

Capital Cities/ABC, Inc. 77 West 66 Street New York NY 10023 (212) 456 6391

Kristin Carroll Gerlach
Senior General Attorney
Law & Regulation

RECEIVED



AUG 24 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 24, 1992

ORIGINAL
FILE

HAND DELIVER

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Ms. Searcy:

On behalf of Capital Cities/ABC, Inc., transmitted herewith for filing with the Commission are an original and five copies of its Comments in MM Docket No. 91-221.

If there are any questions in connection with the foregoing, please contact the undersigned.

Sincerely yours,

Kristin C. Gerlach

KCG/ak
Enclosures

No. of Copies rec'd
LEASODE

0 + 5

RECEIVED

AUG 24 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF CAPITAL CITIES/ABC, INC.

Sam Antar
Vice President, Law & Regulation

Kristin C. Gerlach
Senior General Attorney,
Law & Regulation

Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023

Counsel for Capital Cities/ABC, Inc.

August 24, 1992

TABLE OF CONTENTS

Summary.....	i
Introduction.....	1
I. THE COMMISSION SHOULD RELAX ITS NATIONAL MULTIPLE OWNERSHIP RULE TO ALLOW OWNERSHIP INTERESTS IN 18 TELEVISION STATIONS REACHING 30 PERCENT OF TELEVISION HOUSEHOLDS.....	3
A. The National Multiple Ownership Rule Is Not Necessary To Preserve Competition And Diversity.....	5
B. Relaxation Of The National Multiple Ownership Rule Will Permit Broadcasters To Exploit Economies Of Scale.....	10
C. Broadcast Companies Should Be Permitted To Have Ownership Interests In 18 Television Broadcast Stations Reaching 30 Percent Of Television Households.....	13
D. A Minority Incentive Should Be Included In The National Multiple Ownership Rule.....	16
II. THE COMMISSION SHOULD ELIMINATE ITS BAN ON DUAL NETWORKING.....	18
III. THE COMMISSION SHOULD AFFIRM AND EXTEND ITS "30 VOICES" TEST AS THE SOLE CROSS-OWNERSHIP WAIVER STANDARD.....	20
IV. THE "DOMINANT STATION RULE" SHOULD BE ELIMINATED.....	26
V. THE "FORCED AFFILIATION RULE" SHOULD BE ELIMINATED.....	31
Conclusion.....	35

SUMMARY

Many of the Commission's structural rules that are under review in this proceeding are counterproductive restraints on broadcasters and cannot be justified in today's competitive environment. The enormous increase in media voices has resulted in an irreversible decline in broadcasters' audiences and advertising revenue. Restrictions imposed when three or four television stations were the only source of video information and entertainment for most Americans cannot be justified in light of the fundamental change in the video marketplace.

Capital Cities/ABC urges the Commission to relax the national ownership rule to permit ownership interests in 18 television stations reaching 30 percent of television households, with a minority incentive; to eliminate the dual network rule on a timely basis; to affirm and extend the "30 voices" test as the sole television/radio cross-ownership waiver standard; and to repeal both the "network ownership of stations" rule (the "dominant station" rule) and the rule "governing the broadcast of the programs of more than one network" (the "forced affiliation" rule).

Capital Cities/ABC believes that the greatest and most immediate need is for relaxation of the national multiple ownership rule. In light of the changed broadcast and cable communications marketplace, natural competitive forces can be

relied upon to ensure diversity of viewpoint and vigorous competition. It makes no sense that the people most committed to and knowledgeable about broadcasting -- the broadcasters -- are so limited in the number of television stations they can own whereas no Commission rule would preclude a single company from owning every cable system in the United States.

The Commission has consistently recognized the public interest benefits of economies of scale and other efficiencies associated with joint ownership of broadcast stations. There is no reason to believe that these efficiencies would not apply to broader combinations of 18 commonly-owned stations. Stations in markets both large and small could benefit from consolidation with financially stable group owners. Moreover, an increase in the national ownership limits would have no appreciable effect on diversity or competition in the context of any local market.

