Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Virginia, is amended by removing DTV channel 19 and adding DTV channel 50 at Portsmouth.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3017 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–246, MM Docket No. 00–162, RM–9948]

Digital Television Broadcast Service; Fresno, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ackerley Broadcasting of Fresno, LLC, the successor-in-interest to Fisher Broadcasting-Fresno, licensee of station KGPE(TV) [formerly KJEO(TV)], substitutes DTV channel 34 for DTV channel 14 at Fresno, California. *See* 65 FR 54832, September 11, 2000. DTV channel 14 can be allotted to Fresno in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (37–04–14 N. and 119–25–31 W.) with a power of 330, HAAT of 597 meters and with a DTV service population of 1248 thousand.

With is action, this proceeding is terminated.

DATES: Effective March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–162, adopted February 1, 2001, and released February 2, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under California, is amended by removing DTV channel 14 and adding DTV channel 34 at Fresno.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–3050 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–221, MM 87–8; FCC 00–431]

Review of the Commission's Regulations Governing Television Broadcasting Television Satellite Stations Review of Policy and Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document generally affirms the Commission's local TV multiple ownership rule, radio/TV cross-ownership rule, and grandfathering policies for conditional waivers of the previous radio/TV cross-ownership rule and local marketing agreements. This document modifies, however, the TV stations that qualify toward the minimum number necessary to form a combination pursuant to the local TV multiple ownership rule and the radio/TV cross-ownership rule.

EFFECTIVE DATE: Effective April 9, 2001.

FOR FURTHER INFORMATION CONTACT: Eric J. Bash, Policy and Rules Division, Mass Media Bureau, (202) 418–2130 (voice), (202) 418–1169 (TTY), or *ebash@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Second Order on Reconsideration* (''*MO&O*'') in MM Docket Nos. MM 91–221 and MM 87–8; FCC 00–431, adopted December 7, 2000; released 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 fcc00431.pdf on the Commission's Internet site at *www.fcc.gov.*

Synopsis of Memorandum Opinion and Second Order on Reconsideration

I. Introduction

1. In this *MO&O,* we resolve various petitions for reconsideration of the *Report and Order* (''*R&O*''), 64 FR 50651, September 17, 1999. We also clarify certain aspects of the *R&O* on our own motion.

Background

2. This proceeding is a broad and complex one involving several of the Commission's policies and rules on the cross-ownership and multiple ownership of broadcast stations. In the proceeding, the Commission has attempted to balance two of its most fundamental goals in broadcast ownership—fostering competition in the markets in which broadcast stations compete, and preserving a diversity of information sources, especially at the local level—with the efficiencies of common ownership and increased competition in the media marketplace. Harmonizing these concerns in the *R&O,* we amended the local TV multiple ownership rule, the radio/TV cross-ownership rule, and our standards for presumptive waiver of these rules. We also grandfathered certain television local marketing agreements (LMAs) that we determined were attributable ownership interests, as well as certain radio/TV combinations that were formed pursuant to waivers conditioned on the outcome of this proceeding.

3. The Commission's previous local television multiple ownership rule, or ''TV duopoly rule,'' prohibited common ownership of two TV stations when the Grade B contours of the stations overlapped. Our amended rule allows a party to own TV stations licensed to communities in different Designated Market Areas (DMAs) without regard to contour overlap. Our rule also permits a party to own two TV stations in the same DMA, if at least one of the stations is not among the four highest-ranked stations in the market, and at least eight independently owned and operating full-power broadcast TV stations would remain in the DMA after the proposed combination. In addition, we presume it is in the public interest to waive the amended rule if one of the stations in a proposed combination is a failed or failing station, or is not yet constructed. Once formed, whether pursuant to the amended duopoly rule or waiver standard, a combination may not be transferred unless it meets the rule or waiver standard in effect at the time of transfer.

4. The Commission's previous radio/TV cross-ownership rule generally prohibited common ownership of a radio and TV station in the same geographic area. Our amended rule permits a party to own, in the same geographic area, one TV station (or two TV stations, if permitted by the duopoly rule) and: (a) Up to six radio stations, if at least twenty independently owned media ''voices'' would remain in the market post-combination (or one TV station and seven radio stations in circumstances where a party could own two TV stations and six radio stations); (b) up to four radio stations, if at least ten independently owned media voices would remain in the market post-combination; and (c) one radio station, without regard to the number of independently owned media voices that would remain in the market post-combination. For purposes of the new rule, we count the following as media voices in the market: (a) Radio stations, (b) TV stations, (c) cable systems, as one entity, if a cable system is generally available in the DMA, and (d) certain daily newspapers. We also presume it is in the public interest to waive the amended radio/TV cross-ownership rule if one of the stations in a proposed combination is a failed station. Once formed, whether pursuant to the amended radio/TV cross-ownership rule or waiver standard, a combination may not be transferred unless it satisfies the rule or waiver standard in effect at the time of transfer.

5. In our companion *Attribution R&O*, 64 FR 50622, September 17, 1999, we concluded that a same-market LMA constitutes an attributable ownership interest for the brokering station if that station brokers more than 15% of the brokered station's broadcast hours per week. Consistent with our proposal in the *Second Further Notice of Proposed Rulemaking* (''*2FNPRM*''), 61 FR 66978, December 19, 1996, in the *R&O* we grandfathered LMAs that do not comply with our TV duopoly rule, if entered into prior to the adoption date of the *2FNPRM*. We grandfathered these LMAs through the conclusion of our 2004 biennial review. We required LMAs entered into on or after the adoption date of the *2FNPRM* to comply with our new TV duopoly rule within two years of the adoption date of the *R&O*. We also grandfathered certain radio/TV combinations formed pursuant to waivers that were conditioned on the outcome of this proceeding, if the waivers were applied for on or before July 29, 1999, and ultimately approved by the Commission.

6. We have received fourteen petitions for reconsideration of the *R&O*. These petitions seek reconsideration of both the TV duopoly rule and the radio/TV cross-ownership rule, as well as our grandfathering policies for television LMAs and waivers of the radio/TV cross-ownership rule that were conditioned on the outcome of this proceeding.

III. Discussion

A. Local Television Multiple Ownership Rule

1. Geographic Scope

7. *Background*. As indicated, we concluded in the *R&O* to modify our rule that disallowed common ownership of two TV stations if their Grade B contours overlapped. Instead, we decided to permit common ownership of two TV stations if they are licensed to communities in different DMAs.

