distribution systems makes the limitations on television station ownership obsolete. The Commission found however that the record in this proceeding did not support that conclusion and observed that in any event, some 10% of the U.S. population lacks access to the high-speed broadband needed to stream video programming. Similarly, the Commission rejected commenters’ arguments that the new practice of digital multicasting creates the need for regulatory adjustments. The Commission found that broadcasting on a multicast stream does not typically produce the cost savings and additional revenue streams that can be realized by owning a second in-market station. At the same time, it declined to develop rules to address the issue of

dual affiliations – where a station is affiliated with more than one network – a phenomenon that typically occurs only in small markets.

In the first *Report and Order* in this proceeding, the Commission ruled that joint sales agreements (“JSAs”) would be attributable to the owner of the brokering station for purposes of the multiple ownership rule. This rule would apply to situations where the brokering station sold more than 15% of the weekly advertising time for another in-market station. Stations in JSAs that would violate this rule were given a two-year transition period to become rule-compliant that was to expire on March 31, 2016. Congress intervened to extend this transition period until September 30, 2025. Subsequently, the Court of Appeals vacated the rule on the grounds that the Commission was obligated first to determine whether the overall local television ownership rule served the public interest. The court’s ruling was explicitly without prejudice to future findings that the FCC might make, provided they were procedurally correct. As shown above, in this *Second Report and Order*, the Commission determined that the local television ownership rule continues to serve the public interest. Consequently, the agency readopted the JSA attribution rule. However, in keeping with Congress’s extension of the compliance transition period of the previously adopted JSA rule, the FCC adopted a compliance deadline of September 30, 2025.

Despite comments proposing various adjustments, the Commission also decided to continue employing the same policy for waivers of the rule that was previously in effect. The policy is designed to save stations on the brink of going out of business. To obtain a waiver of the local television ownership rule, an applicant must show that one of the stations involved in the proposed transaction is either failed or failing. It must demonstrate that the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the station, and that selling the station to an out-of-market buyer would result in an artificially depressed price. A station is considered “failed” if it has not been in operation due to financial distress for at least four consecutive months at the time of the application, or it is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application. A station is deemed to be “failing” if it has an all-day audience share of no more than 4% and it has had negative cash flow for three consecutive years immediately prior to the application.

Local Radio Ownership Rule

The local radio ownership rule previously on the books provides the following limits on the number of stations that an owner can hold in a market:

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

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

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Nationwide EAS Test Scheduled for September 28

All EAS-participating broadcast stations will be required to cooperate in the nationwide test of the Emergency Alert System (“EAS”) scheduled for September 28. The FCC and the Federal Emergency Management Agency will conduct the test then, with a back-up date set for October 5, if necessary. All EAS participants must be ready on both dates.

The test message will be transmitted in both English and Spanish, and will clearly indicate that it is only a test. It will be formatted in both audio and text that can be populated into accessible video crawl. The test will provide an opportunity to evaluate these features and other measures

that the Commission has adopted to address problems that surfaced with the 2011 nationwide test.

Performance results for the test will be gathered in the FCC’s EAS Test Reporting System (“ETRS”). All participants were to have registered with the ETRS by August 26. Stations that missed this deadline are still encouraged to file Form One as soon as possible on the ETRS website: <https://www.fcc.gov/general/eas-test-reporting-system>. Test participants will file Form Two by 11:59 p.m. Eastern Time on September 28 to provide day-of-test data. Finally, post-test data is to be submitted by each participant on Form Three by November 14.

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(3) a maximum of six commercial stations in radio markets with 15-20 radio stations, no more than four of which can be in the same service;

(4) a maximum of five commercial radio stations in radio markets with 14 or fewer radio stations, no more than three of which can be in the same service, provided one owner cannot own more than 50% of the stations in the market, except that an entity may always own a single AM and a single FM station combination.

The Commission requested data in this proceeding that would support changing these existing limits. No commenter submitted such data or proposed any alternate tiers of limits. The agency observed that tightening the restrictions would disregard the previously identified benefits of consolidation that followed legislation enacted in the 1996 Act, and, absent grandfathering, would require divestitures that would be disruptive to the industry.

