Commission's Rules, 47 CFR parts 52, is amended as set forth in Appendix B. The Report and Order shall become effective 30 days after publication in the **Federal Register**.

30. *It is further ordered* that pursuant to section 1, 4(i), 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(j), 251, 303(r), the Order on Remand in CC Docket No. 95–116 is adopted. The Order on Remand shall become effective 30 days after publication in the **Federal Register**.

31. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, including the two Final Regulatory Flexibility Analyses and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 52

Communications common carriers, telecommunications, telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends Part 52 of Title 47 of the Code of Federal Regulations as follows:

## PART 52—NUMBERING

■ 1. The authority citation for part 52 is revised to read as follows:

**Authority:** Secs. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154 and 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332 unless otherwise noted.

■ 2. Section 52.12(a)(1)(i) introductory text is revised to read as follows:

**§ 52.12 North American Numbering Plan Administrator and B&C Agent.**

* * * * *

(a)(1) * * *

(i) The NANPA and B&C Agent may not be an affiliate of any telecommunications service provider(s) as defined in the Telecommunications Act of 1996, or an affiliate of any interconnected VoIP provider as that term is defined in § 52.21(h). ''Affiliate'' is a person who controls, is controlled by, or is under the direct or indirect common control with another person. A person shall be deemed to control another if such person possesses, directly or indirectly—

* * * * *

■ 3. Section 52.16 is amended by adding paragraph (g) to read as follows:

**§ 52.16 Billing and Collection Agent.**

* * * * *

(g) For the purposes of this rule, the term ''carrier(s)'' shall include interconnected VoIP providers as that term is defined in § 52.21(h).

■ 4. Section 52.17 is amended by adding paragraph (c) to read as follows:

**§ 52.17 Costs of number administration.**

* * * * *

(c) For the purposes of this section, the term ''telecommunications carrier'' or ''carrier'' shall include interconnected VoIP providers as that term is defined in § 52.21(h).

■ 5. Section 52.21 is amended by redesignating paragraphs (h) through (r) as paragraphs (i) through (s), and by adding new paragraph (h) to read as follows:

**§ 52.21 Definitions.**

* * * * *

(h) The term ''interconnected VoIP provider'' is an entity that provides interconnected VoIP service as that term is defined in 47 CFR 9.3.

* * * * *

■ 6. Section 52.23 is amended by adding paragraph (h) to read as follows:

**§ 52.23 Deployment of long-term database methods for number portability by LECs.**

* * * * *

(h)(1) Porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's ''coverage area,'' as defined in paragraph (h)(2) of this section, overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.

(2) The wireless ''coverage area'' is defined as the area in which wireless service can be received from the wireless carrier.

■ 7. Section 52.32 is amended by adding paragraph (e) to read as follows:

**§ 52.32 Allocation of the shared costs of long-term number portability.**

* * * * *

(e) For the purposes of this section, the term ''telecommunications carrier'' shall include interconnected VoIP providers as that term is defined in § 52.21(h); and ''telecommunications service'' shall include ''interconnected VoIP service'' as that term is defined in 47 CFR 9.3.

■ 8. Section 52.33(b) is revised to read as follows:

**§ 52.33 Recovery of carrier-specific costs directly related to providing long-term number portability.**

* * * * *

(b) All interconnected VoIP providers and telecommunications carriers other than incumbent local exchange carriers may recover their number portability costs in any manner consistent with applicable state and federal laws and regulations.

■ 9. Section 52.34 is added to read as follows:

**§ 52.34 Obligations regarding local number porting to and from interconnected VoIP providers.**

(a) An interconnected VoIP provider must facilitate an end-user customer's valid number portability request, as it is defined in this subpart, either to or from a telecommunications carrier or another interconnected VoIP provider. ''Facilitate'' is defined as the interconnected VoIP providers' affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself or through the telecommunications carriers, if any, that it relies on to obtain numbering resources, subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the NANP-based telephone number.

(b) An interconnected VoIP provider may not enter into any agreement that would prohibit an end-user customer from porting between interconnected VoIP providers, or to or from a telecommunications carrier.

[FR Doc. E8–3130 Filed 2–20–08; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[MB Docket Nos. 06–121; 02–277; 01–235; 01–317; 00–244; 04–228; 99–360; FCC 07–216]**

## 2006 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts rule changes that presumptively permit newspaper/broadcast cross ownership only in the largest markets and only where there exists competition and numerous voices. The revised rule balances the need to support the availability and sustainability of local news while not significantly increasing local concentration or harming diversity. The Commission generally retains the other broadcast ownership rules currently in effect.

**DATES:** Effective March 24, 2008 except for 73.3555(d) which contains information collection requirements that have not been approved by OMB. The FCC will publish a document announcing the effective date of that section.

**FOR FURTHER INFORMATION CONTACT:** Royce Sherlock, (202) 418–2330; Mania Baghdadi, (202) 418–2330.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Report and Order and Order on Reconsideration* in MB Docket Nos. 06–121; 02–277; 01–235; 01–317; 00–244; 04–228; 99–360, FCC 07–216, adopted December 18, 2007, and released February 4, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs*). The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice)(202) 418–0432 (TTY).

