The Director shall make the final agency determination of eligibility within thirty (30) days after expiration of the comment period. The notice of final determination shall set forth the findings of fact and conclusions of law supporting the determination. The Director's determination shall be the final agency decision.

(j) No payment of any portion of a death benefit, except interim benefits payable under § 32.16, shall be made until all hearings and reviews which may affect that payment have been completed.

Appendix to Part 32—PSOB Hearing and Appeal Procedures

a. *Notification to Claimant of Denial.* These appeal procedures apply to a claimant's [1] request for reconsideration of a denial made by the Public Safety Officers' Benefits (PSOB) Office (the PSOB Office). The denial letter will advise the claimant of the findings of fact and conclusions of law supporting the PSOB Office's determination, and of the appeal procedures available under § 32.24 of the PSOB regulations. A copy of every document in the case file that (1) contributed to the determination, and (2) was not provided by the claimant shall also be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The attached material might typically include medical opinions offered by the Armed Forces Institute of Pathology, legal memoranda from the Office of General Counsel of the Office of Justice Programs, or memoranda to the file prepared by PSOB Office staff. A copy of the PSOB regulations shall also be enclosed.

b. *Receipt of Appeal.* 1. When an appeal has been received, the PSOB Office will assign the case, and transmit the complete case file to a hearing officer. Assignments will be made in turn, from a standing roster, except in those cases where a case is particularly suitable to a specific hearing officer's experience.

2. The PSOB Office will inform the claimant of the name of the hearing officer, request submission of all evidence to the hearing officer, and send a copy of this appeals procedure. If an oral hearing is requested, the PSOB Office will be responsible for scheduling the hearing and making the required travel arrangements.

3. The PSOB Office will be responsible for providing all administrative support to the hearing officer. An attorney from the Office of General Counsel (OGC) who has not participated in the consideration of the claim will provide legal advice to the hearing officer. The hearing officer is encouraged to solicit the advice of the assigned OGC attorney on all questions of law.

4. Prior to the hearing, the hearing officer shall request the claimant to provide a list of expected witnesses, and a brief summary of their anticipated testimony.

[1] As used in this procedure, the word "claimant" means a claimant for benefits or, where appropriate, the claimant's designated representative.

c. *Designation of Hearing Officers.* A. In an internal instruction the BJA Director designated a roster of hearing officers to hear PSOB appeals.

1. The hearing officers are specifically delegated the Director's authority to:

(i) Issue subpoenas;

(ii) Administer oaths;

(iii) Examine witnesses; and

(iv) Receive evidence at any place in the United States the officer may designate.

d. *Conduct of the Oral Hearing.* A. If requested, an oral hearing shall be conducted before the hearing officer in any location agreeable to the officer and the claimant.

1. The hearing officer shall call the hearing to order and advise the claimant of (1) the findings of fact and conclusions of law supporting the initial determination; (2) the nature of the hearing officer's authority; and (3) the manner in which the hearing will be conducted and a determination reached.

2. In conducting the hearing, the hearing officer shall not be bound by common law or statutory rules of evidence, by technical or formal rules or procedures, or by Chapter 5 of the Administrative Procedure Act, but must conduct the hearing in such a manner as to best ascertain the rights of the claimant.

3. The hearing officer shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as the hearing officer may determine to be necessary or useful in evaluating the claim.

4. Evidence may be presented orally or in the form of written statements and exhibits. All witnesses shall be sworn by oath or affirmation.

5. If the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing may be adjourned and, at any time prior to the mailing of notice of the decision, reopened for the receipt of such evidence. The officer should, in any event, seek to conclude the hearing within 30 days from the first day of the hearing.

6. All hearings shall be attended by the claimant and his or her representative, and such other persons as the hearing officer deems necessary and proper. The wishes of the claimant should always be solicited before any other persons are admitted to the hearing.

7. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

8. The hearing will be deemed closed on the day the hearing officer receives the last piece of evidence relevant to the proceeding.

9. If the claimant waives the oral hearing, the hearing officer shall receive all relevant written evidence the claimant wishes to submit. The hearing officer may ask the claimant to clarify, or explain the evidence submitted, when appropriate. The hearing officer should seek to close the record no later than 60 days after the claimant's request for reconsideration.

e. *Determination.* 1. A copy of the transcript shall be provided to the claimant, to the PSOB Office, and OGC after the conclusion of the hearing.

2. The hearing officer shall make his, or her, determination no later than the 30th day after the last piece of evidence has been received. Copies of the determiation shall be made available to the PSOB Office and OGC for their review.

3. If either the PSOB Office or OGC disagrees wth the hearing officer's final determination, that office may request the Director to review the record. If the Director agrees to review the record, the Director will send the hearing officer's determination, all comments received form the PSOB Office, OGC, or other sources (except where disclosure of the material would result in an unwarranted invasion of privacy), and notice of his or her intent to review the record, to the claimant. The Director will also advise the claimant of his or her opportunity to offer comments, new evidence, and argument to the Director within 30 days after the receipt of notification. The Director shall seek to advise all parties of the final agency decision within 30 days after the expiration of the comment period.

4. If the PSOB Office and OGC agree with the hearing officer's determination, or the Director declines to review the record, the hearing officer's determination will be the final agency decision, and will be sent to the claimant by the PSOB Office immediately.

5. If the hearing officer's determination is a denial, all material that (1) contributed to the determination and (2) was not provided by the claimant shall be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The claimant will be given an opportunity to request the Director to review the record and the hearing officer's decision and to offer comments, new evidence, or arguement to the Director within 30 days. The Director shall advise all parties of the final agency decision within 30 days after the expiration of the comment period.

6. The PSOB Office will provide administrative support to the hearing officer and the Director throughout the appeal process.

Lois Haight Herrington,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 85-15815 Filed 7-2-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500, 505, 515, 520, 535, and 540

Embargo Program Regulations; Technical and Clarifying Amendments

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is making a number of technical and clarifying amendments to the regulations implementing the embargo

programs it administers. None of the changes will alter the manner in which the office administers any of these programs.

EFFECTIVE DATE: July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202/376-0395.

SUPPLEMENTARY INFORMATION: Notices of approval pursuant to the Paperwork Reduction Act are being inserted into each set of regulations. Section 505.10 is being amended to update its citations. Sections 500.101 and 515.101 are being amended to clarify their effect and to delete references to 8 CFR Chapter II, which no longer exists. Section 500.201(d) is being amended to eliminate a reference to the People's Republic of China (the "PRC") which is no longer subject to the Foreign Assets Control Regulations. Section 500.206 is being removed because it relates to the PRC and is therefore obsolete. The definition of "national" in §§ 500.302(a)(1) and 515.302(a)(1) is being changed to reflect more accurately the Office's application of that term. Section 515.301 is being amended to correct a typographical error. Section 500.321 is being amended to delete "The Panama Canal Zone" from the definition of "United States," in order to reflect the change in the status of the Canal Zone under the Panama Canal Treaty. Section 500.329 and § 515.329 are being amended to clarify their meaning. Sections 500.413 and 500.414 are being removed because they relate solely to § 500.541, which no longer exists. Section 515.413 is being amended to delete a reference to § 515.541, which no longer exists. Sections 500.505, 500.506 and 500.507 and §§ 515.505, 515.506 and 515.507 are being removed and replaced by new §§ 500.505 and 515.505, in order to simplify and clarify the operation of these licenses. Section 500.528(b) is being amended to simplify its operation in accordance with current office practice. Section 515.559(b) is being amended to update its citations. Section 515.560(i) is being removed because it no longer has any effect. Subsections 500.561 (d) and (e) are being removed because they relate to the PRC, which is no longer subject to the Foreign Assets Control Regulations.

Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedures Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Similarly, because the amendments are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 19, 1981, dealing with Federal Regulations.

List of Subjects in 31 CFR Parts 500, 505, 515, 520, 535, and 540

Foreign assets, Foreign trade.

PART 500—[AMENDED]

31 CFR Part 500 is amended as follows:

1. The "Authority" paragraph for Part 500 continues to read as follows:

Authority: Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748, unless otherwise noted.

2. Section 500.101 is revised to read as follows:

§ 500.101 Relation of this part to other laws and regulations.

(a) This part is independent of Parts 505, 515, 520, 530, 535 and 540 of this Chapter. No license or authorization contained in or issued pursuant to one of those parts, or any other provision of law, authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading With the Enemy Act, 50 U.S.C. App. 5(b), as amended, the Foreign Assistance Act of 1961, 22 U.S.C. 2370, or any proclamation, order, regulation or license issued pursuant thereto.

3. Section 500.201(d) is revised to read as follows:

§ 500.201 Transactions involving designated foreign countries or their nationals; effective date.

* * * * *

(d) The term "designated foreign country" means a foreign country in the following schedule, and the terms "effective date" and "effective date of this section" mean with respect to any designated foreign country, or any national thereof, 12:01 a.m. eastern standard time of the date specified in the following schedule, except as specifically noted after the country or area.

Schedule

(1) North Korea, i.e., Korea north of the 38th parallel of north latitude: December 17, 1950.

(2) Cambodia: April 17, 1975.

(3) North Vietnam, i.e., Vietnam north of the 17th parallel of north latitude: May 5, 1964.

(4) South Vietnam, i.e., Vietnam south of the 17th parallel of north latitude: April 30, 1975, at 12:00 p.m. e.d.t.

§ 500.206 [Removed]

4. Section 500.206 is removed.

5. Section 500.302(a)(1) is revised to read as follows:

§ 500.302 National.

(a) The term "national" shall include:

(1) A subject or citizen of a country or any person who has been domiciled in or a permanent resident of that country at any time on or since the "effective date," except persons who were resident or domiciled there in the service of the U.S. Government.

* * * * *

6. Section 500.321 is revised to read as follows:

§ 500.321 United States; Continental United States.

The term "United States" means the United States and all areas under the jurisdiction or authority thereof, including U.S. trust territories and commonwealths. The term "continental United States" means the states of the United States and the District of Columbia.

7. Section 500.329 is revised to read as follows:

§ 500.329 Person subject to the jurisdiction of the United States.

The term "person subject to the jurisdiction of the United States" includes:

(a) Any individual, wherever located, who is a citizen or resident of the United States;

(b) Any person within the United States as defined in § 500.330;

(c) Any corporation organized under the laws of the United States or of any state, territory, possession, or district of the United States; and

(d) Any corporation, partnership, or association, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section.

§ 500.413 [Removed]

8. Section 500.413 is removed.

§ 500.414 [Removed]

9. Section 500.414 is removed.

10. Section 500.505 is revised to read as follows:

§ 500.505 Certain persons unblocked.

(a) The following persons are hereby licensed as unblocked nationals:

(1) Any individual resident in the United States who is not a specially designated national; and

(2) Any corporation, partnership or association that would be a designated national solely because of the interest therein of an individual licensed in paragraph (a) or (b) of this section as an unblocked national.

(b) Individual nationals of a designated country who take up residence in the authorized trade territory may apply to the Office of Foreign Assets Control to be specifically licensed as unblocked nationals.

(c) The licensing of any person as an unblocked national shall not suspend the requirements of any section of this Chapter relating to the maintenance or production of records.

§ 500.506 [Removed]

11. Section 500.506 is removed.

§ 500.507 [Removed]

12. Section 500.507 is removed.

13. Section 500.528(b) is revised to read as follows:

§ 500.528 Certain transactions with respect to blocked foreign patents, trademarks and copyrights authorized.

* * * * *

(b) Payments effected pursuant to the terms of paragraphs (a)(4) and (5) of this section may not be made from any blocked account.

* * * * *

§ 500.561 [Amended]

14. Section 500.561 is amended by removing paragraphs (d) and (e).

15. New § 500.901 is added to read as follows:

Subpart I—Miscellaneous Provisions

§ 500.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 500.517(c), 500.527(c), 500.549, 500.550 (a) and (b), 500.551, 500.552, 500.554 (a) and (b), 500.556 (a) and (b), 500.557, 500.558, 500.559, 500.560, 500.561, 500.562, and 500.801 have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505–0075.

PART 505—[AMENDED]

31 CFR Part 505 is amended as follows:

1. The "Authority" paragraph for Part 505 is amended to read as follows:

Authority: Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp. p. 748, unless otherwise noted.

