

all television viewers -- whether or not they subscribe to cable. The exhibition of network programs by local outlets, which surround the network service with programming tailored to the audiences of their markets, increases both the reach

of cable and is, in any event, much overblown. If the Commission were nevertheless eager to protect against what is extremely unlikely to happen, it could consider imposing a new requirement that a network must maintain an affiliation with an over-the-air broadcaster in markets where the network owns a cable system.

C. Network Cable Ownership Need Not Lead To Undue Concentration in the Video Marketplace.

Finally, some opponents of network cable ownership recently have posed a quite different objection: that it would allow for mergers between one or more of the major cable

III. THE COMMISSION SHOULD ELIMINATE ITS NATIONAL OWNERSHIP RESTRICTIONS FOR BROADCAST TELEVISION STATIONS.

The CBB Report found that the Commission is

relied on a "scarcity" argument to support the rules, i.e., that the limited number of broadcast stations justified ownership restrictions to eliminate the possibility of "monopolistic" control.³⁸ Similarly, broad ownership diversity was assumed to promote diversity of viewpoints and program sources but that assumption "was not based on hard evidence

In 1984, the Commission amended its multiple ownership rules to allow a broadcaster to own up to twelve television broadcast stations (the previous limit was seven).⁴¹ That decision was substantially based on the vast increase in the number of information services and expansion in the audience and advertising markets, which, with respect to theoretical concerns about competition, "eliminated monopolistic control as a serious threat."⁴²

The Commission also determined that diversity would not be adversely affected, since "the most important idea markets are local,"⁴³ "national broadcast ownership limits ... ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public"⁴⁴ and therefore "elimination of the national ownership rule is unlikely to have an adverse impact on the number of independent viewpoints available to consumers."⁴⁵ Diversity concerns were further ameliorated because:

group owned stations do not impose monolithic viewpoints on their various holdings. To the contrary, we noted that the economics of each local

with respect to its editorial judgments.⁴⁶

Although the original opinion provided that the national ownership rules would entirely "sunset" after six years, the Commission later decided to proceed more cautiously, and the "sunset" provision was eliminated on reconsideration. More than six years have passed and it is now clear that there is no justification to restrain broadcasters' business activities through ownership limits. In fact, the number of video outlets has increased substantially since the Commission relaxed the national multiple ownership rules in 1984. In the Ownership Report and Order, the Commission indicated that there were 1169

The tremendous increase in these video outlets in just the past seven years, coupled with a further reduction in network affiliate audience share during that period,⁵² further supports the Commission's conclusion that its diversity and competition goals do not need the protection of the multiple ownership rules.

P Elimination Of The National Multiple Ownership Rules

for equipment and physical facilities,⁵⁵ and sharing of professional services such as lawyers, accountants, insurance carriers and engineers.⁵⁶

There is no reason to expect that these efficiencies would not apply to broader combinations of commonly-owned stations than permitted under current rules. Increasing the current limits would permit broadcasters to take advantage of these efficiencies to improve service to the public, without appreciable effects on the public interest goals of competition or diversity of viewpoints. As discussed above,

