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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Broadcast Television National Ownership Rules	)	MM Docket No. 96-222
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

NOTICE OF PROPOSED RULE MAKING

Adopted: November 5, 1996 **Released:** November 7, 1996

Comments due: February 7, 1997
Reply comments due: March 7, 1997

By the Commission: Commissioners Quello, Ness, and Chong issuing separate statements.

1. In 1995, the Commission released a Further Notice of Proposed Rulemaking in MM Docket Nos. 87-8 and 91-221 (TV Ownership Further Notice) seeking comment on a variety of issues relating to the national broadcast television multiple ownership rules.[1] After comments were submitted, Congress enacted the Telecommunications Act of 1996 (the "1996 Act").[2] The 1996 Act directly affected the rulemaking proceeding by setting specific national ownership audience reach limitations and eliminating the prior national numerical cap on station ownership. The 1996 Act, however, did not address the issue of the measurement of audience reach for the purposes of the new limits. Therefore, in light of the new competitive and regulatory structure of the video marketplace brought about by the 1996 Act, we seek to update the record on measuring national television audience reach for purposes of the new national ownership limit. Specifically, we seek comment on three issues described in detail below: (1) whether to

[1] Further Notice of Proposed Rulemaking in MM Docket Nos. 87-8 and 91-221, 10 FCC Rcd 3524 (1995) (TV Ownership Further Notice). Those aspects of the TV Ownership proceeding that address national ownership issues are now incorporated into this new docket. We note that the TV Ownership Further Notice also addressed issues relating to the Commission's local television ownership rules. Id. at 3569-84. These issues are the subject of a companion proceeding. Second Further Notice of Proposed Rulemaking in MM Docket Nos. 91-221 and 87-7, FCC 96-438 (released November 7, 1996) (Local TV Second Further Notice).

[2] Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (1996).

continue to disregard satellite station ownership in measuring national ownership (the "satellite exemption"); (2) whether and how to incorporate local marketing agreements ("LMAs") into the calculation of national audience reach; and (3) whether to replace our use of Arbitron's Areas of Dominant Influence ("ADIs") to define geographic television markets with the use of Nielsen's Designated Market Areas ("DMAs"). We shall defer consideration of a fourth issue, which was raised in the TV Ownership Further Notice and which addresses whether we should continue to attribute UHF facilities with only one half the audience reach of VHF stations in the same market (the "UHF discount"), until the 1998 biennial review of our broadcast ownership rules.

BACKGROUND

2. Section 73.3555(e) of the Commission's Rules sets forth the rules and operative definitions regarding national ownership limitations applicable to commercial broadcast television stations. Before passage of the 1996 Act, Sections 73.3555(e)(1)(ii) and (iii) generally prohibited entities from having an attributable ownership or other cognizable interest in more than 12 such stations. Sections 73.3555(e)(2)(i) and (ii) generally prohibited an entity from having an attributable ownership or other cognizable interest in a station if it would result in that entity's having such an interest in television stations with an aggregate national audience reach exceeding 25%. The rule defined a station's audience reach as consisting of the total number of television households within the television market for that station, rather than its actual viewing audience.[3] The television market, in turn, was defined as the Area of Dominant Influence (ADI) that Arbitron, a commercial audience-rating service, used in analyzing broadcast television station competition.[4] For purposes of calculating this aggregate audience reach under the rules, UHF stations were attributed with only 50% of the audience within their ADI (the UHF discount),[5] and satellite stations generally were not counted at all (the satellite exemption).[6]

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

> (A) by eliminating the restrictions on the number of television stations that a person or entity may directly or indirectly own, operate, or control, or have a cognizable interest in, nationwide; and
>
> (B) by increasing the national audience reach limitation for television stations to 35%."

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[3] Former 47 C.F.R. § 73.3555(e)(3)(i), now 47 C.F.R. § 73.3555(e)(2)(i).

[4] Id.

[5] Id.

[6] Former 47 C.F.R. § 73.3555(e)(3)(ii), now 47 C.F.R. § 73.3555(e)(2)(ii).

Accordingly, the Commission released an Order revising Section 73.3555(e) of the Rules to reflect these two changes.[7]

4. The 1996 Act is silent with respect to the UHF discount and the satellite station exemption, both of which remain part of the definitions set forth in Section 73.3555(e)(2) for calculating national audience reach. We stated in the 1996 National TV Ownership Order that issues related to these rule provisions would be addressed separately, and that the existing UHF discount and the satellite exemption would remain in effect until such time as we could review and resolve these matters. However, we added that any entity subsequently acquiring stations before these issues were resolved and which complied with the 35% audience reach limitation only by virtue of either or both of these two provisions would be subject to the outcome of the pending national television ownership proceeding, the relevant issues of which have been incorporated into this proceeding.[8]

5. Accordingly, while we shall defer further consideration of the UHF discount, we seek to update the record with regard to the satellite exemption. We also seek comment on two other issues not addressed in the 1996 Act but which bear on our implementation and enforcement of the new 35% reach limit: the treatment of LMAs and the use of geographic market definitions for purposes of calculating national audience reach. The 1996 Act refers to television markets but does not define the term. Similarly, Section 202(g) of the 1996 Act contains the Act's sole reference to television LMAs. It 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." This provision does not address the issue of how to treat television LMAs for the purpose of measuring national ownership.

