- *Number of likely respondents:* 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam will respond. An average of 3 sub-jurisdictions will be anticipated to respond as components of State/jurisdiction efforts.
- *Proposed frequency of response:* annually.
- *Average Burden Per Response:* 24 hours.
- *Estimate of the total annual reporting and record keeping burden:* (54 States and jurisdictions + 3 sub-jurisdictions or 216 responding units) x (1 response per year) x (24 hours average burden per response) = 5,184 hours.

The Administration for Children and Families will consider comments by the public on this proposed collection of information in—

- Evaluating whether the proposed data collection is necessary for proper performance of the functions of ACF, including whether the information will have practical utility.
- Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information of those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington D.C. 20503, Attn: Ms. Wendy Taylor.

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that the rule is consistent with these priorities and principles. The proposed rule implements statutory provisions that require States that receive grants for child access and visitation programs to monitor, evaluate, and report on such programs in accordance with regulations prescribed by the Secretary.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of more than $100 million in any one year. The Department has determined that this proposed rule is not a significant regulatory action with in the meaning of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation would not result in a significant impact on a substantial number of small entities. The primary impact of the proposed rule would be on State governments which are not considered small entities under this Act.

List of Subjects in 45 CFR Part 303

Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.597, Grants to States for Access and Visitation)

Dated: March 13, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For reasons stated in the preamble, we propose to amend 45 CFR part 303 as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation of part 303 continues to read as follows:

Authority: 42 U.S.C. 651 thorough 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k)

2. A new § 303.109 is added to read as follows:

§ 303.109 Procedures for State monitoring, evaluation and reporting on programs funded by Grants to States for Access and Visitation Programs.

(a) *Monitoring.* The State must monitor all programs funded under Grants to States for Access and Visitation Programs to ensure that the programs are providing services authorized in section 469B(a) of the Act, are being conducted in an effective and efficient manner, and are complying with Federal evaluation and reporting requirements.

(b) *Evaluation.* The State:

(1) May evaluate all programs funded under Grants to States for Access and Visitation Programs;

(2) Must assist in the evaluation of significant or promising projects as determined by the Secretary.

(c) *Reporting.* The State must:

(1) Report a detailed description of each program funded by providing the following information, as appropriate: service providers and administrators, service area (rural/urban), population served (race/marital status), program goals, application or referral process (including referral sources), voluntary or mandatory nature of the programs, types of activities, and length and features of a complete program;

(2) Report data including: The number of applicants/referrals for each program, the number of total program participants families and individuals, and the number of program participants and program graduates (families and individuals) by authorized activities (mediation—voluntary and mandatory, counseling, education, development of parenting plans, visitation enforcement—including monitoring, supervision and neutral drop-off and pickup, and development of guidelines for visitation and alternative custody arrangement);

(3) Report the information as required in paragraphs (c)(1) and (c)(2) of this section annually, at such time and in such form as the Secretary may require from time to time.

[FR Doc. 98–8426 Filed 3–30–98; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[MM Docket No. 98–35; FCC: 98–37]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Review of rules; notice of inquiry.

SUMMARY: Pursuant to the requirements of Section 202(h) of the Telecommunications Act of 1996, the Commission issues this Notice of Inquiry soliciting comment on whether any or all of its broadcast ownership rules are no longer in the public interest as the result of competition.

DATES: Comments are due by May 22, 1998, and reply comments are due by June 22, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division (202)418–2134 or Dan Bring, Mass Media Bureau, Policy and Rules Division (202)418–2170.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry in MM Docket No. 98–35, FCC 98–37, adopted March 12, 1998, and released March 13, 1998. The complete text of this Notice of Inquiry 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 may also be purchased from the Commission's copy contractor, International Transcription Service, (202)857–3800, 1231 20th Street, N.W., Washington, D.C. 20036. The Notice of Inquiry is also available on the Internet at the Commission's web site: http://www.fcc.gov.

Synopsis of Notice of Inquiry

I. Introduction

1. This Notice of Inquiry is the first step in our biennial ownership review of the broadcast ownership and other rules as required by section 202(h) of the Telecommunications Act of 1996 (''Telecom Act'').[1] That section provides:

> The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

Section 11 of the Communications Act of 1934, as amended,[2] similarly provides that under the statutorily required review, the Commission ''shall determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition'' and requires that the Commission ''shall repeal or modify any regulation it determines to be no longer necessary in the public interest.''

2. Once this phase is completed, we will review the comments and issue a report. In the event we conclude there is good reason to believe that any of the rules within the scope of the review, or portions thereof, should be repealed or modified, we will issue the appropriate Notice(s) of Proposed Rule Making.

II. Framework for Review

3. For more than a half century, the Commission's regulation of broadcast service has been guided by the goals of promoting competition and diversity.[3] Competition is an important part of the Commission's public interest mandate because it promotes consumer welfare and the efficient use of resources.[4] Diversity, particularly diversity of viewpoints, is the other important part of the Commission's public interest mandate. The Commission's viewpoint diversity objective promotes a goal the Supreme Court has stated underlies the First Amendment. As the Court has said, the First Amendment ''rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public* * *.''[5] Promoting diversity in the number of separately owned outlets has contributed to our goal of viewpoint diversity by assuring that the programming and views available to the public are disseminated by a wide variety of speakers. Moreover, our diversity concerns are separate from our goal of promoting competition. Indeed, the Supreme Court has recently stated that ''[f]ederal policy* * *has long favored preserving a multiplicity of broadcast outlets regardless of whether the conduct that threatens it is motivated by anticompetitive animus or rises to the level of an antitrust violation.''[6]

4. We also note that the definition of economic markets (i.e., product and geographic markets) is an important step in the assessment of current levels of competition that section 202(h) and section 11 require in order to determine whether such competition has eliminated the need for our broadcast rules. The Commission has previously identified three economic markets in which broadcasters operate: the market for delivered video programming; the advertising market; and the program production market. In addition, we tentatively considered that cable television directly competes with broadcast television stations in each of these markets, and that broadcast radio and newspapers compete with television in the local advertising market. While we also sought comment on whether other suppliers of video programming (*e.g.,* Multichannel Multipoint Distribution Service (MMDS), Direct Broadcast Satellite (DBS), etc.) compete with broadcast television stations, we stated 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.[7] Commenters are invited to address the correctness of these tentative considerations, as well as their applicability to the instant proceedings. After exploring the issue of which media compete with broadcasting in each of the economic markets, the competitive analysis then focuses upon whether and to what extent market power exists and is being exercised, and what effect our ownership rules have on the existence and exercise of market power in each of these markets.