8. *Discussion*. One petitioner asked us to reconsider our decision. Commenters have already fully debated the issue of the geographic scope of the duopoly rule, and we considered and resolved this issue in the *R&O*. We explained that DMAs reflect actual viewing patterns, and define the ''market'' in a manner that is widely accepted and used by the advertising and broadcasting industries. Nielsen Media Research collects viewing data from TV households four times a year, assigns a particular county to a DMA if a majority of the viewing in that county is of stations located in the DMA, and then uses the viewing data to compile DMA-based ratings for the TV shows. Advertisers use this data to make advertising purchasing decisions, and broadcasters use this data to make programming decisions. The DMA therefore properly reflects viewership patterns, and serves as the proper basis by which to define the geographic area for our TV duopoly rule. We recognize that a broadcast station may have an incentive to manipulate its DMA assignment in order to combine two stations, but Nielsen Media Research defines DMAs, and we believe that advertisers and competing broadcasters that rely on DMAs to make advertising and programming decisions have an incentive to ensure that DMA assignments are accurate and reliable. This does not mean that DMA assignments will not change, but will do so in response to marketplace changes. We believe that this is a desirable feature of our new rule. Accordingly, we reaffirm our decision to allow two broadcast TV stations to combine if they are located in different DMAs, without regard to contour overlap.

2. Market Rank/Eight Voice Test

9. *Background*. As indicated above, our new TV duopoly rule permits one party to own two stations within the same DMA, if two conditions are satisfied. At least one of the stations must not be ranked among the top four stations in the DMA, as determined by all-day audience share at the time the application to combine is filed, and at least eight independently owned and operating full-power broadcast TV stations must remain post-combination.

10. *Discussion. Market Rank*. One petitioner asked us to reconsider the requirement that at least one of the TV stations in a proposed duopoly not be among the top four stations in the DMA. The petitioner appears to argue that the requirement does not promote programming diversity. We are not persuaded that common ownership will have no adverse impact on program diversity. Moreover, the petitioner overlooks that we seek to promote both competition and diversity with the TV duopoly rule. As we explained in the *R&O*, ''[t]he 'top four ranked station' component of this standard is designed to ensure that the largest stations in the market do not combine and create potential competition concerns. These stations generally have a large share of the audience and advertising market in their area, and requiring them to operate independently will promote competition.'' Because larger stations generally produce local news while smaller stations often do not, we also explained that the requirement that both stations not be among the top four ranked stations did not harm, and in

fact furthered, our diversity goal, if the combination made it possible for the smaller station to produce local news. We thus believe that our decision to require that at least one of the stations in a proposed duopoly not be among the top four ranked stations in the DMA properly harmonizes our competition and diversity goals.

11. We also clarify how to resolve a tie for market rank. Nielsen Media Research often provides audience share in whole numbers, with the result that two stations have the same audience share. In such cases, duopoly applicants must submit more detailed information on audience share (i.e., estimates with a sufficient number of decimal places) to resolve the tie.

12. *Number of Broadcast TV Stations.* A number of petitioners ask us to reconsider our decision to require that eight independently owned and operating broadcast TV voices remain in the DMA post-merger. No petitioner argues that we adopt a particular number other than eight, however.

13. We reaffirm our decision to require that eight broadcast TV stations remain in the market post-combination. We explained our competition and diversity goals in some detail in the *R&O,* and stated that the requirement that eight TV broadcast stations remain in the DMA post-merger ''strikes what we believe to be an appropriate balance between permitting stations to take advantage of the efficiencies of television duopolies while at the same time ensuring a robust level of diversity.'' As we stated in the *R&O,* ''[o]ur decision today is an exercise in line drawing—perennially one of the most difficult yet inevitable challenges facing a government agency.'' We continue to believe that drawing the line at eight reasonably balances the competing interests at stake.

14. We reject the argument that our requirement that eight broadcast TV stations remain in the DMA post-combination inappropriately or unfairly disadvantages stations in smaller markets because of an alleged impossibility of sustaining a full complement of stations in such markets due to economic realities. As discussed in the *R&O,* we recognize that stations in smaller markets will not be able to take advantage of our new rule. We explained, however, that ''we believe this is appropriate given that these markets start with fewer broadcast outlets, and thus a lower potential for providing robust diversity to viewers in such markets * * *. [I]t is in these small markets that consolidation of broadcast television ownership could most undermine our competition and diversity goals.'' Petitioners' concerns that stations in smaller markets are in danger of failing is addressed by our waiver policies, under which we presume it is in the public interest to waive the duopoly rule if a station fails or is in danger of failing. As we explained in the *R&O,* ''the three waiver standards we adopt today * * *. will, consistent with our competition and diversity goals, provide relief in a more tailored fashion for stations in smaller markets that are unable to compete effectively.'' Because we have concluded that a diversity ''floor'' of eight stations serves our competition and diversity goals, we likewise decline to adopt the sliding scale proposed by one petitioner, which would require a greater number of broadcast stations in DMAs with greater populations. We do not believe that certain populations should have more or less competition and diversity than other populations.

15. While we generally affirm the use of DMAs in determining the number of stations in a particular market, we will modify our decision in one respect. Under the current rule, all independently owned and operating, full-power TV stations in a DMA (whether commercial or non-commercial) count toward the eight-station minimum. There are some geographically large DMAs, however, where counting every stations in the DMA may produce results at odds with our goal of establishing a minimum level of independent voices in a particular community. For example, the Miami-Ft. Lauderdale DMA contains a total of fourteen independent full-power TV stations. But two of those stations are licensed to Key West, Florida, approximately 120 miles from Miami. In a situation such as this, we do not believe that the Key West stations constitute an independent ''voice'' to viewers in Key West. However, under our current rules, a single owner could own the only two TV stations serving Key West by relying on the twelve stations in Miami, even though a viewer in Key West could not receive any of the Miami signals. Similarly, a potential combination in the Miami areas could count Key West stations as ''voices'' in the Miami market even though neither of those stations reaches the Miami area.

