

**APPENDIX A  
LIST OF COMMENTERS**

**MB Docket No. 02-277: 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996**

**Initial Comments**

Alaska Broadcasting Company, Inc., Quincy Newspapers, Inc. & Grant Communications, Inc. (“Alaska”)  
Alliance for Community Media (“Alliance”)  
American Federation of Labor & Congress of Industrial Organizations (“AFL-CIO”)  
American Federation of TV & Radio Artists and Writers Guild of America East (“AFTRA”)  
American Women in Radio & Television, Inc. (“AWRT”)  
Annenberg School for Communication (“Annenberg”)  
Arso Radio Corporation (“Arso”)  
Bear Stearns & Co. (“Bear Stearns”)  
Belo Corp. (“Belo”)  
Block Communications, Inc. (“Block”)  
Bonneville International Corp. (“BIC”)  
Buckley Broadcasting Corp. (“Buckley”)  
CanWest Global Communications Corp. (“CanWest”)  
Caucus for Television Producers, Writers & Directors (“The Caucus”)  
Center for the Creative Community (“CCC”)  
Children Now, American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Psychological Association, Action Coalition for Media Education, Center for Media Education, Mediascope, National Association of Child Advocates, National Institute on Media and the Family, National PTA (“Children Now”)  
Clear Channel Communications Inc. (“Clear Channel”)  
Coalition Broadcasters, LIN Television Corporation, Raycom Media, Inc., Waterman Broadcasting Corporation, and Montclair Communications, Inc. (“Coalition Broadcasters”)  
Coalition for a Democratic Pacifica (“CDP”)  
Coalition for Program Diversity (“CPD”)  
Communications Science & Technologies, Inc. (“CST”)  
Communications Workers of America, The Newspaper Guild/CWA, National Association of Broadcast Employees and Technicians/CWA, Printing, Publishing, and Media Workers Section/CWA (“CWA”)  
Consumer Federation of America, Consumers Union, Center for Digital Democracy, Media Access Project (“CFA”)  
Cox Enterprises, Inc. (“Cox”)  
Craig, A.G. (Univ. of California) (“Craig”)  
Dispatch Broadcast Group (“Dispatch”)  
Duhamel Broadcasting Enterprises (“Duhamel”)  
Emmis Communications Corporation (“Emmis”)  
Entravision Holdings, Inc. (“Entravision”)  
Fairness & Accuracy in Reporting (“FAIR”)  
Fox Entertainment Group, Inc. and Fox Television Stations, Inc., National Broadcasting Company, Inc. and Telemundo Communications Group, Inc. Viacom (“Fox”)  
Gannett Company, Inc. (“Gannett”)

Granite Broadcasting Corporation (“Granite”)  
Gray Television, Inc. (“Gray”)  
Hamilton, Dr. James (“Hamilton”)  
Hearst Corporation (“Hearst”)  
Hearst/Argyle Television (“Hearst/Argyle”)  
Information Policy Institute (“IPI”)  
Inner City Broadcasting Corporation (“Inner City”)  
Kidd, Dorothy (Univ. of San Francisco) (“Kidd”)  
KM Communications, Inc. (“KM”)  
MBC Grand Broadcasting (“MBC Grand”)  
Media General Inc. (“Media General”)  
Media General, Inc., (“Media General”) Cosmos Broadcasting Corporation (“Cosmos”), and Block  
Communications (“Block”) (“Media General *et. al*”)  
Minority Media & Telecommunications Council (“MMTC”)  
Morris Communications Corporation (“Morris”)  
National Association of Broadcasters (“NAB”)  
National Association of Broadcasters and the Network Affiliated Stations Alliance (“NAB”) (“NASA”)  
National Association of Black-Owned Broadcasters, Inc. and the Rainbow/PUSH Coalition, Inc.  
 (“NABOB”)  
National Association of Hispanic Journalists (“NAHJ”)  
Newspaper Association of America (“NAA”)  
Nexstar Broadcasting Group, L.L.C. and Quorum Broadcast Holdings, LLC (“Nexstar”)  
Noam, Eli, Columbia Business School (“Noam”)  
National Organization For Women (“NOW”)  
Ortiz, Prof. Sandra (USC) (“Ortiz”)  
Pappas Telecasting Companies (“Pappas”)  
Paxson Communications Corporation (“Paxson”)  
Pollack, Malla (Univ. of Memphis) (“Pollack”)  
Rodriguez, Dr. Clemencia (Univ. of Oklahoma) (“Rodriguez”)  
Schechner, Noam (Yeshiva Univ.) (“Schechner”)  
Sinclair Broadcast Group, Inc. (“Sinclair”)  
Smith, Laura  
Smith, Thomas (“Smith”)  
Stapleton, Nancy (“Stapleton”)  
Strott, Elizabeth (“Strott”)  
Tribune Company (“Tribune”)  
TV-Turnoff Network  
United Church of Christ, Black Citizens for a Fair Media, Civil Rights Forum, Philadelphia Lesbian and  
Gay Task Force, and Women’s Institute for Freedom of the Press (“UCC”)  
Verizon  
Virginia Center for The Public Press  
Walt Disney Company (“Disney”)  
West Virginia Media Holdings (“West Virginia Media”)  
Writers Guild of America (“Writers Guild”)

**Reply Comments (MB Docket 02-277)**

American Cable Association (“ACA”)  
Amherst Alliance (“Amherst”)

Attorney General State of Connecticut  
Belo Corporation (“Belo”)  
Center for Creative Community (“CCC”)  
Clear Channel Communications (“Clear Channel”)  
Coalition for Program Diversity (“CPD”)  
Communications Science & Technologies, Inc. (“CS&T”)  
Cox Enterprises, Inc. (“Cox”)  
Desmond, Thomas (“Desmond”)  
Fox Entertainment Group, Inc. and Fox Television Stations, Inc., National Broadcasting Company, Inc.  
and Telemundo Communications Group, Inc. Viacom (“Fox”)  
Gannett Co., Inc. (“Gannett”)  
Granite Broadcasting (“Granite”)  
Gray Television, Inc. (“Gray”)  
Griffith, David E. (“Griffith”)  
Hearst-Argyle Television (“Hearst-Argyle”)  
Hodson Broadcasting (“Hodson”)  
Inner City Broadcasting (“Inner City”)  
Kennelwood Bcstg Co. (“Kennelwood”)  
Louisville Communications, LLC (“Louisville”)  
MBC Grand Broadcasting (“MBC Grand”)  
Media General, Inc. (“Media General”)  
Mediacom Communications (“Mediacom”) (Revised February 10, 2003)  
Minority Media & Telecommunications Council (“MMTC”)  
National Association of Broadcast Employees and Technicians-Communications Workers of America  
and the National Grange (“NABET-CWA”)  
National Association of Black Owned Broadcasters (“NABOB”)  
National Association of Broadcasters (“NAB”)  
National Association of Broadcasters and Network Affiliated Stations Alliance (“NAB/NASA”)  
National Grange (“The Grange”)  
Newspaper Association of America (“NAA”)  
Nexstar Broadcasting and Quorum Broadcast Holdings (“Nexstar/Quorum”)  
Paxson Communications (“Paxson”)  
Prairie Air Inc. (“Prairie”)  
Prometheus Radio (“Prometheus”)  
Quincy Newspapers (“Quincy”)  
Sinclair Broadcast Group, Inc. (“Sinclair”)  
Tribune Company (“Tribune”)  
United Church of Christ, Black Citizens for a Fair Media, Civil Rights Forum, Philadelphia Lesbian and  
Gay Task Force, and Women’s Institute for Freedom of the Press (“UCC”)  
United States Conference of Catholic Bishops (“USCCB”)  
Univision Communications (“Univision”)  
Walt Disney Company (“Disney”)  
Westwind Communications (“Westwind”)

**MM Docket No. 01-235: Cross-Ownership of Broadcast Stations and Newspapers (Notice of Proposed Rulemaking)****Initial Comments –**

ALTV

American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”)

Arso Radio Corporation (“Arso”)

Association of Local Television Stations (“ALTS”)

Bear Stearns & Co. (“Bear Stearns”)

Belo Corporation (“Belo”)

Bonneville International Corporation (“BIC”)

CanWest Global Communications (“CanWest”)

Caribbean International News Corporation (“Caribbean”)

Consumers Union, Consumer Federation of America, Civil Rights Forum, Center for Digital Democracy, Leadership Conference on Civil Rights and Media Access Project (“CU”)

Cox Enterprises, Inc. (“Cox”)

E.W. Scripps Company (“Scripps”)

Freedom of Expression Foundation, Inc.

Gannett Company (“Gannett”)

Hearst Corporation (“Hearst”)

Hearst-Argyle Television (“Hearst-Argyle”)

Journal Broadcast Corporation

Leggett, Nickolas (“Leggett”)

Media Institute

Media General, Inc. (“Media General”)

Mid West Family Stations (“Mid West”)

Morris Communications (“Morris”)

National Association of Broadcasters (“NAB”)

New York Times Company (“New York Times”)

News Corporation, Ltd. (“News Corp.”)

Newspaper Association of America (“NAA”)

Norwell Television Corporation (“Norwell”)

Pathfinder Communications Corporation (“Pathfinder”)

Reading Eagle Company (“Reading”)

Schurz Communications (“Schurz”)

Star Printing Company (“Star”)

Tribune Company (“Tribune”)

United Church of Christ, Office of Communications, National Organization for Women and Media Alliance (“UCC”)

West Virginia Media Holdings (“West Virginia Media”)

West Virginia Radio Corporation (“West Virginia Radio”)

**Reply Comments**

American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”)

Belo Corporation (“Belo”)

Bliss Communications, Inc. (“Bliss”)

Bowles, Kenneth W. (“Bowles”)

Caribbean International News Corporation (“Caribbean”)  
Consumers Union, Consumer Federation of America, Civil Rights Forum, Center for  
Digital Democracy, Leadership Conference on Civil Rights and Media Access Project (“CU”)  
Cox Enterprises (“Cox”)  
E. W. Scripps Company (“Scripps”)  
Gannett Company (“Gannett”)  
Hahn, Robert (“Hahn”)  
Hearst Corporation (“Hearst”)  
Hearst-Argyle Television (“Hearst-Argyle”)  
Herald Media, Inc. (“Herald”)  
Independent Free Papers of America  
Journal Broadcast Corporation  
Leggett, Nickolas (“Leggett”)  
Media General, Inc. (“Media General”)  
Morris Communications (“Morris”)  
National Association of Broadcasters (“NAB”)  
Newspaper Association of America (“NAA”)  
Schurz Communications Inc. (“Schurz”)  
Shamrock Communications and The Scranton Times (“Shamrock”)  
Tribune Company (“Tribune”)  
United Church of Christ, Office of Communications, National Organization for Women and Media  
Alliance (“UCC”)  
West Virginia Media Holdings (“West Virginia Media”)  
Westwind Communications (“Westwind”)

**Initial Comments** (MM 01-235 in the NPRM Biennial Review MB Docket 02-277)

Alliance for Community Media (“Alliance”)  
American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”)  
American Women in Radio and Television (“AWRT”)  
Block Communications (“Block”)  
Buckley Broadcasting Group (“Buckley”)  
Children Now  
Clear Channel Broadcasting (“Clear Channel”)  
Coalition Broadcasters  
Coalition for Program Diversity (“CPD”)  
Consumer Federation of America (“CFA”)  
Cox Enterprises (“Cox”)  
CWA  
Dispatch Broadcast Group (“Dispatch”)  
Duhamel Broadcasting Enterprises (“Duhamel”)  
Entravision Holdings, Inc. (“Entravision”)  
Granite Broadcasting (“Granite”)  
Hearst Corporation (“Hearst”)  
Hearst-Argyle Television (“Hearst-Argyle”)  
JP Kids  
Leggett, Nickolas (“Leggett”)  
Media General, Inc. (“Media General”)  
Media General, Inc., Cosmos Broadcasting and Block Communications (“Media General *et al.*”)

Minority Media and Telecommunications Council (“MMTC”)  
National Association of Black-Owned Broadcasters (“NABOB”)  
National Association of Broadcasters (“NAB”)  
National Association of Broadcasters/Network Affiliated Stations Alliance (“NAB/NASA”)  
Network Affiliated Stations Alliance (“NASA”)  
Nexstar Broadcasting Group, L.L.C. and Quorum Broadcast Holdings, LLC (“Nexstar”)  
Paxson Communications (“Paxson”)  
Sinclair Broadcast Group (“Sinclair”)  
Smith, Laura K.  
Smith, Thomas (“Smith”)  
United Church of Christ, Office of Communications, National Organization for Women and Media Alliance (“UCC”)  
Verizon  
Walt Disney Company (“Disney”)  
Writers Guild of America (“Writers Guild”)

### **Reply Comments**

Amherst Alliance (“Amherst”)  
Attorney General for State of Connecticut (“Attorney General”)  
Cox Enterprises (“Cox”)  
Granite Broadcasting (“Granite”)  
Hearst-Argyle Television (“Hearst-Argyle”)  
Hodson Broadcasting (“Hodson”)  
Louisville Communications (“Louisville”)  
MBC Grand Broadcasting (“MBC Grand”)  
Media General, Inc. (“Media General”)  
Minority Media & Telecommunications Council (“MMTC”)  
National Association of Black-Owned Broadcasters (“NABOB”)  
National Association of Broadcasters (“NAB”)  
National Association of Broadcasters and Network Affiliated Stations Alliance (“NAB/NASA”)  
Nexstar Broadcasting Group, L.L.C. and Quorum Broadcast Holdings, LLC (“Nexstar”)  
Paxson Communications Corporation (“Paxson”)  
Sinclair Broadcast Group (“Sinclair”)  
Tribune Company (“Tribune”)  
United States Conference of Catholic Bishops (“USCCB”)  
Univision Communications (“Univision”)  
Walt Disney Company (“Disney”)

### **MM Docket No. 01-317: Rules & Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets**

#### **Initial Comments** –

American Federation of TV & Radio Artists and Writers Guild of America East (“AFTRA”)  
American Women in Radio & Television, Inc. (“AWRT”)  
Americans for Radio Diversity (“ARD”)  
Amherst Alliance, Americans for Radio Diversity, Rogue Communications, Palmsradio Beat Radio, REC Networks, Spry Multimedia Group, Citizens Media Corps/Allston-Brighton Free Radio, WILW Radio,