Relaxation of the rule should not be limited to an increase in the numerical cap without a concomitant increase in the "reach" figure. The migration of viewers to other program sources has resulted in a decrease in broadcasters' share of audience. As a result, the "reach" figure established in 1985 does not represent the same opportunity in 1992 as it did then -- it is just not worth as many viewers. A modest increase to 30% would at least help broadcasters to keep pace with the new competition.

We also urge the Commission to eliminate the ban on dual networking on a timely basis. The emergence of new competition, including new program networks, makes it clear that the rule is not necessary to achieve its original purposes: the development of additional networks; the prevention of undue concentration of control, or the stimulation of program diversity.

The Commission should affirm and extend its "30 voices" test as the sole television/radio cross-ownership waiver standard. This test should apply in any market, not just the top 25. When coupled with the ownership limits for each broadcast service, this criterion is all that is necessary in the vast majority of cases to protect the Commission's diversity and competition goals.

Finally, we urge the Commission to eliminate both the "dominant station" rule and the "forced affiliation" rule. Not only is the dominant station rule not necessary for the purposes it was designed to achieve, it may be counter-productive by raising an obstacle to network ownership of small market stations, which are in need of economic revitalization. The "forced affiliation" rule is likewise unnecessary to encourage the growth of UHF broadcast service and access to programming for independent stations. Both purposes have been substantially realized. The rule unnecessarily singles out and restrains the three traditional networks in their choice of distribution outlets.

RECEIVED

AUG 24 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC") submits herewith its Comments in response to the Notice of Proposed Rulemaking in the above-entitled proceeding ("Notice").¹

Introduction

Capital Cities/ABC is a diversified media company that operates the ABC Television Network and owns eight television broadcast stations. Our interests will be directly affected by the outcome of this proceeding.

As we have said in our earlier filings in this proceeding, many of the Commission's structural rules that are

¹ MM Docket No. 91-221, Notice of Proposed Rulemaking, FCC 92-209 (rel. June 12, 1992).

now under review are counterproductive restraints on broadcasters and cannot be justified in today's environment. The video marketplace has changed irrevocably and broadcasters have suffered an irreversible decline in viewers and advertising revenue. Phrases like "explosion of video outlets," "plethora of choices for the viewer," "emergence of Fox and cable as robust competitors to the traditional over-the-air networks," "migration of viewers from traditional broadcast services to other program sources" and "the promise of advancing technology to offer even greater diversity" appear repeatedly throughout industry studies, Commission Notices in rulemaking proceedings and Comments filed by interested industry participants. The statistics in support of these statements have been cited in exhaustive detail. Many of the restrictions imposed when three or four television stations were the only source of video information and entertainment for most Americans cannot be justified in light of this fundamental change in our business.

For Capital Cities/ABC, the question is not what needs changing, but rather where to start. We explain below why we support relaxation of the national multiple ownership rule to allow ownership interests in 18 television stations reaching 30 percent of television households, with a minority incentive for station ownership; timely elimination of the dual network rule; use of the "30 voices" test as the sole cross-ownership waiver standard; elimination of the "network

ownership of stations" rule; and elimination of the rule governing the broadcast of the programs of more than one network.

But from our perspective, the greatest and most immediate need is for reform of the ownership limits. In the new world of video diversity, it makes no sense that broadcasters are limited in the number of television stations they can own, whereas no Commission rule would preclude a single company from owning every single cable system in the United States. The perverse and unintended effect of an ownership limit adopted before the dramatic explosion of cable is that the people most committed to and knowledgeable about broadcasting -- the broadcasters -- are limited to investments in their rival cable companies for growth and expansion. This is simply not in the public interest.

I. THE COMMISSION SHOULD RELAX ITS NATIONAL MULTIPLE OWNERSHIP RULE TO ALLOW OWNERSHIP INTERESTS IN 18 TELEVISION STATIONS REACHING 30 PERCENT OF TELEVISION HOUSEHOLDS.