16. We therefore will modify our duopoly rule as follows. In counting the number of independently owned and operating, full-power stations in a market for purposes of our rule, we will count only those stations whose Grade B signal contour overlaps with the Grade B contour of at least one of the stations in the proposed combination. This new rule will help strengthen our eight-voice diversity floor in geographically large DMAs.

17. This new rule is consistent with our overall duopoly rule, which has always permitted common ownership of stations with no Grade B overlap. Indeed, in the *R&O,* we held that even though we were moving to a duopoly prohibition based on DMAs rather than contour overlap, we would still permit combinations between stations in the same DMA, regardless of the number of voices available, so long as there was no Grade B overlap. Where there was no Grade B overlap, we found that permitting stations to combine would not threaten our goal of preserving a minimum level of competition and diversity. Having reached that conclusion, we believe that its converse is also valid: if two stations with no Grade B overlap have so little impact on competition and diversity in the other's market that they should be permitted to combine, then neither should they be able to rely on the other as a source of competition and diversity in proposing to combine with a third station.

18. Finally, in the interest of consistency, we will adopt a similar modification of our one-to-a-market rule. Currently, we count all independently owned and operating, full-power TV stations in the same DMA as the TV station at issue as additional ''voices'' in the market. We will modify that rule to provide that only those independently owned and operating, full-power TV stations in the same DMA as the TV station(s) at issue, and that have a Grade B signal contour that overlaps with the Grade B contour of the TV station(s) at issue, will count as additional ''voices'' in the market.

19. *Exclusion of Media Other than Broadcast TV Stations.* Many commenters ask that if we continue to require that eight independently owned ''voices'' remain in the DMA post-combination, we count a host of other media, or at a minimum cable systems, newspapers, and radio stations, consistent with our modified radio/TV cross-ownership rule. Another petitioner asks us not to count noncommercial stations.

20. We first reaffirm that we will count both commercial and noncommercial operating TV stations in the DMA. Although noncommercial stations do not compete for advertising dollars, they do contribute to diversity. We recognize that the signal of noncommercial stations may not reach all over-the-air viewers in a DMA. The same may be said, however, of any broadcast TV station in a DMA. In addition, this argument overlooks the possible extension of the broadcast TV

station's signal carriage by a multichannel video programming distributor, such as cable. Indeed, in modifying our duopoly rule, we explained that ''DMAs reflect the fact that a station's audience reach, and hence its ''local market,'' is not necessarily coextensive with the area of its broadcast signal coverage. For example, a station's over-the-air reach can be extended by carriage on cable systems and other multichannel delivery systems, as well as through such means as satellite and translator stations.'' We thus believe that any categorical exclusion of noncommercial stations is unwarranted.

21. We also reaffirm our decision not to count media other than broadcast TV stations. The issue of whether to count other media entities for purposes of the TV duopoly rule has been debated already, and was resolved in the *R&O*. We explained that we had decided to count only broadcast TV stations because these stations are the primary source of news and information for a majority of Americans, and also because the record was not clear on the extent to which other media are substitutes for broadcast TV. We reaffirm both our decision to count only broadcast TV stations, and our rationale for doing so. Broadcast TV has the power to influence and persuade unmatched by other media. In terms of our diversity goal, we emphasize that TV is the dominant source of news and information for Americans, and in the world of television, broadcast TV stations are the dominant source of local news and information. Other video programming distributors, such as cable and DBS, typically do not serve as independent sources of local information; most of any local programming they provide is originated by a broadcast station. We thus reaffirm that, in applying the eight voice standard, we will only count broadcast TV stations.

22. One petitioner argues that, in counting broadcast TV stations in a DMA, we should include those not licensed in the DMA but with a reportable share in the DMA. To serve our competition goal, we have defined the geographic scope of our new duopoly rule with reference to DMAs only, because the DMA is the accepted measure of the market in the broadcast TV industry. Counting stations outside the DMA undercuts the rationale for our decision to adopt the market-based DMA approach. We believe it would be inconsistent with this approach to consider stations in different DMAs to be in separate markets for one purpose (*i.e.*, the triggering circumstances of the duopoly rule), but consider them to be in the same market for another purpose (*i.e.*, counting voices). We recognize that in counting radio stations for purposes of the radio/TV cross-ownership rule, we include those with a reportable share in the radio market. However, DMAs typically cover much larger geographic areas than radio markets, so that a TV station with a reportable share in a DMA may serve a much smaller portion of that market than a radio station with a reportable share in a radio market.

23. In counting broadcast TV stations in the DMA, we also clarify on our own motion that we will not count low power TV (LPTV) stations, including our recently created Class A stations. On March 28, pursuant to the Community Broadcasters Protection Act of 1999, we adopted rules establishing the Class A TV service, which affords certain LPTV stations a form of ''primary'' status. Given the limited signal coverage of LPTV stations, including Class A stations, we do not believe that they have sufficient influence and power to qualify as a station for purposes of our requirement that eight broadcast TV stations remain in a market post-combination. We emphasize that the new duopoly rule requires that ''at least 8 independently owned and operating full-power commercial and noncommercial TV stations'' must remain in a DMA post-merger.

3. Waivers

24. *Background*. In the *R&O*, we held that we would presume it would be in the public interest to waive our duopoly rule if one of the two TV stations was a ''failed'' station, a ''failing'' station, or an ''unbuilt'' station. We explained that stations in such circumstances are not meaningful sources of competition and diversity in a given market, such that their combination with another station not only will not erode our competition and diversity goals, but perhaps will generate public interest benefits, such as additional programming. We held that applicants for all three of these presumptive waivers must demonstrate that the in-market buyer is the only reasonably available candidate willing and able to operate the station, such that selling a station to an out-of-market buyer would result in an artificially depressed price. In addition, we held that, to qualify for a ''failed'' station waiver, applicants must demonstrate that one of the stations has been dark for at least four months or involved in involuntary bankruptcy or insolvency proceedings. To qualify for a failing station waiver, applicants must demonstrate that one of the stations has a low all-day audience share and has a poor financial condition, such as negative cash flow for the past three years, and that the merger will produce public interest benefits. To qualify for an ''unbuilt'' station waiver, applicants must demonstrate that a combination would result in the construction of an authorized but as yet unconstructed station, and that the permittee has made reasonable efforts to construct, but has been unable to do so.

