(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 10, 1996.

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[FR Doc. 96–32265 Filed 12–18–96; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 91–221 and 87–8; FCC 96–438]

Local Television Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *Second Further NPRM,* the Commission makes several tentative conclusions and proposals concerning the modification of the local television ownership rule and the radio-television cross-ownership rule. Specifically, we invite comment on our tentative conclusion to modify the local television ownership rule to a generally less restrictive Designated Market Area (''DMA'') and Grade A signal contour standard and on a number of specific waiver standards for the local television ownership rule. We also seek comment as we reexamine the radio-television cross-ownership rule in light of changes to the radio-television cross-ownership waiver policy and local radio ownership rules contemplated by the Telecommunications Act of 1996 (''1996 Act''). In addition, the Commission tentatively concludes that it will establish the adoption date of this *Second Further NPRM (i.e.,* November 5, 1996) as the grandfathering date for television local marketing agreements (''LMAs'') in the event television LMAs are considered attributable under our ownership rules. The purpose of this *Second Further Notice of Proposed Rulemaking* is to invite additional comments on our local television ownership rule, radio-television cross-ownership rule, and the treatment of existing television LMAs in light of the enactment of the 1996 Act.

DATES: Comments are due by February 7, 1997, and reply comments are due by March 7, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Alan Baughcum (202) 418–2170 or Kim Matthews (202) 418–2130 of the Policy and Rules Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rule Making in MM Docket Nos. 91–222 and 87–8, adopted November 5, 1996, and released November 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W. Washington, D.C. 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Second Further Notice of Proposed Rulemaking

I. Background

1. Last year, the Commission adopted a broad-ranging *Further Notice of Proposed Rule Making* in this docket (hereinafter *TV Ownership Further NPRM).* In that item, the Commission proposed changes or revisions to the national television ownership rule, the local television ownership rule, and the radio-television cross-ownership rule. In addition, the Commission requested comment as to whether certain broadcast television local marketing agreements (''LMAs'') should be considered to be an attributable interest in a manner similar to radio LMAs.

2. On February 8, 1996, the Telecommunications Act of 1996 (the ''1996 Act'') was signed into law. Section 202 of the 1996 Act directs the Commission to undertake significant and far-reaching revisions to its broadcast media ownership rules, some of which—like the relaxation of the national television ownership limit—were proposed in the *TV Ownership Further NPRM.* Section 202 also requires us to review other aspects of our local ownership rules which were also the subject of the *TV Ownership Further NPRM.* In particular, Section 202 requires the Commission to do the following: (1) to conduct a rulemaking proceeding concerning the retention, modification or elimination of the television duopoly rule; and (2) to extend the Top 25 market/30 independent voices one-to-a-market waiver policy to the Top 50 markets, ''consistent with the public interest, convenience, and necessity.'' Additionally, both the Act and its legislative history contain statements regarding the appropriate treatment of existing television local marketing agreements (''LMAs'') under our ownership rules. Because our previous request for comments occurred before the enactment of the 1996 Act, we believe inviting additional comments pertaining to the duopoly rule, the radio-television cross-ownership rule, and the treatment of existing television LMAs is appropriate.

3. We confine this *Second Further NPRM* to issues related to our local television ownership rule (the duopoly rule), the one-to-a-market rule, and LMA grandfathering issues. Issues relating to the national television ownership limit, which was specifically modified by the 1996 Act, were addressed in a previously released Order implementing these modifications (*See Order,* FCC 96–991, 61 FR 10691 (March 15, 1996) and are also discussed in a separate *NPRM* adopted contemporaneously with this *Second Further NPRM.* In addition, issues related to the broadcast attribution rules are the subject of a *Further NPRM* in our attribution proceeding that is also being adopted today.

4. In the sections that follow, we invite comment on several discrete issues prompted by the 1996 Act. We also take this opportunity to solicit further comment in light of our review of comments filed in this proceeding to date. Specifically, we invite comment on our tentative conclusion to modify the local television ownership rule to a generally less restrictive Designated Market Area (''DMA'') and Grade A signal contour standard and on a number of specific waiver standards for the local television ownership rule. We also seek comment as we reexamine the radio-television cross-ownership rule in light of the 1996 Act. Finally, we seek comment on how, if we decide to make television local marketing agreements (''LMAs'') attributable for ownership purposes, existing LMAs should be treated under the Act and the new rules.

II. The Local Television Ownership Rule

A. Background

5. Our local television ownership rule presently prohibits common ownership of two television stations whose Grade B signal contours overlap. The *TV Ownership Further NPRM* set out a comprehensive analytical framework for reviewing this rule in light of three principal goals. First, we seek through our local television ownership rule to promote diversity, particularly program and viewpoint diversity. Second, we intend to foster the competitive operation of broadcast television stations' program distribution and advertising markets. Finally, we seek to promote greater certainty by adopting

generally applicable rules. We also recognize that the 1996 Act and additional Commission proceedings may have a cumulative effect on the ability of small stations or stations owned by minorities and women to compete effectively in this new environment. We seek comment on what aggregate effect these proposed rules may have on small stations, or stations owned by minorities and women.

B. Geographic Scope of the Rule

6.The *TV Ownership Further NPRM* proposed to narrow the geographic scope of the duopoly rule by prohibiting station overlaps on the basis of Grade A contours (with a radius of approximately 30-45 miles) rather than Grade B contours (with a radius of approximately 50-70 miles). We also sought comment on whether Nielsen's DMA was a better measure of a local television market than Grade B signal contours. While some commenters opposed any change of the local ownership rule at all, most advocated a relaxation of the rule, with many supporting some form of the proposed Grade A test.

7. We continue to question whether the Grade B contour best reflects the market in which a television station operates for purposes of our local ownership rule. The *TV Ownership Further NPRM* indicated that the area within the Grade B contour does not necessarily reflect the station's ''core market,'' (*i.e.,* the viewers the station is trying to reach). It further pointed to a number of benefits, including economies of scale, that could be gained by relaxing the rule. Various parties have commented that the Grade B contour test should be relaxed because stations with overlapping Grade B contours are generally unlikely to have enough viewers in common to raise competition or diversity concerns if the stations were jointly owned. Commenters also pointed to the greater number of alternatives now afforded many viewers with cable and other multichannel video program services.