5. Our diversity analysis focuses upon the ability of broadcast and non-broadcast media to advance the three types of diversity (i.e., viewpoint, outlet and source) our broadcast ownership rules have attempted to foster. Viewpoint diversity refers to helping to ensure that the material presented by the media reflect a wide range of diverse and antagonistic opinions and interpretations. Outlet diversity refers to a variety of delivery services (*e.g.,* broadcast stations, newspapers, cable and DBS) that select and present programming directly to the public. Source diversity refers to promoting a variety of program or information

[1] Telecommunications Act of 1996, Pub. L. 104–104, 110 Stat. 56 (1996). Also required by that section is the biennial review of rules adopted pursuant to sections 202(a)–(f) of the Telecommunications Act. These include rules pertaining to cable as well as broadcast cross-ownership.

[2] 47 U.S.C. 161.

[3] For a short history of the Commission's broadcast ownership regulations, *see Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 and 87–8, 10 FCC Rcd 3524, 3526–29 (1995)(hereinafter ''TV Ownership Further Notice'').

[4] *Revision of Radio Rules and Policies,* 7 FCC Rcd 2755 (1992), *recon. granted in part,* 7 FCC Rcd 6387 (1992), *further recon.,* 9 FCC Rcd 7183 (1994).

[5] *Associated Press* v. *United States,* 326 U.S. 1, 20 (1945); *accord Federal Communications Commission* v. *National Citizens Committee for Broadcasting,* 436 U.S. 775 (1978).

[6] *Turner Broadcasting System, Inc.* v. *FCC,* 117 S.Ct. 1174 (1997)(citations omitted).

[7] *TV Ownership Further Notice, supra* at 3538.

producers and owners.[8] In the *TV Ownership Further Notice* we sought comment on whether nonbroadcast outlets contributed to our diversity goals. We tentatively considered that cable television, as well as broadcast television, provides diversity in this market given that cable has the capability for local origination of programming.

6. We propose to apply this framework to evaluate whether our rules continue to be in the public interest as required by the Telecom Act. We seek comment on this proposal. In performing our section 202(h) review, we will consider the effect of meaningful competition that has developed and the extent to which this competition has been furthered by our rules. We also seek comment on the relevance to the framework of the Commission's assessment of the state of competition in the multi-channel video programming delivery services (MVPDs) market contained in the Cable Competition Report,[9] which was released subsequent to our *TV Ownership Further Notice.* Furthermore, we seek comment on how the Commission's assessment of the competitive effects of the Bell Atlantic/NYNEX merger bears on our analysis here.[10] We also seek data, studies and any other information relevant to our consideration of these competition and diversity issues.

III. Rules To Be Reviewed

7. In this Notice of Inquiry we describe each of the rules that are within the scope of our biennial broadcast ownership review. We seek comment on any other rules commenters believe should be included in this review. The rules are grouped into three categories. The first group are those broadcast ownership rules that are currently being examined in pending Commission proceedings. The second group are those broadcast ownership rules that have recently been changed to implement provisions of the Telecom Act of 1996.[11] Finally, the third group are the remaining broadcast ownership rules.

Rules Currently Subject to Outstanding Proceedings

8. Several of the Commission's broadcast ownership rules are currently the subject of open proceedings. They are as follows:

• The television ''duopoly'' rule, which states that a party may not own, operate or control two or more broadcast television stations with overlapping ''Grade B'' signal contours.[12]

• The ''one-to-a-market'' rule, which generally prohibits the common ownership of a television and a radio station in the same market.[13] In 1989, the Commission amended the rule to specify that it would ''look favorably'' on requests for waiver of the restriction in the Top 25 television markets if, after the merger, at least 30 independently owned broadcast voices remained, or if the merger involved a ''failed station.'' Case-by-case review of waiver requests is also provided for in instances where the presumptive waiver criteria are not present. Section 202(d) of the Telecom Act directed the Commission to extend its presumptive waiver policy to the Top 50 television markets if it finds that doing so would be in the public interest.[14]

• the daily newspaper/radio cross-ownership rule[15] which generally prohibits the common ownership of a daily newspaper and a radio station in the same community. The outstanding proceeding examines whether the Commission should modify the existing waiver policy for this rule.[16]

9. We believe that our ongoing review of these rules in the outstanding proceedings satisfies the requirements of section 202(h) of the Telecom Act.[17] We anticipate taking action in those proceedings during 1998 independently of the instant review. We consequently seek no additional comment on these rules in this Notice of Inquiry. Nor do we seek comment on our attribution standards. Our attribution rules define what the Commission will consider a cognizable interest for purposes of its ownership rules. They do not of themselves establish limits on ownership or restrict cross-ownership combinations. Furthermore, they are currently under consideration in MM Docket Nos. 94–150, 92–51, and 87–154.[18]

Rules Recently Changed by Section 202 of the Telecom Act

10. The Commission modified/eliminated several of its ownership rules in accordance with section 202 of the Telecom Act. Section 202(h) of the Act directs the Commission, without limitation, to review its broadcast ownership rules as part of the biennial ownership review. Parties are invited to provide data or other information which would indicate whether some, or all, of the remaining rules are no longer in the public interest. In this proceeding we will review the impact of the remaining rules on competition and diversity and discuss our analysis in the report we issue.

11. In the course of this review, we will examine the effect these rule changes have had, thus far, on the structure and trends in media markets and their impact on our competition and diversity goals. We propose to make this assessment by developing a record examining the changes in the structure of the industry (horizontal concentration and vertical integration) and financial performance in media markets, as well as changes in diversity. Examining the structure of an industry provides information about the industry's conduct and performance. For example, horizontal concentration can give firms sufficient market power to raise rates above competitive levels or otherwise engage in anti-competitive activity, although it can also result in new efficiencies that accrue to the

[8] See *TV Ownership Further Notice, supra* at 3547–51.

[9] Fourth Annual Report, in the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket 97–141 (adopted December 31, 1997) (''Video Competition Report'').

[10] See *Memorandum Opinion and Order* In the Application of NYNEX Corporation, 12 FCC Rcd 19985 (1997).

[11] We will not be reviewing herein the elimination of national radio ownership limits (*Order,* 11 FCC Rcd 12368 (1996)) or cable/network cross-ownership restrictions (*Order* in CS Docket No. 96–56, 11 FCC Rcd 15115 (1996)) because neither is a ''rule adopted pursuant to'' section 202(h) or an existing broadcast ownership rule. Additionally, although these subjects are referred to in section 202(f)(2) of the Telecom Act, the Commission has not revised any rules pertaining to ensuring cable carriage, channel positioning, or nondiscriminatory treatment of broadcast stations by cable systems. Accordingly, these subjects, will not be expressly and separately addressed except as set forth.

[12] 47 CFR 73.3555(b). This rule is currently under consideration in MM Docket Nos. 91–221 and 87–8. *See Notice of Proposed Rule Making* in MM Docket No. 91–221, 7 FCC Rcd 4111(1992); *TV Ownership Further Notice, supra; Second Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 and 87–8, 11 FCC Rcd 21655 (1996).

