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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 Implications of the Changing Video Marketplace	)	MM Docket No. 91-221
	)	

To: The Commission

COMMENTS OF TRIBUNE BROADCASTING COMPANY

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SUMMARY

Tribune Broadcasting Company ("Tribune"), through its subsidiaries, owns four radio and six television stations in seven markets across the nation. Tribune's first station, WGN(AM), began broadcasting in 1924 and its first television stations, in Chicago and New York, signed on in 1948. In the more than forty years since then, Tribune has both pioneered and witnessed incredible change in the broadcast industry overall, and in the video marketplace in particular. What was once a relatively uncrowded marketplace comprised almost entirely of over-the-air broadcasters has since become a hotbed of competition among numerous multi-channel video services. The incredible growth of cable television, and the emergence of new technologies such as MDS and DBS, have fueled an astonishing expansion in the number of video outlets, and thus in the diversity of voices readily accessible to the great majority of Americans.

In light of this explosion of video media and programming choices, Tribune respectfully submits that many Commission rules originally intended to safeguard diversity of viewpoint by imposing structural restrictions on the ownership of broadcast (and newspaper) facilities can no longer be justified. Moreover, such restrictions actually may work against diversity by precluding group owners from realizing economies of scale which would permit them to enhance local news and public affairs programming and, in some cases, to remain on the air. Finally,

such restrictions are inequitable in that they are uniquely imposed upon broadcasters while, for example, cable system owners are free to enjoy the synergies inherent in unlimited multiple ownership.

For all of the foregoing reasons, Tribune respectfully requests that the Commission:

(1) eliminate the limitations on the maximum number and the aggregate audience reach of group-owned broadcast stations ("12-12-12" and "25%" rules) set forth at § 73.3555(d);

(2) eliminate the prohibition against the ownership of (or attributable investment by a party in) television stations with overlapping Grade B contours in § 73.3555(a)(3); or, alternatively, "roll back" the prohibited overlap to the Grade A contour; and

(3) develop criteria for waiver of the FCC's broadcast/newspaper cross-ownership rules at § 73.3555(c).

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Tribune Broadcasting Company ("Tribune") hereby submits its comments in response to the Notice of Inquiry ("Notice") in this proceeding.[1] The Commission's inquiry is appropriate and timely. In recent years, competition in the video marketplace has intensified among video service providers to the point that broadcast stations are imperiled as never before.[2] Thus, the premises underlying the Commission's ownership regulations are no longer valid. Accordingly, changes in the Commission's current regulations are required to protect the American public's undi-

[1] See Notice of Inquiry in MM Docket 91-221, 6 FCC Rcd. 4961 (released August 7, 1991).

[2] See generally, Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 FCC Rcd. 3996 (1991) ("OPP Paper"). Subsequent references to this report are to the page number of the original text.

minished interest in free and diverse service responsive to local needs.

I. INTRODUCTION

Tribune has had a long and active role in radio and television broadcasting. Its first AM station, WGN, took to the air in Chicago as an original "clear channel" signal in 1924. Two of Tribune's television stations, WGN-TV in Chicago and WPIX(TV) in New York, commenced operation in 1948. Tribune now has radio and television stations in seven markets across the nation.[3] Moreover, Tribune's six major market independent television stations make it the nation's fifth largest television broadcasting company.[4] Subsidiaries of Tribune's parent company also publish The Chicago Tribune and several smaller daily newspapers.

The communications industry, especially the television business, has changed dramatically since Tribune entered the broadcasting busness. As the Commission's staff succinctly noted, "[t]he advent of alternative video media has radically altered the market in which television stations . . . operate." OPP Paper at 15. Tribune concurs with the staff that regulations formulated in a different era to curb an individual licen-

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[3] Tribune, through its subsidiaries, owns: WPIX(TV) and WQCD(FM), New York, New York; WGNX(TV), Atlanta, Georgia; WGNO(TV), New Orleans, Louisiana; WGN(AM) and WGN-TV, Chicago, Illinois; KWGN-TV, Denver, Colorado; and KTLA(TV), Los Angeles and KCTC(AM)/KYMX(FM), Sacramento, California.

