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

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: December 15, 1994 Released: January 17, 1995

Comment Date: April 17, 1995
Reply Comment Date: May 17, 1995

By the Commission: Commissioners Quello and Ness issuing separate statements.

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I. INTRODUCTION

1. With this Further Notice of Proposed Rule Making ("Further Notice" or "FNPRM"), the Commission proposes a new analytical framework within which to evaluate our ownership rules applied to television stations. This new framework provides a more structured approach to a comprehensive economic and diversity analysis of the rules. While we have found the comments received in response to the Notice of Inquiry ("Inquiry")[1] and Notice of Proposed Rule Making ("Notice" or "NPRM")[2] useful, we believe that the issuance of this Further Notice is necessary to permit us to compile a record based upon this new framework which will enable us to make a fully informed decision in this important area.[3] Additionally, we solicit further comments here in MM Docket No. 87-8, Television Satellite Stations, on issues relevant to the two proceedings.

II. BACKGROUND

A. The Rules

2. Regulation of broadcast station ownership has been a constant feature of the Commission's Rules for decades. In the early 1940's the Commission, for the first time, established limits on the number of licenses that could be held under common control nationally. These initial multiple ownership rules prohibited the issuance of a license to anyone already possessing a license in the same broadcast service unless the applicant could demonstrate that the issuance of the license (1) would have a pro-competitive impact, and (2)

[1] 6 FCC Rcd 4961 (1991).

[2] 7 FCC Rcd 4111 (1992).

[3] Although the network rules were also a subject of the Inquiry and the Notice, further comment is currently being sought only with respect to ownership issues. We are taking a step-by-step approach, looking first at the ownership structure for television.

would not result in the concentration of control of broadcasting facilities in a manner inconsistent with the public interest. Absolute limits were placed on the common ownership of FM stations (6 stations)[4] and TV (3 stations, raised to 5 in 1944),[5] and, in 1946, the Commission placed a de facto limit of 7 on the ownership of AM stations by denying CBS an application for an eighth such station.[6] In 1953, the Commission adopted national multiple ownership rules that allowed for the common ownership of 7 AM, 7 FM and 5 TV stations.[7] The stated rationale for limiting ownership on a national basis was twofold -- to encourage diversity of ownership in order to foster the expression of varied viewpoints and programming, and to safeguard against undue concentration of economic power.[8]

3. The national ownership rules remained substantially unchanged between 1954 and 1984. At that time, citing an "explosive growth and change" in the mass media market, the Commission initially decided to phase out national ownership limits but, on reconsideration, established a twelve station limit in each service.[9] Additionally, it established an "audience reach cap" that limited the aggregate ownership interests in television stations to those which reached a maximum of 25 percent of the national audience.[10] Also, the Commission established a minority "bubble" which increased to 14 the permissible ownership limitation in any service for minorities; persons acquiring cognizable interests in minority owned and controlled broadcast stations were also entitled to these higher limitations. Similarly, the aggregate reach of TV stations was raised to 30% of the national audience, provided that at least 5 percent of that reach is contributed by minority controlled stations. Although the Commission has since amended the national and local ownership limitations for radio

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[4] 5 FR 2384 (1940).

[5] 6 FR 2284 (1941); 9 FR 5442 (1944).

[6] Sherwood B. Brunton, 11 FCC 407 (1946).

[7] Amendment of Multiple Ownership Rules, 9 RR 1563 (1953). The limit on television stations was raised to 7, with no more than 5 being VHF stations, the next year. Amendment of Multiple Ownership Rules, 43 FCC 2797 (1954).

[8] Amendment of Multiple Ownership Rules, (Gen. Docket 83-1009) 100 FCC 2d 17, 18 (1984), recon. granted in part 100 FCC 2d 74 (1985).

[9] Id.

[10] UHF stations were attributed only 50 percent of their theoretical Area of Dominant Influence ("ADI") reach because of the physical limitations of their signals. 100 FCC 2d at 93-94.

stations,[11] the limits have remained the same for television since 1984.

4. With respect to local ownership, the Commission, early in its existence, addressed "duopoly," the common ownership of more than one station in the same service in a particular community. In 1938, the Commission adopted a strong presumption against granting license applications that would result in duopolies.[12] This was based in part on a "diversification of service" rationale, which suggests that the Commission believed its diversity concerns were better promoted by a greater number rather than a lesser number of separately owned outlets. Rules prohibiting FM duopolies were adopted in 1940 and a rule banning AM duopolies followed in 1943. As indicated in the NPRM in the instant proceeding, the current version of the television duopoly rule was adopted in 1964, when the Commission promulgated ownership restrictions based on fixed contour overlap standards.[13] The Commission relaxed the limitations on radio in 1992.[14]

5. The duopoly rule did not prevent a single party from owning or controlling more than one station in the same area if each station was in a different service. In 1970, the Commission adopted a one-to-a-market rule proscribing common ownership, operation, or control of more than one broadcast station in the same area, regardless of the type of broadcast service involved.[15] The Commission again cited fostering maximum competition in broadcasting and the promotion of diversification of programming sources and viewpoints as justification for the one-to-a-market rule. Later, in 1989, citing a dramatic growth in the number of local broadcast outlets, the resulting reduction in the risk that relaxing the one-to-a-market rule would significantly decrease competition, and evidence that joint ownership of two or more media outlets in the same market does not necessarily lead to a commonality of viewpoints,[16] the Commission added Note 7 to Section 73.3555 of the Commission's Rules.

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[11] Revision of Radio Rules and Policies, 7 FCC Rcd 2755 (1992), recon. granted in part, 7 FCC Rcd 6387 (1992), further recon., 9 FCC Rcd 7183 (1994).

[12] Genesee Radio Corp., 5 FCC 183 (1938).

[13] Report and Order in Docket 14711, 45 FCC 1476 (1964), on reconsideration, 3 RR 2d 1554 (1964). The prohibited overlap adopted for the AM and FM services was 1 mV/m, and Grade B overlap was barred for the television service.

[14] Revision of Radio Rules and Policies, supra at 2773-74.

[15] First Report and Order, Docket No. 18110, 22 FCC 2d 306 (1970). On reconsideration, the Commission abandoned the restrictions the rule would have placed on the formation and transfer of AM/FM combinations. Memorandum Opinion and Order, Docket No. 18110, 28 FCC 2d 662 (1971).

[16] Second Report and Order in MM Docket 87-7, 4 FCC Rcd 1741, 1744 (1989), on reconsideration 4 FCC Rcd 6489 (1989).

