

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Patricia Morris, Environmental Scientist, at (312) 353-8656 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR-18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8656. morris.patricia@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is rulemaking on a non-regulatory planning document intended to ensure the attainment of the 1-hour ozone air quality standard in the Northwest Indiana Area. This action establishes MVEBs for Northwest Indiana that will allow transportation planning to proceed.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is

claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Additional Information

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at EDOCKET or in hard copy at the above address. (Please telephone Patricia Morris at (312) 353-8656 before visiting the Region 5 Office.)

Dated: August 12, 2004.

Steve Rothblatt,

Acting Regional Administrator, Region 5.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 04-256; FCC 04-173]

Attribution of Joint Sales Agreements in Local Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission solicits comment on whether to attribute TV Joint Sales Agreements (JSAs) for purposes of applying the broadcast ownership rules. In a previous decision in this proceeding, the Commission attributed the "brokered station" to the "broker" in certain radio JSAs, but, because prior notice had not been given regarding whether to attribute TV JSAs, the Commission said that it would seek comment in the future on whether to attribute TV JSAs. This decision invites comment on whether to attribute certain TV JSAs.

DATES: Comment are due September 27, 2004; Reply comments are due October 12, 2004. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public and other interested parties on or before October 25, 2004.

ADDRESSES: Federal Communications Commission, Portals II, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Les Smith, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554; or via the internet to Leslie.Smith@fcc.gov, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to Kristy.LaLonde@omb.eop.gov, or via fax at (202) 395-5167.

FOR FURTHER INFORMATION CONTACT: Debra Sabourin, Industry Analysis Division, Media Bureau, (202) 418-0976 or Debra.Sabourin@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Les Smith at (202) 418-0217, or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Notice of Proposed Rulemaking (NPRM)* in MB Docket No. 04-256, FCC 04-173,

adopted July 13, 2004, and released on August 2, 2004. The full text of this *NPRM* is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, Best Company and Printing, Inc., Room CY-B402, telephone (800) 378-3160, e-mail www.BCPIWEB.COM. To request materials in accessible formats for people with disabilities (electronic files, large print, audio format and Braille), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis of Notice of Proposed Rulemaking

1. In its *Report and Order and Notice of Proposed Rulemaking* (68 FR 46286, August 5, 2003, and 68 FR 46359, August 5, 2003) (*R&O*), arising from the third biennial review of its broadcast ownership rules, the Commission attributed the "brokered station" to the "broker" in certain radio JSAs.¹ A JSA is an agreement with a licensee of a brokered station that authorizes a broker to sell some or all of the advertising time for the brokered station in return for a fee or percentage of revenues paid to the licensee. (47 CFR 73.3555, Note 2(k)) Because the broker normally assumes much of the market risk with respect to the station it brokers, radio JSAs generally give the broker authority to hire a sales force for the brokered station, set advertising prices, and make other decisions regarding the sale of advertising time, subject to the licensee's preemptive right to reject the advertising. As a result of the Commission's decision, its attribution rules, which define what interests are counted for purposes of applying the Commission's broadcast ownership rules, now state that a party with a cognizable interest in a radio station that brokers more than 15 percent of the weekly advertising time of another radio station in the same local market is considered to have an attributable

interest in the brokered station *R&O*. (47 CFR 73.3555) In this *NPRM*, the Commission invites comment on whether comparable, same-market TV JSAs should also be attributable.

2. Although the Commission attributed radio JSAs in the *R&O* it did not address TV JSAs or its other attribution rules. The biennial, now quadrennial, review requirement of section 202(h) of the Telecommunication Act of 1996 does not encompass attribution. The attribution rules merely determine what interests are cognizable under the Commission's broadcast ownership rules; they are not ownership limits in themselves. Moreover, the basis of the attribution rules differs from the statutory factors the Commission applies in the biennial reviews. The Commission addressed the attribution of radio JSAs in the *R&O* only because the issue was raised in the local radio ownership proceeding, which was incorporated into the 2002 biennial review. Since prior notice had not been given regarding the issue of whether the Commission should attribute TV JSAs, the Commission said that it would seek comment on whether to attribute TV JSAs in a future *NPRM*. The Commission has no reason to believe that the terms and conditions of TV JSAs differ substantively from those of radio JSAs, and, in this *NPRM*, the Commission tentatively concludes that JSAs have the same effect in local TV markets that they have in local radio markets and should be treated similarly.

