preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (defined as the aggregate of all equity plus all debt) of that media outlet; and

(2)(i) The interest holder also holds an interest in another broadcast licensee or cable television system which operates in the same market and is attributable without reference to this paragraph (c); or

(ii) The interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held.

[FR Doc. 99–23694 Filed 9–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 96–222, 91–221, 87–8; FCC 99–208]

Broadcast Television National Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules regarding how to calculate a group station owners national audience reach for purposes of determining compliance with the broadcast television national ownership rule. This action is necessary to respond to changes in the underlying rule mandated by the Telecommunications Act of 1996, as well as to changes in the Commission's satellite rules and changes in the broadcast television market.

DATES: Effective November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, (202) 418–2120, Policy and Rules Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (''*R&O*''), FCC 99–208, adopted August 5, 1999; released August 6, 1999. The full text of the Commission's *R&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12th St. S.W., Washington, D.C. The complete text of this *R&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Report and Order

1. On November 7, 1996, the Commission released a *Notice of Proposed Rule Making* (''*Notice*''), 61 FR 66987, December 19, 1996, in this proceeding, seeking comment on how to calculate a broadcast television station group owner's aggregate national audience reach for the purposes of determining compliance with the national broadcast television multiple ownership rule, which limits that reach to 35%. Based on the record before us, we conclude that the public interest would be served by counting a market only once when calculating an entity's national ownership reach, even if that entity has an attributable interest in more than one television station in that market. As specific applications of this policy, we are: (1) narrowing the application of the ''satellite exemption,'' under which we disregard satellite station ownership in measuring aggregate national ownership; (2) not incorporating same-market local marketing agreements (''LMAs'') into the calculation of the brokering station's national audience reach; and (3) replacing 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'').

Background

2. Pursuant to section 202(c)(1) of the Telecommunications Act of 1996 (the ''1996 Act''), the Commission amended its national broadcast television ownership rule. Before passage of the 1996 Act, the Commission generally prohibited entities from having an attributable interest in more than 12 broadcast television stations. Further, the Commission generally prohibited an entity from having an attributable interest in a station if it would result in that entity's having an attributable interest in television stations with an aggregate national audience reach exceeding 25%. However, pursuant to section 202(c)(1) of the 1996 Act, the Commission eliminated the 12-station cap and raised the 25% aggregate national audience reach limit to 35%.

3. Pursuant to § 73.3555(e)(2)(i) of the Commission's Rules, a station's audience reach is defined as consisting of the total number of television households within the television market for that station. The television market, in turn, is currently defined as the Area of Dominant Influence (ADI) used by Arbitron, a commercial audience-rating service, to analyze broadcast television station competition. For purposes of calculating this aggregate audience reach under the rules, UHF stations are attributed with only 50% of the audience within their ADI (the UHF discount), a policy that is under careful review in the biennial ownership review. In addition, satellite stations generally are not counted at all in the national audience reach calculation (the satellite exemption). Neither the 1996 Act nor our Order implementing its national television ownership provisions addressed how to measure a licensee's national audience reach, thus leaving undisturbed the process prescribed earlier in connection with the 25% limit. In light of the modified national ownership rule and the new competitive and regulatory structure of the video marketplace brought about by the 1996 Act, we initiated this proceeding to update the record on measuring national television audience reach for purposes of the new national ownership limit.

Discussion

The Satellite Exemption

4. *Background.* A television satellite is a full-power terrestrial broadcast station authorized under part 73 of the Commission's Rules to retransmit all or part of the programming of another station (most commonly the parent station). Satellite stations are operated by the same party that operates the parent station. The Commission does not authorize satellite operation unless it is demonstrated that the frequency would likely go unused otherwise. As a result, 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. Pursuant to 47 CFR 73.3555, Note 5, the Commission's multiple ownership rules do not apply to satellite stations. The Commission exempted TV satellites from the national multiple ownership rules when it adopted the 12-station cap and the 25% audience reach limitation. The Commission believed that this would encourage the provision of television service to smaller communities. It also noted that satellite stations and stations operating primarily as satellites were already exempt from the Commission's duopoly rule because they generally did not originate programming. In 1991, we abolished the 5% ''limit'' on the amount of local programming that a satellite could originate, which we had used as a benchmark for determining whether a station was still a satellite.

