



# PUBLIC NOTICE

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## MEDIA BUREAU OPENS DOCKET AND SEEKS COMMENT FOR 2022 QUADRENNIAL REVIEW OF MEDIA OWNERSHIP RULES

### Action Commences the 2022 Quadrennial Regulatory Review

#### MB Docket No. 22-459

**Comment Date:** [45 days after publication in the Federal Register]

**Reply Comment Date:** [60 days after publication in the Federal Register]

With this Public Notice, the Media Bureau commences the 2022 Quadrennial Review of the Commission's media ownership rules. Accordingly, the Bureau seeks comment, pursuant to the obligation under section 202(h) of the Telecommunications Act of 1996, on whether the media ownership rules remain "necessary in the public interest as the result of competition."<sup>1</sup> Although the Commission has not yet adopted final rules in the 2018 Quadrennial Review proceeding, we remain cognizant of the statutory obligation to review the broadcast ownership rules every four years. Just as the previous (2018) quadrennial review was initiated in December of 2018, we seek to commence this subsequent (2022) review before the end of the 2022 calendar year.

As the Commission has observed previously, the media marketplace can change dramatically in between its periodic regulatory reviews. Moreover, economic studies and data collection, which we welcome as part of this proceeding, may take significant time to complete. Therefore, we find it prudent to provide commenters with ample time and advance notice so they may begin undertaking such efforts, if they so choose, as soon as possible. Accordingly, the Media Bureau finds that initiating the 2022 Quadrennial Review despite the pendency of the 2018 Quadrennial Review is appropriate in this instance.<sup>2</sup>

*Background.* As stated, Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its media ownership rules every four years to determine whether they remain "necessary in the public interest as the result of competition."<sup>3</sup> On December 12, 2018, the Commission

<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(h) (1996) (1996 Act); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3 (2004) (Appropriations Act) (amending Sections 202(c) and 202(h) of the 1996 Act).

<sup>2</sup> The Commission similarly initiated the 2014 Quadrennial Review prior to completing the 2010 review. *See 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 et al.*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4372, para. 1 (2014). In that previous instance, the Commission incorporated the existing 2010 record into the 2014 review. Here, the Media Bureau is creating a new docket for the Commission's future consideration of the 2022 proceeding.

<sup>3</sup> 1996 Act § 202(h); Appropriations Act § 629.

adopted a Notice of Proposed Rulemaking to initiate the 2018 Quadrennial Review proceeding and to seek comment on whether to retain, modify, or eliminate any of its media ownership rules.<sup>4</sup> The three rules on which the Commission sought comment in the *2018 Quadrennial Review NPRM* are the Local Radio Ownership Rule,<sup>5</sup> the Local Television Ownership Rule,<sup>6</sup> and the Dual Network Rule.<sup>7</sup>

After the original comment period closed for the 2018 Quadrennial Review, a number of legal developments ensued that necessitated delaying Commission action on that proceeding. Specifically, several parties had sought judicial review of the *2010/2014 Quadrennial Review Order on Reconsideration*, which had concluded the 2010/2014 Quadrennial Review and adopted rule changes that then became the basis for comment in the subsequent 2018 Quadrennial Review.<sup>8</sup> On September 23, 2019, the Third Circuit vacated and remanded the bulk of the Commission's actions in the *2010/2014 Quadrennial Review Order on Reconsideration*.<sup>9</sup> Accordingly, on December 20, 2019, the Media Bureau issued an Order reinstating the rules as set forth in the *2010/2014 Quadrennial Review Order*.<sup>10</sup> The Third Circuit's actions thus effectively called into question the rules under review in the 2018 Quadrennial Review until the status of the Commission's rule modifications and repeals in the *2010/2014 Quadrennial Review Order on Reconsideration* could be legally settled.

The Commission and broadcast industry petitioners filed separate Petitions for Writ of Certiorari before the Supreme Court, each asking the Supreme Court to review and overturn the Third Circuit's decision on different grounds.<sup>11</sup> The Supreme Court ultimately reversed the Third Circuit's decision in

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<sup>4</sup> See *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12111-12, para. 1. The NPRM also sought comment on several diversity-related proposals offered in the record of the 2010/2014 Quadrennial Review proceeding. See *id.* at 12114, 12145-55, paras. 5, 93-121.

