Amending the present duopoly rule to permit cognizable interests in stations with only Grade B overlaps, therefore, would enhance the ability of over-the-air television stations to compete. Amending the rule would reflect the changes in the video marketplace in the 28 years since the Commission determined that television market conditions required particularly strict duopoly standards. The Commission should proceed to amend the rule as it proposed in the *Notice*.

B. The Commission Should Develop More Information on the Developing Video Marketplace Before Amending the Local Duopoly Rules

As the Commission recognizes, this is a time of rapid change in the television industry. A major competitor to over-the-air broadcasting — cable television — has established itself in the market, and other competing delivery systems may well be on the horizon, possibly including widespread DBS service. The Commission recently adopted rules permitting local telephone companies to begin offering "video dial tone" services with limited participation in ownership and operation of program services offered over those channels.[45/] Apart from telephone companies, these nonbroadcast competitors to television stations do not operate under any ownership restrictions, and local operators may control or have attributable interests in an unlimited number of program services, allowing them flexibility and economies of scale which broadcasters are barred from achieving by the Commission's ownership rules. At the same time, the advent of video compression technologies means that the number of channels available to many television households may grow to unprecedented numbers, and the

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45/ *Telephone Company-Cable Television Cross-Ownership*, CC Dkt, 87-266, FCC 92-327 (re. Aug. 14, 1992).

adoption of an HDTV system will usher in an era of transition that will place further strains on the relationships between existing television stations and their audiences.

In this increasingly multi-channel environment, there is little doubt that single-channel providers may be placed at a distinct competitive disadvantage. While all of broadcasters' competitors are free to avail themselves of economies of scale from offering several program services in their markets, the Commission's duopoly rules remove these opportunities from television stations. This disparity will have several consequences. First, as the ability of over-the-air television stations to obtain significant audience shares declines, their revenues — which are entirely based on delivery of audiences to advertisers — will decrease, and they will no longer be able to provide news and public service to their communities as such stations have always done. Second, as it becomes increasingly clear that broadcasters cannot use their talents for developing attractive program schedules and marketing time to advertisers in new broadcast ventures, television station operators seeking new revenues will themselves be forced into cable and other non-broadcast investments. While television stations would continue to operate, their owners' creative efforts would be channeled into alternative ventures, with the public suffering a loss of quality over-the-air program service.

The Commission made several proposals in the *Notice* to add flexibility to the duopoly rules. As discussed above, NAB supports its first proposal to limit the scope of the TV duopoly rules to the core service areas of stations, their Grade A contours. Significant efficiencies can be realized from just this change in many areas, as stations will be able to share administrative expenses, regional newsgathering costs, and sales forces.

The Commission also asks whether it should further relax the duopoly rules and permit co-ownership of some television stations in the same community. It proposes to permit a limited number of station combinations in a market, so long as there are six independent television "voices" remaining in the community after the combination. The Commission asks whether only combinations of UHF stations should be permitted, or whether UHF-VHF transactions should be allowed as well.

Although NAB agrees with the Commission that changes in the duopoly rules will permit over-the-air television broadcasters to maintain a competitive position in the video market, there are a number of factors which must first be considered in developing rules which may have a fundamental impact on the way local stations operate, many of which the Commission has not yet evaluated. Rather than adopting new rules which may in retrospect prove inappropriate to deal with the challenges facing broadcast television, the Commission should place itself into a position in which new duopoly rules can be developed that take into account the following concerns:

It appears, although it is unstated in the *Notice*, that the Commission contemplates including only commercial stations within the calculation of independent voices its proposal would require.[46/] Also, despite the fact that the average cable penetra-

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46/ Paragraph 20 of the *Notice* describes the six-station complement as including outlets for the three established networks, Fox, and two independents, not (continued...)

tion nationwide is over 60 percent, and in some markets exceeds 80 percent, the Commission proposes to include only broadcast voices in its calculations, examining market diversity in a vacuum and taking no account of the numerous additional program sources controlled by cable operators. NAB believes that any revision of the duopoly rules should take all the video program sources available in a market into account when considering the impact of new duopoly rules on the diversity of information and program sources which will be available to consumers.[47/]

As the Commission itself acknowledges (*Notice* ¶ 20 n.37), the impact of any change in the duopoly rules may be altered by the HDTV allocation plan adopted by

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[46/](...continued)
mentioning any non-commercial stations. Further at n. 35, the Commission states that, based on Arbitron data, 38 television markets would have a sufficient number of television outlets to permit at least one combination under the proposed rules. NAB's examination of market data roughly corresponds with the Commission's, showing that combinations would be permitted in 37 markets if public stations were not included within the "voice" calculation. Including non-commercial stations would permit at least one combination in 59 television markets.

