decisions of licensees or other core operating functions. The attribution rules are used to implement the Commission's broadcast multiple ownership rules. Our goals in commencing this proceeding and in formulating the proposals in the *Further Notice* are to be to maximize the precision of the attribution rules, avoid disruption in the flow of capital to broadcasting, afford clarity and certainty to regulatees, and ease application processing.

Legal Basis: Authority for the actions proposed in this *Further Notice* is contained in Sections 4(i), 303, 307 and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 307, & 310.

Recording, Record keeping, and Other Compliance Requirements: If our attribution rules are made more restrictive so as to attribute interests not now currently attributable, our ownership reporting form, FCC Form 323, will need to be modified accordingly so that such attributable interests will then be reportable on the form. We invite comment as to whether any additional professional skills would be needed to complete this form.

Federal Rules that Overlap, Duplicate or Conflict with the Proposed Rules: The rules proposed in the *Further Notice* will modify the current attribution rules, and, similarly to the Commission's current attribution rules, will be used to implement the multiple ownership rules. Thus, the proposed rules are intended to promote the same diversity and competition goals also fostered by the multiple ownership rules. However, the proposed rules do not overlap, duplicate or conflict with the multiple ownership rules.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply: 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"). 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."[76]

[76] While we tentatively believe that the SBA's 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 proposals on small television and radio stations, for purposes of this *Further Notice*, we utilize 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 or other entities subject to the proposed rules in this *Further Notice* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. *See Report and Order* in MM Docket No. 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), *citing* 5 U.S.C. § 601(3). We have pending proceedings seeking comment on the definition of and data

The proposed rules and policies will apply to television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[77] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[78] Included in this industry are commercial, religious, educational, and other television stations.[79] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[80] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[81] There were 1,509 television stations operating in the nation in 1992.[82] That number has remained fairly constant as indicated by the approximately 1,550 operating television

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relating to small businesses. In our *Notice of Inquiry* in GN Docket No. 96-113 (In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), FCC 96-216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order and Notice of Proposed Rule Making* in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, *e.g.*, 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

[77] 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996).

[78] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92-S-1, Appendix A-9 (1995).

[79] *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

> 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 here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[80] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92-S-1, Appendix A-9 (1995).

[81] *Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[82] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A-9.

broadcasting stations in the nation as of August, 1996.[83] For 1992[84] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[85]

Additionally, the Small Business Administration defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[86] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[87] Included in this industry are commercial religious, educational, and other radio stations.[88] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[89] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[90] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[91] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[92] As of August, 1996, official Commission records indicate that 12,088 radio stations were operating.[93]

Thus, the proposed rules will affect approximately 1,550 television stations; approximately 1,194 of those stations are considered small businesses.[94] Additionally, the proposed rules will

[83] FCC News Release No. 64958, Sept. 6, 1996.

[84] Census for Communications' establishments are performed every five years ending with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, III.

[85] 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.

[86] 13 C.F.R. § 121.201, SIC 4832.

[87] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A-9.

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[92] FCC News Release No. 31327, Jan. 13, 1993.

[93] FCC News Release No. 64958, Sept. 6, 1996.

[94] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1996 total of 1550 TV stations to arrive at 1,194 stations categorized as small businesses.

affect 12,088 radio stations, approximately 11,605 of which are small businesses.[95] 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.[96] 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.[97] 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 rule making 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.

Additionally, the proposed changes to the cable/MDS cross-ownership attribution rule will apply to cable and MDS entities. SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which

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[95] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[96] *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 a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. Id. The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[97] 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, 2797 (1995).

covers subscription television services, which includes all such companies with annual gross revenues of $11 million or less.[98] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.[99] This figure is overinclusive since it includes other pay television services, not only cable and MDS.

The Communications Act contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[100] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[101] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[102] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. We are likewise unable to estimate the number of these small cable operators that serve 50,000 or fewer subscribers in a franchise area.

The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide.[103] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at

[98] 13 C.F.R. §121.201.