Same-Market Satellites

5. *Background.* The national multiple ownership rule, as amended by the 1996 Act, is concerned with a station's potential audience rather than with its actual viewership. Also, we are not concerned with the specific number of television stations owned by a group owner, since the 1996 Act eliminated

the numerical limitations on station ownership formerly in the rule; rather, the national television ownership rule now focuses solely on national audience reach. In the *Notice of Proposed Rule Making* in this proceeding, we tentatively concluded that 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 parent station. Accordingly, we proposed to retain the exemption for satellites operating in the same market as their parents.

6. *Discussion.* We shall retain the satellite exemption for same-market satellites. We are not concerned with the specific number of television stations owned by a group owner, since the 1996 Act eliminated the numerical limitations on station ownership formerly in the rule. In addition, the national ownership rule is concerned with competition and diversity on a national scale, and dual station ownership in one market neither adds to national reach nor affects competition and diversity on a national basis. Also, even if a licensee increases the total number of its viewers by acquiring a second station in the market, the relevant measurement is of audience reach, not of actual viewership.

7. Accordingly, we are amending § 73.3555(e)(2)(ii) of our rules to clarify that we shall not double-count individual markets. In practice, this means that we are retaining the satellite exemption for those satellites that operate in the same television market as their parent stations. Counting the audience twice in such a situation would serve only to distort our calculation of how many potential viewers a group owner is able to reach nationwide.

Separate-Market Satellites

8. In the *Notice of Proposed Rule Making,* we proposed to repeal the satellite exemption for satellites operating in separate markets from their parent stations. As discussed below, we are adopting the proposal.

9. We conclude that the satellite exemption is no longer warranted for satellite stations operating in separate markets from their parent stations. Satellite stations are no longer limited as to the amount of local programming they may originate. Therefore, when a parent station operates a satellite in another market, the licensee's over-the-air audience reach is expanded into another market by the audience reach of the satellite station. Consequently, we shall treat separate-market satellites as we do other television stations, and we shall include them when calculating a group station owner's national aggregate audience reach.

10. We believe that the benefits of inclusion of these stations, including a more accurate reflection of actual audience reach, outweigh any potential costs. The 1996 Act's elimination of the restriction on the absolute number of television stations that may be commonly owned has substantially reduced the disincentive to satellite operation. Also, 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 aggregate national audience reach. The record does not indicate that the operation of a satellite station would generally put licensees over or so close to the 35% national aggregate audience reach limit as to dissuade them from operating the station at all.

Local Marketing Agreements

11. *Background.* An LMA 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 may enable separately owned stations to function cooperatively via joint advertising, shared technical facilities (including shared production facilities), and joint programming arrangements. In the *Notice of Proposed Rule Making,* we proposed not to count same-market LMAs towards the brokering station's national aggregate audience reach calculation.

12. *Discussion.* In our companion *Attribution* R&O, FCC 99–207, we determine that same-market LMAs are attributable to the brokering station for the purposes of administering the local ownership rules when the brokering station programs more than 15% of the brokered station's weekly broadcast hours. However, as we concluded above in the context of same-market satellite stations, the national ownership rule limits audience reach on a national scale, and dual station influence or control in one market does not add to national audience reach. That is merely a specific application of our new general rule of not double-counting markets. The record indicates no additional factors warranting a different analysis in this case. For these reasons, we find that same-market LMAs shall not be included in the brokering station's national aggregate audience reach calculation.

