

and comment requirements of the APA, 5 U.S.C. 553(b)(A), are inapplicable.

Ordering Clauses. Therefore, it is ordered That the authority to conduct a hearing and to select from among mutually exclusive applications in the Instructional Television Fixed Service is delegated to the staff.

4. It is further ordered That, pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, §§ 0.151 and 0.283 of the Commission's Rules, 47 CFR 0.151, 0.283, are amended as set forth below.

5. Because this involves an internal procedural matter not affecting the substantive rights of any entity, and in order to expedite the processing of ITFS applications, it is further ordered that for good cause shown pursuant to the provisions of 5 U.S.C. 553(d)(3), this *Order* shall become effective immediately upon publication in the Federal Register.

6. It is further ordered That this proceeding is terminated.

7. Authority for the adoption of the foregoing revision is contained in sections 5(b), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 155(b), 155(c)(1), and 303(r).

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Changes

Part 0 of title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C 155, 225, unless otherwise noted.

2. Section 0.151 is revised to read as follows:

§ 0.151 Functions of the Office.

The Office of Administrative Law Judges consists of a Chief Administrative Law Judge, an Assistant Chief Administrative Law Judge, and as many other Administrative Law Judges qualified and appointed pursuant to the requirements of section 11 of the Administrative Procedure Act as the Commission may find necessary. It is responsible for hearing and conducting all adjudicatory cases designated for any evidentiary adjudicatory hearing other

than those designated to be heard by the Commission en banc, those designated to be heard by one or more members of the Commission, and those involving the authorization of service in the Instructional Television Fixed Service. The Office of Administrative Law Judges is also responsible for conducting such other hearings as the Commission may assign.

3. Section 0.283 is amended by revising paragraph (a)(9)(i) to read as follows:

§ 0.283 Authority delegated.

* * * * *

(a) * * *

(9) * * *

(i) Mutually exclusive applications not in the Instructional Television Fixed Service, including renewal and construction permit applications, involving non-routine hearing issues.

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[FR Doc. 96-6208 Filed 3-14-96; 8:45 am]

BILLING CODE 6712-01-P

47 CFR PART 73

[FCC 96-90]

Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996 (Broadcast Radio Ownership)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends the Commission's Rules to eliminate current national multiple radio ownership restrictions and to relax local radio ownership restrictions (the "radio contour overlap" rule). This action is necessary to conform the current rules to section 202(a) and 202(b)(1) of the Telecommunications Act of 1996.

EFFECTIVE DATE: March 15, 1996.

FOR FURTHER INFORMATION CONTACT: Alan Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 418-2130.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 96-92, adopted March 7, 1996 and released March 8, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Order

By this Order, the Commission amends 47 CFR 73.3555 of its rules to conform to provisions of the Telecommunications Act of 1996 ("Telecom Act"), Public Law 104-104, 110 Stat. 56 (1996), signed into law by President Clinton on February 8, 1996. Sections 202(a) and 202(b)(1) of the Telecom Act direct the Commission to revise § 73.3555 of its Rules (47 CFR 73.3555) regarding the national multiple radio ownership rule and the local radio ownership ("radio contour overlap") rule.

National Radio Station Ownership

2. Section 73.3555(e)(1)(i) of the Commission's Rules generally limits commercial radio ownership on a nationwide basis to no more than 20 AM stations and no more than 20 FM stations. Section 73.3555(e)(1)(i) further provides that an entity may have an attributable but noncontrolling interest in an additional 3 AM and 3 FM stations that are small business controlled or minority-controlled. Section 202(a) of the Telecom Act directs the Commission to "modify Section 73.3555 of its regulations * * * by eliminating any provisions limiting the number of AM or FM broadcast stations which may be owned or controlled by one entity nationally." Accordingly, § 73.3555(e)(1)(i) will be deleted and the remainder of the rule will be modified to reflect the changes directed by this section of the Telecom Act.