[99] 1992 Census, *supra*, at Firm Size 1-123. *See Memorandum Opinion and Order and Notice of Proposed Rule Making* in MM Docket No. 92-266 and CS Docket No. 96-157, 11 FCC Rcd 9517, 9531 (1996).

[100] 47 U.S.C. § 543(m)(2).

[101] 47 C.F.R. § 76.1403(b).

[102] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[103] 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995).

the end of 1995.[104] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the proposal adopted in this Notice. Under the Commission's rules, a small cable system is a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers over all of its cable systems. We are unable to estimate the number of small cable systems nationwide, and we seek comment on the number of small cable systems.

The Commission refined the definition of "small entity" for the auction of MDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[105] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[106]

The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MDS is a service heavily encumbered with approximately 1,573 previously authorized and proposed MDS facilities and information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1,634 small MDS providers as defined by the SBA and the Commission's auction rules. We seek comment on this tentative conclusion.

Some of the proposals delineated above may also apply to daily newspapers that hold or seek to acquire an interest in a broadcast station that would be treated as attributable under the proposals. A newspaper is an establishment that is primarily engaged in publishing newspapers, or in publishing and printing newspapers.[107] The SBA defines a newspaper that has 500 or fewer employees as a small business.[108] Based on data from the U.S. Census Bureau, there are a total

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[104] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[105] 47 C.F.R. § 21.961(b)(1).

[106] *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding,* MM Docket No. 94-31 and PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589 (1995).

[107] 13 C.F.R. § 121.201 (SIC 2711).

[108] *Id.*

of approximately 6,715 newspapers, and 6,578 of those meet the SBA's size definition.[109] However, we recognize that some of these newspapers may not be independently owned and operated and, therefore, would not be considered a "small business concern" under the Small Business Act.[110] We are unable to estimate at this time how many newspapers are affiliated with larger entities. Moreover, the proposal would apply only to daily newspapers, and we are unable to estimate how many newspapers that meet the SBA's size definition are daily newspapers. Consequently, we estimate that there are fewer than 6,578 newspapers that may be affected by the proposed rules in this *Further Notice*. We invite comment on this estimate.

Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis of the 1995 Notice of Proposed Rule Making.

There were no comments submitted specifically in response to the IRFA. We have, however, taken into account all issues raised by the public in response to the proposals raised in this proceeding. In particular, Association of Independent Television Stations, Inc. (now known as the Association of Local Television Stations, Inc.), among others, generally notes that, given the plethora of other media investment opportunities, relaxation of the attribution rules will attract capital to broadcasting while tightening of the attribution rules may restrict capital flow to broadcasting. We note that access to capital is an issue of profound concern to small entities, and, accordingly, as discussed in the *Further Notice*, *supra*, ¶1, one of our goals in this proceeding has been to avoid disruption in the flow of capital to broadcasting. National Association of Black Owned Broadcasters argues that additional relaxation of the attribution rules will increased concentration of control of the media industry, which works against minority ownership. Our goal is neither specifically to relax or to tighten the attribution rules, but rather to maximize their precision. *Further Notice*, ¶1, *supra*. Additionally, Big Horn Communications, Inc., which notes that it is a small market television station in Montana, argues that LMAs and time brokerage agreements allow cost efficiencies in small markets that increase service to small markets and promote the economic viability of small and financially weak stations. Local Station Ownership Coalition also urges the Commission not to make television station LMAs attributable unless it permits ownership of two television stations in a market because LMAs help financially troubled stations achieve economic viability. We recognize that LMAs can promote economic efficiencies, and our proposal is designed to permit those benefits while providing for attribution of those television station LMAs that should be counted under our multiple ownership rules.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: This *Further Notice* solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered.

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[109] U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 3, SIC Code 2711 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[110] 15 U.S.C. § 632.

