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FEDERAL COMMUNICATIONS COMMISSION

[DA 19-1305]

Media Bureau Announces Procedures for Processing FCC Form 314 and 315 Assignment and Transfer of Control Applications for Commercial Stations in Light of Third Circuit Mandate

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Media Bureau announces revised processing procedures for applications to assign or transfer control of commercial broadcast stations filed on FCC Forms 314 and 315, following the remand of certain Commission rules by the United States Court of Appeals for the Third Circuit, in its decision in *Prometheus Radio Project v. FCC*, 939 F.3d 567 (3d Cir. 2019), *petition for rehearing en banc denied* (3d Cir. Nov. 20, 2019) (*Prometheus*).

DATES: Applicable **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION: By this Public Notice, the FCC's Media Bureau announces procedures for assignment and transfer applicants in light of the United States Court of Appeals for the Third Circuit's decision in *Prometheus*. In its decision, the court vacated and

remanded the Commission’s *2010/2014 Quadrennial Review Order on Reconsideration*,¹ which had modified the Commission’s media ownership rules by: (1) eliminating the newspaper/broadcast cross-ownership and radio/television cross-ownership rules; (2) revising the local television ownership rule by eliminating the “eight voices” test and permitting applicants to seek the combination of two top-four ranked stations in a given market on a case-by-case basis; and (3) deeming joint sales agreements between television stations to be non-attributable. By vacating the *Order on Reconsideration*, the *Prometheus* decision abrogated these rule changes and reinstated the prior media ownership rules adopted in the *2010/2014 Quadrennial Review Order*. See *2010/2014 Quadrennial Review Order*. The court also vacated the Commission’s definition of an “eligible entity,” which had been adopted in the *2010/2014 Quadrennial Review Order*.²

On November 29, 2019, the Third Circuit issued its mandate in *Prometheus*. Letter from Patricia S. Dodszuweit, Clerk, *Prometheus Radio Project v. FCC*, Nos. 17-1107 *et al.* (3d Cir. Nov. 29, 2019). Accordingly, by order released December 20, 2019, the Commission’s rules have been amended to reflect the changes required by the court’s foregoing actions. *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, Order, DA 19-

¹ *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802 (2017) (*2010/2014 Quadrennial Review Order on Reconsideration*). The Court also vacated in its entirety and remanded the Commission’s Order adopting a radio incubator program, *Report and Order In the Matter of Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, 33 FCC Rcd 7911 (2018), and the definition of “eligible entity” from the *2014 Quadrennial Review Order – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, Second Report and Order, 31 FCC Rcd 9864 (2016) (*2010/2014 Quadrennial Review Order*).

² *Prometheus*, 939 F.3d at 587, 589, referencing *2010/2014 Quadrennial Review Order*. That definition is reflected in Section III, Item 6.d. of FCC Form 314 and Section III, Item 8.d of FCC Form 315. Pending further Commission action on this topic, the eligible entity definition and attendant provisions of FCC Forms 314 and 315 are unavailable.

1305 (MB Dec. 20, 2019) (2019 Order). The purpose of this Public Notice is to clarify the application of these new rules as they bear on pending and future applications for assignment and transfer of control.³

New Applications: Effective immediately, every applicant filing an assignment application on FCC Form 314 (Application for Consent to Assignment of Broadcast Station Construction Permit or License - <https://transition.fcc.gov/Forms/Form314/314.pdf>) or a transfer of control application on FCC Form 315 (Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License - <https://transition.fcc.gov/Forms/Form315/315.pdf>) must take account of the media ownership rules now in effect by virtue of the issuance of the mandate in *Prometheus*. The Media Bureau is in the process of seeking approval from the Office of Management and Budget to restore the previous ownership language to the FCC Form 314 and 315. Pending that approval and effective immediately, all applicants must use the existing certification in each form that requires the applicant to certify that it “complies with the Commission’s multiple ownership rules.” See FCC Form 314, section III, Item 6.b; FCC Form 315, section III, Item 8.b. We clarify that when an applicant certifies compliance with the “multiple ownership rules” it is certifying compliance with all of the rules set forth in 47 CFR 73.3555, including the “eight voices” test and the prohibition on top-four combinations in the local television rule; radio/television cross-ownership rules; newspaper/broadcast cross-ownership rules; and attribution of joint sales agreements. 47 CFR 73.3555(b) through (d), notes. See 2019 Order.

Pending Applications: To the extent that licensees have a pending assignment or transfer application filed on Form 314 or 315, they must update their application as described herein.

³ Nothing in this Public Notice shall be construed to affect the right of the Commission or any other party to the *Prometheus* litigation to seek further review of the Third Circuit’s decision in the U.S. Supreme Court, or to limit the Commission’s discretion in the event that the Supreme Court were to take further action in that litigation.

Specifically, within 30 days of the date of this Public Notice, each assignee or transferee must file an amendment to its pending application as required by section 1.65 of the Commission's rules, 47 CFR 1.65. This amendment must include, as Exhibit 1, a statement certifying whether each assignee or transferee complies with the Commission's multiple ownership rules now in effect as a result of the *Prometheus* decision. To the extent the assignee or transferee cannot certify compliance, it should file an explanation with all necessary showings. No action will be taken on pending applications prior to submission of this amendment. Applicants seeking prompt action on their application should not wait the full 30 days to file the required amendment. Applications will be processed once amendments are received.

Thomas Horan,
Chief of Staff, Media Bureau.

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