Local Radio Station Ownership

3. The local radio ownership ("radio contour overlap") rule, 47 CFR 73.3555(a)(1), defines the limits of local commercial radio ownership by a single entity. Section 73.3555(a)(1) permits ownership of up to three commercial radio stations, no more than two of which may be in the same service, in radio markets with 14 or fewer stations, provided that the owned stations, if other than a single AM and FM station combination, represent less than 50 percent of the stations in the market; in markets with 15 or more commercial radio stations, ownership of up to two AM and two FM commercial radio stations is generally permitted if the combined audience share of the commonly owned stations does not exceed 25 percent in the market. Section 202(b)(1) of the Telecom Act requires the Commission to "revise section 73.3555(a) of its regulations * * * to provide that—

(A) In a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio

stations, not more than 5 of which are in the same service (AM or FM);

(B) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and

(D) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market."

Accordingly, § 73.3555(a)(1) and 73.3555(a)(3)(iii) of the Commission's Rules will be revised to reflect the changes directed by section 202(b)(1) of the Telecom Act, as set forth below. Section 73.3555(a)(3)(iii), which defines a radio station's "audience share" for multiple radio ownership under the current rules, will be deleted.

Other Matters

4. This Order is limited to revising our rules as directed by sections 202(a) and 202(b)(1) of the Telecom Act. Section 202(b)(2) of the Telecom Act provides that notwithstanding any limitation authorized by this subsection, the Commission may permit a person or entity to own, operate, or control, or have a cognizable interest in, radio broadcast stations if the Commission determines that such ownership, operation, control, or interest will result in an increase in the number of radio broadcast stations in operation. The implementation of this particular provision will be addressed in a subsequent Notice of Proposed Rule Making. Of course, entities are not precluded from asking the Commission to apply this statutory exception in a particular case before any rule changes.

5. The following aspects of our radio ownership rules, as set forth in previous Commission decisions, are unaffected by the Telecom Act and will remain in effect: (1) We will continue to define the relevant radio market as the area encompassed by the principal community contours (*i.e.*, predicted or measured 5 mV/m for AM stations and predicted 3.16 mV/m for FM stations) of the mutually overlapping stations proposing to have common ownership. (2) The number of stations in the market will continue to be determined based on the principal community contours of all commercial stations whose principal community contours overlap or intersect the principal community

contours of the commonly-owned and mutually overlapping stations. (3) The stations that will be included within the market will continue to be operating commercial full-power stations, including daytimers and foreign stations. We will continue to exclude non-commercial stations, translators and stations that are not operational. However, the principal community contours of any non-operational commercial stations that are part of a transaction or that are commonly-owned by a party to the transaction will continue to be used to define the radio market and to count the number of stations in the radio market. We also note that time brokerage agreements between two stations in the same market that involve more than 15 percent of the brokered station's programming per week will continue to be treated as if the brokered station is owned by the brokering station for purposes of the radio local ownership rules.

Administrative Matters

We are revising these rules without providing prior public notice and comment because the rules being modified are mandated by the applicable provisions of the Telecom Act. We find that notice and comment procedures are unnecessary, and that this action therefore falls within the "good cause" exception of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B) (notice requirements inapplicable "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest"). The rule changes adopted in this Order do not involve discretionary action on the part of the Commission. Rather, they simply implement provisions of the Telecom Act that direct the Commission to revise its rules according to specific terms set forth in the legislation.

Ordering Clause

7. Accordingly, *it is ordered* that pursuant to sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996, and to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), part 73 of the Commission's Rules, 47 CFR part 73, is amended as set forth below. We note that § 73.3555(e) is also being amended in the Order implementing certain of the Telecom Act's broadcast television ownership provisions that is being released simultaneously with this Order.¹ For clarity, the amendments to § 73.3555(e)

are being set forth only in that proceeding. The rules will become effective upon publication of this Order in the Federal Register.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.3555 is amended by revising paragraph (a) to read as follows:

§ 73.3555 Multiple ownership.

(a)(1) *Radio contour overlap rule.* No license for an AM or FM broadcasting station shall be granted to any party (including all parties under common control) if the grant of such license will result in overlap of the principal community contour of that station and the principal community contour of any other broadcasting station directly or indirectly owned, operated, or controlled by the same party, except that such license may be granted in connection with a transfer or assignment from an existing party with such interests, or in the following circumstances:

(i) In a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM);

(ii) In a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);

(iii) In a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and

(iv) In a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.

¹ Order, FCC 96-91 (released March 8, 1996).

(2) Overlap between two stations in different services is permissible if neither of those two stations overlaps a third station in the same service.