In the *Attribution Notice*, we invited comment on whether to restrict or eliminate current attribution exemptions for nonvoting shares and for minority voting shareholders in a corporation with a single majority shareholder. In addition, we requested comment on whether we should adopt new attribution rules or policies when multiple financial or business relationships were held in combination in a licensee. The "equity or debt plus" approach discussed in the *Further Notice* is a specifically tailored approach, narrower than that discussed in the *Notice*. We seek comment on whether there is a significant economic impact on any class of small licensee or permittee as a result of our proposed "equity or debt plus" approach. *See supra* paras. 12-15.

We seek comment on whether there would be a significant economic impact on small stations resulting from the proposed attribution rules for LMAs or from the possible application of the attribution rules to JSAs.

We seek comment on whether there would be a significant economic impact on small entities from the changes we have proposed to the cable/MDS cross-ownership attribution rules.

APPENDIX B

Staff Study of the 1994/95 FCC Annual TV Ownership Reports

Policy and Rules Division
Mass Media Bureau
FCC

Executive Summary

This study collected and analyzed ownership information from the Commission's 1994/1995 annual ownership reports on the majority (1,009 out of 1,043) of for-profit TV stations. The study draws the following conclusions.

- 64.6 percent of broadcast TV stations are closely-held, where majority control is held by 5 or fewer owners.

- As well, 74.9 percent of TV stations are held by group-owners.

- Increasing the attribution benchmark for active stockholders from 5 percent to 10 percent of voting control would decrease the number of currently-attributable owners by approximately one-third. As well, the number of licensees with no attributable owners (excluding directors and officers) would increase from 81 to 134, or by 65.4 percent.

- Broadcast investment by mutual funds, life insurance companies and other passive investors is relatively small. The proposed change from a 10 percent to 20 percent passive investor benchmark would affect 5 of 15 currently-attributable passive investors, and impact 5 stations currently with attributable passive investors. Most reported passive investment is now in the range of 5 percent to 10 percent voting control.

- Non-passive institutional investment is also small, with only 57 such interests reported in total. The proposed increase from a 5 percent to 10 percent benchmark would decrease by 16, or 33.3 percent, the number of institutional interests that are currently attributable.

- Only 10 instances of reported limited liability corporations (LLCs) were found among the stations sampled.

I. Purpose of the Study

The present study was undertaken in conjunction with the attribution notice to analyze the potential impact of proposed rule changes on the cognizable and non-cognizable interests in broadcast TV stations.

II. Study Population of Interest

The scope of the data collection and analysis effort was limited to for-profit broadcast television stations. Data for non-profit TV stations, radio stations and low power stations were not collected for several reasons. With non-profit stations only directors and officers (D&O) are cognizable, and they remain cognizable under proposed changes. The choice to focus on broadcast TV station attribution was made to maximize the use of limited resources.

III. Study Design

Broadcast TV station licensees are required to report cognizable ownership interests in the form of an annual ownership report. These ownership interests include

i) "active" stockholders of 5 percent voting interest or greater in the licensee,

ii) "passive" shareholders, including mutual funds, bank trust departments and life insurance companies holding 10 percent or greater voting interest in the licensee,

iii) single-majority stockholders holding greater than 50 percent interest (in which cases all other voting interests are not attributable),

iv) all general partnership interests,

v) limited partnership interests that are not "sufficiently insulated" and

vi) all directors and officers (D&O) involved in the licensee.

Data collection focused on collecting data on all attributable interests, with the exception of directors and officers with less than 1 percent voting interest in the licensee. Because of their direct operational involvement with the licensee, this latter group is held attributable, regardless of the extent of their ownership stake in the station.

The annual ownership reports also frequently and voluntarily report ownership percentages for owners not attributable under current rules, in particular voting shareholders with interests in the 1 percent to 5 percent ownership range. To expand the scope of our analysis, data collection was extended to include all "reported" voting ownership claims of 1 percent or greater.

IV. Overall TV-Station Results

Ownership information was obtained from the annual ownership reports required by the Commission. Information from the most recent report on file was used. Essentially, data was collected manually and then computer-coded from virtually all of the for-profit broadcast TV ownership filings, except with group-owned stations where a single ownership report was filed for the entire group.