**Summary of the Report and Order**

1. This *Order* was adopted to address the issues raised by the opinion of the United States Court of Appeals for the Third Circuit in *Prometheus Radio Project* v. *FCC,* and pursuant to Section 202(h) of the Telecommunications Act of 1996 (''1996 Act''), which requires the Commission to review its ownership rules (except the national television ownership limit) every four years and ''determine whether any of such rules are necessary in the public interest as the result of competition.''

2. The *Report and Order* eliminates the 32-year old prohibition on newspaper-broadcast cross-ownership. The *Report and Order* revises the Commission's rules to presumptively permit cross ownership only in the largest markets and only where there exists competition and numerous voices. Under the new approach, the Commission presumes a proposed newspaper-broadcast transaction is not inconsistent with the public interest if it meets the following test: (1) The market at issue is one of the 20 largest Nielsen Designated Market Areas (''DMAs''); (2) the transaction involves the combination of only one major daily newspaper and only one television or radio station; (3) if the transaction involves a television station, at least eight independently owned and operating major media voices (defined to include major newspapers and full-power TV stations) would remain in the DMA following the transaction; and (4) if the transaction involves a television station, that station is not among the top four ranked stations in the DMA.

3. All other proposed newspaper-broadcast transactions generally would continue to be presumed not to be in the public interest. The *Report and Order* identifies two limited circumstances in which this negative presumption would be reversed:

• First, the negative presumption will be reversed if the newspaper-broadcast combination involves a ''failing'' or ''failed'' newspaper or station. The *Report and Order* adapts the Commission's longstanding approach concerning failed or failing station waivers of the local television ownership limit to newspaper-broadcast combinations, using the same criteria to define whether an outlet is ''failing'' or has ''failed'' in the newspaper-broadcast context. To be deemed ''failed,'' the newspaper or broadcast station would have to have ceased publication or gone dark at least four months before the filing of an application, or be in bankruptcy proceedings. To be treated as ''failing,'' the applicant must show that (a) the broadcast station has had an all-day audience share of 4 percent or lower, (b) the newspaper or broadcast station has had a negative cash flow for the previous three years, and (c) the combination will produce public interest benefits. In addition, the applicant must show that the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the newspaper or station.

• Second, the negative presumption against a newspaper-broadcast combination will be reversed when a proposed transaction results in a new source of local news in a market—to be specific, when a combination would initiate at least seven hours of new local news programming per week on a broadcast station that previously has not aired local newscasts.

4. Under the new rule, parties seeking to overcome a negative presumption will face high hurdles. In particular, applicants attempting to overcome a negative presumption about a major newspaper-television combination will need to demonstrate by clear and convincing evidence that post-merger, the merged entity will increase the diversity of independent news outlets (e.g., separate editorial and news coverage decisions) and increase competition among independent news sources in the relevant market. The Commission will use the following factors to inform its evaluation: (1) Whether the combined entity will significantly increase the amount of local news in the market; (2) whether the newspaper and the broadcast outlets each will continue to employ its own staff and each will exercise its own independent news judgment; (3) the level of concentration in the DMA; and (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations.

5. This approach will permit the Commission to balance the needs of the public for media and viewpoint diversity with its concerns about the financial health and viability of traditional media outlets and to do so in the context of each particular transaction.

6. In reaching these decisions, the item reaffirms the Commission's previous decision to eliminate the blanket ban on newspaper-broadcast cross-ownership and replace it with a presumption that waivers of the ban are in the public interest in certain limited circumstances. The *Report and Order* observes that the *Prometheus* court agreed that the ban is not necessary to promote competition, diversity, or localism. It concludes that the record contains ample evidence that marketplace conditions have indeed changed since 1975, when the ban was established, and thus justifies a recalibration at this time. In particular, it cites evidence that the largest markets contain a robust number of diverse media sources and the diversity of viewpoints would not be jeopardized by certain newspaper-broadcast combinations, and that newspaper-broadcast combinations can create synergies that result in more news

coverage for consumers. Because the modified rule generally presumes that waivers are in the public interest only for combinations of a single broadcast outlet and a daily newspaper in the largest markets, the item reasons that the modified rule will ensure that such synergies can be captured without impairing diversity.

7. The item explains that newspaper-broadcast cross-ownership in the 20 largest DMAs in the country generally raises fewer diversity concerns because such media markets are more vibrant and have more media outlets. The Commission found notable differences between the top 20 markets and all other DMAs, both in terms of voices and in terms of television households.

8. The item defines major media voices as full-power commercial and noncommercial television stations and major newspapers. It acknowledges that other types of outlets contribute to diversity, but concludes that other voices are not major sources of local news or information and, therefore, should not be included as major media voices in determining whether eight independently owned voices will remain if a combination is allowed. It explains that the Commission selected the number eight for the major media voice count because it is comfortable that at least eight major media voices in the top-20 markets—along with the other unquantified media outlets that are present in those markets—will assure that these markets continue to enjoy an adequate diversity of local news and information sources. The item further explains that the top-four prohibition is included because the Commission considers daily newspapers and the top-four stations to be the most influential providers of local news in markets. Thus, such combinations are likely to cause a greater harm to diversity in a market.

