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., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. In 1995, the Commission released a *Further Notice of Proposed Rulemaking* in MM Docket Nos. 87–8 and 91–221 (*TV Ownership Further NPRM*) seeking comment on a variety of issues relating to the national broadcast television multiple ownership rules.[1] After comments were submitted, Congress enacted the Telecommunications Act of 1996 (the ''1996 Act''). The 1996 Act set specific national ownership audience reach limitations and eliminated our prior national numerical cap on station ownership. However, it did not address the issue of the measurement of audience reach for the purposes of the new limits. Therefore, we seek to update the record on measuring national television audience reach for purposes of the new national ownership limit in three areas, described in detail below: (1) whether to continue to disregard satellite station ownership in measuring national ownership (the ''satellite exemption''); (2) whether and how to incorporate local marketing agreements (''LMAs'') into the calculation of national audience reach; and (3) whether to replace our use of Arbitron's Areas of Dominant Influence (''ADIs'') to define geographic television markets with the use of Nielsen's Designated Market Areas (''DMAs''). We defer until 1998 consideration of another issue: whether to continue to attribute UHF facilities with only one half the audience reach of VHF stations in the same market (the ''UHF discount'').

Background

2. Before passage of the 1996 Act, Sections 73.3555(e)(1)(ii) and (iii) generally prohibited entities from having an attributable ownership or other cognizable interest in more than 12 such stations. Sections 73.3555(e)(2)(i) and (ii) generally prohibited from an entity from having an attributable ownership or other cognizable interest in a station if it would result in that entity's having such an interest in television stations with an aggregate national audience reach exceeding 25%. The rule defined a station's audience reach as consisting of the total number of television households within the television market for that station, rather than its actual viewing audience. The television market, in turn, was defined as the Area of Dominant Influence (ADI) that Arbitron, a commercial audience-rating service, used in analyzing broadcast television station competition. For purposes of calculating this aggregate audience reach under the rules, UHF stations were attributed with only 50% of the audience within their ADI (the UHF discount), and satellite stations generally were not counted at all (the satellite exemption).

3. Section 202(c)(1) of the 1996 Act directed the Commission to ''modify its rules for multiple ownership set forth in Section 73.3555 of its regulations. . . .—

(A) by eliminating the restrictions on the number of television stations that a person or entity may directly or indirectly own, operate, or control, or have a cognizable interest in, nationwide; and

(B) by increasing the national audience reach limitation for television stations to 35%.''

Accordingly, the Commission released an *Order* revising Section 73.3555(e) of the Rules to reflect these two changes.[2]

4. The 1996 Act is silent with respect to the UHF discount and the satellite station exemption, both of which remain part of the definitions set forth in Section 73.3555(e)(2) for calculating national audience reach. We stated in *the 1996 National TV Ownership Order* that issues related to these rule provisions would be addressed separately, and that the existing UHF discount and the satellite exemption would remain in effect until such time as we could review and resolve these matters. We added that any entity subsequently acquiring stations before these issues were resolved and which complied with the 35% audience reach limitation only by virtue of either or both of these two provisions would be subject to the outcome of the pending national television ownership proceeding, the relevant issues of which have been incorporated into this proceeding.

5. We consequently seek to update the record with regard to the satellite exemption, and we also seek comment on two other issues not addressed in the 1996 Act but which bear on our implementation and enforcement of the new 35% reach limit: the treatment of LMAs and the use of geographic market definitions for purposes of calculating national audience reach.

The Rules

The UHF Discount

6. When the Commission adopted the UHF discount in 1985, it stated that the inherent physical nature of the UHF signal created competitive disadvantages at that time sufficient to warrant accommodation in the national multiple ownership rules. However, as explained below, we are postponing any decision as to whether to modify or eliminate the UHF discount until the next biennial review of the broadcast ownership rules.

7. We have observed in other contexts that the UHF disparity has been ameliorated over the years. This is due in part to improved television receiver designs, as well as the fact that many households received broadcast channels via cable rather than by over-the-air transmission. In the *TV Ownership Further NPRM*, we suggested that extensive cable carriage of UHF stations, might have reduced the UHF disparity.

