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

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket 91-221
Regulations Governing	)	
Television Broadcasting	)	

To: The Commission

**COMMENTS OF LIN BROADCASTING CORPORATION,
MIDWEST TELEVISION, INC., PADUCAH NEWSPAPERS, INC.
POST-NEWSWEEK STATIONS, INC.,
PROVIDENCE JOURNAL COMPANY, AND
THE SPARTAN RADIOCASTING COMPANY**

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SUMMARY

The Commission's duopoly rule was adopted in 1940 and tightened in 1964 in an effort to foster diversity in a young television industry. In the ensuing three decades, the video marketplace has undergone a thorough and remarkable transformation. The number of television stations has nearly doubled and now stands at more than 1,000; the proportion of the country's population that can receive more than 10 over-the-air television signals has grown from 4 percent to more than half; cable television has arisen as a competitive force and now serves almost 60 percent of the population; and new video technologies that even industry visionaries could not have imagined 30 years ago are being offered to the public.

The shifting economics of the television market have led to hard times for the broadcasting industry. Some stations have gone dark and others may follow; others teeter on the brink of economic failure and cannot afford to produce local news and a substantial amount of public affairs programming. The very rule that was intended to foster diversity in local television markets now threatens to undermine its own goals by perpetuating a counterproductive industry structure. The rule should be altered to reflect the realities of the new video marketplace and to permit broadcasters to realize the economies of scale that their competitors enjoy today.

The duopoly rule should be altered in two ways. First, the Commission should restrict common ownership only where both stations actually serve the same market. The overbroad Grade B contour overlap benchmark should be eliminated in favor of a more realistic technical standard (such as Grade A or city-grade overlap). Second, VHF-UHF and UHF-UHF combinations in the same market should be permitted. This more realistic policy would permit struggling UHF stations to combine with other stations rather than go dark or operate marginally. Beneficial combinations of administrative, production, and other resources would permit television broadcasters to focus their scarce resources on the provision of high-quality programming service to their communities of license. Granting television broadcasters a realistic degree of local ownership flexibility will foster a vibrant and diverse video marketplace and will serve the underlying goals of diversity and competition more efficiently than the duopoly rule itself.

Finally, the Commission's existing policy on local marketing agreements ("LMAs") defines clearly the obligations of licensees operating within such arrangements. It would be counterproductive and unnecessary to make that policy more restrictive, given that the Commission has found that LMAs can serve the public interest; given the clarity of the Commission's current policy; and given that only a "handful" of such arrangements exist in the television industry.

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LIN Broadcasting Corporation, Midwest Television, Inc., Paducah Newspapers, Inc., Post-Newsweek Stations, Inc., Providence Journal Company, and The Spartan Radiocasting Company, licensees of 32 television stations (collectively, "Licensees"), applaud the Commission's far-ranging review of its television multiple ownership regulations. As the Commission and its staff have noted repeatedly, the television marketplace has evolved into a far more competitive and challenging environment in the years since the Commission's ownership restrictions were formulated.[1/] Expedited regulatory reform along the lines proposed in this proceeding constitutes a critical step toward ensuring that the Commission's regulations accurately reflect the current

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[1/] See, e.g., Review of the Commission's Regulations Governing Television Broadcasting, Notice of Proposed Rule Making, 7 F.C.C. Rcd. 4111 (1992) ("NPRM"); Broadcast Television in a Multichannel Marketplace, 6 F.C.C. Rcd. 3996 (1991) ("Multichannel Marketplace").

realities of television broadcasting and permit broadcasters to serve the public in the most effective manner possible. Licensees especially urge that the Commission modify duopoly restrictions fashioned for a far different era that now impair, rather than safeguard, the goals of preventing undue concentration of control of video media and promoting diversity of video services to the public. Specifically, Licensees recommend that the duopoly rule be modified to limit only common ownership of stations that actually serve the same core market area and to permit VHF-UHF and UHF-UHF combinations within the same service area.

I. THE DUOPOLY RULE NO LONGER SERVES BUT NOW IMPAIRS THE INTERESTS OF DIVERSITY IT WAS INTENDED TO PROTECT.

The Commission's prohibition against ownership of more than one television station in a market has its roots in a provision promulgated in the infancy of television broadcasting. That rule prohibited only common ownership in "substantially the same service area":[2/]

> No person (including all persons under common control) shall, directly or indirectly, own, operate, or control more than one high frequency broadcast station that would serve substantially the same service area as another high frequency broadcast station owned, operated, or controlled by such person.

