

e. **Public Interest and Unmet Needs**

54. Finally, we seek comment on the circumstances in which the Commission should grant a waiver if the applicant demonstrates that the public interest benefits that will flow from a waiver would include public interest programming that would not be provided were the stations owned separately. The Commission has on numerous occasions taken into account an applicant's programming enhancements in granting permanent and temporary waivers of the television duopoly rule although these waivers typically involved only limited amounts of contour overlap between the stations.<sup>96</sup> In *Paramount*, for example, we found that a waiver of the duopoly rule was not only in the public interest, but consistent with the objectives of the duopoly rule, to foster diversity and economic competition.<sup>97</sup> We seek comment on how we should consider public interest programming enhancements in granting permanent waivers of the television duopoly rule.

55. We also seek comment on how, if this waiver criterion were adopted, programming benefits would fit into our analysis of the public interest. Should we rely only on types of programming that the Commission has traditionally considered "public interest" programming, such as children's educational programming, news, public affairs and access of political candidates to the airwaves? Should we permit broadcasters to identify additional types of programming that would support a waiver, such as programming that serves the needs of an underserved segment of the local market or underprovided public interest programming? Should

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<sup>96</sup> See, e.g., *Brisette Broadcasting*, 11 FCC Rcd 6319 (1996) (commitment to expand newscasts on its television stations by at least one hour each weekday; expand community programming with emphasis on local live coverage of community events; employ closed-captioning technology; retain an educational consultant to help develop additional meaningful programming for various age groups in the community); *Stockholders of CBS*, 11 FCC Rcd 3733, 3741, 3762 (1996) (commitment to augment the amount of children's educational programming broadcast over the CBS network and its owned and operated stations; increase by nearly one-third the amount of locally originated news programming on one station; establish a news bureau in New Jersey's capital; linking WCBS-TV to a network of New Jersey-based transmission facilities for live remote broadcasts); *Station Partners*, 10 FCC Rcd 12383 (1995) (increasing locally originated news programming on the acquired station from 14½ hours to 27 hours per week, including an increase of at least 50 percent in the amount of locally originated news reports of special interest to New Jersey; proposing to operate a news bureau in Trenton and to assign a full-time reporter to New Jersey issues).

<sup>97</sup> *Paramount Station Group of Philadelphia*, 10 FCC Rcd 10963, 10967 (1995) ("*Paramount*") (adding a ½ hour public affairs program each week focusing on topics of interest to African-American and other minority residents of New Jersey; establishing a full-time reporter dedicated exclusively to coverage of issues and events pertaining to Camden and central and southern New Jersey) citing *Multiple Ownership Rules*, 2 Rad. Reg.2d at 1476-1477; see also *H & C Communications*, 9 FCC Rcd at 146 (a duopoly rule waiver based upon programming representations is consistent with the objectives of the multiple ownership rules); *Station Partners*, 10 FCC Rcd at 12388 (a duopoly rule waiver based upon programming representations is consistent with the objectives of the duopoly rule).

we follow up on the representations made by licensees in their waiver requests? Finally, we seek comment on whether it would be preferable to consider this waiver criterion, if at all, only in conjunction with one or more of the other criteria discussed above.

### 3. Waivers Pending the Outcome of this Proceeding

56. There has been an increase in broadcast transactions since the passage of the 1996 Act, with a number of these involving requests for waiver of our ownership rules.<sup>98</sup> Our current television duopoly rule will, of course, remain in place pending the outcome of this proceeding, but we take this opportunity to provide parties guidance regarding our policy in waiving the rule during this interim period. We hope that doing so will facilitate planning for these transactions as well as staff processing of license transfer and assignment applications.

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

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

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<sup>98</sup> See "Ownership Rules on the Way," *Broadcasting & Cable*, Sept. 9, 1996, at 8. See also *Applications of Capital Cities/ABC and The Walt Disney Co.*, 11 FCC Rcd 5841, 5872 (1996) (quoting *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)) in which the Commission granted a permanent and a temporary waiver of the duopoly rule and *Brisette Broadcasting*, 11 FCC Rcd 6319, in which the Commission granted three temporary waivers.

### III. Radio-Television Cross-Ownership Rule

59. The radio-television cross-ownership rule, or the one-to-a-market rule, generally forbids joint ownership of a radio and a television station in the same local market.<sup>99</sup> The rule seeks to promote competition as well as viewpoint and programming diversity in broadcasting.<sup>100</sup> In 1989, we amended the rule to permit, on a waiver basis, radio-television mergers in the Top 25 television markets if, post-merger, at least 30 independently owned broadcast voices remained, or if the merger involved a failed station or if the merger satisfied a group of five other criteria.<sup>101</sup> Waivers premised on the first two criteria -- large market size or financial failure -- were presumed to be in the public interest, while waivers based on the "five factors" were evaluated based on the strength of the applicant's individual showings.

