40 CFR Part 52

[PA 083–4036b, PA 083–4037b, PA 069–4035b; FRL–5659–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of Source-Specific VOC and NO_X RACT Determinations, and 1990 Baseyear Emissions For One Source

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing VOC and NO_X RACT for three facilities. In the Final Rules section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying Technical Support Document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all documents subject to this rulemaking action, those documents not affected by the adverse comments will be finalized in the manner described here. Only those documents that receive adverse comments will be withdrawn in the manner described here.

DATES: Comments must be received in writing by January 21, 1997.

ADDRESSES: Written comments on this action should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box, 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Janice Bolden, (215) 566–2185, or Carolyn Donahue, (215) 566–2095, at the EPA Region III office or via e-mail at bolden-janice@epamail.epa.gov or donahue-carolyn@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information, pertaining to this action (VOC and NO_x RACT approval) affecting three facilities in Pennsylvania, provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 22, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–32370 Filed 12–19–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 73 and 76

[MM Docket No. 94–150, 92–51, 87–154; FCC 96–436]

Multipoint Distribution Services

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: This Further Notice of Proposed Rule Making (''FNPRM'') seeks additional comment in our ongoing proceeding to review our broadcast attribution rules, the rules by which we define what constitutes a ''cognizable interest'' in applying the multiple ownership rules. We seek comment as to how the relaxation of our ownership rules resulting from the passage of the Telecommunications Act of 1996 (''1996 Act'') should affect our review of the attribution rules. We also seek comment on new proposals, including a provision to attribute the otherwise nonattributable interests of holders of equity and/or debt in a licensee or media entity subject to the broadcast cross-ownership rules where the interest holder is a program supplier to a licensee or a same-market media entity subject to the broadcast cross-ownership rules and where the equity and/or debt holding exceeds a specified threshold. Additionally, we seek renewed comment on a proposal to attribute Local Marketing Agreements (''LMAs''). We also invite comment on whether we should revise our approach to joint sales agreements (''JSAs'') in specified circumstances. We also seek comment on a study conducted by Commission staff, appended to this FNPRM, on attributable interests in television broadcast licensees and on the implications of this study for our attribution rules, particularly on the voting stock benchmarks. Finally, we invite comment as to whether we should amend the cable/Multipoint Distribution Service (''MDS'') cross-ownership attribution rule. The proposed rules are necessary to promote our goals of maximizing the precision of the attribution rules, avoiding disruption in the flow of capital to broadcasting, affording clarity and certainty to regulatees, and facilitating application processing, and the proposed rules are intended to effect those results. This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

DATES: Written comments by the public on the proposed and/or modified information collections are due February 7, 1997, and reply comments are due March 7, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 11, 1997.

ADDRESSES: In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain$_x$t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's FNPRM in MM Docket No. 94–150, 92–51, 87–

154; FCC 96–436, adopted November 5, 1996 and released November 7, 1996. The full text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C., 20037, (202)857–3800.

Synopsis of Further Notice of Proposed Rule Making

1. The attribution rules seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions. Our current broadcast attribution rules are set out in the Notes to Section 73.3555 of the Commission's rules, and, insofar as the broadcast-cable cross-ownership rule is involved, in the Notes to 47 CFR 76.501.[1] We issued the NPRM in this proceeding, 60 FR 6483, (February 2, 1995) broadly to review the attribution rules. In this FNPRM, we do not specifically discuss a number of issues raised in the NPRM, including treatment of Limited Liability Companies (''LLCs'') and treatment of limited partnerships. Nonetheless, these issues remain outstanding, and we intend to resolve the entire set of issues raised in the NPRM and in this FNPRM, together, after the comments received in response to this FNPRM are received and reviewed.

Paperwork Reduction Act

2. This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: None

Title: FNPRM—Attribution

Form No.: FCC 301, FCC 314, FCC 315, FCC 323

Type of Review: Revision of existing collections

Respondents: Businesses or other for-profit

Number of Respondents: 12,216

Estimated Time Per Response: These proposals could cause an increase in burden of an additional 3.5 hours per respondent

Total Annual Burden: 42,756 hours

Needs and Uses: This Further NPRM seeks comments as to how the relaxation of the Commission's ownership rules resulting from the passage of the Telecommunications Act of 1996 should affect our review of the attribution rules. The attribution rules define what interests are cognizable for purposes of applying the multiple ownership rules to specific situations. The multiple ownership rules limit the number of broadcast stations that a single person or entity, directly or indirectly, is permitted to own, operate, or control. In its Further Notice, the Commission invited comment on a proposal to add a new ''equity or debt plus'' attribution standard to its Rules. Under this proposed standard, where the interest holder is a program supplier or same-market broadcaster or media entity subject to the broadcast cross-ownership rules (i.e., cable systems and newspapers), the Commission would attribute its otherwise nonattributable equity and/or debt interest in a licensee or other media entity subject to the cross-ownership rules, if the equity and/or debt holding is greater than 33%. The Commission also sought comment on: (1) Whether it should attribute television Local Marketing Agreements (LMAs) and radio or television joint sales agreements (JSAs) among licensees in the same market, tentatively concluding that television LMAs should be attributed where they involve more than fifteen percent of the brokered station's weekly broadcast hours; (2) a staff study of the attributable interests in commercial broadcast television licensees, as reported in ownership reports, particularly with respect to the voting and nonvoting stock attribution benchmarks; and (3) grandfathering/transition issues (except for LMAs, which will be resolved in the television local ownership proceeding). With respect to grandfathering, the Commission tentatively concluded that (1) any grandfathering should apply only to the current holder and should not be transferable; and (2) any interests acquired on or after December 15, 1994, the date of adoption of the Notice of Proposed Rulemaking in this proceeding, should be subject to the final rules adopted in the Report and Order in this proceeding. Finally, the Commission invited comment on whether to modify the cable/MDS cross-ownership attribution rules to apply broadcast attribution criteria, as modified in the attribution proceeding, in determining cognizable interests in MDS licensees and cable systems for purposes of applying the ownership restrictions of Section 21.912 of its Rules.

3. The FCC 301 (OMB Control #3060–0027), FCC 314 (OMB Control #3060–0031), FCC 315 (OMB Control #3060–0032) and the FCC 323 (OMB Control #3060–0010) are the data collection devices used to identify those interests that are counted for purposes of applying the multiple ownership rules. Depending on the outcome of this proceeding, these forms may need to be modified to reflect new reportable interest standards and could cause an increase in burden. In addition, relaxation of the present attributable interests standards could result in a reduction in the number of interest-holders required to disclose their ownership interests in broadcast licensees and permittees. The overall impact, however, cannot be determined until resolution of the outstanding rulemaking. The attribution rules seek to identify those interests in or relationships to licensees or media entities that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect programming decisions of licensees or other core operating functions. The attribution rules are used to implement the Commission's broadcast multiple ownership rules.

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603

[1] We recognize that the attribution standards used in a number of other cable rules are implicitly or explicitly based on Section 76.501. For example, the attribution standards in the cable television horizontal ownership, channel occupancy and program access rules are derived from these attribution Notes. We are considering initiating a separate proceeding to address whether to modify the attribution criteria for these rules. In the instant proceeding, we are addressing only the attribution criteria that would apply to Section 76.501(a), the cable-broadcast cross-ownership rule. Additionally, we will consider changes to the cable/MDS cross-ownership attribution rule.

(''RFA''), the Commission is incorporating an Initial Regulatory Flexibility Analysis (''IRFA'') of the expected impact on small entities of the policies and proposals in this FNPRM of Proposed Rule Making in MM Docket Nos. 94–150, 92–51, & 87–154 (''FNPRM'').[2] Written public comments concerning the effect of the proposals in the FNPRM, including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Secretary shall send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.[3]

Reasons Why Agency Action is Being Considered

After the issuance of the NPRM in this Docket, the Telecommunications Act of 1996 (''1996 Act'') was signed into law.[4] The FNPRM seeks comment as to how the multiple ownership rule revisions resulting from passage of the 1996 Act should affect our review of the attribution rules. The FNPRM also seeks comment on our new proposal to attribute the otherwise nonattributable interests of holders of equity and or debt in a licensee or other media entity subject to the cross-ownership rules where the interest holder is a program supplier to a licensee or a same-market broadcaster and where the equity and/or debt holding meets or exceeds specified thresholds. This proposal is intended to address the concerns expressed in the NPRM that the current attribution rules may not precisely or fully identify all the interests in or relationships to broadcast stations that should be counted in applying the multiple ownership rules. Additionally, the FNPRM seeks comment on proposals concerning attribution of Local Marketing Agreements (''LMAs'') and joint sales agreements (''JSAs'') in specified circumstances. Also, the FNPRM seeks comment on a study conducted by Commission staff, appended to this FNPRM, on attributable interests in television broadcast licensees and on the implications of this study for our attribution rules, particularly on the voting stock benchmarks. Finally, we invite comment as to whether we should amend the cable/MDS cross-ownership attribution rule.

Need for and Objectives of the Proposed Rules

The attribution rules seek to identify those interests in or relationships to licensees or media entities that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions. The attribution rules are used to implement the Commission's broadcast multiple ownership rules. Our goals in commencing this proceeding and in formulating the proposals in the FNPRM are to be to maximize the precision of the attribution rules, avoid disruption in the flow of capital to broadcasting, afford clarity and certainty to regulatees, and ease application processing.

Legal Basis

Authority for the actions proposed in this FNPRM is contained in Sections 4(i), 303, 307 and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 307, & 310.

Recording, Recordkeeping, and Other Compliance Requirements

If our attribution rules are made more restrictive so as to attribute interests not now currently attributable, our ownership reporting form, FCC Form 323, will need to be modified accordingly so that such attributable interests will then be reportable on the form. We invite comment as to whether any additional professional skills would be needed to complete this form.

Federal Rules that Overlap, Duplicate or Conflict With the Proposed Rules

The rules proposed in the FNPRM will modify the current attribution rules, and, similarly to the Commission's current attribution rules, will be used to implement the multiple ownership rules. Thus, the proposed rules are intended to promote the same diversity and competition goals also fostered by the multiple ownership rules. However, the proposed rules do not overlap, duplicate or conflict with the multiple ownership rules.