3. The Commission's attribution rules seek to identify those interests in 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."² Influence and control are important criteria with respect to the attribution rules because these rules define which interests are significant enough to be counted for purposes of the Commission's multiple ownership rules.

4. In its 1999 attribution proceeding, the Commission considered whether to

attribute several types of business arrangements, including JSAs and TV local marketing agreements (LMAs).³ The Commission acknowledged that same-market JSAs could raise competitive concerns but said it did not believe that such agreements conveyed a sufficient degree of influence or control over station programming or core operations to warrant attribution, adding that JSAs could promote diversity by "enabling smaller stations to stay on the air." (*1999 Attribution Order*) The Commission required that JSAs be placed in the station's public inspection file, and specifically noted that it retained the discretion to conduct a public interest review of specific JSAs, if warranted, on a case-by-case basis. (*1999 Attribution Order*)

5. In 1999, the Commission distinguished JSAs from LMAs, holding that JSAs are contracts that affect primarily the sale of advertising time, as distinguished from LMAs, which may affect programming, personnel, advertising, physical facilities, and other core operations of radio stations. (*1999 Attribution Order*) Although the Commission did not adopt a rule attributing TV or radio JSAs, it did attribute same-market TV LMAs, stating that its rationale in the *1992 Radio Ownership Order* for attributing same-market radio LMAs—*i.e.*, to prevent their use to circumvent its ownership limits—applies equally to same-market TV LMAs. The Commission also repeated its concern that LMAs among stations serving the same market could undermine broadcast competition and diversity. (*1999 Attribution Order*, citing *1992 Radio Ownership Order*, 57 FR 18089, April 29, 1992) After the *1999 Attribution Order* took effect, the Commission's rules specified that a party with a cognizable interest in either a radio or a TV station that brokers more than 15 percent of the weekly broadcast time of another radio or TV station in the same local market is considered to have an attributable interest in the brokered station. (47 CFR 73.3555, Notes 2(j)(1), 2(k)(1))

6. In 2001, the Commission reopened the issue of whether to attribute radio JSAs in the Local Radio Ownership *NPRM*. (*Rules and Policies Concerning Multiple Ownership of Radio Broadcast*

¹ The *R&O* was affirmed in part, remanded in part in *Prometheus Radio Project v. F.C.C.*, 373 F.3d 372 (3rd Cir. 2004) (*Prometheus v. FCC*). While the court affirmed the Commission's decision to attribute JSAs, as well as other Commission decisions, it remanded a number of decisions in the biennial proceeding to the Commission for additional justification or modification. The court had earlier stayed the effectiveness of the Commission's decision pending review, and, in a separate Partial Judgment, the court continued the stay pending its review of the Commission's action on remand, over which the court retained jurisdiction.

² *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry*, 64 FR 59655, November 3, 1999 (*1999 Attribution Order*), on recon., 66 FR 9962, February 13, 2001. For purposes of the multiple ownership rules, the concept of "control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry*, 60 FR 6483, February 2, 1995.

³ LMAs are sometimes called time brokerage agreements, or TBAs. "Time brokerage" (also known as "local marketing") is the sale by a licensee of discrete blocks of time to a "broker" that supplies the programming to fill that time and sells the commercial spot announcements in it. A joint sales agreement, on the other hand, is an agreement with a licensee of a "brokered station" that authorizes a "broker" to sell advertising time for the "brokered station." 47 CFR 73.3555, Notes 2(j), (k); see also *1999 Attribution Order*.

