(2) * * *

(ii) CCC = WER x (Chronic Conversion Factor) x (exp{m_c[ln(hardness)]+b_c})

* * * * *

[FR Doc. 01–3617 Filed 2–12–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 73, and 76

[MM Docket Nos. 94–150, 92–51, and 87–154; FCC 00–438]

[RIN 3060–AF82]

Attribution Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document concerns rules and policies for attributing cognizable interests in applying the broadcast multiple ownership rules, the broadcast-cable cross-ownership rule, and the cable-Multipoint Distribution Service cross-ownership rule. The intended effect of this action is to clarify and resolve issues raised in petitions for reconsideration pertaining to the application of the Commission's attribution rules.

DATES: Effective April 16, 2001. Written comments by the public on the proposed information collections are due April 16, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before April 16, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington DC 20554. A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and the Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Cyndi Thomas or Mania Baghdadi, Policy and Rules Division, Mass Media Bureau, at (202) 418–2120. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order on Reconsideration (''MO&O'')* in MM Docket Nos. 94–150, 92–51, and 87–154, FCC 00–438, adopted on December 14, 2000, and released on January 19, 2001. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B402, Washington DC. The complete text is also available under the file name fcc00438.doc on the Commission's Internet site at *www.fcc.gov.*

This MO&O contains either new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). The general public and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

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

OMB Approval Number: 3060–XXXX

Title: Reconsideration of Mass Media Attribution Rules, MM Docket Nos. 94–150, 92–51, and 87–154.

Form Nos.: FCC 301 (3060–0027), FCC 314 (3060–0031), FCC 315 (3060–0032), FCC 323 (3060–0010).

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,156.

Estimated Hours Per Response: 0.75 hours respondent; 2.0 hours contract attorney.

Frequency of Response: On occasion.

Estimated Costs to Respondents: $462,400.

Estimated Total Annual Burden: 867.

Needs and Uses: Among other things, the *MO&O* eliminates the single majority shareholder exemption for broadcast stations. This action will improve the precision of the Commission's attribution rules in identifying cognizable interests for purposes of its ownership rules. The Commission will revise the instructions for the FCC 301, FCC 314, FCC 315, and FCC 323 to conform to the new policy.

Synopsis of Memorandum Opinion and Order on Reconsideration

In this *MO&O,* the Commission grants, in part, and denies, in part, five petitions seeking reconsideration of the *Report and Order (''R&O'')* (64 FR 50622, September 17, 1999) released in this proceeding on August 6, 1999. In response to one petition, the Commission provides clarification on certain issues related to the newly adopted attribution rules. In the *R&O,* the Commission, in relevant part, eliminated its cross-interest policy and adopted the new equity/debt plus (EDP) rule, retained the single majority shareholder exemption, adopted rules that make interests in certain television local marketing agreements (LMAs) or time brokerage agreements attributable for purposes of the ownership rules, and established policies for grandfathering certain newly attributable interests. Commenters seek reconsideration of issues related to these actions. In addition, on its own motion, the Commission provides guidance on several issues that the petitioners did not raise, but that pertain to application of the EDP rule.

A. The Equity/Debt Plus Rule

1. Scope of the Rule

Background. The Commission adopted the EDP rule to address the concerns raised in the *Notice of Proposed Rulemaking (''NPRM'')* (60 FR 6483, February 2, 1995) and *Further Notice of Proposed Rulemaking (''FNPRM'')* (61 FR 67275, December 20, 1996), and in the record that its attribution rules did not address some interests, including multiple business and financial relationships that conveyed significant influence such that they should be attributed. For example, network affiliates had expressed concerns that attribution exemptions had permitted networks to extend their nationwide reach by structuring nonattributable deals in which the networks effectively exert significant influence, if not control, over licensees. The EDP rule is a targeted approach that balances the Commission's goal of maximizing the precision of the attribution rules by attributing only interests that are of concern, and its goals of not unduly disrupting capital flow, affording ease of administration, and providing certainty to regulatees. Specifically, the Commission applies a two-pronged test to determine whether an interest is attributable under the EDP rule. Under the first prong, the Commission asks whether the investor is either a major program supplier or a same-market media entity subject to the broadcast ownership rules. A program supplier that supplies over 15 percent of a station's total weekly broadcast programming hours is a ''major program supplier'' under the rule. An interest holder is considered a ''same-market media entity'' where it has an existing attributable interest under the Commission's attribution rules, other than the EDP rule, in a broadcast station, newspaper, or cable system, in a given market. The second prong looks at the extent of the financial interest. Any interest the major program supplier has in a station, to which it supplies programming, will be attributable under the EDP rule if the interest, aggregating both equity and debt, exceeds 33 percent of the total asset value of the station. Similarly, any interest the media entity has in another media entity in the same market will be attributable under the EDP rule if the interest, aggregating both equity and debt holdings, exceeds 33 percent of the total asset value of the additional media entity.

Discussion. The Commission reaffirms the EDP rule as adopted in the *R&O* and declines, at this time, to allow any general exemptions to the rule. The Commission will neither limit the scope of the EDP rule to major program suppliers, nor will the Commission limit the interests attributable under the EDP rule to equity investments only. As the Commission has stated, the intent of its local broadcast ownership rules is to protect competition and program diversity in local broadcast markets. The smaller audiences and fewer advertising dollars available in small broadcast markets limit the number of viable local broadcast stations in those markets. The need to protect incumbents' broadcast signal quality from interference from nearby stations limits the number of stations in all broadcast markets. These limitations on the entry of new broadcast stations make the protection of competition and diversity in local broadcast markets particularly important objectives of the Commission's ownership rules.

The function of the Commission's attribution rules is to define which interests will be counted in applying its ownership rules. The equity/debt approach is intended to resolve the Commission's concerns that multiple nonattributable business interests could be combined to exert influence over licensees. As a result, rather than applying its EDP rule to all investments in broadcasters in a single market, the rule is limited only to those relationships that afford the interest holder the incentive and means to exert influence or control over decisions regarding the core operations of broadcast stations. As the Commission stated in the *R&O*, this targeted approach balances its goal of maximizing the precision of the attribution rules by attributing only those interests that are of concern, and its equally significant goals of not unduly disrupting capital flow and of affording ease of administrative processing and reasonable certainty to regulatees in planning their transactions.

