business interconnections, should be considered to be attributable. Comment is requested regarding the potential for debt or other nonattributable interest, in conjunction with a series of cooperative or contractual arrangements, to provide their holders the ability to influence the day-to-day operations of a licensee, thus implicating our competition and diversity concerns.

50. Any regulation of such interrelationships among broadcasters, given their varying forms, would require case-by-case review in the context of applications for new stations of transfer or assignment applications. The Commission seeks comment as to whether the burdens and uncertainty created by such review would be outweighed by the perceived benefits of addressing the concerns in this area, and whether these concerns are best addressed in the context of our real-party-in-interest rules and *de facto* transfer of control challenges. The Commission also seeks comment as to whether any review of such close business interrelationships should be limited to those markets where the lack of competition and diversity is a particular concern, and how such markets should be defined. In addition, should the Commission focus on combinations of business interrelationships among stations in the same market only, or do inter-market relationships among stations also warrant review? The Commission wishes to emphasize that in considering these issues we are sensitive to the need not to inhibit capital flow into the broadcast industry or unduly disrupt existing financial arrangements.

Administrative Matters

51. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 17, 1995, and reply comments on or before May 17, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington D.C. 20554.

52. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Analysis

53. *Reason for the Action:* This proceeding was initiated to obtain comment on whether the Commission's broadcast attribution rules continue to be effective in serving their intended goals, and on whether they should be revised in certain areas to more effectively achieve those goals.

54. Objective of this Action: The actions proposed in the *Notice* are intended to assure that the Commission's broadcast attribution rules effectively implement the Commission's broadcast multiple ownership rules by identifying those interest that have the potential to influence the licensee in core operating areas, such as programming.

55. *Legal Basis:* Authority for the actions proposed in this *Notice* May be found in Sections 4,303, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154,303,310.

56. *Reporting, Recordkeeping and Other Compliance Requirements Inherent in the Proposed Rule:* If the attribution rules are changed, the Commission would have to change the reporting requirements in the Commission's annual ownership report form, accordingly, as the attribution rules determine which broadcast interests must be reported to the Commission and are counted for multiple ownership purposes.

57. *Federal Rules Which Overlap, Duplicate or Conflict with the Proposed Rule:* None.

58. *Description, Potential Impact and Number of Small Entities Involved:* Approximately 11,000 existing television and radio broadcasters of all sizes may be affected by the proposals contained in this decision. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

59. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:* The Notice solicits comments on a variety of alternatives.

60. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice of Proposed Rule Making, including the IRFA to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et. seq.* (1981)).

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–2545 Filed 2–1–95; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket Nos. 87–8 and 91–221; FCC 94–322]

Broadcast Services; Television Stations

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commission proposes a new analytical framework in which to evaluate its television ownership rules. This framework provides a more structured approach to a comprehensive economic and diversity analysis of the rules. This Further Notice of Proposed Rule Making (*FNPRM*) is issued in order to allow compilation of a comprehensive record, using this new framework, which would enable the Commission to make a fully informed decision in this important area.

DATES: Comments are due by April 17, 1995, and reply comments are due by May 17, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, (202) 418–2130 or Robert Kieschnick, Mass Media Bureau, Policy and Rules Division, (202) 418–2170.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making in MM Docket Nos. 87–8 and 91–221, FCC 94–322, adopted December 15, 1994, and released January 17, 1995. The complete text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Further Notice of Proposed Rule Making

1. This FNPRM proposes a new analytical framework within which to evaluate our ownership rules applied to television stations. This new framework provides a more structured approach to economic and diversity analyses of the rules. While the Commission found the comments received in response to the Notice of Inquiry (56 FR 40847, August 16, 1991) and Notice of Proposed Rule Making (*NPRM*) (57 FR 28163, June 24, 1992) in this proceeding useful, we believe that the issuance of this FNPRM is necessary to permit compilation of a record based upon this new framework which will enable us to make a fully informed decision in this important area. Additionally, the Commission solicits further comments in MM Docket No. 87–8, Television Satellite Stations, on the treatment of satellite television stations under our ownership rules.

2. This review of the television ownership rules originated as a result of a 1991 report developed by the Commission's Office of Plans and Policy, which found that the market for video programming had undergone tremendous changes over the previous fifteen years, and that new competition to ''traditional'' broadcast services had affected the ability of broadcast services to contribute to a diverse and competitive video programming marketplace. The Notice of Inquiry initiating this proceeding thus solicited comment on whether the Commission's existing ownership rules and related policies should be revised to enable television licensees to be more responsive in meeting this competition. The subsequent Notice of Proposed Rule Making was issued to consider changes to several long-standing structural rules governing the television industry, including the rules limiting the ownership interests that a person or entity may have in television stations on both the national and local level. The Commission also solicited comment on certain rules governing the relationship between a network and its affiliates.

3. This FNPRM considers the effects of several major developments since the 1992 NPRM that have altered the telecommunications landscape and accentuated the need to further explore the desirability of modifying the TV ownership rules. In particular, the Commission has re-regulated cable television pursuant to Congressional mandate, leading to rate reductions and raising the prospect of increased cable penetration. DBS and wireless cable (MMDS) are becoming increasingly important players in the video marketplace, and some telephone companies may soon begin to provide video dialtone service. These developments increase the number of competitors broadcast TV stations face and thus may justify loosening the restrictions on broadcast television station ownership. Thus the Commission wishes to analyze the extent to which our TV ownership rules should explicitly account for these competing media. Finally, in 1992, the Commission adopted a regulatory scheme, recently reaffirmed and clarified, governing LMA rules for radio and wishes to consider whether similar rules should be adopted for TV.

