

ALERT

# FCC Approves Broadcast Ownership NPRM, Advancing 2022 Quadrennial Review

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On September 30, the Federal Communications Commission (FCC or Commission) voted 3-0 to approve a Notice of Proposed Rulemaking (NPRM), starting the next phase of the FCC's 2022 Quadrennial Review to examine whether certain of the agency's media ownership rules "continue to serve the public interest in light of new and emerging technologies and ever-evolving marketplace conditions." The NPRM, which was largely unchanged from the draft released on September 9, generally seeks comment on the FCC's three traditional policy goals of competition, localism, and viewpoint diversity, which the agency uses to assess whether the media ownership rules continue to be consistent with the public interest.

Below, we briefly explain the FCC's 2022 Quadrennial Review process before summarizing the key questions on which the FCC seeks comment in the NPRM. Comments will be due 30 days after publication in the Federal Register. Reply comments will be due 30 days thereafter.

## **The Telecommunications Act Requires the FCC to Review Its Media Ownership Rules Every Four Years.**

Section 202(h) of the Telecommunications Act of 1996 (Telecommunications Act) requires the Commission to review its media ownership rules every four years to determine whether they remain "necessary in the public interest as the result of competition" and to "repeal or modify any regulation [that it] determines to be no longer in the public interest."<sup>[1]</sup> These media ownership rules include: (1) the Local Radio Ownership Rule; (2) the Local Television Ownership Rule; and (3) the Dual Network Rule.<sup>[2]</sup>

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## **Practice Areas**

Administrative Procedure  
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- The Local Radio Ownership Rule limits the total number of radio stations that an entity may own within a local market and the number of radio stations within a market that the entity may own in the same service – FM or AM. The total number of radio stations that an entity may own in the same market is directly correlated to the total number of full-power commercial and noncommercial radio stations in the market.
- The Local Television Ownership Rule prohibits an entity from owning more than two television stations in the same Designated Market Area (DMA). Entities may own up to two TV stations in the DMA if: (1) the stations' digital noise limited service contours do not overlap, or (2) at least one of the stations is not ranked within the top four stations in the DMA in terms of audience reach (the Top Four Prohibition). The rule permits the FCC to disregard the Top Four Prohibition upon finding that permitting an entity to own two television stations licensed in the same DMA would serve the public interest, convenience, and necessity.
- The FCC's Dual Network Rule prohibits mergers in a market between or among the Big Four broadcast networks: ABC, CBS, FOX, and NBC.

In the *2018 Quadrennial Review Order*, the Commission made minor modifications to the Local Radio Ownership Rule related to ownership calculation methodology and updated the Local Television Ownership Rule by updating the methodology for determining station ranking within a geographic market and expanding the prohibition on transactions involving certain network affiliations in a market. The FCC concluded that the Dual Network Rule remains necessary in the public interest without changes.

Following legal challenges to the *2018 Quadrennial Review Order*, in July 2025 the U.S. Court of Appeals for the Eighth Circuit vacated the Top Four Prohibition in *Zimmer Radio of Mid-Missouri v. FCC*, finding that the Commission's decision to retain the rule in the *2018 Quadrennial Review Order* was arbitrary and capricious. (We summarized that decision here.) Moreover, the Eighth Circuit explained that the word "modify" in Section 202(h) of the Telecommunications Act only permits the FCC to relax its media ownership rules, holding that "[w]hat Section 202(h) does not mean, and what [it] cannot mean, is that the Commission properly may wedge in new, burdensome rules on broadcasters" during its statutorily mandated quadrennial reviews.

### **The NPRM Seeks Comment on the Commission's Public Interest Goals and Whether the Media Ownership Rules Are Consistent with the Public Interest.**

The NPRM seeks comment on the FCC's three traditional policy goals of competition, localism, and viewpoint diversity, and asks whether "changes in the marketplace" have "rendered certain of these goals obsolete" in the context of the three media ownership rules under review. NPRM ¶ 8. Recognizing that the Eighth Circuit's decision in *Zimmer* "provides significant discretion to the Commission" to conduct its quadrennial review, ¶ 9, the NPRM also asks "whether there are other public interest goals we should consider as part of our quadrennial review process." ¶ 10.

The NPRM also seeks comment on various aspects of: (1) the Local Radio Ownership Rule; (2) the Local Television Ownership Rule; and (3) the Dual Network Rule.

### Local Radio Ownership Rule

The NPRM seeks comment on whether the Local Radio Ownership Rule “remains necessary to further the public interest.” ¶ 13. Specifically, the NPRM asks whether the Local Radio Ownership Rule limits “the ability or potential of broadcast radio to deliver public interest benefits to listeners[.]” ¶ 13. Moreover, the NPRM asks: “If the [R]ule were to be loosened or eliminated, would the current audio marketplace deliver the same or comparable benefits to consumers, particularly with respect to our policy goals of competition, localism, and viewpoint diversity?” ¶ 13. The NPRM also seeks comment on two discrete issues: (1) competition in the audio marketplace; and (2) local radio ownership limits.

