

networks. The R&O retains the 50% UHF discount when calculating a television station owner's national reach, which could benefit small businesses by encouraging the emergence of new broadcast networks. The R&O sunsets the application of the UHF discount for the stations owned by the top four broadcast networks when the digital transition is completed on a market by market basis.

542. The Commission retains the dual network rule, which permits common ownership of multiple broadcast networks, but prohibits a merger between or among the "top-four" networks, finding that the rule is "necessary in the public interest" to promote competition and localism. The R&O concludes that a top-four network merger would give rise to competitive concerns that the merged firm would be able to reduce its program purchases and/or the price it pays for programming, and that this would in turn harm viewers through reduction in program output, program choices, program quality, and innovation. Further, a top-four network merger would harm localism by providing the networks with undue economic leverage over their affiliates.

543. *Minority and Women Proposals (Paragraphs 46–52).* MMTC proposes a dozen business and regulatory initiatives that "would go a long way toward increasing entry into the communications industry by minorities." MMTC's initiatives include: (1) Equity for specific and contemplated future acquisitions; (2) enhanced outreach and access to debt financing by major financial institutions; (3) investments in institutions specializing in minority and small business financing; (4) cash and in-kind assistance to programs that train future minority media owners; (5) creation of a business planning center that would work one-on-one with minority entrepreneurs as they develop business plans and strategies, seek financing, and pursue acquisitions; (6) executive loans, and engineers on loan, to minority owned companies and applicants; (7) enhanced access to broadcast transactions through sellers undertaking early solicitations of qualified minority new entrants and affording them the same opportunities to perform early due diligence as the sellers afford to established non-minority owned companies; (8) nondiscrimination provisions in advertising sales contracts; (9) incubation and mentoring of future minority owners; (10) enactment of tax deferral legislation designed to foster minority ownership; (11) examination of

how to promote minority ownership as an integral part of all FCC general media rulemaking proceedings; and (12) ongoing longitudinal research on minority ownership trends, conducted by the FCC, NTIA, or both; (13) sales to certain minority or small businesses as alternatives to divestitures.

544. These comments contain many creative proposals to advance minority and female ownership. Clearly, a more thorough exploration of these issues, which will allow us to craft specifically tailored rules that will withstand judicial scrutiny, is warranted. Therefore, we will issue a Notice of Proposed Rulemaking to address these issues and incorporate comments on these issues received in this proceeding into that proceeding.

545. We do, however, see significant immediate merit in MMTC's proposal regarding the transfer of media properties that collectively exceed our radio ownership cap. MMTC recommends that the Commission generally forbid the wholesale transfer of media outlets that exceed our ownership rules except where the purchaser qualifies as a "socially and economically disadvantaged business (SDB)." MMTC defines SDBs as the definition contained in legislation recently introduced by U.S. Senator John McCain. We agree with MMTC that the limited exception to a "no transfer" policy for above-cap combinations would serve the public interest. We agree with MMTC that the benefits to competition and diversity of a limited exception allowing entities to sell above-cap combinations to eligible small entities outweigh the potential harms of allowing the above-cap combination to remain intact. Greater participation in communications markets by small businesses, including those owned by minorities and women, has the potential to strengthen competition and diversity in those markets. It will expand the pool of potential competitors in media markets and should bring new competitive strategies and approaches by broadcast station owners in ways that benefit consumers in those markets.

546. In addition, MMTC proposes that we adopt an "equal transactional opportunity" rule similar in some respects to our EEO requirements. While such a rule is worthy of further exploration, we decline to adopt a rule without further consideration of its efficacy as well as any direct or inadvertent effects on the value and alienability of broadcast licenses. We see merit in encouraging transparency in dealmaking and transaction brokerage, consistent with business

realities. We also reiterate that discriminatory actions in this, and any other context, are contrary to the public interest. For these reasons, we intend to refer the question of how best to ensure that interested buyers are aware of broadcast properties for sale to the Advisory Committee on Diversity for further inquiry and will carefully review any recommendations this Committee may proffer. As soon as the Commission receives authorization to form this committee we will ask it to make consideration of this issue among its top priorities.

547. Report to Congress. The Commission will send a copy of the R&O, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA.

Document Availability

548. This document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com. This document is available in accessible formats (computer diskettes, large print, audio recording, and Braille) to persons with disabilities by contacting Brian Millin in the Consumer & Governmental Affairs Bureau at 202-418-7426, TTY 202-418-7365, or at bmillin@fcc.gov.

Ordering Clauses

549. Pursuant to the authority contained in §§ 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310 and section 202(h) of the Telecommunications Act of 1996, this *Report and Order* in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244 is adopted.

550. Part 73 of the Commission's rules is amended.

551. The Interim Policy set forth in the R&O is adopted.

552. The Motion for Revision of Procedural Dates, Expansion of the Scope of the Proceeding, and Inclusion of Additional Studies in the Record, filed on October 9, 2002 by Minority Media and Telecommunications Council and National Association of Black Owned Broadcasters, is denied in