2. Section 505.10(b) is revised to read as follows:

§ 505.10 Prohibitions.

* * * * *

(b) The merchandise is included in the Commodity Control List of the U.S. Department of Commerce (15 CFR Part 399) and identified by the code letter "A" following the Export Control Commodity Numbers, or of a type the unauthorized exportation of which from the United States is prohibited by regulations issued under the Arms Export Control Act of 1976, 22 U.S.C. 2778, or the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq., or successor acts restricting the export of strategic goods.

Schedule

Albania	Lithuania
Bulgaria	North Korea
Cambodia (Kampuchea)	Outer Mongolia
Czechoslovakia	People's Republic of China
Estonia	Poland and Danzig
German Democratic Republic	Romania
East Berlin	Tibet
Hungary	U.S.S.R.
Latvia	Vietnam

PART 515—[AMENDED]

31 CFR Part 515 is amended as follows:

1. The "Authority" paragraph for Part 515 is revised to read as follows:

Authority: Sec. 5, 40 Stat. 415, as amended, 50 U.S.C. App. 5; Sec. 620(a), 75 Stat. 445, 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp., p. 748.

2. Section 515.101 is revised to read as follows:

§ 515.101 Relation of this part to other laws and regulations.

(a) This part is independent of Parts 500, 505, 520, 530, 535, and 540 of this Chapter. No license or authorization contained in or issued pursuant to one of those parts, or any other provision of law, authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part shall be deemed to authorize any transaction prohibited by any law other than the Trading With the Enemy Act, 50 U.S.C. App. 5(b), as amended, the Foreign Assistance Act of 1961, 22 U.S.C. 2370, or any proclamation, order, regulation or license issued pursuant thereto.

3. Section 515.302(a)(1) is amended to read as follows:

§ 515.302 National.

(a) The term "national" shall include:

(1) A subject or citizen of a country or any person who has been domiciled in or a permanent resident of that country at any time on or since the "effective date," except persons who were resident or domiciled there in the service of the U.S. Government.

* * * * *

§ 515.311 [Amended]

4. Section 515.311 is amended by changing the comma following the word "bankers" to an apostrophe, so that the sentence reads" . . . bankers' acceptances . . . ."

5. Section 515.329 is revised to read as follows:

§ 515.329 Person subject to the jurisdiction of the United States.

The term "person subject to the jurisdiction of the United States" includes:

(a) Any individual, wherever located, who is a citizen or resident of the United States;

(b) Any person within the United States as defined in § 515.330;

(c) Any corporation organized under the laws of the United States or of any State, territory possession, or district of the United States; and

(d) Any corporation, partnership, or association, wherever organized or doing business, that is owned or controlled by persons specified in paragraphs (a) or (c) of this section:

6. Section 515.413 is revised as follows:

§ 515.413 Furnishing technical advice to American-owned foreign firms.

Section 515.201 of the regulations does not prohibit an engineering firm in the United States from providing technical assistance to a person in a third country with respect to specifications, quality control, etc., although such advice may result in purchases by that third country of goods of Cuban origin. However, the engineering firm may not itself procure any such goods for its own account or for that of the foreign person.

7. Section 515.505 is revised to read as follows:

§ 515.505 Certain persons unblocked.

(a) The following persons are hereby licensed as unblocked nationals.

(1) Any individual resident in the United States who is not a specially designated national; and

(2) Any corporation, partnership or association that would be a designated national solely because of the interest therein of an individual licensed in paragraph (a) or (b) of this section as an unblocked national.

(b) Individual nationals of a designated country who have taken up residence in the authorized trade territory may apply to the Office of

Foreign Assets Control to be specifically licensed as unblocked nationals.

(c) The licensing of any person as an unblocked national shall not suspend the requirements of any section of this Chapter relating to the maintenance or production of records.

§ 515.506 [Removed]

8. Section 515.506 is removed.

§ 515.507 [Removed]

9. Section 515.507 is removed.

10. Section 515.559(b) is revised to read as follows:

§ 515.559 Transactions by American-owned or controlled foreign firms with Cuba.

* * * * *

(b) The term "strategic goods" means any item, regardless of origin, of a type included in the Commodity Control List of the U.S. Dapartment of Commerce (15 CFR Part 399) and identified by the code letter "A" following the Export Control Commodity Numbers, or of a type the unauthorized exportation of which from the United States is prohibited by regulations issued under the Arms Export Control Act of 1976, 22 U.S.C. 2778, or under the Atomic Energy Act of 1954, 42 U.S.C. 2011, et seq., or successor acts restricting the export of strategic goods.

* * * * *

§ 515.560 [Amended]

11. Section 515.560(i) is removed, and replaced by the notation "[reserved]."

12. New § 515.901 is added to read as follows:

Subpart I—Miscellaneous Provisions

§ 515.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 515.527(c), 515.542(c), 515.543, 515.544 (a) and (b), 515.545(a) (1) and (2), 515.545(b), 515.546, 515.547, 515.548, 515.549 (a) and (b), 515.550, 515.551(a) (1), (2) and (3), 515.552(a) (1) (2) and (3), 515.553, 515.554, 515.555, 515.556, 515.557, 515.558, 515.559, 515.560, 515.565, and 515.801 have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505–0075.

PART 520—[AMENDED]

31 CFR Part 520 is amended as follows:

1. The "Authority" paragraph for Part 520 continues to read as follows:

Authority: Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5; E.O. 8389, Apr. 10, 1940, 5 FR 1400, as amended by E.O. 8785, June 14, 1941, 6 FR 2897, E.O. 8832, July 26, 1941, 6 FR 3715, E.O. 8963, Dec. 9, 1941, 6 FR 6348, E.O. 8998, Dec. 26, 1941, 6 FR 6785, E.O. 9193, July 6, 1942, 7 FR 5205; 3 CFR, 1943 Cum. Supp.; E.O. 10348, Apr. 28, 1952, 17 FR 3789, 3 CFR, 1949–1953 Comp., p. 871; E.O. 11281, May 13, 1966, 31 FR 7215, 3 CFR, 1966 Supp., unless otherwise noted.

2. New § 520.901 is added as follows:

Subpart I—Miscellaneous Provisions

§ 520.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 520.205(e) (1) and (5) and 520.801 have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505–0075.

PART 535—[AMENDED]

31 CFR Part 535 is amended as follows:

1. The "Authority" paragraph for Part 535 continues to read as follows:

Authority: Secs. 201–207, 91 Stat. 1626; 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685; unless otherwise noted.

2. New § 535.905 is added to read as follows:

§ 535.905 Paperwork Reduction Act notice.

The information collection requirements in §§ 535.568 and 535.801 have been approved by the Office of Management and Budget and assigned control number 1505–0075.

PART 540—[AMENDED]

31 CFR Part 540 is amended as follows:

1. The "Authority" paragraph for Part 540 continues to read as follows:

Authority: Sections 201–207, 91 Stat. 1626, 50 U.S.C. 1701–1706; E.O. 12513.

2. New § 540.901 is added to read as follows:

Subpart I—Miscellaneous Provisions

§ 540.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 540.504, 540.505, 540.540, 540.541, 540.601, and 540.602 have been approved by the Office of Management and Budget and assigned control number 1505–0089.

Dated: June 27, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Edward T. Stevenson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85–15919 Filed 7–2–85; 8:45 am]

BILLING CODE 4810–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[Docket Nos. 20521, 20548, etc.; FCC 85–252]

Multiple and Cross-Ownership of AM, FM, TV, and CATV Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission, on reconsideration, revises in part the standards for exempting from attribution limited partnership interests in broadcast, cable television, and newspaper properties in the application of the media multiple ownership rules. In addition, the Commission, on its own motion, clarifies certain matters relating to the aggregation of ownership interests and revises certain reporting requirements relating to the attribution standards. This action is necessary to eliminate ambiguities and apparent inconsistencies in the present attribution standards, to simplify the regulatory structure relating to attribution and to provide additional guidance to persons who are subject to these rules.

EFFECTIVE DATE: July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Laurel Bergold, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio broadcasting, Television.

47 CFR Part 76

Cable television.

Memorandum Opinion and Order

In the matter of Corporate Ownership Reporting and Disclosure by Broadcast Licensees, Docket No. 20521; Amendment of §§ 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Docket No. 20548; Amendment §§ 73.35, 73.240, 73.636 and 76.501 of the Commission's Rules relating to Multiple Ownership of AM, FM, and Television Stations and CATV Systems, BC Docket No. 78–239; and Reexamination of the Commission's Rules and Policies Regarding

the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities, MM Docket No. 83-46, RM-3653, RM-3695, and RM-4045.

Adopted: May 9, 1985.
Released: June 24, 1985.

By the Commission: Commissioner Rivera not participating.

1. Before the Commission are petitions for reconsideration of the *Report and Order* (*"Report"*) [1] in the above-captioned proceedings filed by the American Council of Life Insurance ("Council") and Michael Couzens, P.C. ("Couzens") as well as various oppositions filed against these petitions.[2] After careful review of the petitions, the responsive pleadings and our *Report*, we are persuaded to modify our attribution policy as it relates to limited partnerships. Specifically, we eliminate a threshold requirement that nonattributable limited partnership interests conform to the Revised Uniform Limited Partnership Act of 1976 ("RULPA") [3] and clarify the meaning of the further requirement contained in our *Report* that the holders of such interests not be materially involved in the management or operation of the partnership. We also extend the temporary one year exception for "passive investors" (*i.e.*, investment companies, insurance companies and bank trust departments) whose interests exceed the benchmark as a result of involuntary acquisitions to interests acquired as a result of the prudent exercise of creditors rights. We decline, however, to make any other changes requested by the petitioners in the policies established in the *Report*. In addition, by our own motion, we clarify, *inter alia*, certain matters relating to the aggregation of ownership interests and revise certain reporting requirements.

I. Introduction

2. By the attribution rules the Commission evaluates whether or not a specific ownership or positional interest conveys a degree of influence or control to its holder sufficient to warrant limitation by the media multiple ownership rules. The attribution rules in essence constitute the means by which the media multiple ownership rules are implemented.[4]

3. In its *Report*, the Commission made a number of revisions to the standards governing the means by which it attributes interests in broadcast, cable television and newspaper properties and to the manner in which these interests are reported. Eliminating the distinction between "closely held" and "widely held" corporations, the Commission increased the basic ownership benchmark for attribution to five percent and raised the benchmark for "passive investors" to ten percent.[5] The Commission determined that interests at or above these benchmarks established a rebuttable presumption of a "cognizable interest" but an exception was made for certain interests acquired involuntarily on a temporary basis. In order to reflect the more attenuated interest in the licensee in situations where the ownership interest of an individual or entity is separated by intervening corporations, the Commission also adopted a "multiplier" approach in determining attribution in vertical ownership chains.[6] In addition, the Commission determined that interests held in licensees in the form of non-voting stock, whether or not convertible to voting stock; warrants, debentures and other convertible interests; and debt and lease back arrangements would not be attributed to the owner.

4. With respect to trusts, the Commission determined that the attribution would be evaluated on a case-by-case basis but specified the criteria which would be used in making such evaluations. The Commission generally reaffirmed that officers and directors would be attributed interests in their licensees, but established a mechanism whereby officers and directors who are neither directly or indirectly involved in the activities of the broadcast licensee can be relieved of this interest.

5. The Commission made a number of determinations with respect to matters relating to limited partnerships. Comparing a typical limited partner to a holder of debt or non-voting stock, the Commission found that a typical limited partnership interest confers no influence or control over the license and therefore "can be safely exempted from the effects and implications of the attribution rules."[7] Tacitly recognizing, however, that this lack of influence or control may not exist in all limited partnerships, the Commission determined that it was necessary to established a mechanism by which "to verify appropriate insulation of the general partner from any possibility of control or influence by the limited partners."[8] The Commission found that the provisions of the RULPA constituted an appropriate threshold verification standard and exempted from attribution the limited partnership interests of businesses conforming to this statute.[9] As a further requirement, the Commission held that "[a]ny limited partner relieved of attribution . . . may not be involved in any material respect in the management or operation of the

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[1] *Report and Order* in MM Docket No. 83-46, 97 FCC 2d 997 (1984) [hereinafter referred to as *"Report"*].

