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Federal Communications Commission
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FCC INITIATES THIRD BIENNIAL REVIEW OF BROADCAST OWNERSHIP RULES *Cites Goal of Updating Rules to Reflect Modern Marketplace*

Washington, D.C. - Today, the Federal Communications Commission (FCC) initiated the third Biennial Regulatory Review of Broadcast Ownership Rules. In the 1996 Telecommunications Act, Congress mandated that the FCC review its media ownership rules to determine “whether any of such rules are necessary in the public interest as a result of competition.” Today’s action marks the beginning of the most comprehensive look at media ownership regulation ever undertaken by the FCC. The FCC said the objective of this proceeding is to develop ownership rules and policies that are reflective of the current media marketplace, are based on empirical evidence, and are analytically consistent.

In a Notice of Proposed Rulemaking (NPRM) adopted today, the FCC affirmed its traditional goals of promoting diversity, localism, and competition in the local media market. The item explores the following questions:

- (1) Does the marketplace provide a sufficient level of competition to protect and advance these policy goals?
- (2) If not, do the current ownership rules achieve these goals?
- (3) Are revisions to the rules required to protect and advance diversity, competition and localism in the media market?

The NPRM addresses all of the media ownership rules related to use of the broadcast spectrum, many of which were originally adopted decades ago. Two of these six rules are subject to rulemakings already in progress so their records will be combined into this proceeding; and two other rules have been remanded to the FCC by the U.S. Court of Appeals for the District of Columbia. The six rules and the year they originally were adopted are:

- **Newspaper/Broadcast Cross-Ownership Prohibition (1975):** NPRM in progress (MM 01-235)
- **Local Radio Ownership (1941):** NPRM in progress (MM 00-244)
- **National TV Ownership (1941):** remanded by D.C. Circuit
- **Local TV Multiple Ownership (1964):** remanded by D.C. Circuit
- **Radio/TV Cross-Ownership Restriction (1970)**
- **Dual Television Network Rule (1946)**

Recent court decisions reversing FCC ownership rules emphasized that any limits must be based on a solid factual record, not on predictive judgments alone. With respect to the National TV Ownership rule, the court stated, “Although we agree with the Commission that protecting diversity is a permissible policy, the Commission did not provide an adequate basis for believing the rule would in fact further that cause” (*Fox Television Stations, Inc. v. FCC*, 2002).

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Marking the first effort of its kind, the FCC has commissioned a number of empirical studies examining the current state of the media marketplace, including how consumers use the media, how advertisers view the different media outlets, and how media ownership affects diversity, localism and competition. The results of these studies will be released in the coming weeks. Parties filing comments in response to today's NPRM will have a full opportunity to review these studies before filing comments.

Today's NPRM does not reach any tentative conclusions because the item's objective is to gather data that will build the foundation for media ownership regulation. The FCC said that parties who file comments should provide empirical evidence supporting their assertions.

The FCC said evaluating the rules together will create a comprehensive and consistent analytical framework that will avoid future criticism by the courts. Most recently, the D.C. Circuit, in reviewing the FCC's local television ownership rule, stated, "The deficiency of the Commission's explanation is underscored by the explanation it failed to give for defining 'voices' differently in the cross-ownership and local ownership rules" (*Sinclair Broadcast Group, Inc. v. FCC*, 2002).

Finally, the NPRM invites comment on the standard for the Biennial Review. Does the 1996 Telecommunications Act require the FCC to repeal a rule unless it finds it to be "necessary," meaning "indispensable," or can the FCC retain a rule if it merely serves the public interest? This question was left unresolved by the U.S. Court of Appeals for the District of Columbia in *Fox Television Stations, Inc. v. FCC* (2002).

-FCC-

Comments due: 60 days after release of the studies
Reply Comments due: 30 days after the initial comment deadline

MB Docket 02-277

Action by the Commission, September 12, 2002, by Notice of Proposed Rulemaking (FCC 02-249). Chairman Powell and Commissioner Abernathy, with Commissioner Copps concurring and issuing a statement and Commissioner Martin approving in part, concurring in part and issuing a statement.

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