Applying the EDP rule to same-market media entities is based, in part, on economic studies that have shown that the partial co-ownership of otherwise competing local business entities can lead to a decrease in competition between those local businesses. For example, the owner of a broadcast station that also has a significant financial interest in another local broadcast station has an incentive and may have the opportunity to decrease the level of competition between the two stations by controlling or influencing management decisionmaking of the stations' operations. In the *R&O*, the Commission noted that a same-market media entity relationship affords the interest holder the incentive and means to exert this type of influence over licensees. Specifically, the Commission found that entities with existing local media interests may have an incentive and the means to use financing or contractual arrangements to obtain a degree of horizontal integration, within a particular market, that raises concerns because of the Commission's goal of

protecting local diversity and competition. The Commission therefore reaffirms its decision to include both same-market media entities and major program suppliers as the relationships that trigger the EDP rule.

Similarly, the Commission included debt under the EDP rule because the potential for certain creditors to exert significant influence over the core operations of a licensee, even though the creditors do not hold a direct voting or other equity interest, may undermine the diversity of voices the Commission seeks to promote. The Commission has found that, in many cases, it is no longer possible to classify investments strictly as ''equity'' or ''debt,'' and its has recognized the complexity of distinguishing debt from equity in cases where alleged debt obligations were found to be more properly characterized as equity. In the *R&O*, the Commission concluded that creditors may, through contractual rights and their ongoing right to communicate freely with the licensee, exert as much, if not more, influence or control over some corporate decisions as voting equity holders whose interests are attributable. Based on these same concerns, the Commission has found that debt interests are attributable both under its cable equity plus debt attribution rule, and also in determining eligibility for the New Entrant Bidding Credit under its competitive bidding procedures for commercial broadcast licenses. The Commission has not found that traditional *bona fide* debt by itself is attributable under its rules. The Commission does find, however, that significant debt relationships combined with other attributable interests in the same market, or a major program supplier's holding of significant debt in a licensee to which it supplies substantial amounts of programming, provide an incentive to influence or control key decisions concerning the debtor-station's operations.

Based upon the record in the *R&O*, the Commission found no reason to believe that the EDP rule would unduly curb investment in smaller, minority stations. The EDP rule does not preclude investment in any media entity, including minority and women-owned entities. In fact, the 33 percent threshold allows an investor to own up to one-third of a station's total assets without triggering the EDP rule. To help ensure that its actions do not unduly impede capital flow to broadcasting, the Commission raised the passive investor voting stock benchmark from 10 to 20 percent. As the Commission stated in the *R&O*, the function of its attribution rules is not to limit investment, but to identify influential interests over the core operations of a licensee that should be counted in applying the multiple ownership rules. The Commission's ownership rules, in turn, limit the extent of combined ownership based on its core policies of diversity and competition. Thus, if relaxation of ownership limits is warranted, those issues should be addressed through revision of the multiple and cross-ownership rules, not through redefinition of an attributable interest.

The commenter that raised the issue neither explains how the EDP rule will affect the transition to digital television or the ''spin off'' of broadcast stations, nor presents any evidence to support its concerns. In the *R&O*, the Commission stated that it would consider individual rule waivers in particular cases where substantial evidence is presented that the conversion to digital television would otherwise be unduly impeded or that a waiver would significantly expedite DTV implementation in that particular case. The Commission therefore reaffirms its decision to include debt interests in applying the EDP rule.

Asserting that the EDP rule will have inconsistent regulatory effects depending on the capitalization of broadcast companies, one commenter would quarrel with the Commission's focus on total assets. The Commission focused on total assets rather than looking at equity and debt separately because separate consideration could lead to distortions in applying the EDP rule depending on the percentage of total assets that each class of interests comprises. That the rule may advantage equity holders in entities with large debt interests does not undermine the basis of the EDP rule. As the Commission has explained, the EDP rule examines both equity and debt interests that are otherwise nonattributable to limit the ability of same market media entities and major program suppliers to circumvent the attribution rules by using those interests to gain significant influence over the licensee.

Commenters further argue that the rule is vague and overly broad, contending that the EDP rule could result in an attributable interest where no likelihood of control would exist, producing a lack of clarity in the rule that will cause problems both for licensees attempting to discern attributable interests and for the Commission attempting to administer the rule; and the Commission has not explained how an investment that is less than controlling can harm the public interest or competition in the marketplace. One commenter also asserts that the Commission has not demonstrated that the 33 percent threshold is appropriate, while another opposes adopting a more lenient threshold.

The Commission reiterates that attribution extends to relationships that permit significant influence over the core operations of a licensee, not just to investments that constitute controlling interests or that exceed 50 percent of the ownership of an entity. Shareholders with voting stock interests amounting to 5 percent or more may not have actual control over the management and operations of a licensee, but the Commission has set the voting equity benchmark at 5 percent or more because those shareholders have a realistic potential to exert significant influence or control over the licensees in which they invest. For example, a shareholder with voting stock interests that exceed the benchmark can influence the selection of board members through mechanisms such as proxy fights and, therefore, exert influence on the management of a licensee's operations.

In addition, as the Commission explained in the *R&O*, debt-holders or preferred stockholders, which do not have voting rights, might exert significant influence through contractual rights or other methods of access to a licensee. For example, an agreement entered into in conjunction with preferred stock might grant the holder the right to select the persons who will run for the board of directors. Based on its concern that multiple, substantial business interests could be combined to exert influence over licensees, the Commission determined that nonattributable interests held by major program suppliers and same-market media entities should be subject to limitation by the multiple ownership rules. Thus, the Commission's attribution rules are applicable where an interest holder has a realistic potential to affect the programming decisions or other core operating functions of a licensee.

The Commission also reaffirms the 33 percent investment threshold under the EDP rule for the reasons stated in the *R&O*. The Commission adopted the 33 percent benchmark, in part, based on its previous experience of using a 33 percent threshold in the context of applying the cross-interest policy. The Commission found it an appropriate and reasonable threshold to use in applying the EDP rule and noted that applying a 33 percent threshold had not had a disruptive effect in the context of the cross-interest policy. The Commission found that a 50 percent threshold would be inappropriately high and that the

thresholds of 25 percent or 10 percent would be too low. In exercising its broad discretion to set the threshold, the Commission was guided by its goal of attributing not only interests with the potential to control, but also those interests that convey a realistic potential to exert significant influence. The Commission reiterates, however, that while it will use this threshold in applying the EDP rule now, it may adjust the benchmark in the future, if evidence is provided that would warrant an adjustment.

