

FCC Update: *Media Ownership 2006*

*A Presentation to the
South Carolina Broadcasters Association*

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2006 Review of the Media Ownership Rules

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In June 2006, the Commission opened a new phase of a rulemaking proceeding that concerns its major broadcast ownership rules ([News Release](#)). This rulemaking review serves two purposes: It responds to issues raised in a 2004 appellate decision concerning an earlier phase of the rulemaking, and it also fulfills a current statutory mandate. Section 202(h) of the Telecommunications Act of 1996 requires that the agency periodically review its broadcast ownership rules to "determine whether any of such rules are necessary in the public interest as the result of competition." Section 202(h) also states that Commission must "repeal or modify any regulation that it determines is no longer in the public interest."

The Commission on July 24, 2006, released an official [Further Notice of Proposed Rulemaking](#) ("*Further Notice*") to call for comment on the rules and to seek arguments and factual data about their impact on competition, localism and diversity.

This website provides [Background Information](#) about the proceeding and a brief description of the [Rules Under Review in 2006](#).

We welcome comments on the current rules and suggestions about how the Commission might revise them to better satisfy our policy goals and legal obligations. The formal comment cycle has been extended beyond the normal period, to a total of 120 days. Opening comments are due September 22, 2006, and replies are due November 21, 2006. (Although the formal comment period ends on the latter date, the agency will continue to accept input after that time.)

The Commission's electronic filing system allows commenters to send short comments via e-mail or submit longer documents. [Learn more about how to file a comment](#).

We also plan to hold a series of [public hearings on media ownership issues](#) at diverse locations across the nation.

In addition, the Commission will undertake [research studies](#)

to help inform the agency's decision-making process. Once those studies are complete, they too will be available for public review and comment.

Background

The *Further Notice* marks the latest in a series of developments over the last several years concerning the media ownership rules. The Commission last conducted the required review of the ownership regulations in 2002. The resulting [2002 Biennial Review Order](#) ("*2002 Order*") was released in 2003. (Congress in 2004 amended the frequency of these periodic ownership reviews from once every two years to once every four years.)

In the *2002 Order*, the Commission replaced the newspaper/broadcast cross-ownership rule and the radio-television cross-ownership rule with a single set of cross-media limits. The agency also revised the local television multiple ownership rule, retained the dual network rule, and amended its radio market definition and method of counting stations for purposes of the local radio ownership rule.

Several parties sought court review of various aspects of the *2002 Order*, while others filed petitions for reconsideration with the Commission. In June 2004, the Third Circuit Court of Appeals issued its decision in [Prometheus v. FCC](#), affirming some Commission decisions and remanding others for further justification or modification.

In June 2005, the U.S. Supreme Court declined to review the Third Circuit decision, thereby ending the appellate review stage. With this proceeding, the Commission is moving forward with its response to the Third Circuit Court of Appeals.

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Rules Under Review in 2006

The *Further Notice* seeks comment on the following rules:

- **Local Television Ownership Limit** - Under the current rule, a single entity may own two television stations in the same local market if (1) the so-called "Grade B" contours of the stations do not overlap; or (2) at least one of the stations in the combination is not ranked among the top four stations in terms of audience share and at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the market after the combination. The Commission in 2003 voted to revise the local TV ownership rule to permit an entity to own up to two television stations in markets with 17 or fewer television stations, and up to three television stations in markets with 18 or more television stations. The rule revision was challenged in *Prometheus* and has not taken effect. The *Further Notice* seeks comment on whether the Commission should revise the number of stations that can be commonly owned or whether additional evidence or analysis exists that would further justify the limits adopted in 2003.
- **Local Radio Ownership Limit** - The current rules reflect numerical caps set by Congress in 1996. The restraints are based on a sliding scale that increases with the size of the local market. As a general rule, one entity may own (a) up to five commercial radio stations, not more than three of which are in the same service (*i.e.*, AM or FM), in a market with 14 or fewer radio stations; (b) up to six commercial radio stations, not more than four of which are in the same service, in a market with between 15 and 29 radio stations; (c) up to seven commercial radio stations, not more than four of which are in the same service, in a radio market with between 30 and 44 (inclusive) radio stations; and (d) up to eight commercial radio stations, not more than five of which are in the same service, in a radio market with 45 or more radio stations. The

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Third Circuit in *Prometheus* questioned the rationale behind the Commission's decision to retain these caps. The *Further Notice* calls for comment on whether the limits should be revised or whether additional evidence exists to further justify retaining them as they are.