<sup>5</sup> 47 CFR § 73.3555(a).

<sup>6</sup> *Id.* § 73.3555(b).

<sup>7</sup> *Id.* § 73.658(g).

<sup>8</sup> See Petition for Review of Prometheus Radio Project and Media Mobilizing Project, *Prometheus Radio Project and Media Mobilizing Project v. FCC*, No. 18-1092, Document No. 003112828343 (3d Cir. Jan. 16, 2018); Petition for Review of Independent Television Group, *Independent Television Group v. FCC*, No. 18-1050, Document No. 1719478 (D.C. Cir. Feb. 20, 2018); Petition for Review of Multicultural Media, Telecom and Internet Council, Inc. and the National Association of Black-Owned Broadcasters, *Multicultural Media, Telecom and Internet Council and National Association of Black-Owned Broadcasters v. FCC*, No. 18-1071, Document No. 1721291 (D.C. Cir. Mar. 7, 2018); Petition for Review of Free Press et al., *Free Press et al. v. FCC*, No. 18-1072, Document No. 1722268 (D.C. Cir. Mar. 8, 2018). These petitions were consolidated before the Third Circuit Court of Appeals with the previously filed reviews of the *2010/2014 Quadrennial Review Order*. See Order, *Prometheus Radio Project et al. v. FCC*, No. 17-1107, Document No. 003112514755 (3d Cir. Jan. 18, 2017).

<sup>9</sup> *Prometheus Radio Project v. Federal Communications Commission*, 939 F.3d 567, 584 (3d Cir. 2019) (*Prometheus IV*).

<sup>10</sup> See *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*, MB Docket Nos. 14-50 et al., Order, 34 FCC Rcd 12360 (MB 2019).

<sup>11</sup> See Petition for a writ of certiorari of the Federal Communications Commission, *Prometheus Radio Project et al. v. FCC*, Docket No. No. 19-1231, at 14-15 filed April 17, 2020 (arguing that the Commission was entitled to deference and that the Third Circuit was requiring it to meet an imprecise data threshold); Petition for a writ of certiorari of National Association of Broadcasters, et al., *Prometheus Radio Project et al. v. FCC*, Docket No. No. 19-1241, filed April 17, 2020; certiorari granted October 2, 2020 (arguing that the Third Circuit erred by raising atextual concerns regarding female and minority ownership above concerns over competition).

*Prometheus IV* on April 1, 2021, in a unanimous decision.<sup>12</sup> By then, however, nearly two years had passed since the original comment period closed for the 2018 Quadrennial Review.

On June 4, 2021, the Bureau released a public notice seeking to refresh the record in the 2018 Quadrennial Review proceeding.<sup>13</sup> In that public notice, the Media Bureau sought any new and relevant information concerning the proceeding, including new empirical and statistical evidence, proposals, and detailed analysis.<sup>14</sup> Additionally, the Bureau sought comment on how the media marketplace had evolved since early 2019 and whether new technological innovations had spurred noticeable trends or changed industry practices,<sup>15</sup> as well as how any trends had impacted the manner in which consumers obtain local and national news and information.<sup>16</sup> That proceeding remains pending.

*Discussion.* As with each new quadrennial review required by Congress, we start this proceeding to examine the media ownership rules in light of the media landscape of 2022 and beyond. Although they remain subject to the ongoing 2018 Quadrennial Review proceeding, the three rules currently in place and subject to this review are the Local Radio Ownership Rule and the Local Television Ownership Rule—which limit ownership by a single entity of broadcast radio or television stations in local markets respectively—and the Dual Network Rule, which effectively prohibits mergers among the Big Four broadcast television networks (ABC, CBS, Fox, and NBC). In the context of these three rules, as with prior reviews, we seek information regarding the media marketplace, including ongoing trends or developments (e.g., consolidation, technological innovation, or the emergence of new video or audio options for consumers), that commenters find relevant to the Commission’s review of its media ownership rules.