[2/] Rules Governing Standard and High Frequency Broadcast Stations, 5 Fed. Reg. 2382, 2384 (1940) (former Section 3.228 of the Commission's Rules).

The rule was made more restrictive in 1964 to prohibit any Grade B overlap between commonly owned television stations,[3/] and it has remained essentially unchanged since.[4/] Section 73.3555(a)(3) of the Commission's Rules (the "duopoly rule") now provides:

> No license for [a television] broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates, or controls one or more broadcast stations in the same service and the grant of such license will result in . . . [a]ny overlap of the Grade B contour of the existing and proposed TV stations. . . .

When the Grade B duopoly standard was adopted, cable television served a handful of Americans and largely retransmitted broadcast television signals. Only 4 percent of households received 10 or more over-the-air television signals, and only 649 television stations were on the air.[5/] Today, cable television makes an average of 30 channels of programming available to more than 91 percent of households; almost 60 percent of U.S. households subscribe to cable

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[3/] See Amendment of Sections 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcasting Stations, Report and Order ("Report & Order"), 45 F.C.C.2d 1476, on recon., 3 R.R.2d 1554 (1964).

[4/] In 1991, the Commission adjusted the standards for acquisition of satellite stations, linking a new favorable presumption (in part) to a lack of city-grade overlap. See Television Satellite Stations, 6 F.C.C. Rcd. 4212 (1991).

[5/] See NPRM, 7 F.C.C. Rcd. at 4114.

television.[6/] Even ignoring cable television, more than 54 percent of all U.S. households have access to 10 or more over-the-air broadcast signals. The number of licensed commercial television stations now stands at 1,093. Almost 70 percent of households have video-cassette recorders, and new technologies such as wireless cable and direct broadcast satellites promise to bring even more alternative video services to the marketplace. Today's more sophisticated television viewers have innumerable programming choices that were not even imaginable 30 years ago.

Beyond question, the 1992 video marketplace is a markedly more diverse environment than the 1964 television marketplace. This dramatic transformation in the video marketplace undermines the basic assumptions on which the duopoly rule was premised. The Commission adopted the duopoly rule in its current form because it was concerned with fostering diversity in a young television industry:

> This objective flows logically from two basic principles underlying the multiple ownership rules. First, in a system of broadcasting based upon free competition, it is more reasonable to assume that stations owned by different people will compete with each other, for the same audience and advertisers, than stations under the control of a single person or group. Second, the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have 'an inordinate effect, in a political, editorial, or

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6/ See Multichannel Marketplace, 6 F.C.C. Rcd. at 4008 & Table 1.

similar programming sense, on public opinion at the regional level.'[7/]

These two diversity concerns assume, quite naturally for the era in which they were expressed, that a sufficient economic base exists to support all licensed television stations under separate ownership; that all television stations in a market compete head-to-head for the same audience and advertisers; and that Grade B contour overlap realistically defines that area of direct intra-market competition.

Because of the intense competition in the new video marketplace, it is no longer reasonable to conclude that all stations can remain on the air under separate ownership. As the Commission has recognized, even stations in large markets are not immune from the threat of economic decline, and "[i]n smaller markets the effect will be more severe with some stations going off the air, reducing viewer choice."[8/] A rigid requirement of separate ownership even when such ownership is not economically feasible threatens to force some stations off the air, denying viewers the very diversity of programming choice that the duopoly rule was designed to foster.[9/]

7/ Report and Order, 45 F.C.C.2d at 1477 (footnotes omitted).

8/ Multichannel Marketplace, 6 F.C.C. Rcd. at 4001.

9/ The Commission has recognized that pursuit of diversity should not be an end in itself. "[I]n developing these rules, we have recognized that diversification of ownership is not an absolute factor and that it must be balanced against the demonstrable benefits resulting from the group ownership of stations, such as promoting diversity of

It has also become an anachronism to assume that all channels compete directly with all other channels for the same viewers and advertisers even in stations' core service areas.[10/] In today's highly diverse market, channels often evolve to serve niche audiences, and, furthermore, co-ownership of more than one channel may foster, rather than undermine, diversity. For example, the diversity represented by Cable News Network, Headline News, Turner Network Television, Station WTBS(TV), and a forthcoming all-animation channel is not undermined by the common ownership of these enterprises by Turner.