8. Nearly all of the commenters addressing the issue oppose eliminating the UHF discount. As they correctly point out, approximately 4% of potential viewers are not passed by cable and approximately 34.8% of television households do not subscribe to cable. Such viewers continue to rely on over-the-air reception of both VHF and UHF signals and, accordingly, continue to be subject to the UHF signal disadvantage. Moreover, the Supreme Court is considering the constitutionality of the must-carry rules. If the rules are determined to be unconstitutional, and if many UHF stations are as a result dropped by cable systems, then the increased pass rate and penetration rate of cable television could become much less relevant to the magnitude of the UHF disparity.

9. Given these circumstances, and based on the current record, we have decided to defer any further review of this policy to the biennial review of our broadcast ownership rules that we will conduct in 1998 pursuant to the 1996 Act. We should be in a better position in 1998 to assess the continuing growth over the next several years in the availability and penetration of cable and other multichannel video programming

[1] *Further NPRM* in MM Docket Nos. 87–8 and 91–221, 60 FR 6490, February 2, 1995 *(TV Ownership Further NPRM).* Those aspects of the *TV Ownership* proceeding that address national ownership issues are now incorporated into this new docket. The *TV Ownership Further NPRM* also addressed issues relating to the Commission's local television ownership rules, which are the subject of a companion proceeding. *Second Further Notice of Proposed Rulemaking* in MM Docket Nos. 91–221 and 87–7, also being published today (*Local TV Second Further NPRM*).

[2] *Order*, FCC 96–91 (released March 8, 1996), 61 FR 10691, March 15, 1996 (*1996 National TV Ownership Order*).

suppliers and how this affects the continuing need for the UHF discount. In addition, by 1998 the Commission will have adopted a digital television (DTV) Table of Allotments, and the implementation of this new technology will have proceeded further. Our review of the UHF discount as part of the biennial ownership review would take into account these developments, as both digital technology and the allotment of DTV channels may eventually diminish to a great extent the physical distinction between the UHF and VHF signals.We also invite comment on whether we should impose in the interim any supplementary limitation on national audience reach.

The Satellite Exemption

10. A television satellite is a full-power terrestrial broadcast station that retransmits all or part of the programming of a parent station that is often commonly owned. The Commission currently exempts TV satellites from the national multiple ownership rules. In 1991, in a proceeding addressing the Commission's overall regulation of satellite stations, we abolished both the 5% limit on the amount of local programming that a satellite can originate and the use of that 5% benchmark for determining whether a station is still a satellite.[3] Accordingly, because satellites were no longer limited as to the amount of local programming they could originate, we also sought comment on whether to continue to exempt satellites from the national ownership rule.[4]

11. A satellite may operate in the same market as its parent station intramarket, or the two stations may operate in different markets. We tentatively conclude that, with respect to the intramarket situation, the public interest would be served by retaining the satellite exemption. However, we believe that satellite stations should be counted for purposes of the national ownership limits where they are in a separate market from the parent station.

12. In intramarket situations, we see no reason to count that market twice for the purposes of determining national audience reach.[5] The national multiple ownership rule, as amended by the 1996 Act, is concerned with potential audience rather than actual viewership. Nor are we concerned with the particular number of television stations owned. Indeed, the 1996 Act eliminated the numerical station limitations formerly in the rule and now focuses solely on national audience reach. In this regard, if a licensee acquires a satellite television station in a market within which it already operates a station, it has not extended its audience reach in that television market for purposes of the national audience reach limit; the television households in that market are already counted, given the existence of the licensee's non-satellite station. This is true whether or not the satellite station is originating local programming. We seek comment on our proposal not to ''double count'' a satellite and its parent station in these circumstances.

