personnel and economic resources from which the network can draw. See Chain Broadcasting Report, Docket No. 5060 (1941) (network-owned stations in larger markets "make available a substantial minimum audience for network sustaining programs...[and] permit the networks to experiment with new techniques of program production and new ideas in program content"). The emergence of the Fox network shows how ownership of bedrock stations, coupled with the resources and skills of a strong central management, still serves as the foundation for successful network operations, helping to contribute popular and quality programming to audiences nationwide.

It is important, too, to remember that in this increasingly competitive environment, other major players on the programming side -- suppliers of basic, pay, and pay-per-view cable services -- do not operate under constraints on their vertical integration. Thus, many companies with substantial ownership interests in cable programming networks -- e.g., Time Warner, Viacom, TCI, Cablevision, Cox Cable, Newhouse, Comcast, Scripps-Howard -- also are among the nation's largest cable multiple system operators. Particularly in today's increasingly competitive marketplace, the television networks and other group owners should not be arbitrarily restrained from achieving the most efficient level of station ownership, while their increasingly vigorous competitors for programming and advertising are free from vertical restrictions.

D. Recommendation

We believe that the conditions of the television marketplace fully justify complete elimination of the national ownership limits. We recognize, however, that the Commission may prefer to move more cautiously in this area, as in its recent actions in the radio ownership proceeding.[22/] If so, we believe that the Commission should relax the ownership rules to permit common ownership of at least 24 television stations and, if it retains an audience cap, to increase the cap limitation to at least 35 percent.

Each of the broadcast networks, including Fox, is already crowding the current 25 percent cap. An increase in the audience limit is essential if relaxation of the ownership rules is to provide meaningful opportunities to extend the networks' ownership base.

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22/ See Radio Ownership, 7 FCC Rcd at 2770; Radio Ownership Reconsideration, MM Docket 91-140, FCC 92-361 (August 5, 1992) (News Release).

As discussed above, the financial stability provided by television ownership in major markets has always been the foundation of the networks' strength and a primary source of their ability to finance the quality news, entertainment, and informational programming that have contributed greatly to the American public. This stability is even more important today in an era of fragmenting audiences and reduced profit margins. To increase the permissible number of group-owned stations without increasing the audience cap would effectively restrict additional network ownership of stations to small markets, unnecessarily and arbitrarily curbing the networks' ability to realize important cost efficiencies and to extend the benefits of their ownership to major markets.

The larger markets, with their greater number of stations, provide particularly high levels of viewpoint diversity and economic competition. It would indeed be ironic if, in the name of promoting diversity and competition, Commission rules operated to prevent group owners from expanding into those very markets which are themselves the most diverse and competitive. (Of course, no such limits restrain the expansion of cable owners, who have no regulatory cap on the number or reach of the systems they control.)

With regard to special incentives allowing minority owners to hold an interest in somewhat higher numbers of television stations, CBS continues to believe that the most effective way to promote minority ownership is through other means, such as the Commission's tax certificate and distress sale policies and enhanced access to capital for minority investors.[23/] However, we have no objection to retention of some ownership "bump" where minority-controlled entities are involved, so long as the levels for non-minority owners are set sufficiently high to permit natural growth and realization of scale economies.

## II. The Television Duopoly Rule Should Be Relaxed.

The so-called "duopoly" rules prohibit the common ownership of two or more broadcast stations in the same service (AM, FM, television) which serve "substantially the same area." Multiple Ownership Rules (Duopoly), 4 FCC Rcd 1723 (1989)("Duopoly"). The traditional purpose of the rules has been "to promote the dual goals of economic

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23/ See Radio Ownership, 7 FCC Rcd at 2769-70.

competition and diversity of program and service viewpoints." Id.

In 1989, the Commission modified the radio duopoly rules by reducing the signal contour areas within which joint ownership of stations was prohibited, narrowing the area of prohibited overlap from the 1 mV/m contour to the principal city contour. Id. It did this in order to "enable the public and broadcasters to take advantage of some of the efficiencies and cost savings attributable to common station ownership." Id. at 1729.

