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VIA HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Stop Code 1170
Washington, D.C. 20554

RE: MM Docket No. 91-221

Dear Ms. Searcy:

Transmitted herewith, on behalf of Associated Broadcasters, Inc., and Galloway Media, Inc., are an original and four (4) copies of their "Comments" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH

Patricia A. Mahoney

Patricia A. Mahoney
Counsel for
Associated Broadcasters, Inc. and
Galloway Media, Inc.

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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

To: The Commission

COMMENTS
SUMMARY

Associated Broadcasters, Inc., and Galloway Media, Inc. (hereinafter referred to collectively as "ABI & GMI") herein respectfully submit their Comments in response to the Commission's Notice of Proposed Rulemaking, FCC 92-209, 7 FCC Rcd 4111 (1992) (NPRM), in the above-referenced proceeding. ABI & GMI commend the Commission for its proposal to consider relaxing its ownership rules and policies as they pertain to television broadcasting. As ABI & GMI demonstrate herein, however, the Commission's proposed revisions do not go far enough. Complete elimination of the artificial ownership restrictions pertaining to television broadcasting is now necessary and warranted.

If the Commission truly wishes to ensure that the video marketplace remains competitive, it will eliminate all restrictions on ownership of television broadcast stations. As ABI & GMI demonstrate herein, there should be no limit on the number of TV stations that one licensee can own; the numerical ownership limits should be deleted. In addition, the FCC should repeal its one-to-a-market or radio-television cross-ownership

rule. The FCC should also delete its "duopoly" or contour overlap rule for TV stations. If it is unwilling to eliminate the rule entirely, at a minimum the Commission should permit ownership of at least two television stations in the same market without regard to whether they are VHF or UHF, network or independent, and should change the signal contour used to determine prohibited overlap from the Grade B contour to the Grade A contour. Finally, the Commission should permit and encourage separately owned and licensed stations to enter into time brokerage agreements and other joint ventures and cooperative arrangements.

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WASHINGTON, D.C. 20554

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Review of the Commission's Regulations Governing Television Broadcasting	)	
	)	

To: The Commission

<u>**COMMENTS**</u>

Associated Broadcasters, Inc., and Galloway Media, Inc. (hereinafter referred to collectively as "ABI & GMI"), by their attorneys, hereby respectfully submit their Comments in response to the Commission's <u>Notice of Proposed Rulemaking</u>, FCC 92-209, 7 FCC Rcd 4111 (1992) (<u>NPRM</u>), in the above-referenced proceeding:

Associated Broadcasters, Inc., is the licensee of Stations KWKT(TV), Channel 44, Waco, Texas (ADI Market # 94); KPEJ(TV), Channel 24, Odessa, Texas (ADI Market # 151); and KVEO(TV), Channel 23, Brownsville, Texas (ADI Market #114).[1] Galloway Media, Inc. is the licensee of Station WGMB-TV, Channel 44, Baton Rouge, Louisiana (ADI Market # 95).

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[1] The President, Treasurer, Director, and 100% stockholder of Galloway Media, Inc., and Associated Broadcasters, Inc., Thomas R. Galloway, Sr., is also the President, Treasurer, Director and sole stockholder of Communications Corporation, licensee of AM Station KPEL, Lafayette, Louisiana, and FM Stations KTDY(FM), Lafayette, Louisiana, and KEZA(FM), Fayetteville, Arkansas. The Executive Vice President and Secretary of Associated Broadcasters, Inc. is Executive Vice President of Communications Corporation.

I. Introduction

ABI & GMI commend the Commission for its proposal to consider relaxing its ownership rules and policies as they pertain to television broadcasting. As ABI & GMI demonstrate herein, however, the Commission's proposed revisions do not go far enough. Complete elimination of the artificial ownership restrictions pertaining to television broadcasting is now necessary and warranted. If the Commission truly wishes to ensure that the video marketplace remains competitive, it will eliminate all restrictions on ownership of television broadcast stations. As ABI & GMI demonstrate herein, there should be no limit on the number of TV stations that one licensee can own; the numerical ownership limits should be deleted. In addition, the FCC should repeal its one-to-a-market or radio-television cross-ownership rule. The FCC should also delete its "duopoly" or contour overlap rule for TV stations. Finally, the Commission should freely permit and encourage time brokerage agreements and other joint ventures.

