

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No. 09–182; FCC 10–92]

#### 2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Notice of Inquiry (“NOI”) initiates the Commission’s fifth review of its media ownership rules since the passage of the Telecommunications Act of 1996 (“1996 Act”). Section 202(h) of the 1996 Act requires the Commission to review its ownership rules (except the national television ownership limit) every four years and “determine whether any of such rules are necessary in the public interest as the result of competition.” The Commission will take a fresh look at its current ownership rules in order to determine whether they will serve our public interest goals of competition, localism, and diversity going forward. The Commission’s challenge is to adapt its rules to ensure that they promote these values in the new marketplace and into the future.

**DATES:** Comments are due on or before July 12, 2010 and reply comments are due on or before July 26, 2010.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 09–182, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission’s Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tatel, (202) 418–2330; Amy Brett, (202) 418–2330.

*Initial Paperwork Reduction Act of 1995 Analysis.* This document does not contain proposed information collection

requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission’s NOI in MB Docket No. 09–182, FCC 10–92, adopted May 25, 2010, and released May 25, 2010. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs>). The complete text may be purchased from the Commission’s copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) (202) 418–0432 (TTY).

#### Summary of the NOI

1. The NOI asks fundamental questions, the answers to which will help the Commission define its analytical framework, the scope of this proceeding, and the considerations that should underlie media ownership rules for today’s environment. The comments and information gathered through this NOI will help the Commission to formulate a subsequent Notice of Proposed Rulemaking, in which it will invite comment on proposals for regulations that will best promote its policy goals in the context of the current media marketplace. The Commission first seeks a comprehensive understanding of the current media marketplace in order to determine whether the current ownership rules are necessary in the public interest as the result of competition. It will explore the impact its current ownership rules have on the affected industries, including radio, television, and, indirectly, the newspaper industry. If it determines that the current rules are not satisfying the public interest standard, it will assess the potential impact of any new or amended rules it might adopt. Given the profound marketplace, economic, and industry changes in recent years, it commences this proceeding with no

preconceived notions about the framework that will result from this review or what rules it will adopt. It will examine ownership issues based on the record that is established in this proceeding and will seek to establish a forward-looking framework based on the media marketplace of today, not on marketplace factors as they may have existed in the past.

2. The Commission will take a close look at the impact of consolidation on media markets. In 1996, there were 10,257 commercial radio stations and 5,133 radio owners. Today, there are 11,202 commercial radio stations and 3,143 owners, representing a 39% decrease in the number of owners since 1996. In 1996, there were 1,130 commercial television stations and 450 owners. In 2010, there are 1,302 commercial stations and 303 owners, a 33% decrease in the number of owners. There are currently 175 television station duopolies, which includes owners with attributable local marketing agreements, in the 210 Nielsen TV markets. There are roughly 50 newspaper/broadcast same-market combinations in markets across the country.

3. The media marketplace has seen dramatic changes in recent years. Broadcast audiences and newspaper readership are on the decline. Media industries also are experiencing declining advertising revenues, precipitated in part by the downturn in the national economy. Between 2006 and 2008, advertising revenue declined 13.4% for broadcast television stations; advertising revenue for radio stations dropped 10.7%; and newspaper advertising revenue dropped by 23.1%. PEJ estimates that between 2008 and 2009, revenues for the broadcast television and radio industries each fell 22% and revenues for daily newspapers fell 26% between 2008 and 2009. In 2009, 12 broadcast television and radio companies filed for bankruptcy and several newspaper publishers have either ceased operations or filed for bankruptcy protection.

4. Newspapers and broadcasters have responded to declining revenues in part by cutting staff and closing news bureaus. Some newspapers have given up print editions altogether to concentrate exclusively on online operations. PEJ estimates that the newspaper industry has lost \$1.6 billion in annual reporting and editing capacity since 2000, or roughly 30%. This contraction is accompanied by an explosion of content from Internet and mobile sources. Changes in technology are reshaping how people get their news and audio and video programming. PEJ

reports that 59% of Internet users now use social media and blogging and networking sites. PEJ reports that a sustainable business model currently does not exist to finance the production of online content and finds that even the best new media sites have limited ability to produce content.

5. The Internet clearly has not wholly supplanted traditional media, such as broadcast stations, newspapers, and cable systems, but it has increased the quantity of news and programming available to consumers. The Commission's review must take account of the Internet's role and significance. It will examine how traditional media producers are integrating the Internet into their business models and whether revenues from Internet advertising can mitigate the effects of the loss of other advertising dollars. It will attempt to weigh and assess these trends and evaluate the interrelationships between the marketplace and the Commission's ownership rules.

6. Views differ on the impact of the marketplace changes discussed above. Commenters in previous media ownership proceedings have raised concerns that increased consolidation places control of programming choices in the hands of too few owners. They have asserted that consolidation results in insufficient programming variety to serve the needs of local communities. Parties have asserted that owners of multiple stations in a market may reduce or cease production of local programming on some of their co-owned stations and instead rely on the news produced by their other stations or newspapers. Throughout this proceeding, the Commission will examine whether consolidation adversely affects consumers of media, advertisers, creators of content, and platform owners.

7. Some believe that the economic downturn for traditional media will lead to reduced news coverage and a less informed citizenry. Others believe that the advent of new and creative sources of news available on the Internet will fill any gaps left by traditional news media. In this proceeding, the Commission will examine these issues fully and consider what these and other marketplace and technological changes mean for the regulation of media ownership. After a thorough review of marketplace developments, the Commission may determine that the current rules are serving the public interest, or we may determine that changes are necessary.

8. The Commission's ownership rules must be designed to promote its enduring public interest goals in the

marketplace of today and tomorrow. Historically, the Commission has formulated its ownership rules to benefit consumers by promoting the three principal policy goals of competition, localism, and diversity. The ownership rules have typically sought to promote these goals by limiting the numbers and types of media outlets a single party can own. The Commission has set limits on the numbers of TV and radio facilities an entity may own in local markets, limited the audience reach nationally of commonly owned television stations, and restricted the cross-ownership of broadcast facilities and newspapers in local markets. Through the ownership rules the Commission strives to ensure that owners promote programming responsive to local needs, including public safety information and quality children's programming. All of these types of programming serve the public interest. The Commission thus must seek to achieve a balance in addressing media ownership limits to ensure that consumers have access to these and other types of important programming. The FCC invites comment on how to ensure that its rules are properly calibrated to promote its goals under current marketplace conditions.

