burden on providers and suppliers to the maximum possible extent. At this time, we believe we can best achieve this balance by issuing this continuation document.

Therefore, this document extends the timeline for publication of the final rule for 1 year, until March 1, 2020.

Dated: February 25, 2019.

Ann C. Agnew,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2019–03697 Filed 2–27–19; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 18–349; FCC 18–179]

2018 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission's Notice of Proposed Rulemaking (*NPRM*) initiates the 2018 quadrennial review of its media ownership rules, launched pursuant to a requirement of the Telecommunications Act of 1996 (1996 Act) that the Commission review its media ownership rules every four years to determine whether they remain ''necessary in the public interest as the result of competition'' and to ''repeal or modify any determine[d] to be no longer in the public interest.'' The three rules currently subject to review are the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule. The *NPRM* seeks comment on whether, given the current state of the media marketplace, the Commission should retain, modify, or eliminate any of these rules. The *NPRM* also seeks comment on several proposals offered as potential pro-diversity initiatives.

DATES: Comments due April 29, 2019. Reply comments due May 29, 2019.

ADDRESSES: Interested parties may submit comments and replies, identified by MB Docket No. 18–349, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's website: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For more detailed filing instructions, see the Procedural Matters section below.

FOR FURTHER INFORMATION CONTACT: Brendan Holland, Industry Analysis Division, Media Bureau, *Brendan.Holland@fcc.gov* (202) 418–2757.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in MB Docket No. 18–349; FCC 18–179, adopted on December 12, 2018, and released on December 13, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554, or online at *https://docs.fcc.gov/public/attachments/FCC-18-179A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. *Background.* Last year, the Commission completed its prior combined 2010/2014 review of its media ownership rules by adopting an Order on Reconsideration (*2010/2014 Quadrennial Review Order on Reconsideration*) of its initial Order (*2010/2014 Quadrennial Review Order*), a reconsideration that relaxed or eliminated several rules, including repeal of the previous bans on newspaper/broadcast and radio/television cross-ownership in a market. In the *2010/2014 Quadrennial Review Order on Reconsideration* the Commission revised the Local Television Ownership Rule by eliminating the requirement that, in order to own two stations in a market, eight independent voices must remain in the market post-transaction, and concluded that it would consider, on a case-by-case basis, combinations that would otherwise be barred by the prohibition on ownership of two top-four ranked stations in a market. In eliminating and revising its rules, the Commission recognized the dynamic changes in the media marketplace and the wealth of information sources now available to consumers. The Commission also found that, while the record in the 2010/2014 Quadrennial Review supported adoption of an incubator program to foster the entry of new and diverse voices in the broadcasting industry, the structure and implementation of such a program required further exploration. Accordingly, the Commission sought comment on these issues, and on August 2, 2018, adopted a Report and Order (*Incubator Order*) establishing an incubator program to foster new entry into the broadcasting industry. Under the program, an established broadcaster (*i.e.,* incubating entity) will provide a new entrant or small broadcaster (*i.e.,* incubated entity) with training, financing, and access to resources that would be otherwise inaccessible to these entities. In return for this support, the incubating entity can receive a waiver of the applicable Local Radio Ownership Rule that it can use either in the incubated market or in a comparable market within three years of the successful conclusion of a qualifying incubation relationship.

2. Multiple parties sought reconsideration and judicial review of the Commission's *2010/2014 Quadrennial Review Order, 2010/2014 Quadrennial Review Order on Reconsideration* and *Incubator Order.* The Third Circuit U.S. Court of Appeals has consolidated the petitions for judicial review of these Orders and its review is pending.

3. *Local Radio Ownership Rule.* The rule allows an entity to own: (1) Up to eight commercial radio stations in radio markets with at least 45 radio stations, no more than five of which may be in the same service (AM or FM); (2) up to seven commercial radio stations in radio markets with 30–44 radio stations, no more than four of which may be in the same service (AM or FM); (3) up to six commercial radio stations in radio markets with 15–29 radio stations, no more than four of which may be in the same service (AM or FM); and (4) up to five commercial radio stations in radio markets with 14 or fewer radio stations, no more than three of which may be in the same service (AM or FM), provided that the entity does not own more than 50 percent of the radio stations in the market unless the combination comprises not more than one AM and one FM station. When determining the total number of radio stations within a

market, only full-power commercial and noncommercial radio stations are counted for purposes of the rule. Radio markets are defined by Nielsen Audio where applicable and, in Puerto Rico, the contour-overlap methodology used in areas outside of defined and rated Nielsen Audio Metro markets.

4. In the *2010/2014 Quadrennial Review Order,* the Commission concluded that local radio ownership limits promoted competition, a public interest benefit providing a sufficient basis for retaining a local radio ownership rule. The Commission affirmed its previous finding that competitive local radio markets help promote viewpoint diversity and localism and are consistent with the Commission's goal of promoting minority and female broadcast station ownership. In the subsequent *2010/2014 Quadrennial Review Order on Reconsideration,* the Commission adopted a presumption, to be further considered in this 2018 Quadrennial Review, in favor of waiving the Local Radio Ownership Rule for qualifying radio stations within embedded markets (*i.e.,* smaller markets, as defined by Nielsen Audio, that are contained within the boundaries of a larger, parent Nielsen Audio Metro market) where the parent market currently has multiple embedded markets (*i.e.,* New York and Washington, DC). Such a waiver would permit the applicant to comply with ownership limits determined by examining only the embedded market, and not both the embedded and parent markets. Stations would qualify for waivers under two conditions: (1) Compliance with the numerical ownership limits using the Nielsen Audio Metro methodology in each embedded market, and (2) compliance with the ownership limits using the contour-overlap methodology applicable to undefined markets in lieu of the Commission's current parent market analysis.

5. The Commission seeks comment generally on all aspects of the Local Radio Ownership Rule, including whether the rule remains necessary in the public interest to promote competition and specifically, whether there have been any changes in the marketplace since the 2010/2014 Quadrennial Review that would affect this determination. The Commission also seeks comment on whether, in today's radio marketplace, the rule remains necessary to promote other Commission policy goals such as viewpoint diversity, localism, and female and minority broadcast ownership. Commenters are asked to explain in detail and support with evidence their reasons for any recommended rule changes. If the rule is retained, the Commission will analyze relevant parts of the rule to examine whether each part remains necessary in the public interest due to competition or whether it should be modified or eliminated. Thus, the Commission seeks comment on each of the specific aspects of the rule's operation, including the relevant product market, market size tiers, numerical limits, and AM/FM subcaps, to assess whether these subparts remain necessary or whether any of all of them should be modified or eliminated. If the rule is retained but modified, the Commission seeks comment on whether and how the rule changes should apply to any pending applications. The Commission also seeks comment on whether to make permanent the interim contour-overlap methodology used to determine ownership limits in areas outside the boundaries of defined Nielsen Audio Metro markets, and on the issue of embedded market transactions.

6. In anticipation of further consideration of the presumption in favor of waiving the Local Radio Ownership Rule for radio stations within embedded markets, the National Association of Broadcasters (NAB) submitted a proposal to, among other things, allow an entity in the top 75 Nielsen Audio Metro markets to own or control up to eight commercial FM stations and unlimited AM stations in any of those markets. NAB also proposed that entities in those markets should be permitted to own up to two additional FM stations if they participated in the Commission's incubator program. NAB also proposed eliminating all limits on FM and AM ownership in all other markets. NAB claimed that these rule relaxations remove constraints on radio broadcasters' ability to compete on a level playing field in today's digital audio world where, NAB claimed the Commission cannot ignore, broadcast radio dominance has declined relative to streaming services such as Pandora and Spotify, satellite radio, podcasts, Facebook and You Tube, described as ''multiple major sources of competition for both listeners and advertisers in the audio marketplace.'' Thus, according to NAB, the more relevant factor for listeners has become where services can be accessed, which is now the same for radio and other services, rather than where services are headquartered. NAB added that allowing radio owners to achieve economies of scale and scope would enable them to improve their informational and entertainment programming. Other radio broadcasters similarly claimed that digital competitors such as Google and Facebook enjoy perceived advantages in ability to target advertising, do not need to employ local advertising salesforces, and had therefore captured significant shares of the local advertising market to the detriment of local broadcast radio. Other parties argued in opposition to NAB's proposal that allowing radio broadcasters to buy more stations would not help them compete against internet services such as Google and Facebook, the size of station portfolios had little relevance to dollars allocated to free radio, advertisers did not view radio and internet services as comparable, and radio remains the preferred audio medium for entertainment and local news.

7. The Commission received many additional comments in response to a request for updated information on the status of competition in the marketplace for the delivery of audio programming in seeking to prepare a biennial marketplace report for Congress, comments which are incorporated into the record of this 2018 Quadrennial Review. NAB provided information and statistical data purporting to show how fragmented the listening market has become, and a coalition of radio broadcasters claimed that radio listening has shrunk as audiences divide their time among other audio providers not subject to the same regulatory burdens as radio broadcasters. Other radio station owners asserted that the Commission's ownership limits prevent them from achieving the economies of scale and scope they need to compete with satellite radio and online audio services. On the other hand, coalitions representing musicians, recording artists, and representatives of the music industry argued that AM/FM radio continues to dominate the audio marketplace and that experience shows that consolidation in the radio industry harms small broadcasters and leads to the homogenization of programming.

8. *Market Definition.* The Commission concluded in the *2010/2014 Quadrennial Review Order* that the broadcast radio listening market remains the relevant product market for purposes of the Local Radio Ownership Rule and declined to expand its definition of the market to include non-broadcast audio sources, such as satellite radio and online audio services. The Commission's based this conclusion on the fact that broadcast radio stations provide ''free, over-the-air programming tailored to the needs of the stations' local markets,'' while in

contrast, satellite radio is a subscription service, online audio requires an internet connection, and neither typically provides programming responsive to local needs and interests. Similarly, in evaluating a broadcast radio merger of Entercom Communications and CBS in November 2017, the Department of Justice (DOJ) also considered the radio market, concluding that ''[m]any local and national advertisers consider English-language broadcast radio to be a particularly effective or important means to reach their desired customers, and do not consider advertisements on other media, including non-English-language broadcast radio, digital music streaming services (such as Pandora), and television, to be reasonable substitutes.''