In its Notice of Inquiry, 6 FCC Rcd 4961 (1991) (NOI), in this proceeding, the Commission acted in response to its Office of Plans and Policy's Working Paper No. 26, Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 FCC Rcd 3996 (1991) ("OPP Paper"), in which the Commission's staff documented the uncertain future facing over-the-air television broadcasters, particularly smaller-market, independent, and UHF stations. As a result of comments received in response to the NOI, the Commission has proposed a number of policy and rule changes, including changes in its television ownership rules. ABI & GMI are in an excellent position to respond to the Commission's NPRM, since their stations are all UHF stations in smaller markets. Moreover, WGMB(TV) is a new entrant, having commenced operations pursuant to program test authority in August, 1991.

Based on their experience in operating smaller-market UHF stations and their experience with the current serious financial problems and poor economic conditions afflicting the broadcasting industry, ABI & GMI urge the Commission to eliminate all artificial ownership restrictions pertaining to television stations. Such action is critical to the future of television broadcasting.

II. Numerical Ownership Limits

ABI & GMI urge the Commission to lift all numerical restrictions on the ownership of television stations. These artificial restrictions are not required by law and no longer serve the purpose for which they were first established and have long been maintained, *i.e.*, to foster competition and diversity in programming. Indeed, they now serve to frustrate these objectives, as diverse alternative media enjoy unchecked explosive growth and development.

As recognized by the FCC's staff in the OPP Paper, the current video marketplace is highly competitive and will only become more so. The number of television stations, particularly UHF stations, has grown dramatically in the last decade,[2] as has the number of television signals available over the air in all markets.[3] By 1990, 94% of television households were in markets with five or more television stations available over the air. Additionally, television broadcasters face ever-increasing competition from cable, which now passes over 90% of television households,[4] as well as from other video sources, such as wireless cable, low power television, motion pictures, video cassette recordings, SMATV, and home dishes.[5]

Moreover, competition to over-the-air television will continue to increase dramatically in the next decade, with the initiation of Direct Broadcast Satellite (DBS) services, expansion of ownership of home satellite dishes, and digital video signal compression techniques, which will allow expanded channel capacity and thus permit greater competition. OPP Paper, 6 FCC Rcd at 4000-01, 4042-43, 4065. Thus, artificial ownership restrictions are obviously no longer necessary to foster competition; but, rather, marketplace conditions cannot help but

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[2] In 1980, there were 734 television stations; in 1990, there were 1,093. The number of commercial UHF stations grew by 150% between 1980 and 1990. OPP Paper, 6 FCC Rcd at 4011 & Table 3.

[3] The number of off-air stations available to the median household increased from six in 1975 to ten in 1990. OPP Paper, 6 FCC Rcd at 3999.

[4] OPP Paper, 6 FCC Rcd at 3999-4001, 4011-14.

[5] These competing media sources do not face ownership restrictions such as are placed on television broadcasters.

ensure increased competition, a necessary result of the dramatic technological and marketplace changes facing television broadcasters.

The FCC's ownership restrictions are similarly no longer necessary to afford diversity in programming services. The increase in video services has already resulted in increased diversity in programming. Moreover, increased group ownership can actually encourage diversity; for group-owned stations, managed in common, may have greater incentive to program for different niche audiences with distinct programming rather than targeting the same viewers as other separately-owned stations in a market. See Notice of Proposed Rule Making in MM Docket No. 91-140, 6 FCC Rcd 3275, 3276 (1991).