That Note stated that the Commission would look favorably upon requests for waiver of the one-to-a-market rule if the television-radio 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 involved a "failed" station.[17] It also indicated that the Commission would evaluate, on a case-by-case basis, waiver requests predicated on any of five other grounds set out in the Commission decision adopting Note 7. The rule has remained unchanged since that time.

B. The Proceeding

6. In 1991, the Commission's Office of Plans and Policy (OPP) issued a wide-ranging report on broadcast television and the evolving market for video programming.[18] That report observed that the market had undergone tremendous changes over the previous fifteen years. It found that the policies of the FCC and the federal government, chiefly in enacting the 1984 Cable Act, had generated new competition to "traditional" broadcast services resulting in increased choices for viewers. Further, the report suggested that these increased choices meant increased competition for broadcast television and were, indeed, affecting its ability to contribute to a diverse and competitive video programming marketplace.

7. As a result of the OPP report, we issued a Notice of Inquiry soliciting comment on whether our existing ownership rules and related policies should be revised to enable television licensees to be more responsive in meeting this competition. After reviewing the record developed in response to the Inquiry,[19] we issued a Notice of Proposed Rule Making in order "to consider changes to several of the structural rules that have governed the television industry for many years."[20] These rules included those limiting the ownership interests that a person or entity may have in television stations on both national and local levels. We also solicited comment on certain rules governing the relationship between a network and its affiliates.[21] We believed that these rules needed to be amended in order to strengthen the potential of over-the-air television to compete in the current video marketplace and enhance

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[17] Id.

[18] 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").

[19] 6 FCC Rcd 4961 (1991). Thirty-nine parties filed comments and 19 filed reply comments.

[20] NPRM, supra at 4111.

[21] See supra note 3.

its ability to bring increased choice to consumers.[22]

8. The commenting broadcasters, with one exception, favored elimination or relaxation of the current national ownership limits.[23] Public interest groups and one broadcaster (Fisher Broadcasting Inc.) favored their retention. Those commenting in favor of elimination or relaxation of the limits argued that the proliferation of television stations and alternative video delivery services has weakened the diversity rationale of the rules. Additionally, they asserted that increased group ownership will permit broadcasters to achieve economies of scale that would enhance their ability to compete with cable. Those favoring retention argued that increasing the national limits will undermine diversity and that any savings realized as a result of economies of scale will be used to reduce debt or purchase more expensive syndicated programming -- not to produce new, diverse local programming.

9. There was also substantial comment in favor of relaxation of the duopoly rule which prohibits common ownership of broadcast television stations whose Grade B signal contours overlap. Most commenters believed that prohibiting only Grade A signal contour overlap is warranted and that changing the rule accordingly would enhance broadcasters' viability by enabling them to realize economies of scale. A number of other rule changes were suggested ranging from elimination of the rule altogether to allowing VHF-UHF combinations. Public interest groups and a few broadcasters advocated retention of the rule. Chiefly, they believed that only strong stations will be able to take advantage of relaxation of the rule, and that weak stations that are not purchased by these stations will be priced out of the quality programming market and will have to either rely on "infomercials" or be forced to shut down. Either result, they contended, will harm diversity.

10. A majority of the comments submitted with regard to the television/radio "one-to-a-market" rule -- which generally prohibits the common ownership of television and radio stations serving the same area -- favored its relaxation or complete elimination. These commenters argued that its elimination or liberalization would allow marginal stations to remain on the air (by being owned in common with another local station in a different service) and that the number of independent broadcasters that would remain in most markets would be sufficient to prevent undue concentration. Those in favor of relaxation of the rule proffered a number of alternative ways in which the rule could be eased, such as by allowing common ownership of one AM, one FM and one TV station with overlapping signal contours or by allowing TV/radio combinations where anywhere from 12 to 30 independent broadcast "voices" would remain. The only clear opponent of elimination or relaxation of the rule --

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[22] We received 34 comments and 12 reply comments in response to the Notice. An additional 5 comments were filed late. We have, however, considered them, as well. See Appendix A for a complete list of commenters.

[23] For a more detailed summary of the comments filed in response to the NPRM, see Appendix B, attached.

Barnstable Broadcasting, Inc. -- argued that doing so would adversely affect radio-only operations.

11. The NPRM also discussed one other issue: the treatment of time brokerage agreements, also known as local marketing agreements ("LMAs"), for television stations. These agreements, which are discussed in more detail later in this document, allow one station to purchase blocks of time on another separately owned station which the broker then uses for his own programming and advertising sales. The Commission has adopted some guidelines for radio LMAs, but has not adopted any guidelines for TV LMAs. Few comments were submitted in response to our queries in the NPRM about TV LMAs. Some commenters argued that, unless the duopoly rule is relaxed or eliminated, adoption of the radio model for television LMAs would doom many such agreements because interests that would be attributed as a result of LMAs would give many participants in television LMAs an attributable and impermissible interest in a second local television broadcast station. Other commenters proposed adoption of ownership TV LMA attribution rules similar to those governing radio LMAs.

C. The Further Notice

12. We are issuing this Further Notice to consider the effects of several major developments since the 1992 NPRM that have altered the telecommunications landscape and accentuated the need to further explore the desirability of modifying the TV ownership rules. In particular, the Commission has re-regulated cable television pursuant to Congressional mandate, leading to rate reductions and raising the prospect of increased cable penetration. DBS and wireless cable (MMDS) are becoming increasingly important players in the video marketplace, and some telephone companies may soon begin to provide video dialtone service. These developments should increase the number of competitors to TV stations and thus may justify relaxing restrictions placed on television ownership. We wish to analyze the extent to which our TV ownership rules should explicitly take into account the existence of other competing media. Finally, in 1992, we adopted a regulatory scheme, recently reaffirmed and clarified,[24] governing LMA rules for radio and wish to consider whether similar rules should be adopted for TV.[25]

13. To this end, this Further Notice is intended to provide further analyses of the economic and diversity issues with respect to the various proposals to revise our national and local multiple ownership rules for television stations. This Further Notice provides a statement of frameworks for the economic and diversity analyses of these rules within which we solicit additional comment.

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[24] Revision of Radio Rules and Policies, supra.

[25] Id.

14. We therefore provide the following two sections. The first section, Competitive Analysis of Television Broadcasting, provides the framework for structuring the economic analyses of the rules under consideration. The second section, Diversity Analysis of Television Broadcasting, provides the framework for structuring the diversity analyses of the rules under consideration. The Commission encourages the public to comment on the issues raised by these sections, and to use them to frame comments on the subsequent analyses of the rules.