8. While we believe the Grade B test may be overly restrictive, we are concerned that the Grade A contour alone may not be the appropriate measure to adopt in its place. We recognize that in the *TV Ownership Further NPRM,* we indicated that the record at the time supported moving to a Grade A approach. Upon further consideration of these issues and of the comments submitted in response to the *TV Ownership Further NPRM,* however, we believe a combination of the DMA and Grade A signal contours may be a more appropriate measure of the geographic scope of the local television ownership rule.

9. Our tentative conclusion is that the local television ownership rule should permit common ownership of television stations in different DMAs so long as their Grade A signal contours do not overlap. In this section, we set forth the reasons as to why this approach may more accurately reflect a television station's geographic market and may further our diversity and competition goals. We invite parties to comment on this tentative conclusion and how it might be superior or inferior to a standard that is based solely on signal contours or one that is based solely on DMAs.

10. *The Relevance of DMAs.* The record indicates that the DMA provides, as a general matter, a reasonable proxy of a television station's geographic market. The Commission has previously noted that the benefit of the DMA definition is that it attempts to capture the actual television viewership patterns and each county is assigned to a unique television market, unlike the Grade A and B contour standards which ignore the carriage of broadcast signals over cable systems. Thus, DMAs are designed to reflect actual household viewing patterns and advertising markets—critical ingredients for determining a station's geographic market, both for competition and diversity purposes. In addition, the Commission traditionally has employed a similar geographic measure to the DMA in other rules. That geographic measure is the Area of Dominant Influence (''ADI''), used by the Arbitron Company to define a television station's geographic market according to audience viewing patterns.

11. We thus invite parties to comment further upon whether the DMA provides a reasonable, general approximation of a television station's geographic market, and whether the DMA is an appropriate basis for application of our local ownership rules. Furthermore, we seek comment on the consistency of DMA classifications from year to year. We recognize that some degree of change in these classifications is inevitable as viewing patterns shift, but ask parties to address whether these changes are so frequent or of such significance that they would undermine our goal of crafting an ownership rule that provides certainty and consistency in its application. We also seek comment on the basis upon which changes in DMA boundaries are made, and on whether boundaries are changed at the request of local broadcast television stations.

12. *Supplementing the DMA Test with a Grade A Contour Standard.* While it is our present view that DMAs may be better than either Grade B or Grade A signal contours as measures of the market, we also tentatively conclude that we should supplement our proposed DMA-based rule with a Grade A contour criterion. There are at least two reasons why we would include both the DMA and Grade A signal contours in the local television ownership rule. First, because the DMA is based on the preponderance, not necessarily the majority, of audience viewing, broadcast television stations in neighboring DMAs may in fact be such significant competitors that joint ownership should not be allowed. Broadcast television stations with overlapping Grade A signal contours, whether in the same DMA or not, may compete for viewers and advertising dollars. Second, the common ownership of two broadcast stations in different DMAs with overlapping Grade A signal contours may reduce voice and program diversity available to the viewers in the overlap area. Thus, we believe that a supplemental Grade A overlap criterion will serve to forestall potentially anti-competitive and diversity-reducing mergers in the broadcast television industry.

13. Total viewing for a particular broadcast television station may include viewing in counties both within and outside the station's DMA. Nielsen in fact examines all such viewing attributed to stations in counties in and outside the station's DMA and reports this viewing data under the heading ''Station Totals.'' The fact that there is viewing outside the DMA suggests that, at least in some instances, stations in neighboring DMAs may compete for some of the same audience. This may especially be the case in the eastern U.S. where counties and DMAs tend to be smaller than west of the Mississippi River. In these areas it may be that significant portions of an individual station's audience reside in adjacent DMAs, particularly for stations located near DMA boundaries. We seek comment on whether our composite DMA/Grade A rule will adequately address these concerns.

14. The Commission recognizes that actual viewing patterns may not be limited to instances where stations in different DMAs find their Grade A signal contours overlapping. We believe, however, that the areas in which such Grade A signal contours overlap are likely to be among those where the competitive and diversity concerns raised by common ownership of the two stations would be greatest. This is because the Grade A contour represents

the core over-the-air market. We seek comment on this belief.

15. A further reason we tentatively conclude that a composite DMA/Grade A rule is advisable is because the DMA designation relies on ratings in both cable and non-cable households in describing the geographic reach and extent of television markets. We note, however, that slightly more than one-third of television viewers do not subscribe to cable. Thus, reliance on a DMA market definition may conceal the extent to which viewers that rely on free-over-the-air television might be harmed from a diversity perspective if the duopoly rule takes no independent account of the extent to which two stations serve the same viewers solely on an ''over-the-air'' basis.

16. We ask for comment on whether there are any other such issues raised by reliance on DMA market designations which the Commission should consider. To the extent that such problems exist and are significant, will adding a Grade A component to the rule remedy them and thereby ease our competition and diversity concerns?

17. *Large DMAs and Counties.* We believe that a DMA/Grade A approach will generally be less restrictive than the current Grade B signal contour test. There may be some situations, however, where this is not the case, particularly in some geographically large DMAs west of the Mississippi River. In these situations, the DMA may be large enough so that two stations could be situated in the DMA yet not have overlapping Grade B contours; common ownership of the two stations would be permitted under the existing rule but not under the DMA/Grade A approach. We note, however, that a preliminary review of station locations and Nielsen DMAs suggests that there are currently few stations within the same DMA that could be commonly owned under the existing Grade B signal contour standard that are not already jointly owned. We invite comment on whether parties agree with this assessment, and whether, as a practical matter, the issue is essentially mooted by our proposal to grandfather these existing arrangements. In the event this is not the case, we invite comment as to how we should address this issue in defining the local geographic market and implementing the television duopoly rule. One alternative would be to adopt a two-tiered rule under which we would permit common ownership both in cases where there is no DMA/Grade A overlap and in situations where there is no Grade B overlap. Such a rule would be no more restrictive than our current regulation and would not disrupt current ownership patterns. We seek comment on this approach.