One commenter asks the Commission effectively to review cases individually under the EDP rule by expanding the EDP rule to attribute any relationship that permits an entity to exert significant influence or control over the programming, management, or budgetary decisions of a licensee. The EDP rule takes into consideration an entity's participation in programming and is designed to make attributable debt or nonvoting equity interests that have the ability to influence a station's core management decisions. The Commission notes that the EDP rule may also result in attribution of interests that would otherwise be nonattributable by limiting the availability of the insulated limited partner, *bona fide* debt, and nonvoting stock attribution exemptions.

The Commission notes that in the *NPRM* in this proceeding, it invited comment on whether to adopt a case-by-case review of applications to address its concerns about whether the combination of nonattributable interests and business relationships in a particular case could create significant influence so as to warrant attribution. The Commission sought comment as to whether the burdens and uncertainty created by individual case review would be outweighed by the benefits of addressing its concerns in this area in the context of specific factual situations. Based on its review of the comments filed in response to the *NPRM*, and in response to individual cases at that time, the Commission rejected the case-by-case approach in the *FNPRM*. Instead, the Commission proposed the EDP rule as a ''balanced, specifically tailored approach that would focus the rules more precisely on those relationships that potentially permit significant influence such that they should be attributed.''

In ultimately rejecting case-by-case review and adopting the EDP rule in the *R&O,* the Commission found that the benefits of applying a rule that provides, to the greatest extent possible, regulatory certainty and eases application processing, outweighed the arguably increased accuracy that a case-by-case approach might afford. Indeed, a case-by-case approach might lead to lengthy fact-specific decisions of limited applicability and substantial processing difficulties and delays, impeding its goal of rapidly reviewing transactions and speeding new service to the public. Such a result would disserve the public interest. The Commission therefore believes that the bright-line EDP rule is superior to a case-by-case approach. Accordingly, the Commission denies the request to adopt a routine case-by-case approach to attribution. As it stated in the *R&O,* however, the Commission retains the discretion to review individual cases that present unusual issues and apply attribution on a case-by-case basis where it would serve the public interest to do so. The Commission finds that such discretion ensures a sufficient safety valve for unusual issues or cases that may arise.

Two petitioners seek general exemptions from the EDP rule. One petitioner asks the Commission to amend the EDP rule to make an exception for banks and other lending institutions, asserting that the EDP rule will detrimentally affect a lending institution's ability to invest in media companies because various arms of any big bank operate independently, and these independent groups may finance different broadcasters in the same market.

As it stated in the *R&O,* the Commission believes the EDP rule will not significantly curb investment in broadcast stations. The Commission finds no basis on which to distinguish banks or other lending institutions from other investors in media entities under the EDP rule. Under the Commission's attribution rules, commercial banks, including their venture capital subsidiaries, are treated as active investors. The Commission treats only the trust departments of banks as passive investors under its voting stock benchmark. Indeed, the EDP rule places no more restrictions on lending institutions, with respect to investment or foreclosure, than on any other type of entity interested in investing in a media entity. Similarly, the petitioner has not provided evidence that a large bank's obligation to track its investments for purposes of attribution differs from any other investor's obligation to do the same.

The petitioner cites the Right to Financial Privacy Act (RFPA), 12 U.S.C. 3401 *et seq.,* to suggest that the EDP rule might force lending institutions to disclose private borrower information in violation of financial privacy laws. Congress enacted the RFPA to provide individuals with some privacy rights in financial records that are in the hands of third parties. Among other things, the RFPA defines the conditions under which financial institutions may disclose an individual's financial records and the conditions under which government officials may access an individual's financial records. The RFPA also provides a civil cause of action for anyone injured by a violation of the act's substantive provisions. Applications for construction permits, applications for consent to assignments, as well as applications for consent to transfers of control of broadcast stations must list: (1) Each party to the application whose ownership or positional interest in the applicant is attributable; (2) that party's citizenship; (3) the basis on which the interest is considered attributable, *e.g.,* positional interest or investor attributable under the EDP rule; (4) the party's percentage of votes; and (5) the party's percentage of total assets in the station. The applications require information about the corporate or partnership structure of parties holding attributable interests and information on which the interests are deemed attributable. The applications do not inquire into the party's financial structure or amounts of loans involved in station acquisitions. Similarly, ownership reports do not require any information regarding financing or loan amounts. The petitioner does not explain how the information required in applications, or other forms, much less how the EDP rule itself, might cause lending institutions to violate privacy rights under the RFPA or any other law. In any event, if it is shown that materials filed with the Commission contain financial data that would customarily be guarded from competitors, its rules provide that the materials will not be made routinely available for public inspection.

Another petitioner asks the Commission to make certain exceptions to the EDP rule where the interest is held in a socially and economically disadvantaged small business concern (SDB). The governing statute for the Small Business Administration defines SDBs as businesses where the majority owners' race or ethnicity has impaired the owners' ability to obtain capital or credit for their businesses, and therefore impaired the businesses' ability to compete. At this time, the Commission shall defer consideration of MMTC's request to create certain exemptions for SDBs. The Commission has sponsored fact-finding studies as to whether preferences based on minority status may be justified consistent with the

Supreme Court's decision in *Adarand Constructors* v. *Pena,* 515 U.S. 200 (1995). When the results of these studies have been evaluated, the Commission may initiate future proceedings in this area, as warranted.

2. Clarification of the Definition of ''Total Assets'' and the Requirement of Continuing Compliance

Background. The EDP rule examines whether an interest holder has more than 33 percent of the total assets of a licensee or other media entity. In the *R&O,* the Commission defined total assets as the sum of all debt plus all equity. The Commission defined debt under the EDP rule to include all liabilities, whether short-term or long-term. Equity includes common or preferred stock, whether voting or nonvoting, as well as equity held by insulated limited partners in limited partnerships. The Commission also stated that it would require parties to maintain compliance with the attribution criteria as any changes in a firm's assets occur. Where sudden, unforeseeable changes take place, the Commission stated that it would afford parties a reasonable time, generally one year, to come into compliance with any ownership restrictions made applicable as a result of the change in attributable status.

Discussion. One petitioner asks the Commission to clarify what is included in the definition of ''total assets'' under the EDP rule. Initially, the Commission clarifies that it will include all equity, in whatever manner or amount the debt or equity is held, in computing whether an interest exceeds the EDP rule's 33 percent benchmark. For example, the Commission will include stock, non-stock, partnership or any other form of equity in the calculation. The Commission will also include all short-term and long-term debt liabilities, in whatever manner or amount the debt is held, in computing whether an interest exceeds the EDP rule's 33 percent benchmark.

