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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Policy	)	MM Docket No. 91-221
Implications of the	)	
Changing Video Marketplace	)	

To: The Commission

COMMENTS OF THE NETWORK AFFILIATED STATIONS ALLIANCE

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November 21, 1991

SUMMARY

The Network Affiliated Stations Alliance ("NASA"), a coalition representing more than 600 local network-affiliated television stations, believes regulatory reform is essential to the survival of our system of free and universal local broadcasting. The video marketplace has undergone an unprecedented metamorphosis in the past decade -- cable television, available to more than 90 percent of the public, has achieved both efficiencies and unprecedented market power through the acceleration of vertical and horizontal integration; the number of commercial television stations has grown by more than 50 percent; and new technologies are poised to exert even greater competitive pressure on local broadcasters. In spite of these changes, broadcasting continues to be hampered by inequitable regulations that do little but promote the interests of broadcasting's competitors.

It is crucial, however, that the Commission leave intact the cable-network crossownership prohibition. That rule provides an indispensable protection against the anticompetitive abuse of the market power over local stations possessed by cable operators and broadcast networks.

The rule is, in the first instance, a restraint on cable's market power over local broadcast stations. The Commission, Congress, and the Department of Justice have unanimously concluded that cable operators wield substantial

market power in local markets and are capable of exercising that power to disadvantage the local broadcasters that so often comprise cable's sole competitors. Documentation of carriage denial and manipulation of channel positioning provides ample evidence of cable's misuse of its market power against local broadcasters. Moreover, although the networks may not today occupy the same position of power over cable operators and program producers as they did two decades ago, the networks unquestionably retain substantial market power over many of their affiliates. A cable operator/network would have the ability and incentive to squelch competition in local markets by discriminating against competing affiliates and independents. And the network-affiliate relationship would provide many avenues by which the cable operator/network could undercut the independent programming judgment of affiliated stations. Permitting the market power of cable and the networks to coalesce would exponentially increase the danger that the core values of localism, diversity and public interest broadcasting will become anachronisms. Repeal of this rule at this juncture in the common histories of broadcasting and cable would be nothing short of perverse.

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COMMENTS OF THE NETWORK
AFFILIATED STATIONS ALLIANCE

The Network Affiliated Stations Alliance ("NASA") hereby comments upon the Notice of Inquiry, FCC 91-215, adopted July 11, 1991 and released August 7, 1991 (the "Inquiry").

In this wide-ranging "attic-to-basement" inquiry, the Commission seeks to reexamine and reevaluate the regulatory structure governing local broadcasting. The inquiry is focused on the "implications" of the findings of the Commission's Office of Plans and Policy staff documenting the "vast changes" in the video marketplace in recent years and "an irreversible long-term decline" in the competitive status of local broadcasters. F. Setzer, J. Levy, Broadcast Television in a Multichannel Marketplace, OPP Working Paper Series No. 26 (June 1991) (the "OPP Report") at 1, vii.

NASA is an informal coalition of the affiliate associations of the ABC, CBS and NBC Television Networks. Its members consist of the more than 600 local stations affiliated with those networks. These stations are both intimately

familiar with the extraordinary changes in the local video markets and vitally dependent on the outcome of this inquiry.

I. REFORM OF THE LOCAL BROADCAST REGULATORY REGIME IS ESSENTIAL TO PRESERVE THE BENEFITS THE LOCAL BROADCAST SYSTEM PROVIDES TO THE AMERICAN PEOPLE.

A. The National-Local Synergies Of The Network-Affiliate Distribution System Continue To Provide Unique Value.

The Commission has long sought to promote the core communications policy values of diversity, localism, and public interest programming, OPP Report at 1, and the necessary predicate for maximizing these values, universal availability. A primary vehicle by which it has sought to accomplish these objectives, and to which it has succeeded to remarkable degree, is the unique national network-local affiliate distribution alliance which forms the centerpiece of the local broadcast system.