III. COMPETITIVE ANALYSIS OF TELEVISION BROADCASTING

15. An important part of the Commission's public interest mandate is to promote competition, because competition promotes consumer welfare and the efficient use of resources.[26] To examine the effect on competition of changing the rules under consideration, we must set out the framework within which we will consider the economic issues. In Section III A we briefly describe the economic framework within which we structure the economic analysis. In Section III B we set out the relevant product markets which our rules affect. In Sections III C, D, and E, we address fundamental issues in delineating and describing these relevant product markets. Finally, in Section III F, we summarize the key economic assumptions we apply in subsequent economic analyses of the rules under consideration.

A. Framework for Competitive Analysis

16. The purpose of competitive analysis is to describe the markets at issue in light of established economic theory and legal precedent to determine how the current market structure and regulatory scheme affect competition and consumer welfare. A policy of encouraging competition attempts to achieve this goal by protecting consumers and companies from the abuse of market power by a firm or a group of firms. As a result, the Commission's competitive analysis of the rules at issue in this proceeding focuses upon whether and to what extent market power exists and is being exercised, and what effect these rules have on the existence and exercise of this market power. This analysis requires two steps: (1) definition of the relevant product markets, and (2) examination of these markets' structure for evidence on the existence and exercise of market power.

17. The Supreme Court has stated that in defining a "product" for antitrust law purposes, "no more definite rule can be declared than that commodities *reasonably interchangeable by consumers for the same purposes*" constitute one product market.[27] Examining "cross-elasticities" of demand and supply is one way to define the "product," an

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[26] Id.

[27] United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 394 (1956) (emphasis added); see also Brown Shoe Co. v. United States, 370 U.S. 294, 324-25 (1962).

approach which is generally accepted among economists and commentators.[28] A variety of product or service attributes determine the degree of substitutability between different products. For example, a consumer might view a low quality car as a poor substitute for a high quality car and require a large price differential to consider the purchase of the low quality car. A standard method to define the product market a particular firm operates within is to ask the question: if this firm raised the price of its product, to what degree would consumers continue to purchase that product or turn to the products of other firms, and what are these other products and other firms?[29]

18. After the relevant products are determined, the geographic extent of the market is outlined. In general, the geographic market refers to the area where buyers of the particular product can practicably turn for alternative sources of supply, or the area in which sellers sell this product. It should be noted that the "geographic market" is not limited to the region where the relevant product is *currently* traded but where it can *practicably* be traded. It has been said that the geographic market is the "area of effective competition"[30] or the area in which products compete with substantial parity.[31] A useful technique in determining the geographic market a particular firm operates in is to examine the geographic region where buyers would buy and where sellers would sell in response to a "small but significant and nontransitory" price increase by that firm.[32] No single geographic market definition is likely

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[28] See William M. Landes & Richard A. Posner, Market Power in Antitrust Cases, 94 Harv. L. Rev. 937, 945-48 (1981). Cross-elasticities of demand refer to how the quantity demanded of a product responds to changes in price of another product (e.g., how will CocaCola sales respond to a change in the price of Pepsi). Cross-elasticities of supply refer to how the quantity supplied of a product responds to changes in the price of another product (e.g., how will CocaCola's production respond to a change in the price of Pepsi) .

[29] See U.S. Department of Justice and Federal Trade Commission, 1992 Horizontal Merger Guidelines § 1.11, 4 Trade Reg. Rep. (CCH) ¶ 13,104 (in applying antitrust law, DOJ and FTC define a product market by postulating demand-side responses to a "small but significant and nontransitory" increase in price by a "hypothetical monopolist").

[30] Standard Oil Co. v. United States, 337 U.S. 293, at 299 n.5 (1949); Policy & Rules Concerning Rates for Competitive Common Carrier Services & Facilities Authorizations Therefor, Fourth Report & Order, 95 FCC 2d 554, 563 (1983).

[31] Satellite Television & Associated Resources, Inc. v. Continental Cablevision, Inc., 714 F.2d 351, 356 (4th Cir. 1983), cert. denied, 465 U.S. 1027 (1984).

[32] DOJ/FTC Merger Guidelines at § 1.21.

to be decisive for all purposes of examining a particular industry.[33]

19. Once reasonably interchangeable substitutes are identified and the geographic extent of the market is delineated, the participants in the relevant product market can be identified. This identification allows market shares to be calculated to characterize the market's structure and its concentration. Such calculations are useful as one component of a competitive analysis of potential market power.[34]

20. As with many other human activities, a firm's possession and use of market power is a matter of degree. However, a firm abuses such power when it attempts to "control prices or exclude competition."[35] Therefore, conditions that allow a firm or a group of firms to set price profitably above (or reduce quality below) the competitive level and maintain such a price or quality over time without attracting competitive entry raise concerns about the potential for abuse. The potential for abuse is limited by the degree to which its consumers can turn to substitutes, the competition offered by its existing competitors, the potential competition offered by new entrants, and the degree to which its suppliers can sell their product to other firms.[36] If the relevant product markets are properly defined, the ability of consumers to turn to substitute products offered by other firms will already be reflected in their definition. Market share and concentration can only be reasonable proxies to estimate market power if the market is properly defined.[37]

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[33] See,e.g., Network Inquiry Special Staff, FCC, New Television Networks: Entry, Jurisdiction, Ownership and Regulation 334, at 337-38 (1980)(in analyzing television, while "markets for television equipment and programs may reasonably encompass the entire nation, the geographic market for home viewed television programming might be extremely local").

[34] See United States v. Grinnell, 384 U.S. 563, at 571 (1966), (high market share may ordinarily raise an inference of monopoly power). See also Ball Memorial Hospital, Inc. v. Mutual Hospital Insurance, Inc., 784 F.2d 1325, 1335 (7th Cir. 1986) ("In many cases a firm's share of current sales does indicate [market] power," and market power can develop "[w]hen a firm (or group of firms) controls a significant percentage of the productive assets in the market.")

[35] United States v. E.I. duPont de Nemours & Co., 351 U.S. 377 (1956).

[36] D.W. Carlton and J.M. Perloff, Modern Industrial Organization, (2nd edition, HaperCollins, 1994) at Chapter 9.