9. Throughout the NOI, the FCC invites suggestions for analytical frameworks that will allow it to assess and balance the goals of the ownership review. Commenters should submit relevant data and studies to assist in crafting ownership rules and identify any ongoing studies or projects that it should take into consideration. Its goal is to have the broadest possible participation from all sectors of the public.

10. Five of the Commission's media ownership rules are the subject of this quadrennial review: The local TV ownership rule, the local radio ownership rule, the newspaper/broadcast cross-ownership rule, the radio/TV cross-ownership rule, and the dual network rule. In 2004, Congress amended Section 202(h) of 1996 Act to exclude the national television multiple ownership rule from the Commission's quadrennial review obligation. What authority, if any, does the FCC retain to evaluate the national television multiple ownership rule set at 39% of television households nationwide as part of the quadrennial review or otherwise.

11. The local television ownership rule provides that an entity may own two television stations in the same designated market area ("DMA") only if: (1) The Grade B contours of the stations (as determined by 47 CFR 73.684) do not overlap, or (2) at least one of the

stations in the combination is not ranked among the top four stations in terms of audience share, and at least eight independently owned-and-operated commercial or non-commercial full-power broadcast television stations would remain in the DMA after the combination. To determine the number of voices remaining after the merger, the Commission counts those broadcast television stations whose Grade B signal contours overlap with the Grade B signal contour of at least one of the stations that would be commonly owned.

12. Local Radio Ownership Rule. The local radio ownership rule provides that a person or entity may own, operate, or control: (1) Up to eight commercial radio stations, not more than five of which are in the same service (*i.e.*, AM or FM), in a radio market with 45 or more radio stations; (2) up to seven commercial radio stations, not more than four of which are in the same service, in a radio market with between 30 and 44 (inclusive) radio stations; (3) up to six commercial radio stations, not more than four of which are in the same service, in a radio market with between 15 and 29 (inclusive) radio stations; and (4) up to five commercial radio stations, not more than three of which are in the same service, in a radio market with 14 or fewer radio stations, except that an entity may not own, operate, or control more than 50 percent of the stations in such a market unless the combination of stations comprises not more than one AM and one FM station.

13. Newspaper/Broadcast Cross-Ownership Rule. The newspaper/broadcast cross-ownership rule adopted in 1975 prohibited common ownership of a full-service broadcast station and a daily newspaper if (1) A television station's Grade A service contour completely encompassed the newspaper's city of publication, (2) the predicted or measured 2 mV/m contour of an AM station completely encompassed the newspaper's city of publication, or (3) the predicted 1 mV/m contour for an FM station completely encompassed the newspaper's city of publication. The Commission adopted the newspaper/broadcast cross-ownership rule "in furtherance of our long standing policy of promoting diversification of ownership of the electronic mass communications media." In that Order, the Commission stated that its policy to promote diversity was "derived from both First Amendment and anti-trust policy sources." In the *2006 Quadrennial Review Order*, the Commission established presumptions for the Commission to apply in

determining whether a specific newspaper/broadcast combination serves the public interest. A waiver of the cross-ownership rule is not inconsistent with the public interest where (i) a daily newspaper seeks to combine with a radio station in a top 20 DMA, or (ii) a daily newspaper seeks to combine with a television station in a top 20 DMA and (a) the television station is not ranked among the top four stations in the DMA; and (b) at least eight independently owned and operating "major media voices" would remain in the DMA after the combination. Major media voices are defined as full-power commercial and noncommercial television stations and major newspapers. For markets below the top 20 DMAs, there is a presumption that it is inconsistent with the public interest for an entity to own a newspaper-broadcast combination. The Commission requires an applicant attempting to overcome this negative presumption to demonstrate, by clear and convincing evidence, that the merged entity will increase the diversity of independent news outlets and competition among independent news sources in the relevant market. The Commission will reverse the negative presumption in two limited circumstances: (i) When the proposed combination involves a failed/failing station or newspaper, or (ii) when the proposed combination is with a broadcast station that was not offering local newscasts prior to the combination, and the station will initiate at least seven hours per week of local news after the combination. No matter which presumption applies, the Commission's analysis of the following four factors will inform its review of a proposed combination: (1) The extent to which cross-ownership will serve to increase the amount of local news disseminated through the affected media outlets in the combination; (2) whether each affected media outlet in the combination will exercise its own independent news judgment; (3) the level of concentration in the DMA; and (4) the financial condition of the newspaper or broadcast station, and if the newspaper or broadcast station is in financial distress, the owner's commitment to invest significantly in newsroom operations.

14. **Radio/Television Cross-Ownership Rule.** The radio/television cross-ownership rule allows a party to own up to two television stations (to the extent permitted under the local television ownership rule) and up to six radio stations (to the extent permitted under the local radio ownership rule) in

a market where at least 20 independently owned media voices would remain post-merger. In markets where parties may own a combination of two television stations and six radio stations, the rule allows a party alternatively to own one television station and seven radio stations. A party may own up to two television stations (where permitted under the current local television ownership rule) and up to four radio stations (where permitted under the local radio ownership rule) in markets where, post-merger, at least 10 independently owned media voices would remain. The rule allows a combination of two television stations (where permitted under the local television ownership rule) and one radio station regardless of the number of voices remaining in the market.

15. **The Dual Network Rule.** The Commission's dual network rule permits common ownership of multiple broadcast networks, but prohibits a merger between or among the "top four" networks (that is, ABC, CBS, Fox, and NBC).

16. In analyzing the policy goals, the Commission will consider their relationship to four groups of participants in the media marketplace, each of which may be affected by the ownership rules: (1) Consumers of media or "end users," *i.e.*, viewers, listeners, and readers; (2) advertisers; (3) creators of content; and (4) platform owners, *i.e.*, media distributors, including broadcasters, newspapers, and cable systems. The FCC seeks comment on how to (1) Define the policy goals of competition, localism, and diversity; (2) determine how best to promote these goals in today's media market; (3) analyze the relevance of the policy goals to each of the four groups of market participants identified; (4) measure whether particular ownership structures promote these goals; (5) determine whether any new or revised rules would promote these goals; (6) determine when a goal has been achieved; and (7) balance the goals when they conflict with each other. Are there other goals to consider? To inform the policy decisions, it seeks relevant data and studies about the levels of competition, localism, and diversity in a variety of media markets, including small and large markets, consolidated and unconsolidated markets, markets with existing cross-ownership, and markets without cross-ownership. Are there existing public or proprietary datasets that the FCC should obtain? Are there ongoing studies or projects to consider? It also seeks comment on the extent to which the policy goals are quantifiable. Are there alternative bases

for analysis, including, for example, theoretical analysis, modeling, or simulations?

