

## **FCC Sets Limits on Use of Divestiture Trusts When Station Purchase Would Put Buyer in Violation of Multiple Ownership Rules**

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When one broadcast licensee company buys another, or when there is a restructuring of a company with broadcast ownership holdings that are **grandfathered** under current ownership rules, there often arises a need to **divest stations** so that the buyer (or the new controlling parties after a restructuring) complies with the multiple ownership rules after the completion of the transaction. Often, selling the non-compliant stations quickly so as to not unduly delay the closing of the purchase or the restructuring is difficult, as it takes time to locate a buyer for the "extra" stations and to negotiate a fair sales price. In fact, a **forced divestiture can artificially depress the sales price for the non-compliant stations** that need to be spun off, as potential purchasers of the stations know that any delay of the principal transaction will impose costs on the buyer and seller in that deal. Thus, the parties in the principal transactions often look for ways to avoid a forced sale at a depressed price. One method is the use of a **divestiture trust** - letting a trustee run the stations to be divested until a suitable purchaser can be found at a reasonable price. The FCC has permitted such trusts, but in a [case decided last week](#), it demonstrated that there were limits on their use by denying applications that the Commission deemed interests in too many stations in one area in the hands of one company. This case should provide guidance on the limits of the use of divestiture trusts for those who may consider them in future broadcast transactions.

The case involved radio stations in two smaller markets in Washington state, **Yakima and the Tri-Cities**. There, new Northwest Broadcasting had held full complements of stations, at or close to the ownership limits in each market. New Northwest went into bankruptcy, and a receiver was appointed to run the stations. The receiver reached a deal to sell the stations to Townsquare Media, which already held clusters of stations in these markets, also at or near the ownership limits in the markets. Townsquare proposed to cherry-pick from the New Northwest cluster a few prime stations, and then to assign the remainder (and a few stations that Townsquare had itself owned) to a divestiture trust, with instructions to sell off these stations to an independent buyer. While the FCC decision does not explicitly set forth the terms of the trust, it appears that the beneficial interest in the sales price of the stations to be divested (and presumably any operating profit until the stations were sold) would be for the benefit of Townsquare. In looking at this proposed transaction, the FCC's Media Bureau determined that the proposal to use this trust would concentrate a beneficial interest in too many radio stations in the hands of one company. Thus, the applications were dismissed.

Objections to the applications had been filed by several competitors in the market. The Commission recognized that, as pointed out by the petitioners, divestiture trusts were not suitable for all circumstances, but were instead to be used sparingly, only as necessary to effect a broader transaction and where competition would not be harmed. The Commission's summary of its past precedent was as follows:

First, trusts are occasionally established specifically to effect compliance with the Commission's rules for holdings which would violate the rules if held outright. Because of our concern that divestiture trusts present a potential for abuse, that can pose unacceptable risks to competition, we have consistently found that insulated divestiture trusts should be employed only where necessary, and then to as limited an extent as possible.

After analyzing the transaction proposed here, the FCC did not think that the use of the trusts was limited nor necessary to accomplish a broader transaction. From its review of the cases, the Commission appears to conclude that such trusts are most appropriate in cases of large, multi-market deals, where the divestitures need to occur in only a few markets to complete the larger deal. Here, where the only markets involved were the two where the trusts were used, the FCC had concerns. On top of those concerns, the fact that the Buyer would end up with interests in 23 of the 54 stations in the two markets either under their direct control or through the beneficial interests in the trusts, the deal was stopped.

Perhaps these deals can be recrafted so as to eliminate the beneficial interest in so many stations in the markets, or perhaps the parties will appeal this decision. But, regardless of future actions, this decision is the best expression that the Commission has ever provided as to the limits of the use of divestiture trusts. If you think about crafting such a deal, pay attention to the limits set out in this case.

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