Stations in Local Markets, 66 FR 63986, December 11, 2001. This proceeding was incorporated into the 2002 biennial review.) As part of its larger inquiry into possible changes to local radio ownership rules and policies, the Commission asked whether it should reconsider its blanket exemption of JSAs from attribution, and whether radio JSAs and LMAs or TBAs should be treated similarly. (66 FR 63986, December 11, 2001) In its 2002 *Ackerley* decision, the Commission interpreted the language in the *1999 Attribution Order*, in which it reserved the ability to conduct a review of specific JSAs on a case-by-case basis. It concluded that the parties' TV JSA, which was intertwined with the parties' non-attributable TBA, should be attributable due to the level of influence it permitted the broker to exercise over the brokered station's programming decisions. (*Shareholders of the Ackerley Group, Inc. (Transferor) and Clear Channel Communications, Inc. (Transferee) For Transfer of Control of the Ackerley Group, Inc., and Certain Subsidiaries*, 17 FCC Rcd. 10828, 2002.) (*Ackerley*) In *Ackerley*, Ackerley Group, Inc. had both a TBA and a JSA with KCBA (TV). The TBA expressly limited the amount of programming to be provided under the TBA to 15 percent of the licensee's weekly programming hours, which was the permissible limit without triggering the Commission's attribution rules. However, the brokered station, under the terms of the combined agreements, did not have the right to collect advertising revenue from non-network programming not included within the 15 percent provided under the TBA, and so did not have an economic incentive to refuse programming suggestions by the broker.

7. The Commission explained in *Ackerley* that it had, in the *1999 Attribution Order*, declined to impose new rules attributing JSAs "as long as they deal primarily with the sale of advertising time and do not contain terms that materially affect programming or other core operations of the stations such that they are substantively equivalent to LMAs." (*Ackerley*, 17 FCC Rcd 10842, citing *1999 Attribution Order*, 14 FCC Rcd at 12612-13) The Commission concluded in *Ackerley* that the TBA and related agreements did not provide the licensee with an economic incentive to control the 85 percent of programming not provided by the broker under the LMA. It concluded that, as a result, the agreements together were "substantively equivalent" to an LMA for more than 15 percent of KCBA(TV)'s weekly

broadcast hours and were therefore attributable.

8. In 2003, the Commission decided to attribute radio JSAs. In the *R&O*, the Commission reiterated that the attribution rules seek to identify and include those positional and ownership interests that convey a degree of influence or control to their holder sufficient to warrant limitation under the ownership rules. Where the Commission has referred to an interest that confers "influence" it has viewed it as an interest that is less than controlling, but through which the holder is likely to induce a licensee to take actions to protect the interests of the holder, and where a realistic potential exists to affect a station's programming and other core operational decisions. The Commission found that the use of in-market radio JSAs may undermine its interest in broadcast competition sufficiently to warrant limitation under the multiple ownership rules.

9. Prior to 2003 the Commission distinguished JSAs from LMAs, finding that only LMAs have the ability to affect programming, personnel, advertising, physical facilities, and other core operations of stations. In the *R&O*, however, the Commission found that because the broker controls the advertising revenue of the brokered radio station, JSAs have the same potential as LMAs to convey sufficient influence over core operations of a radio station to raise significant competition concerns warranting attribution. The Commission found that the threat to competition and the potential impact on the influence over the brokered station outweighed any potential benefits that non-attribution of radio JSAs may have on the radio industry.

10. When the Commission attributed JSAs involving radio stations, it said that, where an entity owns or has an attributable interest in one or more stations in a local radio market, joint advertising sales of another station in that market for more than 15 percent of the brokered station's advertising time per week will result in counting the brokered station toward the brokering licensee's ownership limits. (47 CFR 73.3555, Note 2(k)) Additionally, attributable radio JSAs must be filed with the Commission, and placed in the public file. The Commission gave parties two years from the effective date of the new rule to terminate agreements, or otherwise come into compliance with the applicable media ownership rules. (However, if a party sells an existing combination of stations within the two year grace period, it may not sell or assign the JSA to the new owner if the

JSA causes the new owner to exceed any of the Commission's ownership limits; the JSA must be terminated at the time of the sale of the stations.)

