

205. The Commission also reaffirms the AM and FM ownership limits in the current rule. Eliminating the service limits would improperly ignore the significant technical and marketplace differences between AM and FM stations. AM stations have significantly less bandwidth than FM stations, and the fidelity of their audio signal is inferior to that of FM stations. Unlike FM stations, moreover, AM signal propagation also varies with time of day. During the day, AM signals travel through ground currents for between 50 to 200 miles; at night, AM signals travel further because they are reflected from the upper atmosphere. As a result, many AM stations are required to cease operation at sunset. These and other technical differences have an effect on radio listenership patterns. Radio formats also can be affected. In Los Angeles, for example, our analysis indicates that many of the AM stations have a news/talk/sports or ethnic format, while music formats are more likely on commercial FM stations. The Commission cannot agree, therefore, that eliminating the service caps and treating AM and FM radio stations equally for purposes of the overall station limit is consistent with our interest in protecting competition in local radio markets.

206. Although the Commission reaffirms the ownership tiers in the local radio ownership rule, we conclude that it is not necessary in the public interest to exclude noncommercial radio stations in determining the size of the radio market. Although noncommercial stations do not compete in the radio advertising market, they compete with other radio stations in the radio listening and program production markets. Indeed, noncommercial stations can receive a significant listening share in their respective markets. Their presence in the market therefore exerts competitive pressure on all other radio stations in the market seeking to attract the attention of the same body of potential listeners. In television, the Commission has recognized the contribution that noncommercial stations can make to competition by counting noncommercial stations in determining the size of the television market. The Commission sees no reason to treat noncommercial radio stations differently.

207. *Rejection of Repeal and Other Modifications.* The Commission rejects arguments that we should repeal the local radio ownership rule. We see nothing in the record that persuades us that the acquisition of market power in radio broadcasting serves the public

interest. Competition breeds innovation in programming and creates incentives to continually improve program quality. Because competition—and the benefits that flow from it—is lessened when the market is dominated by one or a few players, the Commission seeks through its rules to prevent that type of market structure from developing.

208. Without some check, a party could acquire all or a significant portion of the limited number of broadcast radio channels in a local community, leaving listeners, advertisers, and program producers with fewer substitutes. That situation also would raise the cost of entry into the market by new entrants because there would be fewer radio stations available from which a party could construct a competing station group. Because the most potent sources of innovation often arise from new entrants, a market structure that significantly raises the costs of entry leads to less-than-optimal results in terms of innovation and program quality and thereby harms the public interest. It is therefore necessary for us to impose limits on the number of radio stations a party may own in a local market to preserve competition in the relevant markets in which radio stations compete.

209. The Commission does not dispute that a certain level of consolidation of radio stations can improve the ability of a group owner to make investments that benefit the public. Our responsibility under the statute, however, is to determine the level at which the harms of consolidation outweigh its benefits, and to establish rules to prevent that situation from developing. Several commenters express concern that, in markets with a high level of concentration, small radio firms may be forced to “sell out” to group owners. Specifically, the concern is that, in a concentrated market, dominant radio station groups can exercise market power to attract revenue at the expense of the small owner. As a result, the small owner has greater difficulty obtaining the revenue it needs to develop and broadcast attractive programming and to compete generally against the dominant station groups. The concerns raised by these commenters comport with the competition analysis that underlies this order and supports our decision not to repeal the local radio ownership rule.

210. The Commission also rejects arguments that we incorporate a market share analysis into the local radio ownership rule or that we continue to “flag” applications that propose radio station combinations above a certain

market share. The Commission recognizes that competition analysis generally looks to market share as the primary indicator of market power. Market share, however, must be considered in conjunction with the overall structure of the industry in determining whether market power is present. In radio, the availability of a sufficient number of radio channels is of particular importance in ensuring that competition can flourish in local radio markets. The numerical caps and the AM/FM service limits are designed to address that interest, and in our judgment, establishing an inflexible market share limit in our bright-line rule would add little, if any, benefit. The Commission does not seek to discourage radio firms from earning market share through investment in quality programming that listeners prefer; our objective is to prevent firms from gaining market dominance through the consolidation of a significant number of key broadcast facilities. The Commission does not believe that developing a market share limit would significantly advance that objective.

211. The Commission recognizes that its conclusion differs from the Commission’s view in 1992 that an audience share cap was necessary “to prevent consolidation of the top stations in a particular local market.” But the audience share cap was never intended to be more than a “backstop” to the new numerical limits the Commission had established, which for the first time allowed a party to own multiple radio stations in a local market. The audience share cap was eliminated as a result of the revisions to the local radio ownership rule that Congress mandated in the 1996 Act, which left only the numerical caps in place. But because of the problems associated with the contour-overlap market definition and counting methodologies, the Commission could not rely with confidence on those numerical limits to protect against undue concentration in local markets. As a result, the Commission began looking at revenue share in our “flagging” process and the interim policy that we established in the *Local Radio Ownership NPRM*. Now that the Commission has established a rational system for defining radio markets and counting market participants, it believes that the numerical limits will be better able to protect against harmful concentration levels in local radio markets that might otherwise threaten the public interest. To the extent an interested party believes this not to be the case, it has a statutory right to file a petition to deny