

result, they argue, 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. Although the Commission declines to pass on the competitive situation in any particular radio market in the context of this proceeding, the concerns raised by the latter commenters comport with the competition analysis that underlies this R&O and supports our decision not to repeal the local radio ownership rule.

535. The Commission decides not to require divestiture of existing combinations of broadcast stations that violate the modified multiple ownership rules adopted in the Order. The Commission determined that the alternative, requiring divestiture, would be too disruptive on the broadcast industry, which includes small broadcast owners. However, the Commission will require that combinations comply with the modified multiple ownership rules upon the assignment or transfer of control of the station group. The Commission rejected the alternative, allowing grandfathered combinations to be sold in perpetuity, because such a decision would disserve our competition goals discussed in the Order. Any 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. It could also give small station owners already in the market the opportunity to acquire more stations and take advantage of the benefits of combined ownership.

536. The Commission adopts an exception to the prohibition on the transfer of grandfathered combinations that violate the new rules. The Commission will allow transfers to "eligible entities." The Commission defines an eligible entity as a small business consistent with SBA standards for industry groupings. This exception was adopted to facilitate new entry by, and growth of, small businesses in the broadcast industry, and thereby further our goals of diversity of ownership, competition, and localism. The Commission will allow eligible entities to sell grandfathered combinations generally without restriction. The Commission believes that small businesses 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 that have other revenue streams. To prevent abuse of the policy, the Commission prohibits eligible entities

from selling grandfathered combinations acquired after adoption date of the Order unless it has held the combination for a minimum of three years.

537. Paragraphs 316–325 of the R&O discuss attribution of JSAs. In this regard, the Commission has the option, supported by some commenters, of maintaining its current policy of that JSAs are not attributable under the Commission's rules. Commenters supporting retention of this exemption argue that JSAs produce a public interest benefit. Although the Commission continues to believe that JSAs may have some positive effects on the local radio industry, the threat to competition and the potential impact on the influence over the brokered stations and requires attribution. As indicated in paragraph 319 of the R&O, the Commission recognizes that JSAs raise concerns regarding the ability of smaller broadcasters to compete, and may negatively affect the health of the local radio industry generally. Therefore, the R&O states that the Commission will now count such brokered stations toward the brokering licensee's attributable interest in one or more stations in a local radio market.

538. *Newspaper/Broadcast and Radio/Television Cross Ownership Rules. (Paragraphs 327–481).* Based on the extensive record in this proceeding, the Commission finds that neither the current nationwide prohibition on common ownership of daily newspapers and broadcast outlets in the same market, nor our cross-service restriction on commonly owned radio and television outlets in the same market, is "necessary in the public interest." With respect to both rules, the Commission concludes that the ends sought can be achieved with more precision and with greater deference to First Amendment interests by modifying the rules into a single set of cross media limits. The modified rules adopted in the R&O are, in sum, designed to protect against markets becoming highly concentrated, in a qualitative sense, for diversity purposes.

539. Although our conclusions pertain to markets of all sizes, newspaper-broadcaster combinations may produce tangible public benefits in smaller markets in particular. In this regard, West Virginia Media contends that the cross-ownership restriction impairs coverage of local news and public affairs in small markets by prohibiting combinations that would produce efficiencies and synergies particularly necessary in smaller markets. It argues that the rule may have the unintended effect of stifling local

news by prohibiting efficient combinations that would produce better output. We assume that the efficiencies cited by West Virginia Media can benefit small businesses with respect to the production of news and public affairs programming.

540. *National Ownership Rules (Paragraphs 499–621).* The R&O modifies the national TV ownership rule by raising the audience cap from 35% of the country's television households to 45%. The Commission received a significant amount of public comment in this regard and, based on the record, finds that, although retention of a national cap is necessary to limit the percentage of television households that an entity may reach through the station it owns, a cap of 35% is not necessary to preserve the balance of bargaining power between networks and affiliates and may have other drawbacks. The Commission believes that the current affiliate/network dynamic is beneficial to viewers and should be preserved and that eliminating the cap altogether would shift the balance of power with respect to programming decisions toward the national broadcast networks in a way that would disserve the Commission's localism policy. But the evidence suggests that 35% is overly restrictive and that the cap may safely be raised and the benefits of wider network station ownership achieved without disturbing either this balance or affiliates' ability to preempt network programming.

541. The R&O cites three primary reasons for settling on the 45% cap: (1) Given that the Commission is interested in finding a point at which the balance of bargaining power between networks and affiliates is roughly equal, a national audience reach cap of approximately half of all homes is appropriate; (2) because the Commission has some concern about allowing significant new aggregation of network power absent more compelling evidence regarding the possible effects of that aggregation above current limits and in light of the fact that Congress raised the ownership cap by ten percentage points in 1996, the Commission is inclined to take a similarly incremental approach; and (3) a 45% cap will allow some, but not unconstrained, growth for each of the top largest network owners. Permitting the networks a modest amount of growth will enable them to compete more effectively with cable and DBS operators and may help preserve free, over-the-air television by reducing the likelihood that networks will migrate expensive programming to their cable