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NOV 21 1991

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

COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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SUMMARY

In its wide-ranging Notice of Inquiry, the Commission seeks comments on the public policy implications of changes in the video marketplace, particularly as they impact broadcast television. The Inquiry arises out of a recent Office of Plans and Policy ("OPP") Report that concludes that broadcast television has experienced "an irreversible long-term decline in audience and revenue share." The OPP Report recommends that the Commission eliminate certain restrictions on broadcasters in order to enhance their position in the competitive marketplace.

As far as we can tell, broadcasters are not losing their audiences because of regulatory pressure. There may be a variety of reasons for broadcasters' declining viewership, including their own decisions regarding programming and management. Moreover, while new competition in the video marketplace -- including competition from new broadcast stations -- may have reduced the viewership for individual stations, neither OPP nor the broadcasters themselves view broadcasting as an endangered species.

Therefore, there is no reason to adopt rules that are intended to subsidize or enhance the competitive status of broadcasters at the expense of non-broadcast media -- or to eliminate rules that continue to serve a valid regulatory purpose -- on the grounds that the broadcasters' very survival is at stake. Nor is such preferential treatment warranted on the grounds that broadcasters serve a unique public interest function

in the marketplace -- because, as we demonstrated in our recently-filed Petition for Rulemaking, they clearly do not.

However, to the extent that the Commission's examination demonstrates existing rules no longer serve any valid purpose and, moreover, are found to unduly constrain broadcasters' ability to compete, elimination of such rules may be in order. The network-cable crossownership ban may be one rule that has outlived its original purpose, and we would not oppose its elimination. But before the Commission recommends that Congress eliminate the broadcast-cable crossownership rule -- a rule that was reevaluated and codified by Congress only seven years ago -- it should take a hard look at whether such crossownership still poses a direct threat to diversity and competition in local video markets.

Finally, we do not believe the case has been made as to why the public's viewing expectations should be put at risk by repealing the compulsory license and/or imposing retransmission consent. Our position historically has been to support the license, especially the local license, and nothing thus far has happened to cause us to reconsider that position, much less change our mind. And altering the method by which cable television retransmits broadcast signals to their subscribers -- by imposing retransmission consent requirements -- may well give television stations an undeserved windfall at the direct expense of the audience they are obligated by law to serve.

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THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association, Inc. ("NCTA") hereby submits its comments on the Notice of Inquiry in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry in the United States, representing the owners and operators of cable systems serving over 90 percent of the nation's 55 million cable households. Its members also include cable programmers and others affiliated with the cable television industry.

INTRODUCTION

In its wide-ranging Notice of Inquiry ("NOI"), the Commission seeks comments on the public policy implications of changes in the video marketplace over the past fifteen years, particularly as they impact broadcast television. The Commission is concerned that certain rules and structural restrictions adopted during a period of broadcast dominance may no longer be warranted given the diversity and competition in today's video marketplace.

The inquiry arises out of a recent Office of Plans and Policy ("OPP") study on "Broadcast Television in a Multichannel Marketplace", which concludes that broadcast television has experienced "an irreversible long-term decline in audience and revenue share, which will continue throughout the current decade."[1/] The study predicts that competition from multichannel media will diminish the profitability of broadcasting, resulting in a decline in the quantity and quality of broadcast programming. In OPP's view, several existing ownership rules, which are seen as preventing broadcasters from competing efficiently and effectively with their multichannel competitors, may hasten or exacerbate that decline.

OPP recommends, therefore, that the Commission eliminate its rules limiting multiple ownership of broadcast stations and prohibiting network ownership of cable systems. It also recommends that Congress eliminate the statutory prohibition on cross-ownership of broadcast stations and cable systems in the same community and calls for a reexamination of cable's compulsory copyright license.

1/ F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace vii (June 1991) ("OPP Report").