Recently, the Commission further relaxed the radio duopoly rules by allowing co-ownership of AM or FM stations within the same service area. As adopted in the reconsideration order in the proceeding, the radio rules now allow ownership of up to four stations in a market, depending on the overall number of stations in the market and the audience share of the co-owned stations. Radio Ownership Reconsideration, supra, at 2. This relaxation in duopoly limits was based on the Commission's conclusion that:

> "[O]ur existing rules may actually hamper competition and diversity by making it unnecessarily difficult for stations to compete in today's thriving marketplace. By artificially denying stations efficiencies that could be realized through consolidation of facilities...the local ownership restrictions increase

the costs of doing business at a time when cost-savings may well be critical to survival."

Radio Ownership, 7 FCC Rcd at 2774.

The same considerations strongly favor a substantial relaxation in the television duopoly rules, which currently preclude common ownership of stations with overlapping Grade B contours.

As the Commission observed in 1989, the rapid growth of broadcast and cable sources has meant a dramatic increase in the media alternatives available to residents of virtually every American community. Figures from 1987 cited by the Commission showed that the average market encompassed 10 over-the-air television signals, 20.4 commercial AM stations, 19.5 commercial FM stations, 36 cable channels with 48.8 percent cable penetration, 27.7 newspapers and significantly read magazines, and a VCR penetration rate of 48.7 percent. 4 FCC Rcd at 1724.

For diversity purposes, we believe the Commission should consider this entire universe of media alternatives, which provide the public with an abundance of editorial and programming choices. However, even if one considers television alone, the number of outlets available to viewers is substantial and dramatically higher than that which existed at the time of the adoption of the duopoly rules.

In 1964, only 39 percent of American television households received five or more channels of television programming, and a mere 8 percent received nine or more channels. 1984 Nielsen Report on Television at 2. By last year, 93 percent of television households received seven or more broadcast signals, and the average number of television signals receivable per household was 12. 1991 Nielsen Report on Television at 9. In the country's ten most populous ADI's, containing nearly a third of all American households, the average number of local television stations was 18; the top 20 markets (about 45 percent of all households) averaged 15.8 local stations; and the top 30 markets (about 54 percent of all households) averaged 14 local stations.[24/] Fifty-two markets -- comprising more than 60 percent of all television households -- contained 10 or more local television stations.[25/]

When cable programming alternatives are also taken into account, the number and growth of television options

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24/ Based on listings in Broadcasting Yearbook 1991 at C-129 to -206.

25/ Id.

is even more impressive. Today, 67 percent of television households can receive 20 channels or more of television programming, and 61 percent can receive 30 or more channels. 1991 Nielsen Television Report at 9. The average number of channels receivable by the American household is 35.6. Id. By contrast, as recently as 1985, only 35 percent of households could receive 20 or more channels of television programming, only 19 percent could get 30 or more channels, and the average number of receivable channels was 18.8. Id.

This dramatic growth in video alternatives is due to several factors: the increase in the number of television stations, including low power facilities; the increased profitability of UHF stations; and the rapid rise of cable reach, subscription levels, channel capacity, and program sources. 4 FCC Rcd at 1726; see gen. OPP Report, supra. These video alternatives are not only rising in number; they are also becoming increasingly competitive. As the OPP Report discussed in detail, the traditional dominance of network-owned and affiliated stations has waned throughout the decade, with cable and independent stations (and stations affiliated with the new Fox network) gaining substantially in audience and advertising shares.

The Commission has recognized in its radio duopoly proceedings the community benefits that could result from allowing common ownership of two or more same-service stations in the same area or in close proximity. As the Commission observed, common ownership of nearby radio stations permits "significant efficiencies" in the form of consolidation of accounting, billing, payroll, sales and other administrative and general functions. Duopoly, 4 FCC Rcd at 1727; see also Radio Ownership, 7 F.C.C. Rcd at 2774. Such cost savings and efficiencies, the Commission has found, are likely to enable capital improvements and increased financing of news, public affairs, and other programming that improve station service to the public. Id. at 2776.

