

an agreement, or series of agreements, in which one in-market station provides operational support and programming for another in-market station.<sup>486</sup> Public interest commenters contend that LNS agreements and SSAs result in fewer independent voices and less local news content and could be used to circumvent our rules.<sup>487</sup> On the other hand, broadcasters assert that these agreements facilitate greater collaboration between media outlets and permit stations to sustain labor intensive journalism, thereby offering more communities access to local news content than could otherwise be achieved.<sup>488</sup>

196. *Background.* Our attribution rules currently make attributable certain local marketing agreements (“LMAs”), also referred to as time brokerage agreements (“TBAs”), in which a broker purchases discrete blocks of time from a licensee and supplies programming and sells advertising for the purchased time.<sup>489</sup> Certain joint sales agreements (“JSAs”), which “involve primarily the sale of advertising time and not decisions concerning programming,” are also subject to attribution.<sup>490</sup> These agreements are not precluded by any Commission rule or policy as long as the Commission’s ownership rules are not violated and the participating licensees maintain ultimate control over their facilities.

197. The Commission first adopted attribution rules for same-market radio LMAs in 1992.<sup>491</sup> The Commission was concerned that absent such rules significant time brokerage under such agreements, combined with increased common ownership permitted by revised local radio ownership rules, could undermine the Commission’s competition and diversity goals.<sup>492</sup> In 1999, the Commission adopted attribution rules for television LMAs, finding that the rationale for attributing same-market radio LMAs applied equally to same-market television LMAs, but declined to adopt attribution rules for radio or television JSAs.<sup>493</sup> However, the Commission, in its *2002 Biennial Report and Order*, adopted attribution rules for same-market radio JSAs, finding that JSAs may convey sufficient influence and control over advertising to merit attribution.<sup>494</sup> Subsequently, in 2004, the Commission initiated a rulemaking to determine whether or not to adopt attribution rules for television JSAs; the Commission tentatively

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from, and does not have issue with, traditional “pool” coverage of events, which is done to accommodate a lack of physical space for multiple news crews. *Id.* at 13.

<sup>486</sup> CWA Reply App. 1.1 at 3; Free Press Comments at 10-11.

<sup>487</sup> CWA Comments at 32-33; CWA Reply App. 1.1 at 18-19.

<sup>488</sup> *See, e.g.*, Gray Comments at 14; Local TV Coalition Reply at 7; NAB Comments at 84; Nexstar Comments at 19.

<sup>489</sup> 47 C.F.R. § 73.3555, Note 2(j); *see also Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, MB Docket No. 04-256, Notice of Proposed Rulemaking, 19 FCC Rcd 15238, 15239, ¶ 4 n.7 (2004) (“*2004 TV JSA Attribution NPRM*”).

<sup>490</sup> 47 C.F.R. § 73.3555, Note 2(k); *see also Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, MM Docket No. 01-317, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19861, 19894, ¶ 82 (2001) (“*Multiple Ownership of Radio Broadcast Stations in Local Markets*”).

<sup>491</sup> *1992 Radio Ownership Order*, 7 FCC Rcd at 2788-89, ¶¶ 64-67.

<sup>492</sup> *Id.* at 2788-89, ¶¶ 64-66.

<sup>493</sup> *1999 Attribution Order*, 14 FCC Rcd at 12597, 12612, ¶¶ 83, 122.

<sup>494</sup> *2002 Biennial Review Order*, 18 FCC Rcd at 13745, ¶¶ 321-322. Comment on attribution of radio JSAs was not sought as part of the then biennial media ownership review proceeding, instead it had been sought in a separate proceeding regarding the local radio ownership rules (MM Docket No. 01-317) that was subsequently consolidated with the 2002 biennial media ownership review proceeding. *Id.* at 13743, ¶ 316 n.688; *see also Multiple Ownership of Radio Broadcast Stations in Local Markets*, 16 FCC Rcd at 19894, ¶ 83. Since no comment had been sought on attribution of television JSAs, the Commission declined to adopt any attribution rules for television JSAs in the *2002 Biennial Review Order*. *2002 Biennial Review Order*, 18 FCC Rcd at 13743, ¶ 316 n.688.

concluded that it should.<sup>495</sup> No decision has been issued in that proceeding.<sup>496</sup>

198. *Potential Concerns.* CWA and Free Press object to LNS agreements because they believe that collaboration under LNS agreements harms competition and reduces the amount of independently produced local news programming available to consumers.<sup>497</sup> These commenters are concerned that stations will be unable to devote sufficient resources to independent journalism as a result of the staff reductions and resource sharing resulting from the creation of an LNS.<sup>498</sup> CWA also is concerned that consolidating newsgathering and editorial control reduces diversity and in-depth coverage of local news.<sup>499</sup> Because stations are reporting the same story, CWA argues, viewers are exposed only to a single perspective on every story covered by the LNS.<sup>500</sup> Moreover, CWA suggests that increased communication between stations could lead to antitrust law violations.<sup>501</sup>

199. CWA and Free Press also object to SSAs, particularly those that allow a single station to produce the news content for multiple stations in a local market.<sup>502</sup> According to these commenters, such agreements result in “re-run” content being broadcast over multiple newscasts, thereby reducing the number of independent voices available in the local community.<sup>503</sup> Furthermore, these commenters assert that the staff reductions that typically accompany SSAs reduce the quality, quantity, and diversity of local news coverage.<sup>504</sup>

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<sup>495</sup> 2004 TV JSA Attribution NPRM, 19 FCC Rcd at 15239, ¶ 2.

<sup>496</sup> We also note that changes to certain other of the Commission’s cable and broadcast attribution rules, not impacted here, are currently under consideration in a separate proceeding. See *The Commission’s Cable Horizontal and Vertical Ownership Limits*, MM Docket No. 92-264, Fourth Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 2134, 2136, ¶ 3 (2008) (“seek[ing] further comment on (1) whether to retain the single majority shareholder attribution exemption, which currently applies to the cable and broadcast ownership rules; (2) whether, under the cable attribution rules, a limited partner may sell programming to the partnership and retain insulation; and (3) whether the Commission should clarify certain aspects of the cable Equity Debt (“ED”) attribution rule, as it did for the broadcast Equity/Debt Plus attribution rule”).

<sup>497</sup> CWA Comments at 19; CWA Reply App. 1.1 at 9-11, 14-17; Free Press Comments at 10-12. CWA recommends we adopt certain disclosure requirements for LNS agreements. CWA Reply App. 1.1 at 24-26.