- ***UHF Discount Used in Calculating the National Television Ownership Limit*** - In 2004, Congress enacted legislation that permits a single entity to own any number of television stations on a nationwide basis as long as the station group collectively reached no more than 39 percent of the national TV audience. Because the limit is set by statute, the numerical cap is not under review in the 2006 proceeding. However, the *Further Notice* does seek comment on issues concerning the Commission's UHF discount rule, which the agency has used in calculating a UHF station's audience reach under the national cap.
- ***Newspaper/Broadcast Cross-Ownership Ban*** - The current rule prohibits common ownership of a full-service broadcast station (television or radio) and a daily newspaper if the station's service area completely encompasses the newspaper's city of publication. In the *2002 Order*, the Commission relaxed this rule and the separate radio/TV cross-ownership restriction by replacing both regulations with a set of "cross-media limits." The new limits were tiered according to the size of the local market: (a) in those with three or fewer TV stations, all newspaper/broadcast and radio/television combinations were prohibited; (b) in markets with between four and eight stations, an entity could own a combination that includes a newspaper and either (i) one television station and up to 50 percent of the radio stations that may be commonly owned under the applicable radio cap, or (ii) up to 100 percent of the radio stations allowed under the applicable radio cap; and (c) in markets with nine or more television stations, cross-media combinations would be permitted without limit as long as they complied with the applicable local television and local radio caps. The cross-media limits were challenged in *Prometheus*, and although the Third Circuit agreed that a flat ban on newspaper/broadcast combinations was no longer necessary, the court remanded the specific numerical caps to the Commission for further consideration. The cross-media limits have not taken effect. The *Further Notice* seeks comment on

how the Commission should approach newspaper/broadcast restrictions now. Among other questions, the agency calls for input on whether the differences between television and radio broadcast operations are significant in the context of common ownership with a newspaper.

- **Radio/Television Cross-Ownership Limit** - The current rule allows an entity to own one TV station (or two, if the market is large enough to trigger the “duopoly” provisions of the local television ownership rule) and a varying number of radio stations in a local market, depending on the number of independently owned media “voices” that are left. The *Further Notice* calls for input on how the agency should address radio/TV combinations now.
- **Dual Network Ban** - The current rule permits common ownership of multiple broadcast networks but prohibits a merger between or among the “top four” networks, *i.e.*, ABC, CBS, Fox, and NBC. The restraint was not an issue in *Prometheus*. The *Further Notice* calls for comment on whether the restriction should be retained.

In addition, the *Further Notice* invites comment on the court’s remand of certain proposals concerning minority ownership. It also lists pending petitions for reconsideration of the *2002 Order*. Interested parties may refresh the record concerning those petitions by responding during the 2006 comment period.

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Filing Comments

We welcome public comment on how the Commission should analyze, and possibly change, its broadcast-related ownership rules. A complete description of the rules under review is provided at [Rules Under Review](#).

The FCC usually provides for a two-part comment cycle in its rulemaking proceedings, with an initial comment deadline followed by another deadline for reply comments. The FCC rulemaking proceedings thereby allow commenters “two bites at the apple”—meaning that they offer interested parties a chance to file opening comments that set forth the commenter’s own position on the issues, followed by an opportunity to review the initial comments filed by other commenters and submit a response. First-round comments must be filed at the agency on or before September 22, 2006, and reply comments must be filed on or before November 21, 2006. (As noted below, however, we will accept informal comments filed after the reply deadline.)

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What happens to my comments once they have been filed?