Not only are the numerical ownership limits unnecessary to preserve competition and ensure diversity, but, in fact, deletion of these ownership restrictions is critical to the survival of over-the-air television. The OPP Paper thoroughly portrayed the dismal economic present and future prospects of over-the-air television broadcasting given the explosion of competing media sources. The OPP Paper documented a decline in broadcast station audiences, which has led and may continue to lead to reductions in advertising revenues. The OPP Paper documented falling profits and increasing losses in the last half of the 1980's for both affiliates and independents, with heavy losses concentrated among UHF independents and small-market stations, which losses could continue unless the longer-term trend reverses. See OPP

Paper, 6 FCC Rcd at 4014, 4022-4032, 4083-84, 4097. Poor finances mean that less resources are available for programming and could ultimately lead to stations going dark.[6]

Changes in the ownership rules are necessary to afford television broadcasters some competitive relief. Group ownership can serve the public interest in this regard. Indeed, as the Commission has already found:

> "group ownership may lead to economies of scale, particularly given group owners' ability to consolidate management, bookkeeping, secretarial, sales and programming personnel for a number of stations, and to engage in group advertising sales and group program development and purchases."

Notice of Proposed Rule Making in MM Docket No. 91-140, 6 FCC Rcd 3275, 3276 (1991).[7] The Commission has also recognized that group ownership may foster news gathering, editorializing and public affairs programming, and may lead to the development of independent programming networks, and that the economies of scale could lead to increased resources being available to improve the responsiveness, diversity, and quality of programming. Id.

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[6] Indeed, the OPP Paper predicted that video advertising is likely to grow only very slowly over the next decade, with the television share of advertising falling, and with the result that broadcast stations will suffer declining revenues. In smaller markets, the effects will be severe and could result in stations going dark, with a concomitant loss of service to the public. OPP Paper, 6 FCC Rcd at 4001. While the FCC is not the guarantor of the profitability of broadcasters, if service is lost, the public interest will clearly be disserved.

[7] The OPP Paper agreed that revision of the ownership restrictions could permit economies of scale and reduced costs or improved service. OPP Paper, 6 FCC Rcd at 4103.

Given the state of the television industry today and the Commission's own findings and conclusions, the Commission should remove all numerical limits on the total number of television stations one individual or entity may own or control. If the Commission is unwilling to eliminate entirely its numerical limits, it certainly should increase the limits. Given the multiplicity of video outlets, no audience reach caps should be employed. There are no audience reach caps on CNN, which competes with networks and independent television stations' news programming. There are no audience reach caps on television broadcasters' most vigorous competitors. There is no reason to continue an audience reach cap in television.

III. The One-To-A-Market Rule

This proceeding affords the Commission an excellent opportunity to totally repeal its one-to-a-market or radio-television cross ownership rule, Section 73.3555(b) of the Rules. This rule was significantly relaxed in 1989. The time has now come to eliminate the rule completely.

In its Second Report and Order in Amendment of Section 73.3555 of the Commission's Rules, MM Docket No. 87-7, 4 FCC Rcd 1741 (1989) (Second Report and Order), the Commission outlined at length the efficiency, programming and other service benefits from permitting radio-television combinations in the same market. See 4 FCC Rcd at 1746-50. Such benefits included enabling marginal stations to stay on the air, the activation of unused channels, and the improvement of the facilities of existing stations. Id. at 1749-50. However, in that proceeding, the Commission rejected the notion of eliminating the radio-television cross ownership rule entirely, stating:

> "A large number of commenters supported the first of these other options, to eliminate the radio-television cross-ownership rule completely in all markets. Although this approach would give broadcasters the most flexibility in station acquisition and taking advantage of joint ownership efficiencies in all size markets, some commenters argued that this option would abandon our traditional method of safeguarding viewpoint diversity and economic competition. In the interest of caution, we have decided not to eliminate the rule, but instead to adopt a new case-by-case waiver policy at this time in order to assess the effects of relaxing the one-to-a-market policy."

Second Report and Order, 4 FCC Rcd at 1750 (footnotes omitted). The time for "caution" has ended. The Commission has ample evidence of sufficient and increasing viewpoint diversity and economic competition such that it can easily assess the effects of eliminating the one-to-a-market policy. There is no reason to retain restrictions on ownership simply because they are "traditional." Given the worsening economic state of the radio industry and the ever increasing competition facing both radio and television stations, well documented by the Commission both in this proceeding and in the radio ownership proceeding, it is clear that the economies and efficiencies that can be achieved are desperately needed and that there is no threat to diversity if the rule is repealed. The Commission should, in light of the demonstrated benefits from such combinations, remove all restrictions and barriers to common ownership of TV and radio.