As the Commission recently noted, the American system of broadcasting, which depends substantially upon the integrity of the network/affiliate relationship, has produced a local television programming system that reflects the diversity of the United States. "[C]onsiderable credit for its existence must go to the framework in which it is broadcast -- a framework formed by the national programming networks . . . [and local stations'] synergy of local and national offerings." Report on Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of

Cable Television Service, MM Docket No. 89-600, 5 F.C.C. Rcd. 4962, 5037, (1990) (the "Cable Report").[1] This network-affiliate relationship "is a true partnership serving the interest of both partners and the public interest by combining efficiencies." Scrambling of Satellite Television Signals (Report), 2 F.C.C. Rcd. 1669, 62 R.R.2d 687, 732 (1987).[2]

That this system of free and universal local broadcasting has been subjected to substantial erosion in the past decade has been well chronicled by the OPP staff. See OPP Report at 19-45. But, as Chairman Sikes recently observed, despite this erosion, "broadcasters remain television's lifeline . . . ensur[ing] local coverage of news and public affairs . . . and providing those shared

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[1] The Commission has recognized this value on repeated occasions. See, e.g., Report and Order On Program Exclusivity, 3 F.C.C. Rcd. 5299, 5311 (1988) ("Our country has made a substantial investment in free, local over-the-air service that has and continues substantially to promote the public interest").

[2] As the House Commerce Committee observed in 1988 in reporting the Home Satellite Viewing Act:

> [H]istorically and currently the network affiliate partnership serves the broad public interest. It combines the efficiencies of national production, distribution, and selling with a significant decentralization of control over the ultimate service to the public. It also provides a highly effective means whereby the special strengths of national and local program service support each. This method of reconciling the values served by both centralization and decentralization in television broadcast service has served the country well.

Report of the Committee on Energy and Commerce on the Satellite Home Viewers Act of 1988, H. Rep. No. 100-887, 100th Cong. 2d Sess. 20 (1988).

experiences." Address before the International Radio & Television Society (September 19, 1991).[3/]

B. The Unfair Competitive Imbalance Between Cable And Broadcasting Is Destroying The Local Broadcast System.

The changes in the structure and competitiveness of the home video marketplace in the past 10 years have indeed been "vast." OPP Report at 1. This label, and the implication of the need for substantial regulatory adjustment, would be warranted solely by the changes within the broadcast industry. During the past ten years, the number of commercial television stations has increased nearly 50 percent. Id. at 15-16. This growth has in turn been directly responsible for the introduction of a fourth "network," the first broadcast programming venture of this magnitude in the past 35 years.

The changes implied by these developments, while substantial, pale in comparison to the changes in the nonbroadcast landscape. The past two decades have witnessed

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[3/] Similar acknowledgments of the continuing importance of the local broadcast system and concern for its survival have come from Congress:

> Free local over-the-air television stations continue to play an important role in providing the American people information and entertainment. The Committee is concerned that changes in technology, and accompanying changes in law and regulation, do not undermine the base of free local television service upon which the American people continue to rely.

H.R. Rep. No. 887, Part 2, 100th Cong., 2d Sess. 26 (1988); see also S. 12, 102d Cong., 1st Sess. (1991).

the remarkable metamorphosis of cable from a fragmented antenna-service appendage of broadcasting to a highly integrated, highly concentrated, highly competitive multichannel service available to more than 91 percent of American households and providing access to 30 or more channels to almost 90 percent of cable subscribers. Id. at 70, 85. During the same period, video cassette recorders ("VCRs") were introduced and are now used by more than 75 percent of American households. Id. at 106. Further multichannel competition also may be forthcoming. Direct broadcast satellite ("DBS") services, after a ten-year hiatus, and the multichannel multipoint distribution service ("MMDS" or "wireless cable") show considerable, if unproven, promise. See id. at 103, 110-11.

The resulting impact on broadcasting has been equally significant. Competition from other media, including video providers with dual revenue streams, has decreased the advertising revenues required to fund the local news and public interest programming that forms the basis for the American system of free broadcasting. As the OPP Report found, the revenues necessary to fund local programming have fallen dramatically, especially in smaller markets. See id. at 36, 39. It may be difficult for intermediate- and small-size market television stations to sustain local programming levels in the face of declining revenues; "some small market stations may have little room to cut costs." Id. at 47.

These trends raise the particularly troubling prospect that local news and local programming will be lost in the very markets where the fewest number of local television outlets exist. Without question, the existence of such a trend is a matter of concern to the Commission and the industry alike.

Significant regulatory reform is essential to the long-term survival of the broadcast industry and to assure that the American people continue to receive the benefits that system provides. Chief among these reforms must be the restoration of fair competition between broadcasting and cable.[4/] And the most important single step which can be taken is the modification of the confiscatory and pernicious cable copyright scheme now in effect, a goal the Commission already has embraced but is powerless to implement. See Cable Report, 5 F.C.C. Rcd. at 5043-44; Report on the Compulsory License for Cable Retransmission, 4 F.C.C. Rcd. 6562 (1989). Because of the enduring power of cable in the local marketplace, and to assure that local stations receive adequate compensation for their production and distribution role, NASA continues to believe that adoption of a retransmission consent requirement is preferable to repeal of the compulsory license. See Comments of Network Affiliated

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[4/] See Report and Order on Program Exclusivity, 3 F.C.C. Rcd. 5299, 5311 (1988) ("Promoting fair competition between free, over-the-air broadcasting and cable helps ensure that local communities will be presented with the most attractive and diverse programming possible").