Review of the comments is a key part of the Commission’s decision-making process in rulemakings. The Commissioners and the agency staff will consider the facts, data and arguments made in the comments as the Commission decides whether the existing rules should be changed and, if so, how they should be refashioned. Submissions that provide detailed facts, data and/or economic analyses are particularly useful.

How can I find out what other commenters have said?

Interested parties who wish to reply to comments filed by others—or to simply monitor the submissions that the Commission receives in this proceeding—generally use ECFS. The Commission’s electronic system not only provides a mechanism for filing comments, it also allows members of

download particular documents for review and printing. To obtain electronic access to particular documents filed in the proceeding, use [Search for Filed Comments](#). That link will take you to a search form that you must fill out in order to download any submission. (Although you need not fill out all the blank boxes in the form in order to access documents, at a minimum you must type the docket number -- 06-121 - - into the "Proceeding" box.) More details on how to use ECFS is available at [Getting Started with the Electronic Comment Filing System](#).

What happens if I miss the official deadline for comments or reply comments?

Although we encourage interested parties to strive to file their submissions by the reply comment deadline of November 21, 2006, the Commission has taken procedural steps to allow for the input filed after that date. Late-filed submissions—known in FCC legal parlance as “ex parte communications”—will be placed in the rulemaking docket and considered along with material submitted earlier.

How will I know when the FCC has reached a decision on the media ownership rules?

Because this is a “rulemaking of general applicability,” the Commission will not individually notify each commenter as to when the agency reaches its decision. Instead, we encourage interested parties to check the [Media Ownership](#) section of our website periodically for updates. We will post news about developments there promptly.

How do I file a comment?

The Commission accepts comments filed electronically or on paper. We suggest that commenters who wish to file electronically use one of the two most popular options:

- To submit short comments of a few sentences or paragraphs, click on [ECFS Express](#) and follow the directions you will find there for filing in the Media Ownership proceeding, MB Docket No. 06-121.
- To submit comments of more than a few paragraphs, click on [ECFS](#), which will take you to the main page for Electronic Comment Filing System. There you will find links to detailed instructions on how to use the system. The basic operation of ECFS allows commenters to upload an electronic document into a

form that calls for identifying information about the commenter. Once a commenter provides that essential information and uploads the document, he or she hits the "send" button. (Although ECFS will accept documents in several different formats, including Word and Wordperfect, we generally recommend that filers convert their documents into Adobe Acrobat format for uploading.) When the filing is completed, ECFS will generate a receipt that serves as proof of filing.

Commenters who wish to file on paper must submit an original and four copies of each filing. You may send paper comments by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- If you wish to use commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), send the original and copies to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- If you wish to use U.S. Postal Service first-class, Express or Priority mail, send the original and copies to 445 12th Street, SW, Washington DC 20554.

People with disabilities may contact the Commission to request materials in accessible formats (Braille, large print, electronic files, audio format, etc.). Please send your request by e-mail at FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

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Public Hearings on Media Ownership Issues

The Commission will hold six public hearings on this ownership proceeding in geographically diverse locations around the country. Participants in the hearings will discuss the impact of the rules on topics including but not limited to:

- Localism
- Competition
- Diversity
- Minority ownership
- Children's and family-friendly programming
- Senior citizens
- Religious programming
- Independent programming
- Campaign and community event coverage
- Music and the creative arts
- The growth of the internet
- Jobs and the economy
- Advertisers
- Rural America
- The disabled community

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Hearing Schedule

The hearings have not been scheduled yet, but dates and schedule information will be available here as soon as they have been finalized.

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Research Studies on Media Ownership

The Commission will undertake several research studies and data-gathering efforts to help inform the agency's decision-making process. The studies will be comprehensive (\$200,000 budgeted) and will address a variety of issues including:

- How people get news and information
- Competition within types of media and across media platforms
- Marketplace changes since the Commission last reviewed its ownership rules
- Localism
- Minority participation in today's media environment
- Independent and diverse programming in today's media environment
- The impact of ownership on the production of children's and family-friendly programming.

Once the studies are complete, they will be available here for public review and comment.

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