In the NPRM in this proceeding, the Commission seeks comment on whether it should permit consolidation of radio and television ownership under the respective rules for each service without the additional limitation of a one-to-a-market rule. ABI & GMI enthusiastically support elimination of the one-to-a-market rule. If there must be ownership limits, radio and television limits should be treated separately, particularly at the local level.

As an alternative to elimination of the rule, the Commission has suggested more "moderate" alternatives that would permit ownership of (1) one AM, one FM, and one television station in a market or (2) elimination of the rule only for AM/TV combinations. Finally, the Commission suggests codifying the waiver criteria adopted in 1989 and applying them in all markets in which 30 "independent voices" remain. ABI & GMI oppose all of these more moderate or "cautious" approaches.

As the NPRM points out, the radio-television cross ownership rule was first adopted in 1970. It was viewed by the Commission as an extension of its duopoly rule. NPRM, 7 FCC Rcd at 4116. See Multiple Ownership of Standard, FM & TV Broadcast Stations, 22 F.C.C.2d 306, 307 (1970), on reconsideration, 29 F.C.C.2d 662 (1971). At the outset of its discussion in adopting the rule, the Commission noted that its multiple ownership rules have the twofold objective of (1) fostering maximum competition in broadcasting and (2) promoting diversification of programming sources and viewpoints. 22 F.C.C.2d at 307.

With respect to diversity, it is apparent that the Commission's rationale for the need for regulation was premised on the ability of a licensee to exercise control over news and public affairs programming and the idea that there was a scarcity of outlets through which this information could or would be disseminated:

> "Application of the principles set forth above dictates that one person should not be licensed to operate more than one broadcast station in the same place, and serving substantially the same public, unless some other relevant public interest consideration is found to outweigh the importance of diversifying control. <u>It is elementary that the number of frequencies available for licensing is limited.</u>"

<u>Id</u>. at 311 (emphasis added).

It is apparent from the above passage that, when the Commission adopted the one-to-a-market rule, it believed that the sources of programming competing in a market were and would remain finite and limited because the number of frequencies available were limited. Thus, it seemed appropriate at that time to place limits on the number of outlets one speaker in a community could control. It is also apparent that, when the Commission adopted its one-to-a market rule, the Commission viewed television and radio as each other's only competition in the provision of news and public affairs using the electronic media. The Commission never considered a future with a multiplicity of competing services not limited by the availability of broadcast spectrum.[8]

Twenty-two years later, there has been a tremendous explosion in the growth and development of additional media outlets and sources of programming. As the Commission discovered in its examination of the radio ownership rules, the radio industry has become increasingly diverse and competitive, particularly over the past decade. Just during the period from 1980 to 1991,[9] the number of FM radio stations has grown from 4374 to 6077, and the number of AM stations has grown from 4589 to 4985. See Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2757 (released April 10, 1992), modified on other grounds on August 5, 1992 (text not yet available). At the same time, the number of non-radio outlets competing with radio for audiences and advertising revenues has also increased substantially. Id. Popular music is now available over cable, on cable networks such as MTV and VH-1; and the number of 24-hour per day cable radio network entities has risen from approximately six in 1984 to 15 today, offering approximately 100 separate audio channels, including three digital networks, each of which

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[8] Also, the Commission during this same period did not believe it likely that there would be more than three major television networks in the near future. See Limitations re: TV Network Programs, 28 F.C.C.2d 169, 193 (1971).

[9] In 1970, there were 4269 AM stations, 2476 FM stations, and 872 TV stations on the air. See Broadcasting & Cable Market Place 1992 (hereinafter Broadcasting & Cable), at E-15, E-110. As of January 1, 1992, there were 4988 AM stations on air (5223 authorized), 6036 FM stations on air (7356 authorized), and 1488 TV stations on air (1688 authorized). Id.

provides about 30 channels of CD quality music. Id. at 2757-58. Radio also faces competition in the future from Digital Audio Broadcasting/Broadcast Satellite Sound (DAB)/(BSS), which will offer national channels of CD-quality radio programming by satellite.