[13] 47 CFR 73.3555(c). This rule is also currently under review in MM Docket Nos. 91–221 and 87–8.

[14] See note 12, *supra.*

[15] 47 CFR 73.3555(d). The rule applies to all newspaper/broadcast cross-ownership situations. Only the waiver policy with respect to newspaper/radio combinations is currently under review in another proceeding.

[16] See Notice of Inquiry in MM Docket No. 96–197, 11 FCC Rcd 13003 (1996).

[17] In the Conference Report accompanying the Telecom Act, it is stated that the, ''conferees are aware that the Commission already has several broadcast deregulation proceedings underway. It is the intention of the conferees that the Commission continue with these proceedings and conclude them in a timely manner.'' H.R. Rep. 104–458, at 164.

[18] See *Notice of Proposed Rule Making* in MM Docket Nos. 94–150 *et al.,* 10 FCC Rcd 3606 (1995); *Further Notice of Proposed Rule Making* in MM Docket Nos. 94–150 *et al.,* 11 FCC Rcd 19895 (1996).

benefit of consumers. Examining changes in ownership will provide information on the effects on diversity.

12. Parties are invited to provide us with relevant information, but our review will also be informed by publicly available information, *e.g.,* BIA and Compustat. Toward this end, we include data and a preliminary assessment of some of these effects. We invite parties to comment on the information we present as well as to provide additional data that will shed light on the effects of these rule changes in the media market.

13. *National Television Ownership Rule.* Section 202(c)(1) of the Telecom Act directed the Commission to modify its rules to eliminate the numerical limit on the number of broadcast television stations a person or entity could own nationwide and to increase the audience reach cap on such ownership from 25 percent to 35 percent of television households. The Commission amended section 73.3555(e) of its Rules to reflect this change.[19]

14. It is clear that there has been some consolidation of television stations since the Telecom Act. However, most of the top 25 television group owners remain significantly below the 35 percent reach cap, with only Fox's and CBS's television stations reaching more than 30 percent of U.S. households. The industry continues to be unconcentrated at the national level, with our estimate of the Herfindahl-Hirschman Index (HHI) still below 1000, increasing from 264 in 1996 to 308 in 1997.[20]

15. We seek comment on the effect of this rule on competition and diversity and whether this rule is no longer necessary in the public interest as the result of competition. What effect has it had on competition in the national advertising market or the program production market at the national level? How does the rule affect existing television networks or the formation of new networks? We also seek information on the extent of economies of scale realized as a result of the consolidation permitted by the Telecom Act.

[19] *Order,* 11 FCC Rcd 12374 (1996).

[20] The HHI is a standard measure of economic concentration. The Department of Justice uses the HHI as part of its evaluation of market competition. They generally consider a market to be unconcentrated if the HHI is below 1000. HHIs are calculated by summing the square of each television owner's percentage of total television station revenues. The data for our estimate of the HHI comes from the BIA database which estimates station, owner, and market revenues. The revenue estimate combines national and local advertising revenue for each station, owner, and market. The 1997 HHI uses 1997 ownership data, combined with 1996 revenues, and the 1996 HHI uses 1996 ownership data, combined with 1995 revenues.

16. *Local Radio Ownership Rules.* Section 202(b) of the Telecom Act directed the Commission to relax its radio multiple ownership rules to allow common ownership of up to eight radio stations on the local level, depending on the number of stations in the market. The Commission has revised its Rules to reflect this mandate.[21]

17. We will include in the record of this proceeding an FCC staff report which reviews the response of the radio industry to the revised rules from March, 1996 to November, 1997. We invite comment on the information set forth in this staff report. As the report documents, the number of commercial radio stations has increased 2.5 percent from 10,222 to 10,475. At the same time, there has been a tremendous increase in the number of station transactions since the passage of the Telecom Act resulting in an increase in industry concentration. At the national level, the number of owners of commercial radio stations has declined by 11.7 percent from 5,105 to 4,507. This decline is primarily due to mergers between existing owners. The result of these mergers has been to change the ranking and composition of the top radio station owners.

18. At the local level, there has been a downward trend in the number of radio station owners in Arbitron radio Metro markets. The average number of radio station owners across all radio Metro markets declined from 12 to 11, a loss of about one owner per market. The top 10 radio Metro markets experienced an average loss of 3 owners per market, from about 30 owners to about 27 owners per market. The smallest radio Metro markets (markets 101–265) experienced an average loss of about one owner per market, from about 9 owners to 8 owners. Further, the top owners in each Metro market generally account for an increasing share of total radio advertising revenues in these markets. For example, the top four radio owners in each Metro market, on average, account for about 90 percent of their Metro market's total revenues, compared to about 80 percent in March, 1996. The staff report also indicates that the average number of distinct radio formats across all radio Metro markets is 10, remaining unchanged from March, 1996, to March, 1997.

19. At the industry level, the staff report indicates that publicly traded companies whose primary business is radio broadcasting are experiencing robust financial performance. Operating margins have increased slightly, while their profit margins have varied. This is largely a result of their increased debt loads. Advertising revenues have been sufficient, to date, to generate positive cash flow on an industry-wide basis. This health is reflected in stock returns better than those of the typical S&P 500 company. The market's valuation of radio companies suggests that the market is foreseeing future earnings growth in this industry. The observed consolidation of the radio industry appears to have had positive financial consequences for these radio companies.

[21] Section 202(a) of the Telecom Act directed the Commission to eliminate its national radio ownership restrictions. The Commission amended its rules so that there are now no limits on the number of radio stations that may be owned nationally. *Order,* 11 FCC Rcd 12368 (1996).

20. We invite parties to comment on the effect of the local radio ownership limits on competition in radio. What has been the effect on competition in the program delivery market? What has been the effect on competition in the local advertising market? In this regard, the *TV Ownership Further Notice* noted that television (broadcast and cable) and newspapers provided some level of competition to radio in the local advertising market.[22] Is there greater efficiency at the local level due to consolidation? We ask commenters to provide data documenting any economic efficiencies and specific cost savings.

21. We also seek comment on the impact on diversity in radio. Are the current ownership limits set forth in our rules no longer necessary in the public interest? For example, has coverage of news and public affairs been enhanced as a result? We also note that there has been a drop in the number of minority-owned radio broadcast stations, as reported in the annual report released by National Telecommunications and Information Administration.[23] It has been argued that the change in the radio ownership rules has been detrimental to the enhancement of ownership by

[22] The program production market is national in scope and is, thus, unaffected by changes in the local radio rule. We further note that in reviewing radio station mergers under the antitrust laws, the Department of Justice has taken the position that radio stations form a distinct local advertising market and that newspapers, cable, and broadcast television stations are not effective substitutes to radio stations in this market. See Address of Joel I. Klein, Assistant Attorney General, Antitrust Division of the Department of Justice, "DOJ Analysis of Radio Mergers" (Feb. 19, 1997) (available at http://www.usdoj.gov/atr/speeches/jik97219.htm).

