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47 CFR Part 73
2014 Quadrennial Regulatory Review; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 14–50, 09–182, 07–294, and 04–256; FCC 14–28]

2014 Quadrennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document completes the Commission's proceeding regarding the attribution of television joint sales agreements (JSAs)—in which a ''brokering station'' sells the advertising time for a ''brokered station''—for purposes of applying the broadcast ownership rules. The Commission, consistent with its prior decision to attribute radio JSAs, attributes to the brokering station same-market television JSAs that cover more than 15 percent of the weekly advertising time for the brokered station.

DATES: Effective June 19, 2014, except for the amendment to § 73.3613, which contains information collection requirements that are not effective until approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these changes. A separate notice will be published in the **Federal Register** soliciting public and agency comments on the information collections and establishing a deadline for accepting such comments.

FOR FURTHER INFORMATION CONTACT: Hillary DeNigro, Industry Analysis Division, Media Bureau, FCC, (202) 418–2330. For additional information concerning the information collection requirements contained in the *Report and Order,* contact Cathy Williams at (202) 418–2918, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* in MB Docket Nos. 14–50, 09–182, 07–294, and 04–256; FCC 14–28, was adopted on March 31, 2014, and released on April 15, 2014. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site *http://www.bcpi.com* or call 1–800–378–3160.

Synopsis

I. Introduction

Attribution of Television JSAs

1. The Commission finds that it has sufficient information to act with respect to the attribution of television JSAs, an issue on which comment was sought previously and renewed in the *NPRM,* 77 FR 2867, Jan. 19, 2012, FCC 11–186, rel. Dec. 22, 2011, in the 2010 Quadrennial Review proceeding. It has looked closely at its standards for defining the kinds of agreements between stations that confer a sufficient degree of influence or control so as to be considered an attributable ownership interest under the Commission's ownership rules. Consistent with the Commission's earlier findings regarding radio joint sales agreements (JSAs), it finds that certain television JSAs convey sufficient influence to warrant attribution. As discussed below, the ability of a broker to control a brokered television station's advertising revenue, its principal source of income, affords the broker the opportunity, ability, and incentive to exert significant influence over the brokered station. For that reason, the Commission will count television stations brokered under a same-market television JSA that encompasses more than 15 percent of the weekly advertising time for the brokered station toward the brokering station's permissible ownership totals, just as it long has done with respect to radio stations. The Commission will not count same-market JSAs toward the brokering licensee's national ownership cap to the extent that it would result in double-counting (*i.e.,* counting the same local population twice toward the national reach limit).

2. The Commission finds that a transition period is appropriate to permit licensees that entered into television JSAs of this type prior to the release of the *Report and Order* to conform their practices to its requirements. In addition, the Commission clarifies that the JSA attribution rules (radio and television) do not apply to national advertising representation agencies. It finds that the benefits of its decision to count certain television JSAs as attributable interests for purposes of the ownership rules outweigh any costs or other burdens that may result from this action.

II. Background

3. A JSA is an agreement that authorizes a broker to sell some or all of the advertising time on the brokered station. JSAs generally give the broker authority to hire a sales force for the brokered station, set advertising prices, and make other decisions regarding the sale of advertising time, subject to the licensee's preemptive right to reject the advertising. By contrast, a local marketing agreement (LMA), also referred to as a time brokerage agreement (TBA), involves ''the sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it.'' Based on its ongoing review of television JSAs and the comments in the TV JSA proceeding, the Commission finds that television JSAs often involve the sale of significant portions of advertising time, and many involve the sale of 100 percent of the advertising time on the brokered station. In addition, in 2012 and 2013, Commission staff reviewed 22 transactions involving the sale of 31 television stations in which a JSA was part of the proposed transaction. In each case, the JSA provided for the sale of 100 percent of the brokered station's advertising time. These agreements may provide the brokered station a flat fee, compensation based on a percentage of revenues, or a mixture of both. Of the commenters that described their fee arrangements under their JSAs, none described fee arrangements that were solely based on a flat fee to the licensee. The Commission does not exclude this possibility since such arrangements appear in radio JSAs and since the Commission did not receive information about fee arrangements in every existing television JSA, or even the arrangements in the JSAs held by commenters in the TV JSA proceeding. Indeed, the JSA in *Shareholders of the Ackerley Group, Inc.,* 17 FCC Rcd 10828 (2002) (*Ackerley*), involved the payment of a flat fee to the licensee. The agreements are often of substantial duration—typically five years or more, with provisions for renewal and cancellation by either party. Further, they are often multifaceted agreements that include, or are accompanied by, other agreements that involve the provision of programming, technical support, and/or operational services. In particular, the record indicates that television JSAs are often accompanied by various sharing agreements between the broker and the licensee, such as agreements that provide for technical assistance, sharing of studio or office space, accounting and bookkeeping services, or administrative services. Many television JSA brokers also provide programming or production services to their brokered stations under the JSA or related sharing agreements. In addition, television JSAs are often executed in conjunction with

an option, right of first refusal, put/call arrangement, or other similar contingent interest, or a loan guarantee. For example, of the 22 transactions involving television JSAs reviewed by Commission staff in 2012 and 2013 all involved some type of contingent interest agreement. Over time, the Commission has seen an increase in the prevalence of television JSAs, and recently such agreements have received more attention in broadcast television transactions.

4. The Commission's attribution rules seek to identify those interests in licensees that confer on their holders a degree of ''influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.'' For purposes of the multiple ownership rules, the concept of ''control is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.'' Influence and control are important criteria in applying the attribution rules because these rules define which interests are significant enough to be counted for purposes of the Commission's multiple ownership rules. An interest that confers influence is an interest that is less than controlling, but through which the holder may obtain the ability to induce a licensee to take actions to protect the interests of the holder, and/or where a realistic potential exists to affect a station's programming and other core operational decisions. The attribution rules determine what interests are cognizable under the Commission's broadcast ownership rules; they are not ownership limits in themselves.