Citing the "many changes in the video marketplace," the Notice, at paragraph 11, requests comment on various proposals to modify the national multiple ownership rule. The rule currently limits broadcasters to ownership interests in twelve television stations reaching no more than 25% of total U.S. television households. Ownership interests in two additional stations reaching an additional 5% of television

households are permitted if those stations are minority controlled.²

In light of the changed broadcast and cable communications marketplace, we believe that natural competitive forces can be substantially relied upon to ensure diversity of viewpoint and vigorous competition which the rules were designed to preserve. Like most of the Commission's rules regulating broadcast television, the national multiple ownership rules were adopted during an era when "television broadcasters were the videomarketplace."³ Their effect today is to perpetuate a competitive imbalance that favors non-broadcast technologies.

When the broadcast ownership limits were relaxed in 1985, the Commission decided to proceed cautiously in this area of regulatory reform. Therefore, upon reconsideration, the Commission eliminated the provision in its original order which would have "sunsetted" all national limits after six years.⁴ More than six years have passed and in the

² 47 C.F.R. §73.3555(d).

³ Office of Plans and Policy Working Paper #26. Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 FCC Rcd 3996 (1991) ("OPP Paper") at 169-172. We note that the OPP Paper concludes that the new competition in the video marketplace calls for complete elimination of the national multiple ownership rule. Id. at 170.

⁴ Report and Order in Gen. Docket No. 83-1009, 100 FCC 2d 17, 56 Rad. Reg. 2d (Pike & Fischer) 859 (1984) ("Ownership Report and Order"), on reconsideration, Memorandum Opinion and Order, 100 FCC 2d 74, 57 Rad. Reg. 2d (Pike & Fischer) 966 (1985) ("Ownership Reconsideration Order"), appeal dismissed sub. nom., National Association of Black Owned Broadcasters v. FCC, No. 85-1139 (D.C.

intervening period we have seen the emergence of new and vigorous competition which has produced an irreversible erosion in broadcasters' audience and revenues. The altered competitive environment fully justifies further relaxation of the ownership limitations. Accordingly, we support relaxing the rule initially to permit ownership interests in 18 television stations reaching no more than 30% of total television households. We also support an incentive that would allow ownership in a larger number of stations with a greater percentage reach for minority-controlled stations.

A. The National Multiple Ownership Rule Is Not Necessary To Preserve Competition And Diversity.

The national multiple ownership rule was established to foster economic competition and diversity of viewpoints. The rule was based upon "possibilities" and "assumptions," rather than actual abuse.⁵ With respect to competition, the Commission relied on a "scarcity" argument as one basis for the rule, i.e., that the limited number of broadcast stations justified ownership restrictions to eliminate the possibility of monopolistic control.⁶ Similarly, broad ownership

Cir. Jan. 4, 1991).

⁵ "The Commission adopted the rule on the basis of prognostication, not empirical proof, and relied on assumptions which at the time were untestable." Ownership Report and Order at paragraph 20.

⁶ Id. at paragraph 7.

diversity was assumed to promote diversity of viewpoints and program sources, but that assumption "was not based on hard evidence in the record."⁷

The Commission now believes that "the primary concern underlying the national ownership rule -- preventing economic concentration and consequent harm to diversity -- may have abated with the proliferation of television stations and alternative sources of video programming described [earlier in the Notice]."⁸ We fully agree.

The Commission undertook a comprehensive review of the broadcast and cable marketplace when it amended the national multiple ownership rule in 1984 and 1985. It determined that effects on competition and diversity are to be evaluated primarily in the context of the local market and hence, in the context of the local, rather than national, ownership rules.⁹

⁷ Id. at paragraph 20.

⁸ Notice at paragraph 11.

⁹ It has repeatedly reaffirmed that conclusion. Second Report and Order in MM Docket 87-7, 4 FCC Rcd 1723, 65 Rad. Reg. 2d (Pike & Fischer) 1589 (1989) ("One-To-A-Market Order"); modified on reconsideration, Memorandum Opinion and Order in MM Docket 87-7, 66 Rad. Reg. 2d (Pike & Fischer) 1115 (1989) ("One-To-A-Market Reconsideration"). One-To-A-Market Order at paragraph 80; Report and Order In re Revision of Radio Rules and Policies, MM Docket No. 91-140 (released April 10, 1992) ("Radio Ownership Report") at paragraph 20, modified on reconsideration (FCC News Release 24293, Report No. DC-2198 "National and Local Radio Ownership Rules Modified on Reconsideration" dated August 5, 1992) ("August 5, 1992 News Release").