9. With regard to non-top 20 markets, the item establishes a general presumption that it is inconsistent with the public interest for an entity to own, operate or control a combination in such markets in order to protect competition and media diversity, as these markets cannot match the robustness in media and outlet diversity found in the top 20 markets. Nevertheless, the item recognizes the need to consider factors particular to each market and proposed transaction. Thus, applicants in markets below DMA 20 may overcome the presumption that a merger would not be in the public interest by showing countervailing benefits of the proposed transaction. While the Commission expects such cases to be rare, it acknowledges that a particular market may have unique attributes or that the proposed transaction may present unique advantages. The item explains that the two situations in which the negative presumption may be reversed—when a newspaper or station has failed or is failing and when a proposed combination results in a new source of a significant amount of local news in a market—are grounded in the Commission's longstanding application of a failed/failing station model in evaluating local TV waiver criteria for over 25 years, as well as its recognition of the unique and particular importance of local news and public affairs programming.

10. The Order does not require divestiture of the combinations grandfathered in the Commission's 1975 decision implementing a ban on common ownership of a daily newspaper and a full-power broadcast station; rather these combinations remain grandfathered. Similarly, all permanent waivers from the prior rule that previously have been granted will continue in effect under the new rule.

11. The Order grants five permanent waivers of the rule for the following: Gannett's combination in Phoenix; Media General's combinations in Myrtle Beach-Florence, South Carolina; Columbus, Georgia; Panama City, Florida, and the Tri-Cities, Tennessee/Virginia DMA.

12. Where a pending waiver request involves an existing combination consisting of more than one newspaper and/or more than one broadcast station or an entity has been granted a waiver to hold such a combination pending the completion of this rulemaking, we will afford the licensee 90 days after the effective date of this order to either amend its waiver/renewal request or file a request for permanent waiver. Such requests will be examined on a case-by-case basis. Pending waiver requests and renewal applications will be held in abeyance until the Commission receives an appropriate amendment. Current temporary waivers that have been granted pending the completion of the rulemaking proceeding will be temporarily extended pending our action on requests for permanent waivers. In order to ensure adequate public notice of pending waiver requests, the Order indicates that the Commission will flag applications for proposed newspaper/broadcast combinations in its public notices as seeking waiver of the newspaper/broadcast cross-ownership rule pursuant to Section 73.3555(d) of the Commission's rules.

13. With respect to the remaining broadcast ownership rules under review, including the local television ownership rule, the radio-tv cross-ownership rule, the local radio ownership rule, and the dual network rule, the Commission determined that any further relaxation of ownership rules in the radio or television broadcast markets should not be allowed and retains the media ownership rules that are currently in effect. Thus, it retains the changes to the local radio ownership rule adopted in the 2002 Biennial Review Order, including use of Arbitron markets to define the relevant radio market and including noncommercial stations in determining the size of the radio market. The Order also reaffirms the decision in the 2002 Biennial Review Order to attribute certain same-market radio Joint Sales Agreements. These rules reaffirm the Commission's core competition and diversity goals, while harmonizing these goals with marketplace realities. Finally, the Order concludes that the Commission is foreclosed from addressing the issue of the UHF discount in this proceeding by the 2004 Consolidated Appropriations Act. Accordingly, these rules remain necessary in the public interest as the result of competition.

14. The *Report and Order* also reinstates the failed station solicitation rule, which required an applicant for a waiver of the local TV ownership rule to provide notice of the sale of a failed, failing or unbuilt station to potential out-of-market buyers before it could sell that station to an in-market buyer. The Order states that it is necessary to ensure that out-of-market buyers, including qualified minority broadcasters, have notice of, and an opportunity to bid for, a station before it is combined with an in-market station. A waiver of the rule should only be permitted when no out-of-market buyer is willing to purchase the station at a reasonable price.

**Report and Order**

**Final Paperwork Reduction Act of 1995 Analysis**

15. This *Report and Order* contains both new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be 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 new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public

Law 107–198, *see* 44 U.S.C. 3506(c)(4), we have considered how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' We find that the modified requirements must apply fully to small entities (as well as to others) to protect consumers and further other goals, as described in the *Order*.

16. In this present document, we have assessed the effects of the Commission's broadcast ownership rules, as amended, and find that the effect on businesses with fewer than 25 employees will be minimal.

**Final Regulatory Flexibility Analysis**

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in MB Docket No. 02–277. The Commission sought written public comment on the proposals in the *NPRM* including comment on the IRFA (FCC 02–249, 67 FR 65751, October 28, 2002). The Commission also prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the proposals in the *Further Notice of Proposed Rulemaking (FNPRM)* (FCC 06–93, 71 FR 45511, August 9, 2006; 71 FR 54253, September 14, 2006). The Commission sought written public comment on the *FNPRM,* including comment on the Supplemental IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

18. The *Order* concludes the Commission's 2006 Quadrennial Review of the broadcast ownership rules. This review encompasses the newspaper/broadcast cross-ownership rule, the radio-television cross-ownership rule, the local television multiple ownership rule, the local radio ownership rule, and the dual network rule. The rules are reviewed under Section 202(h) of the Telecommunications Act of 1996 (''1996 Act''), which requires the Commission to review its ownership rules (except the national television ownership limit) every four years and ''determine whether any of such rules are necessary in the public interest as the result of competition.'' Under Section 202(h), the Commission ''shall repeal or modify any regulation it determines to be no longer in the public interest.'' The Commission modifies the newspaper/broadcast cross-ownership rule and retains the other broadcast ownership rules currently in effect.