I. Competitive Analysis of Television Broadcasting

Framework for Competitive Analysis

4. The purpose of competitive analysis is to describe the markets at issue in light of established economic theory and legal precedent to determine how the current market structure and regulatory schemes affect competition and consumer welfare. The Commission's competitive analysis of the rules at issue in this proceeding focuses upon whether and to what extent market power exists and is being exercised, and what effect these rules have on the existence and exercise of this market power. This analysis requires two steps: (1) Definition of the relevant product markets, and (2) examination of these markets' structure for evidence of the existence and exercise of market power. A standard method to define the product market within which a particular firm operates is to ask the question: If this firm raised the price of its produce, to what degree would consumers continue to purchase that product or turn to the products of other firms, and what are these other products and other firms? After this set of relevant products is determined, the geographic extent of the market is outlined. In general, the geographic market refers to the area where buyers of the particular product can practicably turn for alternative sources of supply, or the area in which sellers sell this product. A useful technique in determining the geographic extent of the market is to examine the geographic region where buyers would buy and where sellers would sell in response to a ''small but significant and nontransitory'' price increase by any firm in that market. No single geographic market definition is likely to be decisive for all purposes in examining a particular industry.

5. Once reasonably interchangeable substitutes are identified and the geographic extent of the market is delineated, the participants in the relevant product market can be identified. This identification allows market shares to be calculated to characterize the market's structure and its concentration. Such calculations are useful as one component of a competitive analysis of potential market power. As with many other human activities, a firm's possession and use of market power is a matter of degree. The potential for the exercise of market power is limited by the degree to which its consumers can turn to substitutes, the competition offered by its existing competitors, the potential competition offered by new entrants, and the degree to which its suppliers can sell their product to other firms. If the relevant product markets are properly defined, the ability of consumers to turn to substitute products offered by other firms will already be reflected in their definition. Market share and concentration can only be reasonable proxies to estimate market power if the market is properly defined.

6. Market power cannot be adequately assessed by mere reference to market shares, however, because other factors, such as barriers to entry, can influence the degree to which market share conveys market power. As a result, in addition to market concentration, the conditions of entry in each market must be examined to determine whether the exercise of market power is possible.

Television Broadcasting's Relevant Markets

7. With the above principles in mind, the Commission turns to an identification of the product markets influenced by the rules under consideration. We find that TV broadcasters operate in three economic markets relevant to the rules under consideration: (1) The market for delivered video programming; (2) the advertising market, and (3) the video program production market. For each of these markets, we need to identify what

products are relevant substitutes for one another, who are suppliers of these products, what is the geographic scope of the relevant market, and how to measure market share for the different suppliers. It is these questions to which we now turn for each of television broadcasting's relevant markets.

The Delivered Video Programming Market

8. *Delineation of Relevant Substitute Products and Suppliers.* To identify the relevant substitutes to delivered video programming, it must be recognized that Americans can spend their leisure time doing other activities. The stability of Americans' use of television as a leisure activity suggests that video programming seen on television may be a sufficiently different economic product from other entertainment so that it should be treated as a separate product market. However, parties are requested to comment on this view and supply data and/or analysis which demonstrates the economic relevance of their proposed substitutes for delivered video programming.

9. Turning to an identification of economically relevant suppliers, the Commission is confronted by a more difficult demarcation of this market. Public broadcast station operators clearly compete with commercial broadcast television operators for viewer attention. Cable system operators also compete with broadcast television stations and have grown in importance as a group of suppliers of delivered video programming. The number of cable video networks and the channel capacity of cable systems continue to grow dramatically. However, the Commission notes that more than half of all viewing hours in cable households during the 1992–93 season were of retransmitted broadcast signals. In addition, more than one-third of all households that could subscribe to cable elect not to do so. Because some consumers choose not to purchase cable service, the degree to which cable TV channels are substitutes for broadcast television channels is an issue on which the Commission requests specific comment.

10. In addition to cable, there are now several emerging for-subscription multichannel providers of video programming, such as home satellite dish service, wireless cable service, and direct broadcast satellite service, which may compete with broadcasters in the same manner as cable. While all the above listed alternative suppliers currently provide some amount of delivered video programming, we will tentatively conclude, for purposes of this FNPRM, commercial broadcast television operators, public broadcast television station operators, and cable system operators to be economically relevant alternative suppliers of delivered video programming. While the Commission wishes to tentatively include some of the other suppliers (*e.g.*, MMDS, DBS, VDT, etc.) in our demarcation at this time, we concede that it may not be appropriate to include them because their current market penetration is so low that they are not relevant substitutes to a majority of Americans. However, this situation may rapidly change and we solicit comment on these tentative conclusions. Finally, while VCRs are present in a large number of television households, they do not provide a complete schedule of video programming and so are treated as sufficiently different as to suggest that perhaps they should not be included at this time. However, commenters are asked to provide information on the degree of economic substitutability of all internatives considered above to a broadcast TV station's video programming. In submitting comments, commenters should provide evidence on the extent to which these are economically relevant substitutes as demonstrated by their cross-price elasticities of demand and supply.

11. *Delineation of the Market's Geographic Scope.* Because commercial broadcast television stations have a limited signal range, it appears that, from these operators' perspective, the ''area of effective competition'' is geographically limited. This suggests that commercial broadcast television operators compete in a ''local'' market for delivered programming. However, the alternative suppliers that might be included in the product market have different service areas. Therefore, we recognize that as competition and technology change the geographic reach of the relevant competitors, our notions of the geographic scope of the market for delivered video programming may change.

12. Earlier comments suggested several alternatives for defining the boundaries of the ''local'' market for delivered video programming. While in the past, the Commission has used the Grade B contour to define a local market, comments previously submitted in this proceeding tended to suggest the use of either a smaller geographic area definition (the Grade A contour) or a larger geographic area definition (the DMA). The Commission proposes to continue to rely on a contour overlap standard but will consider the DMA definition of ''local'' for determination of the relevant geographic dimensions of the market for delivered programming. However, further comment is sought on the use of the DMA definition of the geographic scope of these markets. Are DMAs equally applicable for alternative distributors such as cable? Are they too large?