From a policy perspective, the Commission is concerned that the decline of broadcast television could adversely affect "core Commission goals such as localism, diversity, nationwide availability of service, and the public interest standard for broadcasters."[2/] While the ownership restrictions may have been adopted in the first place specifically to promote diversity and localism, the Commission suggests that given the diversity provided by cable and other multichannel competitors, the rules may now only serve to undermine localism by diminishing the viability and quality of local broadcasting.

It makes sense that the Commission review its television rules and policies to ensure that they continue to promote its core goals. To the extent that such an examination demonstrates that the rules no longer serve any valid purpose and, moreover, are found to unduly constrain broadcasters' ability to compete, elimination of such rules may be in order. As described below, we believe that the network-cable crossownership rule may be one rule that has outlived its original purpose, and we would not oppose lifting the ban. We believe a case has not yet been made, however, that the broadcast-cable crossownership ban should be removed, and the risks to the public interest that motivated its adoption by the Commission and subsequent codification by Congress may still be present.

2/ NOI at para. 2.

A significant difference exists, in any event, between removing outdated restrictions on broadcasters and imposing new restrictions on broadcasters' competitors in order to attempt to tip the scales in broadcasters' favor. Even assuming the validity of the OPP Report's conclusion regarding the decline of broadcasters, this should not be used as a pretext to give broadcasters a handout at the expense of competition and diversity. As described below, we remain skeptical of the claim that the compulsory license has harmed broadcasters. And altering the method by which cable television retransmits broadcast signals to their subscribers -- by recommending imposition of retransmission consent -- may well give television stations an undeserved windfall at the direct expense of the audience they are obligated by law to serve.

I. IN ADOPTING NEW POLICIES AND RULES, THE COMMISSION SHOULD NOT GIVE BROADCASTERS AN ARTIFICIAL COMPETITIVE BOOST AT THE EXPENSE OF NON-BROADCAST MEDIA.

The broadcast industry may, in fact, be experiencing declining viewership for a variety of reasons that are not attributable to regulatory restrictions. One such reason may simply be the audience fragmentation that has resulted from the proliferation of new, independent broadcast stations, cable networks and even video cassettes. Another may be the broadcasters' own programming decisions. The new, more competitive video marketplace is much less forgiving of poor decisions regarding programming and management. In any event, if the broadcasters' complete dominance of viewership is being eroded by competition, it does not follow that they are incapable of surviving in a competitive marketplace. Indeed, the broadcasters themselves have recently proclaimed to federal bank regulators that, despite declining viewership, broadcast television remains a vibrant and healthy industry:

> The vast majority of television and radio stations are financially sound. Throughout the eighties, television station profits have shown remarkable consistency for affiliated stations, and profits have shown an increase for independent stations. In 1984, the average affiliated station generated $3,585,000 in pre-tax profits, and in 1990 that figure was $3,590,000. During that five year period, pre-tax profits never fell below $3,445,000.
>
> Independent stations, many of which entered the industry in the early and mid-eighties, experienced a decline in profits in the mid-eighties, but have since seen substantial improvement. In 1990, the average independent station had pre-tax profits of $1,033,000. Part of that increase is attributable to the rising popularity of the Fox network, with which many independent stations are affiliated.
>
> Similarly, television station cash flow figures have been consistent for affiliate stations and have shown an increase for independent stations. The average affiliate station experienced an increase in cash flow from $4,610,200 in 1984 to $5,912,000 in 1990. After experiencing a decrease in cash flow in the mid-eighties, independent stations have seen their cash flow increase in recent years. Thus, in 1990, the average independent station had cash flow of $2,822,000, up from a low of $1,175,000 in 1986.[3/]

3/ Comments of the National Association of Broadcasters, In the Matter of the Supervisory Definition of Highly-Leveraged Transactions, Department of the Treasury, Docket No. 91-7; Federal Deposit Insurance Corporation, Docket No. 050984; Federal Reserve System, Docket No. R-0734, 7-8, (filed Sept. 23, 1991) (citations omitted).

Thus, with the average affiliated station earning $3.6 million annually, the broadcast industry presents a rather robust financial picture.