13. We note that when the brokering station is located in a different market than the brokered or programmed station, the issue of double-counting does not arise. As discussed in the *Attribution R&O,* under our new equity/debt plus rule, we will attribute the interest of a program supplier in a station where it: (1) provides more than 15% of the station's weekly programming; and (2) it holds more than 33% of the licensee's total assets. Such an attributable interest will count towards the 35% national reach limit since the brokered and brokering stations are in different markets.

Market Definition

14. We use the number of television households in each market in which an entity's stations are located to calculate that entity's national audience reach. The definition of the market for this purpose has remained unchanged since 1985, when the Commission first adopted a national audience cap:

> [n]ational audience reach means 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 data at the time of a grant, transfer or assignment of a license. . . . Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.

15. However, because Arbitron no longer updates its county-by-county determinations of each broadcast station's ADI, they are static and have become less reliable over time as market conditions change. Accordingly, as we proposed in the *Notice,* we shall now use Designated Market Areas (DMAs) as compiled by A.C. Nielsen Media Research—another commercial ratings service—where we previously relied on ADIs. We use DMAs to define markets in the context of cable must-carry and retransmission consent. Nielsen uses the term DMA to define a unique geographic area based on the TV viewing habits of its residents. In designating DMAs, Nielsen Media Research collects viewing data from diaries placed in television households four times a year. Nielsen assigns counties to DMAs annually on the basis of television audience viewership as

recorded in those diaries. Counties are assigned to a DMA if the majority or, in the absence of a majority, the preponderance, of viewing in the county is recorded for the programming of the television stations located in that DMA.

16. In some instances the use of DMAs instead of ADIs might lead to small variations in the audience reach calculation of some stations, because in some instances Arbitron and Nielsen define markets somewhat differently. However, these variations would have only a minor effect on the calculation of licensees' national ownership reach.

Conclusion

17. This document reforms how we calculate audience reach for purposes of the national television ownership rule in response to changes in the broadcast television marketplace and changes in the underlying rule itself required by the 1996 Act. The changes that we make are relatively minor. We see no need to adopt any transition policy to implement these relatively minor changes, which should not result in any existing group television station owner's exceeding the 35% national aggregate audience reach cap set forth in the national television ownership rule.

Administrative Matters

Final Paperwork Reduction Act of 1995 Analysis

18. The rules adopted 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 rules will not increase or decrease burden hours imposed on the public.

Regulatory Flexibility Analysis

19. Pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601 et seq., the Commission's Final Regulatory Flexibility Analysis in this *R&O* is below.

Ordering Clauses

20. Accordingly, *it is ordered* that, pursuant to §§ 4(i) and 303(r) of the Commission's rules, 47 U.S.C.154(i) and 303(r), 47 CFR part 73 is amended as set forth as below.

21. *It is further ordered* that, pursuant to the Contract with America Advancement Act of 1996, the amendment set forth set forth below *shall be effective* November 16, 1999.

22. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this *R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

23. *It is further ordered* that this proceeding *is terminated*.

Final Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making*, 61 FR 66987, December 19, 1996, in this proceeding. The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, 5 U.S.C. 604.

I. Need For and Objectives of the National TV Ownership R&O

25. The *R&O* modifies the method by which the Commission determines a group television station owner's national aggregate audience reach for compliance with the national television ownership rule. The modifications are necessary to reflect changes in the underlying national ownership limit adopted pursuant to the Telecommunications Act of 1996.

II. Summary of Significant Issues Raised by the Public in Response to the Initial Analysis

26. No comments were received specifically in response to the IRFA contained in the *Notice of Proposed Rule Making*. However, some comments addressed issues relating to small businesses and businesses controlled by minorities and women, some of which may be small entities. Several commenters made general assertions that broadcast station ownership has consolidated since passage of the 1996 Act, and that the Commission should take businesses controlled by minorities and women into account in all of our pending broadcast ownership proceedings. CBS argued that the ownership rules were not designed to foster minority ownership in the broadcast industry, and that this goal should be pursued by other means.

