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

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

Adopted: May 14, 1992 Released: June 12, 1992

Comment Date: August 24, 1992
Reply Comment Date: September 23, 1992

By the Commission: Commissioner Duggan issuing a separate statement.

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I. INTRODUCTION

1. This Notice of Proposed Rulemaking (NPRM) proposes alternative means of lessening the regulatory burden on television broadcasters as they seek to adapt to the multichannel video marketplace. As documented last year in the FCC Office of Plans and Policy's (OPP) wide-ranging report on

broadcast television and the rapidly evolving market for video programming,[1] that market has undergone enormous changes over the period between 1975 and 1990. In particular, the report found that the policies of the FCC and the entire federal government (e.g., the 1984 Cable Act) spawned new competition to broadcast services that have resulted in a plethora of new services and choices for video consumers. The report further suggested that these competitive forces were affecting the ability of over-the-air television to contribute to a diverse and competitive video programming marketplace.

2. The OPP report prompted us to release a Notice of Inquiry (NOI)[2], and to seek comment on whether existing television ownership rules and related policies should be revised in order to allow television licensees greater flexibility to respond to enhanced competition in the distribution of video programming. After reviewing the comments filed in response to the NOI,[3] we are opening this proceeding to consider changes to several of the structural rules that have governed the television industry for many years. These include rules that establish national and local limits for the number of television stations in which one entity may hold an attributable interest, as well as certain rules governing the three national networks. We will also reexamine the radio-television crossownership rule, which generally prohibits one entity from owning both a radio and a television station that serve substantially the same area. Through our review of the comments filed in response to the proposals we present in this NPRM, we expect to identify specific rule changes designed to assure that Commission policy will facilitate the further development of competition in the video marketplace and the attendant advantages to consumers in increased choice.[4]

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[1] F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996 (1991) (OPP report).

[2] Notice of Inquiry in MM Docket No. 91-221, 6 FCC Rcd 4961 (1991), 56 FR 40847 (August 16, 1991).

[3] Thirty-nine parties filed initial comments, and 19 filed reply comments. A list of commenters is attached as Appendix A.

[4] We focus in this document on a number of structural ownership and network-related rules for which specific changes hold some promise of strengthening the potential of over-the-air television broadcasters to serve the public. Commenters have addressed a variety of other issues, including the network-affiliate rules, cable-broadcast crossownership, cable-network crossownership, retransmission consent/compulsory license, the prime time access rule, and foreign ownership. A number of these matters are already the subject of other proceedings or are sufficiently discrete to warrant separate analysis and are thus not discussed herein. The cable-network crossownership rule, for example, is the subject of our Second Further Notice of Proposed Rulemaking in BC Docket 82-434, 7 FCC Rcd 586 (1991). Mandatory cable television carriage of broadcast signals is the subject of our Second Further Notice of Proposed Rulemaking in MM Docket 90-4, 6 FCC Rcd 4545 (1991). Specifically exempt from our inquiry are those regulatory provisions and

II. OVERVIEW OF THE INDUSTRY[5]

3. The comments received in response to the NOI generally concur that the television industry has undergone significant changes in the past decade and a half, as reflected in the current state of the video programming market. In particular, the industry has experienced an enormous expansion in the number of video outlets available to most viewers and in the alternative sources of video programming. Since 1975 the number of broadcast television stations has increased by 50 percent (from 953 to 1494), with independent television stations accounting for three-quarters of that growth.[6] Today, more than half of all households receive 10 or more over-the-air television signals, while the median household received only six broadcast signals in 1975.[7] At the same time, cable television has grown explosively as a competing force. By 1990, approximately 90 percent of television households were passed by cable; of all television households, approximately 60 percent subscribed to cable.[8] With cable channels included, more than half of all households now receive at least 30 channels. In addition, new program networks have been launched to fill those channels. For example, Fox is emerging as a robust competitor to existing over-the-air networks when not long ago a fourth television broadcast network was unthinkable. In addition, there are over 100 national and regional cable networks.[9] Other multichannel video providers, such as home satellite dish systems and MMDS, as well as home videocassette recorders, also provide alternative sources of video programming. With these new sources of video information and entertainment now available, American households have increased their use of television, watching 7 hours and 2 minutes of programming per day on average in 1990, compared with 6 hours and 44 minutes in 1980.

4. As a greater number and variety of programming choices have emerged, viewers have begun to migrate from traditional broadcast services to other program sources. The percentage of total viewing captured by broadcast

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policies relating to VHF noncommercial channel assignments, comparative licensing, minority distress sales and tax certificates, and television station-newspaper crossownership that are covered by statutory appropriations restrictions. Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies for the Fiscal Year Ending September 31, 1992, Pub. L. No. 102-140, 105 Stat. 797 (1991).

[5] A detailed review of major developments in the television industry prepared by the staff, entitled Overview of the Television Industry, has been placed in the record.

[6] OPP report, supra note 1, at 4008.

[7] Id. at 4013.

[8] Id. at 4044.

[9] Id. at 4049.

television stations fell from 81 percent in the 1984-1985 television season to 70 percent during the 1989-1990 season.[10] This decline in broadcast share results in large part from both increased cable penetration and increased cable viewing in cable households. In addition, the proportion of households owning VCRs, satellite dishes, and MMDS receiving equipment increased dramatically from 1984 to 1991. In short, the sources of video entertainment available to U.S. consumers have greatly proliferated.

5. Declining audience shares have been reflected in declining advertising revenues for broadcast television stations and networks. This is not surprising, since revenues would be expected to decline as competition put downward pressure on advertising rates. The OPP report indicated that network advertising revenues in real (i.e., inflation-adjusted) dollars reached a peak in 1984 and have declined since; station revenues in real terms also declined in 1989 and 1990, and stood at roughly the same level in 1990 as in 1986.[11] Because the number of stations has increased since 1986, however, real advertising revenues per station have fallen by roughly four percent per year from 1987 on.[12] These data are indicative of more competition in video distribution and more options for advertisers.