[37] One summary measure of market concentration used in standard antitrust analysis is the Herfindahl-Hirshman Index, or HHI. HHI is the sum of the squares of the market share of each supplier in a market. The DOJ and FTC, based upon extensive study of different industries, generally regard a market with an HHI below 1000 as "unconcentrated," a market between 1000-1800 as "moderately concentrated," and a market above 1800 as "highly concentrated." See DOJ/FTC Merger Guidelines at §1.51.

21. Market power cannot be adequately assessed by mere reference to market shares, however, because other factors, such as barriers to entry, can influence the degree to which market share conveys market power.[38] As a result, in addition to market share and concentration, the conditions of entry and other structural features in each market must be examined to determine whether the exercise of market power is possible.

B. Television Broadcasting's Relevant Markets

22. With the above principles in mind, we first turn to an identification of the product markets influenced by the rules under consideration. Some have argued that broadcasters "are in the business of producing audiences."[39] Commercial broadcasters fund their activities by selling advertisers access to the audiences they produce. To do this, a commercial broadcast television station organizes and transmits a single schedule of video programming and advertising over the air. This activity involves broadcast TV stations in the purchase or production of video programming, the sale of video advertising, and the delivery of the bundled video programming (i.e., entertainment, news and advertising messages) to consumers with television sets able to receive its broadcast. In providing delivered video programming, any given broadcast station's signal is limited in its geographic reach. This creates an incentive for an organization, such as a broadcast network, to forge arrangements with more than one station so advertisers interested in reaching a national audience can do so. Also, in providing delivered video programming, broadcast television stations purchase, barter, or carry the video products of others (e.g., broadcast networks, syndicators). This activity means that broadcast TV stations exercise some influence on the program production market. As a result of the above points, we judge that TV broadcasters operate in three economic markets relevant to the rules under consideration: the market for delivered video programming, the advertising market, and the video program production market.

23. For each of these markets, as posited earlier, we need to delineate selected measures of their structure. Specifically, we need to identify what products are relevant substitutes for one another, who are suppliers of these products, what is the geographic scope of the relevant market, and how to measure market share for the different suppliers. It is these questions to which we now turn for each of television broadcasting's relevant markets.

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[38] See Oahu Gas Serv., Inc. v. Pacific Resources, Inc., 838 F.2d 360, 366 (9th Cir. 1988) ("A high market share, though it may ordinarily raise an inference of monopoly power, will not do so in a market with low entry barriers or other evidence of a defendant's inability to control prices or exclude competitors."), cert. denied, 488 U.S. 870 (1988) (citations omitted); see also United States v. Syufy Enterprises, 903 F.2d 659, 664 (9th Cir. 1990); Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc., 627 F.2d 919, 924 (9th Cir. 1980), cert. denied, 450 U.S. 921 (1981).

[39] B. M. Owen and S. S. Wildman, Video Economics, Harvard University Press (1992) at 3.

C. The Delivered Video Programming Market

24. Delineation of Relevant Substitute Products and Suppliers. To identify the relevant substitutes to delivered video programming, we must recognize that Americans can spend their leisure time doing other activities. A list of possible uses of a consumer's time is provided in Appendix C. The data reported in Appendix C indicated that in 1970, Americans spent about 46.5% of their leisure time on watching television. In 1988, they spent about 45.3% of their leisure time on watching television. The stability of Americans' use of television as a leisure activity suggests that video programming seen on television may be a sufficiently different economic product from other entertainment that it should be treated as a separate product market.[40] However, parties are requested to comment on this view and supply data and/or analysis which demonstrates the economic relevance of their proposed substitutes for delivered video programming.

25. Turning to an identification of economically relevant suppliers, we are confronted by a more difficult demarcation of this market. Public broadcast station operators clearly compete with commercial broadcast television operators for viewer attention. The number of broadcast television stations has increased substantially in recent years. In 1984, there were 1,180 commercial and noncommercial television stations, in 1994, there were 1,520.[41] Consequently, there has been an almost 30% increase in the number of television stations since the last time the television ownership rules were modified.

26. Cable system operators have also grown over this time period in importance as a group of suppliers of delivered video programming. At present, cable systems pass nearly 96% of all U.S. households, and 62.5% of U.S. TV households (approximately 59 million households) subscribe to cable services.[42] The number of cable video networks and the

[40] This is because the prices, either explicit or implicit, of delivered video programming and other leisure activities can be assumed to vary over this eighteen year period and yet the quantity demanded of delivered video programming has remained stable. This suggests that these activities are economically distinguishable products/services (i.e., their cross-price elasticities are low).

[41] Broadcast Station Totals as of September, 1984. FCC News Release (released October 12, 1984). Broadcast Station Totals as of September 30, 1994, FCC News Release (released October 12, 1994).

[42] Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 - Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming (hereinafter Cable Competition Report), CS Docket # 94-48, __ FCC Rcd __ (September 28, 1994)), at ¶¶ 18, 100. Since 1984, when the broadcast television ownership rules were last revised, the subscriber penetration of the cable industry has increased from 43.7% to 62.5%. Id.

channel capacity of cable systems continue to grow dramatically.[43] However, even among those households subscribing to cable, retransmitted broadcast network signals had a 46% prime time viewing share in the 1992-93 season, while retransmitted independent broadcast and public television stations maintained 17% and 3% shares respectively.[44] Therefore, more than half of all viewing hours in cable households during the 1992-93 season were of retransmitted broadcast signals. In addition, more than one-third of all households that could subscribe to cable elect not to do so.[45] High profile sporting events that people watch, like the Super Bowl, the NBA Championships, the NCAA basketball championships, and the World Series (when played) remain on broadcast television.[46] Because some consumers choose not to purchase cable service, the degree to which cable TV channels are substitutes for broadcast television channels is an issue on which the Commission requests specific comment.

27. In addition to cable, there are now several emerging for-subscription multichannel providers of video programming which may compete with broadcasters in the same manner as cable. As described in detail in the recent *Cable Competition Report*, many consumers can now subscribe to a "wireless" cable ("MMDS") service, purchase a home satellite dish ("HSD"), and subscribe to direct broadcast satellite ("DBS"). In 1994, 143 MMDS systems served 550,000 subscribers.[47] Currently, satellite master antenna television ("SMATV") systems serve approximately one million subscribers,[48] and about four million television households own a home satellite dish.[49] In 1994, DBS providers began operating, with providers and equipment manufacturers optimistic about potential subscriber growth. DirecTV and United States Satellite Broadcasting ("USSB") predict that by the end of 1994, equipment will be available in approximately 10,000 locations with unit sales reaching 1,000,000 by the summer of 1995.[50] Further, USSB estimates that in seven years, almost 40% of all television

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[43] See Cable Competition Report, Appendix C, Tables 2-4.