27. Turning to the specific rules that are the subject of this rule making proceeding, BET argued that if both a parent and a same-market satellite are allocated a second 6 MHz for DTV purposes, then the satellite station audience should be counted towards the 35% national ownership cap because the licensee of such a station will have increased its broadcasting power at least fourfold. It claims that incumbent broadcasters' market power will increase sufficiently to create insurmountable entry barriers against competing stations. However, the *R&O* concludes that such concerns involve competition and diversity on a local, not a national, scale and are not the focus of the national ownership rule.

28. BET asserted that retention of the satellite exemption for separate-market satellites would ''squeeze out'' entrepreneurs and new entrants by enabling large group owners to transfer costs among stations and eliminate competition from small operators. However, the *R&O* adopts a rule whereby such separate-market satellite stations shall be attributed for the purposes of the national ownership rule.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

29. The amended rules will affect entities that have attributable interests in numerous full power commercial television stations reaching a substantial portion of the national viewing public. These multiple station owners are not likely to be small businesses.

1. Definition of a ''Small Business''

30. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial Classification (''SIC'') Code 4833—Television Broadcasting Stations, may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

31. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.'' While we tentatively believe that the foregoing definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is

not suitable for purposes of determining the impact of the new rules on small television and radio stations, and auxiliary services, we did not propose an alternative definition in the IRFA. Accordingly, for purposes of this *R&O*, we utilize the SBA's definition in determining the number of small businesses to which the rules 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 radio and television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this *R&O*.

2. Issues in Applying the Definition of a ''Small Business''

32. As discussed below, we could not precisely apply the foregoing definition of ''small business'' in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

33. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television or radio station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any television or radio station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We attempted to factor in this element by looking at revenue statistics for owners of television stations. However, as discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

34. With respect to applying the revenue cap, the SBA has defined ''annual receipts'' specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

35. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether radio and television stations were affiliated based on SBA's definitions, we relied on the data bases available to us to provide us with that information.

3. Estimates Based on Census Data

36. The rules amended by this *R&O* will apply to full power commercial broadcast television licensees, permittees, and potential licensees.

37. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,594 operating television broadcasting stations in the nation as of June, 1999. For 1992 the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.

38. Thus, the rule changes will affect approximately 1,594 television stations, approximately 77% (or 1,227) of which are considered 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 affiliated companies.

39. We recognize that the rule changes may also affect minority and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0 percent) of 1,221 commercial television stations in the United States. According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial television stations in the United States.

IV. Projected Compliance Requirements of the Rule

40. No new recording, recordkeeping or other compliance requirements are adopted.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

41. The modified rules would apply to full power broadcast television licensees, permittees, and potential licensees. No entity that is near the 35% national aggregate audience reach limit can be classified as a ''small entity.'' As a result, the counting methodology adopted in this *R&O* will not have a direct effect on any small entity.

42. We have decided not to double-count LMAs or commonly owned stations in the same market for the purpose of calculating a licensee's national audience reach. We also eliminate the satellite exemption for licensees that operate a satellite station in a separate market from the parent station. In addition, we have decided to use A.C. Nielsen's Designated Market Areas (DMAs) rather than Arbitron's Areas of Dominant Influence to calculate national audience reach. A.C. Nielsen, like Arbitron, is another commercial ratings service. They are analytically similar. In each of these cases, we have determined that to do otherwise would not be consistent with the objective of the national television ownership rule as modified by the 1996 Act: to promote competition and diversity on a national level by limiting an entity's national audience reach. We expect that such additional competition and diversity will benefit commercial television entities, including small entities.

Report to Congress

43. The Commission will send a copy of the *National TV Ownership R&O*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *National TV Ownership R&O*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *National TV Ownership R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**, 5 U.S.C. 604(b).

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preample, the Federal Communication Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

2. § 73.3555 is amended by revising paragraphs (e)(2)(i), (e)(2)(ii) and the first sentence of Note 5 to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

(e) * * *

(2) * * *

(i) *National audience reach* means the total number of television households in the Nielsen Designated Market Area (DMA) markets in which the relevant stations are located divided by the total national television households as measured by DMA data at the time of a grant, transfer, or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their DMA market.

