

Court Vacates JSA Attribution Rule, Rebukes FCC for Slow Ownership Review

The U.S. Court of Appeals for the Third Circuit, sitting in Philadelphia, has issued a decision sharply critical of the FCC for its slow pace in moving through the periodical review of its broadcast ownership rules as required by the Telecommunications Act of 1996. In that context, the court struck down the FCC's rule that made television joint sales agreements ("JSAs") attributable to the party doing the sales for purposes of calculating compliance with the multiple ownership rules.

This consolidated case involved two groups of appellants attacking the FCC's action and/or inaction. One group, which the court labeled "Citizen Petitioners," including among others the Prometheus Radio Project and the Multicultural Media, Telecom and Internet Council, generally wanted the court to require the Commission to take action more promptly and pointedly in promoting minority and female participation in broadcast ownership. The other group, which included

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FCC Proposes Public File Relief

The FCC has proposed to eliminate the requirement in its rules that commercial radio and television stations maintain in their public inspection files letters and email messages received from the public. This proposal is included in a *Notice of Proposed Rulemaking* in Docket 16-161. Noncommercial stations are not presently required to keep these materials in their public files.

The current version of Section 73.3526(c)(9) of the Commission's rules requires commercial stations to retain in their public inspection files "[a]ll written comments and suggestions received from the public regarding operation of the station unless the letter writer has requested that the letter not be made public or the licensee believes the letter should be excluded from public inspection because of the nature of its content," such as in circumstances where the letter includes defamatory or obscene content. The rule also covers email messages sent to station management or to an email address publicized by the station.

Since 2012, television stations have been posting the contents of their public files on an Internet website hosted by the FCC. Radio stations will begin utilizing that online resource for

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Radio Public Files Go Online June 24

As of June 24, 2016, larger commercial radio stations in the top 50 markets will be required to begin to make their public inspection files available to the public on an FCC-hosted website. In January of this year, the Commission amended its rules and expanded its online public inspection file database to make room for more broadcasters and cable television systems to maintain their public files there. In that action, the Commission mandated online public files for radio stations, cable television systems, DBS television operators and satellite radio licensees.

All commercial radio stations with five or more full-time employees in the 50 largest Nielsen radio markets will have to begin to upload to the Commission's website new public file documents on June 24. Those stations will have an additional six months – until December 24 – to upload most of the previously existing materials required to be in their public files. They will not be required to upload previously existing political file contents or correspondence from the public.

All other radio stations that are presently required to maintain public inspection files must upload public

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Regulatory Fees Proposed for Fiscal Year 2016

The FCC has issued a *Notice of Proposed Rulemaking* in Docket 16-166 to propose the specific amounts for regulatory fees to be imposed on the entities that the agency regulates for the fiscal year ending September 30, 2016. For this fiscal year, Congress has directed the Commission to collect \$384,012,497 to help offset the cost of operating the agency. The Commission attempts to allocate the burden of these fees approximately proportional to its costs in regulating and/or providing services to the regulated entities in each industry and industry subgroup.

In 2015, the Commission proposed some modifications to the formulas used to calculate fees for broadcasters. One of these changes was to set an approximate 2:1 ratio between television fees for stations in the top 10 markets and stations in markets 26-50. This ratio is reflected in the accompanying chart that shows the 2015 fees and the fees proposed for 2016 for most kinds of authorizations of interest to broadcasters.

Another proposed change would result in significant increases in fees for radio stations in the largest markets. The

factors involved in calculating radio fees include the class of the station and the population in the station's service area. Until last year, stations were grouped in seven population categories, the largest one being those serving a population in excess of 3,000,000. The Commission proposes to redefine that category for stations covering a population between 3,000,001 and 6,000,000. A new eighth and more expensive category would include all stations serving more than 6,000,000, as shown in the chart.

The imposition of regulatory fees is required by statute and the Commission must collect them. Following solicitation and review of comments about its fee proposals, the Commission will issue a report and order adopting the actual schedule of fees to be imposed for this fiscal year, though the deadline for paying fees will be announced later (typically in September). Fees for this year will be calculated on the basis of the status of the station as of October 1, 2015.

Comments on the Commission's 2016 regulatory fee proposals are due June 20, and reply comments are due July 5.