Stations Initiative, MM Docket No. 89-600, at 6-9 (April 2, 1990).[5/]

But restoration to broadcasters of control over their signals, even if the Commission were capable of providing it, would not be sufficient to completely level the playing field. As the Commission has recognized, cable's local market power derives not just from the compulsory license but from its status as the sole multichannel provider in virtually every market. The Commission has, moreover, permitted the cable industry to achieve a substantially greater degree of vertical integration than permitted in the broadcast industry, integration which almost certainly provides significant operating efficiencies and substantial additional market clout. See, e.g., OPP Report at 73, 171; Cable Report, 5 F.C.C. Rcd. at 5006-07, 5009.[6/] And it seems likely that future competitors such as DBS will be similarly unconstrained.

The degree of concentration already achieved by cable has not, of course, been without cost in terms of reduced diversity and anticompetitive activity. See Cable Report, 5 F.C.C. Rcd. at 4972-73. In an ideal world, the appropriate regulatory response might well be to require some

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[5/] NASA supports bills pending in both houses of Congress (S. 12, H.R. 3380) to achieve this goal.

[6/] As noted in S. 12, § 2(7), the cable industry's vertical integration has given cable operators both the "incentive and ability" to act anticompetitively.

restructuring of the cable industry. But given the reality that neither the Commission nor the Congress is likely to truly unscramble the omelet, it seems evident that the ownership regulations which have resulted in the extreme fragmentation of the broadcast industry must be revisited and, to a significant extent, relaxed or repealed.

NASA continues to believe, for example, that the Commission has needlessly inhibited the efficiency of the broadcast industry by failing to repeal the network financial interest rule. See Evaluation of the Syndication and Financial Interest Rules (Report and Order), 6 F.C.C. Rcd. 3094 (1991), rec. denied, FCC Report No. DC-1974, 1991 FCC LEXIS 5609 (October 24, 1991). Given the dramatic decline in network power as program purchasers vis-a-vis the large Hollywood producers, there simply is no reason to deny the networks the significant efficiencies inherent in permitting them to fully amortize the risks of network program production by obtaining nonnetwork rights. While the Commission appears to have spoken on this issue for the foreseeable future, NASA urges the Commission to monitor the developments in the programming market with great care and to reexamine the impact of this unfortunate decision at the earliest possible juncture.

NASA also believes that the evidence adduced in this proceeding will confirm that a number of the cross and multiple-ownership rules applicable to broadcasters are in

fact ripe for repeal or significant relaxation. This type of "attic-to-basement review," calling into question the continuing vitality of all such rules, is a promising addition to the Commission's regulatory arsenal and seems particularly well suited to the task at hand. It is analogous to the concept of "zero-based budgeting" now employed by most television station managers and most managers generally.

But, just as zero-based budgeting does not and should not result in the wholesale abandonment of all previously budgeted programs, this attic-to-basement review should not result in the wholesale abandonment of all broadcast ownership restrictions where abiding public interest justifications warrant their retention. As discussed below, the prohibition on cross ownership of cable systems and broadcast networks is a prime case in point.

II. IT WOULD BE ARBITRARY AND CAPRICIOUS TO REPEAL OR DILUTE THE CABLE-NETWORK CROSS-OWNERSHIP PROHIBITION.

The cable-network cross-ownership rule prohibits a cable system from carrying the signal of any television broadcast station if that system has an attributable ownership interest in "a national television network (such as ABC, CBS or NBC)." 47 C.F.R. § 76.501(a) (1990). Its practical effect is to prohibit the cross-ownership of cable systems and broadcast networks.

The rule was adopted in 1970. Second Report and Order, Docket No. 18397, 23 F.C.C.2d 816, 19 R.R.2d 1775

(1970), recon. denied, 39 F.C.C.2d 377, 26 R.R.2d 739 (1973). Twice in the past nine years, the Commission has proposed to repeal the rule. See Notice of Proposed Rulemaking, 91 F.C.C.2d 76 (1982) ("First Notice"); Further Notice of Proposed Rulemaking, FCC 88-271 (September 6, 1988) ("Second Notice").