[4] Tribune currently has a "national audience reach," as that term is defined in Section 73.3555(d) of the Commission's Rules, of 18.66%. That figure is exceeded only by the three broadcast networks and Fox.

see's power in its market simply "are no longer justified and may impede the provision of broadcast services" in the future. OPP Paper at vii.

Specifically, Tribune recommends that the Commission amend its multiple ownership, television "duopoly,"[5] and broadcast/newspaper cross-ownership rules to:

(1) eliminate the limitations on the maximum number and the aggregate audience reach of group-owned broadcast stations ("12-12-12" and "25%" rules) set forth at § 73.3555(d);

(2) eliminate the prohibition against the ownership of (or attributable investment by a party in) television stations with overlapping Grade B contours in § 73.3555(a)(3); or, alternatively, "roll back" the prohibited overlap to the Grade A contour; and

(3) develop criteria for waiver of the FCC's broadcast/newspaper cross-ownership rules at § 73.3555(c).

Such changes will help assure the continued diversity of viewpoint once protected, but now threatened by Section 73.3555.

II. THE COMMISSION'S OWNERSHIP RULES WERE ADOPTED TO REGULATE AN UNCROWDED VIDEO MARKETPLACE WHICH HAS CEASED TO EXIST.

The Commission has explained that its "multiple ownership rules are premised on the principle that 'a democratic society cannot function without the clash of divergent views.'"[6] In

[5] The Commission's staff generally supports such reforms: "[T]he Commission should eliminate its broadcast multiple ownership rules, relax the duopoly rules to permit common ownership of television stations unless their Grade A contours overlap, and consider eliminating the duopoly rules for unaffiliated UHF stations." OPP Paper at 170.

[6] See Corporate Ownership Reporting and Disclosure by Broadcast Licensees, 97 FCC 2d 997, 1004 (1984) ("Ownership Reporting") (continued...)

the interest of fostering diversity of viewpoint, it promulgated national and local ownership restrictions in the early 1940's and capped the maximum permissible number of group-owned stations in a single broadcast service at seven in 1953. In adopting the "Rule of Sevens," the Commission stated that its fundamental purpose was:

> "to promote diversification of ownership in order to maximize diversification of program and service viewpoints as well as to prevent undue concentration of economic power contrary to the public interest." Amendment of Multiple Ownership Rules, 18 FCC 288, 291-92 (1953)

Ownership Reporting at 999 (emphasis added). The Commission's 1941 television duopoly and 1975 broadcast/newspaper cross-ownership restrictions were grounded in precisely the same rationale. Thus, from their inception, the Commission's multiple ownership rules have explicitly been merely "a means to an end -- not an end in and of themselves." See Separate Statement of Chairman Sikes in Revision of Radio Rules and Policies (NPRM), 6 FCC Rcd. 3275, 3284 (1991) ("Radio Rules").[7]

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[6] (...continued)
(adopting 5% standard for attribution of ownership interest) citing Second Report and Order in Docket 18110, 50 FCC 2d 1046, 1079 (1974) [subsequent history omitted].

[7] This also holds true for the duopoly and broadcast/newspaper cross-ownership rules. See First Report and Order in MM Docket 87-7, 4 FCC Rcd. 1723 - 724 (1989) (". . . the ultimate objectives of the duopoly rules, like our other multiple ownership rules, have been to promote economic competition and diversity of programming and viewpoints in order to further the public interest.... [W]e have encouraged ownership diversity as a means of promoting diversity of program sources and viewpoints, not as an end in itself" (original emphasis)); see also First Report and Order in Docket No. 18110, 22 FCC 2d 306 (1970), recon. granted in part, 28 FCC 2d 662 (1971) and Second Report (continued...)

As the Commission has recognized, "[i]n recent years, the diversity of information and sources of information in the communications industry has increased substantially." Id. at 3275. Indeed:

> Not only has the number of television signals available increased dramatically over the past 15 years, but over-the-air service is such that most households have considerable choice in programming even without cable.