AMRAG Magazine, Greenhouse Magazine, Virginia Center for Public Press and Nickolas Leggett (“Amherst”)  
Blakeney Communications (“Blakeney”)  
Clear Channel Communications Inc. (“Clear Channel”)  
Cox Radio (“Cox”)  
Cumulus Media Inc. (“Cumulus”)  
Daugherty Broadcasting Company (“Daugherty”)  
Davis Broadcasting Inc. of Columbus (“Davis”)  
Dick Broadcasting Company (“Dick”)  
Entercom Communications Corporation (“Entercom”)  
Eure Communications Inc. (“Eure”)  
Hispanic Broadcasting Corporation (“Hispanic”)  
Hodson Broadcasting (“Hodson”)  
Idaho Wireless Corporation (“Idaho”)  
Jefferson Pilot Communications Company (“Jefferson”)  
Leggett, Nickolas (“Leggett”)  
MBC Grand Broadcasting (“MBC Grand”)  
Main Street Broadcasting (“Main Street”)  
Mapleton Communications LLC (“Mapleton”)  
Minority Media & Telecommunications Council (“MMTC”)  
Nassau Broadcasting (“Nassau”)  
National Association of Black-Owned Broadcasters (“NABOB”)  
National Association of Broadcasters (“NAB”)  
North American Broadcasting Company (“North American”)  
Office of Advocacy, U.S. Small Business Administration (“SBA”)  
Reese, James L (“Reese”)  
Radio One, Inc. (“Radio One”)  
Salem Communications Corporation (“Salem”)  
United Church of Christ (“UCC”)  
Viacom, Inc. (“Viacom”)  
West Virginia Radio Corp. (“West Virginia Radio”)

### **Reply Comments**

Clear Channel Communications, Inc. (“Clear Channel”)  
Cumulus Media Inc. (“Cumulus”)  
Entercom Communications Group (“Entercom”)  
Future of Music Coalition  
MBC Grand Broadcasting (“MBC Grand”)  
Minority Media & Telecommunications Council (“MMTC”)  
Nassau Broadcasting (“Nassau”)  
National Association of Black-Owned Broadcasters (“NABOB”)  
National Association of Broadcasters (“NAB”)  
Office of Advocacy, U.S. Small Business Administration (“SBA”)  
Radio One Inc. (“Radio One”)  
United Church of Christ (“UCC”)  
Viacom, Inc. (“Viacom”)

**Initial Comments** (MM Docket No. 01-317 in the NPRM for MB 02-277 (Biennial))

Alliance for Community Media  
American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”)  
American Women in Radio and Television (“AWRT”)  
Block Communications (“Block”)  
Buckley Broadcasting (“Buckley”)  
Children Now  
Clear Channel Broadcasting, Inc. (“Clear Channel”)  
Coalition Broadcasters (“Coalition”)  
Coalition for Program Diversity (“CPD”)  
Communication Workers of America (“CWA”)  
Cox Enterprises (“Cox”)  
Cumulus Media Inc. (“Cumulus”)  
Dispatch Broadcast Group (“Dispatch”)  
Duhamel Broadcasting Enterprises (“Duhamel”)  
Entravision Holdings Inc. (“Entravision”)  
Granite Broadcasting (“Granite”)  
Hearst Argyle Television (“Hearst-Argyle”)  
Leggett, Nickolas (“Leggett”)  
MBC Grand Broadcasting (“MBC Grand”)  
Media General, Inc. (“Media General”)  
Media General, Inc. *et al*  
National Association of Black-Owned Broadcasters (“NABOB”)  
National Association of Broadcasters (“NAB”)  
National Association of Broadcasters and Network Affiliated Stations Alliance (“NAB/NASA”)  
Nexstar Broadcasting Group, L.L.C. and Quorum Broadcast Holdings, LLC (“Nexstar”)  
Paxson Communications Corporation (“Paxson”)  
REC Networks (“REC”)  
Sinclair Broadcast Group (“Sinclair”)  
Smith, Thomas C. (“Smith”)  
UCC (“UCC”)  
Verizon Inc. (“Verizon”)  
Walt Disney Company (“Disney”)  
Writers Guild of America (“Writers Guild”)

**Reply Comments**

Amherst Alliance (“Amherst”)  
Attorney General for the State of Connecticut (“Attorney General”)  
Coalition for Program Diversity (“CPD”)  
Cox Enterprises (“Cox”)  
Granite Broadcasting (“Granite”)  
Hearst-Argyle Television (“Hearst-Argyle”)  
Hodson Broadcasting (“Hodson”)  
Louisville Communications (“Louisville”)  
Media General Inc. (“Media General”)  
Minority Media & Telecommunications Council for Diversity & Competition Supporters (“MMTC”)  
National Association of Black-Owner Broadcasters (“NABOB”)



National Association of Broadcasters (“NAB”)  
National Association of Broadcasters and Network Affiliated Stations Alliance (“NAB/NASA”)  
Nexstar Broadcasting Group, L.L.C. and Quorum Broadcast Holdings, LLC (“Nexstar”)  
Paxson Communications (“Paxson”)  
Prairie Air Inc. (“Prairie”)  
Sinclair Broadcast Group (“Sinclair”)  
Tribune Company (“Tribune”)  
UCC  
United States Conference of Catholic Bishops (“USCCB”)  
Univision Inc. (“Univision”)  
Walt Disney Company (“Disney”)  
Westwind Communications (“Westwind”)

**MM Docket No. 00-244: (Definition of Radio Markets – NPRM 12/6/2000)**

**Initial Comments**

Aurora Communications, LLC (“Aurora”)  
Brill Media Company (“Brill”)  
Citadel Communications Corporation (“Citadel”)  
Clear Channel Communications (“Clear Channel”)  
Cox Radio, Inc. (“Cox”)  
Cumulus Media, Inc. (“Cumulus”)  
Entercom Communications Corporation (“Entercom”)  
Entravision Holdings, LLC (“Entravision”)  
MBC Grand Broadcasting (“MBC Grand”)  
Murphy, Rick L. (“Murphy”)  
National Association of Broadcasters (“NAB”)  
Next Media Licensees Inc. (“Next Media”)  
Radio Newburyport LLC (“Radio Newburyport”)  
Secret Communications II, LLC (“Secret”)  
Small Market Broadcasters (“Small Market”)  
Viacom Inc. (“Viacom”)  
Walt Disney Company (“Disney”)  
Weigle Broadcasting Corporation and Wm. E. Bennett (“Weigle”)  
West Virginia Radio Corporation (“West Virginia Radio”)

**Reply Comments**

Great Scott Broadcasting, New Wave Broadcasting, LP, Noalmark Broadcasting (“Great Scott”)  
Jimcar Inc. (“Jimcar”)  
MBC Grand Broadcasting (“MBC Grand”)  
Nassau Broadcasting II, LLC (“Nassau”)

**Initial Comments – NPRM and FNPRM (11/8/2001)**

Americans for Radio Diversity (“ARD”)  
Amherst Alliance (“Amherst”)  
Clear Channel Communications (“Clear Channel”)  
Cox Radio, Inc. (“Cox”)

Cumulus Media, Inc. (“Cumulus”)  
Davis Broadcasting Inc. of Columbus (“Davis”)  
Dick Broadcasting Co. (“Dick”)  
Entercom Communications Corporation (“Entercom”)  
Eure Communications, Inc. (“Eure”)  
Hispanic Broadcasting Corporation (“Hispanic”)  
Hodson Broadcasting (“Hodson”)  
Idaho Wireless Corporation (“Idaho”)  
Jefferson-Pilot Communications Company (“Jefferson-Pilot”)  
Leggett, Nickolas (“Leggett”)  
MBC Grand Broadcasting (“MBC Grand”)  
Mapleton Communications LLC (“Mapleton”)  
Nassau Broadcasting II (“Nassau”)  
National Association of Black-Owned Broadcasters (“NABOB”)  
National Association of Broadcasters (“NAB”)  
North American Broadcasting Company (“North American”)  
Salem Communications Corporation (“Salem”)  
United Church of Christ (“UCC”)  
Viacom, Inc. (“Viacom”)

#### **Reply Comments**

Clear Channel Broadcasting (“Clear Channel”)  
Cumulus Media, Inc. (“Cumulus”)  
Entercom Communications Corp. (“Entercom”)  
MBC Grand Broadcasting (“MBC Grand”)  
Nassau Broadcasting II (“Nassau”)  
National Association of Black-Owned Broadcasters (“NABOB”)  
National Association of Broadcasters (“NAB”)  
United Church of Christ (“UCC”)  
U.S. Small Business Association (“SBA”)  
Viacom, Inc. (“Viacom”)

**APPENDIX B  
NATIONAL NEWS SOURCES**

<i>National News Sources</i>			
<i>TV</i>	<i>Cable/Sat</i>	<i>Radio</i>	<i>Newspapers</i>
		Evening News	
ABC	CNN	B/C	USA Today
CBS	Conus Comm	United Press Int'l	WSJ
NBC	FOX News Ch	ABC	NY Times
	Radio Press		
Associated Press	News	Associated Press	LA Times
		Audio-Visual	
News B/C network	WSJ Radio Net.	News	Wash Post
Reuters	All News Ch.	CBS	
States News			
Service	C-Span	CNN	
Wash. News Net.	CNBC	Radio America	
All News Ch.	MSNBC	Reuters	
PBS		Westwood One	
		USA Radio Net.	
		NPR	

**APPENDIX C**  
Diversity Indices in  
Ten Sample Markets

Market 1 New York City

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	ABC Inc.	1	4.3	1.5	a	---
		Connecticut Public TV & Radio	1	4.3	1.5		2.2
		Dutchess Community College	1	4.3	1.5		2.2
		Educational Broadcasting Corp.	2	8.7	2.9		8.6
		Family Stations Inc	1	4.3	1.5	b	---
		Mountain Broadcasting Corp.	1	4.3	1.5		2.2
		NBC/GE	2	8.7	2.9		8.6
		News Corporation	2	8.7	2.9	c	---
		NJ Public Broadcasting Authority	1	4.3	1.5		2.2
		NYC Board of Education	1	4.3	1.5	d	---
		Paxson Communications Corp.	1	4.3	1.5		2.2
		Shop At Home Incorporated	1	4.3	1.5		2.2
		Tribune Broadcasting Company	1	4.3	1.5	e	---
		Trinity Broadcasting Network Inc	1	4.3	1.5		2.2
		Univision Communications Inc	3	13.0	4.4	f	---
		Viacom International Inc	1	4.3	1.5	g	---
WLNY Inc	1	4.3	1.5		2.2		
WRNN-TV	1	4.3	1.5		2.2		
Radio 24.9%		ABC Radio Incorporated	4	6.7	1.7	a	---
		Access.1 Communications	1	1.7	0.4		0.2
		Alexander Broadcasting	1	1.7	0.4		0.2
		Auricle Communications	1	1.7	0.4		0.2
		Bloomberg Communications Inc	1	1.7	0.4		0.2
		Buckley Broadcasting Corporation	1	1.7	0.4		0.2
		City College of New York	1	1.7	0.4		0.2
		Clear Channel Communications	5	8.3	2.1		4.3
		College of Staten Island	1	1.7	0.4		0.2
		Columbia University	1	1.7	0.4		0.2
		Emmis Communications	3	5.0	1.2		1.6
		Fairleigh Dickinson University	1	1.7	0.4		0.2
		Family Stations Inc	1	1.7	0.4	b	---
		Fordham University	1	1.7	0.4		0.2
Inner City Broadcasting Corporation	2	3.3	0.8		0.7		

		Kingsborough Community College	1	1.7	0.4		0.2
		Mariana Broadcasting Inc	1	1.7	0.4		0.2
		Mega Communications Inc	1	1.7	0.4		0.2
		Montclair State College	1	1.7	0.4		0.2
		Multicultural Radio Broadcasting Inc	3	5.0	1.2		1.6
		New York Times Co.	1	1.7	0.4	H	---
		New York University	1	1.7	0.4		0.2
		Newark Public Radio	1	1.7	0.4		0.2
		Nyack College	1	1.7	0.4		0.2
		NYC Board of Education	1	1.7	0.4	D	---
		Pacifica Foundation	1	1.7	0.4		0.2
		Polnet Communications Ltd	1	1.7	0.4		0.2
		Radio Unica	1	1.7	0.4		0.2
		Radio Vision Cristiana Mgnt. Corp.	1	1.7	0.4		0.2
		Ramapo College of New Jersey	1	1.7	0.4		0.2
		Salem Communications Corporation	2	3.3	0.8		0.7
		Seton Hall University	1	1.7	0.4		0.2
		Spanish Broadcasting System	2	3.3	0.8		0.7
		Universal Broadcasting	1	1.7	0.4		0.2
		Univision Communications Inc	2	3.3	0.8	F	---
		Viacom International Inc	6	10.0	2.5	G	---
		Vulcan Ventures Inc	1	1.7	0.4		0.2
		William Patterson College	1	1.7	0.4		0.2
		WNYC Radio	2	3.3	0.8		0.7
Newspaper 28.8%	Daily 70.3%	Gannett Corporation	6	28.6	5.8		33.5
		Asbury Park Press (Neptune, NJ)					
		Courier News (Bridgewater, NJ)					
		Daily Record (Morristown, NJ)					
		Home News Tribune (E. Brunswick)					
		Journal News (White Plains, NY)					
		Poughkeepsie Journal					
		Daily News (New York, NY)	1	4.8	1.0		0.9
		El Diario La Prensa (New York, NY)	1	4.8	1.0		0.9
		Hoy	1	4.8	1.0		0.9
		Advance Corporation	4	19.0	3.9		14.9
		Jersey Journal (Jersey City, NJ)					
		Star-Ledger (Newark, NJ)					
		Staten Island Advance					
		Times (Trenton, NJ)					
		New Jersey Herald (Newton, NJ)	1	4.8	1.0		0.9
New York Post	1	4.8	1.0	C	---		
New York Times	1	4.8	1.0	H	---		

		Newsday (Melville, NY)	1	4.8	1.0	E	---
		Nowy Dziennik-Polish Daily News	1	4.8	1.0		0.9
		Record/Herald News (Bergen-Passaic)	1	4.8	1.0		0.9
		Times Herald Record (Middletown)	1	4.8	1.0		0.9
		Trentonian (Trenton, NJ)	1	4.8	1.0		0.9
	Weekly 29.7%	Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	18.3%	Cable	1	100.0	2.3		5.2
	81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross-Ownership Total Shares		ABC Corporation			3.1	A	9.8
		Family Stations Inc			1.9	B	3.6
		News Corporation			3.9	C	15.2
		NYC Board of Education			1.9	D	3.6
		Tribune Broadcasting Company			2.4	E	5.9
		Univision Communications Inc			5.2	F	27.4
		Viacom Corporation			4.0	G	15.7
	New York Times Co.			1.4	H	1.9	
Diversity Index (Sum of Column H)							373