[23] Minority Commercial Broadcast Ownership in the U.S., a report of the Minority Telecommunications Development Program, National Telecommunications and Information Administration (August 1997). In this report, the number of minority-owned commercial radio stations declined from 312 in 1995 to 284 in 1996/97. There are no statistics available concerning female ownership of broadcast facilities.

minorities and women in the provision of radio service. The Commission has a statutory obligation under section 309(j) of the Act as well as an historic commitment to encouraging minority participation in the telecommunications industry.[24] We seek comment on the relationship between these ownership limits and the opportunity for minority broadcast station ownership. We also seek comment on any similar effects on female ownership of broadcast facilities. We invite commenters to address judicial considerations in this regard.

22. We invite comment on whether, given the issues raised above, we should modify the local radio ownership rules in any respect. Specifically, we seek comment on whether the way in which we count stations for purposes of applying our local radio ownership rule should remain the same or be modified in order to more realistically account for the number of stations in a market. We ask parties to be specific in any such proposals they advocate.

23. *Dual Network Rule.* Section 202(e) of the Telecom Act directed the Commission to revise its ''dual network'' rule.[25] Under the prior dual network rule, the Commission generally prohibited a party from affiliating with a network organization that maintained more than one network of television broadcast stations. The Telecom Act directed the Commission to revise the rule to permit a television broadcast station to affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such networks are composed of: 1) two or more persons or entities that were ''networks'' on the date the Telecom Act was enacted;[26] or 2) any such network and an English-language program distribution service that on the date of the Telecom Act's enactment provided 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television households.[27] The Commission amended its dual network rule to reflect this directive.[28] We believe, at this time, that no broadcast television network has begun to deliver a dual stream of video programming. We seek comment on whether the current dual network rule is no longer in the public interest.

The Remaining Rules

24. *The UHF Television Discount.* The national television ownership rule states that an entity may own any number of television stations (subject to the restrictions of the local ownership rule) so long as the combined audience reach of the stations does not exceed 35 percent, as measured by the number of television households in their respective ADIs. Under our rules, UHF television stations are attributed with 50 percent of the television households in their ADI market.[29] The Commission has stated that it would review the UHF discount in the biennial ownership review.[30]

25. The Commission adopted the UHF discount in 1985 due to concerns that UHF station signals generally cannot reach as large an audience as VHF station signals.[31] Since that time we have observed in other contexts that this UHF signal disparity has been ameliorated over the years.[32] This is due in part to improved television receiver designs, as well as the fact that many households receive broadcast channels via cable rather than by over-the-air transmission. When the UHF discount was adopted in 1985, cable passed approximately 60 percent of all television households[33] and had approximately 32 million subscribers.[34] Today, the pass rate has risen to 97.1 percent with approximately 64.2 million subscribers.[35] Moreover, the Supreme Court has recently upheld the constitutionality of the ''must-carry'' rules which require cable systems to carry local television broadcast stations.[36] Parties have nonetheless urged us to continue the UHF discount policy given the significant number of television households that do not subscribe to cable.[37]

26. We request comment in this proceeding on whether the UHF discount should be retained, modified, or eliminated. In this regard, commenters may wish to address whether the discount, at its current level, remains appropriate in light of the decreasing disparity between VHF and UHF television due to improvements in transmission and reception technology, cable carriage of UHF television stations under our must-carry rules, and increasing cable penetration. Is there any evidence that the current UHF discount provides a competitive advantage to networks that own UHF stations? While the audience reach of many group owners are unaffected, the reach of several group owners, including Fox and Paxson, would exceed the national reach cap were it not for the discount. Should we decide that the discount be retained in some form for analog television, does it make sense to retain such a discount at all once we have transitioned to digital television transmission? At that time, we expect broadcast television stations will be operating on ''core'' channels, most of which are currently allotted to UHF television.[38] Finally, if the discount were reduced or eliminated, in what manner should group owners that exceed the new limits be grandfathered?

27. *Daily Newspaper/Broadcast Cross-ownership Rule.* The daily newspaper/ broadcast cross-ownership rule prohibits the common ownership of a broadcast station and a daily newspaper in the same locale.[39] The Commission adopted the rule in 1975.[40] Like all of

[24] For a brief historic overview, see generally Notice of Proposed Rule Making in MM Docket Nos. 94–149 and 91–140, 10 FCC Rcd 2788 (1995).

[25] 47 CFR 73.658(g).

[26] A ''network'' is defined with reference to 47 CFR 73.3613(a)(1) for this purpose.

[27] The Conference Report stated that the Commission was being directed to revise its dual network rule ''to permit a television station to affiliate with a person or entity that maintains two or more networks unless such dual or multiple networks are composed of (1) two or more of the four existing networks (ABC, CBS, NBC, FOX) or, (2) any of the four existing networks and one of the two emerging networks (WBTN, UPN).'' S. Rep. No. 230, 104th Cong., 2d Sess. at 163.

[28] *Order*, 11 FCC Rcd 12374 (1996).

[29] 47 CFR 73.3555(e)(2)(i).

[30] *Notice of Proposed Rule Making* in MM Docket Nos. 96–222, 91–221 and 87–8, 11 FCC Rcd 19949, 19956 (1996).

[31] *See Memorandum Opinion and Order* in Gen. Docket No. 83–1009, 100 FCC 2d 74, 92–94 (1985).

[32] See *Report and Order* in MM Docket No. 94–123, 11 FCC Rcd 546, 583–86 (1995) (repealing the prime time access rule); *Report and Order* in MM Docket No. 87–68, 3 FCC Rcd 638 (1988), *clarified* 4 FCC Rcd 2276 (1989) (eliminating the policy under which applications to initiate or improve VHF service were considered contrary to the public interest if they threatened adverse economic impact on existing or potential UHF stations).

[33] Estimate based on data in Television Factbook (Cable and Services volume, 1986 ed.), pp. A39 and A44.

[34] See 1997 Television and Cable Factbook at F–1.

[35] *Fourth Annual Report, supra* at para. 14–15.

[36] *Turner Broadcasting Systems., Inc.* v. *FCC*, 117 S. Ct. 1174 (1997).

[37] See *Notice of Proposed Rule Making* in MM Docket No. 96–222, 11 FCC Rcd 19952–54 (1996) (summarizing comments on issue of whether UHF discount policy should be retained).

[38] See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87–268, FCC 98–24 (released February 23, 1998).

[39] The rule provides that: No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: (1) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or (2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or (3) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published. 47 CFR 73.3555(d).

