

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
2014 Quadrennial Regulatory Review – Review of ) MB Docket No. 14-50
the Commission’s Broadcast Ownership Rules and )
Other Rules Adopted Pursuant to Section 202 of )
the Telecommunications Act of 1996 )
)
2010 Quadrennial Regulatory Review – Review of ) MB Docket No. 09-182
the Commission’s Broadcast Ownership Rules and )
Other Rules Adopted Pursuant to Section 202 of )
the Telecommunications Act of 1996 )
)
Promoting Diversification of Ownership ) MB Docket No. 07-294
In the Broadcasting Services )
)
Rules and Policies Concerning Attribution of Joint ) MB Docket No. 04-256
Sales Agreements in Local Television Markets )
)
Rules and Policies to Promote New Entry and ) MB Docket No. 17-289
Ownership Diversity in the Broadcasting Services )

ORDER

Adopted: December 20, 2019

Released: December 20, 2019

By the Chief, Media Bureau:

1. In Prometheus Radio Project v. FCC,<sup>1</sup> the United States Court of Appeals for the Third Circuit vacated and remanded the Commission’s 2018 Incubator Order<sup>2</sup> and its 2017 Order on Reconsideration<sup>3</sup> in their entirety, as well as the definition of eligible entities adopted in the Commission’s 2016 Second Report and Order.<sup>4</sup> Pursuant to F. R. App. P. 41(b), the court issued its mandate on November 29, 2019, which vacated, as of that date, the rule changes adopted in the Incubator Order and Order on Reconsideration and the eligible entity definition as adopted in the Second Report and Order.<sup>5</sup> With this Order, we amend our rules to reflect the court’s mandate and clarify which rules

<sup>1</sup> Prometheus Radio Project, 939 F.3d 567 (3rd Cir. 2019), petition for rehearing en banc denied.

<sup>2</sup> Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services, MB Docket No. 17-289, Report and Order, 33 FCC Rcd 7911 (2018) (Incubator Order).

<sup>3</sup> 2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 14-50, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802 (2017) (Order on Reconsideration).

<sup>4</sup> 2014 Quadrennial Review Order – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 14-50, Second Report and Order, 31 FCC Rcd 9864, 9960-10008, paras. 234-336 (2016) (Second Report and Order).

<sup>5</sup> Letter from Patricia S. Dodszeit, Clerk, Prometheus Radio Project v. FCC, Nos. 17-1107 et al. (3d Cir. Nov. 29, 2019).

are currently in effect.<sup>6</sup> Consistent with the court's mandate, this Order repeals changes adopted in the *Incubator Order* and *Order on Reconsideration* and the eligible entity definition as adopted in the *Second Report and Order*. As a result of the court's decision and these revisions, the Newspaper/Broadcast Cross-Ownership Rule, Radio/Television Cross-Ownership Rule, Local Television Ownership Rule, Local Radio Ownership Rule, and Television Joint Sales Agreement Attribution Rule are reinstated as they existed prior to the *Order on Reconsideration*.<sup>7</sup> In addition, the eligible entity standard and its application to regulatory measures as set forth in the *Second Report and Order* are repealed.<sup>8</sup> Finally, the regulatory measures adopted in the *Incubator Order* are similarly repealed and unavailable to applicants.

2. The Bureau finds that notice and comment are unnecessary for these rule amendments under 5 U.S.C. § 553(b), because this ministerial order merely implements the mandate of the United States Court of Appeals for the Third Circuit, and the Commission lacks discretion to depart from this mandate.<sup>9</sup> Because this Order is being adopted without notice and comment, the Regulatory Flexibility Act<sup>10</sup> does not apply.

3. Accordingly, **IT IS ORDERED** that Section 73.3555 of the Commission's rules, 47 CFR § 73.3555, is amended as set forth in the Appendix, effective upon publication in the Federal Register.<sup>11</sup>

4. This action is taken pursuant to the authority contained in sections 1, 2(a), 4(i) and (j), 5(c), 257, 303, 307, 308, 309, 310, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 154(j), 155(c), 257, 303, 307, 308, 309, 310, and 403, section 202(h) of the Telecommunications Act of 1996, and sections 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283.

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<sup>6</sup> Nothing in this *Order* shall be construed to affect the right of the Commission or any other party to the *Prometheus* litigation to seek further review of the Third Circuit's decision in the U.S. Supreme Court, or to limit the Commission's discretion in the event that the Supreme Court were to take further action in that litigation.