Market 29 Kansas City

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Hearst-Argyle TV Incorporated	2	22.2	7.5		56.4
		Meredith Corp	1	11.1	3.8		14.1
		News Corp	1	11.1	3.8		14.1
		Paxson Communications Corporation	1	11.1	3.8		14.1
		Public TV 19 Inc	1	11.1	3.8		14.1
		Scripps Howard Broadcasting	2	22.2	7.5		56.4
		Sinclair Broadcast Group Inc	1	11.1	3.8		14.1
Radio 24.9%		ABC Radio Incorporated	1	2.3	0.6		0.3
		Alpine Broadcasting	1	2.3	0.6		0.3
		Board Trustees/Park College	1	2.3	0.6		0.3
		Bott Radio Network	4	9.1	2.3		5.1
		Calvary Bible College	1	2.3	0.6		0.3
		Campbell, Brad L.	1	2.3	0.6		0.3
		Carter Broadcast Group Inc	3	6.8	1.7		2.9
		Entercom	9	20.5	5.1		25.9
		First Broadcasting Company LP	1	2.3	0.6		0.3
		Full Smile Inc	1	2.3	0.6		0.3
		HMEB Communications LLC	1	2.3	0.6		0.3
		KANZA Incorporated	1	2.3	0.6		0.3
		Mid-Coast Radio Project Inc	1	2.3	0.6		0.3
		Mortenson Broadcasting Co., Inc.	1	2.3	0.6		0.3
		New Life Evangelistic Center	1	2.3	0.6		0.3
		Stayton, D.T.	1	2.3	0.6		0.3
		Susquehanna Radio Corporation	4	9.1	2.3		5.1
		Syncom Radio Corporation	2	4.5	1.1		1.3
		Union Broadcasting	2	4.5	1.1		1.3
		University of Missouri	1	2.3	0.6		0.3
Viacom International Inc	4	9.1	2.3		5.1		
Wilkins Communications Network	1	2.3	0.6		0.3		
William Jewell College	1	2.3	0.6		0.3		
Newspaper 28.8%	Daily 70.3%	Daily News (Richmond, MO)	1	16.7	3.4		11.4
		Examiner (Independence, MO)	1	16.7	3.4		11.4
		Liberty Group Publishing Kansas City Kansan Leavenworth Times	2	33.3	6.7		45.5
		Kansas City Star	1	16.7	3.4		11.4
		Olathe Daily News	1	16.7	3.4		11.4
		Weekly Newspaper	1	100.0	8.6		73.2
	29.7%						
Internet 12.5%	18.3%	Cable	1	100.0	2.3		5.2
	81.7%	Dial-up, DSL, and Other	1	100.0	10.2		104.3
Cross-Ownership		None					
Diversity Index (Sum of Column H)							509

Market 57 Birmingham, AL

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Alabama Educational Television	2	20.0	6.8		45.7
		Channel 23 LLC	1	10.0	3.4		11.4
		Media General Broadcast Group	1	10.0	3.4		11.4
		NBC/GE	1	10.0	3.4		11.4
		News Corp	1	10.0	3.4		11.4
		Paxson Communications Corp.	1	10.0	3.4		11.4
		Sinclair Broadcast Group Inc	2	20.0	6.8		45.7
		Trinity Broadcasting CO.	1	10.0	3.4		11.4
Radio 24.9%		Bessemer Radio Inc	1	2.2	0.5		0.3
		Bill Davison Evangelistic Association	1	2.2	0.5		0.3
		Birmingham Ebony Broadcasters	1	2.2	0.5		0.3
		Blount County Broadcasting	2	4.3	1.1		1.2
		Briarwood Presbyterian Church	1	2.2	0.5		0.3
		Citadel Communications Corporation	5	10.9	2.7		7.3
		Clear Channel Communications	5	10.9	2.7		7.3
		Courington Jr., Pat	1	2.2	0.5		0.3
		Cox Radio Inc	7	15.2	3.8		14.4
		Crawford Broadcasting Company	4	8.7	2.2		4.7
		Family Stations Inc	1	2.2	0.5		0.3
		Glen Iris Baptist School	2	4.3	1.1		1.2
		Jefferson State Community College	1	2.2	0.5		0.3
		Lee, James	1	2.2	0.5		0.3
		Macias, Javier	1	2.2	0.5		0.3
		New Century Radio	2	4.3	1.1		1.2
		Progressive United Communications	1	2.2	0.5		0.3
		Queen of Peace Radio Incorporated	1	2.2	0.5		0.3
		Richardson Broadcasting Corporation	1	2.2	0.5		0.3
		Samford University	1	2.2	0.5		0.3
Sides Robinson Inc	1	2.2	0.5		0.3		
Steadman, Herb	1	2.2	0.5		0.3		
Stocks Broadcasting Inc	1	2.2	0.5		0.3		
University of Alabama	1	2.2	0.5		0.3		
Willis Broadcasting Corporation	2	4.3	1.1		1.2		
Newspaper 28.8%	Daily 70.3%	Birmingham News	1	50.0	10.1		102.5
		Birmingham Post-Herald	1	50.0	10.1		102.5
	29.7%	Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	18.3%	Cable Operator	1	100.0	2.3		5.2
	81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross-Ownership		none					
Diversity Index (Sum of Column H)							591



Market 85

Little Rock, AK

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Agape Church, Inc.	2	14.3	4.8		23.3
		Allbritton Communications Company	1	7.1	2.4		5.8
		Arkansas Educational Television Ntk.	3	21.4	7.2		52.5
		Clear Channel Television Inc	2	14.3	4.8	a	---
		Daystar Television Network	1	7.1	2.4		5.8
		Equity Broadcasting Corp	2	14.3	4.8	b	---
		Gannett Company Incorporated	1	7.1	2.4		5.8
		Morris Multimedia Inc	1	7.1	2.4	c	---
		Newark Public Schools	1	7.1	2.4		5.8
Radio 24.9%		AM1380 LLC	1	2.3	0.6		0.3
		American Family Association Inc.	1	2.3	0.6		0.3
		AR Broadcasting Foundation Inc	1	2.3	0.6		0.3
		Archway Broadcasting Group LLC	2	4.5	1.1		1.3
		Caldwell Broadcasting LLC	1	2.3	0.6		0.3
		Citadel Communications Corporation	10	22.7	5.7		32.0
		Clear Channel Communications	5	11.4	2.8	a	---
		Creative Media Inc	2	4.5	1.1		1.3
		Domerese, George	1	2.3	0.6		0.3
		Equity Broadcasting Corporation	3	6.8	1.7	b	---
		Hendrix College	1	2.3	0.6		0.3
		Joshua Ministries	1	2.3	0.6		0.3
		Landers Broadcasting Co Inc	1	2.3	0.6		0.3
		Little Rock School District	1	2.3	0.6		0.3
		Malvern Entertainment Corp	1	2.3	0.6		0.3
		Metropolitan Radio Group Inc	1	2.3	0.6		0.3
		Nameloc Broadcasting	1	2.3	0.6		0.3
		Noalmark Broadcasting Corporation	1	2.3	0.6		0.3
		Powell Broadcasting Company, Inc.	1	2.3	0.6		0.3
		Rusk, Tom	1	2.3	0.6		0.3
		Signal Media	2	4.5	1.1		1.3
University of Arkansas	1	2.3	0.6		0.3		
University of Central Arkansas	2	4.5	1.1		1.3		
Wells Broadcasting Inc	1	2.3	0.6		0.3		
Willis Broadcasting Corporation	1	2.3	0.6		0.3		
Newspaper 28.8%	Daily 70.3%	Arkansas Democrat-Gazette	1	33.3	6.7		45.5
		Denton Courier	1	33.3	6.7		45.5
		Log Cabin Democrat (Conway)	1	33.3	6.7	c	---
	29.7%	Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	18.3%	Cable	1	100.0	2.3		5.2
	81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross Ownership Total Shares		Morris Communications Corp.			7.7	a	58.6
		Clear Channel Television Inc			6.5	b	42.6
		Equity Broadcasting Corp			9.2	c	84.0
Diversity Index (Sum of Column H)							601

Market 115

Lancaster, PA

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Allbritton Communications Company	1	14.3	4.8	a	23.3
		Clear Channel Television Inc	2	28.6	9.7		---
		Hearst-Argyle TV Incorporated	1	14.3	4.8		23.3
		Norris, John and Family	1	14.3	4.8		23.3
		Tribune Broadcasting Company	1	14.3	4.8		23.3
		WITF Inc	1	14.3	4.8		23.3
Radio 24.9%		Clear Channel Communications	2	15.4	3.8	a	---
		Creative Ministries Inc	1	7.7	1.9	3.7	
		Elizabethtown College	1	7.7	1.9	3.7	
		Esfuerzo de Union Cristiana	1	7.7	1.9	3.7	
		Franklin & Marshall College	1	7.7	1.9	3.7	
		Hall Communications Inc	2	15.4	3.8	14.7	
		JVJ Communications Inc	1	7.7	1.9	3.7	
		Millersville State College	1	7.7	1.9	3.7	
		Regent Communications, Inc.	1	7.7	1.9	3.7	
		Spanish American Civil Association	1	7.7	1.9	3.7	
		WDAC Radio Company Inc	1	7.7	1.9	3.7	
Newspaper 28.8%	Daily 70.3%	New Era, Intelligencer Journal	1	100.0	20.2		409.9
	29.7%	Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	18.3%	Cable	1	100.0	2.3		5.2
	81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross Ownership Total Shares		Clear Channel Communications			13.5	a	181.9
Diversity Index (Sum of Column H)							939

Market 139 Burlington, VT / Plattsburgh, NY

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Hearst-Argyle TV Incorporated	1	10.0	3.4		11.4
		Mountain Lake Public Telecom.	1	10.0	3.4		11.4
		Mt. Mansfield Television, Inc.	1	10.0	3.4		11.4
		Smith Broadcasting Group Inc	1	10.0	3.4		11.4
		Straightline Communications	1	10.0	3.4		11.4
		University of New Hampshire	1	10.0	3.4		11.4
		Vermont Public Television	4	40.0	13.5		182.8
Radio 24.9%		Burlington Broadcasters	2	5.1	1.3		1.6
		Champlain Radio Inc	1	2.6	0.6		0.4
		Christian Ministries Inc	1	2.6	0.6		0.4
		Clear Channel Communications	5	12.8	3.2		10.2
		Empire State Radio	1	2.6	0.6		0.4
		Hall Communications Inc	3	7.7	1.9		3.7
		Hometown Radio Inc	1	2.6	0.6		0.4
		Jackson Group	1	2.6	0.6		0.4
		Middlebury College	1	2.6	0.6		0.4
		Northeast Broadcasting Company	7	17.9	4.5		20.0
		Radio Lake Placid Inc	2	5.1	1.3		1.6
		Radio Vermont Group LLC	3	7.7	1.9		3.7
		Saint Michaels College	1	2.6	0.6		0.4
		Saranac Lake Radio LLC	2	5.1	1.3		1.6
		Sison Broadcasting Incorporated	2	5.1	1.3		1.6
		St Lawrence University	1	2.6	0.6		0.4
		State University of New York	1	2.6	0.6		0.4
	University of Vermont	1	2.6	0.6		0.4	
	Vermont Public Radio	1	2.6	0.6		0.4	
	WAMC/Northeast Public Radio	2	5.1	1.3		1.6	
Newspaper 28.8%	Daily 70.3%	Burlington Free Press	1	33.3	6.7		45.5
		Press Republican (Plattsburgh)	1	33.3	6.7		45.5
	29.7%	St. Albans Messenger	1	33.3	6.7		45.5
		Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	18.3%	Cable	1	100.0	2.3		5.2
	81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross Ownership		None					
Diversity Index (Sum of Column H)							621

Market 167

Myrtle Beach, SC

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Diversified Communications	2	33.3	11.3		126.9
		GE Media Inc	1	16.7	5.6		31.7
		Media General Broadcast Group	1	16.7	5.6		31.7
		South Carolina Educational TV	2	33.3	11.3		126.9
Radio 24.9%		Altman, Gardner	2	6.9	1.7		2.9
		Coastline Comm. of Carolina Inc	2	6.9	1.7		2.9
		Cumulus Media Inc	7	24.1	6.0		36.1
		Educational Media Foundation	1	3.4	0.9		0.7
		Fidelity Broadcasting	3	10.3	2.6		6.6
		GEO Broadcast Group Inc.	1	3.4	0.9		0.7
		JARC Broadcasting Inc	1	3.4	0.9		0.7
		NextMedia Group	5	17.2	4.3		18.4
		Radio Training Network Inc	1	3.4	0.9		0.7
		Root Communications Group LP	3	10.3	2.6		6.6
		SC Ed TV Commission	1	3.4	0.9		0.7
		Stalvey, RJ	1	3.4	0.9		0.7
		WPJS Broadcasting Inc	1	3.4	0.9		0.7
Newspaper 28.8%	Daily 70.3%	Sun News	1	100.0	20.2		409.9
	Weekly 29.7%	Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	18.3%	Cable	1	100.0	2.3		5.2
	81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross Ownership		None					
Diversity Index (Sum of Column H)							989

Market 200

Terre Haute, IN

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Bahakel Communications Limited	1	20.0	6.8	a	45.7
		Emmis Communications	1	20.0	6.8		---
		Nexstar Broadcasting Group, L.P.	1	20.0	6.8		45.7
		Southern Illinois University	1	20.0	6.8		45.7
		Vincennes University	1	20.0	6.8		45.7
Radio 24.9%		American Family Association Inc.	1	4.2	1.0	a	1.1
		Bright Tower Communications	2	8.3	2.1		4.3
		Cromwell Group Inc, The	1	4.2	1.0		1.1
		Crossroads Investments LLC	5	20.8	5.2		26.9
		Emmis Communications	2	8.3	2.1		---
		Illinois Bible Institute	1	4.2	1.0		1.1
		Indiana State University	1	4.2	1.0		1.1
		JDL Broadcasting Incorporated	1	4.2	1.0		1.1
		JTM Broadcasting Corp	2	8.3	2.1		4.3
		Key Broadcasting Inc	2	8.3	2.1		4.3
		Rose Hulman Institute of Technology	1	4.2	1.0		1.1
		The Original Company, Inc.	2	8.3	2.1		4.3
		Word Power Inc	3	12.5	3.1		9.7
Newspaper 28.8%	Daily 70.3%	Brazil Times	1	33.3	6.7		45.5
		Daily Clintonian	1	33.3	6.7		45.5
		Terre Haute Tribune-Star	1	33.3	6.7		45.5
	Weekly 29.7%	Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	18.3%	Cable	1	100.0	2.3		5.2
	81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross-Ownership Total Shares		Emmis Communications			8.8	a	78.1
Diversity Index (Sum of Column H)							640

