

(4) If the signals of the stations in a proposed combination: (a) do not have overlapping Grade B contours; and (b) have not been carried, via DBS or cable, to any of the same geographic areas within the past year.

(5) For paragraph (b)(2)(i) of this section only (the top four-ranked restriction), if the stations in a proposed combination are in a market with 11 or fewer full-power television stations, we will consider waivers pursuant to criteria described in the *Report and Order* in MB Docket No. 02-277, released July 2, 2003 (FCC 03-127).

NOTE 8 TO § 73.3555: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 535-1605 kHz band where grant of such application will result in the overlap of 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application of the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

NOTE 9 TO § 73.3555: Paragraph (a)(1) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM station license in the 1605-1705 kHz band by an entity that owns, operates, controls or has a cognizable interest in AM radio stations in the 535-1605 kHz band.

NOTE 10 TO § 73.3555: Authority for joint ownership granted pursuant to Note 9 will expire at 3 a.m. local time on the fifth anniversary for the date of issuance of a construction permit for an AM radio station in the 1605-1705 kHz band.

NOTE 11 TO § 73.3555: For purposes of paragraph (c) of this section: (1) For radio/newspaper combinations, the Cross-Media Limit is triggered when the newspaper's community of publication is completely encompassed by: (i) for AM radio stations, the predicted or measured 2mV/m contour computed in accordance with § 73.183 or § 73.186 of the Commission's rules; (ii) for FM stations, the predicted 1 mV/m contour computed in accordance with § 73.313 of the Commission's

rules; and (2) for television/newspaper combinations, the Cross-Media Limit is triggered when the newspaper's community of publication is located within the same Nielsen Designated Market Area to which the television station is assigned.

NOTE 12 TO § 73.3555: For purposes of paragraph (c) of this section, for television/radio combinations, the rule is triggered when the radio station's community of license is located within the Nielsen Designated Market Area to which the television station is assigned.

[59 FR 49007, Sept. 26, 1994, as amended at 59 FR 62613, Dec. 6, 1994; 61 FR 10690 and 10692, Mar. 15, 1996; 64 FR 50645, 50651, 50666, Sept. 17, 1999; 65 FR 36379, June 8, 2000; 66 FR 9048, Feb. 6, 2001; 66 FR 9972, Feb. 13, 2001; 66 FR 15356, Mar. 19, 2001; 68 FR 46355, Aug. 5, 2003]

§ 73.3556 Duplication of programming on commonly owned or time brokered stations.

(a) No commercial AM or FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24 hour period.

(c) Any party engaged in a time brokerage arrangement which conflicts with the requirements of paragraph (a) of this section on September 16, 1992, shall bring that arrangement into compliance within one year thereafter.

[57 FR 18093, Apr. 29, 1992, as amended at 57 FR 42706, Sept. 16, 1992]

EFFECTIVE DATE NOTE: At 57 FR 18093, Apr. 29, 1992, § 73.3556 was added, effective Aug. 1, 1992. At 57 FR 35763, Aug. 11, 1992, the effective date was deferred pending action by the agency. At 57 FR 37888, Aug. 21, 1992, the effective date was further deferred. At 57 FR 42706, Sept. 16, 1992, paragraph (a) was revised and paragraph (c) was added, effective Sept. 16, 1992.