<sup>498</sup> CWA Comments at 24-25; CWA Reply App. 1.1 at 14; Free Press Comments at 9-12. In the Philadelphia, Pennsylvania market, for example, CWA cites to a Fox/NBC LNS, in which the stations contribute 25 newsroom staff to the LNS, approximately 20 percent of the available personnel in each station’s newsroom. CWA Reply App. 1.1 at 14-15. Moreover, CWA claims that local Fox station, KTTV, dismissed 120 people when the station commenced its LNS in the Los Angeles, California market. CWA Comments at 23; CWA Reply App. 1.1 at 11.

<sup>499</sup> CWA Comments at 24-25; CWA Reply App. 1.1 at 15.

<sup>500</sup> CWA Reply App. 1.1 at 16. In the Austin, Texas market, CWA criticizes an LNS, which consists of the local affiliates of ABC, CBS, NBC, Fox, and MyNetwork. *Id.* at 15-16. CWA also cites to a recent finding that the overall depth of coverage on routine stories – those typically covered by LNSs – is on the decline; CWA is concerned that an increase in reliance on LNSs will accelerate this decline to the detriment of local viewers. *Id.* at 16.

<sup>501</sup> *Id.* at 15-16.

<sup>502</sup> CWA Comments at 22-23; CWA Reply App. 1.1 at 9-10; Free Press Comments at 10-11. CWA asks the Commission to adopt changes to the attribution rules to make SSAs, particularly those that involve outsourcing local news operations, attributable and to act on pending matters involving SSAs and allegations of unauthorized transfer of control. CWA Reply App. 1.1 at 19-24.

<sup>503</sup> CWA Comments at 22-23; CWA Reply App. 1.1 at 9-10; Free Press Comments at 10-11.

<sup>504</sup> CWA Comments at 22; CWA Reply App. 1.1 at 10; Free Press Comments at 11-12. They note that significant layoffs occurred following the execution of SSAs in the Honolulu, Syracuse, and Peoria-Bloomington markets.

200. CWA and Free Press object to SSAs also because they believe broadcasters may be using them to circumvent the Commission's multiple ownership rules.<sup>505</sup> CWA suggests that SSAs contain very similar provisions to LMAs and JSAs, which are attributable under certain conditions under the Commission's multiple ownership rules.<sup>506</sup> For instance, like many LMAs and JSAs, SSAs may involve the sharing of facilities, advertising sales personnel, news production, and certain station operations, and options to purchase the brokered station.<sup>507</sup> CWA opposes broadcasters using SSAs to outsource (or broker) newscasts, in asserted circumvention of the Commission's attribution rules.<sup>508</sup> According to CWA, news programming accounts for an average of 45 percent of a station's revenue; therefore, a brokering station can unfairly acquire a significant portion of the economic benefit generated by the brokered station without triggering the attribution rules.<sup>509</sup> In addition, the American Cable Association ("ACA") argues that both SSAs and LMAs harm local competition particularly when they permit stations to jointly negotiate retransmission consent. ACA argues that such arrangements permit local broadcast stations to exercise additional leverage with respect to MVPDs leading to higher fees for signal carriage, which are passed on to consumers in the form of higher rates.<sup>510</sup> ACA suggests that broadcasters should be precluded from including collective negotiation of retransmission consent in SSAs or LMAs, particularly with respect to the four top-rated local stations.<sup>511</sup>

201. *Potential Benefits.* On the other hand, broadcasters assert that sharing arrangements (including LNS agreements, LMAs, SSAs, and JSAs) are beneficial to local media markets, generating local news and other services that would not be possible otherwise.<sup>512</sup> Gray asserts that, because of the considerable cost savings associated with its sharing agreements, it can invest in the development of multicast programming streams, mobile video applications, and other uses of the broadcast spectrum.<sup>513</sup>

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CWA Comments at 22; CWA Reply App. 1.1 at 9-10. In addition, in the Honolulu market, CWA asserts that pursuant to an SSA, the NBC, CBS, and MyNetwork local broadcast affiliates do not originate any news programming, but obtain news from Raycom Media. CWA Comments at 21; CWA Reply App. 1.1 at 7. Professor Danilo Yanich conducted a study of the Honolulu market to determine the impact of this SSA on the newscasts in the local market. See Danilo Yanich, *Local TV & Shared Services Agreements: Examining News Content in Honolulu* (Feb. 2011), available at <http://mediacouncil.org/wp/resources/SharedServicesStudy.pdf>. By comparing newscasts from before and after the SSA was implemented in October 2009, Professor Yanich determined that the SSA resulted in a reduction in independent news voices in the market (as multiple stations now simulcast the same newscasts) and that the claimed increases in news content from common operation did not materialize. *Id.* at 28-29.

<sup>505</sup> CWA Comments at 19-20; CWA Reply App. 1.1 at 10; Free Press Comments at 13-14.

<sup>506</sup> CWA Comments at 21; CWA Reply App. 1.1 at 6.

<sup>507</sup> CWA Reply App. 1.1 at 6; Free Press Comments at 10.

<sup>508</sup> CWA Comments at 20-21 (citing BOB PAPPER, RADIO TELEVISION DIGITAL NEWS ASS'N, TV AND RADIO STAFFING AND NEWS PROFITABILITY SURVEY 2009 (2009) ("RTNDA Survey"), available at <http://www.rtdna.org/media/pdfs/research/TV%20and%20Radio%20Staffing%20and%20Profitability.pdf>); CWA Reply App. 1.1 at 7 (citing RTNDA Survey). CWA states that the RTNDA Survey found that the amount of local news programming across all markets averaged 26.4 hours per week (approximately 15.7 percent of total airtime). CWA Comments at 20-21; CWA Reply App. 1.1 at 7. Stations in DMAs 101-150 were found to average 22.9 hours per week (approximately 13.6 percent of total airtime). CWA Comments at 20-21; CWA Reply App. 1.1 at 7. Ultimately, many stations could completely outsource their news operation without exceeding the 15 percent attribution threshold. CWA Comments at 20-21; CWA Reply App. 1.1 at 7; see also 47 C.F.R. § 73.3555, Note 2(j).

<sup>509</sup> CWA Comments at 20-21; CWA Reply App. 1.1 at 7.

<sup>510</sup> ACA Comments at 2,

<sup>511</sup> *Id.* at 11, 21.

<sup>512</sup> Local TV Coalition Reply at 7; Gray Comments at 14; NAB Comments at 84; Nexstar Comments at 19.

<sup>513</sup> Gray Comments at 14-15.