11. In *Prometheus v. FCC*, the Third Circuit Court upheld the Commission's decision to attribute radio JSAs. The court held that the Commission had adequately explained its change in policy with respect to attribution of radio JSAs. The court accepted "that the Commission's determination upon 'reexamination of the issue' that the JSAs convey (and always have conveyed) a potential for influence—sufficiently rationalizes [the Commission's] decision to jettison its prior nonattribution policy and replace it with one that more accurately reflects the conditions of local markets." The court also held that attribution of JSAs is not a regulatory taking in violation of the Fifth Amendment. According to the court, in deciding to attribute JSAs, the Commission has not invalidated or interfered with any contracts, but has merely determined that stations subject to JSAs should, in certain circumstances, count toward the regulatory limit in determining how many stations the broker may own in a market. The court also held that stations have no vested right in the continuation of any regulatory scheme.

12. In this *NPRM*, the Commission seeks comment on whether or not to attribute TV JSAs. The Commission tentatively concludes that it should. The Commission asks for comments on the similarities and differences between TV and radio JSAs. Are there differences between TV and radio JSAs such that the Commission should not attribute TV JSAs?

13. A licensee assumes all of the market risk associated with a broadcast TV station's programming when the licensee receives all of the advertising revenue generated by a program. The assumption of all market risk provides a licensee with strong incentives to select the station's programming and oversee other core operations of the station. The Commission's experience with the *Ackerley* case suggests that TV JSAs may reduce a licensee's incentive to select programming and oversee other core operations of the station whose ad time is brokered. For example, a JSA providing a licensee with a fixed monthly fee, regardless of the advertising sales or audience share of the TV station, transfers all market risk from the licensee to the broker. With the JSA, it is the broker's profits that are directly affected by the advertising revenues generated by a program. As such, the broker has strong incentives to induce a licensee to select programming

to protect the broker's interests, and the brokered station has little incentive to resist such influence.

14. In the context of radio JSAs, the Commission found that licensees of radio stations subject to JSAs typically receive a monthly fee regardless of the advertising sales or audience share of the station and, therefore, may have less incentive to maintain or attain significant competitive standing in the market. It concluded that, because the broker controls the advertising revenue of the brokered radio station, JSAs have the potential to convey sufficient influence over core operations of a radio station to raise significant competition concerns warranting attribution. Is the same fee structure typical for TV JSAs? If not, are the incentives different and does this have implications for the Commission's decision? In this *NPRM*, the Commission seeks comment on whether broadcast TV JSAs have a similar potential to influence program selection and other core operations of a TV station.

15. Beyond the issue of potential influence by a JSA broker over a brokered station's operations, which alone may warrant attribution, the unattributable nature of JSAs could lead to the exercise of market power by brokering stations and raise related competition concerns. In the *R&O*, in addressing local TV ownership, the Commission stated, "[o]ur competition goal seeks to ensure that for each TV market, numerous strong rivals are actively engaged in competition for viewing audiences." In the context of radio, JSAs raise concerns regarding the ability of broadcasters who are not in a JSA or LMA combination to compete, and may negatively affect the health of the local radio industry generally. In any given radio market, a broker may own or have an ownership interest in stations, operate stations pursuant to an LMA, or sell advertising time for stations pursuant to a JSA. Instead of stations competing with one another, the Commission, in the *R&O*, said that radio JSAs put pricing and output decisions in the hands of one firm that sells packages of time for all stations that are party to the agreement. As such, radio JSAs have the potential to lessen competition in the market. Do TV JSAs raise the same competitive concerns as radio JSAs? In situations where a party would exceed our ownership limits if a TV JSA is attributed, does the TV JSA provide the broker with the ability to exercise market power, or raise concerns regarding the ability of smaller broadcasters to compete? Is there a difference in the radio and TV markets that would justify treating TV JSAs

differently from radio JSAs? What benefits and harms from JSAs have occurred in the radio context that could occur in the TV context?

