

ALERT

Media Bureau Opens 2022 Quadrennial Ownership Review Proceeding

December 27, 2022

On December 22, 2022, the Federal Communications Commission's (FCC or Commission) Media Bureau (Bureau) released a Public Notice (PN) commencing its 2022 Quadrennial Review of the Commission's media ownership rules. Comments and reply comments are due 45 days and 60 days after publication in the Federal Register, respectively.

The 2022 Quadrennial Review is the latest in a series of reviews conducted pursuant to the Telecommunications Act of 1996 (Telecom Act). The PN seeks comment on whether the Commission's media ownership rules remain "necessary in the public interest as the result of competition."

Below, we provide background and context for the 2022 Quadrennial Review, as well as additional detail on the specific topics the Bureau raised for comment in the PN.

Background and Context

Under Section 202 of the Telecom Act the Commission must review its media ownership rules every four years to determine whether competition in the media marketplace has rendered any of these rules unnecessary in the public interest. The Commission must repeal or modify any such rule that it determines is unnecessary.

In December 2018, the Commission adopted a Notice of Proposed Rulemaking (NPRM) initiating its 2018 Quadrennial Review proceeding. The NPRM sought comment on the Commission's Local Radio Ownership and Local Television Ownership Rules—which limit ownership, by a single entity, of broadcast radio or television stations

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in local markets, respectively—as well as the Dual Network Rule, which effectively prohibits mergers among ABC, CBS, Fox, and NBC.

At that time, however, the United States Court of Appeals for the Third Circuit was reviewing challenges to the FCC's Order on Reconsideration of the combined 2010/2014 Quadrennial Review, which adopted rule changes that then became the basis for comment in the subsequent 2018 Quadrennial Review. Following the close of the 2018 Quadrennial Review's comment period, the Third Circuit issued an Order vacating the challenged Commission actions in their entirety and effectively calling into question the rules under review in the 2018 Quadrennial Review until the Commission's rule modifications in the 2010/2014 Quadrennial Review could be legally settled.

In April 2021, the Supreme Court unanimously reversed the Third Circuit, effectively reinstating the 2010/2014 Quadrennial Review Order on Reconsideration. Soon after, the Bureau issued an Order implementing the Supreme Court's decision. With more than two years having passed since the end of the comment period, the Bureau then released a public notice in June 2021 seeking to refresh the record in the 2018 Quadrennial Review proceeding. That proceeding remains pending, meaning the Commission has yet to adopt any final rules as a result of its 2018 Quadrennial Review.

Nevertheless, with just eight business days remaining before the end of 2022, the FCC issued the PN to commence its next review.

Topics for Comment

The PN identifies the same three areas for review that remain subject to the ongoing 2018 Quadrennial Review: the Local Radio Ownership, Local Television Ownership, and Dual Network Rules. In the context of these three rules, the PN seeks information and comment on a series of topics that include:

- The media marketplace, including ongoing trends or developments like consolidations, technological innovation, or the emergence of new video or audio options for consumers.
- The impact of these rules on the American public as consumers of media, as well as the function and objectives of the rules as they relate to broadcasters' public interest obligations. Among other issues, this includes whether: (a) the rules served, and continue to serve, consumers, particularly with regard to the Commission's competition, localism, and diversity goals; and (b) the Commission should adjust its analysis of the audio and video programming marketplace to account for changes in consumer behavior, like the use of streaming services.
- Barriers to minority and female ownership of broadcast stations and areas in which commenters believe those barriers relate to, intersect with, or could be addressed by changes to the three ownership rules at issue. To this end, the PN encourages commenters to identify concrete changes the Commission could or should make.
- Any additional legal or economic factors, changes, or issues the Commission should consider (with an emphasis on empirical evidence and studies where possible).

Looking Ahead

With the 2022 iteration, the Commission has broken away from its typical practice of releasing lengthy NPRMs to commence its Quadrennial Review proceedings. Nonetheless, the PN still seeks comment on a wide range of topics related to media ownership. As such, all broadcasters should strongly consider participating in this proceeding.

For additional information, or if you are interested in submitting comments, please contact one of the authors listed on this alert or the Wiley attorney who regularly handles your FCC matters.