6. As a result, profits of broadcast television stations also have declined steadily in recent years. Real profits for the average affiliate and average independent station have fallen 21 percent and 68 percent, respectively, since 1984. Although most large-market stations, particularly network affiliates, have continued to earn high, though falling, profits, losses apparently have become the norm in much of the rest of the industry. In 1989, at least 25 percent of stations in the top ten markets experienced losses; aggregate losses occurred in most markets below the top 100; and at least 50 percent of independents in all market classes below the top ten experienced losses.[13]

7. Just as the record reflects a consensus concerning the current state of the market, there appears to be general agreement that the competitive structure of the broadcast television industry has changed for the

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[10] Id. at 4017. The recent ratings performance of some of the major broadcast networks has, however, improved. See, e.g., "So Far, No TV Losers in Olympics," N.Y. Times, Feb. 17, 1992, at D-4 (quoting ABC Senior Vice President Alan Wurtzel concerning "the beginning of a leveling off for network audiences"). See also "Broadcasters Take a Bite Out of Cable in the Ratings," N.Y. Times, March 9, 1992, at D-1 (noting that, in the February 1992 ratings period, aggregate network ratings increased to 41.9 from 38.5 the previous year, while aggregate cable ratings dropped to 10.1 from 12). Given the ratings significance of the "sweeps period" and the Winter Olympics, the long-term significance of these improved network viewing patterns is uncertain.

[11] Id. at 4075.

[12] Id. at 4080.

[13] Id. at 4025.

long term.[14] The comments generally do not disagree that cable viewing now occupies a significant share of the television audience, and that cable's share is likely to increase.[15] The fact that cable's share of advertising revenues is lower than its share of viewers (6 percent of advertising revenues as compared with 22 percent of viewing on channels accepting advertising) suggests that substantial cable advertising growth could occur as advertisers respond to audience shifts and as mechanisms develop for measuring and selling cable audiences more effectively.[16] Accordingly, the comments generally reflect the belief that over-the-air television will face increasing competitive pressure from multichannel media with dual revenue streams.[17] Regulations adopted before the advent of such competition may reduce the ability of broadcasters to respond competitively and to continue offering services that advance the public interest. These conclusions lead us to reexamine and to propose revisions to certain of the rules governing the television industry's market structure. This we do in the following sections.

III. THE NATIONAL OWNERSHIP LIMITATIONS

8. Background. The Commission's national multiple ownership rule limits the number and audience reach of television stations in which an entity may hold an attributable interest to 12 stations and 25 percent of total television households. The rule allows ownership of interests in up to two additional stations reaching an additional five percent of total television households if those stations are minority controlled.[18]

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[14] That is not to suggest that there are no disputes as to specific financial and market projections relevant to the future of the broadcast industry, or that those disputes do not warrant careful review. We invite any further comment concerning these issues.

[15] OPP report, supra note 1, at 4057-4058. As the OPP report stated, this shift makes cable an increasingly attractive and competitive advertising medium. Id.

[16] Id. at 4082.

[17] As the OPP report pointed out, new technologies on the horizon should continue to increase competition to broadcasting. Direct broadcast satellites, if successful, will provide additional choices for viewers; digital signal compression apparently will expand the ability of satellite and cable providers to offer more channels on their existing facilities; and advanced television technologies such as HDTV may well be available on other media before being fully deployed over terrestrial broadcast facilities. Id. at 4065, 4042-4043; S. Merrill Weiss, "Rolling Out Advanced Television in the United States: A Broadcaster's Perspective," Broadcast Cable Financial Journal, March-April 1991, at 28.

[18] 47 C.F.R. § 73.3555(d). The rule, adopted as the Seven Station Rule in 1953, reached its present form in 1985. In its initial order adopting the 12 station rule, the Commission decided to sunset the new national rule entirely in order, among other things, to encourage the emergence of new

9. Comments. Virtually all commenting broadcasters, broadcast interest groups, and the three national broadcast networks urge the Commission either to modify or eliminate the multiple ownership rule.[19] Broadcasters contend that the economies of scale resulting from increased group ownership would encourage the production of new, diverse, and especially locally-produced programming. They also argue that the proliferation of alternative sources of video programming lessens the possibility of economic concentration and consequent harm to diversity on a national basis. Moreover, broadcasters point out that commonly owned stations also contribute to diversity and that group ownership does not mean that jointly owned stations speak with one voice. Finally, these commenters contend that the key issue is not what considerations will justify changes in the multiple ownership rule, but what factors warrant its retention.

10. Opponents of repeal or relaxation of the national ownership caps, including the Motion Picture Association of America (MPAA), the Office of Communication of the United Church of Christ (OC/UCC), the United States Catholic Conference (USCC), and the Telecommunications Research and Action Center (TRAC), argue that the rule has increased ownership diversity, particularly for minorities, and has not repressed new program sources. Therefore, they contend, any change in the rule would reduce programming diversity and harm the public interest.[20] USCC asserts that the public interest requires more, not less, government regulation of broadcasters, many of whom are ignoring their responsibilities to the public interest.[21] USCC contends, for example, that local news operations have been pared or closed down entirely, public interest programming is decreasing, and time brokerage is depriving many viewers of local programming. Finally, they assert that the national ownership rule is not harming networks or broadcasters. These commenters argue that the increase in the station limit from seven to twelve did not help broadcasters because their problems are the result of mismanagement, short-term dislocations, and increased expenses. Therefore,

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networks and to foster efficiencies in the operations of stations. See Report and Order in Gen. Docket 83-1009, 100 FCC 2d 17 (1984) (Multiple Ownership Order). On reconsideration, the Commission reversed its decision to sunset the rule. The Commission also adopted the audience reach limit and the provisions designed to foster minority ownership. Memorandum Opinion and Order, 100 FCC 2d 74 (1985).

[19] See, e.g., Associated Broadcasters and Galloway Media Comments at 3; Bonneville International Corporation Comments at 4; Cedar Rapids Television Company et al Comments at 8; ABC Comments at 20; CBS Comments at 11; NBC Comments at 56; National Association of Broadcasters (NAB) Comments at 18; Fox Broadcasting Company Comments at 17; Tribune Broadcasting Company Comments at 14.

[20] MPAA Comments at 25; OC/UCC Comments at 2; TRAC Reply Comments at 9; USCC Comments at 2.