25. *Discussion*. Several parties ask us to reconsider some of the elements of our presumptive waiver standards, suggesting that they are too burdensome and onerous. For example, some petitioners contend that our failed and failing waiver standards require too much degradation of service before we will permit duopolies. They also ask us to reconsider our requirement that the in-market buyer is the only reasonably available candidate willing and able to operate a station.

26. We reaffirm the elements of our presumptive waiver standards. Given the importance of our competition and diversity goals, we believe it is important to ensure that waivers are available only when truly necessary. As we stated in the context of our failed station waiver, ''we hope to limit the special relief awarded to failed stations to those situations where this relief is clearly needed.'' An essential element of proof for us to presume that a duopoly is in the public interest—in circumstances where less than eight independent broadcast TV stations will remain post-combination—is that one of the stations is in fact failed, failing, or unconstructed, for legitimate reasons, and that no out-of-market buyer is willing to operate the station, and that sale to such a buyer would result in an artificially depressed price. Were it otherwise, combinations would be permitted that would unnecessarily erode our competition and diversity goals. We do not believe that our requirement pertaining to out-of-market buyers amounts to an inappropriate comparison of potential buyers in violation of section 310(d). Rather, in view of the mechanics of the rule, the Commission is not reviewing possible buyers for a particular transfer. The Commission is simply establishing a bar that any licensee who wishes to waive past the eight voice/top four ranked standard must pass.

27. We recognize that a duopoly waiver applicant that is a party to a several-year-old LMA may not, as a practical matter, now be able to show that at the time it entered into the LMA, it was the only buyer willing and able to operate or construct the failed, failing, or unbuilt station, and that sale of the station to an out-of-market buyer

would result in an artificially depressed price. In the *R&O,* we intended to permit parties to an LMA to make a waiver showing based on the circumstances that existed just prior to their entering into the LMA. We therefore will not require a duopoly waiver applicant that seeks to acquire a station with which it formed an LMA in the past (*i.e.*, prior to the adoption date of the *R&O,* in which we announced our new policy) to prove that it was the only buyer willing and able to operate the station, and that sale of the station to an out-of-market buyer would result in an artificially depressed price. We expect such waiver applicants, to prove the other elements of the relevant waiver standard.

28. Two petitioners ask that we adopt a special waiver standard to allow holders of existing LMAs, especially grandfathered LMAs, to convert those arrangements to duopolies. We reject this proposal. Based on the fact that some parties entered into TV LMAs when the Commission had not expressed any unequivocal policy on them, we believed the equities justified affording certain parties some relief and so grandfathered some LMAs to permit them to remain in existence until at least 2004. These equity concerns have no place, however, in considering whether to grant LMAs special dispensation to convert to duopolies, because the parties never had any reasonable expectation of being able to do so, given the Commission's flat prohibition on duopolies.

29. Another petitioner asks us to clarify that a station's demonstrated inability to fund the build-out of its DTV facilities on its own is, standing alone, satisfactory evidence that the station is failing. As indicated, all of our waiver standards require duopoly applicants to show that one of the stations is the only entity ready, willing, and able to operate the other station, and that sale to another buyer would result in an artificially depressed price. In addition, our failing station standard requires applicants to show that one of the stations has an all-day audience share of no more than four per cent and has had negative cash flow for three consecutive years immediately prior to the application, and that consolidation of the stations would result in tangible and verifiable public interest benefits that outweigh any harm to competition and diversity. We clarify that DTV transition costs are relevant to our consideration of whether a station is failing, in that we will consider how these costs have affected a station's cash flow, and whether consolidation with another in-market station would result in demonstrable public interest benefits, such as expedited and improved DTV service. This is consistent with our standards for re-evaluation of grandfathered LMAs in 2004, which include consideration of ''the extent to which one station has enabled the other to convert to digital operations, and whether joint operation has expedited that conversion, as well as produced more over-the-air programming using digital transmission.'' We decline, however, to adopt a policy holding that a station's difficulty in funding its DTV transition is tantamount to its failing under all circumstances. The other elements of our waiver standards are necessary to protect our competition and diversity goals.

30. A petitioner asks us to permit combinations without a waiver where the duopoly involves an authorized but unconstructed station. We decline to do so. Given the fact-intensive nature of the criteria for waiver, we continue to believe that duopolies should be permitted without regard to voice counts not by rule, but by waiver.

31. Public interest groups ask that we reconsider our presumptive waiver standards as well. One petitioner asked that we eliminate our failing and unbuilt station standards for waiver of our duopoly rule, since among other reasons these standards are not available for waiver of our radio/TV cross-ownership rule. We reaffirm our decision. As we explained in the *R&O,* we amended our duopoly and radio/TV cross-ownership rules to differing degrees, and our standards for presumptive waiver vary accordingly. We amended our duopoly rule to a lesser extent than our radio/TV cross-ownership rule, but offered more standards for presumptive waiver of our duopoly rule than for our radio/TV cross-ownership rule. Our overall approach to the duopoly and radio/TV cross-ownership policies is consistent. We have simply struck the balance between combinations allowable by rule and those allowable by waiver at different points. Agencies have the discretion to decide whether to establish their policies through a case-by-case method or through rulemaking, and thus we have struck the balance between these two methods in the manner that we believe best serves the public interest.

32. Another public interest group also asks that we require applicants for duopoly waivers to provide ''socially and economically disadvantaged small business concerns'' (SDBs) with reasonable notice of a station's availability, or offer expedited processing to duopoly-eligible licensees that voluntarily marketed to SDBs. We decline to do so. While we are concerned about minority ownership, we believe, as we stated in the *R&O,* initiatives to enhance minority ownership should await the evaluation of various studies sponsored by the Commission.

4. Transferability

33. *Background.* In the *R&O,* we stated that, once formed, a duopoly could not be transferred unless it complies with the duopoly rule or waiver standard in effect at the time of transfer. This is the case whether the combination was formed in the first instance pursuant to the duopoly rule or waiver.

34. Several petitioners ask us to eliminate our restrictions on transfer, claiming that the transfer of these previously-approved combinations cannot affect our competition and diversity goals, and that restrictions may interfere with investment in broadcast stations. One petitioner asks that we eliminate the restrictions for smaller markets. Others ask that we permit the transfer of duopolies on certain conditions.