13. *Delineation of Market Power Measurement.* To determine whether market power exists, the Commission must also determine how to measure market concentration within the local delivered video programming market. There are four different measurement scales that were frequently mentioned in earlier comments. They are: (1) The number of separately owned stations or outlets, (2) the audience share of the separately owned stations or systems, (3) the number of available channels, and (4) the audience share of the separately available channels. The Commission tentatively proposes to use the number of separately owned stations or outlets serving a market as our unit of measure. However, we recognize its potential limitations and would like additional comment on which of these four measurement scales the Commission should use. Specifically, if the Commission were to use the audience share of the separately available outlets or channels, how should we address the variability this introduces into our television station ownership rules because of changes in the number of outlets or channels offered and the popularity of those outlets' or channels' programming over time? Further, if the Commission were to count the number of available channels, how should mandated-access channels on cable systems be included? Finally, comment is invited on the conditions of entry and other structural features of this market which influence the exercise of market power.

Advertising Markets

National Advertising Market

14. *Delineation of Relevant Substitute Products and Suppliers.* Examination of available data (See appendix D in the full text of the decision) suggests that video advertising is the mass media of choice for advertisers wishing to reach national audiences. Unfortunately, the Commission has no clear evidence on the degree to which all the other alternatives reflected in Appendix D are economically relevant substitutes for video advertising. Consequently the Commission will tentatively consider video advertising an economically distinct segment of the national advertising market. However, we solicit any evidence that commenters can provide which demonstrates that some

of the other alternatives provided in Appendix D are economically relevant substitutes for video advertising of the national advertising market.

15. The Commission believes that the primary suppliers of video advertising in the national market consist of the broadcast networks, program syndicators, cable networks, and perhaps cable multiple system operators (MSOs). The Commission tentatively excludes individual broadcast television stations' and cable system operators' sale of advertising to media buyers (*i.e.*, spot sales) from this market because spot sales of advertising to national advertisers are frequently made to allow the national advertisers to reach a more targeted geographic focus and not to reach a national audience. Further, at this time, we do not include wireless cable operators, DBS operators, or VDT operators because they do not presently provide appreciable amounts of national advertising. However, the Commission solicits evidence which would demonstrate that we have either included too many or too few alternative suppliers of national video advertising.

16. *Delineation of the Market's Geographic Scope.* As stated earlier, we view the national advertising market as distinct from the local advertising market. By its very characterization, we view this as advertising directed to a national audience, and hence national in its geographic scope.

17. *Delineation of Market Power Measurement.* To measure market share for the purpose of discerning the concentration of this market, the Commission proposes to use advertising revenues. Because of data availability concerns, we will proxy this by advertiser expenditures by media, from such sources as McCann-Erickson Incorporated. However, we invite suggestions of alternative measures which might be better indicators of market share in the national video advertising market, on the availability of data necessary to use the measure, and on the conditions of entry and other structural features of this market which influence the exercise of market power.

The Video Program Production Market

18. Broadcast TV stations are also involved in the video program production market through their transmission of video programming produced by others. The competitive concern about multiple ownership of television stations in this market is one of either *monopsony* or *oligopsony* power—*i.e.*, the ability of one or several firms to artificially restrict the consumption of programming or price paid for programming.

19. *Delineation of Relevant Substitute Products and Suppliers.* The products involved in the video program production market, from movies to first-run syndicated television series, are readily distinguishable from other types of programming, like radio programming, and are therefore relevant substitutes. There are a number of sellers and/or suppliers in this market, including program production companies, broadcast television networks, movie studios, and syndicators.

20. Broadcast television stations are major buyers of video programs and typically acquire the video programs they deliver to consumers in one of three ways. First, a broadcaster can affiliate with a broadcast network and obtain an entire package or schedule of programming directly from its network (the network ''feed''). For clearing its airtime for network programming, an affiliate is compensated according to the time of the day it clears time for network programming and the size of its potential audience. Second, television broadcasters can also obtain programming from suppliers called ''syndicators''—national or regional entities that sell programming to television stations on a market-by-market basis. Finally, television stations can produce their own programming. Network affiliates and independent stations both generally air such locally-originated programming as local news and sporting events.

21. Over the last 15 years, the list of additional buyers of video programs for delivery to consumers has grown. This increase in potential purchasers would seem to imply that there is competition among buyers of video programming and, thus, concerns that television broadcasting companies exercise oligopsony power in the purchase of video programs have lessened to some extent. However, the Commission invites comment on this implication.

22. *Delineation of the Market's Geographic Scope.* The video programming production market is clearly national and perhaps international in scope, because television broadcasters obtain a large portion of their programs from national providers. The fact that television broadcasters produce some programming locally does not detract from the national scope of this market, because the television broadcasters could reasonably turn to national sources of supply for programming.

23. *Delineation of Market Power Measurement.* The Commission proposes to use expenditures on video programming as the proper means of determining market shares for the purposes of examining the buying power of the relevant purchasers of video programming. Commenters are requested to discuss whether this a proper measure for assessing the potential for oligopsony power in this market and on the conditions of entry and other structural features of this market which influence the exercise of market power.