9. The Commission now seeks comment on these differing perspectives of the state of the audio marketplace and on whether and how these perspectives should affect its understanding of the market for purposes of the Local Radio Ownership Rule. Should the Commission take DOJ's finding on the radio market into account and if so, how? Should the Commission continue to consider only local broadcast radio stations for purposes of the Local Radio Ownership Rule or should it revise its market definition to include other audio sources? Do local radio stations face direct competition today from satellite radio and online audio services? To what extent has radio's ability to attract listeners and advertisers been affected by satellite radio and online audio? Do advertisers view satellite radio and audio streaming services as substitutes for advertising on broadcast radio? How should the impact of internet services like Google and Facebook on local advertising markets factor into our consideration of the Local Radio Ownership Rule? Do consumers view non-broadcast audio services as meaningful substitutes for local radio stations? Do non-broadcast audio services provide programming that responds to the needs and interests of local markets? Does radio's free, over-the-air availability make it unique or non-substitutable in the audio marketplace? To what extent, if any, should the Commission consider the deployment of In Band on Channel digital radio technology and its role in enabling station owners to expand their program offerings and increase their economies of scale and scope? If the Commission were to revise its market definition, what non-broadcast sources should it include, and how should it count them or otherwise factor them into its rule for purposes of determining market size tiers and numerical limits? Could or should the Commission subtract from any consideration of non-broadcast sources the amount of online audio that listeners in a local market stream from over-the-air radio broadcasts? How would an expanded definition better serve Commission policy goals, if at all?

10. *Market Size Tiers.* In the *2010/2014 Quadrennial Review Order,* the Commission retained the Local Radio Ownership Rule's longstanding approach of imposing numerical ownership limits based on market size tiers and determining market size by counting the number of commercial and noncommercial radio stations within the market. The Commission declined to change the rule to treat embedded markets as separate markets. In addition, the Commission kept in place the demarcations of the four tiers set by Congress in 1996, which draw the lines among Nielsen Audio Metro markets at 45 plus, 30–44, 15–29, and 14 or fewer radio stations, including noncommercial stations. The Commission seeks comment on whether it should retain this approach of using market size tiers, and if it does so, whether the current demarcations should remain. Is there any reason to discontinue including noncommercial radio stations in market counts? How well has the rule's tiered structure served the rule's purposes, and does it promote the policy goals of competition, localism, and viewpoint diversity in today's radio marketplace? NAB's proposal would divide radio markets into only two tiers—the top 75 Nielsen Audio Metro markets and all other markets (*i.e.,* Nielsen Audio Metro markets outside of the top 75 and all undefined markets). What would be the advantages and disadvantages of creating a different number of tiers, including moving from a four-tiered to a two-tiered approach? If the Commission were to collapse four tiers into two, should it draw the line where NAB proposes? Commenters are invited to offer alternative proposals for a tiered approach or for a different type of approach altogether. For example, if the Commission changed from tiers based on station counts, should it consider tiers based on advertising revenue, or some other factor, rather than using Nielsen's Audio Metro market rankings as NAB proposes, which are based on population? Would advertising revenue provide a sufficiently stable measurement and how would such a measurement fit with defining the relevant product market as the broadcast radio listening market? How would the Commission and potential applicants obtain reliable advertising revenue data for all radio stations? Should the Commission factor non-broadcast audio sources in any tiered approach, and if so, how should it do so? For example: (1) If the Commission modifies its current tiers or creates new tiers, should it account for variations across markets in broadband access and adoption rates; (2) should the Commission treat fixed and mobile or wired and wireless broadband the same; and (3) how granularly can and should the Commission measure listening rates for satellite radio and online audio services?

11. In addition, should any modifications to the current tiered approach affect how the Commission applies the rule to areas outside the boundaries of defined Nielsen Audio Metro markets, and if so, how? NAB proposes removing all radio ownership limits for undefined areas. Would NAB's proposal be consistent with Commission policy goals or would it lead to excessive consolidation in those outside areas, and what alternative approach could the Commission take in areas of the country that are undefined by Nielsen Audio? Further, the contour-overlap methodology has been successfully applied on an interim basis to undefined markets for years and the Commission previously rejected arguments that it permitted too much consolidation in certain markets. Is this approach the most effective and practical for determining ownership limits in areas outside defined Nielsen Audio Metro markets and should the Commission therefore make it permanent? Any commenters opposed to adopting the contour-overlap methodology on a permanent basis should explain their reasoning and propose a detailed alternative supported by evidence.

12. *Numerical Limits.* In the *2010/2014 Quadrennial Review Order,* the Commission declined to relax or tighten the numerical limits restricting the number of radio stations an entity may own within a radio market. The Commission seeks comment on whether it is necessary as a result of competition to maintain the numerical limits for any or all of the market size tiers. If the Commission retains existing market tiers, are existing limits restricting the number of radio stations an entity may own within a radio market set appropriately for each of the market size tiers? Do the current limits adequately prevent a radio broadcaster from amassing excessive local market power? Conversely, do they permit sufficient growth to enable radio broadcasters to

obtain the additional assets they may need to improve the quality of their service? Commenters should provide concrete, actual examples of markets where the current limits are either too restrictive or too lenient, explain how those examples typify other markets in that tier, and specify the benefits to those markets that would be gained by revising the limits.

13. The Commission also seeks comment on whether it should account for the different signal strengths of radio stations by weighing different classes of radio stations differently for purposes of applying the numerical limits. For example, the Commission could consider a Class A AM station to be worth two stations, whereas a Class D AM station could be counted as one half a station. What would be the costs and benefits of such an approach? What values should be accorded to the different classes of radio stations if the Commission adopts such an approach? The Commission previously considered a proposal to assign different values to radio stations of different classes for purposes of determining market size tiers and seeks comment on assigning varying weights to different classes of radio stations when applying the numerical limits.

14. In addition, the Commission seeks comment on NAB's proposal to maintain the eight-station limit for the top 75 Nielsen Audio Metro markets but to apply it only to FM stations, thereby allowing unlimited AM ownership. NAB further proposes allowing an owner in the top 75 Nielson Audio Metro markets to acquire up to two additional FM stations if it participates in (and, the Commission assumes, successfully completes) the incubator program. For all other markets, NAB urges the elimination of numerical limits for both FM and AM services. The Commission seeks comment on all aspects of NAB's proposed changes to the numerical limits and invites alternative proposals. What would be the likely effects of removing FM limits in most markets? What would be the likely effects of allowing unlimited AM ownership across all markets? Would such actions, on balance, promote competition by enabling owners to increase their assets, or would they harm competition and/or ownership diversity by driving smaller broadcasters, including minority and women owners, from the marketplace? How would viewpoint diversity and localism be affected? The *Incubator Order* rewards successful incubation of a radio station with one waiver per market to exceed the applicable ownership limit by one station and allows participants to use no more than one reward waiver per market. NAB submitted its proposal to maintain the eight-station limit for the top 75 Nielsen Audio Metro markets before the Commission adopted the *Incubator Order,* so it is unclear whether NAB is suggesting that successful incubation of one station should result in a waiver for two stations or successful incubation of two stations should entitle an owner to acquire two stations above the limit within the same market. The Commission seeks comment on both possible interpretations.

15. *AM/FM Subcaps.* In the *2010/2014 Quadrennial Review Order,* the Commission retained the Local Radio Ownership Rule's AM/FM subcaps, which prevent a broadcaster from owning more than five AM or five FM stations in markets in the largest market tier, four AM or four FM stations in markets in the two middle-sized tiers, or three AM or three FM stations in markets in the smallest tier. The Commission seeks comment on whether the AM/FM subcaps remain necessary and whether its previous reasons for maintaining subcaps are still valid. For example, have subcaps promoted market entry? Are subcaps still necessary given the Commission's efforts to revitalize AM radio or has the disparity between the FM and AM services been narrowed to an extent that the subcaps could be relaxed or eliminated? Since its 2010/2014 Quadrennial Review, the Commission has granted over 1,000 applications to acquire and relocate FM translators to rebroadcast AM stations. Should the expanded and improved coverage of those AM stations affect the analysis of subcaps? Conversely, data from the 2010/2014 Quadrennial Review indicated that the transition to digital radio actually exacerbated the divide between the services because AM stations have been slower to adopt digital radio technology. What is the import of the current status of the digital radio transition for evaluating the subcaps? If subcaps continue to promote competition or ownership diversity, or otherwise serve the public interest, are they currently set at the appropriate levels?

16. If the Commission revises the Local Radio Ownership Rule, should the modified rule include AM or FM subcaps, and if so, how should they be applied? NAB's proposal essentially would eliminate AM subcaps in all markets and retain FM subcaps in only the top 75 markets. NAB does not explain why it would distinguish the FM service for restricted ownership in the top markets rather than limit the total number of radio stations in those markets regardless of service, and the Commission seeks comment on whether the proposal is supported by technical or marketplace differences between the services. In a letter filed shortly after NAB submitted its proposal, the owner of a network of AM stations argued that removing and/or relaxing FM subcaps would harm the AM service by facilitating the migration of content to the FM service. Concurring with that view, iHeartMedia urges the Commission to loosen restrictions on AM ownership while retaining the existing FM subcaps, arguing that doing so would be consistent with the Commission's efforts to revitalize AM radio. Considering these competing positions, the Commission seeks comment on what limits, if any, should apply to AM and FM ownership, whether to retain the current market size tiers and numerical limits, and on whether and how any proposed revisions to the Local Radio Ownership Rule should include such limits.

17. *Embedded Markets.* Owners of radio stations in embedded markets within a parent market, which currently exist only in New York and Washington, DC, must comply with the Local Radio Ownership Rule's numerical limits for both the embedded market and the parent market. In response to the 2010/2014 Quadrennial Review Further Notice of Proposed Rulemaking (*FNPRM*), Connoisseur Media argued that because radio stations within different embedded markets within a parent market have little or no contour overlap and may reach different populations, the Commission's analysis of a proposed acquisition in one embedded market should not include stations owned in the other embedded markets within the same parent market. In the *2010/2014 Quadrennial Review Order on Reconsideration,* the Commission declined to adopt an across-the-board change to its embedded market methodology, but adopted a waiver standard whereby embedded market transactions in markets with multiple embedded markets would be presumed to be in the public interest if they met a two-prong test proposed by Connoisseur: (1) As with the Commission's current methodology for embedded markets, a radio station owner seeking a rule waiver must comply with the applicable numerical ownership limit in each embedded market using the Nielsen Audio Metro methodology; and (2) instead of then also demonstrating compliance with the applicable numerical ownership limit based on the Commission's parent

market analysis, the applicant must show that it also complies with the ownership limits as determined by the contour-overlap methodology ordinarily applicable in undefined markets. The Commission adopted this presumptive waiver standard on an interim basis pending the outcome of this 2018 Quadrennial Review proceeding.

