

ALERT

Third Circuit Denies Request to Delay Effectiveness of FCC Media Ownership Rule Changes

February 8, 2018

The United States Court of Appeals for the Third Circuit has denied a request by public interest groups opposing media ownership deregulation to delay the effectiveness of changes to the Federal Communication Commission's (FCC) rules adopted in November of 2017. As we explained previously, those rule changes were scheduled to go into effect on February 7, 2018. As result of the Court's order, the changes are now effective.

The groups had asked for the delay in an Emergency Petition for Writ of Mandamus, which requested that the Court take the following actions:

- Stay the effectiveness of the November 2017 order until (a) 60 days after the FCC adopts a final reviewable order adopting or rejecting an "eligible entity" definition related to initiatives to increase broadcast ownership by women and minorities, or (b) after the court resolves the groups' petitions for review of the November 2017 order and a previous order;
- Appoint a special master to oversee the FCC's compliance with the court's previous remands including by establishing deadlines; and
- Prevent approval of transactions that would violate the previously existing ownership rules.

The Court denied the Petition in a brief, two-paragraph order, explaining that the groups had "not satisfied the exacting standard for obtaining" mandamus relief.

Authors

Kathleen A. Kirby
Partner
202.719.3360
kkirby@wiley.law
Eve Klindera Reed
Partner
202.719.7404
ereed@wiley.law

Practice Areas

Media
Telecom, Media & Technology

In addition, the Court noted that the FCC's new "incubator" program—which is intended to enhance opportunities for ownership of broadcast stations by women and minorities—remains subject to public comment before the agency. The adequacy of the FCC's efforts to increase minority and female ownership in the broadcast industry has long been among the public interest groups' central complaints in the litigation. The Court's order suggests that it believes the outcome of the incubator proceeding may be of decisional significance, by staying the groups' pending challenges for six months to give the FCC time to act in that proceeding.

The Court's denial of the Petition means that the changes to the media ownership rules that were adopted in November of 2017 went into effect, as previously scheduled, on February 7, 2018. Those changes include the following:

- Relaxation of the local television ownership rule to eliminate the eight-voices test and incorporate a case-by-case approach to evaluating proposed combinations that would violate the top-four rule;
- Reversal of the FCC's earlier decision to treat television joint sales agreements as conferring attributable interests;
- Elimination of the newspaper/broadcast cross-ownership rule;
- Elimination of the radio/television cross-ownership rule; and
- Adoption of a presumptive waiver standard for certain so-called "embedded markets" under the local radio ownership rule.

In addition, on or before August 6, 2018, the FCC must report to the Court on the status of the rulemaking involving the incubator program.

If you have any questions, please let us know.