With respect to the possibility of competitive harm on a national level, the Commission concluded that the massive increase in the number of television broadcast stations and other media that compete with them for audience and advertising revenue "eliminated monopolistic control as a serious threat."¹⁰ It also rejected the contention that increased station ownership would lead to competitive harm in the national broadcast advertising marketplace.¹¹

The Commission also determined that, because effects on diversity are to be evaluated on a local market basis, "national broadcast ownership limits ... ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public."¹²

The Commission rejected the theoretical notion that diversity might be decreased on a national level through the imposition of a single owner's identical ideas in a large number of local markets. First, it found that "group owners

¹⁰ Ownership Report and Order at paragraph 7.

¹¹ Citing the Comments of the Department of Justice, the Commission concluded that there would be no adverse effect on the network advertising market, since the networks already have access to virtually every local market via their affiliation agreements. The spot advertising market was defined as a local market, so that modification of the national multiple ownership rule should have no effect on competition in that market. Id. at paragraph 71.

¹² Id. at paragraph 60: "the most important idea markets are local. For an individual member of the audience, the richness of ideas to which he is exposed turns on how many diverse views are available in his local market."

do not impose monolithic viewpoints on local media outlets."¹³ That remains the case today. Group-owned stations make autonomous decisions with respect to non-network programming and local news, based on the needs of their communities. Each of the Capital Cities/ABC stations broadcasts local public affairs programming unique to its community.¹⁴

Second, the Commission cited the nationwide "abundance of idea sources" in the more than 10,000 broadcast stations and more than 12,000 newspapers and periodicals. Elimination of the rule would, "at worst," result in an "inconsequential decrease in idea sources nationwide."¹⁵ Finally, the Commission noted that group ownership can affirmatively encourage diversity of viewpoint by devoting more resources to activities that improve the quality of programming.¹⁶

¹³ Id. at paragraph 61.

¹⁴ For example, VIVA HOUSTON, an interview show dealing with local politics (KTRK, Houston); VISIONS, a magazine format program dealing with minority and urban issues (WPVI, Philadelphia); REFLECTIONS, a video magazine/documentary and/or discussion program (WTVB, Durham); and SANCTUARY, a religious program (WLS, Chicago).

¹⁵ Ownership Report and Order at paragraph 61. That "abundance of idea sources" has been steadily increasing. Today, there are more than 12,700 radio and television broadcast stations on the air. FCC News Release Announcing Broadcast Station Totals as of July 31, 1992. Cable systems and networks, VCR use, and alternative video delivery systems have increased substantially as well.

¹⁶ Ownership Report and Order at paragraph 62. This point will be discussed further in Section B below.

The number of video outlets has increased substantially since the Commission relaxed the national multiple ownership rules. In the Ownership Report and Order, the Commission indicated that there were 1169 television broadcast stations, 6400 cable systems (passing sixty-four percent of all television households)¹⁷ and only 14% of households had home video cassette recorders (VCRs).¹⁸ In contrast, today there are 1500 television broadcast stations,¹⁹ 11,254 cable systems²⁰ (passing approximately ninety percent of all television households),²¹ and 77 percent of television households now have VCRs.²² The tremendous increase in these video outlets in just the past eight years, coupled with a further reduction in network affiliate audience share during that period,²³ further supports the Commission's conclusion that its diversity and competition goals do not need the protection of the current national multiple ownership rule.

¹⁷ Ownership Report and Order at paragraph 35.

¹⁸ Overview of the Television Industry, Policy and Rules Division, Mass Media Bureau, March 1992 ("Overview of the Television Industry"), p. 3.

¹⁹ FCC News Release Announcing Broadcast Station Totals as of July 31, 1992.

²⁰ Broadcasting, August 17, 1992 at p. 68.

²¹ Overview of the Television Industry, p. 1.

²² Id. at p. 3.

²³ Id. at pp. 2-3.