[47/] We note in addition that the cable bills passed by the House and Senate each require the Commission to study ownership patterns in the cable industry and to adopt new rules to prevent undue concentration of control by cable system operators. S. 12, 102d Cong., 2d. Sess. § 8 (1992); H.R. 4511, 102d Cong. 2d Sess., § 21 (1992). S. 12 specifically requires the Commission to adopt rules to limit both the number of subscribers which one cable operator can serve and the number of channels on a cable system in which the system operator can have an attributable interest. If these provisions are finally enacted, the Commission's determinations about the level of diversity the public interest requires with respect to cable ownership may inform its deliberations about related questions of ownership and control of broadcast stations and networks.

the Commission. If, as the Commission recently proposed,[48] all stations in most markets will receive HDTV channel assignments in the UHF band, the distinction between UHF and VHF stations will diminish or disappear. From one perspective, this suggests that stations in a market should be permitted to combine without regard to the band on which they now operate since they may eventually have identical coverage areas.

Viewed differently, however, the Commission's HDTV proposal shows that changes in the duopoly rules which reflect present conditions may have unintended effects as the television market changes. In the current market, allowing a strong VHF station to take control of a weak UHF station would strengthen the ability of the weaker station to serve the public with attractive programming without harming the competitive position of other VHF stations which might not be able to participate in combinations. If all of the stations in the market are moved to the UHF band, however, the situation becomes quite different. Then, the combined stations would represent a substantially greater economic entity with significant advantages over single stations in the market. While a few existing television stations might obtain an enhanced competitive position in that situation, it would not achieve the Commission's goal of ensuring the future health of over-the-air television generally. The Commission should formulate new duopoly rules, therefore, only as it reaches some more definitive conclusions about the coming transition to HDTV.

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[48] *See Advanced Television Systems*, MM Dkt. 87-268, FCC 92-332 (rel. Aug. 14, 1992).

Similarly, if signal compression technology develops to permit multiple signals to be transmitted over a single existing channel, the same sorts of intra-market disparities would occur if only some stations were able to acquire other stations in their market. Those stations could deliver many more channels than could stations which were not able to participate in station combinations under the Commission's proposed rules.

Indeed, even before such technological changes occur, the Commission needs to develop more information concerning the impact of altered duopoly rules on the television market. The proposed six voice requirement would limit the number of station transactions which could occur, and in most markets the number of permissible combinations would be fewer than the number of stations which may be interested in acquiring another local station. Adoption of the proposed rule would create uneven market conditions when stations take advantage of the few opportunities presented in their markets. If, in a market where only one combination could occur, there were two independent UHF stations, one of which is acquired by the licensee of a VHF station, the remaining UHF station would be placed at a competitive disadvantage.

Permitting station combinations only in the largest television markets may not address the television industry's most pressing needs. Although the profitability of stations in large markets, particularly VHF affiliates, is less than it was in the past, most of these stations are still financially strong. In smaller markets, even network affiliates may no longer be operating at a profit. Over half of all affiliates in ADI markets 101 or smaller lost money in 1991, and the average loss was over 277,000 dollars.[49/]

In these smaller markets, there will not be a sufficient number of local signals to permit stations to consolidate. Not only would these stations be denied any opportunity to take advantage of efficiencies of scale, their ability to attract capital will be even further reduced in comparison to stations in larger markets where opportunities for combined operations might exist.

Changing the television duopoly rules, therefore, requires a careful appreciation of the relationship between the opportunities provided under the revised rules and other developments which are occurring in the video market. The Commission should not adopt rules which may have the effect of creating new classes of "haves" and "have nots" among television stations. NAB should not be understood, however, as arguing that relaxation of the duopoly rules is not needed; television stations will need to provide multi-channel capabilities to be fully competitive. Before adopting new rules, the Commission should assemble as much information as possible to be sure that the rules will have their intended effect. NAB urges the Commission to pursue those inquiries expeditiously.[50/]

49/ NAB Television Financial Database.

50/ Where a station provides evidence that, unless it can be acquired by another station in the market, it is unlikely to survive, the Commission should give favorable consideration to requests for waivers of the duopoly rules.