13. Notably, the above analysis would apply regardless of whether one of the commonly owned stations is a satellite station, as it is based solely on the fact that both stations operate in the same television market. Thus, we extend our proposal to incorporate all commonly owned television stations within a market. Specifically, when two commonly owned stations are in the same market by virtue of a waiver of the local television duopoly rule, we propose not to ''double count'' the television households within that market for national ownership purposes. Similarly, should we ultimately authorize common ownership of more than one television station in a market in the pending local ownership proceeding, we intend not to double count the television households within that market for the purposes of calculating a licensee's national audience reach. We seek comment on this proposal. We also seek comment on how this proposal would affect programming diversity and opportunities for small stations, or stations owned by women and minorities.

14. Turning to parent-satellite combinations in separate markets, we note that this type of satellite provides programming to a population that otherwise would receive no programming at all over the air from either the parent or the satellite station, and the licensee of the parent station controls the programming of both the parent and the satellite station. Consequently, the actual over-the-air audience reach of the parent station's licensee is in fact expanded into another market by the audience reach of the satellite station. While the exemption may have encouraged the operation of satellite stations in the past, any such incentive has been minimized by the elimination of the 12-station limit. Previously, without the exemption, a satellite in an isolated area would have been regarded as being no different from a full-service station in a heavily populated area for the purpose of counting the number of stations toward the 12-station limit. However, as noted above, satellite stations typically operate in areas that are likely to provide television broadcasters relatively little opportunity for growth and profit when compared with larger markets. Under these circumstances, if there had been no satellite exemption, a licensee would have had a disincentive to operate a satellite station, and many rural areas would likely not be receiving service from satellite stations that are operating today. Thus, the exemption allowed group owners to acquire and operate satellite stations without concern for the national numerical station limits.

15. Under the new national ownership rule, however, the equal treatment of satellite stations for the purposes of national ownership would no longer provide a disincentive to satellite operation. Because a satellite generally serves a sparsely populated area that is underserved, the population of the entire market in which the satellite is located should add relatively little to a group owner's total national audience reach. Thus, we tentatively conclude that the satellite exemption in cases where the parent and satellite station serve separate markets is no longer necessary to encourage the operation of satellite stations. We seek comment on our tentative conclusion to eliminate the satellite exemption for parent/satellite combinations in different markets.

Local Marketing Agreements

16. The question of double-counting is also raised when a licensee programs another television station in the same market through an LMA. An LMA is a type of joint venture that generally involves the sale by a licensee of discrete blocks of time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support it. Such agreements enable separately owned stations to function cooperatively via joint advertising, shared technical facilities (including shared production facilities), and joint programming arrangements.

17. We request comment specifically addressing how best to treat LMAs when calculating an entity's national audience reach. We stress that in this *NPRM* we are not addressing the permissibility and attribution of LMAs under our local ownership rules, as

[3] *Report and Order* in MM Docket No. 87–8, 56 FR 31876, July 11, 1991 (*TV Satellite R&O*) (*recon. pending*).

[4] *Second Further Notice of Proposed Rulemaking* in MM Docket 87–8, 56 FR 42306, August 27, 1991.

[5] As noted above, any satellite issues that might arise in the context of the local duopoly rule will be addressed in the local ownership proceeding.

these issues are currently being analyzed in our companion local ownership and attribution rule makings.

18. The double-counting issue arises when one licensee operates as a broker to another in the same television market pursuant to an LMA; in this situation it reaches the same audience twice, through two different television stations. We have incorporated the general issue of whether television LMAs should be attributed in the *Attribution Further NPRM* and tentatively conclude in that proceeding that an LMA of another television station in the same market for more than 15% of the brokered station's weekly broadcast hours should generally be attributed for purposes of our ownership rules. However, as discussed above in the context of satellite stations, the national television ownership rule now focuses solely on national audience reach and we see no reason to double-count a market for purposes of calculating this reach. We seek comment on this tentative conclusion. We seek comment in particular on the effect of double counting for small stations, or for stations owned by women or minorities.

Market Definition

19. The 1996 Act left unchanged a provision in our television ownership rule that defines national audience reach as the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI.