18. A related issue concerns the possibility that certain western counties are sufficiently large, measured by area, that populations in cities or towns at opposite ends of the same county watch stations in different DMAs. Nielsen's methodology for assigning counties would nonetheless award the county based on the preponderance of overall viewing in the county. This could, potentially, lead to a situation in which Nielsen assigns a significant portion of the viewing population of that county, say residents of town A, to a DMA with stations that are not viewed by those television households. Such assignment might occur because Nielsen relies on the preponderance of cable and non-cable viewers in both town A and the larger town B at the opposite end of the county. As a result, under a DMA-based duopoly rule, stations licensed to towns A and B could not be commonly owned even if their Grade B contours do not overlap and they actually serve entirely different markets. Our preliminary analysis, however, indicates that the number of instances in which this might occur may be small. Indeed, we note that Nielsen has, in certain instances, split counties among different DMAs based on the disparate viewing habits of residents in various locations in the county. We seek comment on whether this assessment is accurate. What would be the appropriate response in the event the record shows that this issue in fact presents a significant problem?

19. *Grandfathering.* As noted, recognizing that our proposal could disrupt existing ownership arrangements involving stations in the same DMA with no Grade B overlaps, we seek comment on whether we should, if we adopt a DMA/Grade A rule, grandfather existing joint ownership combinations that conform to our current Grade B test. We also seek comment on whether the grandfathered status we propose for existing joint ownership combinations in the same DMA should cease at the time an applicant seeks to assign or transfer a grandfathered station, or whether we should allow the grandfathered status to be transferred to a new owner. In the event we were to grandfather these combinations, the apparently more restrictive aspects of a DMA/Grade A duopoly approach would appear to have little effect on existing broadcasters, while the relaxation of the duopoly standard inherent in the change from a Grade B to a DMA/Grade A criterion would afford broadcasters significant opportunities to obtain the efficiencies which common ownership may offer. We tentatively conclude that, overall, our DMA/Grade A rule will make the local television rule less restrictive without harming our competition and diversity goals.

C. Exceptions and Waivers to the DMA/Grade A Approach

20. The *TV Ownership Further NPRM* invited comment on whether, in at least some situations, we should allow a company to acquire stations within the same geographic market. We asked parties to address a number of possible exceptions to a ''one station'' local ownership rule, such as (1) permitting combinations of two UHF stations located in the same market or permitting combinations of one UHF station and one VHF station located in the same market, and (2) permitting such combinations only if a certain number of independently-owned broadcast television stations remain after the transaction. We also sought comment on the criteria to be used in a case-by-case waiver approach. In response, a number of parties opposed any relaxation of our current rules, while other commenters urged us to modify our rules to permit same-market combinations in certain circumstances.

21. We invite parties to update the record on the general issue of whether we should permit television duopolies in certain circumstances by rule or waiver. We also seek additional comment on a specific exception and on specific waiver criteria for the local station ownership rule.

22. In addition, we seek further evidence regarding the relationship between ownership and diversity. Greater ownership concentration traditionally has been thought to reduce diversity. We seek comment, analysis and evidence on whether it reduces viewpoint and program diversity. For example, would a single owner of two stations be less likely to present diverse opinions, and less likely to serve diverse audiences, than would two unaffiliated owners? Conversely, would an owner of two stations in a market be more likely to counterprogram and thereby serve the interests and views of more viewers? With respect to these questions, what can we learn from the waivers of local television ownership rules that we have already granted? Have they led to a decrease or an increase in programming or viewpoint diversity? Similarly, taking account of the important differences between television and radio, what can we learn from ''radio duopolies,'' which have been permissible since 1992?

1. Exceptions

a. Distinguishing Between UHF and VHF Stations

23. In response to the *TV Ownership Further NPRM,* several parties raised a threshold issue in arguing that local television station combinations involving UHF stations should receive more favorable treatment than those involving VHF stations. We invite parties to comment on the extent to which we should explicitly distinguish between UHF and VHF stations in determining whether to allow common ownership of stations in the same market. In particular, should we treat the common ownership of UHF stations in the same DMA or even in the same city more favorably than that of non-UHF stations? As several parties noted, some UHF stations are major network affiliates with large market shares, but many are not. These parties therefore raise a question as to the continuing validity of the need for differential treatment of UHFs.

b. Satellite Stations

24. Television satellite stations are authorized under Part 73 of the Commission's Rules to retransmit all or part of the programming of a parent station. The two stations are ordinarily commonly owned. Satellite stations are generally exempt from our broadcast ownership restrictions. An application for television satellite status will be presumed to be in the public interest if the applicant meets three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.

25. We presently see no reason to alter our current policy exempting satellite stations from our local ownership rules. Our satellite station policy, resting in significant part on the satellite station's questionable financial viability as a stand-alone operation, has furthered our ownership policies by adding additional voices to local television markets where otherwise no additional voices might have emerged. The criteria we utilize to evaluate requests for satellite status—including service to underserved areas and a demonstrated unwillingness by potential buyers to operate the station on a stand-alone basis—ensure that satellite operations are consistent with our underlying goals of promoting diversity and competition. Under these circumstances, we believe that continued exception of satellite stations from the local ownership rules is appropriate. We invite comment on this conclusion.

2. Waivers

The Commission seeks comment on a number of specific waiver criteria for allowing common ownership of stations within the same local market.

a. UHF/VHF

27. We have discussed, as a possible exception to the local television ownership rule, exempting certain UHF combinations from the application of the local television ownership rule. Another approach toward the same end would be to create waiver criteria by which the Commission might waive the application of the rule for certain UHF combinations. Many of the comments from parties on possible criteria to be used in permitting common ownership of stations within the same local market focussed on permitting combinations involving UHF stations.