<sup>7</sup> See *Second Report and Order*, 31 FCC Rcd at 9870-9952, paras. 17-215. For clarity, because the *Order on Reconsideration* is vacated in its entirety, the presumption under the Local Radio Ownership Rule that would apply a two-prong test for waiver requests involving existing parent markets with multiple embedded markets is repealed and unavailable to applicants. See *Order on Reconsideration*, 32 FCC Rcd at 9841-46, paras. 86-95. Note 5 to Section 73.3555 is reinstated with a reference to the streamlined procedures adopted in March 2019 for reauthorizing television satellite stations when such stations are assigned or transferred. See *Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations, Modernization of Media Regulation Initiative*, MB Docket No. 18-63, Report and Order, 34 FCC Rcd 1539 (2019).

<sup>8</sup> See *Second Report and Order*, 31 FCC Rcd 9960-10008, paras. 234-336. Apart from the portions of the order related to the now vacated eligible entity definition, the remainder of the *Second Report and Order* is in effect and provides additional guidance with respect to the reinstated rules.

<sup>9</sup> 5 U.S.C. § 553(b)(B); see also *EME Homer City Generation LP v. EPA*, 795 F.3d 118, 134 (D.C. Cir. 2015) (affirming agency good cause determination that notice and comment were unnecessary when a court order invalidated a rule and "commentators could not have said anything during a notice and comment period that would have changed that fact"); *Amendment of Part 95*, Order, 3 FCC Rcd 5032, 1988 WL 488084 \*2 (1988) (notice and comment unnecessary when revisions in an order "merely...delete redundant or obsolete rules").

<sup>10</sup> 5 U.S.C. §§ 601, *et seq.*

<sup>11</sup> While the effect of the court's mandate was to vacate certain rule changes and restore prior rules, as described above, we now undertake by this Order the ministerial step of amending our rules to reflect the court's mandate. Because of the need during the current broadcast station license renewal cycle to alert prospective applicants to the current, applicable rules, there is "good cause" under 5 U.S.C. § 553(d) to make the rules effective immediately upon publication in the Federal Register. See 5 U.S.C. § 553(d)(3) (stating that publication of a "substantive" rule shall be made not less than 30 days before its effective date, "except . . . as otherwise provided by the agency for good cause found and published with the rule").

5. The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief, Media Bureau

## APPENDIX

## Final Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334, 336, and 339.

2. Amend § 73.3555 by revising paragraph (b)(1); removing and reserving paragraph (b)(2); revising paragraphs (c) and (d); revising Note 2, Note 4, Note 5, Note 6, Note 7, and Note 9; and adding Note 12:

**§ 73.3555 Multiple ownership.**

\* \* \* \* \*

(b) *Local television multiple ownership rule.* An entity may directly or indirectly own, operate, or control two television stations licensed in the same Designated Market Area (DMA) (as determined by Nielsen Media Research or any successor entity) if:

(1) The digital noise limited service contours of the stations (computed in accordance with § 73.622(e)) do not overlap; or

(i) At the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and

(ii) At least 8 independently owned and operating, full-power commercial and noncommercial TV stations would remain post-merger in the DMA in which the communities of license of the TV stations in question are located. Count only those TV stations the digital noise limited service contours of which overlap with the digital noise limited service contour of at least one of the stations in the proposed combination. In areas where there is no DMA, count the TV stations present in an area that would be the functional equivalent of a TV market. Count only those TV stations digital noise limited service contours of which overlap with the digital noise limited service contour of at least one of the stations in the proposed combination.

(2) [Reserved]

(c) *Radio-television cross-ownership rule.*

(1) This rule is triggered when:

(i) The predicted or measured 1 mV/m contour of an existing or proposed FM station (computed in accordance with § 73.313) encompasses the entire community of license of an existing or proposed commonly owned TV broadcast station(s), or the principal community contour(s) of the TV broadcast station(s) (computed in accordance with § 73.625) encompasses the entire community of license of the FM station; or

(ii) The predicted or measured 2 mV/m groundwave contour of an existing or proposed AM station (computed in accordance with § 73.183 or § 73.186), encompasses the entire community of license of an existing or proposed commonly owned TV broadcast station(s), or the principal community contour(s) of the TV broadcast station(s) (computed in accordance with § 73.625) encompass(es) the entire community of license of the AM station.

(2) An entity may directly or indirectly own, operate, or control up to two commercial TV stations (if permitted by paragraph (b) of this section, the local television multiple ownership rule) and 1 commercial radio station situated as described in paragraph (c)(1) of this section. An entity may not exceed these numbers, except as follows:

(i) If at least 20 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to:

(A) Two commercial TV and six commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule); or

(B) One commercial TV and seven commercial radio stations (to the extent that an entity would be permitted to own two commercial TV and six commercial radio stations under paragraph (c)(2)(i)(A) of this section, and to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).