III. The Commission Should Permit Radio-Television Combinations Where at Least 15 Independent "Voices" Will Remain in a Market

In the *Notice*, the Commission asks for comments on several proposals to change its radio-television cross-ownership rule, a rule which now bars the formation of new radio-television combinations in one market, subject to several conditions under which the Commission will be favorably disposed to waive the rule. In particular, the Commission is concerned about reconciling its recent revision of the radio structural rules with the cross-ownership rule. Among the options proposed by the Commission are extension of the existing waiver criteria, permitting ownership of one station in each service in any market, or elimination of the rule. NAB urges the Commission to build on the waiver criteria it adopted in 1989, and revise the rule to permit ownership of radio and television stations in a market up to the limits imposed by the duopoly rules applicable to each service, subject only to a requirement that at least 15 independent broadcast "voices" remain in the market after a proposed transaction.

In 1970, a closely divided Commission amended the multiple ownership rules to prohibit not only ownership of more than one station in the same service in one service area, but also to prevent the acquisition of more than one station in any service in a single market. *Multiple Ownership*, 22 FCC 2d 306 (1970), *recon.* 29 FCC 2d 662 (1971).[51/] The rationale on which the Commission based the new rule

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[51/] Three Commissioners dissented from the order adopting the cross-ownership rule. Chairman Burch commented: "The plain fact is that the Commission has (continued...)

was: "[a] proper objective is the maximum diversity of ownership that technology permits in each area." *Id.* at 311. The Commission paid little or no attention to any other values which might be affected by causing such diffusion of ownership, and conceded that it had no evidence of improper conduct arising out of cross-ownership of radio and television stations.[52]

In the 22 years since the radio-television cross-ownership rule was adopted, the Commission has recognized that other concerns may outweigh an uncritical call for the utmost ownership diversity. In 1989, the Commission conducted a broad reexamination of the radio-television cross-ownership rule to determine whether it continued to serve the public interest. *Broadcast Multiple Ownership Rules*, 4 FCC Rcd. 1741, *recon.* 4 FCC Rcd. 6489 (1989). The Commission indicated a changed view of the justifications for cross-ownership rules:

> "As we stated in the *Notice* in this proceeding, the *ultimate* objective of the radio-television cross-ownership rule is to enhance consumer welfare through the promotion of economic competition and diversity of programming and viewpoints. Although we have found that diversity of *ownership* on either the local or national

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[51](...continued)
labored for over 2 years, received reams of comments, heard extensive argument, only to bring forth a rule which applies to areas of ownership least needing attention, if at all." 22 FCC 2d at 335 (Chairman Burch, concurring and dissenting).

[52] The Commission did ameliorate the effects of its new rule by "grandfathering" all existing combinations. On reconsideration, the Commission also determined that there should "be no rule barring the formation of new AM-FM combinations." *Multiple Ownership Rules*, 28 FCC 2d 662, 671 (1971). It reaffirmed that conclusion in *Multiple Ownership*, 50 FCC 2d 1046, 1055 (1975).

> level is a means to achieve these goals, we continue to recognize that economic competition and diversity of programming and viewpoints are not the only goals, and diversity of ownership is not the only consideration, in the licensing of broadcast stations in the public interest."[53]

The Commission pointed to the staggering growth in the total number of broadcast stations since the rule was first adopted. It also acknowledged the development of alternative sources of video programming, in particular the development and widespread penetration of cable systems and the growing impact of VCRs. *Id.* at 1743. It concluded that the growth in media outlets extended to all markets, noting that even ADI markets 201-09 had roughly nine television and radio stations. *Id.*

As a result of the growth of media outlets, it found that "our diversity concerns have become somewhat attenuated since the radio-TV cross-ownership rule was adopted." *Id.* at 1744. Although there always exists the possibility that one more "voice" in a market could provide a significantly different viewpoint,

> "a broadcaster who seeks to operate a second station in the market may, because of economies of scale and cost savings inherent in radio-television combinations in the same market, produce or purchase more informational programming than would two separate stations." *Id.*

The Commission found that most broadcast markets were economically competitive, and that a slight reduction in the number of independent competitors would have negligible effects, if any, on the level of competition in the market. *Id.* at 1745-46. It also pointed out that, while television stations were barred from acquiring radio

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[53] 4 FCC Rcd. at 1742.

stations, cable systems in the same market were not. The Commission believed that it would not serve the public interest to continue regulations which created a more favorable investment client for pay services such as cable than for free universal over-the-air television. *Id.* at 1746. The Commission also exhaustively considered the efficiencies which common ownership of stations in one market could provide and the substantial evidence presented to it of increased news and public affairs programming offered by group owners as compared to single stations in similar markets. *Id.* at 1746-49.