Market 224

Charlottesville, VA

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Central VA Educational Telecom.	2	66.7	22.5		507.8
		Waterman Broadcasting Corp	1	33.3	11.3		126.9
Radio 24.9%		Baker Family Stations	1	5.9	1.5		2.1
		Clear Channel Communications	6	35.3	8.8		77.2
		Eure Communications	4	23.5	5.9		34.3
		James Madison Univ. Bd. of Visitors	1	5.9	1.5		2.1
		Mid-Virginia Broadcasting Corp	1	5.9	1.5		2.1
		Stu-Comm. Inc	1	5.9	1.5		2.1
		University of Virginia	1	5.9	1.5		2.1
		Virginia Tech Foundation Inc.	2	11.8	2.9		8.6
Newspaper 28.8%	Daily 70.3%	Daily Progress	1	100.0	20.2		409.9
	Weekly 29.7%	Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	Cable 18.3%	Cable	1	100.0	2.3		5.2
	Other 81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross Ownership		None					
Diversity Index (Sum of Column H)							1,358

Market 255

Altoona, PA

Base Case

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Clear Channel Communications	1	16.7	5.6		31.7
		Cornerstone TV, Inc.	1	16.7	5.6		31.7
		Cox Broadcasting	1	16.7	5.6		31.7
		Peak Media LLC	2	33.3	11.3		126.9
		Penn State University	1	16.7	5.6		31.7
Radio 24.9%		Allegheny Mountain Network	3	21.4	5.3		28.5
		Altoona Trans Audio Corp Inc	1	7.1	1.8		3.2
		B&F Enterprises	1	7.1	1.8		3.2
		Forever Broadcasting Incorporated	4	28.6	7.1		50.6
		Martinsburg Broadcasting	2	14.3	3.6		12.7
		Sounds Good Incorporated	1	7.1	1.8		3.2
		Vital Licenses	2	14.3	3.6		12.7
Newspaper 28.8%	Daily 70.3%	Altoona Mirror	1	100.0	20.2		409.9
	Weekly 29.7%	Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	Cable 18.3%	Cable	1	100.0	2.3		5.2
	Other 81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross-Ownership		None					
Diversity Index (Sum of Column H)							960

Market 255

Altoona, PA

Scenario: Radio Duopoly

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Clear Channel Communications	1	16.7	5.6		31.7
		Cornerstone TV, Inc.	1	16.7	5.6		31.7
		Cox Broadcasting	1	16.7	5.6		31.7
		Peak Media LLC	2	33.3	11.3		126.9
		Penn State University	1	16.7	5.6		31.7
Radio 24.9%		Allegheny Mountain Network	3	21.4	5.3	a	---
		Altoona Trans Audio Corp Inc	1	7.1	1.8	b	---
		B&F Enterprises	1	7.1	1.8	b	---
		Forever Broadcasting Incorporated	4	28.6	7.1	a	---
		Martinsburg Broadcasting	2	14.3	3.6	b	---
		Sounds Good Incorporated	1	7.1	1.8	b	---
		Vital Licenses	2	14.3	3.6	b	---
Newspaper 28.8%	Daily 70.3%	Altoona Mirror	1	100.0	20.2		409.9
	Weekly 29.7%	Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	Cable 18.3%	Cable	1	100.0	2.3		5.2
	Other 81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross-Ownership Hypothetical		1st radio owner			12.5	a	155.0
		2nd radio owner			12.5	b	155.0
Diversity Index (Sum of Column H)							1,156
Delta (compared to base case of 960 points)							196



Market 255

Altoona, PA

Scenario: TV Duopoly

Media Market		Ownership Shares			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Col. F Squared
A	B	C	D	E	F	G	H
Television 33.8%	Broadcast 100.0%	Clear Channel Communications	1	16.7	5.6	a	---
		Cornerstone TV, Inc.	1	16.7	5.6	a	---
		Cox Broadcasting	1	16.7	5.6		31.7
		Peak Media LLC	2	33.3	11.3		126.9
		Penn State University	1	16.7	5.6		31.7
Radio 24.9%		Allegheny Mountain Network	3	21.4	5.3		28.5
		Altoona Trans Audio Corp Inc	1	7.1	1.8		3.2
		B&F Enterprises	1	7.1	1.8		3.2
		Forever Broadcasting Incorporated	4	28.6	7.1		50.6
		Martinsburg Broadcasting	2	14.3	3.6		12.7
		Sounds Good Incorporated	1	7.1	1.8		3.2
		Vital Licenses	2	14.3	3.6		12.7
Newspaper 28.8%	Daily 70.3%	Altoona Mirror	1	100.0	20.2		409.9
	Weekly 29.7%	Weekly Newspaper	1	100.0	8.6		73.2
Internet 12.5%	Cable 18.3%	Cable	1	100.0	2.3		5.2
	Other 81.7%	Dial-up, DSL, and other	1	100.0	10.2		104.3
Cross-Ownership Hypothetical		TV Duopoly			11.3	a	126.9
Diversity Index (Sum of Column H)							1,024
Delta (compared to base case of 960 points)							64

**APPENDIX D**  
**DIVERSITY INDEX SCENARIOS**  
**BY NUMBER OF TV STATIONS IN MARKETS**

Base Case		Average Change in Diversity Index, Resulting from Mergers						
TV Stations in Market	Average Diversity Index	Radio and Television	Newspaper and Radio	Newspaper and Television	Newspaper, TV, and ½ Radio	TV Duopoly	Newspaper and TV Duopoly	Newspaper, Radio, and TV Duopoly
1	1,707	651	271	910	1,321	---	---	---
2	1,316	301	335	731	1,009	---	---	---
3	1,027	190	242	331	515	---	---	---
4	928	138	236	242	408	---	---	---
5	911	111	263	223	393	91	376	846
6	889	79	239	200	340	63	357	688
7	753	73	171	121	247	47	242	533
8	885	79	299	152	314	36	308	734
9	705	64	198	86	207	28	172	473
10	635	56	107	51	119	23	101	292
15	595	43	149	48	145	10	97	302
20	612	49	222	40	128	6	80	350

The Diversity Indices are calculated according to the method described in the text of this *Report and Order*. To obtain the average changes in the Diversity Index across markets, we grouped each Arbitron market according to the number of television stations in that market's overlapping Nielsen DMA. We examined the entire universe of markets for those markets with either few television stations (1-5) or many television stations (15 and 20), because of the limited number of markets in these groups. We selected a random sample of 10 markets each from the groups of markets with 6, 7, 8, 9, and 10 television stations, because of the large number of these markets. In developing the merger scenarios, we started with the market structure as of November 2002, and made hypothetical adjustments; *e.g.*, how would the Diversity Index change by creating a TV duopoly. For scenarios involving mergers between radio stations and television or newspaper (except for the newspaper, TV and ½ of the radio limit scenario) we assumed that prior to the merger the radio owner owned the maximum number of radio stations allowable. We adjusted the initial market structure, therefore, if the owner was not actually at the maximum.

**APPENDIX E**  
**DISCUSSION OF COMMENTS ON MOWG STUDY NO. 10**

**A. Discussion of Economists Incorporated Comments**

**1. Introduction**

1. In the comments of Economists Incorporated, Bruce M. Owen et al evaluate the study “*On the Substitutability of Local Newspaper, Radio, and Television Advertising in Local Business Sales*” by C. A. Bush. Owen et al focus on measurement errors and assert that price data require additional manipulation prior to use in estimation. In this section, we respond to the comments of Economists Incorporated. In summary, measurement errors are acknowledged in the paper of Bush, and under the regression technique and model used by Bush, Owen et al fail to show whether the bias is toward too little substitution between local newspaper, radio, and television, or whether there is too much substitution between local media. Finally, the proposed manipulation of radio and TV prices is without merit.

**2. Measurement Errors**

2. Owen et al begin with the measurement error associated with the use of SQAD data for prices of both local radio and local television advertising. We agree that use of SQAD data introduces measurement error. Bush used SQAD radio and television price data because data on prices paid by local radio and television advertisers are not available.

3. The second measurement error recognized by Owen involves expenditures on local newspaper ads. Owen argues that there is no basis for the allocation and no test of the robustness of the allocation methodology. Owen asserts that the regression coefficients have no validity. Bush acknowledges, however, that local newspaper ad expenditures are constructed through an allocation process that introduces some degree of measurement error. The basis for the allocation process is a simple understanding that advertising revenues are associated with newspaper reach or number of readers/subscribers. It is assumed that readers/subscribers are positively correlated with adult population. However, reader/subscriber data were not available for newspapers in the sample, and therefore, adult population was used. On the question of validity of results- the results are valid given assumptions and data. Appropriate econometric technique was used with available data under reasonable assumptions. The question is not validity - but reliability. Measurement errors affect both the dependent and independent variables of the model. Under the regression technique and model used by Bush, Owen et al fail to show or provide any evidence on whether the bias is toward too little substitution between local newspaper, radio, and television, or whether there is too much substitution between local media. Bush has, however, provided some evidence of weak substitutability. On robustness - Owen has complete access to all the data and software associated with the Bush study, but no sensitivity analysis or alternative modeling/regressions are provided by Owen et al. Bush presented statistical results in Chart A of his paper. The data support the theoretical model and reveal that, statistically, there is weak substitutability between local television ads, local newspaper ads, and local radio ads in the sales activities of local businesses. However, due to measurement errors in the work of Bush, we give the study an appropriate weight, and we also give weight to other evidence of distinct local media markets that are contained in the record.

**3. Data Manipulation**

4. Owen asserts that the cost per point price measures used by Bush are meaningless. He reasons that the audience represented by a “point” varies between television and radio within a DMA, and

within television and radio across DMA. Owen et al claim that using cost per point data for both radio and television is an apples and oranges comparison because the Arbitron radio market populations is typically smaller than the Nielsen DMA population. We disagree with Owen et al for several reasons. First, Bush's use of CPP follows work in the economic literature. Ekelund et al (1999) and (2000) use CPP in their studies of radio and television. Second, radio and television are apples and oranges. Radio and television technologies are fundamentally and inherently different and, therefore, give rise to distinctly different messages/content. A radio message/content is not the same as a television message/content. A radio message is only sound, while television is sound, text, pictures, and motion pictures. Because the radio message stimulates a person only through sound, a radio listener/person is fundamentally different from a television viewer/person. That is a radio person has the characteristic of only hearing, while any television person sees and hears. One need only think of the 1960 Presidential Election between John F. Kennedy and Richard M. Nixon to understand these technologies and their different effects. As another example, one can look to music videos and the effects of MTV. By using non-manipulated CPP data, Bush acknowledges the apples and oranges nature of radio and television. Bush understands that it is really meaningless to assume that 1000 television viewers/persons are the same as 1000 radio listeners/persons. As a final example, instead of the sales activities, suppose that a local business is manufacturing desks. Desks require wood and metal. The price of wood is in dollars per board foot, while steel is sold in dollars per ton. It would bring no meaning to the estimation of the substitutability of wood and steel in the production of desks by first altering the price of wood to be dollars per ton. Besides such a conversion having no meaning, it is not the actual price a desk manufacturer would pay for wood. Owen's proposed manipulation of CPP data is unnecessary and meaningless.

5. Owen et al argue that newspaper prices in Bush's study are not adjusted for audience size. That is the newspaper price is not comparable to the radio and television prices. Owen would manipulate the data in order to express the newspaper price on a CPP basis. Owen is incorrect. Bush's newspaper price is the price actually paid by advertisers for a retail ad. Moreover the price reflects both the technology of newspapers i.e., print which is not sound or motion pictures. The construction of a "newspaper CPP" would distort the fact that a newspaper reader is not the same as a radio listener or television viewer. This is because the technologies of radio, television, and newspaper are different i.e., the message/content of these media are different. The construction of a "newspaper CPP" is unnecessary.

6. Owen argues that Bush's newspaper price inappropriately averages newspapers of different sizes. Owen asserts that if prices [of newspapers within a DMA] are not on a comparable circulation basis, their average is meaningless. Owen is wrong. The mean price of a newspaper is a reasonable calculation when data are not available on quantity of retail ads or on retail ad revenues for newspapers in the sample. If data were available, a weighted average price using newspaper ad revenue as the basis for weights would appear most appropriate. However, retail ad revenue by newspaper by DMA are not available. Although the data of Bush are publicly available, Owen does not present alternative or "correct" newspaper price data. He provides no alternative estimates of substitutability using an alternative newspaper price. In other words, there is no evidence of distortion or bias resulting from Bush's construction of newspaper prices.

7. Owen argues that the Bush study does not control for non-price media characteristics that might affect the choice of advertising media. Owen is wrong for several reasons. First, in the theoretical model of the Bush study, the derived demand for a medium is a function of media prices and the total media budget of the local business. Thus, the theory completely informs the regressions. Non-price media characteristics would appear in ad hoc specifications that are uninformed or guided by economic theory. In deed, without a priori theoretical consideration of variables to be included in the specification,

variables could be added to the model such that statistical significance could not be determined for any parameter of interest in the model. Second, Bush does introduce, however, two dummy variables to control for competitive effects that are associated with the size or rank of a DMA. In summary, the model of Bush is, however, supported by the data, and the results of Bush suggest that, statistically, there is weak substitutability between local media in the sales activities of local businesses. Again, Owen et al provide no alternative results using the data or model of Bush.

8. Owen et al assert that the Bush study incorrectly states advertising on a per business establishment basis. They argue that dividing local advertising expenditures by the number of business establishments is not appropriate because some businesses do not advertise at all via media. This argument is without merit. Without specific data on local businesses that advertise within a DMA, Bush followed the practice of the consumer demand literature in constructing advertising expenditures of a local business. In the economic literature on estimating consumer demand systems, it is typical to express consumer expenditures on a particular good or category of goods on a per capita basis even though not all people consume the good or category. Analogously, Bush expresses local media expenditures on a per business establishment basis even though not all local businesses advertise. Moreover, Owen et al provide no empirical evidence of bias or distortion in the estimate parameters as result of expressing advertising expenditures on a per business establishment basis.

## **B. Discussion of Hausman's Comments**

### **1. Introduction**

9. In the Comments of Clear channel Communications, Inc., Dr. Hausman critiques the study "*On the Substitutability of Local Newspaper, Radio, and Television Advertising in Local Business Sales*" by C. A. Bush. In this section, Hausman's comments are addressed.