Rather than itemizing what is included in the definition of ''total assets,'' the Commission clarifies that, for purposes of the EDP rule, an applicant may base the valuation of a station on either the book value as defined under standard financial accounting practices, or some other value, including the fair market value, provided the valuation is reasonable. In relying upon the book value, fair market value, or other reasonable value of a station, the applicant must use the valuation relevant at the time the application or ownership report is filed. If the issue arises in connection with a transfer or assignment application or an ownership report filed after consummation of a transfer or assignment, the applicant must use the sales price of that transfer or assignment as the total asset value. The Commission finds that clarifying the definition of total assets to include the foregoing reasonable methods of valuing a station's total assets for purposes of the EDP rule will provide applicants flexibility to use the most accurate valuation of the station at the time an application or ownership report is filed. The Commission may need to review an applicant's basis for computing its valuation where petitions are filed against the application. As a result, an applicant should retain the documentation on which it computes the value of the station so that it can produce the documentation as needed.

One petitioner asks the Commission to clarify when equity and debt interests that change over time should be evaluated for purposes of the EDP rule. The Commission reaffirms that parties must maintain compliance with the attribution criteria as any changes in a firm's assets occur. As noted in the *R&O,* where sudden, unforeseeable changes take place, the Commission will afford parties a reasonable time, but no more than 12 months from the time the unforeseen change occurred, to come into compliance with any ownership restrictions made applicable as a result of the change in attributable status. The Commission further notes that the scheduled repayment of loans is clearly not an ''unforeseeable'' or sudden event.

3. Clarification of Other EDP Issues

In addition to the issues that the petitioners raise in their petitions for reconsideration, the Commission notes that certain other issues have arisen with respect to the application of the newly adopted EDP rule. While none of the petitioners formally sought clarification on these particular issues, the Commission determines that it is in the public interest and serves its goals of promoting clarity and certainty under its regulations to provide guidance, on its own motion, on four issues.

a. Options, Warrants, and Loan Guarantees. Initially, the Commission considers how to apply the EDP rule to options, warrants, and loan guarantees. *Bona fide* debt, including a guarantee for a loan, is not ordinarily attributable under its rules. In addition, options, warrants, and other nonvoting interests with the right of conversion to voting interests are not ordinarily attributable until the conversion is effected. In the *R&O,* however, the Commission explained that the EDP approach would focus on those relationships that afford the interest holder the incentive and means to exert influence over the core operations of a licensee. For example, substantial investors or creditors that do not hold a direct voting interest may have the incentive and means, through contractual arrangements with the licensee, to exert as much, if not more, influence over some corporate decisions as voting equity holders whose interests are attributable. The Commission amended its rules to provide that where a major program supplier or same-market media entity holds a substantial financial interest in a licensee exceeding 33 percent of the total assets, that interest is attributable. In addition, the Commission amended its rules making the exemption of certain contractual arrangements, including debt and unexercised options and warrants, subject to the EDP rule.

Until exercised, options and warrants do not convey the underlying interest they entail, but they do constitute assets that are sold for consideration. Accordingly, the Commission will include the amount of consideration paid for the option or warrant in determining whether the option or warrant holder's interest is attributable under the EDP rule, and it will include any security deposit or financial contribution made by a guarantor for the guarantee of a loan in determining whether the guarantor's interest is attributable under the EDP rule. As noted, the Commission wishes to establish, so far as possible, a bright-line test that avoids the uncertainty of case-by-case review, and to premise the EDP rule on whether the extent of a financial interest is significant and is coupled with a relationship between the investor and the licensee that gives the investor an incentive to exert influence. Thus, the Commission clarifies that it will add any consideration or other amounts paid for options or warrants to any other equity or debt investment the holder has in a licensee. Similarly, it will include any financial contributions made by a guarantor, including amounts placed into escrow as security for a loan guarantee or amounts otherwise made in connection with the guarantee, to any other equity or debt investments the guarantor has in a licensee. In all cases, the Commission will then divide that aggregated amount by the total asset value of the licensee to determine whether the option or warrant holder's interest exceeds the 33 percent benchmark.

b. The Multiplier Rule. The Commission also clarifies, on its own motion, that it will use a ''multiplier'' in applying the EDP rule to indirect

interests held in licensees. The Commission has traditionally used a multiplier under its attribution rules to determine the ownership interest of a party whose interest is held through intervening corporate entities. Specifically, attribution ownership interests in a broadcast licensee, cable television system, or daily newspaper that are held indirectly by a party through one or more intervening corporations are determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain. Under the Commission's pass-through exception, however, a link in the ownership chain that represents a percentage interest exceeding 50 percent is treated as a 100 percent interest, when calculating the successive links in the ownership chain. The Commission also notes that in calculating the foreign ownership of a licensee or its parent under Section 310(b) of the Communications Act, as amended, it multiplies the percentage of interest held by each foreign investor in the successive links of the ownership chain, regardless of the amount of equity the foreign investor holds.

As the Commission does under its attribution rules in calculating whether an interest exceeds the voting stock benchmark in a corporation, the Commission will multiply the successive links in the vertical ownership chain of a licensee or other media entity to determine whether an indirect interest in the licensee or other media entity is attributable under the EDP rule. Specifically, the Commission will multiply the successive percentage interests, aggregating both equity and debt, in each intervening entity where a party holds an indirect interest in the licensee or other media outlet. Rather than applying the pass-through exception in determining whether an interest is attributable under the EDP rule, however, the Commission will multiply the percentage interest even where the interest in the link exceeds 50 percent.

In adopting the use of a multiplier, the Commission concluded that multiplication of successive interests would more realistically reflect a party's attenuated interest in a licensee where there are intervening corporations. The Commission established the pass-through exception to reflect the *de jure* control, rather than the *de facto* control, an entity might have over a licensee. Because the EDP rule applies not only to voting equity, but also to nonvoting equity and debt, the Commission will not employ the pass-through exemption to determine which interests are attributable under the EDP rule. The Commission made this same determination in the context of foreign ownership. Accordingly, the Commission will multiply the successive interests, aggregating both equity and debt, in each intervening entity, even where the interest exceeds 50 percent, to determine whether an indirect interest in a licensee is attributable under the EDP rule. The Commission also clarifies that it will use the multiplier not only in applying the EDP rule to corporations, but also to financial interests in partnerships, limited liability companies, or any other type of organizational form.

c. Interests in Multiple Stations. The Commission next clarifies how the EDP rule is applied where an investor holds an interest in an entity that owns several stations in one market or multiple stations in several markets. The issue of how to apply the EDP rule may arise, for example, where the investor holds a nonvoting financial interest amounting to over 33 percent of the total asset value of the entity that owns or is the licensee of the multiple stations. If the investor's interest is nonvoting stock, debt, an insulated limited liability company or limited partnership interest, the interest would not be attributable under the Commission's non-EDP attribution rules. If, however, the investor is either a major program supplier to a station owned by the multiple-station owner, or has a non-EDP attributable interest in another station in the same market in which the multiple-station owner owns a station, the issue arises whether the investor has, under the EDP rule, an attributable interest in all of the stations owned by the multiple-station owner. Such an issue might also arise in a case where a voting stock interest in the entity is non-attributable under the single majority shareholder exemption because the exemption is grandfathered, as discussed below.