[40] *Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and*

Continued

our multiple ownership rules, the newspaper/broadcast cross-ownership rule rests on the twin goals of promoting diversity and economic competition.[41] The Commission determined that, as a general rule, granting a broadcast license to an entity in the same community as that in which the entity also publishes a newspaper would harm diversity.[42] Although the Commission, in adopting the rule, noted its expectation that there could be meritorious waiver requests, it set forth very stringent waiver criteria.[43] As a result, only two cases, both involving television/newspaper combinations, have been found to warrant permanent waiver of the rule.[44]

28. In 1996, the Commission opened an inquiry to consider amending the waiver policy with respect to newspaper/radio combinations.[45] Since the scope of this biennial ownership review encompasses the issues raised in the outstanding *NOI*, we will place the comments we have already received into the record of this review and take them into account in our review of the broader rule.

29. Additionally, we note that a Petition for Rulemaking seeking elimination of the rule in its entirety was filed by the Newspaper Association of America (''NAA'') on April 28, 1997.[46] We will place this filing in the record of this proceeding and invite comment on the merits of the petition.

30. Generally, the NAA Petition argues that in adopting the rule there never was a record of evidence that cross-owned stations engaged in anti-competitive practices. NAA further argues that, whatever the FCC's original reasons for the rule were, ''[i]n the abundantly diverse and highly competitive mass media marketplace of the late 1990s, maintenance of these selective cross-ownership restrictions is unnecessary, discriminatory, and unjustifiable.'' [47] NAA points to relaxation in other Commission ownership rules [48] and argues that the newspaper/broadcast cross-ownership rule unfairly singles out newspaper publishers, denying them the ability to realize efficiencies and synergies while leaving their competitors free to do so.[49] NAA also argues that relaxation of the newspaper/broadcast cross-ownership rule will help preserve newspapers and broadcast stations as viable media outlets and enhance diversity. Finally, NAA asserts that the rule is inconsistent with the First Amendment and that courts today would require a far stronger showing than was made in 1975 to support such a direct limitation on the free speech rights of a particular class of citizens.'' [50]

31. A number of parties, however, have argued for the continuation of the rule. Supporters of the rule commenting in the Notice of Inquiry on our newspaper/radio waiver policy contend that daily newspapers often dominate the local advertising market and to give a party with such dominance a broadcast outlet would allow it to exercise market power with respect to the local advertising market.[51] Supporters also contend that newspaper/broadcast combinations would give a single entity too much of a voice with respect to forming opinion on public issues. The new media pointed to by opponents of the rule, they state, do not add significant local viewpoints, are not locally based, and do not provide news or information on local issues.[52] Although supporters of the rule agree that cable television and the Internet have the potential to facilitate debate on local issues, they dispute that they yet serve that purpose to any significant degree and argue that these media are costly and do not reach large segments of the community.[53]

32. We invite comment on these competing positions with respect to the newspaper cross-ownership restriction. We specifically ask commenters to address whether the rule should be retained, modified or eliminated.

33. *Competitive Effects on the Market for Delivered Programming.* Since newspapers do not operate in the market for delivered video or audio programming, allowing cross-ownership between television and newspapers in a local market would not appear to harm competition in the market for delivered video or video programming. We invite comment on this view.

34. *Competitive Effects on the Market for Advertising.* In the *TV Ownership Further Notice* we tentatively considered that the local advertising market includes video advertising (broadcast and cable), radio advertising and newspaper advertising.[54] Total local advertising revenue for radio, television, newspaper, and cable was $68 billion in 1996. Local radio accounted for $12 billion (17.2 percent of the total), television accounted for $21 billion (30.3 percent), newspapers accounted for $34 billion (49.7 percent), and cable accounted for $2 billion (2.9 percent).[55] Permitting the owner of a broadcast TV or radio station to own a newspaper, or vice versa, could give the company the market power to raise local radio, television, and/or newspaper advertising rates, depending on the market share of the combined entity. We invite comment and evidence on this issue, and on the levels of local advertising share that might give rise to competitive concern. Commenters may also wish to comment on NAA's views concerning competition in the advertising market. While newspaper local advertising revenue may be as large as combined television and radio local advertising revenues, NAA argues that it includes newspaper classified advertisements, a market in which broadcast stations do not compete with newspapers.

35. *Competitive Effects on the Program Production Market.* Newspapers, being a print medium, are not a participant in the video and audio program production markets. Thus, relaxing this rule would not appear to

Order, 50 FCC 2d 1046 (1975) (''*Second Report and Order*''), *recon.*, 53 FCC 2d 589 (1975) (''*Recon. Order*''), *aff'd sub nom. Federal Communications Commission v. National Citizens Committee for Broadcasting, supra.* The provisions of 47 CFR 73.3555 do not apply to noncommercial educational FM and TV stations. See 47 CFR 73.3555(f).

[41] *Second Report and Order, supra* at 1074.

[42] *Id.* at 1075.

[43] The criteria are: 1) inability to sell the station; 2) the only possibility of the station's sale would be at an artificially reduced price; 3) separate ownership and operation of the newspaper and the broadcast station could not be supported in the locality; and 4) the purposes of the rule would be disserved by its application or application of the rule would be unduly harsh.

[44] *Field Communications Corp.*, 65 FCC 2d 959 (1977); *Fox Television Stations Inc.*, 8 FCC Rcd 5341, 5349 (1993); *aff'd sub nom. Metropolitan Council of NAACP Branches* v. *FCC*, 46 F.3d 1154 (D.C. Cir. 1995). In both cases, the combination had previously been owned by the same or substantially the same parties.

[45] See Notice of Inquiry in MM Docket No. 96–197, *supra.*

[46] See Newspaper Association of America, Petition for Rulemaking in the matter of amendment of section 73.3555 of the Commission's Rules to eliminate restrictions on newspaper/broadcast station cross-ownership (April 28, 1997) (''NAA Petition'').

[47] *Id.* at 16.

[48] *Id.* at 40.

[49] *Id.* at 38 *et seq.*

[50] NAA Petition at 46.

[51] See Comments of David E. Hoxeng d/b/a ADX Communications in MM Docket No. 96–197 at 2. Hoxeng provides as an example San Antonio, TX, where, he states, the cost-per-thousand to newspaper advertisers skyrocketed following the buyout and closure of one San Antonio daily by the other. *Id.* at 2–3. See also Comments of Tennessee Association of Broadcasters filed in MM Docket No. 96–197 at 5.

[52] See Joint Comments of Black Citizens for a Fair Media et al. filed in MM Docket No. 96–197 at 18–19.

[53] *Id.*

[54] Allowing such joint ownership should have no effect on competition in the national advertising market because of differences in the geographic dimensions of this market.

[55] ''Estimated Annual U.S. Advertising Expenditures 1990—1996,'' Prepared for Advertising Age by Robert J. Coen, McCann-Erickson.

harm competition in these supply markets. We invite comment on this view.

