

Multiple Ownership Proposals Released By FCC - Abolish Radio-TV Cross-Ownership Rules, Leave Most Other Rules In Place, Examine Shared Services Agreements

December 23, 2011 by [David Oxenford](#)

The FCC issued its [Notice of Proposed Rulemaking in its reexamination of its multiple ownership rules](#), suggesting limited changes in its rules governing the number of interests that one person or company can have in media outlets in a particular community. The FCC's tentative conclusions leave **most of the current rules in place** - including rules that **limit the number of radio and TV stations that one entity can own** in a market, and **rules prohibiting combined ownership of daily newspapers and TV stations** in the same market. The Commission also proposed keeping the **dual network rule**, prohibiting the combination of any of the four major TV networks. **Shared Services Agreements** were another issue addressed by the FCC - proposing to examine SSAs and other news and program sharing agreements between otherwise independent stations. The FCC did propose the abolition of one rule - the rule that currently limits the **ownership of radio and TV stations in the same market**. In the NPRM, the FCC suggested that other ownership rules could be waived in some instances, so the details of waivers and exceptions could become an important aspect of any final decision in this proceeding. All of these conclusions are tentative, and the Commission asks many questions about each of its tentative conclusions and asks for public comment on its ideas. The public can formally weigh in with comments for 45 days after the NPRM is published in the Federal Register, and file replies 30 days later. After that, there is sure to be much lobbying of the Commissioners before any final decision is made.

This proceeding combines several on-going proceedings. The Commission started its required **Quadrennial Review** of the ownership rules over two years ago with a series of [public hearings](#), and a [Notice of Inquiry](#). The Commission also is dealing with the clean-up of its last review of the ownership rules, which was embodied in a controversial decision reached late in 2007 (see our summaries [here](#) and [here](#)). The [Third Circuit Court of Appeals threw out significant parts of that decision](#), finding that the FCC's relaxation of the newspaper-television rules had not been the subject of adequate notice to the public, and that the FCC had ignored its obligations to take steps to promote minority ownership of the media. Some parties seeking repeal of the newspaper-television cross-ownership rules have asked the Supreme Court to review the Third Circuit decision - but this NPRM looks to reexamine many of these issues in

the event that the Supreme Court doesn't otherwise preempt their decision. Below we'll take a look at specific questions raised by the NPRM.

Local television ownership: The FCC tentatively concludes that the current rule, limiting TV combinations to the ownership of two stations in a market, but only where there will be 8 independently owned stations in the market after the combination, and only where the combination is not of two of the top 4 rated stations in the market. The FCC asks for comments on that conclusion, and on a number of other issues including:

- Whether, in a digital world, it should look at ownership on a DMA basis, rather than relying on Grade B contours that really were an analog concept. This would be similar to what the FCC does in radio - looking at how many stations are owned and how many voices are in a market based on Arbitron-defined markets
- Should there be waivers of the prohibitions on combinations of stations in smaller markets, where stations might not otherwise be able to support themselves, or support news programming, if they were independently owned? What standards should govern such waivers? Do combining stations need to be failing, or does there simply need to be some other public interest benefit of the combination?
- Is the prohibition against the Top 4 stations combining sufficient to preserve diversity in a market, or should a Top 5 or Top 6 rule be adopted?
- Should the sale of an affiliation be regulated, so that a Top 4 station owning a second lower ranked station could not buy the affiliation agreement of another Top 4 station - taking advantage of the FCC's policy of evaluating Top 4 status only in connection with the sale of a license (a reaction to the Honolulu case where a sale of an affiliation took place - see our article [here](#))
- Do digital multicasting, new technologies, and other competition in the video marketplace affect the FCC's tentative conclusions?

Local Radio Ownership: The current rules place limits on the number of stations that can be owned in each market based on the number of competitors who are in that market. In the smallest market, one owner can have interests in two stations - one AM and one FM. In the largest (markets with 45 or more radio stations), one owner can hold up to 8 stations, no more than 5 of which can be AMs or FMs. The FCC proposes to keep these rules in place, but asks questions including:

- A number of broadcast groups suggest that limits not have the AM and FM subcaps - so that one owner could hold up to 8 AMs or 8 FMs in a single market.