FCC REGULATORY FEES FOR FISCAL YEAR 2016

Type of Authorization	Proposed FY2016	Actual FY2015
Full Power Television		
Markets 1-10	\$ 60,775	\$ 46,825
Markets 11-25	45,750	43,200
Markets 26-50	30,575	27,625
Markets 51-100	15,225	16,275
Remaining Markets	5,000	4,850
Construction Permit	5,000	4,850
Satellite Television Station (all markets)	1,750	1,575
Low Power TV, TV/FM Translators and Boosters	455	440
Satellite Earth Station	345	3100
AM Radio Construction Permit	690	590
FM Radio Construction Permit	1,200	750

ACTUAL FY 2015 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 775	\$ 645	\$ 590	\$ 670	\$ 750	\$ 925
25,001-75,000	1,550	1,300	900	1,000	1,500	1,625
75,001-150,000	2,325	1,625	1,200	1,675	2,050	3,000
150,001-500,000	3,475	2,750	1,800	2,025	3,175	3,925
500,001-1,200,000	5,025	4,225	3,000	3,375	5,050	5,775
1,200,001-3,000,000	7,750	6,500	4,500	5,400	8,250	9,250
3,000,001+	9,300	7,800	5,700	6,750	10,500	12,025

PROPOSED FY 2016 REGULATORY FEES FOR RADIO

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM A, B1, C3	FM B,C,C0,C1,C2
0-25,000	\$ 1,100	\$ 795	\$ 690	\$ 760	\$ 1,200	\$ 1,375
25,001-75,000	1,650	1,200	1,025	1,150	1,800	2,050
75,001-150,000	2,200	1,600	1,375	1,575	2,400	2,750
150,001-500,000	3,300	2,375	2,075	2,275	3,600	4,125
500,001-1,200,000	5,500	3,975	3,450	3,800	6,000	6,875
1,200,001-3,000,000	8,250	5,950	5,175	5,700	9,000	10,300
3,000,001+6,000,000	11,000	7,950	6,900	7,600	12,000	13,750
6,000,001+	13,750	9,950	8,625	9,500	15,000	17,175

Quality Requirement for Digital FM Clarified

The FCC has clarified the meaning of the provision in Section 73.403 of its rules that requires an FM station offering programming in digital audio to provide a free digital audio programming service that is comparable to or better in audio quality than that of the station's analog service. The Commission said that this provision is designed to ensure that a station devotes adequate bandwidth to the digital channel replicating its analog service so as to avoid a deterioration in the quality of that service. Stations have discretion to allocate their digital bandwidth to various services in the proportion that they select – as long as there is at least one free digital service with quality comparable to or better than the station's analog service. This rule is not intended to address quality issues related to interference from external sources.

This pronouncement came in the context of a ruling on an Application for Review filed by the licensee of WDJC-FM, Birmingham, Alabama, seeking to reverse a Media Bureau decision denying its Petitions to Deny several applications for new low power FM stations. The LPFM applicants had proposed to operate nearby on a second adjacent channel to WDJC-FM and requested waivers of the spacing requirements of Section 73.807.

WDJC-FM argued that the LPFM applicants' requests for waivers should be denied because the proposed stations would cause interference to the digital stream in its sideband multicast service. Such interference would denigrate its digital signal and therefore cause it to violate its obligation imposed by Section 73.403 to provide a digital service of comparable quality to its analog service.

WDJC-FM also asserted that the Media Bureau should have treated the proposed LPFM stations as operating on a "spectrally first adjacent" channel despite the fact that they proposed the second adjacent channel. WDJC-FM offered engineering analysis to show how this interference would occur. The Bureau rejected this argument because it was based on a first adjacent channel hypothesis that was irrelevant to the actual proposal for operation on a second adjacent channel.

The Bureau did not address WDJC-FM's concerns about Section 73.403 because the Petitions were rejected on other grounds. While finding the Bureau's explanation sufficient, the Commission decided to add its clarification that the digital quality rule is not concerned with external interference.

Radio Public Files Go Online June 24 *continued from page 1*

file materials beginning March 1, 2018. By that date, they must also have uploaded most of the previously existing items required to be in the public file.