19. The Commission's approach in this *Order* is a cautious approach that balances the concerns of many commenters that it not permit excessive consolidation, with concerns of other commenters that it afford some relief to assure continued diversity and investment in local news programming by a modest loosening of the 32 year-old prohibition on newspaper/broadcast cross-ownership. The Commission believes that the decisions it adopts in the *Order* serve our public interest goals, appropriately take account of the current media marketplace, and comply with our statutory responsibilities.

*B. Legal Basis*

20. This *Order* is adopted pursuant to 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.

*C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and the Supplemental IRFA*

21. The Commission received no comments in direct response to the IRFA and the Supplemental IRFA. However, the Commission received comments that discuss issues of interest to small entities. These comments are discussed in the section of this FRFA discussing the steps taken to minimize significant impact on small entities, and the significant alternatives considered.

*D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

22. 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.

23. *Television Broadcasting.* In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than $13 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 December 7, 2007, about 825 (66 percent) of the 1,250 commercial television stations in the United States have revenues of $13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

24. 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 market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is 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. 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.

25. *Radio Broadcasting.* The Small Business Administration defines a radio broadcasting entity that has $6.5 million or less in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of December 7, 2007, about 10,500 (95 percent) of 11,050 commercial radio stations in the United States have revenues of $6.5 million or less. We note, however, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or

aggregate revenues from affiliated companies.

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

27. *Daily Newspapers.* The SBA has developed a small business size standard for the census category of Newspaper Publishers; that size standard is 500 or fewer employees. Census Bureau data for 2002 show that there were 5,159 firms in this category that operated for the entire year. Of this total, 5,065 firms had employment of 499 or fewer employees, and an additional 42 firms had employment of 500 to 999 employees. Therefore, we estimate that the majority of Newspaper Publishers are small entities that might be affected by our action.

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

28. Broadcasters whose newspaper/broadcast combination is approved under the presumption that a proposed newspaper broadcast combination is consistent with the public interest when it initiates the programming of local newscasts of at least seven hours per week on a broadcast outlet that otherwise was not offering local newscasts prior to the combined operations must report to the Commission annually regarding how they have followed through on their commitment to initiate at least seven hours a week of local news. The *Order* modestly revises the newspaper/broadcast cross-ownership rule and otherwise retains the broadcast ownership rules currently in effect. With the exception of the foregoing reporting requirement, the *Order* imposes no increased reporting, recordkeeping or other compliance requirements.

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

29. 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.

30. The *Order* modestly revises the newspaper/broadcast cross-ownership rule. Under the new rule, the Commission presumes a proposed newspaper/broadcast transaction is not inconsistent with the public interest if it meets the following test: (1) The market at issue is one of the 20 largest Nielsen Designated Market Areas (''DMAs''); (2) the transaction involves the combination of only one major daily newspaper and only one television or radio station; (3) if the transaction involves a television station, at least eight independently owned and operating major media voices (defined to include major newspapers and full-power TV stations) would remain in the DMA following the transaction; and (4) if the transaction involves a television station, that station is not among the top four ranked stations in the DMA. All other proposed newspaper/broadcast transactions would continue to be presumed not in the public interest.

31. Under the new rule, the negative presumption will be reversed in two circumstances. First, the newspaper or broadcast station would have to be considered ''failed'' or ''failing.'' To be deemed ''failed,'' the newspaper or broadcast station would have to have ceased publication or gone dark at least four months before the filing of an application, or be in bankruptcy proceedings. To be treated as ''failing,'' the applicant must show that (a) the broadcast station has had an all-day audience share of 4 percent or lower, (b) the newspaper or broadcast station has had a negative cash flow for the previous three years, (c) the combination will produce public interest benefits, and (d) the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the newspaper or station. Second, the negative presumption will be reversed when the combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours per week of local news programming after the combination. Under the new rule, the Commission would consider a negative presumption as establishing a high hurdle as it reviews the transactions on a case-by-case basis. In particular, applicants attempting to overcome a negative presumption about a newspaper television combination will need to demonstrate by clear and convincing evidence that post-merger the merged entity will increase the diversity of independent news outlets (*e.g.*, separate editorial and news coverage decisions) and increase competition among independent news sources in the relevant market. The Commission will use the following factors to inform its evaluation: (1) The extent to which cross-ownership will serve to increase the amount of local news disseminated through the affected media outlets in the combination; (2) whether each affected media outlet in the combination will exercise its own independent news judgment; (3) the level of concentration in the Nielsen DMA; and (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the owner's commitment to invest significantly in newsroom operations. This approach will permit the Commission to balance the needs of the public for media and viewpoint diversity with its concerns about the financial health of traditional media outlets in the context of each particular transaction.

32. The Commission considered other alternatives, but the *Order* retains the other media ownership rules currently in effect. The Commission believes that the decisions it adopts in the *Order* serve our public interest goals, appropriately take account of the current media marketplace, and comply with our statutory responsibilities. It retains the radio/television cross-ownership rule currently in effect to provide protection for diversity goals in local markets and thereby serve the public interest.