35. We reaffirm our decision not to permit the transfer of a duopoly, unless it meets a rule or waiver standard in effect at the time of transfer. Petitioners are correct that we would not have permitted these combinations in the first instance unless we concluded that they did not compromise our competition and diversity goals at that time. But marketplace factors change over time. For example, suppose that a TV station seeks to buy a second station, pursuant to a failed station waiver, in a DMA where there are six independently owned TV stations. We approve the transaction, such that five independent TV stations remain. A TV station in the DMA then goes off the air, with the result that there are four independent stations in the DMA. Several years later, the combination has rehabilitated the previously failed station, and a station group with a national presence but no stations in the same market as the combination seeks to acquire the combination. Section 309(d) requires us to evaluate whether this transfer serves the public interest, convenience, and necessity. We believe the answer to this statutorily-mandated inquiry is more complicated than simply acknowledging that we approved the combination in the past, at a time when the marketplace was significantly different. We recognize that the mere transfer of a combination may or may not adversely affect the competition and diversity dynamics in the market. We believe that

we struck the appropriate balance in harmonizing marketplace changes with our bedrock competition and diversity goals by not requiring combinations to divest stations with the ebb and flow of the market, but requiring them to comply with our rules and waiver policies at the time of transfer. We are especially concerned with maintaining a competition and diversity ''floor'' in smaller markets, and thus decline to adopt the suggestion that we allow parties to transfer duopolies in those markets without regard to our rules or waiver policies. We reaffirm our decision to prohibit transfers of duopolies, unless they comply with our rule or waiver policies at the time of transfer.

36. Several commenters ask us to adopt additional exceptions to our transfer policy, on the same bases commenters asked us to adopt additional exceptions to our waiver policies. Against the backdrop of reaffirming our duopoly rule, standards for presumptive waiver, and transfer policy, we do not believe that it is appropriate to carve out any additional exceptions to the transfer policy. Rather, we believe that these exceptions, if they have merit, are better examined on a case-by-case basis. However, as request by one petitioner, we do wish to clarify the answer to the question of whether duopolies created from LMAs may be transferred through 2004, as the LMAs can be. We clarify that such a duopoly, like any other duopoly, may not be transferred unless it satisfies the rule or waiver standard at the time of transfer. As explained, in the context of our waiver policies, we extended certain relief to grandfathered LMAs, based on the equities of their situation. Parties to grandfathered LMAs formed these arrangements and may have made significant investments in them before the Commission had given clear notice that it intended to attribute LMAs in certain circumstances. These parties could not have formed a reasonable expectation that they could have converted these LMAs to duopolies, since the Commission prohibited duopolies at the time. Accordingly, the equity arguments for maintaining and transferring LMAs do not extend to converting or transferring duopolies created from those LMAs.

B. Radio/TV Cross-Ownership Rule

37. We turn next to petitions for reconsideration of our amended radio/TV cross-ownership rule. As with the TV duopoly rule, petitioners have asked us to reconsider many aspects of our policy, including the circumstances that trigger our rule, the application of our voice counts, our standards for presumptive waiver, and our transfer policy.

1. Circumstances That Trigger the Rule

38. *Background*. In amending the *R&O,* we did not change the circumstances that trigger our radio/TV cross-ownership rule. Rather, we stated that ''[t]he current one-to-a-market rule, and the rule we adopt today, is triggered by the degree of contour overlap among the stations involved.'' Thus, the rule is triggered when the Grade A contour of a TV station encompasses the entire community of license of an AM or FM radio station, or when the 2 mV\m contour of an AM radio station, or the 1 mV\m contour of an FM radio station, encompasses the entire community of license of a TV station.

39. *Discussion.* Several parties ask us to clarify the application of the rule. Parties ask us to clarify that radio stations, even if encompassed by the Grade A contour of a TV station, do not trigger radio/TV cross-ownership analysis if they are located in separate DMAs from the TV station. Parties also ask us to clarify that overlapping contours of a single TV station and several radio stations, if the radio stations are in separate radio markets, constitute several distinct radio/TV combinations, each deserving independent analysis.

40. We clarify as follows. Although the radio/TV cross-ownership rule continues to be triggered by contour encompassment, we generally do not count stations assigned to different markets toward the limits of the rule when applying it. Thus, for purposes of the radio/TV cross-ownership rule, we generally do not count radio stations located in one Arbitron radio market toward the limits on the number of radio stations a party may own in another Arbitron radio market, even when the radio stations in the different markets fall within the Grade A contour of a commonly owned TV station. For example, the recent application to transfer control of CBS Corp. to Viacom, Inc. involved a TV station located in the Baltimore DMA and Arbitron radio metro, the Grade A contour of which encompassed the entire communities of license of several radio stations located in the Washington, DC DMA and Arbitron radio metro. We did not count these several radio stations toward CBS/Viacom's radio/TV ownership limits in the Baltimore market because the stations are not assigned to that market. We do count, however, a radio station assigned to one Arbitron radio market toward an entity's ownership limits in a distant market when the contour of the radio station triggers the rule, because the rule continues to be triggered by contour encompassment, and such a radio station has a presence for competition and diversity purposes in the distant market. For example, the recent CBS/Viacom transaction also involved a radio station assigned to the San Francisco DMA and Arbitron radio metro, the 2mV\m contour of which encompassed the entire community of license of a proposed co-owned TV station located in the Sacramento DMA. We counted that San Francisco-based radio station toward CBS/Viacom's radio/TV ownership limits in the Sacramento market because the contour of that radio station triggered the rule. In sum, we clarify that, generally, we do not count toward an entity's radio/TV ownership limits in one market those radio stations assigned to an Arbitron radio market other than the one in which a commonly owned TV station is located. However, we will count toward an entity's radio/TV cross-ownership limits any radio station assigned to an Arbitron radio market other than the one in which a commonly owned TV station is located, if the contour of the radio station triggers the radio/TV cross-ownership rule. Given that contour encompassment continues to trigger the radio/TV cross-ownership rule, we believe it is necessary to recognize that radio stations located in one market in fact have a presence in a distant market, if their contours reach into the distant market and trigger the rule.

