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

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| In re | ) | |
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| Review and Revision of Rules | ) | RM-8414 |
| Governing Radio Station | ) | |
| Ownership Opportunities | ) | |

## REPLY TO COMMENTS ON PETITION FOR RULE MAKING

In these brief reply comments, the National Association of Broadcasters ("NAB")[1] NAB reiterates its strongly-held view that some additional changes need be made in the "duopoly" rules currently applicable to radio station ownership. The scope of -- and rational for -- our proposed rule changes are spelled out thoroughly in our above-captioned Petition for Rule Making.[2] In that Petition we recommended several changes to the Commission's local radio ownership rules, especially as they apply to smaller market operations. Each proposed rule change was founded on a central notion -- giving radio broadcasters an enhanced ability to compete in the local market.

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[1]NAB is a nonprofit, incorporated association which serves and represents America's radio and television broadcast stations and networks.

[2]This petition was filed at the Commission on August 23, 1993. The Commission placed the NAB Petition on public notice, and assigned it file number RM-8414 on January 11, 1994. (Report No. 1996.; "Associate Managing Director Public Information and Reference Services -- Petitions for Rule Making Filed.")

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Following the placement of the NAB Petition on FCC public notice, several developments have occurred that provide further support for at least the kinds of rule changes NAB advanced in its Petition. These developments, we believe, should provide even greater stimulus for the Commission's near term issuance of a Notice of Proposed Rule Making.

For one, no comments have been submitted in opposition to our Petition. Moreover, the record does contain support reflecting the concerns which exist among many station owners who are largely -- if not totally -- incapable of owning (or engaging in a time brokerage-type local marketing agreement with) another station in the same "market."

Additionally, and perhaps even more compelling, is the introduction earlier this month, in the United States Senate, of S.1822, the "short title" of which is the "Communications Act of 1994." Co-sponsored by Senator Ernest Hollings (D., S.C.), and currently by 12 other U.S. senators, the bill addresses a wide range of proposed statutory amendments. Among the bill's provisions -- and relevant to the matters raised in the NAB Petition -- is the section mandating that:

> [w]ithin one year after the date of enactment of this Act, the Commission shall, after a notice and comment proceeding, modify or remove such national and local ownership rules on radio and television broadcast stations as are necessary to ensure that broadcasters are able to compete fairly with other media providers while ensuring that the

public receives information from a diversity of media voices.[3]

Thus, there is growing Congressional support for the kind of regulatory review recommended in the above-captioned NAB Petition. Indeed, the bill looks toward significant changes in the entire panoply of broadcast station ownership rules -- not just the radio station local duopoly rules that were the subject of our Petition. Accordingly, NAB believes that any FCC rulemaking review of the radio ownership rules should include a thorough analysis of both the local and the national restrictions to determine whether further liberalization of these rules would be in order.

Surely, this bill asks the Commission to ensure that any changes to these multiple ownership rules not endanger the diversity of media voices available to the public. However, NAB fully can rely, in this regard, on the wealth of diversity already available to local audiences.

As noted in the NAB Petition, NAB performed a comprehensive study, in 1987, of the media outlets then available to the public.[4] The survey revealed a virtual treasure trove of diverse media outlets. For example, the average market then had access to 36 cable channels, 10 over-the-air television signals,

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[3]S. 1822, 103d Congress, 2d Sess., Title VII ("Media Diversity"), Section 701 ("Removal of Broadcast Station Ownership Restrictions").

[4]See Vestal, P., "An Analysis of Media Outlets by Markets," submitted as Appendix B to NAB's Comments in MM Docket No. 87-7, filed June 15, 1987.

20.4 AM and 19.5 FM radio signals, 15.9 newspapers, 11.8 magazines with subscription figures of at least five percent, and a VCR penetration rate of 48.7%.[5] Now, of course, these figures are generally much higher.

Today, cable penetration has grown to 64.5% nationwide, ranging from 48% to 91% in individual markets.[6] VCR penetration now has risen to 81.7% of households.[7] Again, since that survey was completed, the several other alternative information sources have continued to grow, furnishing unsurpassed diversity of programming. Additionally, the existence and growth of these rival media further guarantee competitive local radio advertising markets.

The kinds of regulatory changes envisioned in the NAB Petition clearly would not endanger such diversity. Rather, the relief sought in the NAB Petition would actually work to enhance diversity in that radio outlets would have greater resources to contribute diverse programming in the local marketplace. Also, this great wealth of diversity would not be threatened if the Commission were to issue a Notice of Proposed Rule Making, and later adopt a Report and Order, which would have within their scope much more significant changes to the radio ownership landscape.

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[5] Id. at 1.

[6] See May 1993 Cable & Other TVHH Universe Estimates Update, The Arbitron Company, released July, 1993.

[7] See May 1993 VCR Penetration Estimates, The Arbitron Company, released June, 1993.

Moreover, while S.1822 specifies a minimum amount of time (after the bill's becoming law) for the Commission to engage in a rule making to consider such rule changes, no existing law provides any restraint on the Commission moving ahead -- today -- to propose at least the rule changes recommended in the NAB Petition. Indeed, we believe the Commission would be on solid ground if it were to inaugurate a rule making looking at rule changes beyond those advanced in our Petition, especially in light of the vast changes in the regulatory and competitive landscape that have occurred in recent years and are envisioned under the National Information Infrastructure concept.

**CONCLUSION**

For the reasons stated above, submitted in the above-reference NAB Petition and found in the record of RM-8414, NAB again urges the Commission to revisit -- through rule making -- the radio station duopoly rules. Indeed, it would appear that the Commission would be well advised to propose, in such a rule making Notice, broadcast station ownership regulatory changes

that could go well beyond the proposals embodied in the NAB Petition.

Respectively submitted,

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February 25, 1994

**CERTIFICATE OF SERVICE**

I, Judith L. Gerber, do hereby certify that a true and correct copy of the foregoing "Reply to Comments on Petition for Rule Making" of the National Association of Broadcasters was sent, by first class mail, on this date, February 25, 1994, to the following:

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