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ALERT

Federal Court Vacates Portions of Local Television Ownership Rule

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On July 23, 2025, the U.S. Court of Appeals for the Eighth Circuit vacated two aspects of the Federal Communications Commission's (FCC or Commission) regulation restricting the number of television stations that one entity can own in a local market. The court vacated the prohibition on ownership of two of the top four stations in a local market (the Top Four Prohibition) and the FCC's expansion of the Top Four Prohibition to reach multicast streams and low power television stations (the Note 11 Amendment).

The Eighth Circuit's vacatur of the Top Four Prohibition and the Note 11 Amendment is significant for the television industry. Equally important is the Eighth Circuit's holding that the federal statute directing the FCC to review its media ownership regulations every four years is "deregulatory [in] nature" and cannot be used by the agency to "wedge in new, burdensome rules on broadcasters" during its future periodic reviews. That holding will shape future quadrennial reviews and may help to achieve Congress's deregulatory purpose in directing the FCC's periodic reviews.

The decision, *Zimmer Radio of Mid-Missouri v. FCC*, marks the latest development in a decades-long litigation saga concerning the FCC's media ownership rules. Below, we discuss the Eighth Circuit's decision, its practical impacts, and potential FCC action.

Background

Section 202(h) of the 1996 Telecom Act requires the FCC to review its media ownership rules every four years to determine whether they are still "necessary in the public interest as the result of competition" and to "repeal or modify" any rule it finds no longer in the public

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interest. In the Report and Order completing the 2018 Quadrennial Review (released in December 2023), the FCC retained its existing broadcast ownership rules and expanded the Top Four Prohibition by adopting the Note 11 Amendment.

The *Zimmer Radio* Petitioners and Intervenors, including the National Association of Broadcasters representing thousands of television and radio broadcasters, challenged the Order. Specifically, the Petitioners and Intervenors challenged the FCC's decision to retain the Local Radio and Television Ownership Rules, as well as several discrete aspects of those rules.

This is the first time in more than twenty years that a circuit court other than the U.S. Court of Appeals for the Third Circuit has heard a substantive challenge to an FCC quadrennial (or, before that, biennial) review of the media ownership rules.

The Eighth Circuit's Decision

In its highly anticipated decision, the Eighth Circuit unanimously vacated and remanded the Top Four Prohibition and Note 11 Amendment. The Eighth Circuit denied the remainder of the petition for review, leaving the remaining broadcast ownership rules intact for now.

In its analysis of the Top Four Prohibition, the Eighth Circuit found "the Commission's decision to retain the rule arbitrary and capricious." Rejecting the FCC's claim that top four combinations would reduce competition in markets, the Eighth Circuit found that the evidence in the record demonstrated that not all top four combinations are the same. The court found persuasive evidence submitted by the National Association of Broadcasters that, in many markets, combinations of top four stations would increase competition. The court found a lack of support, meanwhile, for the FCC's claims that the top four stations in a market are generally associated with the four major broadcast networks, and that they are more likely to originate local news. Finally, the court ruled that the availability of a specific mechanism for seeking waivers of the Top Four Prohibition could not "save an irrational rule."

In addition to vacating the Top Four Prohibition overall, the court also found that the tightening of that prohibition through the Note 11 Amendment was unlawful because the word "modify" in Section 202(h) only permits the FCC to relax its ownership rules, not to tighten them. The court explained that "[t]he deregulatory nature of the 1996 Act also supports" the plain meaning of the text. Citing Commissioner Simington's dissent, the court said "[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.

With respect to (1) the remaining aspects of the Local Television Ownership Rule and (2) the Local Radio Ownership Rule, the court found that the FCC's analysis was reasonable and therefore sufficient to withstand arbitrary-and-capricious review.

When Does the Eighth Circuit's Decision Take Effect?

The Eighth Circuit delayed issuance of its mandate as to the Top Four Prohibition for 90 days to "allow the FCC an opportunity to modify, accelerate, or postpone the mandate" based on the agency's analysis of the potential "disruptive effect of vacating" and any attempt the FCC might make to cure its defective reasoning. The court did not delay its mandate as to the Note 11 Amendment, so vacatur of that aspect of the Top Four Prohibition will take effect after the mandate issues in the ordinary course under federal appellate rules. Subsequent developments may cause further delays in effectiveness.

What's Next at the FCC?

Immediately following the *Zimmer Radio* decision's release, FCC Chairman Brendan Carr released a statement applauding the Eighth Circuit's decision. Now-Chairman Carr, who dissented from the FCC's December 2023 Order retaining the Top Four Prohibition and adopting the Note 11 Amendment as a Commissioner, described the FCC's retention of the Top Four Prohibition as "a decision to retain a regulation that does not match marketplace realities." Notably, Chairman Carr stated that he is "pleased to see that the court agrees and has vacated that regulation."

Now, Carr and his agency will need to decide whether to request to "modify, accelerate, or postpone the mandate" and how the *Zimmer Radio* decision will impact its ongoing 2022, and upcoming 2026, quadrennial reviews of the media ownership rules.

Wiley attorneys Eve Reed, Jeremy Broggi, and Boyd Garriott represented interventors ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates in the Eighth Circuit litigation. Additionally, Wiley's seasoned Media Practice has a deep bench of attorneys with extensive experience counseling broadcasters on the FCC's ownership rules and compliance, and has long worked together with Wiley's Issues and Appeals Practice on litigation related to those rules. If you have any questions about the *Zimmer Radio* decision and its impact on broadcasters, please contact one of the authors listed on this alert.