For all stations, materials exempt from the online file requirement include (1) items that are already on the FCC's website such as applications and ownership reports, (2) previously existing political file materials, and (3) letters and emails from the public. Commercial stations are presently required to continue to maintain correspondence from the public in the local public files at the main studio. Note, however, that in a different rulemaking proceeding, the Commission has recently proposed to eliminate the requirement to keep public correspondence. See the story on page 1.

Television broadcasters have been subject to the requirement to post their public files online since 2012. The online database being established for new users by June 24 is separate from the one that television stations have been using. As

of June 24, the Commission will migrate all existing online television files to the new database, and television broadcasters will have to begin to upload their current materials to it as well. The old database will cease to be available after June 24. The Commission says that the new database features technical improvements to facilitate the uploading of documents and the management of the online files. The new site also features the implementation of an application programming interface ("API") that can be used to connect the database to third-party web hosting services.

The new database is currently available in a demonstration mode at <https://publicfiles-demo.fcc.gov/admin/>. Station personnel can practice uploading and managing documents at this site. The API can be accessed for demonstration purposes at <https://publicfile-demos.fcc.gov/developer/>. This demonstration environment is for practice only. All material uploaded to it will be deleted on June 24 and will not be transferred to the new working database..



DEADLINES TO WATCH



License Renewal, FCC Reports & Public Inspection Files

- June 1, 2016 Deadline to place EEO Public File Report in public inspection file and on station's Internet website for all nonexempt radio and television stations in **Arizona, District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia and Wyoming.**
- June 1, 2016 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Michigan and Ohio**, and non-commercial television stations in **Arizona, District of Columbia, Idaho, Maryland, Nevada, New Mexico, Utah, Virginia, West Virginia and Wyoming.** (The FCC has amended its rules so as to reschedule this filing date for December 1, 2017, pending review by the Office of Management and Budget. As of this writing, that review has not been completed. Until OMB approves the new forms, the prior rule and schedule will remain in effect.)
- June 1, 2016 Deadline for all broadcast licensees and permittees of stations in **Arizona, District of Columbia, Idaho, Maryland, Michigan, Nevada, New Mexico, Ohio, Utah, Virginia, West Virginia and Wyoming** to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).
- June 1, 2016 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Michigan and Ohio**; and all television stations in employment units with of five or more full-time employees in **District of Columbia, Maryland, Virginia and West Virginia.**
- July 10, 2016 Deadline to place Issues/Programs List for previous quarter in public inspection file for all full service radio and television stations and Class A TV stations.
- July 11, 2016 Deadline to file quarterly Children's Television Programming Reports for all commercial full power and Class A television stations.
- August 1, 2016 Deadline to place EEO Public File Report in public inspection file and on station's Internet website for all nonexempt radio and television stations in **California, Illinois, North Carolina, South Carolina and Wisconsin.**
- August 1, 2016 Deadline to file Biennial Ownership Report for all noncommercial radio stations in **Illinois and Wisconsin**, and noncommercial television stations in **California, North Carolina and South Carolina.** (The FCC has amended its rules so as to reschedule this filing date for December 1, 2017, pending review by the Office of Management and Budget. As of this writing, that review has not been completed. Until OMB approves the new forms, the prior rule and schedule will remain in effect.)
- August 1, 2016 Deadline for all broadcast licensees and permittees of stations in **California, Illinois, North Carolina, South Carolina and Wisconsin** to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).
- August 1, 2016 Deadline to file EEO Broadcast Mid-term Report for all radio stations in employment units with more than 10 full-time employees in **Illinois and Wisconsin**; and all television stations in employment units with of five or more full-time employees in **North Carolina and South Carolina.**

Rulemakings to Amend Digital TV Table of Allotments

The FCC is considering amendments proposed to the Digital TV Table of Allotments to add and/or delete the following channels. The deadlines for filing reply comments are shown.

Community	Station	Present Channel	Proposed Channel	Reply Comments
Tolleson, AZ	KPPX-TV	51	31	June 13
Cordele, GA	WSST-TV	51	22	June 13

FILING WINDOW FOR "250-MILE" FM TRANSLATOR MODIFICATIONS TO BECOME AM FILL-IN TRANSLATORS

Class C and Class D AM Stations	Now - July 28, 2016
All AM Stations	July 29 - Oct. 31, 2016



DEADLINES TO WATCH



Deadlines for Comments In FCC and Other Proceedings

Docket	Comments	Reply Comments
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(All proceedings are before the FCC unless otherwise noted.)