18. Accordingly, the Commission seeks comment on how to address the issue of embedded market transactions. If the Commission retains a Local Radio Ownership Rule, how should it apply going forward to radios station in markets that contain multiple embedded markets, currently New York and Washington, DC? Should the presumptive waiver standard become permanent? Should it be modified in any way? Should it apply to all current and future markets that contain multiple embedded markets, or should its application be limited to the two existing parent markets with multiple embedded markets? How do competition, diversity, and localism considerations affect the question? Embedded market designations can be updated and modified by Nielsen Audio as market conditions change, and Nielsen Audio's radio station customers can request the designation of a new embedded market. How could the Commission guard against purchasers taking advantage of an anticipated designation of a new embedded market in a manner that would thwart the purpose of the current ownership limits? For example, in the event that Nielsen Audio creates new, additional situations with multiple embedded markets within a larger parent market, should there be a waiting period before applicants can take advantage of that change in circumstance, similar to the waiting period applicable to changes in the stations reported as ''home'' to a Nielsen Audio Metro market? If the Commission adopts any change to its approach to embedded markets, should the change also apply to markets with a single embedded market? Is there a distinction between markets with one embedded market and markets with multiple embedded markets such that the Commission should vary its approach between those situations?

19. In the *2010/2014 Quadrennial Review Order on Reconsideration,* the Commission expressed its intent to consider in this 2018 Quadrennial Review an alternate NAB proposal that stations licensed in embedded markets with signal coverage of less than 50 percent of the parent market's population not be considered part of the parent market for purposes of local ownership limit compliance calculations. The Commission seeks comment on whether it should adopt such an approach or any other across-the-board rule changes regarding embedded markets. Is there a need to implement a rule change that carves out a blanket exception to the current methodology given that there are only two parent markets containing multiple embedded markets? Or is a permanent presumptive waiver standard an adequate solution given how narrow its use is likely to be? The Commission seeks comment on the potential advantages and disadvantages of these various approaches and invites proposals for other ways to address embedded market transactions.

20. *Minority and Female Ownership.* In the *2010/2014 Quadrennial Review Order,* the Commission found the current Local Radio Ownership Rule to be consistent with its goal of promoting minority and female ownership of broadcast radio stations, observing that the rule, while competition-based, indirectly promotes viewpoint diversity by facilitating ''the presence of independently owned broadcast radio stations in the local market, thereby increasing the likelihood of a variety of viewpoints and preserving ownership opportunities for new entrants.'' It pointed to AM subcaps in particular as elements of the rule that foster new entry. Because available data did not show that stricter limits would increase minority and female radio ownership, however, the Commission chose not to tighten the rule. Similarly, the Commission found no indication of a causal link between Congress' loosening of local radio limits in 1996 and the increase in ownership diversity since then that would justify loosening the rules. The Commission seeks comment on whether any new information has become available that would cause us to reevaluate these conclusions. The Commission also seeks comment on how retaining or modifying the Local Radio Ownership Rule might affect broadcast radio ownership and entry by small business owners, if at all.

21. *Local Television Ownership Rule.* The Local Television Ownership Rule allows an entity to own up to two television stations in the same Nielsen Designated Market Area (DMA) (a group of counties forming an exclusive geographic area to which the Nielsen Company assigns each broadcast television station) if: (1) The digital noise limited service contours (NLSCs) of the stations (as determined by § 73.622(e) of the Commission's rules) do not overlap; or (2) at the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top-four stations in the DMA, based on the most recent all-day (9 a.m.–midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service. With respect to the latter provision—the Top-Four Prohibition—an applicant may request that the Commission examine the facts and circumstances in a market regarding a particular transaction and, based on the showing made by the applicant in a particular case, make a finding that permitting an entity to directly or indirectly own, operate, or control two top-four television stations licensed in the same DMA would serve the public interest, convenience, and necessity. The Commission considers showings that the Top-Four Prohibition should not apply due to specific circumstances in a local market or with respect to a specific transaction on a case-by-case basis.

22. The Commission found in the *2018 Quadrennial Review Order on Reconsideration* that local television ownership limits remained necessary to promote competition among broadcast stations in local television markets, finding that such competition leads stations to invest in better and more locally tailored programming and to compete for advertising revenue and retransmission consent fees. The Commission also determined, however, that the existing rule required modification to ensure that television broadcasters could achieve efficiencies to make such improvements in an evolving video marketplace. The Commission therefore repealed the provision of the previous rule requiring at least eight independently owned television stations to remain in a DMA after any station acquisition in the DMA, finding that this Eight-Voices test was unsupported by the record or reasoned analysis and was no longer necessary in the public interest. The Commission also added flexibility to the application of the Top-Four Prohibition by adopting the case-by-case analysis mentioned above.

23. First, the Commission seeks comment on whether the current version of the Local Television Ownership Rule is necessary in the public interest as a result of competition. In earlier media ownership reviews, broadcasters argued that local television ownership restrictions prevent them from competing effectively, while other commenters supported retention of limits based on the need to prevent excessive consolidation of television stations due to the unique nature of their free, over-

the-air programming provided on spectrum licensed for public benefit. The Commission seeks comment on how developments in the video programming industry since the last quadrennial review have affected whether the Local Television Ownership Rule is necessary as a result of competition and to promote localism and viewpoint diversity among local broadcast television stations. The Commission seeks comment on whether promoting competition among television stations in local viewing markets continues to be the proper framework within which to consider the rule, and if so, what forms of competition it should take into account under such a framework. For instance, how, if at all, should the Commission consider competition among television stations for viewers, advertisers, retransmission consent fees, network affiliation, the provision of local news or other programming, the production or acquisition of programming, innovation, or any other form of competition?

24. The Commission also seeks comment on whether the Local Television Ownership Rule is necessary to promote localism or viewpoint diversity. The Commission has previously stated that a competition-based rule, while not designed specifically to promote localism or viewpoint diversity, may still have such an effect. Has the prior reliance on competition as the primary policy goal of the Local Television Ownership Rule also served as a proxy for preserving a certain level of localism or viewpoint diversity in local television markets that might otherwise be lost were we to find the rule no longer necessary for competition purposes?

25. The Commission seeks comment on whether a competition-based Local Television Ownership Rule promotes the production or provision of local programming. Localism has been a cornerstone of the Commission's broadcast regulation for decades, with the Commission finding that broadcast licensees have an obligation to air programming that is responsive to the needs and interests of their communities of license. Does promoting competition among broadcast stations incentivize stations to produce and improve local programming? Could or does competition from non-broadcast video sources, which have no local programming requirements, create the same incentives to produce and improve local programming?

26. If the Commission decides to retain the Local Television Ownership Rule, it will analyze the relevant parts of the rule to examine whether each particular provision similarly remains necessary in the public interest as a result of competition or whether it should be modified or eliminated. Thus, the Commission seeks comment on specific aspects of the rule's operation, including the relevant product market, numerical limits, and the Top-Four Prohibition, to assess whether these subparts remain necessary or whether any or all of them should be modified or eliminated. The Commission also asks whether developments in the video programming industry involving multicasting, satellite stations, low power stations, and the next generation transmission standard have any implications on the Local Television Ownership Rule or its subparts.

27. *Market Definition.* In the *2010/2014 Quadrennial Review Order on Reconsideration,* the Commission found that a rule to preserve competition among local broadcast television stations was still warranted, but also noted that it was not free to retain the rule without adjustments to account for marketplace changes outside the local broadcast television market. The Commission also found that non-broadcast video offerings do not serve as meaningful substitutes for local broadcast television, and noted that video programming delivered by multichannel video programming distributors (MVPDs) is generally uniform across all markets, as is programming provided by online video distributors (OVDs). The Commission stated that unlike local broadcast stations, MVPDs and OVDs were not likely to make programming decisions based on conditions or preferences in local markets, but indicated that this conclusion could change in a future proceeding with a different record.

28. The Commission now seeks comment on relevant marketplace changes and whether and how it should take such changes into account. The Commission seeks comment on the appropriate product market for reviewing the Local Television Ownership Rule, including whether to include more than broadcast video programming and what market participants to consider. In light of the evolving video marketplace, the Commission also seeks comment on its prior findings in the *2010/2014 Quadrennial Review Order,* and whether and to what extent non-broadcast sources of video programming should be considered competitors to broadcast television stations. Do consumers consider broadcast television to be interchangeable with other sources of programming? If so, what other sources of video programming should be included in the analysis of a local product market? What factors should the Commission consider in analyzing non-broadcast sources of video programming? Should the Commission distinguish between linear (scheduled) and non-linear (*i.e.,* video-on-demand) distributors of video? In which product markets, if any, do non-broadcast video programmers compete with broadcast television programmers? Does broadcast television offer any programming for which there is no substitute available from non-broadcast video programmers? Based on Nielsen and NAB data, the Commission noted in the *Eighteenth Video Competition Report* the increasing number of households relying on broadcast rather than MVPD service. To what extent do consumers rely on broadcast television as their primary, or only, source of video programming? The Commission previously noted that broadband penetration is relevant when considering whether on-line platforms are meaningful substitutes for local broadcast. Is the availability of non-broadcast video comparable to that of broadcast television? Do viewers rely on or consume programming from local broadcast stations in a manner different from other sources of, potentially, non-local video programming? In addition, do any non-broadcast video programmers make programming decisions based on local markets or the actions of individual local television stations (*i.e.,* a cable operator deciding to carry local sporting events not covered by the local broadcaster)?

29. The Commission also found in the *2010/2014 Quadrennial Review Order* that arguments by broadcasters that advertisers no longer distinguish between local broadcast television and non-broadcast video programming when deciding how to spend on local advertising were not supported by the record. Thus, the Commission seeks comment on whether and to what extent non-broadcast sources of video programming should be considered competitors to broadcast television stations. The Commission also asks how advertisers select between local broadcast and non-broadcast sources of programming and seeks studies and data that it can use to assess substitutability in local advertising among all sources of video in a DMA. The Commission seeks comment and new data about whether and how various video programming providers compete for local advertising revenue.