(ii) If at least 10 independently owned media voices would remain in the market post-merger, an entity can directly or indirectly own, operate, or control up to two commercial TV and four commercial radio stations (to the extent permitted by paragraph (a) of this section, the local radio multiple ownership rule).

(3) To determine how many media voices would remain in the market, count the following:

(i) TV stations: Independently owned and operating full-power broadcast TV stations within the DMA of the TV station's (or stations') community (or communities) of license that have digital noise limited service contours (computed in accordance with § 73.622(e)) that overlap with the digital noise limited service contour(s) of the TV station(s) at issue;

(ii) Radio stations:

(A)(1) Independently owned operating primary broadcast radio stations that are in the radio metro market (as defined by Arbitron or another nationally recognized audience rating service) of:

(i) The TV station's (or stations') community (or communities) of license; or

(ii) The radio station's (or stations') community (or communities) of license; and

(2) Independently owned out-of-market broadcast radio stations with a minimum share as reported by Arbitron or another nationally recognized audience rating service.

(B) When a proposed combination involves stations in different radio markets, the voice requirement must be met in each market; the radio stations of different radio metro markets may not be counted together.

(C) In areas where there is no radio metro market, count the radio stations present in an area that would be the functional equivalent of a radio market.

(iii) Newspapers: Newspapers that are published at least four days a week within the TV station's DMA in the dominant language of the market and that have a circulation exceeding 5% of the households in the DMA; and

(iv) One cable system: if cable television is generally available to households in the DMA. Cable television counts as only one voice in the DMA, regardless of how many individual cable systems operate in the DMA.

(d) *Newspaper/broadcast cross-ownership rule.*

(1) No party (including all parties under common control) may directly or indirectly own, operate, or control a daily newspaper and a full-power commercial broadcast station (AM, FM, or TV) if:

(i) The predicted or measured 2 mV/m groundwave contour of the AM station (computed in accordance with § 73.183 or § 73.186) encompasses the entire community in which the newspaper is published and, in areas designated as Nielsen Audio Metro markets, the AM station and the community of publication of the newspaper are located in the same Nielsen Audio Metro market;

(ii) The predicted or measured 1 mV/m contour of the FM station (computed in accordance with § 73.313) encompasses the entire community in which the newspaper is published and, in areas designated as Nielsen Audio Metro markets, the FM station and the community of publication of the newspaper are located in the same Nielsen Audio Metro market; or

(iii) The principal community contour of the TV station (computed in accordance with § 73.625) encompasses the entire community in which the newspaper is published; and the community of license of the TV station and the community of publication of the newspaper are located in the same DMA.

(2) The prohibition in paragraph (d)(1) of this section shall not apply upon a showing that either the newspaper or television station is failed or failing.

\* \* \* \* \*

**Note 2 to § 73.3555:**

In applying the provisions of this section, ownership and other interests in broadcast licensees, cable television systems and daily newspapers will be attributed to their holders and deemed cognizable pursuant to the following criteria:

a. Except as otherwise provided herein, partnership and direct ownership interests and any voting stock interest amounting to 5% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper will be cognizable;

b. Investment companies, as defined in 15 U.S.C. 80a-3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have a cognizable interest only if they hold 20% or more of the outstanding voting stock of a corporate broadcast licensee, cable television system or daily newspaper, or if any of the officers or directors of the broadcast licensee, cable television system or daily newspaper are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

c. Attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph i. of this note, attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph (i) of this note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of "Licensee," then X's interest in "Licensee" would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in "Licensee" would be 2.5% ( $0.1 \times 0.25$ ). Under the 5% attribution benchmark, X's interest in "Licensee" would be cognizable, while A's interest would not be cognizable. For purposes of paragraph i. of this note, X's interest in "Licensee" would be 15% ( $0.6 \times 0.25$ ) and A's interest in "Licensee" would be 1.5% ( $0.1 \times 0.6 \times 0.25$ ). Neither interest would be attributed under paragraph i. of this note.]

d. Voting stock interests held in trust shall be attributed to any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will. If the trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the grantor or beneficiary, as appropriate, will be attributed with the stock interests held in trust. An otherwise qualified trust will be ineffective to insulate the grantor or beneficiary from attribution with the trust's assets unless all voting stock interests held by the grantor or beneficiary in the relevant broadcast licensee, cable television system or daily newspaper are subject to said trust.