2. Application of the Voice Counts

41. *Background*. In the *R&O,* we decided to permit common ownership of one TV station (or two, if permitted by the duopoly rule) and a varying number of radio stations, depending on the number of certain independently owned media voices that would remain in a given market post-combination. Specifically, pursuant to the amended rule, we allow the common ownership of one (or two) TV stations and six radio stations in the same market, if at least twenty independently owned media voices would remain in the market post-combination. In circumstances where we allow common ownership of two TV and six radio stations, we also allow common ownership of one TV and seven radio stations. Under our new rule, we allow common ownership of one (or two) TV stations and four radio stations in the same market, if at least ten independently owned media voices would remain in the market post-combination. We also allow common ownership of one (or two) TV stations and one radio station in the same market, without regard to the number of

media voices that would remain post-combination. For purposes of the new radio/TV cross-ownership rule, we include as independently owned media voices in the market all independently owned and operating radio stations in the market, all independently owned and operating full-power TV stations in the market, independently owned cable systems (as one voice, if generally available in the TV station's DMA), and independently owned daily newspapers for which the circulation exceeds 5% of the households in the DMA.

42. *Discussion.* Petitioners raise a number of concerns about the application of our voice counts. As a preliminary matter, one petitioner suggests that the *R&O* was not clear about the circumstances pursuant to which one entity may own one TV station and seven radio stations. To the extent the *R&O* was unclear, we clarify that an entity may own such a combination only if it could own two TV stations and six radio stations, *i.e.*, only if it could satisfy the TV duopoly requirement that eight full-power independently owned and operating broadcast TV stations would remain in the DMA post-combination. We believe that construction of the rule to allow a combination of 1 TV/7 radio stations only where a combination of 2 TV/6 radio is possible best serves our competition and diversity goals. We believe that a combination of eight broadcast outlets should be permissible only under such circumstances where the more stringent duopoly test can be satisfied.

43. *Broadcast Stations Counts.* One petitioner asks us not to count noncommercial broadcast stations, and that we count only those broadcast stations with a certain level of viewership in a DMA. We reaffirm that we will count noncommercial stations, for the same reasons we stated above in the context of our duopoly rule. We also will not require broadcast stations to have a certain level of viewership before counting them. We believe that the assignment of a broadcast station to a particular market, and its continued success as a going concern, demonstrates that a station is a source of viable competition and diversity in a given market, and therefore should be counted.

44. Consistent with our decision not to count in the duopoly context Class A or LPTV stations for purposes of satisfying the requirement that eight independent TV broadcast stations must remain in the DMA post-merger, we wish to clarify on our own motion that we will not count in the radio/TV cross-ownership context either LPTV stations, including Class A stations, or low power FM (LPFM) stations for purposes of satisfying the requirement that a certain number of media entities must remain in the market post-combination. As we explained above in the duopoly context, LPTV stations, given their limited signal coverage, do not have sufficient influence and power to qualify as a station for purposes of our policy that a certain minimum number of stations must remain in a market post-combination. Likewise, the LPFM service is designed to serve small, localized communities; the strict limitation on their signal reach means that their programming will not be available to most of the market at issue in a proposed radio/TV combination. Therefore, LPFM stations will not be counted in determining compliance with the requirement that a specified number of independently owned media voices must survive the formation of the combination at issue.

45. *Newspapers Counts.* Pursuant to our new rule, we include daily newspapers in our count of independently owned media voices if they are published in the DMA at issue and if they have a circulation in excess of 5% of the households in the DMA. One petitioner asks us to include a newspaper that owns a number of daily newspapers that have an aggregate circulation equal to or greater than 5% of the households in the DMA. We decline to do so, because it is not consistent with our rationale for limiting the number of newspapers we include in our count of ''media voices'' to those with a circulation of at least 5% of the households in the DMA. As we explained in the *R&O*, ''[o]ur intent in this regard is to include those newspapers that are widely available throughout the DMA and that provide coverage of issues of interest to a sizeable percentage of the population. Although we recognize that other publications also provide a source of diversity and competition, many of these are only targeted to particular communities and are not accessible to, or relied upon by, the population throughout the local market.'' We reaffirm both our decision and our rationale.

3. Waivers

46. In the *R&O*, we held that we would presume it is in the public interest to waive the radio/TV cross-ownership rule if one of the stations is a failed station. One petitioner asks that we also presume that waiver of the radio/TV cross-ownership rule is in the public interest if one of the stations is failing or not yet constructed, as we did in the context of the duopoly rule. As we have explained, we revised our duopoly rule to a lesser extent than our radio/TV cross-ownership rule. We believe that a waiver is another form of liberalizing a rule, and thus that we struck the appropriate balance in our duopoly and radio/TV cross-ownership policies, in terms of our rules and presumptive waiver policies. We reaffirm our approach to our revised radio/TV cross-ownership policy ''by amending the rule to provide a greater degree of common ownership of radio and television stations while at the same time limiting waivers of this new rule to only extraordinary circumstances.''

47. In the *R&O*, we also decided to grandfather any radio/TV combination formed pursuant to a waiver conditioned on the outcome of this proceeding, if applied for on or before July 29, 1999 (the ''sunshine'' notice for the *R&O*, and ultimately approved by the Commission. We grandfathered these combinations through our 2004 biennial review, during which the Commission will review the radio/TV cross-ownership rule, and the conditional waivers. One petitioner asks us to reconsider our grandfathering decision, and require all radio/TV combinations to comply with our new rules and waiver policies. As we explained in the *R&O*, although the conditional waiver grantees knew that the continuation of any combinations they formed was subject to the outcome of this proceeding, we believed it was appropriate to grandfather the specified combinations because in many cases a significant period of time had passed since the grantees formed and made investments in their combinations. We reaffirm both our decision and our rationale.

4. Transferability

48. In the *R&O*, we stated that, once formed, whether pursuant to the amended rule or waiver standard, a radio/TV combination could not be transferred unless it complies with the radio/TV cross-ownership rule or waiver standard in effect at the time of transfer. Some parties ask us to reconsider our decision, for reasons similar to those they asked us to reconsider our same decision in the duopoly context. We explained that we believe that we have properly harmonized changes in the marketplace with our competition and diversity goals by, on the one hand, not requiring combinations to divest broadcast stations when the market changes such that those combinations no longer comply with our rules and waiver policies, and, on the other hand,

requiring combinations to comply with these rules and waiver policies at the time of transfer. We reaffirm our decision.