OPP Paper at 18.[8] Including cable service, the median number of channels available to the American home is now in excess of 30. OPP Paper at 13.[9] More specifically, "in the period 1953 to 1983, the number of operating AM, FM and TV stations increased by approximately 92%, 561% and 466%, respectively."[10]

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7 (...continued) and Order in Docket No. 18110, 50 FCC 2d 1046, 1079 (1975), [subsequent history omitted] (broadcast/newspaper cross-ownership rule defined "in terms of [the FCC's] primary concern -- diversity in ownership as a means of enhancing diversity in programming services to the public...").

8 The increase in the number of stations has been especially dramatic in larger markets. A full "94% of television households [by 1990] were located in markets with five or more television stations." OPP Paper at vii.

9 According to the Commission's staff, "The number of over-the-air television stations available to the median household increased from six in 1975 to ten in 1990. Including cable channels increases the median number of available channels to well over thirty." OPP Paper at 13. Given that 91.2% of all television households were passed by cable in 1990, and that 61.4% of those homes elected to pay for basic service, cable's explosive impact on median video channel availability is not surprising. OPP Paper at 70 (citations omitted).

10 See Report and Order in Docket No. 84-19, 101 FCC 2d 402, 408 n. 20 (1984), citing, Notice of Proposed Rule Making in Gen. Docket No. 83-1009, 48 Fed. Reg. 49438, 49443 (October 25, 1983). Indeed, with respect to operating television stations, even the impressive figure above may be too conservative. According to the Commission's 48th Annual Report, 199 TV stations were broad-
(continued...)

Cable television experienced even more phenomenal growth, increasing from an estimated 150 systems serving 30,000 subscribers in 1953 to approximately 6400 systems serving 32-35 million subscribers in 1984 with a "pass" rate of 64%.[11] By 1990, according to the Commission's staff, cable service was estimated to be available to 91.2% of American television households. OPP Paper at 68, Table 15.

Moreover, although cable "pass" and "penetration" rates are expected to level off in coming years,[12] free broadcast television's competition from "alternative video media," which already have "radically altered the market in which television stations operate," will continue to increase. OPP Paper at 15. Video cassette recorders, satellite master antenna systems, direct broadcast satellite services, wireless cable delivery systems, pay-per-view options and even targeted computer networks will combine in the coming decade to further erode free, local television's audience and revenue base.

Thus, the video marketplace of the 1990's cannot be dominated by a small number of broadcasters as may have been the case in the 1950's or even the 1970's. Rather, today's video marketplace has so many diverse sources of information, including print media, available to the public that individual broadcasters

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10 (...continued) casting in 1953; by 1984 that number had increased nearly six-fold to 1169 stations.

11 See Report and Order in Docket No. 83-1009, 100 FCC 2d 17, 28 n. 33 (1984).

12 See OPP Paper, Table 15 at 67, and discussion at 71-72.

not only do not dominate the market, but must increasingly struggle to survive.

III. RADICAL CHANGES IN THE VIDEO MARKETPLACE REQUIRE COMMENSURATE CHANGES IN THE COMMISSION'S REGULATIONS.

The substantial increase in video services means that market forces, not structural regulations, may be relied on to promote diversity. Indeed, continued reliance on structural regulations would actually undermine the objective of diversity, particularly where those regulations impact only broadcasters and not their video competitors.

