

more definitions that are appropriate to its activities. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

515. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

516. *Television Broadcasting.* The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations³⁷ must be included. Our estimates, therefore, likely overstate the number of small entities that might be affected by any changes to the ownership rules, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

517. *Radio Broadcasting.* The SBA defines a radio broadcast entity that has \$6 million or less in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public.

According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of \$6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations³⁸ are included.³⁹ Our estimate, therefore likely overstates the number of small businesses that might be affected by any changes to the ownership rules.

518. *Daily Newspapers.* The SBA defines a newspaper publisher with no more than 500 employees as a small business. According to the 1997 Economic Census, 8,620 of 8,758 newspaper publishers had less than 500 employees. The data does not distinguish between newspaper publishers that publish daily and those that publish less frequently, and the latter are more likely to be small businesses than the former because of the greater expense to publish daily. The new cross ownership limits apply only to daily newspapers. It is likely that not all of the 8,620 small newspaper publishers are affected by the current rule.

E. Description of Projected Reporting, Recordkeeping, Other Compliance Requirements

519. The R&O generally relaxes or retains the existing broadcast ownership rules. The R&O does, however, adopt a paperwork and compliance requirement in connection with the local radio ownership rules. The R&O requires that parties with existing attributable Joint Sales Agreements (JSAs) covering radio stations located in Arbitron Metros file a copy of the JSA with the Commission within 60 days of the effective date of the R&O. Parties with JSAs for radio stations not located in Arbitron Metros will have to file JSAs within 60 days of the effective date of the Order. Additionally, we are modifying FCC Application Forms 314 and 315 to require applicants to file attributable JSAs at the time an application is filed. In addition, parties may be required to file a copy of Local Marketing

Agreements (LMAs) that have become attributable because of the decision to modify the market definition for radio stations.

520. Further, in connection with the local TV ownership rule, the R&O states that any licensee with a temporary waiver or pending waiver extension request must, by no later than 60 days after the effective date of the R&O, file either a statement describing how ownership of the subject station complies with the local TV ownership rule or an application for transfer or assignment of license for one of the stations that is subject of the waiver.

521. The R&O modifies the standards for rule waiver requests involving failed, failing, and unbuilt local television stations by removing the requirement to demonstrate that there is no reasonably available out-of-market buyer. It also provides guidelines for waiver of the top four-ranked restriction in markets of certain sizes, and addresses existing combinations that may not comply with the modified local television ownership rule. The R&O indicates that waiver applicants should supply: television ratings information for all the television stations in the market for the four most recent ratings periods; and 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. Waiver applicants claiming that the merger is needed to facilitate the digital transition should provide data supporting this assertion. 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 the failing station waiver, the Commission will require that, at the end of the merged stations' license term, 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. 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 do not have overlapping Grade B contours and have not been carried, via DBS or cable, to any of the same geographic areas within the past year. The R&O also adopts a paperwork and compliance requirement in connection with parties who have a

³⁷ Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties control or has to power to control both. 13 CFR 121.103(a)(1).

³⁸ Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1).

³⁹ SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. 13 CFR 121(a)(4).