The Local TV Coalition and Nexstar note that the Commission has long held that sharing agreements (e.g., JSAs) generate efficiencies and serve the public interest.<sup>514</sup>

202. According to the Local TV Coalition and TTBG, sharing agreements can be particularly important in small and mid-sized markets.<sup>515</sup> The Coalition asserts that the advertising revenue available in most small and mid-sized markets is insufficient to support four stand-alone broadcast television news operations.<sup>516</sup> In such markets, the Coalition states, broadcasters budget an average of approximately \$1.8 million per year for the capital and operating expenses associated with local news production.<sup>517</sup> The Local TV Coalition notes that unprofitable news operations, like any unprofitable business venture, likely will be eliminated over time.<sup>518</sup> The Local TV Coalition submits an analysis of 20 small and mid-sized markets, which it asserts shows that one or more news operations would have been lost without the existence of shared services agreements or common ownership of local stations.<sup>519</sup>

203. In addition, the Local TV Coalition provides numerous examples of claimed public interest benefits from sharing agreements. For example, in the Burlington, Vermont–Plattsburgh, New York market, the local Fox affiliate and the local ABC affiliate entered into a JSA and a SSA in 2005.<sup>520</sup> Prior to entering into these agreements, the Fox station had never aired a local newscast and the ABC station had discontinued its news operation and fired 25 staffers.<sup>521</sup> Since concluding the sharing agreements, the Fox station now produces newscasts for both stations, resulting in 28 new jobs.<sup>522</sup> NAB also submits examples of broadcast television stations that increased local news programming as a result of sharing agreements.<sup>523</sup> Nexstar states that sharing agreements have enabled it to increase news coverage in the Lubbock, Texas and the Peoria-Bloomington, Illinois markets, and as a result it has launched a nightly newscast in various markets across five states that previously had no local news coverage.<sup>524</sup> Nexstar asserts that any layoffs associated with these agreements typically involve back-office staff and not news personnel.<sup>525</sup> It also asserts that any layoffs of redundant news personnel permit local broadcasters to

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<sup>514</sup> Local TV Coalition Reply at 21-22; Nexstar Reply at 14.

<sup>515</sup> Local TV Coalition Reply at 7; TTBG Reply at 4.

<sup>516</sup> Local TV Coalition Reply at 7.

<sup>517</sup> *Id.* at 8.

<sup>518</sup> *Id.* at 7.

<sup>519</sup> Local TV Coalition Reply App. A; *see also* Local TV Coalition Reply at 9-11. For example, in the Springfield, Missouri market, the Local TV Coalition states that without the existing SSA, two of the top-four stations would have experienced significant losses in 2010 from news operations. Local TV Coalition Reply at 10; Local TV Coalition Reply App. A at 1. In order to keep the news operations profitable, the stations entered into an SSA with a “stronger” affiliate. Local TV Coalition Reply at 10; *see also* Local TV Coalition Reply App. A at 1.

<sup>520</sup> Local TV Coalition Reply at 12.

<sup>521</sup> *Id.*

<sup>522</sup> *Id.* The Coalition asserts that this news operation, and the resulting jobs, would not be possible without the JSA and SSA. *Id.* For additional examples of markets where the Coalition asserts that sharing agreements have produced public interest benefits, *see id.* at 12-20.

<sup>523</sup> NAB Comments Att. B at 26. For example, NAB states that pursuant to a JSA, a station in DMA 101-150 produces 19.5 hours per week of local news for another in-market station and a station in DMA 50-100 produces a daily newscast for another local station. *Id.*

<sup>524</sup> Nexstar Reply at 6, 11-12.

<sup>525</sup> *Id.* at 12.

invest more money in news production and other local programming.<sup>526</sup> Broadcasters state that issues concerning the joint negotiation of retransmission consent fees should be addressed in the Commission's retransmission consent proceeding, and not in the media ownership proceeding.<sup>527</sup> Ultimately, broadcasters oppose any additional regulation of sharing agreements.<sup>528</sup>

204. *Request for Comment.* Are LNS agreements and SSAs substantively equivalent to agreements that are already subject to our attribution rules, and are they therefore attributable today or should they be attributable?<sup>529</sup> What characteristics make them different from already attributable agreements? How, if at all, do LNS agreements and SSAs create interests in licensees that confer a degree of "influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions"?<sup>530</sup> What is the impact of agreements such as LNS agreements and SSAs on our competition, localism, and diversity goals? Does either of these types of agreements have a greater impact on our policy goals than the other? If so, what characteristics account for the disparity in impact? Should we, and if so how, consider the impact of these agreements on our policy goals when formulating our ownership rules?

205. If we determine that LNS agreements and/or SSAs should be attributable, how should we define LNS agreements and SSAs and what attribution standard should we adopt? If we adopt new attribution rules, should existing agreements be grandfathered? If so, how should the grandfathering be structured? If not, how long should broadcasters have to comply with the new attribution rules? If we determine that these arrangements should not be attributable, should we adopt disclosure requirements? If so, what disclosure should be required?<sup>531</sup> Such disclosures could help viewers determine the origin of news content and help the Commission monitor the proliferation of such agreements and determine whether to revisit the issue of attribution.

206. What benefits accrue from stations entering into LNS agreements or SSAs? What would be the impact of a rule that would lead to the attribution of LNS agreements or SSAs? If these agreements result in attribution, what would be the effect, if any, on the cost to produce local news, the ability to employ journalists, and the overall quality of news programming? Is it possible that, without such agreements, local news coverage could be reduced or that some stations will cease news production?

207. Instead of focusing on attributing certain named agreements (e.g., JSAs, LMAs, SSAs, LNS agreements) as we have in the past, should we adopt a broader regulatory scheme that encompasses

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<sup>526</sup> *Id.* at 12. Nexstar also states that the airing of commonly produced newscasts does not result in running the same news on multiple broadcast stations. *Id.*

<sup>527</sup> Coalition Reply at 2-3; Fox Reply at 2; Gray Reply at 1-2; NAB Reply at 28, 31; Nexstar Reply at 14. *See also Media Bureau Seeks Comment on a Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent*, MB Docket No. 10-71, Public Notice, 25 FCC Rcd 2731 (MB, 2010) ("Retransmission Consent Proceeding").

<sup>528</sup> Local TV Coalition Reply at 21; Gray Comments at 15; NAB Comments at 84; Nexstar Reply at 10; TTBG Reply at 4. The Local TV Coalition also argues that the media ownership proceeding is not the appropriate venue to consider attribution issues. Local TV Coalition Reply at 23 (noting that attribution of JSAs to broadcast television stations is currently under consideration by the Commission in MB Docket No. 04-256).

<sup>529</sup> *See Shareholders of the Ackerley Group, Inc. (Transferor) and Clear Channel Communications, Inc. (Transferee) For Transfer of Control of the Ackerley Group, Inc. and Certain Subsidiaries*, Memorandum Opinion and Order, 17 FCC Rcd 10828, 10841, ¶ 33 (2002) (finding that the combination of a non-attributable radio TBA and a radio JSA, not subject to any attribution rules at the time, were "substantively equivalent" to an LMA for more than 15 percent of the station's weekly broadcast time and were therefore attributable).