[2] The National Association of Broadcasters ("NAB"); McKenna, Wilkinson & Kittner ("McKenna") and William R. Varecha ("Varecha") each filed an opposition to Couzens' petition. The National Cable Television Association, Inc. ("NCTA") filed an opposition to Council's petition. Couzens filed a reply to the oppositions of the NAB, McKenna and Varecha.

[3] Revised Uniform Limited Partnership Act section 101 *et seq.* (1976).

[4] The Media multiple ownership rules involve constraints on media ownership. These rules have both national and local dimensions.

The national network/cable ownership rule prohibits an individual or entity from owning, operating or controlling a national television network and cable television system. 47 CFR 76.501(a)(1) (1984). The Commission has proposed deletion of this rule. *Notice of Proposed Rule Making* in CT Docket No. 82-434, 91 FCC 2d 76 (1982). Under the national 12 station rule, an individual or entity is generally prohibited from owning, operating or controlling more than 12 AM, 12 FM and 12 television stations as well as television stations which, in the aggregate, can reach more than 25 percent of the national audience. *Report and Order* in Gen. Docket No. 83-1009, FCC 84-350 (released August 3, 1984), *reconsid. granted in part*, FCC 84-638 (released Feb. 1, 1985), *appeal docketed sub nom, National Association of Black Owned Broadcasters v. FCC*, No. 85-1139 (D.C. Cir. filed Mar. 4, 1985).

In addition to these national rules, there are four local media multiple ownership rules. The duopoly rule procribes any individual or entity from owning, operating or controlling two or more broadcast stations in the same service area if the stations' primary service signal contours overlap. The one-to-a-market rule in effect limits common ownership, operation or control of a radio and television station in the same market. The newspaper/broadcast cross-ownership rule, a variant of the one-to-a-market rule, similarly prohibits any individual or entity from owning, operating, or controlling a broadcast station and a daily newspaper in the same market. The broadcast/cable cross-ownership rule proscribes common ownership of a colocated broadcast and cable television system. 47 CFR 73.3555 (a)-(c), 76.501 (1984). The substance of the latter rule has recently been incorporated into the Communications Act. Cable Communications Policy Act of 1984, section 613(a), Pub. L. No. 98-549, 98 Stat. 2779 (1984).

[5] The Commission also determined that it was unnecessary to attribute an interest to minority shareholders of a corporate licensee in situations where that licensee has a single majority voting stockholder.

[6] While the Commission generally determined to adopt the proposal to multiply successive ownership interest in vertical ownership situations, it declined to utilize this multiplier approach in situations where any link represents a percentage interest which exceeds 50 percent.

[7] *Report*, 97 FCC 2d at 1022.

[8] *Id.* at 2023.

[9] *Id.* The Commission determined that limited partnerships which did not conform to the provisions of RULPA would be accorded noncognizable status upon the submission of the limited partnership agreement to the Commission with an explanation as to how the agreement satisfies its concerns. *Id.*

broadcast, cable television, or newspaper entity concerned."[10]

6. The Commission applied the attribution rules adopted in its *Report* to each of the media multiple ownership rules. No modification was made, however, in the attribution rules applicable to the cable/telephone cross-ownership rule.[11]

II. Decision on Reconsideration

A. Summary of Pleadings

7. While most elements of the Commission's decision have not been challenged, the Commission has been asked to reconsider three aspects of its *Report*. Specifically, we have been requested: (1) To extend the scope of this proceeding to encompass the attribution rules applicable to our cable/telephone cross-ownership rule, (2) to "clarify" that the concept of a "distress acquisition" encompasses interests temporarily acquired as a result of the prudent and necessary exercise of foreclosure, conversion or creditor rights and (3) to revise our treatment of limited partners so that such persons are treated as cognizable owners under the attribution rules.

1. Telephone/Cable Cross-Ownership Rule

8. Council requests the Commission to revise the attribution standards applicable to the telephone/cable cross-ownership rule. Council states that the Commission expressed an intention to establish a comprehensive framework for the attribution standards applicable to all of the Commission's multiple ownership rules but nonetheless failed to include attribution standards for telephone/cable ownership rules within the scope of its order. Citing the capital intensive nature of both industries, technological developments and the AT&T divestiture, Council asserts that the rationales underlying the liberalization of the attribution standards applicable to the media multiple ownership rules should apply with equal or greater force to the telephone/cable cross-ownership rule. While Council acknowledges that the *Notice of Proposed Rule Making ("Notice")*[12] did not expressly propose revisions to the telephone/cable ownership rule, it concludes that extention of the new attribution standards to this rule would not run afoul of the notice requirements of the Administrative Procedure Act[13] since the *Notice* expressed the Commission's intention to undertake a comprehensive review of the attribution standards. Even if the Commission were to conclude that its *Notice* did not provide the requisite statutory notice, however, Council contents that the Commission should still take steps in this proceeding to extend the revised attribution standards to the telephone/cable ownership rule. Specifically, it suggests that the Commission by order provide the public with notice of its intention to take the action requested by Council, afford parties the opportunity to comment on this proposal and extend the attribution standards applicable to the media multiple ownership rules to the telephone/cable cross-ownership rule unless substantial and compelling reasons to refrain from acting in this manner are presented by the commenting parties.

9. NCTA opposes Council's request that the attribution standards promulgated in the Commission's *Report* be made applicable to the telephone/cable cross-ownership rule. NCTA asserts that the Commission's objective in establishing attribution benchmarks for the multiple ownership rules was to determine that degree of ownership which will provide the potential ability to influence programming decisions. NCTA contends that purpose underlying the telephone/cable cross-ownership rule is to prevent a telephone carrier from using its monopoly control over telephone service to adversely affect telephone company customers and competing cable operators. Since the purposes underlying these two rules are entirely different, NCTA states that there is no reason to assume that the attribution benchmarks established for the media multiple ownership rules should be automatically extended to the telephone/cable ownership rule. In addition, NCTA takes issue with Council's alternative proposal that the Commission issue a further order announcing its intention to incorporate the attribution standards established in its *Report* to the cable/telephone cross-ownership rule, stating that only a full rule making proceeding would permit the Commission to obtain the information necessary to determine the propriety of revising the ownership benchmarks for that rule.

2. Temporary Involuntary Acquisitions

10. In its petition, Council also requests the Commission to "clarify" the scope of the exception accorded to the involuntary acquisition of stock on a temporary basis which exceeds the benchmark. Council urges the Commission to modify its characterization of such interests as "involuntary," stating that this description could be interpreted to exclude certain "distress" acquisitions which are necessary to protect the assets of the company or the interests of its shareholders or policyholders. Council urges the Commission to specify that interests acquired "as a result of the prudent and necessary exercise of foreclosure, conversion, creditor or other similar rights"[14] are within the scope of this exception. No parties in this proceeding opposed Council's request.

3. Limited Partnership Interests

11. In its petition, Couzens requests the Commission to reconsider its decision to exempt limited partners from the definition of cognizable ownership and to treat limited partners in the same manner as voting shareholders. Couzens notes that neither voting shareholders nor limited partners conduct the day-to-day business affairs of their respective entities but that both types of owners, through the retention of specific types of power, may exercise a significant amount of indirect control. For example, Couzens states that the power of a limited partner to elect or remove general partners is comparable to the power of voting shareholder to elect or remove directors. Couzens compares the power of voting shareholders to dissolve the corporation or sell substantially all of the corporate assets to the power of limited partners to terminate the partnership or approve the sale of its assets. Couzens also contends that the power of a voting shareholder to approve amendments to the Articles of Incorporation or to adopt, amend or repeal the bylaws is similar to the power of a limited partner to amend the partnership agreement.

12. Couzens asserts that reliance on the provisions of the RUPLA is impractical, stating that the Commission has failed to consider the administrative resource impact in the use of a standard which would require the Commission to make difficult "control" determinations. Couzens also suggests that if the *Report* is interpreted to adopt the uniform law as it may be subsequently amended, the Commission may have impermissibly delegated its authority. In contrast, Couzens asserts that if the *Report* is interpreted to adopt the current

[10] *Id.*

[11] 47 CFR 63.54 (1984).

[12] *Notice of Proposed Rule Making* in MM Docket No. 83-46, FCC 83-46 (released Feb. 15, 1983), 48 FR 10082 (Mar. 10, 1983) [hereinafter referred to as *"Notice"*].

[13] 5 U.S.C. 553(b) (1982).

[14] "Petition for Reconsideration in Part," filed by American Council of Life Insurance (June 8, 1984) at 7-8.

provisions of the uniform act, the Commission's standard is one which is likely to be revised. In addition, Couzens states that the Commission's treatment of limited partnership interests as noncognizable conflicts with the congressional intent that partnership interests should be recognized in computing media ownership and minority ownership preferences under the statutory changes authorizing the Commission to award licenses by a process of random selection.[15]

13. McKenna, NAB and Varecha each urge the Commission to reaffirm the noncognizable status of limited partnership interests.[16] Each of these parties notes that limited partnerships can provide a useful source of capital to the broadcast industry and asserts that the standard established by the Commisssion's *Report* is appropriate.

14. Varecha takes issue with Couzens' contention that limited partners possess powers similar to those of corporate shareholders. He contends that the ability of a limited partner to replace a general partner is at most a contingent control right since Commission approval under section 310(d) of the Communications Act must be obtained prior to such a transfer.[17] In contrast, Varecha states that the power of the shareholders to replace the entire board of directors ordinarily does not require any Commission scrutiny since such a change by itself does not constitute a change in ownership or control under section 310(d).

15. Varecha also notes that the shareholders are the owners of the corporation and that the board of directors serve at the discretion and solely for the benefit of the shareholders. In contrast, Varecha states that since both the general partners and the limited partners are joint owners, it is unusual for partnership agreements to permit a limited partner to replace a general partner without cause. Moreover, Varecha contends that a limited partner who takes part in the control of the business risks unlimited liability whereas the efforts of a corporate shareholder to influence or control the business do not entail such a risk.

16. Defending the Commission's determination to use the RULPA as a standard, NAB asserts that the method in which "control" is defined under that statute would not permit the limited partner, by virtue of his or her ownership status, to unduly influence the licensee's operations, such as its programming decisions, in a manner which would concern the Commission. NAB contends that the power to manage the entity is given to the general partners and that the specific activities permitted to limited partners under the statute constitute extraordinary matters which would not enable the limited partner to affect programming decisions on a regular basis. NAB asserts that the role of a limited partner is analogous to that of a holder of debt or nonvoting stock in a corporation and, therefore, should not be subject to the attribution rules. Similarly, McKenna asserts that the limited partners in most limited partnerships have virtually no power over partnership affairs.

17. Each of the three parties opposing Couzens' petition emphasizes that conformance to the provisions of the RULPA is merely a threshold standard. They note that, in addition to compliance with the model statute, a limited partner seeking nonattributable status is also required to refrain from any material involvement in the management or operation of the business. The opponents to Couzens' petition assert that this additional requirement will sufficiently assure that limited partners will not engage in the types of activities which would warrant attribution of their interests for purposes of the media multiple ownership rules.

18. Finally, NAB and Varecha take issue with Couzens' contention regarding the conflict between the Commission's treatment of the ownership interests of limited partners as noncognizable and the congressional intent to recognize partnership interests in computing preferences under the lottery statute. These parties state that at most the congressional statements concerning the method of computing preferences were addressed in a context which differed materially from the issues regarding which interests will be attributed for purposes of the media multiple ownership rules and consequently are not dispositive in determining the standards which should be established in this proceeding.

19. Noting that the revised model act does not specify the types of actions which would constitute participation by a limited partner in the affairs of the business, in its reply, Couzens again urges the Commission to withdraw its reliance upon the provisions of the RULPA as a standard in determining whether or not a limited partner should be relieved from attribution. In addition, it takes issue with the view that the *Report* requires exempt limited partners to refrain from material involvement in the business. It asserts, instead, that compliance with the provisions of the RULPA, while inappropriate, is in fact the sole standard promulgated in the *Report*. Addressing Varecha's contentions regarding the limitations imposed by the Communications Act on the ability of a limited partner to remove a general partner, Couzens asserts that this removal power is atypical and that influence by a limited partner can be exercised in other ways. Couzens warns against reliance upon the powers of a "typical" limited partnership, pointing out that an exemption from attribution for limited partnership interests will be used in the future by persons who wish to avoid the strictures of the multiple ownership rules. In addition, Couzens reiterates its position that the lottery statute reflects a legislative intent that limited partnership interests be attributed.