[21] USCC Comments at 2.

they conclude that an additional increase in the multiple ownership limits would not cure any of broadcasting's ills.

11. Proposal. In view of the many changes in the video marketplace detailed above, we seek comment on whether to relax the national ownership rule. We have previously recognized the benefits that may accrue from increased station group ownership, including: efficiencies from combining managerial, technical and other operations; efficiencies from group advertising sales and program purchases; and efficiencies that might flow from the stations forming the nucleus of a new network.[22] We continue to believe that these increased economies of scale could permit the production of new and diverse, including locally produced, programming.[23] Moreover, we believe 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 in Section II supra. As noted above, this increase in the number of sources of video programming available to American consumers has had an adverse impact on the advertising revenues earned by many existing broadcast television stations. We are concerned that we not perpetuate unnecessary regulations that impede the competitive ability of these stations or preclude them from taking advantage of certain economic efficiencies. We are sensitive to arguments about the effect of ownership concentration on programming diversity. If, however, by altering the current national ownership restrictions, we could permit broadcast television stations to compete more effectively without permitting undue economic concentration or loss of programming diversity, we believe we should consider such action.

12. With these considerations in mind, we seek comment on which, if any, modification of the national ownership limits would best serve the public interest. Specifically, we invite comment on amending the national numerical limit to permit common ownership of 20 or perhaps 24 television stations instead of 12 and altering the national reach restriction to permit a group owner to reach 35 percent instead of 25 percent of the national audience. This moderate approach would allow some growth in the size of group owners and provide us an opportunity to assess over time the benefits and any costs

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[22] See Multiple Ownership Order, supra note 18, at 27, 44.

[23] OC/UCC presents a study purporting to contradict the proposition that savings from the efficiencies of group ownership are invested in additional local programming. OC/UCC Comments at 12. However, since OC/UCC's study is based on a sample of only 5 of the over 200 television markets, it is not clear that the study is representative of television stations or markets in general. In any event, their results indicate that group-owned stations carry slightly more nationally syndicated programming than do individually owned stations. OC/UCC's data also indicate that group-owned stations surpassed individually owned stations in providing local news as well as national news and public affairs programming in 1984 and 1989, the last year of the study. Therefore, we seek comment regarding OC/UCC's findings, including additional independent studies as well as the experience of specific group owners, and the appropriate import to be ascribed to these data.

of increased station ownership. We also seek comment on whether a smaller increase in the limits, e.g., from 12 to 18 stations and 25 to 30 percent reach, would adequately serve our goals. Finally, we seek comment on whether we should modify only the numerical limit (and retain the 25 percent reach limit) to address the concern that it is the numerical limit that unduly restricts group owners wishing to invest in smaller market stations, because such owners will reach substantially fewer television households when they reach the numerical cap than will group owners investing in larger market stations.[24] We invite comment on the foregoing proposals and on any other proposals commenters believe would be consistent with our stated objectives.[25]

13. As noted above, our current rule allows a single entity to hold interests in up to 14 (rather than 12) television stations reaching 30 (rather than 25) percent of total television households if the additional stations are minority controlled. We seek comment on including a similar minority incentive should we modify the national ownership limitations pursuant to any of the proposals outlined above. In particular, commenters are asked to address how such an incentive should be structured.[26]

IV. THE CONTOUR OVERLAP ("DUOPOLY") RULE

14. Background. Section 73.3555(a)(3) of the Commission's Rules prohibits ownership of cognizable interests in television stations with overlapping Grade B contours. This version of the television duopoly rule was adopted in 1964, when the Commission first prohibited station ownership based on fixed contour overlap standards.[27] At the time, the video marketplace

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[24] We note that the OPP report was considerably more pessimistic concerning the future prospects for small market and UHF stations than for large market and VHF stations. OPP report, supra note 1, at 4023-4025.

[25] In our outstanding proceeding concerning television satellites, see Second Further Notice of Proposed Rulemaking in MM Docket No. 87-8, 6 FCC Rcd 5010 (1991), we asked whether television satellites should be exempted from the multiple ownership rule. In light of the proposals presented herein, commenters who filed in that proceeding are invited to update their comments in this proceeding. Commenters are encouraged to address whether that docket should be incorporated into this proceeding; or whether the issues raised in that docket should be addressed prior to, or concurrently with, the termination of this docket.

[26] The Commission in its recent radio ownership decision declined to retain a minority incentive in the national radio ownership rules. Report and Order in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992) (Revision of Radio Rules and Policies), paras. 26-28. In light of that decision, we seek comment on the efficacy of the current minority incentive for television ownership in the marketplace.

[27] Report and Order in Docket 14711, 45 FCC 1476, 1480 (1964), on reconsideration, 3 RR 2d 1554 (1964). An earlier version of the rule prohibited licensing of a station if it was under the same ownership or

consisted solely of 649 television stations and a small number of cable systems whose primary purpose was to retransmit the signals of over-the-air broadcast stations. The Commission adopted the rule, along with fixed contour overlap standards for the AM and FM services, in order to provide some predictability and rationality in what had been, until that time, an ad hoc approach to approving common ownership of stations in local markets. The Commission explained its selection of the Grade B contour as the prohibited degree of overlap by noting that "television has a considerably greater impact" than radio, and that there are fewer television than radio channels available. In light of these facts, the Commission concluded that a "more restrictive" overlap rule was necessary for television, and declined to adopt a standard based on Grade A overlap.[28]

15. Comments. Most commenting broadcasters, broadcast interest groups, and the national networks generally advocate relaxation of the duopoly rule.[29] They contend that economies of scale are greatest at the local level, and that by using managerial, technical, and on-air talent to which they already have access, group owners can improve local service. They further assert that, given the level of competition in most local markets, the duopoly rule is not needed to ensure diversity, except perhaps in a few small markets. In fact, they claim, to the extent that the rule impedes the competitiveness of broadcasters, it may actually undermine the Commission's diversity goal.

16. Commenters opposed to any relaxation or elimination of the duopoly rules, including MPAA and Fisher Broadcasting, argue 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.[30] They further assert that the diversity of ideas to which an individual member of the audience is exposed depends on the number of diverse views available in the local market. According to those commenters, there is no evidence that eliminating or relaxing the rule will contribute to competition in local markets because cross-subsidies from the stronger to the weaker commonly owned stations disadvantage other competitors (particularly smaller stations) in those markets.