A. Competition, Not Regulation, Is the Best Means of Achieving the FCC's Policy Objectives.

While Tribune agrees that diversity of viewpoint clearly continues to be in the public interest, market forces now can and should replace rigid ownership restrictions to assure diversity of viewpoint in the video marketplace. As documented above, the uncrowded television marketplace of the 1950's bears little resemblance to the broader and highly competitive video market of the 1990's. Given the current extraordinarily high level of competition among video service providers, diversity of viewpoint no longer realistically depends upon regulatory fragmentation in the ownership of broadcast outlets. Thus, the Commission's concern over media monopolization, which served as the basis for its ownership rules, has no application in the current video marketplace. The multiple ownership, television duopoly, and broadcast/newspaper cross-ownership prohibitions based upon that outdated rationale, therefore, are no longer justified and should be eliminated.[13]

The Commission previously has recognized the appropriateness of relaxing its ownership rules in light of increased competition in the marketplace. In 1984, for example, the Commission increased from 7 to 12 the maximum number of non-minority owned stations in which a single party may hold an ownership (or other attributable) interest. That proceeding was initiated, according to the Commission, because:

> the nature and scope of broadcasting in the United States has experienced an enormous transformation. The mass media market in toto likewise has witnessed explosive growth and change. . . . [Accordingly,] there has been increasing question as to whether a national ownership rule is relevant to or indeed fosters the Commission's dual goals of promoting diversity and competition.

See Report and Order in Docket No. 83-1009, supra, 100 FCC 2d at 18. Indeed, quite apart from the explosive growth in video competition, the Commission has also called into question the basic assumptions underlying these rules.[14] On reconsideration,

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[13] As the Commission has recognized for half a century, and increasingly often in the past decade, technological and social changes require that its regulations be revised -- or even rescinded -- when circumstances so demand. Indeed, "it is well established that '[r]egulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy.'" See Regional Concentration of Control (MO&O), 100 FCC 2d 1544, 1553 (1985) citing Office of Communications of United Church of Christ v. FCC, 707 F.2d 1413, 1425 n.25 quoting American Trucking Association, Inc. v. Atchison, Topeka and Santa Fe Railway Company, 387 U.S. 397, 416 (1967).

[14] [N]ew information also causes us to reevaluate some of the basic assumptions underlying the Rule and its relationship to (continued...)

the Commission eliminated the "sunset" provision originally adopted for the 12 station limit and adopted a cap on aggregate national audience. See Memorandum Opinion and Order in Gen. Docket 83-1009, supra, 100 FCC 2d at 74 (1985). In so doing, however, the Commission also:

> affirm[ed] the conclusion contained in the [initial] Report and Order that, as a matter of policy, the total elimination of a presumptive national ownership rule would benefit the public interest. We are convinced that repeal of the seven station rule would not contravene our traditional policy objectives of promoting diversity and preventing undue economic concentration.

Id. at 97 (emphasis added).

Similarly, in MM Docket 87-7, the Commission recently amended its radio/television "duopoly" rule, Section 73.3555(a), to permit the common ownership of commercial radio stations in the same service within an Area of Dominant Influence if the "principal city contours" of the stations do not overlap.[15] At a second stage of the same proceeding, the Commission also liberalized its standard for waiver of its "one-to-a-market" rule,

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14 (...continued)
viewpoint diversity. Evidence in this proceeding suggests that group owners do not impose a monolithic editorial viewpoint on their stations, but instead permit and encourage independent expression by the stations in response to local community concerns and conditions. Thus, it appears that Commission policy founded on the purported dangers of group ownership may have been based in large degree upon a false assumption. Id. at 20 (emphasis added). Tribune notes for the record that it neither exercises central control over the editorial voices of its stations, nor instructs its stations in what to cover in their local newscasts.

15 See First Report and Order in MM Docket 87-7, supra, 4 FCC Rcd. at 1729. Significantly, the Commission cited the "substantial growth and availability of media outlets in local markets" as a primary rationale for its actions. Id. at 1725.

Section 73.3555(b). The Commission now presumes that a waiver permitting the common ownership of radio and television stations in the top 25 markets is in the public interest when "30 separately owned, operated and controlled broadcast licensees" will remain after the combination.[16] Significantly, the Commission again based its actions upon "substantial growth in the telecommunications marketplace," citing specifically "growth in the traditional over-the-air broadcast services" and "numerous alternative electronic technologies that are providing competition and making significant contributions to the marketplace of ideas." See Notice of Proposed Rule Making in MM Docket 87-7, 2 FCC Rcd. 1138, 1140 (1987) (emphasis added).