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

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<sup>99</sup> All licensees are permitted to own one AM radio station and one FM radio station in the same market (*i.e.*, an AM-FM combination). The geographic scope of the rule for television licensees is the ADI television market whereas the geographic scope of the rule for radio licensees is the television metropolitan market.

<sup>100</sup> See *Amendment of Sections 73.35, 73.240 and 73.636 of the Commission Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations, First Report and Order*, 22 F.C.C.2d 306, 310, 313 (1970); *TV Ownership Further Notice* at 3578.

<sup>101</sup> These criteria include the potential public service benefits of joint operation of the facilities involved in the merger, the types of facilities involved, the number of stations already owned by the applicant, the financial situation of the station(s), and the nature of the post-merger market in light of our diversity and competition concerns. See *Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules*, MM Docket No. 87-7, 4 FCC Rcd 1741, 1753 (1989).

in those markets that have a sufficient number of remaining alternative suppliers/outlets as to ensure sufficient diversity and competition.<sup>102</sup>

61. Commenting parties responded with a variety of positions ranging from recommending repeal of the rule,<sup>103</sup> to relaxation of the rule,<sup>104</sup> to retention of the rule.<sup>105</sup> Parties favoring repeal argue that any market power problems are adequately addressed by the individual radio and television ownership rules as well as by the antitrust laws.<sup>106</sup> Additionally, they point to the possible increase in programming diversity to be derived from the savings available from joint ownership.<sup>107</sup> They also point to the Commission having granted essentially all waiver applications under the rule.<sup>108</sup> Several comments advocating relaxation of the rule would do so only if the Commission required that a minimum number of independently owned voices remained after a merger to protect diversity.<sup>109</sup> Those who would retain the rule offer a variety of reasons including the alleged arbitrariness of any mandated number of post-merger independently owned voices, the loss of broadcasting employment due to repeal, and reduced public affairs and news programming on radio as a result of increased numbers of television-radio mergers.<sup>110</sup>

62. Since those comments were received, Congress passed the 1996 Act. The 1996 Act affects our radio-television cross-ownership rule in at least two ways. First, Section 202(d) of that Act directs the Commission to extend our radio-television cross-ownership waiver policy

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<sup>102</sup> *TV Ownership Further Notice* at 3580-81.

<sup>103</sup> See Media Institute Comments at 12; Group W Comments at 30-34; CBS Comments at 63; Golden Orange Comments at 14-17; Texas Television Comments at 3, 17; CCA Comments at 21; Capital Cities/ABC Comments at 25; Capital Broadcasting Comments at 8; WYDO-TV Comments at 5-6; Citicasters Comments at 1; Jet Broadcasting Comments at 5-10; Smith Comments at 6; FOE Comments at 17; Cedar Rapids Comments at 10.

<sup>104</sup> See New World Comments at 27.

<sup>105</sup> See BCFM Comments at 40; AFTRA-National Comments at 11; AFTRA-Pittsburgh Comments at 1; AFTRA-Los Angeles Comments at 1.

<sup>106</sup> See Capital Cities/ABC Comments at 25; Capitol Broadcasting Comments at 8; CBS Comments at 63; Cedar Rapids Comments at 10; Citicasters Comments at 1.

<sup>107</sup> Capitol Broadcasting Comments at 8.

<sup>108</sup> Citicasters Comments at 5-6 (citing 42 reported cases decided between 1989 and 1995).

<sup>109</sup> CBS Comments at 63; Cedar Rapids Comments at 10; Citicasters Comments at 10.

<sup>110</sup> AFTRA-NY Comments at 6; AFTRA-National Comments at 11; BCFM Comments at 32, 34.

to the Top 50 rather than the top 25 television markets ". . . consistent with the public interest, convenience and necessity." Second, the 1996 Act significantly liberalized the local radio ownership rules. Prior to the 1996 Act, the largest number of radio stations one firm could own in any market was four -- two AM and two FM stations.<sup>111</sup> As modified by the 1996 Act, however, our rules now allow one party to own up to 8 commercial radio stations in radio markets with 45 or more commercial radio stations. One party can own up to 7 commercial radio stations in radio markets with 30-44 commercial radio stations and as many as 6 commercial radio stations in radio markets with 15-29 commercial radio stations. For radio markets with 14 or fewer commercial radio stations, one party can own up to 5 commercial radio stations (provided that no party may own, operate or control more than 50% of the stations in the market).<sup>112</sup>

63. We consider the recent statutory changes to the local radio ownership rules to be significant enough to warrant further comment on our radio-television cross-ownership rule proposals outlined in the *TV Ownership Further Notice*. First, can the rule be eliminated based on a finding that radio and television stations are not substitutes? Thus far, several commenters advocated eliminating the rule because they asserted that radio and television were not substitutes and did not compete in the same markets.<sup>113</sup> Citicasters cited the difference in the demographics of the audiences, peak listening times and the selling of advertising.<sup>114</sup> However, studies by Economists Inc. and NERA asserted that radio and television and other media were economic substitutes in the local advertising and in the delivered programming markets.<sup>115</sup> We find the record is currently unclear regarding the appropriate relevant product market definition with respect to our competition and diversity concerns so we do not propose to repeal the radio-television cross-ownership rule at this time. We welcome, however, additional comment and any available empirical evidence on this issue.