17. Proposals. The duopoly rule is the oldest and, as far as

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control as another station broadcasting in "substantially the same service area." Rules and Regulations Governing Experimental Television Broadcast Stations, 5 Fed. Reg. 2382, 2384 (1940).

[28] 45 FCC at 1484. The Commission also noted that in many areas of the country, Grade B signals provided the only available service.

[29] See, e.g., Abry Communications Comments at 5; Associated Broadcasters and Galloway Media Comments at 7; Bonneville International Corporation Comments at 5; Cedar Rapids Television Company et al Comments at 8; Group One Broadcasting Comments at 6; Tribune Broadcasting Comments at 15; NAB Comments at 32; INTV Comments at 24; CBS Comments at 24; NBC Comments at 61.

[30] MPAA Comments at 23; Fisher Broadcasting Comments at 5.

diversity is concerned, perhaps the most important of our ownership restrictions. Yet, it is common ownership of precisely those co-located, same-service facilities now governed by the duopoly rule that may hold promise for the greatest economic efficiencies. As we recently stated in our decision to relax the radio ownership rules, allowing ownership of more than one station in a market (or region) would permit beneficial merger of administrative, newsgathering, and production functions.[31] Offering a wider audience to advertisers and sharing joint and common costs, regional groups of stations under common ownership could also compete more effectively. Moreover, relaxing the rule may enable financially troubled stations to remain on the air or improve their service, thus promoting our goals of diversity and localism. Finally, we note that the level of competition in local markets has greatly increased since the duopoly rule was adopted in 1964. More than half of all households (54 percent) now receive at least 10 over-the-air signals, as compared to four percent in 1964. If cable channels are included, more than half of all households receive at least 30 channels. Nonetheless, given the fundamental importance of the contour overlap limitation in protecting our interest in diversity, we believe caution is counseled in amending this rule.

18. Accordingly, we seek comment on whether and how we might modify the contour overlap rule to afford broadcasters greater flexibility, yet avoid undue harm to our underlying competition and diversity concerns. First, we invite comment on whether we should change the signal contour used to determine whether prohibited overlap occurs from the Grade B to the Grade A. This change would narrow the geographic area in which common ownership of television stations would trigger our rules to an area that more accurately reflects a station's core market.[32] In addition, the rule revision would permit common ownership of stations in neighboring communities, thus facilitating increased operating efficiencies. We seek comment on whether, given the substantial increase in video programming services available to the public and the increasing competition faced by broadcast television, the proposed change would promote competition without threatening local programming and ownership diversity.

19. We also seek comment on whether we should further modify our local ownership rules to permit common ownership of television stations with overlapping contours under certain limited circumstances.[33] For example, we

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[31] Revision of Radio Rules and Policies, supra note 26, at paras. 32, 37-38.

[32] There exists one pending television duopoly case involving Grade B (but not Grade A) overlap where divestiture has been required by the Commission--Rochester, NY (WUHF-TV). Memorandum Opinion and Order, File No. BALCT-890829KF, 5 FCC Rcd 3842 (1990), extension granted, 6 FCC Rcd 7479 (1991) (until Dec. 20, 1992). We will toll our previous divestiture schedule pending the outcome of this proceeding.

[33] In this regard, commenters are asked to address the appropriate interplay between the proposal to move from a Grade B to a Grade A contour standard and the proposals to increase the number of local television

could permit combinations involving only UHF stations, thus allowing the licensees of such stations to capture significant economies of scale with respect to administrative, newsgathering, and production functions. This alternative would limit mergers to the class of stations that are often handicapped by less favorable signal propagation characteristics and higher technical operating costs than VHF stations and that tend to be less profitable than their VHF competitors. Moreover, these stations are generally newer and not affiliated with one of the national broadcast networks.[34]

20. On the other hand, limiting the rule change to UHF stations alone would prevent mergers between strong VHF and weak UHF stations. Permitting such mergers might be effective in preserving or improving the service of UHF stations. Accordingly, we also seek comment on whether we should permit the combination of any two stations where one of the stations is a UHF facility and where a minimum number of separately owned television stations would remain after the proposed combination. A minimum of six independently owned stations, for example, would provide outlet capacity for ABC, NBC, CBS, Fox, and two independents.[35] Or, as in our recent revision of the radio rules,[36] should the number of stations in a market that one entity is allowed to own be staggered according to the total number of stations in the market? We invite comment on these and other proposals that might encourage innovative business arrangements that increase the competitiveness of stations but do not undermine our interest in diversity.[37]

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broadcast stations an entity may own in the same market. Specifically, we seek comment on whether modifications to the numerical limits should be implemented in the event that we also decide to use a new Grade A contour standard.

[34] We invite comment on whether we should limit the number of UHF facilities that could combine under such an approach and whether we should require that a minimum number of separately-owned television stations remain in the market after formation of such a combination. See para. 20, infra.

[35] Arbitron data indicate that this criterion would permit mergers in 38 of the top 50 markets.

[36] See Revision of Radio Rules and Policies, supra note 26, at para. 40.

[37] We note that several of the proposed changes to the duopoly rule are premised on a distinction between VHF and UHF stations. As the broadcast industry makes a transition to ATV technology, however, such distinctions ultimately may disappear (e.g., in the event that all ATV stations are eventually moved to one band or another). To the extent this scenario unfolds, we will of course evaluate the impact of such changes on any revised ownership rules adopted in this proceeding. Commenters should address whether any UHF/VHF distinction would be appropriate in light of the potential transition to ATV technology.

V. TIME BROKERAGE AGREEMENTS

21. In the radio ownership proceeding, we adopted new rules designed to limit time brokerage agreements that appear to thwart the purpose of our national and local radio ownership rules.[38] Specifically, we provided that a licensee's time brokerage of any other station in the same market for more than 15 percent of the brokered station's broadcast hours per week would result in counting the brokered station toward the brokering licensee's national and local ownership limits. While we are concerned about the overall effect of time brokerage or "local marketing" agreements on competition and diversity in broadcast television, we are aware of only a handful of such agreements in the industry.[39] Therefore, we seek comment on the extent to which time brokerage or LMAs are a pervasive phenomenon in television, whether they present the same competitive and diversity concerns we found in the radio industry and whether we similarly should restrict them in some fashion in the television station context if we substantially relax the television local ownership rules.