20. As we stated in the *1995 Television Ownership Further NPRM,* Arbitron no longer updates its county-by-county determinations of each broadcast station's ADI. Accordingly, we proposed to use Designated Market Areas (DMAs) as compiled by A.C. Nielsen—another commercial ratings service—where we previously relied on ADIs, noting that they are analytically similar. Moreover, in our companion *Local TV Second Further NPRM,* we state that the DMA provides, as a general matter, a reasonable proxy of a television station's geographic market. Consequently, we tentatively conclude in that proceeding that local television markets should be on the basis of DMAs, although for purposes of the local ownership rules, we further propose that we should supplement the DMA test with a Grade A signal contour criterion.

21. While the general issue of how to delineate the geographic scope of local markets was addressed by several commenters in response to the *1995 Television Ownership Further NPRM,* we observe that it was not in the context of calculating a broadcaster's national audience reach. In the absence of any comment, we tentatively conclude that we should adopt the proposal to use DMAs for calculating national audience reach.

22. In some instances the use of DMAs instead of ADIs may lead to small variations in the audience reach calculation of some stations. This is due to the fact that in some instances Arbitron and Nielsen define markets somewhat differently. For example, Hagerstown, Maryland, constitutes its own Arbitron ADI, while it is part of the Washington, DC DMA established by Nielsen. While we recognize that these variations occur, we believe they will have a minor effect on the calculation of an entity's national ownership reach. We invite parties to comment on this assessment.

Implementation and Transition Issues

23. In this *NPRM,* we propose to modify the satellite exemption, but we defer consideration of the UHF discount until our biennial review in 1998. We seek comment regarding the implementation of any changes we may make to the satellite exemption. We also seek to determine whether a group station owner complying with the 35% limit only by virtue of the UHF discount could nevertheless have so high a national audience reach that it would not be in the public interest and, if so, how this matter is best addressed. We note that part of the *1996 National TV Ownership Order* concerned subsequent station acquisitions (*i.e.*, UHF or satellite station acquisitions made after March 15, 1996, the effective date of that *Order*) that comply with the 35% audience reach limitation only by virtue of either or both of the UHF discount or the satellite exemption. We advised broadcasters that such transactions would be subject to the ultimate resolution of this rulemaking. We now ask commenters to address how best to effectuate that approach.

Conclusion

24. The Telecommunications Act of 1996 established new, relaxed limitations on national multiple ownership. We have issued this *NPRM* to update the record on subsidiary matters not addressed in the Act which determine how to calculate the new 35% national audience reach cap—whether to continue the satellite exemption, as well as issues related to LMAs and market definition. In seeking comment on these issues, we wish to ensure that the new national audience reach cap is effectively implementated so as to promote our competition and diversity goals. We also seek comment on the transaction issues raised by any rule changes we may adopt in this proceeding.

Administrative Matters

25. 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. 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.

26. 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 Sections 1.1202, 1.1203, and 1.1206(a).

Initial Paperwork Reduction Act of 1995 Analysis

The rules proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no 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.

Initial Regulatory Flexibility Analysis

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 *Notice of Proposed Rulemaking* (*NPRM*).[6] Written public comments concerning the effect of the

[6] An IRFA pursuant to Public Law Notice 96–354, § 603, 94 Stat. 1165 (1980) was incorporated into both the *Notice of Proposed Rulemaking* and *Further Notice of Proposed Rulemaking* in MM Docket Nos. 91–221 and 87–8, the national ownership aspects of which have been incorporated into this proceeding.

proposals in the *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 the submission of comments in this proceeding. The Secretary shall send a copy of this *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.[7]

Reason for NPRM

After the issuance of the *TV Ownership Further NPRM* in 1995, the Telecommunications Act of 1996[8] was signed into law. Accordingly, this *NPRM* seeks comment on how the Telecommunications Act of 1996 should affect our ongoing analysis of the national broadcast television ownership rules.