[44] "Viewing Shares Broadcast Years 1983/84 - 1992/1993," Cable Television Developments (National Cable Television Assoc.), Apr. 1994, at 5-A (citing A.C. Nielsen Co. statistics).

[45] See Cable Competition Report, Appendix C, Table 1.

[46] Implementation of Section 26 of the 1992 Cable Act -- Inquiry into Sports Programming Migration, Final Report, 9 FCC Rcd 3440, 3501 (1994).

[47] Cable Competition Report at ¶79.

[48] Cable Competition Report at ¶92.

[49] Cable Competition Report at ¶73.

[50] Cable Competition Report at ¶66.

households may receive programming *via* DBS.[51] Finally, in the future, consumers may be able to receive video entertainment through their telephone lines -- twenty-four applications have been filed with the Commission by local exchange carriers seeking video dialtone ("VDT") authorizations which would cover a total of 8.5 million households.[52]

28. Another possible competitor in the delivered video programming market is the use of a videocassette recorder ("VCR"). VCRs allow viewers to see programs at times other than when they are broadcast and also permits viewers to choose pre-recorded tapes *in lieu* of watching whatever is on television that evening. VCR penetration has continued to grow -- at present, over 80% of U.S. TV households own a VCR.[53]

29. While all the above listed alternative suppliers currently provide some amount of delivered video programming, we will tentatively include, for purposes of this FNPRM, commercial broadcast television operators, public broadcast television station operators, and cable system operators to be economically relevant alternative suppliers of delivered video programming. While we wish to tentatively include some of the other suppliers (e.g., MMDS, DBS, VDT, etc.) in our demarcation at this time, we concede that it may not be appropriate to include them because their current market penetration is so low that they are not relevant substitutes to a majority of Americans. However, this situation may rapidly change, especially as a result of the Commission's regulatory stance towards encouraging entry into the delivered video programming market through other delivery media. Therefore we seek comment on which of these suppliers we should include in our demarcation.

30. Finally, while VCRs are present in a large number of television households, they do not provide a complete schedule of video programming and so are treated as sufficiently different as to suggest that perhaps they should not be included at this time.[54] However, we ask commenters to provide information on the degree of economic substitutability of all the alternatives considered above to a broadcast TV station's video programming. In submitting comments, we request that commenters provide evidence on the extent to which these are economically relevant substitutes as demonstrated by their cross-price elasticities of demand

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[51] Cable Competition Report at ¶70.

[52] Cable Competition Report at ¶104.

[53] Kagan Media Index at 14.

[54] To some extent VCRs complement rather than substitute for broadcast or cable video programming (e.g., many people tape such programming for viewing at a more convenient time). This makes the treatment of VCRs as an economically relevant substitute for broadcast television more problematic. See J. D. Levy and P. K. Pitsch, *Statistical Evidence of Substitutability Among Video Delivery Systems* in E. M. Noam (editor), Video Media Competition: Regulation, Economics, and Technology, for evidence on how VCRs complement the delivered programming of broadcast television stations.

and supply, or other evidence.

31. Delineation of the Market's Geographic Scope. As discussed above, the geographic scope of the relevant market is defined by the geographic area to which buyers will reasonably turn and from which competing suppliers sell their products.[55] Since commercial broadcast television stations have a limited signal range, it appears that, from these operators' perspective, the "area of effective competition" is geographically limited to a "local" area. This suggests that commercial broadcast television operators compete in a "local" market for delivered programming. However, the alternative suppliers that might be included in the product market have different service areas. Cable operators, for example, operate at a local franchise or system level, and are increasingly becoming composed of regional clusters.[56] In addition, many cable systems are owned or managed by cable multiple system operators ("MSOs"), which might operate these local franchises at a national level.[57] Wireless cable and SMATV systems may serve entire metropolitan areas, and a video dialtone service offered by a local exchange carrier may eventually serve an entire geographic region of the country. DBS service providers operate on a national level.[58] Therefore, while we will assume that the market for delivered video programming is primarily local, since most providers operate locally, we recognize that as competition and technology change the geographic reach of the relevant competitors, our notions of the geographic scope of the market for delivered video programming may change.

32. Earlier comments suggested several alternatives for defining the boundaries of the "local" market for delivered video programming. They were a television station's predicted Grade A contour, its predicted Grade B contour, its Metropolitan Statistical Area (MSA), and its Area of Dominant Influence (ADI) or Designated Market Area (DMA).[59] Grade A and Grade B contours represent geographic delineations based upon the predicted field strength contours of a broadcast television station. While in the past, the Commission has used the

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[55] See Tampa Electric Co. v. Nashville Coal Co., 365 U.S. 320, at 330-33 (1961).

[56] Cable Competition Report at ¶¶ 52, 151-55.

[57] See Cable Competition Report at ¶¶ 137-56 (discussing nationwide level and implications of cable MSOs).

[58] Cable Competition Report at ¶ 53.

[59] For a definition of the Grade A and Grade B contours, see 47 CFR §73.684. Metropolitan Statistical Areas are defined by the Census Bureau as zones of common economic interests. Areas of Dominant Influence are defined for all broadcast stations on a county-by-county basis by Arbitron to facilitate transactions between advertisers and those broadcast stations. Designated Market Areas are defined by A. C. Nielson and are analytically similar to the ADI. Since Arbitron no longer updates its ADI lists, we propose to use DMAs in our future analysis of this issue.

Grade B contour to define a local market, prior comments tended to suggest the use of either the smaller geographic area definition (the Grade A contour) or the larger geographic area definition (the DMA). The benefit of the Grade A contour definition is that it covers less area than the Grade B and thus better represents the quality of signal necessary for television stations to compete effectively. The benefit of the DMA definition is that it attempts to capture the actual television viewership patterns and each county is assigned to a unique television market, unlike the Grade A and Grade B contour standards which ignore the carriage of broadcast signals over cable systems.

33. We propose to continue to rely on a contour overlap standard but will consider the DMA definition of "local" for determination of the relevant geographic dimensions of the market for delivered programming. However, we request further comment on the use of the DMA definition of the geographic scope of these markets. Are DMAs equally applicable for alternative distributors such as cable? Are they too large?