VI. RADIO-TELEVISION CROSSOWNERSHIP RULE

22. Background. Section 73.3555(b) of the Commission's rules prohibits a party from holding cognizable ownership interests in a radio station and a television station located in the same market.[40] Note 7 to Section 73.3555, which was adopted in 1989, states that it is the Commission's policy to look favorably upon requests for waiver of this rule if the combination would occur in one of the top 25 television markets and 30 separately owned, operated, and controlled broadcast licensees would remain after the combination, or if the request involves a "failed" station. Requests for waivers on other grounds are evaluated according to five factors: (1) the potential benefits of the combination; (2) the types of facilities involved; (3) the number of stations already owned by the applicant; (4) the financial difficulties of the station(s); and (5) the nature of the market in light of competition and diversity concerns.

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[38] Revision of Radio Rule and Policies, supra note 26, at paras. 64-65.

[39] A recent survey of broadcast stations conducted by the Commission's Field Operations Bureau indicated that time brokerage is not a widespread practice in the television industry. Of 284 stations surveyed, only 17 (or 6 percent) engaged in time brokerage; only 1 of the 17 was a television station. Public Notice, "Broadcast Station Time Brokerage Survey Completed," Mimeo No. 21878 (Feb. 14, 1992).

[40] A television station and a radio station are deemed to be in the same market if the 2 mV/m groundwave contour of an AM station, or the 1 mV/m contour of an FM station, encompasses the entire community of license of the television station. In addition, a television and radio station are deemed to be in the same market if the Grade A contour of the television station encompasses the entire community of license of the radio station. This rule is also referred to as the "one-to-a-market" rule.

23. Section 73.3555(b) was first adopted in 1970.[41] The Commission viewed this rule as a logical extension of its duopoly rule, and stated its belief that diversity of viewpoint was best served by diversifying broadcast station ownership.[42] Nevertheless, the Commission did not commit itself irrevocably to this approach, if "some other relevant public interest consideration is found to outweigh the importance of diversifying control."[43] In 1989, the Commission, recognizing that radio/TV station combinations may give rise to significant economic efficiencies in station operations and that these efficiencies would ultimately redound to the benefit of broadcast audiences, adopted both the Top 25 markets/30 voices and "failed station" presumptions for radio/TV crossownership waivers noted above.[44] The Commission concluded that the potential harm from crossownership in such markets was so small, and the potential benefits, including greater diversity of viewpoints, so significant, that a cautious relaxation of the rule would serve the public interest.

24. More recently, the Commission adopted new radio ownership rules, which allow a single licensee to own between three and six radio stations in the same local market, depending on market size.[45] This decision was based on our findings that the radio industry had become highly fragmented, that an appropriate regulatory response was to allow radio licensees to enjoy the efficiencies stemming from greater group ownership, and that permitting limited ownership consolidation would enhance radio's ability to serve the public without diluting competition and diversity in local media markets.

25. Comments. Only a handful of commenters addressed the one-to-a-market rule specifically. Broadcasters (including group owners) and the Association of Independent Television Stations (INTV) urge elimination of the rule.[46] They argue that because of additional outlets of local programming,

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[41] First Report and Order in Docket No. 18110, 22 FCC 2d 306 (1970), on reconsideration 29 FCC 2d 662 (1971).

[42] 22 FCC 2d at 310.

[43] Id. at 311.

[44] Second Report and Order in MM Docket 87-7, 4 FCC Rcd 1741 (1989), on reconsideration 4 FCC Rcd 6489 (1989).

[45] Revision of Radio Rules and Policies, supra note 26. For example, in markets with 40 or more radio stations, a single entity may own up to 3 AM and 3 FM stations with up to a 25 percent combined audience share; by contrast, in markets with fewer than 15 radio stations, a single licensee may own up to 3 stations, no more than 2 of which may be in the same service, provided that the owned stations represent less than 50 percent of the stations in the market.

[46] Associated Broadcasters and Galloway Media Comments at 7; Bonneville International Corporation Comments at 5; Clear Channel Communications Comments at 2; NAB Comments at 31.

the rule is no longer necessary to promote diversity. In addition, they point out that repeal of the rule would permit consolidation of administrative operations, thus reducing costs, and would lead to more diverse and locally-targeted programming. INTV argues that elimination of the rule would place broadcasters on more equal footing with cable operators and save imperiled UHF and AM licensees.[47]

26. Opponents of relaxation or repeal of this particular rule (e.g. TRAC) argue that the rule should be retained because the danger of concentration is especially great at the local level. Several commenters, including MPAA, OC/UCC, and USCC, generally oppose any changes in the television broadcast ownership rules.[48]

27. Proposals. Because of the growth of cable services and the increase in the number of both radio and television stations, our local ownership rules alone may be sufficient to ensure competitive and diverse radio and television markets. In this regard, we note that even small markets have a considerable number of television and radio stations and other sources of programming. For example, in markets ranked between 126 and 150 on the basis of their Areas of Dominant Influence (ADIs), there are, on average, six over-the-air broadcast television signals and 18 radio signals. Accordingly, one approach to modifying our local ownership rules would be to 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. We invite comment on whether this approach would best serve our public interest goals.

28. At the same time, given that we have just relaxed the radio ownership rules and are considering in this proceeding proposals to relax the duopoly rule for television, we also seek comment on a more moderate approach which would permit ownership of one AM, one FM, and one television station in a market.[49] This alternative would allow broadcasters to achieve efficiencies from consolidated operation but also would limit local cross-service ownership. A third, more cautious approach would be to eliminate the one-to-a-market rule only for TV/AM combinations. This option would provide benefits of consolidation to both television stations and the AM service. A fourth approach would be to codify the waiver criteria adopted in 1989 and apply them to any market, not just the top 25, in which 30 "independent voices" would remain. Arguably, there is sufficient competition and diversity in any market with 30 independent voices, whether or not it is a top 25

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[47] INTV Comments at 31.