5. The Commission first adopted attribution rules for LMAs involving radio stations in the same geographic market in 1992. The Commission was concerned that absent such rules significant time brokerage under such agreements could undermine the Commission's competition and diversity goals. The Commission found that the ability to control the programming on a non-commonly owned in-market radio station allowed the brokering party the ability to unduly influence the brokered station. In 1999, the Commission extended the attribution of time brokerage agreements to include LMAs between television stations, finding that the rationale for attributing same-market radio LMAs applied equally to same-market television LMAs. In its *1999 Attribution Order,* 64 FR 50622, Sept. 17, 1999, FCC 99–207, rel. Aug. 6, 1999, the Commission considered also whether to attribute certain radio and television JSAs. The Commission acknowledged that same-market JSAs could raise competitive concerns but stated that, at that time, it did not believe that such agreements conveyed a sufficient degree of influence or control over station programming or core operations to warrant attribution, adding that JSAs could promote diversity by ''enabling smaller stations to stay on the air.'' In the *2002 Biennial Review Order,* 68 FR 46286, Aug. 5, 2003, FCC 03–127, rel. July 2, 2003, however, the Commission revisited its earlier decision not to attribute same-market radio JSAs. It concluded, on reexamination, that influence or control over the advertising revenue of a brokered station, generally the principal source of a licensee's income, afforded the JSA broker, like the LMA broker, the potential to exercise sufficient influence over the core operations of a station to warrant attribution. As it had with respect to both radio and television LMAs, the Commission adopted a 15 percent weekly threshold for determining whether to attribute same-market radio JSAs. It also concluded that same-market radio JSAs may sufficiently undermine the Commission's interest in broadcast competition to warrant limitation under the multiple ownership rules. As the Commission had not explicitly included the issue of attribution of television JSAs in the underlying Notice of Proposed Rulemaking, it did not address television JSAs in the *2002 Biennial Review Order,* but rather indicated that it would issue a further Notice of Proposed Rulemaking to seek comment on whether or not to attribute television JSAs. It subsequently did so in the *TV JSA NPRM,* 69 FR 52464, Aug. 26, 2004, FCC 04–173, rel. Aug. 2, 2004.

6. In the *TV JSA NPRM,* the Commission tentatively concluded that television JSAs have the same effects in local television markets that radio JSAs do in local radio markets and that the Commission should therefore attribute television JSAs. The Commission noted that it had no reason to believe that the terms and conditions of television JSAs differ substantially from those of radio JSAs. The Commission asked, however, whether differences existed between television and radio JSAs such that it should not attribute television JSAs, and it asked whether television JSAs should be grandfathered if they were deemed attributable.

7. The commenters in response to the *TV JSA NPRM* consist entirely of broadcasters, nearly all of whom urge the Commission not to attribute television JSAs. Commenters urge the Commission to reaffirm the 1999 determination that television JSAs, unlike LMAs, do not convey a sufficient degree of influence or control over broadcast stations to warrant attribution. They argue that the record does not support a change in policy, and that the Commission must give a reasoned account if it now rejects the previous conclusion.

8. The Commission sought comment generally on attribution of agreements among co-market stations in the Notice of Proposed Rulemaking in the 2010 Quadrennial Review proceeding, specifically referencing the Commission's ongoing proceeding regarding the proposed attribution of television JSAs. Many parties addressed attribution of television JSAs in that proceeding. For example, UCC *et al.'*s comments in the 2010 Quadrennial Review proceeding support the Commission's tentative conclusion in the *TV JSA NPRM* that certain same-market television JSAs should be attributed. Numerous public interest groups, trade associations, and unions support the Commission's proposed attribution of certain television JSAs and its inquiry into SSAs. Many broadcast commenters, however, assert that television JSAs should not be attributable or urge the Commission to seek additional comment on television JSAs before issuing a decision on attribution.

9. On February 20, 2014, DOJ submitted *ex parte* comments strongly supporting the Commission's tentative conclusion to attribute television JSAs. DOJ, noting its extensive and growing experience reviewing television JSAs in the context of its antitrust analysis of broadcast television transactions, asserts that television JSAs provide incentives similar to common ownership and should be made attributable under the Commission's rules. DOJ asserts that failure to attribute such agreements could result in circumvention of the Commission's media ownership limits and frustrate competition in local markets.

III. Discussion

10. The Commission believes that the record compiled in response to the *TV JSA NPRM,* as informed by its ongoing transaction review and comments in the 2010 Quadrennial Review proceeding, provides it with relevant and sufficient information from which to act. Since the release of the *TV JSA NPRM,* the Commission has continued to review JSAs, often in conjunction with applications for approval to transfer or assign a television station license. The Commission notes that during the pendency of this rulemaking proceeding, the Media Bureau

continued to consider and approve applications for the assignment of license or transfer of control of broadcast television licenses that complied with the Commission's rules in effect at the time of the transfer or assignment, some of which included television JSAs. In the absence of a Commission rule attributing television JSAs, the Bureau reviewed and approved transactions that it determined did not raise questions of *de facto* control and where, in its opinion, the licensee of the brokered station retained a sufficient interest in the advertising revenue received from a JSA such that it retained control and remained invested in the successful operation of the station. However, there has never been a Media Bureau policy generally applicable to JSAs that the television licensee receive a specified percentage of the revenues under a JSA and, indeed, there is no requirement that JSAs even be approved by the Commission. The Bureau's approval of particular transactions in no way limits the Commission's ability to change its attribution rules going forward or to adopt a reasonable transition period for parties to ensure that existing television JSAs comply with the new attribution standard. Therefore, reliance on the Media Bureau's approval of transactions that included a JSA during a period when there was no television JSA attribution rule is misplaced. The Media Bureau applied the attribution rules in effect at the time it processed those applications. Indeed, the Bureau's decisions in cases involving television JSAs often referred to the pending TV JSA proceeding and reminded parties that the Bureau's actions were subject to any subsequent Commission action in that proceeding. Even assuming that the Bureau's past decisions could be read to mean that same-market television JSAs, generally speaking, do not confer influence over programming decisions if the brokered station retains at least 70 percent of the station's advertising revenues, the Commission rejects that premise and reaches a different conclusion in the *Report and Order.* The Media Bureau's review of future transactions will be guided by the new rule adopted herein. Based on the Commission's ongoing experience reviewing JSAs, it observes that neither the terms and conditions of JSAs as described in the comments nor their competitive impact on markets appear to have changed significantly. In addition, the submissions in the 2010 Quadrennial Review proceeding regarding television JSAs are consistent with the comments filed in the television JSA proceeding. Furthermore, some of those more recent submissions that advocate an additional formal comment period primarily seek an opportunity to provide additional argument about the potential public interest benefits associated with combined station operation under television JSAs and the existence of increased competition for broadcast television stations from non-broadcast video alternatives. The Commission finds, however, that those arguments bear on the issue of liberalization of the local television ownership rules and not on the question of whether JSAs give the brokering station a degree of influence and control that rises to the level of attribution, which is the sole focus of the inquiry here. As discussed below, the asserted public interest benefits of common ownership, operation, or control of stations in the same local market, and the issue of whether competition from other video alternatives warrants relaxation of the ownership rules, are appropriately raised and considered in the context of setting the terms of the local television ownership rule. Moreover, the record already includes numerous comments on those points with regard to television JSAs. In addition, the Commission's decision is informed by its experience with the attribution of radio JSAs, which has operated to ensure that the goals of the radio ownership rules are not undermined by nonattributable agreements conferring the potential for significant influence over a station's core operating functions. Accordingly, the Commission finds that the existing record provides a sufficient basis on which to make the decision herein.