While the FCC tentatively rejects those proposals, the Commission asks for more comments, including whether just allowing 8 AMs under common ownership might be a good idea

- Do Internet radio, satellite radio and other technologies pose a sufficient competitive force in local markets that they should be considered in an ownership analysis?
- Does digital HD radio, with multicasting opportunities, in any way affect the need for the rules, or minimize the need for liberalization of the rules?
- In the largest of markets, should one owner be allowed to hold more than 8 stations - i.e. should the FCC set up tiers where there one owner could own more stations - say allowing ownership of 10 stations in a market of more than 55 stations?
- In what circumstances should waivers of these limits be permitted?

Newspaper/Broadcast Cross-Ownership: The current rules prohibit a newspaper operator from owning a radio or TV station in the same area the newspaper serves. In 2007, the FCC proposed relaxing that prohibition in the Top 20 markets, and also provided for waivers in smaller markets. The Third Circuit overturned this decision based on the lack of public comment. The FCC now proposes that a rule similar to the 2007 decision be adopted, but asks for comments as to exactly what standards should be used to evaluate proposed combinations. The tentative conclusion is that, in the Top 20 markets, radio/newspaper ownership should be allowed, and newspaper/TV combinations be allowed if the TV station is not a Top 4 station and there are at least 8 voices in the market (one would think that the 8 voices test would be met in every Top 20 market). But the FCC asks a number of questions including:

- Should the rules be addressed on a DMA basis, rather than on a Grade A contour methodology as is currently the case for TV/newspaper combinations?
- Should cross-ownership be based on tiers established by the number of media voices in a market? Are the Top 20 markets significantly different than smaller markets?
- Are there circumstances where a waiver should be granted to permit combinations in smaller markets?
- Should additional factors be evaluated in permitting combinations in Top 20 markets?

Radio-Television Cross-Ownership: The current rules permit same-market combinations of radio and TV stations based on the number of other voices in a market, but the ownership of a TV station will set for that owner an ownership limit for radio stations lower than that which would normally apply for radio ownership in that market. The FCC proposes to do away with any restrictions on radio and television ownership - allowing one owner to have the maximum number of each type of station that would be permitted in that market. This is based on a finding that radio and television stations are not viewed as substantial substitutes by either advertisers or consumers. The FCC asks for comments on this conclusion.

Dual Network Rule: The rule currently prohibits the combination of any of the Top 4 commercial networks (ABC, NBC, CBS and Fox). The FCC concluded that these networks still serve a much larger audience than any cable network or any other broadcast network, and are very important to both advertisers and viewers. Based on the important role that the networks play, the Commission proposed retaining the rule. It asks for comments on this conclusion.

Shared Services Agreements: Given the controversy in Hawaii (summarized [here](#)) and the issues that have been [raised by public interest groups](#) suggesting that shared services agreements and similar arrangements evade the FCC ownership prohibitions, the FCC has asked if these kinds of agreements should be made "attributable", i.e. if they should count as if they are an ownership interest subject to the ownership rules. Comments are sought on a number of questions including:

- What are the benefits of such agreements, and the perceived detriments?
- How should SSAs be defined, if a rule against them is adopted?
- Should the FCC not even try to define an SSA, but instead adopt a broader rule that encompasses any kind of significant relationship with a competing station? (This would seem to imply a return to an old FCC "cross-interest" policy that prohibited substantial interests in competing stations, a policy that was abandoned decades ago as the FCC felt that bright line tests set by the ownership rules should determine what is permitted and what is not)
- The FCC also notes that it has had an open proceeding on the attribution of TV Joint Sales Agreement - radio JSAs having been made attributable years ago, though it gives no indication of when that proceeding will be resolved.

Diversity: In connection with each of these rules, the FCC asked for comments on the impact that its proposals would have on the ownership of broadcast stations by

members of minority communities, and whether other changes in each of these rules would somehow better serve its interest in encouraging diversity in ownership of the media.

Other Issues: The FCC also summarized a number of studies that it conducted on media ownership and its effect on news, diversity of viewpoints, localism and minority ownership. The FCC asks for comments on the findings of these studies.

This is a very important proceeding that will be sure to generate much controversy, and much discussion. When will it be resolved? My observations are that these proceedings always take much longer than anyone expects. Moreover, given their potential to be quite controversial, they are not usually decided before a big election, like that coming up in November. My prediction - don't look for a decision for another year (maybe during the December holidays next year?). Be ready to file your comments when the date is announced, and participate in the upcoming debate.

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