C. Television Local Marketing Agreements

49. *Background.* In our *Attribution R&O,* we adopted ''a new rule to *per se* attribute television LMAs, or time brokerage of another television station in the same market, for more than fifteen percent of the brokered station's broadcast hours per week and to count such LMAs toward the brokering licensee's local ownership limits.'' In the *R&O* in this proceeding, we concluded, as we proposed in the *2FNPRM,* to grandfather LMAs entered into before the adoption date of that notice (November 5, 1996) through the conclusion of our 2004 biennial review, and to require LMAs entered into on or after that date to comply with our TV duopoly rule within two years of the adoption date of the *R&O* (August 5, 1999).

50. *Discussion.* Several petitioners contend that we should have grandfathered all LMAs, and that our decision not to do so is contrary to section 202(g) of the Telecommunications Act of 1996. This issue was already fully briefed and developed in the record that led to the *R&O,* and we see no reason to disturb our decision or revisit our analysis in detail here. Section 202(g) states that ''[n]othing in this section shall be construed to prohibit the origination, continuation, or renewal of any television local marketing agreement that is in compliance with the regulations of the Commission.'' As we explained in the *R&O,* the express terms of the language indicate what section 202 was *not* intended to do, *i.e.,* prohibit LMAs, but it does not indicate what if anything else the section was intended to do. We recognize that the Conference Report to the 1996 Act states that ''[s]ubsection (g) grandfathers LMAs currently in existence upon enactment of this legislation and allows LMAs in the future, consistent with the Commission's rules. The conferees note the positive contributions of television LMAs and this subsection assures that this legislation does not deprive the public of the benefits of existing LMAs that were otherwise in compliance with the Commission regulations on the date of enactment.'' We believe that this language at best indicates that Congress intended the Commission to grandfather LMAs that were in existence as of the date of enactment, *i.e.,* February 8, 1996. We have grandfathered those LMAs, as well as those entered into almost nine months later when the Commission adopted the *2FNPRM.* Thus, we reject the argument that section 202(g) compels us to grandfather *all* LMAs entered into prior to the effective date of our new rules.

51. Our decision not to grandfather LMAs entered into on or after the adoption date of the *2FNPRM* does not constitute retroactive rulemaking. As the Supreme Court has stated, ''[a] statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment * * * or upsets expectations based on prior law.'' Likewise, as the U.S. Court of Appeals for the District of Columbia Circuit has stated, ''[i]t is often the case that a business will undertake a certain course of conduct based on the current law, and will then find its expectations frustrated when the law changes. This has never been thought to constitute retroactive rulemaking, and indeed most economic regulation would be unworkable if all laws disrupting prior expectations were deemed suspect.'' In any event, parties to the non-grandfathered LMAs could not have had a reasonable expectation that their agreements and investments would be permissible, since when the Commission adopted the *2FNPRM,* it gave explicit notice of its proposal not to grandfather non-compliant LMAs entered into on or after that date. We have not assessed a forfeiture or other penalty on parties to the non-grandfathered LMAs. We have not altered any reasonable expectations they had when they entered into these LMAs, or imposed any new duties on the parties to the LMAs. Rather, we held, after giving explicit notice of our proposal to do so, that non-compliant LMAs entered into on or after the date of that notice will not be grandfathered.

52. Nor does our decision not to grandfather LMAs entered into on or after the adoption date of the *2FNPRM* constitute an unconstitutional taking of property in violation of the Fifth Amendment. As a preliminary matter, it is doubtful whether an LMA constitutes a cognizable ''property'' interest for takings purposes. Yet even assuming that the parties to LMAs could satisfy the threshold question of whether they have a property interest, our decision not to grandfather LMAs entered into after the *2FNPRM* does not constitute a taking. Parties to nongrandfathered LMAs entered them after the Commission made the following statements in the *2FNPRM*: ''[T]elevision LMAs entered into on or after [November 5, 1996] would be entered into at the risk of the contracting parties. Consequently, if these latter television LMAs result in a violation of any Commission ownership rule, they would not be grandfathered and would be accorded only a brief period in which to terminate.'' Any party that subsequently chose to enter into an LMA cannot now be heard to argue that the Commission's action—which is well within our authority—interfered with their reasonable investment-backed expectations. Indeed, we gave these parties an ample two-year period in which to terminate their LMAs in order ''to avoid undue disruption of existing arrangements and [to] allow the holders of LMAs to order their affairs.''

53. A public interest group requests that we eliminate grandfathered LMAs if by 2004 minority or SDB ownership has fallen by 10%. We decline to do so, and reaffirm our approach in the *R&O* to decide the status of grandfathered LMAs in tandem with, or not later than, our 2004 biennial review of our broadcast cross-ownership rules.

D. First Amendment Arguments

54. *Background.* In the *R&O,* we explained that ''[a]ll of our broadcast cross-ownership and multiple ownership rules, including the 'TV duopoly' and 'one-to-a-market' rules at issue in this proceeding, are based on the 'twin goals' of competition and diversity.'' Our competition goal seeks to ensure that broadcasters do not obtain market power, to the detriment of advertisers, other competitors, and the public. Our diversity goal seeks to ensure that the public has access to information from a variety of diverse and antagonistic sources.

55. *Discussion.* One petitioner contends that our diversity rationale violates the First Amendment, for a variety of reasons. In essence, the petitioner argues that our diversity goal, ''standing alone'' and without a scarcity of video programming alternatives, cannot sustain our cross-ownership and multiple ownership rules, and that even if this goal were sufficiently important for First Amendment purposes, our ownership rules are not sufficiently tailored to achieve that goal.

56. We disagree. Aside from the fact that the petitioner ignores the competition basis for our rules, our diversity goal and means of promoting that goal are consistent with the First Amendment. To the extent our ownership rules implicate First Amendment concerns, the Supreme Court has noted that they are content-neutral. According to the applicable test, ''[a] content-neutral regulation will be sustained under the First

Amendment if it advances important governmental interests unrelated to the suppression of free speech, and does not burden substantially more speech than necessary to further those interests.'' In the *R&O,* we explained at length the basis for our conclusion that our ownership rules advance the important governmental interests of competition and diversity, and do so in a particularly nonburdensome way for purposes of the First Amendment. The petitioner has not provided any reason for us to reconsider that conclusion. We also note that, in order for the rules to apply to entities and individuals, those entities or individuals must already own a broadcast outlet in the same market. Our rules and waiver policies are designed to ensure that others have an opportunity to own an outlet in the market before an entity or individual with one or more outlets already in a given market obtains another one. Our rules thus foster, rather than impede, the values underlying the First Amendment, as the Supreme Court has recognized.