11. On further examination of the issue, the Commission finds that television JSAs, like radio JSAs and radio and television LMAs, have the potential to convey significant influence over a station's operations such that they should be attributable. This is consistent with the Commission's more recent determination in 2003 to attribute same-market radio JSAs, which reversed the Commission's earlier determination in the *1999 Attribution Order* that same-market radio JSAs should not be attributable. In *Prometheus Radio Project* v *FCC,* 373 F.3d 372 (3d Cir. 2004) (*Prometheus I*), the Third Circuit upheld the Commission's change of course with respect to the attribution of radio JSAs, finding that the Commission's reexamination of the potential for a radio JSA to convey the ability for a brokering station to influence a brokered station satisfied the Commission's obligation to provide a ''reasoned analysis'' for the change in policy. Consistent with the Commission's analysis supporting attribution of radio JSAs and with the tentative conclusion in the *TV JSA NPRM,* it now finds that television JSAs involving a significant portion of the brokered station's advertising time convey the incentive and potential for the broker to influence program selection and station operations. Thus, as the Commission concluded in 2003 with respect to radio JSAs, it concludes that the Commission's previous view that television JSAs do not convey sufficient influence to warrant attribution was incorrect. Whether a JSA provides the brokered station a fixed fee or a percentage fee, the broker's revenues depend on its ability to sell the ad time for the brokered station, which depends in turn on the popularity of the brokered station's programming. The broker therefore has a strong incentive to influence the brokered station's programming decisions. As Hubbard states, ''the assumption of market risk associated with local advertising sales, and the ability to create greater market strength in sales, necessarily influences programming decisions. In commercial broadcasting, programming and sales are inextricably connected.'' In addition, to the extent it transfers market risk to the brokering station, the licensee of the brokered station will have less incentive to maintain or attain significant ratings share in the market. In upholding the Commission's attribution rules in the past, courts have held that the Commission reasonably designed those rules to identify interests that provide the holder with the incentive and ability to influence or control the programming or other core operational decisions of the licensees, rather than to address individual instances of actual influence or control.

12. The Commission finds that JSAs provide incentives for joint operation that are similar to those created by common ownership. For example, when two stations are commonly owned, the paired stations may benefit by winning advertising accounts that are new to both of them (rather than by having one co-owned station win an account from the other) and, possibly, by being able to raise advertising prices above those that they would obtain if the stations were independently owned. A broker selling advertising time on two stations, one of which is owned by the broker, has incentives similar to those of an owner of two stations to coordinate advertising activity between the two stations. JSAs thus provide strong incentives for coordination of

advertising activities rather than competition for advertising revenue.

13. In addition, contrary to some commenters' claims, the Commission's experience indicates that television JSAs can be used to coordinate the operations of two ostensibly separately owned entities. For example, in *Ackerley,* the Commission found that the intertwined non-attributable television JSA and time brokerage agreement were ''substantively equivalent'' to an attributable LMA. Many commenters assert that their agreements are structured so that the brokered station maintains control of its programming and other core operations. This argument misses the point. The issue in this proceeding is whether sufficient influence exists such that the interest should be counted in applying the ownership rules, which is a separate issue from whether the licensee has maintained ultimate control over its programming and core operations so as to avoid the potential for an unauthorized transfer of control or the existence of an undisclosed or unauthorized real party in interest.

14. Several commenters acknowledge that a JSA broker may have some influence over a brokered station, but they argue that the level of influence is minimal because the broker is involved only in non-network advertising sales. They note that television JSAs differ from radio JSAs because television stations typically have network affiliations, and in such cases the network influences programming. For example, Entravision argues that television station affiliations are motivated by the economic arrangements between the licensee and the network and have little relationship to non-network advertising; that affiliations do not tend to change; that the broker cannot control the network arrangement; and that, given the affiliation agreements, it is questionable whether a JSA broker could ever control the programming decisions of a network-affiliated licensee. Entravision contrasts this with radio, where format changes occur regularly and where network affiliations are generally uncommon. Entravision asserts that, because television stations produce little of their own programming other than news and public affairs, there is little room for the JSA broker to control anything except how advertising is sold. Accordingly, commenters argue, a television JSA does not convey influence over selection of programming or other core operations.

15. The Commission disagrees. It is possible for multiple parties to influence the programming decisions of a station. Television stations provide local and/or syndicated programming, not merely network programming. Thus, the fact that a station may air network programming does not prevent the broker from influencing the selection of non-network programming, be it local programming that the licensee of the brokered station produces or syndicated programming that it acquires to fill the rest of the broadcast day. The Commission notes further that not all stations are affiliated with national networks, and even among those that are, the amount of programming time provided by a national network can vary widely. Accordingly, the amount of non-network advertising time available on a station is not uniformly small, as some commenters would suggest, and the broker's ability to influence the brokered station may not be meaningfully constrained, even if the Commission accepted commenters' arguments regarding the impact of network programming. Furthermore, § 73.658(e) of the Commission's rules prohibits a station from entering into an affiliation agreement that does not permit the affiliate to preempt network programming that it finds ''unsatisfactory or unsuitable or contrary to the public interest'' and to substitute ''a program which, in the station's opinion, is of greater local or national importance.'' The JSA broker can potentially influence the brokered station's decision whether or not to pre-empt network programming, as well as its choice of non-network programs, and has an incentive to do so given the strong relationship between programming decisions and sale of advertising time discussed above. In addition, a JSA broker can potentially influence the brokered station's choice of network affiliation. A broker has a strong incentive to ensure that the brokered station provides programming—and an audience—that is complementary to that offered by its own station in order to maximize the attractiveness of the two stations to advertisers. As a result, the effects of a JSA extend even to programming in dayparts in which the broker does not sell the advertising time. The more time the broker sells, the more likely it becomes that the broker will have the ability to act on that incentive and influence the selection of the brokered station's programming. Thus, the fact that some television stations have network affiliations does not undermine the finding that television JSAs confer sufficient influence that they should be attributed.

16. In addition, many commenters argue that different treatment of radio and television JSAs is warranted because radio and television markets are different. They contend that television stations incur special costs (such as greater programming and equipment costs) that radio stations do not, and also face more competition than radio stations, because television stations compete with a greater variety and increasing number of alternative media outlets. Commenters also contend that television stations depend less on local advertisers than radio stations. Hubbard disagrees that market differences between radio and television justify different treatment of JSAs. According to Hubbard, there are fewer television outlets than radio outlets and fewer television programming networks than radio networks, so that ''economic arrangements that tie local television stations together represent greater harm to diversity of programming and to competition than in radio.''