(3) (i) Where the principal community contours of two radio stations overlap and a party (including all parties under common control) with an attributable ownership 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 paragraph (a)(1) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

(ii) Every time brokerage agreement of the type described in paragraph (a)(3)(i) of this section 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 paragraph (a) of this section.

(4) For purposes of this paragraph (a):

(i) The "principal community contour" for AM stations is the predicted or measured 5 mV/m groundwave contour computed in accordance with § 73.183 or § 73.186 and for FM stations is the predicted 3.16 mV/m contour computed in accordance with § 73.313.

(ii) The number of stations in a radio market is the number of commercial stations whose principal community contours overlap, in whole or in part, with the principal community contours of the stations in question (i.e., the station for which an authorization is sought and any station in the same service that would be commonly owned whose principal community contour overlaps the principal community contour of that station). In addition, if the area of overlap between the stations in question is overlapped by the principal community contour of a commonly owned station or stations in a different service (AM or FM), the number of stations in the market includes stations whose principal community contours overlap the principal community contours of such commonly owned station or stations in a different service.

(iii) "Time brokerage" 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.

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[FR Doc. 96-6207 Filed 3-14-96; 8:45 am]

BILLING CODE 6712-01-U

47 CFR Part 73

[FCC 96-91]

Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 (Telecom Act).¹ Section 202(c)(1) of the Telecom Act directs the Commission to revise its Rules regarding the national television station multiple ownership rules. Section 202(e) of the Telecom Act directs us to revise the Commission's Rules with respect to dual networking operations. With this *Order*, we conform our rules to these particular provisions of the Telecom Act.

EFFECTIVE DATE: March 15, 1996.

FOR FURTHER INFORMATION CONTACT:

Alan Aronowitz, Mass Media Bureau, Policy and Rules Division, Legal Branch, (202) 418-2130, or via the Internet at aaronowi@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, FCC 96-91, adopted March 7, 1996 and released March 8, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Order

1. *National Ownership Limitations.* Currently, § 73.3555(e)(1)(ii) through (iii), (2) and (3) of the Commission's Rules set forth the rules and operative definitions regarding national ownership limitations applicable to commercial television stations. The rule prohibits entities from having an attributable ownership or other cognizable interest in more than 12 such

stations, except that such an interest in two additional stations is permitted, for a total of 14 stations, if these additional stations are minority-controlled. The rule also prohibits an entity from having an attributable ownership or other cognizable interest in a station if it would result in that entity having such an interest in television stations with an aggregate national audience reach exceeding 25 percent (an additional 5 percent reach is permitted, for a total of 30 percent, if it is derived from minority-controlled stations). For purposes of calculating this aggregate audience reach under the rules, UHF stations are attributed with only 50 percent of their audience reach (the "UHF discount"),² and stations which are primarily satellite operations are generally not counted (the "satellite exception").³

2. Section 202(c)(1) of the Telecom Act directs the Commission to "modify its rules for multiple ownership set forth in § 73.3555 of its regulations * * *.

(A) by eliminating the restrictions on the number of television stations that a person or entity may directly or indirectly own, operate, or control, or have a cognizable interest in, nationwide; and

(B) by increasing the national audience reach limitation for television stations to 35 percent."

Section 73.3555(e) of the Commission's Rules will be revised to reflect the changes directed by section 202(c)(1) of the Telecom Act, as set forth below.

3. The Telecom Act is silent with respect to the UHF discount and the satellite station exception, both of which are incorporated in the definition of "national audience reach" set forth in § 73.3555(e)(3). The UHF discount and satellite exception are matters presently under consideration in the Commission's outstanding proceeding reviewing its television broadcast ownership rules,⁴ and any rule modifications with respect to these matters will be addressed, as appropriate, in that proceeding. In calculating the national audience reach in the interim, therefore, the UHF discount and the satellite exception, as set forth in our current rules, will continue to apply. However, any entity which acquires stations during this interim period and which complies with the 35 percent audience reach limitation only by virtue of one or both of these two provisions will be subject to the outcome in the pending television

² 47 CFR 73.3555(e)(3)(i).

³ 47 CFR 73.3555(e)(3)(ii).

⁴ See TV Ownership Further Notice, 60 FR 6490 (February 2, 1995).

¹ Pub. L. 104-104, 110 Stat. 56 (1996).