Docket 15-94; NPRM Emergency Alert System enhancements	June 8	July 8
Docket 14-50; Public Notice Hispanic Television Study		June 9
The reply comment deadline for Docket 16-16 (Termination of Certain Dormant Proceedings)		June 16
Docket 16-166; NPRM Regulatory fees for Fiscal Year 2016	June 20	July 5
Docket 16-142; Public Notice Request for comments re Petition for Rulemaking to allow implementation of ATSC 3.0		June 27
Docket 11-43; NPRM Video description	June 27	July 26
Docket 16-161; NPRM Revisions to public inspection file requirements	FR+30	FR+60

FR+N means the filing deadline is N days after publication of notice of the proceeding in the Federal Register.

Paperwork Reduction Act Proceedings

The FCC is required under the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection with certain rules, policies, applications and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

Topic	Comment Deadline
Broadcast equipment performance measurements, Section 73.1590	June 14
Accessibility features in digital apparatus and navigation devices, Sections 79.107, 79.108, 79.110	June 14
Broadcast auxiliary service application, Form 601	June 16
LPTV application, Form 2100, Schedule C	June 24
Station identification, Sections 73.1201, 74.783, 74.1283	July 18
Emergency Alert System	July 18
Public television station digital transition grant program*	July 18

*Program of the Department of Agriculture, Rural Utilities Service

Cut-Off Dates for AM and FM Applications to Change Community of License

The FCC has accepted for filing the AM and FM applications identified below proposing to change each station's community of license. These applications may also include proposals to modify technical facilities. The deadline for filing comments about any of the applications in the list below is **June 21, 2016**. Informal objections may be filed anytime prior to grant of the application.

Present Community	Proposed Community	Station	Channel	Frequency
Brewton, AL	Pace, FL	WOWB	215	90.9
Metter, GA	Portal, GA	WBMZ	279	103.7
Portal, GA	Brooklet, GA	WXRS-FM	263	100.5
Gooding, ID	Kuna, ID	KRXXR(AM)	N/A	1470
Rexburg, ID	Sugar City, ID	KIDJ	292	106.3
Benavides, TX	Driscoll, TX	KOUL	299	107.7
Chehalis, WA	Rainier, WA	KACS	213	90.5

Cut-Off Dates for Low Power Television Applications

The FCC has accepted for filing the following digital low power television applications. The deadline for filing petitions to deny any of these applications is **June 20, 2016**. Informal objections may be filed anytime prior to grant.

Community	Station	Channel	Applicant
Mobile, AL	WMOE-LD	42	Tiger Eye Broadcasting Corp.
Mobile, AL	WWBH-LD	47	Tiger Eye Broadcasting Corp.
Paradise, CA	New	45	Deepak Viswanath
Victorville, CA	K30NY-D	30	Victor Valley Public Television, Inc.
Dover, DE	WEVD-LD	3	Marquee Broadcasting, Inc.
Augusta, GA	New	15	DTV America 1, LLC
Driggs, ID	K32LS-D	32	Idaho Broadcast Partners, LLC
Cedar Falls, IA	New	17	DTV America Corporation
Lund, NV	K16LG-D	16	White Pine Television District #1
Hobbs, NM	K45JA	17	EICB-TV East, LLC
Kerrville, TX	KWTC-LD	14	International Broadcasting Network
Lufkin, TX	KNCD-LD	23	Grace Worship Center, Inc.
Lufkin, TX	KLUF-LP	27	Grace Worship Center, Inc.
Rio Grande City	KRGT-LD	5	CTV Broadcasting, LLC
Robstown, TX	KINE-LD	40	Carlos Lopez, Executor for Estate of Humberto Lopez

**RADIO STATIONS IN TOP-50 MARKETS
WITH 5 OR MORE FULL TIME EMPLOYEES
BEGIN USING ON-LINE PUBLIC FILE
JUNE 24, 2016**

Lowest Unit Charge Schedule for 2016 Political Campaign Season

During the 45-day period prior to a primary election or party caucus and the 60-day period prior to the general election, commercial broadcast stations are prohibited from charging any legally qualified candidate for elective office (who does not waive his or her rights) more than the station's Lowest Unit Charge ("LUC") for advertising that promotes the candidate's campaign for office. Lowest-unit-charge periods are imminent in the following states. Some of these dates are tentative and may be subject to change.