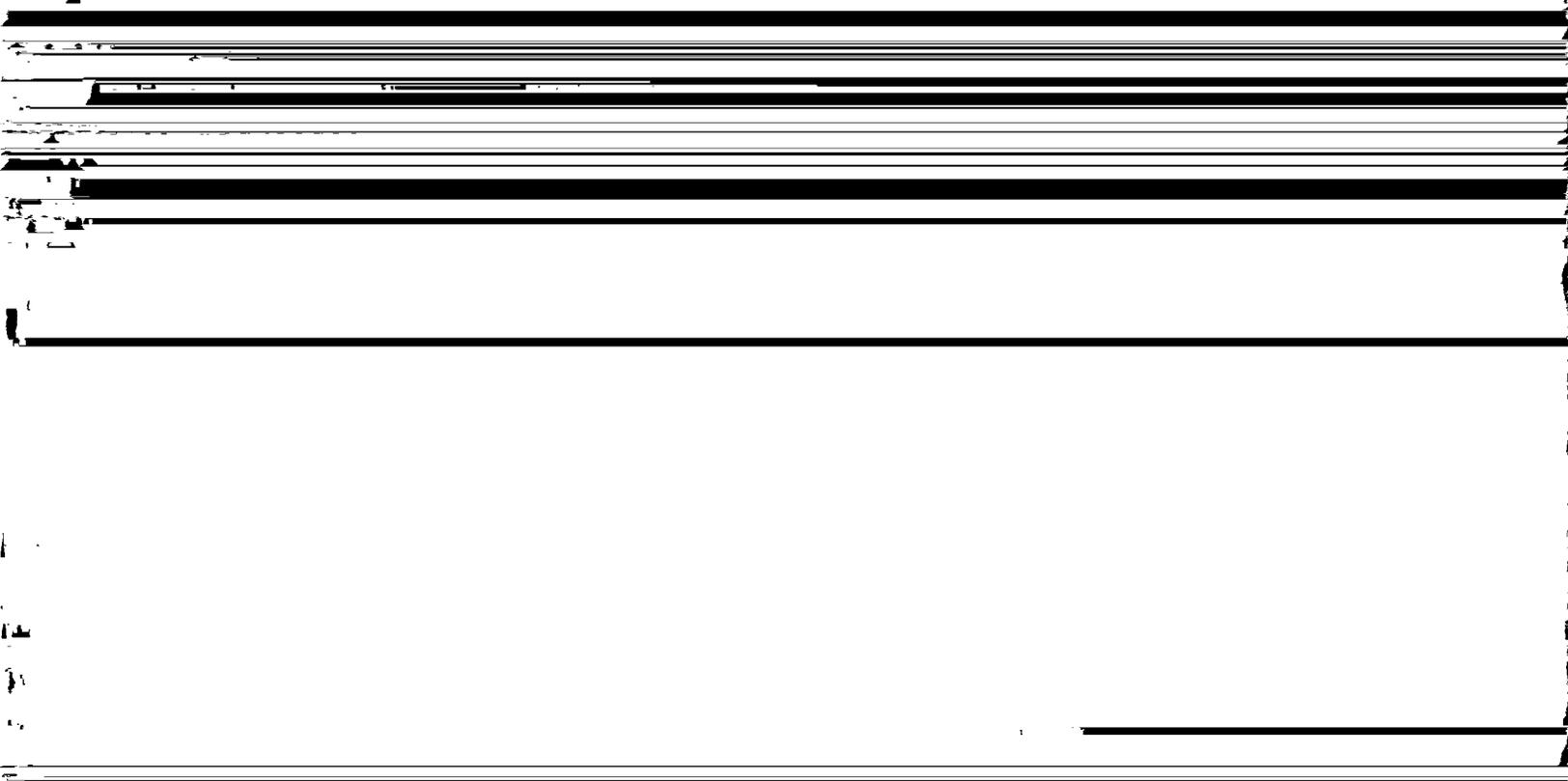
12. Commission has also considered that rules restricting national

IV. THE COMMISSION SHOULD ELIMINATE ITS BAN ON DUAL NETWORKING.

the dual network rule prohibits a network company

networks.⁶¹ Similarly, MTV Networks, a division of Viacom,⁶² recently announced that it will begin programming three MTV channels in mid-1993, and indicated that it was exploring the possibility of expanding its VH-1 and Nickelodeon services in a similar fashion.⁶³

Television network companies should likewise be permitted to operate multiple broadcast networks. Unless current restrictions are eliminated, they will be prevented from taking full advantage of advancing technology. For example, some predict that video compression techniques may permit multiple channels to be broadcast in the spectrum now allocated to one channel.⁶⁴ Such a development would create



to radio.⁶⁵ These rules were summarily applied to television in 1945 without modification or substantial comment.⁶⁶ The primary rationale for these Rules at the time they were adopted fifty years ago was to encourage the growth of additional national networks and thereby promote full competition in the broadcast field.⁶⁷ The dual network rule was also intended to prevent undue concentration of network control, and to encourage program diversity.⁶⁸ Each of these concerns is examined in turn.