20. Apparently modifying in part its initial position that all limited partnership interests should be attributable, Couzens states that "the oppositions are persuasive that such a result is too harsh."[18] It asserts that the Commission should exempt from attribution limited partnership interests where the applicant demonstrates that the "Articles of Limited Partnership" do not include any powers of the limited partners to participate in the conduct of the business.

B. Discussion of the Issues on Reconsideration

1. Telephone/Cable Cross-Ownership Rule

21. We are not persuaded by Council's suggestion that we should address in this proceeding—either by action in this *Order* or by issuance of supplementary notice and subsequent order—the issue of attribution standards applicable to the telephone/cable cross-ownership rule. First, contrary to Council's contention, we do not believe that the scope of the *Notice* in this proceeding can reasonable be deemed to encompass this issue. We note in this regard that the *Notice* announced our intention to review the attribution standards applicable to what we specifically characterized as the "media

[15] 47 U.S.C. 309(i) (1982).

[16] Should the Commission determine that additional assurances of non-involvement may be desirable, NAB asserts that the Commission should expand the non-involvement requirement contained in the *Report* to include those activities with which it is concerned. NAB expressly states that the Commission may wish to consider withdrawing its reliance on RULPA in favor of a certification approach.

[17] 47 U.S.C. 310(d) (1982).

[18] "Reply," filed by Michael Couzens, P.C. (July 27, 1984) at 7.

multiple ownership rules."[19] Furthermore, in an earlier phase of this proceeding, Council specifically recognized that the attribution standards governing the telephone/cable cross-ownership rule were not raised in the *Notice*. In fact, in its comments responding to the *Notice*, Council characterized the telephone/cable cross-ownership rule as "[t]he only ownership rule conspicuously *absent* from the scope of this wide-ranging proceeding."[20]

22. Secondly, we do not believe it is either necessary or appropriate to expand the scope of this proceeding in order to consider the attribution issues raised by Council. Traditionally, we have addressed the attribution standards applicable to the media multiple ownership rules separately from consideration of the appropriate attribution standards governing the telephone/cable cross-ownership rule.[21] We have done so largely because these two categories of multiple ownership rules relate at least in part to different industries, affect the interests of different parties, and have disparate underlying objectives.[22] Council has advanced no convincing reason to alter this approach. In addition, we have recently adopted a *Report and Order* in MM Docket No. 84-1296 which, *inter alia*, specifically declined to impose the media ownership attribution standards in cable/telephone cross-ownership situations.[23] For these reasons, therefore, we shall not use this proceeding to expand the telephone/cable cross-ownership attribution rule.

2. Involuntary Acquisitions of Stock on a Temporary Basis

23. On reconsideration we are persuaded to grant Council's request that we clarify the "involuntary" acquisition exception to the attribution rules to include all interests temporarily acquired "as a result of the prudent and necessary exercise of foreclosure, conversion, creditor or other similar rights."[24] Notwithstanding our use of the term "involuntary" to limit the scope of the exception, Council suggests that the exception encompasses certain "voluntary" acquisitions which "are compelled by circumstances to protect company assets and the interests of the company's policyholders and shareholders."[25] In the absence of adverse comment to Council's suggestion and upon further reflection on the circumstances leading to the exercise of creditors rights, a grant of Council's request is justified.

24. We conclude that the interpretation espoused by Council is not inconsistent with the purposes underlying our attribution rules. As noted above, we adopted an attribution benchmark for "passive investors" that is higher than the benchmark applicable to non-passive investors.[26] The higher benchmark applied to the interests of passive investors reflects the fact that this type of investor generally obtains stock solely for investment purposes and possesses no interest in controlling the management or policies of the corporation.[27] Yet in adopting this benchmark, we necessarily recognized the need to attribute ownership of voting stock held even by passive investors in certain circumstances. We determined that "merely voting or trading large blocks of stock can affect the management of a company"[28], even where the investor has no intention of exercising any influence or control over the corporation. We concluded that this would often result in situations where a passive investor held voting stock in blocks of 10 percent or more.

25. Notwithstanding this requirement, we determinied that passive investors could exceed the 10 percent benchmark for a period not exceeding one year without incurring an attributable interest in the involuntary acquisition of stock in certain narrowly defined situations. The two situations described in our *Report* which trigger the exception are the acquisition by an insurance company resulting from the recapitalization of a company in which it has invested and the acquisition by a bank trust department resulting from the execution of an estate.[29] Common to both situations is the element of lack of control. A creditor has no control over whether or not a company in which it has invested will become bankrupt and require recapitalization. Similarly, a bank trust department has no control over the type and extent of a testator's stock holdings at the time of his or her death. Because the institutional investor is unable to either predict with reasonable certainty or take action to timely prevent the acquisition of interests which would place it in violation of the media multiple ownership rules, we provided a temporary exception to the attribution rules in this type of limited circumstance.

26. The acquisitions described in Council's petition are similiar to those described in our *Report*. Although the acceptance of collateral or similar actions which give rise to foreclosure, conversion or creditor rights is within the control of the passive investor, the exercise of those rights is not triggered by events within its control. The institutional investor has fiduciary responsibilities to its investors to maximize the investment and would be in most instances constrained to exercise foreclosure actions. In any event, a one year temporary exception will satisfy the Commission's concerns that a passive investor is not using the foreclosure process to violate the multiple ownership rules and unlawfully concentrate the programming decisions of licensees in itself with concomitant detrimental effects on media diversity. While the institutional investor could structure the transaction, by utilizing a qualified trust or other insulating mechanism, so that the interest acquired is exempt from attribution, that appears to be a cumbersome and costly mechanism to impose on investors who

[19] *Notice, supra* n.12 at para. 3.

[20] "Comments" filed by the American Council of Life Insurance (April 25, 1983) at 16 (emphasis added).

[21] The attribution standards applicable to the telephone/cable cross-ownership rule were addressed in the *Final Report and Order* in Docket No. 18509, 21 FCC 2d 307, *reconsid. granted in part*, 22 FCC 2d 748 (1970), *aff'd sub nom. General Telephone Co. of the Southwest v. United States*, 499 F.2d 846 (5th Cir. 1971). That order did not address any issue relating to the attribution standards applicable to the media ownership rules. Similarly, when the Commission has revised the attribution standards applicable to the media multiple ownership rules, it has chosen not to consider revisions to the attributions standards applicable to the telephone/cable cross-ownership rule. *See, e.g., Report and Order* in Docket No. 20520, 59 FCC 2d 970 (1976), *reconsid. granted in part*, 65 FCC 2d 336 (1977), *aff'd sub nom. National Citizens Committee for Broadcasting v. FCC*, 559 F.2d 189 (D.C. Cir.), *cert. denied*, 434 U.S. 987 (1977).

[22] A common objective underlying each of the media multiple ownership rules is to promote diversity of program and service viewpoints and to encourage diversity of expression of the communications media. *See, e.g., Report and Order* in Docket No. 8967, 18 FCC 288, 291 (1953); *Second Report and Order* in Docket No. 18110, 50 FCC 2d 1046 (1975). The objective underlying the telephone/cable cross-ownership rule, in contrast, is to prevent a telephone company from abusing its control over its monopoly services and facilities in the competitive CATV market. For example, all CATV systems have to use the telephone company's pole lines or conduit space, and the telephone/cable cross-ownership rule reflects the Commission's concern that were a telephone company permitted to own a CATV systems in its operating area, it could discriminate against competing CATV systems in providing access to these facilities. *Final Report and Order* in Docket No. 18509, *supra* n.24.

[23] *Report and Order* in MM Docket No. 84-1296, FCC 85-179 (released April 19, 1985).

[24] "Petition for Reconsideration in Part," *supra* n.14 at 7.

[25] *Id.*

[26] *See Report*, 97 FCC 2d at 1013.

[27] *Id.* at 1012-13.

[28] *Id.* at 1013.

[29] *Id.* at 1017.

are merely exercising fiduciary responsibilities. In short, like the situations described in our *Report*, exercise of creditor rights by passive investors is triggered by events not within its control. Therefore, a temporary one year exception to the effects of the multiple ownership rules is warranted.

3. Limited Partnerships

27. *Non-Attributable Status for Properly Insulated Limited Partnership Interests.* On reconsideration, we affirm our initial determination to relieve from attribution limited partnership interests in entities that sufficiently insulate the limited partner from influence or control of partnership affairs. We remain convinced that the exemption of properly insulated limited partnership interests furthers the public interest; this exemption not only facilitates the infusion of capital into broadcasting enterprises but, in addition, it eliminates unnecessary and potentially costly regulation while still maintaining the intergrity of the diversity rationale underlying the multiple ownership rules.

28. Although under state law, a limited partner is required to participate in certain matters relating to the business,[30] the performance of none of these mandatory functions—either singly or in the aggregate—by itself provides the limited partner with an ownership interest of concern to us for purposes of the multiple ownership rules. For example, the mere fact that the limited partner has the right to certain records and data concerning the company [31] does not empower that partner to influence or control the company's affairs. Similarly, while the limited partner does have to agree to the provisions of the certificate of limited partnership [32] and, under the Uniform Limited Partnership Act of 1916 ("ULPA"), authorize amendments to that document [33], this power does not inexorably lead to influence or control over the business of the partnership. Nor, in our view, is mandatory participation by the limited partners in the admission of new general partners,[34] by itself, sufficient to require the attribution of a limited partnership interest.[35] Likewise, exercise of the other mandatory rights of a limited partner—such as the right to seek a judicial dissolution or winding up of the business [36], the right to compensation or a share in the company's profits,[37] and a right to bring a derivative suit on behalf of the partnership in situations where the general partner refuses to take this action [38]—would not, *per se*, materially involve the limited partner in the management or operation of the business for purposes of the multiple ownership diversity concerns. Moreover, by distinguishing between influential and non-influential ownership interests, the exemption is consistent with the objectives underlying the attribution rules.

29. In support of its assertion that we should presumptively attribute all limited partnership interests, Couzens compares the powers of a holder of a limited partnership interest to that of a voting shareholder. We find, however, that a limited partnership is a distinct form of business association with unique characteristics [39] that justify the differential treatment of limited partnership interests for attribution purposes. Perhaps the most critical distinction between a limited partnership interest and a voting shareholder's interest is the broad flexibility given to the partners of a limited partnership to determine the powers of a limited partner. Unlike the rights accorded to a typical corporate shareholder, the partners have the ability to insulate the limited partner's participation in the business by the inclusion of specific restrictions in the partnership agreement or the certificate of limited partnership.

30. Further, we disagree with Couzens' contention that our decision not to presumptively attribute all limited partnership interests in applying our media multiple ownership rules is inconsistent with the expressed intent of Congress and our own interpretation of that intent. In this connection, Couzens refers to the Conference Report [40] accompanying the lottery amendments to the Communications Act [41] and to the Commission's reading of that Report in its decisions implementing the lottery provisions.[42] Couzens correctly points out that this legislative history, and our subsequent actions in light thereof, have resulted in our generally attributing limited partnership interests in computing lottery preferences.[43] The Conference Report, however, is devoid of any reference concerning the attribution standards governing the media multiple ownership rules. Moreover, in our lottery decisions, we expressly noted that the attribution rules established for determining lottery preferences were "not identical" to those used in applying the media multiple ownership rules.[44] In sum, we do not believe that Congressional intentions or our decisions in the lottery context constrain our treatment of limited partnership interests in the distinct context of applying our media multiple ownership rules.[45]

31. We also disagree with Couzens' assertion that "the Commission's insistence on lack of control by the limited[ ] [partner]" is on a "collision course" [46] with the development of limited partnership law. The Commission does not "insist" that a limited partner lack control over the business. A company which is controlled by a limited partner is free to enter the broadcasting field; it is able to obtain construction permits and

[30] In regulating limited partnerships, forty-nine states, the District of Columbia and the Virgin Islands have adopted either the Uniform Limited Partnership Act of 1916 [UNIFORM LIMITED PARTNERSHIP ACT (1916)] ("ULPA") or its successor, RULPA, *supra* n.3.

[31] RULPA sections 105, 305; ULPA section 10.