[48] MPAA Comments at 3; OC/UCC Comments at 28; USCC Comments at 2.

[49] Absent a waiver, this approach would preclude group owners that acquire more than an AM-FM combination in a given market from acquiring a television station serving the same area. Given the recent relaxation of our local radio ownership rules, we invite comment on whether further accommodation of group radio owners in a newly crafted one-to-a-market rule is appropriate. See Revision of Radio Rules and Policies, supra note 26.

market. Codifying the waiver criteria in this manner would give broadcasters greater flexibility and save both Commission and applicant resources that are now spent on such waiver requests. Finally, commenters are invited to propose other approaches to modifying this rule, indicating how their proposal would promote a financially viable and diverse set of competitors in the local media distribution market.

VII. DUAL NETWORK RULE

29. Background. Under the Commission's rules, a television station cannot affiliate with a network that operates more than one network if the networks operate simultaneously and serve substantially overlapping geographic areas. This "dual network" rule, § 73.658(g), was adopted in the Chain Broadcasting Report in 1941.[50] The rule was directed at NBC, the only company then with two radio networks. The Commission found that operation of two networks gave NBC excessive control over its affiliates because their contracts did not specify whether a station was part of the Red or Blue network. Moreover, the Commission concluded that operation of two networks gave NBC an unfair competitive advantage over other networks and protected it against future competition.[51] The Commission extended the dual network rule to television networks in 1946.[52] In 1977, the Commission repealed the rule for radio after concluding that the tremendous increase in the number of radio stations, the greatly lessened economic importance of networks, and the change in the type of network programming (from half-hour or longer entertainment programming to periodic news and information segments of five minutes) rendered the rule an arbitrary restraint on stations' freedom to

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[50] Report on Chain Broadcasting, Docket No. 5060 (1941) (Chain Broadcasting Report). Section 303(i) of the Communications Act of 1934, 47 U.S.C. § 303(i), gives the Commission explicit authority to regulate chain broadcasting, which is defined in § 3(p) of the Act as the "simultaneous broadcasting of an identical program by two or more connected stations." 47 U.S.C. § 153(p). The Commission first exercised this authority in 1941, when it adopted the Chain Broadcasting Report. In addition to the dual network rule, the Report adopted a number of regulations, all but one of which is still in effect in some form today.

The rules were adopted to redress the "unhealthy predominance" of the network organizations by eliminating arbitrary and inequitable network practices. These standard practices, in the Commission's view, stifled competition and made the local station a servant of the network rather than of the public interest. The Commission believed that licensees should be more independent if they were to fully serve the public interest. Chain Broadcasting Report, supra, at 97. The Supreme Court upheld the chain broadcasting rules in 1943. NBC v. United States, 319 U.S. 190 (1943).

[51] Chain Broadcasting Report, supra note 49, at 70-73.

[52] Amendment of Part 3 of the Commission's Rules, 11 Fed. Reg. 33 (January 1, 1946).

schedule network programming.[53]

30. Comments. NBC, CBS, ABC, and NAB argue that the dual network rule should be repealed because the rule is allegedly outdated; according to these commenters, the abuses it was designed to prevent can no longer occur, and the radically changed circumstances that warranted repeal of the rule for radio broadcasters now warrant similar repeal for television broadcasters. These parties further claim that the prohibition will prevent broadcast networks from taking full advantage of emerging technology, such as video compression, that would enable the network to time-shift programming and to create programming that meets the demands of more specialized, narrow segments of the television audience. They contend that application of video compression technology would not only permit efficient use of the spectrum but also encourage competition and diversity of program service. These commenters point to the fact that new networks, broadcast and cable, have been created as proof that existing network organizations cannot foreclose entry.[54]

31. Opposing commenters argue that the dual network ban should be left in place to ensure both program diversity and the existence of a competitive marketplace for viewers and programming. MPAA contends that only a few companies could provide a second network in the foreseeable future, and there is no benefit in permitting these companies to lock up distribution channels that should remain available for new, independent programming sources.[55]

32. Proposal. As our review of the changing video environment indicates, one of the principal developments taking place is the growth of multiple channel service providers.[56] Such providers enjoy certain economies of scale and marketing advantages. But broadcasters and broadcast networks seeking to become multichannel service providers have confronted certain regulatory barriers to doing so, and those barriers appear to have channeled the networks' activities into non-broadcast enterprises. While Commission rules prohibit dual networking in the television broadcast context, television networks today can and do provide or participate in multiple networks distributed over cable. For example, NBC operates CNBC and will provide multiple channels of Summer Olympic feeds to cable systems. Capital Cities/ABC owns a substantial share of the ESPN and Arts & Entertainment (A&E) cable services.

33. We note that, with the advancement of satellite technology and associated video compression, the television networks could become multichannel competitors by introducing a multiple channel network and making

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[53] Report, Statement of Policy, and Order in Docket No. 20721, 63 FCC 2d 674, 677, 685 (1977).

[54] NBC Comments at 53; ABC Comments at 27; CBS Reply Comments at 5; NAB Comments at 46.

[55] MPAA Comments at 17.

[56] OPP report, supra note 1, at 4004.

more efficient use of their existing network distribution facilities. To the extent the dual network rule forestalls such innovations that would enhance program diversity and competition and increase the efficiency of spectrum usage, the rule may be disserving the public interest, especially since the television networks have the resources to invest in technological development and the ability to supply programming for additional channels. In addition, the rule may restrict the networks' use of their news gathering and other resources in ways that hamper their ability both to compete with multichannel service providers and to service local broadcast outlets. The existing multinetwork operations of the Home Shopping Network, provided under an FCC waiver, demonstrate some of this potential, i.e., operation of an alternative late-night network available to a separate group of affiliates.[57] The rule may inhibit the creation of alternative language feeds or time-shifting networks of the type developing in the cable industry. Moreover, the coverage of the rule may be unduly broad, since it uses a definition that includes even small regional networks, which might, for example, distribute alternative sports events on a regional basis.