⁶⁵ Report on Chain Broadcasting and Order in Docket No. 5060 (May 2, 1941), aff'd sub nom. National Broadcasting Company v. United States, 319 U.S. 190 (1943). Although the rule was suspended in 1941, the Commission readopted the rule in 1943 after NBC sold its Blue Network and incorporated it in the Chain Broadcasting Rules for television. Network Inquiry Report at IV.8. The other rules in the original Chain Broadcasting Rules were the "exclusive affiliation," "territorial exclusivity," "two-year term of affiliation," "option time," "right to reject programs," "network ownership of stations" and "control by network of station rates" rules. The "two-year term of affiliation" rule was eliminated by the Commission in 1989. Two-Year Rule, supra.

⁶⁶ Federal Communication Commission Network Inquiry Special

A. Elimination Of The Rule Would Not Result In Undue Network Economic Power Or The Ability To Foreclose The Development Of New Networks.

Network dominance, to the extent it ever existed, cannot be maintained in today's highly fragmented, competitive environment. The fear of network dominance stemming from a

[U]nder present circumstances vastly different from those dealt with in the Chain Broadcasting Report ... , these regulations are unnecessary simply because (under vastly different circumstances and with sharply reduced "network dominance"), the abuses and practices dealt with are unlikely to develop to any substantial extent. ... Moreover, even if undesirable situations develop in a few cases, these will be so small in light of the vastly increased number of stations, and the greater number of networks, that no significant harm to the overall public interest would be expected.⁷²

The analogy to the changes in the video marketplace is unequivocal.⁷³

Similarly, the 1980 Network Inquiry Report

broadcasters, and the vast number of local video outlets precludes any significant control of those outlets by broadcast networks.⁷⁶

As is clear from the recent emergence of new networks, broadcast and otherwise, existing network organizations do not have the ability to foreclose the entry of new networks. Nor is repeal of the dual network rule (or other Commission rules restricting network business dealings)

