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TMT INSIGHTS
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Opportunities in FCC's Revised Media Ownership Rules

Significant changes to long-standing media ownership rules could lead to further consolidation across the sector.

Every four years the FCC is required by law to take a hard look at its media ownership rules, which govern how many media properties in a market a person can own. (Note: In FCC land, "ownership" may mean as little as holding 5% of the voting stock or a partnership interest.) These rules exist, at least in part, to advance the government's interest in viewpoint diversity—to enhance opportunities for the public to receive content from multiple sources. In an Order on Reconsideration released in November 2017, the FCC finally completed its 2010 and 2014 reviews—just in time for it to commence its 2018 proceeding. The Order became effective in early February, once the Third Circuit denied an emergency writ of mandamus, but remains on appeal.

The Order reversed decisions that the FCC had made just a little more than a year earlier. What were the salient differences? Not very much new evidence, but, instead, the election, which resulted in replacing FCC Chairman Tom Wheeler, an Obama appointee, with Chairman Ajit Pai. The Order, which gave the broadcast industry and other long-standing advocates for sectoral deregulation much of what they had requested, creates some new opportunities for existing players and investors.

Local TV

Since 1999, the FCC has limited ownership of local television stations in two main ways:

- Restricting common ownership of the top-four ranked stations in a market (the Top-Four Prohibition); and
- Requiring that after combining ownership of any two television stations in a market, no fewer than eight independently owned television stations must remain (the Eight-Voices Test).

The Order eliminates the Eight-Voices Test outright.

- *This will allow for significant consolidation, particularly in small- to mid-size markets, enabling economies of scale in the production of local television content.*

The Order replaces the Top-Four Prohibition with a case-by-case approach focused on whether the combination's public interest benefits will outweigh any harms.

- *The effect of this change will be unclear until the FCC develops precedent for reviewing proposed combinations, but combinations are now possible, which may be of interest to owners of a top-two station seeking to acquire a weaker third- or fourth-ranking station.*

Local Radio/Television Cross-Ownership

For decades, the FCC prohibited an entity from owning more than two television stations and one radio station in the same market, unless the market is of a certain size.

- The larger the market, the greater the ownership allowed, so an entity could own two television stations and six radio stations or one television station and seven radio stations in the largest markets.

The Order scraps that rule entirely, largely because the FCC has now concluded that most people do not get significant local news from local radio and, therefore, that those stations do not contribute significantly to viewpoint diversity.

- *In smaller markets, there will be greater opportunities for common ownership of television and radio stations.*
- *In the larger markets, the effect of the rule's elimination will be more muted because acquisitions of local television and/or radio stations are now, and will remain, subject to separate rule caps on local television (described above) or existing caps on ownership of radio stations in a single market (which the FCC left largely untouched).*

Newspaper/Broadcast Cross-Ownership

Since 1975, the FCC has prohibited common ownership of a daily print newspaper and an AM, FM or television broadcaster in the same market.

- The rule has long been a target for elimination, particularly in recent years, given the challenging economics of the newspaper industry and the increase of nonprint sources of news.

The FCC has killed the rule, finding no basis for it in the current media market, and in light of concerns regarding the definition of a "daily newspaper" in a digital world.

- *Given the financial situation of the newspaper industry, the elimination of the rule may be of largely symbolic value.*
- *Still, some broadcasters, perhaps in smaller markets, may now find that some local or regional newspapers are attractive targets, principally because they are able to generate substantial, valuable local news content and provide alternative or complementary sources of advertising revenue.*

Attribution of Joint Sales Arrangements

In 2014, the FCC adopted a rule that television joint sales arrangements (JSAs)—whereby one station brokers more than 15% of the weekly advertising time of another, in-market station—will result in attributing to the brokering station ownership of the brokered station.

- The purported basis for the rule was that the JSA would give the brokering station influence over the programming of the brokered station.
- The Third Circuit vacated the rule, but the Commission readopted it in August 2016.

The Order eliminates the rule, which had been particularly disliked by the broadcast industry and Chairman Pai. The FCC concluded that that the rule had no evidentiary basis and that its benefits outweigh any consequences of attributing ownership of the brokered station to the brokering station.

- *The rule's elimination will not so much facilitate new acquisitions and investments in local television stations but will allow for some economies of scale in sales of advertising, and that may continue to help to strengthen television stations with fewer resources.*

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