

effectively with other media outlets and to provide improved services to the public. Several commenters contend that this is especially true for broadcasters in small and mid-sized markets. The Commission agrees that, by limiting common ownership of television stations in local markets where at least eight independently owned TV stations would remain post merger, the current rule prohibits mergers that would result in efficiencies that will benefit the public interest, especially mergers in small and mid-sized markets. The modifications to the rule adopted in the Order will permit broadcasters in more small and mid-sized markets, including small entities, to combine and thereby achieve such efficiencies. The modified rule accounts for the competitive realities faced by broadcasters in small and medium markets. Although the modified rule ensures that there will be at least six competitors in markets with 12 or more television stations, in markets with 11 or fewer television stations the R&O permits higher levels of concentration in light of the differences in the economics of broadcasting in smaller markets. The top four-ranked restriction of the modified local TV ownership rule also protects small entities by preventing the largest firms in a given local market from combining to achieve excessive market power. By prohibiting combinations involving stations with the largest audience shares, the restriction protects against potential harm to broadcasters with smaller market shares, including small entities.

531. The R&O also addresses competitive challenges faced by broadcasters in small markets through modified waiver standards. 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. The R&O further adopts two additional waiver standards. First, it provides for consideration of requests for waiver of the top four-ranked prohibition of the local TV ownership rule in markets with 11 or fewer TV stations where an applicant can show that the public interest benefits of a proposed combination outweigh potential harms to competition, diversity, and localism. In evaluating such waiver requests, the Commission also will account for the diminished reach of UHF stations by considering whether the proposed combination involves a UHF station. Reduced audience reach diminishes UHF stations' impact on diversity and

competition in local markets. Because this standard applies only in smaller markets, it may benefit smaller entities that would otherwise be unable to combine under the current rule. In addition, because it will account for competitive disparities faced by UHF stations, it will benefit small entities that may own such stations. The Order also provides guidelines for waivers for combinations involving stations that do not have overlapping signal contours and are not carried in the same geographic area by MVPDs.

532. The Commission received a proposal that, if the local TV multiple ownership rule is relaxed, the Commission require periodic certification by owners of same-market combinations that they are not engaged in certain types of anticompetitive conduct that would adversely affect smaller broadcasters in their markets. The Commission denies this proposal, on grounds that the modified local television ownership rule does not increase the likelihood that broadcasters will engage in anticompetitive conduct. The R&O notes that, if broadcasters engage in anticompetitive conduct that is illegal under antitrust statutes, remedies are available pursuant to those statutes. In addition, an antitrust law violation would be considered as part of the Commission's character qualifications review in connection with any renewal, assignment, or transfer of a license.

533. The Commission, as discussed in paragraphs 209–220 of the R&O, received several suggestions for modifying the local TV multiple ownership rule, but concludes that, as compared to the modified rule, the proposals advanced by commenters are more likely to result in anomalies and inconsistencies or will otherwise fail to serve our policy goals. Examining each proposal in turn, the R&O concludes that these proposals would permit unacceptable levels of concentration in local markets or would permit combinations among top four-ranked stations, which are likely to result in competitive harm, with no offsetting public interest benefits. One commenter, the National Association of Broadcasters (NAB) proposes a "10/10" alternative that would permit combinations where at least one of the stations has had, on average over the course of the year, an all-day audience share of 10 or less. NAB maintains that its proposal would provide needed financial relief for struggling stations in small and medium markets and those that are lower rated, and, by prohibiting combinations of leading stations, would effectuate the Commission's diversity

and competition goals. The Commission dismisses this proposal, finding that the proposal would permit mergers between financially strong stations, including top four-ranked stations, in a significant number of markets, and offers no justification for using 10 as a threshold. The R&O finds that, rather than allowing combinations involving top four-ranked stations as a general rule, consideration of waivers of the top four-ranked restriction in smaller markets on a case-by-case basis, as described above, will better effectuate its policy goals, and will address the concerns of broadcasters in smaller markets, including small entities operating in such markets.

534. *Local Radio Ownership Rule (Paragraphs 235–326).* The local radio ownership rule limits the number of commercial radio stations overall and the number of commercial radio stations in a service (AM or FM) that a party may own in a local market. The Commission finds that the numerical limits in the current rule are "necessary in the public interest," but finds that the rule must be modified to change the method for defining radio markets and to count noncommercial stations in the market. The R&O thus modifies the rule by adopting a market definition that reflects more accurately the competitive impact of proposed radio station combinations, and by providing that the Commission will count non-commercial radio stations in calculating market size. The R&O also makes joint sales agreements (JSAs) attributable for purposes of determining compliance with the local radio ownership rule and adopts "grandfathering" rules and procedures to address any existing station ownership patterns or JSAs that may cause a party to be out of compliance with the modified rule. The Commission dismisses requests to repeal the local radio ownership rule. Commenters favoring repeal argue that, for example, the rule is unjustified because consolidation has resulted in efficiencies and has produced significant public interest benefits. While 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, we seek to ensure that radio stations outside of the dominant groups, including small entities can remain viable and, beyond that, can prosper. Other commenters dispute these contentions, expressing concern 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