will leave intact the networks with such power.⁷⁷ The Commission

to do so, in the cable industry.⁷⁹

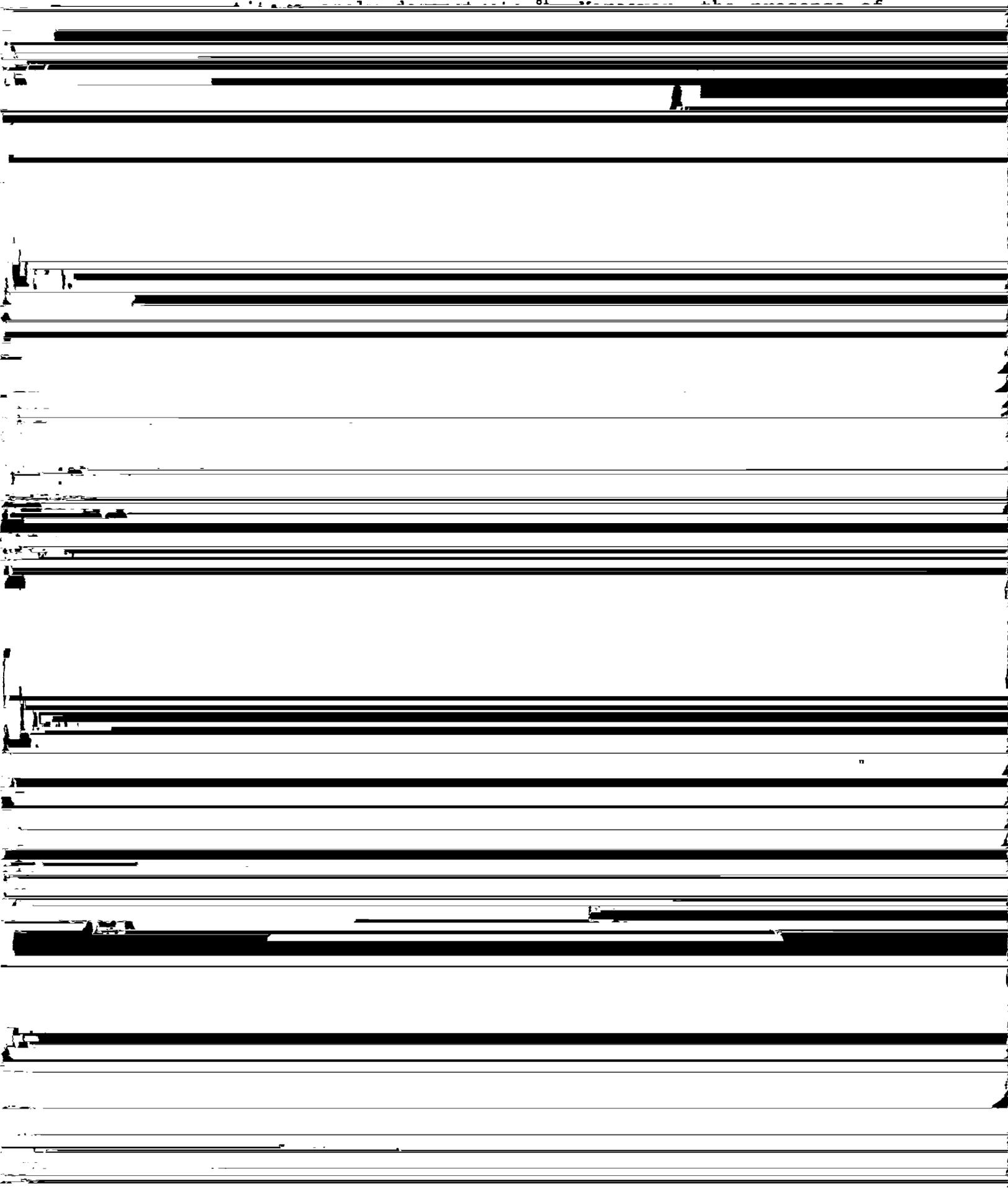
B. Elimination Of The Rule Would Encourage, Not Compromise, Competition And Diversity Of Program Service To The Public.

The Commission's concern with diversity in establishing the dual network rule was based on the assumption that there was a direct correlation between the number of program sources and the amount of diversity in programming in general -- that all programs emanating from one company would reflect the same viewpoint and editorial voice, and that given the limited number of broadcast outlets and the existence of only three program suppliers, the viewpoints of those suppliers would dominate the market.⁸⁰

That concern simply makes no economic or practical sense in today's diverse and pluralistic marketplace. As the number of outlets has proliferated, program providers have attempted to identify and tap into more segmented audiences with specialized interests. The inevitable result has been more choice, not less. The future holds the promise of even greater diversity as the plans of broadcast's cable

⁷⁹ Id. at paragraphs 19, 15.

⁸⁰ Radio Deregulation Order at paragraph 25; Home Shopping Network at paragraph 14.



[REDACTED]

exploit the efficiencies available to their competitors. There are potential economies in common use of personnel, equipment and property, which could lead to lower costs for advertisers, and enhanced ability to meet advertisers' audience targeting needs -- in short, "a better product to offer advertisers at a lower cost."⁸⁴ We note, for example, that MTV's plans call for selling advertising across all three proposed channels, based on cumulative demographics, ratings and reach.⁸⁵ The ABC Radio Networks achieve comparable efficiencies by selling advertising across the networks. The

V. TERMS OF THE BROADCAST NETWORK/AFFILIATE RELATIONSHIP SHOULD BE NEGOTIATED BY THE PARTIES INVOLVED.

We believe that all rules governing the network/affiliate relationship should be reduced to one simple rule: The affiliate must remain free not to carry a network program which it believes to be contrary to the public interest, or to substitute a program of greater local or national importance. Otherwise, all matters affecting terms and conditions of the network/affiliate relationship should be left to private negotiations between the parties. The Commission has a long-standing policy of non-interference in network affiliation decisions and the "private agreements" that flow from those affiliations.⁸⁹ Absent a strong public interest reason, it should also refrain from dictating the terms of those private arrangements.