Moreover, as the Commission noted in the radio proceeding, co-ownership of stations in the same market will likely enhance, rather than harm, programming diversity; "while competing stations might try to reach the same core audience, a single owner might try to program different stations to appeal to different audience segments in order to maximize its total audience size." Id. at 2771-72.

For the same reasons, the Commission should substantially relax current limits on local television station ownership. At the very least, the Commission should measure its local ownership limits with reference to the stations' respective Grade A contours, rather than Grade B. The Grade A contour has long served as the Commission's benchmark for its limitations on cross-ownership of television stations and non-television media (i.e., radio-television, cable-television, and newspaper-television cross-ownership). See, e.g., 47 C.F.R. Section 73.3555(c). There is no reason why any more restrictive approach is necessary with regard to television station ownership.

The Commission should also permit certain kinds of co-ownership of television stations within the same market, regardless of contour overlap. Specifically, the Commission should permit:

(i) co-ownership of at least two UHF stations within a market;

(ii) co-ownership of one VHF and one UHF station, so long as the market would still include stations owned by at least six different, separate owners. See NPRM at ¶ 20.

As suggested in the NPRM, combinations between strong VHF and weak UHF stations within the same market would be particularly "effective in preserving or improving the service of UHF stations." Id. Such combinations also provide station owners with an opportunity to establish innovative alternative programming on a second channel. For example, a station owner might use a UHF second channel to provide a full-time news, information, and/or interview service; to present an extended schedule of national and local sporting events; or to present programming geared to a special segment of the audience, such as children or an ethnic minority. Such opportunities could prove especially attractive to the networks and their affiliates. By acquiring an additional station in markets in which they already own one facility, and by offering special second-channel services to affiliates who obtain an additional station, the networks could apply their skills and resources to developing programming alternatives, combining network and local service, that would be of great interest and benefit to smaller "niche" sections of the viewing audience.[26/]

## III. The Radio-Television Cross-Ownership Rule Should Be Relaxed

Section 73.3555(b) of the Commission's rules, adopted in 1970, prohibits common ownership of a radio station and

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26/ This scenario also would require elimination of the dual network rule, as discussed below at pages ______.

a television station in the same market. In 1989, the Commission relaxed the rule's application by adopting a flexible waiver approach. Under this approach, a radio-television combination would presumptively qualify for waiver if it involved (i) one of the top 25 television markets, with at least 30 separately owned broadcast stations, or (ii) a "failed" station that was inoperative or in bankruptcy proceedings. See Multiple Ownership (Duopoly), 4 FCC Rcd 1741 (1989). Waiver requests for radio-television combinations in which these circumstances were not present would be reviewed by the Commission on a case-by-case basis, considering the possible benefits and competitive impact of the cross-ownership.

As noted above, the Commission based its action on its conclusions that (i) the tremendous growth and availability of media outlets in local markets had substantially alleviated concerns about diversity and competition, and (ii) joint ownership of local stations offered significant efficiencies that could enhance programming diversity, strengthen service, and promote competition among stations. See gen. id.

The Commission recently noted that its experience under this waiver policy had demonstrated that joint ownership of radio and television stations in a market "can result in cost savings of 10 percent or more." Radio Ownership, 7 FCC Rcd at 2775. These savings, the Commission observed, resulted from sharing of facilities and services such as towers and transmitter buildings, studios and offices, business departments and managers, administrative and management services, accounting and legal services, and engineering backup staffs. Id. at 2775 n.90.