THE RULES

The UHF Discount

6. Background. When the Commission initially adopted the 12-station rule in 1984,[9] no mention was made of treating UHF stations any differently than VHF stations for the purposes of measuring national ownership. However, three parties petitioned the Commission to reconsider the 12-station rule to adopt a national audience reach limitation with an extra

[7] Order, FCC 96-91 (released March 8, 1996), 61 Fed. Reg. 10691 (March 15, 1996) (1996 National TV Ownership Order).

[8] 1996 National TV Ownership Order at 10691-92.

[9] Report and Order in Gen. Docket No. 83-1009, 100 FCC 2d 17 (1984) (1984 TV Ownership R&O).

allowable audience reach for UHF stations.[10] In response, the Commission created the UHF discount, whereby UHF stations are attributed with only 50% of the television households within their ADI. The Commission acknowledged that the inherent physical nature of the UHF signal created competitive disadvantages at that time sufficient to warrant accommodation in the national multiple ownership rules. Specifically, the Commission observed that, because UHF signal strength decreases more rapidly with distance than does VHF signal strength, a UHF signal generally cannot reach as large an audience as a VHF signal.[11]

7. Comments. Stating that the high national cable penetration rate may have diminished the UHF disparity, we asked commenters in the 1995 TV Ownership Further Notice to address whether the continuation of the UHF discount would serve the public interest.[12] With the exception of Cedar Rapids Television Company (Cedar Rapids),[13] all of the commenters addressing this issue supported retaining the UHF discount.[14] Cedar Rapids argued that the nature of a UHF station's signal now has little importance in affecting its competitive success. It noted that although the Fox network has a large number of UHF affiliates, it nevertheless has become a strong competitor against the three largest networks. Therefore, Cedar Rapids posited, a UHF station's success now depends on the quality of its programming, not on the nature of its signal.[15] Also, Cedar Rapids claimed that retaining the UHF discount would allow developing networks, which affiliate primarily with UHF stations, to "subvert" the limitation and actually to reach double the audience of operators with mostly VHF stations.[16] One consequence of this would be that a network would gain sufficient market power that it could more easily pressure a small-station affiliate not to preempt network programming.[17] It added that elimination of the UHF discount would become particularly appropriate once broadcasters begin

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[10] The three parties were Westinghouse Broadcasting and Cable, Inc., Cox Communications, Inc., and the Motion Picture Association of America, Inc. Memorandum Opinion and Order in Gen. Docket No. 83-1009, 100 FCC 2d 74, 79 (1985) (1985 TV Ownership Reconsideration).

[11] Id. at 92-94.

[12] TV Ownership Further Notice at 3568-69.

[13] Cedar Rapids Comments at 8, 16.

[14] While supporting the retention of the UHF discount, Viacom Inc. stated that it should not be made available to "full service, full coverage networks," which it defined as those with an audience reach of 90-95% of television households and that provide at least 14 hours of prime time programming per week. Viacom Reply Comments at 2, 7. The other commenters addressing the UHF discount were the Association for Local Television Stations (formerly known as the Association of Independent Television Stations, Inc.) (ALTV), Silver King Communications, Inc. (Silver King), Tribune Broadcasting Company (Tribune), and Viacom, Inc. (Viacom).

[15] Cedar Rapids Comments at 8.

[16] Id. at 16.

[17] Id. at 15-16.

building new digital television facilities, most of which will operate in the UHF band.[18]

8. In support of the UHF discount, Tribune Broadcasting Company (Tribune) and Silver King Communications, Inc. (Silver King) contended that recent network affiliation switches and audience ratings indicate that the UHF/VHF distinction remains important. They stated that the recent affiliation switch of 68 stations in 33 markets illustrates that the marketplace recognizes a UHF disparity. The commenters asserted that the primary driving force behind this activity has been the networks' preference for VHF affiliates over UHF ones.[19] Tribune added that the recently reported increases in affiliate compensation rates reflect the collective decision of the three largest networks to defend their remaining VHF outlets, in order to maximize their ability to attract the widest possible audiences.[20] Tribune also asserted that another indication of the UHF disparity is that VHF stations generally have higher ratings than UHF stations.[21]

9. Also arguing for retention of the discount, the Association for Local Television Stations (ALTV) stated that VHF stations typically have a signal reach of 72-76 miles, while UHF stations' signal reach is only 44 miles. It added that a UHF station generally requires ten times the power to broadcast its strongest signal than does a VHF station.[22] In this regard, Silver King asserted that UHF stations achieve high signal quality on a competitive level with VHF stations only at great expense. As an example, Silver King cited two stations in the Phoenix, Arizona television market. According to Silver King, it would cost UHF station KNXV-TV, Channel 15, approximately $900,000 for a new transmitter to make its signal competitive with VHF station KAET(TV), Channel 8. In addition, the UHF station's annual power bills would increase from $60,000 to $300,000. Nevertheless, Silver King added, even with these changes, the UHF station would not reach as many viewers as the VHF station.[23] As an indication of the alleged disadvantages still faced by UHF stations, ALTV asserted that networks and advertisers prefer VHF stations for affiliation and for advertising, respectively. In support of this contention, ALTV cited Fox's ending its affiliation with a number of UHF stations and replacing them with VHF affiliates.[24]

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[18] Id. at 16.