28. Given these comments, we request additional comment on whether we should treat UHF station combinations differently from VHF combinations with respect to local ownership and, if so, how. Commenters citing disadvantages that they believe UHF stations continue to suffer should also list very specific criteria for waiving the duopoly rule that would correspond to those disadvantages, e.g., small audience share or limited area of signal coverage. We ask parties to comment on the use of such criteria in granting waivers in light of our competition and diversity goals. In addition, while the 1996 Act itself is silent on the question, the *Conference Report* to the Act states that ''[i]t is the intention of the conferees that, if the Commission revises the multiple ownership rules, it shall permit VHF-VHF combinations only in compelling circumstances.'' Thus, we seek comment on whether there are particular locations (such as Alaska or Hawaii) where there are such compelling circumstances that the Commission might allow some VHF/VHF combinations for reasons analogous to those cited in support of UHF combinations. Commenters supporting this view should describe the nature of the showing that should be required and the effect of any such waivers on diversity and competition in these markets.

b. Failed Station

29. We invite comment on whether, if an applicant can show that it is the only viable suitor for a failed station, the Commission should grant the application regardless of contour overlap or DMA designations. A ''failed'' broadcast station for purposes of our one-to-a-market rule waiver standard is a station that has not been operated for a substantial period of time, *e.g.*, four months, or that is involved in bankruptcy proceedings. We ask whether this failed station standard would be appropriate in evaluating a potential duopoly application. We invite comment on whether it is preferable to have two operating stations with a single owner than to have one operating and one dark station. The Commission also invites comment on whether any such standard should be relatively strict or generous. For example, should only failed stations qualify, or should we consider failing stations as well? If so, what is the appropriate definition of a failing station? Should applicants be required to demonstrate that they are the only qualified and viable purchaser for the failed stations? We seek comment on whether this standard is appropriate, on how a demonstration that a station has ''failed'' or is failing might be accomplished.

c. Vacant and New Channel Allotments

30. In our recent *Sixth Further Notice of Proposed Rule Making* (''*Sixth FNPRM*''), 61 FR 43209 (August 21, 1996) in the DTV proceeding, we proposed to delete all vacant TV allotments in order to provide existing television stations with DTV allotments with comparable coverage. In the Sixth FNPRM, however, we indicated that ''in some communities—mainly rural areas—unused channels may remain even after all existing broadcasters receive allotments.''

31. We invite comment on whether we should entertain a waiver request to the local television ownership rule to enable a local broadcast television licensee to apply for a channel allotment that has long remained vacant or unused, *e.g.,* five years. We believe that it may not be in the public interest to have allotted broadcast channels lie fallow—particularly in markets where it might be possible to allow additional NTSC stations to come on the air without adversely impacting the proposed DTV allotment table and the transition to digital television. Evidence that an allotment has remained vacant for five years, or evidence of a pattern of failure in applications for that allotment, may suggest that the operation of another television station on a stand-alone basis in the community in question is not economically viable. In those circumstances, the public interest in diversity may be advanced by permitting an existing station in the market to acquire the station, rather

than allowing the channel to remain unused. Similarly, if it is possible to create new channel allotments in a market without interfering with nearby channels and without adversely impacting the proposed new DTV allotment table, we seek comment on whether the Commission should entertain applications by an incumbent television licensee to establish a new channel in a market. We note that there currently is a freeze placed on new applications as the result of our DTV proceeding. We anticipate that, in the event we adopt a vacant channel waiver criterion, it would not apply until a DTV table of allotments is finalized in that proceeding. *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service, Sixth FNPRM,* 61 FR 43209 (August 21, 1996). We seek comment on this issue, including whether there may be circumstances where it would be appropriate to consider such waiver requests before DTV allotments are finalized.

32. A vacant channel waiver criterion is analogous to waivers for failed stations. We believe that granting waivers for failed stations and vacant allotments would be consistent with our objective to advance diversity and competition. We therefore seek comment on whether these failed and vacant channel waiver proposals increase the amount and diversity of programming and viewpoints available in the market. Similarly, we seek comment on a possible competitive or economic efficiency rationale for prohibiting existing broadcasters from expanding their capacity into unused broadcast spectrum that no other person wants to use. Specifically, we ask commenters to discuss the rationale that unassigned channels might need to be preserved for new broadcasters to accommodate future growth in demand for local television broadcasting. We solicit comment on these observations and especially upon the feasibility of this proposal given the proposed new DTV allotment table.

d. Small Market Share/Minimum Number of Voices

33. In addition, the Commission seeks comment on whether it should entertain waivers to allow joint ownership of stations that (1) have very small audience or advertising market shares and (2) are located in a very large market where (3) a specified minimum number of independently owned voices remain post-merger. The purpose of such a waiver standard would be to enhance competition in the local market by allowing small stations to share costs and thereby compete more effectively. It could also increase the availability of programming and, perhaps, program diversity were such stations to use their economic savings to produce new and better-quality programming or related enhancements. Such advantages may be particularly helpful to small and independent UHF stations.

34. *Market Share.* We seek comment as to the size of market shares that would be sufficiently low to meet this standard. We also seek comment on whether a small market share waiver standard would tend to limit the application of this waiver standard, either absolutely or generally, to UHF stations and to independent stations not affiliated with any major network. In addition, if after a duopoly waiver is granted, such joint ownership results in the previously struggling stations developing large shares of the viewing audience, should the Commission terminate the waiver for joint ownership in the event the owner seeks to assign or transfer the stations' licenses?

35. *Minimum Number of Voices.* The *TV Ownership Further NPRM* discussed whether waivers would be appropriate where a sufficient number of independently owned broadcast television voices remained in the market post-merger. Several parties argued for variations on similar waiver standards.

36. We have previously sought comment on whether a minimum of six independently owned broadcast television stations in an ADI is an appropriate standard in light of our competition and diversity goals. The Commission's 1995 *TV Ownership Further NPRM* raised numerous questions about the extent to which other video and non-video products and services were competitive or diversity substitutes for broadcast television. We noted the lack of unanimity among the parties as to which products and services are substitutes and which are not. Given the many changes that are taking place in the television industry and the lack of consensus in the record, we ask here for comment on whether we should, until we observe further marketplace developments, focus only on broadcast television outlets in counting voices for this proposed waiver. Or, for example, should we give consideration to cable television systems when cable has a very high penetration level in the market? If so, how should a cable system be counted for these purposes? In view of recent developments regarding DBS, Open Video Systems (OVS), and on-line services, we also seek comment on whether and how these services should be counted as voices. For a given minimum number of independently owned broadcast television voices, an approach that counted only broadcast television voices would establish a more difficult standard for station owners in most markets to meet as compared to an approach that included a broader array of media as independent voices. Indeed, such an approach might limit waivers under this criteria to only the very largest markets. However, based on experience gained from granting waivers in these circumstances, we could then consider relaxing the rule further as part of a future biennial review of our ownership rules.