17. The Section 202(h) statutory directive directly links the Commission's review of the media ownership rules to ensuring that media markets are competitive. The Commission invites comment on how to define the competition goal in today's media marketplace. What analytical approaches should it employ to determine whether common ownership of multiple media outlets increases or decreases competition?

18. In order to evaluate the performance of the media marketplace, how should the Commission measure the current level of competition in that marketplace? It seeks to assess the competitive performance of the relevant markets, not of particular firms, and is particularly interested in proposed definitions of relevant product and geographic markets. They directly impact the applicability of media ownership limits because product market definitions determine which entities compete with each other and thus, how many media outlets are in a market. A narrow product market definition could limit ownership if limits are based on market size. Previously, the Commission's competition analysis has focused on whether the rules result in lower prices, higher output, more choices for buyers, and more technological progress than would be the case if markets were unregulated. Are these still the relevant competitive factors to consider? Are there other factors? Is the competition goal best conceptualized as economic competition?

19. How should the Commission measure whether its ownership rules enhance competition in a way that benefits consumers? As noted above, traditional competitive analysis focuses on price, quality, and innovation. Indeed, competition is not an end in itself but a means to advance consumer welfare. Because broadcast radio and television content is available for free to end users, we cannot use price in analyzing competition for listeners and viewers. Are there potential proxies for consumer welfare?

20. The Commission has found that competition among broadcast outlets is likely to benefit consumers by making available programming that meets consumers' preferences. Is this still the case today? Should the Commission seek to determine whether consumers are getting the content they want from broadcast media? If consumer satisfaction is an important metric for assessing the state of our competition

goal with regard to consumers, how should it be measured?

21. How useful is survey research for assessing end user satisfaction with the range of content provided in the local market? Alternatively, would it be useful to look at empirical and theoretical analyses of competition in other markets to gather information about what market structures, as reflected by the number of firms competing in a market and market share distribution generally, result in a competitive market structure? Could it apply such a figure to the media marketplace?

22. Are there more easily measurable proxies for consumer satisfaction, such as media utilization? What about factors such as increases or decreases in utilization to determine satisfaction? If there is an increase in video programming consumption on the Internet (measured by minutes of use) and a decrease in such consumption via broadcast stations, is that a relevant factor in determining consumer satisfaction for purposes of evaluating our competition goal? What weight should be given to consumer choices in obtaining media content, as revealed by actual behavior?

23. What is the best way to measure consumer satisfaction among particular demographic groups, such as women, racial and ethnic minorities, non-English speakers, and people with disabilities? What is the nexus between media ownership and whether or not a particular demographic group within a designated market area is being served by available broadcast media platforms?

24. The Commission also seeks comment on the degree to which various media providers compete for consumers and how to measure this. Can consumers easily switch among different forms of media without suffering a loss in satisfaction? If not, what are the trade-offs among the levels of satisfaction and the forms of media among which they may switch? Should it analyze the television and radio markets separately or jointly? Do consumers consider radio and television to be substitutes in choosing any service and, if so, for what services? Do television stations adjust the content that they provide in response to changes in content delivered over radio stations and *vice versa*? How do radio and television respond to competition for consumers from other platforms such as the Internet or mobile devices?

25. Should promoting competition in advertising markets be one of the goals of the ownership rules? How should it measure the state of competition in advertising markets? Should it consider

performance metrics that are broader than price, or should it rely on traditional competitive analysis? How should it define the relevant product and geographic markets? What is the appropriate analytical framework that would implement the framework suggested by commenters.

26. While end user prices for broadcast radio and television do not exist, advertising prices are available, making it possible to do a traditional competitive analysis of advertising markets. Historically, the Commission has relied on assessments of competition in advertising markets as a proxy for consumer welfare in media markets. Does the state of competition in the advertising market provide a useful indicator of the state of competition for end users? Does an efficient competitive advertising market ensure that all end users have choices that are relevant to their interests and their particular cultures? If the advertising market is found to be competitive, can the Commission then infer that the menu of content broadcasters provide is doing a good job of attracting the demographic groups in which advertisers are interested? Are certain demographic groups underserved in the media market, or is competition in the advertising market a sufficient indicator that its competition policy goal with respect to all consumers is being satisfied?

27. Media markets have been considered "two-sided markets," in which platforms use content to bring together consumers on one side and advertisers on the other side. How should the Commission take this structure into account? How do differences in the program preferences of viewers and advertisers affect the competition policy goal, and how would it balance those preferences if they are not compatible?

28. How should it assess the impact of the ownership rules on content creators? Platform owners purchase content from creators in the programming market. To what extent should competition for content among platforms be a goal? Should competition in the programming market be a goal as an end in itself, beyond the effect it has on consumers and advertisers? If so, why? Can competition in the programming market be fully measured by observing performance metrics in the consumer and advertising segments, or should the Commission develop different measures?

29. Should the ownership rules seek to promote competition among distribution platform owners as an end in itself, apart from any impacts on the

other groups of market participants? Does the race, gender, or ethnicity of platform owners affect the interests of consumers, advertisers, or content creators, and how? How does the Commission assess and measure the significance of competition in platform ownership?

30. How should the Commission address different effects on different groups? Should it require efficiencies to be passed through to end users (in the form of more and/or better content) or to advertisers (in the form of a more efficient advertising market with better demographic targeting and/or lower prices) before concluding that they contribute to policy goals? To what extent should the analysis of the impact of market structure on media market participants differ in the context of unserved and underserved communities? What, if any, changes to the media ownership rules could promote minority and female ownership of broadcast stations? What marketplace or other factors would encourage new entry by minorities and/or females? Does consolidation hinder such ownership or does the opportunity to obtain efficiencies of scale and scope help promote growth and better public service by minority and female owners?

31. Consumers of broadcast video content also have choices for video programming among hundreds of cable channels and on many Internet sites such as hulu.com, fancast.com, abc.com, fox.com, and available for download at Netflix.com and at iTunes. Some of the Internet sites provide free content viewable with online commercial interruptions; some provide fee-only content; and others offer content only to their subscribers or members. Consumers of broadcast radio can choose also among over 100 audio channels carried by satellite radio, downloadable podcasts, audio streaming, and other audio entertainment available in cars, on mobile devices, and on computers. What is the impact of such changes on the economic viability of broadcasters, including specifically the viability of their local news and public affairs programming, in terms of the cost of production and resulting station revenue from such programming? Do new media provide opportunities for entry by minorities and females?