[19] Tribune Comments at 27-28; Silver King Comments at 11. See also Centennial Communications Comments at 2-5.

[20] Tribune Comments at 27-28.

[21] Id. at 28-30.

[22] ALTV Comments at 36.

[23] Silver King Comments at 10-11, citing Broadcasting and Cable, "Public TV Solution Not As Simple As V's, U's," April 3, 1995 at 80.

[24] ALTV Comments at 28-29.

10. Some commenters addressed the effect cable television has had on the UHF service. ALTV stated that because the Commission's mandatory cable carriage rules are still being appealed,[25] UHF station licensees cannot be assured of continued carriage on local cable systems.[26] Silver King contended that, depending on the status of the must-carry rules, increasing cable penetration could increase the need for the UHF discount. Specifically, it argued, both Congress and the Commission have found that in the absence of must-carry rules, UHF stations are at greater risk of not being carried by local cable systems. Should the rules be found unconstitutional, the commenter alleged, the existing UHF disparity will increase.[27]

11. Discussion. As explained below, we have decided that any decision as to whether to modify or eliminate the UHF discount is best postponed until the 1998 biennial review of the broadcast ownership rules.[28]

12. We have observed in other contexts that the UHF disparity has been ameliorated over the years.[29] This is due in part to improved television receiver designs, as well as the fact that many households receive broadcast channels via cable rather than by over-the-air transmission. In the TV Ownership Further Notice, we suggested that extensive cable carriage of UHF stations might have reduced the UHF disparity.[30] When the UHF discount was adopted in 1985, cable passed only 64% of all television households[31] and had approximately 32-35 million subscribers.[32] Today, the pass rate has risen to 96%, with approximately 59 million subscribers.

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[25] A three-judge panel of the United States District Court for the District of Columbia originally upheld the must-carry rules as constitutional content-neutral speech regulations. Turner Broadcasting System, Inc. v. F.C.C., 819 F.Supp 32 (D.C. Cir. 1993). On appeal, the Supreme Court agreed that the rules should be examined as content-neutral speech restrictions, but it vacated the panel's decision and remanded the case for further development of the factual record. Turner Broadcasting System v. F.C.C., 114 S.Ct. 2445 (1994). Upon remand and having developed a more substantive record, the three-judge district court panel upheld the rules, 910 F. Supp 734 (D.C. Cir. 1995), and the Supreme Court is expected to rule on appeals of that decision some time in 1997.

[26] ALTV Comments at 27-28.

[27] Silver King Comments at 11-12.

[28] Section 202(h) of the Telecommunications Act directs the Commission to review all of its broadcast ownership rules biennially. The first such review will be in 1998.

[29] See Report and Order in MM Docket No. 94-123, 11 FCC Rcd 546, 583-86 (1995) (repealing the prime time access rule; Report and Order in MM Docket No. 87-68, 3 FCC Rcd 638 (1988), clarified 4 FCC Rcd 2276 (1989) (eliminating the policy under which applications to initiate or improve VHF service were considered contrary to the public interest if they threatened adverse economic impact on existing or potential UHF stations).

[30] TV Ownership Further Notice at 3568.

[31] 1984 TV Ownership R&O at 28, citing Television Factbook (Cable and Services volume, 1984 ed.), p. 1725 (1984 Television Factbook).

[32] 1984 Television Factbook at 1725.

13. Nearly all of the commenters addressing the issue nonetheless oppose eliminating the UHF discount. As they correctly point out, approximately 4% of potential viewers are not passed by cable and approximately 34.8% of television households do not subscribe to cable.[33] Such viewers continue to rely on over-the-air reception of both VHF and UHF signals and, accordingly, continue to be subject to the UHF signal disadvantage. We further note that, although the legislative history of the 1996 Act did not discuss the UHF discount with respect to the national ownership rule, the Conference report to the Act suggested that the Commission draw a distinction between UHF and VHF stations in determining whether to modify the television duopoly rule, which prohibits the common ownership of television broadcast stations whose Grade B contours overlap.[34] In addition, as a number of commenters point out, recent affiliation switches indicate that broadcast networks favor VHF affiliates over UHF affiliates.[35] Also, as a general matter, it appears that UHF stations are less profitable than VHF stations.[36]

14. Moreover, at this time, as ALTV points out, the Supreme Court is considering the constitutionality of the must-carry rules.[37] The outcome of this case could affect our decision. If the rules are determined to be unconstitutional, and if many UHF stations are as a result dropped by cable systems, then the increased pass rate and penetration rate of cable television could become much less relevant to the magnitude of the UHF disparity.