33. The *Order* finds that restrictions on common ownership of television stations in local markets continue to be necessary in the public interest to protect competition for viewers and in local television advertising markets. The Commission concludes that, in order to preserve adequate levels of competition within local television markets, the local TV ownership rule as it is

currently in effect should be retained. Accordingly, an entity may own two television stations in the same DMA if: (1) The Grade B contours of the stations do not overlap; or (2) at least one of the stations in the combination is not ranked among the top four stations in terms of audience share, and at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the DMA after the combination. To determine the number of voices remaining after the merger, the Commission counts those broadcast television stations whose Grade B signal contours overlap with the Grade B signal contour of at least one of the stations that would be commonly owned. With respect to the waiver standard for the local TV ownership rule, we will reinstate our requirement that a waiver applicant demonstrate that there is no buyer outside the market willing to purchase the station at a reasonable price. Reinstating this requirement will promote the market entry of small businesses, including minority- and women-owned businesses, because it will increase the likelihood that they will learn of purchasing opportunities.

34. The Commission does not revise its decision that DMAs are the more precise geographic markets. Nonetheless, in the instant *Order*, unlike in the *2002 Biennial Review Order,* we are not relaxing the local television ownership rule, and, accordingly, to avoid disruption to settled expectations, we retain the Grade B overlap provision. Furthermore, we believe that maintaining the Grade B provision will promote television service in rural areas by continuing to enable station owners to build or purchase an additional station in a remote corner of the DMA, beyond the reach of their Grade B signal, without regard to the top four/eight voices restriction.

35. The *Order* concludes that the current local radio ownership rule remains ''necessary in the public interest'' to protect competition in local radio markets. As directed by the *Prometheus* court, the Commission also provides a reasoned justification for our decision to retain the existing numerical limits on local radio ownership and the AM subcaps. In addition, we deny or dismiss a number of pending petitions for reconsideration of the Commission's action concerning the local radio ownership rule in the *2002 Biennial Review Order.* Accordingly, an entity may own, operate, or control (1) up to eight commercial radio stations, not more than five of which are in the same service (*i.e.*, AM or FM), in a radio market with 45 or more full-power, commercial and noncommercial radio stations; (2) up to seven commercial radio stations, not more than four of which are in the same service, in a radio market with between 30 and 44 (inclusive) full-power, commercial and noncommercial radio stations; (3) up to six commercial radio stations, not more than four of which are in the same service, in a radio market with between 15 and 29 (inclusive) full-power, commercial and noncommercial radio stations; and (4) up to five commercial radio stations, not more than three of which are in the same service, in a radio market with 14 or fewer full-power, commercial and noncommercial radio stations, except that an entity may not own, operate, or control more than 50 percent of the stations in such a market. Retaining the AM subcap serves the public interest because the relative affordability of radio compared to other mass media makes it a likely avenue for new entry into the media business, particularly by small businesses.

36. For the same reasons recited by the Commission in 2002, we continue to believe that the dual network rule is necessary in the public interest to promote competition and localism. Accordingly, the *Order* retains the dual network rule in its current form. No petitions were filed asking the Commission to reconsider its decision to retain the rule, and no challenges were filed in *Prometheus.* The Commission sought comment in the *FNPRM* on whether the dual network rule remains necessary in the public interest to promote the Commission's policy goals. Almost all of the few parties commenting on the rule in this proceeding support retaining the rule in its current form. Other parties argue that relaxing or eliminating the rule would increase concentration to the detriment of competition, diversity, and localism. No specific changes to the dual network rule were proposed, and only two parties—Fox and CBS—oppose retaining the rule in any form. Neither of these parties has provided evidence convincing us that a departure from our 2002 decision to retain the rule in its current form is warranted.

37. The *Order* finds that the Commission is foreclosed from addressing the issue of the UHF discount in this proceeding by the 2004 Consolidated Appropriations Act. Although the Appropriations Act did not specifically mention the UHF discount, the *Prometheus* court observed that the statutory 39 percent national cap would be altered if the UHF discount were modified. The court observed that the Appropriations Act amended Section 202(h) to exclude ''any rules relating to'' the 39 percent national cap, and determined that the UHF discount was a rule ''relating to'' the national TV cap. The Third Circuit concluded that Congress ''apparently intended to insulate the UHF discount from periodic review,'' but left open the possibility that the Commission may consider the discount in a rulemaking ''outside the context of Section 202(h).'' Accordingly, the *Order* concludes that the UHF discount is insulated from review under Section 202(h).

38. The *Order* notes that in the pending proceeding entitled *Public Interest Obligations of TV Broadcast Licensees* commenters ask the Commission to impose additional ''public interest'' obligations on television broadcasters. The *Order* explains that some of the issues raised in that proceeding have already been resolved by the Commission. With respect to other ideas raised in this proceeding such as whether the agency should establish more specific minimum public interest requirements for licensees and how broadcasters could improve political candidates' access to television, the Commission declines to take any further action at this time. Nevertheless, to the extent that circumstances change, the Commission agrees to revisit this decision and initiate proceedings as appropriate.

**Congressional Review Act**

39. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

**Ordering Clauses**

40. Accordingly, *It is ordered,* that 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, this *Report and Order and Order on Reconsideration* and the rule modifications attached hereto as Appendix A are adopted, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval. It is our intention in

adopting these rule changes that, if any of the rules that we retain, modify or adopt today, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law. Thus, for example, if one of the ownership rules is held to be unlawful, the other ownership rules shall remain in effect to the fullest extent permitted by law, each being severable from the others.