64. Second, even if we eventually consider television and radio stations substitutes, can the rule be eliminated because the respective radio and television ownership rules alone can be relied upon to ensure sufficient diversity and competition in the local market? Citicasters and

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<sup>111</sup> 47 C.F.R. § 73.3555(a)(1)(ii) (1995).

<sup>112</sup> See *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, Order, 61 Fed. Reg. 10689.

<sup>113</sup> See *Capital Cities/ABC Comments* at 26; *Citicasters Comments* at 7-8; *Jet Comments* at 6; *Viacom Reply Comments* at 9.

<sup>114</sup> *Citicasters Comments* at 7-8.

<sup>115</sup> *NERA Study* at 2; *EI Study* at 89; see also *Hill Radio Comments* at 1.

Capital Cities/ABC supported elimination of the rule on this basis.<sup>116</sup> We solicit additional comment on this issue given that, as described above, the local radio ownership rules have been substantially revised with the passage of the 1996 Act.

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

66. Consistent with Section 202(d) of the 1996 Act, we propose, at a minimum, to extend the Top 25 market/30 voice waiver policy to the Top 50 markets. The 30 independently owned voices test has proven effective in safeguarding our diversity and competition objectives in the Top 25 markets. Our experience in processing waiver requests beyond these markets further indicates that application of the 30 independently owned voices test to the Top 50 markets should also be sufficient to safeguard diversity and competition in markets 26-50. We consequently tentatively conclude that extending this test to the Top 50 markets would be consistent with the public interest, convenience and necessity. Thus, an applicant would be presumptively entitled to a waiver to obtain one AM, one FM, and one television station in a Top 50 market as long as 30 independently owned voices remained after the merger. The *TV Ownership Further Notice* made a similar proposal and most parties were in apparent agreement with at least taking this step.<sup>117</sup> We regard this as a minor change in our rules because the independently owned 30 voice requirement would remain the primary restraint on radio-television mergers.

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

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<sup>116</sup> Citicasters' Comments at 1; Capital Cities/ABC Comments at 25.

<sup>117</sup> Indeed, many commenters were in favor of eliminating the rule altogether. Citicasters argued that if its suggestion for elimination of the rule is rejected, the Commission should at least extend its Top 25 waiver standard to all markets.

68. Initially, we ask whether the Top 25 market/30 voice presumptive waiver policy should be extended to *any* television market with the required minimum number of independently owned voices, effectively converting the existing market and remaining independently owned voices test into simply a remaining independently owned voices standard. Previously, Citicasters supported extending the presumptive waiver policy to all television markets.<sup>118</sup> Citicasters argued that the public interest would be served by waivers of the radio-television cross-ownership rule in virtually all cases.<sup>119</sup> Hill Radio, BCFM, AFTRA-National, and AFTRA-Pittsburgh opposed any modification to the rule.<sup>120</sup>

69. In addition, we question whether the presumptive waiver policy should be extended to apply not only to entities that seek to own one AM, one FM, and one television station, but to entities that seek to own one television station and more than one FM and/or more than one AM radio station. In 1992 we deferred consideration of whether a television licensee could, under our presumptive waiver policy, acquire more than one radio station in a community in the same service preferring instead to address the issue in our television ownership proceeding.<sup>121</sup> More recently, the D.C. Circuit, in dicta, questioned whether there is a sufficient public interest rationale for not applying the presumptive waiver policy to proposed radio-television combinations involving more than one radio station in the same service where the combination would otherwise satisfy the Top 25 market/30 voice test.<sup>122</sup>

70. In light of the court's observation and the new radio station ownership limits, which permit a radio station licensee to own up to eight commercial radio stations in one market, we seek comment on whether we should amend the radio-television cross-ownership rule or our presumptive waiver policy to permit joint ownership of a television station and more than one commercial radio station in the same service in a market. If so, should there be any limit on the number of radio stations that can be approved under such an approach? In modifying the local radio limits, Congress found it beneficial to allow greater concentration in local radio ownership, at least when a cross-ownership situation is not involved. We ask whether these

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<sup>118</sup> Citicasters, however, also advocated reducing the number of independently owned voices in conjunction with the extension. Citicasters Comments at 9-10.

<sup>119</sup> *Id.* at 5-6.

<sup>120</sup> BCFM Comments at 40; AFTRA-New York Comments at 6; and AFTRA-Pittsburgh Comments at 1; *see also* Hill Radio Comments at 2.