32. In what ways does competition from the Internet affect the financial condition of broadcasters? What are the consequences of the current challenges that traditional media face in monetizing their content on the Internet? How should the current financial and other problems being

faced by newspapers factor into analysis? What role have debt and profit margins played in the current media structure? Are there other anticipated near-term marketplace changes that should affect the analysis?

33. Are there unique attributes of broadcasting that should define and measure broadcast competition without reference to other media? If not, what other media should the FCC consider as it assesses competition in the relevant markets and measures performance? The FCC invites comment on how to define and promote localism in the context of the media ownership rules. How does ownership structure affect localism? The Commission has relied on two measures to determine whether licensees are meeting their local programming requirements: (1) The selection of programming responsive to local needs and interests of broadcasters' communities of license, and (2) local news quantity and responsiveness. Does the traditional localism goal need to be redefined in today's media marketplace?

34. The FCC seeks comment on what performance metrics to use to analyze the relevance of the localism goal for each group of market participants in determining whether the ownership rules are in the public interest. How should the Commission define and measure localism as it applies to consumers? One approach is to measure programming of interest to the community in general and local news and public affairs programming in particular. Such programming could be evaluated based on the quantity of programming responsive to local needs and interests, which would largely continue the traditional approach. What programming should be deemed responsive to the community, and how should it be defined and measured? What sources of content should the Commission consider? Should it measure the quantity of local content by time or space devoted to issues, stories, programs or articles, the total number of these, or some combination thereof?

35. Are there other ways of measuring the extent to which the localism goal is being achieved in today's media marketplace? Would a survey on citizen consumption of, and satisfaction with, local content be a useful measure? Is the satisfaction of local end users (viewers, listeners, or readers) an adequate measure of whether locally oriented programming adequately serves local needs? If so, what is a proper gauge of audience satisfaction with locally oriented content? If consumers are satisfied with the amount and responsiveness of local content, does

that signify that the media ownership rules are successfully promoting localism?

36. Alternatively, should it examine local programming inputs, such as the number of local journalists, the number of local news bureaus, or expenditures on local news and public affairs, either in absolute terms or as a percentage of total revenues or expenditures? Would such inputs to local programming content be a useful performance metric? Are such inputs a valid proxy for the responsiveness of local programming?

37. Should it consider consumers' interest in locally oriented programming? How should the extent of consumer demand for free, local content factor into the media ownership rules? For instance, if ratings for local news broadcasts have declined over the years, should that affect any emphasis on the goal of localism? Alternatively, is the provision of local news programming socially valuable in itself, regardless of variations in consumer interest in such programming? If so, would measures of civic engagement such as voter turnout or civic knowledge be useful to measure?

38. How should it define and measure localism as it applies to historically underserved minority communities? What is the best approach to measuring satisfaction among particular demographic groups with the quantity and effectiveness of locally-oriented programming? Are there aspects of localism that are relevant specifically to minority communities? Are there particular types of programming, including news and informational programming, which are specifically relevant to minority communities? If so, how should such programming be defined and measured?

39. Should the Commission consider radio and television (and other content platforms such as newspapers, cable, and the Internet) as separate product markets or as a single product market for purposes of achieving our localism goal? How should it account for nonbroadcast distribution outlets for locally oriented programming? How should it account for new media, both in terms of metrics and the impact of new media on traditional media? Does the Internet play a role in the promotion of localism by providing a unique forum for communities and local organizations to share information on niche topics and community-oriented information not provided by other media platforms? What about hyper-local and free community group Web sites? What weight should they be given? While not all consumers have broadband Internet access, information first reported on the

Internet—through local blogs, Web sites, listservs and similar online sources—may be picked up by the traditional media and further disseminated to non-users of the Internet. Is that a relevant factor?

40. Do most local news originate from traditional media sources, such as broadcasting and newspapers? How heavily should origination factor into analysis? How should any measure of quantity account for re-broadcasting or re-purposing of content? Does the current prevalent business model for traditional media, in which many companies provide free Internet content, have any adverse effect on the quantity or responsiveness of local content provided? Should the Commission consider mobile platforms in its analysis? Consumers increasingly use smart phones and other mobile devices to access up-to-date information on local school events and closings, local weather, and local civic information. Consumers also are using mobile devices to deliver news and information through social networking Web sites. Should we consider consumer-to-consumer information in our analysis?

41. Should the Commission seek to promote localism with regard to the advertising sector of media markets? Is there a policy reason for the Commission to promote local advertisers' access to local media? If there is such a policy concern, can it be addressed by ensuring that the advertising market is competitive?

42. Should the Commission consider content creators in deciding whether the ownership rules are necessary to advance localism? Does locally produced or originated content make a particular contribution toward the localism goal, and, if so, how should it define "local production" or "origination" in today's media marketplace. What entities should qualify as local content creators? How should it measure the quantity and responsiveness of locally oriented and produced content?

43. Should the Commission consider platform owners in deciding whether the ownership rules are necessary to advance localism? Is local ownership a goal in itself or simply a means to foster the provision of local programming to consumers? Are there differences in the amount and responsiveness of local content provided in markets where there are significant numbers of locally owned and/or managed stations as opposed to markets characterized by nonlocal owners and/or managers?

44. How does market structure affect localism in all of these respects? Is there any particular ownership structure that

would best promote the localism goal? Does combined ownership of outlets within a platform, such as in radio alone, or across platforms, such as with respect to radio/television cross-ownership or newspaper/broadcast cross-ownership, promote or hinder the localism goal? Commenters should provide predictive evidence as to how any proposed changes in any ownership rule (whether the change be an elimination, relaxation, or tightening of an ownership rule or even a waiver or grandfathering of noncompliance with a rule) would likely affect the amount, quality, and/or diversity of the local news, public affairs programming and other information in the community affected by the change. Is there a difference in the degree to which the localism goal is achieved in markets with many single station owners versus markets in which multiple station ownership is more common? Is there any difference in markets where a TV station or radio station is co-owned with a newspaper as opposed to ones that are not? Please submit any relevant studies or data with respect to these issues.

45. How should the Commission define diversity? The Commission historically has approached the diversity goal from five perspectives—program diversity, viewpoint diversity, source diversity, outlet diversity, and minority and female ownership diversity. In this NOI, it seeks comment on the relative importance of each of these aspects of diversity. The Commission seeks to refine the performance metrics and thresholds used to judge how well the current rules operate to achieve the diversity goal. How does their use comport with the values and principles embodied in the First Amendment? Commenters should support their comments with sound empirical evidence demonstrating a link between structural rules and the diversity goal.