On the latter occasion, NASA's three association members, in their first joint action of this sort, vigorously opposed repeal. Comments of ABC, CBS and NBC Television Network Associations, B.C. Docket No. 82-434 (October 24, 1988) ("Affiliate Comments").[7/] The members of NASA reaffirm their vigorous opposition to repeal of the rule.

Although the changes in the video market, which have been so persuasively recounted in the OPP Report, have largely obviated the rule's original purpose of protecting the then-nascent cable and cable programming industries from network dominance, there is equally little doubt that those same changes have made the cable-network rule far more important today than at the time it was adopted. The rule now serves the essential role of preventing cable systems and the networks from combining their unquestioned power over local stations to stifle competition and diversity in local broadcast markets and unduly infringe upon the independent programming judgments of local affiliates.

[7/] The Affiliate Comments are being filed in this proceeding under separate cover and are incorporated herein by reference.

Indeed, the affiliates believe that repeal of this rule at this juncture in the common histories of broadcasting and cable would be nothing short of perverse. The most compelling feature of the current video marketplace is cable's domination of the local market and local broadcasting in particular. It simply makes no sense to give cable yet another tool with which to subjugate its competitors.

The affiliates, too, believe strongly that the Commission should not enmesh the networks in unnecessarily restrictive regulation. But repeal of this rule would not help the networks so much as it would help cable and hurt local stations. Repeal of the cable-network rule would be another damaging blow to the local broadcast system.

NASA requests that the Commission dispense with further reexamination of the cable-network rule in this proceeding and close the still-pending parallel rulemaking looking toward the rule's repeal.

A. Cable Operators Have Substantial Market Power Over Local Stations.

The cable-network cross-ownership prohibition is, in the first instance, a restraint on cable's market power over local stations.

That cable operators have such power has been established repeatedly by the Commission in the past three years. The evidence is unequivocal: cable operators exercise substantial and growing market power over local stations in

virtually every market in the country. The only question is whether, barring strong regulatory countermeasures, that power will continue to grow incrementally or whether there will be an abrupt "break through" or acceleration as cable's capacity burgeons and its gains in advertising dollars match its already-substantial audience shares. See OPP Report at 129-32.

In July, 1990, for example, the Commission issued a 200-page report divulging the results of a year-long investigation of the cable industry, based on extensive comments, field hearings, a joint GAO-FCC study, follow-up inquiries directed at major multiple system operators ("MSOs") and the records compiled in 10 other cable-related FCC proceedings (including this one). Cable Report, supra. The Cable Report, which provides much of the basis for the OPP Report's discussions of cable issues, found that in all but a handful of markets there is but one franchised cable operator and that the prospects for multichannel competition in most markets remains remote. The Cable Report concluded that (1) although local broadcasters provide "varying degrees" of competition to cable services and thus help to "constrain" cable's monopolistic behavior, (2) cable operators possess "market power" in the home video market. Cable Report, 5 F.C.C. Rcd. at 4972-74.

The Cable Report reaffirmed the Commission's earlier findings that this market power accrued in part from the cable compulsory copyright license:

> With the compulsory copyright license and without must carry obligations, cable operators are able to engage in a type and degree of competition against local broadcasters that was unenvisioned and unintended when the Copyright Act was adopted. Cable operators carry the most popular local stations with virtually no compensation to the stations, use the audience they derive from carriage of these stations to increase their own advertising revenue and, in turn, buy more and better cable-exclusive programming, further draining audience and advertising revenues away from local stations.

Cable Report, 5 F.C.C. Rcd. at 5039-40. The result is a clear and unfair subsidy for cable operators. See also Compulsory Copyright License for Cable Retransmission (Report to Congress), 4 F.C.C. Rcd. 6562 (1989); OPP Report at 155.