The Commission clarifies that the investor in the foregoing case will not automatically hold an attributable interest under the EDP rule in all of the stations or media outlets owned by or licensed to the multiple-station owner. Rather, the investor will have an attributable interest under the EDP rule only in those stations or media outlets owned by or licensed to the multiple-station owner where the investor meets the triggering relationship prong of the EDP rule, *i.e.,* the investor is a major program supplier to a station owned by the multiple-station owner, or the investor is a same-market media entity. Specifically, an investor will have an attributable interest, under the EDP rule, in any station that is owned by or licensed to a multiple-station owner and to which the investor supplies over 15 percent of the station's total weekly broadcast programming hours. An investor will also have an attributable interest under the EDP rule in a station or media outlet owned by or licensed to the multiple station owner that is in the same market as a station or media outlet in which the investor also has an attributable interest under the Commission's non-EDP attribution rules.

d. Officers and Directors. The Commission clarifies how it will apply the EDP rule to officers and directors. In doing so, the Commission follows established precedent. Under the Commission's attribution rules, the officers and directors of a parent company of a broadcast licensee, cable television system, or daily newspaper, with an attributable interest in any subsidiary entity, are deemed to have a cognizable interest in the subsidiary. The Commission will apply the same principle under the EDP rule. Each director or officer is individually attributed with the company's full equity and debt interests for purposes of applying the EDP rule. Where an entity has a financial interest in a licensee, its officers or directors will be deemed to hold that same financial interest. The Commission will not, however, treat an officer's or director's investment in a media entity as the company's investment for the purpose of applying the EDP rule.

B. Single Majority Shareholder Exemption

Background. Under the single majority shareholder exemption from attribution, in a corporation in which a single shareholder owns more than 50 percent of the voting stock of the corporation, the interests of minority shareholders are not attributable. In the *R&O,* the Commission intended that the EDP rule would limit the availability of the single majority shareholder exemption. Thus, for example, if a minority shareholder's financial interest in a licensee amounts to over 33 percent of the licensee's total asset value and the minority shareholder is either a major program supplier to the licensee or a same-market media entity, the minority shareholder's interest would be attributable under the EDP rule, even if the licensee has a single majority shareholder. The Commission declined, in the *R&O,* to eliminate the single majority shareholder exemption for broadcast stations, while the Commission eliminated the exemption from its general cable attribution rules.

Discussion. One petitioner asks the Commission to eliminate the single majority shareholder exemption for broadcasters, arguing that it is arbitrary and capricious to eliminate the exemption for cable systems and not for broadcast stations. The Commission grants the request. In the *Cable Attribution Report and Order* (64 FR 67193, December 1, 1999), the Commission concluded that the single majority shareholder exemption should be eliminated because of its concern ''that a minority shareholder may be able to exert influence over a company even where a single majority shareholder exists.'' The Commission generally found in that proceeding no evidence that differences in ownership, financing, or management structures between the cable and broadcast industries warrant creating an attribution standard for applying the cable horizontal ownership, or other cable rules, that is different than the standard the Commission uses in applying the broadcast multiple ownership rules. Thus, the Commission sees no rational basis to distinguish between cable and broadcasting that would justify eliminating the exemption for the cable ownership rules while retaining it for the broadcast ownership rules.

In addition to resolving the apparent inconsistency that resulted from the Commission's decision to eliminate the single majority shareholder exemption in the cable context, eliminating this exemption from the broadcast attribution rules would promote one of its primary goals in this proceeding: to improve the precision of its attribution rules in identifying cognizable interests for purposes of its ownership rules. In adopting the single majority shareholder exemption in 1984, the Commission reasoned that minority interest shareholders ''would be unable to direct the affairs or activities of the licensee on the basis of their shareholdings'' where a single majority shareholder controls the corporation. The Commission therefore determined that these minority interests would not be deemed cognizable for purposes of the multiple ownership rules.

In this proceeding, as in the cable attribution rulemaking, the Commission has repeatedly stated that its attribution rules are designed to identify not only interests that enable an entity to control a company, but also interests that give an entity the potential to exert significant influence on a company's major decisions, even if the entity cannot control the company. Minority shareholders may not be able to control the affairs or activities of licensees, but, in certain circumstances, they clearly have the potential to influence a licensee's actions. Although the influence of a minority shareholder may be diminished somewhat where a single majority shareholder controls the licensee, the Commission has no reason to believe that the minority shareholder's influence is eliminated or so attenuated in such circumstances that the Commission should ignore its ownership interest for purposes of its ownership rules. Accordingly, the Commission will amend Note 2 of § 73.3555 of its rules to eliminate the single majority shareholder exemption from the broadcast attribution rules.

The Commission further concludes that the single majority shareholder exemption will no longer apply to minority interests acquired on or after the adoption date of this *MO&O.* Accordingly, any minority interests in a company with a single majority shareholder will be grandfathered if the interest was acquired before the adoption date of this *MO&O.* Grandfathering of these minority interests will be permanent until the grandfathered interest is assigned or transferred. The Commission notes, however, that grandfathered minority interests in companies with single majority shareholders remain subject to the EDP rule.

C. LMA Attribution and Filing Requirements

Background. An LMA or time brokerage agreement is a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill the time and sells the commercial spot announcements to support the programming. In the *R&O,* the Commission adopted attribution rules for television LMAs. Specifically, an intra-market television LMA is *per se* attributable if the LMA involves more than 15 percent of a brokered station's weekly broadcast hours. In contrast, the Commission will not attribute television time brokerage agreements between stations in different markets, unless the agreements come under the EDP rule. Specifically, an inter-market television LMA is attributable only if the broker supplies more than 15 percent of a station's programming (*i.e.,* the broker is a major program supplier), and it has a financial investment that is more than 33 percent of the brokered station's total asset value. The Commission also decided to attribute intra-market radio LMAs for purposes of applying all of its multiple ownership rules that are applicable to radio stations, not just the radio duopoly rule, as in the past.