16. The Commission seeks concrete information on the terms and conditions of TV JSAs. The Commission asks commenters that are parties to TV JSAs to answer the following questions, which can help us to assess the typical terms and significance of TV JSAs. What is the duration of the agreement? What terms and conditions are associated with TV JSA agreements besides advertising terms? The Commission wishes to know the nature of the other terms as well. 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 TV JSAs differ from TV LMAs? Are TV JSAs also usually accompanied by program agreements, or are they mostly solely advertising agreements? What other arrangements typically occur between parties in terms of station operations or joint use of production facilities? For example, are TV JSAs often accompanied by shared services or joint services agreements? If so, what terms are involved and what services or facilities are shared? What is the impact of these attributes of JSAs and terms of these contracts on the Commission's concerns about influence or control? Are TV JSAs typically accompanied by non-attributable financial investments? If such combinations occur, what are their terms?

17. Why do parties enter into TV JSAs? What are the benefits they enjoy? Do these benefits differ from those of LMAs? What kind of efficiencies arise with TV JSAs? How are these shared among parties to the TV JSAs? What benefits accrue to the public from TV JSAs? The Commission has seen TV JSA agreements that are accompanied by non-attributable TV LMAs, sometimes involving a situation where a stronger station provides local news programming to a weaker station in the market as part of the agreements. This may enable such stations to provide news that they were not able to provide previously. Is this a frequent occurrence and, if so, what impact should it have on our decision? What effect, if any, might attribution of TV JSAs have on the digital transition?

18. What impact do TV JSAs have on competition? What are the disadvantages of having a TV JSA? Under what circumstances, if any, should the interest of the broker/JSA

holder be held attributable? The Commission particularly asks station owners who compete with stations that are parties to TV JSAs, as well as other commenters, to speak to the effects of any TV JSAs in their market.

19. If the Commission does decide to attribute TV JSAs, are there any compelling reasons why the Commission should not apply the existing radio JSA attribution guidelines, including the filing requirements, to TV JSAs? If a rule similar to the radio JSA attribution rule is applied to TV JSAs, should the Commission use the fifteen percent benchmark that it used in the radio context, or is some other percentage more appropriate? Alternatively, should TV JSAs be examined only on a case-by-case basis, and be attributed only if their likely degree of influence is similar to that of an LMA, as in *Ackerley*?

20. The commission did not grandfather existing radio JSAs. Parties having existing, attributable JSAs that would cause them to exceed relevant ownership limits were required to file a copy with the Commission, and were given two years from the effective date of the R&O to terminate those JSAs or otherwise come into compliance with the local radio ownership rules. Should these same transition provisions apply to TV JSAs? What effects, if any, should JSAs have on the renewal expectancy of TV stations? Information contained in the parties' comments is essential to the Commission's assessment of whether to grandfather existing TV JSAs in the event they are deemed attributable, and the form this grandfathering should take. Parties to existing JSAs are the best source of this information. It is critical that the Commission be provided the information it needs to make a reasoned decision, and to fashion appropriate grandfathering rights, if any, in the event it deems JSAs attributable. For parties to TV JSAs, the Commission asks that the licensee of the brokering station and/or the licensee of the brokered station include the information described above in their comments, along with any other information that they think is relevant.

21. Finally, while this *NPRM* concerns TV JSAs, the Commission notes that TV LMAs entered into before November 5, 1996, were grandfathered until the conclusion of the 2004 biennial review of the broadcast ownership rules. As part of that review, the Commission was to reevaluate these grandfathered TV LMAs, on a case-by-case basis, using specified factors, to determine whether they should continue to be grandfathered. (*Review of the Commission's Regulations*

Governing TV Broadcasting, TV Satellite Stations Review of Policy & Rules, 64 FR 54225, October 6, 1999, *clarified in Memorandum Opinion & Second Order on Reconsideration*, 66 FR 9039, February 6, 2001) On January 22, 2004, President Bush signed into law the Appropriations Act. (Consolidated Appropriations Act, 2004, Public Law 108-199, section 629, 118 Stat. 3, 2004) Section 629 of the Appropriations Act amends section 202(h) of the Telecommunications Act of 1996, modifying the biennial review requirement of the 1996 Act to a quadrennial review requirement. According to the amended statute, the next ownership review will commence in 2006. Since the Commission will not undertake an ownership review in 2004, it invites comment as to whether it should nonetheless commence the reevaluation of the grandfathered LMAs in 2004 or postpone it till the next quadrennial ownership review in 2006.