Of the total 1542 licensed TV stations, for-profit stations numbered 1043 and non-profit stations numbered 499. Of the for-profit stations, 781 stations or 74.8% were held by group owners, defined as 2 or more stations owned by the same corporate holding company. The remaining 262 stations were singly-owned stations. The breakdown between for-profit and non-profit stations, and group-owned versus singly-owned stations is shown in Table I, presented at the end of this report.

Table II categorizes TV stations by owner type. Of the for-profit TV stations censused, 64.6 percent are closely-held stations, either (1) by a sole proprietor, (2) by a single-majority shareholder, (3) majority family-owned or (4) majority-owned by a small (less than six) number of individual shareholders. Family-owned stations are those where five or fewer family members hold more than 50 percent ownership interest in a particular station. Closely-held stations are similarly defined but without the family-membership requirement. In contrast, only 20.1 percent of for-profit stations are categorized as widely-held, where typically any one shareholder would hold only a small percent of ownership in the station. These percentages exclude stations which may be closely or widely held in the context of a general partnership (GP), limited partnership (LP) or limited liability corporation (LLC) ownership structure.

As well, 4.2 percent of TV stations are organized as GPs, 8.8 percent as LPs and 1.0 percent as LLCs. Finally of the remaining stations, 5 are international TV stations and 8 are currently in receivership.

Separate results for group-owned and singly-owned stations are given in Table III. As shown in the table, group-owned stations tend to have less concentrated ownership, with 20.4 percent of these stations widely held, while only 6.8% of singly-owned stations are widely-held.

V. Voting Shareholders as Cognizable Interests

The Commission currently attributes ownership to stockholders with 5 percent or more of voting rights in a broadcast station. Under consideration in the NPRM is a proposed increase in the attribution benchmark for voting stockholders from its current level at 5 percent to a 10 percent benchmark. Of interest is the impact of a change in the attribution benchmark on the number of attributable owners.

The distribution of ownership interests that are attributable under the 5 percent rule is given next. The number of equity holders in the 1 percent to 5 percent range is also given, although with the caveat that non-attributable interests are voluntarily reported and may undercount the true number. The table excludes "passive" shareholders, single-majority shareholders, and partnership interests, which are governed by separate attribution rules. These groups will be separately analyzed below.

Table A
Distribution of Non-Passive Ownership Claims

Ownership Range	Number	Percent
1% - < 5%	274	†
5% - <10%	438	37.5%
10% - <15%	183	15.7%
15% - <20%	129	11.1%
20% - ≤50%	417	35.7%
50% - 100%	0*	0.0%
Total attributable	1167	100%

† Not currently attributable. Also, D&Os holding less than 1 percent equity are not reported.
*Single-majority shareholders are analyzed below.

The table indicates that among attributable shareholders falling under the current 5% rule, 37.5 percent have ownership interests between 5 percent and 10 percent, 15.7 percent with interests between 10 percent and 15 percent, 11.1 percent with interests between 10 percent and fifteen percent and 35.7 percent with interests between 20 percent and 50 percent. Interestingly, the largest concentrations of ownership are in the 5 percent to 10 percent and 20 percent to 50 percent categories. Under the proposed change in the attribution benchmark from 5 percent to 10 percent, approximately 37.5 percent of currently attributable owners would become non-attributable.

Of additional interest is the impact of proposed rule changes on the number of attributable owners per broadcast station. The following table gives the distribution of the number of attributable owners per broadcast TV station under the current 5 percent benchmark and under the proposed 10 percent benchmark.

Table B
Distribution of Number of Attributable Owners Per Station
Under 5 Percent and 10 Percent Benchmarks for Non-passive Investors

Per Station Number of Attributable Owners	Current 5 Percent Benchmark	Proposed 10 Percent Benchmark
0*	81	134
1	41	27
2	67	92
3	56	66
4	38	43
5	43	19
6	24	3
7	16	5
8	18	0
9	0	0
10	1	0
11	1	0
12	3	0
Total stations	389	389

* D&Os holding less than 1 percent equity are excluded.

