



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MB Docket No. 17-318; FCC 17-169]**

**National Television Multiple Ownership Rule**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This Notice of Proposed Rulemaking (NPRM) initiates a comprehensive review of the national television audience reach cap, including the UHF discount used by broadcasters to determine compliance with the cap. The national cap limits entities from owning or controlling television stations that, together, reach more than 39 percent of the television households in the country. The NPRM asks questions about whether a cap is still needed and what public interest goals it would promote, where the cap should be set if still needed, and how compliance with the cap should be calculated, including the question of whether the UHF discount should be eliminated. The Notice also invites comment on the Commission's legal authority to take such actions.

**DATES:** Comments are due on or before **[INSERT DATE 30 DAYS AFTER**

**PUBLICATION IN THE FEDERAL REGISTER]**. Reply Comments are due on or before

**[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested parties may submit comments and replies, identified by MB Docket No. 17-318, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For more detailed filing instructions, see the Procedural Matters section below.

**FOR FURTHER INFORMATION CONTACT:** Brendan Holland, Industry Analysis Division, Media Bureau, [Brendan.Holland@fcc.gov](mailto:Brendan.Holland@fcc.gov) (202) 418-2757.

**SUPPLEMENTARY INFORMATION:** This NPRM in MB Docket No. 17-318, was adopted December 14, 2017, and released December 18, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, 445 12<sup>th</sup> Street, SW., Room CY-A257, Washington, DC 20554, or online at

[https://apps.fcc.gov/edoc\\_public/attachmatch/FCC-17-169A1.pdf](https://apps.fcc.gov/edoc_public/attachmatch/FCC-17-169A1.pdf). To request this document in accessible formats for people with disabilities (e.g. braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (e.g. accessible format documents, sign language interpreters, CART, etc.), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## **SYNOPSIS**

1. Background. The national television audience reach cap and the related UHF discount are an outgrowth of television ownership restrictions dating back to the earliest days of broadcast television. The Commission first imposed national ownership restrictions for television stations in 1941 by limiting the number of stations that could be commonly owned, operated, or controlled to three. This limit was eventually broadened to seven stations in 1954 and eventually to 12 stations in 1984. In 1985, the Commission also determined that a 25 percent nationwide audience reach cap, in addition to the twelve-station limit, would help prevent a potentially disruptive industry restructuring. Along with the

national cap, the Commission also adopted a 50 percent UHF discount to reflect the fact that, in the analog television broadcasting era, UHF signals reached a smaller audience in comparison with VHF signals. The UHF discount provides that, for purposes of determining compliance with the national audience reach cap, stations broadcasting in the VHF spectrum are attributed with all television households in their Designated Market Areas (DMAs), while UHF stations are attributed with only 50 percent of the households in their DMAs.

2. In the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission to amend its rules to increase the national audience reach cap from 25 percent to 35 percent and eliminate the restriction on owning more than 12 broadcast television stations nationwide. The Commission reaffirmed the 35 percent cap in its 1998 Biennial Review Order, but the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) later remanded that decision, finding that the Commission had failed to demonstrate that the 35 percent national audience reach cap advanced localism, diversity, or competition. In the 2002 Biennial Review Order, the Commission found that while a national ownership cap was no longer needed to protect diversity and competition, the cap remained necessary to protect localism. The Commission further concluded that raising the cap from 35 percent to 45 percent would strike an appropriate balance between the broadcast networks and the local affiliates by permitting some growth for the owners of the Big Four networks (ABC, CBS, Fox, and NBC) and allowing them to achieve greater economies of scale, while at the same time ensuring that the networks could not reach a larger national audience than their affiliates collectively.