\* \* \*

g. Officers and directors of a broadcast licensee, cable television system or daily newspaper are considered to have a cognizable interest in the entity with which they are so associated. If any such entity engages in businesses in addition to its primary business of broadcasting, cable television service or newspaper publication, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a broadcast licensee, cable television system or daily newspaper, with an attributable interest in any such subsidiary entity, shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the broadcast licensee, cable television system or daily newspaper subsidiary, and a statement properly documenting this fact is submitted to the Commission. [This statement may be included on the appropriate Ownership Report.] The officers and directors of a sister corporation of a broadcast licensee, cable television system or daily newspaper shall not be attributed with ownership of these entities by virtue of such status.

h. Discrete ownership interests will be aggregated in determining whether or not an interest is cognizable under this section. An individual or entity will be deemed to have a cognizable investment if:

1. The sum of the interests held by or through "passive investors" is equal to or exceeds 20 percent; or
2. The sum of the interests other than those held by or through "passive investors" is equal to or exceeds 5 percent; or

3. The sum of the interests computed under paragraph h. 1. of this note plus the sum of the interests computed under paragraph h. 2. of this note is equal to or exceeds 20 percent.

i.1. Notwithstanding paragraphs e. and f. of this Note, the holder of an equity or debt interest or interests in a broadcast licensee, cable television system, daily newspaper, or other media outlet subject to the broadcast multiple ownership or cross-ownership rules (“interest holder”) shall have that interest attributed if:

A. The equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that media outlet; and

B.(i) The interest holder also holds an interest in a broadcast licensee, cable television system, newspaper, or other media outlet operating in the same market that is subject to the broadcast multiple ownership or cross-ownership rules and is attributable under paragraphs of this note other than this paragraph i.; or

(ii) The interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held. For purposes of applying this paragraph, the term, “market,” will be defined as it is defined under the specific multiple ownership rule or cross-ownership rule that is being applied, except that for television stations, the term “market,” will be defined by reference to the definition contained in the local television multiple ownership rule contained in paragraph (b) of this section.

2. Notwithstanding paragraph i.1. of this Note, the interest holder may exceed the 33 percent threshold therein without triggering attribution where holding such interest would enable an eligible entity to acquire a broadcast station, provided that:

i. The combined equity and debt of the interest holder in the eligible entity is less than 50 percent, or

ii. The total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity. For purposes of this paragraph i.2, an “eligible entity” shall include any entity that qualifies as a small business under the Small Business Administration’s size standards for its industry grouping, as set forth in 13 CFR 121.201, at the time the transaction is approved by the FCC, and holds:

A. 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

B. 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

C. More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

j. “Time brokerage” (also known as “local marketing”) is the sale by a licensee of discrete blocks of time to a “broker” that supplies the programming to fill that time and sells the commercial spot announcements in it.

1. Where two radio stations are both located in the same market, as defined for purposes of the local radio ownership rule contained in paragraph (a) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a), (c), and (d) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

2. Where two television stations are both located in the same market, as defined in the local television ownership rule contained in paragraph (b) of this section, and a party (including all parties under common control) with a cognizable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (b), (c), (d) and (e) of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station.

3. Every time brokerage agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the provisions of paragraphs (b), (c), and (d) of this section if the brokering station is a television station or with paragraphs (a), (c), and (d) of this section if the brokering station is a radio station.

k. "Joint Sales Agreement" is an agreement with a licensee of a "brokered station" that authorizes a "broker" to sell advertising time for the "brokered station."

1. Where two radio stations are both located in the same market, as defined for purposes of the local radio ownership rule contained in paragraph (a) of this section, and a party (including all parties under common control) with a cognizable interest in one such station sells more than 15 percent of the advertising time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a), (c), and (d) of this section.

2. Where two television stations are both located in the same market, as defined for purposes of the local television ownership rule contained in paragraph (b) of this section, and a party (including all parties under common control) with a cognizable interest in one such station sells more than 15 percent of the advertising time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (b), (c), (d), and (e) of this section.

3. Every joint sales agreement of the type described in this Note shall be undertaken only pursuant to a signed written agreement that shall contain a certification by the licensee or permittee of the brokered station verifying that it maintains ultimate control over the station's facilities, including, specifically, control over station finances, personnel and programming, and by the brokering station that the agreement complies with the limitations set forth in paragraphs (b), (c), and (d) of this section if the brokering station is a television station or with paragraphs (a), (c), and (d) of this section if the brokering station is a radio station.