<sup>121</sup> *See Revision of Radio Rules and Policies, Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, MM Docket No. 91-140, 7 FCC Rcd 6387, 6394 n.40 (1992). Since that time, we have processed such requests under our five-factor, case-by-case waiver policy. *Id.*

<sup>122</sup> *See WSB v. FCC*, 85 F.3d 695, 701 (D.C. Cir. 1996).

benefits also extend to the situation where an entity that already owns a television station in the market also seeks to acquire the full complement of radio stations that would otherwise be allowed under the new radio limits.<sup>123</sup>

71. We further ask whether we should revise the minimum required number of independently owned voices that must remain after a proposed transaction. The *TV Ownership Further Notice* proposed to allow radio-television combinations in markets which had a sufficient number of alternative suppliers/outlets remaining to ensure diversity and competition.<sup>124</sup> We received several comments supporting a reduction in the number of independently owned voices that should remain after a proposed transaction. CBS asserted that the efficiencies that result from co-ownership are passed on to the public and should be broadly available in markets with at least 15 outlets because the market would not be highly concentrated. Therefore, CBS recommended reducing the number of minimum independently owned voices remaining in a market to 15 instead of 30.<sup>125</sup> Cedar Rapids and Citicasters observed that the public's access to alternative providers as a result in the growth in media supported a reduction in the required number of independently owned voices to 20.<sup>126</sup>

72. Although these comments support a reduction in the required number of independently owned voices, we must determine what media should be counted towards meeting the required number of independently owned voices. In the *TV Ownership Further Notice*, we tentatively concluded that cable should be counted but that other electronic media such as Multipoint Multichannel Distribution Service (MMDS), videocassette recorders (VCRs), and Open Video Systems (OVS) should not be counted in our diversity analysis.<sup>127</sup> We invite further comment on this view and on the manner in which multichannel video providers should be counted, if at all, for these purposes. In addition, even if we eventually conclude that radio and television are substitutes, should we consider each radio station as the equivalent of a broadcast television station for purposes of counting the independently owned voices?<sup>128</sup> Thus, we invite comments concerning not only what should be counted to reach the required number of independently owned voices, but how counting of those independently owned voices should take

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<sup>123</sup> CBS advocated this position before enactment of the 1996 Act and the resulting changes to our local radio ownership rules. CBS Comments at 63

<sup>124</sup> *TV Ownership Further Notice* at 3581.

<sup>125</sup> CBS Comments at 63 (also advocated extending the waiver policy beyond the Top 25 markets).

<sup>126</sup> Cedar Rapids Comments at 10; Citicasters Comments at 10-11.

<sup>127</sup> *TV Ownership Further Notice* at 3556-3558.

<sup>128</sup> See *TV Ownership Further Notice* at 3558 and *supra* para. 63.

place. We further seek comment on the treatment of television LMAs in assessing the number of independent voices in one-to-a-market cases. In the event television LMAs are deemed attributable in our attribution proceeding, we believe that both the brokering and brokered stations in an LMA arrangement would be counted as a single voice. We would expect this to be the case whether or not the LMA arrangement is grandfathered.<sup>129</sup> We invite comment on these issues.

73. Finally, we ask whether the "five factors" should be changed or refined to be more effective in protecting our competition and diversity concerns. Under this standard, we make a public interest determination on a case-by-case basis currently using the following five criteria: 1) the potential public service benefits of common ownership of the facilities, such as the economies of scale, cost savings and programming and service benefits; 2) the types of facilities involved; 3) the number of media outlets already owned by the applicant in the relevant market; 4) any financial difficulties involving the stations(s); and 5) issues pertaining to the level of diversity and competition within the affected market.

74. We note that since these factors were articulated in 1989, many significant changes have taken place in the broadcast marketplace and regulatory environment. For example, the local ownership rules for radio have been liberalized substantially; new radio and television (full-power and low power) stations have gone on the air; and there have been changes in capital markets. As a result, the market for television and radio stations has been extremely active and ownership patterns are changing. Competitive media are increasing with the advent of DBS and MMDS; and there may have been changes in the broadcast advertising markets, as well.

75. We seek comment on whether we should use different criteria in lieu of or in addition to the current five factors to help us determine whether a particular application serves the public interest. Specifically, what kinds of factors should be weighed in evaluating the effect of a proposed change on the public? Should we continue to weigh each of the factors currently used?

76. Are there other, new factors that would help us evaluate changes to market concentration resulting from the proposed transaction and to determine whether it raises anti-competitive or diversity concerns? One possibility would be to examine audience shares and advertising shares that an entity would obtain if its transaction were approved. We ask for comment on whether audience share information is useful and appropriate for our analysis of diversity. Is there a way we can define independent "voices" that would make our diversity analysis more accurate? For example, should we require that only those "voices" be counted

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<sup>129</sup> See *infra* Section IV.

that overlap, to a significant extent, the service area of the proposed combination? If so, how would we measure such an overlap area in a way that ensures an accurate reflection of the local market?