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

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. 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 Small Business Administration (''SBA''). 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 SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.''[5]

The proposed rules and policies will apply to television broadcasting licensees, radio broadcasting licensees and potential licensees of either service. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in

[2] An IRFA pursuant to Public Law Notice 96–354, section 603, 94 Stat. 1165 (1980) was incorporated into the Notice of Proposed Rule Making in MM Docket Nos. 94–150, 92–51 & 87–154, 10 FCC Rcd 3606 (1995), 60 FR 3606, February 2, 1996 (''NPRM'').

[3] 5 U.S.C. 603(a).

[4] Public Law Notice 104–104, 110 Stat. 56 (1996).

[5] While we tentatively believe that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this FNPRM, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations or other entities subject to the proposed rules in this FNPRM and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See Report and Order in MM Docket No. 93–48 (Children's Television Programming), 11 FCC Rcd 10660, 10737–38 (1996), citing 5 U.S.C. 601(3). We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our *Notice of Inquiry* in GN Docket No. 96–113 (In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), FCC 96–216, released May 21, 1996, 61 FR 33066, June 26, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. Additionally, in our *Order* and *Notice of Proposed Rule Making* in MM Docket No. 96–16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), 61 FR 9964, March 12, 1996, we invited comment as to whether relief should be afforded to stations: (1) Based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

annual receipts as a small business.[6] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[7] Included in this industry are commercial, religious, educational, and other television stations.[8] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[9] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[10] There were 1,509 television stations operating in the nation in 1992.[11] That number has remained fairly constant as indicated by the approximately 1,550 operating television broadcasting stations in the nation as of August, 1996.[12] For 1992 [13] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[14]

Additionally, the Small Business Administration defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[15] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[16] Included in this industry are commercial, religious, educational, and other radio stations.[17] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[18] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[19] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[20] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[21] As of August, 1996, official Commission records indicate that 12,088 radio stations were operating.[22]

Thus, the proposed rules will affect approximately 1,550 television stations; approximately 1,194 of those stations are considered small businesses.[23] Additionally, the proposed rules will affect 12,088 radio stations, approximately 11,605 of which are small businesses.[24] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. We recognize that the proposed rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations and 293 (2.9%) of the commercial radio stations in the United States.[25] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations and 394 (3.8%) of 10,244 commercial and non-commercial radio stations in the United States.[26] We recognize that the numbers of minority and women broadcast owners may have changed due to an increase in license transfers and assignments since the passage of the 1996 Act. We seek comment on the current numbers of minority and women owned broadcast properties and the numbers of these that qualify as small entities. To assist us with our responsibilities under the amended Regulatory Flexibility Act, we specifically request comments concerning our assessment of the number of small businesses that will be impacted by this rule making proceeding, the type or form of impact, and the advantages and disadvantages of the impact.

In addition to owners of operating radio and television stations, any entity who seeks or desires to obtain a television or radio broadcast license may be affected by the proposals contained in this item. The number of entities that may seek to obtain a television or radio broadcast license is unknown. We invite comment as to such number.

Additionally, the proposed changes to the cable/MDS cross-ownership attribution rule will apply to cable and MDS entities. SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841

[6] 13 CFR 121.201, Standard Industrial Code (SIC) 4833 (1996).

[7] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[8] *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes ''Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[9] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[10] Id. SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[11] FCC News Release No. 31327, January 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 42, Appendix A–9.

[12] FCC News Release No. 64958, September 6, 1996.

[13] Census for Communications' establishments are performed every five years ending with a ''2'' or ''7''. See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 42.

[14] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[15] 13 CFR 121.201, SIC 4832.

[16] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 42, Appendix A–9.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[21] FCC News Release No. 31327, January 13, 1993.

[22] FCC News Release No. 64958, September 6, 1996.

[23] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1996 total of 1,550 TV stations to arrive at 1,194 stations categorized as small businesses.

[24] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[25] *Minority Commercial Broadcast Ownership in the United States,* U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (''MTDP'') (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[26] *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, Women-Owned Business, WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities,* Notice of Proposed Rule Making, 10 FCC Rcd 2788, 2797, 60 FR 06068 (January 12, 1995).

(SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of $11 million or less.[27] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.[28] This figure is overinclusive since it includes other pay television services, not only cable and MDS.

The Communications Act contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [29] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[30] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[31] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. We are likewise unable to estimate the number of these small cable operators that serve 50,000 or fewer subscribers in a franchise area.

The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide.[32] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[33] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the proposal adopted in this NPRM. Under the Commission's rules, a small cable system is a cable system with 15,000 or fewer subscribers owned by a cable company serving 400,000 or fewer subscribers over all of its cable systems. We are unable to estimate the number of small cable systems nationwide, and we seek comment on the number of small cable systems.

The Commission refined the definition of ''small entity'' for the auction of MDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[34] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[35]

The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MDS is a service heavily encumbered with approximately 1,573 previously authorized and proposed MDS facilities and information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1,634 small MDS providers as defined by the SBA and the Commission's auction rules. We seek comment on this tentative conclusion.

Some of the proposals delineated above may also apply to daily newspapers that hold or seek to acquire an interest in a broadcast station that would be treated as attributable under the proposals. A newspaper is an establishment that is primarily engaged in publishing newspapers, or in publishing and printing newspapers.[36] The SBA defines a newspaper that has 500 or fewer employees as a small business.[37] Based on data from the U.S. Census Bureau, there are a total of approximately 6,715 newspapers, and 6,578 of those meet the SBA's size definition.[38] However, we recognize that some of these newspapers may not be independently owned and operated and, therefore, would not be considered a ''small business concern'' under the Small Business Act.[39] We are unable to estimate at this time how many newspapers are affiliated with larger entities. Moreover, the proposal would apply only to daily newspapers, and we are unable to estimate how many newspapers that meet the SBA's size definition are daily newspapers. Consequently, we estimate that there are fewer than 6,578 newspapers that may be affected by the proposed rules in this FNPRM. We invite comment on this estimate.

Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis of the 1995 NPRM of Proposed Rule Making

There were no comments submitted specifically in response to the IRFA. We have, however, taken into account all issues raised by the public in response to the proposals raised in this proceeding. In particular, Association of Independent Television Stations, Inc. (now known as the Association of Local Television Stations, Inc.), among others, generally notes that, given the plethora of other media investment opportunities, relaxation of the attribution rules will attract capital to broadcasting while tightening of the attribution rules may restrict capital flow to broadcasting. We note that access to capital is an issue of profound concern to small entities, and, accordingly, as discussed in the

[27] 13 CFR 121.201.

[28] 1992 Census, *supra*, at Firm Size 1–123. See *Memorandum Opinion and Order and Notice of Proposed Rule Making* in MM Docket No. 92–266 and CS Docket No. 96–157, 11 FCC Rcd 9517, 9531, 61 FR 45356 (August 8, 1996).

[29] 47 U.S.C. § 543(m)(2).

[30] 47 CFR § 76.1403(b).

[31] Paul Kagan Associates, Inc., *Cable TV Investor*, February 29, 1996 (based on figures for December 30, 1995).

[32] 47 CFR § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393, 60 FR 35854 (June 5, 1995).

[33] Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

[34] 47 CFR 21.961(b)(1).

[35] See *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94–31 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 60 FR 36524 (June 30, 1995).

[36] 13 CFR 121.201 (SIC 2711).

[37] *Id.*

[38] U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 3, SIC Code 2711 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[39] 15 U.S.C. 632.

FNPRM, *supra,* ¶1, one of our goals in this proceeding has been to avoid disruption in the flow of capital to broadcasting. National Association of Black Owned Broadcasters argues that additional relaxation of the attribution rules will allow increased concentration of control of the media industry, which works against minority ownership. Our goal is neither specifically to relax or to tighten the attribution rules, but rather to maximize their precision. FNPRM, *supra,* ¶1. Additionally, Big Horn Communications, Inc., which notes that it is a small market television station in Montana, argues that LMAs and time brokerage agreements allow cost efficiencies in small markets that increase service to small markets and promote the economic viability of small and financially weak stations. Local Station Ownership Coalition also urges the Commission not to make television station LMAs attributable unless it permits ownership of two television stations in a market because LMAs help financially troubled stations achieve economic viability. We recognize that LMAs can promote economic efficiencies, and our proposal is designed to permit those benefits while providing for attribution of those television station LMAs that should be counted under our multiple ownership rules.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives

This FNPRM solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered. In the NPRM, we invited comment on whether to restrict or eliminate current attribution exemptions for nonvoting shares and for minority voting shareholders in a corporation with a single majority shareholder. In addition, we requested comment on whether we should adopt new attribution rules or policies when multiple financial or business relationships were held in combination in a licensee. The ''equity or debt plus'' approach discussed in the FNPRM is a specifically tailored approach, narrower than that discussed in the NPRM. We seek comment on whether there is a significant economic impact on any class of small licensee or permittee as a result of our proposed ''equity or debt plus'' approach.

We seek comment on whether there would be a significant economic impact on small stations resulting from the proposed attribution rules for LMAs or from the possible application of the attribution rules to JSAs.

We seek comment on whether there would be a significant economic impact on small entities from the changes we have proposed to the cable/MDS cross-ownership attribution rules.

Staff Study of the 1994/95 FCC Annual TV Ownership Reports
Policy and Rules Division
Mass Media Bureau
FCC

Executive Summary

This study collected and analyzed ownership information from the Commission's 1994/1995 annual ownership reports on the majority (1,009 out of 1,043) of for-profit TV stations. The study draws the following conclusions.

- 64.6 percent of broadcast TV stations are closely-held, where majority control is held by 5 or fewer owners.
- As well, 74.9 percent of TV stations are held by group-owners.
- Increasing the attribution benchmark for active stockholders from 5 percent to 10 percent of voting control would decrease the number of currently-attributable owners by approximately one-third. As well, the number of licensees with no attributable owners (excluding directors and officers) would increase from 81 to 134, or by 65.4 percent.
- Broadcast investment by mutual funds, life insurance companies and other passive investors is relatively small. The proposed change from a 10 percent to 20 percent passive investor benchmark would affect 5 of 15 currently-attributable passive investors, and impact 5 stations currently with attributable passive investors. Most reported passive investment is now in the range of 5 percent to 10 percent voting control.
- Non-passive institutional investment is also small, with only 57 such interests reported in total. The proposed increase from a 5 percent to 10 percent benchmark would decrease by 16, or 33.3 percent, the number of institutional interests that are currently attributable.
- Only 10 instances of reported limited liability corporations (LLCs) were found among the stations sampled.