In addition to its sound economic state, broadcast television is still the most pervasive medium -- reaching 98 percent of the nation. And it still maintains 72 percent of the viewership in all households and 59 percent of the viewership in cable households.[4/] Undoubtedly, the advent of more viewing options has affected the viewership of individual broadcast stations. But such competition has come, in significant part, from the increased number of local broadcast stations now on the air in many communities. Measured in terms of the number of viable broadcast stations, broadcasting appears to be a growth industry, not a declining one.[5/]

Nevertheless, structural restrictions and other rules that were developed at a time when broadcasting was the predominant television medium -- realistically, the only medium -- may need to be reexamined. Indeed, the Commission should reconsider any rules that may now serve no particular purpose other than to constrain broadcasters' ability to compete more effectively.

4/ 1991 Cable TV Facts, Cable Television Advertising Bureau, Inc.

5/ OPP Report at 15-18, 45 (noting that the total number of television stations has increased over the past decade, with UHF stations increasing by 150 percent between 1980 and 1990.) Moreover, by 1990, 94 percent of television households were in markets with 5 or more stations. Id. at 17.

There is, on the other hand, no reason to adopt rules that are intended to subsidize or enhance the competitive status of broadcasters at the expense of non-broadcast media -- such as must carry or retransmission consent -- on the grounds that the broadcasters' very survival is threatened. As shown above, neither OPP nor the broadcasters themselves view broadcasting as an endangered species.

Nor is such preferential treatment of broadcasters warranted on the grounds that they serve a unique public interest function in the marketplace. First, it is not evident that broadcasters have the specific public interest obligations or offer the significant public interest programming that might once have justified such protectionism.[6/] In fact, the OPP Report casts considerable doubt on the notion that broadcast licensees are significant providers of local or public service programming in

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6/ See Comments of the National Cable Television Association, Inc. (filed Sept. 25, 1991), In the Matter of Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates, MM Docket Nos. 90-4 and 84-1296. In its Petition for Rulemaking requesting the Commission to expand the effective competition proceeding as it pertains to the reimposition of must carry, NCTA demonstrated that the Commission's policies and rules, such as ascertainment procedures, programming guidelines and comprehensive review of uncontested renewal applications, that once gave concrete meaning to the localism and public obligations of broadcasters have been eliminated. In the petition, NCTA did not generally call for a return to this regulatory regime for broadcasters. It only urged that the Commission could not reimpose must carry rules premised on the unique public service obligations of broadcasters unless it also adopted rules ensuring that such obligations actually existed.

the aftermath of deregulation.[7/] Second, protectionism would only be warranted if broadcasting served the public interest in some unique manner that could not be duplicated by its competitors in the video marketplace. As has been shown, however, the cable industry provides increasing amounts of local origination and educational programming, and entire networks are devoted to public affairs, such as C-SPAN, C-SPAN II and CNN.[8/] Moreover, through its "Cable In the Classroom" initiative, the industry currently provides schools with commercial-free programs from leading cable networks. Thus, cable can and increasingly does provide the kind of news, information and public affairs programming both nationally and locally that the broadcasters historically provided.

Moreover, as the Commission seems to recognize in the NOI, while eliminating ownership restrictions might enable local broadcasters to compete more effectively, there would be no assurance that such competition would necessarily improve the quantity and quality of local programming. Therefore, the Commission is seeking comment not only on whether it should eliminate existing ownership restrictions but also on whether it should reconsider more recent deregulatory decisions "that

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7/ See OPP Report at 45 (noting that stations "appear to devote only a small percentage of total expenditures to local programming").

8/ OPP Report at 168 ("Local cable news channels are increasing in number and are beginning to duplicate the last remaining unique service of broadcast stations.").

deleted or modified rules or policies which were based upon the principles of diversity [and] localism. . . ."[9/] Those former rules include such requirements as conducting community ascertainment and meeting certain programming guidelines.

NCTA does not advocate that these regulations be reimposed on the broadcast industry -- unless the Commission were to give broadcasters special protection and an artificial boost based on their supposed public service requirements. The Commission cannot reasonably premise protective regulations on the broadcasters' unique public trusteeship responsibilities unless it reimposes rules that would once again make that trusteeship meaningful.