37. *Market Size.* We also invite comment on whether, if we adopt a small market share and minimum number of voices waiver policy, we should add a market size test. In other words, we might limit waivers based on a minimum number of television voices in the very largest markets. We invite comment on whether the largest markets already have sufficiently numerous competing broadcast television outlets to safeguard our competition and diversity concerns. Or, are there so few such large markets that development of a waiver criterion is not an efficient means to promote diversity? Parties are also asked to comment on the appropriate minimum number of voices under such an approach. For example, should this standard require a minimum number of independently-owned broadcast television stations (including both commercial and non-commercial stations) licensed to communities in the DMA after the proposed transaction? The Commission seeks comment on alternative standards, and whether waivers based on these criteria should be limited, at least for the time being, to only the largest markets.

e. Public Interest and Unmet Needs

38. Finally, we seek comment on the circumstances in which the Commission should grant a waiver if the applicant demonstrates that the public interest benefits that will flow from a waiver would include public interest programming that would not be provided were the stations owned separately. The Commission has on numerous occasions taken into account an applicant's programming enhancements in granting permanent and temporary waivers of the television duopoly rule although these waivers typically involved only limited amounts of contour overlap between the stations. We also seek comment on how, if this waiver criterion were adopted, programming benefits would fit into our analysis of the public interest. Should we rely only on types of programming

that the Commission has traditionally considered ''public interest'' programming, such as children's educational programming, news, public affairs and access of political candidates to the airwaves? Should we permit broadcasters to identify additional types of programming that would support a waiver, such as programming that serves the needs of an underserved segment of the local market or underprovided public interest programming? Should we follow up on the representations made by licensees in their waiver requests? Finally, we seek comment on whether it would be preferable to consider this waiver criterion, if at all, only in conjunction with one or more of the other criteria discussed above.

3. Waivers Pending the Outcome of This Proceeding

39. There has been an increase in broadcast transactions since the passage of the 1996 Act, with a number of these involving requests for waiver of our ownership rules. Our current television duopoly rule will, of course, remain in place pending the outcome of this proceeding, but we take this opportunity to provide parties guidance regarding our policy in waiving the rule during this interim period. We hope that doing so will facilitate planning for these transactions as well as staff processing of license transfer and assignment applications.

40. During this interim period, we will generally grant waivers of the television duopoly rule, conditioned on coming into compliance with the requirements ultimately adopted in this proceeding within six months of its conclusion, where the television stations seeking common ownership are in different DMAs with no overlapping Grade A signal contours. Commission staff will have delegated authority to act on applications seeking such waivers as long as the applications do not raise new or novel issues. We have tentatively concluded that the record in this proceeding supports relaxation of the geographic scope of the duopoly rule from its current Grade B overlap standard to a standard based on DMAs supplemented with a Grade A overlap criterion. While we are providing an opportunity for comment on this tentative conclusion, we do not believe granting waivers satisfying the proposed standard, and conditioning them on the outcome of this proceeding, will adversely affect our competition and diversity goals in the interim. It will also have the benefit of providing parties some flexibility in moving forward on merger transactions that do not comply with the current duopoly rule.

41. We will be disinclined to grant waiver requests not falling in this category (*i.e.*, those involving stations in the same DMA or with overlapping Grade A signal contours), absent extraordinary circumstances. These types of waiver requests will be acted upon by the full Commission.

III. Radio-Television Cross-Ownership Rule

42. The radio-television cross-ownership rule, or the one-to-a-market rule, generally forbids joint ownership of a radio and a television station in the same local market. The rule seeks to promote competition as well as viewpoint and programming diversity in broadcasting. In 1989, we amended the rule to permit, on a waiver basis, radio-television mergers in the Top 25 television markets if, post-merger, at least 30 independently owned broadcast voices remained, or if the merger involved a failed station or if the merger satisfied a group of five other criteria. Waivers premised on the first two criteria—large market size or financial failure—were presumed to be in the public interest, while waivers based on the ''five factors'' were evaluated based on the strength of the applicant's individual showings.

43. In the *TV Ownership Further NPRM*, we proposed to eliminate the cross-ownership restriction in its entirety or replace it with an approach under which cross-ownership would be permitted where a minimum number of post-acquisition, independently owned broadcast voices remained in the relevant market. We tentatively concluded that there were two alternative approaches towards modifying the one-to-a-market rule. If radio stations and television stations do not compete in the same local advertising, program delivery or diversity markets, we proposed to eliminate this rule entirely and rely on our local ownership rules to ensure competition and diversity at the local level. Under the local radio ownership rules in effect at that time, this would have permitted entities to own one AM, one FM, and one television station in small markets. In large markets, one entity would have been able to own up to 2 AMs, 2 FMs, and 1 television station. If, on the other hand, radio and television did compete in some or all of the same local markets, then we proposed to modify the one-to-a-market rule to allow radio-television combinations (AM-TV, FM-TV, or AM-FM-TV) in those markets that have a sufficient number of remaining alternative suppliers/outlets as to ensure sufficient diversity and competition.

44. Commenting parties responded with a variety of positions ranging from recommending repeal of the rule, to relaxation of the rule, to retention of the rule. Since those comments were received, Congress passed the 1996 Act. The 1996 Act affects our radio-television cross-ownership rule in at least two ways. First, Section 202(d) of that Act directs the Commission to extend our radio-television cross-ownership waiver policy to the Top 50 rather than the top 25 television markets ''* * * consistent with the public interest, convenience and necessity.'' Second, the 1996 Act significantly liberalized the local radio ownership rules. Prior to the 1996 Act, the largest number of radio stations one firm could own in any market was four—two AM and two FM stations. As modified by the 1996 Act, however, our rules now allow one party to own up to 8 commercial radio stations in radio markets with 45 or more commercial radio stations. One party can own up to 7 commercial radio stations in radio markets with 30–44 commercial radio stations and as many as 6 commercial radio stations in radio markets with 15–29 commercial radio stations. For radio markets with 14 or fewer commercial radio stations, one party can own up to 5 commercial radio stations (provided that no party may own, operate or control more than 50% of the stations in the market).