<sup>530</sup> 1999 Attribution Order, 14 FCC Rcd at 12560, ¶ 1.

<sup>531</sup> *See, e.g.*, CWA Comments at 33-35; CWA Reply App. 1.1 at 24-26.

all agreements, however styled, that relate to the programming and/or operation of broadcast stations?<sup>532</sup> If so, how should we define the covered agreements and structure this regulatory scheme? What characteristics of such agreements are most likely to confer a degree of “influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions”?<sup>533</sup> Should we consider the impact of these agreements on other matters of Commission interest, such as retransmission consent negotiations? Or are these issues more appropriately considered in another context, such as the retransmission proceeding?<sup>534</sup>

208. We strongly encourage parties to existing agreements of all of these types to respond to this request for comment and to provide any other information they think is relevant. It is critical that the Commission obtain accurate information on how these agreements operate in order to make a reasoned decision on what, if any, changes should be made to the Commission’s attribution rules.

## VII. PROCEDURAL MATTERS

### A. Regulatory Flexibility Act

209. As required by the Regulatory Flexibility Act,<sup>535</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities of the policies and rules addressed in this NPRM. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and should have a separate and distinct heading designating them as responses to the IRFA.

### B. Paperwork Reduction Act Analysis

210. *Initial Paperwork Reduction Act Analysis.* This NPRM may result in a new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

### C. Ex Parte Rules

211. *Permit-But-Disclose.* The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>536</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made

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<sup>532</sup> For instance, the Commission previously sought comment on whether to attribute television JSAs. *Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, MB Docket No. 04-265, Order, 19 FCC Rcd 18166 (Med. Bur. 2004).

<sup>533</sup> 1999 Attribution Order, 14 FCC Rcd at 12560, ¶ 1.

<sup>534</sup> See *Retransmission Consent Proceeding*.

<sup>535</sup> See 5 U.S.C. § 603.

<sup>536</sup> 47 C.F.R. §§ 1.1200 *et seq.*

during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### D. Comment Filing Procedures

212. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

213. **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

214. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C., 20554. These

documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

215. *Availability of Additional Information Regarding Media Ownership Studies.* The Commission has made available additional information pertaining to the media ownership studies, which are listed in Appendix A. A number of the authors of the media ownership studies created data sets using proprietary information licensed to the author or the Commission. The data sets, as well as related materials necessary to replicate the studies' analyses, including market data provided to the authors of the studies as "Government Furnished Information," are available for review and inspection by interested parties in the public reference room at the FCC's headquarters (Room CY-A251, 445 12<sup>th</sup> Street, SW, Washington, D.C.) consistent with procedures contained in the Protective Order.<sup>537</sup> Prior to reviewing the proprietary data sets, parties are required to sign and submit the Declaration, which was released as part of the Protective Order. Parties also may be able to obtain licenses from licensors of the underlying proprietary data to evaluate the results of the studies and/or to develop other studies that will contribute to the record in this proceeding.

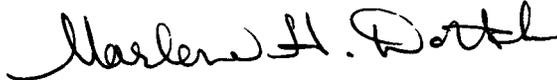
216. *Information.* For additional information on this proceeding, contact Hillary DeNigro or Benjamin Arden of the Industry Analysis Division, Media Bureau, at (202) 418-2330.

### VIII. ORDERING CLAUSE

217. Accordingly, IT IS ORDERED, that pursuant to the authority contained in Sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this Notice of Proposed Rulemaking IS ADOPTED.

218. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

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<sup>537</sup> 2010 Quadrennial Review Protective Order, 26 FCC Rcd at 8474.

**APPENDIX A****Media Ownership Studies**

Media Ownership Study 1, Local Media Ownership and Media Quality, by Adam D. Rennhoff and Kenneth C. Wilbur

Media Ownership Study 2, Consumer Valuation of Media as a Function of Local Market Structure, by Scott J. Savage and Donald M. Waldman

Media Ownership Study 3, How the Ownership Structure of Media Markets affects Civic Engagement and Political Knowledge, 2006-2008, by Lynn Vavreck, Simon Jackman, and Jeffrey B. Lewis

Media Ownership Study 4, Local Information Programming and the Structure of Television Markets, by Jack Erb

Media Ownership Study 5, Station Ownership and the Provision and Consumption of Radio News, by Joel Waldfogel

Media Ownership Study 6, Less of the Same: The Lack of Local News on the Internet, by Matthew Hindman

Media Ownership Study 7, Radio Station Ownership Structure and the Provision of Programming to Minority Audiences: Evidence from 2005- 2009, by Joel Waldfogel

Media Ownership Study 8A, Local Media Ownership and Viewpoint Diversity in Local Television News, by Adam D. Rennhoff and Kenneth C. Wilbur

Media Ownership Study 8B, Diversity in Local Television News, by Lisa M. George and Felix Oberholzer-Gee

Media Ownership Study 9, A Theoretical Analysis of the Impact of Local Market Structure on the Range of Viewpoints Supplied, by Isabelle Brocas, Juan D. Carrillo, and Simon Wilkie

Media Ownership Study 10, Broadcast Ownership Rules and Innovation, by Andrew S. Wise

**APPENDIX B****Proposed Rules**

The Federal Communications Commission proposes to amend Part 73 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

**PART 73—Radio Broadcast Services**

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

**AUTHORITY:** 47 U.S.C. 154, 303, 334 and 336

2. Amend § 73.3555 by removing and reserving paragraph (c) and revising paragraphs (b) and (d) to read as follows:

**§ 73.3555 Multiple ownership.**

\* \* \* \* \*

(b) Local television multiple ownership rule. An entity may directly or indirectly own, operate, or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research or any successor entity) if:

(1) At the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day (9:00 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and

(2) At least 8 independently owned and operating, full-power commercial and noncommercial TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located. Count only those TV stations with a community of license in the same DMA as the stations in the proposed combination. In areas where there is no Nielsen DMA, count the TV stations present in an area that would be the functional equivalent of a TV market. Count only those TV stations with a community of license in the same area that would be the functional equivalent of a TV market as the stations in the proposed combination.

(c) [Reserved]

(d) Daily newspaper-broadcast cross-ownership rule. (1) No license for a full power AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: (i) the TV station's community of license and the entire community in which the newspaper is published being located within the same Nielsen DMA; (ii) the predicted or measured 2 mV/m contour of an AM station, computed in accordance with Sec. 73.183 or Sec. 73.186, encompassing the entire community in which such newspaper is published; or (iii) the predicted 1 mV/m contour for an FM station, computed in accordance with Sec. 73.313, encompassing the entire community in which such newspaper is published.