17. The Commission does not agree that market or service differences support treating radio and television JSAs differently. While television stations may depend less on local advertisers than radio stations as a percentage of overall advertising revenue, advertising revenue data demonstrate that television stations do depend on local advertising for revenues to a significant degree. Also, arguments that television stations need JSAs to survive in a competitive television market are properly addressed in the context of setting the applicable ownership limits rather than in deciding whether television JSAs confer influence such that they should be attributed in the first place. Ultimately, the Commission finds that the fundamental nature of television JSAs and radio JSAs is the same, in that they both allow an in-market, same-service competitor the right to sell advertising time on an independently owned station and give rise to the same types of incentives and opportunities to influence the programming and operations of the brokered station. The Commission finds that the fee structure associated with the JSA does not change this conclusion. In deciding to attribute radio JSAs, the Commission made clear that the *sine qua non* of attribution is an interest ''through which the holder is likely to induce a licensee to take actions to protect the interests of the holder.'' And the Commission has calibrated attribution levels ''based on our judgment regarding what interests in a licensee convey a realistic potential to affect its programming and other core

operational decisions.'' To be sure, the Commission has noted that some licensee/broker arrangements, such as radio JSAs providing for payment of a flat fee to the licensee, not only provide the broker with the incentive and ability to influence station operations and programming, but also deprive the licensee of a financial stake in its own station. The Commission has never stated, however, that the licensee must be deprived of all financial stake in its station to warrant attribution. Regardless of the fee structure, the television JSA broker has the ability and incentive to influence the brokered station. Accordingly, the Commission finds that these agreements should receive the same treatment for attribution purposes. In deciding to change the attribution policy with respect to radio JSAs, the Commission stated that its reexamination of the issue had led it to find that, because of the broker's control over advertising revenues of the brokered station, JSAs ''have the same potential as LMAs to convey sufficient influence over core operations of a station'' to warrant attribution. The Commission believes that the same finding applies to television JSAs, notwithstanding any market differences, including the presence of network agreements.

18. Schurz asserts that the Commission should refrain from making television JSAs attributable without also relaxing the ownership limits in the local television ownership rule. According to Schurz, it has typically been the Commission's practice to find certain agreements attributable at the same time as or after relaxing the relevant ownership limits. The attribution standards are not conditioned, however, on specific numerical ownership limits but instead help to ensure that the limits are not evaded. It is therefore necessary and appropriate to identify practices and agreements that confer a sufficient degree of influence that they should be counted toward the ownership limits. Although at times the Commission has acted to modify ownership limits at the same time it has revised its attribution rules, this has not always been the case. Ultimately, it is not necessary to relax the television ownership limits in conjunction with the determination that television JSAs are attributable.

19. Finally, some commenters acknowledge that television JSAs confer at least some influence over the programming of the brokered station, but argue that their public interest benefits outweigh these other considerations. Similarly, commenters in the 2010 Quadrennial Review proceeding fail to acknowledge the potential for influence over the programming of the brokered station, and argue that the Commission should refrain from attributing television JSAs because of the public interest benefits that result from the efficiencies that arise from sharing, including allegedly facilitating minority and female ownership and increasing diverse programming. While the Commission recognizes that cooperation among stations may have public interest benefits under some circumstances, particularly in small to mid-sized markets, these potential benefits do not affect the assessment of whether television JSAs confer significant influence such that they should be attributed. Rather, any such benefits should be assessed in determining where to set the applicable ownership limit, *i.e.,* how many television stations a single entity should be permitted to own, operate, or control in a local television market. The Commission's reexamination of the issue leads it to conclude that the contention that JSAs may rescue struggling stations by enabling smaller stations to stay on the air is not relevant to the question of whether JSAs confer the potential for significant influence, warranting attribution. Rather, it is an argument that is relevant to the determination of where to set the ownership limits and potentially to whether a waiver of the ownership rules is warranted in a particular case. The same holds true for any other asserted public interest benefits of television JSAs. Nonetheless, the Commission will afford transitional relief to stations that are party to existing television JSAs, as discussed below.

20. The Commission does not wish to imply that all JSAs are harmful. The Commission has recognized that common ownership may have public interest benefits in some circumstances, and it believes that the same may be true of JSAs. JSAs may, for example, facilitate cost savings and efficiencies that could enable the stations to provide more locally oriented programming. JSAs, however, should not be used to circumvent the local broadcast television ownership rules, which are designed to promote competition. Some assert that it is unfair to attribute television JSAs while allowing multichannel video programming distributors (MVPDs) to engage in similar conduct through local ''interconnects.'' While there are various Commission rules relating to MVPD ownership, there is no counterpart in the MVPD context to the local television ownership rule. And the broadcast attribution rules are designed to ensure that parties cannot circumvent the broadcast ownership rules. Further, the issue of MVPD local interconnects was not subject to notice in either the *NPRM* in the 2010 Quadrennial Review or the *TV JSA NPRM,* and is beyond the scope of this proceeding. If interested parties perceive a problem that would be remedied by attribution of MVPD joint advertising arrangements, they may file a petition for rulemaking, which the Commission will consider. Because television JSAs encompassing a substantial portion of the brokered station's advertising time create the potential to influence the brokered station and provide incentives for joint operation that are similar to those created by common ownership, the Commission finds that television JSAs that permit the sale of more than 15 percent of the advertising time per week of the brokered station, as described in greater detail below, should be cognizable interests for purposes of applying the ownership rules.

21. Paxson submits a declaration of Mark Fratrik, Ph.D., Vice President of BIA Financial Network discussing the impact on the Herfindahl-Hirschman Index (HHI)—a measure used to analyze a proposed merger's potential impact on competition—of attribution of certain of Paxson's own television JSAs and other television JSAs it identified in publicly available records. According to Paxson, the combinations reviewed would produce only a small increase in the HHI below the 100 point threshold that typically implicates DOJ antitrust issues. The analysis, however, does not address the ability and incentive for the brokering station to exert influence over the brokering stations core operating functions. Rather, Paxson's analysis goes to the appropriateness of the Commission's local television ownership limits (or the appropriateness of a waiver of those limits), which are not based simply on a structural antitrust analysis, but rather on a broader concern with promoting competition, localism, and diversity.

22. The Commission has consistently applied a 15 percent threshold to determine whether to attribute JSAs in radio markets and LMAs in both television and radio markets, and it finds that it is appropriate to use that same threshold here. This threshold was most recently applied in the Commission's decision to attribute certain same-market radio JSAs, a decision that was upheld by the Third Circuit in *Prometheus I.* A 15 percent advertising time threshold will allow a station to broker a small amount of

advertising time through a JSA with another station in the same market without triggering attribution, yet will fall short of providing the broker a significant incentive or ability to exert influence over the brokered station's programming or other core operating functions because it will not be selling the advertising time in a substantial portion of the station's programming. Just as in the radio context, the Commission believes that a 15 percent advertising time threshold will identify the level of control or influence that would realistically allow holders of such influence to affect core operating functions of a station, including programming choices, and give them an incentive to do so.