### **2. Methodological Issue**

10. Dr. Hausman's methodological criticism of the Bush study assumes a model where market price and market quantity are determined by the intersection of the market demand curve and the market supply curve. His entire analysis assumes that prices are determined in a simultaneous equation model of market demand and market supply. The Bush study is not, however, a general equilibrium model or simultaneous equation model of price determination. Bush studies the derived demand of a local business for advertising that is used in the sales effort of the local business. In the model of Bush all firms are Bertrand competitors. In Bertrand competition each provider of a good or service sets the price of that good or service. For any competitive market, price will equal marginal cost, and for non-competitive markets prices are set based on the Bertrand pricing rule. Prices are completely determined without any reference to intersecting market supply and market demand curves. In fact, as Hausman<sup>1</sup> points out, there is a "prevalence of one-newspaper towns", and such monopolists would follow the Bertrand pricing rule. In fact, supply curves do not exist for monopolists. In other words, Bush assumes that the underlying price data are generated through a process of Bertrand pricing. The local business takes advertising prices as given, and maximizes expected sales. The result is a system of derived demand equations for local advertising by the local business. This means that there is no simultaneous equations bias, and therefore instrumenting in order to correct for simultaneous equation bias is not necessary.

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<sup>1</sup> Statement of Professor Jerry A. Hausman at 17.

11. In the demand system modeled by Bush, the fundamental econometric problem is the singularity of the covariance matrix caused by the adding-up restriction i.e., the sum of the local business's expenditures on various media must equal the total media budget. When the covariance matrix is singular, conventional methods fail and estimates cannot be derived. Moreover, the econometric methodology proposed by Hausman of estimating three separate simultaneous equation models and instrumenting/using two stage least squares does not address or solve the problem of singularity. The econometric methodology used by Bush produces efficient and consistent estimates given the singularity of the covariance matrix. Finally, the econometric methodology used by Bush is based on recent literature and practices for estimating demand systems with singular covariance matrices<sup>2</sup>. Bush's use of price data is consistent with recent and historical practices, e.g., Raper et al (2002)<sup>3</sup>, Andrikopoulos (2000)<sup>4</sup>, and Powell (1974)<sup>5</sup> in the estimation of demand systems with singular covariance matrices.

### 3. Measurement Error and Bias

12. In the Bush paper measurement errors are acknowledged. Bush states that local newspaper ad expenditures are constructed through an allocation process that introduces some degree of measurement error. Bush used SQAD radio and television price data because data on prices paid by local radio and television advertisers are not available. Use of SQAD data introduces measurement error.

13. Hausman (p. 17) finds the same measurement errors and concludes that Bush's results are biased towards finding too little demand sensitivity and too little substitution across media. Hausman provides no evidence on the direction of bias. Under the estimation of procedure and model used by Bush, Hausman does not demonstrate the direction of bias given measurement errors. The direction of bias suggested by Hausman holds for the case of simple linear regressions<sup>6</sup>. In deed, there could be bias towards finding too little substitution or bias toward finding too much substitution. Without evidence/data

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<sup>2</sup> See Dhrymes (1987 and 1994).

<sup>3</sup> Kellie C. Raper, Maria Namakhoye Wanzala, and Rudolfo M. Nayga, Jr., *Food Expenditures and Household Demographic Composition in the US: a Demand System Approach*, 34 APPLIED ECON. 981-92 (2002).

<sup>4</sup> Andreas A. Andrikopoulos and John Loizides, *The Demand for Home-Produced and Imported Alcoholic Beverages in Cyprus: The Aids Approach*, 32 APPLIED ECON. 1111-19 (2000).

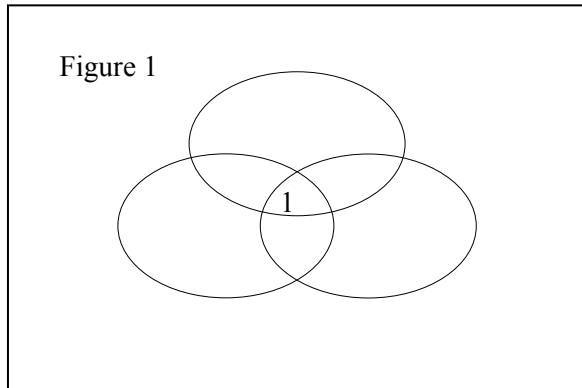
<sup>5</sup> Alan Powell, *EMPIRICAL ANALYTICS OF DEMAND SYSTEMS* (Mass.: Lexington Books, 1974)

<sup>6</sup> Jerry Hausman, *Mismeasured Variable in Econometric Analysis: Problems from the right and problems from the Left*, 15 *J. ECON PERSPECTIVES* 57-67 (Nov. 2001).

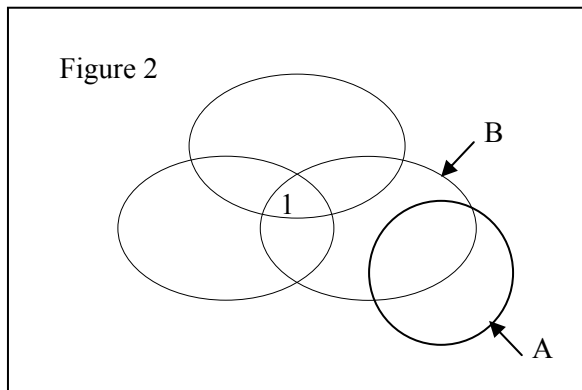
the actual direction of the bias cannot be determined. Bush has, however, provided some evidence of weak substitutability.

## APPENDIX F CONTOUR-OVERLAP METHODOLOGY

Under the existing contour-overlap methodology for defining radio markets and counting the radio stations that are in those markets, the Commission uses the principal community contours of the commercial radio stations that a party seeks to own. The relevant radio market is defined as the area encompassed by the principal community contours of the commonly owned radio stations whose contours mutually overlap. In Figure 1, for example, because the three stations have contours that mutually overlap in Area 1, if they were to be commonly owned, the radio market would be the entire shaded area.



Principal community contours also are used to count the number of radio stations in a radio market (*i.e.*, to determine the size of the market for purposes of applying the ownership limits). Specifically, in addition to the radio stations whose contours form the market, any station whose principal community contour intersects the market is considered “in” the market. For example, in Figure 2, three of the stations have contours that overlap in Area 1, thus forming a radio market comprised of the shaded area. Station A would be considered in that market because its contour intersects the market. It would be counted, moreover, even if it and the three other stations in Figure 2 have the same owner.



The situation exemplified in Figure 2 can result in what is known as the “numerator-denominator” inconsistency (also known as the “Pine Bluff” problem). Under the current rule, the numerator represents the number of commercial radio stations a party is deemed to own in a market. Only those stations that form the market (because their contours mutually overlap) are counted in the numerator. For example, in Figure 2, the three stations whose contours overlap in Area 1 are the only stations that their owner is deemed to own in that market. In contrast, the denominator, which represents the total number of commercial radio stations in the market (*i.e.*, the market size or tier), includes every



station whose contour intersects the market. Thus, even if all four stations in Figure 2 were to be commonly owned, Station A would be included in the denominator because its contour intersects the shaded area, but it would not be included in the numerator because its contour does not intersect Area 1. (Station A would, however, be included in the numerator when analyzing the market formed by the overlap of its contour and that of Station B. The two unlabeled stations in Figure 2 would be counted in the denominator (but not the numerator) in *that* market because their contours overlap the market.)

**APPENDIX G**  
**FINAL REGULATORY FLEXIBILITY ANALYSIS**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (Notice) initiating this proceeding.<sup>2</sup> IRFAs were also incorporated into the Notice of Proposed Rulemaking in MM Docket 01-317, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets (Local Radio Ownership NPRM), the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in MM Dockets 01-317 and 00-244, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, and Definition of Radio Markets (Combined NPRM), the Notice of Proposed Rulemaking in MM Docket 00-244, Definition of Radio Markets (Definition NPRM), and the Notice of Proposed Rulemaking in MM Docket 01-235, Cross-Ownership of Broadcast Stations and Newspapers (Newspaper/Broadcast Cross-Ownership NPRM).<sup>3</sup> The Commission sought written public comment on the proposals in all of the Notices of Proposed Rulemaking, including comment on the IRFAs. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>4</sup>

**A. Need for, and Objectives of the Report and Order (Order)**

2. The Order is the culmination of the Commission's third biennial ownership review and addresses all six broadcast ownership rules. This review is undertaken pursuant to Section 202(h) of the Telecommunications Act of 1996, which requires the Commission to review its broadcast ownership rules every two years. The Notice initiated review of four ownership rules; the national television multiple ownership rule,<sup>5</sup> the local television multiple ownership rule<sup>6</sup>, the radio television cross-ownership rule<sup>7</sup>; and the dual network rule.<sup>8</sup> The first two rules have been reviewed and the proceedings remanded to the Commission by the U.S. Court of Appeals for the District of Columbia Circuit. In addition, the Commission previously initiated proceedings on the local radio ownership rule<sup>9</sup> and the

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See Appendix A of the Notice, 17 FCC Rcd at 18558.

<sup>3</sup> See Notice of Proposed Rulemaking in MM Docket 01-317, 16 FCC Rcd at 19904, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in MM Dockets 01-317 and 00-244, 16 FCC Rcd at 25085, Notice of Proposed Rulemaking in MM Docket 00-244, 15 FCC Rcd at 25085, and the Notice of Proposed Rulemaking in MM Docket 01-235, 16 FCC Rcd at 17307. Cited collectively as the NPRMs.

<sup>4</sup> See 5 U.S.C. § 604.

<sup>5</sup> See 47 C.F.R. § 73.3555(c).

<sup>6</sup> See 47 C.F.R. § 73.3555(b).

<sup>7</sup> See 47 C.F.R. § 73.3555(c).

<sup>8</sup> See 47 C.F.R. § 73.658(g).

<sup>9</sup> See 47 C.F.R. § 73.3555(a).

newspaper/broadcast cross-ownership rule.<sup>10</sup> The Order: (1) replaces the newspaper/broadcast and radio/television cross/ownership rules with a set of cross-media limits; (2) modifies the local television multiple ownership rule; (3) modifies the local radio ownership rule and its market definition; (4) modifies the national TV ownership rule by changing the 35% limit in the current rule to 45%; and (5) retains the current dual network rule. The Commission believes these actions are necessary not only to comply with its Section 202(h) obligation, but to protect the Commission's chief goals in effectively regulating broadcasting, to promote diversity, localism, and competition.

3. The changes adopted in the Order provide a new, comprehensive framework for broadcast ownership regulation. The march of technology has brought to homes, schools, and places of employment across America unprecedented access to information and programming, while the Commission's broadcast ownership rules continue to restrict who may hold radio and television licenses... The current rules inadequately account for the competition presence of cable, ignore the diversity-enhancing value of the Internet, and lack any sound basis for a national audience reach cap. Our current rules are, in short, a patchwork of unenforceable and indefensible restrictions that, while laudable in principle, do not serve the interests they purport to serve.

4. The adoption of the Order is critical to the realization of the Commission's public interest goals in that it puts an end to any uncertainty regarding the scope and effect of our structural broadcast ownership rules. Most importantly, the rules discussed and adopted in the Order serve the Commission's competition, diversity and localism goals in highly targeted ways and, working together, form a comprehensive framework that is responsive to today's media environment.

## **B. Legal Basis**

5. This Order is adopted pursuant to Sections 1, 2(a), 4(j), 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. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

6. In addition to comments filed in direct response to the IRFA, the Commission received hundreds of thousands of comments, some of which concerned matters of particular interest to small entities. These comments are discussed in the section of this FRFA discussing the steps taken to minimize significant impact on small entities, and the significant alternatives considered. The Small Business Administration (SBA) filed comments in response to the IRFA in the Notice and also in response to the IRFAs in Dockets 01-317 and 00-244.<sup>11</sup> In both letters, SBA argues that the Notices of

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<sup>10</sup> See 47 C.F.R. § 73.355(d).

<sup>11</sup> SBA's comments were endorsed in an e-mail from Chris Powell, managing editor of the Journal Inquirer in Manchester, Connecticut, and by Susan Hager of the Alliance for Small Business Regulatory Fairness. The Center for the Creative Community (CCC) also filed comments in response to the IRFA in the Notice, echoing many of same arguments as SBA, and the Commission dismisses these arguments for the same reasons it dismisses SBA's contentions. Additionally, CCC maintains that the IRFA should have discussed the negative impact that easing or eliminating the dual network or national television multiple ownership rules could have on small entities in the creative arts community, such as writers, directors, producers, and performers among others. The Commission notes that the RFA requires that the Commission discuss the impact of potential rules or rule changes only on small entities which are regulated by the Commission. (*See American Trucking Associations, Inc. v. United States Environmental Protection Agency*, 171 F3d 1027, 336 U.S. App D.C. 16. citing *Motor and Equip. Mfrs. Ass'n v.* (continued....))

Proposed Rulemaking were not specific enough to comply with the Administrative Procedure Act or the Regulatory Flexibility Act., and that the IRFA did not fully discuss the possible impact of the proposed actions on small entities or offer alternatives that could minimize that impact. SBA contends that the general nature of the decisions made it difficult for small entities to file meaningful comments and so “frustrates the spirit of the RFA.” Therefore, SBA asks us to issue a Further Notice of Proposed Rulemaking in this proceeding. We disagree with SBA and deny its request. Contrary to the implication of SBA, the actual rules at issue in this proceeding are specifically identified in the Notice and are well-known by interested parties – they are our current broadcast ownership rules. Congress has directed us to review those rules every two years to determine whether those exact rules remain necessary in the public interest. That we have done in this proceeding and in accordance with the Notice. Further, Congress has directed the Commission to eliminate or modify any of its broadcast ownership rules that no longer are necessary. Again, it was explicit in the Notice that we might eliminate any rule that could not be justified in light of the current media marketplace. To the extent that we have eliminated rules in the Order, there has been no failure of notice. With respect to those rules that, having been found unnecessary, have been modified in the Order, the question is the familiar one – were the modifications a “logical outgrowth” of the issues identified in the Notice. The Commission concludes that the Order and its accompanying rules are a logical outgrowth of the questions posed in the Notice. The modifications made in the Order are consistent with the issues and questions posed in the Notice, and take account of the full record in this proceeding. The Commission takes seriously the mandate of Section 202(h) to review our broadcast ownership rules every two years. It would be impractical to complete such a Herculean task, in this case, to review six different rules, and to complete that review in time to start another review, if we issued a separate notice detailing modifications to rules and initiated another comment period.

7. SBA’s contentions that the general nature of the IRFA in the Notice made it financially and practically difficult for small entities to file meaningful comments and that small entities have not had an opportunity to comment on the potential impact of the actions adopted in the Order are belied by the hundreds of thousands of comments filed in this proceeding. Additionally, public hearings were conducted.