30. Given the Commission's prior findings in the *2010/2014 Biennial Review Order* that competition within local markets can produce better

programming and programming tailored to local needs and interests from which viewers benefit, the Commission seeks comment on whether, in evaluating the Local Television Ownership Rule, it should consider sources of local news and other local programming as a relevant product market. What are the most prominent sources of local news and local programming beyond broadcast television? Should non-video providers of news and information—such as radio, newspapers, internet websites, and social media platforms—be examined in the product market analysis? To what extent do potential viewers rely for local news on these alternative sources? Given Knight Foundation reports that online-only local news websites have limited impact, are these sources originators of local programming, or do they simply aggregate or utilize content generated by traditional local news sources? Are non-broadcast sources of local programming available in all DMAs or are they just in major markets? Is the depth of any coverage of local issues by non-broadcast platforms consistent across DMAs? The Commission seeks comment on the availability and variety of local video programming in each Nielsen DMA and on how the Commission would, and if it should, evaluate local programming for purposes of any programming-based analysis. The Commission seeks comment on whether defining the local product market for our television ownership rules to include specific types of programming would raise First Amendment concerns.

31. What measures could the Commission use to assess competition among sources of local video programming or other local content? What data sources might the Commission use to determine which sources consumers consider substitutes? Given the lack of a single, accepted, industry-wide standard for measuring online viewership, how should the Commission account for various providers of news, information, and video programming to the extent that some entities, such as OVDs and websites, may lack an industry standard for measuring viewership and engagement?

32. The Commission also seeks comment on the relationship between its local television ownership market definition and any changes thereto, and the market definition and analysis used by DOJ, which examines local television broadcasters competing in the spot advertising market. The Commission stated in the *2010/2014 Quadrennial Review Order* that its market definition when evaluating broadcast television mergers is like DOJ's in that the scope of the Commission's rule is similarly limited to local television broadcast stations. DOJ's analysis, however, has historically focused on competition for advertising, whereas the Commission's analysis focuses on multiple factors, including audience share. Recently in evaluating the combination of Nexstar and Media General, DOJ also looked at competition for retransmission consent licensing fees in local television markets. The Commission seeks comment on whether and how DOJ's analytical framework should inform its own, and vice versa. Are there ways in which the Commission's current rule is either consistent or inconsistent with antitrust principles? Do other public interest considerations support the rule?

33. *Numerical Limit.* Currently, a broadcast licensee can own up to two television stations (a duopoly) in a DMA, subject to the requirements of the Local Television Ownership Rule. In the *2010/2014 Quadrennial Review Order,* the Commission concluded that changes in the local television market demonstrated by the record were insufficient to justify either tightening or loosening this numerical limit. The Commission therefore seeks comment on whether subsequent changes in the video programming industry now support changes to the numerical limit. If the Commission finds that retaining a local television rule remains in the public interest, should it change the numerical limit on how many stations may be owned in a DMA?

34. *Top-Four Prohibition.* The Commission found in the *2010/2014 Quadrennial Review Order* that ratings data supported the Local Television Ownership Rule's focus on the top-four rated full power television stations in a market, that there typically remained a significant ''cushion'' of audience share points that separated the top-four stations in a market from the fifth-ranked station and below, and that the record supported potential harms associated with top-four combinations. The Commission seeks comment on the applicability of these previous conclusions based on new, updated ratings data and/or examples of existing commonly owned top-four station combinations. If the Commission retains a local television ownership rule, should the top four prohibition be retained or modified?

35. In the *2010/2014 Quadrennial Review Order on Reconsideration,* the Commission recognized that rigid application of the Top-Four Prohibition in all DMAs may not be supported by the unique conditions present in certain DMAs or with respect to certain transactions, and accordingly adopted a hybrid approach to allow applicants to seek a case-by-case examination of a proposed combination that would otherwise be prohibited by the Top-Four Prohibition. The Commission stated that the types of information applicants could provide on competition in the local market in such examinations included: (1) Ratings share data of the stations proposed to be combined compared with other stations in the market; (2) revenue share data of the stations proposed to be combined compared with other stations in the market, including advertising (on-air and digital) and retransmission consent fees; (3) market characteristics, such as population and the number and types of broadcast television stations serving the market (including any strong competitors outside the top-four rated broadcast television stations); (4) the likely effects on programming meeting the needs and interests of the community; and (5) any other circumstances impacting the market, particularly any disparities primarily impacting small and mid-sized markets.

36. The Commission asks whether flexibility in applying the Top-Four prohibition remains necessary and, if so, whether the case-by-case approach is the most effective way to achieve it. If the Commission finds that a case-by-case analysis is the best approach, do the types of information listed in the *2010/2014 Quadrennial Review Order on Reconsideration* serve as reliable factors in determining whether a top-four combination would serve the public interest? If so, should some factors be weighed more heavily than others in the analysis? Are there factors in addition to the examples provided in the *2010/2014 Quadrennial Review Order on Reconsideration* that the Commission should consider? What kinds of data should licensees provide to support their showings? Should the Commission adopt a more rigid set of criteria for its case-by-case determination?

37. Alternatively, should the Commission avoid a case-by-case or hybrid approach and establish a bright-line test that would permit common ownership of two top-four stations in all cases, or in particular markets or circumstances? For example, should the Commission permit common ownership of the fourth-ranked station in a market and either the second-ranked station or third-ranked station in that same market? Should the Commission allow combinations between the second-ranked station or third-ranked station in the same market? Should such combinations only be permitted in

smaller markets where there is less advertising revenue available to support programming and station operations? The Commission also seeks comment on whether it should create a presumption for permitting common ownership of two top-four stations if certain conditions are met. What conditions should the Commission consider in determining if a combination would not negatively impact competition? For example, should the Commission presume that a combination is permissible if the combined stations' share of the audience and/or advertising market share does not exceed a certain threshold?

38. If the Commission either retains the case-by-case approach or adopts a bright-line test, it seeks comment on how to analyze competition in local television markets. In considering the effect of top-four combinations on local advertising markets, the Commission seeks studies that estimate the elasticity of demand for local advertising. In the absence of such studies, what data sources or types of data might the Commission use to assess substitutability in local advertising across dayparts, program types, and stations? What measures, in addition to viewership share, could be used to assess competition between stations in local programming? What data sources might we use to determine which programs or stations viewers consider substitutes?

39. A top-four combination may have different effects on competition among broadcast stations for viewers of different types of programming, for instance, local programming, network programming, and syndicated programming. Should the Commission weigh each competitive effect and, if so, how? If the Commission considers specific categories of programming, should it look at the viewership of each type of programming, the amount of revenue generated for the local station by each type of programming, both, or something else? Top-four combinations may also affect the quantity or quality of local programming available in the market. Although intended primarily to promote competition, does the Top-Four Prohibition also preserve, as a byproduct, a sufficient level of localism or viewpoint diversity in local markets? The Commission seeks comment on whether and how it should consider elimination of an independent local news operation or a reduction in local news programming.

40. The Commission also seeks comment on whether and how it should weigh any effect on retransmission consent negotiations in evaluating competitive effects under the Commission's case-by-case approach to evaluating top-four station combinations. Commenters in proceedings involving potential top-four station combinations consistently have raised the issue of potential retransmission consent fee increases because of reduced competition between stations and undue bargaining leverage for stations if commonly owned top-four stations are able to negotiate such fees jointly as a result of the combination. In its Nexstar-Media General review, DOJ also recognized that common ownership of two major broadcast network affiliates can lead to diminished competition in the negotiation of retransmission agreements with MVPDs in local television markets. The Commission therefore seeks comment on whether and how it should weigh the effect on retransmission consent negotiations in evaluating top-four station combinations under its case-by-case approach. Should the Commission maintain the Top-Four Prohibition for purposes of preventing any potential competitive harms caused by joint negotiation of retransmission consent fees by two commonly owned top-four stations in a DMA, and would such an approach be inconsistent with congressional intent in prohibiting joint negotiation only when conducted by non-commonly owned stations in the STELA Reauthorization Act of 2014?

41. If the Commission keeps the Top-Four Prohibition or a similar rule that relies on the ranking of stations by audience share or viewership, should any specific provisions of the rule be modified? The rule currently determines a station's in-market ranking based on the most recent all-day (9 a.m.–midnight) audience share, as measured by Nielsen Media Research. The Commission seeks comment on whether this data point is still the most useful for accurately determining a station's ranking for purposes of the Top-Four Prohibition. Have there been changes in the industry that necessitate examining different data? The Commission also seeks comment on whether and how it should account for instances where a station makes use of multicast streams, satellite stations, or translators. Should the ratings of these stations or streams be combined with the ratings of the primary station or stream to determine the station's ratings in the DMA? Why or why not? Lastly, based on Commission staff review of Nielsen data, there are instances where noncommercial television stations have audience shares comparable to those of commercial stations. Should the Commission distinguish between commercial and noncommercial stations for purposes of the Top-Four Prohibition? Why or why not?

42. The Commission seeks comment on whether to provide clarification of the phrase ''at the time the application to acquire or construct the station(s) is filed.'' Should entities filing an application submit as support audience share data for the most recent month, week, or sweeps period in relation to the date when the application was submitted to the Commission? Should the time frame for the submitted data be required to show a longer period? For example, should the Commission require applicants to submit ratings data over a three-year period to demonstrate that a station truly is or is not ranked among the top-four stations in the DMA ''at the time the application to acquire or construct the station(s) is filed'' as suggested in the *2010/2014 Quadrennial Review Order on Reconsideration*? If not, should the Commission take another approach to prevent circumvention of the Top-Four Prohibition's requirements based on anomalous data? Should it rely on the most recent period solely as a presumption, which might be rebutted by interested parties?

43. Given the longstanding nature of the Top-Four Prohibition, much of the discussion in this section focuses on the continued applicability of that rule and ways that it might be adjusted or clarified to apply in the current video marketplace. The Commission also seeks comment on alternatives to the Top-Four Prohibition. Should common ownership of two stations in a market be permitted when at least one of the stations is not ranked among the top-three stations in the market, or among the top-two? What economic data support establishing such a top-three approach, considering the significant differences in national audience share between the top-four national networks and others? Should the Commission distinguish between stations located in larger Nielsen DMAs and those in mid- to small-sized DMAs by adopting a tiered approach to application of any ranking-based prohibition? Should common ownership be permitted when there is a certain number of non-broadcast local video programing sources in a DMA? The Commission seeks comment on how these and any other proposals supported by the record would promote and protect competition in local television markets.