I. Purpose of the Study

The present study was undertaken in conjunction with the attribution notice to analyze the potential impact of proposed rule changes on the cognizable and non-cognizable interests in broadcast TV stations.

II. Study Population of Interest

The scope of the data collection and analysis effort was limited to for-profit broadcast television stations. Data for non-profit TV stations, radio stations and low power stations were not collected for several reasons. With non-profit stations only directors and officers (D&O) are cognizable, and they remain cognizable under proposed changes. The choice to focus on broadcast TV station attribution was made to maximize the use of limited resources.

III. Study Design

Broadcast TV station licensees are required to report cognizable ownership interests in the form of an annual ownership report. These ownership interests include

(i) ''active'' stockholders of 5 percent voting interest or greater in the licensee,

(ii) ''passive'' shareholders, including mutual funds, bank trust departments and life insurance companies holding 10 percent or greater voting interest in the licensee,

(iii) single-majority stockholders holding greater than 50 percent interest (in which cases all other voting interests are not attributable),

(iv) all general partnership interests,

(v) limited partnership interests that are not ''sufficiently insulated'' and

(vi) all directors and officers (D&O) involved in the licensee.

Data collection focused on collecting data on all attributable interests, with the exception of directors and officers with less than 1 percent voting interest in the licensee. Because of their direct operational involvement with the licensee, this latter group is held attributable, regardless of the extent of their ownership stake in the station.

The annual ownership reports also frequently and voluntarily report ownership percentages for owners not attributable under current rules, in particular voting shareholders with interests in the 1 percent to 5 percent ownership range. To expand the scope of our analysis, data collection was extended to include all ''reported'' voting ownership claims of 1 percent or greater.

IV. Overall TV-Station Results

Ownership information was obtained from the annual ownership reports required by the Commission. Information from the most recent report on file was used. Essentially, data was collected manually and then computer-coded from virtually all of the for-profit broadcast TV ownership filings, except with group-owned stations where a single ownership report was filed for the entire group.

Of the total 1542 licensed TV stations, for-profit stations numbered 1043 and

non-profit stations numbered 499. Of the for-profit stations, 781 stations or 74.8% were held by group owners, defined as 2 or more stations owned by the same corporate holding company. The remaining 262 stations were singly-owned stations. The breakdown between for-profit and non-profit stations, and group-owned versus singly-owned stations is shown in Table I, presented at the end of this report.

Table II categorizes TV stations by owner type. Of the for-profit TV stations censused, 64.6 percent are closely-held stations, either (1) by a sole proprietor, (2) by a single-majority shareholder, (3) majority family-owned or (4) majority-owned by a small (less than six) number of individual shareholders. Family-owned stations are those where five or fewer family members hold more than 50 percent ownership interest in a particular station. Closely-held stations are similarly defined but without the family-membership requirement. In contrast, only 20.1 percent of for-profit stations are categorized as widely-held, where typically any one shareholder would hold only a small percent of ownership in the station. These percentages exclude stations which may be closely or widely held in the context of a general partnership (GP), limited partnership (LP) or limited liability corporation (LLC) ownership structure. As well, 4.2 percent of TV stations are organized as GPs, 8.8 percent as LPs and 1.0 percent as LLCs. Finally of the remaining stations, 5 are international TV stations and 8 are currently in receivership.

Separate results for group-owned and singly-owned stations are given in Table III. As shown in the table, group-owned stations tend to have less concentrated ownership, with 20.4 percent of these stations widely held, while only 6.8% of singly-owned stations are widely-held.

V. Voting Shareholders as Cognizable Interests

The Commission currently attributes ownership to stockholders with 5 percent or more of voting rights in a broadcast station. Under consideration in the NPRM is a proposed increase in the attribution benchmark for voting stockholders from its current level at 5 percent to a 10 percent benchmark. Of interest is the impact of a change in the attribution benchmark on the number of attributable owners.

The distribution of ownership interests that are attributable under the 5 percent rule is given next. The number of equity holders in the 1 percent to 5 percent range is also given, although with the caveat that non-attributable interests are voluntarily reported and may undercount the true number. The table excludes ''passive'' shareholders, single-majority shareholders, and partnership interests, which are governed by separate attribution rules. These groups will be separately analyzed below.

I. Issue Analysis

A. Impact of the 1996 Act

4. The 1996 Act relaxed our broadcast station multiple ownership rules. Section 202 of the 1996 Act directed the Commission to eliminate national radio multiple ownership limits, to relax significantly local radio ownership rules, to eliminate the limit on the number of television stations that a person or entity may directly own nationwide, and to raise the national television audience reach cap to 35 percent. The 1996 Act also directed the Commission to extend its one-to-a-market waiver policy, 47 CFR 73.3555(c), to the top 50 markets, consistent with the public interest, convenience, and necessity, and to review its television duopoly rule, 47 CFR 73.3555(b).

5. In two Orders released on March 8, 1996 (61 FR 10689, March 15, 1996 and 61 FR 10691, March 15, 1996), the Commission amended its ownership rules to reflect: (1) The elimination of the numerical national television ownership caps and the increase in the national television ownership audience reach cap to 35 percent; and (2) the elimination of national radio ownership limits and the relaxation of the local radio ownership limits.[40] In a companion *Second Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 & 87–8, adopted today, the Commission invites further comment on a number of issues concerning the local television ownership rules, including extension of the one-to-a-market waiver policy and possible grandfathering of existing television LMAs, should we ultimately determine that these arrangements are attributable.[41]

6. We invite comment in this proceeding as to whether the changes resulting from passage of the 1996 Act should affect our discussion of the attribution and cross-interest issues raised by the NPRM, and, if so, how. The relaxation of our multiple ownership rules does not itself require either a relaxation or tightening of the attribution rules. It does, however, reinforce our belief that the attribution rules must function effectively and accurately to identify all interests that are relevant to the underlying purposes of the multiple ownership rules and that should therefore be counted in applying those rules. As importantly, we seek to identify clearly those interests that do not and should not implicate concerns raised by the multiple ownership rules and that should not, therefore, be counted. We invite comment on these issues, and we specifically invite commenters to update the record on the impact of the 1996 Act on the issues raised in the NPRM, including those not discussed again in this FNPRM, such as LLCs and the cross-interest policy.

B. New Attribution Issues and Proposals

7. In this FNPRM, we explore additional issues and proposals to increase the precision of our attribution rules. First, we invite comment on whether we should add a new ''equity or debt plus'' attribution rule to the current rules. If adopted, such a new rule would limit, but not eliminate, the single majority shareholder and nonvoting stock attribution exemptions and would address our concerns, expressed in the NPRM, about whether certain multiple business interests should be attributable when held in combination. Under such a rule, where the interest holder is a program supplier or same-market broadcaster or media entity subject to the broadcast cross-ownership rules, 47 CFR 73.3555(c), 73.3555(d), & 76.501(a), we would attribute its otherwise nonattributable equity and/or debt interest in a licensee or other media entity subject to the cross-ownership rules if the equity and/or debt holding is greater than a specified benchmark.[42] Second, we incorporate into this proceeding our proposal to attribute television time brokerage agreements (or LMAs) based on the same principles that currently apply to radio LMAs.[43] Thus, we

[40] *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996 (Broadcast Radio Ownership)*, FCC 96–90, 61 FR 10689 (March 15, 1996); *Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations)*, FCC 96–91, 61 FR 10691 (March 15, 1996).

[41] FCC 96–438, released November 7, 1996 (''*TV Ownership Second FNPRM*'').

[42] We will refer herein to such media entities or outlets proposed to be subject to the ''equity or debt plus'' approach as ''same-market broadcasters'' simply as a shorthand. Thus, when we refer to a ''same-market broadcaster'' in this FNPRM in the context of discussing the ''equity or debt plus'' approach, we include daily newspapers and cable operators.

[43] We earlier raised this proposal in the television ownership proceeding, *Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 & 87–8, 10 FCC Rcd 3524, ¶¶ 138–40 , 60 FR 6483, (February 2,1995) (''*TV Ownership FNPRM*''), but now intend to resolve the issue of treatment of LMAs in this attribution proceeding. We will

Continued

tentatively conclude that we should treat time brokerage of another television station in the same market for more than fifteen percent of the brokered station's weekly broadcast hours as being attributable, and therefore as counting toward the brokering licensee's national and local ownership limits. Third, we invite comment as to whether we should attribute joint sales agreements among broadcasters in the same markets, at least under certain circumstances, and as to what factors should make such contractual relationships attributable. With respect to television stations, the definition of what is the same ''market'' for purposes of applying the ''equity or debt plus'' attribution standard, if adopted, as well as for applying the proposals to attribute LMAs and JSAs, will be resolved in the television local ownership proceeding. For radio stations and other entities covered by our broadcast attribution rules, we would define the same ''market'' by reference to the definition of the market used in the underlying multiple ownership rule that is implicated.

1. ''Equity or Debt Plus''

8. *Background.* In the NPRM, ¶ 51, we expressed concern that our earlier conclusion that a minority shareholder could not exert significant influence on a licensee where there is a single majority shareholder may not be a valid conclusion in all circumstances. Therein, ¶ 53, we also noted our concern that nonvoting shareholders could, in certain circumstances, carry appreciable influence that is not now attributed. Accordingly, we invited comment on whether to restrict or eliminate current attribution exemptions for nonvoting shares and for minority voting shareholders in a corporation with a single majority shareholder. In addition, we requested comment on whether we should adopt new attribution rules or policies when multiple financial or business relationships were held in combination in a licensee. We noted that such multiple relationships could in combination with equity or debt interests create sufficient influence to warrant attribution. While we expressed these concerns, we did not delineate specific proposals to address them.