Administrative Matters

22. *Ex Parte Rules*. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

23. *Comments and Reply 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 the notice of proposed rulemaking on or before September 27, 2004, and reply comments on or before October 12, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). All comments should reference MB Docket No. 04-256.

24. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be

sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 2002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

25. Parties must also serve either one copy of each filing via e-mail or two paper copies to Best Copy and Printing, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 488-5300, or via email to fcc@bcpiweb.com. In addition, parties should serve one copy of each filing via email or three paper copies to Brenda Lewis, 445 12th Street, SW., 2-C266, Washington, DC 20554. Parties should also serve one copy of each filing via email or one paper copy to Debra Sabourin, Media Bureau, 445 12th Street, SW., 2-C165, Washington, DC 20554.

26. *Availability of Documents*. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. These documents also will be available electronically from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII text, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 488-5300, facsimile (202) 488-5563, or via e-mail at fcc@bcpiweb.com. To request materials in accessible formats for people with

disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

27. *Regulatory Flexibility Act*. As required by the Regulatory Flexibility Act, (See 5 U.S.C. 603) the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *Notice of Proposed Rulemaking*. The IRFA is set forth full in the full text of this *NPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM*, and they should have a separate and distinct heading designating them as responses to the IRFA.

28. *Paperwork Reduction Act*. This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due October 25, 2004. 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060-XXXX.

Title: Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets, *NPRM*, MB Docket No. 04-256, FCC 04-173.

Form Number: N.A.

Type of Review: New collection.

Respondents: Business or other for profit entities.

Estimated Number of Respondents: 1,360.

Estimated Time Per Response: 1 hour.

Frequency of Response: 1 time.
Estimated Total Annual Burden:
1,360 hours.

Estimated Total Annual Costs: 0.

Privacy Act Impact Assessment: No impacts.

Needs and Uses: The data would be used by the Commission to determine whether the applicants meet basic statutory requirements to become a Commission licensee/permittee and to assure that the public interest would be best served by grant of the application. The proposed filing requirements would also help to determine whether the applicant and/or filer is in compliance with the Commission's multiple ownership rules.

Ordering Clauses

29. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(A), 154(I), 303, 307, 309, AND 310, and section 202(h) of the Telecommunications Act of 1996, the *Notice of Proposed Rulemaking* is adopted.

30. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act. (See 5 U.S.C. 603(a).)

Initial Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act (RFA),⁴ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the Proposed Rules

32. The Commission, in a *Report and Order and Notice of Proposed Rulemaking (R&O)*, arising from the third biennial review of its broadcast ownership rules, adopted a rule

attributing the "brokered station" to the "broker" in certain radio joint sales agreements (JSAa). A JSA is an agreement with a licensee of a "brokered station" in return for a fee paid to the licensee. The Commission's attribution rules seek to identify those interests in 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." Influence and control are important criteria with respect to the attribution rules because the rules define which interests are significant enough to be counted for purposes of the Commission's multiple ownership rules.

33. In the *R&O*, the Commission decided to attribute radio JSAs but found the issue as it relates to TV stations was beyond the scope of the proceeding. In extending the attribution rule to include radio JSAs, the Commission found that the use of in-market radio JSAs may undermine out interest in broadcast competition sufficiently to warrant limitation under the multiple ownership rules. Accordingly, in the *R&O*, the Commission revised the attribution rules, which define what interests are counted for purposes of applying the Commission's media ownership rules, to state that a party with a cognizable interest in a radio station that brokers more than 15 percent of the weekly advertising time of another radio station in the same local market is considered to have an attributable interest in the brokered station. These new rules have been stayed. The *NPRM* invites comment on whether same-market TV JSAs should also be attributable under the same terms. The *NPRM* also invites comment on whether the factors that led the Commission to attribute radio JSAs apply as well in the context of TV JSAs. For example, the Commission asks whether TV JSAs have a similar potential to influence core operations of the brokered TV station and whether TV JSAs raise similar competitive concerns as radio JSAs.