Despite the overwhelming evidence supporting a comprehensive restructuring of the cross-ownership rule,

> "[i]n an abundance of caution, we have decided that it would be preferable to review proposed radio-TV combinations on a case-by-case basis, even in large markets, in order to have a period of time in which to assess the ramifications of relaxing the radio-TV cross-ownership prohibition."[54]

The Commission indicated that it would favor waiver applications in the top 25 media markets where, after the proposed transaction, there would remain 30 separately owned media voices, or where the application involves control of a "failed" broadcast station.

After several years of experience with the waiver policy, it is time for the Commission to go further and reduce the scope of the cross-ownership rule, limiting its application to situations where there is a clear danger of loss of either economic

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[54] *Id.* at 1750.

competition or diversity. As the Commission recently noted, in waiver requests filed since 1989, significant cost savings were anticipated from the ability to combine ownership of radio and television stations in a market.[55]

Changes in the cross-ownership rule are particularly appropriate following the Commission's changes to the radio ownership rules. The Commission found that the growing fragmentation of the radio market and increased economic pressures on radio stations supported changes in the radio duopoly rules to permit radio stations to combine operations to save costs and achieve other efficiencies. The Commission concluded that "cost savings from joint operation are likely to be invested in capital improvements and better programming that will inure to the benefit of the listening public." 7 FCC Rcd. at 2776.

It would be anomalous for the Commission to permit radio operators without television interests to acquire additional radio stations to obtain the efficiencies and programming benefits which group operation brings, and deny such benefits to licensees who also operate a television station. If television licensees continue to be barred from radio acquisitions in most markets, or if they are limited to one radio station in each service while competitors may operate multiple AM and FM stations, television licensees will be placed at a significant and unjustified disadvantage. In 1989, the Commission rejected proposals which would have only permitted radio-

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55/ *Revision of Radio Rules and Policies*, 7 FCC Rcd. 2755, 2775, *recon.* __ FCC Rcd. ____ (1992). The Commission pointed to *Tulsa 23*, 5 FCC Rcd. 727 (1990)(10 percent reduction in costs); *Great American Television and Radio Co.*, 4 FCC Rcd. 6347 (1989)(11-17 percent reduction); *P-N-P Broadcasting, Inc.*, 4 FCC Rcd. 5596 (1989)(12 percent reduction).

television combinations involving weaker stations or in the largest markets since these proposals would have unduly restricted the benefits of group ownership to certain classes of stations without any significant evidence that the limitations were needed to protect competition and diversity. Similarly, having altered its radio duopoly rules, the Commission should not arbitrarily limit the benefits of the new rules to certain classes of licensees.

Since its experiment with waiving the cross-ownership rules in large markets has not resulted in any demonstrable evidence of loss of diversity or competition, the Commission should proceed to change the rule to reflect the conclusions it reached in 1989. Moving from a waiver approach to cross-ownership standards in the rules will give greater certainty to investors contemplating station acquisitions and will also reduce the burden on the Commission's staff which must now review each cross-ownership waiver application on an individual basis.

The Commission, therefore, should amend the cross-ownership rule to permit television licensees in any market to also have cognizable interests in radio stations in the same market up to the limits established in the radio multiple ownership rules, so long as after a proposed transaction, there are at least 15 separately owned radio and television voices in the market.[56/] There is no reason why the Commission should confine the benefits of group operation to an arbitrarily selected group of large markets. In the *Notice* (¶ 27), the Commission pointed out that in television markets

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56/ The Commission should continue its present policy of counting all full power television stations and all operating AM and FM stations licensed to communities in the television market as "voices."

126-150, there are on average six over-the-air television stations and 18 radio stations. Even in very small markets, therefore, there now are a large number of stations providing competition and sources for diverse programming and viewpoints.