45. We consider the recent statutory changes to the local radio ownership rules to be significant enough to warrant further comment on our radio-television cross-ownership rule proposals outlined in the *TV Ownership Further NPRM.* First, can the rule be eliminated based on a finding that radio and television stations are not substitutes? Second, even if we eventually consider television and radio stations substitutes, can the rule be eliminated because the respective radio and television ownership rules alone can be relied upon to ensure sufficient diversity and competition in the local market?

46. We also seek to update the record on options for modifying, but not eliminating, the radio-television cross ownership rule. Accordingly, we invite comment on whether any easing of the cross-ownership rule should take the form of modifying the rule itself or modifying our presumptive waiver policy.

47. Consistent with Section 202(d) of the 1996 Act, we propose, at a minimum, to extend the Top 25 market/30 voice waiver policy to the Top 50 markets. The 30 independently owned

voices test has proven effective in safeguarding our diversity and competition objectives in the Top 25 markets. Our experience in processing waiver requests beyond these markets further indicates that application of the 30 independently owned voices test to the Top 50 markets should also be sufficient to safeguard diversity and competition in markets 26–50. We consequently tentatively conclude that extending this test to the Top 50 markets would be consistent with the public interest, convenience and necessity. Thus, an applicant would be presumptively entitled to a waiver to obtain one AM, one FM, and one television station in a Top 50 market as long as 30 independently owned voices remained after the merger. The *TV Ownership Further NPRM* made a similar proposal and most parties were in apparent agreement with at least taking this step. We regard this as a minor change in our rules because the independently owned 30 voice requirement would remain the primary restraint on radio-television mergers.

48. We also invite comment, however, on the following four options—most of which were discussed in the previous *NPRM*—to change the rule beyond that contemplated by the 1996 Act. First, should we extend the presumptive waiver policy to any television market that satisfies the minimum independent voice test? Second, should we extend the presumptive waiver policy to entities that seek to own more than one FM and/or AM radio station? Third, should we reduce the number of required independently owned voices that must remain after a transaction? And fourth, should our ''five factors'' test be changed or refined to be more effective in protecting competition and diversity? To assist our consideration of these alternatives, we seek comment on the effects of waivers we have granted in the past on competition in local markets and on viewpoint and program diversity. We request that commenters provide as specific data as possible in describing their conclusions.

49. To the extent the Commission finds that it is necessary to consider market share information in reviewing matters of common ownership, we also ask for comment on how to establish the appropriate definition of the relevant advertising market for our consideration. For example, we seek comment on whether we should view the relevant market as focusing on advertising in radio and television. Alternatively, is the relevant market in this context more appropriately defined as local advertising media for radio, television, newspaper, cable, and others, or should certain media segments be excluded? In this regard, we also seek comment on the level of data on market shares that firms should be required to provide in order to demonstrate that common ownership would meet market share criteria. In particular, should they provide market share of radio and television local revenue independently, as well as the combined share of all advertising?

50. We seek comment on the above options as well as other possible means of revising the radio-television cross ownership rule, particularly in light of the changes resulting from the 1996 Act. We seek to safeguard our competition and diversity goals while at the same time allowing parties to take advantage of the efficiencies that may result from permitting cross ownership of radio and television stations in the same market. As to the latter, we urge parties to provide more detailed evidence of these efficiencies. Can the same level of efficiencies be achieved in the cross-ownership situation as when the common ownership involves stations within the same service? Do these efficiencies diminish as the number of commonly owned stations increases?

51. We note that our current radio-television cross-ownership rule will remain in place pending the resolution of this proceeding. Waiver requests submitted in the interim will be processed pursuant to our current criteria for evaluating such requests. The Chief of the Mass Media Bureau will continue to have delegated authority to rule on uncontested one-to-a-market waiver requests that involve stations in the Top 100 television markets that are clearly consistent with prior Commission precedent, *i.e.*, which present no new or novel issues. One-to-a-market waiver requests not falling in this category will be referred to the Commission. We expect that waivers falling in this latter category that are granted by the Commission will be conditioned on the outcome of this proceeding.

IV. Television Local Marketing Agreements

52. A television local marketing agreement (''LMA'') is a type of contract in which the licensee leases blocks of its broadcast time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support the programming. Currently, the Commission does not attribute television LMAs for local and national ownership purposes and so these relationships are not subject to our ownership rules. However, in the radio context, radio station ownership is attributed to any radio licensee who enters into an LMA with another radio station in the same market if the agreement involves the brokering of more than 15% of the station's weekly broadcast hours.

53. In the previous *NPRM,* the Commission suggested that guidelines similar to those governing radio LMAs may be necessary with regard to television LMAs. We also determined that such agreements, subject to some general Commission guidelines, can provide competitive and diversity benefits to both the brokering parties and to the public. We tentatively proposed to treat LMAs involving television stations in the same basic manner as we did for radio stations. That is, time brokerage of another television station in the same market for more than 15% of the brokered station's weekly broadcast hours would result in counting the brokered station toward the brokering licensee's national and local ownership limits. Further, television LMAs would be required to be filed with the Commission in addition to the existing requirement that they be kept at the stations involved in an LMA. Finally, we indicated that our television LMA guidelines would allow for ''grandfathering'' television LMAs entered into before the adoption date of the *TV Ownership Further NPRM,* subject to renewability and transferability guidelines similar to those governing radio LMAs as described more fully below in paragraphs 90 and 91.

54. These proposed guidelines primarily concern the circumstances under which a television LMA should be attributed to the brokering entity for purposes of the broadcast ownership rules. We will consequently incorporate the issue of whether to adopt these guidelines, or some variation of them, into our companion proceeding regarding our broadcast attribution rules. In our companion *Attribution Further NPRM,* we tentatively conclude that we should treat time brokerage of another television station in the same market for more than 15 percent of the brokered station's weekly broadcast hours as being attributable, and therefore as counting toward the brokered licensee's multiple ownership limits.