3. Following adoption of the 2002 Biennial Review Order, and while an appeal of that order was pending, Congress partially rolled back the cap increase by including a provision in the 2004 Consolidated Appropriations Act (CAA) directing the Commission “to modify its rules to set the national cap at 39 percent of national television households.” The CAA further amended Section 202(h) of the 1996 Act to require a quadrennial review of the Commission’s broadcast ownership rules, rather than the previously mandated biennial review. In doing so, however, Congress excluded consideration of “any

rules relating to the 39 percent national audience reach limitation” from the quadrennial review requirement. Prior to the enactment of the CAA, several parties had appealed the Commission’s 2002 Biennial Review Order to the U.S. Court of Appeals for the Third Circuit (Third Circuit). In June 2004, the Third Circuit found that the challenges to the Commission’s actions with respect to the national audience reach cap and the UHF discount were moot as a result of Congress’s action.

4. In August 2016, the Commission eliminated the UHF discount, finding that UHF stations were no longer technically inferior to VHF stations following the digital television transition and that the competitive disparity between UHF and VHF stations had disappeared. Then-Commissioner Pai and Commissioner O’Rielly dissented from this decision. In April 2017, in response to a Petition for Reconsideration, the Commission reinstated the UHF discount, finding that the Commission’s elimination of the discount, effectively tightening the cap without also determining whether the cap remained in the public interest, was arbitrary and capricious and unwise from a public policy perspective. Because the UHF discount is used to determine licensees’ compliance with the national audience reach cap, the Commission concluded that the UHF discount and the cap are inextricably linked, and eliminating the discount without considering the cap itself was in error. In reinstating the UHF discount, the Commission committed to undertake this comprehensive rulemaking to determine whether to modify or eliminate the national cap, including the UHF discount.

5. Commission Authority to Modify or Eliminate the National Cap. As an initial matter, the Commission seeks comment on its authority to modify or eliminate the national cap, including authority to modify or eliminate the UHF discount. The Commission previously concluded in the UHF Discount Elimination Order that the Commission has authority to modify or eliminate the 39 percent national audience reach cap, including the UHF discount (although it refrained from adjusting the cap). The Commission found that it had such authority based on its broad authority to adopt—and revise or eliminate—all necessary rules under the Communications Act. In contrast, parties opposing reinstatement

of the UHF discount on reconsideration argued variously that the Commission lacked authority to modify or eliminate the national cap, the UHF discount, or both.

6. In previously concluding that it has authority to modify or eliminate the national cap, the Commission rejected arguments that, when Congress established the 39 percent national audience reach cap, it precluded the Commission from any adjustment of the cap or the discount. The Commission reasoned that the 2004 CAA “simply directed the Commission to revise its rules to reflect a 39 percent national audience reach cap and removed the requirement to review the national ownership cap from the Commission’s quadrennial review requirement.” The Commission concluded that the CAA did not impose a statutory national audience reach cap or prohibit the Commission from evaluating the elements of this rule. In addition, although the Third Circuit ultimately concluded in its review of the Commission’s 2002 Biennial Review Order that questions related to the UHF discount were moot as a result of the CAA, it did not foreclose the Commission’s consideration of its regulation defining the UHF discount in a rulemaking outside the context of section 202(h). Further, Congress elected to use the same language in the 2004 CAA, instructing the Commission to “modify its rules,” as it did when it instructed the Commission to change the cap from 25 to 35 percent as part of the 1996 Act. Both the D.C. Circuit (in finding it was arbitrary and capricious for the Commission to *retain* that cap as part of the 1998 biennial review) and the Commission itself (in subsequently raising the cap from 35 to 45 percent) interpreted the identical language in the 1996 Act as preserving the Commission’s authority to modify the cap in the future.

7. The Commission further based its finding of authority to modify the cap and discount on its broad authority to adopt rules necessary to carry out the provisions of the Communications Act, and its authority to revisit its rules and revise or eliminate them as appropriate. Given continued questions regarding authority in this area, the Commission seeks further comment on its prior conclusion that it has authority to modify or eliminate the national audience reach cap and the UHF discount. The Commission asks whether Congress’s exclusion of the national cap from the quadrennial review provision merely

meant to relieve the Commission of the *obligation* to reconsider the cap every four years (as the Third Circuit concluded), or was it designed to withhold the Commission's authority to change the cap as set by Congress. The Commission also asks whether Congress's instruction to the Commission to "modify its rules" in 1996 and 2004, rather than simply mandating a specific national audience reach cap, preserves the Commission's traditional statutory authority to alter or eliminate the cap in a future rulemaking.

