



Federal Communications Commission
Washington, D.C. 20554

January 14, 2016

DA 16-47

Small Entity Compliance Guide

2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rule and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996

FCC 14-28

MB Docket Nos. 14-50, 09-182, 07-294, and 04-256

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC’s approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC’s Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Fax: 1-866-418-0232

I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order* in MB Docket Nos. 14-50, 09-182, 07-294, and 04-256, released April 15, 2014,¹ the Commission adopted rules regarding the attribution of television joint sales agreements (JSAs).

II. BENEFITS

The Commission's decision to attribute television JSAs will preserve competition by ensuring that broadcast television station owners are not able to evade the Commission's media ownership limits through the use of certain television JSAs. The Commission found that, under such an agreement, the ability of the brokering station to control the brokered station's advertising revenue, its principal source of income, would afford the broker the opportunity, ability, and incentive to exert significant influence over the brokered station. In addition, the Commission found that television JSAs provide incentives for joint operation that are similar to those created by common ownership and can be used to coordinate the operations of two ostensibly separately owned entities. As a result, the Commission ordered that, with regard to same-market television JSAs that permit the brokering station to sell more than 15 percent of the weekly advertising time of the brokered station, ownership of the brokered station will be attributed to the licensee of the brokering station. The Commission reasoned that the 15 percent attribution threshold provides the opportunity for stations to realize cost savings through the joint sale of a small portion of advertising time while preserving the independence of the brokered station.

III. COMPLIANCE REQUIREMENTS

1. Background Information: Definitions

- **Attributable Interest:** An attributable interest is an interest in a broadcast station that counts as an ownership interest for the purpose of applying the Commission's media ownership rules. Examples of other attributable interests include officers or directors of a broadcast licensee and individuals or entities that own five percent or more of the outstanding voting stock of a broadcast licensee.
- **Brokered Station:** A brokered station is a station that authorizes another station to sell its advertising time.
- **Brokering Station:** A brokering station is a station that is authorized to sell the advertising time for another station.
- **Designated Market Area (DMA):** A DMA is a geographic area defined by The Nielsen Company as a group of counties that make up a particular television market.
- **Joint Sales Agreement (JSA):** A JSA is an agreement with a licensee of a brokered station that authorizes a brokering station to sell advertising time for the brokered station.

2. Entities required to take action under this proceeding

The television JSA attribution rule and related filing and reporting requirements apply to broadcast television stations. Radio licensees and multichannel video programming distributors are not included in the Commission's actions regarding JSAs in this proceeding.

¹ 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4527-45, ¶¶ 340-72 (2014).

3. Compliance with attribution threshold

The new attribution rule for television JSAs applies when: (1) both broadcast television stations are licensed to the same DMA; and (2) the brokering station is authorized to sell more than 15 percent of the weekly advertising time of the brokered station. In these circumstances, the brokering station will have an attributable interest in the brokered station. The rule became effective on June 19, 2014.

Stations that have a television JSA signed before the release of the *Report and Order* will have until June 19, 2016 (i.e., two years from the effective date of television JSA attribution rule), to ensure that the agreement complies with the Commission's media ownership rules or to come into compliance with the media ownership rules by another means. For example, if the local television ownership rule (47 C.F.R. § 73.3555(b)) prohibits the brokering station from having an attributable interest in more than one broadcast television station in the same DMA, the licensees of the affected stations would either have to terminate the agreement or modify the agreement to ensure that the brokering station is authorized to sell no more than 15 percent of the brokered station's weekly advertising time, or the licensee of the brokering station would have to take other steps to avoid having an attributable interest in more than one broadcast television station in the market. Licensees that believe application of the attribution rule to their particular circumstances would not serve the public interest may seek a waiver of this rule. Likewise, licensees that believe application of the local television ownership rule would adversely affect competition, diversity, or localism may seek a waiver of that rule.

Television JSAs entered into after the release of the *Report and Order* must comply with the Commission's media ownership rules at the time they are executed; the two-year compliance period does not apply to any television JSA entered into after the release of the *Report and Order*. Television JSAs that were entered into before the release of the *Report and Order* but that expire before June 19, 2016, however, may be renewed even if the agreement would violate the media ownership limits, provided that the renewal term does not extend beyond June 19, 2016.

Update: The STELA Reauthorization Act of 2014 ("STELAR") was enacted on December 4, 2014. In STELAR, Congress provided that licensees with attributable television JSAs "shall not be considered to be in violation of the ownership limitations [in section 73.3555 of the Commission's rules, 47 C.F.R. § 73.3555,] by reason of the application of the [attribution] rule" until six months after the end of the two-year compliance period adopted by the Commission.² The six-month period ends on December 19, 2016.