Also, as the Commission found in the radio proceeding, in response to the intense inter- and intra-industry competition, radio station programming has become increasingly diverse and targeted. Whereas, during the mid-1970s, one follower of the radio industry classified stations according to eight major formats, today it tracks 35 major formats and more than 20 minor formats. Id.

As the Commission has recognized both in the radio ownership proceeding and in this proceeding, the number of television stations has also increased dramatically in the last decade, from 1019 in 1980 to 1494 today. Id. at 2758. During this same period, cable, which competes with both radio and television, has enjoyed tremendous growth, with national cable penetration increasing from 25% in 1980 to 64% today and the number of national basic cable programming networks growing from 34 to at least 80 during the same period. Id.

In the OPP Paper, the FCC's Office of Plans and Policy examined changes in competition in the television broadcast industry over the period from 1975 to 1990 and presented its predictions for the next decade. At the very outset of the Executive Summary to the OPP Paper, the FCC's staff observed:

> "Over the past fifteen years the range of broadcast, cable, and other video options available to the American viewer has increased dramatically."

6 FCC Rcd at 3999. The staff noted that its

> "analysis supports the conclusion that in the new reality of increased competition regulations imposed in a far less competitive environment to curb perceived market power or concentration of control over programming are no longer justified and may impede the provision of broadcast services."

Id. The OPP Paper's Executive Summary also contains the following findings:

- In 1975, the U.S. had three commercial broadcast television networks and no cable networks; cable television was solely a broadcast retransmission medium.
- By 1990, there were four commercial broadcast networks and over 100 national and regional cable networks.
- In 1976 only 17% of television households subscribed to cable.
- In 1990 over 56% of television households subscribed to cable.
- The number of broadcast stations increased by 50% during the period 1975-90, with independent television stations accounting for three-quarters of the growth.
- The number of off-air stations available to the median household increased from six in 1975 to ten in 1990.
- By 1990 94% of television households were located in markets with five or more televisions stations.
- In 1975 there were no home satellite dish systems and no home videocassette recorders (VCRs).
- In 1990 3% of television households had home dishes and 69% owned VCRs.

Id. These findings were largely adopted by the Commission as "statistics" that "are well known" in its Notice of Inquiry, 6 FCC Rcd 4961 (1991), in this proceeding.

The staff also summarized its findings on viewing patterns:

> "Expansion in the availability of outlets and programming has dramatically changed viewing patterns. The broadcast networks and their affiliates have been the big losers. The prime-time viewing share of the three major commercial networks plummeted from 93 in 1975 to 64 in 1990. The all-day three-network viewing share fell from 41 to 35 between 1984/85 and 1989/90. These declines have been accompanied by increased viewing of independent stations and cable networks. In recent years, pay cable and independent station viewing has leveled off, but basic cable viewing continues to grow. Overall, viewing of cable-originated programming rose from 14 percent to 26 percent of total viewing and from 24 percent to 39 percent of viewing in cable households. Thus, the decline in the broadcast share results from both increased cable penetration and increased cable viewing shares in cable households."

OPP Paper, 6 FCC Rcd at 4000 (emphasis added). Thus, the Commission's own studies and findings document the growth and diversity of media outlets and the continuing growth of cable, which is not limited by the availability of frequencies. Indeed, with the advances in signal compression techniques and the impending advent of DBS, the public will have a seemingly unlimited and infinite number of programming sources available.[10]

Unlike the industry in 1970, radio and television stations are no longer the only source of news (local, national or

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[10] See OPP Paper, 6 FCC Rcd at 4033-36. The staff has described video compression technology as "the technological factor that almost certainly will have the biggest impact on the video delivery marketplace over the next ten years." Id. at 4042.

international) and public affairs programming. Radio and television stations today face ever-increasing competition for viewers, listeners, and advertisers from cable, wireless cable, satellite, video cassette recorders, and (coming soon) DBS. These competitive sources of programming are diverse and are not limited by either the technical limitations or the artificial ownership restrictions that inhibit broadcasters from effectively competing. Thus, there is no reason to limit the number of radio stations a licensee can acquire relative to the number of television stations it can acquire in the same market. For the purposes of the Commission's ownership rules, they should be treated as two distinct services.