[32] *Id.*

[33] ULPA section 25(b). The revised act does not require all partners to sign amendments to the certificate of limited partnership. RULPA section 204(a)(2).

[34] *See* RULPA section 401; ULPA section 9(e).

[35] This is particularly true in light of our clarification in this *Order* that for such interest to be noncognizable under the "no material involvement" standard, the general partner must possess a veto over such admissions. *See* para. 46, *infra*.

[36] *See* ULPA section 10; RULPA section 802. The RULPA provides that all partners can consent to a non-judicial dissolution. RULPA section 801.

[37] *See, e.g.*, ULPA section 10.

[38] *See* RULPA section 1001. There is no comparable provisions in the ULPA.

[39] Similarly, the activities which limited partners are required to perform under state law and the ability of the partners to prescribe, within wide boundaries, the powers of a limited partner differentiates a limited partnership interest from those interests which are automatically exempted from our attribution rules.

[40] H.R. Rep. No. 765, 97th Cong., 2d Sess. 45 (1982).

[41] 47 U.S.C. 309(i) (1982).

[42] *Second Notice of Proposed Rule Making* in Gen. Docket No. 81-768, 91 FCC 2d 911, 924 (1982); *Second Report and Order* in Gen. Docket No. 81-768, 93 FCC 2d 952, 976 (1983).

[43] *Second Report and Order* in Gen. Docket No. 81-768, *supra* n.45.

[44] *Id.* at n.35.

[45] We also reject Varecha's contention that *Anax Broadcasting, Inc.*, 87 FCC 2d 483 (1981), a transfer of control case, requires us to exempt all limited partnership interests from attribution. In *Anax*, the limited partners were restricted to a purely passive role in the business by virtue of the specific terms of the limited partnership agreement. *Id.* at 488. As a consequence, the mere fact that we found that a transfer of specific interests governed by a restrictive limited partnership agreement in *Anax* did not constitute a transfer of control for purposes of section 310(d) does not support the broad proposition that all limited partners are *de jure* incapable of exercising any material influence or control over partnership affairs for purposes of the diversity concerns underlying the multiple ownership rules. *See also Wometco Enterprises, Inc.*, FCC 85-30 (released February 6, 1985), *appeal docketed sub nom. Traylor v. FCC*, No. 85-1099 (D.C. Cir., filed February 15, 1985).

[46] "Petition for Reconsideration," filed by Michael Couzens, P.C. (June 4, 1984) at 10.

broadcast licenses from the Commission on the same basis as any other company. The sole effect of the attribution criteria adopted in this proceeding is that the interest of the "active" limited partner in the limited partnership is counted in the application of the multiple ownership rules.

32. Moreover, the trend in limited partnership law is neither to mandate nor restrict the powers accorded to limited partners. As we noted above, the modern trend, as reflected in the RULPA, is to give the partners flexibility in determining intra-partnership relations. Our decision to condition an exemption from attribution upon the adoption of appropriate restrictions on the activities of a limited partner is fully consistent with modern limited partnership law as long as these restrictions do not conflict with any requirements of the applicable limited partnership statute. Because the relevant state statutes permit the partners to agree to the restrictions which would permit exemption from attribution under our rules, the "inconsistency" cited by Couzens does not exist.

33. Finally, while retaining its position that limited partnership interests should be cognizable, Couzens suggests that we should ameliorate even what Couzens characterizes as the "harsh" result of automatically attributing all limited partnership interests by permitting an applicant to demonstrate that the "Articles of Limited Partnership" do not empower the limited partner to participate in the conduct of the business. We will not adopt this *ad hoc* waiver approach. Not only would it impose regulatory burdens on limited partners who in fact lack the ability to materially influence partnership affairs, but it would also require the Commission to make costly administrative determinations on specific requests filed by individual applicants. We find that the better approach is the one adopted herein in which we specify the criteria which would insulate a limited partner from active involvement in the business and grant an exemption from our attribution rules upon certification by the licensee that the limited partner is in compliance with these criteria.[47] It addresses Couzens' legitimate concern that influential limited partnership interests be attributed but does so in a manner which promotes administrative efficiency and avoids unnecessary regulation.

34. *Appropriate Standard for Assessing A Cognizable Interest.* Although we decline to establish a rule that presumptively attributes all limited partnership interests, we are also not altering our determination that some types of limited partnership interests should be cognizable. While many limited partners may not possess the ability to signficantly influence or control partnership affairs, all limited partners are not similiarly insulated.[48] No party in this proceeding has disputed that an exemption from attribution for limited partners that have the power to participate actively in the business would contravene our regulatory objectives nor has any party opposed our determination that a mechanism is needed to assure that the interests of such limited partners remain cognizable.[49] The major dispute among the parties is the proper standard to effectuate these uncontroverted goals. Accordingly, in this section, we shall address in turn the two standards established in our *Report* to determine whether or not a specific limited partnership intetest is cognizable under our attribution rules: the "conformance to RULPA" standard and the "no material involvement" standard.

35. *"Conformance-to-RULPA" Standard.* Upon further reflection, we have determined that the threshold standard established in our *Report* exempting from attribution those limited partnerships which conform to the provisions of the RULPA is inappropriate. We note that both the petitioner, Couzens, and one of the parties opposing the petition, NAB, have suggested that we consider withdrawing our reliance upon the revised model act. There are three reasons why we find that this threshold standard should be eliminated.

36. First, it is unnecessary for us to have two disparate standards which both address the criteria used to determine which limited partnership interest should be exempted from attribution. As explained *infra*, we believe our requirement that all exempted limited partners refrain from any material involvement in their company's management and operations, particularly as clarified on reconsideration, is sufficient by itself to meet out objectives. The retention of the threshold standard interposes an unnecessary layer of complexity into our regulatory process, making the attribution rules unduly complicated and imposing unwarranted regulatory burdens. The elimination of this standard, therefore, will simplify our regulatory processes without harm to the objectives underlying our rules.

37. Second, we find that the provisions of the RULPA fail to provide the persons subject to the standard with adequate guidance. There has been no uniform interpretation of the statute and, moreover, the scope of permissive activities, in large part, is not contained in the statute at all but rather is determined by the terms of individual partnership agreements. In addition, the apparent inconsistency between RULPA and the "no material involvement" standard interjects ambiguity and confusion into the attribution process.

38. Third, we have determined that reliance on the provisions of the RULPA is inconsistent with the objectives underlying the attribution rules. Contrary to our initial finding, we now believe that the mere fact that a limited partnership conforms to the provisions of the RULPA does not provide meaningful assurance that the limited partner will lack the ability to significantly influence or control partnership affairs.

39. While the RULPA specifies that a limited partner can participate in any of the "safe harbor" activities enumerated in that model statute without being deemed to have taken part in the "control" of the business,[50] it is clear that exercise of many of these activities could involve the limited partner in the affairs of the partnership to a far greater

[47] *See* paras. 44–46, *infra*.

[48] Our experience in assessing the ownership structures of broadcast licensees reflects that the role of limited partners varies significantly in different broadcast entities. *Compare Decision* in BC Docket No. 79–286, 90 FCC 2d 583 (1982) (general partner has sole responsibility for all management functions) and *Anax Broadcasting Inc.*, 87 FCC 2d 483, 488 (1981) (limited partners required to maintain a purely passive role) *with Merrimack Valley Broadcasting*, 92 FCC 2d 506, 508, 615 (1982) (the two limited partners are full time sales manager and full time traffic sales manager, respectively) and *Greater Wichita Telecasting Inc.*, 90 FCC 2d 1046, 1052, *reconsid. denied*, 92 FCC 2d 780 (1982) (limited partner is in "vital" position as assistant station manager).

[49] While several parties, citing a statement in our *Report*, emphasize that the "typical" limited partner has no significant involvement in the management of the company (*Report*, 97 FCC 2d at 1022), we do not find this to be determinative. First, a tacit assumption underlying this statement is that certain "atypical" limited partners have significant management responsibilities and we find that a standard is necessary to separate these limited partners from those that are effectively isolated from participation in partnership affairs. Second, we anticipate that multiple owners, in their evaluation of different types of business organizations, will properly take into consideration the rules we adopt in this proceeding. If these persons perceive that there are specific advantages in establishing "atypical" limited partnerships due to the revision of the attribution rules adopted in this proceeding, we can expect the number of "active" limited partners to increase significantly.

[50] RULPA section 303(b).

degree than is appropriate for one who has been granted a total exemption from attribution on the basis of the "passive" nature of his or her equity holding. For example, under the "safe harbor" provisions, a limited partner could act as a manager of a broadcast station. He or she could also perform as a consultant to assess the appropriate programming format or to choose individual programs for the broadcast station. The safe harbor provisions permit a limited partner to "advise" the general partner on the type of programming he or she wants for the station or on any other matters relating to the business. If this "advice" is not adopted, the limited partner could participate in a decision to remove the general partner.[51] In fact, under the "safe harbor" provisions, a limited partner in certain instances could possess the preemptory power to remove a general partner [52] at any time and for any reason.

40. Moreover, the "safe harbor" provisions are merely examples of activities which the model act permits the limited partners to perform.[53] The statute expressly sanctions the performance of activities in addition to the "safe harbor" provisions and the judicial standards used in accessing the scope of these "additional" activities stem from a different policy rationale than those policies underlying the attribution rules.[54]

41. Furthermore, the model act, by its express terms, permits a limited partner to retain limited liability and to participate "in the control of the business" [55] as long as this participation "is not substantially the same as the exercise of the powers of a general partner" [56] and creditors have no actual knowledge of this control. The RULPA, therefore, makes distinctions between different degrees of "control." As long as creditors lack the requisite knowledge, the statute actually permits a limited partner to exercise a "little" control without giving up the benefits of limited liability.

42. In sum, while the performance of many of the "safe harbor" activities by a limited partner would be fully consistent with the RULPA, these activities would allow for the possibility of influence or control that would warrant attribution of the limited partner. The fact that the limited partner who exercised these powers would nonetheless be attributed under our "no material involvement" standard, only serves to illustrate that the retention of RULPA as a standard both unduly complicates our regulatory scheme and is unnecessary for the achievement of our regulatory objectives. We conclude that the continued use of the RULPA as a threshold criterion in attribution determinations for limited partnership interests is no longer advisable and we herein eliminate it.[57]

43. *"No Material Involvement" Standard.* In our *Report*, we determined that no limited partner relieved from attribution could be:

> Involved in any material respect in the management or operation of the broadcast, cable television, or newspaper entity concerned.[58]

Although Couzens erroneously disputes its existence [59], no party has questioned the propriety of this standard. In fact, the three parties substantively addressing this standard agree that it provides an appropriate mechanism to enable the Commission to verify that limited partners who are relieved from attribution will lack the ability to influence or control partnership affairs. We agree with this assessment and therefore affirm that a limited partner, to be exempt from attribution, must refrain from involvement in any material respect in the management or operation of the media activities.

44. Nonetheless, we believe it appropriate to provide additional guidance to limited partners as to what kind of insulation is sufficient to exempt a limited partnership interest from attribution. This will enable limited partners who wish to take advantage of our exclusion to include within their partnership agreement [60] the appropriate

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[51] We disagree with Varecha's assertion that, because the transfer of a general partnership interest is subject to Commission approval under Section 310 of the Communications Act, the contingent power of a limited partner to remove a general partner is *per se* insufficient to constitute "control." *See* 47 U.S.C. 310(d) (1982). While not finding that prior Commission approval of the replacement of a general partner would be necessary for purposes of Section 310, a general partner is likely to follow the advice of a limited partner if he or she knows that the limited partner possesses the power of removal even if his or her replacement is subject to Commission approval. Therefore, the power of removal, even if it is a "contingent" right, potentially provides a limited partner with the ability to control, or at least to materially influence, partnership affairs. Moreover, the power of removal is merely one of a number of "safe harbor" provisions contained in the RULPA. The revised act permits limited partners to engage in other activities which provide them with the ability to control or materially influence the business.

[52] Section 303(b)(5)(v) of RULPA specifies that the limited partner does not participate in the control of the business by voting on the removal of a general partner and section 302 provides that the right to vote can be "on a per capita *or other* basis." RULPA sections 302, 303(b)(5)(v) (emphasis added). If the partnership agreement specifies that the right to vote on the removal of a general partner is to be based on the percentage of equity contribution and if the limited partner contributed a majority of the capital, the power of the limited partner to remove the general partner would be absolute.