B. Relaxation Of The National Multiple Ownership Rule Will Permit Broadcasters To Exploit Economies Of Scale.

The Commission has consistently recognized the public interest benefits of efficiencies available through multiple ownership of broadcast stations. These economies of scale lead to greater financial resources for broadcasters, allow them to compete more effectively and thus ultimately provide better service to the public.²⁴ Allowing broadcasters to realize these efficiencies is particularly important in the current and future video marketplace when they have to withstand extraordinary competition. Specific efficiency benefits identified by the Commission include group advertising sales and program purchases,²⁵ consolidation of general and administrative functions, capital expenditures for equipment and physical facilities,²⁶ and sharing of professional services such as lawyers, accountants, insurance carriers and engineers.²⁷

The Notice refers to a study conducted by the Office of Communications of the United Church of Christ (OC/UCC)

²⁴ See, e.g., Notice of Proposed Rule Making in MM Docket No. 91-140, In Re Revision of Radio Rules and Policies (released May 30, 1991) at paragraph 4.

²⁵ Ownership Report and Order at paragraph 82.

²⁶ First Report and Order in MM Docket 87-7, 4 FCC Rcd 1723, 65 Rad. Reg. 2d (Pike & Fischer) 1676 (1989) (Radio Contour Order) at paragraphs 35-36.

²⁷ One-To-A-Market Order at paragraphs 39-45.

"purporting to contradict the proposition that savings from the efficiencies of group ownership are invested in additional local programming."²⁸ The Commission notes possible flaws in the Study, and asks for comment on it.

Based on an analysis of the Study by the ABC Affiliate Marketing and Research Department, we believe that its methodology is flawed and that its claimed results are unsubstantiated. The Study's sample does not provide a representative look at local television markets or stations in general, since it represents only 2% of those markets. The Study also ignores factors that might affect stations' abilities to produce new programming, such as the economic climate and the debt service involved in acquiring new stations. Finally, the data developed by the Study do not support the conclusion that "local public affairs in the surveyed markets was primarily aired by the individually owned stations" while "[t]he amount of local news aired provided by group and individually owned stations was about the same."²⁹

²⁸ Notice at paragraph 11.

²⁹ OC/UCC relied upon a differential of .4% in favor of individually owned stations to support its conclusion that individually owned stations provided more local public affairs programming than group owned stations, yet cited a 1.0% differential (almost three times as high) in favor of group owned stations to support a conclusion that the amount of local news was "about the same." Experience indicates that group-owned stations produce a significant amount of local news and public affairs programming. Each of the eight Capital Cities/ABC stations broadcasts between 17.5 and 37.5 hours of regularly scheduled local news and public affairs programming each week.

The ABC Analysis is attached hereto as Exhibit A.

Thus, the results of the OC/UCC Study cannot be used to dispute the proposition that economies and efficiencies of group ownership can lead to production of new programming. Moreover, 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, the Commission has recognized that rules restricting national ownership of broadcast stations inherently have very little effect on competition or diversity. Licensees should therefore be permitted "to exploit any possible efficiency from group ownership."³⁰

³⁰ Ownership Report and Order at paragraph 86. In addition, in its decision allowing joint AM-FM ownership, the Commission noted that "separation of ownership ends all economies of scale." Multiple Ownership of Standard, FM, and Television Broadcast Stations, 50 FCC 2d 1046, 1055, on reconsideration 53 FCC 2d 589 (1975), remanded sub. nom. National Citizens Comm. For Broadcasting v. FCC, 555 F. 2d 938 (D.C. Cir. 1977), aff'd in part, rev'd in part, 436 U.S. 775 (1978).

C. Broadcast Companies Should Be Permitted To Have Ownership Interests In 18 Television Broadcast Stations Reaching 30 Percent Of Television Households.