CBS is well-acquainted with the benefits of local radio-television cross-ownership, since it has long operated TV-AM-FM combinations in New York, Los Angeles, Chicago, and Philadelphia (all existing prior to 1970, and "grandfathered" at that time) and recently acquired, under the 1989 waiver policy, another such group in Minneapolis. The operations of these stations attest to the substantial advantages that cross-ownership can provide. In each city, the CBS-owned radio and television stations enjoy significant cost savings by sharing various facilities and services. They also contribute to each other's programming in a number of ways. In each city, for example, the AM and television news operations are in regular contact, routinely sharing information, materials, interviews, and reports, and thus complementing and strengthening their respective newsgathering and reporting capabilities.

At the same time, in each case, the jointly owned CBS television and radio stations in each city have separate editorial policies and offer significantly different programming.

We believe that the substantial public benefits that the CBS stations enjoy due to their co-ownership, and the resulting service improvements that are passed on to the public, should be more broadly available. In particular, as the Commission found in 1989, co-ownership of television and radio stations in a market can be especially useful in helping weaker stations upgrade their service, their programming, and their competitiveness.

CBS supports the first proposal offered in the NPRM, under which permissible radio and television combinations in a given market would be limited only by the applicable ownership restrictions for each service. NPRM at ¶ 27. At the least, the Commission should conclusively permit radio-television combinations in markets in which at least 30 separately owned outlets would remain, without limitation to the top 25 markets. Id. at ¶ 28.

We note also that the Commission should not automatically limit a co-owner of radio and television stations to a single station in any service. See Id. at ¶ 28 n.49. Such a restriction would prevent existing owners of radio-television combinations in a single market from taking advantage of the enhanced efficiencies made possible by the recent relaxation of the local radio ownership limits, and of any relaxation of the local television ownership rules adopted in this proceeding. The potential benefits of cross-ownership are so great, and the threat to diversity or competition so slight, that owners of multiple stations in one broadcast service should not be arbitrarily precluded from ownership in another service.

## IV. The Commission Should Repeal the Dual Network Rule

The dual network rule, 47 C.F.R. § 73.658(g), effectively prohibits the operation by one entity of more than one simultaneous television network serving the same or substantially overlapping markets.

In 1977, the Commission repealed the dual network rule for radio. Radio Network Broadcasting, 63 F.C.C.2d 674, 684-85 (1979). The Commission concluded that the rule had become unnecessary and unproductive in light of, _inter alia_, the substantial increase in the number of radio stations, the reduced dominance and profitability of the radio networks, and the increased competitiveness of the radio marketplace. _Id._ In particular, the Commission found that in the competitive radio marketplace, no single radio network had the ability, or was likely to gain the ability, to preclude the entry of new rival networks. _Id._ The Commission also concluded that the development of diverse multiple networks by a single owner had the potential to enhance the programming options available to stations and the public. _Id._

The same situation now applies to television. The increase in the number of television stations, the growing strength and market share of independent stations, the declining market shares and profitability of the traditional networks, the emergence and rapid growth of a fourth network, and the rise of cable and cable programming networks -- developments discussed at length in the _OPP Report_ and elsewhere in these Comments -- have alleviated the concerns of control and network domination that led to the establishment of the rule. At the same time, the rule stands in the way of potential network activities which could significantly enhance programming choices for stations and viewers.

As the Commission suggests, there is no reason to believe that the development of multiple broadcast networks would operate to reduce program diversity. To the contrary, a network would have every incentive to develop distinctive and diversified programming for its respective network feeds to appeal to different viewers and extend its overall audience reach. This has been the experience of both the radio networks and the cable networks.[27/]

In particular, as discussed above, elimination of the dual network rule combined with relaxation of local station ownership limits could permit the development of new network-affiliate partnerships to present on second channels specialized network and local programming directed to more narrowly focused audiences -- e.g., a full-time news and information service, a sports service, or programming geared to children, women, minority groups, or other segment of the viewing public. Such a development would permit the networks and the affiliates to diversify their programming and their service to the community by building on their existing relationship, resources, and expertise.

