the Commission has generalized requirements for both radio and television mandating the presentation of programming relevant to issues facing the broadcaster's community.

59. The direct technique of regulating viewpoint diversity has fallen out of favor. This is due to both changes in the marketplace -- chiefly, the large increases in the number of broadcast stations and in competition to broadcasting -- and to heightened concern over First Amendment issues. Accordingly, as indicated, most of our rules and policies employing the direct technique for ensuring viewpoint diversity have been eliminated.

60. The indirect method used by the Commission for obtaining viewpoint diversity has been through our structural rules. These attempt to increase the diversity of viewpoints ultimately received by the public by providing opportunities for varied groups, entities and individuals to participate in the different phases of the broadcast industry. There are a number of examples of structural regulations designed to have an impact on viewpoint diversity. For example, our ownership restrictions, including those limiting the number of stations that a person can own on both the national and local levels and those limiting the ownership interests that broadcasters may have in other media, are intended to assure that information is dispensed from "diverse and antagonistic sources."[75] Similarly, our licensing process has given incentives to those not yet involved in the broadcast industry by according a preference to those having fewer broadcast interests than their opponents in the comparative context, and our minority ownership and EEO policies are designed to encourage more participation in the broadcast industry by those historically under-represented in it.[76] Indeed, Congress' concern with diversity has led to its approval of the use of structural methods to assure both source and outlet diversity in cable television, as well. Section 11 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") was adopted by Congress to address its concerns that the cable industry had become increasingly vertically integrated -- with common ownership of both programming and distribution systems -- and that, as a consequence, cable operators had obtained the ability to favor affiliated programmers and cable systems over unaffiliated or competing programmers and distributors.[77]

61. The indirect technique for encouraging viewpoint diversity (i.e., structural rules) fosters two other kinds of diversity that the Commission has regarded as integral to the ultimate goal of providing the public with a variety of viewpoints. First, certain of the Commission's structural rules, such as the ownership limits, promote "outlet" diversity, which refers to a variety of delivery services (e.g., broadcast stations) that select and present

[75] Associated Press v. United States, supra at 20.

[76] Implementation of Commission's Equal Employment Opportunity Rules (MM Docket No. 94-34), 9 FCC Rcd 6276, (1994).

[77] See Second Report and Order in MM Docket No. 92-264, 8 FCC Rcd 8565, 8583 (1993)(citing H.R. Rep. No. 628, 102d Cong., 2d Sess., at 43).

programming directly to the public. Second, other Commission structural rules, such as the Prime Time Access Rule and the Financial Interest and Syndication Rule, were designed to foster "source" diversity, which refers to ensuring a variety of program producers and owners. The Commission has felt that without a diversity of outlets, there would be no real viewpoint diversity -- if all programming passed through the same filter, the material and views presented to the public would not be diverse. Similarly, the Commission has felt that without diversity of sources, the variety of views would necessarily be circumscribed.

B. New Approaches to Diversity

62. As indicated above, we have traditionally equated an increase or decrease in outlet diversity with a corresponding change in viewpoint diversity.[78] Accordingly, we have limited ownership of broadcast facilities on both the national and local levels. However, there is information suggesting that it may be possible to have a decrease in outlet diversity without a corresponding decrease in viewpoint diversity. For instance, in our earlier proceeding analyzing the national multiple ownership limitations, the record suggested that group television station owners generally allow local managers to make editorial and reporting decisions autonomously and that group-owned stations are more likely than others to editorialize.[79]

63. There are two schools of thought concerning the relationship between ownership and diversity. The one school holds that the more independently owned outlets there are, the greater the viewpoint diversity. This is the "51 stations provide more diversity than 50" approach to diversity as typified by the First Report and Order in Docket No. 18110.[80] A

---

[78] See, e.g., First Report and Order in Docket No. 18110, 22 FCC 2d 306, 311 (1970), recon. granted in part, 28 FCC 2d 662 (1971).