In the *R&O,* the Commission decided to review the issue of grandfathering existing intra-market radio LMAs on a case-by-case basis. Specifically, the Commission concluded that it would consider the issue of grandfathering radio LMAs whose attribution as of November 16, 1999, the effective date of the newly adopted rules, resulted in ownership violations. The Commission further concluded that any interest, other than intra-market radio and television LMAs, newly attributable under the rules that would result in violations of the ownership rules, would be grandfathered if the triggering interest was acquired before November 5, 1996, the date of the *FNPRM* in this proceeding. The Commission determined that grandfathering would apply only to the current holder of the attributable interest, and if the grandfathered interest was later assigned or transferred, new owners would be given one year to come into compliance with the multiple ownership rules. Non-grandfathered interests, except for non-grandfathered intra-market television LMAs, must be divested to comply with the Commission's multiple ownership rules within twelve months of the date of adoption of the *R&O.* The Commission requires the licensee that is the brokering station to file with the Commission, within 30 days of execution of a time brokerage agreement, a copy of any such agreement, redacted as necessary, that would result in the arrangement being attributed.

Discussion. One petitioner asks the Commission to deem unlawful LMAs entered into after August 6, 1999, the date the *R&O* was released, arguing that LMAs are an unlawful evasion of the ownership rules that hinder diversity and competition and are no longer necessary with adoption of the revised duopoly rule; the grandfathering plan for existing LMAs protects existing equity interests; and suggests that LMAs entered into after August 6, 1999, may have been entered into to bypass the Commission's transfer or assignment authorization requirements or to prevent a competitor from obtaining a transfer. Another petitioner urges the Commission to reject the request because the Commission has already found that the record shows that a number of television LMAs have resulted in public interest benefits.

The Commission made no finding in the *R&O* that LMAs are *per se* unlawful as of any date. The Commission's newly adopted attribution rules do not preclude parties from entering into LMAs. Rather, the Commission

amended its rules to make intra-market LMAs and some inter-market LMAs attributable for purposes of its broadcast ownership rules. Some LMAs are grandfathered, while interests in others may need to be divested. Parties may still enter into LMAs with the understanding that they may be subject to applicable ownership rules. Nothing suggests that Congress intended the Commission to deem *per se* unlawful all LMAs entered into after a certain date. Indeed, in the Conference Report on Section 202(g) of the Telecommunications Act of 1996, the conferees recognized ''the positive contributions of television LMAs.'' The Commission finds no reason to reconsider its decision that LMA interests may be attributable under its newly adopted rules, but that LMAs are not unlawful.

One petitioner also urges the Commission to require all existing LMAs, not just attributable LMAs, to be filed with the Commission. The Commission will not change the filing requirements for LMAs as adopted in the *R&O.* The attribution rules impose an affirmative obligation on licensees to determine whether a particular LMA is attributable and, if it is, to file the agreement with the Commission. Commercial radio and television licensees must also maintain copies of time brokerage agreements in their local public inspection files. As the Commission stated in the *R&O,* it believes a licensee's affirmative obligation in combination with its filing requirements will subject LMAs to sufficient scrutiny by competitors, the public, and the Commission. The Commission therefore reaffirms the requirement that brokering stations must file redacted copies of attributable LMAs with the Commission within 30 days of execution of the agreement.

D. Cross-Interest Policy

Background. The cross-interest policy has been applied to preclude individuals or entities from holding an attributable interest in one media property (broadcast station, newspaper, cable system) and having a ''meaningful'' albeit nonattributable interest in another media entity serving ''substantially the same area.'' In the *R&O,* the Commission eliminated the cross-interest policy.

Discussion. One petitioner asks the Commission to reconsider its decision to eliminate the cross-interest policy, contending that the Commission has not explained why the policy should not be retained in small and medium markets and arguing that the Commission has failed to consider the impact of its decision on diversity. The petitioner argues that repeal of the cross-interest policy may result in allowing business combinations and relationships, that were not permitted under the cross-interest policy, that are not covered by the EDP rule, and that are not addressed by other rules and remedies referenced by the Commission in its *R&O.*

The Commission declines to reconsider its decision to eliminate the cross-interest policy. Its decision in the *R&O* to eliminate the cross-interest policy was based on its judgment that the regulatory costs and chilling effects of administering the cross-interest policy and the benefits of applying clear ownership and attribution standards outweigh any risks of abuses in eliminating the policy. As the Commission noted, the cross-interest policy did not prohibit the relationships it covered outright, but required an *ad hoc* determination as to whether the relationships at interest would be permitted. The Commission determined that the public interest would be better served by administering, to the greatest extent possible, bright line tests with respect to attribution and ownership rather than case-by-case determinations, which delay processing and involve public and regulatory costs. The Commission did not base its conclusion simply on the increased certainty that a rule-based proscription provided. Rather, the Commission carefully reviewed the interests typically addressed by the cross-interest policy and included within the ambit of the new rules those interests that the Commission concluded warranted continued limitation. Most obvious among these is the consideration of nonvoting equity and debt interests under the Commission's EDP standard.

In short, the Commission's attribution tests were based on its best judgment, after a review of the record, as to what relationships should count in terms of administering the ownership rules. The ownership rules, in turn, are based on the Commission's competition and diversity analysis. The local ownership rules do take into account the nature and size of the market. Further, the Commission also retained discretion, in an appropriate case, ''to review individual cases that present unusual issues on a case-by-case basis where it would serve the public interest to conduct such a review.'' Administering regulatory procedures that are, to the greatest extent possible, clear and consistent is an important aspect of the public interest.

Procedural Matters

Authority for issuance of this *MO&O* is contained in Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405.

Paperwork Reduction Act Analysis. This *MO&O* contains either new or modified information collections. The Commission, therefore, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collections contained in this *MO&O* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 60 days from date of publication of this *MO&O* in the **Federal Register**. Comments should address: (a) Whether the new or modified 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 to filing comments with the Secretary, a copy of any comments on the information collections in this *MO&O* should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room 1–C804, Washington, DC 20554, or over the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or over the Internet to *edward.springer@omb.eop.gov.*

Supplemental Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible impact on small entities of the rules adopted in the *MO&O.* The Supplemental FRFA is set forth in the *MO&O.*

Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* and the *FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM* and *FNPRM,* including comment on the

IRFAs. The comments received were discussed in the Final Regulatory Flexibility Analysis (FRFA) contained in the *R&O* in this proceeding. As described below, this *MO&O* grants reconsideration of one action taken in the *R&O* and provides clarification of other issues. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) addresses the rule modifications on reconsideration and conforms to the RFA.