44. *Multicasting.* As a result of the digital television transition, all full-power television stations have the ability to use their available spectrum to

broadcast not only their main program stream but also, if they choose, additional program streams—an activity commonly referred to as multicasting. In the *2010/2014 Quadrennial Review Order* the Commission distinguished between the ability to multicast and ownership of a separate broadcast station and declined to impose restrictions on local television station ownership based on the ability to multicast. Because the record indicated that dual affiliations involving two Big Four networks (ABC, CBS, Fox, and NBC) via multicasting were generally limited to smaller markets where there was an insufficient number of full-power commercial television stations to accommodate each Big Four network or where other unique marketplace factors led to creating the dual affiliation, the Commission declined to regulate dual affiliations through multicasting, even in instances where a licensee is affiliated with more than one of the Big Four networks. The Commission stated, however, that it would continue to monitor this issue and act in the future, if appropriate.

45. The Commission now seeks comment on how technical and other developments in the broadcast industry have affected multicasting. Are some multicast streams functioning as the equivalent of separate broadcast stations? Multicasting has enabled broadcasters to bring more programming to consumers, particularly in smaller, rural markets, by expanding the availability of the four major networks and newer networks. Based on Commission staff review of Nielsen data, there are at least several dozen DMAs where a single entity holds affiliations with two Big Four networks by using a multicast stream to carry the second signal. Thus, the Commission seeks comment on the characteristics of DMAs where major network affiliations are carried on multicast streams. Are there certain markets where this practice is more commonplace? Do dual affiliations with major networks remains limited to smaller markets or has the practice become more widespread? The Commission asks whether and how it should evaluate multicast streams for purposes of the Local Television Ownership Rule.

46. *Satellite Stations.* Television satellite stations are full-power broadcast stations authorized under Part 73 of the Commission's rules that generally retransmit some or all of the programming of another television station, known as the parent station, which typically is commonly owned or operated with the satellite station. Satellite stations are exempt from the Local Television Ownership Rule, and the Commission seeks comment on their use to carry two Big Four networks in a market. For instance, how should the Commission treat a situation in which a licensee utilizes multicasting to air two Big Four networks on a parent station (*e.g.,* one on the primary stream and one on a multicast stream), and airs the same two Big Four networks on a satellite station? How prevalent is this practice, and is it consistent with the purposes behind allowing satellite stations in the first place, which are generally intended to bring over-the-air television service to unserved areas? Are there benefits to allowing this practice that outweigh any potential harms? The Commission seeks comment on whether this issue should be addressed through modification of the satellite exemption to the Local Television Ownership Rule or, alternatively, in the context of the satellite authorization process.

47. *Low Power Television Stations.* Changes in industry practice and technological advances may have extended the reach and enhanced the capabilities of low power and translator television broadcast stations that are currently exempt from local television ownership limits. Based on a review of Nielsen data by Commission staff, there are a significant number of low power stations affiliated with a Big Four network. Because of this affiliation, MVPDs are likely willing to carry the low power stations, which qualify for must-carry on cable systems under very limited circumstances, despite their status. If low power stations can in this way become the functional equivalent of full power stations in certain instances, should the Commission account for the number of low power television stations as part of its Local Television Ownership Rule in some way, and if so, how? For instance, should a low power station that is ranked among the top four stations in audience share in a DMA be counted as a top-four station for purposes of the Top-Four Prohibition?

48. *Next Generation Broadcast Television Transmission Standard.* Currently, the broadcast television industry is developing a new transmission standard called Advanced Television Systems Committee (ATSC) 3.0 with the intent of merging the capabilities of over-the-air broadcasting with the broadband viewing and information delivery methods of the internet, using the same 6 MHz channels presently allocated for DTV service. According to ATSC 3.0 advocates, the new standard has the potential to improve broadcast signal reception greatly, particularly on mobile devices and television receivers without outdoor antennas. ATSC 3.0 will enable broadcasters to offer enhanced and innovative new features to consumers, including Ultra High Definition (UHD) picture and immersive audio, more localized programming content, an advanced emergency alert system (EAS) capable of waking up sleeping devices to warn consumers of imminent emergencies, better accessibility options, and interactive services.

49. The Commission seeks comment on the implications, if any, of the new broadcast television transmission standard on the Local Television Ownership Rule. The Commission also seeks comment on whether any provisions of the Local Television Ownership Rule potentially could affect adoption and deployment of the new transmission standard. How, if at all, should the Commission in the context of local television ownership consider the decisions of television broadcasters to adopt voluntarily the ATSC 3.0 transmission standard?

50. *Broadcast Spectrum Auction.* In the *2010/2014 Quadrennial Review Order,* the Commission stated that it could not yet determine how the incentive auction would affect the Local Television Ownership Rule. On April 13, 2017, the Commission released a public notice announcing the results of the reverse and forward auctions and the repacking of the broadcast television spectrum. Pursuant to the statute authorizing the incentive auction, that public notice marked the auction's completion and the start of the 39-month post-auction transition period. Given completion of the auction and the subsequent surrender of spectrum and/or initiation of channel-sharing agreements, the Commission seeks comment on whether the auction's effects on local television ownership have any implication on retention or modification of the Local Television Ownership Rule.

51. *Shared Service Agreements.* In the *2010/2014 Quadrennial Review Order,* the Commission adopted a definition of shared service agreements (SSAs) and, despite opposition from broadcasters, a requirement that commercial television stations disclose SSAs by placing them in their online public inspection files. The Commission also found it lacked knowledge about the content, scope, and prevalence of SSAs that kept it from evaluating the impact of these agreements, if any, on its policy goals with respect to broadcast ownership. The *2010/2014 Quadrennial Review Order on Reconsideration* upheld the disclosure requirement, which took effect on March 23, 2018. The Commission now seeks comment on

what action, if any, it should take on SSAs in the context of this 2018 review of the Local Television Ownership Rule. Should the Commission retain or eliminate the SSA filing requirement? What, if anything, have commenters learned from filing the agreements so far?

52. *Minority and Female Ownership.* The Commission stated in the *2010/2014 Quadrennial Order* that, while the Local Television Ownership Rule promotes competition among broadcast television stations in local markets and is not meant to preserve or create specific amounts of minority and female ownership, the rule nevertheless promotes opportunities for diversity in local television ownership. The Commission concluded that the competition-based rule helps to ensure the presence of independently owned broadcast television stations in the local market, thereby indirectly increasing the likelihood of a variety of viewpoints and preserving ownership opportunities for new entrants. The record held no data indicating that the duopoly rule has reduced minority ownership or suggested that a return to the single station per licensee rule would increase ownership opportunities for minorities and women. While the data did indicate an increase in minority ownership following relaxation of the Local Television Ownership Rule, there was no evidence in the record that established a causal connection. The Commission now asks how retaining, modifying, or eliminating the local television rule would affect broadcast television ownership and entry by minority and female owners, if at all. The Commission seeks data and an updated record on the effects of the Local Television Ownership Rule on minority and female broadcast ownership and entry. Finally, the Commission seeks comment on how retaining or modifying the rule might affect broadcast television ownership and entry by small business owners, if at all.

53. *Dual Network Rule.* The Dual Network Rule permits common ownership of multiple broadcast networks, but effectively prohibits a merger between or among the Big Four networks. In the *2010/2014 Quadrennial Review Order,* the Commission concluded that the Dual Network Rule continues to be necessary in the public interest to promote competition and localism. With respect to competition, the Commission found the rule necessary to promote both competition in the provision of primetime entertainment programming and the sale of national advertising. With respect to localism, the Commission found that the rule was necessary to preserve the balance of power between the Big Four networks and their local affiliates.

54. In conducting its analysis of whether the Dual Network Rule remains necessary, the Commission traditionally has considered broadcast networks as participating in the video marketplace in two ways: (1) Assembling and distributing a collection of programming suitable for large, national audiences, and (2) selling advertising based on this programming to large, national advertisers. Does the Dual Network Rule continue to be relevant to competition or network behavior in either or both of these segments? The Commission concluded in the *2010/2014 Quadrennial Review Order* that ''the primetime entertainment programming provided by the Big Four broadcast networks and national television advertising time are each a distinct product—the availability, price, and quality of which could be restricted, to the detriment of consumers, if two [Big Four broadcast networks] were permitted to merge.'' Does this conclusion remain valid? The Commission also generally seeks comment on whether the Dual Network Rule remains necessary to promote its goals of competition, viewpoint diversity and localism, and on whether the benefits of the rule outweigh any costs.

55. Regarding viewership, in the *2010/2014 Quadrennial Review Order* the Commission found, based on Nielsen data, that no cable programming could deliver primetime audiences on par with, let alone greater than, the primetime audiences delivered by the Big Four networks. The Commission's *Eighteenth Video Competition Report,* based on 2015 data, showed that broadcast affiliates still draw the largest share of total day and prime time viewing audiences in relation to independent stations and non-commercial and cable networks. The *2010/2014 Quadrennial Review Order* also found a continued wide disparity in the advertising rates and revenue earned by the Big Four networks and other broadcast and cable networks. The Commission seeks more current data on these topics. Do these or other recent developments have any implications for the Commission's competition rationale underlying the Dual Network Rule?

56. The Commission also found in the *2010/2014 Quadrennial Review Order* and in previous reviews of the Dual Network Rule that the Big Four networks operate as a ''strategic group'' in the national advertising market and that they largely compete among themselves for the most significant portion of the national advertising market, namely advertisers that seek to reach national mass audiences. The Commission further found that the programming provided by the Big Four networks was a distinct product that, when compared to other broadcast and cable programming, had a unique ability to regularly attract large prime-time audiences and thus command higher advertising rates. Does the Commission's ''strategic group'' finding still hold true? Given the increasing number of video programmers in today's market, as well as the increasing popularity of their programming, is network broadcast programming still a distinct product? Does nightly network news programming, or any other programming, distinguish the broadcast networks, or are consumers now turning to other news or programming sources that remove this distinction? Are there other producers of mass audience programming such that a merger between two of the Big Four networks would no longer harm competition for national advertising? In the past, the Commission reviewed programming audience shares and the advertising rates and revenues of various programmers in making this determination. Should the Commission continue to rely on these data, or are there other data or metrics it should consider? Are there better sources of relevant data than the Commission has considered in the past?

57. One of the biggest changes in the video programming market has been online distribution of programming from a variety of sources. Today, OVDs—including linear multichannel streaming services, both those from social media companies and other online platforms, and direct-to-consumer offerings by broadcast networks themselves—reach millions of consumers. Digital advertising on these or other online platforms is steadily increasing in market and revenue share. How, if at all, have these changes affected competition for national broadcast television advertising? The Commission seeks comment on whether and how any such changes should affect our Dual Network Rule.