Second Update: The Consolidated Appropriations Act, 2016 was enacted on December 18, 2015. In the Act, Congress provided that, through September 30, 2025, "the amendments to the rules of the Commission [adopted in the 2014 *Order*] shall not apply to a joint sales agreement (as defined in Note 2(k) to section 73.3555 of title 47, Code of Federal Regulations) that was in effect on March 31, 2014," and "[a] party to a [television] joint sales agreement that was in effect on March 31, 2014, shall not be considered to be in violation of the ownership limitations of section 73.3555 of title 47, Code of Federal Regulations, by reason of the application of the rule in Note 2(k)(2), as so amended, to the joint sales agreement."³

4. Filing of attributable television JSAs

As discussed in greater detail below, the *Report and Order* requires that all attributable television JSAs be filed with the Commission. This filing requirement became effective on October 28, 2014. The filing deadline for attributable television JSAs is as follows:

- **Attributable television JSAs entered into on or before October 28, 2014:** The licensee of the brokering station must file the agreement with the Commission no later than **November 28, 2014**.

² STELA Reauthorization Act of 2014, Pub. L. No. 113-200, § 104, 128 Stat. 2059, 2063 (2014).

³ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 628 (2015).

- **Attributable television JSAs entered into after October 28, 2014:** The licensee of the brokering station must file the agreement with the Commission no later than **30 days** after the agreement is executed.

Each party that must file an attributable television JSA must provide an original and one copy, which can be delivered to the Commission in the following ways:

- **Hand or messenger-delivered mail accepted between 8:00 a.m. to 7:00 p.m. only:**
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554
- **Commercial overnight mail, EXCEPT United States Postal Service:**
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
- **All other mail, INCLUDING United States Postal Service Express Mail, Priority Mail, and First Class Mail:**
Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Additional information on how to file a paper document with the Commission can be found at:
<http://www.fcc.gov/guides/how-file-paper-documents-fcc>.

5. **Disclosure of television JSAs on FCC Forms**

Previously, various FCC Forms—listed below—contained questions regarding attributable radio JSAs and attributable radio or television time brokerage agreements (also referred to as local marketing agreements). These questions now include attributable television JSAs. Any entity that is required to answer such a question should consult the form’s instructions for guidance on responding to the question.

- FCC Form 2100, Schedule A (Formerly FCC Form 301), Application for Construction Permit For Commercial Broadcast Station;
- FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License;
- FCC Form 315, Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License;
- FCC Form 323, Ownership Report for Commercial Broadcast Station

IV. RECORDKEEPING

The Report and Order does not impose any new recordkeeping obligations on television stations.

V. IMPACT ON SMALL BUSINESS

The *Report and Order* brings the Commission's policy regarding television JSAs in line with the existing rules regarding radio JSAs by counting television stations brokered under a same-market television JSA toward the brokering station's permissible television ownership totals if the brokering station sells more than 15 percent of the brokered station's weekly advertising time. Attribution of an ownership interest to the brokering station in these circumstances does not diminish the ownership interests held by the owners of the brokered station or otherwise impact the organizational structure of the brokered station.

The rule adopted in the *Report and Order* protects local markets—including small businesses operating in local markets—from exposure to competitive harms that might result from contractual agreements between stations for control of advertising sales. Therefore, the Commission believes that in many cases the attribution of a same-market television JSA will protect small businesses, as well as large, from the adverse impacts of competing stations' coordination of advertising sales.

The *Report and Order* adopts a two-year transition period for stations to come into compliance in order to avoid undue disruption to current business arrangements, which will help small television stations that do not have the same financial and technical resources as large stations. This transition period will give small entities with attributable television JSAs sufficient time to make alternative arrangements or to seek a waiver, if appropriate.

In addition, the *Report and Order* adopts a filing requirement for attributable television JSAs, which the Commission believes will have a minimal and uniform impact for all entities. Compliance will only require the expenditure of very little additional resources, and the filing requirement is the least burdensome alternative. In addition, entities may be required to report attributable television JSAs on certain FCC Forms, as described above. Compliance is very simple and will only require the expenditure of very little additional resources. Accordingly, the adverse economic impact on small businesses will be minimal, at most, and in many cases non-existent.

INTERNET LINKS

Report and Order

- <http://www.fcc.gov/document/2014-quadrennial-regulatory-review>

Chairman and Commissioner Statements

- Chairman Wheeler: <http://www.fcc.gov/article/fcc-14-28a2>
- Commissioner Clyburn: <http://www.fcc.gov/article/fcc-14-28a3>
- Commissioner Rosenworcel: <http://www.fcc.gov/article/fcc-14-28a4>
- Commissioner Pai: <http://www.fcc.gov/article/fcc-14-28a5>
- Commissioner O'Rielly: <http://www.fcc.gov/article/fcc-14-28a6>
- Commissioner O'Rielly Attachment: <http://www.fcc.gov/article/fcc-14-28a7>

FCC Forms

- FCC Form 2100, Schedule A: <http://transition.fcc.gov/Forms/Form2100/2100instructions.pdf>
- FCC Form 314: <http://transition.fcc.gov/Forms/Form314/314.pdf>
- FCC Form 315: <http://transition.fcc.gov/Forms/Form315/315.pdf>
- FCC Form 323: <http://transition.fcc.gov/Forms/Form323/323.pdf>

FCC Rules

- 47 C.F.R. § 73.3555 (2013): <http://www.gpo.gov/fdsys/pkg/CFR-2013-title47-vol4/pdf/CFR-2013-title47-vol4-sec73-3555.pdf>