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

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

79. We note that our current radio-television cross-ownership rule will remain in place pending the resolution of this proceeding. Waiver requests submitted in the interim will be processed pursuant to our current criteria for evaluating such requests. The Chief of the Mass Media Bureau will continue to have delegated authority to rule on uncontested one-to-a-market waiver requests that involve stations in the Top 100 television markets that are clearly consistent with prior Commission precedent, *i.e.*, which present no new or novel issues.<sup>130</sup> One-to-a-market waiver requests not falling in this category will be referred to the Commission. We expect that waivers falling in this latter category that are granted by the Commission will be conditioned on the outcome of this proceeding.

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<sup>130</sup> *Louis D. DeArias*, 11 FCC Rcd 3662, 3667 (1996) (setting forth delegated authority in one-to-a-market cases, and granting permanent, unconditional waiver to allow common ownership of one television station, two FM stations, and two AM stations in the 78th largest television market).

#### IV. Television Local Marketing Agreements

80. A television local marketing agreement ("LMA") is a type of contract in which the licensee leases blocks of its broadcast time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support the programming.<sup>131</sup> Currently, the Commission does not attribute television LMAs for local and national ownership purposes and so these relationships are not subject to our ownership rules. However, in the radio context, radio station ownership is attributed to any radio licensee who enters into an LMA with another radio station in the same market if the agreement involves the brokering of more than 15% of the station's weekly broadcast hours.<sup>132</sup>

81. In the previous notice, the Commission suggested that guidelines similar to those governing radio LMAs may be necessary with regard to television LMAs.<sup>133</sup> We also determined that such agreements, subject to some general Commission guidelines, can provide competitive and diversity benefits to both the brokering parties and to the public.<sup>134</sup> We tentatively proposed to treat LMAs involving television stations in the same basic manner as we did for radio stations.<sup>135</sup> That is, time brokerage of another television station in the same market for more than 15% of the brokered station's weekly broadcast hours would result in counting the brokered station toward the brokering licensee's national and local ownership limits.<sup>136</sup> Further, television LMAs would be required to be filed with the Commission in addition to the existing requirement that they be kept at the stations involved in an LMA.<sup>137</sup> Finally, we indicated that our television LMA guidelines would allow for "grandfathering" television LMAs entered into before the adoption date of the *TV Ownership Further Notice*, subject to renewability and transferability guidelines similar to those governing radio LMAs<sup>138</sup> as described more fully below in paragraphs 90 and 91.

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<sup>131</sup> *Id.* at 3581.

<sup>132</sup> *Revision of Radio Rules and Policies, Report and Order*, MM Docket No. 91-140, 7 FCC Rcd 2755, 2784 (1992), *clarified*, 7 FCC Rcd 6387 (1992), *further clarified*, 9 FCC Rcd 7183 (1994).

<sup>133</sup> *TV Ownership Further Notice* at 3583.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 3583-3584.

<sup>138</sup> *Id.* at 3584.

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

83. We will, however, decide in this proceeding how to treat *existing* television LMAs under any guidelines that are adopted that would attribute television LMAs to the brokering station. These television LMA grandfathering and transition issues will be especially significant issues if we do not modify our duopoly rules, because such an attribution provision would preclude television LMAs in any market where the time broker owns or has an attributable interest in another television station.<sup>139</sup>

84. In this regard, Section 202(g) of the 1996 Act states that "[n]othing in this section shall be construed to prohibit the origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission." We interpret this provision as clearly stating no more than that Section 202 of the 1996 Act shall not be construed to prohibit any television LMA that is in compliance with the Commission's rules. We do not regard Section 202(g) as limiting our ability to promulgate attribution rules under Title I and Title III affecting the status of television LMAs.<sup>140</sup> As a result, we do not see Section 202(g) of the 1996 Act as posing a legal restraint on our questions in the *TV Ownership Further Notice* as to 1) whether television LMAs in which a broker obtains the ability to program 15% or more of a broadcast television station's weekly broadcast output should be deemed an attributable interest (which will be decided in the attribution proceeding); and 2) whether grandfathering existing television LMAs from any applicable ownership rules that would follow from that attribution decision is appropriate.<sup>141</sup>

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<sup>139</sup> *Id.*

<sup>140</sup> Section 310(d) of the Communications Act requires the Commission to find that any "transfer of control" of any broadcast station serve the "public interest, convenience and necessity." 47 U.S.C. § 310(d). Section 4(i) of the Communications Act allows the Commission to "make such rules and regulations . . . as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Therefore, our authority to promulgate broadcast attribution criteria -- which essentially define "control" -- stems from these statutory provisions rather than Section 202 of the 1996 Act.

<sup>141</sup> *TV Ownership Further Notice* at 3583-84.