Commenters had urged the Commission to eliminate the subcaps within each tier that limit the number of AM or FM stations that can be owned within the larger group. The agency said that the public interest is served by keeping these subcaps because they foster the availability of single stations (especially AMs) for new entrants to acquire.

There was some minor tinkering with exceptions and precautions involving situations where a change in a station’s community of license may have the effect of moving the station to a different market. The Commission also decided to define markets in Puerto Rico on the basis of overlapping contours as it does in cases where stations are located outside of a Nielsen Audio rated market despite the fact that the entire island of Puerto Rico is one Nielsen Audio market.

Newspaper/Broadcast Cross-Ownership Rule

The newspaper/broadcast cross-ownership rule prohibits common ownership of a daily newspaper and a full-power AM, FM or television station if the station’s service contour encompasses the newspaper’s community of publication. Some commenters argued that eliminating this rule would benefit localism and competition. The Commission ruled that the more important basis for this rule is the foster-

ing of viewpoint diversity. While there has been a proliferation of primarily national sources of news and information, the Commission found that traditional local media outlets continue to be the principal sources of local news and information. Accordingly, the Commission opted to retain the basic elements of the rule, with minor changes.

The television element of the rule was revised to account for the transition to digital broadcasting. Instead of referencing the Grade A contour, the rule now prohibits common ownership of a full-power television station and a daily newspaper when (1) the community of license of the TV station and the community of publication of the newspaper are in the same Nielsen DMA, and (2) the station’s principal community contour encompasses the entire newspaper community of publication.

For radio, the rule prohibits common ownership of a radio station and a daily newspaper if they are in the same Nielsen Audio Metro and if the entire community of publication of the newspaper is encompassed by the FM 1 mV/m contour or the AM 2 mV/m contour. If both the newspaper community and the station’s community of license are outside of any Nielsen Audio Metro, the radio contour overlap of the entire newspaper community will by itself trigger the rule.

The Commission adopted an exception to this rule for situations involving a failed or failing station or newspaper. A “failed” entity is one that has been silent or stopped circulating due to financial distress for at least four months prior to the application, or is involved in an involuntary bankruptcy or insolvency proceeding. To qualify for the “failing” exception, the station must have an all-day audience share of 4% or less, the station or newspaper must have had negative cash flow for the previous three years, and it must be shown that the combination would provide public interest benefits. The in-market buyer must be the only reasonably available candidate willing and able to acquire and operate the distressed property, and it must be shown that the sale to an out-of-market buyer would artificially depress the price.

The Commission will entertain requests for waivers of

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DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

- October 1, 2016 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 **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands and Washington.**
- October 3, 2016 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Iowa and Missouri**, and noncommercial television stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Mariana Islands, Oregon, Puerto Rico, Virgin Islands and Washington.** (The FCC has amended its rules so as to reschedule this filing date for December 1, 2017, pending review by the Office of Management and Budget. As of this writing, that review has not been completed. Until OMB approves the new forms, the prior rule and schedule will remain in effect.)
- October 3, 2016 Deadline for all broadcast licensees and permittees of stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, Mariana Islands, Missouri, Oregon, Puerto Rico, Virgin Islands and Washington** 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).
- October 3, 2016 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Iowa and Missouri**; and all television stations in employment units with five or more full-time employees in **Florida, Puerto Rico and Virgin Islands.**
- October 10, 2016 Deadline to place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.
- October 11, 2016 Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.

Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
(All proceedings are before the FCC unless otherwise noted.)		
Docket 16-238; Public Notice Petition to increase foreign ownership stake in Hemisphere Media Group, Inc. in excess of the 25% threshold		Sept. 13
Docket 16-247; Public Notice Status of competition in video programming market	Sept. 21	Oct. 24

Rulemakings to Amend FM Table of Allotments

The FCC is considering amendments proposed to the FM Table of Allotments to add or delete (indicated with a "D") the following channels. The deadlines for filing comments and reply comments are shown. The asterisk indicates that these channels are reserved for noncommercial use.