8. Modification of Elimination of the National Audience Reach Cap. The Commission seeks comment on whether there is still a need for a national cap that prevents ownership of stations that collectively reach more than a certain percentage of the television households in the country. The Commission asks whether such a cap serves the public interest. The Commission notes at the outset that the video marketplace has changed considerably since it last considered the national cap in the 2002 Biennial Review Order, and since Congress instructed the Commission to set a 39 percent cap in 2004. The Commission's most recent annual Video Competition Report describes, among other developments, the growth of video programming options available to consumers, including online alternatives to traditional video distribution, reverse compensation fees paid by affiliates to broadcast networks, common ownership of broadcast and cable networks, consolidation among both Multichannel Video Programming Distributors (MVPDs) and non-network owned station groups, and continuing MVPD video subscriber losses. The Commission concluded in the UHF Order on Reconsideration that the failure to consider these changes compounded the error of eliminating the UHF discount. Accordingly, the Commission now seeks comment on how these marketplace changes, as well as any other changes not previously mentioned, should be considered in the context of the possible modification or elimination of the national audience reach cap. For instance, the Commission previously found in its 2002 Biennial Review Order that a national audience reach cap set at some level is necessary in the public interest to promote localism. Specifically, the Commission found that a percentage cap maintains the appropriate balance of power between broadcast networks and their local affiliate groups, in part by preventing the excessive accumulation of audience reach by network-owned groups, which are more likely to hold stations in

multiple geographic markets with large populations. The Commission reasoned that a national audience reach cap preserves the leverage necessary for local affiliates to collectively negotiate to influence network programming decisions and exercise their rights to preempt network programming in favor of programming the affiliates feel is better suited to local community needs. In setting a 45 percent cap, the Commission found that a national audience reach cap set at that level would ensure that network-owned station groups could not achieve a level of direct audience reach that exceeds that of their local affiliates, while at the same time allowing for limited growth by each of the Big Four network owners, allowing them to achieve better economies of scale and scope and remain competitive.

9. The Commission now seeks comment on whether the existing cap is still necessary to promote localism. The Commission asks whether its previously articulated justifications—related to collective influence and preemption by local affiliates—still hold true, and whether localism has increased, decreased, or remained roughly the same over time. The Commission asks whether there are recent examples where local affiliates have influenced network programming to better serve local needs, and how recent affiliate preemption rates compare to those the Commission cited in the 2002 Biennial Review Order. The Commission asks whether there are other metrics by which it can assess the effect of the national audience reach cap on localism and whether, even if preserving a national audience reach cap at some level would promote localism, would modifying or eliminating the cap nevertheless have offsetting benefits (for example, in promoting competition or diversity).

10. The Commission also asks whether other changes in the marketplace have affected the network/affiliate relationship, such that it would need to adjust assumptions made in previous reviews of the cap. The Commission asks how the growth of independent station groups over the last two decades has changed the dynamic between network-owned station groups and their affiliates. The Commission notes that its interest in preserving a national/local balance between networks and affiliates is predicated upon the Commission's prior conclusion that networks and their affiliates have different economic incentives when it comes to serving local interests. The Commission previously has found that broadcast

networks primarily seek to air programming that will appeal to large national audiences, while local affiliates are more attuned to the needs of their local communities. The Commission seeks comment on these prior conclusions, including whether the conclusion that local affiliates are more attuned to local needs is still valid and whether it continues to apply equally to all local affiliates. The Commission also asks whether the size of the station group affects this conclusion.