State	Election Event	Date	LUC Period
Puerto Rico	Dem. Pres. & Terr. Primary	June 5	Apr. 21 - June 5
California	Pres. & State Primary	June 7	Apr. 23 - June 7
Iowa	State Primary	June 7	Apr. 23 - June 7
Montana	Pres. & State Primary	June 7	Apr. 23 - June 7
New Jersey	Pres. & State Primary	June 7	Apr. 23 - June 7
New Mexico	Pres. & State Primary	June 7	Apr. 23 - June 7
North Dakota	Democratic Pres. Caucus	June 7	Apr. 23 - June 7
South Dakota	Pres. & State Primary	June 7	Apr. 23 - June 7
District of Columbia	Dem. Pres. & State Primary	June 14	Apr. 30 - June 14
Maine	State Primary	June 14	Apr. 30 - June 14
Nevada	State Primary	June 14	Apr. 30 - June 14
North Dakota	State Primary	June 14	Apr. 30 - June 14
South Carolina	State Primary	June 14	Apr. 30 - June 14
Virginia	State Primary	June 14	Apr. 30 - June 14
Colorado	State Primary	June 28	May 14 - June 28
New York	State Primary	June 28	May 14 - June 28
Oklahoma	State Primary	June 28	May 14 - June 28
Utah	State Primary	June 28	May 14 - June 28
Kansas	State Primary	Aug. 2	June 18 - Aug. 2
Michigan	State Primary	Aug. 2	June 18 - Aug. 2
Missouri	State Primary	Aug. 2	June 18 - Aug. 2
Washington	State Primary	Aug. 2	June 18 - Aug. 2
Tennessee	State Primary	Aug. 4	June 20 - Aug. 4
Virgin Islands	Territorial Primary	Aug. 6	June 22 - Aug. 6
Connecticut	State Primary	Aug. 9	June 25 - Aug. 9
Minnesota	State Primary	Aug. 9	June 25 - Aug. 9
Vermont	State Primary	Aug. 9	June 25 - Aug. 9
Wisconsin	State Primary	Aug. 9	June 25 - Aug. 9
Hawaii	State Primary	Aug. 13	June 29 - Aug. 13
Wyoming	State Primary	Aug. 16	July 2 - Aug. 16
Guam	Territorial Primary	Aug. 27	July 13 - Aug. 27
Arizona	State Primary	Aug. 30	July 16 - Aug. 30
Florida	State Primary	Aug. 30	July 16 - Aug. 30
Massachusetts	State Primary	Sep. 8	July 25 - Sep. 8
Delaware	State Primary	Sep. 13	July 30 - Sep. 13
New Hampshire	State Primary	Sep. 13	July 30 - Sep. 13
Rhode Island	State Primary	Sep. 13	July 30 - Sep. 13

LPTVs Must Be Operating to Participate in Special Post-Auction Displacement Window

The FCC's Media Bureau has released a Public Notice to inform licensees and permittees of low power television and television translator stations that they must be operational on the date that the Commission releases the Channel Reassignment Public Notice to be eligible to participate in the post-Incentive Auction special displacement filing window. At the conclusion of the Incentive Auction, the Commission will develop a new assignment plan for the full power and Class A stations that remain on the air. Many of those stations will be displaced from the spectrum in the 600-MHz band that is being reallocated to wireless services. Others will have to be relocated to accommodate the congestion of stations in the reduced television band. The Channel Reassignment Public Notice will be the vehicle by which the FCC announces this new plan. The Commission will then open a special filing window for LPTV stations that have been displaced to file applications proposing to relocate to an open channel. It will be impossible to know with certainty which channels will be available for this purpose prior to the release of the Channel Reassignment Public Notice. The timing of the release of this Public Notice is also uncertain as it depends upon the conclusion of the Incentive Auction, which is currently in progress.