41. *It is further ordered,* that the Petition for Reconsideration filed by Office of Communication of the United Church of Christ, Inc., Black Citizens for a Fair Media, Philadelphia Lesbian and Gay Task Force, and Women's Institute for Freedom of the Press; and the Petition for Reconsideration filed by Minority Media and Telecommunications Council, Counsel for Diversity and Competition Supporters filed in MB Docket No. 02–277 are granted to the extent set forth in this *Order,* and otherwise are denied. The Petitions for Reconsideration filed in MB Docket No. 02–277 by National Association of Black Owned Broadcasters, Inc. and The Rainbow/PUSH Coalition, Inc.; WTCM Radio, Inc.; WJZD, Inc.; Cumulus Media, Inc.; Galaxy Communications, L.P.; Mt. Wilson FM Broadcasters; Entercom Communications Corp.; Great Scott Broadcasting; Treasure and Space Coast Radio; Saga Communications, Inc.; Future of Music Coalition; National Organization for Women; Mid-West Family Broadcasting; Monterey Licenses, LLC; LIN Television Corporation and Raycom Media Inc.; Duff, Ackerman & Goodrich, LLC; Center for the Creative Community and Association of Independent Video and Filmmakers; Robert W. McChesney and Josh Silver of Free Press; Nexstar Broadcasting Group, LLC; Saga Communications, Inc.; Consumers Federation of America and Consumers Union; Capitol Broadcasting Company, Inc.; Bennco, Inc.; The Amherst Alliance and the Virginia Center for the Public Press are dismissed or denied as discussed in this *Order.*

42. *It is further ordered,* that as enumerated in paragraph 76 of the *Report and Order and Order on Reconsideration,* the grandfathering or waivers granted in the 1975 newspaper/broadcast cross-ownership decision, *Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations,* Docket No. 18110, 50 FCC 2d 1046 (1975) are continued, and all permanent waivers for the prior newspaper-broadcast cross ownership rule that have previously been granted are continued.

43. *It is further ordered,* that as enumerated in paragraph 77 of the *Report and Order and Order on Reconsideration,* waivers are granted to Gannett Co. Inc.'s combination in Phoenix (The Arizona Republic and KPNX-TV), Media General Inc.'s combination in Myrtle Beach-Florence, South Carolina (WBTW(TV) and the Morning News), Media General, Inc.'s combination in Columbus, Georgia (WRBL(TV) and the Opelika-Auburn News), Media General, Inc.'s combination in Panama City, Florida (WMBB(TV) and the Jackson County Floridan), and Media General's combination in the Tri-Cities, Tennessee/Virginia DMA (WJHL–TV and the Bristol (Virginia Tennessee) Herald Courier).

44. *It is further ordered,* that as enumerated in paragraph 78 of the *Report and Order and Order on Reconsideration,* licensees with a pending waiver request that involves an existing station combination consisting of more than one newspaper and/or more than one broadcast station will have 90 days after the effective date of the *Report and Order and Order on Reconsideration* to either amend their renewal or waiver requests or file a request for a permanent waiver.

45. *It is further ordered,* that as enumerated in paragraph 78 of the *Report and Order and Order on Reconsideration,* entities that have been granted a temporary waiver of the newspaper/broadcast cross-ownership rule pending the completion of this rulemaking will have 90 days after the effective date of the Report and Order to either amend their renewal or waiver requests or file a request for a permanent waiver.

46. *It is further ordered,* that the proceedings in MB Docket No. 06–121, MB Docket No. 02–277, MM Docket No. 01–235, MM Docket No. 01–317, MM Docket No. 00–244, and MM Docket No. 99–360 are terminated.

47. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order and Order on Reconsideration,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 73**

Radio, Television.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

■ 2. Section 73.3555 is revised to read as follows:

### § 73.3555 Multiple ownership.

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

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

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

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

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

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

(b) *Local television multiple ownership rule.* An entity may directly or indirectly own, operate, or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research or any successor entity) only under one or more of the following conditions:

(1) The Grade B contours of the stations (as determined by § 73.684) do not overlap; or

(i) At the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and

(ii) At least 8 independently owned and operating, full-power commercial and noncommercial TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located. Count only those stations the Grade B signal contours of which overlap with the Grade B signal contour of at least one of the stations in the proposed combination. In areas where there is no Nielsen DMA, count the TV stations present in an area that would be the functional equivalent of a TV market. Count only those TV stations the Grade B signal contours of which overlap with the Grade B signal contour of at least one of the stations in the proposed combination.

(2) [Reserved]

(c) *Radio-television cross-ownership rule.*

(1) *This rule is triggered when:* (i) The predicted or measured 1 mV/m contour of an existing or proposed FM station (computed in accordance with § 73.313) encompasses the entire community of license of an existing or proposed commonly owned TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s) (computed in accordance with § 73.684) encompasses the entire community of license of the FM station; or

(ii) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station (computed in accordance with § 73.183 or § 73.386), encompasses the entire community of license of an existing or proposed commonly owned TV broadcast station(s), or the Grade A contour(s) of the TV broadcast station(s) (computed in accordance with § 73.684) encompass(es) the entire community of license of the AM station.

