how control should be determined. The Commission proposes to require, as a safeguard against misuse, that each licensee wishing to qualify for the benefits of the rule certify on its application for transfer, assignment or renewal that investors taking advantage of this exception (*i.e.*, non-minority or male investors holding shares above the applicable attribution benchmark who seek to have their interests deemed non-attributable) do not exercise control over the day-to-day operations of the broadcast station.

Tax Certificates

14. The Commission next explores ways to expand its existing tax certificate policy to encourage entities to sell their mass media holdings to minorities and women, and to make it easier for minority and female operators

to upgrade their facilities.

15. Exercising the authority conferred upon it by Section 1071 of the Internal Revenue Code, 26 U.S.C. 1071, the Commission has, since 1978, issued tax certificates to promote minority ownership of broadcast stations. Under the current policy, tax certificates are available to (1) individuals and entities that sell a broadcast station or cable system to a minority-controlled purchaser and (2) equity holders in a minority-controlled broadcasting or cable entity upon the sale of their equity, provided that their interest assisted in financing the acquisition of a broadcast or cable property or was purchased within the first year after broadcast license issuance, thus contributing to the stabilization of the entity's capital base.

16 A tax certificate enables the seller to defer for two years the gain realized by (1) treating it as an involuntary conversion, under 26 U.S.C. 1033, with the recognition of gain avoided by the acquisition of qualified replacement property; or (2) electing to reduce the basis of certain depreciable property, under 26 U.S.C. 1071, or both.

17. Over the past several years, a number of parties have suggested that the policy could be of even greater benefit to minority owners if the Commission and the Internal Revenue Service set up a working group to change certain IRS rules regarding tax certificates. They proposed, for example, that the Commission ask the IRS to revise its 1966 ruling that requires a holder of a tax certificate to reinvest the proceeds of a sale in a corporation that directly operates a communications business, as opposed to a holding company. They also proposed that the Commission ask the IRS to revisit revenue rulings holding

that the purchase of interests in a partnership does not qualify as replacement property. In addition, they urge the Commission to ask the IRS to increase the deferred period from two years to at least four years. Another suggestion that has come up in informal discussion with minority mass media operators in that the Commission seek to expand the definition of suitable reinvestment property for a mass media seller to include any communications business. The Commission seeks comment on these proposals and invite commenters to suggest other ways the tax certificate policy could be used to further the goals set out in the Notice.

18. Further, the Commission notes that it has been suggested that the tax certificate policy be extended to investors that provide start-up capital for minority-controlled cable programmers, and seeks comment on this proposal. The Commission also asks whether it should grant tax certificates to minority MMDS operators or minority video programmers. The Commission also raises the issue of making a tax certificate available to a minority operator that sells its facility to a non-minority buyer if the minority seller uses the proceeds to invest in a controlling interest in a more valuable mass media property. In addition, commenters are requested to discuss how the tax certificate policy could be modified to increase female ownership of mass media facilities.

Other Mechanisms

19. The Commission discusses other ideas that might also contribute to greater minority and female ownership of mass media facilities, including (1) proposing legislation regarding an investment tax credit for investors in minority-controlled communications corporations; (2) streamlining certain aspects of its broadcast application procedures for applicants funded by Specialized Small Business Investment Companies (SSBICs); and (3) adopting a local radio ownership cap that would permit a minority-controlled entity to own up to three AM stations of any type and up to three Class A FM stations in markets with at least 15 stations, subject to a combined audience share limitation of 30 percent. The Commission seeks comment on these proposals, and specifically asks whether it should adopt a national ownership cap for women similar to its national TV and radio ownership caps for minority, or any other parallel proposal.

Data Collection

20. Finally, the Commission seeks comment on whether to revise its

Annual Ownership Report form, FCC Form 323, to include a section requiring owners to identify their race or ethnicity and their gender. The Commission also asks commenters to submit relevant data regarding any apparent impact that increased consolidation of facilities resulting from relaxation of the multiple ownership rules has had on minority and female owners, including the impact of local marketing agreements (LMAs) between stations.

21. Ex Parte Rules—Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. See 47 CFR 1.1202, 1.1203, 1.1206.

22. Comment Information. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before April 17, 1995, and reply comments on or before May 17, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

23. Initial Regulatory Flexibility Analysis.

I. Reason for the Action

This proceeding was initiated to explore ways to increase minority and female ownership of broadcasting facilities.

II. Objective of This Action

The actions proposed in the *Notice* are intended to facilitate minority and female entry into mass media services, and are particularly aimed at increasing those groups' access to capital.

III. Legal Basis

Authority for the actions proposed in this *Notice* may be found in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303.