Moreover, the growing competition for local advertising dollars between cable operators and broadcasters has created substantial incentives for cable operators to deny carriage to local stations and to provide "disadvantaged" carriage, including frequent or ill-timed channel positioning changes. The record compiled in the cable inquiry demonstrated convincingly that cable operators were able and willing to act on those incentives.[8/] The Cable Report also

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[8/] See Cable Report, 5 F.C.C. Rcd. at 5045; see also Amendment of Part 94 to Permit Private Video Distribution Systems of Video Entertainment Access to the 18 GHz Band, 6 F.C.C. Rcd. 1270, 1271 (1991) ("cable systems possess a disproportionate share of market power and, therefore, are capable of engaging in anticompetitive conduct"), rec. denied,

left no doubt that "the ability of cable systems to behave anticompetitively derives not only from the compulsory license but from their market power in the program delivery market." Id. at 5043.[9/]

Only four months ago, a year after the release of the Cable Report, the Commission found that cable's growing market power made it necessary to raise the threshold level of local signals necessary to provide "effective competition" to cable's basic services from three to six over-the-air signals. Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates (Report and Order and Second Further Notice), 6 F.C.C. Rcd. 4545 (1991) (the "Effective Competition Order"). A new study by the staff of the Antitrust Division of the Department of Justice found that more than half of cable's rate increases since 1984 are the result of sheer market power. See R. Rubinowitz, U.S. Dep't of Justice, Antitrust Division, Market Power and Price Increases for Basic Cable Service Since Deregulation (August 6, 1991). Congress has, likewise, recognized that "television broadcasters like other programmers can be at the mercy of a

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News Release PN 20657 (Nov. 18, 1991).

[9/] Congress, too, is well aware of cable's market power. Pending in Congress are several measures designed to restrain that power in various ways, including rate regulation and program access (S. 12), retransmission consent and must-carry (S. 12, H.R. 3380), and telephone company competition (H.R. 2546).

cable operator's market power." S. Rep. No. 102-92, 102d Cong., 1st Sess. 69 (1991).

Furthermore, citing studies that cable operators have continued to abuse their market power by denying carriage through anticompetitive manipulation of broadcast station channel positions, the Commission again has proposed to reinstitute must carry and channel-positioning protection. Effective Competition Order, 6 F.C.C. Rcd. at 4564-65; see also S. Rep. No. 102-92, 102d Cong., 1st Sess. 35, 42-46 (1991). The reason, as CBS put it five years ago, before cable accrued the full measure of market power it has today, is that "one fact has not changed: in virtually all cable communities, there is only one cable system, and that cable system effectively controls viewers' access to local broadcast signals." Comments of CBS, Inc., Docket No. 85-349, at 4 (January 29, 1986). Moreover, the incentive of cable operators to engage in anticompetitive behavior has grown substantially as they have become full-fledged competitors in the sale of national and local advertising. See generally OPP Report at 132; Cable Report, 5 F.C.C. Rcd. at 5010.

Given this overwhelming evidence of local station vulnerability to cable, the Commission should be very wary of any measure which provides either greater incentive or greater ability of cable systems to behave anticompetitively towards local stations. As described below, cross-ownership with a broadcast network does both.

B. The Networks Have Market Power Over Their Affiliates.

The complex nature of the relationship between the networks and their affiliates was depicted at length in the prior comments filed by the affiliates in the cable-network proceeding. As the affiliates noted there, the relationship between an affiliate and its network is not only that of joint venturer but that of supplier/customer and, in the market for national advertising dollars, competitor. Affiliate Comments at 11-16.

The principal issues on which the networks and affiliates bargain are affiliations, compensation, and clearances. To this deceptively simple list of inter-related issues must now be added the issues of the geographic and temporal scope of network nonduplication exclusivity. See Program Exclusivity in the Cable and Broadcast Industries, 3 F.C.C. Rcd. 5299 (1988), modified, 4 F.C.C. Rcd. 2711 (1989) (geographic and temporal scope of network nonduplication rights are a matter of agreement between stations and networks).

That the balance of power in this relationship would rest with the networks but for Commission restraints on network power has been acknowledged by the Commission from the first days of networking. While the relative power of local affiliates and the networks varies from market to market, "the individual television station has a greater need, in most

instances, for the network affiliation" than the network does for that station. Report and Order, Docket No. 12746, 21 F.C.C. 697, 713 (1959), aff'd sub nom. Metropolitan Television Co. v. Federal Communications Comm'n, 289 F.2d 874 (D.C. Cir. 1961) (adopting rule barring network representation of affiliates in national advertising sales).[10/] It remains true, particularly in smaller markets, that "the economic survival of the [affiliated] station may well depend on such affiliation." Affiliates' Comments at 14. It seems evident, then, that the networks, through the threat of disaffiliation, exercise considerable control over a large number of their affiliates.[11/]

[10/] A precise assessment of the relative strengths of the affiliates and networks must of necessity be market specific. In those markets with relatively few outlets or where there is a large disparity in the technical facilities among the local stations, the local stations have relatively greater clout. Conversely, where there are numerous stations and where the facilities of those stations are relatively equal, the networks have greater bargaining leverage.