15. Given these circumstances, and based on the current record, we have decided to defer any further review of this policy to the biennial review of our broadcast ownership rules that we will conduct in 1998 pursuant to the 1996 Act. We should be in a better position in 1998 to assess the continuing growth over the next several years in the availability and penetration of cable and other multichannel video programming suppliers and how this affects the continuing need for the UHF discount. In addition, by 1998 the Commission will have adopted a digital television (DTV) Table of Allotments, and the implementation of this new technology will have proceeded further. Our review of the UHF discount as part of the biennial ownership review would take into account these developments, as both digital technology and the allotment of DTV channels may eventually diminish to a great extent the physical distinction between UHF and

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[33] Second Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming in CS Docket No. 95-61, 11 FCC Rcd 2060, 2068 (1995) (Second Annual Report).

[34] S. Conf. Rep. 104-230, 104th Cong. 2d Sess. 163 (1996) ("[i]t is the intention of the conferees that, if the Commission revises the multiple ownership rules, it shall permit VHF-VHF combinations only in compelling circumstances."). The Commission is examining these local ownership issues in a companion rulemaking proceeding. See n. 1, above.

[35] See ¶ 8, above.

[36] See, e.g., National Association of Broadcasters 1993 Television Financial Report, 171, 173 (1994) (reporting 1993 data showing that VHF independent stations had pre-tax profits of $14.3 million, while UHF independent stations had pre-tax profits of $1.5 million).

[37] See note 25, above.

VHF signals.[38]

16. We consequently shall defer our review of the UHF discount until the next biennial review. However, we invite comment on whether we should impose in the interim any supplementary limitation on national audience reach. In particular, because group station owners will, as now, be able to own and operate a greater number of UHF stations than they otherwise could before they reach the 35% national audience reach limit, we ask commenters to address whether a group station owner complying with the rule by virtue of the UHF discount could nevertheless have so high a national audience reach that it would not be in the public interest. If so, how is this matter best addressed?

The Satellite Exemption

17. Background. A television satellite is a full-power terrestrial broadcast station authorized under Part 73 of the Commission's Rules to retransmit all or part of the programming of a parent station that is often commonly owned. Pursuant to 47 C.F.R. § 73.3555, Note 5, the Commission's multiple ownership rules do not apply to satellite stations. As with the UHF discount, the Commission exempted TV satellites from the national multiple ownership rules on reconsideration of its decision in the 1984 TV Ownership R&O. A group television station owner had filed a petition to reconsider the 1984 TV Ownership R&O, requesting the Commission to create an exemption from any numerical ownership limits for stations operated primarily as satellites. The commenter posited that this would encourage the provision of television service to smaller communities.[39] It also stated that satellite stations were exempt from the Commission's duopoly rule because they generally do not originate programming.[40] Based on these arguments, the Commission adopted the exemption.[41] In 1991, in a proceeding addressing the Commission's overall regulation of satellite stations, we abolished both the 5% limit on the amount of local programming that a satellite can originate and the use of that 5% benchmark for determining whether a station is still a satellite.[42] Accordingly, because satellites were no longer limited as to the amount of local programming they could originate, we also

[38] See Second Further Notice of Proposed Rulemaking in MM Docket No. 87-268, 7 FCC Rcd 5376, 5379-80 (1992) (discussing impact of digital technology on UHF handicap); Sixth Further Notice of Proposed Rule Making in MM Docket No. 87-268 (FCC 96-317, released Aug. 14, 1996) at ¶¶ 19-20 (proposing not to utilize any frequencies beyond channel 51 for DTV allotments, which is relevant to UHF handicap as higher UHF channels experience worse propagation losses and negative multipath and shadowing effects).

[39] 1985 TV Ownership Reconsideration at 80.

[40] Id. at 90 n. 43. At the time, the station would lose its status as a satellite if more than 5% of its programming was locally originated.

[41] Id.

