

effective date will be granted only in response to a timely request and for only the most compelling reasons.

(k) Four-letter combinations commencing with “W” or “K” which are assigned as call signs to ships or to other radio services are not available for assignment to broadcast stations, with or without the “-FM” or “-TV” suffix.

(l) Users of nonlicensed, low-power devices operating under part 15 of this chapter may use whatever identification is currently desired, so long as propriety is observed and no confusion results with a station for which the FCC issues a license.

(m) Where a requested call sign, without the “-FM,” “-TV,” “-CA” or “-LP” suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, an applicant utilizing the on-line reservation and authorization system will be required to certify that consent to use the secondary call sign has been obtained from the holder of the primary call sign.

[63 FR 71603, Dec. 29, 1998, as amended at 65 FR 30007, May 10, 2000]

§ 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 non-commercial 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 non-commercial 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.

(2) [Reserved]

(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 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 paragraph (b)(2)(i) of this section, in a DMA with 17 or fewer full-power commercial and non-commercial television broadcast stations, an entity may have a cognizable interest in no more than 2 commercial television broadcast stations; or

(B) Subject to paragraph (b)(2)(i) of this section, in a DMA with 18 or more full-power commercial and non-commercial 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 non-commercial 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.

(e) The ownership limits of this section are not applicable to noncommercial educational FM and noncommercial educational TV stations. However, the attribution standards set forth in the Notes to this section will be used to determine attribution for non-commercial educational FM and TV applicants, such as in evaluating mutually exclusive applications pursuant to subpart K.

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.

NOTE 2 TO § 73.3555: In applying the provisions of this section, ownership and other interests in broadcast licensees, cable television systems and daily newspapers will be attributed to their holders and deemed cognizable pursuant to the following criteria

(a) Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper will be cognizable;

(b) Investment companies, as defined in 15 U.S.C. 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper, or if any of the officers or directors of the broadcast licensee, cable television system or daily newspaper are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(c) Attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph (i) of this note, attribution of ownership interests in a broadcast licensee,

cable television system or daily newspaper that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph (i) of this note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% (0.1×0.25). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable. For purposes of paragraph (i) of this note, X's interest in "Licensee" would be 15% (0.6×0.25) and A's interest in "Licensee" would be 1.5% ($0.1 \times 0.6 \times 0.25$). Neither interest would be attributed under paragraph (i) of this note.]

(d) Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant broadcast licensee, cable television system or daily newspaper are subject to said trust.

(e) Subject to paragraph (i) of this note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies. An interest in a Limited Liability Company ("LLC") or Registered Limited Liability Partnership ("RLLP") shall be attributed to the interest holder unless that interest holder is not materially involved, directly or indirectly, in the management or operation of the media-related activities of

the partnership and the licensee or system so certifies.

(2) For a licensee or system that is a limited partnership to make the certification set forth in paragraph (f)(1) of this note, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. For a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (f)(1) of this note, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the media activities of the LLC or RLLP. The criteria which would assume adequate insulation for purposes of this certification are described in the Memorandum Opinion and Order in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985), as modified on reconsideration in the Memorandum Opinion and Order in MM Docket No. 83-46, FCC 86-410 (released November 28, 1986). Irrespective of the terms of the certificate of limited partnership or partnership agreement, or other organizational document in the case of an LLC or RLLP, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners, or other interest holders in the case of an LLC or RLLP, in the management or operation of the media-related businesses of the partnership or LLC or RLLP.

(3) In the case of an LLC or RLLP, the licensee or system seeking insulation shall certify, in addition, that the relevant state statute authorizing LLCs permits an LLC member to insulate itself as required by our criteria.

(g) Officers and directors of a broadcast licensee, cable television system or daily newspaper are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting, cable television service or newspaper publication, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee, cable television system or daily newspaper, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly

unrelated to the broadcast licensee, cable television system or daily newspaper subsidiary, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the appropriate Ownership Report.] The officers and directors of a sister corporation of a broadcast licensee, cable television system or daily newspaper shall not be attributed with ownership of these entities by virtue of such status.

(h) Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

(1) The sum of the interests held by or through "passive investors" is equal to or exceeds 20 percent; or

(2) The sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

(3) The sum of the interests computed under paragraph (h)(1) of this note plus the sum of the interests computed under paragraph (h)(2) of this note is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and (f) of this note, the holder of an equity or debt interest or interests in a broadcast licensee, cable television system, daily newspaper, or other media outlet subject to the broadcast multiple ownership or cross-ownership rules ("interest holder") shall have that interest attributed if:

(1) The equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that media outlet; and

(2)(i) The interest holder also holds an interest in a broadcast licensee, cable television system, newspaper, or other media outlet operating in the same market that is subject to the broadcast multiple ownership or cross-ownership rules and is attributable under paragraphs of this note other than this paragraph (i); or

(ii) 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.

(j) "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.

(k) "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.

NOTE 3 TO § 73.3555: In cases where record and beneficial ownership of voting stock is not identical (*e.g.*, bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street names for the benefit of customers, investment advisors holding stock in their own names for the benefit of clients, and insurance companies holding stock), the party having the right to determine how the stock will be voted will be considered to own it for purposes of these rules.

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 in this Note or in the *Report and Order* in Docket No. 02-277, released July 2, 2003 (FCC 02-127).

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 percent; 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).

NOTE 8 TO § 73.3555: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 535-1605 kHz band where grant of such application will result in the overlap of 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such

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common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application of the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

NOTE 9 TO § 73.3555: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band by an entity that owns, operates, controls or has a cognizable interest in AM radio stations in the 535-1605 kHz band.

NOTE 10 TO § 73.3555: Authority for joint ownership granted pursuant to Note 9 will expire at 3 a.m. local time on the fifth anniversary for the date of issuance of a construction permit for an AM radio station in the 1605-1705 kHz band.

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: (i) 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; (ii) 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.

[59 FR 49007, Sept. 26, 1994, as amended at 59 FR 62613, Dec. 6, 1994; 61 FR 10690 and 10692, Mar. 15, 1996; 64 FR 50645, 50651, 50666, Sept. 17, 1999; 65 FR 36379, June 8, 2000; 66 FR 9048, Feb. 6, 2001; 66 FR 9972, Feb. 13, 2001; 66 FR 15356, Mar. 19, 2001; 68 FR 46355, Aug. 5, 2003]

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§ 73.3556 Duplication of programming on commonly owned or time brokered stations.

(a) No commercial AM or FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24 hour period.

(c) Any party engaged in a time brokerage arrangement which conflicts with the requirements of paragraph (a) of this section on September 16, 1992, shall bring that arrangement into compliance within one year thereafter.

[57 FR 18093, Apr. 29, 1992, as amended at 57 FR 42706, Sept. 16, 1992]

EFFECTIVE DATE NOTE: At 57 FR 18093, Apr. 29, 1992, § 73.3556 was added, effective August 1, 1992. At 57 FR 35763, Aug. 11, 1992, the effective date was deferred pending action by the agency. At 57 FR 37888, Aug. 21, 1992, the effective date was further deferred. At 57 FR 42706, Sept. 16, 1992, paragraph (a) was revised and paragraph (c) was added, effective September 16, 1992.

§ 73.3561 Staff consideration of applications requiring Commission action.

Upon acceptance of an application, the complete file is reviewed by the staff and, except where the application is acted upon by the staff pursuant to delegation of authority, a report containing the recommendations of the staff and any other documents required is prepared and placed on the Commission's agenda.

[44 FR 38499, July 2, 1979]