

in compliance with the cross-media limits. For the combinations that comply with the cross-media limits adopted herein, the Commission will issue a letter replacing the conditional grant with permanent approval. For any combinations that violate the cross-media limits, the Commission will issue a letter indicating that the combination will continue to be grandfathered until a decision in the 2004 Biennial Review is final. As part of the 2004 Biennial Review, the Commission will review and reevaluate the status of such grandfathered combinations to determine whether they should continue to be grandfathered. On a case-by-case basis, the Commission will consider the competition, diversity, equity, and public interest factors the combinations may raise.

344. *Other Cross-Media Waivers.* The Commission's cross-media limits are founded on the presumption that, by reason of cable carriage, television stations are available throughout the DMA to which they are assigned. The Commission recognizes, however, that this may not be true in every case. Accordingly, those requesting waiver of our cross-media limits may attempt to rebut this presumption in individual cases.

345. *Elimination of Flagging and Interim Policy.* In August 1998, the Commission began "flagging" public notices of radio station transactions. Under this policy, the Commission flagged proposed transactions that would result in one entity controlling 50% or more of the advertising revenues in the relevant Arbitron radio market or two entities controlling 70% or more of the advertising revenues in that market.

346. The Commission believes that the changes made today to the market definition will address many of the market concentration concerns that led the Commission to begin flagging radio station transactions. Accordingly, effective upon adoption of this R&O, the Commission will no longer flag radio sales transactions or apply the interim policy procedures adopted in the Local Radio Ownership NPRM in processing them.

347. *Processing of Pending and New Assignment and Transfer of Control Applications.* The processing guidelines below will govern pending and new commercial broadcast applications for the assignment or transfer of control of television and radio authorizations commencing as of the adoption date of this R&O. These guidelines also cover pending and new modification applications that implicate our multiple ownership rules. Applications filed on or after the effective date of this R&O as

well as applications that are still pending as of such effective date will be processed under the new multiple ownership rules, including, where applicable, the interim methodology for defining radio markets as adopted in the R&O.

348. *New Application.* The Commission has established a freeze on the filing of all commercial radio and television transfer of control and assignment applications that require the use of FCC Form 314 or 315 ("New Applications"). The Commission will revise application Forms 301, 314 and 315 to reflect the new rules adopted in the R&O. The freeze will be in effect starting with the R&O's adoption date until notice has been published by the Commission in the **Federal Register** that OMB has approved the revised forms. Upon such publication, parties may file New Applications, but only if they demonstrate compliance with the new multiple ownership rules adopted in the R&O, including where applicable, the interim methodology for defining radio markets outside Arbitron metros, or submit a complete and adequate showing that a waiver of the new rules is warranted. The Commission will continue to allow the filing of short-form (FCC Form 316) applications at any time and will process them in due course.

349. *Pending Applications.* Applicants with long-form assignment or transfer of control applications (FCC Form 314 or 315) or with modification applications (FCC Form 301) that are pending as of adoption of the R&O ("Pending Applications") may amend those applications by submitting new multiple ownership showings to demonstrate compliance with the ownership rules adopted in the R&O, including where applicable, the interim methodology for defining radio markets outside of Arbitron metros, or by submitting a request for waiver of the new rules. Parties may file such amendments once notice has been published by the Commission in the **Federal Register** that OMB has approved the information collection requirements contained in such amendments. Pending Applications that are still pending as of the effective date of the new rules will be processed under the new rules. Applications proposing pro forma assignments and transfers (FCC Form 316) will be processed in the normal course.

350. *Pending Petitions and Objections.* Petitions to deny and informal objections that were submitted to the Commission prior to the adoption date of the R&O and that raise issues unrelated to competition against

Pending Applications will be addressed with respect to those issues at the time the Commission acts on such Applications. Petitions and informal objections that were submitted to the Commission prior to the adoption date of the R&O and that contest Pending Applications solely on grounds of competition pursuant to the interim policy will be dismissed as moot.

VI. National Ownership Rules

351. The Commission considers the national TV ownership rule and the dual network rule. The Commission concludes that it should modify the former by raising the cap to 45%, and the Commission retains the latter.

A. National TV Ownership Rule

352. The current national TV ownership rule prohibits any entity from owning television stations that in the aggregate reach more than 35% of the country's television households. 47 CFR 73.3555(e)(1). The Commission concludes that the current rule cannot be justified and it raises the cap to 45% and retains the UHF discount.

353. In the 1984 *Multiple Ownership Report and Order*, the Commission determined that repealing the national TV ownership rule would not harm competition or diversity. Consistent with the decision in 1984, the Commission finds that restricting national station ownership is not necessary to promote either of those policy objectives. It departs, however, from the 1984 decision to repeal the rule because evidence in the record demonstrates that the national television cap serves localism. The localism rationale for retaining the national television cap was articulated in the 1998 *Biennial Review Report*. In that decision the Commission explained that preserving a balance of power between the networks and their affiliates serves local needs and interests by ensuring that affiliates can play a meaningful role in selecting programming suitable for their communities. The Commission continues to believe that to be the case and, consequently, that a national cap is necessary to limit the percentage of television households that a broadcast network may reach through the stations it owns. Although the record supports retention of a national ownership cap, it does not support a cap of 35%. The evidence shows that the cap at the current level is not necessary to preserve the balance of bargaining power between networks and affiliates. The record also indicates that the cap appears to have other drawbacks. Most importantly, the cap restrains some of