



Federal Communications Commission
Washington, D.C. 20554

June 28, 2017

DA 17-627

Small Entity Compliance Guide

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

FCC 17-40
MB Docket No. 13-236
Released: April 21, 2017

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 revised rules adopted in the above referenced Federal Communications Commission (FCC or Commission) rulemaking docket(s). This Guide is not intended to replace the rules. The Guide is intended to facilitate compliance with the rules, not to supersede 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 cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. All decisions regarding a particular small entity will be based on the statute and relevant rules.

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:

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I. OBJECTIVES OF THE PROCEEDING

- In the Order on Reconsideration in MB Docket No. 13-236, released on April 21, 2017, the Commission reinstated the UHF discount portion of the national television multiple ownership rule. The reinstatement of the UHF discount became effective on June 15, 2017.
- The national television multiple ownership rule prohibits a single entity from owning television stations that, in the aggregate, reach more than 39 percent of the total television households in the nation. “Reach” is defined as the number of television households in the television Designated Market Area (DMA) to which each station is assigned. No market is counted more than once, even if a station owner holds more than one station in the market.
- In 1941, the Commission first began limiting the number of stations that could be commonly owned and then, in 1985, supplemented the station number limit with a national television audience reach cap. In 1985, television stations all broadcast in analog format and stations operating in the UHF spectrum band were considered technically inferior and at a competitive disadvantage relative to stations broadcasting in the VHF band. UHF stations produced weaker over-the-air signals, reached smaller audiences, and cost more to build and operate. Therefore, the Commission allowed UHF stations to count only 50 percent of the television households in their DMAs when calculating compliance with the national television audience reach cap. This was called the UHF discount.
- In August 2016, in a previous Report and Order, the Commission eliminated the UHF discount, finding that UHF stations are no longer technically inferior to VHF stations following the transition to digital television broadcasting, and that any competitive disparity between UHF and VHF stations had been eliminated. The elimination of the UHF discount became effective on November 23, 2016. The Commission declined at that time to review whether the overall national audience reach cap of 39 percent was still in the public interest, or to consider the options consumers have today for receiving and viewing video programming, which have changed significantly since Congress directed the FCC to set the cap at 39 percent in 2004.
- In this Order on Reconsideration the Commission reinstated the UHF discount, finding that the Commission’s prior elimination of the discount effectively tightened the 39 percent national television audience reach cap. The Order also finds that the cap and the UHF discount, which is used by broadcast television station owners to calculate compliance with the cap, are inextricably linked, and that the Commission erred when it eliminated the UHF discount without also considering whether effectively tightening the cap was in the public interest. The Order also finds that the prior Commission presented no examples of how the 39 percent cap, including the discount, was harming the public interest goals of competition, diversity, or localism.
- The Order on Reconsideration states that the Commission will open a comprehensive rulemaking proceeding later this year to determine whether the 39 percent national audience reach cap, including the UHF discount, remains in the public interest.

II. PRACTICAL IMPACT

- Reinstatement of the UHF discount returns broadcasters to the status quo that existed prior to elimination of the UHF discount.
- Reinstatement of the UHF discount will permit the Commission to conduct a comprehensive evaluation of whether the national audience reach cap, including the UHF discount used to calculate compliance with the cap, remains in the public interest, and whether to maintain or adjust it accordingly.

- Reinstating the UHF discount eliminates any potential harmful impact on some broadcasters, including those that are small businesses, from what was effectively a tightening of the cap.
- Broadcast station groups that exceeded the cap because the discount was eliminated will no longer exceed the cap, and those station groups can be transferred intact as a result of the reinstatement of the discount. Additionally, station groups below the cap that still have “head room” before approaching the limit can acquire additional stations that they might not have been able to acquire without exceeding the cap, absent reinstatement of the discount.
- These effects will continue while the Commission completes its comprehensive review of the national audience reach cap and UHF discount in tandem, and determines whether the cap, including the UHF discount, remains in the public interest.

III. COMPLIANCE REQUIREMENTS

A. Entities Required to Take Action under this Proceeding

- All commercial broadcast station groups are required to comply with the national audience reach cap. Because the Order on Reconsideration reinstates the UHF discount, broadcasters can return to calculating compliance with the national audience reach cap in the manner they used before the UHF discount was eliminated.

B. Rules Reviewed by the Commission

- The Order on Reconsideration reinstates the UHF discount as part of the national television multiple ownership rule, 47 CFR § 73.3555(e).
- As indicated, the rule states that no license for a commercial television broadcast station shall be granted, transferred, or assigned to any party, including all parties under common control, if the grant, transfer, or assignment would result in such party or any of its stockholders, partners, members, officers, or directors having an interest in television stations that have an aggregate national audience reach exceeding 39 percent.
- Before the Commission eliminated the UHF discount, national audience reach was defined as the total number of television households in the Nielsen DMA in which the relevant stations are located divided by the total national television households as measured by DMA data at the time of a grant, transfer, or assignment of a license. For purposes of making this calculation, UHF television stations are attributed with 50 percent of the television households in their DMA. The Order on Reconsideration reinstates this definition.

IV. RECORDKEEPING

- The Order on Reconsideration imposes no increased reporting, recordkeeping, or other compliance requirements.

V. IMPACT ON SMALL BUSINESSES

- Reinstatement of the UHF discount will not impose additional obligations or expenditure of resources on small businesses.
- The Commission anticipates that a new, comprehensive rulemaking proceeding to examine the national television audience reach cap and UHF discount in tandem will positively impact broadcasters, including small entities, and eliminate the potential harm posed by eliminating the discount piecemeal. The new proceeding will also allow the Commission to examine whether the national audience reach cap, including the UHF discount, should be modified in light of changes in the video programming marketplace, and their effect on broadcasters, including small broadcasters.

VI. INTERNET LINKS

Order on Reconsideration

<https://ecfsapi.fcc.gov/file/0426267477284/FCC-17-40A1.pdf>

Commissioner Statements

Chairman Pai: <https://ecfsapi.fcc.gov/file/042023833856/DOC-344490A2.pdf>

Commissioner Clyburn: <https://ecfsapi.fcc.gov/file/042023833856/DOC-344490A3.pdf>

Commissioner O’Rielly: <https://ecfsapi.fcc.gov/file/042023833856/DOC-344490A4.pdf>