34. Choice of Market Power Measurement. To determine whether market power exists, we must also determine how to measure market concentration within the local delivered video programming market. There are four different measurement scales that were frequently mentioned in earlier comments. They are: (1) the number of separately owned stations or outlets,[60] (2) the audience share of the separately owned stations or systems, (3) the number of available channels,[61] and (4) the audience share of the separately available channels. We tentatively propose to use the number of separately owned stations or outlets serving a market as our unit of measure. We use this unit of measure because it is consistent with prior Commission practice and minimizes the variability of measurement due to fluctuations in the popularity of an outlet's programming. However, we recognize its potential limitations and would like additional comment on which of these four measurement scales should the Commission use. Specifically, if we were to use the audience share of the separately available outlets or channels, how should we address the variability this introduces into our television station ownership rules because of changes in the number of outlets or channels offered and the popularity of those outlets' or channels' programming over time? Further, if we were to count the number of available channels, how should mandated-access channels on cable systems be included?[62] And finally, we invite comment on the condition of entry and other structural features of this market that influence the existence and exercise of market power.

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[60] This would treat a cable operator as just one more alternative provider.

[61] This would treat a cable system as contributing many channels of video programming, even though all the channels are on the cable system which is owned by one entity.

[62] See, e.g., 47 U.S.C. §§ 531 (reservation of cable channels for public, educational and governmental use), 532 (reserving up to 15% of activated channels on a cable system for leased access), 534-35 (must-carry requirements for local and noncommercial broadcast stations).

D. Advertising Markets

35. TV broadcasters operate in two advertising markets -- national and local. The basis for this distinction rests on the following observations. For reasons discussed earlier, all TV broadcasters are limited in the geographic area for which they can supply advertising services. The substitutes available to an advertiser desiring national coverage may be different from those available to an advertiser desiring local coverage. While individual broadcast television stations sell advertising spots to national advertisers, much of the video advertising directed toward national audiences is sold or bartered by either broadcast networks or syndicators. Consequently, we will assume that broadcast television stations operate in two advertising markets.[63]

1. National Advertising Market

36. Delineation of Relevant Substitute Products and Suppliers. In Appendix D, we present data from McCann-Erickson, Inc. on the distribution of advertising revenues by media and year for the last several years. Examination of these data suggests that video advertising is the mass medium of choice for advertisers wishing to reach national audiences.[64] Unfortunately, we have no clear evidence on the degree to which all the other alternatives listed in this Appendix are economically relevant substitutes for video advertising. One study finds some substitutability amongst some of these alternatives, but also finds a significant degree of price inelasticity for each alternative considered.[65] Consequently we will tentatively consider video advertising an economically distinct segment of the national advertising market. However, we solicit any evidence that commenters can provide which demonstrates that some of the other alternatives provided in Appendix D are economically relevant substitutes for video advertising in the national advertising market.

37. We believe that the primary suppliers of video advertising in the national market, as suggested by Appendix D, consist of the broadcast networks, program syndicators, cable

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[63] See Owen and Wildman, supra note 39, at 11-13 for further discussion of this view that there "are two distinct advertising marketplaces: national advertising and local advertising."

[64] This point is also made in a story on broadcast networks in the Washington Post, October 31, 1994, at A10.

[65] B. J. Seldon and C. Jung, Derived Demand for Advertising Messages and Substitutability among the Media, 33 Quarterly Review of Economics and Finance 71 (1993). Price elasticity is a measure of the responsiveness of a demand for a product or service to changes in its price.

networks,[66] and perhaps cable multiple system operators (MSOs). The broadcast networks sell national advertising time for their television affiliates, and, according to the McCann-Erickson estimate, approximately 74 percent of the national video advertising expenditures go to network advertising. We tentatively exclude individual broadcast television stations' and cable system operators' sale of advertising to media buyers (i.e., spot sales) from this market because spot sales of advertising to national advertisers are frequently made to allow the national advertisers to reach a more targeted geographic focus and not to reach a national audience (e.g., selling trips to the Bahamas to persons in the snow belt during January). Further, at this time, we do not include wireless cable operators, DBS operators, or VDT operators because they do not presently provide appreciable amounts of national advertising. However, we solicit evidence which would demonstrate that we have either included too many or too few alternative suppliers of national video advertising.

38. Delineation of the Market's Geographic Scope. As stated earlier, we view the national advertising market as distinct from the local advertising market. By its very characterization, we view this as advertising directed to a national audience, and hence national in its geographic scope.

39. Choice of Market Power Measurement. To measure market share for the purpose of discerning the concentration of this market, we propose to use advertising revenues. However, we invite suggestions of alternative measures which might be better indicators of market share in the national video advertising market. These suggestions should also address the availability of data necessary to use the measure. And finally, we invite comment on the conditions of entry and other structural features of this market that influence the existence and exercise of market power.

2. Local Advertising Market

40. Delineation of Relevant Substitute Products and Suppliers. Advertisers wishing to reach a "local" market are not necessarily limited to video advertising. As the McCann-Erickson Inc. data in Appendix D demonstrates, an advertiser wishing to get its message to a local market appears to have, in addition to video advertising, the following options: radio

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[66] This is advertising time sold by national cable programming networks to national advertisers. The Commission notes that cable networks do not reach all television households because not all households subscribe to cable and not all cable operators provide all cable programming networks. However, the Commission believes that cable network advertising should be included in the national market, recognizing that the less-than-national coverage is probably reflected in advertising rates. We request specific comment from parties as to whether this category on the chart in Appendix D includes advertising sold by cable multiple system operators (MSOs) for advertising on their various systems. If this category does not include MSOs sales, we request input as to the magnitude of such sales and whether these sales should be included in this national video advertising market.

(spot and local), newspapers (local), magazines (regional magazines, and regional editions of national magazines), direct mail, outdoor/billboards, and yellow pages. For these options, we would like commentors to discuss the following issues. To what extent do advertisers regard radio advertising as a substitute for local broadcast television advertising? To what extent do advertisers regard local newspaper advertising as a substitute for local broadcast television advertising? If local newspaper advertising is a substitute for TV advertising, should all newspaper advertising be included or should classified advertising be excluded? Finally, do advertisers seeking to reach a local market find regional magazines/regional editions of magazines, direct mail, outdoor, and yellow pages to be acceptable substitutes for local broadcast television advertising?

41. More generally, to help the Commission draw the boundaries of the local advertising market relevant to the rules under consideration, we request commenters to provide answers to two questions. First, how do advertisers seeking to reach a local market view the above-listed alternatives and how do they make their decisions on which media to use? Second, how do these advertisers react to changes in the price of advertising on one medium relative to another that the commenter thinks is a relevant substitute? For this last question, commenters are requested to quantify the cross-price sensitivity of the proposed substitutes.