Further, in small markets, cable systems provide additional competition in the local advertising market and a large number of additional channels with programming and viewpoints not otherwise available in the market. One cable operator, of course, controls all of the channels on a cable system, and frequently one MSO controls virtually all of the cable systems in a television market, or the cable systems participate in an interconnect to sell advertising jointly across the market. The widespread penetration of cable supports changes in the cross-ownership rules in two ways: (1) the availability of cable channels and competition for advertising sales from cable ensures that the Commission's objectives of preserving economic competition and viewpoint diversity will not be threatened by increased radio-television cross-ownership; and (2) cable systems' growing economic power require the Commission to permit broadcasters also to be able to take advantage of the efficiencies from operation of several programming outlets.

It is appropriate to reduce the number of independent voices the Commission will require in a market from 30 to 15. Although there is no scientific way in which to determine the number of voices necessary to achieve a particular level of viewpoint diversity, the presence of 15 separately owned stations or groups is sufficient to ensure that a wide variety of program formats and viewpoints can be expressed in any market. Such a market might include television stations affiliated with each of the four commercial networks, an independent and a public television station, and at least nine radio stations or groups not affiliated with any of the television stations. A market with at least 15 competitors is one that would be characterized by competitive behavior, benefitting advertisers whose business will be vigorously sought by a large number of entities.[57]

Moreover, as the Commission has acknowledged, common ownership of stations in a market does not imply that common viewpoints will be taken by those stations. *Broadcast Multiple Ownership Rules*, 4 FCC Rcd. at 1744. Even if there are only 15 independent voices in a market where a combination has taken place, there will be a greater number of stations, each of which will provide an opportunity for differing program formats and for the expression of differing views on public issues. Indeed, since there will be greater resources available to support the production of news and information programming, permitting additional cross-ownership may lead to greater opportunities for the expression of diverse viewpoints.

NAB urges the Commission, therefore, to amend the radio-television cross-ownership rule to permit cognizable interests in radio and television stations in any

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[57] It may be possible to speculate about scenarios where additional combinations could be viewed as anticompetitive, such as acquisition of the leading AM and FM stations in a smaller market by the leading television station. In the unlikely event that a combination which posed a significant threat to local market competition were proposed, the application would be subject to petitions to deny and the Commission will be able to examine the implications of the particular combination on the specific media market involved. It would not be appropriate for the Commission to decline to make needed changes in its cross-ownership rule on the basis of fears about "worst case" hypotheses.

market as long as there will remain at least 15 independent broadcast voices in the market after a proposed transaction occurs.

IV. The Commission's Network Rules

The Commission proposes to repeal three rules dealing with the operation of broadcast networks. NAB supports elimination of § 73.658(f) of the Commission's Rules concerning network ownership of stations in smaller markets. Section 73.658(*l*) of the Rules, however, may continue to serve as a useful protection for the development of independent stations. While NAB believes that § 73.658(g), the dual network rule, should be repealed, the Commission should defer action until a time when the impact of signal compression and other technological developments can be more fully appreciated.

A. The Dual Network Rule Should be Repealed Only as Part of the Development of a Multichannel Broadcast Environment

In its Comments on the *NOI*, NAB argued that the dual network rule should be repealed as the circumstances which led to its adoption had radically changed and the rule made little sense in an environment where one entity could control unlimited numbers of cable program networks.[58] Each of these arguments remains fully valid and supports repeal of the dual network prohibition.

Nonetheless, the reality of today's video marketplace is that, if one of the existing networks chose now to offer an additional national program service, it would

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[58] *See* Comments of NAB in MM Dkt. No. 91-221, filed Nov. 21, 1991, at 46-50.

be required to affiliate with a station owned by a different licensee than its existing affiliate. Although the new network might thus achieve a "toehold" in the market, it would do so only at the cost of weakening existing network-affiliate relationships. The network's existing affiliates would be concerned that the network would place its most popular programming on the new network as it struggled to gain market penetration, weakening its existing affiliates' local market position.

Even if these developments might not occur or could be prevented, there certainly are insufficient existing broadcast outlets in many television communities for all of the current television networks to develop new nationally distributed broadcast program services. It would not appear to advance the public interest for the Commission to embark upon a regulatory initiative which may have the effect of adding strength to only one participant in what is now a competitive market, while comparatively weakening the others.

In its comments on the *NOI*, NAB pointed to the advent of signal compression technology and the prospect of multichannel operation of broadcast stations as circumstances where the public interest would strongly support repeal of the dual network rule. As more opportunities for over-the-air program distribution become available, the networks should be able to participate and develop new and innovative program services in conjunction with their affiliates. The Commission notes (*Notice* ¶ 34 n.58) that it has already proposed to waive the dual network rule as part of the development of the Advanced Television Service. The prospect of new opportunities for stations and networks to work together should provide an incentive for them to support development of the technology needed for multichannel broadcast television operation.