In addition, we note that the statutory directive of section 202(h) is explicitly tied to the public interest standard, in that it requires the Commission to determine whether the rules remain “necessary in the public interest as the result of competition.” Accordingly, we seek comment on the impact of the rules on the American public as consumers of media and the function and objectives of the rules as they relate to broadcasters’ public interest obligations. Have the rules served, and do they continue to serve, consumers, particularly with respect to the Commission’s longstanding policy goals of competition, localism, and diversity? If so, in what ways? Are there ways in which the rules have fallen short? Has the marketplace under our current rules delivered sufficient “returns” for consumers with respect to competition, localism, and diversity? How can the Commission measure or evaluate any “returns” that consumers have received as a result of those rules? Should the Commission adjust its analysis of the audio and video programming marketplace to account for fundamental changes in consumer behavior (e.g., use of streaming alternatives)? Are there areas in which consumers rely uniquely on broadcast media? More generally, how should the Commission define or redefine the policy goals for the rules? Are there other policy goals, besides competition, localism, and diversity, that the Commission should consider in relation to the rules?

We further note that commenters in prior proceedings have encouraged the Commission to evaluate the effects of its rules on the ownership of broadcast stations by minorities and women. To this

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<sup>12</sup> *FCC v. Prometheus Radio Project*, 141 S.Ct. 1150, 1154 (2021).

<sup>13</sup> *Media Bureau Seeks to Update Public Record in the 2018 Quadrennial Regulatory Review*, Public Notice, 36 FCC Rcd 9363 (MB 2021).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See id.* at 9367. The Media Bureau also sought comment on what impact, if any, the completion of the 2017 Incentive Auction and related repack of the television spectrum had on the industry, as well as any legal or economic factors that should be considered in the context of its ongoing review. *Id.* at 9367-68.

end, we seek comment on barriers to minority and female ownership of broadcast stations and areas in which commenters believe those barriers relate to, intersect with, or could be addressed by changes to the three ownership rules that are the subject of this proceeding. Specifically, we encourage commenters to identify concrete changes the Commission could or should make with respect to these or any additional ownership rules. We ask commenters to explain in detail or to demonstrate with legal analysis and empirical evidence how any such changes or additions would address concerns regarding minority and female ownership and how they could withstand legal scrutiny.

As always, commenters may provide any additional information regarding legal or economic factors, changes, or issues that the Commission should consider, evaluate, and/or address in the context of the 2022 Quadrennial Review. The record compiled in response to this Public Notice will help inform the Commission's next steps in the 2022 proceeding, such as any subsequent Notice of Proposed Rulemaking. In this regard, we reiterate the request from previous quadrennial reviews that commenters submit empirical evidence, data, and studies in support of their claims and positions wherever possible.<sup>17</sup> We encourage commenters to draw any conclusions or connections between data and potential policy or rule changes as tightly and as explicitly as possible. In addition to identifying, analyzing, and submitting existing data, commenters are encouraged to compile new data or to conduct further research that can be submitted to the Commission as part of the 2022 proceeding.

*Ex Parte Rules – Permit But Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.<sup>18</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*Filing Comments and Replies.* **All filings must be submitted in MB Docket No. 22-459.** Interested parties may file comments and reply comments on or before the dates indicated on the first

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<sup>17</sup> We note that empirical and statistical data submitted in the record of the Quadrennial Review play an important role in the Commission's evaluation of the ownership rules. *See generally FCC v. Prometheus Radio Project*, 141 S.Ct. at 1160 (affirming the Commission's actions based on the Commission's reasonable and reasonably explained analysis and interpretation of available data in the record); *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 et al.*, MB Docket Nos. 14-50 et al., Second Report and Order, 31 FCC Rcd 9864, 9976, para. 270 (2016) (noting that the Commission's improved ownership data contributes to meaningful analysis regarding media ownership and diversity policies and expressing hope that interested parties will use such data to conduct further studies and analyses).

<sup>18</sup> 47 CFR §§ 1.1200 *et seq.*

page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>

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*Additional Information.* For additional information on this proceeding, please contact Ty Bream of the Media Bureau, Industry Analysis Division, [Ty.Bream@fcc.gov](mailto:Ty.Bream@fcc.gov), (202) 418-0644.

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