The table indicates that the number of stations with no attributable owners (except directors and officers) would increase from 81 to 134, or by 65.4 percent.

VI. Voting Stock: Passive Investors

A less-restrictive 10 percent attribution benchmark is currently set for certain institutional investors thought to be restricted by law or fiduciary responsibility from active involvement in station operations. These so-called "passive" investors include bank trust departments, mutual funds and insurance companies. Because of their passive status, the Commission prohibits these investors from serving as directors or officers of the broadcast station, or from attempting to otherwise influence station operations.

The distribution of ownership claims for passive investors, excluding partnerships and single-majority stockholder stations, is given next.

Table C
Distribution of Passive Ownership Claims

Ownership Range	Number	Percent
1% - < 5%	0	†
5% - <10%	28	†
10% - <15%	1	6.7 %
15% - <20%	4	26.7 %
20% - ≤50%	10	66.7%
50% - 100%	0*	0.0%
Total attributable	15	100%

† Not currently attributable.
*Single-majority shareholders are analyzed below.

As given in the table, the reported number of passive investors is relatively small, with only 43 such institutional investors reported in total for these stations. Of these 43, only 15 hold attributable equity interests. With the proposed relaxation of the attribution benchmark to 20 percent, 5 of the currently attributable interests would become non-attributable. As well, the largest number of passive investors fall in the 5 percent to 10 percent range.

Despite the small number of passive institutional investors, some of these do in fact have large equity stakes in broadcast stations. For example, one passive investor owns 50% of the parent company of a licensee.

The following table gives the distribution of the number of attributable owners under the current 10 percent and under the proposed 20 percent benchmark for passive investors.

Table D
Distribution of Number of Attributable Owners Per Station
Under 10 Percent and 20 Percent Benchmarks for Passive Investors

Per Station Number of Attributable Owners	Current 10 Percent Benchmark	Proposed 20 Percent Benchmark
0	376	381
1	11	6
2	2	2

VII. Voting Stock: Other Institutional Investors

Institutional investors not considered to be passive investors include commercial banks (excluding trust departments), investment banks, brokerage firms and pension funds. These investors are not judged to be restricted by law or fiduciary responsibility from involvement in broadcast operations, and are subject to the 5 percent attribution benchmark of other non-passive voting shareholders. No change is currently proposed for these passive investors in the NPRM.

The distribution of ownership interests for non-passive institutional investors is given next.

Table E
Distribution of Ownership Interests of
Non-Passive Institutional Investors

Ownership Range	Number	Percent
1% - < 5%	9	-
5% - <10%	16	33.3%
10% - <15%	8	16.7%
15% - <20%	7	14.6%
20% - ≤50%	13	27.1%
50% - 100%	4	8.3%
Total TV stations	57	100.0%

As with passive investors, the number of reported non-passive institutional investors in broadcast stations is relatively small. With the proposed relaxation to 10 percent benchmark, 16 or 33.3

percent of these would become non-attributable.

Despite their small number, some non-passive institutional owners have large interests in broadcast stations. For example, one bank owns 100 percent of the parent company of three TV broadcast licenses. As well, a venture capital subsidiary owns 72.05% of the parent company of two TV licensees.

VIII. Single-Majority Shareholder

Single-majority shareholder investments are those where a single stockholder controls more than 50 percent of the voting interest in the licensee. All other shareholders in this case are non-attributable, regardless of their percent ownership, since the single-majority shareholder is thought to hold operational control.

As given in Table II, a total of 308, or 30.5% of for-profit TV stations, are single-majority shareholder owned. The following table lists the distribution of voting shares for these licensees falling under the single-majority shareholder rule. Sole proprietorships and sole owners are listed as 100 percent.