Commission policies regarding affiliation agreements and network program practices were originally codified in 1941 in the "Chain Broadcasting Rules" applicable to radio.⁹⁰ These rules are the "exclusive affiliation," "territorial

⁸⁹ "The award of network affiliation agreements or the competition for them, is ordinarily a matter in which we play no role. Channel 41, Inc., 27 FCC 2d 595 (1970), recon. denied, 30 FCC 2d 6 (1971). While the Commission has enacted a number of

exclusivity," "option time," "right to reject programs," "dual network,"⁹¹ "network ownership of stations" and "control by network of station rates" rules. The "two-year term of affiliation" rule, which was also part of the Chain Broadcasting Rules applied to television, was eliminated by the Commission in 1989.⁹²

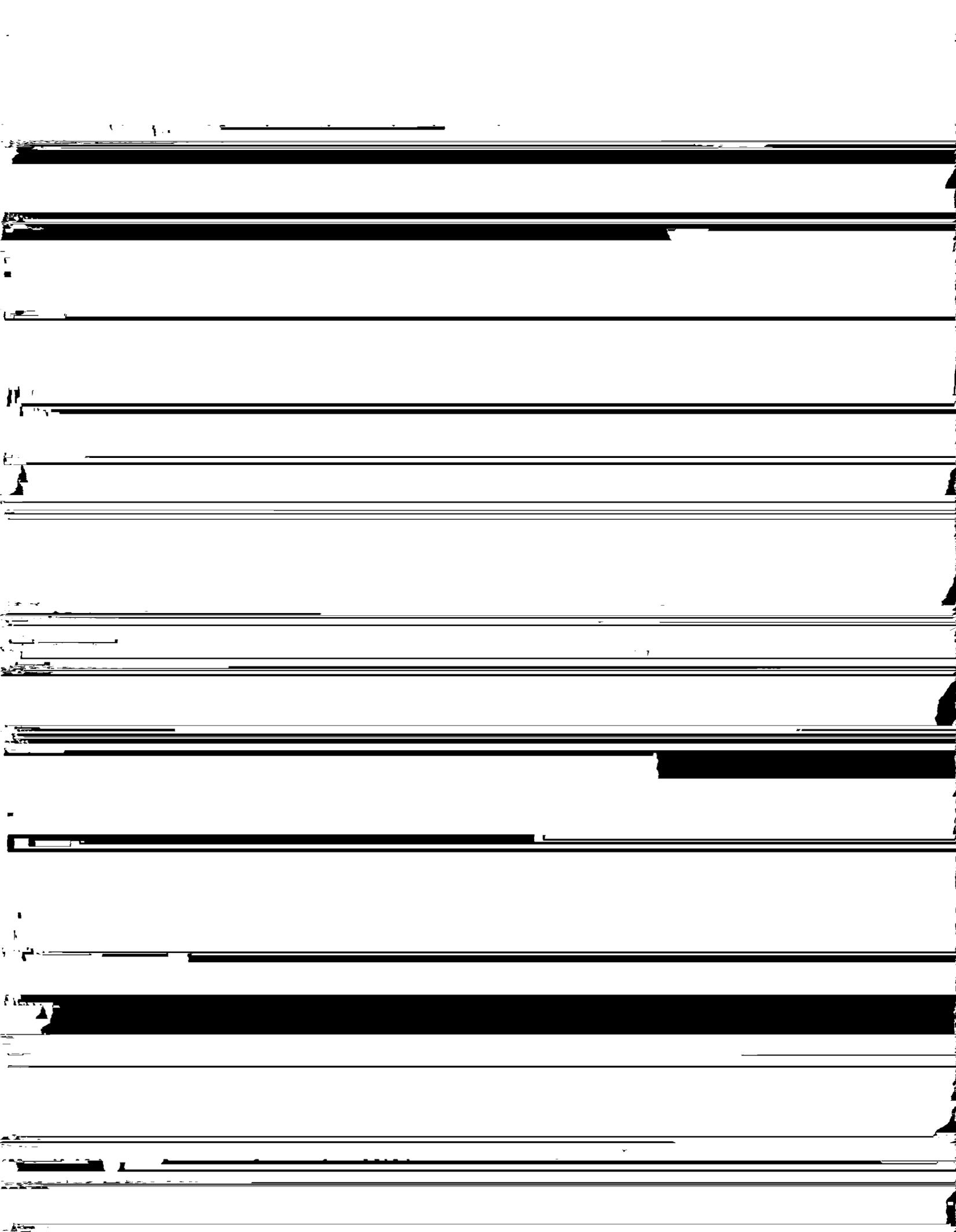
As noted above, these rules were summarily applied to television in 1945 without modification or substantial comment. They were intended to prohibit undue concentration of network power and to encourage the growth of additional national networks, thereby promoting full competition in the broadcast field. Relying upon the increased number of broadcast outlets and concomitant decreased "network dominance," the Commission eliminated all of the Chain Broadcasting Rules (except the "territorial exclusivity" rule) for radio in 1977.⁹³