Tentative Economic Conclusions

24. Above, the Commission has reached a series of tentative conclusions about the three markets that broadcast television stations are involved in that are important to consider in the context of this FNPRM. The Commission will assume these delineations of relevant substitutes and suppliers, geographic scope, and measures of market power for the market for delivered programming, the market for advertising, and the video program production market in subsequent analyses of the effect of broadcast ownership rules under consideration. To aid the reader, the Commission set out the alternatives in Appendix E of the full text of the decision, and those starred alternatives that will be tentatively used as working assumptions about the relevant markets in further discussion. Clearly these delineations should be the focus of comments on our competitive analysis of television broadcasting, and so are subject to change based upon comments and evidence received in response to the FNPRM.

25. In analyzing the economic effects of the rules under consideration, the Commission assumes the above product market descriptions, and considers: (1) Whether the existing evidence points currently to exercise of market power (focusing upon prices in the different markets); and (2) whether relaxing the current rules will substantially increase the concentration of these markets to levels which raise concerns about the potential for the exercise of market power?

II. Diversity Analysis of Television Broadcasting

26. The Commission has historically examined the effectiveness of its broadcast regulations in achieving diversity goals by primarily assessing diversity within the broadcasting industry, on national and local levels. However, due to the increasing availability of a variety of video programming sources, the Commission believes that a new framework for

assessing diversity, which takes into account the developments in the communications marketplace and which captures the rigor of our economic analysis may be appropriate.

27. In the full text of this FNPRM, the Commission lays out its traditional diversity goals and approaches for achieving them, raises questions concerning new approaches for defining diversity, and seeks comment on how to apply a framework for assessing the efficacy of broadcast regulations in achieving these goals. More specifically, Section IV A describes the three types of diversity that the Commission's rules have attempted to foster—viewpoint, outlet and source diversity, and the two basic techniques the Commission has used to achieve these diversity goals—direct means (such as nonentertainment programming guidelines) and indirect means (like our structurally-based ownership rules). Section IV B, then considers new approaches to ensure diversity, and Sections IV C and D set forth possible methods for defining what markets should be evaluated to determine whether the Commission's diversity goals are being served by the particular broadcast regulation in question. Section IV C proposes a broadening of the ''product'' market that the Commission has traditionally examined for diversity purposes, to go beyond just broadcast-delivered video programming received in the home, and Section IV D discusses the geographic markets the Commission would examine in determining whether its diversity goals are being furthered by the broadcast regulation in question.

28. Once the Commission has determined the appropriate product and geographic markets that are relevant for assessing whether the diversity goals of a rule are being met, we will examine each rule at issue by (a) identifying which diversity goal or goals the rule seeks to foster (*e.g.*, viewpoint, outlet and/or source), (b) determining whether the rule in fact fosters such goals in the relevant markets, and (c) deciding whether, in those markets, there is a need for continued regulation to maintain or increase existing levels of diversity.

III. National Ownership Rule

29. Currently, a company is limited to owning 12 broadcast TV stations nationally in different local markets and to a maximum aggregate 25% national audience reach. The reach limit presently prevents a group owner from owning television stations in each of the 12 largest markets. The national networks and some other group owners have concentrated their station purchases on stations located in markets with the largest audiences. As a result of this strategy, some group owners have reached the 25% audience reach limit before they have acquired 12 stations. Thus, it appears that for many of the existing national TV group owners, the 25% national audience reach limit is the more binding regulatory constraint on group acquisition of additional stations nationally. In order to examine whether the national ownership limits should be relaxed, the full text of this FNPRM presents first a competitive analysis and then a diversity analysis.

Effects on Competition

30. In conducting the competitive analysis, the Commission seeks to examine the effects of relaxing these rules on the potential competitiveness of the markets for delivered video programming, advertising, and video program production. The primary focus in each of these discussions is on the effect of changing the rules on the concentration of the market. As a consequence of these analyses, the FNPRM solicits comments on a number of issues such as: (1) The effect of relaxation of the national ownership limits on competition in the local market for delivered video programming; (2) the effect of relaxation of the national ownership limits on competition in local advertising markets; (3) evidence concerning economies in the distribution of video programming which may accrue to group owners of television stations, particularly if the commenters distinguishes between the effects of owning a group of stations and the effects of affiliating with a network; and (4) the effect relaxation of national group ownership limits might have on the prices of broadcast television stations, with its attendant effect on the ability of minorities to acquire broadcast television stations.

Effects on Diversity

31. In conducting the diversity analysis, the Commission seeks to examine the effects of relaxing these rules on the diversity of viewpoints available to the public, paying particular attention to the diversity of voices. The FNPRM notes that one of the premises of the national television ownership limitations has been that placing limitations on the number of stations a party can have a cognizable interest in promotes diversity outlets and viewpoints, and limits the degree of control over viewpoints expressed nationally that any entity could have thus furthering First Amendment goals. However, while the national ownership rules may foster these goals, and especially outlet diversity, the rules may not be essential to achieving such diversity. It appears that such factors as increased video media competition, network affiliation and diversity on the local level all favor alteration of the national ownership limitations. While the Commission's analysis suggests that, from a diversity standpoint, changes in the current national ownership limitations may be warranted, commenters should nevertheless address what effect, if any, group ownership and consolidation of ownership nationally would have on viewpoint diversity in news and public affairs programming, especially locally. Additionally, for national news, network affiliated stations primarily use their network affiliation to provide national news programming, and broadcast networks must compete with each other and with cable news networks in providing national news. Consequently, we ask whether changing national group ownership rules would have any impact on the delivery of national news and, if so, what that impact would be. Finally, given that the pursuit of large audiences may drive all licensees—whether group owners or not—towards the exclusion of controversial, non-mainstream subjects from their programming, does ownership diversity, indeed, have a major effect on viewpoint diversity with respect to television?