Need for, and Objectives of, the Memorandum Opinion and Order

The attribution rules seek to identify those interests in licensees or media entities that confer on their holders a degree of influence or control such that the holders have the potential to affect the programming decisions of licensees or other core operating functions. The attribution rules are used to implement the Commission's broadcast multiple ownership rules. The Commission's goals in this proceeding are to improve the precision of the attribution rules, avoid disruption in the flow of capital to broadcasting, afford clarity and certainty to regulatees and markets, and facilitate application processing. While its focus is on the issues of influence or control, the Commission must also tailor the attribution rules to permit arrangements where an ownership or positional interest involves minimal risk of influence to avoid unduly restricting the means by which investment capital may be made available to the broadcast industry. The rule revisions and clarifications contained in this *MO&O* meet these goals.

Summary of Significant Issues Raised by the Public

The comments in response to the IRFAs that addressed small business issues were discussed in the FRFA contained in the *R&O* in this proceeding. We received no petitions for reconsideration in direct response to that FRFA. In its petition for reconsideration, however, the Office of Communications, Inc. of United Church of Christ *et al.* (UCC) asked the Commission to eliminate the single majority shareholder exemption for broadcast stations, arguing that it is arbitrary and capricious to eliminate the exemption for cable systems and not broadcasters. Under the single majority shareholder exemption from attribution, in a corporation in which a single shareholder owns more than 50 percent of the voting stock of the corporation, the interests of minority shareholders are not attributable. The Commission grants UCC's request, finding no rational basis to distinguish between cable and broadcasting that would justify eliminating the exemption for the cable ownership rules while retaining it for the broadcast ownership rules. Any minority interest in a company with a single majority shareholder will be grandfathered if the interest was acquired before the adoption date of this *MO&O.* Grandfathered minority interests in companies with single majority shareholders, however, remain subject to the equity/debt plus (EDP) rule.

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

The rules revisions contained in this *MO&O* will apply to full service television and radio licensees and permittees, potential licensees and permittees, cable services or systems, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service, and newspapers. These entities are discussed in detail in the FRFA contained in the *R&O* at Section III.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *MO&O* clarifies various aspects of the EDP rule adopted in the *R&O.* One clarification is to use the ''multiplier'' in calculating an EDP interest. Specifically, the Commission will multiply the successive percentage interests, aggregating both equity and debt, in each intervening entity where a party holds an indirect interest in the licensee or other media outlet. In calculating an EDP interest, however, the Commission will not apply the pass-through exception, which applies to indirect voting stock interests in corporations where a link in the ownership chain that represents a percentage interest exceeding 50 percent is treated as a 100 percent interest. Thus, the Commission will multiply successive interests for purposes of EDP, even where the interest exceeds 50 percent. The decision not to apply the pass-through exception is less restrictive than the traditional application of the multiplier on all entities, including small businesses.

The *MO&O* also eliminates the single majority shareholder attribution exemption. Elimination of the single majority shareholder attribution exemption does not affect grandfathered small entities. Elimination of the single majority shareholder exemption does not affect the Commission's ownership reporting requirements. The reporting requirements for non-grandfathered licensees may increase, however, because those licensees will be required to report interests that are newly attributable as a result of elimination of the exemption. Those entities are already required to file ownership reports with the Commission, so any additional cost associated with this reporting requirement is nominal.

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

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.

Under the Commission's pass-through exception to the multiplier rule, a link in the ownership chain that represents a percentage interest exceeding 50 percent is treated as a 100 percent interest, when calculating the successive links in the ownership chain. The *MO&O* clarifies that the Commission will not apply the pass-through exception in using the multiplier to calculate interests under the EDP rule. An alternative to this decision is to apply the pass-through exception for purposes of EDP, which would make the calculation of attributable EDP interests as restrictive on all entities, including small businesses, as those calculated under the traditional application of the multiplier.

The *MO&O* eliminates the single majority shareholder attribution exemption. To minimize the disruptive effect of this attribution rule change, the *MO&O* grandfathers entities, subject to the EDP rule, relying on the single majority shareholder exemption whose interests were acquired before the adoption date of the *MO&O.* An alternative to eliminating the exemption would be to leave the rule as is. In addition to the prior decision to eliminate the exemption for cable operators, however, the Commission believes that eliminating the exemption from the broadcast attribution rules will promote one of its primary goals to improve the precision of the

Commission's attribution rules in identifying cognizable interests for purposes of the ownership rules.

Report to Congress: The Commission will send a copy of the *MO&O,* including this Supplemental FRFA, in a report to be sent to Congress pursuant to SBREFA. In addition, the Commission will send a copy of the *MO&O,* including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

The petitions for reconsideration or clarification are granted to the extent provided herein and otherwise are denied pursuant to sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405, and § 1.429(i) of the Commission's rules, 47 CFR 1.429(i).

Sections 4(i) & (j), 303(r), 307, 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) & (j), 303(r), 307, 308 and 309, parts 21, 73, and 76 of the Commission's rules, 47 CFR. Parts 21, 73, 76, are amended as set forth in the *MO&O.*

The rule amendments set forth in the *MO&O* shall be effective sixty days after publication in the **Federal Register**.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *MO&O* in MM Docket Nos. 94–150, 92–51, and 87–154, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

The new or modified paperwork requirements contained in this *MO&O* (which are subject to approval by the Office of Management and Budget (OMB)) will go into effect upon OMB approval.

This proceeding is hereby terminated.

List of Subjects in

47 CFR Part 21

Multipoint distribution service.

47 CFR Part 73

Television broadcasting, Radio broadcasting.

47 CFR Part 76

Cable television service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons set forth in the preamble, Parts 21, 73, and 76 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 47 U.S.C. 552, 554.

2. Section 21.912 is amended by:

a. Designating Note 1 as ''Note 1 to § 21.912'';

b. Removing Note 1(b);

c. Redesignating Notes 1(c) through Notes 1(l) as Notes 1(b) to § 21.912 through Note 1(k) to § 21.912;

d. Revising newly redesignated Note 1 (c) to § 21.912 and Note 1(e) to § 21.912;

e. Revising the first and second sentence of newly redesignated Note 1(f)(2);

f. Revising newly redesignated Note 1(h)(3);

g. Revising the introductory text to newly redesignated Note 1(i), and revising redesignated Note 1(i)(2); and

h. Designating Note 2 as ''Note 2 to § 21.912''.

The revisions and deletion read as follows:

§ 21.912 Cable television company eligibility requirements and MDS/cable cross-ownership.