8. Hodson Broadcasting filed comments and reply comments in MM Dockets 01-317 and 00-244, recommending that the Commission modify the new entrant bidding credit in the broadcast auction process from the current percentages of 25 percent and 35 percent to 30 percent and 45 percent. Hodson also recommends, in its proposed 30 percent tier, that we allow an attributable interest in five mass media facilities nationwide instead of the current three, with the condition that the winning bidder has no attributable interest in a broadcast presence already in the market the proposed broadcast station intends to serve. Finally, for entities eligible for Hodson’s proposed 45 percent tier, Hodson recommends that we establish a relaxed payment plan for the winning bid balance that would include an extended payment schedule. Hodson claims that its proposals would benefit small entities. Hodson’s proposals go to our broadcast auction rules and process, not our ownership rules. These proposals are not a logical outgrowth of the Notice and they are therefore outside the scope of this proceeding.

(Continued from previous page) \_\_\_\_\_  
*Nichols*, 142 F.3d 449, 467 & n. 18, 1988, supporting an interpretation of the RFA that agencies have no obligation “to conduct a small entity impact analysis of effects on entities which it does not regulate.” The Commission does not regulate these entities.

#### D. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

9. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of entities that will be affected by the rules.<sup>12</sup> The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>13</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.<sup>14</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>15</sup>

10. In this context, the application of the statutory definition to television stations is of concern. 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 estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. 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.

11. **Television Broadcasting.** The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business.<sup>16</sup> Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”<sup>17</sup> According to Commission staff review of the BIA Publications, Inc. Master Access Television

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<sup>12</sup> 5 U.S.C. 604(a)(3).

<sup>13</sup> *Id.* § 601(6).

<sup>14</sup> *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the 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.”

<sup>15</sup> 15 U.S.C. § 632.

<sup>16</sup> See OMB, North American Industry Classification System: United States, 1997 at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002)

<sup>17</sup> OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (NAICS code 513120, which was changed to code 51520 in October 2002). 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.” Separate census categories pertain to businesses primarily engaged in producing programming. See *id.* at 502-05, NAICS code 51210. Motion Picture and Video Production: code 512120, Motion Picture and Video Distribution, code 512191, Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>18</sup> must be included. Our estimates, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

**12. Radio Broadcasting.** The SBA defines a radio broadcast entity that has \$6 million or less in annual receipts as a small business.<sup>19</sup> Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”<sup>20</sup> According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations<sup>21</sup> are included.<sup>22</sup> Our estimate, therefore likely overstates the number of small businesses that might be affected by any changes to the ownership rules.

**13. Daily Newspapers.** The SBA defines a newspaper publisher with no more than 500 employees as a small business.<sup>23</sup> According to the 1997 Economic Census, 8,620 of 8,758 newspaper publishers had less than 500 employees.<sup>24</sup> The data does not distinguish between newspaper publishers that publish daily and those that publish less frequently, and the latter are more likely to be small businesses than the former because of the greater expense to publish daily. The new cross ownership limits apply only to daily newspapers. It is likely that not all of the 8,620 small newspaper publishers are affected by the current rule.

#### **E. Description of Projected Reporting, Recordkeeping, Other Compliance Requirements**

14. The Order generally relaxes or retains the existing broadcast ownership rules. The Order does, however, adopt a paperwork and compliance requirement in connection with the local radio ownership rules. The Order requires that parties with existing attributable Joint Sales Agreements (JSAs) covering radio stations located in Arbitron Metros file a copy of the JSA with the Commission within 60

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<sup>18</sup> “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>19</sup> See OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 513111, which was changed to code 515112 in October 2002).

<sup>20</sup> *Id.*

<sup>21</sup> “Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

<sup>22</sup> “SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size.” 13 C.F.R. § 121(a)(4).

<sup>23</sup> 13 C.F.R. § 121.201 (NAICS Code 511110).

<sup>24</sup> These census data are found at <http://www.census.gov/prod/ec97/97m511a.pdf>, visited 5/21/03.

days of the effective date of the Order. Parties with JSAs for radio stations not located in Arbitron Metros will have to file JSAs within 60 days of the effective date of the Order. Additionally, we are modifying FCC Application Forms 314 and 315 to require applicants to file attributable JSAs at the time an application is filed. In addition, parties may be required to file a copy of Local Marketing Agreements (LMAs) that have become attributable because of the decision to modify the market definition for radio stations.

15. Further, in connection with the local TV ownership rule, the Order states that any licensee with a temporary waiver or pending waiver extension request must, by no later than 60 days after the effective date of the Order, file either a statement describing how ownership of the subject station complies with the local TV ownership rule or an application for transfer or assignment of license for one of the stations that is subject of the waiver.

16. The Order modifies the standards for rule waiver requests involving failed, failing, and unbuilt local television stations by removing the requirement to demonstrate that there is no reasonably available out-of-market buyers. It also provides guidelines for waiver of the top four-ranked restriction in markets of certain sizes, and addresses existing combinations that may not comply with the modified local television ownership rule. The Order indicates that waiver applicants should supply: television ratings information for all the television stations in the market for the four most recent ratings periods; and information about current local news production for all stations in the local market and the effect of the proposed merger on local news and public affairs programming for the affected stations. Waiver applicants claiming that the merger is needed to facilitate the digital transition should provide data supporting this assertion. Applicants stating that the merger is needed to preserve a local newscast should document the financial performance of the affected news division. Applicants for waiver of our top four-ranked restriction must demonstrate that the proposed combination will produce public interest benefits. As in the context of the failing station waiver, the Commission will require that, at the end of the merged stations' license term, the owner of the merged stations must certify to the Commission that the public interest benefits of the merger are being fulfilled. This certification must include a specific factual showing of the program-related benefits that have accrued to the public. The Commission will consider waivers of our local TV ownership rule where a party can demonstrate that the signals of the stations in a proposed combination do not have overlapping Grade B contours and have not been carried, via DBS or cable, to any of the same geographic areas within the past year. The Order also adopts a paperwork and compliance requirement in connection with parties who have a conditional waiver or a pending waiver request concerning newspaper/broadcast or television/radio cross-ownership situations. These parties must notify the Commission as to whether or not the combinations are in at-risk markets or whether the combinations would otherwise be prohibited pursuant to the Commission's Cross-Media Limits.<sup>25</sup>

17. The Order addresses issues relating to existing combinations that may not comply with the modified rules. The Order grandfathers existing holdings. The Order requires that parties come into compliance with the modified rules upon sale of the grandfathered combination, except when such transfers are made to, or by, "eligible entities." The Order defines an eligible entity as a small business consistent with SBA standards for industry groupings. The Order prohibits an eligible entity from selling a grandfathered combination acquired after the adoption date of the Order unless it has held the combination for a minimum of three years. The Order adopts processing guidelines for pending broadcast assignment and transfer of control applications. Applicants with pending long-form applications (FCC Forms 314 and 315) that require a multiple ownership showing may amend applications by submitting a

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<sup>25</sup> See Order paragraph. 494 .

new multiple ownership showing demonstrating compliance with the rules adopted in the Order. Applicants may begin filing such amendments once notice has been published by the Commission in the Federal Register that OMB has approved the information collection requirements contained in such amendments. Applications pending as of the effective date of the rules adopted in the Order will be processed under the new rules.

18. Finally, the Order establishes a freeze on the filing of new broadcast assignment and transfer of control applications that require the use of FCC Form 314 or 315.

19. The freeze begins on the adoption date of the Order and ends on the date that notice has been published by the Commission in the Federal Register that OMB has approved the revised forms. The Commission will continue to process short-form (FCC 316) applications. The Commission is modifying and releasing revised forms 301, 314, and 315 based on the changes in the Order, and these revised forms will be effective upon OMB approval.

#### **F. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered**

20. 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>26</sup>

21. Any discussion of alternatives which were available to the Commission in reviewing these broadcast ownership rules must begin with an understanding that Section 202(h) mandates that the Commission review these rules to determine whether they remain “necessary in the public interest.” Section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules if the Commission finds the rules are not “necessary in the public interest.” Thus, the Commission has three chief alternatives available in analyzing each of these rules -- to eliminate the rule, modify it, or, if the Commission determines that the rule is “necessary in the public interest,” retain the rule. As discussed in paragraphs 10-16 of the Order, the Commission in reviewing the broadcast ownership rules is acting under its legislative mandate and, guided by recent court decisions,<sup>27</sup> finds that Section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules. Given these limitations, the Commission is limited in the relief it can offer small entities.

22. The Commission received more than 500,000 brief comments and form letters from individual citizens. These commenters expressed general concerns about the potential consequences of media consolidation, including concerns that such consolidation would result in a significant loss of viewpoint diversity, and affect competition from all entities, including small entities. The Commission shares these concerns and believes that the rules adopted in the Order serve our public interest goals, take account of and protect the vibrant media marketplace, including the continued viability of small entities, and comply with our statutory responsibilities and limits.

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<sup>26</sup> 5 U.S.C. § 603 (c).

<sup>27</sup> See, for example, *Fox Television Station, Inc. v FCC*, 280 F.3d 1027, 1044 (D.C. Cir. 2002), *rehearing granted*, 293 F.3d 537 (D.C. Cir. 2002) and *Sinclair Broadcast Group v. FCC*, 284 F.3d 148 (D.C. Cir. 2002).



23. The decisions made in the Order reduce or remove regulatory restrictions for all entities, including small entities. The Commission also adopts waiver processes that will enable licensees to seek relief from the impact of the rules in appropriate circumstances. Additionally, we are grandfathering existing combinations, both intra- and inter-media, that would not comply with the new regulations. This will prevent the harmful economic impact of forced divestiture at fire-sale prices that would have been burdensome to all affected licensees, including small entities. Also, the Commission generally elects to establish bright-line ownership rules rather than case-by-case determinations. This will reduce the delay, cost, and uncertainty that sometimes accompanies case-by-case reviews. This is of special interest to small entities as such costs could weigh disproportionately on small businesses if the subject matter of the proposed transaction is a substantial portion of the small business's total assets. Generally speaking, by adopting bright-line rules rather than a case-by-case approach, the Commission takes action that will benefit small businesses by lowering transaction costs and increasing regulatory certainty.

**24. Local TV Multiple Ownership Rule (Paragraphs 132-234).** The Order modifies the current local TV multiple ownership rule to permit an entity to have an attributable interest in two television stations in markets with 17 or fewer stations; and up to three stations in markets with 18 or more stations, provided that no more than one of the stations in the combination is ranked among the top four in terms of audience share. As a result of the top four-ranked standard, combinations in markets with fewer than five stations are not permitted. The Order eliminates the provision of the current rule that permits combinations of two television stations that do not have overlapping signal contours. Because of mandatory carriage of television broadcast stations by multichannel video programming distributors, the geographic market in which a station competes is generally its Nielsen Designated Market Area (DMA), rather than its over-the-air service area. Therefore all proposed stations combinations will be subject to the restrictions described above, without regard to contour overlap.

25. Commenters proposing elimination or relaxation of the local TV multiple ownership rule argue that the rule is no longer "necessary in the public interest" because it prevents broadcasters from achieving efficiencies that will allow them to compete more effectively with other media outlets and to provide improved services to the public. Several commenters contend that this is especially true for broadcasters in small and mid-sized markets. The Commission agrees that, by limiting common ownership of television stations in local markets where at least eight independently owned TV stations would remain post merger, the current rule prohibits mergers that would result in efficiencies that will benefit the public interest, especially mergers in small and mid-sized markets. The modifications to the rule adopted in the Order will permit broadcasters in more small and mid-sized markets, including small entities, to combine and thereby achieve such efficiencies. The modified rule accounts for the competitive realities faced by broadcasters in small and medium markets. Although the modified rule ensures that there will be at least six competitors in markets with 12 or more television stations, in markets with 11 or fewer television stations the Order permits higher levels of concentration in light of the differences in the economics of broadcasting in smaller markets. The top four – ranked restriction of the modified local TV ownership rule also protects small entities by preventing the largest firms in a given local market from combining to achieve excessive market power. By prohibiting combinations involving stations with the largest audience shares, the restriction protects against potential harm to broadcasters with smaller market shares, including small entities.

26. The Order also addresses competitive challenges faced by broadcasters in small markets through modified waiver standards. The Order modifies the standards for rule waiver requests involving failed, failing, and unbuilt local television stations by removing the requirement to demonstrate that there is no reasonably available out-of-market buyer. The Order further adopts two additional waiver standards. First, it provides for consideration of requests for waiver of the top four-ranked prohibition of

the local TV ownership rule in markets with 11 or fewer TV stations where an applicant can show that the public interest benefits of a proposed combination outweigh potential harms to competition, diversity, and localism. In evaluating such waiver requests, the Commission also will account for the diminished reach of UHF stations by considering whether the proposed combination involves a UHF station. Reduced audience reach diminishes UHF stations' impact on diversity and competition in local markets. Because this standard applies only in smaller markets, it may benefit smaller entities that would otherwise be unable to combine under the current rule. In addition, because it will account for competitive disparities faced by UHF stations, it will benefit small entities that may own such stations. The Order also provides guidelines for waivers for combinations involving stations that do not have overlapping signal contours and are not carried in the same geographic area by MVPDs.

27. The Commission received a proposal that, if the local TV multiple ownership rule is relaxed, the Commission require periodic certification by owners of same-market combinations that they are not engaged in certain types of anticompetitive conduct that would adversely affect smaller broadcasters in their markets. The Commission denies this proposal, on grounds that the modified local television ownership rule does not increase the likelihood that broadcasters will engage in anticompetitive conduct. The Order notes that, if broadcasters engage in anticompetitive conduct that is illegal under antitrust statutes, remedies are available pursuant to those statutes. In addition, an antitrust law violation would be considered as part of the Commission's character qualifications review in connection with any renewal, assignment, or transfer of a license.

28. The Commission, as discussed in paragraphs 209-220 of the Order, received several suggestions for modifying the local TV multiple ownership rule, but concludes that, as compared to the modified rule, the proposals advanced by commenters are more likely to result in anomalies and inconsistencies or will otherwise fail to serve our policy goals. Examining each proposal in turn, the Order concludes that these proposals would permit unacceptable levels of concentration in local markets or would permit combinations among top four-ranked stations, which are likely to result in competitive harm, with no offsetting public interest benefits. One commenter, the National Association of Broadcasters (NAB) proposes a "10/10" alternative that would permit combinations where at least one of the stations has had, on average over the course of the year, an all-day audience share of 10 or less. NAB maintains that its proposal would provide needed financial relief for struggling stations in small and medium markets and those that are lower rated, and, by prohibiting combinations of leading stations, would effectuate the Commission's diversity and competition goals. The Commission dismisses this proposal, finding that the proposal would permit mergers between financially strong stations, including top four-ranked stations, in a significant number of markets, and offers no justification for using 10 as a threshold. The Order finds that, rather than allowing combinations involving top four-ranked stations as a general rule, consideration of waivers of the top four-ranked restriction in smaller markets on a case-by-case basis, as described above, will better effectuate its policy goals, and will address the concerns of broadcasters in smaller markets, including small entities operating in such markets.