42. Turning to video advertising, a local broadcast television station sells advertising time to a variety of advertisers, both national and local in scope, who wish to reach its local market. If that broadcast TV station raises its advertising rates, the advertisers that buy time on that station have several reasonably interchangeable alternatives by which to get their message out. First, they could buy time on another broadcast TV station serving the same local market. Second, they could buy time through the local cable operator. This option is growing in importance, as the recent surge in cable operator advertising revenues demonstrates. In addition, cable operators have started using "cable interconnects" -- regional consortia of cable systems that sell spot advertising for all cable systems in a metropolitan area.[67] The growth of cable system "clustering" is also likely to enhance cable's ability to sell local advertising. And as other regional or local distribution media grow, such as wireless cable, SMATVs and VDT, the number of outlets for firms desiring local video advertising grows as well.

43. For the purpose of further discussion, we will tentatively consider the local advertising markets to include video advertising, radio advertising, and newspaper advertising. For video advertising, we will tentatively include local cable operators as an alternative supplier of video advertising to broadcast television station operators. We will treat other

[67] See, e.g., Linda Moss, TV Stations Lobby Against Cable for Political Ads, Multichannel News, September 5, 1994 at 3, 20; Linda Moss, Vendors Hit Bumpy Road with Advertising Pipeline, Multichannel News, October 10, 1994 at 3; Linda Moss, Top 10 Markets Eye Similar Ad Upgrades, Multichannel News, August 8, 1994.

alternative suppliers as not presently significant enough economically to constrain the exercise of economic power by a broadcast television station in selling local advertising. However, we are open to economic analysis which demonstrates that this view of the relevant substitutes and suppliers for the local advertising market is too narrow.

44. Delineation of the Market's Geographic Scope. The essential issue is what is the "area of effective competition" TV broadcasters face in the sale of advertising? Earlier, we set out four geographic delineations for "local" in our discussion of the market for delivered video programming. To issues raised there, we add the following questions. Can there be two or more "local advertising markets" inside the Grade A or B contour or DMA of a broadcast station? Commenters are also requested to specifically comment on the effect of broadcast retransmission by cable on the advertising market. Does the fact that, for example, a person can watch Boston broadcast TV stations on the Albany, New York cable system have any impact on defining the geographic scope of a "local" advertising market? Finally, would the regulatory burden of using a different geographic delineation of market for local advertising from that of video programming delivery be justified by the gains in economic relevance? With this last point in mind, we nevertheless tentatively define the geographic scope of the local advertising market for any broadcast television station as the DMA that it falls within.

45. Choice of Market Power Measurement. To measure market share for the purpose of discerning the concentration of this market, we proposed to use advertiser revenues. However, we invite suggestions of alternative measures which might be better indicators of market share in the local video advertising market. These suggestions should also address the availability of data necessary to use the measure. Finally, we invite comment on the conditions of entry and other structural features of this market that influence the existence and exercise of market power.

E. The Video Program Production Market

46. Aside from advertising, TV broadcasters must organize a schedule of video programming, either produced by themselves or by others. This involves broadcast television stations in the program production market. The competitive concern about multiple ownership of television stations in this market is one of either *monopsony* or *oligopsony* power -- *i.e.*, the ability of one or several firms to artificially restrict the consumption of programming or price paid for programming.

47. Delineation of Relevant Substitute Products and Suppliers. The video program production market involves video products from movies to first-run syndicated television series. The products are readily distinguishable from other types of programming, like radio programming, and are therefore relevant substitutes. There are a number of sellers or suppliers in this market. Programs that are aired on broadcast television are produced by program production companies. To a certain extent, broadcast television networks also produce programs through their in-house production companies for broadcast through their

affiliates. Most television programs that are produced for the networks or independent stations are produced by the major movie studios, independent program producers (who often affiliate with a movie studio in order to produce the program), or syndicators.

48. Broadcast television stations are major buyers of video programs, who typically acquire the video programs they deliver to consumers in one of three ways. First, a broadcaster can affiliate with a broadcast network and obtain an entire package or schedule of programming directly from its network (the network "feed"). The network, in this regard, acts as a broker between the program supplier and its affiliated stations. Each of the three major networks distributes its programs to over two hundred television stations nationwide that are connected with the network by cable or satellite. For clearing its airtime for network programming, an affiliate is compensated according to the time of the day it clears time for network programming and the size of its potential audience. Networks encourage their affiliates to carry the entire network "feed" so as to maximize the audience they can sell to advertisers. Second, television broadcasters can also obtain programming from suppliers called "syndicators" -- national or regional entities that sell programming to television stations on a market-by-market basis. And finally, television broadcasters can produce their own programming. Network affiliates and independent stations both, in general, air locally-originated programming, primarily local news and sports programming.

49. Over the last 15 years the list of additional buyers of video programs for delivery to consumers has grown. For example, it now includes, in addition to broadcast television networks and syndicators, cable networks, cable operators, direct broadcast satellite operators, low power television stations, and telephone companies.[68] The increasing number of potential purchasers would seem to imply that there is competition among buyers of video programming and thus, concerns that television broadcasting companies exercise oligopsony power in the purchase of video programs have lessened to some extent. However, we solicit comment on the effect of nascent broadcast networks and these alternative buyers of video programming on competition in this market.

50. Delineation of the Market's Geographic Scope. The video programming production market is clearly national and perhaps international in scope, because television broadcasters obtain a large portion of their programs from national providers. The fact that television broadcasters produce some programming locally does not detract from the national scope of this market, because the television broadcasters could reasonably turn to national sources of supply for programming.

51. Choice of Market Power Measurement. We propose to use expenditures on video programming as the proper means of determining market shares for the purposes of examining

[68] For a discussion of recent telephone company efforts to purchase video programming see Mike Mills, In Hollywood, Bells are Ringing, Washington Post (November 1, 1994) at D1.

the buying power of the relevant purchasers of video programming. Commenters are requested to discuss whether this is a proper measure for assessing the potential for oligopsony power in this market. And finally, we invite comment on the conditions of entry and other structural features of this market that influence the existence and exercise of market power.

F. Tentative Economic Conclusions

52. Above, we have reached a series of tentative conclusions about the three markets that broadcast television stations are involved in that are important to consider in the context of this FNPRM. We will assume these delineations of relevant substitutes and suppliers, geographic scope, and measures of market power for the market for delivered programming, the market for advertising, and the video program production market in subsequent analyses of the effect of broadcast ownership rules under consideration. To aid the reader, we set out the alternatives in Appendix E, and star those alternatives that we will tentatively use as working assumptions about the relevant markets in further discussion. Clearly these delineations should be the focus of comments on our competitive analysis of television broadcasting, and so are subject to change based upon comments and evidence received in response to the FNPRM.