The Commission, therefore, should refrain from acting on the dual network rule. At the same time, it should make clear that it will repeal the rule as increased opportunities for over-the-air broadcast program distribution become available.

B. The Commission Should Repeal Its Outdated Rule Prohibiting Network Ownership of Television Stations In Small Markets

NAB believes that the rule prohibiting network ownership of television stations in small markets, or those markets where stations are of "unequal desirability",[59] which was first adopted in 1946, is an anachronism that should be repealed. As the Commission noted, the rule has never been applied to prevent a network purchase of a station, and the last time the rule even appears to have been raised was over thirty years ago.[60]

The ostensible purpose of the rule was to preclude networks from "bottling up" the best facilities in a small market, thereby making them inaccessible to competing networks and discouraging the creation and growth of new networks. Today, the possibility that competing networks could be barred from small markets is virtually nil. Commission data indicates that the average television market has about seven licensed stations, and over half of all households receive more than ten over-the-air stations.[61] Moreover, even in areas where only a relatively few stations are avail-

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[59] 47 C.F.R. § 73.658(f).

[60] *Notice* ¶ 36 n.62.

[61] *Notice* ¶ 36 n. 61.

able over-the-air, it is almost certain that all networks' programming is being made available through cable and/or satellite home dish importation of distant network signals.[62]

While it is true that new networks, both cable and over-the-air, have proliferated during the rule's existence, it cannot be seriously argued that any of these networks would not have been created without the rule. To the extent the intent of the rule could be deemed merely to preclude a network with "deep pockets" from owning a small market station, thereby disrupting the competitive balance in the market, it would appear to be woefully under-inclusive and discriminatory in failing to prevent any other large group owner, or well-financed entity, from acquiring such stations. The rule's inapplicability to such well-financed non-network owners does not appear to have resulted in deleterious competitive imbalances in small markets.

Repeal of the rule would have the desirable effect of providing networks with the flexibility to acquire small market stations in financial distress. Such flexibility is significant in that small market stations lost an average of $880,000 each in 1991.[63]

C. The Rule Requiring Networks Without Affiliates in a Market to First Offer Programming to Independent Stations in the Market With Comparable Facilities Should Be Retained

Section 73.658(*l*) of the Commission's Rules provides that in television markets in which two stations have already affiliated with two of the three major

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[62] In this regard, Fox Broadcasting's Fox Net is now available to 1.3 million homes in "white areas" unable to receive a Fox affiliate signal. *See Electronic Media*, Aug. 3, 1992, at 4.

[63] *TV Digest*, Aug. 10, 1992, at 1.

networks and in which there are one or more independent stations with reasonably comparable facilities, the network without an affiliate in that market must first offer its programming to an independent station before offering it to the affiliated stations. The purpose of the rule is to prevent bias against primary affiliations with independent stations, particularly UHF stations, in favor of secondary affiliations with VHF stations. Specifically, it prevents one or both of the VHF stations in a market from choosing among the program offerings of two networks, while requiring their UHF competitor to fill its schedule with more expensive and/or less popular syndicated programs.

In adopting the rule, the Commission found that guaranteeing UHF stations access to a larger quantity of desirable network programs, and to the most desirable programs of one of the networks, on a regular and continuing basis, would provide the audience flow essential to enabling the UHF service to become and remain viable and competitive. The Commission also believed that the public would benefit because network programming would be broadcast at more convenient times.[64/]

While it is true, as the Commission, points out, that there has been a considerable increase in the supply of programming since the rule's adoption in 1971, there also has been a considerable increase in the number of video outlets, both broadcast and non-broadcast, which compete for that programming. Moreover, the intense

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[64/] *Notice* ¶ 40.

debate over modification of the Commission's financial interest and syndication rules,[65] provides ample evidence of the considerable commercial value that continues to be ascribed to network programming, and to how important independent stations consider access to such programming to be.

Given the fact that more than half of all independent stations lost at least $300,000 each in 1991, and that UHF independent station profits dropped 17.1 percent in 1991 to an average loss of $567,000,[66] the repeal of Section 73.658(*l*) would appear to be inadvisable at this time.