**29. Local Radio Ownership Rule (Paragraphs 235- 326).** The local radio ownership rule limits the number of commercial radio stations overall and the number of commercial radio stations in a service (AM or FM) that a party may own in a local market. The Commission finds that the numerical limits in the current rule are "necessary in the public interest," but finds that the rule must be modified to change the method for defining radio markets and to count noncommercial stations in the market. The Order thus modifies the rule by adopting a market definition that reflects more accurately the competitive impact of proposed radio station combinations, and by providing that the Commission will count non-commercial radio stations in calculating market size. The Order also makes joint sales agreements (JSAs) attributable for purposes of determining compliance with the local radio ownership rule and adopts

“grandfathering” rules and procedures to address any existing station ownership patterns or JSAs that may cause a party to be out of compliance with the modified rule. The Commission dismisses requests to repeal the local radio ownership rule. Commenters favoring repeal argue that, for example, the rule is unjustified because consolidation has resulted in efficiencies and has produced significant public interest benefits. While the Commission does not dispute that a certain level of consolidation of radio stations can improve the ability of a group owner to make investments that benefit the public, we seek to ensure that radio stations outside of the dominant groups, including small entities can remain viable and, beyond that, can prosper. Other commenters dispute these contentions, expressing concern that, in a concentrated market, dominant radio station groups can exercise market power to attract revenue at the expense of the small owner. As a result, they argue, the small owner has greater difficulty obtaining the revenue it needs to develop and broadcast attractive programming and to compete generally against the dominant station groups. Although the Commission declines to pass on the competitive situation in any particular radio market in the context of this proceeding, the concerns raised by the latter commenters comport with the competition analysis that underlies this Order and supports our decision not to repeal the local radio ownership rule.

30. The Commission decides not to require divestiture of existing combinations of broadcast stations that violate the modified multiple ownership rules adopted in the Order. The Commission determined that the alternative, requiring divestiture, would be too disruptive on the broadcast industry, which includes small broadcast owners. However, the Commission will require that combinations comply with the modified multiple ownership rules upon the assignment or transfer of control of the station group. The Commission rejected the alternative, allowing grandfathered combinations to be sold in perpetuity, because such a decision would disserve our competition goals discussed in the Order. Any spin-offs that would be required upon sales of stations in a grandfathered group could afford new entrants the opportunity to enter the media marketplace. It could also give small station owners already in the market the opportunity to acquire more stations and take advantage of the benefits of combined ownership.

31. The Commission adopts an exception to the prohibition on the transfer of grandfathered combinations that violate the new rules. The Commission will allow transfers to “eligible entities.” The Commission defines an eligible entity as a small business consistent with SBA standards for industry groupings. This exception was adopted to facilitate new entry by, and growth of, small businesses in the broadcast industry, and thereby further our goals of diversity of ownership, competition, and localism. The Commission will allow eligible entities to sell grandfathered combinations generally without restriction. The Commission believes that small businesses require greater flexibility than do larger entities for the disposition of assets. Restrictions on the sale of assets could disproportionately harm the financial stability of smaller firms, compared to that of larger firms that have other revenue streams. To prevent abuse of the policy, the Commission prohibits eligible entities from selling grandfathered combinations acquired after adoption date of the Order unless it has held the combination for a minimum of three years.

32. Paragraphs 316-325 of the Order discuss attribution of JSAs. In this regard, the Commission has the option, supported by some commenters, of maintaining its current policy of that JSAs are not attributable under the Commission’s rules. Commenters supporting retention of this exemption argue that JSAs produce a public interest benefit. Although the Commission continues to believe that JSAs may have some positive effects on the local radio industry, the threat to competition and the potential impact on the influence over the brokered stations and requires attribution. As indicated in paragraph 319 of the Order, the Commission recognizes that JSAs raise concerns regarding the ability of smaller broadcasters to compete, and may negatively affect the health of the local radio industry generally. Therefore, the

Order states that the Commission will now count such brokered stations toward the brokering licensee's attributable interest in one or more stations in a local radio market.

33. **Newspaper/broadcast and radio/television cross ownership rules. (Paragraphs 327-481).** Based on the extensive record in this proceeding, the Commission finds that neither the current nationwide prohibition on common ownership of daily newspapers and broadcast outlets in the same market, nor our cross-service restriction on commonly owned radio and television outlets in the same market, is "necessary in the public interest." With respect to both rules, the Commission concludes that the ends sought can be achieved with more precision and with greater deference to First Amendment interests by modifying the rules into a single set of cross media limits. The modified rules adopted in the Order are, in sum, designed to protect against markets becoming highly concentrated, in a qualitative sense, for diversity purposes.

34. Although our conclusions pertain to markets of all sizes, newspaper-broadcaster combinations may produce tangible public benefits in smaller markets in particular. In this regard, West Virginia Media contends that the cross-ownership restriction impairs coverage of local news and public affairs in small markets by prohibiting combinations that would produce efficiencies and synergies particularly necessary in smaller markets. It argues that the rule may have the unintended effect of stifling local news by prohibiting efficient combinations that would produce better output. We assume that the efficiencies cited by West Virginia Media can benefit small businesses with respect to the production of news and public affairs programming.

35. National Ownership Rules (Paragraphs 499-621). The Order modifies the national TV ownership rule by raising the audience cap from 35% of the country's television households to 45%. The Commission received a significant amount of public comment in this regard and, based on the record, finds that, although retention of a national cap is necessary to limit the percentage of television households that an entity may reach through the station it owns, a cap of 35% is not necessary to preserve the balance of bargaining power between networks and affiliates and may have other drawbacks. The Commission believes that the current affiliate/network dynamic is beneficial to viewers and should be preserved and that eliminating the cap altogether would shift the balance of power with respect to programming decisions toward the national broadcast networks in a way that would disserve the Commission's localism policy. But the evidence suggests that 35% is overly restrictive and that the cap may safely be raised and the benefits of wider network station ownership achieved without disturbing either this balance or affiliates' ability to preempt network programming.

36. The Order cites three primary reasons for settling on the 45% cap: (1) given that the Commission is interested in finding a point at which the balance of bargaining power between networks and affiliates is roughly equal, a national audience reach cap of approximately half of all homes is appropriate; (2) because the Commission has some concern about allowing significant new aggregation of network power absent more compelling evidence regarding the possible effects of that aggregation above current limits and in light of the fact that Congress raised the ownership cap by ten percentage points in 1996, the Commission is inclined to take a similarly incremental approach; and (3) a 45% cap will allow some, but not unconstrained, growth for each of the top largest network owners. Permitting the networks a modest amount of growth will enable them to compete more effectively with cable and DBS operators and may help preserve free, over-the-air television by reducing the likelihood that networks will migrate expensive programming to their cable networks. The Order retains the 50% UHF discount when calculating a television station owner's national reach, which could benefit small businesses by encouraging the emergence of new broadcast networks. The Order sunsets the application of the UHF discount for the stations owned by the top four broadcast networks when the digital transition is completed on a market by market basis.

37. The Commission retains the dual network rule, which permits common ownership of multiple broadcast networks, but prohibits a merger between or among the “top-four” networks, finding that the rule is “necessary in the public interest” to promote competition and localism. The Order concludes that a top-four network merger would give rise to competitive concerns that the merged firm would be able to reduce its program purchases and/or the price it pays for programming, and that this would in turn harm viewers through reduction in program output, program choices, program quality, and innovation. Further, a top-four network merger would harm localism by providing the networks with undue economic leverage over their affiliates.

38. **Minority and Women Proposals (Paragraphs 46-52).** MMTC proposes a dozen business and regulatory initiatives that “would go a long way toward increasing entry into the communications industry by minorities.”<sup>28</sup> MMTC’s initiatives include: (1) equity for specific and contemplated future acquisitions; (2) enhanced outreach and access to debt financing by major financial institutions; (3) investments in institutions specializing in minority and small business financing; (4) cash and in-kind assistance to programs that train future minority media owners; (5) creation of a business planning center that would work one-on-one with minority entrepreneurs as they develop business plans and strategies, seek financing, and pursue acquisitions; (6) executive loans, and engineers on loan, to minority owned companies and applicants; (7) enhanced access to broadcast transactions through sellers undertaking early solicitations of qualified minority new entrants and affording them the same opportunities to perform early due diligence as the sellers afford to established non-minority owned companies; (8) nondiscrimination provisions in advertising sales contracts; (9) incubation and mentoring of future minority owners; (10) enactment of tax deferral legislation designed to foster minority ownership; (11) examination of how to promote minority ownership as an integral part of all FCC general media rulemaking proceedings; and (12) ongoing longitudinal research on minority ownership trends, conducted by the FCC, NTIA, or both<sup>29</sup>; (13) sales to certain minority or small businesses as alternatives to divestitures.

39. These comments contain many creative proposals to advance minority and female ownership. Clearly, a more thorough exploration of these issues, which will allow us to craft specifically tailored rules that will withstand judicial scrutiny, is warranted.<sup>30</sup> Therefore, we will issue a Notice of Proposed Rulemaking to address these issues and incorporate comments on these issues received in this proceeding into that proceeding.

40. We do, however, see significant immediate merit in MMTC’s proposal regarding the transfer of media properties that collectively exceed our radio ownership cap. MMTC recommends that the Commission generally forbid the wholesale transfer of media outlets that exceed our ownership rules except where the purchaser qualifies as a “socially and economically disadvantaged business (SDB).”<sup>31</sup>

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<sup>28</sup> MMTC Nov. 5, 2002 Comments at Tab 10, “Twelve Minority Ownership Solutions.”

<sup>29</sup> *Id.*

<sup>30</sup> See *Adarand Constructors Inc. v. Peña*, 515 U.S. 200, 227 (1995) (holding that all racial classifications imposed by a governmental agency must be analyzed by reviewing courts under strict scrutiny, and are constitutional “only if they are narrowly tailored measures that further compelling governmental interests”).

<sup>31</sup> MMTC Comments at 107. See also NAB Reply Comments at 44 (“Although NAB would go further, so that station owners would be allowed to transfer properly formed station combinations freely to any purchaser, whether an SDB or not, NAB does not oppose MMTC’s proposal.”).

MMTC defines SDBs as the definition contained in legislation recently introduced by U.S. Senator John McCain.<sup>32</sup> As discussed in the Grandfathering and Transition Procedures, Local Ownership Rules Section VI(D) V *infra*, we agree with MMTC that the limited exception to a “no transfer” policy for above-cap combinations would serve the public interest. We agree with MMTC that the benefits to competition and diversity of a limited exception allowing entities to sell above-cap combinations to eligible small entities outweigh the potential harms of allowing the above-cap combination to remain intact. Greater participation in communications markets by small businesses, including those owned by minorities and women, has the potential to strengthen competition and diversity in those markets. It will expand the pool of potential competitors in media markets and should bring new competitive strategies and approaches by broadcast station owners in ways that benefit consumers in those markets.

41. In addition, MMTC proposes that we adopt an “equal transactional opportunity” rule similar in some respects to our EEO requirements.<sup>33</sup> While such a rule is worthy of further exploration, we decline to adopt a rule without further consideration of its efficacy as well as any direct or inadvertent effects on the value and alienability of broadcast licenses. We see merit in encouraging transparency in dealmaking and transaction brokerage, consistent with business realities. We also reiterate that discriminatory actions in this, and any other context, is contrary to the public interest. For these reasons, we intend to refer the question of how best to ensure that interested buyers are aware of broadcast properties for sale to the Advisory Committee on Diversity for further inquiry and will carefully review any recommendations this Committee may proffer. As soon as the Commission receives authorization to form this committee we will ask it to make consideration of this issue among its top priorities.<sup>34</sup>

42. Report to Congress. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.<sup>35</sup> In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>36</sup>

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<sup>32</sup> “Telecommunications Ownership Diversification Act of 2003,” S.267, 108<sup>th</sup> Congress, 1<sup>st</sup> Sess.

<sup>33</sup> MMTC Comments at 115-120.

<sup>34</sup> We anticipate that the Committee will make recommendations on ways to improve our regulatory programs designed to enhance new entry into broadcasting.

<sup>35</sup> *See* 5 U.S.C. § 801(a)(1)(A).

<sup>36</sup> *See* 5 U.S.C. § 604(b).

**APPENDIX H  
RULE CHANGES**

47 CFR Part 73 is amended to read as follows:

**PART 73 – RADIO BROADCAST SERVICES**

The authority citations for part 73 continue to read as follows:

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

Section 73.3555 is amended by revising paragraphs (a) and (b), removing paragraphs (c) and (d), and adding a new paragraph (c); by redesignating paragraphs (e) and (f) as (d) and (e) and revising paragraph (d); by retaining all notes in force, revising Notes (1), 2(i)(2)(ii), 2(j), 4, 5, 6 and 7, and by adding new Notes 2(k), 11 and 12 to read as follows:

**§ 73.3555 Multiple ownership.**

(a) (1) Local radio ownership rule. A person or single entity (or entities under common control) may have a cognizable interest in licenses for AM or FM radio broadcast stations in accordance with the following limits:

(i) In a radio market with 45 or more full-power, commercial and noncommercial radio stations, not more than 8 commercial radio stations in total and not more than 5 commercial stations in the same service (AM or FM);

(ii) In a radio market with between 30 and 44 (inclusive) full-power, commercial and noncommercial radio stations, not more than 7 commercial radio stations in total and not more than 4 commercial stations in the same service (AM or FM);

(iii) In a radio market with between 15 and 29 (inclusive) full-power, commercial and noncommercial radio stations, not more than 6 commercial radio stations in total and not more than 4 commercial stations in the same service (AM or FM);

(iv) In a radio market with 14 or fewer full-power, commercial and noncommercial radio stations, not more than 5 commercial radio stations in total and not more than 3 commercial stations in the same service (AM or FM); provided, however, that no person or single entity (or entities under common control) may have a cognizable interest in more than 50% of the full-power, commercial and noncommercial radio stations in such market unless the combination of stations comprises not more than one AM and one FM station.

(b) Local television multiple ownership rule.

(1) For purposes of this section, a television station's market shall be defined as the Designated Market Area (DMA) to which it is assigned by Nielsen Media Research or any successor entity at the time the application to acquire or construct the station(s) is filed. Puerto Rico, Guam, and the U.S. Virgin Islands each will be considered a single market.

(2) An entity may have a cognizable interest in more than one full-power commercial television broadcast station in the same DMA in accordance with the following conditions and limits:

- (i) at the time the application to acquire or construct the station(s) is filed, no more than one of the stations that will be attributed to such entity is 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
- (ii) (A) Subject to (2)(i) above, in a DMA with 17 or fewer full-power commercial and noncommercial television broadcast stations, an entity may have a cognizable interest in no more than 2 commercial television broadcast stations; or  
  
(B) Subject to (2)(i) above, in a DMA with 18 or more full-power commercial and noncommercial television broadcast stations, an entity may have a cognizable interest in no more than 3 commercial television broadcast stations.