*Audio Marketplace Competition.* The NPRM asks whether the FCC should redefine the local broadcast radio market to include non-broadcast radio sources, including “satellite radio, audio streaming services, webcasting, podcasting, or other programming platforms. . . .” ¶ 14. Additionally, the NPRM asks whether the FCC should continue to retain limits on radio station concentration, regardless of whether the FCC finds that broadcast radio remains a distinct product market. ¶ 15. The NPRM further asks whether advertisers view satellite radio, audio streaming services, podcasting, or any other audio source as substitutes for broadcast radio. ¶ 16.

*Local Radio Ownership Limitations.* The NPRM asks whether the existing market size tiers under the Local Radio Ownership Rule “remain necessary in the public interest as the result of competition” and whether the FCC should “continue to have separate limits (or subcaps) for ownership of FM and/or AM stations that limit the number of radio stations a licensee can own in the same service (AM or FM) in a single market[.]” ¶¶ 18-19. The NPRM asks about potential changes to the Local Radio Ownership Rule, including whether to provide individualized relief, particularly for smaller markets, through a case-by-case review. ¶ 20.

### Local Television Ownership Rule

In the NPRM, the FCC invites comment on “whether the Local Television Ownership Rule continues to further broadcast television service to American consumers, or whether, in light of the pressures local television stations now face, the existing rule stands in the way of their ability to better serve their local communities and allowing local broadcasters to compete.” ¶ 24. The FCC also seeks comment on two specific issues concerning the Local Television Ownership Rule: (1) whether the Rule remains necessary given developments in the video marketplace; and (2) whether local television ownership limits remain necessary in the public interest as a result of competition.

*Video Marketplace Competition.* The NPRM seeks comment on several aspects of the video marketplace, including how to define the marketplace for video services and whether that definition should include non-broadcast video programming; the migration of audiences and advertisers to online platforms; how permitting broadcasters to achieve economies of scale through common ownership will enhance their ability to compete against non-broadcast entities and serve the public interest; and whether competing local stations, in addition to non-broadcast sources, motivate broadcast TV stations to benefit consumers through local programming and different viewpoints. ¶¶ 25-27. The NPRM also asks whether the Local Television

Ownership Rule remains necessary due to competition, and seeks comment on the public interest benefits of consolidation. ¶¶ 29-30.

*Local Television Ownership Limits.* In the event that the agency concludes that broadcast television ownership limits are necessary, the NPRM asks whether it should limit ownership to two stations per DMA, whether to adopt a case-by-case review for transactions involving ownership of a third station in a market or to facilitate a presumption in favor of granting ownership of a third station in certain circumstances, and whether to apply ownership limits uniformly across markets, or alternatively, considering market size or tiers. ¶ 31.

#### Dual Network Rule

In the NPRM, the Commission seeks comment on whether the Dual Network Rule remains necessary. Specifically, the NPRM solicits comment on several considerations to determine how the Big Four networks and the Dual Network Rule promote competition and localism, in particular. ¶ 34.

*Competition.* The NPRM seeks comment on metrics capturing competition by or among the Big Four networks, particularly with respect to programming, advertising, and consumer impact. For instance, the NPRM asks whether Big Four ownership of online video distribution platforms should be considered as part of the Dual Network Rule analysis. The NPRM also asks how viewers may benefit from competition among the Big Four networks, and whether other entities offer “the amalgam of offerings provided by the Big Four broadcast networks.” ¶¶ 35-40.

*Localism.* The NPRM seeks comment on the Dual Network Rule’s role in promoting localism, and subsequent implications of modifying or eliminating the Rule. For instance, the NPRM asks whether repealing or modifying the rule would strengthen Big Four networks’ leverage over local station affiliates and harm viewers. The NPRM also inquires whether “recent marketplace developments argue in favor of preserving or altering the Dual Network Rule as a necessary check” on the Big Four networks. ¶¶ 41-42.

The NPRM also seeks comment on how online video distribution platforms have changed traditional network-affiliate relationships and impacted consumers. For example, the NPRM seeks comment on whether bargaining power now favors broadcast networks, or whether online video distribution platforms have partnered with local broadcasters. ¶ 43.

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

[2] In a separate proceeding, the Commission is seeking comment on its authority to modify or eliminate the national television audience reach cap, which currently limits entities from owning or controlling television stations that, in the aggregate, reach more than 39% of the television households across the country. See

Public Notice, Media Bureau Seeks to Refresh the Record in the National Television Multiple Ownership Rule Proceeding, MB Docket No. 17-318, DA 25-530 (MB June 18, 2025).