HSN
HOME SHOPPING NETWORK, INC.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA FEDERAL EXPRESS

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 91-221
Review of the Commission's
Regulations Governing Television
Broadcasting

Dear Ms. Searcy:

Transmitted herewith on behalf of Home Shopping Network, Inc. ("HSN") are an original and four copies of its Comments in the above-referenced proceeding.

An additional copy of HSN's Comments are enclosed herewith to be date-stamped by the Commission upon receipt and returned to the undersigned in the enclosed postage prepaid, self-addressed envelope.

If there are any questions concerning this matter, please contact the undersigned.

Very truly yours,

Michael Drayer
Senior Counsel

enclosures

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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 Commission's	)	
Regulations Governing Television	)	MM Docket No. 91-221
Broadcasting	)	

To: The Commission

COMMENTS
OF
HOME SHOPPING NETWORK, INC.

HOME SHOPPING NETWORK, INC.

By: Allen P. Allweiss
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August 21, 1992

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SUMMARY

The Commission has presented a number of proposals to modify its broadcast television multiple ownership rules as a result of changes that have taken place in the video marketplace, trends identified and described by the FCC Office of Plans and Policy in its Staff Working Paper entitled "Broadcast Television in a Multichannel Marketplace" and comments on an agency Notice of Inquiry prompted by the Office of Plans and Policy Paper.

Home Shopping Network, Inc. ("HSN") supports the general thrust of the Commission's proposals to modify its multiple ownership rules pertaining to broadcast television stations. Specifically, HSN recommends repeal of the national ownership cap and relaxation of the duopoly rules. As demonstrated herein, these rules are not only anachronisms in today's video marketplace, they no longer serve the Commission's public policy goals. In fact, the rules are contrary to the public interest and their modification likely will advance the agency's public interest objectives. Thus modification of the multiple ownership rules along the lines suggested by HSN is a critical first step in promoting fair competition in the video marketplace and thereby serving the American public.

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

In the Matter of:	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)))	MM Docket No. 91-221

To: The Commission

COMMENTS
OF
HOME SHOPPING NETWORK, INC.

Home Shopping Network, Inc. ("HSN") hereby submits these Comments in response to the Commission's Notice of Proposed Rulemaking, MM Docket No. 91-221 (released June 12, 1992) (hereinafter NPRM) concerning the policy implications of the changing video marketplace.

INTRODUCTION

HSN, through various subsidiaries, owns and operates 11 full-power, full-service, UHF television stations and one full-power, UHF television satellite station. Also through various subsidiaries, HSN owns and distributes on a nationwide basis four satellite-delivered program services: HSN2 and HSN4 primarily serve broadcast station affiliates, HSN1 serves cable affiliates, and HSN5, HSN's newest channel, is intended to serve both broadcast and cable affiliates. HSN has been at the forefront of broadcasters employing technical and creative innovation to ensure that broadcasting remains a strong presence in the video marketplace of tomorrow.

DISCUSSION

1. Background.

Last year the Commission released the FCC Office of Plans and Policy Staff Working Paper entitled "Broadcast Television in a Multichannel Marketplace"[1] which examined the current state of the video marketplace and likely video landscape at the close of the century based upon an analysis of current trends. The OPP Paper documented what has become apparent to virtually all observers of the video marketplace, that television broadcasters are struggling while multichannel video providers are prospering in a video industry characterized by outmoded regulations that are predicated on a video marketplace dominated by television broadcasters that no longer exists.

Based upon the OPP Paper's findings and subsequent comments filed in response to the FCC's Notice of Inquiry prompted by the release of the OPP Paper, the Commission has released the instant NPRM proposing to revise its rules governing the television industry's market structure to comport with marketplace realities and to further public interest objectives. HSN supports the thrust of the Commission's NPRM, although it believes the agency should repeal its national ownership cap with respect to broadcast television stations altogether in addition to relaxing its duopoly rules. As HSN stated in its comments to the Notice of

[1] Office of Plans and Policy Working Paper #26. Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd. 3996 (1991)(hereinafter "OPP Paper").

Inquiry, these rules are anachronisms that threaten the long-term future of a robust television industry in a video marketplace increasingly dominated by cable operators, and their repeal/relaxation will be a critical first step in promoting fair competition in the video marketplace without compromising the FCC's public policy goals.

2. The FCC Should Repeal Its Broadcast Television National Ownership Limits.

In its NPRM, the Commission states that the national ownership limits prevent television broadcasters from fully realizing beneficial economies of scale.[2] The FCC also states that these increased economies of a scale could permit the production of new and diverse, including locally produced, programming.[3] Finally, while the Commission remains sensitive to concerns about the effect of ownership concentration on program diversity, the agency believes that the proliferation of television stations and alternative sources of video programming may have abated these concerns.[4] Accordingly, the Commission offers several proposals to increase the number of television stations that may be owned by a single entity as well as proposing corresponding increases in audience reach. The FCC does not, however, propose to eliminate the national ownership cap entirely.

