

equitable considerations that persuade us to grandfather existing combinations.

336. *Transferability.* In general, the Commission will prohibit the sale of existing combinations that violate the modified local radio ownership rule, the local television ownership rule, or the cross media limits. Parties must comply with the new ownership rules in place at the time a transfer of control or assignment application is filed. However, in order to help promote diversity of ownership, the Commission will allow sales of grandfathered combinations to and by certain "eligible entities." The Commission does not agree with commenters that advocate allowing grandfathered combinations to be freely transferable in perpetuity, irrespective of whether the combination complies with our adopted rules. Such an approach would hinder our efforts to promote and ensure competitive markets. Unlike our decision not to require existing station owners to divest stations, here, the threat to competition is not outweighed by countervailing considerations. Buyers will be on notice that ownership combinations must comply at the time of the acquisition of the stations. Thus, they do not have the same expectations as present owners who acquired stations under the current ownership rules. Because of the limited number of broadcast licenses available, station spin-offs that would be required upon sales of stations in a grandfathered group could afford new entrants the opportunity to enter the media marketplace. They could also give smaller station owners already in the market the opportunity to acquire more stations and take advantage of the benefits of combined operations. Because divestitures are not required until a sale of the station groups, owners have sufficient time to minimize any specific complications due to joint operations. Therefore, the Commission rejects the argument that prohibiting transfers of station groups that exceed the new ownership limits would be unacceptably disruptive or would negatively impact the availability of bank financing, as some commenters suggest. Requiring future assignments and transfers to comply with our ownership rules upon sale is consistent with Commission precedent. The prohibition on the transfer of grandfathered stations will not apply to pro-forma changes in ownership or to involuntary changes of ownership due to a death or legal disability of the licensee.

337. *Eligible Transfer.* The Commission is adopting an exception to its prohibition on the transfer of grandfathered combinations in violation

of the new rules. This exception applies to grandfathered radio and television combinations that exceed the ownership limits adopted in this R&O, cross-media combinations in at-risk markets, and cross-media combinations in small to medium sized markets that exceed the ownership limits adopted in this R&O. Entities may transfer control of or assign a grandfathered combination to "eligible entities" as defined herein.³³ In addition, "eligible entities" may sell existing grandfathered combinations without restriction. As the Commission defines in greater detail below, it limits "eligible entities" to small business entities, which often include businesses owned by women and minorities.

338. The Commission defines an "eligible entity" as an entity that would qualify as a small business consistent with SBA standards for its industry grouping. For example, the SBA small business size standard for radio stations is \$6 million or less in annual revenue. For TV stations the limit is \$12 million. The Commission will further require that any transaction pursuant to this exception may not result in a new violation of the rules. Control of the eligible entity purchasing the grandfathered combination must meet one of the following control tests. The eligible entity must hold (1) 30% or more of the stock/partnership shares of the corporation/partnership, and more than 50% voting power, (2) 15% or more of the stock/partnership shares of the corporation/partnership, and more than 50% voting power, and no other person or entity controls more than 25% of the outstanding stock, or (3) if the purchasing entity is a publicly traded company, more than 50% of the voting power.

339. The Commission will allow entities that meet the definition of "eligible entity" to transfer any existing grandfathered combination generally without restriction. The Commission believes that small businesses that qualify as eligible entities require greater flexibility than do larger entities for the disposition of assets. Restrictions on the sale of assets could disproportionately harm the financial stability of smaller firms compared to that of larger firms, which have additional revenue streams. However, an eligible entity may not transfer a grandfathered combination acquired

³³ We are not grandfathering existing combinations of stations that exceed the ownership limits because of an attributable interest in a station pursuant to an LMA or JSA. Existing LMAs and JSAs that result in a combination of stations exceeding the ownership limits must be terminated at the time of the sale or within two years, whichever comes first.

after the adoption date of this R&O to an entity other than another eligible entity unless it has held the combination for a minimum of three years. The Commission will prohibit eligible entities from granting options to purchase, or rights of first refusal to prevent non-eligible entities from financing an acquisition in exchange for an option to purchase the combination at a later date. Any transaction pursuant to this policy may not result in a new violation of the rules.

340. *Radio LMA Combinations.* The Commission will give licensees two years from the effective date of this R&O to terminate any LMAs that result in a violation of the new ownership limits, or otherwise come into compliance with the new rules. If the licensee sells an existing combination of stations within the two year grace period, it may not sell or assign the LMA to the buyer if the LMA causes the buyer to exceed the ownership limits adopted in this R&O. Parties are prohibited from entering into an LMA or renewing an existing LMA that would cause the broker of the station to exceed the ownership limits.

341. *TV LMA Combinations.* In our Local TV Ownership Report and Order, the Commission grandfathered LMA combinations that were entered into prior to November 5, 1996, through the end of our 2004 biennial review. The Commission does not alter this policy. These LMAs are not affected by the grandfathering policy adopted in the R&O.

342. *TV Temporary Waivers.* A few licensees have been granted temporary waivers of our local TV ownership rule, and some have filed requests for an extension of waivers that are currently pending, or have sought permanent waivers. Any licensee with a temporary waiver, pending waiver request, or waiver extension request must, no later than 60 days after the effective date of this R&O or the date on which the waiver expires, whichever is later, file one of the following: (i) A statement describing how ownership of the subject station complies with the modified local TV ownership rule; or (ii) an application for transfer or assignment of license of those stations necessary to bring the applicant into compliance with the new rules.

343. *Cross-Media Conditional Waivers.* A few licensees have been granted conditional waivers of the previous one-to-a-market rule. Parties that currently have conditional waivers for radio/television combinations must submit a statement to indicate whether the combination they hold: (1) Is located in an at-risk market, (2) is located in a small to medium size market, and (3) is