Table F
Distribution of Ownership Interests in Single-Majority Shareholder Licensees

	Non-Passive Investors		Passive Investors	
Ownership Range	Number	Percent	Number	Percent
1% - < 5%	74	9.9	0	0.0 %
5% - <10%	121	16.2	0	0.0 %
10% - <15%	101	13.5	2	16.7 %
15% - <20%	52	7.0	1	8.3 %
20% - ≤50%	93	12.5	7	58.3 %
50% -<100%	305	40.9	2	16.7 %
100%	162	40.9	0	0.0 %
Total	746		12	

The distribution of non-attributable interests (excluding D&Os with less than 1 percent stake) in single-majority shareholder licensees is reasonably uniform. In particular, the results do not indicate a large block of "49 %" shareholders, who might have chosen to use the single-majority shareholder rule to circumvent attribution, while holding a large stake in the licensee.

Some instances of single-majority shareholders involve institutional owners with large stakes. For example, three licensees are 90.0% owned by trust agreement. As cited above, 5 licensees are closely held by non-passive institutional investors.

IX. Non-voting Stock

The attribution rules for equity interests in a broadcast station apply only to those stockholders holding voting control. Common or preferred stockholders without voting rights are exempted from attribution under the premise that their lack of voting control precludes their ability to affect management or operation of a broadcast station. Non-voting stock is a common mechanism for companies to raise equity capital without sacrificing voting control. Differential voting rights includes companies with dual or multiple classes of stock where one class of stock carries greater voting rights than other classes of stock. For purposes of attribution, the attributable equity interests is determined by the percent of total voting rights held by any individual. In total, the study found 79 instances of non-voting interests in TV broadcast stations.

X. Partnership Interests

Under the attribution rules governing partnership interests, general partners are always attributable, regardless of the extent of their ownership stake. Limited partners are likewise attributable as owners, regardless of their ownership percentage, unless the licensee files a certification statement that the limited partner is "insulated", i.e., non-active in the management or operation of the licensee. This special treatment of general and limited partners derives in part from the special role that general partners play as both owners and managers. In contrast, limited partners are restricted from involvement in operational control, and can be forced to give up limited liability rights if they participate in operation or management decisions. Therefore, in contrast to corporations, the separation of ownership and control is weaker for general partners, who perform both functions and stronger for limited partners, who may lose limited liability rights if separation is not maintained.

As presented in Table II, 42 in number, or 4.2% of for-profit tv stations are organized as general partnerships, and 89 in number or 8.8% are limited partners. In addition, another 42 of for-profit TV stations have a limited partnership involved as an equity holder.

The following table presents the distribution of interests in stations organized as general or limited partnerships. Excluded are all non-partnership for-profit stations, including those broadcast stations where one of the equity owners may be a limited partnership.

Table G
Distribution of Ownership Interests in General and Limited Partnerships

Ownership Range	General Partners	Percent	Limited Partners	Percent
1% - < 5%	51	21.3	29	19.7 %
5% - <10%	13	5.4	46	31.3 %
10% - <15%	9	3.8	44	30.0 %
15% - <20%	11	4.6	0	0.0 %
20% - ≤50%	72	30.0	28	19.0 %
50% - 100%	84	35.0	0	0.0 %
Total	240		147	

The results indicate that the majority of general partners have either small (less than 5 percent) or very large (greater than 20 percent) ownership stakes in the licensee.

The ownership files investigated also indicate that virtually all limited partners claim insulation of their partnership claim.

XI. Limited Liability Companies and Other New Business Forms

A limited liability company (LLC) is a new hybrid form of ownership that combines advantages of both a limited partnership and corporations. Like limited partnerships, profits in an LLC are passed directly through to investors and therefore taxed only as personal income, which avoids the double taxation of corporations. However, unlike limited partnerships, LLC members may exercise management control without threat of loss of limited liability.

The available ownership records show a total of 10 stations organized as LLCs and 1 station partially owned by an LLC.