9. We received several comments concerning these issues. Most commenters urged us to retain the single majority shareholder and nonvoting stock exemptions from attribution. However, network affiliates have expressed concerns that the exemptions have allowed networks to extend their nationwide reach by structuring nonattributable deals in which the networks effectively exert significant influence if not control over licensees.[44] In addition, while most parties were generally opposed to a case-by-case attribution approach, several parties agreed that there is a need to adopt new policies with respect to multiple business interests, or at least to clarify our existing policies in this regard.[45] One commenter was generally opposed to relaxing the attribution rules, commenting that ''[a]ny relaxation of the attribution rules will allow an increase in the concentration of control of the industry,'' and adding that an increased concentration of control ''works against diversity of viewpoints and works against minority ownership.''[46]

10. In light of the broad divergence of opinion in the comments, we believe it would be desirable to explore a balanced, specifically-tailored approach that would focus the rules more precisely on those relationships that potentially permit significant influence such that they should be attributed. Accordingly, based in part on our review of the comments, which underscore the concerns expressed in the NPRM, and in response to recent cases, we invite comment on a new ''equity or debt plus'' attribution rule. Many of the concerns sought to be addressed by the proposed ''equity or debt plus'' attribution approach have traditionally been dealt with under the cross-interest policy. A chief benefit of the new proposed approach, as discussed further below, is that it would permit greater certainty and predictability in deciding future cases than the cross-interest policy, which has traditionally been applied on an *ad hoc*, case-by-case basis.

11. *Overview of Approach.* The new rule would operate in addition to other attribution standards and would attempt to increase the precision of the attribution rules, address the foregoing concerns about multiple nonattributable relationships, and respond to concerns about abuses of the single majority shareholder and nonvoting stock attribution exemptions. This approach would not eliminate the nonvoting and single majority shareholder exemptions from attribution, but would limit their availability in certain circumstances. Under this approach, we would attribute the otherwise nonattributable debt or equity interests in a licensee where: (1) The interest holder also holds certain other significant interests in or relationships to a licensee or other media outlet subject to the cross-ownership rules that could result in the ability to exercise significant influence; and (2) the equity and/or debt holding exceeds specified thresholds. We seek to apply bright line attribution tests wherever possible. Accordingly, we invite comment on what the appropriate threshold(s) for these purposes should be and specifically whether we should set the threshold at 33 percent where the interest holder is: (1) A program supplier to the licensee, as will be discussed below, or (2) a same-market broadcaster or other media outlet subject to the broadcast cross-ownership rules, including newspapers and cable operators. We emphasize that, under the ''equity or debt plus'' approach delineated herein, a finding that an interest is attributable would result in that interest being counted for all applicable multiple ownership rules, local and national.

12. The ''equity or debt plus'' approach is narrower than that discussed in the NPRM with respect to resolving our concerns that multiple nonattributable business interests could be combined to exert influence over licensees. It also does not go so far as to repeal the current nonvoting stock and single majority shareholder attribution exemptions; except in cases involving a same-market broadcaster or a program supplier or any other relationship category that we delineate, the single majority shareholder and nonvoting stock exemptions would continue to apply as they do now. This approach reflects our current judgment as to the appropriate balance between our goal of maximizing the precision of the attribution rules by attributing all interests that are of concern, and only those interests, and our equally significant goals of not unduly disrupting capital flow and of affording ease of administrative processing and reasonable certainty to regulatees in planning their transactions. To the extent that it misses some situations that might be of concern, we, of course, would reserve the right to address extraordinary cases on an *ad hoc* basis and in a manner consistent with the public interest. We invite comment as to whether the ''equity or debt plus'' option should be adopted, and, if so,

resolve the issue of possible grandfathering of LMAs in the television ownership proceeding.

[44] See Consolidated Comments of AFLAC Broadcast Group (''AFLAC'') at 15–19; Consolidated Reply Comments of AFLAC at 3–4; Reply Comments of Network Affiliated Stations Alliance at 2–3, 6–7.

[45] See, *e.g.*, Consolidated Comments of AFLAC at 15, 21–23.

[46] Comments of National Association of Black Owned Broadcasters at 10, 13.

whether the 33 percent benchmark is appropriate and whether other relationships to or interests in a licensee should also trigger attribution under an ''equity or debt plus'' approach.

13. *Triggering Relationships.* The ''equity or debt plus'' approach would focus directly on those relationships that may trigger situations in which there is significant incentive and ability for the otherwise nonattributable interest holder to exert influence such that the interest may implicate diversity and competition concerns and should be attributed. As noted above, we seek comment as to whether the application of the equity and/or debt benchmarks discussed below should be triggered where the interest holder is either: (1) A broadcaster or other media entity in any service implicated by any of the current cross-ownership rules, which operates in the same market; or (2) a program supplier.

14. The approach of focusing on specified triggering relationships would extend the Commission's current recognition that the category or nature of the interest holder is important to whether an interest should be attributed. For example, under the current broadcast attribution rules, passive investors are subject to a higher voting stock attribution benchmark, 47 CFR 73.3555 Note 2(c), since these parties are subject to fiduciary and other restraints on their exercise of influence over licensees and are, by their nature, principally concerned with investment returns rather than direct influence over the licensee.

15. Same-market broadcasters and certain other same-market media entities may raise particular concerns because of our goal of protecting local diversity and competition. Firms with existing local media interests could use financing or contractual arrangements, such as LMAs, to obtain a degree of horizontal integration within a particular local market that should be subject to local multiple ownership limitations. Indeed, the Commission's cross-interest policy reflects its concern for competition and diversity where an entity has an attributable interest in one media outlet and a ''meaningful relationship'' with another media outlet serving substantially the same area, *i.e.*, in the same market.[47] In such cases, if the ''equity or debt plus'' approach is adopted, an attributable investment in one broadcast or other media outlet subject to the broadcast cross-ownership rules (*i.e.*, cable systems and newspapers), combined with a substantial non-attributable investment in a second station or media outlet subject to the cross-ownership rules in the same market, would trigger attribution of both stations or media interests to the interest holder, where common ownership of the two entities involved would be barred by the broadcast cross-ownership rules. We seek comment on this option. Certainly, television broadcasters should be included as ''same-market broadcasters,'' as should radio stations. We also believe that other media entities captured by the cross-ownership rules (*i.e.*, daily newspapers and cable operators) should be subject to the ''equity or debt plus'' approach, just as they are subject to our broadcast cross-ownership rules, but we seek comment on the implications of including daily newspapers and cable operators within the scope of this proposal. In particular, how should we define what is the ''same market'' for purposes of applying the ''equity or debt plus'' proposal to these latter entities?

16. We also invite comment on whether we should include program suppliers under the ''equity or debt plus'' attribution test to address our concern and that of some commenters that program suppliers such as networks could use nonattributable interests to exert influence over critical station decisions, including programming and affiliation choices. In recent transactions involving program suppliers, it has appeared that nonattributable investors can be granted rights over licensee decisions that might afford them significant influence over the licensee. We note that radio and television time brokerage agreements or LMAs are program supply contracts and would be encompassed under the ''equity or debt plus'' attribution approach, if we specify program suppliers as a triggering category. Thus, under the ''equity or debt plus'' approach, such agreements might result in attribution in specific cases if the brokering station holds a financial interest in or acts as a creditor of the brokered station. Television time brokerage agreements might also be attributable under the *per se* LMA attribution approach discussed below.

17. One recent transaction, for example, required us to decide whether to attribute complex and substantial financial interests that a national television network held in the proposed assignee of a television station and associated translator station.[48] The proposed assignee was a multiple station owner whose stations were affiliated with the network investor. We found that the collective interests and relationships in that case ''do not squarely fall within any of the cases * * * in which the Commission has previously found multiple relationships between a network and its affiliate nonattributable.''[49] We therefore granted the application conditioned upon the outcome of this rulemaking proceeding.[50] Other recent cases have raised similar concerns and are also conditioned on the outcome of this proceeding.[51]

18. We tentatively conclude that there is the potential for certain substantial investors or creditors to have the ability to exert significant influence over key licensee decisions through their contract rights, even though they are not granted a direct voting interest or may only have a minority voting interest in a corporation with a single majority shareholder, which may undermine the diversity of voices we seek to promote. They may, through their contractual rights and their ongoing right to communicate freely with the licensee, exert as much or more influence or control over some corporate decisions as voting equity holders whose interests are attributable. We seek specific comment on this issue.

19. If we were to apply this new attribution approach to program suppliers, we would need to decide how to define the category of ''program supplier.'' We seek comment on how

[47] For a recent application of the policy and statement of this justification, see *Roy M. Speer*, FCC 96–258, ¶¶ 124–25, released June 14, 1996.

[48] *BBC License Subsidiary L.P (WLUK–TV)*, 10 FCC Rcd 7926 (1995).

[49] *Id.* at ¶ 43.

[50] *Id.* at ¶ 44.

[51] These include *Roy M. Speer*, FCC 96–258, released June 14, 1996; *BBC License Subsidiary L.P. (KHON–TV et. al)*, 10 FCC Rcd 10968 (1995); *BBC License Subsidiary L.P (WLUK–TV)*, 10 FCC Rcd 7926 (1995); *Quincy D. Jones*, 11 FCC Rcd 2481 (1995); Letter to Heritage Media, Inc. et al. from Roy J. Stewart, Chief, Mass Media Bureau, dated January 18, 1996 (FCC File Nos. BTCCT–950911KF–KG and BALCT–950628KJ–KL); Letter of Roy J. Stewart, Chief, Mass Media Bureau, dated May 8, 1995, Re File Nos. BALH–940323GE and BAL–940330EA (Cincinnati, Ohio); Letter of Larry D. Eads, Chief, Audio Services Division, Mass Media Bureau, Ref. 1800B2, 8910–BD, dated June 8, 1995, Re File Nos. BAL–940525EA, BALH–940525EB (Wellington and Fort Collins, Colorado). Additionally, on March 27, 1996, the staff, acting pursuant to delegated authority, conditioned the grant of applications seeking authorization for the transfer of control of Noble Broadcast Licenses, Inc., licensee of radio stations serving communities in Ohio, Missouri, Illinois, and Colorado, to Jacor Communications, Inc., on the outcome of this proceeding. We do not seek nor will we consider in this proceeding comments on the merits of the decisions in these particular cases. If necessary, we will issue separate orders to apply any new rules resulting from the instant proceeding to the cases that have been conditioned on its outcome. We mention these cases here only to illustrate the kinds of relationships and interests that have aroused concerns about the need to revise our attribution rules and invite comment, as discussed below, on these relationships and interests in general.

the definition should be set. One potential definition would include all entities from which a broadcast licensee obtains programming, including program producers, syndicators and networks. As noted above, these entities in particular may have inherent interests in influencing programming decisions. Alternatively, should we limit the definition to networks or only to program suppliers that supply significant or substantial quantities of programming to the licensee? If we limit the definition to networks, how should we define a network for these purposes? Alternatively, if we were to adopt a criterion based on the amount of programming supplied, what amount of programming would be sufficient for us to classify an entity as a program supplier for purposes of applying the ''equity or debt plus'' approach? In addition, where the program supplier is an entity in which other persons or entities hold interests, how great an interest in a program supplier can a person or entity hold without being deemed to be a program supplier for purposes of applying the debt or equity plus rule? Should we treat as program suppliers only those persons or entities that hold a controlling interest (*de facto* or *de jure*) in a program supplier? Alternatively, should we apply our broadcast attribution rules in answering this question? Under such an approach, for example, applying the current attribution rules, the holder of five percent of the voting stock in a program supplier would be considered to be a program supplier for purposes of applying the ''equity or debt plus'' approach. As another alternative, should we establish a separate benchmark to be applied in making this determination? If the last, what should that benchmark be?