46. What is the proper geographic area and the proper product market within which to analyze the achievement of the diversity goal? The Commission tentatively concludes that the appropriate geographic unit is an area within which, roughly speaking, all citizens have the same range of media choices. It seeks comment on this tentative conclusion. Do existing geographic market definitions satisfy this criterion? Are there any reasons to evaluate diversity on a national level for some facets of diversity?

47. Should the Commission apply performance metrics for the diversity goal that aggregate all media outlets in a geographic area or that separate outlets of each media type? Do particular types

of media contribute more than others to particular aspects of diversity? Should it analyze local television and radio separately? Should it consider only content aired on broadcast outlets or are other platforms relevant as well? How should it take account of the vast number of channels and range of content available via cable television, satellite television, and the Internet? Which media, if any, are close enough substitutes to be considered in the same “product market?” The costs associated with cable television, satellite television, and the Internet (including paying for the connection and for necessary home equipment) put some services out of reach for some segments of the population. How should that be accounted for? If it concludes that the Internet provides the capability to distribute a nearly limitless variety of content, which facets of the diversity goal would be satisfied? Focusing on the Internet, how should it assess the importance of Internet news blogs and aggregators, such as the Huffington Post or the Drudge Report? Do aggregators contribute to media market diversity, even if they produce little or no original content? Commenters should submit studies and data that evaluate the significance of the Internet in formulating media ownership regulation.

48. The FCC previously has concluded that program diversity, which refers to the variety of programming formats and content, is promoted by competition among media outlets. Is competition among media outlets the optimal way to achieve program diversity generally? Viewed this way, a market structure that provides an acceptable level of competition would also be considered to provide an acceptable level of program diversity. Does increased competition among independently owned media outlets always lead to increased program diversity? Are there situations in which concentrated ownership increases program diversity? Is it possible to obtain an objective measure of program diversity? Are the performance metrics suggested above in connection with the competition goal (e.g., consumer satisfaction, media utilization) adequate for this task? If additional performance metrics are necessary, what would they be and how should they be collected?

49. There are certain types of programming that the Commission historically considers to promote the public interest that we would consider in our analysis of diverse programming. For instance, the Commission requires broadcast licensees to provide

programming designed to educate and inform children and to protect children from excessive and inappropriate commercial messages. What is the impact of market structure on the availability of such programming?

50. Viewpoint diversity refers to the availability of media content reflecting a variety of perspectives. How should it measure the level of viewpoint diversity? Is there an objective measure of viewpoint diversity? Should it attempt to measure viewpoint diversity through an analysis or census of available content? Are news and public affairs programs the only relevant sources of viewpoint diversity? How should it define news and public affairs programming? For example, is “Entertainment Tonight” or “The Daily Show” news programming? Can it make such judgments consistent with the First Amendment?

51. As an alternative to measuring the “supply” of content to assess viewpoint diversity, should it take a “demand side” approach and utilize measures of audience satisfaction and media consumption as proxies for viewpoint diversity? How do differences in the number of independent media outlets in an area affect diversity? Do multi-outlet news content providers contribute more or less to viewpoint diversity than singly owned outlets? How does platform ownership and market structure influence viewpoint diversity? Do markets with more independent owners provide more divergent viewpoints on controversial issues? Alternatively, are there benefits of combined ownership, even though it reduces the number of independent owners in a market? Can combined ownership benefit consumers by allowing economies of scale or scope that can benefit end users by enabling broadcasters to provide more diverse programming? In particular, does consolidated ownership enable owners to provide more news programs that represent wide-ranging viewpoints? Does the existence of multiple independent decision makers (sometimes referred to as “gatekeepers”) increase the likelihood that all significant viewpoints will be delivered to the public by at least one local outlet? To what extent does consolidated ownership affect the ability of nonaffiliated/independent small companies or women/minority-owned companies that produce programming to get their programming on the air? What effect, if any, has consolidated ownership had on the availability of a variety of diverse viewpoints to women and minority consumers? Are women and minorities increasing their

ownership levels in companies that are content providers or in other aspects of media production aside from station ownership?

52. Source diversity refers to the availability of media content from a variety of content creators. What role does source diversity play? Is source diversity an end in itself or simply a means to achieving other diversity goals? Would an appropriate level of outlet diversity obviate any separate concerns about source diversity? How should it measure the level of source diversity? Is the availability of independent content creators a measure of source diversity? If so, how should it define "independent content creator"? Is source diversity important for all types of programming? What role should consumer satisfaction or media consumption play in evaluating source diversity? Do the responses to these questions change according to whether the focus is on the airing of local news, public affairs programming or other information?

53. Outlet diversity refers in part to the number of independently owned media outlets in a relevant market. Many of our ownership rules have been stated in terms of the number of independent media "voices" in relevant local markets. Should one of the Commission's goals in prescribing media ownership rules be to promote more independent owners in the platform sector of the media marketplace? Should it view outlet diversity as an instrument for ensuring other types of diversity, such as viewpoint and source diversity, or as an end in itself? How should it measure the relationship between diverse ownership and our other diversity metrics?

54. Another aspect of outlet diversity is the ownership of platforms by diverse individuals and entities, including minorities, women, and small businesses. What was the impact of the relaxation of the radio ownership limits mandated by Congress in 1996 on minority and female ownership of radio stations, and what studies have been done documenting that impact? Does the FCC's structural media ownership rules have an effect on broadcast ownership by minorities, women, and small businesses? What is the relationship between diversity of broadcast ownership and viewpoint diversity? Commenters should support their views with data, studies, and analysis. Should the ownership rules be used to promote diverse types of broadcast owners and, if so, how can the Commission pursue this goal in a manner consistent with the Constitution and relevant case law?

55. The Commission recognizes that there may be tension among the goals of competition, localism, and diversity. For example, proposed transactions may generate efficiencies and enhance program offerings but reduce the number of independent media owners, viewpoint diversity, minority ownership, or localism. How should it weigh our competition, localism, and diversity goals when they conflict? Should it set minimum thresholds for each goal and permit consolidation as long as the thresholds are met? Should any of the ownership rules be designed to serve one or two goals, rather than all three goals? Are any of our goals more important in regulating some media sectors than others?

56. Should it apply different performance cutoffs or different trade-offs across goals in different-sized markets? Should the competition goal outweigh the diversity of ownership goal in certain instances? Does the impact of consolidation differ between small markets and large markets? For instance, does market size affect whether consolidation results in more or less local or diverse news and public affairs programming? Should it measure performance on an absolute level or proportionally to market size? For instance, should it consider hours of local news and public affairs programming per 100,000 households in the market as opposed to hours of local news in the market?