The public will benefit by the removal of regulatory constraints that prevent broadcasters from bringing more diverse programming choices to local television markets. As the NPRM recognizes, the economies of scale possible with co-located broadcast facilities "hold promise for the greatest economic efficiencies" (7 F.C.C. Rcd. at 4115). These economies can make it possible, for example, for a broadcaster to program a network-affiliated station and provide a local all-news channel on a currently struggling UHF station that is

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program service and aiding in the development of new broadcast services." Broadcast Multiple Ownership Rules, 4 F.C.C. Rcd. 1723, 1723-24 (1989) (footnote omitted).

[10/] As shown in Part II, the existing Grade B overlap standard clearly sweeps too wide to include situations where stations serve entirely different markets as well as only fringe areas of the same market.

unable to provide local coverage at all.[11] If broadcasters are permitted to combine operations (as their competitors in the cable industry and other segments of the media business can do today), duplicative administrative costs can be reduced. Significant economies of common ownership can permit broadcasters to focus their scarce resources on the provision of programming service at a level that may not be possible if each station were to remain separately owned. For example, stations serving portions of the same state could draw on similar news bureaus and sources, more effectively conduct state-wide public service campaigns, share electronic news gathering facilities, and cooperate in other ways that will benefit their viewers. Stations that could otherwise be forced to go dark or broadcast marginally would be able to continue to serve the public, thereby enhancing the number of choices available to viewers.

In short, the 1960s-era television duopoly restrictions are no longer necessary and appropriate to prevent undue concentration of economic control and to ensure diversity of video services. Granting broadcasters local ownership flexibility will foster a more vibrant and diverse

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11/ Indeed, some markets are beginning to reflect efforts by broadcasters to leverage their substantial journalistic resources by creating all-news channels, but the duopoly rule has driven those efforts largely into cooperative cable ventures. Surely the net gain to diversity would be greater if all viewers, and not only those that subscribe to cable, could benefit from such expanded local news coverage.

video marketplace than the current overbroad duopoly prohibition.

II. ANY DUOPOLY RESTRICTION SHOULD FOCUS ONLY ON STATIONS SERVING THE SAME MARKET AND SHOULD PERMIT VHF-UHF AND UHF-UHF COMBINATIONS.

Because of the radical changes in the video marketplace, the viewing public will benefit from the removal of the overbroad barriers of the duopoly rule that inhibit broadcasters from serving the public in the most effective manner. Licensees recommend that the duopoly rule be relaxed to restrict only common ownership of stations that actually serve the same core market and permit VHF-UHF and UHF-UHF combinations even when both stations serve the same market.

A. Common Ownership Of Stations That Do Not Serve The Same Television Market Should Not Be Restricted.

The Commission's rule should not prevent common ownership of television stations that do not serve essentially the same market. The Grade B contour benchmark is significantly overbroad because it prohibits common ownership of stations that serve separate and distinct television markets -- New York and Philadelphia, for just one example.[12/] Stations in different markets generally compete

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12/ _See_ Capital Cities Communications, Inc., 59 R.R.2d 451, 461-65 (1985). Indeed, the existing standard restricts common ownership of stations even where Grade B contour of one station does not include any portion of the area of dominant influence of the other station.

only marginally, and sometimes not at all, for the same viewers or advertising. With the growth of alternative video services, no compelling public interest justification exists today for preventing the significant efficiencies that can result from common ownership of such stations.

The use of Grade B contour overlap benchmark produces other anomalous results. For example, one Licensee operates a station in a hyphenated market that is effectively cut off from several counties by a range of hills. Although the station technically overlaps Grade B contours with a station across the range, very little actual overlap exists between the stations; nonetheless, the duopoly rule prevents this Licensee from acquiring the second station and greatly improving service to the entirety of its market.