In any event, the inevitable decline in broadcast revenues that has accompanied the transition to a competitive video marketplace should not be used as a premise to load up obligations on its competitors. Instead, the Commission should look first at the way the broadcast industry has been managed, at its business decisions, and at any governmental policies that might handicap broadcasting before it gives special advantages to broadcasters or places special burdens on broadcasting's competitors.

9/ NOI at para. 14. Indeed, in a separate statement, Commissioner Barrett specifically requests that commenting parties address the appropriateness of the FCC's prior decisions to eliminate the fairness doctrine and the requirement that broadcasters conduct ascertainment procedures to determine the needs, interest and issues of their local communities.

Indeed, broadcasters already have a special, governmentally conferred advantage -- the free use of scarce spectrum. To provide their service to subscribers, cable operators incur the very substantial costs of physically wiring the entire service area. On top of these costs, local governments typically impose franchise fees of up to five percent of the operator's gross revenues -- which is expected to amount to $826 million in 1991 alone.[10/] By contrast, broadcasters not only do not need to construct costly facilities to reach viewers' homes, but are also given free use of the airwaves by the government. The National Telecommunications and Information Administration's "conservative" estimate of the marketplace value of the spectrum that has been given, free, to television and radio broadcasters is $11.5 billion.[11/]

In sum, today's video marketplace is dynamic, highly competitive, and continually evolving. As OPP recognized, the growth and development of satellite services and alternative media have increased viewer demand for diversity:

> Economic and technological developments over the past 15 years have vastly expanded the array of video choices available to the American public. . . . The new video marketplace is making it possible, therefore, for viewers to signal their preferences far more precisely than before, and programmers are responding by producing more

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10/ Paul Kagan Associates, Inc., Cable TV Franchising, January 31, 1991 at 3.

11/ NTIA, U.S. Spectrum Management Policy: Agenda for the Future 91 (Feb. 1991).

> targeted programming to serve the increasingly segmented market.[12/]

Broadcast television "will have its place in this new world but as one player among many".[13/] If broadcasters are freed from any unnecessary restrictions, their contribution to this new environment may be enhanced. But it is far too late in the day to turn back the clocks to a time where broadcasters occupied a protected status at the expense of consumer choice.

II. THE NETWORK-CABLE CROSSOWNERSHIP RULE HAS OUTLIVED ITS ORIGINAL PURPOSE AND IS NO LONGER NECESSARY.

This proceeding is, of course, not the first in which the Commission has considered eliminating the network-cable crossownership rule. Indeed, almost a decade ago, the Commission concluded that changes in the video marketplace had greatly reduced the anticompetitive risks inherent in network-cable crossownership. Taking no action on this matter for six years, the Commission again proposed repealing the rule in 1988 after the National Telecommunications and Information Administration (NTIA) concluded in a comprehensive study of cable television that the earlier rationales for instituting the crossownership rule appeared to be no longer valid in today's marketplace.[14/]

12/ OPP Report at 172.

13/ Id.

14/ Video Program Distribution and Cable Television: Current Policy Issues and Recommendations (NTIA Report 88-233) at 72 (1988).

Those earlier rationales were based on the Commission's perception that if the three major broadcast networks had the opportunity to acquire cable systems, the cable industry would not stand a chance of realizing its potential as a provider of an alternative array of video programming. The Commission was concerned that a network-controlled cable industry would thwart the development of competitive services and thereby restrain diversity in television programming. The Commission recognized that the networks had not only the incentive but the power through crossownership to "hinder the development of new cable-oriented networks and hence have a dampening effect on potential programming competition on the national level" by denying potential cable networks access to broadcast network-owned and operated cable systems.[15/] As the Commission stated in 1973:

> What [the data compiled in the 1970 inquiry] did demonstrate was that the major broadcast television networks were already such dominant influences in the television field that any further expansion of their ownership or control into the new and growing cable television industry was *per se* undesirable, and that such network involvement in cable should be stopped and turned around before it became entrenched. . . .[16/]

Thus, in an effort to reverse the trend toward network ownership and promote cable's development, the Commission foreclosed the

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15/ *Second Report and Order*, Docket No. 18397, 23 F.C.C.2d 816, 821 (1970).