Conclusion

For the foregoing reasons, NAB urges the Commission to make cautious changes in the television ownership rules, permitting increased investment in the broadcast industry and allowing the Commission to study the impact of these initial changes before proceeding to more thorough revision of the structural rules. Specifically, the Commission should increase the number of stations and the audience reach of stations across the Nation that may be under common ownership or control. The Commission should permit ownership of interests in stations whose Grade B contours overlap. Common ownership of radio and television stations in one market should be permitted so long as 15 independent media voices will continue in the market. The Commission should also dispense with its long-dormant rule governing network

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65/ 47 C.F.R. §§ 73.659-73.662; *Syndication and Financial Interest Rules*, 6 FCC Rcd. 3094, *recon.* 7 FCC Rcd. 345 (1991).

66/ *TV Digest*, Aug. 10, 1991, at 1, 2.

station ownership in small markets, but should retain its rule requiring networks without a local affiliate to first offer programming to independent stations. The Commission should await action on its proposals to amend or repeal the local duopoly rule and the dual network rule until other developments in the video market become apparent.

Respectfully submitted,

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Appendix A

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July 3, 1991

The Honorable Daniel Inouye
Chairman
Subcommittee on Communications
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter is to provide NAB's response to the United Church of Christ's report on television informational programming for the record of the Communications Subcommittee hearing on broadcasters' public interest responsibilities.

As I noted in my testimony on June 20th, NAB had only received a copy of this report the night before the hearing. I remarked then that after only a cursory review of the report, NAB's Research and Planning Department had already found some glaring problems with the study. In this letter I will review these and additional problems we have found with the approach and methodology of the report. I believe that these problems show this study to be unreliable.

Let me begin by saying that the premise that you simply can count up the minutes of informational programming and make a policy decision on whether enough programming is provided is ludicrous. Clearly these quantitative measures say nothing about the quality of the programming. Moreover, counting minutes of certain types of informational programming does not acknowledge the changing nature of how broadcasters are providing that information to the American public. Broadcasters are increasingly covering important policy and social issues not by having talk shows at inconvenient times of the day, but rather by including segments on these issues in their local news. In fact, the UCC study found that local news *increased* since the year in which deregulation took effect. This result is not surprising, as the Essential Information study cited by UCC also found an increase in the amount of local news (a 74% increase from 1979 to 1989). This flexibility in covering the important issues of the day is exactly what the FCC sought when deregulating stations from arbitrary quantitative limits.

Still another example of stations covering local issues, not documented by the UCC study, is the one-minute newsbreaks stations air throughout the day. This has been increasingly used by stations in recent years. For example, one station in Washington, D.C. has committed to airing them every hour. The time allocated for newsbreaks is not included in the television guides used by the UCC and was not independently sought by the authors of the study. As a result, the increase in local news reported by the UCC study would be even more dramatic.

Before I go any further discussing some of the study's results, I would like to point out that the UCC reliance on their survey results to justify policy changes would not hold up to any scientific review. While the authors of the study do a professional job in randomly selecting the markets and stations to study, they fail to carry that professionalism through when discussing the significance of their results. As any first year statistical student knows, one must always discuss the *margin of error* associated with results when evaluating results from a random sample. Only then can you confidently determine whether there was any significant change. Nowhere in the study is there any mention of the margin of error for the results presented.

We believe there is an obvious reason for this omission, as it would show that there has been no change in the amount of informational programming. The small decreases in certain types of informational programming, relied upon by the authors to make their broad policy recommendations, would be shown to be within that margin of error. In other words, the changes which form the foundation of sweeping reregulation proposals are just as likely to be caused by sampling error as by alterations in the practices of television broadcasters. Needless to say, NAB submits that adopting policy prescriptions on such evidence is not the best way to set communications policy.

Another problem with the study and the approach it takes is that it neglects the increase in the number of stations on air informing the public. Instead, it focuses on the amount of informational programming offered by the average station. Yet, with the 55.3% increase in the number of television stations on air since 1974 (the first year analyzed), the 45.9% increase since 1979 (the second year) and the 23.8% increase since 1984 (the third year), there is a tremendous increase in the *total* amount of informational programming available to the American public covering a wide range of issues. That should be the primary focus of Congress, what the American public can see and hear via free over-the-air broadcasting.

In addition to relying on these results, the authors also discuss other "research" included in two petitions-to-deny in which they were a party. In both of the cases mentioned the petitions-to-deny were denied by the FCC with the finding that the amount of programming was adequate. With the lack of results included in the present UCC study and the FCC discounting earlier studies of specific cases, one might ask "where's the beef?"