The data cited above justify a substantial increase in the number of television broadcast stations in which a company can have an ownership interest. We do not believe, however, that relaxation of the rule should be limited to an increase in the numerical cap without a concomitant increase in the reach figure. Citing the OPP Paper, the Commission notes that keeping the reach figure at its existing level would "address the concern that it is the numerical limit that unduly restricts group owners wishing to invest in smaller market stations."³¹ However, stations in large as well as small markets could benefit from consolidation with financially stable group owners. Although the OPP Paper was more "pessimistic" about the "future prospects" of smaller market stations,³² the fact remains that the enormous increase in competition from other media has affected broadcast stations in markets of all sizes. There is no reason to prevent broadcast companies from acquiring stations in larger markets where they might see the greatest competitive opportunities for efficiencies and synergies with their existing stations; efficiencies that would translate into improved program services for a larger number of viewers.

³¹ Notice at paragraph 12.

³² Id. at paragraph 12, note 24.

The national multiple ownership rule defines "reach" as the total number of television households in ADI markets in which the relevant stations are located, divided by the number of total national television households as measured by ADI data.³³ Establishing a maximum reach figure "necessarily involves some measure of administrative subjectivity," as the Commission has noted.³⁴ It represents a theoretical universe of viewing which has no direct relationship to a station's actual share of that possible audience.

Because of the migration of audiences to other program sources, broadcasters' share of audience has declined overall since 1985, from 89 in the 1984-85 season, to 76 in the 1991-92 season.³⁵ Moreover, as the OPP Paper has made clear, this audience fragmentation is pronounced and irreversible.³⁶ While we do not suggest that a "share"³⁷

³³ 47 CFR §3555(d). UHF stations are credited with only half of the television households in the ADI.

³⁴ Ownership Reconsideration Order at paragraph 40.

³⁵ Source: Nielsen Homevideo Index. Cable Activity Report. Average quarter-hour household shares of all broadcast stations, Monday-Sunday 24 hour period. Fourth-second quarter average each season.

³⁶ OPP Paper at 159. Any broadcaster's share of whatever advertising revenue there may be in a particular year is a function of the size of the audience that it can attract. While overall advertising demand may go up and down from year to year, the exodus of audience from watching advertising on free television is irreversible. It thus represents a permanent change in the video marketplace.

standard be substituted for one based on audience reach, we are suggesting that the reduced share numbers demonstrate that the "reach" figure established by the Commission in the Ownership Reconsideration Order does not represent the same opportunity in 1992 as it did in 1985 -- it is simply not worth as many broadcast viewers. A conservative increase to 30% would at least help broadcasters keep pace with the new competitive marketplace. It is also more conservative than the proposal to increase the numerical cap to 24 and the reach to 35%, a proposal the Commission characterized as "moderate."³⁸

The material above provides a more than ample basis for the Commission to conclude that moderate relaxation of the national multiple ownership rule in the way we suggest will have no appreciable effect on diversity or competition. It is important to note, however, that there are additional

³⁷ The use of ratings or share calculations could prove to be unwieldy and likely subject to dispute. Administrative convenience also supports a readily identifiable standard. As Commissioner Quello has noted, if ownership limits were based on national or local audience levels:

"[t]he Commission could find itself mired in local population figures and local ... audience shares in its effort to resolve disputes or to establish the appropriate benchmarks. This is particularly difficult since audience shares change frequently."

Separate Statement of Commissioner James H. Quello In re: Notice of Proposed Rule Making on the Revision of Radio Rules and Policies.

³⁸ Notice at paragraph 12.

safeguards to protect these public interest goals -- the availability of the antitrust laws and the requirement that the Commission approve each broadcast station acquisition:

In any case, the Commission will continue to scrutinize each individual acquisition to assure that the acquisition does not contravene any of the Commission's public policy concerns, particularly those related to diversity and competition.³⁹

For these reasons, we believe that a conservative increase in the numerical cap to 18 stations, coupled with a similarly conservative increase in the reach figure to 30%, would allow additional opportunities for broadcast companies and permit the Commission to monitor the benefits and any costs associated with increased station ownership.⁴⁰

D. A Minority Incentive Should Be Included In The National Multiple Ownership Rule.

The Commission has fashioned specific policies to encourage minority ownership of broadcast stations, including tax certificates, distress sales and comparative preference policies.⁴¹ Capital Cities/ABC has always supported and

³⁹ Ownership Report and Order at paragraph 5; reaffirmed and quoted in Ownership Reconsideration Order at paragraph 28, note 32.