Tentative Proposals

32. The Commission tentatively concludes that liberalization of the national ownership limits would not have an adverse impact upon competitiveness of the markets for delivered video programming, the market for advertising, or the video program production market. Nor do we believe that raising the national ownership limits would have serious adverse effects on diversity. Therefore, the Commission proposes raising national ownership limits and seeks comment about the manner in which these limits should be expressed (*e.g.*, number of stations or outlets, number of stations or outlets with a reach cap, reach cap without any limit on the number of stations or outlets, or audience share cap) and the extent to which they should be raised. The Commission believes that changes in the national multiple ownership rules should be incremental in order to avoid significant dislocation in the television industry.

33. The NPRM in this proceeding proposed several adjustments to the multiple ownership rules, which

commenters should consider in the context of this decision. The NPRM proposed amending the national numerical limit to permit common ownership of 18, 20 or 24 television stations and altering the national reach restriction to permit a group owner to reach 30 or 35 percent. Alternatively, the NPRM sought comment on whether to modify only the numerical limit, retaining the 25 percent reach limit. Commenters were mixed in their responses to each of these proposals and provided little structured analysis by which we could compare contrasting positions. Consequently, comments are requested on these proposals which are structured in a manner consistent with the analytical framework proposed herein.

34. Comment is also invited on the following new proposal. The Commission could eliminate the numerical station limit entirely, and allow the reach limit to increase by some fixed percentage, such as 5% every 3 years, until the reach limit rises to 50%, the final limit. During this period, the Commission would monitor the relevant markets and determine whether or not problems have arisen which call for a halt in the relaxation of the national ownership limit. The Commission believes that formulating national limits only in terms of reach, rather than in conjunction with a number of stations limit, may be preferred because it captures the relevant dimension of interest (*i.e.*, the total audience potentially available) and it allows companies flexibility to own either a few stations serving large population markets or a larger number of stations serving small population markets. In addition to these advantages, it may be desirable to allow the reach limit to rise gradually rather than immediately to 50%, in order to monitor industry changes. Parties are encouraged to comment on all the above proposals and any others they wish to suggest.

35. In applying the above to full power stations, we note that UHF stations are now attributed with only 50 percent of their theoretical reach within the ADI. The Commission incorporated this adjustment in the 1984 rules to account for the physical limitations of the UHF signal. The Commission seeks comment on whether this adjustment should be retained. Similarly the Commission similarly seeks comment on whether and, if so, to what extent, there remains a disparity between VHF and UHF signal propagation and how this should affect the UHF discount, if at all. In this regard, comment is also invited on whether, should the UHF discount be modified, existing group owners should have the reach discount for any currently owned UHF stations ''grandfathered,'' or whether this should be done only where divestiture would otherwise result from a new UHF reach rule that no longer reduced the theoretical reach by 50%.

36. Next, the Commission notes that a television station that qualifies as a satellite is exempt from the national ownership restrictions. Because the Commission, in this proceeding is now considering modifying all aspects of the national and local ownership rules in this proceeding, we believe it is appropriate to incorporate MM Docket 87–8 (Second Further Notice of Proposed Rule Making at 56 FR 42306, August 27, 1991; Report and Order at 56 FR 31876, July 12, 1991) the outstanding proceeding on satellite television stations and resolve such ownership matters in this proceeding. In light of the proposed treatment of local marketing agreements in this FNPRM, we invite comment on whether satellite television stations should continue to be exempted from the national multiple ownership rules.

VI. Local Ownership Rule

37. The local ownership rule prohibits common ownership of two television stations whose grade B contours overlap, and is intended to preclude ownership of more than one television station in a local community in order to promote competition and diversity. As discussed earlier herein, television stations compete for viewership and sell advertising in local markets. Thus, it is important that the Commission's rules ensure workable competition in local markets. Accordingly, changes to the local ownership rule give rise to more serious concerns than changes to the national ownership rule. The Commission intends to carefully evaluate the economic factors that affect the local marketplace, including changes that occurred after the NPRM was adopted in 1992. We will also look at how the proposal to modify the contour overlap rule from Grade B to Grade A is affected by other proposals in this FNPRM and how it and these other proposals influence the effects of allowing common ownership of broadcast television stations with contour overlap in a local market.

Effects on Competition

38. Because commercial broadcast television station operators effectively compete with each other, with public broadcast television stations, with cable system operators, and others serving their ''local'' market, some existing large markets for delivered video programming appear to be unconcentrated when we use either the number of independent operators measure or the number of channels of programming measure for market share calculations.

39. Allowing one entity to own more than one broadcast TV station within a ''local'' market may permit the company to realize economies of scale, reducing the costs of operating the two stations. The Commission seeks hard evidence from commenters of the existence and magnitude of such economies, particularly information regarding the experience of those group owners who have consolidated pursuant to the Commission's relaxed local radio ownership rule and the one-to-a-market waiver standard. Comment is also invited on whether experiences with respect to the radio market can be used to predict the benefits of relaxing ownership rules in local television markets.

40. Allowing a company to own more than one broadcast TV station in a local market might give the company the economic power to raise video advertising rates within the local service area, if, by virtue of the combination, the local market became sufficiently concentrated. Evidence on whether significant market power in the local advertising market already exists is mixed. Further, at this time, it is not clear whether cable system operators offer effective competition to broadcast station operators in providing local advertising. It is also not clear how substitutable radio and newspaper local advertising is for broadcast television local advertising. Interested parties are asked to provide whatever data and analysis they can on the substitutability of these media in the local advertising market at present and in the future. Assuming that they are not effective substitutes, comment is also requested on how many independent providers of local video advertising are necessary to ensure effective competition in this market. Statistical evidence supporting comments will especially be welcome.