* * * * *

Note 1 to § 21.912: * * *

* * * * *

(c) Attribution of ownership interests in an MDS licensee or cable television system 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 an MDS licensee or cable television system 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 x 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 x 0.25) and A's interest in ''Licensee'' would be 1.5% (0.1 x 0.6 x 0.25). Neither interest would be attributed under paragraph (i) of this note.]

* * * * *

(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) * * *

(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 MDS or cable television 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 MDS or cable television activities of the LLC or RLLP. * * *

* * * * *

(h) * * *

(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 an MDS licensee or cable television system subject to the MDS/cable cross-ownership rule (''interest holder'') shall have that interest attributed if:

* * * * *

(2) The interest holder also holds an interest in an MDS licensee or cable television system that is attributable under paragraphs of this note other than this paragraph (i) and which operates in any portion of the franchise area served by that cable operator's cable system.

* * * * *

PART 73—RADIO BROADCAST SERVICES

3. The authority citation for Part 73 continues to read as follows:

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

4. The notes following § 73.3555 are amended by:

a. Designating Note 1 as ''Note 1 to § 73.3555'';

b. Designating Note 2 as ''Note 2 to § 73.3555'';

c. In Note 2 to § 73.3555 remove paragraph (b);

d. In Note 2 to § 73.3555 paragraphs (c) through (k) are redesignated as paragraphs (b) through (j);

e. In Note 2 to 73.3555 revise newly redesignated paragraphs (c) and (e);

f. In Note 2 to § 73.3555 revise newly redesignated paragraph (f)(2);

g. In Note 2 to § 73.3555 revise newly redesignated paragraph (h)(3);

h. In Note 2 to § 73.3555 revise the introductory text to newly redesignated paragraphs (i), and (i)(2)(i);

i. Designating Note 3 as ''Note 3 to § 73.3555'';

j. Designating Note 4 as ''Note 4 to § 73.3555'';

k. Designating Note 5 as ''Note 5 to § 73.3555'';

l. Designating Note 6 as ''Note 6 to § 73.3555'';

m. Designating Note 7 as ''Note 7 to § 73.3555'';

n. Designating Note 8 as ''Note 8 to § 73.3555'';

o. Designating Note 9 as ''Note 9 to § 73.3555''; and

p. Designating Note 10 as ''Note 10 to § 73.3555''.

The revisions and deletion read as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 2 to § 73.3555: * * *

(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 x 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 x 0.25) and A's interest in ''Licensee'' would be 1.5% (0.1 x 0.6 x 0.25). Neither interest would be attributed under paragraph (i) of this note.]

* * * * *

(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) * * *

(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. * * *

* * * * *

(h) * * *

(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:

* * * * *

(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

* * * * *

5. Section 73.3613 is amended by revising the first sentence of paragraph (d) and revising paragraph (e) to read as follows:

§ 73.3613 Filing of contracts.

* * * * *

(d) *Time brokerage agreements.* Time brokerage agreements involving radio stations, where the licensee (including all parties under common control) is the brokering entity, there is a principal community contour overlap (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) with the brokered station, and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving television stations where licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both licensed to the same market as

defined in the local television multiple ownership rule contained in § 73.3555(b), and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving radio or television stations that would be attributable to the licensee under § 73.3555 note 2(i).
* * *

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: contracts relating to the joint sale of broadcast advertising time that do not constitute time brokerage agreements pursuant to § 73.3555 note 2(j); subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

6. Section 73.3615 is amended by revising the second sentence in paragraph (a)(3)(iii)(B) to read as follows:

§ 73.3615 Ownership reports.

* * * * *

(a) * * *

(3) * * *

(iii) * * *

(B) * * * If X has a voting stockholder interest in the licensee, only those voting interests of X that are cognizable after application of the ''multiplier'' described in note 2(c) of § 73.3555 of the rules, if applicable, shall be reported. * * *

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

7. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

8. Section 76.501 is amended by:

a. Designating Note 1 as ''Note 1 to § 76.501'';

b. Designating Note 2 as ''Note 2 to § 76.501'';

c. Designating Note 3 as ''Note 3 to § 76.501'';

d. Designating Note 4 as ''Note 4 to § 76.501'';

e. Designating Note 5 as ''Note 5 to § 76.501'';

f. Designating Note 6 as ''Note 6 to § 76.501'' and revising it.

The revision reads as follows:

§ 76.501 Cross-ownership.

* * * * *

Note 6 to § 76.501: In applying paragraph (a) of § 76.501, for purposes of paragraph note 2(i) of this section, attribution of ownership interests in an entity covered by this rule 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. The ownership percentage for any link in the chain that exceeds 50% shall be included. [For example, 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 15% (0.6x0.25), and A's interest in ''Licensee'' would be 1.5% (0.1x0.6x0.25).]

[FR Doc. 01–3175 Filed 2–12–01; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

Application for Special Temporary Authorization; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulations redesignated and amended at 62 FR 5928, 5929, February 10, 1997. The regulations related to applications for special temporary authorizations contained in § 25.120(a).

EFFECTIVE DATE: February 13, 2001.

FOR FURTHER INFORMATION CONTACT: Terry D. Johnson, (202) 418–0445 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction prescribed the procedures one must follow to apply for special temporary authorization to install and/or operate new or modified equipment for earth stations.

Need for Correction

As published, § 25.120(a) contains an incomplete mailing address which could delay receipt and processing of requests for special temporary authorizations.

List of Subjects in 47 CFR Part 25

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications, Television.

PART 25—SATELLITE COMMUNICATIONS

Accordingly, 47 CFR part 25 is corrected by making the following correcting amendment:

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

§ 25.120 Application for special temporary authorization. [Corrected]

2. In § 25.120 revise the last sentence in paragraph (a) to read as follows:

(a) * * * A copy of the request for special temporary authority also shall be forwarded to the Commission's Columbia Operations Center, 9200 Farm House Lane, Columbia, MD 21046–1609.

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–3636 Filed 2–12–01; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–39; FCC 01–24]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document resolves a number of issues concerning the transition to digital broadcast television (DTV). Among the issues resolved in the Report and Order are: when to require election by licensees of their post-transition DTV channel; whether to require replication by DTV licensees of their NTSC Grade B service contours; whether to require enhanced service to the principal community served by DTV licensees; and how we should process mutually exclusive applications. We also address in this document a host of technical issues and determine that at this time there is no persuasive information to indicate that there is any deficiency in the 8–VSB modulation system of the DTV transmission standard that would cause us to revisit