23. Sinclair asserts that applying the 15 percent threshold used for radio and television LMAs and radio JSAs would be arbitrary and capricious because of differences in the radio and television marketplace. Sinclair's reference to comments DOJ filed in a prior attribution proceeding could be read to mean that DOJ determined that it was not appropriate to treat radio and television markets the same for attribution purposes. In fact, the cited comments merely pointed out that the agency had not analyzed television JSAs and therefore limited its comments to radio JSAs. The recent *ex parte* submission from DOJ strongly supporting the Commission's decision to attribute television JSAs confirms that Sinclair's reading of DOJ's earlier comments was mistaken. In addition, Sinclair is misguided in asserting that television JSAs cannot be attributed in the absence of detailed definitions of categories of station's advertising and programming time. Such elements would apply equally to radio and television LMAs and/or radio JSAs and have not proved necessary as components of the rule for successful implementation in those attribution rules. As discussed herein, the Commission finds that the differences between the radio and television markets do not warrant different treatment of radio and television JSAs. In addition, as discussed above, the Commission finds that the ability of the brokering station to control the advertising revenue of the brokered stations, the common component of JSAs and LMAs, gives the brokering station under a JSA the same incentive and ability to influence the brokered station's core operating functions as a brokering station under an LMA. For example, while an LMA gives the brokering station the direct ability to influence programming on the brokered station because the LMA broker provides the programming to the brokered station, the Commission has found that the sale of advertising time pursuant to a JSA provides the brokering station with the indirect ability to influence the brokered station's programming. As the amount of advertising revenue controlled by the brokering station increases, so too does its incentive and ability to influence brokered station's programming—including programming in dayparts in which the broker does not sell the advertising time. The Commission can see no benefit to permitting greater indirect influence over the brokering station's programming than could be achieved directly through an LMA; accordingly, the Commission reject Sinclair's assertion that applying the 15 percent threshold to television JSAs would be arbitrary and capricious. Were the Commission to establish a higher limit for JSAs, licensees and brokers could be expected to simply choose to enter into JSAs instead of LMAs because of the higher attribution threshold, thus creating a ready avenue for evading the LMA attribution rule and the ownership limits.

24. In addition, Paxson briefly offers two proposals of its own: (1) A 35 percent all-market advertising sales standard and (2) a ''JSA-Plus'' standard that would result in attribution in situations involving various levels of advertising sales, ownership options, and programming rights. Paxson's brief discussion, however, does not provide any empirical or theoretical basis upon which to adopt either of these proposals, both of which appear to focus primarily on the impact of the brokerage agreement on the competitive market rather than the broker's incentive and ability to influence the brokered station's core operating functions. Further, Paxson appears to have devised the thresholds, at least in the first option, in order to avoid the attribution of its own television JSAs. Ultimately, the record does not support the adoption of either of these alternatives, and the Commission believes that a broker has the ability and incentive to exert influence over a brokered station's programming and operations well below the threshold or combination of interests that Paxson proposes.

25. The rationale for attributing LMAs and JSAs is the same for radio and television: To prevent the circumvention of the ownership limits. Ultimately, in attributing these other agreements, the Commission determined that the 15 percent threshold was the appropriate threshold, as below that threshold the Commission has found that a broker will lack significant incentive or ability to exert influence over the brokered station's programming or other core operating functions; and, as discussed above, the Commission finds no evidence that television JSAs are sufficiently unique as compared to other attributable agreements to justify a different attribution threshold. Thus, where an entity that owns or has an attributable interest in one or more television stations in a local television market sells more than 15 percent of the advertising time per week of another television station in the same market, it will be deemed to hold an attributable interest in the brokered station and such station will be counted toward the brokering licensee's ownership compliance.

26. Finally, the Commission notes that parties that believe that the application of the attribution rules to their particular circumstances would not serve the public interest always have the ability to seek a waiver. The Commission has an obligation to take a hard look at whether enforcement of a rule in a particular case serves the rule's purpose or instead frustrates the public interest. Thus, for example, a party seeking waiver of the attribution rule could attempt to demonstrate that a particular television JSA in context—including any related agreements or interests—does not provide the brokering entity with the opportunity, ability, and incentive to exert significant influence over the programming or operations of the brokered station. In considering a request for waiver of attribution, the Commission will take into account the totality of the circumstances in order to assess whether strict compliance with the rule is inconsistent with the public interest. For example, to make such a showing, an applicant may provide the JSA together with any other agreements, documents, facts, or information concerning the operation and management of a brokered station that demonstrate that the underlying public interest considerations supporting the Commission's decision to attribute JSAs, as discussed herein, are not present in the particular case. The relevant factors may include, without limitation: (i) Specific facts that show a lack of incentive or ability for the broker station to influence the brokered station's programming or operations, and (ii) specific facts that demonstrate that the brokered station has the incentive and ability to maintain independent operations and programming decisions that are not influenced by the broker

station and the incentive and ability to exclude the broker station from exerting influence over programming and operations. A waiver request for a JSA that is limited in scope (*i.e.,* percentage of the station's advertising sales) and duration so as to minimize or eliminate any influence on operations or programming is more likely to be successful than an open-ended request. Similarly, if a licensee believes that application of the local television ownership rule in a particular situation would adversely affect competition, diversity, or localism, it may seek a waiver of that rule. For example, an applicant may be able to demonstrate that a waiver would enable a school, community college, other institution of higher education, or other community support organization or entity to own a station and that the public interest benefits of such ownership outweigh the harms the Commission has identified with common ownership in support of the local television ownership limits. The Commission will carefully review and consider any such request on an expedited basis. The Commission recognizes that broadcast transactions are time sensitive and that Commission action on assignment and transfer applications, including any associated waiver requests, must be taken promptly without unnecessary delay. The Commission directs the Bureau to prioritize review of any applications for waiver necessitated by attribution of JSAs and to complete their review within 90 days of the record closing on such waiver petitions provided there are no circumstances requiring additional time for review.