11. The Commission also seeks comment on whether there are other justifications for a national audience reach cap besides localism. In the 2002 Biennial Review Order, for example, the Commission noted in its competition discussion that the national cap appeared to encourage innovation in broadcast television by preserving a number of separately-owned station groups and then concluded that a variety of owners had led to innovative programming formats and technical advances. The Commission pointed to new programming formats developed by non-network owned affiliates, such as all-news channels and local news magazines, and the potential for experimentation in the use of digital spectrum as part of the digital television transition. The Commission now seeks comment on whether these prior conclusions have proven true over time and whether they remain true today. The Commission asks whether the variety of owners on a national level produced by the national audience reach cap continues to promote innovation in the marketplace, or whether there are ways in which the national audience reach cap hinders innovation.

12. The Commission previously has found that a national television ownership restriction is not necessary to promote the goals of competition or diversity. The Commission first reached this conclusion in 1984 when, regarding competition, it recognized the relevance of advertising to measuring competition in national and local television markets, and concluded that, for the local spot advertising market, the local television ownership rule rather than a national ownership rule would best address any risk of competitive harm. Regarding diversity, the Commission concluded that national broadcast ownership limits, as opposed to local ownership limits, ordinarily are not pertinent to assuring a diversity of views. The Commission nonetheless set a national audience reach cap to avoid any rapid restructuring of the



industry that might be caused by its decision the previous year to raise the numerical cap from seven to twelve stations. The Commission now asks whether these previous conclusions are still valid, and whether any other goals supporting national ownership limits should be considered in this proceeding.

13. In addition, the Commission seeks comment on whether changes in the marketplace warrant a fresh look at the national television ownership rule's impact on competition or diversity at either the local or national level. The Commission asks how marketplace changes have affected competition in the local broadcast television market or any other relevant markets. The Commission notes that other video distributors, including direct broadcast satellite providers and online video programmers, are not restricted by ownership limits. The Commission asks whether the cap, or the current level of the cap, have any negative impact on competition or diversity, and how any modification of the cap might affect these goals. The Commission asks whether marketplace changes have affected the relationships and business dealings between local broadcasters and other video distributors in ways that would justify retention, modification, or elimination of the national audience reach cap. The Commission notes that it has rules in place related to the distribution of video programming and carriage negotiations between broadcast stations and MVPDs (local exclusivity and retransmission consent negotiation rules) and asks whether the existence of these rules in any way informs the consideration of whether to retain, modify, or eliminate the cap. The Commission asks, for example, whether the rules have affected the relationships and business dealings between local broadcasters and other video distributors in ways that might affect the need for and operation of any national audience reach cap. The Commission also asks whether the cap serves any competition or diversity purpose related to the production or purchase of programming (e.g., syndicated programming).

14. If the Commission concludes that a national audience reach cap remains in the public interest, it asks at what level it should be set. The Commission asks whether a 39 percent cap still makes sense, or whether the cap should be set at a different level. The Commission has not articulated a justification for the cap in well over a decade, and the last time it did, it concluded that the cap should be

raised from 35 to 45 percent. Congress subsequently scaled back the Commission's 45 percent cap to the current 39 percent level in 2004. Commenters urging the Commission to retain the 39 percent cap or to adjust it either upward or downward should provide a reasoned basis for any proposed line-drawing. The Commission also seeks comment on whether the national audience reach cap should apply equally to all ownership groups (e.g., groups that are network-owned or affiliated with cable networks versus those that are not). The Commission asks whether audience reach is the proper measurement to use for the cap (as opposed to some other measurement of a station group's size or influence, such as actual viewership, market share, or amount of advertising revenue). The Commission asks whether it should consider alternatives with some built-in flexibility; for instance, alternatives that might employ the use of a threshold screen that would trigger a more detailed analysis, such as an automatic presumption or a safe harbor, either in lieu of or in addition to a bright line cap. If the Commission were to modify the national audience reach cap, it asks whether this action would affect any barriers to entry (either positively or negatively), including entry by women, minority, or small business owners.

15. *Determining Compliance with a National Cap.* Assuming the Commission retains a national audience reach cap at some level, it seeks comment on how to calculate compliance, including possible modification or elimination of the UHF discount. If the Commission determines that it has authority to adjust the national cap and that a national cap remains necessary in the public interest, it asks what, if any, changes it should make to the rules for determining licensees' compliance with that cap.