[42] Report and Order in MM Docket No. 87-8, 6 FCC Rcd 4212 (1991) (TV Satellite R&O) (recon. pending).

sought comment on whether to continue to exempt satellites from the national ownership rule.[43]

18. Comments. In the TV Ownership Further Notice, we solicited further comment on the Commission's satellite exemption policy. Most parties that discussed the issue sought to retain at least some form of the exemption. CBS Inc., Silver King, and Thomas C. Smith (Smith) claimed that the policy encourages the operation of satellite stations, which serves the public interest because such stations reach underserved areas that cannot support a non-satellite station.[44] In contrast, however, Black Citizens for a Fair Media, et al. (BCFM)[45] and Le Enterprises, Inc. (Lee) noted that satellites can now originate a significant amount of local programming, which they could not do in 1985.[46] Thus, Lee alleged, a rule such as the national ownership rule that is concerned with the audience reach for original programming should exempt only those satellite stations that rebroadcast a substantial part of the parent station's programming.[47] Silver King added that if the Commission does repeal the exemption for satellite stations, then it should nevertheless continue to exempt existing satellites.[48]

19. Discussion. In our 1991 proceeding concerning satellite stations, we determined that broadcast television stations could qualify as satellites, and therefore be exempt from our local ownership rules, provided they meet certain criteria.[49] As noted, we also eliminated the local program origination limit that had formerly applied to satellite stations, but at the same time we stated that doing so "raised questions concerning the continued advisability of exempting satellite stations from the limitations of the national multiple ownership rules." Accordingly, we subsequently sought comment on this issue, which was incorporated in the TV Ownership Further Notice and on which we now seek further comment, given the changes to our rules resulting from the 1996 Act.

20. A satellite may operate in the same market as its parent station, i.e., intramarket, or the two stations may operate in different markets. We tentatively conclude that, with respect

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[43] Second Further Notice of Proposed Rulemaking in MM Docket 87-8, 6 FCC Rcd 5010 (1991).

[44] CBS Comments at 41 n. 75; Silver King Comments at 14-16; Smith Comments at 4.

[45] BCFM filed comments jointly with the Center for Media Education, Chinese for Affirmative Action, Communications Task Force, Hispanic Bar Association, League of United Latin American Citizens, National Conference of Puerto Rican Women, Office of Communications of the United Church of Christ, Philadelphia Lesbian and Gay Task Force, Telecommunications Research Action Center, Wider Opportunities for Women, and Women's Institute for Freedom of the Press.

[46] See note 42, above.

[47] Lee Comments at 6-7; BCFM Comments at 38-39.

[48] Silver King Comments at 17-18.

[49] See TV Satellite R&O, above.

to the intramarket situation, the public interest would be served by retaining the satellite exemption. However, we believe that satellite stations should be counted for purposes of the national ownership limits where they are in a separate market from the parent station.

21. In intramarket situations, we see no reason to count that market twice for the purposes of determining national audience reach.[50] The national multiple ownership rule, as amended by the 1996 Act, is concerned with potential audience rather than actual viewership.[51] Nor are we concerned with the particular number of television stations owned. Indeed, the 1996 Act eliminated the numerical station limitations formerly in the rule and focuses solely on national audience reach.[52] In this regard, if a licensee acquires a satellite television station in a market within which it already operates a station, it has not extended its audience reach in that television market for purposes of the national audience reach limit; the television households in that market are already counted, given the existence of the licensee's non-satellite station. This is true whether or not the satellite station is originating local programming. We seek comment on our proposal not to "double count" a satellite and its parent station in these circumstances.

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

23. We now turn to parent-satellite combinations in separate markets. We note that this type of satellite provides programming to a population that otherwise would receive no

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

[51] As noted above, Section 202(c)(1) of the 1996 Act directs the Commission to increase "the national audience *reach* limitation for television stations to 35%." [emphasis added]. The term "audience reach" suggests that the Commission consider the number of viewers within a station's reach, not the number of people who happen to view that particular station's programming. Further, neither the 1996 Act nor the accompanying Conference Report indicates a desire for the Commission to conduct a station-by-station assessment of the ratings of a particular group owner's programming.

[52] Section 202(c)(1) of the 1996 Act.

programming at all over the air from either the parent or the satellite station,[53] and the licensee of the parent station controls the programming of both the parent and the satellite station.[54] Consequently, the actual over-the-air audience reach of the parent station's licensee is in fact expanded into another market by the audience reach of the satellite station. While the exemption may have encouraged the operation of satellite stations in the past, any such incentive has been minimized by the elimination of the 12-station limit. Previously, without the exemption, a satellite in an isolated area would have been regarded as being no different from a full-service station in a heavily populated area for the purpose of counting the number of stations toward the 12-station limit. However, as noted above, satellite stations typically operate in areas that are likely to provide television broadcasters relatively little opportunity for growth and profit when compared with larger markets.[55] Under these circumstances, if there had been no satellite exemption, a licensee would have had a disincentive to operate a satellite station, and many rural areas would likely not be receiving service from satellite stations that are operating today. Thus, the exemption allowed group owners to acquire and operate satellite stations without concern for the national numerical station limits.

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

Local Marketing Agreements

25. The question of double-counting is also raised when a licensee programs another television station in the same market through an LMA. An LMA is a type of joint venture that generally involves the sale by a licensee of discrete blocks of time to a broker who then supplies

[53] For the Commission to presume that satellite operation of a station would serve the public interest, the applicant must demonstrate (among other things) that no alternative operator that would not present a conflict with the multiple ownership rules is ready and able to construct or to purchase and operate the station as a full-service station. TV Satellite R&O at 4215. Moreover, the Commission has reaffirmed that the traditional purpose underlying satellite authorization "is to encourage service in areas not otherwise served or capable of being served by another full-service station." Id.