[53] *RULPA* at section 303(c).

[54] In evaluating activities beyond the scope of the "safe harbor" provisions, the courts have adopted either the "creditor reliance" standard or the "powers" standard. *See, generally*, M. Piece, "Limited Partner Control and Liability Under the Revised Uniform Limited Partnership Act", 32 Southwest L.J. 130 (1979). The sole purpose underlying the "creditor reliance" standard is to provide partners with discretion in determining the powers of limited partners so long as this discretion does not result in injury to third parties. This standard does not prevent limited partners from becoming intimately involved in all aspects of the business as long as third parties are not misled to their detriment. Because the "creditor reliance" test is unconcerned with the potential of the limited partner to materially influence or control the management or operations of the business, that policy diverges from the rationale underlying the attribution rules. *See, e.g., Frigidaire Sales Corporation v. Union Properties*, 14 Wash. App. 634, 544 P.2d 781 (1976), *aff'd*, 88 Wash. 2d 400, 562 P.2d 244 (1977).

The "powers" standard, which is the other criterion used in interpreting the "control" test, is also inadequate in assessing whether or not a particular interest should be subject to attribution under the media multiple ownership rules. Although this standard, unlike the "creditor reliance" standard, does evaluate the actions and powers of the limited partners, the line drawn by certain courts applying the "powers" test permit the holder of a limited partnership interest to possess the type of power over partnership affairs which we find inconsistent with an exemption from our attribution rules. For example, some of the cases applying this standard permit the limited partner to influence or control the operations of the business as long as the general partner possesses the authority to check or to countermand the actions of the limited partner. *See, e.g., Silvola v. Rowlett*, 129 Colo. 552, 272 P.2d 287 (1954).

[55] RULPA section 303(a).

[56] *Id.*

[57] In light of this holding, there is no need for us to consider Couzens' arguments that reliance on the provisions of the RULPA is an impermissible delegation of authority or that the standard is impractical or administratively burdensome.

[58] *Report*, 97 FCC 2d at 1023. *See* 47 CFR 73.3555, NOTE 2(f) (1984).

[59] The "no material involvement" standard is expressly embodied in the text of our *Report* (*Report*, 97 FCC 2d at 1023), in the recodification of the substantive attribution rules [47 CFR 73.3555 NOTE 2(f)(1984)] and in the revision of the regulations prescribing the reporting of attributable interests. 47 CFR 73.3615(a) (1984).

[60] As the drafters of the RULPA have indicated, "the certificate of limited partnership is confined principally to matters respecting the addition and withdrawal of partners and of capital, and other important issues are left to the partnership agreement." RULPA, Commissioner's Comment to section 101, 6 U.L.A. 182 (1983 Supp.). Consequently, we expect that the safeguards insulating an exempt limited partner typically will be contained in the partnership agreement. We are not precluding partners, however, from incorporating these safeguards in the certificate of limited partnership, if they so choose.

safeguards which, in turn, would permit a licensee to make the requisite certification. Not only will our guidelines provide greater certainty, but they will also lessen the need for the Commission to make costly *ad hoc* administrative determinations regarding the adequacy of specific unsulating mechanisms.

45. In establishing these standards, we reiterate that our intention is neither to restrict nor to prohibit, as a general matter, the types of business activities in which limited partners may engage. If a limited partner is willing to have his or her interest in the partnership attributed, we have no intention, by this order, of scrutinizing in any manner the activities of that partner. Consequently, we do not purport to prescribe either the kind or extent of involvement of an attributed limited partner in partnership affairs.

46. Moreover, depending upon the extent, type and location of their other media interests, we expect that certain limited partners would choose to incorporate within their partnership agreement the insulating provisions necessary to qualify for an exemption from attribution, whereas other limited partners would elect to acquire or retain the capacity to influence the partnership notwithstanding the application of our attribution rules. Indeed, it is likely that different limited partners, within the same company, may reach different conclusions regarding the need for an exemption from attribution. As a consequence, compliance with the requirements described below is restricted in scope to those limited partners who wish to qualify for an attribution exemption. We also wish to make clear that these guidelines are not incorporated into our rules and serve only to indicate the type of insulation the Commission will consider in evaluating challenges to the exclusion.

47. We believe that it is appropriate to provide the partners of a limited partnership with flexibility in the manner in which they draft their limited partnership agreement. For example, the partners, by establishing separate classes of limited partners or prescribing limitations applicable only to specified limited partners, could formulate an agreement in which the requisite insulating provisions were limited in scope to those partners desiring an exemption from attribution. In such a situation, the licensee would be able to make the certification necessary to exempt the specific partners who meet our "no material involvement" standard notwithstanding the fact that there may be other limited partners in the same partnership who do not qualify for an exemption. Limited partners who are not adequately insulated would simply be reported by the licensee as holding a cognizable ownership interest.

48. To be relieved from attribution, the limited partnership agreement should specify that the exempt limited partner [61] cannot act as an employee of the limited partnership if his or her functions, directly or indirectly, relate to the media enterprises of the company.[62] For example, the interest of a limited partner who acted as a station manager would be attributed. We will also require the limited partnership agreement to bar an exempt limited partner from serving, in any material capacity, as an independent contractor or agent with respect to the partnership's media enterprises. By way of illustration, an exempt limited partner could not hold a management contract for the station or act as an agent for the station in procuring programming. Moreover, the partnership agreement should restrict exempt limited partners from communicating with the licensee or the general partner on matters pertaining to the day-to-day operations of its business.[63]

49. The partnership agreement should also contain several provisions relating to the voting power of the limited partner. The partnership agreement may permit the exempt limited partners to vote on the admission of additional general partners, but the agreement should empower the general partner to veto any such admission.[64] In addition, the partnership agreement should either prohibit the exempt limited partner from voting on the removal of a general partner or limit this right to situations where the general partner is subject to bankruptcy proceedings, as described in sections 402 (4)–(5) of the RULPA [65] or is adjudicated incompetent by a court of competent jurisdiction.

50. Moreover, with the exception of permitting a limited partner to make loans to, or act as a surety for the business, the agreement should also bar the exempt limited partner from performing any services to the limited partnership materially relating to its media activities.[66] In addition, the agreement should also state, in express terms, that the exempt limited partner is prohibited from becoming actively involved in the management or operation of the media businesses of the partnership.[67] Finally, in determining the appropriate attribution of interests to a limited partner, we will scrutinize the close familial relationships of that partner. In this regard, while we have held that a "familial/business relationship, *standing alone*, is insufficient to create a presumption of common control for purposes of applying the mutiple ownership rules," [68] we have evaluated the facts and circumstances in specific cases to determine whether or not it was appropriate to attribute interests on the basis of a close familial relationship.[69] We will continue to follow this approach in dealing with attribution based on familial relationships generally. With respect to the specific situation in which a marital relationship is involved, we have previously determined that the interest held by one spouse are to be presumptively attributed to the other.[70]

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[61] If the limited partner is not a natural person, these restrictions apply to the constituent parts of the limited partner, e.g., its directors, officers, partners, etc. Where applicable, in vertical chain situations, our multipiler will be used. *See* 47 CFR 73.3555, NOTE 2(d) (1984).

[62] While a limited partner can also be a general partner (*see* RULPA § 303(a)), the interest of such a person in the business is attributable by virtue of the general partnership interest.

[63] This requirement is generally comparable to the requirement that we imposed upon persons taking advantage of our "passive investor" benchmark. In our *Report*, we imposed the requirement that passive investors "refrain[] from contact or communication with the licensee on any matters pertaining to the operation of its stations. . . ." *Report*, 97 FCC at 1013. Compliance with the provision we adopt here would restrict a limited partner from voting on any matters relating to the day-to-day operations of the business.

[64] The RULPA specifies that the written consent of each partner is necessary for the admission of new general partners into the business. RULPA § 401. Therefore, under RULPA, the power to veto the admission of new general partners is given to both the limited partners and the general partners.

[65] RULPA § 402(4)(5). This restriction is analogous to our determination concerning trusts. In our *Report*, we stated that a person who "holds the unrestricted power to replace a trustee . . . [will] have the assets of that trust attributed to him, unless such power is contingent upon some event beyond that person's control." *Report*, 97 FCC 2d at 1024.

[66] The RULPA, but not the ULPA, permits the contribution of the limited partner, in whole or in part, to be in the form of services. *See* RULPA sections 101(2), 201 (5)–(6); ULPA § 4.

[67] If a limited partner relieved from attribution subsequently acts in a manner which contravenes the insulating provisions of the partnership agreement or the certificate of limited partnerships, or if that partner subsequently becomes materially involved in the management or operations of the partnership, the Commission will attribute the limited partnership interest of the nonconforming limited partner.

[68] *Alabama Radio Corporation and Deep South Broadcasting Co.*, 69 FCC 2d 1256, 1263 n.9 (1978) (emphasis in original). *See* KTRB Broadcasting Co., 46 FCC 2d 605, 607 (1974) and *Alexander Klein*, 86 FCC 2d 423, 428 (1981).

[69] *See, e.g., East Arkansas Broadcasters, Inc.*, FCC 80-1283, 20 RR 934 (1960).

[70] *Alexander Klein*, 86 FCC 2d at 426 (1981); *Lady Sarah McKinney Smith*, 59 FCC 2d 398, 401 (1976); *Waters Broadcasting Corp.*, 88 FCC 2d 1216–19.

Continued

Notwithstanding the nearly conclusive statute the Commission has accorded this presumption in the past,[71] we will henceforth permit this presumption to be rebutted, on a case-by-case basis, in appropriate circumstances. We find that the inclusion of the above restrictions in the limited partnership agreement, coupled with proper consideration of close familial relationships, provide sufficient insulation to permit the licensee or cable television system to certify that the limited partner could not be involved in any material respect in the management or operation of the business.[72]

III. Clarification and Revision on Our Own Motion

51. On our own motion, we raise certain matters addressed in our *Report*. Specifically, we clarify matters concerning the single majority stockholder exception and revise certain requirements governing the reporting of ownership interests.[73] Additionally, we clarify the applicability of the divestiture requirements of § 76.501 of our rules in situations where interests grandfather under the cable cross-ownershp provisions pass to an heir or legatee.

52. *Aggregation Policy.* Under our aggregation policy a person with stock in several separate acounts has a cognizable interest if the sum of these accounts is equal to or exceeds the benchmark standard, even if each account, when considered in isolation, is below the benchmark.[74] The reason for this policy is to prevent persons from "evading our ownership constraint by breaking down their interests into non-cognizable discrete investments." [75] While it is clear that we aggregate separate accounts to determine whether or not a person has an attributable interest, in our *Report* it is not clear whether we aggregate separate accounts to determine whether a single person owns majority voting stock in the corporation, thereby exempting from attribution all other corporate shareholders, regardless of the size of their stock interests.

53. As long as the single majority stockholder interest is reflected on the face of the ownership report,[76] discrete interests will be aggregated in determining the applicability of the "single majority stockholder" exception.[77] The rationale underlying the exception is that the minority corporate stockholders, "even acting collaboratively, would be unable to direct the affairs or activities of the licensee on the basis of their shareholdings." [78] The inability of the minority corporate shareholders to direct the affairs of the corporation is not dependent upon whether the single majority shareholder possesses majority interest by virtue of a single majority account or by virtue of two or more stock accounts which, in the aggregate, exceed 50 percent of the voting shares of the corporation. Moreover, fundamental fairness dictates that if we aggregate discrete interests in determining whether a person is subject to attribution, we should similarly aggregate discrete interests in determining whether or not a person is exempt from attribution. Therefore, for both attribution and reporting purposes, we will aggregate discrete interests in application of the "single majority stockholder" rule.

54. Because of the potential in limited instances for the multiplier and aggregation rules to result in more than one single majority stockholder, modification of the aggregation rule in certain situations is necessary.[79] Accordingly, only those *de jure* control interests in intermediate corporations and direct interests in licensees will be aggregated in determining whether a party has standing as a single majority stockholder.[80]

55. In addition, clarification is needed as to the manner in which we implement our aggregation policy in a situation where the same person owns both "passive investor" and general

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rev'd on other grounds, 88 FCC 2d 1204, 1206 (1981), *set aside*, 91 FCC 2d 1260 (1982), *off'd sub nom. West Michigan Broadcasting Co. v. Fcc*, 735 F.2d 601 (D.C. Cir. 1984), *cert. denied*, Case No. 84-7000 (March 4, 1985).