41. Television stations purchase or barter for video programming in a national market in the sense that producers of video programming typically create product which is marketed to be broadcast in more than one local market. However, the program market could be affected if Commission relaxation of the local ownership rules permitted one or a few broadcast station owners to exercise significant market power in the purchase of video programming. The result might be that suppliers of video programming would

be forced to sell their product at below competitive market prices in order to gain access to the local market controlled by one or a few local group owners. However, the ever increasing number of alternative providers of delivered video programming in just about every major market may mitigate the potential distortion of video programming prices through an entity's control of broadcast access to television sets in a local market by providing program producers with additional outlets for their product. The Commission solicits comment on this point and evidence on the potential market power in the purchase of video programming in different markets if we were to relax the local ownership rule.

42. As with relaxing the national ownership limits, relaxing local ownership limits could increase the price of broadcast television stations. The potential for increased prices of broadcast TV stations is troubling in light of the limited financial ability of minorities and women to purchase TV stations. The Commission addressed issues relating to the difficulties of minorities and women in obtaining access to capital in a Notice of Proposed Rule Making in MM Docket 94–150 (FCC 94–324, adopted December 15, 1994, and released January 12, 1995). We ask for comment and analysis of these issues.

43. The Commission is also concerned about the possibility that changes in the local ownership limits may adversely affect the pool of independent television stations available for acquisition by and/or affiliation with nascent broadcast networks. Consequently, we solicit comment on the effects of allowing station ownership consolidation at the local level on the future development of these nascent broadcast networks. A separate but related concern, is with allowing the owner of a station affiliated with or owned by an established broadcast network to own another broadcast television station serving the same market. This possibility may confer on such an owner more market power than would arise from an independent station operator acquiring a second station in the market. Comment is sought on the importance of this concern.

Effects on Diversity

44. The Commission's concern with diversity is most acute with respect to local ownership issues. The Commission has consistently believed that a reduction in local outlet diversity would translate into a reduction of viewpoint diversity. While the existing duopoly rule may foster diversity by assuring that only one television outlet in a given market can be owned by a single entity or individual (assuring that each local television outlet is owned by a different person or entity), we believe it is appropriate to solicit comments on whether the rule remains essential in its current form to ensure diversity.

45. In recent years the totality of information outlets on the local level has increased. In a recent radio ownership proceeding (Report and Order in MM Docket No. 91–140, 57 FR 18089, April 29, 1992), the Commission found that the abundance of radio and other media outlets now available ''make clear that the local marketplace is far more competitive and diverse—indeed, has been virtually transformed—since the local ownership rules were first promulgated.'' On this basis, the Commission liberalized the duopoly rule with respect to radio.

46. With respect to television, because of the fewer number of broadcast television stations than broadcast radio stations, we must be cautious in our analysis of outlet diversity, and the impact of mergers among TV stations on the local level on such diversity. Further, it should be recognized that the apparent level of television outlet diversity may not reflect what is in fact available to, or obtainable by, many consumers. For example, cable and other subscription services are perceived to provide an alternative video outlets. How, if at all, should the portion of viewers that chooses not to subscribe affect our analysis of available programming outlets? Is an outlet of opinion less available simply because it is not popular or is more costly? Further comment is requested on the degree to which such fee-based sources and outlets for video programming provide true alternatives to over-the-air television for purposes of ensuring viewpoint diversity.

Tentative Proposals

47. The Commission sets out one specific proposal and requests comment on other possible rule changes. The current rule prohibits common ownership of broadcast television stations with overlapping Grade B contours. The Commission believes that the record already established in this proceeding is sufficient to justify proposing to relax the rule by decreasing its prohibited contour overlap from Grade B to Grade A. Comment is sought on this proposal as well as on other possible ways in which the rule could be modified.

48. The NPRM, asked whether the Commission should modify the contour overlap rule, balancing the greater flexibility afforded broadcasters against the potential harm to our underlying competition and diversity concerns. Comment was invited on whether the predicted Grade B contour should continue to determine prohibited overlap, or whether it should be changed to the Grade A contour. The vast majority of commenters agreed that a Grade A contour standard provides a substantially more realistic and accurate measure of a station's core market than the existing Grade B contour rule. The commenters also stated that the switch from a Grade B standard to a Grade A standard will increase broadcasters' long-term viability by enabling them to reap the benefits provided by ''economies of scale''—without any commensurate loss in program diversity. The Commission thus proposes to modify this rule so that joint ownership will be precluded only where there is overlap of the Grade A contours. The Commission seeks further comment on this proposal in light of our competitive and diversity analyses of the television broadcasting industry. Comment is also requested on what the impact would be of moving from a Grade B to a Grade A contour rule on particular markets. Further, how many cases would occur in which relaxing the rule to a Grade A contour would allow an entity to own two stations within a single designated market area or within a single metropolitan statistical area?

49. As a separate matter from whichever contour test the Commission ultimately decides to use, the issue arises as to whether, in at least some situations, a company should be allowed to acquire stations with overlapping contours. The Commission requests comment on whether to permit common ownership in local markets, such as UHF/UHF combinations or UHF/VHF combinations, or maintain the current prohibition against contour overlap and allow waivers either under a presumptive guideline or a case-by-case basis.

50. The NPRM asked whether or not an entity should be permitted to own two UHF stations with overlapping contours. Comment was also sought on whether the Commission should permit a UHF station to merge with a VHF station as a more effective way of preserving or improving the service of UHF stations, and on whether it would be appropriate to consider such consolidations only where a minimum number of separately owned television stations would remain after the proposed combination. Commenters were very divided as to whether the economic benefits to licensees outweighed the potential harm to

competition and diversity. Commenters are invited to submit further analyses of these proposals with reference to a Grade A contour definition of the relevant local geographic market for purposes of establishing local television ownership limits. However, commenters arguing that the economic benefits outweigh the potential harm to competition and diversity need to provide more specific evidence of the projected economic benefits as weighed against the potential harm to competition and diversity.