57. Are there other policy goals, in addition to competition, diversity, and localism to consider, in determining ownership limits in this proceeding? If so, what other goals, why are they important and appropriate to consider from a statutory perspective in this proceeding? Should the Commission consider the impact of its media ownership rules on the availability to all Americans of news and information, not only local but also national news and information? The Commission separately has issued a Public Notice to invite comment on various issues relating to the information needs of communities. The issues raised in that notice are interrelated to issues raised in this ownership proceeding although the focus of this proceeding is narrower, since the Commission concentrated here only on our media ownership rules. Should it consider the impact of our ownership rules on investigative journalism? If so, should the Commission consider only investigative journalism in broadcast media or across all media? If commenters believe that it should undertake such an examination in this proceeding, it invites comment on whether revising multiple ownership

rules is necessary to preserve or enhance the availability of news and information and journalism, and, if so, what specific measures should be taken to promote these goals.

58. The Commission invites comment, supported by empirical or other available evidence, on each of the current ownership rules described above, and whether it satisfies the statutory standard. For each of the current ownership rules reviewed in this proceeding, it seeks comment on how the rule affects the local market structure and in turn impacts the Commission's policy goals. Commenters should propose specific analytical frameworks for linking the ownership rules to the policy goals discussed above and measuring the impact of the rules on the policy goals. Would it be useful to target particular rules to particular goals, for example, to use the local television and radio ownership rules to advance the competition goal and the cross-ownership rules to advance the diversity and localism goals? Are there any changes it should make to the rules to promote the goals more effectively? Do the current numerical limits set forth in the ownership rules continue to be necessary to serve our competition, localism, and diversity goals? If it decides to retain the current limits, how should it justify them? Commenters who believe that the current rules do not promote competition, localism, and diversity should propose specific modifications to these rules or describe in detail an alternative framework that would better promote our goals. Commenters should support their contentions with empirical evidence and explain how their recommended approaches would affect the various stakeholders, such as end users, advertisers, content creators, and platform owners. Commenters also should raise any additional pertinent issues with respect to each of these rules beyond those on which they are specifically invited to comment. Commenters who seek modification of the rules should address how to ensure that any revisions to the rules are consistent with the courts' decisions reviewing earlier Commission media ownership orders. For example, what evidentiary bases and what methodological approaches would enable the Commission to provide a reasoned analysis that would be adequate to satisfy judicial scrutiny of any numerical limits it may adopt?

59. The Commission invites commenters who advocate retention of the current ownership rule structure, with or without modification, to address the following specific questions about

the rules: With regard to the local television ownership rule, does the eight-voices test continue to serve our goals? How does the eight-voices requirement promote competition, diversity, and localism? Should it continue to count only full-power television stations as voices, or should a broader or narrower set of voices be considered? What media should be considered when determining the number of voices in a market in applying this rule? Are there other criteria to use to determine what to count as a voice in a given market? Does the current prohibition of mergers among the top-four-rated television stations in a market continue to serve the policy goals? While the Grade B contour no longer exists in the digital world, is an overlap provision or some resort to contours still necessary? Should it make changes to the failed/failing station waiver standard? Should it account for market share other than through the prohibition of a merger among the top-four rated stations? Are there any other aspects of the local television ownership rule that should be revised. Commenters should evaluate the local television ownership rule in the context of the larger marketplace for delivered video. What is the impact on television broadcast programming of competition among MVPDs, and how should it consider this impact in the context of the local television ownership rule? Does the 1996 Act require the Commission to maintain competition among television broadcasters or between broadcasters and other video providers, or both? Is it necessary also to look separately at the broadcast television market? Would consolidation of television station ownership in local markets provide more and better programming? Would permitting one entity to own more television stations in a local market enable the broadcast television service to compete more effectively with MVPDs? Would such combined ownership benefit viewers and/or advertisers through a strengthened competitive position? Is relaxation of the rule warranted in smaller markets to help broadcasters compete with other MVPDs and achieve economies of scale that can allow provision of more responsive and diverse programming to consumers? Television broadcasters assemble their streams of content through a combination of in-house production and outside sources. How does the local market structure of television station ownership affect the market for acquiring content? Would significant consolidation of television

stations in a local market have the potential to harm program syndicators that sell their programming directly to individual local stations? Can the local television ownership rule affect this market and, if so, how should it take account of this effect in crafting the local television ownership rule? The current limit may not be reached in particular markets. How can it account for under-limit situations when predicting the effect of changes in the rules on achievement of the goals?

60. Are the current numerical limits appropriate to achieve the goals of the local radio ownership rule? The local radio ownership rule currently distinguishes between AM and FM services. Does it continue to make sense to have sub-caps for the two services? Have recent technological advances eliminated the need for this aspect of the rule? What part should low-power FM stations play in the rule? Should it account for other sources of audio programming in applying the rule? Should the degree of consolidation of other media in the local market be a factor in the rule, or should it continue to count only the number of radio stations in a market in applying the rule? Should this rule take account of market share?

61. With regard to the newspaper/broadcast cross-ownership rule, should the Commission treat newspaper-television combinations differently from newspaper-radio combinations, as we do in the 2006 presumptive standard? Are some goals or metrics more relevant for one or the other type of combinations? Are particular market participants more heavily affected by the rule? Which elements of market structure are most important for measuring the effects of this rule on the policy goals? Would relaxing the newspaper/broadcast cross-ownership rule result in economies of scale and scope that could help newspapers to survive? Alternatively, do the problems faced by newspapers result from extraneous factors that make relief in this area irrelevant? For example, statistics show that fewer people are reading newspapers and, instead, are increasingly getting news and information from nontraditional sources. Statistics also demonstrate an increase in the degree of penetration of new media, including online websites, and social media. Given the fragmentation of sources of news, would structural relief help newspapers sufficiently to result in a net gain in local news and information? Should any such relief operate via a revised rule or via a waiver standard? If the latter, what type of waiver standard should be

applicable? Is the presumptive standard adopted in the *2006 Quadrennial Review Order* able to further the competition, diversity, and localism goals as well as result in economies of scale and scope that could help newspapers survive? Is a rule that relies on presumptions preferable in order to achieve the goals? What factors should a relaxed rule or waiver standard take into account? Should any relaxation of the rule continue to account for the number of voices in a community? For instance, is there a basis in the current marketplace for finding that cross-ownership only in the largest markets would be in the public interest? Should it take into account market share of the media entities that would be combined? If the number of voices is relevant, how should voices be defined for this purpose?