58. The Commission also seeks comment on whether recent developments in the video programming and national advertising markets suggest that the Dual Network Rule should be modified to promote competition or eliminated. If the rule is modified, what changes should we make? Should networks be removed from or added to the rule? If so, which networks? What would be the basis for eliminating the

rule? If the rule were eliminated, would antitrust statutes or any other statutes, rules, or policies serve as a sufficient backstop to prevent undue consolidation between or among the Big Four networks? Why or why not?

59. The Commission also seeks comment on whether The Dual Network Rule remains necessary to promote localism, in particular by maintaining a balance of power between the Big Four networks and their local affiliates. To reach the largest possible national audience, the Big Four networks acquire their own broadcast stations, usually in the largest television markets, and enter into affiliation agreements with station owners throughout the rest of the country. Through affiliation, a model which has existed for more than fifty years, networks benefit through wide delivery of their programming, and network affiliates benefit by gaining access to high-quality programming. The Commission has found in previous media ownership rule reviews that the network-affiliate model balances competing interests: Networks have an economic incentive to ensure that programming appeals to a mass, nationwide audience while affiliates have an economic incentive to tailor programming to their local audiences and influence network programming choices to ensure that the programming serves local needs and interests. Affiliates also may decide individually to preempt network programming for other programming better serving the local audience. The Commission now seeks comment on whether these specific conclusions, and the Commission's general conclusion that the Dual Network Rule is needed to keep the balance of bargaining power between the Big Four networks and their affiliates, remain true in today's video marketplace.

60. Evidence submitted in the Commission's review of the Comcast-NBCU merger suggested that broadcast network affiliation remains sought after and critical to many local stations' success. Also, while advertising revenue remains essential to broadcast stations, the *Eighteenth Video Competition Report* showed that retransmission consent revenues now represent a much greater proportion of total revenue for many broadcast stations than previously, and stations with Big Four network affiliations often receive the lion's share of retransmission consent dollars from MVPDs in a local market. The *Eighteenth Video Competition Report* also showed that, whereas local affiliates were once paid by networks to distribute network programming, today networks seek and receive compensation from their affiliates in the form of reverse compensation payments. According to one estimate by SNL Kagan, total industrywide reverse compensation payments paid by affiliates to broadcast networks have increased from roughly $300 million in 2010 to $2.9 billion in 2017. There is some evidence too that networks now exert leverage through oversight or approval of affiliate retransmission consent negotiations, and although not common, in some instances in recent years a network dropped or threatened to drop a local affiliate to launch a network O&O station in the same market. To what extent do networks extract a share of retransmission consent payments received by their affiliates? How, if at all, should the Dual Network Rule account for these or other recent changes to the network/affiliate relationship?

61. In addition, the rise of online video options in recent years also may have altered the network-affiliate dynamic. As stated above, OVDs now reach millions of consumers, creating new opportunities for networks to achieve widespread distribution without the direct involvement of network affiliates. In the broadcast-MVPD world of retransmission consent, local affiliates may have some recourse against broadcast networks bypassing their affiliates in this manner by negotiating for, and if necessary enforcing via Commission rules, contractual network non-duplication rights, which protect a broadcast station's right to be the exclusive distributor of network programming within a specified geographic zone. By contrast, in the world of online video distribution, local affiliates lack a comparable regulatory backstop. The ability of networks to achieve online distribution of network programming in a local market, without the need for local affiliates to consent, may give networks some additional leverage in the network-affiliate relationship that did not exist in the pre-online video world. What implications, if any, do developments related to the growth of online video distribution have for the Dual Network Rule and its underlying localism rationale?

62. As the Commission has previously noted, the Dual Network Rule is intended to preserve the ability of local affiliates to advocate for local interests in programming decisions. Would a Big Four network merger reduce the ability of a network affiliate to use the availability of other top, independently-owned networks as a bargaining tool to influence programming decisions of its network, including the affiliate's ability to engage in a dialogue with its network over the suitability for local audiences of either the content or scheduling of network programming? Have changes discussed above, including the growth of online video or increased reverse compensation and retransmission consent fees, affected bargaining between networks and affiliates on programming and scheduling?

63. Considering the longstanding existence of the Dual Network Rule, has localism increased, decreased, or remained roughly the same over time? Are there recent examples where local affiliates have influenced network programming to better serve local needs? Are there other metrics by which we can assess the effect of the Dual Network Rule on localism? Have other changes affected the network/affiliate relationship, such that the Commission would need to adjust assumptions made in previous reviews of the Dual Network Rule? For instance, has the growth over the last two decades of station groups not owned and operated by networks changed the dynamic between networks and their affiliates? Do recent changes affecting the network-affiliate relationship suggest that the Dual Network Rule should be modified, rather than being retained or eliminated, to promote localism? If so, what modifications should we make that would better promote localism?

64. *Minority and Female Ownership.* The Commission concluded in the *2010/2014 Quadrennial Review Order* that, given the Dual Network Rule's unique focus on mergers involving the Big Four networks rather than ownership limits in local markets, the rule would not be expected to have any meaningful impact on minority and female ownership levels. The Commission seeks comment on whether and how market or other changes since its last media ownership review may have affected this conclusion. The Commission also seeks comment on how retaining, modifying or eliminating the Dual Network Rule would affect broadcast television ownership and entry by minority and female owners, if at all. Finally, the Commission seeks comment on how retaining or modifying the Dual Network Rule might affect broadcast television ownership and entry by small business owners, if at all.

65. *Diversity Related Proposals.* The *NPRM* also seeks comment on three proposals for increasing media diversity advanced by MMTC in prior proceedings. These three proposals were distilled from a larger list based on guidance from the Third Circuit in its decisions and Commission staff, and the Commission already has adopted two

additional proposals from this list. The three proposals the Commission now considers are: (1) Extending cable procurement requirements to broadcasters; (2) developing a model for market based tradable ''diversity credits'' to serve as an alternative method for adopting ownership limits; and (3) adopting formulas aimed at creating media ownership limits that promote diversity.

66. *Extending Cable Procurement Regulation.* The 1992 Cable Act states that a cable system must: ''[e]ncourage minority and female entrepreneurs to conduct business with all parts of its operation.'' § 76.75(e) of the Commission's rules explains that this requirement may be met by, for example, recruiting as wide as possible a pool of qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations, and other sources likely to be representative of minority and female interests. To help determine whether this requirement can be applied to broadcasters, the Commission seeks comment on the threshold issue of whether, because Commission cable procurement authority flows directly from the 1992 Cable Act, it has authority to adopt a procurement requirement for broadcasters. The Communications Act imposes equal employment opportunity obligations on broadcasters, but no procurement requirements. Does this difference between the two statutes reflect any limitation on the Commission's otherwise extensive Communications Act Title III authority over broadcasters? The Commission seeks comment on potential sources of Commission authority, including any ancillary authority, to extend procurement regulations to the broadcast industry. The Commission also seeks comment on whether, by specifically identifying minority/female entrepreneurs, the proposal would classify these entrepreneurs differently from others such as to trigger heightened judicial scrutiny. If heightened scrutiny is triggered, how would such a rule comport with the Commission's previous finding in the *2010/2014 Quadrennial Review Order* that it lacked the evidence to satisfy the heightened scrutiny needed to justify race- or gender-based broadcast regulation? Would inclusion of any type of audit, review, or enforcement mechanism pursuant to which the Commission considered broadcasters' compliance with the requirement be problematic or interpreted as tacitly encouraging broadcasters to favor certain entrepreneurs to the detriment of others in a way that would trigger heightened scrutiny?

67. If a broadcast procurement rule as proposed by MMTC would trigger heightened judicial scrutiny, can any proposed rule be modified to be race- and gender-neutral to avoid the potential legal impediments raised by a race- and gender-conscious broadcast procurement rule? In such a case, how would the requirement be stated? Would a race- and gender-neutral broadcast procurement rule be as effective as a race- and gender-conscious broadcast procurement rule?

68. The Commission also seeks comment on MMTC's assertion in the *2010/2014 Quadrennial Review* that § 76.75(e) ''has been a springboard for the migration of minority and women entrepreneurs into operating and ownership positions in the cable and satellite industries[,]'' and has ''contributed mightily to the economic success of scores of minority and women owned businesses engaged in banking, broker/dealer services, construction, fiber and satellite dish installation, programming, legal services, accounting, and much more.'' In deciding whether to adopt additional regulations or extend a regulation to additional industries, it is important to assess the likelihood that the regulation would have the desired effect of increasing minority and female participation in the broadcast industry. Consequently, the Commission seeks data on the degree to which § 76.75(e) has promoted minority and women businesses and whether any broader trends in the intervening two decades since enactment of the cable procurement requirement have played a role in fostering greater minority and female participation in the cable industry. In this regard, we also seek comment on the relative benefits and costs of extending § 76.75(e) to the broadcast industry. How can the value of these benefits and costs be measured?

69. The Commission also notes the significant differences between the cable and broadcast industries and seeks comment on the feasibility—and utility—of imposing a § 76.75(e)-type requirement on the broadcast industry. For example, unlike broadcasters, cable providers must construct and continuously maintain and upgrade a significant physical plant and therefore purchase goods and services on a much larger scale than broadcasters. Over-the-air delivery of broadcast radio and television does not require laying fiber or coaxial cable to every home and, in most instances, deploying customer premise equipment, necessitating regular purchase of equipment and material at significant volume. Constructing and maintaining extensive cable networks also requires employing and contracting for far more labor than is required in the broadcast sector. Unlike broadcasters, cable operators maintain a direct billing relationship with their customers, offering more contracting opportunities—in the form of outsourced billing or customer service functions—than the broadcast industry. Accordingly, the Commission seeks input on the feasibility and utility of imposing a cable procurement regulation on broadcasters.