55. We will, however, decide in this proceeding how to treat *existing* television LMAs under any guidelines that are adopted that would attribute television LMAs to the brokering station. These television LMA grandfathering and transition issues will be especially significant issues if we do

not modify our television duopoly rule, because such an attribution provision would preclude television LMAs in any market where the time broker owns or has an attributable interest in another television station.

56. In this regard, Section 202(g) of the 1996 Act states that ''[n]othing in this section shall be construed to prohibit the origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission.'' We interpret this provision as clearly stating no more than that Section 202 of the 1996 Act shall not be construed to prohibit any television LMA that is in compliance with the Commission's rules. We do not regard Section 202(g) as limiting our ability to promulgate attribution rules under Title I and Title III affecting the status of television LMAs. As a result, we do not see Section 202(g) of the 1996 Act as posing a legal restraint on our questions in the *TV Ownership Further NPRM* as to (1) whether television LMAs in which a broker obtains the ability to program 15% or more of a broadcast television station's weekly broadcast output should be deemed an attributable interest (which will be decided in the attribution proceeding); and (2) whether grandfathering existing television LMAs from any applicable ownership rules that would follow from that attribution decision is appropriate.

57. We recognize, however, that the language in the *Conference Report* to the 1996 Act appears to interpret Section 202(g) of the 1996 Act in a different manner with regard to television LMAs that predate February 8, 1996, the date of enactment of this legislation. The *Conference Report* states—''[Section 202(g)] grandfathers LMAs currently in existence upon enactment of this legislation and allows LMAs in the future, consistent with the Commission's rules. The conferees note the positive contributions of television LMAs and this subsection assures that this legislation does not deprive the public of the benefits of existing LMAs that were otherwise in compliance with Commission regulations on the date of enactment.'' The *Conference Report* suggests that the conferees intended to ''grandfather'' existing television LMAs. Although we do not interpret the statute as requiring that outcome, we believe that existing television LMAs entered into on reliance of the Commission's current policy should not be disrupted during the remainder of the current contract term. Indeed, we had a similar concern at the time of the *TV Ownership Further NPRM* and so asked a series of questions as to whether television LMAs entered into before the adoption date of the *TV Ownership Further NPRM* should be grandfathered with respect to ownership regulations.

58. We wish to provide an additional opportunity for comment on these grandfathering and transition issues. In particular, in order to devise a fair and efficient method to bring licensees into compliance with our ownership rules, in the event television LMAs are attributable, we request specific comments concerning the number of television LMAs that are in effect on the date of the adoption of this *NPRM*, the market that each LMA covers, the length of the contractual relationship, and any other data concerning television LMA relationships that would have a bearing on bringing parties to an LMA into compliance with our ownership rules. This data will allow us to assess the need for grandfathering existing LMAs in the event they are deemed attributable, and the form this grandfathering should take. We wish to minimize undue and inequitable disruption to existing contractual relationships, and consequently seek comment on allowing television stations to come into compliance with our ownership rules within a reasonable period of time.

59. We note that such a transition would not involve grandfathering permanent ownership arrangements that would violate our rules given that LMAs typically involve, by their nature, more temporary relationships that have set contractual terms. We thus are inclined to institute a grandfathering policy to provide that in the event television LMAs become attributable pursuant to the broadcast attribution proceeding, television LMAs entered into prior to a specific date, and that are otherwise in compliance with applicable rules and policies, would be permitted to continue in force without disruption until the original term in the LMA expires. However, if a grandfathered television LMA results in violation of any Commission ownership rule, a party would be required to seek a waiver from the Commission prior to transferring the station or renewing the grandfathered television LMA. By specifying this date at this time, we provide notice that television LMAs entered into after the grandfathering date will not be grandfathered if television LMAs are ultimately found to be attributable. Additionally, we hope to provide certainty to television licensees who wish to make business decisions concerning television LMAs until the attribution issue is resolved. We consequently believe this grandfathering approach would be appropriate. We reserve the right, however, to invalidate an otherwise grandfathered LMA in circumstances that raise particular competition and diversity concerns, such as those that might be presented in very small markets.

60. With respect to specifying a particular grandfathering date in the event we determine television LMAs should be attributable under our local ownership rules, we are inclined to grandfather all television LMAs entered into *before* the adoption date of this *NPRM* for purposes of compliance with our ownership rules. Thus, such television LMAs will not be disturbed during the pendency of the original term of the LMA in the event the cognizability of the LMA would result in violation of an ownership rule. However, television LMAs entered into *on or after* the adoption date of this *NPRM* would be entered into at the risk of the contracting parties. Consequently, if these latter television LMAs result in violation of any Commission ownership rule, they would not be grandfathered and would be accorded only a brief period in which to terminate.

61. We generally propose to limit the transferability and renewability of grandfathered television LMAs as we did with respect to radio LMAs. In transfer situations wherein the television LMA was entered into *before* the grandfather date, we generally propose to permit the new station owner to retain the LMA for the duration of the initial term of the television LMA even if it would otherwise violate our local ownership rules, under our new attribution criteria for television LMAs. We invite comment, however, as to whether there should be some absolute limit, such as three years, on such grandfathering. In transfer situations wherein the television LMA was entered into *on or after* the grandfather date, we propose to allow the new station owner a minimum amount of time to terminate the contractual relationship. In the television LMA renewal context, we propose to permit renewal or extension of television LMAs only if the extension or renewal took place *before* the relevant grandfathering date. We seek comments on these proposals.

V. Administrative Matters

62. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before February 7, 1997 and reply comments on or before March 7, 1997. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and

supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. If you want to file identical documents in more than one docketed rulemaking proceeding, you must file two additional copies of any such document for each additional docket. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

63. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally* 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

64. Additional Information: For additional information on this proceeding, please contact Alan Baughcum (202) 418-2170 or Kim Matthews (202) 418-2130 of the Policy and Rules Division, Mass Media Bureau.

VI. Initial Paperwork Reduction Act of 1995 Analysis

65. The rules proposed in this *Second Further Notice of Proposed Rulemaking* have been analyzed with respect to the Paperwork Reduction Act of 1995 and contain no changes from our earlier proposals in this rule-making proceeding related to new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements. These proposed rules would not increase or decrease burden hours imposed on the public.

