

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of)
Sections 202(c)(1) and 202(e) of the)
Telecommunications Act of 1996)
(National Broadcast Television)
Ownership and Dual Network Operations))
)
47 C.F.R. Sections 73.658(g) and)
73.3555)

ORDER

Adopted: March 7, 1996

Released: March 8, 1996

By the Commission:

1. On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 ("Telecom Act").¹ Section 202(c)(1) of the Telecom Act directs the Commission to revise Section 73.3555 of our Rules (47 C.F.R. §73.3555) regarding the national television station multiple ownership rules.² Section 202(e) of the Telecom Act directs us to revise Section 73.658(g) of the Rules (47 C.F.R. §73.658(g)) with respect to dual networking operations. With this Order, we conform our rules to these particular provisions of the Telecom Act.

National Television Station Ownership

2. Currently, Sections 73.3555(e)(1)(ii-iii), (2) and (3) of the Commission's Rules set forth the rules and operative definitions regarding national ownership limitations applicable to commercial television stations. The rule prohibits entities from having an attributable ownership or other

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996).

² Section 202(c)(2) ("Local Ownership Limitations") directs the Commission to conduct a rulemaking proceeding to determine whether to retain, modify, or eliminate its limitations on the number of television stations that a person or entity may own, operate, or control, or have a cognizable interest in, within the same television market. The implementation of that particular provision will be addressed in a subsequent Notice of Proposed Rule Making. We note that there already is a pending proceeding addressing several of the Commission's local and national television ownership rules. See Further Notice of Proposed Rulemaking in MM Docket Nos. 91-221 and 87-8, 10 FCC Rcd 3524 (1995) ("TV Ownership Further Notice").

cognizable interest in more than 12 such stations, except that such an interest in two additional stations is permitted, for a total of 14 stations, if these additional stations are minority-controlled. The rule also prohibits an entity from having an attributable ownership or other cognizable interest in a station if it would result in that entity having such an interest in television stations with an aggregate national audience reach exceeding 25 percent (an additional 5 percent reach is permitted, for a total of 30 percent, if it is derived from minority-controlled stations). For purposes of calculating this aggregate audience reach under the Rules, UHF stations are attributed with only 50 percent of their audience reach (the "UHF discount"),³ and stations which are primarily satellite operations are generally not counted (the "satellite exception").⁴

3. Section 202(c)(1) of the Telecom Act directs the Commission to "modify its rules for multiple ownership set forth in Section 73.3555 of its regulations . . .

(A) by eliminating the restrictions on the number of television stations that a person or entity may directly or indirectly own, operate, or control, or have a cognizable interest in, nationwide; and

(B) by increasing the national audience reach limitation for television stations to 35 percent."

Section 73.3555(e) of the Commission's Rules will be revised to reflect the changes directed by Section 202(c)(1) of the Telecom Act, as set forth in the Appendix.

4. The Telecom Act is silent with respect to the UHF discount and the satellite station exception, both of which are incorporated in the definition of "national audience reach" set forth in Section 73.3555(e)(3). The UHF discount and satellite exception are matters presently under consideration in the Commission's outstanding proceeding reviewing its television broadcast ownership rules,⁵ and any rule modifications with respect to these matters will be addressed, as appropriate, in that proceeding. In calculating the national audience reach in the interim, therefore, the UHF discount and the satellite exception, as set forth in our current rules, will continue to apply. However, any entity which acquires stations during this interim period and which complies with the 35 percent audience reach limitation only by virtue of one or both of these two provisions will be subject to the outcome in the pending television ownership proceeding (MM Docket Nos. 91-221 and 87-8) concerning these issues. We accordingly retain and redesignate Sections 73.3555(e)(3)(i) and (ii). The remainder of the definitions set forth in subsection (e)(3) (defining "minority" and "minority-controlled") will be removed to conform to the rule changes mandated by the Telecom Act.

³ 47 C.F.R. §73.3555(e)(3)(i).

⁴ 47 C.F.R. §73.3555(e)(3)(ii).

⁵ See TV Ownership Further Notice, 10 FCC Rcd at 3568-69.