Any technical benchmark adopted by the Commission should be closely tailored to the market areas where stations directly compete. The proposal in the NPRM to use a Grade A contour overlap standard constitutes a conservative approach that would avoid at least many situations where stations compete in different markets. The NPRM is correct that a Grade A standard would better reflect stations' "core markets" (7 F.C.C. Rcd. at 4115); but, as the Commission has recognized on several other occasions, a narrower principal community contour standard would also limit common ownership of stations that compete in the same core area.[13/] Even in 1964, the Commission recognized that a Grade A overlap standard might be appropriate but at that time adopted the Grade B benchmark, reasoning that Grade B signals provided the only video service in some parts of the United States.[14/] This is not, of course, the case today and is not a persuasive rationale for retaining an overbroad benchmark.

Either a Grade A or principal city overlap standard, therefore, would constitute a more realistic limit on combinations serving the same area. There are numerous metropolitan and rural areas across the country where stations could benefit from common ownership even though the markets to be served by the stations differ significantly. Stations in large, small and hyphenated markets could benefit substantially from utilization of the Grade A contour for the duopoly rule, as could stations in communities that comprise a larger metropolitan area. The goals of diversity and competition would be better served by the use of a standard that more closely reflects the actual service area of broadcast stations.

13/ See Television Satellite Stations, 6 F.C.C. Rcd. at 4214; Amendment of the Broadcast Multiple Ownership Rules, 4 F.C.C. Rcd. 1723, 1725, 1728 (1989) (in relaxing the radio duopoly rules, the Commission determined that "[t]he principal city contour standard that we are adopting more accurately reflects the geographic area where most of a station's audience is located and relieves the overly restrictive effects of the current rule . . .").

14/ See Report & Order, 45 F.C.C.2d at 1484.

B. The Duopoly Rule Should Permit VHF-UHF and UHF-UHF Combinations In The Same Market.

The duopoly rule should be relaxed to permit same-market UHF-UHF and VHF-UHF common ownership. UHF television stations operate under substantial handicaps that, despite the best efforts of the Commission and the industry, have not been cured over time. Several UHF stations have gone dark in recent years and a significant number of others teeter on the brink of economic failure or must limit local programming effects including news and public affairs programming. Even in 1964, the Commission recognized that special circumstances surrounded the UHF service and required special consideration. In deciding on reconsideration that application of the Grade B contour standard to existing UHF stations would work an unnecessary hardship, the Commission was quite prescient:

> Many UHF operations have lost substantial sums during the lean early days of UHF. . . . to deny such stations the opportunity to improve service by new, stricter duopoly rules might tend to keep them in an inferior position competitively, thus thwarting the developments we have otherwise tried to encourage. Such denial could conceivably lead to a station's demise, thus lessening diversity and competition which it is the purpose of these rules to achieve.[15/]

The "lean days" of UHF have not, regrettably enough, come to an end.

15/ Reconsideration Order, 3 R.R.2d at 1562.

For the same reasons the Commission expressed in 1964, special considerations militate in favor of permitting UHF stations to have greater ownership flexibility. VHF-UHF or UHF-UHF ownership combinations will permit UHF stations that are experiencing difficulties staying afloat to benefit from common local ownership, helping preserve the choice and diversity that the American public has come to expect from its system of broadcasting.[16/] Such a policy will permit marginal stations to present higher quality and more issue-responsive programming and local news by realizing economies of scale with other stations. A net gain in news and public interest programming should result because stronger stations are more likely to be able to afford resource-intensive local programming efforts.[17/]

Licensees urge that relaxation of the duopoly rule not be reserved for only the largest television markets. The economic threat to continued UHF survival is greatest in

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16/ The Commission asks for comment on whether relaxation of the duopoly rule to permit VHF-UHF and UHF-UHF combinations would be mooted by the ultimate adoption of advanced television ("ATV") service in the United States, which is expected to diminish the technical and coverage differences that currently exist between VHF and UHF stations. See NPRM at 11 n.37. Licensees believe it is premature to judge whether ATV will bring parity to the video marketplace. When ATV finally is implemented, the marketplace will have evolved to the point where another attic-to-basement adjustment of the Commission's rules may be necessary. At that point, it will become possible to judge whether a different formulation of the duopoly rule is necessary, but such an inquiry is impossible to perform with any accuracy at this juncture.

