

ALERT

Media Bureau Seeks to Refresh Media Ownership Record

June 8, 2021

On June 4, 2021, the Federal Communications Commission's (FCC or Commission) Media Bureau (Bureau) released a Public Notice seeking to refresh the record in its pending 2018 Quadrennial Review proceeding. Comments are due 30 days after publication in the Federal Register and Reply Comments are due 60 days after publication in the Federal Register.

The FCC released its Notice of Proposed Rulemaking for the 2018 Quadrennial Review (2018 NPRM) in December 2018. At that time, 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 and other orders in which the FCC adopted measures designed to promote broadcast ownership diversity. After the comment period on the 2018 NPRM closed: (1) the Third Circuit issued an Order in *Prometheus Radio Project v. FCC* vacating the challenged orders in their entirety; (2) the Supreme Court unanimously reversed the Third Circuit, effectively reinstating those orders; and (3) the FCC's Media Bureau issued an Order implementing the Supreme Court's decision.

Considering the time that has passed since the comment period for the 2018 NPRM closed and the ensuing litigation, the Bureau is seeking further comment on a number of issues to update the record in the 2018 Quadrennial Review Proceeding, including matters that were not expressly raised in the 2018 NPRM.

Background

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Practice Areas

Media
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Under the Telecommunications Act of 1996, the Commission must review its media ownership rules every four years to determine whether, as a result of competition, they are still necessary in the public interest. In conducting this review, the Commission looks to ensure that these rules continue to promote core policy goals like competition, localism, and diversity, as intended.

In the 2018 NPRM, the Commission sought comment on whether to retain, modify, or eliminate its structural media ownership rules, and on several diversity-related proposals offered in the record of the 2010/2014 Quadrennial Review proceeding. Following the Supreme Court's decision in *Prometheus*, three structural ownership rules remain in place and are still subject to the Commission's quadrennial review process: (1) the Local Radio Ownership Rule; (2) the Local Television Ownership Rule; and (3) the Dual Network Rule. In the 2018 NPRM, the Commission sought comment on these three structural rules.

Topics for Comment

In issuing the Public Notice, the Bureau explained that the 2018 Quadrennial Review proceeding continues to generate significant interest, including the submission of additional information following the close of the original comment period in 2019. As such, the Bureau asks commenters to update the record on a number of topics, including the following:

- **Materials that have been filed in the docket since the formal comment and reply period ended:** In particular, the Bureau seeks comment on whether these materials highlight any issues—including those not fully explored by the 2018 NPRM—that warrant further comment and consideration. The Bureau also asks whether there are issues raised in the 2018 NPRM for which new and relevant information has come to light.
- **New or additional information regarding the media marketplace:** Although the Public Notice broadly asks about any information that would be relevant to the 2018 Quadrennial Review, the Bureau specifically requests information regarding the broadcast industry's evolution since early 2019 and its current trajectory, including the effects of technological change, new entry, consolidation, or changing market conditions. The Bureau also seeks comment on the further development and impact of technological advances and industry practices, such as multicast streams, satellite stations, low power television stations, and ATSC 3.0 transmission.
- **Other relevant trends that have been, or are being, observed within the broadcast industry or in related markets:** The Bureau requests comment on whether trends like the growth of online audio and video sources, as well as the continued strength and importance of broadcast radio and television stations in their local communities, among others, have continued, accelerated, flattened, or reversed in recent years such that the Bureau should take account of any new or continuing trendlines in its 2018 Quadrennial Review. In particular, the Bureau asks how, if at all, it should account for access to, or usage of, broadband Internet service or other technologies.
- **The impact of the Incentive Auction and repack on the Local Television Ownership Rule:** The Bureau requests comment on how, if at all, the Incentive Auction and its aftermath affected the broadcast industry.

- **The impact of the COVID-19 pandemic:** The Bureau seeks comment on the extent, if it at all, to which it should consider changes to, or effects on, the broadcast industry as a result of the COVID-19 pandemic in the 2018 Quadrennial Review proceeding.
- **Additional empirical evidence:** The Bureau asks whether there is any new or additional data that are now available, or studies that have been published or performed, that would inform the FCC's analysis. In particular, the Bureau invites any insights or analysis of research regarding how to further the Bureau's policy goals and whether such research suggests any specific rule changes.
- **Other factors:** Finally, the Bureau seeks comment on whether there are any other legal or economic factors, changes, or issues that the Bureau should consider in the context of this quadrennial review and, if so, how the Bureau should evaluate or address them.

In sum, the Public Notice effectively solicits comment on all issues related to media ownership. Accordingly, all broadcasters should strongly consider submitting comments.

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.

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