85. We recognize, however, that the language in the *Conference Report* to the 1996 Act appears to interpret Section 202(g) of the 1996 Act in a different manner with regard to television LMAs that predate February 8, 1996, the date of enactment of this legislation. The *Conference Report* states --

[Section 202(g)] grandfathers LMAs currently in existence upon enactment of this legislation and allows LMAs in the future, consistent with the Commission's rules. The conferees note the positive contributions of television LMAs and this subsection assures that this legislation does not deprive the public of the benefits of existing LMAs that were otherwise in compliance with Commission regulations on the date of enactment.<sup>142</sup>

The *Conference Report* suggests that the conferees intended to "grandfather" existing television LMAs. Although we do not interpret the statute as requiring that outcome, we believe that existing television LMAs entered into on reliance of the Commission's current policy should not be disrupted during the remainder of the current contract term. Indeed, we had a similar concern at the time of the *TV Ownership Further Notice* and so asked a series of questions as to whether television LMAs entered into before the adoption date of the *TV Ownership Further Notice* should be grandfathered with respect to ownership regulations.<sup>143</sup>

86. Most commenters who responded to our television LMA grandfathering queries supported grandfathering the agreements to some extent.<sup>144</sup> CCA supports grandfathering all existing agreements,<sup>145</sup> while Texas Television, Golden Orange and Louisiana Television maintain that television LMAs entered into before the effective date of applicable rules should be grandfathered.<sup>146</sup> MAC, Malrite and Brooks Broadcasting agreed with the Commission's proposal to grandfather television LMAs entered into before the adoption date of the *TV*

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<sup>142</sup> *Conference Report* at 164.

<sup>143</sup> *TV Ownership Further Notice* at 3584.

<sup>144</sup> See Golden Orange Comments at 2; Louisiana Television Comments at 3, 12-14; MAC Comments at 13-14; Texas Television Comments at 3, 12-14; Lee Enterprises Comments at 10; Jet Comments at 11; Malrite Comments at ii, 49-50; CCA Comments at ii, 31; Big Horn Comments at 8; Brooks Broadcasting Reply Comments at 8-9.

<sup>145</sup> See CCA Comments at 31.

<sup>146</sup> Texas Television Comments at 2, 12-14; Golden Orange Comments at 2; Louisiana Television Comments at 3, 12-14.

*Ownership Further Notice*.<sup>147</sup> Centennial advocated the grandfathering of all television LMAs that were entered into within 90 days of the adoption of the *TV Ownership Further Notice*.<sup>148</sup> Centennial further advocated a one-year sunset provision for these television LMAs that would result in the termination of the LMAs one year after the adoption date of the *TV Ownership Further Notice*.<sup>149</sup> Post-Newsweek completely opposed grandfathering existing television LMAs.<sup>150</sup>

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

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

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<sup>147</sup> MAC Comments at 13-14; Malrite Comments at 49-50; Brooks Broadcasting Reply Comments at 8-9.

<sup>148</sup> Centennial Comments at 2.

<sup>149</sup> *Id.*

<sup>150</sup> Post-Newsweek Comments at 1, 8.

LMAs until the attribution issue is resolved. We consequently believe this grandfathering approach would be appropriate. We reserve the right, however, to invalidate an otherwise grandfathered LMA in circumstances that raise particular competition and diversity concerns, such as those that might be presented in very small markets.

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

90. In the *TV Ownership Further Notice*, we also sought comment concerning the transferability and renewal of television LMAs that were grandfathered under our rules.<sup>151</sup> In the radio local ownership rules, we limited the transfer and renewal of LMAs that violated our rules at the time of the transfer or renewal. In transfer situations, we permitted the new station owner to retain the LMA for the duration of the initial term of the LMA if the LMA would not create a new violation or exacerbate an existing violation of our local radio ownership rules.<sup>152</sup> Likewise, in the renewal context, we declined to permit renewal or extension of an LMA if, at the expiration date of the initial agreement, the LMA would be barred by our rules.<sup>153</sup>

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

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<sup>151</sup> *TV Ownership Further Notice* at 3584.

<sup>152</sup> *Revision of Radio Rules and Policies, Second Memorandum Opinion and Order*, MM Docket No. 91-140, 9 FCC Rcd 7183, 7192-7193 (1994).

<sup>153</sup> *Id.* at 7193.

permit renewal or extension of television LMAs only if the extension or renewal took place *before* the relevant grandfathering date. We seek comments on these proposals.

## V. Conclusion

92. In conclusion, this *Second Further Notice* seeks comment on a number of critical issues relating to our local television ownership policy. In particular, parties are asked to:

- Comment on our tentative conclusion that the current Grade B contour overlap rule for local television ownership be replaced with a DMA/Grade A rule;
- Consider and discuss the various local television ownership rule waiver policies proposed in Section II;
- Analyze the 1996 Act's impact upon our radio-television cross-ownership rule, discuss our proposal to extend our Top 25 market presumptive waiver policy to the Top 50 markets, and discuss whether the rule should be further modified or eliminated;
- Comment on the factors we should use in weighing the requests for one-to-a-market waivers that are not presumptively granted; and
- Discuss our proposal to grandfather from attribution certain television LMAs if in the companion proceeding we ultimately decide that LMAs should be attributable.