Legal Basis

34. This *NPRM* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, 310, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, and section 202(h) of the Telecommunications Act of 1996.

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

35. The RFA directs agencies to provide a description of, and, where

feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under Section 3 of the Small Business Act. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

36. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which the rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

37. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of June 26, 2004, about 860 (68%) of the 1,270 commercial television stations in the United States have revenues of \$12 million or less. The Commission notes, however, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimates, therefore, likely overstate the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which these estimates are based do not include or aggregate revenues from affiliated companies.

⁴ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

38. The *NPRM* invites comment as to whether, if the Commission adopts a rule attributing same-market TV JSAs, it should adopt a requirement that attributable TV JSAs must be filed with the Commission.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

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

40. The Commission invites comment on the options of leaving TV JSAs unattributable, attributing same-market TV JSAs under certain circumstances or examining TV JSAs on a case-by-case basis. The Commission tentatively concludes that it should attribute TV JSAs. The *NPRM*, however, invites comment on the various harms and benefits of TV JSAs, including whether TV JSAs may hinder the ability of smaller broadcasters and broadcasters who are not in a JSA to compete. The Commission has previously recognized the JSAs can have benefits. For example, the Commission, in the *Report and Order in MM Docket Nos. 94-150, 92-51, and 87-154* (64 FR 50622, September 17, 1999), while acknowledging concern with the possible competitive consequences of business agreements such as JSAs, noted that "some JSAs may actually help promote diversity by enabling smaller stations to stay on the air." Also, the *NPRM* refers to JSAs accompanied by non-attributable LMAs, sometimes involving a situation where a stronger station provides local news programming to a weaker station in the market as part of the agreements and allowing such stations to provide news that they were not able to provide previously. The *NPRM* invites comment on whether this is a frequent occurrence and if so, what impact it should have on the Commission's decision. The Commission also invites comment on

the impact of attribution of TV JSAs on the digital transition.

41. Finally, the *NPRM* considers whether, if TV JSAs are made attributable, the Commission should grandfather existing TV JSAs. As discussed in the *NPRM*, the *R&O* did not grandfather radio JSAs, but gave licensees two years from the effective date of the *R&O* to terminate those JSAs or otherwise come into compliance with the Commission's ownership rules. The *NPRM* invites comment on whether the same provisions should apply in the context of TV JSAs. The Commission invites comment on the effects of the alternatives and proposals in the *NPRM* on small businesses.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

42. None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040809233-4233-01; I.D.080304B]

RIN 0648-AR55

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery and Northeast Multispecies Fishery; Framework 16 and Framework 39

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement concurrently Framework 16 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP) and Framework 39 to the Northeast Multispecies FMP (Multispecies FMP) (Joint Frameworks) developed by the New England Fishery Management Council (Council). The Joint Frameworks would establish Scallop Access Areas within Northeast (NE) multispecies Closed Area I (CAI), Closed Area II (CAII) and the Nantucket Lightship Closed Area (NLCA). The NE multispecies closed areas are currently closed year-round to all fishing that is

capable of catching NE multispecies, including scallop fishing. Measures are proposed to allow the scallop fishery to access the scallop resource within the NE multispecies closed areas, and ensure that NE multispecies catches by scallop vessels are consistent with the Multispecies FMP. The Joint Frameworks would also revise the Essential Fish Habitat (EFH) closed areas implemented under Amendment 10 to the Scallop FMP in order to make the areas consistent with the EFH closures under the Multispecies FMP, as established by Amendment 13 to the Multispecies FMP.

DATES: Comments must be received at the appropriate address or fax number (*see ADDRESSES*) by 5 p.m., local time, on September 10, 2004.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Joint Frameworks 16/39." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments submitted via e-mail or internet should be sent to ScallopAR55@noaa.gov. Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted to the RA at the address above and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

Copies of the Joint Frameworks, their Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978-281-9288; fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

The Joint Frameworks were adopted by the Council on February 24, 2004. The Council initially submitted the Joint Frameworks and associated analyses on April 20, 2004, and a final revised submission was provided to NMFS on July 2, 2004. The Joint Frameworks were