20. Finally, if we include programming suppliers among the cognizable relationships that would trigger the equity or debt thresholds discussed above, we nonetheless wish to avoid disrupting the flow of capital to television stations to fund, among other things, the conversion to digital television, which we anticipate will be costly. We invite comment as to whether the ''equity or debt plus'' approach would significantly hinder networks or other telecommunications entities from helping stations to fund the conversion to digital television, and, if so, if this is a significant problem.

21. *Investment Thresholds.* Under the foregoing approach, where the creditor or equity interest holder is a same-market broadcaster or a program supplier to the station in question, in addition to applying the existing attribution criteria, we would attribute any financial interest or investment in the station or other media outlet that exceeds specified equity or debt thresholds. We would aggregate the equity interests of such an investor (including both non-voting stock in whatever form it is held and voting stock) in a licensee or other media outlet for purposes of applying the equity threshold and would apply the same approach with respect to aggregating all debt holdings in applying the debt threshold. We seek comment as to whether preferred stock should be treated as equity or as debt for purposes of applying the threshold. Additionally, when the investor's total investment in the licensee or other media outlet, aggregating all debt and equity interests, exceeds a specified threshold percentage of all investment in the licensee (the sum of all equity plus debt), attribution would also be triggered. In aggregating the different classes of investment, equity and debt, we propose to use total capitalization as a base. We invite comment on these views. Is the approach proposed workable? Would aggregating different classes of investment pose difficulties, and, if so, how can these difficulties be avoided?

22. We invite comment on what specific percentage threshold(s) we should set for purposes of applying the foregoing approach, and we specifically request commenters to provide factual and empirical data to support the threshold or benchmark they advocate. We are inclined to set the equity and debt thresholds at the same level because the rationale for including such investments, *i.e.,* those affording the ability to influence important station decisions, is the same for all such forms of investment. A 33 percent benchmark might be reasonable for these purposes. We invite comment on whether a higher or lower benchmark would be more effective in achieving our diversity and competition goals, while not unduly disrupting capital flow. We believe that the threshold should be at least as high as the passive investor benchmark, whether that benchmark be 10 percent, as under the current rules, or 20 percent, as proposed in the NPRM in this proceeding. Additionally, we do not want to set the limit so low as to unduly disrupt capital flow to broadcasting. Finally, we note that, in the context of its cross interest policy, the Commission has permitted a nonattributable equity interest as large as 33 percent. See Cleveland Television Corp., 91 FCC 2d 1129, 1132–35 (Rev. Bd. 1982), *review denied,* FCC 83–235 (May 18, 1983), aff'd, Cleveland Television Corp. v. *FCC,* 732 F.2d 962 (D.C. Cir. 1984) (''*Cleveland Television*''). *Accord, Roy M. Speer,* FCC 96–258, ¶¶ 124–26, released June 14, 1996. In *Cleveland Television,* 91 FCC 2d at 1132–35, the Commission held that a one-third non-voting preferred stock interest by a broadcaster in another station in the same market conferred ''insufficient incidents of contingent control'' to violate the multiple ownership rules or the cross-interest policy, and that the holders, by virtue of ownership of the non-voting preferred stock interest would not retain the means to directly or indirectly control the station. We invite comment on the validity of this conclusion in the context of the ''equity or debt plus'' approach. Additionally, we seek comment on the impact of a 33 percent threshold on small business entities, particularly on whether there would be a disproportionate effect on small or minority entities.

23. With respect to the specific benchmark proposed, the comments reveal that the networks have substantial nonattributable investments in affiliated stations and that group owners have nonattributable investments in other stations.[52] We invite commenters to give us current data as to the typical nonattributable interests held by networks and group owners in other stations and how those relationships might be affected by the proposed changes. We ask commenters to designate whether the station is a small business as defined by the Small Business Administration (''SBA''),[53] and/or is minority or woman-owned. Such information would be useful in weighing the probable impact of setting the threshold at the 33 percent level or another level. Finally, we note that nonvoting shares, debt, and voting minority shares in a corporation with a single majority shareholder are not reported under current ownership

[52] For example, according to the Network Affiliated Stations Alliance Comments, Exhibit 1, filed in May 1995: ABC had a 14.7 percent nonattributable interest in 10 stations in addition to the stations in which it owned a 100 percent interest; CBS had a 49 percent nonattributable interest in one station in addition to transactions pending to acquire other nonattributable interests in connection with a station swap with NBC; Fox had a 20 percent nonattributable interest in the stations attributed to New World, a 25 percent nonattributable interest in the stations attributed to SF/Savoy, and a proposed 20 percent nonattributable interest in the Blackstar stations; and NBC had a 49 percent nonattributable interest in one station. Of course, this information is over one year old. Indeed, in the interim, both CBS and ABC have been sold to other entities that are group owners.

[53] The SBA defines a small television station as one that has no more than $10.5 million in annual receipts. 13 CFR § 121.201.

report forms, and, if we adopt the ''equity or debt plus'' proposal, we would need to modify our ownership forms accordingly. We invite comment as to how we should modify our ownership report form, FCC Form 323, for this purpose.

24. We also invite comment as to whether the targeted approach outlined above would be preferable to a case-by-case approach that determines whether an interest should be attributed based directly on the kinds of powers granted to an interest holder in contract language. For example, in some recent transactions, currently nonattributable investments have been accompanied by contractual provisions that essentially give the investor veto power over decisions normally made by the board of directors under the authority of the voting shareholders.[54] Such combined provisions could give the investor undue power to influence operational decisions. One approach to handling these cases might be to base attribution on the type of contract language that yields control over decisions of concern to us. Although such an *ad hoc* approach is more tailored than a generic rule, it also might lead to complicated interpretation and processing difficulties and might add uncertainty to resolution of attribution cases. Thus, a bright line approach, such as the ''equity or debt plus'' approach, which clearly defines those business relationships that cause the greatest concern, could provide certainty and minimize regulatory costs. We invite comment as to whether a bright line test, where attribution would be linked to the size of an investor's interest, can serve as a proxy for these concerns, based on the assumption that the degree of contractual rights an investor may hold is typically related to the level of his investment. Also, would the ''equity or debt plus'' approach capture those cases where currently nonattributable investments are accompanied by contractual provisions that have aroused the foregoing concerns?

2. Attribution of Time Brokerage Agreements or LMAs

25. An LMA or time brokerage agreement is a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill that time and sells the commercial spot announcements to support the programming.[55] In the radio context, time brokerage of another radio station in the same market for more than fifteen percent of the brokered station's weekly broadcast hours results in attribution of the brokered station to the brokering licensee for purposes of applying our multiple ownership rules. See 47 CFR § 73.3555(a)(4)(i).

26. In our *TV Ownership FNPRM,* we tentatively proposed to attribute television LMAs based on the same principles that apply to radio time brokerage agreements. Thus, time brokerage of another television station in the same market for more than fifteen percent of the brokered television station's weekly broadcast hours would be held to be attributable, and therefore would count toward the brokering television licensee's national and local ownership limits.[56] We specifically propose here that LMAs, if attributable, would also count in applying our other ownership rules, including, for example, the broadcast-newspaper cross-ownership rule (47 CFR 73.3555(d)), the broadcast-cable cross-ownership rule (47 CFR 76.501(a)) and the one-to-a-market rule (or radio-television cross-ownership rule) (47 CFR 73.3555(c)). We request comment on these tentative proposals. We also note that if we adopt this proposal for television LMAs, the radio LMA rules (47 CFR 73.3555(a)(3)) would have to be modified accordingly, since radio LMAs are currently considered only for purposes of applying the radio contour overlap rule (47 CFR 73.3555(a)(1)), and invite comment on how the radio LMA attribution rules should be modified in this regard. We also incorporate the tentative proposal that attributable television LMAs be filed with the Commission in addition to being kept at the stations involved in an LMA.[57] We note that we asked in the *TV Ownership FNPRM,* ¶ 139, whether the program duplication or simulcasting limits that apply to commonly owned or time brokered radio stations should apply to TV LMAs. We will also resolve that issue in this proceeding.

27. The proposed *per se* LMA attribution standard would apply whether or not the LMA holder has other multiple business relationships with the brokered station or otherwise has a financial investment in the brokered station. While time brokerage agreements not involving a television station in the same market would not fall under this *per se* LMA attribution standard, as discussed above, such time brokerage agreements could be attributable under the ''equity or debt plus'' approach, if adopted, where the brokering station has an equity and/or debt interest in the brokered station that exceeds the specified investment threshold.[58] We invite updated comments on all aspects of the foregoing tentative conclusions and proposals.

28. In making this proposal to attribute television LMAs in the *TV Ownership FNPRM,* we also recognized the need to deal with pre-existing television LMAs and asked whether we should grandfather television LMAs entered into prior to December 15, 1994, the date of adoption of the *TV Ownership FNPRM,* and whether we should subject such existing LMAs to renewability and transferability guidelines similar to those governing radio LMAs.[59] However, if we do decide to attribute LMAs as we propose here,

[54] For example, in *BBC License Subsidiary L.P (WLUK–TV),* 10 FCC Rcd 7926 (1995), in addition to holding 45 percent of the cash equity in the licensee and other contractual rights, the investor had approval rights over certain major decisions of the licensee, such as expansion of operations into new business areas, mergers, consolidations and acquisition of other businesses, the sale of assets, the sale of securities and issuance of stock, the amendment of the corporate by-laws and dividend payment decisions.

