Broadcast LAW BLOG

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On the 15th Anniversary of the Telecommunications Act of 1996, The Effect on Broadcasters is Still Debated

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On February 8, 1996, the **Telecommunications Act of 1996** was signed into law by President Bill Clinton. While the Act had significant impact throughout the communications industry, the impact on broadcasters was profound, and is still being debated. The Act made changes for broadcasters in several major areas:

- Lengthened **license renewals to 8 years** for both radio and TV, and eliminated the "comparative renewal"
- For radio, eliminated all national caps on the number of radio stations in which one party could have an attributable interest and increased to 8 stations the number one party could own in the largest radio markets
- For television, raised national ownership caps to having stations that reached no more than 35% of the national audience, with no limits on the number of stations that could be owned as long as their reach was under that cap.
- Allocated spectrum that resulted in the DTV transition

Obviously, the DTV spectrum began the profound changes in the way television is broadcast, and led to the current debate as to whether over-the-air television should be further cut back in order to promote wireless broadband (see our recent post on the FCC's current proceeding on this issue). While the other changes have now been in effect for 15 years, the debate over these provisions continue. Some argue that the renewal and ownership modifications have created too much **consolidation in the broadcast media** and lessened the **broadcaster's commitment to serving the public interest.** Others argue that, in the current media world, these changes don't go far enough. Broadcasters are under attack from many directions, as new competitors fight for local audiences (often with minimally regulated multi-channel platforms, such as those delivered over the Internet) and others attack broadcasters principal financial support - their advertising revenue. Even local advertising dollars, traditionally fought over by broadcasters and newspapers (with some competition from billboards, direct mail and local cable), is now under assault from services such as Groupon and Living Social, and from other new media competitors of all sorts. With the debated continuing on these issues in the current day, it might be worth a few looking back at the 1996 changes for broadcasters, and their impact on the current broadcast policy debate.

First, the changes on license renewal. The Telecommunications Act lengthened the license renewal period to 8 years (from 7 years, though renewals had been required every 3 years only a few years before the 1996 Act) and eliminated the **comparative renewal**. Prior to the enactment of these changes, at license renewal time, the FCC would not only accept petitions arguing that a licensee was not doing a good job and should therefore not have its license renewed, but the rules also allowed a challenger to file an application with the FCC seeking a new station on the frequency of the station seeking renewal, contending that the challenger could do a better job of serving the public and deserved the rights to the local frequency more than the incumbent broadcaster. This led to many decades-long proceedings to challenge broadcast renewals, some pursued, in the opinion of many participants, by the challengers in hope of getting some sort of payout (or "greenmail", as it was called by some) to go away and leave the licensee alone. Even though most of these challenges were not successful (as the FCC gave licensee's a presumption of renewal if they could demonstrate that they had served the public interest), licensees still ran into huge expenses trying to defend themselves against claims that some new party could do a better job serving the public than the existing licensee. As lofty promises about future programming are easier to make than showings about a past record, these were long, costly proceedings, and the possibility of such a challenge made investors leery about the broadcast industry given the uncertainty that these renewals posed.

There seems to be little controversy over the abolition of this renewal process, but the lengthening of the renewal period to 8 years seems to still elicit concern about the ability of the FCC to judge the performance of broadcasters in serving the public interest only once every eight years (see our post, here, about **Commissioner Copps' proposal to bring back 3 year license terms**). As the vast majority of license renewals go through the FCC uncontested and without controversy or concern, one wonders if any benefit that would be gained from more frequent scrutiny of broadcast performance would outweigh the cost and expense of a shorter cycle where broadcasters would be constantly dealing with the preparation of renewal applications (and where precious FCC staff time would have to be devoted to such review). Whether broadcasters are serving the public will presumably be a topic addressed by the Future of Media report coming from the Commission soon, and will also no doubt be addressed when the long-pending localism proceeding comes to an end after the Future of Media report is released and analyzed.

The ownership reforms of the Telecommunications Act also are at the core of the same debate as to whether broadcasting continues to serve the public and as to whether more ownership regulation is necessary (despite the explosion of new electronic media competitors since 1996 - Sirius XM was not then in service, streaming audio and video - like YouTube and Pandora- was just beginning with hard-to-listen-to audio files, social media was not even on the horizon). The Telecommunications Act eliminated all national caps on the number of stations that a radio broadcaster could own (from previous caps of 20 AM and 20 FM stations), and raised from 4 to

8 the number of radio stations that an owner could have in the largest markets. On the TV side, the national cap was raised from 25% of the national TV households to 35% (late raised to 39%). The debates over these reforms continue to this day. Many think that the local ownership rules for TV should be relaxed to permit more small market TV duopolies so that the development of small market stations can be supported, and some favor a change in radio ownership caps - getting rid of the current rules (which limit one owner to 5 FM stations in a market where that owner can hold a total of 8 stations, and lesser caps on AM and FM ownership in smaller markets), to allow one owner to hold as many stations in the same service (AM or FM) as is permitted by the rules (i.e. in a market where an owner can now hold 8 stations - only 5 of which can be either AM or FM stations, the proposal is to allow one party to own up to 8 AMs or FMs, with no AM or FM subcap). Given that services with which radio competes (like Pandora or Sirius XM) can have unlimited channels, proponents of a loosening of the rules submit that these artificial limitations are outdated. Others argue that the current rules have allowed too much consolidation in the same ownership hands, and that the rules should be tightened, not relaxed. These issues will no doubt be debated in the upcoming review of the FCC's multiple ownership rules. We should be seeing a Notice of Proposed Rulemaking in that proceeding in the not too distant future.

15 years, in terms of media technology and competition, seems like eons ago, though many of us remember these changes as if they were yesterday, which is perhaps why so many of the changes that occurred in 1996 are still being debated in today's FCC proceedings. It will be interesting to see how those debates shape the media going forward, and how they will be remembered in 2026.