Though perhaps politically problematical, it remains HSN's view that the national ownership limits should be

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[2] NPRM at ¶11.

[3] Id.

[4] Id.

eliminated in their entirety. Television broadcasters' ultimate success in the video marketplace will continue to be predicated on their unique qualities -- their local responsiveness, identity and innovations. As public trustees broadcasters are different from other video providers, and even with repeal of the national ownership cap, they are likely to compete effectively in the video marketplace against cable systems and other multichannel providers only by accentuating these differences.

The availability of the economies of scale resulting from elimination of the national ownership limits would allow broadcasters to improve the quality of local news coverage and other public interest programming (e.g., increasing the quantity and quality of children's programming) thereby benefitting broadcasters through cost savings that permit them to distinguish themselves in their markets, while benefitting the public that would be the recipient of stations' improved service to their local communities.

This last point is a very important one because it addresses the Commission's appropriate concerns over whether repeal of the national ownership cap would have a negative impact on localism and/or diversity. As noted above, repeal of the national ownership limits would provide incentives for broadcasters to improve their service to their local communities. Moreover, the elimination of outmoded structural regulations in no way compromises the continuing vitality of broadcasters' public interest obligations as public trustees and the Commission's authority to enforce its rules and policies concerning these obligations. The Commission's recent enactment of rules limiting commercials during children's programming and imposing an affirmative obligation on broadcasters to serve children in their audiences illustrates that the public trustee regulatory model is alive and well. Thus localism would not be compromised by repeal of the national ownership cap.

Likewise, repeal of the national ownership limits would not have a negative impact on diversity. As a threshold matter, when assessing diversity the Commission should consider the abundance of program choices from both broadcast and non-broadcast sources available to viewers in the video marketplace. Although, as noted above, broadcasters have a unique role in the video marketplace that must be preserved, the notion of diversity encompasses all available program choices. The potential for improvement in local service from repeal of the national ownership cap, and the fact that HSN, as well as the FCC, propose only relaxation of the duopoly rules likely would increase the quality of those choices with regard to television broadcast channels in the marketplace.[5] As a practical matter, by requiring that station managers and general managers operate stations and be responsive to their local communities, local service obligations ensure that

[5] Those individuals unable or unwilling to subscribe to pay television services would particularly benefit from an improvement in the quality of local coverage to a degree that would far outweigh any nominal decrease in diversity of ownership.

group-owned stations provide diverse offerings and not operate as one station with several distant full-power "translators."

For these reasons, HSN continues to believe the national ownership cap should be eliminated entirely. If, however, the Commission adopts a "moderated" approach to provide itself with an opportunity to assess the impact of deregulation over time, this "moderated" approach must not be so graduated as to restrict long-term planning and diminish the incentives of group owners to invest in enough additional stations to begin to fully realize the potential economies of scale. Therefore, if the Commission is determined to retain some national ownership limits, HSN would urge the agency to adopt its most liberal proposal -- i.e., to permit a single entity to own 24 television stations with a maximum reach of 35% of the national audience.[6]

3. The FCC Should Relax Its Broadcast Television Duopoly Rules.

As with the national ownership limits, in its NPRM, the Commission states that the duopoly rules prevent television broadcasters from fully realizing beneficial economies of

[6] Id. at ¶12. HSN also supports retaining the current minority incentive as part of any modification of the national ownership cap short of repeal. Thus, a single entity should be entitled to hold interests in up to 26 (rather than 24) television stations reaching 40 (rather than 35) percent of total television households if the additional stations are minority controlled. While, as noted at pp. 8-10, infra, elimination of the national ownership limits (and relaxation of the duopoly rules) would provide even greater benefits, in HSN's experience, the minority incentive has played a positive role in reaching agreement on mutually beneficial relationships with minority individuals and enterprises and thus HSN does not believe there exists any justification for eliminating the minority incentive, particularly because retaining it has no countervailing detrimental effects.

scale -- efficiencies that may in fact be greater than those implicated by the national ownership cap.[7] Likewise, while the Commission intends to be cautious in amending these rules due to their fundamental importance in protecting diversity, the agency notes that the level of competition in local markets has greatly increased since the duopoly rules were adopted in 1964.[8] Accordingly, the Commission offers proposals that would relax the duopoly rules as applied to television stations.

HSN supports the Commission's proposal to relax its duopoly rules to permit common ownership of television stations unless their Grade A contours overlap.[9] As noted by the Commission, utilizing the Grade A contours more accurately reflects a station's core market and permits common ownership of stations in neighboring communities, thereby allowing economies of scale to be realized.[10] The use of Grade B contours as opposed to Grade A contours as the basis for determining prohibited overlaps cannot be justified when the imagined benefits of using the Grade B contours (*i.e.*, *theoretically* enhancing diversity within a relatively small area where both stations' signals may not even be actually received) are compared with the very real benefits of utilizing the Grade A contours (*i.e.*, improving the chances

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7 *Id*. at ¶17.