16. Initially, the Commission seeks comment on whether to eliminate the UHF discount. Notably, no commenter in the prior UHF discount proceedings presented evidence that the original technical justification for the discount is still valid, and the Commission in the UHF Discount Order on Reconsideration did not disturb its earlier conclusion that the UHF discount no longer has a sound technical basis following the digital television transition. The Commission seeks further comment on this prior conclusion, as well as on the importance of any non-technical justifications for the UHF discount that remain relevant. For example, the Commission noted in the UHF Discount Order on

Reconsideration the industry's reliance on the UHF discount to develop long-term business strategies.

Parties seeking reinstatement of the UHF discount described how they used the UHF discount to build new networks that provide innovative, competitive programming. The Commission seeks comment on whether eliminating the UHF discount would, on balance, serve the public interest and whether the current UHF discount causes harm to consumers or presents other drawbacks to retaining it.

17. The Commission also seeks comment on whether the UHF discount should be modified or whether it should be supplemented or replaced with some other weighting method for determining compliance with any national limit on ownership of broadcast stations. The Commission asks whether there are other station or market characteristics that would warrant discounting or weighting a station's audience reach when determining compliance with a national cap. The Commission previously sought comment on and declined to adopt a VHF discount, acknowledging that UHF spectrum is now generally considered more desirable than VHF spectrum for digital television broadcasting, but finding insufficient evidence to conclude that VHF operations are universally inferior to UHF operations or that VHF stations' economic viability was sufficiently in jeopardy to warrant a VHF discount. The Commission seeks comment on these previous conclusions as well as whether there are other discounts or weights it should consider as part of a national ownership rule. The Commission asks how, if at all, it should account for the fact that many consumers today receive local broadcast stations via an MVPD, rather than over the air, in considering any discount or weight premised on a disparity in over-the-air coverage.

18. The Commission seeks comment on the impact that elimination of the UHF discount would have on the operation or effectiveness of a national audience reach cap. In the UHF Discount Order on Reconsideration, the Commission concluded that the elimination of the UHF discount effectively tightened the national cap. Therefore, if the Commission eliminates the UHF discount, the Commission asks whether it should simultaneously raise the national cap and by how much, assuming it finds that it has authority to do so. The Commission asks whether the UHF discount serves the underlying purposes of the national cap, namely, the preservation of a balance of power between broadcast networks and local

affiliates, and how, if at all, elimination of the discount would alter that network/affiliate dynamic. The Commission asks whether the UHF discount benefits certain types of station group owners more than others (e.g., non-Big Four networks versus Big Four networks), and how its elimination would affect such owners. The Commission also seeks comment on how eliminating the UHF discount would affect not only the local television market, but the broader video marketplace as a whole.

19. *Benefit-Cost Analysis.* In addition, the Commission seeks comment on how to compare the benefits and costs associated with modifying or eliminating the national cap, including the UHF discount. The Commission asks commenters supporting modification or elimination of the current 39 percent audience reach cap or the UHF discount to explain the anticipated economic impact of any proposed action and, where possible, to quantify benefits and costs of proposed actions and alternatives. The Commission asks whether the current national audience reach cap creates benefits or costs for any segment of consumers. The Commission asks whether the cap creates benefits or costs for any segment of the industry that should be counted as social benefits or costs rather than transfers from one segment of the industry to another. The Commission asks how the cap creates these benefits and costs, and what evidence supports this explanation. The Commission asks how the value of these benefits and costs can be measured for parties receiving them, what factors create uncertainty about the existence or size of these benefits and costs, and how its economic analysis should take these uncertainties into account.

20. The Commission asks how elimination of the national audience reach cap would alter these benefits and costs, and the comparative benefits and costs of modifying the cap upward rather than eliminating it entirely. The Commission asks whether allowing station groups to exceed the current 39 percent cap leads to any consumer benefits, such as increased competition, choice, innovation, or investment in programming, and what amount of additional scale above the current ownership limit would be required to realize such benefits. The Commission asks the comparative benefits and costs of lowering the cap. Commenters making claims about benefits and costs should support their claims with relevant economic theory and evidence, including empirical analysis and data.