Community	Channel	MHz	Comments	Reply Comments
Pima, AZ	278A*	103.5	Oct. 17	Nov. 1
Pima, AZ	296A*(D)	107.1	Oct. 17	Nov. 1

Cut-Off Dates for Noncommercial FM Applications

The FCC has accepted for filing the applications for new noncommercial FM stations as identified below. Petitions to deny must be filed by the deadlines shown. Informal objections may be filed anytime prior to grant of the application.

Community	Channel	MHz	Applicant	Deadline
Sand Point, AK	220	91.9	Aleutian Peninsula Broadcasting, Inc.	Sep. 23
Allakaket, AK	240	95.9	Big River Public Broadcasting Corp.	Sep. 26

**FY 2016 REGULATORY FEES DUE
SEPTEMBER 27, 2016**

**TELEVISION SPECTRUM
REVERSE AUCTION
STAGE 2 BIDDING BEGINS
SEPTEMBER 13, 2016**



DEADLINES TO WATCH



Lowest Unit Charge Schedule for 2016 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 periods are imminent in the following states. Some of these dates are tentative and may be subject to change.

State	Election Event	Date	LUC Period
Delaware	State Primary	Sep. 13	July 30 - Sep. 13
New Hampshire	State Primary	Sep. 13	July 30 - Sep. 13
Rhode Island	State Primary	Sep. 13	July 30 - Sep. 13
United States	General Election	Nov. 8	Sep. 9 - Nov. 8

Cut-Off Date for AM and FM Applications to Change Community of License

The FCC has accepted for filing the AM and FM applications identified below proposing to change each station's community of license. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is September 26, 2016. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Brewton, AL	Jay, FL	WOWB	215	90.9
Strasburg, CO	Watkins, CO	KJHM	268	101.5
Bethany Beach, DE	West Ocean City, MD	WKZP	240	95.9
Peachtree City, GA	Union City, GA	WRDG	244	96.7
Grand Portage, MN	Grand Marais, MN	New	245	96.9
Beulah, ND	New England, ND	KQLZ	239	95.7
New England, ND	Beulah, ND	KLTQ	250	97.9
Clarendon, PA	Sheffield, PA	WKNB	282	104.3
Sheffield, PA	Clarendon, PA	WLSF	286	105.1
Camden, SC	Saint Stephen, SC	WEAF(AM)	N/A	1120
Benavides, TX	Agua Dulce, TX	KOUL	299	107.7
Delta, UT	Gunnison, UT	KMGR	239	95.7

The deadline for comments about the following applications is **October 18, 2016**.

Ashland, AL	Stewartville, AL	WFXO	252	98.3
El Dorado, AR	Junction City, AR	KMLK	268	101.5
Roaring Springs, TX	Girard, TX	New	248	97.5
Sandy, UT	Kearns, UT	KTKK(AM)	N/A	630

Paperwork Reduction Act Proceedings

The FCC is required under 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
Commercial broadcast ownership reports, Section 73.3615, Form 2100, Schedule 323 (formerly Form 323)	Sep.19
Noncommercial broadcast ownership reports, Section 73.3615, Form 2100, Schedule 323-E (formerly Form 323-E)	Sep. 19
Broadcast license renewal application, Form 303-S	Oct. 11
Broadcasting emergency information, Section 73.1250	Oct. 14
International broadcast station applications, Forms 309, 310, 311	Oct. 25

FILING WINDOW FOR "250-MILE" FM TRANSLATOR MODIFICATIONS TO BECOME AM FILL-IN TRANSLATORS NOW THROUGH OCTOBER 31, 2016

RADIO STATIONS IN TOP-50 MARKETS WITH 5 OR MORE FULL TIME EMPLOYEES SHOULD HAVE BEGUN USING ONLINE PUBLIC FILE AS OF JUNE 24, 2016 FOR NEW DOCUMENTS. DEADLINE TO UPLOAD PRIOR EXISTING DOCUMENTS IS DECEMBER 24, 2016

NATIONWIDE EAS TEST IS SEPTEMBER 28, 2016 STATIONS THAT DID NOT REGISTER WITH THE FCC BY THE AUGUST 26 DEADLINE SHOULD DO SO IMMEDIATELY

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collect data about revenue and could not therefore use that metric. Nevertheless, the agency acknowledged that stations serving small communities and rural areas do face financial difficulties that should be addressed. In this vein it set fees for radio stations in the two tiers for the smallest markets (stations covering populations of less than 75,000) at levels somewhat less than were originally proposed.

