

approach to ensure the orderly processing of radio station applications pending completion of that rulemaking proceeding.

189. Applicants will be required to demonstrate compliance with the rule when filing applications to obtain a new construction permit or license, to assign or transfer an existing permit or license, or to make certain modifications, such as a change in the community of license of a radio station. The Commission makes clear that any radio station that is included in the radio market under our methodology will also be counted against a station owner's ownership limit in such market.

190. *Arbitron Metro Survey Areas.* Where a commercially accepted and recognized definition of a radio market exists, it seems sensible to the Commission to rely on that market definition for purposes of applying the local radio ownership rule. Arbitron, as the principal radio rating service in the country, has defined radio markets for most of the more populated urban areas of the country. The record shows that Arbitron's market definitions are an industry standard and represent a reasonable geographic market delineation within which radio stations compete. Indeed, the DOJ consistently has treated Arbitron Metros as the relevant geographic market for antitrust purposes. As NABOB succinctly states, "Radio stations compete in Arbitron markets." Given the long-standing industry recognition of the value of Arbitron's service, we believe there is strong reason to adopt a local radio market definition that is based on this established industry standard.

191. Although Arbitron Metro boundaries do occasionally change, the Commission is not convinced that such changes occur with such frequency, or that they are so drastic, that we must reject reliance on those boundaries in defining the relevant radio markets. The Commission believes, moreover, that we can establish safeguards to deter parties from attempting to manipulate Arbitron market definitions for purposes of circumventing the local radio ownership rule. Specifically, the Commission will not allow a party to receive the benefit of a change in Arbitron Metro boundaries unless that change has been in place for at least two years. This safeguard includes both enlarging the Metro (to make a market larger) and shrinking the Metro (to split a party's non-compliant station holdings into separate markets). Similarly, a station combination that does not comply with the rule cannot rely on a change in Arbitron Metro definitions to show compliance and thereby avoid the

transfer restrictions outlined in the grandfathering section of the R&O, unless that change has been in effect for two years. The Commission also will not allow a party to receive the benefit of the inclusion of a radio station as "home" to a Metro unless such station's community of license is located within the Metro or such station has been considered home to that Metro for at least two years. A party also may not receive the benefit of changing the home status of its own station if such change occurred within the two years prior to the filing of an application. The Commission believes these safeguards will ensure that changes in Arbitron Metro boundaries and home market designations will be made to reflect actual market conditions and not to circumvent the local radio ownership rule. To the extent, of course, that the Commission determines that, despite these safeguards, an Arbitron Metro boundary has been altered to circumvent the local radio ownership rule, we can and will consider that fact in evaluating whether a radio station combination complies with the rule's numerical limits.

192. *Counting Methodology.* For each Arbitron Metro, Arbitron lists the commercial radio stations that obtain a minimum audience share in the Metro. Some of these stations are designated by Arbitron as "home" to the Metro. These "home" radio stations usually are either licensed to a community within the Arbitron Metro or are determined by Arbitron to compete with the radio stations located in the Metro. These radio stations are also known as "above-the-line" stations because, in ratings reports, Arbitron uses a dotted line to separate these stations from other radio stations—known as "below-the-line" stations—that have historically received a minimum listening share in a Metro.

193. The Commission traditionally has relied on BIA's Media Access Pro database to obtain information about particular Arbitron Metros. The BIA database relies on Arbitron's market definitions and builds upon Arbitron's data to provide greater detail about the competitive realities in Metro markets. Given our experience with the BIA database and its acceptance in the industry, we will count as being in an Arbitron Metro above-the-line radio stations (*i.e.*, stations that are listed as "home" to that Metro), as determined by BIA. The Commission also will include in the market any other licensed full power commercial or noncommercial radio station whose community of license is located within the Metro's geographic boundary. A radio station located outside of a Metro occasionally

may be included as home to that Metro. In such cases, the Commission will count that station as participating in the radio market in which its community of license is located in addition to the Metro. The Commission believes this simple rule will help prevent odd results in cases where a station requests "home" status in order to be viewed as a participant in another (usually larger) Metro. With these rules, our counting methodology will reflect more accurately the competitive reality recognized by the radio broadcasting industry.

194. The Commission rejects arguments that we should count below-the-line stations in determining the size of a Metro's radio market. Below-the-line stations can be a considerable distance from the Metro, and in many cases serve different population centers, if not altogether different Metros, from radio stations located in the market. Although the Commission recognizes that, in certain instances, certain below-the-line radio station may have a competitive impact in the market for radio listening, we believe that, on balance, counting every below-the-line radio station would produce a distorted picture of the state of competition in a particular Metro.

195. *Areas Not Located in an Arbitron Metro.* Arbitron Metros do not cover the entire country. The Commission accordingly will develop radio market definitions for non-Metro areas through the rulemaking process. The Commission initiates in a separate notice, published elsewhere in the **Federal Register**, a new rulemaking proceeding to seek comment on that issue.

196. While that rulemaking proceeding is pending, the Commission will need to process applications proposing radio station combinations in non-Metro areas and determine whether such combinations comply with the local radio ownership rule. Although we find the contour-overlap methodology problematic for the reasons stated above, we conclude that its temporary use during the pendency of the rulemaking proceeding cannot be avoided. The contour-overlap methodology is, at a minimum, well understood, and continuing its use for a few additional months would allow for the orderly processing of radio station applications.

197. Although the Commission finds it necessary to maintain the contour-overlap market definition for an additional period of time, we will make certain adjustments to minimize the more problematic aspects of that system. Specifically, the Commission adopts