A. Filing Requirements and Transition Procedures

27. First, subject to OMB approval, the Commission will require going forward that attributable television JSAs be filed with the Commission within 30 days after the JSA is entered into. Currently, commercial television stations are required under § 73.3526 of the Commission's rules to place a copy of any JSA involving the station in the local public inspection file, but are not required to file such agreements with the Commission. With the adoption of the *Report and Order,* commercial television stations that are party to an attributable JSA will now be required to file a copy of the agreement with the Commission pursuant to § 73.3613, consistent with requirements for attributable LMAs and attributable radio JSAs. Second, the Commission will require parties to existing attributable television JSAs and/or parties to attributable television JSAs entered into after the release of the *Report and Order* but before the filing requirement becomes effective to file a copy of such agreements with the Commission within 30 days after the filing requirement becomes effective. The Commission will seek OMB approval for the filing requirement, and, upon receiving approval, the Commission will release a document specifying the date by which television JSAs must be filed. Third, the Commission directs the Media Bureau to take the necessary steps to modify the relevant application forms to conform to the rule changes adopted in the *Report and Order,* including the reporting of attributable television JSAs, for example, in connection with a request for authority to transfer or assign a station license. Such forms would include, *inter alia,* FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License, and FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License.

28. The Commission rejects arguments that it should automatically grandfather all television JSAs permanently or indefinitely. In these circumstances, the Commission finds that such grandfathering would allow arbitrary and inconsistent changes to the level of permissible common ownership on a market-by-market basis based not necessarily on where the public interest lies, but rather on the current existence or nonexistence of television JSAs in that market when the new attribution rule becomes effective. Instead, consistent with the Commission's treatment of existing radio JSAs when the Commission first made such agreements attributable, and as discussed in the *TV JSA NPRM,* parties to existing, same-market television JSAs whose attribution results in a violation of the ownership limits will have two years from the effective date of the *Report and Order* to terminate or amend those JSAs or otherwise come into compliance with the local television ownership rule. The Commission finds that such a transition period is necessary to avoid undue disruption to current business arrangements, and it believes that the two-year compliance period will give licensees sufficient time to make alternative arrangements. No transition period is granted with regard to new television JSAs that would cause the broker to exceed the media ownership limits. In order to avoid undue disruption, however, parties may renew existing television JSAs even if renewal would cause the broker to exceed the media ownership limits, provided that the renewal period shall not exceed the two-year transition period provided for in the *Report and Order.* The Commission notes that parties to television JSAs have long been on notice of the possibility that the Commission's would attribute certain same-market television JSAs. Moreover, as noted above, licensees may seek a waiver of the Commission's rules if they believe strict application of the rules would not serve the public interest.

29. In the *TV JSA NPRM,* the Commission sought comment on whether it should take the same approach for television JSAs that it had taken when radio JSAs became attributable, noting that pre-existing radio JSAs were not grandfathered but affected licensees were given a two-year compliance period. In contrast, when the Commission proposed making television LMAs attributable, it proposed grandfathering LMAs entered into before the further notice of proposed rulemaking was issued. Moreover, as with the Commission's radio JSA decision, the Commission is providing a two-year transition period for licensees to come into compliance. Thus, the Commission disagrees with Paxson that equitable considerations warrant the same grandfathering approach here as the Commission adopted for television LMAs. Likewise, the Commission's decision not to grandfather existing television JSAs does not conflict with the grandfathering of non-compliant ownership combinations. Broadcasters have been on notice since 2004 of the Commission's tentative conclusion that certain television JSAs should be attributed and that existing television JSAs would not necessarily be grandfathered. Thus, any broadcaster that entered into or renewed a JSA after the *TV JSA NPRM* was released knew the risk of doing so. Moreover, broadcasters are not required to obtain prior approval of JSAs, and JSAs are not reviewed at all unless they are part of a transaction requiring approval. The Commission also rejects Paxson's claim that failure to grandfather pre-existing television JSAs for at least five years would result in impermissible retroactive rulemaking. The Commission's decision to make television JSAs attributable alters the future effect, not the past legal consequences, of television JSAs. It does not alter the past legality of television JSAs, does not impose liability for past actions, and does not introduce any retrospective duties for past conduct.

B. National Sales Representatives

30. Sinclair sought clarification that the Commission would not attribute television and radio stations that are represented by national advertising representative firms (rep firms) where a rep firm is co-owned with a broadcaster, and the parent owns a same-market station. Rep firms bring national advertisers who want to buy commercial time in selected markets together with the individual stations in those markets. For the reasons discussed below, the Commission finds that the record does not support attribution of a rep firm's client stations to a rep firm.

31. Some commenters argue that the Commission must reconcile its decision to eliminate the former *Golden West Broadcasters,* 16 FCC 2d 918 (1969) (*Golden West*), cross-interest policy with respect to the attribution decision herein. Since eliminating the former cross-interest policy (by which a licensee was prohibited from having an interest in more than one station in the same service in the same area), the Commission consistently has held that advertising representation does not constitute an attributable interest. Under the Commission's former *Golden West* policy, the Commission prohibited representation of a radio or television station by a national sales representative owned wholly or partially by the licensee of a competing station in the same service in the same community or service area. However, the Commission abolished that policy with respect to attribution in 1981, holding that market forces and the remedies available under antitrust laws were sufficient to deter the anticompetitive practices the policy was meant to address. The Commission also noted ''that the potential for impairment of economic competition that *Golden West* was designed to guard against will be mitigated by the incentive of the unaffiliated station to seek the sales representative that will most vigorously serve its interest.'' Since 1981, the Commission has consistently refused to prohibit or attribute sales rep agreements. The Commission believes the decision to eliminate the *Golden West* policy was sound, and the JSA attribution rules should not be read to disturb that decision.

32. In this regard, the Commission notes that some commenters claim that attribution of television JSAs would be discriminatory and inconsistent with the Commission's previous decision not to attribute national advertising agreements, because both types of agreements provide one firm with the ability to influence an unaffiliated station's operations. As explained in the *Report and Order,* the Commission is attributing same-market television JSAs because they convey a sufficient degree of influence to warrant attribution. National advertising agreements do not raise the same concerns. Unlike JSAs involving competing stations in the same local market, national advertising agreements do not combine ownership of a local, competing television station with the potential for significant influence over programming. Therefore, the Commission disagrees with commenters that the decision today to attribute same-market television JSAs is inconsistent with previous attribution decisions.