53. In analyzing the economic effects of the rules under consideration, we assume the above product market descriptions, and focus upon the questions: (1) do we have any evidence of the abuse of market power currently (focusing upon prices in the different markets), and (2) will relaxing our current rules substantially increase the concentration of these markets to levels which raise concerns about the potential for the abuse of market power?

IV. DIVERSITY ANALYSIS OF TELEVISION BROADCASTING

54. The Commission has historically examined the effectiveness of its broadcast regulations in achieving diversity goals by primarily assessing the level of outlet diversity within the broadcasting industry, on national and local levels. That approach may be too narrow in today's world, in which the American public can receive home delivered video programming from a variety of outlets. Under such circumstances, it makes less and less sense to regulate a market on the grounds of ensuring diversity, without taking into account whether there is an available diverse array of non-broadcast media. That being said, we believe we need a new framework for assessing diversity, which takes into account the developments in the communications marketplace and that captures the rigor of our economic analysis.

55. In the sections that follow, we lay out our traditional diversity goals and approaches for achieving them, raise questions concerning new approaches for defining diversity, and seek comment on how to apply a framework for assessing the efficacy of our

broadcast regulations in achieving these goals. More specifically, Section A describes (a) the three types of diversity that our rules have attempted to foster -- viewpoint, outlet and source diversity, and (b) the two basic techniques the Commission has used to achieve these diversity goals -- direct means (such as nonentertainment programming guidelines) and indirect means (such as our structurally-based ownership rules). Then, in Section B, we discuss new approaches to our concerns with diversity. In the last two sections, we set forth possible methods for defining what markets should be evaluated to determine whether our diversity goals are being served by the particular broadcast regulation in question. Thus, Section C proposes a broadening of the "product" market that we have traditionally examined for diversity purposes, to go beyond just broadcast-delivered video programming received in the home. Section D suggests the geographic markets we would examine in determining whether our diversity goals are being furthered by the broadcast regulation in question.

56. Once we have determined the appropriate product and geographic markets that are relevant for assessing whether the diversity goals of a rule are being met, we will examine each rule at issue by (a) identifying which diversity goal or goals the rule seeks to foster (e.g., viewpoint, outlet and/or source), (b) determining whether the rule in fact fosters such goals in the relevant markets, and (c) deciding whether, in those markets, there is a need for continued regulation to maintain or increase existing levels of diversity.

A. The Traditional Diversity Goals and Methods for Achieving These Goals

57. Traditionally, at least as important as the Commission's concern about undue economic concentration among broadcast stations, has been its concern for ensuring diversity of viewpoints in the material presented over the airwaves. This notion is derived from the same concept that underlies the First Amendment. As the Supreme Court has said, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public...."[69] We have tried to ensure such diversity using two basic techniques -- one direct and the other indirect.

58. Our direct techniques have consisted of regulations specifically designed to act directly on the programming -- and, more particularly, the nonentertainment programming -- presented by broadcast stations. Even the earliest renewal forms promulgated by the Federal Radio Commission (the Federal Communications Commission's predecessor agency) required applicants to attach a printed program and provide information on the average amount of time devoted weekly to various types of programs, clearly conveying the impression that the FRC favored some types of programming.[70] Since then, other methods of direct regulation have

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[69] Associated Press v. United States, 326 U.S. 1, 20 (1945).

[70] See, e.g., 1928 Annual Report to Congress by the Federal Radio Commission, p. 161. The forms asked for information on the average amount of time on a weekly basis that

been used by the Commission. For instance, in 1949, the Commission adopted its Report on Editorializing by Broadcast Licensees which, among other things, stressed the duty of all licensees to devote a "reasonable amount of time" to the discussion of public issues.[71] Later, in 1960, the Commission adopted a policy that explicitly listed certain types of programming as being in the public interest.[72] Subsequently, it adopted nonentertainment programming guidelines mandating that applications proposing less than the guideline amounts could not be processed by the staff but, instead, would have to be brought to the attention of the full Commission.[73] Additionally, over time the Commission developed community ascertainment obligations that required broadcasters to familiarize themselves with the needs and interests of their communities and to offer some programming in response to those needs.[74] Currently,

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was devoted to: entertainment, religious, commercial, educational, agricultural, and fraternal programming.

[71] 13 FCC 1246, 1247 (1949). Also, in that Report, the Commission adopted Fairness Doctrine requirements. On August 4, 1987, in Syracuse Peace Council v. WTVH(TV), 2 FCC Rcd 5043 (1987), aff'd 867 F.2d 654 (D.C. Cir. 1989), cert. denied, 110 S. Ct. 717 (1990), the Commission decided to cease enforcement of the Fairness Doctrine after concluding that it no longer served the public interest.

[72] In its 1960 En Banc Programming Statement, the Commission listed 14 types of programming that it felt were in the public interest. They were: (1) opportunity for local self-expression, (2) the development and use of local talent, (3) programs for children, (4) religious programs, (5) educational programs, (6) public affairs programs, (7) editorialization by licensees, (8) political broadcasts, (9) agricultural programs, (10) news programs, (11) weather and market reports, (12) sports programs, (13) service to minority groups, and (14) entertainment programs. The following year, the Commission sought to further encourage news programming by prohibiting staff action on any application in which the applicant had either not broadcast or did not propose to broadcast any news. Notations of General Agenda, June 28, 1961.

[73] These guidelines were eliminated for television in 1984. See Report and Order in MM Docket No. 83-670, 98 FCC 2d 1075 (1984), recon. denied 104 FCC 2d 357 (1986), aff'd in part and remanded in part sub nom., Action for Children's Television v. FCC, 821 F.2d 741 (1987).

[74] A broadcaster's obligation to make a specific effort to understand the needs of its community was long a part of a broadcaster's duties. See, e.g., P.B. Huff, 11 FCC 1211, 1218 (1947). In its 1960 Programming Statement, 44 FCC 2303, 2316 (1960), the Commission firmed up this obligation stating that a licensee's obligation to operate in the public interest included its "diligent, positive and continuing effort...to discover and fulfil the tastes, needs and desires of his community or area for broadcast service." Formal ascertainment obligations were eliminated in the early 1980s in the Commission's radio and television deregulation proceedings.