51. If the Commission were to maintain the existing prohibition against common ownership of broadcast television stations with contour overlap but allow waivers, it must also be determined whether to follow a case-by-case approach. Parties may wish to address the factors the Commission currently considers in one-to-a-market waivers, which include the financial condition of the station to be purchased, the competitive and diversity characteristics of the market, and potential public interest benefits.

52. Whether the Commission relaxes the rule or adopts a waiver standard, it is necessary to consider the number of independent suppliers serving the market. In a number of our past ownership proceedings, the Commission described and generally took into account the growth of new media that provide competitive and diversity enhancing alternatives to over-the-air television (or radio). However, with the exception of the one-to-a-market rule, the Commission fashioned the actual rule that counted only television stations or only radio stations in the local or in the national market. Given the conclusions discussed above regarding who are the relevant alternative suppliers and the kind of analysis we were concerned with (*e.g.*, competitive analysis versus diversity analysis), comment is invited on the issue of which market or analysis should control the determination of who are the independent suppliers that the Commission counts for purposes of setting local ownership limits.

53. In determining the number of independent suppliers for either competitive or diversity analysis of a relaxation to the contour overlap rule, the Commission must define the region in which the count is performed. One proposal is to treat the overlap area as the relevant region. Another proposal would be to treat the relevant region as the DMA within which the two broadcast television stations operate. This second proposal might allow joint ownership of two broadcast television stations with contour overlap when such joint ownership does not reduce the number of independent suppliers in their DMA below some critical level. The Commission solicits comment on both these proposals.

54. Finally, should the Commission decide to designate a minimum number of independent suppliers that should remain in a local market, the question must be addressed of whether we should choose a number which allows everyone in the market currently to acquire another station or whether to allow firms to be acquired on a first-come first-served basis until some minimum number of independent broadcast television stations remain. The Commission seeks guidance on which threshold number, if any, of remaining independent suppliers would satisfy both competition and diversity concerns. Further, comment is solicited on whether simply counting outlets is preferable to examining audience share for addressing the impact of an outlet on our competitive and diversity concerns. Finally, guidance is sought on which of the above approaches is the preferred approach with respect to these concerns.

II. The Radio-Television Cross-Ownership Rule

55. The radio-television cross-ownership rule, or the one-to-a-market rule, basically provides that a company cannot own both a radio station and a television station located in a given ''local'' market. This rule was adopted to limit any potential market power in the media market, and to ensure a sufficient diversity of broadcast outlets, and was amended in 1989 to permit, on a waiver basis, radio-television mergers as long as the combination occurred in one of the top 25 television markets and 30 separately owned broadcast licensees remained after the combination, or if the waiver request involved a ''failed'' station, or if the waiver request satisfactorily addressed five criteria relating to public interest concerns. Whether this limit is still needed to promote these ends will be considered in the following discussion.

Effects on Competition

56. As indicated above, the Commission tentatively concludes that delivered video programming and delivered audio programming were sufficiently distinct products so as to represent different product markets for competitive analysis purposes. Commenters are asked to provide information on the nature and extent of harm, if any, from relaxing this rule on these markets.

57. The main potential economic cost of permitting the owner of a broadcast TV station to own a broadcast radio station in a local market, or vice versa, appears to be that it might give the company the market power to raise local radio and/or television advertising rates. People may listen to radio and watch television at different times while advertisers might view either means as an acceptable substitute for getting their message to the same people. On the other hand, some advertising messages may be more effective on television and others more effective on radio. However, as our earlier discussion indicated, we do not have sufficient evidence on this issue to address the effects of relaxing the one-to-a-market rule on the local advertising market. Assuming for the purposes of soliciting comments, that they are economically relevant substitutes, then the issue arises as to how many independent suppliers of local advertising are necessary to ensure that these markets are workably competitive. The Commission invites comment and evidence on both these issues.

58. Earlier in the FNPRM, the Commission tentatively concluded that video programs are sufficiently distinct products that the market for video program production should be considered a separate product market. By this logic, the markets for video program production and audio program production are arguably distinct markets. Thus, market power in the video program production market should not translate into market power in the audio program production market, unless the company already has such market power. However, these program production markets are national markets and presumably the national ownership limits for either broadcasting station type should prevent a company from acquiring such market power. Thus the Commission sees no reason why relaxing the one-to-a-market rule should harm competition in either of these supply markets, but seeks comment on this tentative conclusion.

59. The benefits of permitting the owner of a broadcast TV station to own a broadcast radio station in the same local market, or vice versa were discussed in the Memorandum Opinion and Order in MM Docket No. 87–7 (54 FR 32639, August 9, 1989). The company can reduce its video and audio programming costs through a reduction in personnel and overhead expenses and could use one advertising sales force instead of two for the two stations. This reduction in expense could make the joint enterprise more economically

viable than the separate operations were before the combination took place. It would be important for commenters to provide factual evidence on the size of such efficiency gains so the Commission could weigh them against any potential costs of relaxing the one-to-a-market rule.

Effects on Diversity

60. The radio-television (''one to a market'') rule is intended to foster outlet and viewpoint diversity on the local level. The rule appears to be achieving the diversity goals for which it was adopted, but may not be necessary in its current form to ensure competitive and diverse radio and television markets. Nevertheless, as noted above, diversity has the most impact in the local context and we must be cautious in taking any action that could serve to reduce that diversity, particularly in smaller markets.

Tentative Proposals

61. The NPRM in this proceeding sought comment on a variety of proposed relaxations to the one-to-a-market rule, including: (1) Elimination of the rule—using local limits of each service to prevent undue concentration; (2) allowing common ownership of one AM, one FM and one TV station per market; (3) allowing TV–AM combinations only; and, (4) codifying current waiver criteria and applying them to all markets, and not just the top 25 markets, where 30 independently owned voices remain. Commenters were generally in favor of elimination or relaxation of the current rule, arguing that the economies from joint operations would allow more stations to remain on the air and would also permit licensees to provide better service to the public.