[55] *TV Ownership FNPRM,* ¶ 133. In this FNPRM, we refer to LMAs or time brokerage agreements. For purposes of applying the radio LMA rules, the Commission's rules define time brokerage as ''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.'' 47 CFR § 73.3555(a)(4)(iii). While we have generally used the terms interchangeably, we will refer herein to LMAs as those time brokerage agreements involving a broker that is a licensee of one or more stations in the same market as the brokered station.

[56] TV Ownership FNPRM, ¶ 138. When the *TV Ownership FNPRM* was released, we applied national multiple ownership limits to radio stations, and the brokered station was attributed to the brokering station for purposes of applying both those national limits and the local limits. *See Revision of Radio Rules and Policies,* 7 FCC Rcd 2755, 57 FR 18089 (April 29, 1992), *on reconsideration,* 7 FCC Rcd 6387, 6400–01 (''*First Radio Ownership Reconsideration Order*'') 57 FR 42701 (September 16, 1992), *on further reconsideration,* 9 FCC Rcd 7183, 7191, 59 FR 62609 (December 6, 1994). Subsequently, the national ownership limits were eliminated for radio. See *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996* (*Broadcast Radio Ownership*), FCC 96–90, 61 FR 10689 (March 15, 1996). Accordingly, the interest is counted only in applying local radio ownership limits. National multiple ownership limits apply to television stations, however, and, under our proposal, the brokered television station would be counted toward the brokering television station's national and local ownership limits, including the one-to-market rule. We note, however, that the narrow issue of whether the audience reach of a brokering and a brokered station serving the same market would both be counted toward the audience reach cap, with the effect of double counting the stations, will be decided in our proceeding concerning the television national multiple ownership rules. *Notice of Proposed Rule Making* in MM Docket Nos. 96–222, 91–221 & 87–8, FCC 96–437, released November 7, 1996.

[57] See *TV Ownership FNPRM,* ¶ 138. See 47 CFR § 73.3613(d).

[58] Thus, under the proposals enumerated in this FNPRM, LMAs are potentially attributable under a *per se* LMA attribution rule and/or under the ''equity or debt plus'' approach discussed above.

[59] *TV Ownership FNPRM,* ¶¶ 138–40.

we intend to resolve the grandfathering, renewability and transferability issues in the separate TV local ownership docket, *TV Ownership Second FNPRM*, so that we can evaluate the extent to which grandfathering may be needed based on the nature of the local ownership rules we adopt.

29. With respect to our tentative proposal in the TV Ownership FNPRM, now incorporated within this attribution proceeding, to attribute certain television LMAs to the brokering station for purposes of applying the multiple ownership rules, commenters voiced a range of positions. Some opposed attributing television LMAs for ownership purposes, particularly if the Commission does not relax its duopoly rule.[60] Others supported using the radio rules as a blueprint for regulating television LMAs.[61] Still other parties argued for more restrictive rules.[62] However, commenters generally failed to provide the Commission with the kind of factual information we seek. Consequently we once again request quantitative information on the number and characteristics of existing television LMAs.

30. We are especially interested in information on the typical geographic proximity of the brokering and brokered stations, the typical term of television LMAs, the typical renewal provisions, the typical arrangements between the brokered station and the broker on the sale of advertising time during brokered time periods, the percent of brokered station time sold to the program supplier in an LMA, and the typical arrangements between the brokered station and the broker to allow the brokered station to reject broker-supplied programming that the brokered station deems not in the public interest to broadcast. We ask commenters to provide us with information as to whether such agreements typically require the broker to make fixed payments to the brokered station or whether other payment terms are applicable. Do LMAs typically require that the broker sell all the brokered time? Do they call for the broker to provide the brokered station with studio services at the broker's facility? Is there a typical LMA? Are there typical provisions or do these agreements vary widely? Can we draw general conclusions about LMAs? Are there classes or categories of LMAs that should be subject to different attribution treatment? Finally, we want to emphasize, as we did in our radio ownership proceeding, ''that the licensee is ultimately responsible for all programming aired on its station, regardless of its source.''[63] In this regard, we invite comment on what, if any, specific safeguards we should adopt with respect to television LMAs to ensure a brokered station's ability to exercise its programming responsibility.[64]

3. Joint Sales Agreements (JSAs)

31. In the Attribution NPRM, ¶¶ 94–95, we requested comment on whether, through multiple cooperative arrangements or contractual agreements, broadcasters could so merge their operations as to implicate our diversity and competition concerns. We noted, however, that we did not intend to re-open our earlier decisions permiting joint sales practices in radio and television. These decisions, of course, allowed joint sales practices subject to compliance with the antitrust laws.

32. Subsequent to issuing the Attribution NPRM, the staff has been presented with cases involving joint sales agreements (i.e., agreements for the joint sales of broadcast commercial time) that have raised anew diversity and competition concerns with respect to such agreements.[65] This leads us to ask whether non-ownership based mechanisms such as JSAs that might convey influence or control over advertising shares should be considered, and possibly attributed. For example, where one station owner controls a large percentage of the advertising time in a particular market, it could potentially exercise market power. Accordingly, we invite additional comments on the potential effects of JSAs among same-market broadcasters on diversity and competition. We also seek comment as to whether we should attribute JSAs among licensees in the same market, including both radio and television licensees, irrespective of whether they are accompanied by the holding of debt or equity.

33. We recognize that a JSA not involving stations in the same market may permit influence over station operations. Nonetheless, we distinguish between JSAs in the same market and JSAs among stations not located in the same market. Our concern for media concentration has been focused on local markets. For example, in the radio context, only LMAs among stations in the same market are subject to attribution, and we apply only local multiple ownership limits. And, in the television context, we have similarly been more concerned with local markets because the video program delivery market is a local market.[66] Following this traditional concern for local markets, we focus on JSAs in local markets. We invite comment on this approach.

34. We seek general information concerning the typical contractual terms of JSAs. What is the typical length of such agreements, and are they automatically renewable? How are the station owner and broker compensated? Are there package deals among several stations? Does the broker get involved in the operation of the station, including programming and finances, either directly or indirectly? As a practical matter, do typical JSAs differ from LMAs or do time brokerage agreements usually accompany JSAs? What other arrangements typically occur between parties in terms of station operations, joint sales force utilization, or joint use of production facilities? In addition, what kind of efficiencies arise with JSAs, how are these shared among parties to the JSA, and how do these benefits differ from those of LMAs? Finally, what impact do JSAs have on competition, and under what circumstances, if any, should the interest of the broker/JSA holder be held attributable? If we were to consider JSAs, should such interests be attributable in all circumstances involving stations in the same market, or only where the broker also has some influence over the programming or other operations of the brokered station? Alternatively, should we apply another criterion in deciding whether to attribute JSAs, such as attributing JSAs among same-market stations where the brokering station exceeds a specific market share benchmark? We seek

[60] See, e.g., Comments of Association of Independent Television Stations, Inc., now known as Association of Local Television Stations, Inc. (''ALTV''), filed in MM Docket Nos. 91–221 & 87–8 at 29, n.52; Comments of Kentuckiana Broadcasting, Inc. filed in MM Docket Nos. 91–221 & 87–8 at 5–6.

[61] See, e.g., Comments of ABC, filed in MM Docket Nos. 91–221 & 87–8, at 26–27.

[62] See Comments of Post-Newsweek Stations, Inc., filed in MM Docket Nos. 91–221 & 87–8, at 8–9.

[63] First Radio Ownership Reconsideration Order, 7 FCC Rcd 6387, ¶ 63 (1992).

[64] For instance, radio time brokerage agreements of the type described in Section 73.3555(a)(3)(i) of our Rules must be reduced to writing and contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including control over station finances, personnel, and programming. See 47 CFR 73.3555(a)(3)(ii).

[65] See, e.g., Letter of Roy J. Stewart, Chief, Mass Media Bureau, dated May 8, 1995, Re File Nos. BALH–940323GE and BAL–940330EA (Cincinnati, Ohio); Letter of Larry D. Eads, Chief, Audio Services Division, Mass Media Bureau, Ref. 1800B2, 8910–BD, dated June 8, 1995, Re File Nos. BAL–940525EA, BALH–940525EB (Wellington and Fort Collins, Colorado).

[66] See TV Ownership FNPRM, ¶¶ 31, 36–45, 87–88.

comment on these issues and any other relevant questions concerning whether or not JSAs should be attributable, at least under certain circumstances.

C. Voting Stock Benchmarks

35. In the NPRM, as discussed above, we requested comment as to whether we should increase the voting stock benchmarks from five to ten percent for active investors and from ten to twenty percent for passive investors. In response, the majority of commenters that responded to these issues favor increasing the benchmarks. However, commenters did not submit, in response to the NPRM, the kind of specific, empirical evidence that we believe may be necessary before we can reasonably conclude that the benchmarks should be raised, and we invite additional comments to provide such additional evidence and economic studies. Accordingly, we ask for specific and empirical information in a number of areas to justify raising the benchmarks.

36. In this regard, Commission staff has conducted a study of the attributable interests in commercial broadcast television licensees, as reported in the ownership reports licensees are required to file. The results of the staff study are set forth below. One conclusion from that study is that increasing the attribution benchmark for active investors from five percent to ten percent would decrease the number of currently-attributable owners by approximately one-third. The number of stations for which no stockholder would be attributable would increase from 81 to 134 stations (out of 389 commercial for-profit television stations that are incorporated and are not single majority shareholder stations), under current stock distribution patterns.

37. We invite comment on all aspects of this study, including its implications for our attribution rules. Does the study suggest that existing attribution criteria appropriately balance the goals of identifying those interests that should be counted in applying the multiple ownership rules, while not unduly disrupting capital flow? Would stockholding or investment patterns change in response to a change in the attribution rules? If so, how would they change, and why would they change? Would there be a significant impact on capital flow, given the relaxation of the multiple ownership rules resulting from passage of the 1996 Act? Is there a need to encourage additional capital investment?