16/ *Cable Television Cross-Ownership*, *Memorandum Opinion and Order*, Docket No. 18397, 39 F.C.C.2d 377, 392 (1973).

broadcast networks from holding or acquiring any interest in cable systems.

Throughout the 1970s, as the Commission envisaged, the network-cable crossownership rule played an important role in fostering the growth and development of cable television, particularly cable programming services. By 1981, an OPP study concluded that the crossownership ban was no longer necessary to ensure the development of new cable networks, and indeed, found that the rule may actually sacrifice the efficiencies and other procompetitive benefits of vertical integration between the networks and cable systems.[17/] Cable's emergence as a competitive medium, accompanied by other dramatic changes in the video marketplace, led the Commission to adopt a Notice of Proposed Rulemaking recommending that the ban be repealed.[18/]

In its comments in the 1982 rulemaking proceeding, NCTA agreed that changes in the video marketplace had lessened the risk that broadcast networks, through ownership of cable systems, would stifle the development of cable television as a viable, competitive medium. NCTA cited the Commission's findings that cable had developed into a sturdy competitor whose long-term

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17/ K. Gordon, J. Levy and R. Preece, FCC Policy on Cable Ownership, Staff Report, Office of Plans and Policy, November 1981. See also Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation, Final Report (1980).

18/ Elimination of the Prohibition on Common Ownership of Cable Television Systems and National Television Networks, Notice of Proposed Rulemaking, 91 F.C.C.2d 76 (1982).

viability was no longer in doubt; that cable's proven success made it unlikely that even the broadcast networks had the resources to buy up all the systems and suppress their growth; and that given the emergence of new providers of video programming, cable systems were under increasing pressure to compete effectively. Under these circumstances, NCTA noted, the broadcast networks would have little economic incentive to operate cable systems at less than their maximum level simply to protect broadcast revenues. In light of these factors, NCTA did not oppose elimination of the rule.

Similarly, in 1988, when the Commission reopened the proceeding after the NTIA report, NCTA reiterated that it did not oppose elimination of the prohibition, noting that cable had developed into a full-fledged competitor during the six intervening years.[19/] System values continued to increase and cable networks proliferated. Indeed, the rapid growth of satellite-delivered cable programming services had itself driven the development of alternative technologies for delivering such services. Given consumer demand for such programming, NCTA again noted that it would be foolish, and costly, for a broadcast

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19/ Comments of National Cable Television Association, Inc. (filed Oct. 24, 1988), In the Matter of Amendment of Part 76, Subpart J, Section 76.501 of the Commission's Rules and Regulations to Eliminate the Prohibition on Common Ownership of Cable Television Systems and National Television Networks, Further Notice of Proposed Rule Making; BC Docket No. 82-434, 3 F.C.C.Rcd. 5283 (1988).

network to acquire a cable system with the objective of stifling competition from cable program services.

In the three years since the Commission last considered network-cable crossownership, competition and diversity in the video marketplace has only intensified. Cable has increased its penetration from 53 percent in 1988 to 60 percent of American homes in 1991.[20/] Channel capacity continues to increase with the incorporation of fiber optics and other technological advancements; and viewership of basic cable networks is on the rise.[21/] Since 1988, new cable programming services, such as TNT, CNBC, the Monitor Channel, and Court-TV, have joined the ranks of the over 70 national satellite-delivered cable networks.[22/] And, as cable has grown, so have its competitors--MMDS, SMATV and home satellite dish service.[23/] The broadcast industry, too, has witnessed healthy growth in the late eighties,

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20/ A.C. Nielsen Company.

21/ Warren Publishing Television, Inc. Television Cable Factbook, Cable & Services Volume, 1991 Edition at C-389, 1988 Edition at 359; Paul Kagan Associates, Inc. Cable TV Technology at 4-5; Paul Kagan Associates, Inc. Cable TV Programming at 6-7.