[54] See generally Section 310(d) of the Communications Act of 1934, 47 U.S.C. § 310(d).

[55] See n. 53.

the programming to fill that time and sells the commercial spot announcements to support it.[56] Such agreements enable separately owned stations to function cooperatively via joint advertising, shared technical facilities (including shared production facilities), and joint programming arrangements.[57]

26. We stated in the TV Ownership Further Notice that we needed to collect more information about the extent and nature of TV LMAs before determining how they should be considered for multiple ownership purposes. Several parties addressed this issue in their comments, but they focused on the effects of LMAs on local, not national, competition and diversity. Thus, we request comment specifically addressing how best to treat LMAs when calculating an entity's national audience reach. We stress that in this Notice we are not addressing the permissibility and attribution of LMAs under our local ownership rules, as these issues are currently being analyzed in the local ownership and attribution rule makings.[58] In this rule making, we are concerned with the treatment of LMAs for purposes of calculating the national audience reach.

27. The double-counting issue arises when one licensee operates as a broker to another in the same television market pursuant to an LMA; in this situation it reaches the same audience twice, through two different television stations. We have incorporated the general issue of whether television LMAs should be attributed in the Attribution Further Notice and tentatively conclude in that proceeding that an LMA of another television station in the same market for more than 15% of the brokered station's weekly broadcast hours should generally be attributed for purposes of our ownership rules.[59] However, as discussed above in the context of satellite stations, the national television ownership rule now focuses solely on national audience reach. Consistent with that conclusion, we tentatively conclude that we should not count the TV households in the market twice for purposes of measuring the brokering station's national ownership limit. We seek comment on this tentative conclusion. We seek comment in particular on the effect of double counting for small stations, or for stations owned by women or minorities.

Market Definition

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[56] See TV Ownership Further Notice at 3581-82; Report and Order in MM Docket 91-140, 7 FCC Rcd 2755, 2784 (1992) (Revision of Radio Rules and Policies).

[57] Id.

[58] See Further Notice of Proposed Rule Making in MM Docket Nos. 94-150, 92-51, and 87-154, FCC 96-436 (released November 7, 1996) (Attribution of Broadcast Interests), also adopted today (Attribution Further Notice). Also, for a detailed discussion of the relevance of TV LMAs to local competition and diversity, see TV Ownership Further Notice at 3581-3584.

[59] Attribution Further Notice at ¶¶ 26-31.

SEPARATE STATEMENT
of
COMMISSIONER SUSAN NESS

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; et al.

Today we advance towards our goal of issuing clear, simplified, and fair rules regarding broadcast media ownership.

The Telecommunications Act of 1996 expanded radio and television ownership opportunities nationwide and significantly liberalized local radio ownership rules. We had initiated these proceedings before Congress took action last winter because we recognized that the media markets are changing. In view of the changes mandated by Congress and to elicit comment on more specific proposals than those previously described, we now ask the public for further comment.

I am pleased to support these items for three reasons:

First, I prefer to change FCC policies or set standards by rulemaking rather than through ad hoc decisions. We shouldn't delay making decisions on license transfers and other transactions that come before us, but those individual cases do not give the kind of guidance that rulemakings do. A rule is clear, is predictable, and is fair to all. When we complete a rulemaking, everyone knows what the rules of the game will be. Through rulemaking, we have the benefit of hearing from all who are interested, including experts and others who may point out unintended consequences of our proposals. And best of all, transactions can then be expedited.

Second, I prefer to expand market opportunities by raising ownership limits as Congress has done, not through unattributable interests and other "all-but-ownership" activities. In our attribution proposals, we are striking a balance between the goal of precisely defining

"ownership" and the equally significant goal of not impeding capital flow. The proposals we put out for comment today are intended to be narrowly tailored to close loopholes, even as we liberalize direct ownership limits.

Third, the three items include several specific concepts that further our goal of making FCC rules realistic, such as the "Grade A/DMA" duopoly proposal and the "debt and equity plus" attribution proposal. We are also asking for comments on how we might improve the "five factors" we weigh in evaluating certain one-to-a-market waiver applications. These proposals, I believe, should help refine and expedite a more market-based review process.

The challenge of making decisions that are in the "public interest, convenience, and necessity" has never been more difficult in the broadcasting area than it is today. I join Commissioner Chong in saying, "we should adopt new rules precisely calibrated to achieve our goals of encouraging competition and diversity in broadcasting without unduly restraining broadcast commerce." I hope that the comments we receive provide us with the strong factual basis we need to achieve these goals.