The Commission followed similar reasoning in further amending its rules just one month prior to the release of the Notice in this docket. In Television Satellite Stations, 6 FCC Rcd. 4212 (1991), the Commission eased restrictions on the ownership and operation of satellite television stations by presuming the operation of such stations to be in the public interest upon a showing that the "Principal Community" contours of the proposed satellite and parent stations will not overlap. In linking that presumption to the Principal Community contour, the Commission explained that its "approach will facilitate satellite service to areas with a demonstrated need for such

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[16] See Second Report and Order in MM Docket 87-7, 4 FCC Rcd. 1741 (1989). Once again, the Commission acted in response to "the substantial growth and availability of media outlets in local markets, as well as the significant efficiencies and public service benefits that can be obtained from joint ownership." Id. at 1742.

service, yet will protect our diversity and competition goals in the core market areas of the stations concerned . . . ." Id. at 4214.[17]

B. The Failure to Revise the Ownership Rules in Light of the Profound Changes in the Video Marketplace Would Undermine Diversity.

The proliferation of broadcast stations, the maturation of cable television, and the emergence of diverse alternative video sources over the past two decades already have taken a considerable toll on the audience shares and revenues of local broadcast stations. Moreover, looking ahead:

> During the next decade, television broadcasters will face increased competition from more and higher-quality alternatives and, consequently, broadcast television audience shares are likely to continue their gradual decline. . . . and each major broadcast network will increasingly become one of a larger group of distributors, along with cable networks, Fox, and others.

OPP Paper at viii (emphasis added). Thus, "[b]roadcast television stations, as a group, will suffer declining revenues." OPP Paper at ix, 7. That decline inevitably will force "broadcasters to scale back program production, and to the extent that they do, the quality of local programming may suffer." OPP Paper at 160. Because of the high cost of producing quality local news

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[17] Moreover, in May of 1991, the Commission initiated a proceeding "to explore changes in structural and ownership regulations governing radio broadcasting, with a view toward ensuring that aural services can continue to compete in the communications marketplace and to provide service to the public." See Radio Rules, supra, 6 FCC Rcd. at 3275. Significantly, the Commission's proposals in that docket are predicated upon the substantial increase in "the diversity of information and sources of information in the communications industry" which has evolved in "recent years." Id.

and relatively poor revenue stream generated by other public affairs programming, such programs will be disproportionately affected by the continued shrinkage of local broadcasting's financial base.[18]

That result would particularly harm individuals who rely primarily or exclusively on free over-the-air television. As the staff has recognized:

> Because of its mandate to provide a nationwide communications system, the Commission should be concerned, in particular, with viewers who value television, but, in effect, have no substitutes for broadcast service, either because they lack access to multichannel media <u>or because they cannot afford to subscribe to multichannel services</u>.

<u>OPP Paper</u> at x (emphasis added). The viability of free, local broadcast service, therefore, will depend upon broadcasters' freedom in the future to "adopt more efficient forms of organization" thereby allowing broadcasters to compete more effectively and facilitating "the continued provision of valued over-the-air service." <u>Id</u>.[19]

Thus, to the extent that the ownership rules here at issue prevent broadcasters from organizing their operations to

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[18] <u>See</u> <u>OPP Paper</u> at 42. Five of Tribune's six television stations produce and air at least one hour of local news programming each day. It has been Tribune's experience that the costs of producing such comprehensive local news programs, especially in larger markets, are substantial. Similarly, Tribune notes that the children's programming that broadcasters are now obligated to produce also will be both expensive and unlikely to produce substantial revenue.

[19] In general, the new video programming services are national or regional in character. Accordingly, even if made available at no additional cost to viewers, they cannot replace local, over-the-air broadcast service. Moreover, cable television programming, even when local in character, is certainly not free.

facilitate local program production, such rules now work actively <u>against</u> diversity. As the Commission's staff notes:

> In today's market, for instance, common ownership of large numbers of broadcast stations nationwide, or of more than one station in a market [or region], may permit exploitation of economies of scale and reduce costs or permit improved service. Joint news gathering operations, for instance, might permit improvements in the quality of local news coverage.