Objectives

This *NPRM* seeks comment on modifying the national broadcast television ownership rules to achieve our competition and diversity goals in light of the passage of the Telecommunications Act. Pursuant to the Act, a licensee may not own a station if it would result in that broadcaster's owning television stations with an aggregate national audience reach exceeding 35%. A station's audience reach has traditionally been defined for national ownership purposes as the total number of television households within the station's Area of Dominant Influence (ADI), an area used by Arbitron to analyze broadcast television station competition. While the Telecommunications Act set the 35% national audience reach limit, it did not address how to actually measure audience reach. This *NPRM* seeks comment on issues relating to such measurement.

First, we propose to eliminate the satellite exemption to the national ownership rule, by which a television satellite station is not considered when calculating a broadcaster's national audience reach, in cases where the satellite operates in a different market from its parent. The exemption was intended to encourage the operation of satellite stations. Without the exemption, a satellite would have brought a group station owner closer to the 12-station cap (which was eliminated by the Telecommunications Act) just like the acquisition of any other station, thereby creating a disincentive for satellite operation. However, because the 12-station cap has been eliminated and because incorporation of a satellite's local market should add relatively little to a group owner's total national audience reach, the disincentive to satellite operation has likely been removed. When the satellite and the parent are in the same market, however, we propose to retain the exemption, because multiple counting of the same audience would appear unrelated to Congress's concern with national audience reach.

Second, the *NPRM* turns to LMAs, noting that the issue is relevant only if the LMA is deemed attributable, a question being resolved in the pending attribution proceeding. This *NPRM* proposes that local marketing agreements (LMAs) not be counted for the purposes of calculating an entity's national audience reach. When one licensee operates as a broker to another in the same television market pursuant to an LMA, it reaches the same audience twice, through two different television stations, and it does not allow the brokering station's licensee to reach any audience that it is not already reaching. Thus, it appears that Congress's concern with national audience reach, as opposed to numerical station limits, is not implicated.

Finally, the *NPRM* proposes to utilize Designated Market Areas (DMAs), the areas used by Nielsen to analyze broadcast television station competition, instead of ADIs when calculating the number of TV households in a station's market. Arbitron no longer updates its county-by-county determinations of each broadcast station's ADI. However, DMAs are generally similar to ADIs and are still updated regularly. Any effects caused by this modification of the rule are expected to be *de minimis.*

Legal Basis

Authority for the actions proposed in this *NPRM* may be found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r).

Recording, Recordkeeping, and Other Compliance Requirements

No new recording, recordkeeping or other compliance requirements are proposed.

Federal Rules That Overlap, Duplicate, or Conflict with the Proposed Rules

The Commission's broadcast-newspaper, television broadcast-cable, local radio ownership, and local 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.

Description and Estimate of the Number of Small Entities To Which the Rules Would Apply

The Small Business Administration (SBA) defines a television broadcasting station that is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts as a small business.[9] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[10] Included in this industry are commercial, religious, educational, and other television stations.[11] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[12] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[13] There were 1,509 television stations operating in the nation in 1992.[14] That number has remained fairly constant, as indicated by the approximately 1,550 operating television stations in August, 1996.[15] In 1992,[16] there were 1,155 television station establishments that

[7] Public Law Notice 96–354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981), as amended.

[8] Public Law Notice 104–104, § 101, 110 Stat. 56 (1996) (Telecommunications Act).

[9] 13 CFR § 121.201, Standard Industrial Code (SIC) 4833 (1996). For purposes of this *Notice of Proposed Rulemaking*, we are utilizing the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are television broadcasters in the future. *See Report and Order* in MM Docket No. 93–48 (*Children's Educational and Informational Programming*), 61 FR 43981 (August 27, 1996), citing 5 U.S.C. § 601(3).

[10] Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92–S–1, Appendix A–9 (1995).

[11] Id.

[12] Id.

[13] Id.

[14] FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, supra note 71, Appendix A–9.

[15] Federal Communications Commission News Release 64958, September 6, 1996.