VII. Initial Regulatory Flexibility Analysis

66. With respect to this *Second Further NPRM*, an Initial Regulatory Flexibility Analysis (IRFA) is contained below. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio and television broadcasting industries. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *Second Further NPRM*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Second Further NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

Initial Regulatory Flexibility Analysis Regulatory Flexibility Act As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this *Second Further NPRM.* Written public comments concerning the effect of the proposals in the *Second Further NPRM*, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further NPRM* provided in Paragraph 94. The Secretary shall send a copy of this *Second Further NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Reason and Objectives for *Second Further NPRM:* After the issuance of the *Television Ownership Further NPRM* in this docket, the Telecommunications Act of 1996 (''1996 Act'') was signed into law. *The Second Further NPRM* seeks to update the record in this proceeding on the effect of the 1996 Act and to review other aspects of our local ownership rules which were also the subject of the *Television Ownership Further NPRM.*

First, this *Second Further NPRM* proposes to modify the geographic scope of the duopoly rule to eliminate the Grade B contour overlap standard and replace it with a DMA/Grade A contour standard. Second, this *NPRM* proposes to modify the radio-television cross ownership rule to conform to Section 202 of the 1996 Act. Accordingly, we propose to extend our 30 voices waiver policy to the Top 50 markets. We also seek comment on a number of other options for revising the radio-television cross-ownership rule and the waiver policy for this rule. Finally, this *NPRM* proposes to institute a grandfathering policy in the event television LMAs become attributable pursuant to the accompanying broadcast attribution proceeding.

Legal Basis: Authority for the actions proposed in this *Second Further NPRM* may be found in Sections 4(i), 303(r), and 307(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303(r), and 307(a) and Sections 202(c)(2), 202(d), 202(g), and 257 of the Telecommunications Act of 1996.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply: The proposed rules and policies will concern full power television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business Administration (SBA) defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified in Services, Industry 7812. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation at the end of August 1996. For 1992 the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.

Additionally, the SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified in Services, Industry 7922. The 1992 Census indicates that 96% (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. For 1996, official Commission records indicate that 12,088 radio stations were operating. Thus, the proposed rules will affect approximately 1,550 television stations, approximately 1,194 of those stations are considered small businesses. Additionally, the proposed rules will affect 12,088 radio stations, approximately 11,605 are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States. We recognize that the numbers of minority and women broadcast owners may have changed due to an increase in license transfers and assignments since the passage of the 1996 Act. We seek comment on the current numbers of minority and women owned broadcast properties and the numbers of these that qualify as small entities. To assist us with our responsibilities under the amended Regulatory Flexibility Act, we specifically request comments concerning our assessment of the number of small businesses that will be impacted by this rulemaking proceeding, the type or form of impact, and the advantages and disadvantages of the impact. In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown. We invite comment as to such number.

Description of Projected Recording, Recordkeeping, and Other Compliance Requirements: No new recording, recordkeeping or other compliance requirements are noted in this *Second Further Notice of Proposed Rulemaking.*

Federal Rules That Overlap, Duplicate, or Conflict With the Proposed Rules: The Commission's broadcast-newspaper, television broadcast-cable, local radio ownership, and national television ownership rules also promote the same goals as the rules discussed in this item, however, they do not overlap, duplicate or conflict with the proposed rules.

Significant Alternatives to the Proposed Rule Which Minimizes the Significant Economic Impact on Small Entities and Accomplish the Stated Objectives: The Commission seeks to minimize the impact of any changes in the television local ownership rules upon small entities while preserving competition and diversity in our local markets. Any significant alternatives consistent with the stated objectives presented in the comments will be considered. We urge parties to support their proposals with specific evidence and analysis.

Local Ownership Rule: In this *NPRM* we tentatively conclude that a combination of the DMA and Grade A signal contours may be a better measure of the geographic scope of the duopoly rule. We also seek comment on whether to grandfather existing common ownership combinations that conform to our current Grade B test and whether we should permit television duopolies in certain circumstances by rule or wavier.

Radio-Television Cross-Ownership Rule: In the *Television Ownership Further Notice of Proposed Rulemaking,* we received a large array of comments recommending a variety of positions ranging from repeal, to relaxation, to retention of the rule. We request comment and specific data to support the commenters positions concerning: (1) extending the presumptive waiver policy to any television market that satisfies the minimum independent voice test; (2) extending the presumptive waiver policy to entities that seek to own more than one FM and/or AM radio station; (3) reducing the number of required independently owned voices that must remain after a transaction; and (4) whether the ''five factor'' waiver policy should be changed or refined to be more effective in protecting competition and diversity.

Television Local Marketing Agreements: To minimize undue and inequitable disruption to existing contractual relationships, we propose a grandfathering policy which allows television stations to come into compliance with our ownership rules within a reasonable period of time.

We seek comment concerning the significant economic impact of each of the above mentioned proposals on a substantial number of small stations.

Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis: There were no comments submitted specifically in response to the IRFA that was included in the *Television Ownership Further Notice of Proposed Rulemaking.* We have, however, taken into account all issues raised by the public in response to the proposals raised in this proceeding. We received conflicting comments concerning the impact of joint ownership on broadcast stations. Several commenters advocated the modification or elimination of the local ownership rules in order to permit station owners to take advantage of the economies of scale that will result from joint ownership. On the other side, several commenters argued that the ability of station owners to take advantage of the economies of scale resulting from joint ownership will drive up the price of stations which will make it more difficult for new entrants, including minorities and women, to finance the purchase of stations.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–32140 Filed 12–18–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket Nos. 96–222, 91–221, and 87–8; FCC 96–437]

Broadcast Television National Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making makes several proposals regarding how to calculate a group television station owner's aggregate national audience reach to determine compliance with the Commission's 35% national audience cap. This action is needed to best implement the national ownership provisions of the Telecommunications Act of 1996.

DATES: Comments are due by February 7, 1997, and reply comments are due by March 7, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in MM Docket Nos. 96–222, 91–221, and 87–7, adopted November 5, 1996, and released November 7, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW.,