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27/ Thus, for example, Turner Broadcasting System, Inc. offers CNN, Headline News, TNT, and TBS cable networks. Viacom International provides MTV, VH-1, Nickelodeon, Showtime, and the Movie Channel, co-owns Comedy Central, and has announced plans for further splintering of its MTV into several separate cable channels with distinct formats.

The potential benefits of the dual network rule's elimination and the adverse consequences of its retention are both magnified by the imminent arrival of video compression technology. Video compression promises to greatly increase the multi-channel delivery capabilities of satellite transmissions, cable, and over-the-air broadcasting. NPRM at ¶ 33. In the words of the OPP Report, video compression "will allow for greatly expanded capacity on all media and will reduce the cost of channel capacity, thus spurring the development of new, competitive program channels, many of them narrowly focused." 6 FCC Rcd at 4042.

The networks, with their extensive news, sports, and entertainment operations, would be well-situated to invest in the new technology and to utilize it in the development of beneficial new programming services. NPRM at ¶ 33. If, on the other hand, the networks continue to be barred from developing additional broadcast programming services, they will be placed at an increasingly severe disadvantage relative to their competitors in program delivery, including cable programming networks, who are under no such legal constraint.

As noted above, several cable programming suppliers already provide multiple cable networks. Their number will undoubtedly increase substantially in coming years, particularly with the advent of video compression. To meet this multichannel competition, broadcast networks should be permitted to develop alternative broadcast programming services, rather than be limited to expansion into cable programming.[28] The benefits of a diversified, multi-network operation should be made available to broadcast stations and the viewers of over-the-air television, and not limited to cable operators and subscribers. If free, universal network television is to retain its vitality, if networks are to be able to continue to offer their unique blend of quality news, sports, and entertainment in conjunction with local programming, it is imperative that they be permitted to develop and operate alternative broadcast programming services. We urge repeal of the dual network rule.

## V. The Commission Should Eliminate Sections 73.658(f) and (1) of its Rules

The Commission proposes to eliminate Sections 73.658(f) and (1) of its rules. The former provides that a network cannot own a television station in a locality "where the existing television broadcast stations are so few or of such unequal

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[28] ABC has invested substantially in ESPN and Arts & Entertainment; NBC operates CNBC. Only CBS has not moved into national cable programming, preferring to remain dedicated to a national broadcast operation.

desirability...that competition would be substantially restrained." The latter provides that in a market in which two networks have established affiliation agreements with stations, the third network must first offer its programming to an independent station before offering it to one of the existing affiliates.

For reasons amply discussed in the NPRM, CBS fully supports the elimination of these obsolete and thoroughly unnecessary provisions. Any justification, and any force, that these restrictions may have had at the time of their adoption is now long past, given the great increases in the number of broadcast stations and the profusion of video alternatives (broadcast, cable, satellite dish) now available to nearly every American home. As the Commission observes, these rules have had virtually no practical impact since their respective adoption. Today, they are mere anachronisms, placing useless, arbitrary, and discriminatory restrictions on network growth and affiliate relationships. Both rules should be repealed.

## CONCLUSION

Over-the-air television in general, and the broadcast networks in particular, have for decades provided Americans at no charge with the finest in entertainment, sports, and national and local news programming. Today, broadcasters and networks face formidable competitive challenges from their fee-charging, multichannel rivals in cable and other services. In this radically transformed marketplace, with its tremendous profusion of video outlets and program choices, old limits on station ownership and network activities are not only unnecessary and unfair; they also stand in the way of investments and improvements in broadcast service which would redound to the benefit of the viewing public. CBS urges the Commission to delete or to substantially relax the outmoded restrictions that are the subject of this proceeding.

Respectfully submitted,

CBS Inc.

By Howard F. Jaeckel

Howard F. Jaeckel

By J.W. Zucker

John W. Zucker

Its Attorneys

51 West 52nd Street
New York, New York 10019
(212) 975-4595

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