(2) An entity may directly or indirectly own, operate, or control up to two commercial TV stations (if permitted by paragraph (b) of this section, the local television multiple ownership rule) and 1 commercial radio station situated as described in paragraph (c)(1) of this section. An entity may not exceed these numbers, except as follows:

(i) If at least 20 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to:

(A) Two commercial TV and six commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule); or

(B) One commercial TV and seven commercial radio stations (to the extent that an entity would be permitted to own two commercial TV and six commercial radio stations under paragraph (c)(2)(i)(A) of this section, and to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).

(ii) If at least 10 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to two commercial TV and four commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).

(3) To determine how many media voices would remain in the market, count the following:

(i) TV stations: independently owned and operating full-power broadcast TV stations within the DMA of the TV station's (or stations') community (or communities) of license that have Grade B signal contours that overlap with the Grade B signal contour(s) of the TV station(s) at issue;

(ii) *Radio stations:* (A)(1) Independently owned operating primary broadcast radio stations that are in the radio metro market (as defined by Arbitron or another nationally recognized audience rating service) of:

(*i*) The TV station's (or stations') community (or communities) of license; or

(*ii*) The radio station's (or stations') community (or communities) of license; and

(*2*) Independently owned out-of-market broadcast radio stations with a minimum share as reported by Arbitron or another nationally recognized audience rating service.

(B) When a proposed combination involves stations in different radio markets, the voice requirement must be met in each market; the radio stations of different radio metro markets may not be counted together.

(C) In areas where there is no radio metro market, count the radio stations present in an area that would be the functional equivalent of a radio market.

(iii) Newspapers: Newspapers that are published at least four days a week within the TV station's DMA in the dominant language of the market and that have a circulation exceeding 5% of the households in the DMA; and

(iv) One cable system: if cable television is generally available to households in the DMA. Cable television counts as only one voice in the DMA, regardless of how many individual cable systems operate in the DMA.

(d) *Daily newspaper cross-ownership rule.* (1) No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in:

(i) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or

(ii) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or

(iii) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.

(2) Paragraph (d)(1) of this section shall not apply in cases where the Commission makes a finding pursuant to Section 310(d) of the Communications Act that the public interest, convenience, and necessity would be served by permitting an entity that owns, operates or controls a daily newspaper to own, operate or control an AM, FM, or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (d)(1) of this section.

(3) In making a finding under paragraph (d)(2) of this section, there shall be a presumption that it is not inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper in a top 20 Nielsen DMA and one commercial AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (d)(1) of this section, provided that, with respect to a combination including a commercial TV station,

(i) The station is not ranked among the top four TV stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and

(ii) At least 8 independently owned and operating major media voices would remain in the DMA in which the community of license of the TV station in question is located (for purposes of this provision major media voices include full-power TV broadcast stations and major newspapers).

(4) In making a finding under paragraph (d)(2) of this section, there shall be a presumption that it is inconsistent with the public interest, convenience, and necessity for an entity to own, operate or control a daily newspaper and an AM, FM or TV broadcast station whose relevant contour encompasses the entire community in which such newspaper is published as set forth in paragraph (d)(1) of this section in a DMA other than the top 20 Nielsen DMAs or in any circumstance not covered under paragraph (d)(3) of this section.

(5) In making a finding under paragraph (d)(2) of this section, the Commission shall consider:

(i) Whether the combined entity will significantly increase the amount of local news in the market;

(ii) Whether the newspaper and the broadcast outlets each will continue to employ its own staff and each will exercise its own independent news judgment;

(iii) The level of concentration in the Nielsen Designated Market Area (DMA); and

(iv) The financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the proposed owner's commitment to invest significantly in newsroom operations.

(6) In order to overcome the negative presumption set forth in paragraph (d)(4) of this section with respect to the combination of a major newspaper and a television station, the applicant must show by clear and convincing evidence that the co-owned major newspaper and station will increase the diversity of independent news outlets and increase competition among independent news sources in the market, and the factors set forth above in paragraph (d)(5) of this section will inform this decision.

(7) The negative presumption set forth in paragraph (d)(4) of this section shall be reversed under the following two circumstances:

(i) The newspaper or broadcast station is failed or failing; or

(ii) The combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours per week of local news programming after the combination.

(e) *National television multiple ownership rule.* (1) No license for a commercial television broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors having a cognizable interest in television stations which have an aggregate national audience reach exceeding thirty-nine (39) percent.

(2) *For purposes of this paragraph* (e):

(i) National audience reach means the total number of television households in the Nielsen Designated Market Areas (DMAs) in which the relevant stations are located divided by the total national television households as measured by DMA data at the time of a grant, transfer, or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their DMA market.

(ii) No market shall be counted more than once in making this calculation.

(3) Divestiture. A person or entity that exceeds the thirty-nine (39) percent national audience reach limitation for television stations in paragraph (e)(1) of this section through grant, transfer, or assignment of an additional license for a commercial television broadcast station shall have not more than 2 years after exceeding such limitation to come into compliance with such limitation. This divestiture requirement shall not apply to persons or entities that exceed the 39 percent national audience reach limitation through population growth.

(f) The ownership limits of this section are not applicable to noncommercial educational FM and noncommercial educational TV stations. However, the attribution standards set forth in the Notes to this section will be used to determine attribution for noncommercial educational FM and TV applicants, such as in evaluating mutually exclusive applications pursuant to subpart K of part 73.