36. *Other Economic Effects.* Broadcaster and newspaper interests have long made the argument that the quality of news and public affairs programming to the public, a core concern of the Commission, could be enhanced if broadcasters could share in the expertise of a newspaper's operations. We seek comment on this issue. Could the same beneficial results be achieved through non-attributable joint ventures? Studies documenting and comparing the news and public affairs programming of existing newspaper/broadcast combinations with the news and public affairs programming of broadcast facilities that are not owned by a newspaper in the same geographic market would be particularly informative.

37. Similar claims have been made with respect to efficiencies realized as a result of the combination's advertising sales force. While any realized reduction in expenses could make the joint enterprise more economically viable than the separate operations were before the combination took place, we are most interested in whether such efficiencies would produce benefits for broadcast audiences and advertisers. We seek comment on this view.

38. *Effects on Diversity.* The newspaper/broadcast cross-ownership rule is intended to promote media diversity on the local level. The maintenance of such diversity has been a central Commission objective since its establishment. However, there have been changes since the rule was adopted. For example, the Commission now allows some cross-ownership between television and radio stations in the same local market and Congress has directed us to relax our local radio ownership limitations. In addition, there has been an increase in the number of radio and TV stations and local newspapers. We must examine the rule in this context, but with a full recognition of the importance of diversity in local markets. Clearly, combined operations reduce the number of separately owned outlets. We seek comment on the impact of this reduction on the public interest. We also seek comment on whether and to what extent, newspapers and broadcast stations under common ownership express contrasting points of view or cover each other in a critical manner.

39. In this regard, we point out that television, newspapers, and radio continue to be America's major source of news.[56] The Roper survey found that more than two-thirds of Americans usually get their news from television, and 37 percent from newspapers.[57] The survey indicated that Americans also rely on radio as a news source, but to a lesser extent than television and newspapers. We consequently wish to proceed cautiously in this area and seek comment on how the public's reliance on these media for news would be affected if we were to relax this rule.

40. The combination of a large daily newspaper and a large broadcast station could have a significant impact on diversity. We seek comment on whether the impact on diversity depends on the relative size of the newspaper and broadcast facility involved in a potential merger. Commenters should also address NAA's argument that various pay video delivery services and other informational media, together with an increase in broadcast stations and weekly newspapers, sufficient to assure diversity in the absence of the rule? Or, as argued by opponents of relaxation of the rule, are such other informational media too limited in availability or use, or do such media provide insufficient information on issues of local concern to offset the loss of diversity on the local level that would accompany elimination or relaxation of the newspaper/broadcast cross-ownership rule? We also seek comment on how diversity is served in suburban markets where the appropriate outlets to be examined may include metropolitan television and radio stations and community or suburban newspapers rather than newspapers in the major city.

41. *Cable/Television Cross-ownership Rule.* Section 76.501(a) of the Commission's Rules effectively prohibits common ownership of a broadcast television station and cable system in the same local community.[58] The Telecom Act eliminated a similar statutory prohibition.[59]

42. The rule was adopted in 1970 in order to further the Commission's policy of promoting diversity in local mass communications media.[60] In adopting the rule, the Commission made clear that it was avoiding any ban on joint ownership of a television broadcast station and cable system not located in the same area. "It is not our desire to keep television broadcasters out of the CATV industry, but to avoid over-concentrations of media control . . . we should have no objection to exchange of CATV systems among broadcasters which would maintain their involvement in the CATV industry while eliminating local cross-ownerships." [61]

43. This is the first time since adopting the cable/television cross-ownership rule that the Commission has reviewed the rule. Indeed, since 1984, the rule was required by statute.[62] When the Telecom Act eliminated the statutory provision, the Conference Report clarified that repeal of the prohibition should not prejudge the outcome of any review by the Commission of its rules regarding cable/broadcast cross-ownership.[63] The Telecom Act also eliminated our rule prohibiting broadcast television networks from owning or controlling cable systems.[64] While broadcast television networks are now statutorily permitted to buy cable systems, they are still generally precluded from doing so on any significant basis by the cable/broadcast cross-ownership rule, because the networks are also broadcast television licensees. We seek comment on whether this rule should be retained, modified or eliminated.

44. *Effects on the Market for Delivered Programming.* Television stations compete in the market for delivered video programming with cable system operators, wireless cable operators and possibly with DBS operators serving their "local" market. We note that in its *Fourth Annual Report* on the status of competition in the market for the delivery of multichannel video programming, the Commission stated that "local markets for the delivery of

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[56] America's Watching: Public Attitudes Toward Television 1997, Roper Starch Worldwide Inc.

[57] Respondents were permitted to name more than one news source.

[58] The rule prohibits a cable operator from carrying any broadcast television station if it directly or indirectly owns, operates, controls, or has an interest in a television broadcast station whose predicted Grade B signal contour overlaps any part of the area within which its cable system is serving subscribers.

[59] *See* Subsection 202(i) of the Telecom Act.

[60] Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems; and Inquiry Into the Development of Communications Technology and Services to Formulate Regulatory Policy and Rulemaking and/or Legislative Proposals, *Second Report and Order*, in Docket No. 18397, 23 F.C.C. 2d 816, 820 (1970).

[61] *Id.* at 821.

[62] The Cable Communications Policy Act of 1984 added section 613 of the Communications Act of 1934, as amended (47 U.S.C. 533). Section 613(a)(1) of the Act provided that "It shall be unlawful for any person to be a cable operator if such person, directly or through 1 or more affiliates, owns or controls, the licensee of a television broadcast station and the predicted grade B contour of such station covers any portion of the community served by such operator's cable system." That provision was eliminated by section 202(i) of the Telecom Act.

[63] House Rep. No. 458, 104th Cong., 2d Sess. at 164.

[64] See Subsection 202(f) of the Telecom Act.

video programming generally remain highly concentrated and continue to be characterized by some barriers to entry and expansion by potential competitors to incumbent cable systems.'' [65] While the ability of the broadcast spectrum to compete as a transmission medium with cable is effectively limited by the amount of broadcast spectrum and channels that are assigned to television markets, the *Report* notes that DTV has the potential to allow the broadcasters to become more effective competitors with cable companies in the multichannel video programming distribution market. [66]

45. We seek comment on the relevance of our conclusions in the *Fourth Annual Report* on our consideration of competitors to broadcast television. We seek comment on whether these changed market circumstances render our rule unnecessary. Also, we seek comment on the possible effects that repeal or relaxation of the cable/television cross-ownership rule may have on the market for delivered programming in particular. Would common ownership of a cable system and a television station increase or diminish the program choices, or the preferred programs, available to audiences? Would repeal or relaxation raise competition concerns in this market? Could relaxation of the rule result in public interest benefits? Could the same beneficial results be achieved through non-attributable joint ventures? Should a distinction be made in judging the effect of this rule on local versus national programming?