[71] *Id.*

[72] There are a number of powers which a limited partner may exercise consistent with these guidelines. A limited partner exempt from the attribution rules can exercise all of the powers mandated by either of the uniform acts. For example, he or she may determine the contents of the certificate of limited partnerships as well as amendments to that document. Subject to the veto of the general partner, the exempt limited partner can vote on the admission of new partners. He or she can petition for a judicial dissolution upon the conditions specified by state law or file derivative suits on behalf of the partnership.

In addition to these activities, there are other powers which a limited partner can possess and still qualify for an exemption from attribution. An exempt limited partner may vote on the removal of a partner who is adjudicated an incompetent by a court of competent jurisdiction or is subject to bankruptcy proceedings as described in section 402 (4)-(5) of the RULPA. RULPA section 402 (4)-(5). The exempt limited partner may make loans to, or act as surety for, the business. He or she may vote on the sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the business other than in the ordinary course of the business. In addition, the exempt limited partner can vote on a change in the nature of the business or petition the Commission for authority to effectuate an assignment or transfer of control of the company. An exempt limited partner can be a customer of the partnership. Moreover, the exempt limited partner, *inter alia*, can also provide services to the limited partnership as long as those activities do not materially relate to the media activities of the partnership.

[73] There is also a matter concerning ownership reports which does not require revision but warrants clarification. In our revisions to § 73.3615, we specified that licensees owning multiple stations with different anniversary dates could file a single report on the date of their choice as long as the reports are not more than one year apart. 47 CFR 73.3615(a) (1984). If the licensee selects the anniversary date of a station and subsequently sells that station, it can select the anniversary date of another station as the date for the filing of its ownership report so long as its reports are not filed more than one year apart.

[74] *See Report*, 97 FCC 2d at 1026.

[75] *Notice, supra* n.12 at para. 36.

[76] Licensees are required to report all interests which exceed the benchmark standard. In addition, they are required to report discrete interests of a person below the benchmark but which aggregated exceed the benchmark in situations where those interests are known to the licensee. *Report*, 97 FCC 2d at 1028-29. Therefore, if the discrete interests constituting a majority share are either at or above the benchmark or below the benchmark but known to the licensee, they are subject to the reporting requirements and a minority shareholder can take advantage of the automatic "single majority stockholder" exclusion. If the discrete interests constituting the majority stockholding interest are below the benchmark standard and unknown to the licensee, the minority shareholder cannot take advantage of the "single majority" exclusion. In such a situation, however, the minority shareholder can seek to rebut the presumption that the interest should be deemed cognizable. *See id.* at 1010-11.

[77] Under this rule, if an individual owns 100 percent interest in corporation A, which in turn owns 35 percent stock of a licensee corporation and the same individual owns 100 percent interest in corporation B, which in turn owns 20 percent stock of the same station, that individual will be deemed to be a "single majority stockholder" in the broadcast station and all other stockholders of the licensee corporation will be relieved from attribution.

[78] *Report*, 97 FCC 2d at 1008-09.

[79] For example, assume X has a 60% interest in Corporation A which in turn has a 40% interest in a licensee. X also has a 49% interest in Corporation B which in turn has a 49% interest in the licensee. Under the typical application of the multiplier and aggregation rules, X would be attributed with a 64% interest in the licensee [Corporation A's 40% interest in the licensee added to the product of Corporation B's 49% interest in the licensee and X's 49% interest in Corporation B (49% × 49% = 24%)]. Assume, however, that Z owns the remaining 11% of the licensee directly and the remaining 51% interest in Corporation B. Under these circumstances Z would be attributed with Corporation B's 49% and his own 11% for a total ownership interest in the licensee of 60%. Unless the aggregation procedures are modified, both X and Z could be considered a single majority stockholder.

[80] In the example described in footnote 79 above, Z's *de jure* control of Corporation B would result in the attribution to Z alone of Corporation B's 49% interest in the licensee which, when added to Z's 11% direct interest, would render Z the single majority stockholder. X's 49% interest in Corporation B would be disregarded for purposes of determining the single majority stockholder.

investment interests.[81] In this type of situation a bipartite standard will be applied in order to ascertain whether or not the interests are attributable. First, the "passive investor" and general benchmark interests will be separately aggregated. If the sum of either group is equal to or exceeds the benchmark established in our *Report* for that type of investment, the holder of the interests has an investment which is cognizable under the attribution rules. Second, if the two sums individually are below the relevant benchmarks, these two sums will be added and the interests will be attributed if the total is equal to or exceeds the higher "passive investor" benchmark of ten percent of the stock of the corporation.[82] Moreover, the licensee will be required to report any such subbenchmark interests which, if aggregated in the manner prescribed above, exceed the attribution benchmarks where those interests are known to the licensee.

56. *Single Majority Stockholder Exemption.* The "single majority stockholder" exception unlike other attribution exemptions, is based upon the quantity of stock held by a third person rather than upon the extent or nature of the holder's own stock interests. As a consequence, a minority interest in excess of the otherwise applicable attribution benchmark that qualifies for an exemption from attribution by virtue of the single majority stockholder exception may become cognizable if the majority stockholder effectuates a transfer or assignment which results in no single individual or entity holding more than fifty percent of the voting stock. The availability of the single majority stockholder exemption, therefore, may be eliminated by actions of persons other than the holder of that exemption.

57. Because the imposition of unnecessary restraints upon the alienability of stock interests disserves the public interest, we will not consider the existence of the single majority stockholder exemption in evaluating assignments or transfers requested by the majority stockholder. As a consequence, we will not prevent or delay a single majority stockholder from assigning or transferring stock merely because the interest of a minority stockholder may become cognizable as a result of such an assignment or transfer.

58. Our concern with unreasonable restraints upon the alienability of stock interests, however, does not imply that we will fail in our obligation to vigorously enforce our media multiple ownership rules. A minority stockholder who relies upon the single majority stockholder exception has an affirmative obligation to assure that the interests which he or she possesses are consistent with the limitations embodied in our ownership rules. Specifically, a minority stockholder has the responsibility to take any corrective action necessary in the event that the elimination of the availability of the single majority stockholder exception places him or her in violation of the media multiple ownership rules. For example, he or she could effectuate a partial assignment or transfer of the non-conforming ownership interests or place the interest in a trust which qualifies for an exemption from attribution. Given that the loss of a previously available single majority shareholder exemption may be relatively precipitous and beyond the control of the minority stockholder, we will afford a transition period of up to one year in which the affected minority stockholder may cure any resulting violation.

59. *Ownership Reports.* On our own motion, we make four types of revisions to the scope of the data which we require to be submitted in the ownership reports.[83] Two types of changes are corrections of inadvertent errors made in the revisions of the text of § 73.3615 of our rules. The other two changes concern the persons required to file ownership reports.

60. First, our *Report* specifies that changes will be made to the reporting requirements "to correspond to the new attribution standards and methods adopted herein." [84] Yet the language of our rule concerning the reporting requirements in vertical ownership situations does not completely effectuate this intent.[85] We therefore revise § 73.3615 of our rules to conform the reporting requirements to the substantive attribution rules.

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[81] Persons holding interests qualifying for "passive investor" status are subject to the 10 percent benchmark with respect to that interest whether or not that person is included within the definition of a "passive investor." For example, an individual holding the majority stock of an insurance company which in turn owns 6 percent stock in a broadcast station does not have a cognizable interest in the station. While the individual may not come within the strict definition of "passive investor," his or her indirect ownership interest in the station is wholly the result of the ownership of an entity which qualifies for "passive investor" treatment. As a consequence, the individual is subject to the 10 percent "passive investor" benchmark. A contrary rule would produce the anomalous result of having the owner of a more remote interest being subject to a more rigorous standard than the owner of a direct interest.

[82] For example, assume that an individual owns a majority of stock in the following four companies: (1) An insurance company, which in turn owns 4 percent of the stock of the licensee corporation; (2) an investment company, which in turn owns 2 percent of the stock the licensee corporation; (3) Corporation A, which in turn owns 2 percent of the stock of the licensee corporation and (4) Corporation B, which in turn owns 1 percent of the stock of the licensee corporation. To determine whether or not this individual has an attributable holding, one first adds the 4 percent holding of the insurance company and the 2 percent holding of the investment company and ascertains that the 6 percent total is below the 10 percent "passive investor" benchmark. Similarly, the 2 percent stock holding of Corporation A is added to the 1 percent stock holding of Corporation B; the 3 percent total is below the 5 percent benchmark. Under the second part of the standard, the 6 percent "passive investment" total is added to the 3 percent "non-passive investment" total to ascertain that the sum of these figures is less than 10 percent. The owner of these holdings, therefore, is not deemed to have an attributable interest in the licensee. If this person, however, subsequently acquires majority stock interest in a bank, the trust department of which in turn owns 3 percent of the stock of the licensee, the holdings of this person would be attributable because the total of the 9 percent sum of the "passive investment" stock and the 3 percent general investment stock exceeds 10 percent; the interests are subject to attribution even though the separate "passive investment" and "general investment" sums do not exceed their respective benchmarks.

[83] It is proper for us to make these revisions on our own motion. We note that the *Notice* specified that the type of information that we require licensees to submit in an ownership report is within the scope of this proceeding. *See, e.g., Notice, supra* n.12 at para. 40. In addition, both the Administrative Procedure Act and our own regulations exempt rules of practice and procedure from the notice and comment rulemaking requirements. 5 U.S.C. 553(b)(A) (1982); 47 CFR 1.412(a)(5) (1984). In *Revision of Application for Construction Permit for Commercial Broadcast Station*, FCC 81-278 (released October 19, 1981), 50 RR 2d 381 (1981), we held that revisions to the information required in the application for a construction permit, Form 301, was exempt from the notice of comment rulemaking requirements of the Administrative Procedure Act. Section 73.3615, which prescribes the scope and material to be included in the ownership report, Form 323, is such a rule. As we stated in revising Form 301 on our own motion, "we are changing neither substantive law or policy nor any underlying Commission requirement pertaining to ultimate public interest finding. Rather, we are revising the form and manner in which this information is submitted." *Id.* at 381.

[84] *Report*, 97 FCC 2d at 1028.

[85] The language of the revised rules adopted in our *Report* does not incorporate an exception to the use of a "multiplier" in situations where a link in the ownership chain represents a percentage interest which exceeds 50 percent; require the reporting of corporate shareholders, officers and directors who have an attributable interest through means of a corporate partner at the second link of the vertical ownership chain; or require reporting of attributable interests above the second link. In the revisions to Section 73.3615, we also clarify that the "multiplier" is applicable only to corporate ownership interests rather than to all types of interests in a vertical ownership chain held by corporations. For example, the "multiplier" does not apply to any ownership interests in a partnership whether or not that interest is held by a corporation.

61. Second, we are deleting the term "partner" which was inadvertently added to § 73.3615(a)(3)(i) of our rules as revised in our *Report*. By its terms, § 73.3615(a)(3)(i) elicits information on corporations, associations, trusts, estates and receiverships. Since the preceding provision, § 73.3615(a)(2), specifically deals with partnerships, we find it unnecessary to request information on partners in § 73.3615(a)(3)(i).[86]

62. Third, upon further reflection, we have decided to revise the scope of the exemption granted to "50/50 partnerships" from the requirement that ownership reports be filed annually.[87] While we continue to believe that it is appropriate to exempt many "50/50 partnerships," we will require the filing of annual reports for such partnerships which do not consist entirely of natural persons. This minor modification is necessary in order to assure that we are made aware of changes to attributable interests in the partners in situations where assignment or transfer applications are not required. For example, annual reports would provide information on changes in the officers or directors of a corporate partner.

63. In addition, we have determined to extend this reporting exemption to encompass all partnerships consisting entirely of natural persons. Our rules require prior Commission approval of an assignment or transfer of any partnership interest.[88] Because we will obtain adequate ownership information on natural person partnerships in the context of the assignment and transfer process, we believe that we can safely eliminate the annual reporting requirement as it applies to all partnerships composed entirely of natural persons.