STATEMENT OF

COMMISSIONER RACHELLE B. CHONG

Re: *Review of the Commission's Regulations Governing Television Broadcasting; ("Local Ownership"), Second Further Notice of Proposed Rulemaking, MM Docket No. 91-221; Broadcast Television National Ownership Rules and Review of the Commission's Regulations Governing Television Broadcasting ("National Ownership"), Notice of Proposed Rulemaking, MM Docket No. 96-222; 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, MM Docket No. 94-150; et al.*

Last year, we undertook a reevaluation of our television ownership and broadcast attribution rules in light of current market conditions. We recognized that the video programming market is becoming more and more competitive with each passing month. Cable channels are proliferating. In addition, there is new competition from Direct Broadcast Satellite services, MMDS providers, on-line services and, soon, Open Video Systems offered by the local telephone companies.

In this increasingly competitive environment, broadcasters, including TV licensees, need greater ownership flexibility so that they can have a fair chance to compete. Congress recognized this fact in the 1996 Telecommunications Act by directing us to eliminate the national ownership cap and reexamine our local television ownership rules. In my view, the 1996 Act evinces Congress' clear intention that we loosen our regulatory grip on the broadcast medium. Congress signalled to us that it is time to adjust our rules to fit the new reality of the video programming marketplace.

In these further NPRMs, we seek to update our record in light of the 1996 Act and other changes in the market. In my mind, our goal here is to fine tune our ownership and attribution rules. We should adopt new rules precisely calibrated to achieve our goals of encouraging competition and diversity in broadcasting without unduly restraining broadcast commerce. I encourage all commenters to examine the proposals set forth in these items and tell us how we can best reach our goal.

Finally, concerning attribution of broadcast ownership interests, I am interested in the impact of the proposal to include debt and equity held by a program supplier. In particular, I question whether certain debt or equity issues, even with the limitation to those held by program suppliers, would not be conducive to establishing "control". I also am concerned that our definitions in this area must be sufficiently precise in order to avoid causing disruptions in institutional investment, or other productive ventures.

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.

28. The definition of the relevant television market has been and continues to be critical to measuring national audience reach because the number of television households in each market in which an entity's stations are located is used to calculate that entity's national audience reach. Specifically, the 1996 Act left unchanged a provision in our television ownership rule that states:

> [n]ational audience reach means the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI data at the time of a grant, transfer or assignment of a license. . . . Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.[60]

29. As we stated in the 1995 Television Ownership Further Notice, Arbitron no longer updates its county-by-county determinations of each broadcast station's ADI. Accordingly, we proposed to use Designated Market Areas (DMAs) as compiled by A.C. Nielsen -- another commercial ratings service -- where we previously relied on ADIs, noting that they are analytically similar.[61] Moreover, in our companion Local TV Second Further Notice, we state that the DMA provides, as a general matter, a reasonable proxy of a television station's geographic market.[62] Consequently, we tentatively conclude in that proceeding that local television markets should be defined on the basis of DMAs, although for purposes of the local ownership rules, we further propose that we should supplement the DMA test with a Grade A signal contour criterion.[63]

30. While the general issue of how to delineate the geographic scope of local markets was addressed by several commenters in response to the 1995 Television Ownership Further Notice,[64] we observe that it was not in the context of calculating a broadcaster's national audience reach. In the absence of any comment, we tentatively conclude that we should adopt the proposal to use DMAs for calculating national audience reach.

31. We note that in some instances the use of DMAs instead of ADIs may lead to small

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[60] 47 C.F.R. § 73.3555(e)(2)(i), formerly 47 C.F.R. § 73.3555(e)(3)(i).

[61] 1995 Television Ownership Further Notice at 3539 n. 59.

[62] Local TV Second Further Notice at ¶ 14.

[63] Id. at ¶ 10-27.

[64] E.g., Comments of Texas Television, Inc.; CBS; and Golden Orange Broadcasting Co., Inc.

variations in the audience reach calculation of some stations. This is due to the fact that in some instances Arbitron and Nielsen define markets somewhat differently. For example, Hagerstown, Maryland, constitutes its own Arbitron ADI, while it is part of the Washington, D.C. DMA established by Nielsen. While we recognize that these variations occur, we believe they will have a minor effect on the calculation of an entity's national ownership reach.[65] We invite parties to comment on this assessment.

IMPLEMENTATION AND TRANSITION ISSUES

32. In this Notice, we propose to modify the satellite exemption, but we defer consideration of the UHF discount until our biennial review in 1998. We seek comment regarding the implementation of any changes we may make to the satellite exemption. We also seek to determine whether a group station owner complying with the 35% limit only by virtue of the UHF discount could nevertheless have so high a national audience reach that it would not be in the public interest and, if so, how this matter is best addressed. We note that part of the 1996 National TV Ownership Order concerned subsequent station acquisitions (i.e., UHF or satellite station acquisitions made after March 15, 1996, the effective date of that Order) that comply with the 35% audience reach limitation only by virtue of either or both of the UHF discount or the satellite exemption. We advised broadcasters that such transactions would be subject to the ultimate resolution of this rulemaking.[66] We now ask commenters to address how best to effectuate that approach.