(2) There is a presumption that it is consistent with the public interest, convenience, and necessity for an entity to own, operate or control in a top 20 Nielsen DMA a daily newspaper and (1) a full power radio

station, or (2) a full-power TV broadcast station provided that, (i) the TV station is not ranked among the top four TV stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and (ii) at least 8 independently owned and operating major media voices would remain in the DMA in which the community of license of the TV station in question is located (for purposes of this provision major media voices include full-power TV broadcast stations and major newspapers).

(4) There is a presumption that it is inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control in a DMA other than the top 20 Nielsen DMAs a daily newspaper and a full-power TV broadcast station in the same DMA as the newspaper's community of publication, or a commercial AM or FM broadcast station as defined in paragraph (d)(1) of this section.

\* \* \* \* \*

## APPENDIX C

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of this NPRM. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. Pursuant to our statutory mandate under the Telecommunications Act of 1996,<sup>4</sup> the NPRM seeks comment on the Commission's media ownership rules and proposed changes thereto. As discussed in the NPRM, we are required by statute to review our media ownership rules every four years to determine whether they "are necessary in the public interest as the result of competition."<sup>5</sup> The NPRM discusses the local television ownership rule, the local radio ownership rule, the newspaper/broadcast cross-ownership rule, the radio/television cross-ownership rule, and the dual network rule. Our challenge in this proceeding is to take account of new technologies and changing marketplace conditions while ensuring that our media ownership rules continue to serve our public interest goals of competition, localism, and diversity. The NPRM also seeks comment on economic studies analyzing the relationship between local media market structure and the policy goals that underlie the Commission's media ownership rules. In addition, the NPRM seeks comment in this proceeding on the aspects of the Commission's 2008 *Diversity Order*<sup>6</sup> that the Third Circuit remanded in *Prometheus II*.<sup>7</sup>

3. We find that the public interest is best served by modest, incremental changes to our rules.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) ("1996 Act"); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) ("Appropriations Act") (amending Sections 202(c) and 202(h) of the 1996 Act). The media ownership rules subject to this quadrennial review are the local television ownership rule, the local radio ownership rule, the newspaper/broadcast cross-ownership rule, the radio/television cross-ownership rule, and the dual network rule.

<sup>5</sup> Section 202(h) of the 1996 Act, 47 U.S.C. § 303 note. Section 202(h) of the 1996 Act further requires the Commission to "repeal or modify any regulation it determines to be no longer in the public interest." *Id.* In *Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) ("*Prometheus I*"), the Third Circuit concluded that "necessary in the public interest" is a "plain public interest" standard under which 'necessary' means 'convenient,' 'useful,' or 'helpful,' not 'essential' or 'indispensable.'" *Id.* at 394. The court stated that "the first instruction [of § 202(h)] requires the Commission to take a fresh look at its regulations periodically in order to ensure that they remain 'necessary in the public interest.'" *Id.* at 391. In 2004, Congress revised the then-biennial review requirement to require such reviews quadrennially. See Appropriations Act § 629, 118 Stat. at 100.

<sup>6</sup> *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket No. 07-294, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (2008) ("*Diversity Order*" and "*Diversity Third FNPRM*").

<sup>7</sup> *Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011) ("*Prometheus II*").

Recognizing current market realities, the NPRM seeks comment on the following proposals:

- *Local Television Ownership Rule.* In the NPRM, we tentatively conclude that we should retain the current local television ownership rule with minor modifications. Specifically, the NPRM proposes to eliminate the Grade B contour overlap provision of the current rule. We tentatively conclude that we should retain the prohibition against mergers among the top-four-rated stations, the eight-voices test, and the existing numerical limits. In addition, the NPRM seeks comment on whether to adopt a waiver standard applicable to small markets, as well as appropriate criteria for any such standard. Also, the NPRM seeks comment on whether multicasting should be a factor in determining the television ownership limits.
- *Local Radio Ownership Rule.* The NPRM proposes to retain the current local radio ownership rule. The NPRM also seeks comment on alternative modifications to the rule and whether and how the rule should account for other audio platforms. The NPRM also proposes to retain the AM/FM subcaps, and seeks comment on the impact of digital radio. The NPRM seeks comment on whether to adopt a waiver standard and on specific criteria to adopt.
- *Newspaper/Broadcast Cross-Ownership Rule.* In the NPRM, we tentatively conclude that some newspaper/broadcast cross-ownership restrictions continue to be necessary to protect and promote viewpoint diversity. The NPRM proposes to use Nielsen DMA definitions to determine the relevant market area for television stations, given the lack of a digital equivalent to the analog Grade A service contour. The NPRM proposes to adopt a rule that includes elements of the 2006 rule, including the top 20 DMA demarcation point, the top-four television station restriction, and the eight remaining voices test.
- *Radio/Television Cross-Ownership Rule.* The NPRM proposes to eliminate the radio/television cross-ownership rule in favor of reliance on the local radio rule and local television rule. We believe that the local radio and television ownership rules adequately protect our localism and diversity goals and tentatively conclude that eliminating this rule is not likely to lead to significant additional consolidation of broadcast facilities. The NPRM seeks comment on this.
- *Dual Network Rule.* In the NPRM, we tentatively conclude that the dual network rule remains necessary in the public interest to promote competition and localism and should be retained without modification.
- *Diversity Order Remand/Eligible Entity Definition.* We seek comment in this NPRM on issues that previously were being addressed in a separate rulemaking proceeding focused on enhancing the diversity of ownership in the broadcast industry, including by increasing ownership opportunities for minorities and women. As explained in the NPRM, the Third Circuit in *Prometheus II* remanded the measures adopted in the Commission's 2008 *Diversity Order* that relied on a revenue-based "eligible entity" standard<sup>8</sup> and emphasized that the actions required on remand from the *Diversity Order* should be completed "within the course of the Commission's 2010 Quadrennial Review of its media ownership rules."<sup>9</sup> Accordingly, we seek comment in this proceeding on how the Commission should respond to the court's remand and on other actions we should consider to increase the level of broadcast station ownership by minorities and women.

<sup>8</sup> These measures include: (1) Revisions of Rules Regarding Construction Permit Deadlines; (2) Modification of Attribution Rules; (3) Distress Sale Policy; (4) Duopoly Priority for Companies that Finance or Incubate and Eligible Entity; (5) Extension of Divestiture Deadline in Certain Mergers; and (6) Transfer of Grandfathered Radio Station Combinations to Non-Eligible Entities. *Diversity Order*, 23 FCC Rcd at 5931, 5936, 5939, 5943-45, ¶¶ 15, 31, 39, 56-61; see also *Prometheus II*.

<sup>9</sup> *Prometheus II*, 652 F.3d at 472.