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

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

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

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

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

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

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

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

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

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

g. Officers and directors of a broadcast licensee, cable television system or daily newspaper are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting, cable television service or newspaper publication, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee, cable television system or daily newspaper, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee, cable television system or daily newspaper subsidiary, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the appropriate Ownership Report.] The officers and directors of a sister corporation of a broadcast licensee, cable television system or daily newspaper shall not be attributed with ownership of these entities by virtue of such status.

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

1. The sum of the interests held by or through ''passive investors'' is equal to or exceeds 20 percent; or

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

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

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

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

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

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

j. ''Time brokerage'' (also known as ''local marketing'') is the sale by a licensee of discrete blocks of time to a ''broker'' that supplies the programming to fill that time and sells the commercial spot announcements in it.

1. Where two radio stations are both located in the same market, as defined

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

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

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

k. ''Joint Sales Agreement'' is an agreement with a licensee of a ''brokered station'' that authorizes a ''broker'' to sell advertising time for the ''brokered station.''

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

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

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

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

**Note 5 to § 73.3555:** Paragraphs (b) through (e) of this section will not be applied to cases involving television stations that are ''satellite'' operations. Such cases will be considered in accordance with the analysis set forth in the Report and Order in MM Docket No. 87–8, FCC 91–182 (released July 8, 1991), in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating ''satellite'' television station, the Grade B contour of which overlaps that of a commonly owned, operated, or controlled ''non-satellite'' parent television broadcast station, or the Grade A contour of which completely encompasses the community of publication of a commonly owned, operated, or controlled daily newspaper, or the community of license of a commonly owned, operated, or controlled AM or FM broadcast station, or the community of license of which is completely encompassed by the 2 mV/m contour of such AM broadcast station or the 1 mV/m contour of such FM broadcast station, may subsequently become a ''non-satellite'' station under the circumstances described in the aforementioned Report and Order in MM Docket No. 87–8. However, such commonly owned, operated, or controlled ''non-satellite'' television stations and AM or FM stations with the aforementioned community encompassment, may not be transferred or assigned to a single person, group, or entity except as provided in Note 4 of this section. Nor shall any application for assignment or transfer concerning such ''non-satellite'' stations be granted if the assignment or transfer would be to the same person, group or entity to which the commonly owned, operated, or controlled newspaper is proposed to be transferred, except as provided in Note 4 of this section.

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

**Note 7 to § 73.3555:** The Commission will entertain applications to waive the restrictions in paragraph (b) and (c) of this section (the local television ownership rule and the radio/television cross-ownership rule) on a case-by-case basis. In each case, we will require a showing that the in-market buyer is the only entity ready, willing, and able to operate the station, that sale to an out-of-market applicant would result in an artificially depressed price, and that the waiver applicant does not already directly or indirectly own, operate, or control interest in two television stations within the relevant DMA. One way to satisfy these criteria would be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the permit, and that no reasonable offer from an entity outside the market has been received.

We will entertain waiver requests as follows:

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

2. For paragraph (b) of this section only, if one of the television stations involved is a ''failing'' station that has an all-day audience share of no more than four per cent; the station has had negative cash flow for three consecutive years immediately prior to the application; and consolidation of the two stations would result in tangible and

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

3. For paragraph (b) of this section only, if the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so.

**Note 8 to § 73.3555:** Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 535–1605 kHz band where grant of such application will result in the overlap of 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535–1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application of the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

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

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

[FR Doc. E8–3133 Filed 2–20–08; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 08–273; MB Docket No. 07–164; RM–11386]**

## Radio Broadcasting Services; Peach Springs, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Audio Division, at the request of Smoke and Mirrors, LLC, allots Channel 268C3 at Peach Springs, Arizona, in lieu of vacant Channel 285C3. Channel 268C3 can be allotted at Peach Springs, Arizona, in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.3 km (9.5 miles) west of Peach Springs at the following reference coordinates: 35–29–35 North Latitude and 113–35–17 West Longitude.

**DATES:** Effective March 17, 2008.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dupont, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order,* MB Docket No. 07–164, adopted January 30, 2008, and released February 1, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

### List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

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

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

### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 285C3 and adding Channel 268C3 at Peach Springs.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E8–3262 Filed 2–20–08; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 08–272; MB Docket No. 05–150; RM–11214]**

## Radio Broadcasting Services; Norfolk and Windsor, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, grant.

**SUMMARY:** This document grants a Petition for Reconsideration filed by CC Licenses, LLC, directed to the *Report and Order* in this proceeding. In doing so, it reallots Channel 299A from Windsor to Norfolk, Virginia, and modifies the Station WJCD license to specify Norfolk as the community of license. To replace the loss of a sole local service at Windsor, it also reallots Channel 287B from Norfolk to Windsor and modifies the Station WKUS license to specify Windsor as the community of license. The reference coordinates for the Channel 299A allotment at Norfolk, Virginia, are 36–55–26 and 76–15–05. The reference coordinates for the Channel 287B allotment at Windsor, Virginia, are 36–48–47 and 76–35–57. With this action, the proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Media Bureau (202) 418–2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Memorandum Opinion and Order* in MB Docket No. 05–150, adopted January 31, 2008, and released February 1, 2008. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.* On March 14, 2008, the Media Bureau's Consolidated Database System will reflect as the reserved assignment for Station WJCD, Channel 299A at Norfolk, Virginia in lieu of Windsor, Virginia, and the