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**Note 4 to § 73.3555:**

Paragraphs (a) through (d) of this section will not be applied so as to require divestiture, by any licensee, of existing facilities, and will not apply to applications for assignment of license or transfer of control filed in accordance with § 73.3540(f) or § 73.3541(b), or to applications for assignment of license or

transfer of control to heirs or legatees by will or intestacy, or to FM or AM broadcast minor modification applications for intra-market community of license changes, if no new or increased concentration of ownership would be created among commonly owned, operated or controlled media properties. Paragraphs (a) through (d) of this section will apply to all applications for new stations, to all other applications for assignment or transfer, to all applications for major changes to existing stations, and to all other applications for minor changes to existing stations that seek a change in an FM or AM radio station's community of license or create new or increased concentration of ownership among commonly owned, operated or controlled media properties. Commonly owned, operated or controlled media properties that do not comply with paragraphs (a) through (d) of this section may not be assigned or transferred to a single person, group or entity, except as provided in this Note, the Report and Order in Docket No. 02-277, released July 2, 2003 (FCC 02-127), or the Second Report and Order in MB Docket No. 14-50, FCC 16-107 (released August 25, 2016).

\* \* \* \* \*

**Note 5 to § 73.3555:**

Paragraphs (b) through (e) of this section will not be applied to cases involving television stations that are "satellite" operations. Such cases will be considered in accordance with the analysis set forth in the Report and Order in MM Docket No. 87-8, FCC 91-182 (released July 8, 1991), as further explained by the Report and Order in MB Docket No. 18-63, FCC 19-17, (released March 12, 2019), in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest. An authorized and operating "satellite" television station, the digital noise limited service contour of which overlaps that of a commonly owned, operated, or controlled "non-satellite" parent television broadcast station, or the principal community contour of which completely encompasses the community of publication of a commonly owned, operated, or controlled daily newspaper, or the community of license of a commonly owned, operated, or controlled AM or FM broadcast station, or the community of license of which is completely encompassed by the 2 mV/m contour of such AM broadcast station or the 1 mV/m contour of such FM broadcast station, may subsequently become a "non-satellite" station under the circumstances described in the aforementioned Report and Order in MM Docket No. 87-8. However, such commonly owned, operated, or controlled "non-satellite" television stations and AM or FM stations with the aforementioned community encompassment, may not be transferred or assigned to a single person, group, or entity except as provided in Note 4 of this section. Nor shall any application for assignment or transfer concerning such "non-satellite" stations be granted if the assignment or transfer would be to the same person, group or entity to which the commonly owned, operated, or controlled newspaper is proposed to be transferred, except as provided in Note 4 of this section.

**Note 6 to § 73.3555:**

For purposes of this section a daily newspaper is one which is published four or more days per week, which is in the dominant language in the market, and which is circulated generally in the community of publication. A college newspaper is not considered as being circulated generally.

**Note 7 to § 73.3555:**

The Commission will entertain applications to waive the restrictions in paragraph (b) and (c) of this section (the local television ownership rule and the radio/television cross-ownership rule) on a case-by-case basis. In each case, we will require a showing that the in-market buyer is the only entity ready, willing, and able to operate the station, that sale to an out-of-market applicant would result in an artificially depressed price, and that the waiver applicant does not already directly or indirectly own, operate, or control interest in two television stations within the relevant DMA. One way to satisfy these

criteria would be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the permit, and that no reasonable offer from an entity outside the market has been received.

We will entertain waiver requests as follows:

1. If one of the broadcast stations involved is a “failed” station that has not been in operation due to financial distress for at least four consecutive months immediately prior to the application, or is a debtor in an involuntary bankruptcy or insolvency proceeding at the time of the application.
2. For paragraph (b) of this section only, if one of the television stations involved is a “failing” station that has an all-day audience share of no more than four per cent; the station has had negative cash flow for three consecutive years immediately prior to the application; and consolidation of the two stations would result in tangible and verifiable public interest benefits that outweigh any harm to competition and diversity.
3. For paragraph (b) of this section only, if the combination will result in the construction of an unbuilt station. The permittee of the unbuilt station must demonstrate that it has made reasonable efforts to construct but has been unable to do so.

\* \* \* \* \*

**Note 9 to § 73.3555**

Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605–1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535–1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM station license in the 1605–1705 kHz band by an entity that owns, operates, controls or has a cognizable interest in AM radio stations in the 535–1605 kHz band.

\* \* \* \* \*

**Note 12 to § 73.3555**

Parties seeking waiver of paragraph (d)(1) of this section, or an exception pursuant to paragraph (d)(2) of this section involving failed or failing properties, should refer to the Second Report and Order in MB Docket No. 14–50, FCC 16–107 (released August 25, 2016).

\* \* \* \* \*