This filing window will be limited to operating stations that (1) are displaced by a full power or Class A station as a result of the Incentive Auction or the repacking process; (2) will cause interference to or receive interference from frequencies repurposed for a new 600-MHz band wireless licensee; or (3) are licensed on frequencies in one of the 600-MHz band guard bands. Section 73.3700(g) of the Commission's rules mandates that stations participating in this filing window must be operating on the release date of the Channel Reassignment Public Notice. To qualify as "operating," the station must have a license or an application for a license on file with the Commission. Displaced LPTV stations that do not qualify for this filing window will have to wait until later to apply for an open channel when there will be fewer open channels available.

Although the special displacement filing window does present an incentive to complete construction early, the construction permits for new digital LPTV and TV translator stations have been extended until the LPTV digital transition date, which will be 51 months after release of the Channel Reassignment Public Notice. The Commission advises that any construction efforts these permittees may undertake between now and the release of the Channel Reassignment Public Notice are completely voluntary.

FCC Proposes Public File Relief continued from page 1

their public files this month. Notwithstanding these transitions, letters and emails from the public are not to be posted on the public website, although they are still considered to be part of the public inspection file and they must be available at the station for public review. Stations would be relieved of this obligation with the elimination of this rule.

There is another rule that formerly required commercial stations to keep correspondence in the public file. Section 73.1202 required stations to retain in the public file written comments and suggestions from the public regarding station operations. Letters received by television stations were to be separated into categories for programming and non-programming matters. At the time that this rule was adopted in 1973, the Commission also mandated that commercial stations air regular announcements to inform the audience of the licensee's responsibilities to the public and of the appropriate method for individuals to express their opinions about the station's operation. The purpose of the correspondence file was "to permit a member of the public to better determine the nature of community feedback being received by the licensees and the extent to which his or her opinions regarding community problems and needs and/or the licensee's station operation might be shared by other members of the community." The requirement for announcements was subsequently removed from this rule as stations were required by another rule to broadcast announcements in connection with their regular license renewal applications. In 1998, the Commission adopted a measure to eliminate Section 73.1202 and moved the regulation for retaining public correspondence to the more comprehensive public file rule, Section 73.3526. However, the deletion of Section 73.1202 has never

been reflected in the federal government's formally produced Code of Federal Regulations.

The Commission has tentatively concluded that it should eliminate the requirement to retain letters and emails from the public in the public inspection files of commercial stations. The goal of the rule was to ensure that broadcasters comply with their public interest obligations to air programming responsive to the needs and interests of their communities. However, the Commission now recognizes that members of the public are able to scrutinize a station's performance and to submit comments and petitions about that performance to the station and/or to the FCC without the need for each station to retain routine correspondence.

The Commission invites public comment on its tentative conclusion and on a number of questions germane to the topic: What are the benefits of eliminating or retaining the rule? How often do members of the public make use of the correspondence file at the station's main studio? Does this material contain information that continues to be useful to local audience members, or other interested parties, that cannot be obtained through other methods? What impact does the use of social media by a broadcast station have on the ability of members of the public to communicate with the station and others regarding the station's programming and other issues?

Comments must be filed in this docket within 30 days of publication of notice of this proceeding in the Federal Register. Reply comments will be due 60 days after that publication.

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various broadcast interests and which the court identified as the "Deregulatory Petitioners," opposed the implementation of the JSA rule and the general lack of progress in the FCC's review of the ownership rules.

The Commission's television multiple ownership rules place a cap on the total national audience reach permitted by stations under common control, and restrict the number of stations that can be under common control in a local market. A maximum of two stations with overlapping contours in a local market can be under common control, but only if not more than one of them is among the top four stations in the market and if at least eight independently owned and operated stations, or voices, would remain in the market after the merger. Under the JSA rule, where a station has an agreement to conduct sales for another and those sales amount to 15% or more of the second station's weekly advertising, the second station is attributable to the owner of the first station for purposes of calculating the first station owner's compliance with the ownership restrictions. When the rule was adopted in 2014, existing noncompliant JSAs were grandfathered for two years, by

the end of which time parties had to bring themselves into compliance. Congress later extended that transition period until 2025.

Congress directed the FCC in Section 202(h) of the 1996 Act to conduct periodic reviews of its broadcast ownership rules. The statute mandates that the FCC "shall determine whether any of such rules are necessary in the public interest as the result of competition," and "shall repeal or modify any regulation it determines to no longer be in the public interest." Congress originally required the FCC to conduct such reviews on a biennial basis, but later amended the statute to provide for quadrennial reviews. The FCC has not yet completed its 2010 review and instead merged it into the 2014 review, which remains pending.