64. Fourth, upon further reflection, we have decided to revise in one respect the reporting requirements imposed upon permittees. Our regulations currently require a permittee to file an initial Ownership Report shortly after the grant of its application for a construction permit.[89] Traditionally, we had also required that a permittee both file an ownership report on an annual basis and within thirty days inform the Commission of any ownership change affecting the information contained in that report by means of a supplemental ownership report. In our *Report*, we determined that the annual reporting and supplemental filing requirements were unnecessary to achieve our regulatory objectives and, as a consequence, eliminated these reporting requirements. While we remain convinced on reconsideration that the reduction in the reporting burdens on permittees is warranted, there is one modification which in our view should be made to the revised reporting requirements now applicable to permittees. In light of the substantial effort necessary for the construction of broadcast facilities, it is likely that significant time will elapse between the filing of the initial Ownership Report and the commencement of commercial broadcasting. Consequently, we believe that supplemental information should be filed when the permittee applies for a broadcast license. We believe that the slight administrative burden associated with the filing of a single updated report or the certification of the accuracy of the existing Report is clearly outweighed by our increased ability to enforce the media multiple ownership rules. Therefore, we will require a permittee, at the time at which it applies for a station license, to file an updated Ownership Report or to certify that the data contained in its current Ownership Report are unchanged.

65. *Divestiture of Cable Interests Transferred to Heirs or Legatees.* Finally, as a ministerial matter, we are taking the opportunity presented by our amendment of the attribution notes to § 76.501 of the rules to add a note to that section clarifying another matter. The added note makes explicit our position that cable interests grandfathered under the cable cross-ownership provisions need not be divested when those interests are transferred to an heir or legatee, whether by will or by intestacy, provided that the degree or extent of cross-ownership would not be increased by such transfer. The broadcast multiple ownership rules have long contained a note that specifically provides for such a divestiture exception,[90] and nothing suggests that the result would or should be different where cable interests are involved. Our action here serves simply to memorialize our view in this regard and to thereby remove any uncertainty which might exist on this issue.

66. As prescribed by the Regulatory Flexibility Act,[91] we have prepared a final regulatory flexibility analysis ("FRFA") which outlines the effect of the substantive rules adopted in this *Memorandum Opinion and Order* on small entities. The FRFA is contained in Appendix D.

67. The requirements contained in this *Memorandum Opinion and Order* have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burden on the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

68. Accordingly, it is ordered, that Parts 73 and 76 of the Commission's Rules and Regulations are amended effective July 31, 1985, as set forth in the attached Appendices A, B, and C.

69. It is further ordered, that the "Petition for Reconsideration in Part" filed by the American Council of Life Insurance is granted to the extent described herein and is otherwise denied.

70. It is further ordered, that the "Petition for Reconsideration" filed by Michael Couzens, P.C., is granted to the extent described herein and is otherwise denied.

71. It is further ordered, that the Secretary shall cause this *Memorandum Opinion and Order* to be printed in the Federal Communications Commission Reports.

72. Authority for the actions taken herein is contained in Sections 4(i), 4(j), 303 and 405 of the Communications Act of 1934, as amended.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

The authority citation for part 73 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).

2. 47 CFR 73.3555 **Note 2** is amended by revising paragraph (g) and by adding paragraph (i) to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 2: * * *

* * * * * *

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system to make the certification set forth in paragraph (a)(1) of this section, it must verify that the partnership agreement or certificate of

[86] 47 CFR 73.3615(a)(3)(i) (1984).

[87] *Report*, 97 FCC 2d at 1032.

[88] *See* 47 CFR 73.3540(a), (f)(6) (1984).

[89] 47 CFR 73.3615(b) (1984).

[90] *See* § 73.3555, **Note 4** (formerly §§ 73.35, **Note 8**; 73.240, **Note 8** and 73.636, **Note 8**).

[91] *See* 5 U.S.C. § 601 *et seq.* (1982).

limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assure adequate insulation for purposes of this certification are described in the *Memorandum Opinion and Order* in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

* * * * *

(i) 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 10 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 (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 10 percent.

* * * * *

Appendix B

47 CFR Part 73 is amended as follows:

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

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).

2. 47 CFR 73.3615 is amended by revising the introductory text of paragraph (a), (a)(1), the introductory text of (a)(2), the introductory text of (a)(3), (a)(3)(i), (a)(3)(iv)(B), and (b) to read as follows:

§ 73.3615 Ownership reports.

(a) Each licensee of a commercial AM, FM, or TV broadcast station shall file an Ownership Report on FCC Form 323 once a year, on the anniversary of the date that its renewal application is required to be filed. Licensees owning multiple stations with different anniversary dates need file only one Report per year on the anniversary of their choice, provided that their Reports are not more than one year apart. A licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide the following information as of a date not more than 60 days prior to the filing of the Report:

(1) In the case of an individual, the name of such individual;

(2) In the case of a partnership, the name of each partner and the interest of each partner. Except as specifically noted below, the names of limited partners shall be reported. A limited partner need not be reported, regardless of the extent of its ownership, if the limted partner is not materially involved, directly or indirectly, in the management or operation of the licensee and the licensee so certifies.

* * * * *

(3) In the case of a corporation, association, trust, estate or receivership, the data applicable to each:

(i)(A) The name, residence, citizenship, and stockholding of every officer, director, trustee, executor, administrator, receiver and member of an association, and any stockholder which holds stock accounting for 5 percent or more of the votes of the corporation, except that an investment company, insurance company, or bank trust department need be reported only if it holds stock amounting to 10 percent or more of the votes, provided that the licensee certifies that such entity has made no attempt to influence, directly or indirectly, the management or operation of the licensee, and that there is no representation on the licensee's board or among its officers by any person professionally or otherwise associated with the entity.

(B) A licensee shall report any separate interests known to the licensee to be held ultimately by the same individual or entity, whether those interests are held in custodial accounts, by individual holding corporations or otherwise, if, when aggregated:

(*1*) The sum of all interests except those held by or through "passive investors" is equal to or exceeds 5 percent; or

(*2*) The sum of all interests held by or through "passive investors" is equal to or exceeds 10 percent; or

(*3*) The sum of the interests computed under paragraph (a)(3)(i)(B)(*1*) of this section plus the sum of the interests computed under paragraph (a)(3)(i)(B)(*2*) of this section is equal to or exceeds 10 percent.

(C) If the majority of the voting stock of a corporate licensee is held by a single individual or entity, no other stockholding need be reported for that licensee;

* * * * *

(iv) * * *

(B) Where X is not a natural person and has attributable ownership interest in the licensee under § 73.3555 of the rules, regardless of its position in the vertical ownership chain, an Ownership Report shall be filed for X which, except as specifically noted below, must contain the same information as required of a licensee. If X has a voting stockholder interest in the licensee, only those voting interests of X that are cognizable after application of the "multiplier" described in Note 2(d) of § 73.3555 of the rules, if applicable, shall be reported. If X is a corporation, whether or not its interest in the licensee is by virtue of its ownership of voting stock, the officers and directors shall be reported. With respect to those officers and directors whose duties and responsibilities are wholly unrelated to the licensee, and who wish to be relieved of attribution in the licensee, the name, title and duties of these officers and directors, with statements properly documenting that their duties do not involve the licensee, shall be reported.

* * * * *

(b) Except as specifically noted below, each permittee of a commercial AM, FM or TV broadcast station shall file an Ownership Report on FCC Form 323 (1) within 30 days of the date of grant by the FCC of an application for original construction permit and (2) on the date that it applies for a station license. The Ownership Report of the permittee shall give the information required by the applicable portions of paragraph (a) of this section. A permittee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and it is accurate, in lieu of filing a new Report.

* * * * *

Appendix C

47 CFR Part 76 is amended as follows:

1. The authority citation for Part 76 continues to read:

Authority: Secs. 7, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).

2. 47 CFR 76.501(a) **Note 2** is amended by revising paragraph (g) and by adding new paragraph (i) as follows:

§ 76.501 Cross-ownership.

* * * * *

(a) * * *

Note 2: * * *

* * * * *

(g)(1) A limited partnership interest shall be attributed to a limited partner unless that partner is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership and the licensee or system so certifies.

(2) In order for a licensee or system to make the certification set forth in paragraph (g)(1) of this section, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. The criteria which would assure adequate insulation for purposes of this certification are described in the *Memorandum Opinion and Order* in MM Docket No. 83-46, FCC 86-252 (released June 24, 1985). Irrespective of the terms of the certificate of limited partnership or partnership agreement, however, no such certification shall be made if the individual or entity making the certification has actual knowledge of any material involvement of the limited partners in the management or operation of the media-related businesses of the partnership.

* * * * *

(i) 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 10 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 (i)(1) of this section plus the sum of the interests computed under paragraph (i)(2) of this section is equal to or exceeds 10 percent.

* * * * *

3. 47 CFR 76.501(a) is amended by adding a new **Note 4** as follows:

§ 76.501 Cross-ownership.

* * * * *

(a) * * *

Note 4: Paragraph (a)(2) of this section will not be applied so as to require the divestiture of ownership interests proscribed herein solely because of the transfer of such interests to heirs or legatees by will or intestacy, provided that the degree or extent of the proscribed cross-ownership is not increased by such transfer.

Appendix D

Final Regulatory Flexibility Analysis[1]

1. *Need for and Objective of the Rule.* The reasons that the Commission determined to revise the standards by which it assesses whether or not to attribute limited partnership interests were to eliminate ambiguities and apparent inconsistencies in the present attribution standards, to simplify the regulatory structure relating to attribution and to assure that the interests of limited partners which do in fact possess the ability to materially influence business affairs are taken into account in the application of the media multiple ownership rules. Small entities benefit from the clarification and simplification of the attribution standards relating to limited partnership interests.

2. *Issues Raised in Response to the Initial Regulatory Flexibility Analysis.* No party to this proceeding raised any issue specifically in response to either the Initial Regulatory Flexibility Analysis contained in the *Notice of Proposed Rulemaking* or the Final Regulatory Flexibility Analysis contained in the *Report and Order.*

3. *Significant Alternatives Considered and Rejected.* The Commission considered the proposal to presumptively attribute all limited partnership interests. Recognizing, however, that many limited partners lack the ability to materially influence the management or operations of the company in which they have invested, the Commission determined that this approach would impose unnecessary costs both upon limited partners and the Commission's processes.

The Commission rejected the notion that it would retain the threshold standard that exempts limited partnership interests which, *inter alia,* conform to the provisions of the Revised Uniform Limited Partnership Act of 1976 ("RULPA"). Because the *Report and Order* requires that a person seeking an exemption from attribution for a limited partnership interest to refrain from any material involvement in the management or operations of the business, the Commission found that retention of the "conformance to RULPA" standard was unnecessary. It also determined that the use of two disparate standards for assessing when a limited partnership interest is exempt from attribution tends to engender confusion and uncertainty. It found that the "conformance to RULPA" standard failed to provide a clear framework by which persons holding limited partnership interests could readily ascertain whether or not their interests were cognizable and that the activities permitted by this standard were in fact inconsistent with the policies underlying the attribution standards.

4. *Public Dissemination of this Document.* The attached *Memorandum Opinion and Order,* which includes this Final Regulatory Flexibility Analysis, is publicly available. This document can be obtained at the Federal Communications Commission, Office of Public Affairs, Room 202, 1919 M St. NW., Washington, D.C. 20554.

[FR Doc. 85-15735 Filed 7-2-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Section 604 of the Regulatory Flexibility Act, *inter alia,* requires an agency to prepare a final regulatory flexibility analysis in instances in which it is required to provide notice of a rule change and in fact promulgates a final rule. 5 U.S.C. 604(a) (1982). *See* 5 U.S.C. 553(b) (1982). The rule changes concerning the manner in which the Commission attributes limited partnership interests, but not the revisions to the data which are required to be submitted in an Ownership Report, are within the scope of section 604(a). *See* n.83, *supra.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 13]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

Correction

In FR Doc. 85-12357 beginning on page 21052 in the issue of Wednesday, May 22, 1985, make the following corrections:

1. On page 21056, in the first column, in § 571.108 the third and fourth lines from the bottom should read:

S4.1.1.36 * * *

(a) * * *

2. Also on page 21056, in the third column, the Standard number at the beginning of the next to last line should read "S4.1.1.37".

BILLING CODE 1505-01-M