

Hitting the Brakes

Legal eagle **SALLY BUCKMAN** explains how a U.S. Court of Appeals ruling is impacting cross-ownership regulations.

Dear Expert,

My company has been considering a transaction that would be permitted only if the Federal Communications Commission (FCC) relaxes its broadcast ownership rules. We expected to see a decision by now. Will it come soon?

Waiting in Wichita

Dear Wichita,

It does not appear that the FCC will be changing the broadcast ownership rules anytime soon. That's due to a decision by the U.S. Court of Appeals, which sets aside rule changes made by the commission in 2017.

The decision affects broadcasters in several ways. First, the rules limiting broadcast station ownership revert to those in effect prior to the 2017 changes, and the FCC has signaled that it's unlikely to approve transactions that don't comply with the pre-2017 rules. Second, it is unlikely that the FCC will proceed with further changes in the foreseeable future.

So, what's going away, exactly? In its 2017 decision, the FCC repealed a rule that prohibited the common ownership of a daily newspaper and a radio or TV station in the same market, and another cross-ownership rule that limited the number of radio and TV stations that an entity could own in the same market.

The 2017 decision also relaxed the local television ownership rule by eliminating the prohibition on one company owning two TV stations in a market only if eight independently owned stations would remain in the market after the acquisition. And it also eliminated the rule that treated a television joint sales agreement as the equivalent of controlling a station under the ownership rules and therefore prevented a company from owning one TV station and selling advertising time for another TV station in

the same market. The FCC also announced that it would consider requests for waiver of the ban on the common ownership of two top-four ranked stations in a market.

The 2017 decision quickly led to several major acquisitions. The largest was Nexstar Media Group's acquisition of Tribune Media. Nexstar was able to acquire two top-four ranked stations in the Indianapolis and Norfolk markets because of the rule change.

The FCC is required by law to review its broadcast ownership rules every four

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years and to repeal or modify any rule that it determines to be no longer in the public interest as the result of competition. In December 2018, the commission initiated its latest review. Many expected that the review would lead to further relaxation of the ownership rules, including those that limit the number of radio stations that an entity can own in a market.

But the process came to a screeching halt in late September 2019, when the U.S. Court of Appeals for the Third Circuit issued its decision, directing the FCC to gather more data on how the changes to the rules would impact minority and female ownership.

Moving forward, most FCC experts expect the commission to delay the 2018 quadrennial review and focus on defending the 2017 decision. (For more on that, see "Last Word," on page 30.)

The FCC has not yet ruled on the effect of the court's decision on acquisitions that had already been completed. Presumably,

a now non-compliant acquisition would be "grandfathered" – allowed to remain in effect – if the commission's decision approving it is no longer subject to review. However, the company may be limited in its ability to sell the "grandfathered" combination in the future, because any acquiror would need to show that the acquisition complies with the ownership rule then in effect.

If the commission's approval of a now non-compliant acquisition is not yet "final," and the transaction is still being challenged, the effect of the court's decision is less clear.

The court's ruling also affects pending and potential transactions. Shortly after the court's decision, News-Press & Gazette terminated its proposed acquisition of Heartland Media's TV stations, which would have resulted in the ownership of a

daily newspaper and TV station in the same market. No one knows how many other acquisitions have been quietly shelved.

In addition, the transaction involving the sale of a controlling interest in television and radio stations owned by Cox to an entity affiliated with Apollo Global Management was restructured so that it would comply with the pre-2017 ownership rules.

Both actions imply that the FCC had signaled that it would not approve pending transactions that do not comply with the pre-2017 ownership rules.



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