For the first time this year, there is an eighth tier for radio stations in the largest markets. The Commission had proposed, and now has established, the largest radio station fee category for stations with coverage area populations greater than 6,000,000. The new seventh tier is for radio stations with coverage area populations from 3,000,001 to 6,000,000.

As is customary, regulatory fees are calculated on the basis

of the station's status at the beginning of this fiscal year, i.e., as of October 1, 2015. Nonprofit entities are exempt from paying regulatory fees, including for commercial stations. Entities with total aggregate regulatory fee liability of less than \$500 are excused from the obligation to pay. The Commission considers amounts below this threshold as de minimus.

Fees are payable now online through the Commission's mandatory Fee Filer system. The deadline for submitting payments without penalty is 11:59 PM Eastern Time on September 27. Fees paid after the deadline are subject to a 25% penalty. The Commission will withhold certain services (such as processing applications or petitions) for parties with unpaid late fees. Shortly after the due date, the FCC will refer the collection of late fees to the U.S. Treasury's Centralized Receivables Service.

Type of Authorization	Actual FY2016	Proposed FY2016	Actual FY2015
Full Power Television			
Markets 1-10	\$ 60,675	\$ 60,775	\$ 46,825
Markets 11-25	45,675	45,750	43,200
Markets 26-50	30,525	30,575	27,625
Markets 51-100	15,200	15,225	16,275
Remaining Markets	5,000	5,000	4,850
Construction Permit	5,000	5,000	4,850
Satellite Television Station (all markets)	1,750	1,750	1,575
Low Power TV, TV/FM Translators, Boosters	455	455	440
Satellite Earth Station	345	345	310
AM Radio Construction Permit	620	690	590
FM Radio Construction Permit	1,075	1,200	750

ACTUAL FY 2016 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 990	\$ 715	\$ 620	\$ 785	\$ 1,075	\$ 1,250
25,001-75,000	1,475	1,075	925	1,025	1,625	1,850
75,001-150,000	2,200	1,600	1,375	1,525	2,400	2,750
150,001-500,000	3,300	2,375	2,075	2,275	3,600	4,125
500,001-1,200,000	5,500	3,975	3,450	3,800	6,000	6,875
1,200,001-3,000,000	8,250	5,950	5,175	5,700	9,000	10,300
3,000,001+6,000,000	11,000	7,950	6,900	7,600	12,000	13,750
6,000,001+	13,750	9,950	8,625	9,500	15,000	17,175

PROPOSED FY 2016 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 1,100	\$ 795	\$ 690	\$ 760	\$ 1,200	\$ 1,375
25,001-75,000	1,650	1,200	1,025	1,150	1,800	2,050
75,001-150,000	2,200	1,600	1,375	1,575	2,400	2,750
150,001-500,000	3,300	2,375	2,075	2,275	3,600	4,125
500,001-1,200,000	5,500	3,975	3,450	3,800	6,000	6,875
1,200,001-3,000,000	8,250	5,950	5,175	5,700	9,000	10,300
3,000,001+6,000,000	11,000	7,950	6,900	7,600	12,000	13,750
6,000,001+	13,750	9,950	8,625	9,500	15,000	17,175

ACTUAL FY 2015 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 775	\$ 645	\$ 590	\$ 670	\$ 750	\$ 925
25,001-75,000	1,550	1,300	900	1,000	1,500	1,625
75,001-150,000	2,325	1,625	1,200	1,675	2,050	3,000
150,001-500,000	3,475	2,750	1,800	2,025	3,175	3,925
500,001-1,200,000	5,025	4,225	3,000	3,375	5,050	5,775
1,200,001-3,000,000	7,750	6,500	4,500	5,400	8,250	9,250
3,000,001+	9,300	7,800	5,700	6,750	10,500	12,025

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this rule without requiring the “good cause” showing generally needed for waiver requests. Rather, in this case the waiver advocate will only need to show that the proposed combination would not unduly harm viewpoint diversity in the local market.