62. With regard to the radio/television cross-ownership rule, are the current procedures for counting voices in a market achieving the goals or should they be modified? Have recent technological developments had an impact on the voices that should be counted when applying the rule? Does the current rule for counting voices make sense in today's media marketplace? If so, do the media voices considered in this rule's voice count adequately encompass relevant media outlets? How should the Commission justify a decision to retain the particular numerical limits contained in the current rule? What type of waiver standard should be applicable?

63. Would the dual network rule be more effective if it targeted mergers among networks with specific characteristics rather than specifically targeting mergers among the four major networks? If so, what characteristics should it consider, and how should it measure them? Would a merger between or among any of the top-four broadcast networks harm competition in the program acquisition market? How does the Commission balance any conflicting goals underlying this rule? What is the appropriate metrics to use in analyzing the competitive effects of the dual network rule on the program acquisition market? Should the Commission measure shares of expenditures on video entertainment programming? Is the dual network rule necessary to protect competition in the national advertising market? What metrics should the Commission use to make this determination? Should it rely on measurements of the shares of national advertising?

64. If the Commission finds that the existing media ownership rules are no longer necessary in the public interest



as the result of competition, it must modify or eliminate the rules. If it modifies the rules, should it use a bright line approach or adopt an alternative approach, such as analyzing changes in ownership on a case-by-case basis, or a hybrid of the two? What are benefits and disadvantages of bright line rules versus a case-by-case approach? Proponents of bright line rules should discuss why to maintain such an approach and should address the questions, asked above, as to whether any modifications should nonetheless be made to the current rules. For example, should the Commission retain numerical limits affecting ownership of radio stations but revise the current limits? Alternatively, should it adopt a new rule structure? Proponents of a case-by-case approach should discuss whether there are certain ownership rules that are particularly suited to a case-specific review process, or whether a case-by-case approach should be applied to all the ownership rules.

65. If it is determined that the existing rules are not necessary in the public interest as the result of competition, should the Commission adopt a broad cross-media approach to media ownership? Such an approach could replace in whole or in part the focus of each of the current rules on specific types of broadcast outlets. What are the costs and benefits of outlet-specific rules as compared to rules that apply to all media together? Would a broad cross-media approach be consistent with the relevant court cases that have reviewed the Commission's ownership rules? When discussing possible approaches to structuring the ownership rules, commenters should address compatibility of the rules with the court remands in *Sinclair*, *Prometheus*, and *Lamprecht*. Do the holdings in these cases limit the Commission's ability to adopt specific ownership limits? Do the holdings require the Commission to consider any specific factors going forward? Do these cases suggest that a particular approach to ownership regulation is more likely than others to satisfy the courts?

66. Would maintaining bright line rules advance the policy goals? What are the benefits or negative consequences of retaining the current approach? Do bright line rules adequately take into consideration today's media marketplace? Do bright line rules promote efficiency in license transfers and in planning business transactions? Are lenders more likely to provide financing in a climate of regulatory certainty? Are there other benefits to consider in maintaining bright line rules? Conversely, bright line rules do

not fully account for either changing economic conditions within a particular local market or all of the variations that may exist across markets. The fairness and predictability of bright line rules must be weighed against their inflexibility and insensitivity to particular circumstances. To what extent does the possibility of waivers mitigate any disadvantages of bright line rules? Are there other disadvantages of bright line rules to be considered?

67. Alternatively, should the Commission adopt a case-by-case approach instead of adopting new or revised bright line rules? A case-by-case approach allows room for consideration of individual circumstances, thereby increasing the likelihood that a decision with respect to a specific transaction will best serve a particular market. A comprehensive review of all the relevant variables in a local market permits a regulator to render a decision that is appropriate for that market at that time. The flexibility of a case-by-case approach is an advantage in the dynamic and rapidly evolving media marketplace. Are there other advantages of a case-by-case approach?

68. A case-by-case approach also has disadvantages. It can make the decisionmaking process less predictable, which can generate uncertainty, posing challenges for market participants and their lenders. In addition, a complicated set of precedents can evolve from a case-by-case approach, compounding uncertainty and confusion for market participants. A compelling set of facts in a particular situation can lead to an unexpected exception or introduce new variables to be considered. Over time, simply understanding the precedents may become a daunting task. The administrative burdens associated with a case-by-case approach are high relative to a bright line approach. A comprehensive review process that accounts for the particular conditions of a local market can prolong decisionmaking and thus chill market activity. Are there other disadvantages to a case-by-case approach?

69. Should the Commission adopt a hybrid of the two approaches for any or all of the ownership rules? For example, a hybrid rule (such as the newspaper/broadcast cross-ownership rule as modified by the Commission in the 2006 ownership review) could define parameters that predict a likely outcome in most cases while allowing room, within specified guidelines, for an analysis of individual circumstances. Commenters are asked to explain how their recommended approaches would affect the various stakeholders, such as

end users, advertisers, content creators, and platforms.

70. Should any of the ownership rules incorporate additional factors to be considered when the Commission reviews assignment and transfer applications? Additional factors could potentially include local economic and financial conditions, the applicant's financial status and ability to access capital, the size of the local market, the size of the applicant, the holdings of the applicant's competitors in the market, the applicant's audience ratings and/or advertising revenues, the applicant's history of promoting innovation, or the effects of the digital television transition. Some of our media ownership rules already incorporate some of these factors. Proponents of a hybrid approach should explain which factors they believe should be considered and why and how the Commission should take those factors into account. Should certain factors weigh more heavily than others? Opponents of such an approach should explain why the Commission should not have the flexibility to take these types of factors into account.

71. If the Commission determines that the existing rules are no longer necessary in the public interest as the result of competition, should the Commission adopt a broad cross-media approach to regulating media ownership? Such an approach would look at all conditions in a geographic market in determining the degree of permissible combined ownership in that market. What are the benefits or disadvantages of adopting rules that consider all media in a market together? Would a cross-media approach better account for changes in the media marketplace and today's market realities? What parameters should we use to measure such an approach? How should it define the market, and what components of the media marketplace should the Commission take into account?

72. How should the FCC adjust its rules to account for technological changes that are reshaping how people are getting their news and public affairs information? Should the Commission's rule structure account for all major sources of news and public affairs information? What sources should be included? If there is a decline in demand for mainstream news media, should it take that into consideration? How should the rules account for trends in the news media?