**B. Legal Basis**

4. The proposed action is authorized under Sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>10</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>11</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>12</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>13</sup>

6. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than \$14.0 million in annual receipts.<sup>14</sup> Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”<sup>15</sup> The Commission has estimated the number of licensed commercial television stations to be 1,382.<sup>16</sup> According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of October 3, 2011, 950 (or about 73 percent) of an estimated 1,301 commercial television stations<sup>17</sup> in the United States have revenues of \$14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial

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<sup>10</sup> 5 U.S.C. § 603(b)(3).

<sup>11</sup> 5 U.S.C. § 601(6).

<sup>12</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>13</sup> 15 U.S.C. § 632.

<sup>14</sup> See 13 C.F.R. § 121.201 (NAICS Code 515120).

<sup>15</sup> U.S. Census Bureau, *2002 NAICS Definitions*, <http://www.census.gov/epcd/naics02/def/NDEF515.HTM> (visited Oct. 19, 2011). This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” *Id.* Separate census categories pertain to businesses primarily engaged in producing programming (e.g., Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199). 13 C.F.R. § 121.201.

<sup>16</sup> See *Broadcast Station Totals as of March 31, 2011*, Press Release (MB, rel. May 16, 2011) (“*March 31, 2011 Broadcast Station Totals Press Release*”), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-306575A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306575A1.pdf).

<sup>17</sup> We recognize that this total differs slightly from that contained in the *March 31, 2011 Broadcast Station Totals Press Release*; however, we are using BIA’s estimate for purposes of this revenue comparison.

educational (“NCE”) television stations to be 392.<sup>18</sup> We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>19</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

7. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

8. *Radio Broadcasting.* The proposed policies could apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than \$7 million in annual receipts.<sup>20</sup> Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public.<sup>21</sup> According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database on as of October 3, 2011, about 10,783 (97 percent) of 11,125 commercial radio stations have revenues of \$7 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>22</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

9. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

10. *Daily Newspapers.* The SBA has developed a small business size standard for the census category of Newspaper Publishers; that size standard is 500 or fewer employees.<sup>23</sup> Census Bureau data

<sup>18</sup> See March 31, 2011 Broadcast Station Totals Press Release.

<sup>19</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 121.103(a)(1).

<sup>20</sup> See *id.* at § 121.201 (NAICS Code 515112).

<sup>21</sup> U.S. Census Bureau, 2002 NAICS Definitions, <http://www.census.gov/epcd/naics02/def/NDEF515.HTM> (visited Oct. 19, 2011).

<sup>22</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 121.103(a)(1).

<sup>23</sup> *Id.* at § 121.201 (NAICS code 511110).

for 2007 show that there were 4,852 firms in this category that operated for the entire year.<sup>24</sup> Of this total, 4,771 firms had employment of 499 or fewer employees, and an additional 33 firms had employment of 500 to 999 employees. Therefore, we estimate that the majority of Newspaper Publishers are small entities that might be affected by our action.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

11. The NPRM proposes a number of rule changes that will affect reporting, recordkeeping and other compliance requirements. Each of these changes is described below.

12. The NPRM proposes modifications to several of the media ownership rules as set forth in Paragraph 3 above. The proposals, if ultimately adopted, would modify several FCC forms and their instructions: (1) FCC Form 301, Application for Construction Permit For Commercial Broadcast Station; (2) FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License; and (3) FCC Form 315, Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License. The Commission may have to modify other forms that include in their instructions the media ownership rules or citations to media ownership proceedings, including Form 303-s and Form 323. The impact of these changes will be the same on all entities, and we do not anticipate that compliance will require the expenditure of any additional resources.

**E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>25</sup>

14. The specific proposals on which the NPRM seeks comment, set forth in Paragraph 3 above, are intended to achieve our public interest goals of competition, localism, and diversity. The NPRM seeks comment on a number of measures designed to minimize the economic impact of our proposed rules on firms generally, as well as those intended to promote broadcast ownership opportunities among a diverse group of owners, including small entities. For example, as part of the local radio ownership rule, the NPRM proposes to retain the AM/FM subcaps, which limit the number of radio stations in the same service that an entity can own. As noted in the NPRM, the Commission has previously concluded that AM/FM subcaps serve the public interest by promoting new entry into radio ownership, particularly by small businesses, including minority- and women-owned businesses.<sup>26</sup>

15. The NPRM also seeks comment in this proceeding on the aspects of the Commission's 2008 *Diversity Order* that the Third Circuit remanded in *Prometheus II*.<sup>27</sup> Among other measures, the NPRM seeks comment on those intended to promote broadcast ownership opportunities for small businesses. For instance, the NPRM seeks comment regarding whether to reinstate the preexisting revenue-based eligible entity definition, which the Commission has concluded would "be effective in creating new opportunities for broadcast ownership by a variety of small businesses and new entrants,

<sup>24</sup> U.S. Census Bureau, *2007 Economic Census, Sector 51: Information, Subject Series: Establishment and Firm Size, Employment Size of Firms for the US: 2007* (rel. Nov. 19, 2010), [http://factfinder.census.gov/servlet/IBQTable?\\_bm=y&-geo\\_id=&-ds\\_name=EC0751SSSZ5&-lang=en](http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-ds_name=EC0751SSSZ5&-lang=en) (NAICS code 511110) (visited Oct. 19, 2011).

<sup>25</sup> See 5 U.S.C. § 603(c).

<sup>26</sup> NPRM at ¶ 75.

<sup>27</sup> See *id.* at Section IV.

including minorities and women.”<sup>28</sup> The NPRM also seeks comment on whether increasing station ownership by small businesses should be an independent policy goal in this proceeding and, if so, whether readopting the preexisting eligible entity definition would be a reasonable and effective means of promoting this objective.<sup>29</sup>

**F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule**

16. None.

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<sup>28</sup> *Diversity Order*, 23 FCC Rcd at 5927, ¶ 9. As defined in the *Diversity Order*, an “eligible entity” is any entity that qualifies as a small business under revenue-based standards that have been established by the Small Business Administration (“SBA”). *Id.* at 5925, ¶ 6.

<sup>29</sup> *NPRM* at ¶ 161.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS  
APPROVING IN PART, DISSENTING IN PART**

*Re: 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182, Promoting Diversification of Ownership In the Broadcasting Services, MB Docket No. 07-294, Notice of Proposed Rulemaking*

As I cast perhaps my last major vote as a Member of the Federal Communications Commission, it will come as a surprise to very few that I cannot approve of the Quadrennial Review in all of its aspects. While I find a better level of analysis here than in previous Quadrennial Reviews, the item nevertheless provokes my dissent because it heads down a similar road that the two previous Commissions travelled regarding newspaper-broadcast cross-ownership. In the vast majority of cases, I do not believe that newspaper-broadcast cross-ownership advances the public interest. It means fewer voices in the community, less localism in the industry, and steep transactional costs that all too often lead to down-sized or shuttered newsrooms and fired journalists. Our media, and our public policy, need to head in a different direction. A media that more effectively nourishes genuine civic dialogue is necessary to successful self-government.

