

the digital transition should provide data supporting this assertion.

156. The Commission also will consider the effect of the proposed merger on localism and viewpoint diversity. Waiver applicants should submit information about current local news production for all stations in the local market and the effect of the proposed merger on local news and public affairs programming for the affected stations. Applicants stating that the merger is needed to preserve a local newscast should document the financial performance of the affected news division. Applicants for waiver of our top four-ranked restriction must demonstrate that the proposed combination will produce public interest benefits. As in the context of failing station waivers, the Commission will require that, at the end of the merged stations' license terms, the owner of the merged stations must certify to the Commission that the public interest benefits of the merger are being fulfilled. This certification must include a specific, factual showing of the program-related benefits that have accrued to the public. Cost savings or other efficiencies, standing alone, will not constitute a sufficient showing. Finally, the Commission's review of waiver requests will account for the diminished reach of UHF stations. As discussed in our national television ownership rule section, UHF stations reach fewer households than VHF stations because of UHF stations' weaker broadcast signals. Reduced audience reach diminishes UHF stations' impact on diversity and competition in local markets. Accordingly, the Commission will consider whether one or both stations sought to be merged are UHF stations.

157. The revised local TV ownership rule no longer permits combinations involving stations that do not have overlapping Grade B contours, on grounds that, because of statutory mandatory carriage requirements, most stations compete with each other on a DMA-wide basis. However, the Commission recognizes that certain stations are not carried throughout their assigned DMAs, and thus do not compete with each other within their assigned markets. Accordingly, the Commission will consider waivers of our local TV ownership rule where a party can demonstrate that the signals of the stations in a proposed combination: (a) Do not have overlapping Grade B contours; and (b) have not been carried, via DBS or cable, to any of the same geographic areas within the past year.

158. With respect to a licensee's ability to transfer or assign a

combination involving a station acquired pursuant to a waiver, the Commission does not find support in the record for permitting such transfers where they do not comply with our rules. The transfer or assignment of such a combination must comply with our rules or waiver standards at the time an application to transfer or assign the station is filed.

159. *Satellite Stations.* Television satellite stations retransmit all or a substantial part of the programming of a commonly owned parent station. Satellite stations are generally exempt from the Commission's broadcast ownership restrictions. The Commission believes that continued exemption of satellite stations from the local TV ownership rule is appropriate. Our satellite station policy rests on such factors as the questionable financial viability of the satellite as a stand-alone facility, and establishment of service to underserved areas. By adding stations to local television markets where stations otherwise would not have been established, the policy advances the same goals as those underlying our local TV ownership restrictions. Since these stations are licensed only if they cannot survive as standalone, independently operated stations, the Commission finds that exempting them from the local TV ownership rule will not harm competition or diversity.

160. *Transferability of Combinations Under Modified Rule.* If an entity acquires a second or third station that complies with the Commission's modified rule, it will not later be required to divest if the number of stations in the market subsequently declines below the level consistent with our outlet cap, or if more than one commonly owned station subsequently becomes a top four-ranked station in the market. The impact of such a "springing" rule would be highly disruptive to the market. Like our other rules, however, the Commission will not ignore the public interest underpinnings at the time of a subsequent sale of the combination. Thus, absent a waiver, a combination may not be assigned or transferred to a new owner if the combination does not satisfy our local TV ownership cap at the time of the proposed assignment or transfer.

#### *B. Local Radio Ownership Rule*

161. The local radio ownership rule limits the number of commercial radio stations overall and the number of commercial radio stations in a service (AM or FM) that a party may own in a local market. In the 1996 Act, Congress directed the Commission to revise those limits to provide that: (1) In a radio

market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM); (2) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM); (3) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM); and (4) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.

162. The Commission concludes that the numerical limits in the local radio ownership rule are "necessary in the public interest" to protect competition in local radio markets. The Commission concludes, however, that the rule in its current form does not promote the public interest as it relates to competition because (1) its current contour-overlap methodology for defining radio markets and counting stations in the market is flawed as a means to protect competition in local radio markets, and (2) the current rule improperly ignores competition from noncommercial radio stations in local radio markets. To address those concerns, the Commission modifies the rule to replace the contour-overlap market definition with an Arbitron Metro market and to count noncommercial stations in the radio market; and the Commission initiates a new rulemaking proceeding as part of this item to define markets for areas of the country where Arbitron Metros are not defined. Although the Commission primarily relies on competition to justify the rule, the Commission recognizes that localism and diversity are fostered when there are multiple, independently owned radio stations competing in the same market; its competition-based rule, therefore, will also promote those public interest objectives. The Commission also conclude that, consistent with our focus on competition, joint sales agreements ("JSAs") will result in attribution of the brokered station to the brokering party under certain conditions.

163. *Section 202(h) Determination.* Under section 202(h), the Commission considers whether the local radio