Dual Network Operations

5. Section 73.658(g) of the Commission's Rules, commonly known as the "dual network" rule, currently prohibits television stations from affiliating with a network organization that maintains more than one network of television stations unless the networks are not operated simultaneously or unless there is no substantial overlap in the territory served by the group of stations comprising each such network. For purposes of the current rule, a network organization is any entity that simultaneously broadcasts an identical program to two or more interconnected stations.⁶

6. Section 202(e) of the Telecom Act instructs the Commission to "revise Section 73.658(g) of its regulations . . . to permit a television broadcast station to affiliate with a person or entity that maintains 2 or more networks of television broadcast stations unless such dual or multiple networks are composed of --

(1) two or more persons or entities that, on the date of enactment of the Telecommunications Act of 1996, are 'networks' as defined in section 73.3613(a)(1) of the Commission's regulations . . . ; or

(2) any network described in paragraph 1 and an English- language program distribution service that, on such date, provides 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television homes (as measured by a national ratings service)."

The first of these provisions, Section 202(e)(1) of the Telecom Act, incorporates by reference Section 73.3613(a)(1) of our current rules, which defines a network as any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and /or any person, entity or corporation controlling, controlled by, or under common control with such person, entity or corporation. 47 C.F.R. § 73.3613(a)(1). In effect, this provision applies to the ABC, CBS, Fox, and NBC television networks. The second provision, Section 202(e)(2) of the Telecom Act, in effect encompasses the UPN and WB television networks. Section 73.658(g) of the Commission's Rules will be modified to conform to Section 202(e) of the Telecom Act, as set forth in the Appendix.

⁶ Network or "chain" broadcasting is defined by Section 3(p) of the Communications Act as "simultaneous broadcasting of an identical program by two or more connected stations." 47 U.S.C. §153(p).

Administrative Matters

7. We are revising these rules without providing prior public notice and an opportunity for comment because the rules being modified are mandated by the applicable provisions of the Telecom Act. We find that notice and comment procedures are unnecessary, and that this action therefore falls within the "good cause" exception of the Administrative Procedure Act ("APA").⁷ The rule changes adopted in this Order do not involve discretionary action on the part of the Commission. Rather, they simply implement provisions of the Telecom Act that direct the Commission to revise its rules according to specific terms set forth in the legislation.

Ordering Clause

8. Accordingly, IT IS ORDERED that pursuant to Section 202(c)(1) and 202(e) of the Telecommunications Act of 1996, and to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 303(r), Part 73 of the Commission's Rules, 47 C.F.R. Part 73, IS AMENDED as set forth in the Appendix. The rules will become effective upon publication of this Order in the Federal Register.⁸

9. For additional information regarding this proceeding, contact Alan Aronowitz, Mass Media Bureau, Policy and Rules Division, Legal Branch, (202) 418-2130, or via the Internet at aaronowi@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

⁷ See 5 U.S.C. §553(b)(B) (notice requirements inapplicable "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

⁸ See *id.* at §553(d) (rules that relieve a restriction may be effective less than 30 days after publication in the Federal Register).

APPENDIX

Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 73 RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334.

2. Section 73.658(g) is revised to read as follows:

§ 73.658 Affiliation agreements and network programming practices; territorial exclusivity in non-network program arrangements.

* * * * *

(g) *Dual Network Operation.* A television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations *unless* such dual or multiple networks are composed of:

(1) Two or more persons or entities that, on February 8, 1996, were "networks." For the purposes of this paragraph, the term network means any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity, or corporation; or

(2) Any network described in paragraph (g)(1) of this section and an English-language program distribution service that, on February 8, 1996, provided four or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television homes (as measured by a national ratings service).

* * * * *

3. Section 73.3555(e) is revised to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(e)(1) *National television multiple ownership rule.* No license for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in TV stations which have an aggregate national audience reach exceeding thirty-five (35) percent.

(2) For purposes of this paragraph:

(i) *National audience reach* means the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI data at the time of a grant, transfer or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their ADI market. Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.

(ii) *TV broadcast station* or *TV station* excludes stations which are primarily satellite operations.

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