(c) Cross-Media Limits. Cross-ownership of a daily newspaper and commercial broadcast stations, or of commercial broadcast radio and television stations, is permitted without limitation except as follows:

- (1) In Nielsen Designated Market Areas (DMAs) to which three or fewer full-power commercial and noncommercial educational television stations are assigned, no newspaper/broadcast or radio/television cross-ownership is permitted.
- (2) In DMAs to which at least four but not more than eight full-power commercial and noncommercial educational television stations are assigned, an entity that directly or indirectly owns, operates or controls a daily newspaper may have a cognizable interest in either: (i) one, but not more than one, commercial television station in combination with radio stations up to 50% of the applicable local radio limit for the market; or (ii) radio stations up to 100% of the applicable local radio limit if it does not have a cognizable interest in a television station in the market.
- (3) The foregoing limits on newspaper/broadcast cross-ownership do not apply to any new daily newspaper inaugurated by a broadcaster.

(d) National television multiple ownership rule. (1) No license for a commercial television broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors having a cognizable interest in television stations which have an aggregate national audience reach exceeding forty-five (45) percent.

(2) For purposes of this paragraph (d):

- (i) National audience reach means the total number of television households in the Nielsen Designated Market Areas (DMAs) in which the relevant stations are located divided by the total national television households as measured by DMA data at the time of a grant, transfer, or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their DMA market.
- (ii) No market shall be counted more than once in making this calculation.



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**Note 1 to § 73.3555:** The words “cognizable interest” as used herein include any interest, direct or indirect, that allows a person or entity to own, operate or control, or that otherwise provides an attributable interest in, a broadcast station.

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**Note 2(i)(2)(ii) to § 73.3555:** The interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held. For purposes of applying this paragraph, the term, “market,” will be defined as it is defined under the specific multiple ownership rule or cross-media limit that is being applied, except that for television stations, the term “market,” will be defined by reference to the definition contained in the local television multiple ownership rule contained in paragraph (b) of this section.

**Note 2(j) to § 73.3555:** “Time brokerage” (also known as “local marketing”) is the sale by a licensee of discrete blocks of time to a “broker” that supplies the programming to fill that time and sells the commercial spot announcements in it.

(1) Where two radio stations are both located in the same market, as defined for purposes of the local radio ownership rule contained in paragraph (a) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a) and (c) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(2) Where two television stations are both located in the same market, as defined in the local television ownership rule contained in paragraph (b) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (b) and (c) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(3) Every time brokerage agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraphs (b) and (c) of this section if the brokering station is a television station or with paragraphs (a) and (c) if the brokering station is a radio station.

**Note 2(k) to § 73.3555:** “Joint Sales Agreement” is an agreement with a licensee of a “brokered station” that authorizes a “broker” to sell advertising time for the “brokered station.”

(1) Where two radio stations are both located in the same market, as defined for purposes of the local radio ownership rule contained in paragraph (a) of this section, and a party (including all parties under common control) with a cognizable interest in one such station sells more than 15 percent of the advertising time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a) and (c) of this section.

(2) Every joint sales agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the limitations set forth in paragraphs (a) and (c) of this section.

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**Note 4 to § 73.3555:** Paragraphs (a) through (c) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy, if no new or increased concentration of ownership would be created among commonly owned, operated or controlled media properties. Paragraphs (a) through (c) will apply to all applications for new stations, to all other applications for assignment or transfer, to all applications for major changes to existing stations, and to applications for minor changes to existing stations that implement an approved change in an FM radio station's community of license or create new or increased concentration of ownership among commonly owned, operated or controlled media properties. Commonly owned, operated or controlled media properties that do not comply with paragraphs (a) through (c) of this section may not be assigned or transferred to a single person, group or entity, except as provided above in this Note or in the Report and Order in Docket No. 02-277, released July 2, 2003 (FCC 03-127).

**Note 5 to § 73.3555:** Paragraphs (b) and (c) of this section will not be applied to cases involving television stations that are "satellite" operations. Such cases will be considered in accordance with the analysis set forth in the Report and Order in MM Docket No. 87- 8, FCC 91-182 (released July 8, 1991), in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating "satellite" television station may subsequently become a "non-satellite" station under the circumstances described in the aforementioned Report and Order in MM Docket No. 87-8. A cognizable interest in such "non-satellite" television stations may be retained by the existing interest-holder even if that interest would be impermissible under § 73.3555(b) or (c). However, such "non-satellite" station may not be transferred or assigned to a single person, group, or entity except as provided for by § 73.3555(b) and (c).

**Note 6 to § 73.3555:** For purposes of paragraph (c) of this section a daily newspaper is one that is published four or more days per week, is in the dominant language of the market in which it is published, and is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.

**Note 7 to § 73.3555:** The Commission will entertain applications to waive the restrictions in paragraph (b) of this section (the local television multiple ownership rule) on a case-by-case basis. We will entertain waiver requests as follows:

(1) If one of the broadcast stations involved is a "failed" station that has not been in operation due to financial distress for at least four consecutive months immediately prior to the application, or is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application.

(2) If one of the television stations involved is a "failing" station that has an all-day audience share of no more than four per cent; the station has had negative cash flow for three consecutive years immediately prior to the application; and consolidation of the two stations would result in tangible and verifiable

public interest benefits that outweigh any harm to competition and diversity.

(3) If the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so.

(4) If the signals of the stations in a proposed combination: (a) do not have overlapping Grade B contours; and (b) have not been carried, via DBS or cable, to any of the same geographic areas within the past year.

(5) For paragraph (b)(2)(i) of this section only (the top four-ranked restriction), if the stations in a proposed combination are in a market with 11 or fewer full-power television stations, we will consider waivers pursuant to criteria described in the Report and Order in MB Docket No. 02-277, released July 2, 2003 (FCC 03-127).

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**Note 11 to § 73.3555:** For purposes of paragraph (c) of this section: (1) for radio/newspaper combinations, the Cross-Media Limit is triggered when the newspaper's community of publication is completely encompassed by: (A) for AM radio stations, the predicted or measured 2mV/m contour computed in accordance with § 73.183 or § 73.186 of the Commission's Rules; (B) for FM stations, the predicted 1 mV/m contour computed in accordance with § 73.313 of the Commission's Rules; and (2) for television/newspaper combinations, the Cross-Media Limit is triggered when the newspaper's community of publication is located within the same Nielsen Designated Market Area to which the television station is assigned.

**Note 12 to § 73.3555:** For purposes of paragraph (c) of this section, for television/radio combinations, the rule is triggered when the radio station's community of license is located within the Nielsen Designated Market Area to which the television station is assigned.

43. Section 73.3613 is amended by revising paragraph (d) and redesignating it paragraph (d)(1), adding a new paragraph (d)(2), and revising paragraph (e) to read as follows:

§ 73.3613 Filing of contracts.

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(d)(1)Time brokerage agreements (also known as local marketing agreements): Time brokerage agreements involving radio stations where the licensee (including all parties under common ownership) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local radio multiple ownership rule contained in § 73.3555(a), and more than 15 percent of the time of the brokered station, on a weekly basis is brokered by that licensee; time brokerage agreements involving television stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both licensed to the same market as defined in the local television multiple ownership rule contained in § 73.3555(b), and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving radio or television stations that would be attributable to the licensee under § 73.3555 Note 2(i). Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(d)(2) Joint sales agreements: Joint sales agreements involving radio stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local radio multiple ownership rule contained in § 73.3555(a), and more than 15 percent of the advertising time of the brokered station on a weekly basis is brokered by that licensee. Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC; subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

44. Section 73.5007 is amended by revising paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(3)(i), (b)(3)(ii), and (b)(3)(iv) to read as follows:

§ 73.5007 Designated entity provisions.

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(b)\*\*\*

(2)\*\*\*

- (i) AM broadcast station – principal community contour (see § 73.24(i));
- (ii) FM Broadcast station – principal community contour (see § 73.315(a));
- (iii) Television broadcast station – television Grade B or equivalent contour (see § 73.683(a) for analog TV and § 73.622(e) for DTV);

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(3)\*\*\*

- (i) AM broadcast station – principal community contour (see § 73.24(i));
- (ii) FM broadcast station – principal community contour (see § 73.315(a));
- (iii) \*\*\*
- (iv) Television broadcast station – television Grade B or equivalent contour (see § 73.683(a) for analog TV and § 73.622(e) for DTV).

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**APPENDIX I**  
**INITIAL REGULATORY FLEXIBILITY ANALYSIS**

1. As required by the Regulatory Flexibility Act (RFA),<sup>43</sup> the Commission has prepared this present 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 (“Notice”). 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 on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>44</sup> In addition, the Notice and the IRFA (or summaries thereof) will be published in the Federal Register.<sup>45</sup>

2. The Commission will send a copy of the Notice, including this IRFA to the Chief Counsel for Advocacy of the SBA. A copy of the Notice and the IRFA (or summaries thereof) will also be published in the Federal Register.<sup>46</sup>

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

3. Section 202(h) of the Telecommunications Act of 1996 (1996 Act) requires the Commission to review all of its broadcast ownership rules every two years commencing in 1998 (“Biennial Review”), and to determine whether any of these rules are necessary in the public interest as the result of competition. The 1996 Act also requires the Commission to repeal or modify any regulation it determines to be no longer in the public interest. In the 2002 Biennial Report and Order, the Commission concluded that the numerical limits in the local radio ownership rule are necessary in the public interest to protect competition in local radio markets. We also concluded that the rule in its current form did not promote the public interest as it relates to competition, in part, because the current methodology for defining radio markets is conceptually flawed as a means to protect competition in local radio markets. Thus, the Commission revised the present method of determining the dimensions of radio markets and/or of counting the stations available in those markets. The new geographic based approach better serves the public interest, reflects true markets in which radio stations compete, and better effectuates Congressional intent when it adopted the radio ownership limits in 1996. In the 2002 Biennial Report and Order, the Commission adopted a geography-based approach using Arbitron-defined markets. However, the Commission found that the current record provides insufficient information about appropriate boundaries for areas located outside of Arbitron defined areas. This Notice is designed to solicit comment on proposals to define radio markets outside of Arbitron defined areas.

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<sup>43</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>44</sup> See 5 U.S.C. § 603(a).

<sup>45</sup> See *id.*

<sup>46</sup> See 5 U.S.C. § 604(b).

## B. Legal Basis

4. This Notice is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, 310, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, 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>47</sup> The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental entity under Section 3 of the Small Business Act.”<sup>48</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>49</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>50</sup>

6. In this context, the application of the statutory definition to radio stations is of concern. 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 estimates that follow of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and are therefore over-inclusive to that extent. 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.

7. The SBA defines a radio broadcast entity that has \$6 million or less in annual receipts as a small business.<sup>51</sup> Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”<sup>52</sup> According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of \$6 million or less. We note,

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<sup>47</sup> 5 U.S.C. § 603(b)(3).

<sup>48</sup> *Id.* § 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 SBA and after opportunity for public comment, establishes one or more definitions of the term where appropriate to the activities of the agency and publishes the definition(s) in the Federal Register.”

<sup>49</sup> *Id.*

<sup>50</sup> 15 U.S.C. § 632.

<sup>51</sup> See OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 513111, which was changed to code 515112 in October 2002).

<sup>52</sup> *Id.*

however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations<sup>53</sup> are included.<sup>54</sup> Our estimate, therefore likely overstates the number of small businesses that might be affected by any changes to the ownership rules.

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

8. The Notice proposes to modify the definition of radio markets outside of Arbitron defined areas. The action, depending on the definition ultimately adopted, would modify the instructions and the multiple ownership showing currently required for the following forms: (1) FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License; (2) FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License; and (3) FCC Form 301, Application for Construction Permit For Commercial Broadcast Stations. The impact of these changes will be the same on all entities. Whether compliance will take more, less, or the same amount of time and money, will depend on the definition adopted.

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

9. 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>55</sup>

10. We are directed under law to consider alternative means to achieve our stated objectives.<sup>56</sup> In the 2002 Biennial Report and Order, the Commission considered and rejected alternatives to defining radio markets through the rulemaking process. Specifically, the Commission found that determining radio markets on a case-by-case basis would create significant regulatory uncertainty and impose substantial burdens on small-market radio broadcasters, many of which are small businesses. The Commission concluded that the better course is to develop radio market definitions for non-Metro areas through the rulemaking process. The Commission found that this would be the most expeditious way to define local radio market boundaries for the entire country. Defining radio markets also would give all interested parties, including small businesses, clear guidance about how the Commission will

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<sup>53</sup> “Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

<sup>54</sup> “SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size.” 13 C.F.R. § 121(a)(4).

<sup>55</sup> 5 U.S.C. § 603(c).

<sup>56</sup> 5 U.S.C. § 603(b).

analyze a proposed radio station combination in non-Arbitron areas.

11. The Notice invites comment on how to modify the current methodology for determining radio markets for areas of the country outside of Arbitron defined areas. The Commission has a number of alternatives on which it invites comment. We particularly invite comment on how the various alternatives might impact on small businesses and on alternatives outside the Notice which might minimize any burden on small businesses.

12. The Commission seeks comments on how to draw specific market boundaries in areas of the country not located in the Arbitron Metros and on what factors should we consider in grouping radio stations into markets. The Commission proposes that radio markets be county-based. One alternative, if that proposal is adopted, would be to use a different standard in the western United States where counties are significantly larger. The Commission could also divide counties into separate radio markets in certain circumstances. Small businesses should benefit from a county-based system because county boundaries are clear, stable, and well-known, and are commonly used for market definition purposes (see next paragraph).

13. The Commission also seeks comment on whether to rely on any pre-existing market definitions in delineating radio markets for non-Metro areas. For example, the Commission could base its Metro definitions on the Metropolitan Area (MA) definitions developed by OMB. The Commission asks how the radio market should be defined in areas that MAs do not cover, and notes one possible alternative would be to establish geographic markets based on the location, distribution, and density of populated area. The Commission could also treat Cellular Market Areas as the relevant geographic market for radio. Both of these potential market definitions are county-based. We do not believe that the selection of one pre-defined market definition over another generally will have an impact on small business. We invite comment on this question.

14. The market definition we establish would result in small business owners being subject to a market definition that is different than the one to which they currently are subject. As a result, the number of radio stations that they may own, and the number of radio stations that their competitors may own, under the local radio ownership rule may change. We encourage parties to use this opportunity submit specific information that would the Commission in properly delineating the boundaries of the local radio markets in which they are interested.

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

15. None.