46. *Effects on the Market for Advertising.* Allowing joint ownership of a television station and a cable system in a local market might give the joint owner the economic power to raise its advertising rates within the local service area if, by virtue of the combination, the local market became concentrated.[67] Evidence on whether significant market power in the local advertising market already exists is mixed. As we stated earlier, total local advertising for these media was $68.5 billion in 1996. Local cable advertising revenues were small ($2.0 billion, 2.9 percent of total local advertising) when compared to local commercial broadcast television station advertising revenues ($20.7 billion, 30.3 percent of total local advertising), but they are increasing in size and importance.[68] Radio local advertising revenues accounted for $11.7 billion (17.2 percent of total local advertising) and newspaper accounted for $34 billion (49.7 percent of total local advertising). Prior studies have found mixed evidence regarding the impact of cable on broadcast TV station advertising revenues.[69] Thus, at this time, it is not clear whether cable system operators offer effective competition to broadcast station operators in providing local advertising.[70]

47. When considering advertising substitutes, we recognize that while many firms use a mix of video, audio, print, and other media to advertise their products and services, some firms may rely on video advertising almost exclusively and are, therefore, most affected by any market power that might be created by a modification to this rule. We have previously noted that it is not clear how substitutable radio and newspaper local advertising is for broadcast television local advertising.[71] We seek information and data about the appropriate scope of the product and geographic advertising market within which television stations and cable systems compete. Statistical evidence supporting fact-based analysis on the substitutability of these media in the local advertising market will especially be welcome.

48. *Effects on the Program Production Markets.* We specifically seek comment on whether the cable/broadcast television rule is no longer necessary in light of the current state of the program production market. The program market could be affected if Commission modification or elimination of the cable/television cross-ownership rule permitted a cable/television combination to exercise market power in the purchase of video programming for delivery in the local market. We seek comment on whether cable/broadcast television combinations could exercise monopsony power—i.e., the ability of the cable/television combination to artificially restrict the price paid for programming. We solicit evidence on the potential market power in the program production market if we were to eliminate or relax the cable/television cross-ownership rule. Specifically, we seek comment on whether other broadcast stations and alternative providers of delivered video programming (e.g., MMDS and DBS) may mitigate a cable/television combination's potential for monopsony power by providing program producers with additional local outlets for their product. We ask commenters to address whether our analysis of this issue is affected by whether the programming in question is network-provided programming, syndicated programming sold on a national basis, or programming produced for particular local markets. We also seek comment on the potential for a cable/television combination to deny alternative providers of delivered video programming access to the programming of the television station involved in the cable/television combination. On a related matter, we seek comment on whether our channel positioning and must-carry rules provide sufficient protection to ensure that if a cable company owns a local television station, the cable company could not discriminate in favor of its owned television station.

49. *Other Economic Effects.* Allowing cable/television cross-ownership within a local market may permit an entity to realize economies of scale, reducing the costs of operations. Joint ownership may permit cost-sharing in administrative and overhead expenses, sharing of personnel, joint advertising sales, and the pooling of resources for local program production (such as news and public affairs programming). The cost savings from these economies could then be used to provide better programming to the public, better coverage of local issues and possibly lower the cost of advertising and/or increase the quality of service available to advertisers. We seek evidence from commenters of the existence and magnitude of such economies and whether they can be reached through alternatives to common ownership, e.g., joint ventures. In addition, we ask commenters to describe how likely such economies are to be passed on to audiences and advertisers.

50. *Effects on Diversity.* Our concern with diversity is most acute with respect to local ownership issues. Both television and competing video outlets are viewed at the local level. We ask

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[65] *Fourth Annual Report, supra* at para. 11. Section 628(g) of the Communications Act of 1934, as amended, requires the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming. Congress imposed this annual reporting requirement as one means of obtaining information on the competitive status of markets for the delivery of multichannel video programming delivery that would aid both Congress and the Commission in determining when there was competition sufficient to reduce or eliminate many of the regulatory restraints imposed on the cable industry.

[66] *Fourth Annual Report, supra* at para. 95.

[67] Allowing such joint ownership should have no effect on competition in the national advertising market because of differences in the geographic dimensions of this market.

[68] ''Estimated Annual U.S. Advertising expenditures 1990–1996,'' Prepared for Advertising Age by Robert J. Coen, McCann-Erickson. See also Bernstein Research, Network Television Primer, February 1998 at 6 (showing advertising growth rates for cable networks and television).

[69] TV Ownership Further Notice, supra at 3571.

[70] Id.

[71] Id.

commenters to address the impact on diversity if we were to modify or eliminate the cable/television cross-ownership rule. Would any and all cable/television combinations lead to greater harm to diversity than other ownership combinations that Congress or the Commission permit? Since cable and broadcast television may be the closest substitutes in the video marketplace, should the Commission be especially vigilant in promoting diversity in the context of this rule?

51. *Experimental Broadcast Stations.* Subpart A of part 74 of the Commission's Rules[72] provides for the licensing of experimental broadcast stations. These are stations ''licensed for experimental or developmental transmissions of radio telephony, television, facsimile, or other types of telecommunication services intended for reception and use by the general public.''[73] A multiple ownership rule pertaining to experimental broadcast stations prohibits any person (or persons under common control) from controlling directly or indirectly two or more experimental broadcast stations unless it can be shown that the research program requires the licensing of two or more separate stations.[74]

52. Because this is an ownership rule pertaining to a type of broadcast station, we believe that section 202(h) of the Telecom Act requires the Commission to review the rule as part of its biennial broadcast ownership review. However, experimental broadcast stations generally are prohibited from providing regular program service.[75] Accordingly, it does not appear that they significantly participate in competitive or diversity markets. Nevertheless, we seek comment on whether this rule remains in the public interest.

IV. Waivers

53. As we begin this first biennial review of our broadcast ownership rules, we believe it is important to review and restate our approach to granting conditional waivers of broadcast ownership rules which are under active consideration by the Commission in a rulemaking or inquiry proceeding. Generally, we have not granted conditional waivers of a broadcast ownership rule simply on the grounds that the rule was the subject of an ongoing rulemaking or inquiry proceeding, believing that such a blanket approach would make our enforcement processes unworkable and would subject our regulatees to undesirable levels of uncertainty. Perhaps more importantly, such an approach would necessarily assume that compliance with the subject rule during the pendency of its review was not in the public interest, an assumption which would ordinarily lack a substantial record basis at the notice of inquiry or notice of proposed rulemaking stage of a proceeding. Nonetheless, there are limited areas of our broadcast ownership waiver practice where we have consciously departed from this general approach.