D. Transition Issues

38. In the NPRM, ¶ 15, we stated our concern that any action taken in this proceeding not disrupt existing financial arrangements, and, accordingly, invited comment as to whether we should grandfather existing situations or allow a transition period for licensees to come into compliance with the multiple ownership rules if we adopt more restrictive attribution rules. All commenters that have addressed this issue in response to the NPRM urge the Commission to grandfather existing interests indefinitely if it adopts more restrictive attribution rules because of the disruptive effect and the unfairness to the parties of mandatory divestiture. According to CBS, Comments at 13–14, the alternative of a transition period would not provide real relief from restrictive attribution rule changes, such as restricting the availability of the single majority shareholder exemption.

39. We now seek additional comment on the option of a transition period, particularly since the national television multiple ownership rules have recently been relaxed, as have the local radio multiple ownership rules, and the national radio ownership limits have been eliminated. Accordingly, we invite commenters again to address the transition/grandfathering issue in light of these different circumstances, including the appropriate length for any transition period that may be adopted. We reiterate that the issue of grandfathering of television LMAs, should we decide to attribute them, will be resolved in the television local ownership proceeding; in this FNPRM, we refer only to transition and grandfathering issues related to the other (non-LMA) attribution issues raised in this attribution proceeding.

40. If we grandfather existing interests, what grandfathering principle should we apply? Such grandfathering would mean that the relationship would be held attributable, but the holder would not be required to divest holdings in the event that the attribution resulted in the holder exceeding our ownership limits. If the joint holdings were later sold, that ownership grandfathering would not transfer to the assignee or transferee. We also invite comment as to the extent of grandfathering that would be required if we restrict attribution rules.

41. Finally, regardless of what policy we ultimately adopt with respect to either a transition or grandfathering of existing interests, we tentatively conclude that any interests acquired on or after December 15, 1994, the date of adoption of the NPRM in this proceeding, should be subject to the final rules adopted in the *Report and Order* in this proceeding. We seek comment on this approach, and whether a subsequent grandfathering date would be more appropriate. In the event that we adopt a transition period, what is the appropriate length for such a transition period? We tentatively propose that any such transition period adopted to permit divestiture of such interests should be relatively short and no longer than six months.[67]

E. Cable/MDS Cross-Ownership Attribution

42. We also take this opportunity to consider changes to the cable/Multipoint Distribution Service (''MDS'') cross-ownership attribution rule.[68] Section 613(a) of the Act states that ''[i]t shall be unlawful for a cable operator to hold a license for multichannel multipoint distribution service * * * in any portion of the franchise area served by that cable operator's cable system.'' 47 U.S.C. § 533(a) (*emphasis added*). The Commission may waive the requirements of this provision ''to the extent the Commission determines is necessary to ensure that all significant portions of a franchise area are able to obtain video programming.'' 47 U.S.C. § 533(a)(2).[69] Section 613(a) was added by Section 11(a) of the 1992 Cable Act. In implementing Section 613(a), the Commission modified its existing cable/MDS cross-ownership rule in Section 21.912 of the rules.[70] Section 21.912(a) prevents a cable operator from obtaining an MDS authorization if any portion of the MDS protected service area overlaps with the cable system's franchise area actually being served by cable. Section 21.912(b) also prohibits a cable operator from leasing MDS capacity if its franchise area being served overlaps with the MDS protected service area. For purposes of this rule, ''an attributable ownership interest shall be defined by reference to the definitions

[67] See, e.g,, Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations), FCC 96–91, 61 FR 10691 (March 15, 1996).

[68] For purposes of this item, MDS also includes single channel Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'').

[69] Compare 47 U.S.C. 537(d) (before the 1996 Act, providing broad authority for ''public interest'' waivers of the cable anti-trafficking restriction). The cable/MMDS cross-ownership prohibition does not apply if the cable operator is subject to ''effective competition'' in its franchise area. Id. section 533(a)(3) (added by 1996 Act).

[70] Implementation of Section 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 6828, 6843, 58 FR 42013 (August 6, 1993) (''Implementation Order''), reconsidered on other grounds, 10 FCC Rcd 4654, 60 FR 37830 (July 24, 1995).

contained in the Notes to § 76.501, provided however, that:

(i) The single majority shareholder provisions of Note 2(b) to § 76.501 and the * * * limited partner insulation provisions of Note 2(g) to § 76.501 shall not apply; and

(ii) The provisions of Note 2(a) to § 76.501 regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.'' [71]

43. This strict attribution standard severely restricts investment opportunities that are compatible with our goal of strengthening wireless cable and providing meaningful competition to cable operators. Additionally, we see no reason to have different attribution criteria for broadcasting and MDS. We have previously observed that ''the Commission could employ the broadcast attribution criteria contained in Section 73.3555 (Notes) of its Rules, or such other attribution rules as the Commission deemed appropriate for this purpose.'' [72] Thus, the instant proceeding provides us with an opportunity to revisit our current attribution standard consistent with our responsibility to achieve the objective of diversity while ''balancing genuine and significant efficiencies.'' [73] Therefore, we invite comment on whether we should apply broadcast attribution criteria, as modified by this proceeding, in determining cognizable interests in MDS licensees and cable systems for purposes of applying the ownership restrictions of Section 21.912 of our Rules. In addition, we seek comment as to whether we should add an ''equity or debt plus'' attribution rule where the competing entity's holding exceeds 33 percent or some other benchmark. We believe that these proposed modifications of our attribution rule will increase the potential for investment consistent with our responsibility ''[t]o further diversity and prevent cable from warehousing its potential competition.'' [74]

IV. Conclusion

44. By this FNPRM, we request comments to update the record in this proceeding, which is intended to determine whether the attribution rules continue to be effective in identifying those interests that should be counted for purposes of applying the multiple ownership rules. It is important to ensure that these rules operate accurately so that we apply the multiple ownership limits, which have recently been relaxed as a result of passage of the 1996 Act, in an appropriate manner, and that the attribution rules are not used as a means to evade or circumvent these limits. We believe that the concerns and issues raised in the comments and in this FNPRM are of utmost importance, and we look forward to well-reasoned and empirically-based comments with respect to these issues.

V. Administrative Matters

45. *Filing of Comments.* Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before February 7, 1997 and reply comments on or before March 7, 1997. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. Parties are also asked to submit, if possible, draft rules that reflect their positions. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 219), 1919 M Street, N.W., Washington, D.C. 20554.

46. *Initial Paperwork Reduction Act of 1995 Analysis.* This FNPRM contains either a proposed or modified information collection (i.e., revision of Annual Ownership Report, FCC Form 323). As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this FNPRM, as required by the Paperwork Reduction Act of 1995, Public Law Notice 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB comments are due 60 days from the date of publication of this FNPRM in the Federal Register. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

47. Written comments by the public on the proposed and/or modified information collections are due February 7, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after the date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

48. *Ex Parte Rules.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR Sections 1.1202, 1.1203, and 1.206(a).

49. This FNPRM is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303.

50. *Additional Information.* For additional information on this proceeding, contact Mania K. Baghdadi (202) 418–2130 or Berry Wilson (202) 418–2024, Policy and Rules Division, Mass Media Bureau.

51. *Initial Regulatory Flexibility Analysis.* With respect to this FNPRM, an Initial Regulatory Flexibility Analysis (''IRFA'') as set forth below. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an IRFA of the expected impact on small entities of the proposals contained in this FNPRM. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio and television broadcasting industries. Comments on the IRFA must be filed in accordance with the same filing deadlines as

[71] 47 CFR 21.912 (note 1(A)).

[72] Implementation Order at 6843.

[73] S. Rep. No. 92, 102d Cong., 1st Sess. 46–47 (1991)

[74] Id.

comments on the FNPRM, but they must have a distinct heading designating them as responses to the IRFA.

The Secretary shall send a copy of this FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Public Law Notice 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981), as amended.

List of Subject

47 CFR Part 21

Televison broadcasting.

47 CFR Part 73

Television broadcasting, and radio broadcasting.

List of Subject in 47 CFR Part 76

Cable televison.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

TABLE A.—DISTRIBUTION OF NON-PASSIVE OWNERSHIP CLAIMS

Ownership range (percent)	Number	Percent
1–<5	274	†
5–<10	438	37.5
10–<15	183	15.7
15–<20	129	11.1
20–≤50	417	35.7
50–100	*0	0.0
Total attributable	1167	100

Not currently attributable. Also, D&Os holding less than 1 percent equity are not reported.

*Single-majority shareholders are analyzed below.

The table indicates that among attributable shareholders falling under the current 5% rule, 37.5 percent have ownership interests between 5 percent and 10 percent, 15.7 percent with interests between 10 percent and 15 percent, 11.1 percent with interests between 10 percent and fifteen percent and 35.7 percent with interests between 20 percent and 50 percent. Interestingly, the largest concentrations of ownership are in the 5 percent to 10 percent and 20 percent to 50 percent categories. Under the proposed change in the attribution benchmark from 5 percent to 10 percent, approximately 37.5 percent of currently attributable owners would become non-attributable.

Of additional interest is the impact of proposed rule changes on the number of attributable owners per broadcast station. The following table gives the distribution of the number of attributable owners per broadcast TV station under the current 5 percent benchmark and under the proposed 10 percent benchmark.

TABLE B.—DISTRIBUTION OF NUMBER OF ATTRIBUTABLE OWNERS PER STATION UNDER 5 PERCENT AND 10 PERCENT BENCHMARKS FOR NON-PASSIVE INVESTORS

Per station number of attributable owners	Current 5 percent benchmark	Proposed 10 percent benchmark
0*	81	134
1	41	27
2	67	92
3	56	66
4	38	43
5	43	19
6	24	3
7	16	5
8	18	0
9	0	0
10	1	0
11	1	0
12	3	0
Total stations	389	389

*D&Os holding less than 1 percent equity are excluded.

The table indicates that the number of stations with no attributable owners (except directors and officers) would increase from 81 to 134, or by 65.4 percent.

VI. Voting Stock: Passive Investors

A less-restrictive 10 percent attribution benchmark is currently set for certain institutional investors thought to be restricted by law or fiduciary responsibility from active involvement in station operations. These so-called ''passive'' investors include bank trust departments, mutual funds and insurance companies. Because of their passive status, the Commission prohibits these investors from serving as directors or officers of the broadcast station, or from attempting to otherwise influence station operations.