62. The Commission tentatively concludes that there are two alternative approaches towards modifying the one-to-a-market rule. On the one hand, the Commission could find that radio stations and television stations do not compete in the same local advertising, program delivery, or diversity markets and propose to eliminate this rule entirely and rely on local ownership rules to ensure competition and diversity at the local level. On the other hand, the Commission could conclude that radio and television do compete in some or all of these local markets, in which case we propose to allow radio-television combinations in those markets that have a sufficient number of remaining alternative suppliers/outlets as to ensure sufficient diversity and workable competition. In this regard, the Commission seeks comment on whether ''30 separately owned, operated and controlled broadcast licensees'' continues to represent the appropriate minimum requirement, or whether diversity and competition concerns can be satisfied if a lesser number of licensees remain, such as 20. Further, comment is invited on whether this count should be for independent supplier/outlets within a DMA or some other geographic market delineation. Finally, the Commission notes that if the latter proposal, to modify rather than eliminate the rule were to be adopted, we also propose to continue accepting waivers for ''failed'' broadcast stations as currently provided for in note 7 of § 73.3555 of the Commission's Rules, and to continue evaluating other waiver requests on the basis of the five considerations set forth in the Second Report and Order (54 FR 08744, March 2, 1989) and the Memorandum and Order (as cited above) in MM Docket No. 87–7.

VIII. Local Marketing Agreements

Description

63. A Local Marketing Agreement (LMA) is a type of joint venture that generally involves the sale by a licensee of discrete blocks of time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support it. Such agreements enable separately owned stations to function cooperatively via joint advertising, shared technical facilities, and joint programming arrangements. In MM Docket 91–140, the Commission adopted guidelines primarily applicable to the AM and FM services for LMAs. We also decided that TV station LMAs should be kept at the station and be made available for inspection upon request by the Commission.

64. The NPRM sought comment on the prevalence of TV LMAs, whether they presented the same types of competitive and diversity concerns that the Commission found in the radio context, and whether they should be subject to some limitations. Few commenters addressed LMAs, and those who did comment on this issue basically expressed two divergent general views: (1) That TV LMAs should remain unregulated absent evidence of abuse, irrespective of whether new TV multiple ownership rules are adopted; or (2) that if the Commission did adopt rules governing TV LMAs, such rules should be no more restrictive than those governing radio LMAs. The Commission seeks further comment and specific information on this matter to enable us to choice between these views and adopt appropriate guidelines for TV LMAs.

65. Specifically, the Commission solicits specific quantitative data about TV LMAs, indicating the number of such agreements currently in existence. If such comment is not received, it may be necessary for the Commission to conduct a survey to obtain this quantitative data. Also do TV LMAs serve the same purposes as radio LMAs or are there significant differences between them? What benefits accrue to the parties involved in TV LMAs? What benefits accrue to the public from TV LMAs?

Analysis and Tentative Proposals

66. The Commission believes that, to ensure that TV stations using LMAs comply with the TV multiple ownership rules, regardless of whether such rules are modified, some guidelines may be necessary. We tentatively propose to treat LMAs involving television stations in the same basic manner as radio station LMAs. That is, time brokerage of another television station in the same market for more than fifteen percent of the brokered station's weekly broadcast hours would result in counting the brokered station toward the brokering licensee's national and local ownership limits. If the local TV multiple ownership rules are not relaxed, such an attribution provision would preclude TV LMAs in any market where the time broker owns or has an attributable interest in another TV station. Additionally, TV LMAs would be required to be filed with the Commission in addition to the existing requirement that they be kept at the stations involved in an LMA. Furthermore, the TV LMA guidelines would allow for ''grandfathering'' TV LMAs entered into prior to the adoption date of the FNPRM, subject to renewability and transferability guidelines similar to those governing radio LMAs.

67. To test the appropriateness of these proposals, the Commission seeks comment on the following issues. Are there any compelling reasons why the Commission should not apply the existing radio LMA guidelines, including the filing requirements, the limitation on program duplication, and the ownership attribution provisions, to TV LMAs? If the radio ownership attribution rule applies to TV LMAs, should the Commission use the fifteen percent benchmark that it used in the radio context, or is some other percentage more appropriate? What effects, if any, should LMAs have on the renewal expectancy of TV stations? What effects, if any, would these

proposed attribution guidelines have on the ownership of TV stations by minorities and women, and how should the Commission deal with such effects?

68. To avoid any unnecessary disruption to existing contractual relationships, the Commission also seeks comment on guidelines concerning the termination, transferability and renewal of TV LMAs. Should the contract rights associated with existing TV LMAs be transferable when the brokering station is sold? If so, what restrictions, if any, should apply? Should TV LMAs entered into before the adoption date of this Further Notice be subject to the same ''grandfathering'' and renewability guidelines that govern radio LMAs as set forth in the Second Radio Reconsideration, *supra,* irrespective of whether the local TV multiple ownership rules are modified? Specifically, should existing LMAs be ''grandfathered'' for the remainder of the initial term of the LMA and then be subject to the governing local TV multiple ownership rules?

Administrative Matters

69. Pursuant to applicable procedures set forth in Section 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 17, 1995, and reply comments on or before May 17, 1995. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

70. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 C.F.R. 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Act Statement

71. The Initial Regulatory Flexibility Act Statement found in paragraphs 18 through 25 (57 FR at 28166–67) in the summary of the Notice of Proposed Rule Making in this proceeding remains unchanged.

72. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in the Notice of Proposed Rule Making in this proceeding as set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Further Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 95–2502 Filed 2–1–95; 8:45 am]

BILLING CODE 6712–01–M