8 *Id*.

9 *Id*. at ¶18.

10 *Id*.

that neither of the overlapping stations will be forced to go dark, ensuring local service in each of two neighboring communities and enhancing the services they are able to provide as a result of the efficiencies created).

HSN also supports elimination of the duopoly rules as applied to unaffiliated UHF stations. HSN proposes that for purposes of identifying unaffiliated UHF stations the definition of a television network set out in Section 73.662(i) of the Commission's Rules as adopted in MM Docket No. 90-162 be applied. (The proposed language is attached hereto as Exhibit A.) Besides being inherently handicapped by their "channel position" and facing the same economic obstacles faced by all television broadcasters, UHF licensees also must overcome additional barriers to succeed because their stations typically have less favorable signal propagation characteristics and higher technical operating costs than VHF stations.[11] Co-ownership of UHF stations in the same market, when such stations under the best of circumstances must "try harder" to survive, presents no threat to diversity that is not substantially outweighed by the benefits of continued operation and improved services that can result from the efficiencies created by co-ownership.

4. **Deregulation, the Small Owner/Operator and Minority Entrepreneurs.**

The broadcast television market today is a mature one and, as the Office of Plans and Policy noted in its study, the number of operating broadcast television stations is likely to

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[11] Id.

decline in the coming years. It stands to reason that those stations that would be available to group owners would be failing or marginal stations that could benefit from stronger ownership and without such ownership might otherwise go dark. Theory notwithstanding, the practical reality is that the small owner/operator of a struggling station is less likely to offer expensive, high-quality or innovative programming than a group owner with the resources to make the necessary investments for survival.

Eliminating -- or at least substantially relaxing -- the national ownership limits and relaxing the duopoly rules could, in fact, prove beneficial to small entrepreneurs and prospective minority station owners. HSN has played a leading role among companies in encouraging increased minority ownership of television stations through financing, technical assistance and affiliation agreements with minority existing and prospective station owners.[12] HSN's efforts reflect the company's belief that these undertakings are sound business investments as well as being the right thing to do. However, HSN and others could do more to assist minorities and other new television industry entrants if they were not foreclosed from obtaining more security for providing this assistance in the form of attributable minority ownership interests or

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[12] See Statement of Pluria W. Marshall, Chairman, National Black Media Coalition, Before the Commerce, Science and Transportation Subcommittee on Communications, U.S. Senate, June 20, 1991. See also Letter of Daniel K. Tabor, President, National Black Caucus of Local Elected Officials, to Senator Daniel K. Inouye, Chairman of the Subcommittee on Communications, Committee on Commerce, Science and Transportation, U.S. Senate, June 18, 1991.

options to obtain such interests that could be exercised without, or with less, regard to the company's current number or location of attributable interests. The commitment required to assist new industry entrants, financial and otherwise, is simply too great and too risky for interested companies to undertake in the absence of a strong security interest.

CONCLUSION

Technology and competition have eroded both the marketplace and public policy justifications for maintaining the broadcast television multiple ownership rules in their current form. Cable television system operators control dozens of channels in individual markets and are constrained in multiple system ownership only by the antitrust laws. In practice this means they have not been constrained at all. Repealing or, at a minimum, substantially relaxing the national ownership cap and relaxing the duopoly rules is an important first step in leveling the video programming playing field and thereby promoting a stronger, free over-the-air broadcast television industry that will give broadcasters the ability and the incentives to improve their service to our nation's local communities and prosper as well.

FOR THE FOREGOING REASONS, HSN urges the Commission to repeal the national ownership limits contained in the agency's multiple ownership rules -- or at least substantially relax them -- and relax its duopoly rules to permit common ownership of television stations unless their Grade A contours overlap, and eliminate the duopoly rules entirely for UHF stations not affiliated with a television network as that term is defined in Section 73.662(i) of the Commission's Rules as adopted in MM Docket No. 90-162.

Respectfully submitted,

HOME SHOPPING NETWORK, INC.

By: ____________________
Allen P. Allweiss
Executive Vice President

By: ____________________
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August 21, 1992

EXHIBIT A

A "**television network**" is any person, entity, or corporation providing on a regular basis more than fifteen (15) hours of prime time programming per week (exclusive of live coverage of bona fide news events of national importance) to interconnected affiliates that reach, in aggregate, at least seventy-five (75) percent of television households nationwide; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity, or corporation. Not included within this definition is any television network formed for the purpose of producing, distributing, or syndicating program material for educational, noncommercial, or public broadcasting exhibition, or for non-English language exhibition, or that predominantly distributes programming involving the direct sale of products or services.

Note: "National audience reach" for purposes of this definition is the total number of United States television households in the Arbitron Area of Dominant Influence (ADI) markets in which the stations or regular television station affiliates of the network are located, divided by the total national television households as measured by the most current ADI data publicly available at the start of each television season. "Regular basis" means providing, on average for the prior six months, more than the specified number of hours of programming per week.