54. For example, in certain cases in recent years the Commission has granted interim waivers or extensions where a pending proceeding is examining the rule in question, the Commission concludes that the application before it falls within the scope of the proposals in the proceeding, and a grant of an interim waiver would be consistent with the Commission's goals of competition and diversity. This is most likely to occur where protracted rulemaking proceedings are involved and where a substantial record exists on which to base a preliminary inclination to relax or eliminate a rule. An example of this situation involves the TV duopoly rule geographic market standard currently under review in our local ownership rulemaking.[76]

55. In contrast to those situations, in our first biennial review of our broadcast ownership rules, we do not believe it appropriate to provide for conditional waiver of any of the ownership rules under review in this proceeding solely because of the pendency of this review. Here, for example, we do not have a protracted proceeding or substantial record on any of these rules that leads us to initial conclusions about any specific proposals to modify or eliminate any of the rules at issue here. In addition, we do not have substantial waiver experience suggesting an appropriate course of action regarding the rules under review herein. We retain, of course, both the right and the obligation to review any request for waiver of our rules based upon the specific facts in a particular case. What is important is whether the public interest would be served by a grant of the waiver.[77]

56. We are aware that in at least one case a conditional waiver of the radio-newspaper cross-ownership rule has been granted based upon the pendency of a proceeding.[78] To the extent that this decision suggests that the pendency of a proceeding by itself would be sufficient basis for a waiver, it is superseded, although as a matter of equity we do not alter its governance of the situation to which it was addressed.[79]

V. Conclusion

57. By this *Notice,* we solicit comments on these and any other issues pertinent to our review of our broadcast ownership and other rules. Commenters should frame their discussion and analysis in a manner consistent with our framework for addressing our historic competition and diversity concerns. We ask commenters to provide data and evidence to support their positions so as to facilitate objective analysis of the issues raised.

Administrative Matters

58. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 22, 1998, and reply comments on or before June 22, 1998. To file formally in this proceeding, you must file an original plus six 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 eleven copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., 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. Copies may be obtained through the Commission's contract copier, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20036. ITS can also be reached at (202)857–3800 or by facsimile at (202)857–3805.

59. Subject to the provisions of 47 CFR 1.1203 concerning ''Sunshine

[72] 47 CFR 74.101—74.184.

[73] 47 CFR 74.101.

[74] 47 CFR 74.134.

[75] 47 CFR 74.182.

[76] See Second Further Notice in MM Docket No. 91–221 & 87–7, 11 FCC Rcd 21655, 21681 (1996) (Commission states that granting waivers satisfying the proposed standard would not adversely affect its competition and diversity goals in the interim).

[77] See WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[78] Letter to Joel Rosenbloom from Chief, Mass Media Bureau concerning ABC/Capital Cities-Disney Company merger, dated October 24, 1996, p. 2.

[79] We note that the staff, on March 6, 1998, granted an extension of the Tribune Company's temporary waiver to commonly own a television station and newspaper in the Miami, Florida market. Stockholders of Renaissance Communications Corporation, DA 98–456 (MMB March 6, 1998). That action was based on special circumstances and does not, in our view, stand in contradiction to the conditional waiver standard we articulate here.

Period'' prohibitions, this proceeding is exempt from *ex parte* restraints and disclosure requirements pursuant to 47 CFR 1.1204(b)(1).

60. Accordingly, *it is ordered* that pursuant to the authority contained in sections 4, 11, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 161, 303, and 403, and 202(h) of the Telecommunications Act of 1996, this Notice of Inquiry is adopted.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–8276 Filed 3–30–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

[FHWA Docket No. MC–96–10; FHWA–97–2334]

Recommendations on Uniform Forms and Procedures for the Transportation of Hazardous Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental notice of report availability; request for comments.

SUMMARY: The FHWA is requesting public comment on the final report and recommendations of the Alliance for Uniform HazMat Transportation Procedures (the Alliance) concerning the implementation of a portion of the former Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The statute requires the Secretary of Transportation (the Secretary) to establish a working group of State and local government officials to establish uniform forms and procedures for the registration of persons that transport hazardous materials by motor vehicle. The working group is required to make recommendations to the Secretary on whether to limit the filing of State registration and permit forms and the collection of filing fees to the State in which the person resides or has its principal place of business. The Alliance is the working group created to fulfill the requirements of the statute, and accordingly, published its final report with recommendations on March 15, 1996.

On July 9, 1996, the FHWA published a notice indicating that the Alliance's report was available and requesting public comments on the report (61 FR 36016). After reviewing the comments received in response to the notice of availability, the FHWA has determined that it should seek additional public comment before the agency makes a decision on whether to implement the recommendations of the Alliance.

DATES: Written comments must be received on or before June 29, 1998.

ADDRESSES: Submit written, signed comments to Docket No. FHWA–97–2334, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, (202) 366–4009; Mr. James D. McCauley, Office of Motor Carrier Safety and Technology, (202) 366–9579; or Mr. Raymond W. Cuprill, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: http://www.nara.gov/nara/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/su_docs.

Availability of The Alliance's Report

Electronic Access

The Alliance report has been posted on the Internet. The entire report may be viewed on the Internet, depending on the software being used, and/or downloaded. The report is in WordPerfect 6.1 format while the forms contained in Appendix F of the report are in Graphics Interchange Format (GIF)—a standard format for digitized images. Users will need a graphics viewer to see the GIF file.

There are several ways to access the report on the Internet. The most direct method is as follows: http://www.fhwa.dot.gov/omc/alliance.html.

Alternatively, the report may be accessed through the FHWA's Office of Motor Carriers (OMC) home page located at http://www.fhwa.dot.gov/omc/omchome.html. This site contains general information on the OMC and its programs as well as links to online Federal Motor Carrier Safety Regulations and regulatory guidance, and Federal Hazardous Materials Regulations. When accessing the Alliance report from the OMC home page select the following hyperlinks:

1. Special Program Areas.
2. Final Report: Uniform Program Pilot Project.

Whichever approach is used, users may scroll through the table of contents and access the desired section of the report by clicking on the appropriate heading.

Ordering Copies of the Alliance Report

Copies of the report (''Final Report: Uniform Program Pilot Project,'' March 15, 1996) may be ordered from the National Governors' Association (NGA) Publications Center at (301) 498–3738. The NGA Publications Center will charge a shipping and handling fee for all orders.

Background

Section 5119 of title 49, United States Code, requires the Secretary to establish a working group of State and local government officials to develop recommendations on uniform forms and procedures that the States can use to register and permit persons that transport, or cause the transportation of, hazardous materials by motor vehicle. The working group is also required to make recommendations as to whether the filing of registration and permit forms, and the collection of related fees, should be limited to the State in which a person resides or has its principal place of business. In developing its recommendations, the group is required to consult with persons who are subject to these registration and permit requirements. The recommendations of the working group are to be included in a final report to the Secretary.[1] Finally, section 5119 requires the issuance of regulations implementing those

[1] The report is to be also submitted to the Committee on Commerce, Science, and Transportation of the U.S. Senate, and the Committee on Public Works and Transportation of the U.S. House of Representatives.