22/ National Cable Television Association, Cable Television Developments, September 1991 at 1-C.

23/ Paul Kagan Associates, Inc., Marketing New Media, November 18, 1991 at 4. The Commission has, for example, recently fostered the further growth and development of MMDS systems by relaxing and streamlining rules pertaining to this technology. First Report and Order, Gen. Docket No. 90-54, 5 F.C.C.Rcd. 6410 (1990); Second Report and Order, Gen. Docket No. 90-54, released October 25, 1991.

with consistent profits for network-affiliated stations and profit increases for independent stations.[24/]

Thus, NCTA continues to believe that it is too late in the game for the broadcast networks to use ownership to thwart cable's development and to suppress the growth of competing cable networks.

Ironically, in the instant proceeding, the Commission's focus in reexamining the network-cable crossownership rule is not whether it is necessary to ensure cable's survival in the face of broadcast dominance but whether it is placing the national broadcast networks at a competitive disadvantage by precluding their ability to diversify and make efficient use of their programming and packaging skills. This emphasis on the merits of vertical integration reflects just how much the broadcast networks' role has changed since the prohibition was adopted. In OPP's view, such limitations on entry into and ownership of cable systems are actually now counter-productive to the Commission's diversity goals.

As the Commission, NTIA and NCTA have previously recognized, vertical integration does have procompetitive benefits, including reducing transaction costs and risks of obtaining programming, expanding the supply of cable programming and the diversity of viewing choices for consumers. In any event, whatever benefits may accrue to the broadcast industry from allowing cross-media

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24/ See supra note 3.

ownership, the network-cable crossownership rule has outlived its motivating purposes, and NCTA continues not to oppose lifting this restriction.

III. THE COMMISSION SHOULD UNDERTAKE AN ANALYSIS OF WHETHER THE LOCAL BROADCAST-CABLE CROSSOWNERSHIP RULE HAS ANY CONTINUED VALIDITY IN LIGHT OF THE CHANGES IN THE VIDEO MARKETPLACE.

While the network-cable crossownership rule has achieved its objectives, the local broadcast station-cable crossownership rule should be closely scrutinized before it is eliminated. As discussed above, the Commission banned network-cable crossownership on the grounds that the networks had both the incentive and the power to constrain cable development in order to preserve the dominance of broadcasting and the broadcast networks on the national level. That dominance is no longer the threat it once was.

By contrast, the Commission adopted the rules prohibiting crossownership of cable systems by broadcast stations in local markets primarily to promote the policy favoring "diversity of control over local mass communications media."[25/] And Congress codified the rules in section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. Section 533(a), "to prevent the

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25/ Second Report and Order, supra, 23 F.C.C.2d at 820 (emphasis added). On reconsideration, the Commission noted it was guided by two principal goals: increased competition in the economic marketplace and increased competition in the marketplace of ideas. Cable Television Cross-ownership, Memorandum Opinion and Order, supra, 39 F.C.C.2d at 391.

development of local media monopolies, and to encourage a diversity of ownership of communications outlets."[26/] Local broadcast stations do compete head-to-head with cable systems. Indeed, the Commission has recently reaffirmed its finding that local broadcast stations constitute a principal source of "effective competition" for cable systems.[27/] If the local broadcaster owns the cable system, it could have severe implications for competition in the local marketplace.

The Commission's reasoning in revoking the "seven station" multiple ownership rule for broadcast stations in 1984 (which prevented ownership by one entity of more than seven AM, seven FM and seven TV stations) is illustrative of the importance of evaluating whether distinctions ought to be maintained between ownership restrictions in national versus local markets:

> . . . [I]t is apparent that restrictions on the ownership of radio and TV stations at a nationwide level bear no necessary relationship to the number of independent viewpoints in a particular local market, nor does relaxation or abolition of this rule affect the Commission's local ownership restrictions. Consequently, the lack of relevance of the rule to local viewpoint diversity persuades us that elimination of the national ownership rule is unlikely to have an adverse impact on the number of independent viewpoints available to

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26/ Report of the Committee on Energy and Commerce of the House of Representatives, H.R. Rep. 98-934, 98th Cong., 2d Sess. 55 (1984).