The Commission’s decision to leave the newspaper/broadcast cross-ownership rule intact was perhaps the most controversial aspect of this *Second Report and Order*. In his dissenting statement, Commissioner Pai stated that at one point in the deliberations a majority of Commissioners supported repeal of this rule. However, when it was announced that a vote to repeal the rule would have to be unanimous, the concept died.

Radio/Television Cross-Ownership Rule

The radio/television cross-ownership rule prohibits an entity from owning more than two television stations and one radio station within the same market unless the market meets certain size criteria. If at least 10 independently owned media voices would remain in the market post-merger, an entity may own up to two television stations and four radio stations. If 20 voices would remain after the merger, an entity may own up to two television stations and six radio stations, or one television station and up to seven radio stations. Media voices include television stations, radio stations, newspapers and cable systems. Markets are defined by the service contours of the relevant stations.

The Commission found that the record in this proceeding supports the conclusion that this rule continues to be necessary to foster viewpoint diversity in local markets. Minor adjustments to the rule concern updating the television contours from analog to digital, i.e., the use of the principal community contour in place of the Grade A contour, and the noise limited service contour instead of the Grade B contour, for encompassing communities of license and for overlaps to count in-market voices.

Eligible Entities

In addition to broadcast ownership rules, the FCC included in this proceeding its consideration of a remand order about “eligible entities” from the U.S. Third Circuit Court of Appeals. This concerned the Commission’s 2008 decision to adopt a revenue-based definition for entities eligible to receive certain preferential treatment as a race-neutral means of facilitating diversity in broadcast ownership leading to viewpoint diversity. The court ruled that the Commission had adopted a definition of eligible entities that was arbitrary and capricious because the agency failed to show how such a revenue-based definition would help the intended minority and women beneficiaries.

The Commission believes that efforts to achieve viewpoint diversity in broadcast ownership by way of minority and female preferences might survive the strict scrutiny that courts would be required to give them. However, after extensive discussion and input by commenters in this proceeding,

the Commission has concluded that there is insufficient evidence to show a clear correlation between minority and female broadcast ownership, i.e., ownership diversity, and viewpoint diversity. The agency does, however, believe that the revenue-based eligible entity system promotes diversity viewpoint – which is an objective of the overall broadcast ownership regulatory regime.

In furtherance of that policy, the Commission reinstated the revenue-based eligible entity rules that the court had vacated with the acknowledgment that they may not necessarily foster greater minority or female participation in broadcast ownership. For the purpose of this rule, the FCC uses the Small Business Administration’s standard for a “small business.” Under this definition, the entity must have no more than \$38.5 million in annual revenue. The revenues of affiliated entities, parent entities and affiliates of parents are included in the calculation. Benefits for eligible entities as so defined will include construction permit extensions, modified attribution standards, policies for distress sales, a duopoly priority for companies that finance or incubate an eligible entity, extensions of divestiture deadlines in certain mergers, and the assignment of grandfathered radio station combinations.

Shared Service Agreements

The Commission adopted new rules to require the disclosure in online public inspection files of Shared Service Agreements (“SSAs”) between commercial television stations. An SSA is defined 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 Commission’s rules; or (2) stations that are not directly or indirectly under common de jure control permitted under the Commission’s rules 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.

The Commission says that the disclosure of these agreements is in the public interest because they impact the agency’s competition, localism, and diversity goals. They may shed light on practices that lead to unauthorized transfers of control. The rule pertains to any combination of commercial stations, whether or not they are in the same market. Confidential and proprietary information can be redacted (but must be made available to FCC staff upon request). The Commission clarified that the rule is not intended to include temporary arrangements such as might be developed to address emergencies or coverage of breaking news.

Radio stations and noncommercial television stations are not subject to this requirement. Although commenters urged the Commission to make stations in SSAs attributable to one another for purposes of compliance with the multiple ownership rules, the agency declined to take that step at this time.