(ii) No market shall be counted more than once in making this calculation.

* * * * *

Note 5: Paragraphs (a) through (d) of this section will not be applied to cases involving television stations that are ''satellite'' operations. * * *

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[FR Doc. 99–23695 Filed 9–16–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–221, 87–8; FCC 99–209]

Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's local TV multiple ownership rule and its radio/TV cross-ownership rule. This document also adopts a grandfathering policy for certain TV local marketing agreements and certain conditional waivers of the radio/TV cross-ownership rule. The purpose of this action is to balance the Commission's competition and diversity goals with the efficiencies and public interest benefits that can be associated with common ownership of same-market broadcast stations.

DATES: Effective November 16, 1999, except for the requirements that: (1) radio/TV cross-ownership conditional waiver grantees file with the Commission showings sufficient to convert their compliance or non-compliance with the Commission's revised radio/TV cross-ownership rule; and (2) holders of local marketing agreements (LMAs) that have become attributable under the Commission's revised rules file a copy of their LMA with the Commission. These requirements contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective dates for those sections.

FOR FURTHER INFORMATION CONTACT: Eric Bash, (202) 418–2120, Policy and Rules Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (''*R&O*''), FCC 99–209, adopted August 5, 1999, and released August 6, 1999. The full text of the Commission's *R&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. S.W., Washington, D.C. The complete text of this *R&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Report and Order

I. Introduction

1. In this *R&O,* we revise our local TV multiple ownership rule and the radio/TV cross-ownership rule to respond to ongoing changes in the broadcast television industry. The new rules we adopt today reflect a recognition of the growth in the number and variety of media outlets in local markets, as well as the significant efficiencies and public service benefits that can be obtained from joint ownership. At the same time, our decision reflects our continuing goals of ensuring diversity and localism and guarding against undue concentration of economic power. The rules we adopt today and in our related national television ownership and broadcast attribution proceedings, being adopted simultaneously with this *R&O,* balance these competing concerns and are intended to facilitate further development of competition in the video marketplace and to strengthen the potential of broadcasters to serve the public interest.

II. Background

2. The local TV multiple ownership rule currently prohibits an entity from having cognizable interests in two television stations whose Grade B signal contours overlap. The Commission rarely grants permanent waivers of the duopoly rule, reserving such relief for cases with unique or highly unusual circumstances. Under current policy, the time brokerage by one television station of another television station, even one in the same market, pursuant to a time brokerage or ''local marketing'' agreement (''LMA''), is not attributable, and accordingly these relationships are not subject to our multiple ownership rules. The radio-television cross-ownership rule generally forbids joint ownership of a radio and a television station in the same local market. We have presumed it is in the public interest to waive this rule in the top 25 television markets if, post-merger, at least 30 independently owned broadcast voices remain, or if the merger involves a failed station. Such waivers are available to permit ownership of up to one television, one AM, and one FM station per market. We have evaluated other waiver requests case by case, based on an analysis of five criteria (the ''five factors'' test).

3. This proceeding began in 1991 with the issuance of a *Notice of Inquiry* (''*NOI*''), 56 FR 40847, August 16, 1991, soliciting comment on whether existing television ownership rules and related policies should be revised in light of ongoing changes in the competitive market conditions facing broadcast licensees. After reviewing the comments received in response to the *NOI,* the Commission issued a *Notice of Proposed Rule Making* (''*NPRM*''), 57 FR 28163, June 24, 1992, containing a number of alternative proposals involving the national and local television ownership rules, and seeking comment on the extent and impact of LMAs in the broadcast television industry.

4. In 1994, in a *Further Notice of Proposed Rule Making* (''*FNPRM*''), 60 FR 06490, February 2, 1995, in this docket, the Commission set forth a competition and diversity analysis for examining our ownership rules. Based