Table I: Distribution of For-profit TV Stations Across Type

1994/95 Ownership-report Data

A. Total Profit and Non-profit Stations

For-profit TV stations:

	Numbers	Percent
Group-owned stations	781	74.8%
Single-owned stations	262	25.2%
Total For-profit stations	1043*	100.0%
Number of TV Group-owners	180	

Not-for-profit TV stations

Total Stations	499*

Total Number of Stations	1542

* This break-out between for-profit and not-for-profit stations reflects the designation self-reported by licensees on their annual ownership report filed with the Commission. The number of not-for-profit stations exceeds the number of non-commercial stations (363 as of 11/20/95, *Broadcasting & Cable*) by some 130 stations, representing commercial-band stations that are not-for-profit.

Table II: For-profit TV stations by station type

1994/95 Ownership-report Data

B. Aggregate for-profit station results

Type of Ownership	Number of Stations	Percent
Single-owner stations	158	15.7%
Single-majority-shareholder stations	308	30.5%
Family-owned stations	72	7.1%
Closely-held stations	114	11.3%
Widely-held stations	203	20.1%
General partnerships (GP)	42	4.2%
Limited partnerships (LP)	89	8.8%
Limited liability corporations (LLC)	10	1.0%
International Stations	5	0.5%
In Receivership	8	0.8%
	1009	100%

Table III: Group-owned and singly-owned TV station results

1994/95 Ownership-report Data

Type of Ownership	Group-Owned Stations Percent	Singly-Owned Stations Percent
Single-owner stations	15.3%	22.9%
Single-majority-shareholder stations	32.2%	30.5%
Family-owned stations	7.9%	4.4%
Closely-held stations	10.2%	18.9%
Widely-held stations	20.4%	6.8%
General partnerships (GP)	4.0%	3.2%
Limited partnerships (LP)	8.5%	9.6%
Limited liability corporations (LLC)	1.1%	0.4%
International Stations	0.0%	2.0%
In Receivership	0.6%	1.6%

APPENDIX C: List of Commenting Parties

Commenters

AFLAC Broadcast Group, Inc.
Association of Independent Television Stations, Inc.[111]
Big Horn Communications, Inc.
California Public Employees' Retirement System[112]
Capital Cities/ABC Inc.
Capital Group Companies, Inc.
CBS Inc.
Communications Corporation of America
Cook Inlet Region, Inc.
EZ Communications, Inc.
Fox Television Stations Inc. & Fox Broadcasting Company
Freedom of Expression Foundation, Inc.
Freeman Spogli & Co., Inc.
Goldman Sachs Group, L.P.
Investment Company Institute
Local Station Ownership Coalition
M/C Partners, The Blackstone Group, & Vestar Capital Partners
Mid West Family Stations
National Association of Black Owned Broadcasters
National Broadcasting Company, Inc.
Network Affiliated Stations Alliance
New World Communications Group Incorporated
Qwest Broadcasting L.L.C.
Silver King Communications, Inc.
Tribune Broadcasting Company
Turner Broadcasting System, Inc.
Westinghouse Broadcasting Company

Reply Commenters

AFLAC Broadcast Group
Association of Independent Television Stations, Inc.[113]
CBS Inc.
EZ Communications, Inc.

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[111] This commenter is now known as Association of Local Television Stations, Inc.

[112] Filed late, with an accompanying Motion.

[113] This commenter is now known as Association of Local Television Stations, Inc.

Fox Television Stations Inc. and Fox Broadcasting Company
General Electric Capital Corporation
Goldman Sachs Group, L.P.
LIN Television Corporation
Local Station Ownership Coalition
Malrite Communications Group, Inc.
M/C Partners, The Blackstone Group, and Vestar Capital Partners
Minority Media and Telecommunications Council
Network Affiliated Stations Alliance
Pappas Stations Partnership
Smith Broadcasting Group, Inc.
Tribune Broadcasting Company

SEPARATE STATEMENT
OF
COMMISSIONER JAMES H. QUELLO

RE: Review of the Commission's Regulations Governing Television Broadcasting; ("Local Ownership"), Second Further Notice of Proposed Rulemaking