The distribution of ownership claims for passive investors, excluding partnerships and single-majority stockholder stations, is given next.

TABLE C.—DISTRIBUTION OF PASSIVE OWNERSHIP CLAIMS

Ownership range	Number	Percent
1%–<5%	0	†
5%–<10%	28	†
10%–<15%	1	6.7
15%–<20%	4	26.7
20%–≤50%	10	66.7

TABLE C.—DISTRIBUTION OF PASSIVE OWNERSHIP CLAIMS—Continued

Ownership range	Number	Percent
50%–100%	0*	0.0
Total attributable	15	100

†Not currently attributable.

*Single-majority shareholders are analyzed below.

As given in the table, the reported number of passive investors is relatively small, with only 43 such institutional investors reported in total for these stations. Of these 43, only 15 hold attributable equity interests. With the proposed relaxation of the attribution benchmark to 20 percent, 5 of the currently attributable interests would become non-attributable. As well, the largest number of passive investors fall in the 5 percent to 10 percent range.

Despite the small number of passive institutional investors, some of these do in fact have large equity stakes in broadcast stations. For example, one passive investor owns 50% of the parent company of a licensee.

The following table gives the distribution of the number of attributable owners under the current 10 percent and under the proposed 20 percent benchmark for passive investors.

TABLE D.—DISTRIBUTION OF NUMBER OF ATTRIBUTABLE OWNERS PER STATION UNDER 10 PERCENT AND 20 PERCENT BENCHMARKS FOR PASSIVE INVESTORS

Per station number of attributable owners	Current 10 percent benchmark	Proposed 20 percent benchmark
0	376	381
1	11	6
2	2	2

VII. Voting Stock: Other Institutional Investors

Institutional investors not considered to be passive investors include commercial banks (excluding trust departments), investment banks, brokerage firms and pension funds. These investors are not judged to be restricted by law or fiduciary responsibility from involvement in broadcast operations, and are subject to the 5 percent attribution benchmark of other non-passive voting shareholders. No change is currently proposed for these passive investors in the NPRM. The distribution of ownership interests

for non-passive institutional investors is given next.

TABLE E.—DISTRIBUTION OF OWNERSHIP INTERESTS OF NON-PASSIVE INSTITUTIONAL INVESTORS

Ownership range	Number	Percent
1%–<5%	9	.....
5%–<10%	16	33.3
10%–<15%	8	16.7
15%–<20%	7	14.6
20%–≤50%	13	27.1
50%–100%	4	8.3
Total TV stations	57	100.0

As with passive investors, the number of reported non-passive institutional investors in broadcast stations is relatively small. With the proposed relaxation to 10 percent benchmark, 16 or 33.3 percent of these would become non-attributable.

Despite their small number, some non-passive institutional owners have large interests in broadcast stations. For example, one bank owns 100 percent of the parent company of three TV broadcast licenses. As well, a venture capital subsidiary owns 72.05% of the parent company of two TV licensees.

VIII. Single-Majority Shareholder

Single-majority shareholder investments are those where a single stockholder controls more than 50 percent of the voting interest in the licensee. All other shareholders in this case are non-attributable, regardless of their percent ownership, since the single-majority shareholder is thought to hold operational control.

As given in Table II, a total of 308, or 30.5% of for-profit TV stations, are single majority shareholder owned. The following table lists the distribution of voting shares for these licensees falling under the single-majority shareholder rule. Sole proprietorships and sole owners are listed as 100 percent.

TABLE F.—DISTRIBUTION OF OWNERSHIP INTERESTS IN SINGLE-MAJORITY SHAREHOLDER LICENSEES

Ownership range	Non-passive investors		Passive investors	
	Number	Percent	Number	Percent
1%–<5%	74	9.9	0	0.0
5%–<10%	121	16.2	0	0.0
10%–<15%	101	13.5	2	16.7
15%–<20%	52	7.0	1	8.3
20%–≤50%	93	12.5	7	58.3
50%–<100%	305	40.9	2	16.7
100%	162	40.9	0	0.0
Total	746		12	

The distribution of non-attributable interests (excluding D&Os with less than 1 percent stake) in single-majority shareholder licensees is reasonably uniform. In particular, the results do not indicate a large block of ''49%'' shareholders, who might have chosen to use the single-majority shareholder rule to circumvent attribution, while holding a large stake in the licensee.

Some instances of single-majority shareholders involve institutional owners with large stakes. For example, three licensees are 90.0% owned by trust agreement. As cited above, 5 licensees are closely held by non-passive institutional investors.

IX. Non-Voting Stock

The attribution rules for equity interests in a broadcast station apply only to those stockholders holding voting control. Common or preferred stockholders without voting rights are exempted from attribution under the premise that their lack of voting control precludes their ability to affect management or operation of a broadcast station. Non-voting stock is a common mechanism for companies to raise equity capital without sacrificing voting control. Differential voting rights includes companies with dual or multiple classes of stock where one class of stock carries greater voting rights than other classes of stock. For purposes of attribution, the attributable equity interests is determined by the percent of total voting rights held by any individual. In total, the study found 79 instances of non-voting interests in TV broadcast stations.

X. Partnership Interests

Under the attribution rules governing partnership interests, general partners are always attributable, regardless of the extent of their ownership stake. Limited partners are likewise attributable as owners, regardless of their ownership percentage, unless the licensee files a certification statement that the limited partner is ''insulated'', i.e., non-active in the management or operation of the licensee. This special treatment of general and limited partners derives in part from the special role that general partners play as both owners and managers. In contrast, limited partners are restricted from involvement in operational control, and can be forced to give up limited liability rights if they participate in operation or management decisions. Therefore, in contrast to corporations, the separation of ownership and control is weaker for general partners, who perform both functions and stronger for limited partners, who may lose limited liability rights if separation is not maintained.

As presented in Table II, 42 in number, or 4.2% of for-profit TV stations are organized as general partnerships, and 89 in number or 8.8% are limited partners. In addition, another 42 of for-profit TV stations have a limited partnership involved as an equity holder.

The following table presents the distribution of interests in stations organized as general or limited partnerships. Excluded are all non-partnership for-profit stations, including those broadcast stations where one of the equity owners may be a limited partnership.

TABLE G.—DISTRIBUTION OF OWNERSHIP INTERESTS IN GENERAL AND LIMITED PARTNERSHIPS

Ownership range	General partners	Percent	Limited partners	Percent
1%–<5%	51	21.3	29	19.7
5%–<10%	13	5.4	46	31.3
10%–<15%	9	3.8	44	30.0
15%–<20%	11	4.6	0	0.0
20%–≤50%	72	30.0	28	19.0
50%–100%	84	35.0	0	0.0
Total	240		147	

The results indicate that the majority of general partners have either small (less than 5 percent) or very large (greater than 20 percent) ownership stakes in the licensee.

The ownership files investigated also indicate that virtually all limited partners claim insulation of their partnership claim.

XI. Limited Liability Companies and Other New Business Forms

A limited liability company (LLC) is a new hybrid form of ownership that combines advantages of both a limited partnership and corporations. Like limited partnerships, profits in an LLC are passed directly through to investors and therefore taxed only as personal income, which avoids the double taxation of corporations. However, unlike limited partnerships, LLC members may exercise management control without threat of loss of limited liability.

The available ownership records show a total of 10 stations organized as LLCs and 1 station partially owned by an LLC.

A. Total Profit and Non-Profit Stations

TABLE I.—DISTRIBUTION OF FOR-PROFIT TV STATIONS ACROSS TYPE 1994/95 OWNERSHIP-REPORT DATA

	Numbers	Percent
For-profit TV stations:		
Group-owned stations	781	74.8
Single-owned stations	262	25.2
Total for-profit stations	*1043	100.0
Number of TV group-owners	180	
Not-for-profit TV stations:		
Total stations	*499	

TABLE I.—DISTRIBUTION OF FOR-PROFIT TV STATIONS ACROSS TYPE 1994/95 OWNERSHIP-REPORT DATA—Continued

	Numbers	Percent
Total number of stations	1542	

*This break-out between for-profit and not-for-profit stations reflects the designation self-reported by licensees on their annual ownership report filed with the Commission. The number of not-for-profit stations exceeds the number of non-commercial stations (363 as of 11/20/95, Broadcasting & Cable) by some 130 stations, representing commercial-band stations that are not-for-profit.

B. Aggregate For-Profit Station Results

TABLE II.—FOR-PROFIT TV STATIONS BY STATION TYPE 1994/95 OWNERSHIP-REPORT DATA

Type of ownership	Number of stations	Percent
Single-owner stations	158	15.7
Single-majority-shareholder stations	308	30.5
Family-owned stations	72	7.1
Closely-held stations	114	11.3
Widely-held stations	203	20.1
General partnerships (GP)	42	4.2
Limited partnerships (LP)	89	8.8
Limited liability corporations (LLC)	10	1.0
International Stations	5	0.5
In Receivership	8	0.8
	1009	100

TABLE III.—GROUP-OWNED AND SINGLY-OWNED TV STATION RESULTS 1994/95 OWNERSHIP-REPORT DATA

Type of ownership	Group-owned stations percent	Singly-owned stations percent
Single-owner stations	15.3	22.9

TABLE III.—GROUP-OWNED AND SINGLY-OWNED TV STATION RESULTS 1994/95 OWNERSHIP-REPORT DATA—Continued

Type of ownership	Group-owned stations percent	Singly-owned stations percent
Single-majority-shareholder stations	32.2	30.5
Family-owned stations	7.9	4.4
Closely-held stations	10.2	18.9
Widely-held stations	20.4	6.8
General partnerships (GP)	4.0	3.2
Limited partnerships (LP)	8.5	9.6
Limited liability corporations (LLC)	1.1	0.4
International Stations	0.0	2.0
In Receivership	0.6	1.6

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1312

[STB Ex Parte No. 618]

Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property By or With a Water Carrier in the Noncontiguous Domestic Trade

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board proposes to modify its tariff filing regulations to reflect the elimination of most tariff filing requirements for surface carrier transportation, and to provide carriers with additional flexibility to establish appropriate formats for the filed tariffs that continue to be required. The proposed regulations eliminate obsolete provisions, and provide more flexibility for carriers to devise publications that will best fulfill the needs of the carriers and their customers.