I only wish we were in a different position than the one we find ourselves in at this moment. In the ten-plus years that I have been at the Commission, we have witnessed dramatic media industry consolidation, to say nothing of the extensive concentration that occurred during the preceding twenty years. It is time to put an end to the years of public policy shortfall that have encouraged this trend. My ideal NPRM would flash an orange caution light that change was in the works, setting the stage for a Report and Order that would turn on a red light to many consolidation transactions, while still allowing for exceptions in the few cases that would warrant them.

The media landscape is, as we all know, changing. In the last few years we have seen incredible growth in the broadband realm, ripe with exciting options and opportunities. What we have not witnessed is the breadth and depth online to replace what has been lost in “traditional” media. This becomes critically important when you look at the hundreds of millions of dollars that no longer flow into news operations, only a fraction of which has been replaced by Web newsgathering. Simply put, what we currently have is an illusion of plenty. The barriers to self-publish have never been lower, but the majority of eyeballs and clicks are still focused on too few small players. It is irresponsible to remove all protections, both in terms of ownership and public interest obligations, in traditional media on the shaky expectation that the new media of broadband will somehow make everything right and furnish our citizens with the news and information they need to make informed decisions for the future of our country. If the past is prologue here, there is no guarantee we will achieve parity in the new media platform. Indeed, we must be extremely careful to not repeat the same mistakes in new media that we permitted in traditional media by permitting so few to control so much. Developing a truly democratized media online is vital to realizing the transformative power of the Internet.

The world of media has fundamentally changed, but America’s ongoing historical challenge to provide its citizens with information infrastructure has not changed, nor has the responsibility of the FCC to create rules to enhance the statutory mandates of localism, competition, and diversity.

This is not just my philosophy. It reflects the beliefs of millions of Americans who have contacted us over the past ten years about the shortfalls of media policy. It also reflects the views of tens of thousands of citizens I have personally met with around the nation. One of my principal activities as a Commissioner has been to encourage a national dialogue on media policy. With a number of my colleagues over the past decade, I have gone on the road to foster such discussions from Florida to Vermont, from Portland, Oregon to Portland, Maine—and dozens of points between. What I hear

everywhere I go is great frustration with the current media environment—frustration as too much glitzy infotainment replaces real local news and community information; frustration with all the canned, homogenized music that has pushed aside local and regional artists and genres; frustration with too much shouted opinion and too little factual, investigative journalism. Just a few weeks ago, Commissioner Clyburn and I were in Atlanta talking about these issues. I sensed an almost palpable feeling of anguish as we listened to plea after urgent plea for more community media, more voices, and more diversity on our airwaves.

*These rules matter.* People know that something is not right and they are looking to the FCC to make a difference. Many in Congress have let us know their concerns about an overly consolidated media. Not to mention the fact that the Court has continued to frown upon our inaction on a host of initiatives we should have taken by now, especially when it comes to fulfilling our obligation to provide a more diverse media.

I am of the strong opinion that we should be farther along in correcting the inequities of minority and women ownership of broadcast outlets. While I am pleased to see the proposal for an incubator program teed up for comment in the NPRM before us, I would have preferred us to have already taken action on such proposals as “Overcoming Disadvantages” and any number of other proposals submitted over the past several years to the Commission by our Diversity Advisory Committee. These are the kinds of actions that I believe the Third Circuit has been expecting of us for years and it is why the Court keeps sending back FCC rules that fail to deliver. In a country now nearly one-third minority, it is shocking, and I think embarrassing, that people of color own barely more than 3% of full-power commercial television stations. We must make a prompt and major commitment to ownership diversity. This certainly includes a Commission commitment to fund the necessary studies to build a record essential to satisfying judicial scrutiny so that we can go from the kind of interim steps I have just discussed to the even more aggressive policies that will be needed to bring diversity and justice to our media.

With the perils of consolidation on clear display in market after market, it would seem to me that we should be closing loopholes instead of providing openings for them. I was deeply distressed to discover, in the item’s discussion of newspaper-broadcast cross-ownership, that Chairman Martin’s proposed rule is being considered once again, even after Congress and the Court have on numerous occasions expressed their displeasure. Worse, the conditions that the then-majority attached to the 2008 newspaper-broadcast rule were so riddled with loopholes that an 18-wheeler could be driven through them—yet here they are, teed up for our consideration yet again! I was strongly opposed to the four factors that Chairman Martin proposed in the 2007-2008 proceeding, and I am opposed to considering them again in this proceeding.

It is a very positive development that we are taking a closer look at ownership attribution, especially the Shared Services Agreements and whether or not such agreements constitute an end-run around our rules. We have seen a proliferation of these types of agreements in recent years, in many cases to the detriment of independent content. Too often we see exactly the same programming being shown on two or more channels, including the simulcast of identical newscasts. There should be exceptions for expenses such as sharing a helicopter, but all too often the deals are, in reality, a transfer of power without having to come before the Commission. Commenters have also flagged the issue of how these types of agreements encroach on competition in terms of retransmission consent agreements. It is critical that the FCC look at these arrangements from all sides and make critical decisions on how our rules should be modified to incorporate these Shared Services Agreements. I am pleased we are heading in that direction.

As my time winds down at the Commission, I am more convinced than ever that strong action is needed on these fronts. The record will now be open as the Quadrennial Review proceeding moves in the months ahead to Report and Order. I hope that all stakeholders will take part in responding to this Notice of Proposed Rulemaking. We should all remember the admonition of my mentor, Senator Fritz Hollings, that “Decisions without you are decisions against you.” This is the time for citizens far-and-wide to tell

us what they really think and to offer their comments and proposals for an enhanced media. We have seen citizen input accomplish great things before; now we need to see it again. To my mind, no issue before this Commission—*no issue*—rivals in importance the future of our media. No other great issue will be successfully resolved without its being presented in all its dimensions to the American people. Our Founding Fathers understood this and took steps to make it happen. Now it is our generation's turn.

**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL  
APPROVING IN PART, CONCURRING IN PART**

*Re: 2010 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182, Promoting Diversification of Ownership In the Broadcasting Services, MB Docket No. 07-294, Notice of Proposed Rulemaking*

The media marketplace has experienced a dramatic transformation over the past decade. More relevant to this proceeding, however, significant market developments have taken place since the previous review of our media ownership rules commenced in 2006. American consumers no longer live in a world limited to broadcast stations and newspapers. They also receive programming via cable, satellite and the Internet, not to mention mobile platforms. Today’s notice recognizes that the current media landscape has more delivery platforms than just broadcasting and newspapers; however, this vibrant competition is not reflected in the tentative conclusions. Instead, the Commission appears to be prepared to accept a regulatory *status quo* by entrenching itself into an overly-cautious, wait-and-see approach regarding the further development of new media platforms even though they have already revolutionized the market.