93. Through this *Notice*, we seek to ensure that our ownership rules promote competition and program and viewpoint diversity. The proposals and discussion of the relevant issues in this *Notice* are guided by these objectives, and we hope they encourage the development of a robust record that will guide us in resolving these important matters.

## VI. Administrative Matters

94. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before February 7, 1997 and reply comments on or before March 7, 1997. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. If you want to file identical documents in more than one docketed rulemaking proceeding, you must file two additional copies of any such document for each additional docket. You should send comments and reply comments to Office of the

Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

95. Written comments by the public on the proposed and/or modified information collections are due February 7, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections within 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov) and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

96. 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 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

97. Additional Information: For additional information on this proceeding, please contact Alan Baughcum (202) 418-2070 or Charles Logan (202) 418-2130 of the Policy and Rules Division, Mass Media Bureau.

## VII. Initial Paperwork Reduction Act of 1995 Analysis

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

## VIII. Initial Regulatory Flexibility Analysis

99. With respect to this *Second Further Notice*, an Initial Regulatory Flexibility Analysis (IRFA) is contained in the Appendix. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio and television broadcasting industries.

Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *Second Further Notice*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Second Further Notice*, 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.<sup>154</sup>

## FEDERAL COMMUNICATIONS COMMISSION

  
William F. Caton  
Acting Secretary

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<sup>154</sup> Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981), as amended.

**APPENDIX A: Initial Regulatory Flexibility Analysis Regulatory Flexibility Act**

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this *Second Further Notice*.<sup>155</sup> Written public comments concerning the effect of the proposals in the *Second Further Notice*, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice* provided in Paragraph 94. The Secretary shall send a copy of this *Second Further Notice*, 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.<sup>156</sup>

**Reason and Objectives for *Second Further Notice*:** After the issuance of the *Television Ownership Further Notice* in this docket, the Telecommunications Act of 1996 ("1996 Act")<sup>157</sup> was signed into law. The *Second Further Notice* seeks to update the record in this proceeding on the effect of the 1996 Act and to review other aspects of our local ownership rules which were also the subject of the *Television Ownership Further Notice*.

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

**Legal Basis:** Authority for the actions proposed in this *Second Further Notice* may be found in Sections 4(i), 303(r), and 307(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303(r) and 307(a) and Sections 202(c)(2), 202(d), 202(g) and 257 of the Telecommunications Act of 1996.<sup>158</sup>

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<sup>155</sup> An IRFA pursuant to Pub. L. No. 96-354, § 603, 94 Stat. 1165 (1980) was incorporated into both the *Notice of Proposed Rule Making*, 7 FCC Rcd 4111 (1992) and *Further Notice of Proposed Rule Making*, 10 FCC Rcd 3524 (1995) in MM Docket Nos. 91-221 and 87-8.

<sup>156</sup> 5 U.S.C. § 603(a).

<sup>157</sup> Pub. L. No. 104-104, 101 Stat. 56 (1996).

<sup>158</sup> *Id.*

**Description and Estimate of the Number of Small Entities to which the Proposed Rule will Apply:** The proposed rules and policies will concern full power television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business Administration (SBA) defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.<sup>159</sup> Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.<sup>160</sup> Included in this industry are commercial, religious, educational, and other television stations.<sup>161</sup> Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.<sup>162</sup> Separate establishments primarily engaged in producing taped television program materials are classified in Services, Industry 7812.<sup>163</sup> There were 1,509 television stations operating in the nation in 1992.<sup>164</sup> That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation at the end of August 1996.<sup>165</sup> For 1992<sup>166</sup> the number of television stations that produced less than \$10.0 million in revenue was 1,155 establishments.<sup>167</sup>

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<sup>159</sup> 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996). For purposes of this *Second 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 and to consider further the issue of the number of small entities that are radio and television broadcasters in the future. See *Policies and Rules Concerning Children's Television Programming, Report and Order*, MM Docket No. 93-48, 11 FCC Rcd 10660, 10737 (1996) (citing 5 U.S.C. § 601(3)).

<sup>160</sup> 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).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, Appendix A-9.

<sup>165</sup> FCC News Release No. 64958, Sep. 6, 1996.

<sup>166</sup> Census for Communications' establishments are performed every five year; each census year ends with a "2" or "7". See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 6, III.

<sup>167</sup> 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.