Interviewing Walk-in Job Applicants Is Not Recruitment

The FCC's Media Bureau has issued a *Notice of Apparent Liability for Forfeiture* for \$11,000 to Fidelity Cablevision, Inc. for violating the Commission's EEO rules about how to recruit employees. Fidelity operates a cable television system in Lawton, Oklahoma. The EEO rules for cable systems and broadcast stations are essentially the same.

The Commission's rules require employers to use recruitment sources for each vacancy in a manner so as to "widely disseminate information concerning the vacancy." While no specific number of recruitment sources is codified in the rules, employers are expected to use sources that could reasonably be expected to reach the entire local community. The employer is also required to maintain records that identify which sources produced the candidates interviewed and hired. The Bureau audited Fidelity's EEO records in 2015 and determined that its recruiting efforts had been deficient because it had failed to reach out to the community in any meaningful way in its recruitment efforts for many of its vacancies.

During the period covered by the Bureau's investigation, Fidelity filled 13 full-time positions for which the recruiting did not meet the Commission's standards. Nine of these hires resulted from referrals from existing employees and walk-in applicants. It filled two positions using applications that had been on file from previous walk-in applicants. One person was hired with a combination of walk-ins, internal postings and websites. The 13th candidate came from an unspecified referral.

The Bureau found that none of the procedures used to fill these positions satisfied the Commission's rules. Although it is permissible to interview and/or hire a walk-in applicant, walk-in applicants do not constitute a recruitment effort under the FCC's requirements. Likewise, relying only on the employer's own private contacts, such as employee referrals, does not constitute recruitment as contemplated by the agency. Public outreach is required. The Bureau said that internal postings do not result in sufficient public outreach to inform job seekers who are unconnected to the employer or its incumbent staff that positions are available. The Bureau also referenced recent

Commission rulings that make it clear that recruiting solely from Internet sources does not satisfy the obligation to disseminate information widely concerning job vacancies.

The FCC also requires its media employers to analyze their recruitment programs regularly to ensure that they are effective in achieving broad outreach, and to address any problems discovered in this analysis. If an employer fails to recruit properly, the Bureau says that it is not possible to do an appropriate analysis.

Of the 13 noncompliant hires, 12 occurred too long prior to the release of the *Notice* to be within the statute of limitations. Fidelity is therefore immune from financial sanctions for the violations associated with them. However, one of the positions was filed within the one-year period prior to the release of the Bureau's *Notice* and consequently can be the subject of a forfeiture. The Bureau proposed a \$10,000 fine for the recruiting failure associated with that hire, and a \$1,000 fine for Fidelity's failure to analyze its recruitment program.

The Bureau also imposed a reporting requirement on Fidelity. At the beginning of October in each of the years 2016, 2017 and 2018, it must file a report with the Bureau's EEO staff that includes the following information:

- (a) the employment unit's most recent EEO public file report;
- (b) dated copies of all advertisements, bulletins, letters, and other communications announcing each full-time vacancy for the preceding reporting year;
- (c) the recruitment source that referred the hiree for each full-time vacancy, the job title of each full-time vacancy filled and the date each full-time vacancy was filled;
- (d) the total number of interviewees for each full-time vacancy for the preceding reporting year and the referral source for each interviewee; and
- (e) the sources contacted for each full-time opening during the reporting year.

Auction Stage 1 Unsuccessful; Stage 2 Announced continued from page 1

auction, this spectrum will be reconfigured into nine pairs of 5-megahertz channels for wireless use. Guard bands will occupy 24 megahertz.

Licensees of television stations who had accepted a winning bid in the Stage 1 reverse auction and whose status was marked "FROZEN – PROVISIONALLY WINNING" at the close of the reverse auction may now participate in the Stage 2 reverse auction. All other Stage 1 reverse auction

applicants whose status was not frozen are no longer eligible to participate.

All television licensees, whether or not they are participating in the auction, are reminded that they remain subject to the Commission's anti-collusion rules. They are prohibited from communicating auction-related information to other television licensees or to forward auction applicants.

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