17/ See Multichannel Marketplace, 6 F.C.C. Rcd. at 4031.

smaller markets; and these markets would be harmed most dramatically by the diminution in viewer choice and diversity represented by the loss of a local television broadcast station. Permitting common ownership of stations that do not serve substantially the same area and permitting VHF-UHF or UHF-UHF common ownership even in smaller markets will help preserve the diversity that the duopoly rule historically has tried to achieve.

If the duopoly rule is relaxed to more appropriately reflect the new video marketplace, the viewing public will be well served. Broadcasters would be free to compete more effectively with cable programmers, which now can bring a virtually unlimited number of channels under common control into almost 60 percent of American households. Broadcasters also will be free to combine administrative, production, and other staffs, and more effectively respond to market forces in serving the public in their communities of license.

III. THE COMMISSION NEED NOT ALTER ITS POLICY TOWARD TELEVISION LOCAL MARKETING AGREEMENTS.

The NPRM seeks comment on whether to impose new restrictions on television local marketing agreements ("LMAs").[18/] The Commission's existing policy makes it clear that parties to LMAs must maintain ultimate control of their stations (including programming, personnel and finances) and

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[18/] See NPRM at 12.

must comply with federal and state antitrust laws as well.[19/] There does not appear to be any necessity for abandoning this sound policy in favor of imposing new regulatory obstacles and administrative burdens on television stations.

The Commission recently has reiterated its prior determination that LMAs are beneficial mechanisms that "enable stations to pool resources and reduce operating expenses without necessarily threatening competition or diversity."[20/] In view of the restraints on these beneficial arrangements that already exist, and because (as the Commission has noted) only "a handful of [local marketing] agreements" exist today, it is unnecessary to retard the opportunity for use of LMAs by imposing additional governmental regulations absent adoption of new ownership caps similar to those fashioned for radio that would permit co-ownership of more than two stations in the same market. Of course, if the television duopoly rules were not relaxed even to permit more than one station in a market, the imposition of the radio model (which attributes ownership interests to parties to LMAs) would effectively preclude LMAs between television stations in the same area. This result would disserve the public interest by eliminating

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19/ See, e.g., J. Dominic Monahan, 6 F.C.C. Rcd. 1867 (1991); Peter D. O'Connell, 6 F.C.C. Rcd. 1869 (1991); Bruce M. Madden, 6 F.C.C. Rcd. 1871 (1991); Roy R. Russo, 5 F.C.C. Rcd. 7586 (1990); Joseph A. Belisle, 5 F.C.C. Rcd. 7585 (1990).

20/ Revision of Radio Ownership Rules, 7 F.C.C. Rcd. 2755, 2766 (1992).

a beneficial structure that broadcasters can effectively use to serve their communities of license.

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For these reasons, the Commission should relax the duopoly rule to restrict only common ownership of stations serving the same basic market and permit VHF-UHF and UHF-UHF combinations in the same market. The Commission need not and should not impose new restrictions on the use of television LMAs.

Respectfully submitted,

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KXAM-TV, Llano, Texas
KXAS-TV, Fort Worth, Texas
WAND(TV), Decatur, Illinois
WANE-TV, Fort Wayne, Indiana
WAVY-TV, Portsmouth, Virginia
WISH-TV, Indianapolis, Indiana
WOOD-TV, Grand Rapids, Michigan

MIDWEST TELEVISION, INC.

KFMB-TV, San Diego, California
WCIA(TV), Champaign, Illinois
WCFN(TV), Springfield, Illinois
WMBD-TV, Peoria, Illinois

PADUCAH NEWSPAPERS, INC.

WPSD-TV, Paducah, Kentucky

POST-NEWSWEEK STATIONS, INC.

WDIV(TV), Detroit, Michigan
WFSB(TV), Hartford, Connecticut
WJXT(TV), Jacksonville, Florida
WPLG(TV), Miami, Florida

PROVIDENCE JOURNAL COMPANY

KING-TV, Seattle, Washington
KGSW-TV, Albuquerque, New Mexico
KGW-TV, Portland, Oregon
KHNL(TV), Honolulu, Hawaii
KHBC-TV, Hilo, Hawaii
KOGG(TV), Wailuku, Hawaii
KMSB-TV, Tucson, Arizona
KREM-TV, Spokane, Washington
KTVB-TV, Boise, Idaho
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