34. Finally, development of satellite technology has made it easier to create networks, and many networks now compete with ABC, NBC, and CBS. For example, the Fox Broadcasting Company, launched five years ago, now has approximately 130 affiliates (ABC, NBC, and CBS each have approximately 200). The number of national basic cable networks increased from 34 in 1982 to 80 in 1990. As of 1990, there were also 9 national pay cable networks, 8 national pay-per-view services, and 38 regional networks. In addition, distribution systems exist for first-run syndicated programming. In the context of this multiplicity of network and other program sources, we believe that repeal of the dual network rule might expand the flexibility available to existing broadcast program providers with little risk to diversity.[58] We seek comment, however, on the possibility that eliminating the rule would prevent entry of new, independent programming sources, which are more likely to lack (or to require more time to arrange for) the funds needed to create a full complement of programming for new distribution channels. We also seek comment on the possible effect of this proposal on network-affiliated and independent

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[57] Memorandum Opinion and Order in the Matter of the Applicability of 47 CFR §73.658(g) and 47 CFR §73.658(k) to Home Shopping Inc., 4 FCC Rcd 2422 (1989). Home Shopping Network provides a 24-hour network service, HSN2, to 23 UHF stations and an overnight programming service, HSN Overnight, to 19 UHF stations. In granting the waiver, the Commission found that simultaneous operation of the two networks would not threaten either program diversity or competition in the advertising market; the actual amount of simultaneous operation averaged only 3.7 hours per 24 hour period in a limited number of markets, and HSN's operations were not dependent on advertising revenue. Moreover, the waiver was consistent with the Commission goal of encouraging alternatives to traditional networking. Id. at 2423.

[58] We have proposed waiver of the rule in certain respects to accommodate the implementation of HDTV in the Advanced Television proceeding. Second Report and Order and Further Notice of Proposed Rulemaking in MM Docket 87-268, 7 FCC Rcd 3340 (1992).

broadcast television stations and whether any safeguards might be needed to counteract possible anticompetitive conduct.

VIII. OTHER NETWORK RULES

35. **Network ownership of stations.** Section 73.658(f) of our rules provides that a network or an entity controlled by a network cannot own television stations in areas where there are few television stations or the stations are of such unequal desirability that competition would be restrained by allowing such licensing.

36. Background. This rule was also adopted in the Chain Broadcasting Report[59] to prevent radio networks from dominating smaller markets. The Commission found that ownership of stations by networks renders them inaccessible to competing networks, and this "bottling up" of the best facilities discouraged the creation and growth of new networks.[60] Along with the other chain broadcasting rules, it was made applicable to television in 1946.[61] The rule has never been applied to prevent a network purchase of a station, although the issue was raised in six cases.[62]

37. Proposal. In view of the radical changes in the television marketplace since 1946, we request comment on repealing this rule. In this regard, we note that even stations in the smallest markets are subject to significant competition today, whether from other broadcast stations, cable, satellite dishes, other multichannel competitors, or VCRs. Moreover, network ownership might allow a struggling station to survive. We thus seek comment on the following questions: Is there any basis to assume that a network could achieve an unfair competitive advantage over the other station owners, including large group owners, that are not subject to this restriction? Would allowing networks into the smallest markets bring better service to the public? Is there a need for this separate rule in addition to our duopoly and one-to-a-market rules?

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[59] Chain Broadcasting Report, supra note 49.

[60] Id. at 67.

[61] See note 51, supra. In 1946, there were only six television stations in the entire United States. Today, the average television market has approximately seven licensed stations and over half of all households receive more than ten over-the-air television signals.

[62] See General Times Television Corp., 13 RR 499 (1956); New Britain Broadcasting Co., 21 FCC 958 (1956); Hyman Rosenblum, 22 FCC 1432, 1441 (1957); St. Louis Telecast, Inc., 22 FCC 625, 738 (1956); Biscayne Television Corp., 22 FCC 1464, 1465 (1957); and National Broadcasting Co., Inc., 44 FCC 2098 (1960). For a discussion of these cases, see L.A. Powe, Jr., "FCC Determinations on Networking Issues in Multiple Ownership Proceedings," at 51-59 (August 1979) in Network Inquiry Special Staff, Preliminary Report on Prospects for Additional Networks (Feb. 1980).

38. **Broadcast of the programs of more than one network.** Section 73.658(l) of our rules provides that in television markets in which two stations have already affiliated with two of the three major 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 the independent station before offering it to the affiliated stations.

39. Background. This rule was adopted in 1971 to prevent network bias against primary affiliations with independent stations (particularly UHF stations) in favor of secondary VHF affiliations.[63] The practical effect of the rule is to force the third network to affiliate with the UHF station. The rule was adopted to address a situation existing in two markets--Raleigh-Durham, NC and Augusta, GA--with two VHF network affiliates and one UHF independent. Proponents of the rule argued that it was detrimental to the Commission's objective of fostering UHF development to allow one or both of the VHF stations in the market to choose among the program offerings of two networks, leaving the UHF station (which would already have been at a handicap with respect to its VHF competitors) with the less desired programming.[64] Even that programming was subject to "recapture" if the VHF station decided to clear it.[65] Moreover, some VHF stations were taking the programming of two different networks shown at the same time, and delaying the broadcast of one of the programs by almost as much as a week. Networks countered that the audience that a UHF station can deliver is so small as not to represent a viable alternative to a VHF station, and the only result will be a loss to the public of certain programming. Moreover, the networks contended that such "sheltering regulation" would remove an incentive to UHF stations to improve their facilities.[66]

40. The Commission concluded that the public interest required adoption of the rule. It 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 viable and competitive and make a permanent contribution to the full development of the nation's television system. The Commission also believed that the public would benefit because network programming would be broadcast at more convenient times. While some who could not receive a UHF signal would lose access to programming previously carried on a VHF station, the Commission

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[63] First Report and Order in Docket No. 18927, 28 FCC 2d 169 (1971). We note that since 1971 the number of television stations has grown from 881 to 1494, an increase of 70 percent.

[64] The UHF station was faced with another disadvantage: it was forced to fill its schedule with often more expensive and less popular syndicated programming. Id. at 172.

[65] Id. at 169-170.

