

other rights, such as some voting shares or contractual relationships? If the Commission decides to attribute nonvoting shares without reference to the existence of other contractual relationships, should we adopt a separate benchmark at the same level as we apply either to voting shares or to "passive" investors? The Commission tentatively believes that we should, if we decide to attribute nonvoting shares, adopt a benchmark at least as high as that applied to "passive investors" since there is a common assumption of less potential for influence or control in both instances.

#### Partnership Interests

26. The Commission generally attributes all partnership interests, except for sufficiently insulated limited partnership interests, regardless of the degree of equity holding. There is no apparent controversy regarding the rule to attribute all general partnership interests, and the Commission does not intend to revisit this rule. The Commission currently exempts from attribution those limited partners that are sufficiently insulated from "material involvement," directly or indirectly, in the management or operation of the partnership's media related activities, upon a certification by the licensee that the limited partners comply with specified insulation criteria. Limited partnership interests that are not insulated are attributable, regardless of the amount of equity held. The Commission seeks comment on the effectiveness of the current insulation criteria for limited partnership interests. Are additional insulation criteria necessary to assure that the goals of the attribution rules are achieved? Or, to the contrary, should the insulation criteria be relaxed to any degree, at least in certain circumstances, to attract increased capital investment or encourage new entry, and can this be done without implicating the purposes of the multiple ownership rules to encourage diversity and competition?

27. *Business Development Companies and Other Widely-Held Limited Partnerships.* The *Capital Formation Notice* proposed to relax insulation criteria with respect to business development companies organized as limited partnerships so as to eliminate, as much as possible, the current conflict with state and federal securities laws. Alternatively, the *Capital Formation Notice* asked whether the Commission should combine an equity ownership standard specific to these partnerships with a more limited relaxation of specific insulation requirements. The *Capital Formation Notice* also solicited

comments on whether the Commission should modify the insulation criteria applicable to all "widely-held" limited partnerships to recognize insulation where limited partners hold an insignificant percentage of the total interests in the partnership. The Commission asked whether a 5 percent or other ownership benchmark would be appropriate in certain circumstances.

28. The Commission seeks additional comments in this area. In particular, we would like updated information and additional empirical information on the growth and prevalence of business development companies and widely-held limited partnerships as investment vehicles generally, as well as applied to the broadcast industry in particular, including the percentage of equity typically represented by their investment. In this regard, it will be helpful for commenters to discuss with specificity the operation of business development corporations and widely-held limited partnerships and whether the existing insulation criteria have hindered capital flow from these entities to licensees.

29. The Commission asks parties to address the standards that could be used to define widely-held limited partnerships eligible for application of any revised insulation criteria. Comment is particularly sought on whether there is anything inherent in the nature of state or federal regulation of business development companies that would insure that they remain widely held and whether such a guarantee, if it exists, is an adequate substitute for any of our current insulation criteria. Parties may also wish to offer additional suggestions for defining widely-held limited partnerships that reflect our concerns that such entities be used exclusively for investment purposes.

30. Additional information is sought, supported by empirical data, on whether the Commission should revise our decision, on reconsideration of the *Attribution Order*, not to adopt an equity benchmark for noninsulated limited partnerships. In that decision, the Commission decided to apply insulation criteria to limited partnerships, instead of applying an equity benchmark. The Commission is not inclined to change this approach based on the record compiled thus far. If parties disagree with this conclusion, they must provide us with more data and analysis to demonstrate that our earlier decision is no longer valid or effective.

31. In this respect, the Commission seeks information on the financial and legal structures of limited partnerships to enable us to determine whether there

is a uniform equity level below which the Commission need not be as concerned or need not be concerned at all with the application of the insulation criteria. Should equity share be defined by the amount of cash contribution, the share of proceeds, or rights on dissolution? How would the Commission evaluate contributions in the form of services? If the power of a limited partner is not related to his proportional partnership share (which is the premise of the current rules), is there a partnership size that would obviate the power of any one partner, such that ownership should not be attributed to any partner, regardless of his share? The Commission also asks whether other state and federal regulations might provide guidance in this area, and/or the extent that such regulations might provide sufficient protection so as to make additional Commission regulations. In this regard, the Commission requests estimates, supported by economic or other studies that provide their basis, of how much additional capital might be made more readily or cheaply available to the broadcast industry by adoption of any of these approaches, as well as how such capital is likely to be distributed.

#### Limited Liability Companies and Other New Business Forms

32. The Commission also seeks comment as to how we should treat, for attribution purposes, the equity interest of a member in a limited liability company or LLC, a relatively new form of business association permitted and regulated by statute in at least 45 states. The Commission has recently received TV and radio assignment applications where parties have argued that we should exempt certain owners of an LLC from attribution, either because they should be treated as nonvoting shareholders or because they should be treated as fully-insulated limited partners. So that processing of pending applications is not indefinitely delayed, the Commission plans to process them on a case-by-case basis until this rule making is completed, using the tentative proposal delineated above as our interim policy, including the special exception for minorities discussed therein.

33. Comment is solicited as to how the Commission should treat LLCs, Registered Limited Liability Partnerships ("RLLPs"), and other new business forms as well as any other new business forms, that may arise in the future for attribution purposes. Any approach the Commission takes with respect to LLCs and similar hybrid entities must ensure that exemption