We believe, as the Commission did in 1977, that the vastly changed video marketplace provides ample justification for elimination of most of these rules, several of which were motivated primarily by outdated concerns that competing suppliers be assured access to what was then a very limited number of desirable video outlets. That situation has been

⁹¹ This rule was discussed in detail in Section IV above.

⁹² Two-Year Rule, supra.

⁹³ Radio Deregulation Order. See discussion in Section IV above.



substantially concerns about "network dominance." Networks are virtually no different from other program suppliers, in that they face the same competition for programming, advertising revenues and viewers in today's increasingly fragmented market. They, in concert with their affiliates, should be permitted the freedom to compete fully in this marketplace.

A. Right to Reject Programs

This regulation provides that nothing in a network-affiliate agreement can prevent or hinder a station licensee from rejecting a network program which it believes to be contrary to the public interest, or substituting a program which it believes to be of greater local or national importance.⁹⁵ The rule grew out of the licensee's basic legal obligation to program its station in the public interest.⁹⁶ The practical effect of the rule is to prevent a network affiliate from agreeing to clear a network program whose carriage would violate this basic obligation.

⁹⁵ The rule provides: "Right to reject programs. No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization which, with respect to programs offered or already contracted for, pursuant to an affiliation contract, prevents, or hinders the station from (1) rejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable, or contrary to the public interest, or (2) substituting a program which, in the station's opinion, is of a greater local or national importance." 47 C.F.R. §73.658(e).

⁹⁶ E.g., NBC v. U.S., 319 U.S. at 205-06.

We agree that the concept is sound, whether it is expressed in the form of a regulation or Commission policy. The Commission has described it as "the key to the maintenance of essential licensee responsibility for network

ability to make independent programming judgments.⁹⁹ As has been shown, several new networks of all types have emerged in recent years, and the Commission has stated that existing networks do not have the power in today's environment to foreclose the entry of additional networks in any event.¹⁰⁰ Finally, the continued existence of the affiliate's right to reject network programming is the ultimate protection of his programming judgment.

Accordingly, we see no reason to retain this rule

The Commission's primary reasons for banning option time completely in 1963 were that it: "resulted in a 'fencing out' of non-network groups ... from certain hours, including the bulk of valuable evening 'prime time'";¹⁰² "restrict[ed] the licensee's freedom of choice" with respect to programming;¹⁰³ and acted as a "shield" for programs which otherwise would "stand or fall on their merits."¹⁰⁴ The Commission also cited a "need to encourage non-network program sources, especially in view of the expected increase in the number of UHF stations which will need attractive nonnetwork fare."¹⁰⁵

There is no reason to retain the rule in today's