⁴⁰ Notice at paragraph 12.

⁴¹ See e.g., Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 F.C.C. 2d 849 (1982); Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 F.C.C. 2d 979 (1978). In Metro Broadcasting, Inc. v. Federal Communications Commission et al., 110 S.Ct. 2997 (1990), the Supreme Court upheld the constitutionality of the Commission's policies regarding minority comparative hearing preferences and "distress sales."

continues to support those policies. While we agree that they should "serve as the primary mechanism to promote minority ownership in television and radio broadcasting,"⁴² we also support incorporation of a minority incentive in the modified national multiple ownership rule.

As the Commission has previously noted, "national multiple ownership rules may, in some circumstances, play a role in fostering minority ownership."⁴³ Thus, in the Ownership Reconsideration Order, the Commission increased the maximum numerical cap to 14 commonly-owned stations, and the audience reach limit to 30% provided that at least two of the stations were minority-controlled and the additional 5% reach (in the case of television stations) was due to the minority-controlled stations.⁴⁴ We also note that, on reconsideration, the Commission adopted a minority incentive in its recent Radio Ownership proceeding (providing for an attributable but non-controlling interest in three stations beyond the numerical limit if those stations are minority-controlled).⁴⁵

Incorporating a minority incentive in the modified national multiple ownership rule for television would be consistent with Commission's prior practice to encourage

⁴² Ownership Reconsideration Order at paragraph 45.

⁴³ Id.

⁴⁴ Id.

⁴⁵ August 5, 1992 Press Release.

minority participation in broadcast ownership. We support it.

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

The dual network rule prohibits a network company from simultaneously operating more than one network of television broadcast stations in identical or overlapping geographic areas.⁴⁶ The Commission recognizes that the regulatory barriers imposed by this rule "...appear to have channeled the networks' activities into non-broadcast enterprises,"⁴⁷ while there is no analogous restriction on cable companies or other multichannel providers, who have been exploiting the opportunities presented by the ability to offer multiple networks to its viewers. There is no reason to foreclose similar competitive opportunities for broadcast network companies in the current video marketplace.

We have set forth our views on the dual network rule at length in our earlier Comments in this proceeding.⁴⁸ We

⁴⁶ The rule states: No license shall be issued to a television broadcast station affiliated with a network organization which maintains more than one network of television broadcast stations: provided, that this section shall not be applicable if such networks are not operated simultaneously, or if there is no substantial overlap in the territory served by the group of stations comprising each such network. 47 C.F.R §73.658(g).

⁴⁷ Notice at paragraph 32.

⁴⁸ Comments of Capital Cities/ABC, Inc. in MM Docket No. 91-221, In the Matter of Review of the Policy Implications of the Changing Video Marketplace, filed November 21, 1991, pp. 26-35.

continue to believe, as we urged in our earlier Comments, that elimination of the rule would not result in undue economic power or the ability to foreclose the development of new networks. Instead, the likely outcome of freeing up the networks to apply their unique programming and marketing expertise to the operation of multiple broadcast networks would be to increase both competition and program diversity.⁴⁹

We have seen no persuasive reasons why the public interest would not best be served by immediate repeal of the dual network rule. However, we recognize that some network affiliated stations may oppose a change because they believe it would be detrimental to their interests. We assume that affiliated stations will be submitting comments on this issue.

⁴⁹ Capital Cities/ABC believes that the greatest opportunity for multiple broadcast networks will be found in video compression. The Commission's Overview of the Television Industry describes digital video compression as an efficient technology holding great promise for program diversity:

"Digital video compression is a signal processing technique that permits the transmission of a television signal using significantly less bandwidth than is currently needed. This technology, which recently has been employed by several satellite services, is applicable to all video delivery systems, including broadcast, cable, and wireless cable. Video compression will increase channel capacity and decrease per channel cost. Delivery services using compression will be able to offer separate feeds for each U.S. time zone or staggered starting times for movies. It also will reduce the cost of new channels and is likely to allow the development of specialized programming services. Compression is also expected to facilitate the introduction of HDTV which requires the transmission of more information per frame than today's standard TV."

Overview of the Television Industry, pp. 3-4.