Additionally, the SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business.<sup>168</sup> A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.<sup>169</sup> Included in this industry are commercial, religious, educational, and other radio stations.<sup>170</sup> Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.<sup>171</sup> However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified in Services, Industry 7922.<sup>172</sup> The 1992 Census indicates that 96% (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.<sup>173</sup> Official Commission records indicate that 11,334 individual radio stations were operating in 1992.<sup>174</sup> For 1996, official Commission records indicate that 12,088 radio stations were operating.<sup>175</sup>

Thus, the proposed rules will affect approximately 1,550 television stations, approximately 1,194 of those stations are considered small businesses.<sup>176</sup> Additionally, the proposed rules will affect 12,088 radio stations, approximately 11,605 are small businesses.<sup>177</sup> 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

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<sup>168</sup> 13 C.F.R. § 121.201, SIC 4832.

<sup>169</sup> Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 6, Appendix A-9.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> 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.

<sup>174</sup> FCC News Release No. 31327, Jan. 13, 1993.

<sup>175</sup> FCC News Release No. 64958, Sep. 6, 1996.

<sup>176</sup> We use the 77% figure of television stations that were operating with less than \$10 million in 1992 and apply it to the 1996 total of 1550 television stations to arrive at 1,194 television stations categorized as small businesses.

<sup>177</sup> 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 categorized as small businesses.

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.<sup>178</sup> 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.<sup>179</sup> 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.

**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.

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<sup>178</sup> *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, 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.

<sup>179</sup> 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).

**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 *Notice* 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.<sup>180</sup> We also seek comment on whether to grandfather existing common ownership combinations that conform to our current grade B test<sup>181</sup> and whether we should permit television duopolies in certain circumstances by rule or waiver.<sup>182</sup>

**Radio-Television Cross-Ownership rule:** In the *Television Ownership Further Notice*, we received a large array of comments recommending a variety of positions ranging from repeal, to relaxation, to retention of the rule.<sup>183</sup> 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.<sup>184</sup>

**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.<sup>185</sup>

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<sup>180</sup> See *supra* ¶¶ 12 - 25

<sup>181</sup> See *supra* ¶ 28.

<sup>182</sup> See *supra* ¶¶ 29 - 55 (addressing UHF/VHF Stations, Satellite Stations, Failed Stations, Vacant and New Channel Allotments and Small Market Share/Minimum of Voices and other possible waiver criteria).

<sup>183</sup> See ¶ 61, notes 102 - 104.

<sup>184</sup> See *supra* ¶¶ 67 - 78.

<sup>185</sup> See *supra* ¶ 88 - 91.

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*. 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.<sup>186</sup> 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.<sup>187</sup>

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<sup>186</sup> Big Horn Comments at 1-2; LSOC Comments at 23; LSOC Reply Comments at 9; Cedar Rapids Comments at 9-10; Broad Street Comments at 9.

<sup>187</sup> AFTRA-NY Comments at 6; AFTRA-LA Comments at 2; See NABOB at 13; MMTC Reply Comments at 2.

**APPENDIX B: List of Commenting Parties**

The following is a list of parties that filed comments on or before the applicable deadlines for filing comments and reply comments to the TV Ownership Further Notice.<sup>188</sup>

## Commenters

AFLAC Broadcast Group, Inc.	AFLAC
American Federation of Television and Radio Artists Los Angeles Local	AFTRA-LA
American Federation of Television and Radio Artists New York Local	AFTRA-NY
American Federation of Television and Radio Artists National	AFTRA-National
American Federation of Television and Radio Artists Pittsburgh	AFTRA-Pittsburgh
Association of Independent Television Stations, Inc.	ALTV <sup>189</sup>
Big Horn Communications, Inc.	Big Horn
Black Citizens for a Fair Media, et. al.	BCFM
Broad Street Television, L.P.	Broad Street
Capital Cities/ABC, Inc.	Capital Cities/ABC
Capitol Broadcasting Company, Inc.	Capitol Broadcasting
CBS, Inc.	CBS
Cedar Rapids Television Co.	Cedar Rapids
Centennial Communications, Inc.	Centennial
Citicasters Co.	Citicasters
Clear Channel Television, Inc.	Clear Channel
Communications Corporation of America	CCA
Cook Inlet Region, Inc.	Cook Inlet
Dispatch Broadcast Group	Dispatch
Ellis Communications, Inc.	Ellis
Erickson, Larry	Erickson

<sup>188</sup> The *Television Ownership Further Notice* was released on January 17, 1995. The Commission set April 17, 1995 and May 17, 1995 as the Comment and Reply Comment Dates, respectively. On April 7, 1995, the Mass Media Bureau extended the time to file comments to May 17, 1995 and the time to file reply comments to June 19, 1995. By order released June 15, 1995, the Mass Media Bureau further extended the time to file reply comments to June 30, 1995. Finally, by order released June 16, 1995, the Mass Media Bureau extended the reply comment deadline to July 10, 1995.

<sup>189</sup> Now the Association of Local Television Stations (ALTV).