[16] Census for communications establishments are performed every five years, during years that end with a ''2'' or ''7''. *See* Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9, III (1995).

produced less than $10.0 million in revenue.[17]

We recognize that the proposed rules may also affect 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.[18] According to the U.S. Bureau of the Census, 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and noncommercial television stations in the United States.[19] 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 Telecommunications Act of 1996. 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 Regulatory Flexibility Act, we specifically request comments concerning our assessment of the number of small businesses that will be impacted by this rule making proceeding, the type or form of impact, and the advantages and disadvantages of the impact.

[17] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[18] *Minority Commercial Broadcast Ownership in the United States,* U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (MTDP) (April 1996). MTDP considers minority ownership as ownership of more than 50% of the broadcast corporation's stock, have voting control in a broadcast partnership, or own a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[19] *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, *Women-Owned Business,* WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of mass Media Facilities, Notice of Proposed Rulemaking,* 10 FCC Rcd 2788 (1995), 60 FR 6068, (February 1, 1995).

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

The proposed rules and policies would apply to full power broadcast television licensees, permittees, and potential licensees. We have proposed to not double count commonly owned stations in the same market and LMAs for the purpose of calculating a licensee's national audience reach. We also propose to eliminate the satellite exemption of licensees that operate a satellite station in a separate market from the parent station. We do not have sufficient information, at this time, to reach a tentative conclusion about the effect of these proposed rules, and seek comment on the potential significant economic impact of these proposals on a substantial number of small stations. We urge parties to support their comments with specific evidence and analysis.

We tentatively conclude that there is not a significant economic impact regarding our proposal to use Designated Market Areas (DMAs) compiled by A.C. Nielsen instead of Arbitron to calculate national audience reach. A.C. Nielsen, like Arbitron, is another commercial ratings service, and they are analytically similar.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–32139 Filed 12–18–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 96–22; Notice 1]

Federal Motor Vehicle Safety Standards; Head Restraints

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comment; technical report.

SUMMARY: This document requests comments about a NHTSA Technical Report titled, ''Head Restraints—Identification of Issues Relevant to Regulation, Design, and Effectiveness.'' The report discusses Federal Motor Vehicle Safety Standard No. 202, *Head Restraints*, and its history, previous evaluations of Standard No. 202 and head restraint effectiveness, biomechanics of neck injury and related research, current whiplash rates, occupant/head restraint positioning, insurance industry evaluation, European standards, and future designs. The report also identifies questions which, if answered may lead to improvement in head restraint effectiveness through modifying Standard No. 202. These questions are repeated in this document. The agency invites the public to comment on the report; answer the questions listed in this notice; and make any other comments relevant to the regulation, design and effectiveness of head restraints.

DATES: Comments must be received no later than March 19, 1997.

ADDRESSES: All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW, Washington DC 20590. [Docket hours, 9:30 a.m.–4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Louis Molino, Office of Crashworthiness Standards, Light Duty Vehicle Division, NPS–11, NHTSA, 400 Seventh Street, SW, Washington, DC 20590 (Phone: 202–366–2264; Fax: 202–366–4329; E-mail: lmolino@nhtsa.dot.gov).

SUPPLEMENTARY INFORMATION:

Background

Since January 1, 1969 passenger cars have been required by Federal Motor Vehicle Safety Standard No. 202 to have head restraints in the front outboard seating positions. Head restraints must either (a) be at least 27.5 inches above the seating reference point in their highest position and not deflect more than 4 inches under a 120 pound load, or (b) limit the relative angle of the head and torso of a 95th percentile dummy to not exceed 45 degrees when exposed to an 8 g acceleration. Standard No. 202 was extended to light trucks and vans under 10,000 pounds on September 1, 1991.

In 1982, the National Highway Traffic Safety Administration (NHTSA) reported the effectiveness of integral and adjustable restraints at reducing neck injuries in rear impacts was 17 and 10 percent, respectively. The difference was due to integral restraints being higher with respect to the occupant's head than adjustable restraints, which are normally left down. The agency concluded that head restraints were a cost effective safety device.

In 1995, the Insurance Institute for Highway Safety (IIHS) evaluated the head restraints of 164 vehicles based on