73. If it does consider other sources of news, how should it treat new media outlets that are owned by traditional media sources? Should the Commission

treat Web sites owned by traditional media companies differently from independently owned Web sites? How should it treat online aggregators that do not engage in significant original content production themselves, but rather provide selective access to content created by other online content providers and/or traditional media sources? How should it treat other types of arrangements for shared news sources? How do shared news services affect the coverage of local events? Are these arrangements permissible under the cross-ownership rules and should they be?

74. In the 2002 *Biennial Review Order*, the Commission attempted a cross-media approach to media ownership by developing a “diversity index.” The Third Circuit vacated and remanded that aspect of the order as insufficiently supported by the record. If the Commission takes a cross-media approach, how can it avoid the shortcomings the court found in the 2002 order?

75. Should the Commission expand its review in this proceeding to include and consider two issues that may relate to our media ownership rules? First, the Commission’s cross-ownership and local television ownership rules employ analog broadcast television contours as one criterion in determining whether the applicable rule is violated. However, analog contours are no longer relevant. Should the FCC continue using broadcast television contour for purposes of the ownership rules, and if so, how should it revise the rules?

76. The Commission has defined two digital television service contours, the digital noise limited service contour (“NLSC”) and the DTV principal community contour. The digital NLSC approximates the Grade B contour. The FCC does not have an equivalent digital contour for the analog Grade A contour. Should it continue to use contour encompassment as a triggering factor and to count voices in a market as currently used in the media ownership rules? If it continues to use contours to determine compliance or applicability of a rule, what contours should it use? Should it substitute the NLSC for the Grade B contour? Is there a suitable substitute for the Grade A contour? Should it consider using the same digital contour for all of the ownership rules, and not distinguish between different geographic areas, such as the analog Grade A, Grade B, and city grade contours? What are the benefits or harms of adopting a single contour standard? Should it continue to require 100% encompassment for a rule to be triggered?

77. Alternatively, should it eliminate the use of contours and adopt a different analytical approach? If so, what criteria should be used to determine when a rule is triggered? How should it count voices if it does not use a contour-based method? Should it count voices in geographic areas? For instance, if it uses Arbitron metro areas for this purpose, how would it address areas in which Arbitron has not defined radio markets? What are the benefits or harms of substituting a geographic-based approach for a contour approach?

78. To facilitate nationwide broadband deployment, the Commission released and sent to Congress its broadband plan, “Connecting America: The National Broadband Plan” on March 16, 2010. The plan sets out a plan of action and a roadmap “to spur economic growth and investment, create jobs, educate our children, protect our citizens, and engage in our democracy.” Is the broadband plan a relevant factor to consider when developing broadcast ownership rules? Does access to broadband affect our policy goals? How does access to audio and video content available over broadband factor into the competition analysis? How does access to broadband affect the diversity goals?

79. What, if any, specific aspects of the broadband plan are relevant here? For example, would ubiquitous access to broadband service in this country impact the media ownership policy? Should the competitive impact of the Internet be given more weight if the percentage of consumers with broadband access substantially increases? The plan finds that mobile services are playing an increasingly important role in our lives and our economy. Should the Commission’s policy goals to foster mobile services impact media ownership rules? Should the fact that consumers are increasingly getting news and programming through their mobile devices impact the decisions in this proceeding?

80. Ex Parte. The inquiry this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.

81. Comment Filing Procedures. Pursuant to sections 1.415 and 1.419 of the Commission’s Rules, 47 CFR 1.415 and 1.419, 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: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies 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 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes 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 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

89. Accordingly, *It is ordered*, that pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this Notice of Inquiry is adopted.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 2010-14099 Filed 6-10-10; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 242

#### Defense Federal Acquisition Regulation Supplement; Contractor Insurance/Pension Review (DFARS Case 2009-D025)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD proposes to remove and relocate the requirements for conducting a Contractor Insurance/Pension Review from Procedures, Guidance, and Information to the Defense Acquisition Regulation Supplement.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 10, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2009-D025, using any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009-D025 in the subject line of the message.

*Fax:* 703-602-0350.

*Mail:* Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Overstreet, 703-602-0311.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

As part of a DFARS Transformation effort, Defense Acquisition Regulation Supplement (DFARS) Case 2003-D050, published at 71 FR 9273, February 23, 2006, moved requirements for Contractor Insurance/Pension Review (CIPR) from DFARS 242.7302 to Procedures, Guidance, and Information

(PGI) 242.7302. This DFARS case proposes to move requirements for CIPR back to the DFARS from the PGI. The threshold and requirements for conducting a CIPR are DoD-wide policy that has a significant effect beyond the internal operating procedures of DoD. Since conduct of a CIPR impacts industry, as contractors are required to provide documentation to support the reviews, the requirements for CIPR should be located in the DFARS.

##### B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The proposed rule merely relocates the requirements for CIPR from the PGI to the DFARS. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009-D025) in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies because information collection requirements in the proposed rule at DFARS subpart 242.73 are currently approved under Office of Management and Budget Control Number 0704-0250. Relocating the requirement has no impact on the information collection requirement.

##### List of Subjects in 48 CFR Part 242

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR part 242 as follows:

#### PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for 48 CFR part 242 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

2. Revise section 242.7302 to read as follows:

##### 242.7302 Requirements.

(a)(1) An in-depth CIPR as described at DFARS 242.7301(a)(1) shall be conducted only when—

(i) A contractor has \$50 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(ii) The ACO, with advice from DCMA insurance/pension specialists and DCAA auditors, determines a CIPR is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(2) Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(b) A special CIPR that concentrates on specific areas of a contractor's insurance programs, pension plans, or other deferred compensation plans shall be performed for a contractor (including, but not limited to, a contractor meeting the requirements in paragraph (a) of this section) when any of the following circumstances exists, but only if the circumstance(s) may result in a material impact on Government contract costs:

(1) Information reveals a deficiency in the contractor's insurance/pension program.

(2) The contractor proposes or implements changes in its insurance, pension, or deferred compensation plans.

(3) The contractor is involved in a merger, acquisition, or divestiture.

(4) The Government needs to follow up on contractor implementation of prior CIPR recommendations.

(c) The DCAA auditor shall use relevant findings and recommendations of previously performed CIPRs in determining the scope of any audits of insurance and pension costs.

(d) When a Government organization believes that a review of the contractor's insurance/pension program should be performed, that organization should provide a recommendation for a review to the ACO. If the ACO concurs, the review should be performed as part of an ACO-initiated special CIPR or as part of a CIPR already scheduled for the near future.

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