Perhaps the Commission’s proposed regulatory sclerosis can be explained by the history of appellate litigation that has affected our media ownership proceedings. Even though several stakeholders recently petitioned the Supreme Court to review the 2006 rules, no legal hurdles preventing us from modernizing our rules to reflect the economic and technological realities of the current marketplace stand in our way. The Commission has been aware since at least 2002 that the Internet was having a profound effect on the media landscape. Maintaining decades-old industrial policy in this age of competition, mobility and new media is not in the public interest, and it certainly is not what Congress intended when it directed the Commission to repeal or modify unnecessary regulation.

While I applaud the proposal to eliminate the radio-television cross-ownership rule, I am disappointed that we tentatively conclude to retain most of the existing media ownership rules, including the dual network, local television and local radio ownership rules. Moreover, while the Commission does propose an anemic relaxation of the newspaper-broadcast cross-ownership rule for the largest markets and seeks comment on eliminating restrictions on newspaper/radio combinations, the proposals do not go nearly far enough. We should seek comment on a much more dramatic modernization, if not complete elimination, of the 36-year-old newspaper-broadcast cross-ownership rule. Broadcast stations and daily newspapers are grappling with falling audience and circulation numbers, diminishing advertising revenues, and staff reductions as online sources gain in popularity. The notion that broadcasters may distribute their content through radio, television, the Internet, mobile devices and other unforeseen portals, but must be prohibited by law from printing the same content on the medium of newsprint, seems anachronistic at best. Arcane and burdensome rules should not be allowed to continue impeding, or potentially impeding, the ability of broadcasters and newspapers to survive and thrive in the digital era.

In fact, contrary to eliminating outdated regulations, the Commission is suggesting rule changes that would be more burdensome than existing regulations. For instance, the proposal to apply ownership combination restrictions to daily newspapers and television stations within the same Nielsen Designated Market Area may prohibit ownership combinations that are currently permitted. Further, I am troubled by yet another round of inquiries – this time within the framework of our attribution rules – into shared service agreements and other local newsgathering cooperative efforts. These arrangements are used to reduce the costs of news production and any action taken to hinder such relationships may have unintended consequences, such as reducing the quality and quantity of local news and exacerbating the failure of more newspapers. We must be wary of taking actions in the name of promoting journalism, especially if they could have the opposite effect. As I have often said, journalism does not need the government’s “help.” That very notion raises serious constitutional concerns.

In this notice, we also seek comment on the myriad proposals to enhance media diversity that have been introduced over the past few years. Our query is not only understandable but necessary as well in light of the *Prometheus II* decision, whereby the Third Circuit struck down many of the diversity provisions adopted in the 2007 Diversity Order. While some are neutral, several of these proposals are race and/or gender based. For those proposals aimed at expanding media opportunities for minorities and women, we have to be mindful that any action the Commission would take in this area *must* also be legally sustainable and satisfy the rigorous demands of the Equal Protection Clause, as interpreted under the Supreme Court's *Adarand* line of cases. As I have said several times before, the diversity studies should be completed as soon as possible to assist us in supporting any new race- and/or gender-based regulations and determining the best approaches to increase media diversity, in accordance with the Constitution.

For these reasons, I vote in support of seeking comment on the diversity proposals and eliminating the radio-television cross-ownership rule. I must concur, however, on the rest of the notice, because I cannot agree with the tentative conclusions to retain the remainder of the media ownership rules and have serious concerns regarding the possible attribution of agreements broadly relating to the programming and/or operation of broadcast stations. I have not seen any data, nor is there any evidence cited in the notice, that would support such regulation. Nevertheless, I will keep an open mind and look forward to reviewing the submissions that are filed. I hope that stakeholders will provide comprehensive data and information regarding the competitive nature of the media sector and the effects that the proposed rules will have on industry and American consumers. I also remain hopeful that the Commission will pursue the deregulatory approach mandated by Congress. In that regard, I commend the Chairman for accepting edits to elicit information about the benefits of shared service agreements and newspaper-broadcast cross-ownership and the possible harms that could result if the proposed rules are adopted. Finally, I thank the staff of the Media Bureau for their hard work on this notice and the work that still remains before them.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

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In considering this item, I experienced a myriad of emotions: Hope, fear, frustration, expectation, and exasperation.

Media ownership affects every single person in this country, whether they realize it or not. Everyone digests news, some casually others voraciously. Therefore, preserving journalistic integrity and promoting a diversity of viewpoints are paramount concerns, and should remain top priorities for this agency.

Among other things, this NPRM acknowledges that the Commission needs more data. It admits that the factual information that the Commission currently has is incomplete if developing policies to promote greater female and minority ownership is still a priority. I commend the Chairman for insisting that ours is a data-driven agency, and am encouraged by the commitment to support the research necessary to achieve, in an expeditious fashion, a comprehensive picture of the current state of female and minority ownership.

Women, minorities and those who reside in rural areas come into my office painting a bleak picture. They feel disconnected from the public airwaves, and their outlets rarely speak to the needs of their communities. They echo the argument that more relaxed media ownership rules would negatively impact diversity of ownership, but without the proper data, our agency cannot concur or refute that troubling conclusion. Does consolidation harm chances for others to fairly compete? Is female and minority ownership in the broadcast sector particularly lagging as compared to other industries? Is every segment of this country getting the information its residents need? I have been told by those wishing to serve long-neglected communities that female and minority owners have a great record when it comes to diverse hiring, promotion and community service. But stories and anecdotes, no matter how persuasive or discouraging, are not enough. This Commission has a duty to get a firm and informed handle on what is actually happening in our big cities and in our small towns. We need to know how our policies are actually affecting ALL Americans.

The FCC needs to know who owns the media. We have an obligation to more fully understand what impact that ownership has on journalism and the critical information needs of all our communities. The answers to these questions are crucial, and we owe it to the public to implement policies that are informed and forward-looking.

This Commission's responsibility to the public interest is one I take very seriously, and this falls squarely into that mission. Our research on the media landscape cannot be done quickly enough, and with the funds approved for Fiscal Year 2012, one less barrier stands in the way of us meeting that basic mission.

I will continue to work with Chairman Genachowski, my colleagues at the Commission, and other interested parties as we collect, evaluate and incorporate timely and much sought after data, which will serve as the foundation for a sound policy framework.