<u>OPP Paper</u> at 170. Furthermore, as the Commission recently reiterated, the benefits of consolidation are not conjectural:

> [T]he <u>Second Report & Order</u> in MM Docket 87-7, 4 FCC Rcd. 1741 (1989), . . . illustrates economies of scale and other efficiencies that can be achieved via group ownership in general. For example, the <u>Order</u> refers to evidence that existing group owned stations spend a larger percentage of their budgets on news and overall programming and appear to air more informational programming than stations that are not group-owned. <u>Id</u>. at 1748-1749.

<u>Radio Rules</u>, <u>supra</u>, 6 FCC Rcd. at 3276 n.8. Moreover, quite apart from the preservation of local news and public affairs programming, economies achieved through group ownership may in some cases be essential to permit financially troubled local

stations to remain on the air as active voices in large and small markets alike,[20] as the Commission's staff has recognized:

> While eliminating sources of inefficiency is always desirable, that objective takes on particular urgency at a time when broadcast stations and networks face intense competition and, in extreme cases, the prospect of insolvency.

OPP Paper at 2. Chairman Sikes recently eloquently made the same valid point:

> The shadow [that] contemporary realities casts on our rules demands that we reassess them carefully. The results of increasing competition strongly suggest that more stations are not always synonymous with more diversity. . . . [O]ur current ownership rules are a means to an end -- not an end in and of themselves. Where the means is maximizing diversified ownership and the end actually attained is increased diversity, the rules make sense. But where the means produce perverse results, logic as well as sound public policy require that we not be blind to this reality and that we act reasonably in responding to it.

See Radio Rules, supra, 6 FCC Rcd. at 3284 (emphasis added).

Tribune submits that the Commission would foster diversity by eliminating its 12-12-12 and national audience reach rules. Such action would permit group owners to realize additional economies of scale and thus enhance their ability both to compete and survive in the highly competitive video marketplace and also to devote more resources to local news and public affairs programming, as well as other innovative programs.

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[20] The Commission's staff found that, "At least 25 percent of stations in the top ten markets experienced losses" in the period examined. OPP Paper at 35, citing NAB, Television Financial Report, 1990 at 1.

For the same reasons, the Commission should eliminate the television duopoly rule, thereby permitting economies of resources on the local level and other advantages. As noted below, no such restrictions apply to the ownership of multiple cable systems or channels in a local geographic market. No different rule for over-the-air channels thus can be justified in the current marketplace. At the very least, the Commission should roll back the relevant overlap from the Grade B to the Grade A contour of the stations involved. Such a change would be consistent with the Commission's recent actions in amending its radio duopoly and its television satellite station rules, and would permit common ownership where the stations serve different cities of license and distinct core markets.

Much the same reasoning supports reconsideration of the Commission's broadcast/newspaper cross-ownership rule. Like the television industry, the newspaper industry has experienced profound competitive pressure from other media, including cable television, and has suffered from the substantial shift toward video in American information source preferences over the past 30 years.[21] Accordingly, in addition to eliminating the national

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[21] "[D]uring the past decade, [newspapers' advertising share]... has been eroding as a steady stream of competitors have emerged in the marketplace and the marketplace for advertising became [sic] fragmented." Specifically, "[i]n most communities the competition for the reader's time and attention and the local advertiser's dollars is fearsome. There are a whole host of competitors including television, cable TV, national and regional dailies, weekly, shoppers, magazines and yellow page directories. And the number of media choices is expanding." See Jules S. Tewlow, "Are Newspapers in Trouble? Observations on Some Trends and Developments in the Newspaper Business," Harvard University Center for Information Policy Research, August, 1991 ("Tewlow (continued...)

multiple ownership and local television duopoly rules, Tribune also urges the Commission to develop and adopt presumptive waiver criteria for the broadcast/newspaper cross-ownership rule.[22] By so doing, the Commission will permit local broadcasters and newspaper publishers not only to realize the economies of scale discussed above, but to harness the inevitable synergy that common ownership of a broadcast station and a newspaper will facilitate. In the current competitive environment, Tribune submits that the public can only benefit from such collaboration.