70. *Develop a Model for Market-Based Tradeable Diversity Credits.* In reply comments submitted in the 2002 Biennial Review, a group called the Diversity and Competition Supporters (DCS) advanced several initiatives that it asserted would foster diversity, including tradeable ''diversity credits'' for the broadcast industry. While diversity credits weren't well defined, the idea appears to involve creating a system of credits tradable in a market-based system and redeemable by a broadcaster buying additional stations to offset any increased concentration resulting from a proposed transaction. DCS offered diversity credits as a potential alternative to the test then in use by the Commission requiring that, for a broadcaster to own two stations in a market, eight independent voices must have remained in the market post-transaction. DCS suggested that economists (presumably both at the Commission and beyond) could explore the concept and stated its hope ''that other parties will attempt to design a market-based Diversity Credit program.'' In 2004, a member of the Transactional Transparency Subcommittee of the FCC Advisory Committee on Diversity in the Digital Age further developed the diversity credits concept, suggesting credits linked to each broadcast license based on the extent to which the licensee was ''socially and economically disadvantaged'' and that, if a transaction promoted diversity (*e.g.,* the breakup of a local ownership cluster or the sale of a station to a socially and economically disadvantaged business), the Commission would award the seller additional diversity credits ''commensurate with the extent to which the transaction promotes diversity.'' Similarly, according to this 2004 proposal, if a transaction reduced diversity (*e.g.,* by creating an ownership combination or growing an ownership cluster), the Commission would require diversity credits from the buyer, commensurate with the extent to the which the transaction reduced diversity.

Finally, according to the 2004 proposal, if a company seeking approval of a transaction held insufficient diversity credits to gain approval, the company would need to purchase diversity credits on a secondary market from third-party companies. The proposal did not define either ''promoting'' or ''reducing'' diversity, or how the impact of a transaction would be measured or quantified. MMTC continued to advocate for tradable diversity credits in the *2010/2014 Quadrennial Review,* asking the Commission to explore their feasibility by issuing a Notice of Inquiry. Therefore, the Commission now seeks comment on whether and how it should create a system of tradable diversity credits that would foster ownership diversity in broadcasting.

71. The Commission first seeks comment on its authority to adopt a tradeable diversity credit system within its structural broadcast ownership rules or otherwise. While the Communications Act contains no explicit authority to create or rely on such a program, when presenting the idea, DCS asserted that the sections 303(f), (g), and (r) of the Communications Act provided authority to implement tradable diversity credits. Are the sections cited by DCS applicable to such credits?

72. Assuming it has the required authority, the Commission seeks comment on the feasibility of relying on determinations about social and economic disadvantage given its concerns, expressed in the *2010/2014 Quadrennial Review Order,* about relying on such determinations. As proposed, the allocation of diversity credits was based on the extent to which the licensee could be considered ''socially and economically disadvantaged.'' How should the term ''socially and economically disadvantaged'' business (SDB) be defined? The 2004 proposal stated that, ''[m]inority status could be a factor in qualifying as an SDB if the Commission finds through rulemaking that minorities, under certain conditions, are socially and economically disadvantaged in the broadcasting industry because of their race[,]'' but did not provide any guidance about when an individual might or might not qualify on the basis of race. In the *2010/2014 Quadrennial Review Order,* the Commission found that the record did not establish a basis for race-conscious remedies and concluded that such measures were unlikely to withstand review under the equal protection component of the Constitution's due process clause. Thus, the Commission, unlike the Small Business Administration (SBA), declined to adopt an SDB eligibility standard that would have recognized the race and ethnicity of applicants, or any other race- or gender-conscious measure. Given the Commission's previous findings and conclusions, can it adopt a diversity credit program that considers race or gender, or other protected classes, in a manner that could withstand equal protection review? Commenters advocating for such a program should explain in detail, based on relevant judicial precedent and existing empirical data, how circumstances have changed such that the Commission could now overcome the significant evidentiary issues that it previously found would need to be resolved to adopt race- or gender-based policies that could withstand heightened judicial scrutiny.

73. If the socially and economically disadvantaged concept in the 2004 proposal was a precursor to the Overcoming Disadvantages Preference (ODP) concept that MMTC has advanced in subsequent Commission rulemaking proceedings, the Commission in the *2010/2014 Quadrennial Review FNPRM* assessed the ODP concept and stated concerns that the Commission lacks the resources needed to conduct the individualized reviews central to ODP. The Commission has similar concerns about the administrative and practical challenges of developing, implementing and applying a diversity credits program. The 2004 proposal suggested that the program rely on ascribing a diversity credits number to each broadcast license or possibly each licensee. Who would make that allocation of diversity credits, and on what criteria would the Commission or other arbiter determine the number of credits to be awarded to each license or licensee?

74. Such a program also raises potentially complicated definitional issues. How would the Commission define ''diversity'' in this context? In the 2002 Biennial Review Order, the Commission described several types of diversity, focusing on viewpoint diversity as the relevant touchstone for purposes of the structural media ownership rules. Would a diversity credit system have as its goal fostering viewpoint diversity, ownership diversity, both forms of diversity, or some other type of diversity?

75. Once diversity is defined, how would parties—or the Commission—determine, qualitatively or quantitatively, whether a transaction promotes or harms diversity? How would the degree to which the transaction harms or benefits diversity be quantified, such that the number of credits awarded for, or required before approval of, such a transaction could be determined? For example, would the impact on diversity vary depending on the size of the market, the number of operators therein, or the characteristics of the stations involved in the transaction? Would a requirement that parties remit to the Commission a certain number of diversity credits to receive approval of a transaction replace the Commission's existing structural broadcast ownership rules, which are based primarily on other policy goals, such as competition and localism? Or would compliance with the diversity credit regime be an additional requirement before a transaction were permitted?

76. Recognizing that diversity credits could be used as a form of currency in the broadcast market, how could the Commission effectively test such a scheme to ensure it would not lead to any unintended consequences? Developing and implementing a system that ensures that the award of diversity credits leads to the desired result—increasing diverse ownership in the broadcast market—rather than inadvertently skewing the market towards an unintended outcome, including greater concentration or loss of localism and viewpoint diversity, would seem to be a particular challenge. The Commission seeks comment on how to address these issues.

77. *Tipping Point Formula and Source Diversity Formula.* In 2002, MMTC proposed a ''tipping point formula'' for use in the local radio market in lieu of the Commission's now-abandoned practice of ''flagging'' radio transactions that, after initial analysis based on advertising revenue, approached a level of local concentration that raised public interest concerns about preserving diversity and competition. In 2003, DCS proposed a ''source diversity formula'' for use in the broader media market that seemed to be an attempt to quantify the benefit derived from increased viewpoint diversity. As with diversity credits, the Communications Act provides no explicit authority to adopt or apply these formulas, and the Commission seeks comment on possible sources of such statutory authority. Moreover, because MMTC and DCS have provided little update to the formulas since proposing them, the Commission seeks input generally on their relevance in today's marketplace. The formulas also raise administrative and practical concerns on which the Commission seeks comment, as discussed below.

78. MMTC's tipping point formula attempted to determine when a proposed transaction would create an entity that could control so much advertising revenue that ''well run independents'' could not survive or offer ''meaningful local service'' (all undefined). The formula's asserted goal was to assess how much ''revenue'' an ''independent'' would need on average to survive in a given market, with this number then being multiplied by the number of ''independents'' in that market. Because the Commission's abandoned flagging approach relied on advertising revenues, the term ''revenue'' in MMTC's tipping point formula appears also to refer to advertising revenue. MMTC essentially suggests that the Commission should bar any transaction that would reduce the revenue available to support independent operators in a market to an amount below what could sustain those operators. Stated differently, a broadcaster would not be permitted to acquire competing stations in a market if the purchase would create revenue so great as to leave insufficient revenue for the independents in the market. MMTC provided the following variables as inputs for its formula, as well as the formula shown below:

MR: Market revenue.

MR1: Amount of market revenue drawn by largest platform.

MR2: Amount of market revenue drawn by second largest platform.

IN: Number of independent stations in the market.

SU: Minimum fixed cost for an independent station to stay on the air.

VFSU: Variability Factor for Survival Operations, reflecting the average amount of revenues per independent station that must be available in the market, collectively, to take account of variations among the independent stations and thereby ensure that well-run weak independents stay on the air.

LS: Minimum additional cost, beyond SU, for an independent station to offer a meaningful local service.

VFLS: Variability Factor for Local Service reflecting the average amount of revenue per independent station that must be available in the market, collectively, to take account of variations among the independent stations and thereby ensure that well-run weak independents remain viable.

LSTP: Local Service Tipping Point, *i.e.,* the point at which, if the top two station groups control more revenue, independents will begin to lose their ability to offer meaningful local service.

SUTP: Survival Tipping Point, *i.e.,* the point at which, if the top two station groups control more revenue, independents will be unable to meet their fixed operating costs and must, therefore, sell out or go dark.

Based on these inputs, according to MMTC, the Local Service Tipping Point is the point at which: IN (SU + VFSU + LS + VFLS) = MR − (MR1 + MR2), and the Survival Tipping point is the point at which: IN (SU + VFSU) = MR − (MR1 + MR2). In presenting these variables, MMTC noted that ''[t]he cost of maintaining a station on the air varies somewhat depending on local market factors[,]'' that such regional or local differences ''can be designed into a formula by indexing a market's cost of living relative to the national average[,]'' and that such issues could be addressed in a negotiated rulemaking involving all interested parties.

79. We seek comment on the various terms used in the formula. For example, how should the terms ''independent'' and ''platform'' be defined in the context of today's radio marketplace? How should the terms ''well-run independent'' and ''well-run weak independent'' be defined? What objective criteria can we apply to distinguish between a ''well-run independent'' and a ''well-run weak independent'' to ensure that use of a tipping point formula does not prop up stations that are either poorly managed or simply not airing programming that responds to the community's interests? What is meant by ''meaningful local service''? We also seek comment on whether any determinations about how well a station is run or the concept of ''meaningful local service'' might create First Amendment concerns.

80. MMTC's formula appears to rely on advertising revenues. If so, how would the Commission and potential applicants obtain reliable advertising revenue for all radio stations? If another type of revenue is more appropriate, what data would the Commission rely on to obtain information about this other revenue? How should the concept of ''fixed operating costs'' be quantified? How should the Commission account for local and regional cost differences?

81. Finally, the Commission seeks comment on what seems to be the fundamental premise behind MMTC's tipping point formula: that retaining independents (however that term is defined) in a market maintains diversity (however that term is defined). We also invite commenters to address any other issues that they believe are raised by the tipping point formula proposal.

82. DCS submitted its source diversity formula in response to a challenge from then-Chairman Powell to derive an ''HHI [Herfindahl-Hirschman Index used to measure market concentration] for Diversity.'' The formula appears to seek to measure the level of consumer welfare derived from viewpoint diversity in the radio and television broadcast market, and DCS suggested it could be a ''thermometer'' to determine whether ''a national or local market manifest[s] strong diversity, moderate diversity, or slight diversity.'' DCS proposed that the Commission conduct a negotiated rulemaking to determine what significance to accord to various ''temperature readings'' on this thermometer, *i.e.,* what temperatures would reflect ''poor health,'' or ''strong health.'' DCS appeared to suggest that the source diversity formula could be used in lieu of the Commission's now-repealed ''eight voices'' test.