27/ In the Matter of Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates, Report and Order and Second Further Notice of Proposed Rule Making, MM Docket Nos. 90-4 and 84-1296, 6 F.C.C.Rcd. 4545 (1991).

consumers.[28/]

It goes on to state:

> For the individual member of the audience, the richness of ideas to which he is exposed turns on how many diverse views are available within his local broadcast market. For that individual, whether or not some of those views are also disseminated in other local broadcast markets does not affect the diversity to which he is exposed. Accordingly, national broadcast ownership limits, as opposed to local ownership limits, ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public.[29/]

Thus, the primary concern is ensuring diversity in local, not national markets. The local broadcast-cable crossownership rule is part of a fabric of federal regulations, including the various broadcast "duopoly" rules, the newly-adopted cable-MDS crossownership rule and the telephone-cable crossownership rule, which are designed to preserve some level of diversity and competition in local markets.

In recommending repeal of the broadcast-cable crossownership prohibition, the OPP study finds that "allowing combinations between broadcasters and other media, as long as they did not decrease the competitiveness of local broadcast markets, could allow efficient use of programming and other resources." But

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28/ Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Report and Order, Docket No. 83-1009, 100 F.C.C.2d 17, 27 (1984).

29/ Id. at 37.

before the Commission recommends that Congress eliminate a long-standing structural restriction -- one that was reevaluated and codified by Congress only seven years ago -- it should take a hard look at whether such combinations will actually decrease diversity and competition in local video markets.

IV. THE CURRENT SYSTEM FOR RETRANSMITTING BROADCAST SIGNALS CONTINUES TO SERVE THE PUBLIC INTEREST.

As part of a series of questions regarding the implications of the development of dual revenue sources for cable television and other technologies, the Commission raises the issue of whether "repeal of the compulsory license for cable television and/or implementation of a scheme of retransmission consent [would] enable local stations to compete more effectively?"[30/] The Commission has already made clear its hostility to the compulsory license, and has recommended that Congress abolish it.[31/]

30/ NOI at para. 10.

31/ Compulsory Copyright License for Cable Retransmission, 4 F.C.C.Rcd. 6562 (1989); Cable Television Service (Competition and Rate Deregulation Policies), 67 R.R.2d 1771, 1808-09 (1990) (Commission's Report to Congress proposing repeal of the compulsory license in absence of must carry rules).

NCTA has stated its opposition to that view in comments filed in the Commission's earlier proceeding, and incorporates by reference herein those comments. Comments of the National Cable Television Association, Inc. in Gen. Docket No. 87-25 (filed Aug. 6, 1987); Reply Comments of the National Cable Television Association, Inc. in Gen. Docket 87-25 (filed Oct. 5, 1987).

The impetus for the Commission's current inquiry into the intellectual property field appears to be the underlying notion, increasingly prevalent among broadcasters, that by fundamentally changing the Copyright and Communications Acts to hobble cable operators' ability to provide their subscribers with access to broadcast signals,[32/] local broadcasters will somehow obtain more revenues and their competitive position will improve.

As described supra, we strongly take issue with the premise that broadcasters should be given a competitive edge at the expense of non-broadcast media. And we do not believe the case has been made as to why the public's viewing expectations should be put at risk by repealing the compulsory license. Our position historically has been to support the license, especially the local license, and nothing thus far has happened to cause us to reconsider that position, much less change our mind. The compulsory license continues to provide a relatively efficient mechanism for enabling cable systems to retransmit broadcast stations to their subscribers and for copyright owners to obtain payment for the transmission of their programs to wider audiences.

Even if some change in the compulsory license were warranted, however, imposition of retransmission consent is a wrong-headed solution. Broadcasters are required by their

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32/ See OPP Report at 91 (noting that loss of the compulsory license could slow cable's growth by raising their program acquisition costs).