In sum, Tribune believes that, if left in place, the present rigid restrictions on broadcast ownership will in time reduce diversity of viewpoint by weakening, if not extinguishing, many broadcast television outlets. Such a result would

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[21] (...continued)
Report"). In addition, newspapers share of total advertising revenue across all media declined between 1975 and 1990 from approximately 30% to 26%. While that reflects a decline of 12%, a significant figure, the actual erosion of newsapers' base was even more profound. It is important to note that overall circulation in that period "was essentially level -- not keeping pace with population growth." Tewlow Report at 3. Finally, readership demographics do not augur well for the daily newspaper industry. Only 29% of adults between the ages of 18 and 29 now report reading a newspaper every day. See Strategic Tools for the 1990's, Report No. 3, The Media Triangle: Report of ANPA's Telecommunications Opportunities and Strategies Task Force (1989) at 6.

[22] Tribune recognizes that the newspaper cross-ownership prohibition may not be repealed absent Congressional action. The Company urges the Commission to reconsider that policy and, in the interim, to develop criteria which, if satisfied, would establish a presumption that waiver of Section 73.3555(c) in an individual case would serve the public interest. Such criteria, for example, could be designed to assure the Commission that a proposed broadcast/newspaper combination would have "no significant impact on competition" by focusing, e.g., on one or more of the following factors: number of print and electronic information providers in the subject market, market size, and financial status of the entities to be co-owned.

contravene the public interest as well as the original intent of the rules, and is readily preventable by prompt Commission action in this proceeding.

C. Compared to Other Video Services, Broadcasting is Disproportionately and Unnecessarily Encumbered by the Commission's Current Ownership Regulations.

Perhaps more than any other single image, the "level playing field" has become the dominant metaphor of Commission rule making proceedings in the last decade. Indeed, the Commission's credo (were it to adopt one) might well be to:

> foster development of a marketplace in which all firms can compete on an even basis, unhindered by artificial regulatory handicaps, and all have an opportunity to provide the most highly valued and most efficient service possible.

OPP Paper at 1-2. As its staff has underscored, however, "[m]any of the Commission's existing rules conflict with these goals, hindering broadcasters' efforts to provide service and preventing them from competing on an even footing in the new, more rigorous competitive environment." Id. For example, neither the Commission's rules nor the Cable Act of 1984 limits either the number of cable systems that may be owned or the number of subscribers that may be reached by cable Multiple System Operators. Nor does the Commission restrict the number of cable systems nationwide or in proximate franchise areas that a single party may control or invest in. Similarly, a single entity may own, control or take an interest in an unlimited number of cable program services or networks.

Thus, even though "broadcasters . . . provide the major source of competition to cable systems,"[23] and encouraging competition to cable recently has been singled out as a priority of the Commission,[24] Section 73.3555 of the Commission's rules precludes broadcasters from consolidating their resources (or teaming with local daily newspapers) to compete with cable operators for viewers. Both economics and equity thus require reform of the Commission's ownership rules.

IV. CONCLUSION

The video marketplace of 1991 bears little resemblance to the marketplaces of 1953, 1975 or even of 1984. Competition for viewers among video delivery services has undeniably intensified. With the continued emergence of new technologies, such competition inevitably will become even fiercer as the new century approaches. Accordingly, the danger of broadcast group dominance which gave rise to the Commission's ownership rules has passed.

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[23] OPP Paper at 2.

[24] See, e.g., Report and Order in Gen Dkts. 90-54 and 80-113 ("Wireless Cable Order"), 5 FCC Rcd. 6410 (1990), reconsidered in part, FCC 91-301 (released October 25, 1991).

For the foregoing reasons, Tribune respectfully requests that the Commission amend its ownership rules as proposed above to sustain vigorous competition in the video marketplace.

Respectfully submitted

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