IV. The Contour Overlap Rule

The origin of and original purpose behind the Commission's contour overlap rule is similar to the origin of the national numerical limitations. The rule was established to promote the maximum diversity of program service and viewpoints and to prevent undue concentration of economic power. See Amendment of Sections 73.35, 73.240 and 73.636, 45 F.C.C. 1476 (1964). For the same reasons as stated above, this rule should be eliminated. There is no danger today that any local broadcast licensee could obtain an undue concentration of economic control in the market of video programming services. There is no question that the future offers an unimaginable selection of video programming sources to the consumer at the local level as well as the national level.[11]

If the Commission is unwilling to eliminate the rule entirely, it should permit a single entity to own two or more television stations in the same market and change the signal contour used to determine prohibited overlap to Grade A, rather than Grade B. These changes would be similar to the actions taken by the Commission to relax the rules for radio. ABI & GMI urge the Commission to adopt such changes for all television stations, whether or not they are network affiliates or independents and whether or not they are VHF or UHF. Also the Commission should not adopt the six independently owned stations test, as suggested in the NPRM, 7 F.C.C. Rcd at 4115, ¶ 20. Such a benchmark would limit the effectiveness of this action so as to make it unavailable to relieve the economic problems facing small market television stations today.

The time has come for the Commission to seriously consider the benefits and economies of multiple ownership as a way to ensure the continued viability of free over-the-air television broadcasting and as a way of preserving and ensuring diversity and competition--not as an impediment.

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[11] In the NPRM, it is noted that Commenters opposed to relaxation of this rule in response to the NOI argued that the danger of concentration and resulting harm to diversity are greatest at the local level because the number of frequencies available for licensing is limited. As demonstrated above, while broadcast spectrum may be limited, the number of sources of video programming is not limited, even at the local level, where many cable systems offer local news, weather, educational, informational, and public affairs programming.

V. Time Brokerage Agreements

ABI & GMI urge the Commission to permit and encourage separately owned and licensed television stations, consistent with the requirements of the antitrust laws, to enter into joint ventures and other cooperative arrangements, including time brokerage, program affiliation, and simulcast agreements, for the reasons discussed above. Same service agreements and cross service agreements should be treated equally. Such joint venture agreements should be permitted regardless of market size or number of stations in a market. Indeed, it is the smaller market stations whose survival may depend on such agreements and arrangements.

Such agreements should not be limited by audience share, nor should there be a limit on the number of stations in any given market that are permitted to enter into such agreements. It would be unwise and almost impossible for the Commission to begin deciding which stations in a given market could enter into such agreements and which could not.

As the Commission did in the radio ownership proceeding, the Commission should require that all such agreements must be filed at the Commission, placed in the respective stations' local public inspection files, and disclosed in ownership reports (with confidential and proprietary information redacted). No further reporting should be necessary. The Commission's complaint procedures are adequate to monitor whether or not the stations involved are serving the public interest. More importantly, if a licensee enters into such an agreement, in reliance upon and following prior Commission and staff rulings, and properly files and reports the agreement or arrangement, it should not suffer any disadvantage or demerit at renewal time by virtue of having entered into such an arrangement.

Finally, such a permissive policy on joint ventures would not obviate a need to alter ownership limits, and altering ownership limits does not obviate the need to encourage joint ventures.

VI. Conclusion

The ownership restrictions placed on television broadcasters were developed under and in response to industry, market, and technological conditions that no longer exist. The existing rules no longer serve the purposes for which they were established and may even thwart those purposes by preventing broadcasters from effectively and efficiently competing against their competitors.

The Commission should let marketplace conditions prevail. Broadcasters should be permitted to operate as many stations as they wish, wherever they wish, and with whatever programming they wish. Broadcasters must operate their stations in the public interest. Given the volume of diverse viewpoints and the level of competition facing television today and predicted for the future, the public interest standard, marketplace conditions, antitrust laws and other state and local regulations offer sufficient limitations on the ownership and operation of television stations to ensure that the Commission's goals of competition and diversity will be protected and fostered. All artificial ownership limitations should be eliminated.

Respectfully submitted,

ASSOCIATED BROADCASTERS, INC. and
GALLOWAY MEDIA, INC.

By: Patricia A. Mahoney
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August 24, 1992