[11/] The affiliates have observed that the vulnerability of many stations to the threat of affiliation switch or by-pass is reflected in the sometimes substantial differentials between the values of affiliates and independents. Affiliate Comments at 14. Proponents have asserted that the nationwide affiliate-independent price differential is evidence that it is the affiliates who wield market power, not the networks. CBS Further Reply Comments, B.C. Docket No. 82-434 (November 22, 1988) at 20-23. Suffice it to say that these back-of-the-envelope calculations, which, for example, lump network owned-and-operated stations in with affiliates and the value added by the affiliation in with the value added by the local station, do not demonstrate that the affiliates are extracting the lion's share of the joint venture profits from the networks. More importantly, gross nationwide numbers are largely irrelevant, for they do not reflect the diversity of local markets. There are indeed markets where the affiliates have relatively greater strength; but there are many markets,

The Commission has responded to this reality with an array of complex regulations that mirror the complexity of the underlying relationship. See generally 47 C.F.R. § 73.658 (1990); Affiliate Comments at 17-21. Despite these restraints, there is little question but that in a large number of markets the networks have the upper hand and wield substantial control over their affiliates.

Nor is there any reason to think that the marketplace developments cited in the OPP Report have increased the bargaining leverage of the affiliates. To the contrary, there has been a very significant increase in the supply of stations seeking affiliations over the past 20 years. Concomitantly, the significant increase in cable penetration has substantially reduced the impact of technical disparities among local stations. See OPP Report at 17. These dramatic increases in station supply have made the market for network affiliations substantially more competitive. At the same time, the impact of cable competition on station profitability has been particularly severe on smaller market stations, the stations whose very survival may depend on affiliation. See OPP Report at 34, 43, 41 Table 12.

Compensation is another area in which network power can be manifested. As the affiliates noted in their prior

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some quite large but many smaller ones, where the networks have the clear upper hand.

comments, compensation as a function of station revenues is generally inversely proportionate to market size, constituting a relatively small portion of large market revenues but as much as 15-20 percent of smaller market revenues. Affiliate Comments at 16. Indeed, in smaller markets compensation frequently approaches or exceeds 100 percent of net profit.

The continuing predominance of the networks over their affiliates is demonstrated by the fact that in the past three years all three of the networks have substantially reduced their total affiliate compensation and have announced their intention to eliminate compensation entirely.[12/] In a number of markets, affiliates are no longer receiving any compensation and, in at least one instance, an affiliate is paying "reverse compensation" to the network.[13/]

It is worth noting that network leverage has apparently been maintained or even grown despite the rise of the Fox network. This is explained perhaps by the facts that Fox has a shorter programming schedule, substantially lower

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[12/] See, e.g., CBS, Affiliates to Re-Examine 'Partnership', Broadcasting, October 21, 1991, at 23; NBC Seeks Compensation Reform, Electronic Media, October 18, 1991; ABC Cuts Affiliate Compensation, Broadcasting, August 19, 1991, at 41; CBS Cuts Affiliate Compensation, Tightens Budget, Broadcasting, November 19, 1990, at 22; Affiliates Balk at New NBC Compensation Plan, Communications Daily, May 23, 1989, at 6.

[13/] See Miami: Whole Lot of Changing Going On, Broadcasting, December 12, 1988, at 51.

compensation rates and that its affiliates have substantially lower profitability.[14/]

At stake is not simply the financial health of the affiliates, but their ability to provide the local public interest programming which the Commission expects and demands. A fundamental and recurring tension in the network-affiliate relationship is the issue of clearances and preemptions. The pressure from the networks is for affiliates to adhere rigidly and unbendingly to the network schedule, a schedule which would effectively fill the most-watched parts of the broadcast day with nonlocal programming. The networks were initially so successful in applying such pressure that the Commission adopted a regulation expressly prohibiting the networks from preventing an affiliate from rejecting network programs which the station finds contrary to the public interest or to substitute a program in its judgment "of greater local or national importance." 47 C.F.R. § 73.658(e).

Though the rule and the principle are easily stated, they are not so easily enforced. The issues of preemption, clearance, compensation and affiliation are inextricably intertwined. Affiliates faced with competition for an affiliation or a threat of a compensation cut may well seek to curry the favor of the network by reducing preemptions, even

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[14/] See OPP Report at 37 & Figure 6 (profitability of independent stations, including Fox affiliates); Fox Affiliates Avoid Sharing Programming Tab, Broadcasting, July 22, 1991, at 29.