Broadcast Television National Ownership Rules and Review of the Commission's Regulations Governing Television Broadcasting ("National Ownership"), Notice of Proposed Rulemaking

Review of the Commission's Regulations Governing Attribution of Broadcast Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; Reexamination of the Commission's Cross-Interest Policy ("Attribution"), Further Notice of Proposed Rulemaking

Today the Commission has adopted three notices seeking further comment on various aspects of its television ownership rules, specifically focusing on rules pertaining to local ownership issues, national ownership issues, and the attribution of broadcast interests. I believe that these three notices identify appropriate questions in a relatively neutral manner, and I write separately in this statement to highlight issues from each item that I consider of particular importance.

The Commission's local ownership rules currently prohibit a person or entity from having interests in two television stations whose Grade B signal contours overlap. It is significant that today's Second Further Notice seeks comment on a potential change to a new standard for authorizing common ownership of television stations that are in separate DMAs (Nielsen's Designated Market Area) and whose Grade A contours do not overlap. While I am interested in seeing the response of commenters on this issue, I believe that the proposal is potentially useful to the extent that it applies a definition of a broadcasting market commonly used for advertising purposes. In this regard, the combination of the DMA and Grade A information could yield a more actual reflection of a "local market", including the unique market characteristics east and west of the Mississippi River, as well as the influence of cable carriage upon actual viewing practices. I also am pleased that the local ownership item enables the Commission to move forward, during the interim period pending the outcome of this proceeding, in processing pending assignment or transfer applications, conditioned on the stations' compliance with the outcome of the proceeding.

I would also note that the DMA/Grade A proposal is intended as an analytically reasonable step in defining local markets for broadcasting purposes, and is not intended to be applied so as to become a more restrictive standard. Accordingly, I am hopeful that commenters will identify any specific instances where particular markets or counties might experience unintended consequences under the new standard.

As another local ownership issue, the radio-television cross-ownership rule, or the one-to-a-market rule, generally prohibits joint ownership of a radio and television station in the same local market. With respect to the Commission's waiver policy for this rule, the Second Further Notice seeks comment on potential changes to the "five factors" typically evaluated in order to foster competition and diversity. In this context, to the extent that the Commission finds it is necessary to consider market share information in reviewing requests for waivers, I believe it is important for the Commission to analyze the appropriate definition of the relevant advertising market, as well as the necessary level of data that firms should be required to provide in order to demonstrate that common ownership would meet market share criteria. It is useful to point out that since the passage of the 1996 Telecommunications Act, the radio marketplace continues to demonstrate increases in the number of stations with a slight trend toward moderate decreases in the number of owners.[1] As a result, I previously have stated that to the extent media outlets are increasing rapidly and becoming more closely related to other communications services, we must carefully weigh the longer term impact of finding markets to be "concentrated" based solely on radio advertising, as opposed to all advertising, sources in a community. [2]

Concerning national ownership issues, I take special interest in the treatment of the discount attributed to UHF stations in calculating a broadcasting network's national audience reach. I believe it is appropriate, at this time, for the Commission to defer consideration of the issue of the UHF discount until the Commission's biennial review of the broadcast ownership rules that will be conducted in 1998 pursuant to the 1996 Act. In addition to varying station valuations between UHF and VHF stations as well as the evolving role of UHF stations in emerging networks, I believe that it is necessary to wait in order to assess more carefully the impact of digital allocations on the role of UHF stations in the video marketplace.

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[1] Since March 1996, the number of commercial stations in the top 50 markets has increased nearly 2%, while the total number of owners of commercial stations in the top 50 markets have decreased over the same period by approximately 3.7%. See BIA MasterAccess Database; BIA Publications Inc., Chantilly, VA, 22021.

[2] See Jacor Communications, Inc., FCC 96-380 (released September 17, 1996), Statement of Commissioner James H. Quello, Concurring in Part.