CONCLUSION

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

ADMINISTRATIVE MATTERS

34. 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

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[65] For example, if an entity were to acquire a station in Hagerstown, it would be attributed with 1.97% of the U.S. population in calculating its national audience reach using DMAs, because Hagerstown is in the Washington, DC DMA (1.97% of the U.S. population). However, as ranked by Arbitron, Hagerstown is its own ADI and accounts for only 0.05% of the U.S. population -- a difference of 1.92%.

[66] 1996 National TV Ownership Order at 10691-92.

or before February 7, 1997, and reply comments on or before March 7, 1997. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

35. 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 on or before 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 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.

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

37. Additional Information: For additional information on this proceeding, please contact Paul Gordon, Policy and Rules Division, Mass Media Bureau, (202) 418-2130.

INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

38. The rules proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements. These proposed rules would not increase or decrease burden hours imposed on the public.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this Notice of Proposed Rulemaking

(Notice).[67] Written public comments concerning the effect of the proposals in the 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 the submission of comments in this proceeding. The Secretary shall send a copy of this 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.[68]

Reason for Notice: After the issuance of the TV Ownership Further Notice in 1995, the Telecommunications Act of 1996[69] was signed into law. Accordingly, this Notice seeks comment on how the Telecommunications Act of 1996 should affect our ongoing analysis of the national broadcast television ownership rules.

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

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

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[67] An IRFA pursuant to Pub. L. No. 96-354, § 603, 94 Stat. 1165 (1980) was incorporated into both the Notice of Proposed Rulemaking, 7 FCC Rcd 4111 (1992) (TV Ownership Notice), and the Further Notice of Proposed Rulemaking, 10 FCC Rcd 3524 (1995) (TV Ownership Further Notice), in MM Docket Nos. 91-221 and 87-8, the national ownership aspects of which have been incorporated into this proceeding.

[68] Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981), as amended.

[69] Pub. L. No. 104-104, § 101, 110 Stat. 56 (1996) (Telecommunications Act).

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

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

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

Recording, Recordkeeping, and Other Compliance Requirements: No new recording, recordkeeping or other compliance requirements are proposed.

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

Description and Estimate of the Number of Small Entities to Which the Rules Would Apply: The Small Business Administration (SBA) defines a television broadcasting station that is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts as a small business.[70] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[71] Included in this industry are

[70] 13 C.F.R. § 121.201, Standard Industrial Code (SIC) 4833 (1996). For purposes of this Notice of Proposed Rulemaking, we are utilizing the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations and to consider further the issue of the number of small entities that are television broadcasters in the future. See Report and Order in MM Docket No. 93-48 (Children's Educational and Informational Programming), 61 Fed. Reg. 43981, 43992 (August 27, 1996), citing 5 U.S.C. § 601(3).

[71] Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92-S-1, Appendix A-9 (1995).

commercial, religious, educational, and other television stations.[72] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[73] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[74] There were 1,509 television stations operating in the nation in 1992.[75] That number has remained fairly constant, as indicated by the approximately 1,550 operating television stations in August, 1996.[76] In 1992,[77] there were 1,155 television station establishments that produced less than $10.0 million in revenue.[78]

We recognize that the proposed rules may also affect minority and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations.[79] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and noncommercial television stations in the United States.[80] We recognize that the numbers of minority and women broadcast

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[72] Id.

[73] Id.

[74] Id.

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

[76] Federal Communications Commission News Release 64958, Sept. 6, 1996.

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

[78] 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.

[79] 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.

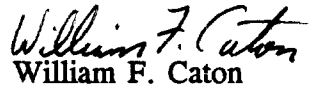
[80] See Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, Women-Owned Business, WB87-1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 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

owners may have changed due to an increase in license transfers and assignments since the passage of the Telecommunications Act of 1996. We seek comment on the current numbers of minority and women owned broadcast properties and the numbers of these that qualify as small entities. To assist us with our responsibilities under the Regulatory Flexibility Act, we specifically request comments concerning our assessment of the number of small businesses that will be impacted by this rule making proceeding, the type or form of impact, and the advantages and disadvantages of the impact.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The proposed rules and policies would apply to full power broadcast television licensees, permittees, and potential licensees. We have proposed to not double count commonly owned stations in the same market and LMAs for the purpose of calculating a licensee's national audience reach. See ¶¶ 21-22, 27, above. We also propose to eliminate the satellite exemption for licensees that operate a satellite station in a separate market from the parent station. See ¶¶ 23-24, above. We do not have sufficient information, at this time, to reach a tentative conclusion about the effect of these proposed rules, and seek comment on the potential significant economic impact of these proposals on a substantial number of small stations. We urge parties to support their comments with specific evidence and analysis.

We tentatively conclude that there is not a significant economic impact regarding our proposal to use Designated Market Areas (DMAs) compiled by A.C. Nielsen instead of Arbitron to calculate national audience reach. A.C. Nielsen, like Arbitron, is another commercial ratings service. They are analytically similar. See ¶ 29, above.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton
Acting Secretary

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).