21. Comparison of benefits and costs allows the Commission to identify the most economically efficient policy—that is, the policy that maximizes the value of resources from the perspective of consumers. The Commission asks whether it should seek to preserve a level of localism or other policy outcomes that do not maximize economic efficiency or consumer welfare, what public interest reasons support such actions, and what evidence justifies the elevation of these other public interest considerations over consumer welfare. The Commission asks what limiting principle the Commission should employ to determine when these alternative public interest considerations are satisfied, and what evidence demonstrates that the commenter’s preferred policy alternative is likely to achieve the appropriate level of localism or other desired outcome, as determined by these other public interest considerations.

22. *Relationship to Other Commission Rules.* Prior to 2004, when Congress expressly excluded review of the national audience reach cap from the Commission’s quadrennial review process, the national cap typically had been considered in conjunction with the Commission’s other media ownership rules. For example, when the Commission raised the limit on the number of stations a broadcaster could own to twelve, it also adopted a limit on the total national audience reach of station groups. To ensure a comprehensive review, the Commission seeks comment on the interplay between the national audience reach cap and other Commission ownership rules affecting television broadcasters. First, the Commission seeks comment on how, if at all, its local television ownership rule, which limits consolidation within local markets, should be taken into account in analyzing whether to modify or eliminate the national cap, which limits consolidation on a national level. Second, the Commission invites comment on how, if at all, it should consider the future decisions of television broadcasters to adopt the “Next Generation” transmission standard (or ATSC 3.0) on a voluntary basis. Finally, the Commission seeks comment on whether it should consider the potential impact on any other Commission rule or action in analyzing whether to modify or eliminate the national cap or UHF discount.

23. Grandfathering. To the extent that any rule the Commission adopts as a result of this proceeding causes a station owner to no longer be in compliance with the national audience reach cap or to violate any new limit, the Commission seeks comment on whether it should grandfather such ownership combinations as it has in the past. The Commission further seeks comment as to whether there should be any restrictions on the further transferability of any grandfathered stations. The Commission notes that, in the UHF Discount Elimination Order, it grandfathered station combinations that would exceed the 39 percent cap as a result of elimination of the UHF discount, but would have required any grandfathered ownership combination subsequently sold or transferred to comply with the national ownership cap in existence at the time of transfer. Subsequently, the UHF Discount Order on Reconsideration reinstated the UHF discount and dismissed as moot requests to reconsider and modify grandfathering provisions.

24. Given this history, and recognizing broadcaster interest in maintaining the economies of scale and scope achieved through station combinations, if the Commission modifies the cap and/or the UHF discount, the Commission seeks comment on whether it should allow full, intact transferability without divestitures of grandfathered station groups. If the Commission adopts a rule change as a result of this proceeding that necessitates the grandfathering of existing, noncompliant station groups, it seeks comment on the appropriate date for triggering such grandfathering. The Commission also seeks comment on any other alternatives to grandfathering and transferability of non-compliant station groups. Finally, the Commission seeks comment on any new grandfathering issues arising from the questions posed in this NPRM or presented in initial comments filed in response.

## **PROCEDRAL MATTERS**

25. Ex Parte Presentations. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period

applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the Electronic Comment Filing System available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

26. Filing Procedures. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

27. Availability of Documents. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12<sup>th</sup> Street SW, CY-A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

28. Additional Information. For additional information on this proceeding, please contact Brendan Holland of the Media Bureau, Industry Analysis Division, [Brendan.Holland@fcc.gov](mailto:Brendan.Holland@fcc.gov), (202) 418-2757.

29. Paperwork Reduction Act Notice. The Commission seeks comment on whether, based on this NPRM, it should adopt any new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995 invites the general public and the Office of Management and Budget to comment on any such information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.