33. Given the unique nature of national advertising sales firms, as discussed below, the Commission clarifies that it will not generally apply the rules attributing television or radio JSAs to national advertising sales representation agencies. It observes that typically, national rep firms that are commonly owned with broadcast stations are operated separately from the commonly owned broadcast stations. With hundreds, if not thousands, of clients and a narrow business focus (namely, the sale of national spot advertising), rep firms are not involved in the day-to-day operations of their client stations, commonly owned or otherwise. In addition, there are fundamental differences in the relationship between a local station and a rep firm, and between local stations that are party to a JSA. For example, when a station contracts with a rep firm, it typically provides only enough information about its operations to enable the rep firm to sell national advertising spots on the station. Because of the way rep firms are structured and the contractual protections available to a local station, station-specific information is not provided to the competing stations in the market that also contract with the rep firm. By contrast, in a JSA involving multiple local stations, the advertising rate information and other otherwise confidential station information is shared between the parties. Moreover, as noted above, JSAs are often executed in conjunction with other types of sharing agreements, which leads to higher levels of common operation that are not present in relationships with rep firms. Ultimately, the Commission concludes that the relationship between a rep firm and its client station, as described herein, does not confer the same potential and incentives for the rep firm to influence a licensee that are present in a traditional JSA relationship. Therefore, national rep firms should not generally be subject to the television and radio JSA attribution rules. While the Commission is not aware of any instances of non-national advertising sales firms (*e.g.,* regional advertising sales firms) that are commonly owned with a broadcast licensee, the rationale adopted in the *Report and Order* for excluding national rep firms from the television and radio JSA attribution rules would apply to such non-national rep firms to the extent these firms are operated in the same manner as national rep firms (*i.e.,* completely separate and independent from the operation of the local broadcast stations).

34. At the present time, the Commission has no evidence to suggest that a national advertising representation firm that has a commonly owned broadcast station in a local market in which it also represents a client for advertising services would have the incentive or ability to exert significant influence over the programming or other core activities of its client. Nevertheless, the Commission will entertain complaints based on a showing that a rep firm that is commonly owned with a broadcast licensee has not insulated the business of operating its commonly owned broadcast station from the business of providing advertising representation services in a market in which the rep firm has a commonly owned broadcast station. In such cases, the Commission will make a case-by-case determination of whether attribution is appropriate.

IV. Procedural Matters

A. Final Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *TV JSA NPRM* in MB Docket No. 04–256. The Commission sought written public comment on the proposals in the *TV JSA NPRM,* including comment on the IRFA. The Commission received no comments in direct response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

36. Consistent with the Commission's earlier findings regarding radio joint sales agreements JSA), the *Report and Order* finds that television JSAs similarly convey sufficient influence over the brokered station's finances, personnel, and programming decisions to warrant attribution. A JSA is an agreement that authorizes a broker to

sell some or all of the advertising time on the brokered station. In particular, the *Report and Order* finds that television JSAs provide incentives—including incentives for stations to coordinate advertising activities and avoid competing with each other—that are in some cases similar to those created by common ownership. Accordingly, the *Report and Order* concludes to count television stations brokered under a same-market television JSA toward the brokering station's permissible ownership totals under the Commission's broadcast ownership rules consistent with the treatment of radio JSAs. Specifically, where an entity owns or has an attributable interest in one or more stations in a local television market, joint advertising sales of another television station in that market for more than 15 percent of the brokered station's weekly advertising time will create a cognizable interest for the brokering station for purposes of applying the broadcast ownership rules. The 15 percent threshold is the same threshold adopted by the Commission for radio JSAs and will allow a station to broker a small amount of advertising time through a JSA with another station in the same market without triggering attribution, yet will fall short of providing the broker a significant incentive or ability to exert influence over the brokered station's programming or other core operating functions because it will not be selling the advertising time in a substantial portion of the station's programming. The *Report and Order* finds that a two-year transition period is appropriate to permit licensees that entered into television JSAs of this type prior to the release of the *Report and Order* to address those circumstances. In addition, parties to existing, attributable television JSAs, and/or parties to attributable television JSAs entered into after the release of the *Report and Order* but before the filing requirement becomes effective, must file a copy of such agreements with the Commission within 30 days after the filing requirement becomes effective. Stations are already required to include these agreements in their public inspection file. Going forward, parties to attributable television JSAs must file copies of such agreements with the Commission within 30 days after execution.

37. The Commission finds in the *Report and Order* that the attribution of television JSAs is necessary because these agreements can be used to coordinate the operations of two ostensibly separately owned entities and can provide incentives that are similar to those created by common ownership. While the Commission has previously recognized the potential benefits of common ownership, and believes that JSAs may provide similar benefits, such as facilitating cost savings and efficiencies that could enable the stations to provide more locally oriented programming, the Commission finds that television JSAs should not be used to circumvent the local broadcast television ownership rule, which is designed to promote competition. Additionally, the *Report and Order* finds that television JSAs provide the brokering stations the ability and incentive to influence the selection of non-network programming on the brokered stations. In addition, the Commission finds that a JSA broker can influence the brokered station's choice of network affiliation. The *Report and Order* concludes that a broker has a strong incentive to ensure that the brokered station provides programming—and an audience—that is complementary to that offered by its own station in order to maximize the attractiveness of the two stations to advertisers. Thus, the fact that some television stations have network affiliations does not undermine the Commission's finding that television JSAs confer sufficient influence that they should be attributed.

38. The Commission finds no support for treating radio and television JSAs differently. While the *Report and Order* finds that television stations may depend less on local advertisers than radio stations as a percentage of overall advertising revenue, advertising revenue data demonstrate that television stations do depend on local advertising for revenues to a significant degree. Also, the Commission finds that arguments that television stations need JSAs to survive in a competitive television market are properly addressed in the context of setting the applicable ownership limits rather than in deciding whether television JSAs confer influence such that they should be attributed in the first place. In addition, the *Report and Order* concludes that fundamental nature of television JSAs and radio JSAs is the same and that these agreements should be treated the same for attribution purposes. In deciding to change its attribution policy with respect to radio JSAs, the Commission stated that its reexamination of the issue had led it to find that, because of the broker's control over advertising revenues of the brokered station, JSAs have the same potential as LMAs to convey sufficient influence over core operations of a station to warrant attribution. The *Report and Order* finds that the same finding applies to television JSAs, notwithstanding any market differences, including the presence of network agreements.

39. Because television JSAs can create the potential to influence the brokered station and provide incentives for joint operation that are similar to those created by common ownership, as described in the *Report and Order,* the Commission finds that same-market television JSAs that permit the sale of more than 15 percent of the advertising time per week of the brokered station should be cognizable interests for purposes of applying the broadcast ownership rules.

40. The *Report and Order* also clarifies that the radio and television JSA attribution requirements do not apply to national sales representative firms (rep firms). The Commission concludes that the relationship between a rep firm and its client station as understood by the Commission does not raise the same issues of control that are present in a traditional JSA relationship. Therefore, national rep firms should not generally be subject to the television and radio JSA attribution rules. However, the Commission will entertain complaints based on a showing that a rep firm that is commonly owned with a broadcast licensee has not insulated the business of operating its commonly owned broadcast station from the business of providing advertising representation services in a market in which the rep firm has a commonly owned broadcast station. In such cases, the Commission will make a case-by-case determination of whether attribution is appropriate.