The court's action to vacate the JSA rule was not a decision on the merits of the rule itself. The court said that the FCC's first obligation under the 1996 Act was to review existing rules, such as the restrictions on the multiple ownership of television stations, to determine if those restrictions should be relaxed. Instead of first undertaking that

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review, the Commission had augmented rather than relaxed those restrictions by adding the JSA element. The court left open the possibility that the FCC might appropriately adopt such a rule if done within the context of its properly conducted periodic review. However, more generally, the court held that the Commission cannot expand its attribution policies for an ownership rule to which Section 202(h) of the 1996 Act applies unless it has, within the previous four years, fulfilled its obligation to review that rule and determine whether it is in the public interest.

More broadly and in the face of the prolonged delay in the ownership regulatory review of what they considered to be outdated regulations, the Deregulatory Petitioners urged the court to vacate all of the broadcast ownership restrictions. The court declined to do this, noting that it would be the “administrative law equivalent of burning down the house to roast the pig.” However, the court went on to warn that “this remedy, while extreme, might be justified in the future if the Commission does not act quickly to carry out its legislative mandate.”

The Citizen Petitioners were also impatient with the FCC’s inaction. The issue of how to achieve greater involvement by minorities and women in broadcast ownership has become entwined in the Commission’s ownership review process. Along with most other matters related to the ownership review proceedings, progress on this issue has been bogged down, to the dissatisfaction of these petitioners.

In the 2002 ownership review, to promote diversity the Commission allowed the sale to “eligible entities” of grandfathered combinations of radio stations that would otherwise exceed the ownership caps. An eligible entity was an entity qualifying as a small business under the revenue-based definition of the Small Business Administration. Subsequently, eligible entities were given preferences and benefits in other aspects of broadcast ownership. However, this mechanism was criticized as lacking evidence that small businesses are more likely to be owned by minorities or females. Several parties have asked the FCC to use a definition that would give preferences to “socially and economically disadvantaged businesses” (“SDBs”).

In the 2004 decision known as *Prometheus I*, the court declined to grant a request to strike down the revenue-based construct for the eligible entity. It credited the FCC’s contention that the definition of the replacement candidate – the SDB – was still too fluid. However, the court noted its anticipation that by the next quadrennial review, the FCC

would be able to evaluate whether SDBs would better serve the agency’s diversity objectives.

Such did not turn out to be the case however. The FCC’s 2006 quadrennial review did not produce any new definition for “eligible entity.” Although alternate descriptions had been proposed, the revenue-based model was still employed. The court finally ruled that the revenue-based definition for “eligible entity” as a mechanism to encourage ownership diversity was arbitrary and capricious in the 2011 decision known as *Prometheus II*. It remanded the matter back to the FCC with instructions to develop a more rational mechanism.

The Citizen Petitioners brought the present case to the court with the complaint that the FCC still has not acted on that directive. They asked the court to compel the FCC to act under Section 706(1) of the Administrative Procedure Act that allows a court to “compel agency action unlawfully withheld or unreasonably delayed.” The Commission asked the court to defer again for two reasons. First, the agency claimed that it was technically not in violation of the *Prometheus II* remand order because its 2010 review has not been completed. The court greeted this explanation with total exasperation. Second, the Commission said that the court’s concerns would soon be mooted by the agency’s imminent action. At oral argument, FCC counsel advised the court that the Commission’s chairman intended to circulate an order for review by the other commissioners by June 30 that would result in a final action on the eligible entity question by the end of 2016. The chairman subsequently confirmed to the public that this was his plan.

While the court expressed its appreciation for this timetable, it nonetheless issued a remand order to the FCC to act promptly to bring the eligible entity definition to a close. The court said that it would not prejudice the outcome of this analysis. It simply ordered that the Commission act on the matter. To encourage prompt action, the court ordered the Citizen Petitioners and the FCC to participate in a mediation procedure for the purpose of establishing a timetable for a final agency action. If the parties are unable to do so within 60 days, the court said that it would establish a schedule for FCC action that it deems appropriate.

The decision in this consolidated case is entitled *Prometheus Radio Project v. Federal Communications Commission*, and no doubt will come to be known as *Prometheus III*.

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