[66] Id. at 177.

concluded that the technical differences were diminishing and the rule was limited by its terms to situations where the UHF and VHF facilities were "reasonably comparable."[67]

41. Proposal. This rule was adopted to provide independent stations enhanced access to programming. Given the great increase in the supply of programming since the rule's adoption in 1971, we question whether any valid reason remains for this rule limiting the options of networks as "sellers" of network programming and local television stations as "buyers" of that programming. On the other hand, network programming may be so commercially valuable that providing independent stations access to such programming in the circumstances covered by this rule may be viewed as enhancing their ability to compete. We thus seek comment on whether market changes now warrant our repealing the rule.

IX. CONCLUSION

42. We seek comment on a wide range of options for altering our television rules so that our regulations keep pace with a significantly changed video marketplace. We ask commenters to provide facts, data, and studies to bolster their arguments concerning which of the rules should be retained, relaxed, or repealed.

X. ADMINISTRATIVE MATTERS

Ex Parte Rules--Non-Restricted Proceeding

43. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

Comment Information

44. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 24, 1992, and reply comments on or before September 23, 1992. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Initial Regulatory Flexibility Analysis

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[67] Id. at 190-192.

45. **Reason for the Action:** This proceeding was initiated to review and update the Commission's national and local television ownership rules, certain television crossownership rules, and certain rules governing the television broadcast networks.

46. **Objective of this Action:** The actions proposed in this Notice are intended to relax some of the national and local ownership and crossownership restrictions on television broadcasters, and certain business restrictions on the broadcast television networks, to enable them to adjust to the changing communications marketplace, and to better respond to the needs of the public.

47. **Legal Basis:** Authority for the actions proposed in this Notice may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303.

48. **Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule:** None.

49. **Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule:** None.

50. **Description, Potential Impact and Number of Small Entities Involved:** Approximately 2700 existing television broadcasters of all sizes may be affected by the proposals contained in this decision.

51. **Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:** The proposals contained in this NPRM are meant to simplify and ease the regulatory burden currently placed on commercial television broadcasters.

52. As required by § 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq. (1981)).

Additional Information

53. For additional information on this proceeding, contact Beverly McKittrick, Mass Media Bureau, (202) 632-5414.

XI. ORDERING CLAUSE

54. IT IS ORDERED that the temporary waiver of Section 73.3555(a)(3)

of the Commission's rules granted Act III Broadcasting of Rochester, Inc. is FURTHER EXTENDED until Commission action with respect to Section 73.3555(a)(3) in this proceeding becomes final.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Donna R. Searcy
Secretary

APPENDIX A

LIST OF COMMENTERS

Initial Comments

1. Abry Communications
2. Associated Broadcasters, Inc. and Galloway Media, Inc.
3. Association of America's Public Television Stations and the Public Broadcasting Service
4. Association of Independent Television Stations, Inc. (INTV)
5. Bonneville International Corporation
6. Capital Cities/ABC, Inc.
7. CBS, Inc.
8. Cedar Rapids Television Company, Jefferson-Pilot Communications Company of Virginia, Jewell Television Corp., Lanford Telecasting Co., Inc., Marsh Media, Inc., Marsh Media Of El Paso and WTZA-TV Associates
9. Clear Channel Communications, Inc.
10. Community Broadcasters Association
11. Corporation For Public Broadcasting
12. ESPN, Inc.
13. Fisher Broadcasting Inc.
14. Fox Broadcasting Company
15. Freedom Of Expression Foundation, Inc. and The Media Institute
16. Gaston Taxpayers Association
17. General Instrument Corporation
18. Great American Television And Radio Company, Inc.
19. Group One Broadcasting
20. Home Shopping Network, Inc.
21. Motion Picture Association Of America, Inc. (MPAA)
22. Motorola Inc.
23. National Association Of Broadcasters (NAB)
24. National Broadcasting Company, Inc. (NBC)
25. National Cable Television Association, Inc. (NCTA)
26. National Football League
27. National Telephone Cooperative Association
28. Network Affiliated Stations Alliance (NASA)
29. Office Of Communication Of The United Church Of Christ (OC/UCC)
30. Pinelands, Inc.
31. Radio-Television News Directors Association
32. Tele-Communications, Inc. (TCI)
33. Teledemocracy Project
34. Television Operators Caucus, Inc.
35. Tribune Broadcasting Company
36. United States Catholic Conference (USCC)
37. Univisa, Inc.
38. Westinghouse Broadcasting Company, Inc.
39. WTZA-TV Associates

Reply Comments

1. Association of Independent Television Stations, Inc. (INTV)
2. Capital Cities/ABC, Inc.
3. CBS, Inc.

4. Community Broadcasters Association
5. Fox Broadcasting Company
6. King World Productions, Inc.
7. Land Mobile Communications Counsel
8. Major League Baseball
9. Motion Picture Association of America, Inc.
10. National Broadcasting Company, Inc.
11. National Cable Television Association, Inc.
12. Network Affiliated Stations Alliance
13. Press Broadcasting Company, Inc.
14. Program Producers and Distributors Committee
15. Tele-Communications, Inc. (TCI)
16. Telecommunications Research and Action Center and the Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights (TRAC)
17. Tribune Broadcasting
18. Silvia Stagg
19. Women Against Military Madness (WAMM) Media Watch

May 14, 1992

SEPARATE STATEMENT
OF
COMMISSIONER ERVIN S. DUGGAN

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

When we adopted the Notice of Inquiry in this docket, I said that I fully supported reviewing the Commission's rules and policies in light of the rapidly changing conditions in the video marketplace. In particular, I believe the FCC should do all that it can to help free, over-the-air television broadcasters compete against multichannel video providers with a dual revenue stream. A new framework for station ownership may, in fact, help promote that competition. I certainly see no harm in asking the question, particularly in terms of the relatively moderate proposals set forth in this Notice.

However, as I noted in my separate statement in the Radio Rules proceeding last March, I do not assume that actions that are appropriate for the highly fragmented and economically embattled radio industry are necessarily advisable here. To be sure, the television marketplace is changing, as the study of the Office of Plans and Policy made clear. Whether greater concentration of television station ownership is the appropriate regulatory response, however, is very much an open question for me. I will be most interested, therefore, in the comments that discuss the Notice's ownership proposals in the context of the industry's long-term financial picture.

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