IV. Administrative Matters

57. 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.

58. *Paperwork Reduction Act Analysis.* The actions taken in this *MO&O* have been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and record-keeping requirements or burdens on the public.

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

V. Ordering Clauses

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

61. Pursuant to 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, part 73 of the Commission's rules, 47 CFR part 73, *is amended* as set forth in the rule changes.

62. Pursuant to the Contract with America Advancement Act of 1996, the rule amendments set forth *shall become effective* April 9, 2001.

63. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *MO&O* in MM Docket Nos. 91–221 and 87–8, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

64. This proceeding is *terminated.*

VI. Supplemental Final Regulatory Flexibility Analysis

65. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (''*NPRM*''), 57 FR 28163, June 24, 1992; the *Further Notice of Proposed Rulemaking* (''*FNPRM*''), 60 FR 6490, February 2, 1995; and the *2FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM,* the *FNPRM,* and the *2FNPRM,* 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, this *MO&O* grants reconsideration of some actions 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 Second Order on Reconsideration

66. In the *R&O,* the Commission revised its local television ownership rules—the local television multiple ownership rule, or TV duopoly rule, and the radio/TV cross-ownership rule—and also adopted grandfathering policies for certain television local marketing agreements and radio/TV combinations. The Commission received fourteen petitions for reconsideration of the new rules and grandfathering policies. The *MO&O* resolves these petitions and associated pleadings, consistent with the Commission's overall goals in the proceeding. These Commission's goals were to balance two of its most fundamental goals in broadcast ownership—fostering competition in the markets in which broadcast stations compete, and preserving a diversity of information sources, especially at the local level—with the efficiencies of common ownership and increased competition in the media marketplace.

Summary of Significant Issues Raised by the Public

67. 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. The Commission received no petitions for reconsideration in direct response to the FRFA.

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

68. The rules revisions contained in this *MO&O* will apply to commercial television and radio broadcast licensees, and potential licensees and permittees. 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

69. No new recording, recordkeeping or other compliance requirements are adopted.

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

70. The *MO&O* generally affirms and clarifies the *R&O,* but it also modifies the TV duopoly and radio/TV cross-ownership rule. As explained below, this change relates to the standard the Commission uses to determine if the necessary circumstances are present to approve a particular combination. As also explained below, the Commission has considered how this change affects small entities, and taken steps to minimize significant economic impact on them.

71. The duopoly rule, as revised in the *R&O,* permits common ownership of two TV stations in the same market, defined by Designated Market Areas (DMAs), if, among other things, eight independently owned and operating full-power TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located.

72. The rules as revised in the *MO&O* strike what we believe to be the appropriate balance between allowing broadcast stations to realize the efficiencies of combined operations, and furthering our policy goals of competition and diversity. The rules tighten the showing necessary for common ownership, and thereby prevent stations in the market from obtaining and exercising market power

at the expense of smaller stations. For example, consider a DMA that includes nine TV stations, six of which broadcast from hypothetical City A, and the other three of which broadcast from hypothetical City B. The signal contours of the stations in City A do not reach viewers in City B, and vice versa. The rule, as revised in the *R&O,* would permit two of the three stations in City B to combine, with the possible result that they could obtain and exercise market power at the expense of the third station in City B. The rule as revised in the *MO&O* would not permit any of the stations in City B to combine with each other. (It would, however, permit one station in City A to combine with one station in City B, leaving eight TV stations in the DMA.) Thus, the alternative considered of affirming the rule as revised in the *R&O* could have enabled a smaller station's competitors to obtain and exercise market power.

73. In tightening the circumstances under which two stations can combine, we recognize that our new rule may not just protect smaller stations, but instead may hamper their ability to combine, reduce costs, and compete more effectively. We note, however, that the rules, as revised in the *R&O,* and affirmed in the *MO&O,* permit struggling stations to combine when one of them has failed or is failing, or the combination of the two would result in the construction of an authorized but as yet unconstructed station.

74. For the above reasons, we believe that the Commission has taken steps to minimize significant economic impact on a substantial number of small entities.

Report to Congress

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

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

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

PART 73—RADIO BROADCAST SERVICES

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

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

2. Section 73.3555 is amended by revising paragraphs (b)(2)(ii) and (c)(3)(i) to read as follows:

§ 73.3555 Multiple Ownership.

* * * * *

(b) * * *

(2) * * *

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

* * * * *

(c) * * *

(3) * * *

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

* * * * *

[FR Doc. 01–3046 Filed 2–5–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

49 CFR Part 37

[Docket OST–1998–3648]

RIN 2105–ACOO

Transportation for Individuals With Disabilities—Accessibility of Over-the-Road Buses (OTRBs)

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule; Request for comments.

SUMMARY: The Department is amending its Americans with Disabilities Act (ADA) regulations concerning accessibility of over-the-road buses (OTRBs) by removing the provision requiring compensation to passengers who do not receive required service, clarifiying the information collection requirements, postponing until March 26, 2001, the requirement for bus companies to submit information reporting ridership on accessible fixed route service and the acquisition of buses, and designating a different address for regulated parties to use in submitting the required information. The amendments respond to a recent court decision and comments on the information collection requirements.

DATES: *Effective Date:* This rule becomes effective March 8, 2001.

Written Comments: Comments on the interim final rule must be submitted on or before March 8, 2001.

ADDRESSES: The public is invited to submit written comments on the Interim Final Rule. The Interim Final Rule may be changed in light of the comments received. Written comments should refer to the docket number of this interim rule and be submitted in duplicate to: DOT Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to: DOT Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

All docket material will be available for inspection at this address and on the Internet at *http://dms.dot.gov.* Docket hours at the Nassif Building are Monday–Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Attorney, Regulation and Enforcement, Office of the General Counsel, 400 7th Street, SW., Room 10424, Washington, DC 20590, 202–366–9306 (voice), 202–366–9313 (fax), or *blane,workie@ost.dot.gov* (email).

SUPPLEMENTARY INFORMATION: The Department's September 1998 final rule