2. Legal Basis

41. The *Report and Order* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 1544(i), 303, 307, 309, 310, and 403, and section 202(h) of the Telecommunications Act of 1996.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

42. The Commission received no comments in direct response to the IRFA.

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

43. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules 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. 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). The final rules adopted herein affect small television and radio broadcast stations and small entities that operate daily newspapers. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

44. *Television Broadcasting.* The SBA defines a television broadcasting station that has no more than $35.5 million in annual receipts as a small business. The definition of business concerns included in this industry states that establishments are primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting 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. Census data for 2007 indicate that 2,076 such establishments were in operation during that year. Of these, 1,515 had annual receipts of less than $10.0 million per year and 561 had annual receipts of more than $10.0 million per year. Based on this data and the associated size standard, the Commission concludes that the majority of such establishments are small.

45. The Commission has estimated the number of licensed commercial television stations to be 1,387. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of November 26, 2013, 1,294 (or about 90 percent) of an estimated 1,387 commercial television stations in the United States have revenues of $35.5 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 396. The Commission notes, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. This estimate, therefore, likely overstates the number of small entities that might be affected by this action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

46. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

47. The *Report and Order* adopts a requirement that parties to existing, attributable television JSAs, and/or parties to attributable television JSAs entered into after the release of the *Report and Order* but before the filing requirement becomes effective, must file a copy of such agreements with the Commission within 30 days after the filing requirement becomes effective. Going forward, parties to attributable television JSAs must file copies of such agreements with the Commission within 30 days after execution. The *Report and Order* directs the Media Bureau to take the necessary steps to modify the relevant application forms to require applicants to file attributable television JSAs at the time an application is filed using the forms.

48. In addition, the following FCC forms and/or their instructions will be modified to require the reporting of attributable television JSAs: (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; (3) FCC Form 315, Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License; (4) FCC Form 323, Ownership Report for Commercial Broadcast Station. The impact of these changes will be the same on all entities, and compliance will likely require only the expenditure of *de minimis* additional resources.

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

49. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its 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.

50. The *Report and Order* finds that television JSAs convey sufficient influence to warrant attribution, such that the Commission will count television stations brokered under a same-market television JSA toward the brokering station's permissible ownership totals if the amount of time jointly sold is equal to or greater than 15 percent of the station's advertising time. This rule brings the Commission's policy regarding JSAs in the television market in line with the existing rules regarding radio markets. While the *Report and Order* recognizes that JSAs may have public interest benefits, particularly in small- to mid-sized markets, these potential benefits do not affect the assessment of whether television JSAs confer significant influence such that they should be attributed. The rule adopted in the *Report and Order* protects local markets—including small businesses operating in local markets, as opposed to regional or national markets—from exposure to competitive harms that might result from contractual agreements between stations for control

of advertising. Therefore, the Commission believes that in many cases the attribution of a same-market television JSA will protect small businesses, as well as large, from the adverse impacts of competing stations' coordination of advertising sales.

51. Nonetheless, the *Report and Order* finds that a transition period during which parties are required to come into compliance is necessary to avoid undue disruption to current business arrangements. Such a transition period will be especially helpful to small television stations that do not have the same financial and technical resources as large stations. Accordingly, parties to existing, same-market television JSAs whose attribution results in a violation of the ownership limits will have two years from the effective date of the *Report and Order* to terminate or amend those JSAs or otherwise come into compliance with the local television ownership rule. No transition period is granted with regard to new television JSAs that would cause the broker to exceed the media ownership limits. However, parties may renew existing television JSAs even if renewal would cause the broker to exceed the media ownership limits, provided that the renewal period shall not exceed the two-year transition period provided for in the *Report and Order.* The *Report and Order* finds that this transition period will give licensees with television JSAs sufficient time to make alternative arrangements—such as revise the agreement to limit the amount of advertising time sold to 15 percent of the weekly advertising time or enter into an agreement with another entity that would not result in an impermissible attributable interest—or to seek waiver relief from the Commission's rules, if appropriate. Parties that believe that the application of the attribution rules to their particular circumstances would not serve the public interest always have the ability to seek a waiver. These steps will minimize the adverse impact on small entities.

52. In addition, parties to existing, attributable television JSAs, and/or parties to attributable television JSAs entered into after the release of the *Report and Order* but before the filing requirement becomes effective, must file a copy of such agreements with the Commission within 30 days after the filing requirement becomes effective. Going forward, parties to attributable television JSAs must file copies of such agreements with the Commission within 30 days after execution. The impact of this filing requirement will be minimal and uniform for all entities. The Commission anticipates that compliance will only require the expenditure of *de minimis* additional resources, and believes, therefore, that the filing requirement is the least economically burdensome alternative. In addition, entities may be required to report attributable television JSAs on certain FCC Forms, for example, in connection with a request for authority to transfer or assign a station license. The Commission anticipates that compliance will only require the expenditure of *de minimis* additional resources. Accordingly, adverse economic impact on small entities will be minimal, at most, and in many cases non-existent.

F. Report to Congress

53. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

54. Accordingly, *it is ordered,* that pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, and 403, and section 202(h) of the Telecommunications Act of 1996, the *Report and Order is adopted.* The rule modifications shall be effective June 19, 2014, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective on the effective date announced in the **Federal Register** notice announcing OMB approval. Changes to FCC Forms required as the result of the rule amendments adopted herein *will become effective* on the effective date announced in the **Federal Register** notice announcing OMB approval.

55. *It is further ordered,* that the proceeding MB Docket No. 04–256 IS *terminated.*

56. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects 47 CFR part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Section 73.3555 is amended by redesignating paragraph k.2. as k.3., in Note 2 to § 73.3555, adding new paragraph k.2., and revising newly redesignated paragraph k.3. to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 2 to § 73.3555: * * *

k. * * *

2. Where two television stations are both located in the same market, as defined for purposes of the local television ownership rule contained in paragraph (b) of this section, and a party (including all parties under common control) with a cognizable interest in one such station sells more than 15 percent of the advertising time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (b), (c), (d), and (e) of this section.

3. Every joint sales agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the limitations set forth in paragraphs (b), (c), and (d) of this section if the brokering station is a television station or with paragraphs (a), (c), and (d) of this section if the brokering station is a radio station.

* * * * *

■ 3. Section 73.3613 is amended by revising paragraph (d)(2) to read as follows:

§ 73.3613 Filing of contracts.

* * * * *

(d) * * *

(2) *Joint sales agreements:* Joint sales agreements involving radio stations

where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local radio multiple ownership rule contained in § 73.3555(a), and more than 15 percent of the advertising time of the brokered station on a weekly basis is brokered by that licensee; joint sales agreements involving television stations where the licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both in the same market as defined in the local television multiple ownership rule contained in § 73.3555(b), and more than 15 percent of the advertising time of the brokered station on a weekly basis is brokered by that licensee. Confidential or proprietary information may be redacted where appropriate but such information shall be made available for inspection upon request by the FCC.

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