83. DCS depicted the source diversity formula as shown below with the following variables: X = consumer welfare derived from viewpoint diversity; p = a program consumed from a particular source; g = the number of programs from a particular source that are available for consumption; C = the number of consumers consuming a particular program; T = consumers' mean media consumption time devoted to the absorption of viewpoints in a particular program; Z = consumers' mean attentiveness to a particular program; m = a source (including all outlets owned by that source); and n = number of differently owned sources offering programs consumed. The formula as proposed was:

$$X = \mathrm{n}^{1+(\frac{1}{n})} \hat{a}_{m=1}^{n} \left(\hat{a}_{p=1}^{g} CTZ \right)$$

DCS acknowledged that the formula was imperfect and would need testing and validation before deployment.

84. The formula raises several fundamental questions. Is the formula sufficiently comprehensive for commenters to gauge without additional explanation whether it can provide a meaningful assessment of consumer welfare and viewpoint diversity in a particular market? Are there terms used in the formula inputs that require definition prior to any assessment of the formula's utility? For example, do terms such as ''source'' and ''program'' need to

be defined before analyzing the formula? Are there other terms that need defining? How will the formula inputs be obtained? For example, we seek comment on how to capture inputs such as ''consumers' mean attentiveness to a particular program'' and ''consumers' mean media consumption time devoted to the absorption of viewpoints in a particular program.'' How should the Commission determine the level of diversity to ascribe to various formula results (*e.g.,* ''strong diversity,'' ''moderate diversity,'' or ''slight diversity'')? Finally, the Commission invites commenters to address any other issues that they believe are raised by the source diversity formula.

85. *Cost-Benefit Analysis.* For the three structural media ownership rules and all of the diversity-related proposals discussed above, the Commission seeks comment on how to compare the benefits and costs associated with retaining, modifying or eliminating the rule or adopting the diversity-related proposal, with any proposed modification to the proposal. Commenters supporting modification or elimination of any rule or adoption of any proposal should explain the anticipated economic impact of any proposed action and, where possible, quantify benefits and costs of proposed actions and alternatives. Do the current rules create benefits or costs for any segment of consumers? Do the rules create benefits or costs for any segment of the industry that should be counted as social benefits or costs rather than transfers from one segment of the industry to another? How do the rules create these benefits and costs, and what evidence supports this explanation? How can the value of these benefits and costs be measured for parties receiving them? What factors create uncertainty about the existence or size of these benefits and costs, and how should the Commission's economic analysis take these uncertainties into account?

86. How would elimination of any rules alter the benefits and costs? What are the comparative benefits and costs of modifying any rule rather than eliminating it entirely? For instance, would loosening the current local television or local radio ownership restrictions, or allowing certain of the Big Four networks and not others to merge lead to any consumer benefits, such as increased choice, innovation, or investment in programming? What amount of additional scale would be required to realize such benefits? Would these benefits conflict with, or come at a cost to, our traditional policy goals of competition, viewpoint diversity or localism, and if so, how should we measure and evaluate these tradeoffs? What are the comparative benefits and costs of tightening the current restrictions? The Commission asks commenters to support their claims about benefits and costs with relevant economic theory and evidence, including empirical analysis and data.

Procedural Matters

87. *Ex Parte Rules—Permit-But-Disclose.* The proceeding that this *NPRM* initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules, or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the Commission's Electronic Comment Filing System (ECFS) available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

88. *Filing Requirements—Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using ECFS.

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

89. *Initial Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

90. Written public comments are requested on the IFRA and must be filed in accordance with the same filing deadlines as comments on this *NPRM,* with a distinct heading designating them as responses to the IRFA. In

addition, a copy of this *NPRM* and the IRFA will be sent to the Chief Counsel for Advocacy of the SBA.

91. *Paperwork Reduction Act.* This *NPRM* seeks comment on whether the Commission should adopt new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, invites the public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

92. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

93. *Additional Information.* For additional information on this proceeding, please contact Brendan Holland of the Media Bureau, Industry Analysis Division, *Brendan.Holland@fcc.gov,* (202) 418–2757.

Initial Regulatory Flexibility Analysis

94. *Need for, and Objective of, the Proposed Rules.* This *NPRM* begins an examination of the Commission's media ownership rules and possible changes to these rules. As discussed in the *NPRM,* the Commission is required by statute to review its media ownership rules every four years to determine whether they ''are necessary in the public interest as the result of competition.'' Consistent with the Communications Act, the Commission must examine its media ownership rules and consider whether they continue to serve our public interest goals of competition, viewpoint diversity and localism, or whether they should be modified or eliminated. Specifically, the *NPRM* examines the three remaining media ownership rules, the Local Radio Ownership Rule, the Local Television Ownership Rule and the Dual Network Rule. In addition, the *NPRM* seeks comment on several proposals that were advanced in previous rulemakings and which the Commission indicated it would examine further in the context of this review of its structural ownership rules. These proposals, to extend cable procurement requirements to broadcasters, develop a model for market-based, tradeable ''diversity credits'' to serve as an alternative method for adopting ownership limits, and adopt formulas aimed at creating media ownership limits that promote diversity, are presented by their proponents as initiatives that could further the Commission's diversity goal. The Commission anticipates that these initiatives, if ultimately adopted, might benefit small entities.

95. *Legal Basis.* The proposed action is authorized under sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, and section 202(h) of the Telecommunications Act of 1996.

96. *Description and Estimate of the Number of Small Entities to which the Proposed Rules Apply.* The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act (SBA). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

97. *Television Broadcasting.* According to the U.S. Census Bureau 2017 NAICS Definitions, this U.S. Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25 million or less, 25 had annual receipts between $25 million and $49,999,999 and 70 had annual receipts of $50 million or more. Based on this data, the Commission estimates that the majority of commercial television broadcast stations are small entities under the applicable size standard.

98. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,349. Of this total, 1,248 stations (or about 92.5 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in November 2018, and therefore these stations qualify as small entities under the SBA definition.

99. *Radio Broadcasting.* This U.S. Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts. Economic Census data for 2012 show that 2,849 firms in this category operated in that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 and 26 with annual receipts of $50 million or more. Based on this data, we estimate that the majority of commercial radio broadcast stations were small under the applicable SBA size standard.

100. Apart from the U.S. Economic Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,426 stations and the number of commercial FM radio stations to be 6,737, for a total number of 11,364. Of this total, 11,355 stations (or 99.9 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in November 2018, and therefore these stations qualify as small entities under the SBA definition.

101. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or

television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules may apply does not exclude any radio or television station from the definition of small business on this basis and is therefore possibly over-inclusive.

102. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* The proposals, if ultimately adopted, would require modification of several Commission forms and their instructions: (1) FCC Form 301, Application for Construction Permit for Commercial Broadcast Station; (2) FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License; and (3) FCC Form 315, Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License. The Commission also would modify, as necessary, other forms that include in their instructions the media ownership rules or citations to media ownership proceedings, including Form 303–S, Application for Renewal License for AM, FM, TV, Translator, or LPTV Station and Form 323, Ownership Report for Commercial Broadcast Station. The impact of these changes will be the same on all entities, and we do not anticipate that compliance will require the expenditure of any additional resources or place additional burdens on small businesses.

103. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant—Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

104. The *NPRM* begins a statutorily mandated examination of whether three remaining media ownership rules remain in the public interest as a result of competition and promote the Commission's longstanding policy goals of competition, viewpoint diversity and localism. The *NPRM* acknowledges new technologies and changed marketplace conditions that affect whether the rules remain in the public interest considering competition and the need to allow broadcasters, including small entities, to achieve the economies of scale and scope necessary to continue to compete in a changed marketplace. The *NPRM* considers measures designed to minimize the economic impact of any changes to these rules on firms generally, as well as initiatives designed to promote broadcast ownership opportunities among a diverse group of owners, including small entities. The *NPRM* also invites comment on the effects of any rule changes on different types of broadcasters (*e.g.,* independent or network-affiliated), the benefits and costs associated with any proposals, and any potential to have significant impact on small entities.

105. The *NPRM* proposes no new reporting requirements, performance standards or other compliance obligations, although, as discussed above, it may modify, as necessary, certain existing reporting forms should it adopt any changes to its media ownership rules. Should the Commission ultimately adopt changes to its media ownership rules that could increase requirements or compliance burdens for small entities, it will determine whether possible exemptions, waiver opportunities, extended compliance deadlines or other measures would mitigate any potential impact on small entities.

106. *Federal Rules that May Duplicate, Overlap or Conflict with the Proposed Rules.* None.

Ordering Clauses

107. Accordingly, it is ordered that, pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303, 307, 309, 310, and 403 of the Communications Act of 1934, as amended, and section 202(h) of the Telecommunications Act of 1996, this Notice of Proposed Rulemaking is adopted.

108. It is further ordered, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on the *NPRM* in MB Docket No. 18–349 on or before sixty (60) days after publication in the **Federal Register** and reply comments on or before ninety (90) days after publication in the **Federal Register**.

109. It is furthered ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 19–18; RM–11823; DA 19–44]

Television Broadcasting Services Gadsden and Hoover, Alabama

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: At the request of ION Media License Company, LLC. (ION), licensee of television station WPXH-TV, channel 45, Gadsden, Alabama (WPXH), the Commission is proposing to amend the DTV Table of Allotments by changing WPXH's community of license from Gadsden to Hoover, Alabama. ION asserts that the proposed reallotment is consistent with the Commission's second allotment priority by providing Hoover with its first local transmission service. ION also asserts that the proposed reallotment will not deprive Gadsden of its sole broadcast station because it will continue to be served by station WPXH-TV, licensed to Trinity Christian Center of Santa Ana, Inc. on channel 26 at Gadsden.

DATES: Comments must be filed on or before March 15, 2019 and reply comments on or before March 25, 2019.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: ION Media License Company, LLC, c/o Terri McGalliard, 601 Clearwater Park Road, West Palm Beach, Florida 33401.

FOR FURTHER INFORMATION CONTACT: Darren Fernandez, Media Bureau, at *Darren.Fernandez@fcc.gov;* or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 19–18; RM–11823; DA 19–43, adopted February 5, 2019, and released February 5, 2019. In addition to the proposed reallotment, ION requests waivers of § 73.625(a)(1) of the Commission's rules, 47 CFR 73.625(a)(1) and the Commission's freeze on the filing of