30. Initial Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Act Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this NPRM. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified above. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

31. Need for, and Objectives of, the Proposed Rules. This NPRM seeks comment on the Commission's national television audience reach cap, including the discount afforded to UHF stations. Earlier this year, the Commission reinstated the UHF discount, which provides a 50 percent discount to UHF stations for purposes of calculating compliance with the 39 percent audience reach cap. In reinstating the discount, the Commission found that the earlier decision to eliminate the discount had effectively tightened the cap without considering whether the overall cap remained in the public interest, particularly in light of changes to the video marketplace. The Commission found this action to be arbitrary and capricious and unwise from a public policy perspective. This NPRM seeks to rectify the Commission's prior error and undertake a broader assessment of the national audience cap, including the UHF discount. This NPRM asks whether the Commission should modify or eliminate the current 39 percent national audience reach cap, and whether to grandfather any newly non-compliant combinations and if so, how.

32. Legal Basis. The legal basis for any action that may be taken pursuant to this NPRM is contained in Sections 1, 2(a), 4(i), 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended.

33. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Apply. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA

generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act (SBA). 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. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

34. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The Small Business Administration has created the following small business size standard for such businesses: those having \$38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, 25 had annual receipts between \$25,000,000 and \$49,999,999 and 70 had annual receipts of \$50,000,000 or more. Based on this data, the Commission estimates that the majority of commercial television broadcasters are small entities under the applicable size.

35. Additionally, the Commission has estimated the number of licensed commercial television stations to be 1,378. Of this total, 1,263 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on May 9, 2017, and therefore these licensees qualify as small entities under the SBA definition.

36. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, 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 estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

37. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. If the Commission determines that it should modify or eliminate the current 39 percent national audience reach cap or permanently eliminate or modify the UHF discount, this action could require modification of certain FCC forms and their instructions, possibly including: (1) FCC Form 301, Application for Construction Permit for Commercial Broadcast Station; (2) FCC Form 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License; and (3) FCC Form 315, Application for Consent to Transfer Control of Corporation Holding Broadcast Station Construction Permit or License. The Commission may also have to modify other forms that include in their instructions the media ownership rules or citations to media ownership proceedings, including Form 303-S, Application for Renewal License for AM, FM, TV, Translator, or LPTV Station and Form 323, Ownership Report for Commercial Broadcast Station. The impact of these changes will be the same on all entities, and the Commission does not anticipate that compliance will require the expenditure of any additional resources or place additional burdens on small businesses.

38. Steps Taken to Minimize Significant Impact on Small Entities and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among

others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

39. The Commission has previously concluded that the national audience reach cap is intended to promote its public interest goal of localism. We seek comment on whether this rule or any modified rule is necessary at this time to serve localism and, if not, whether any rule is necessary to serve our goals of viewpoint diversity and competition in the video marketplace or other goals such as innovation. The NPRM seeks comment on the need for, and efficacy of, a national audience reach cap and UHF discount or other type of limit in light of significant changes in the video marketplace since the Commission last reviewed the cap and discount together. Assuming some limit is necessary, the NPRM seeks comment on whether the Commission should retain or modify the existing audience reach cap and UHF discount; retain the audience reach cap but adopt a different weighting methodology; adopt a limit based on some other measurement of a station group's size or influence, such as actual viewership, market share, or advertising revenue; or adopt a more flexible alternative such as a threshold screen that would trigger a more detailed analysis, an automatic presumption or safe harbor, either in lieu of or in addition to a bright line cap. The NPRM invites comment on the effects of any proposed rule changes on different types of broadcasters (e.g., independent or network-affiliated), the costs and benefits associated with any proposals, and any potential to have significant impact on small entities. The Commission expects to further consider the economic impact on small entities following its review of comments filed in response to the NPRM and this IRFA.

40. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rule. None.

41. Ordering Clauses. Accordingly, it is ordered that, pursuant to the authority contained in Sections 1, 2(a), 4(i), 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended the NPRM is adopted.

42. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

## **FEDERAL COMMUNICATIONS COMMISSION**

Marlene H. Dortch,  
Secretary.

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