[79] Report and Order in Gen. Docket No. 83-1009, supra at 31-37. Due to the nature of that proceeding, we had no data addressing local, rather than national, ownership issues. See also, Second Report and Order in MM Docket No. 87-7, 4 FCC Rcd 1741, 1744 (1989) recon. granted in part 4 FCC Rcd 6489 (1989). In the Second Report and Order we noted that CBS, in its comments, stated that in 45% of the instances in which CBS-owned television and radio stations in the same market made endorsements in electoral races from 1980 to 1983, they endorsed opposing candidates. Additionally, CBS noted other instances in which CBS-owned stations in the same market had taken different editorial positions on significant issues.

[80] "If a city has 60 frequencies available but they are licensed to only 50 different licensees, the number of sources for ideas is not maximized. It might be the 51st licensee that would become the communication channel for a solution to a severe local social crisis." 22 FCC 2d at 311. See also, Multiple Ownership of Standard, FM and Television Broadcast Stations, 45 FCC 1476, 1476-1477 (1964). For an overview of the Commission's concern with diversity, see generally, FCC v. National Citizens Committee for Broadcasting, 436

second school of thought concerning diversity posits that the greater the concentration of ownership, the greater the opportunity for diversity of content. Under this view, where there are competing parties, each of their strategies would be to go after the median viewer with "greatest common denominator" programming, leaving minority interests unmet. But where one party owned all the stations in a market, its strategy would likely be to put on a sufficiently varied programming menu in each time slot to appeal to all substantial interests.[81] While this model may, indeed, promote diversity of entertainment formats and programs, we question whether it would act similarly with regard to news and public affairs programming and ask commenters to address this point. Similarly, in our radio multiple ownership proceeding,[82] we found that greater concentration of ownership, especially on the local level, could enhance diversity by allowing stations that would otherwise go off the air to remain in service.[83] We ask commenters to address whether, in view of the current situation in the home delivered video programming market, the traditional school of thought concerning diversity, as described above, remains valid. If not, they should provide a description of the model that they feel more accurately provides an analytical approach and explain why they believe it to be preferred.

C. The Relevant Product Markets for Assessing Diversity

64. In adopting regulations having an impact on diversity, whether direct or indirect, we have traditionally limited our consideration to the situation present in broadcasting at the time of the regulations' adoption, without implicating other information/entertainment services.[84] More recently, we have begun to view the broadcast media, and particularly television, as being part of a wider media environment and have included them in our diversity analysis, at least in a general way.[85] We now believe it is unrealistic to consider broadcast television station ownership in isolation when analyzing

---

U.S. 775 (1978).

[81] Steiner, P.O., Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting, Quarterly Journal of Economics 66 (1952):194-223. It is important to recognize that a monopolist may also engage in this kind of product differentiation in order to deter entry by potential competitors. See R. Schmalensee, Entry deterrence in the ready-to-eat cereal industry, Bell Journal of Economics 9 (1978): 305-327.

[82] See fn. 11, supra.

[83] 7 FCC Rcd at 2760-2761.

[84] There are a few exceptions to this general observation, including §§ 73.3555(c) (broadcast/newspaper cross-ownership prohibition) and 76.501 (cable/TV and cable/network ownership prohibitions).

[85] Amendment of Multiple Ownership Rules (Gen. Docket 83-1009), supra.

outlet diversity, and we propose to take other media into more specific account in assessing diversity. If consumers can choose from among several video programming services which they view as being substitutable for each other, an accurate analysis of outlet diversity must reflect that fact. In determining which services should be treated under our diversity analysis as substitutable, we first survey the universe of possibilities. As discussed above,[86] available outlets for video programming include broadcast television, cable television, telephone companies offering video dial tone service, MMDS, video cassettes and, increasingly, DBS. Approximately 62.5 percent of American households (i.e., approximately 59 million households) subscribe to cable.[87] VCRs are owned by over 80 percent of U.S. television households.[88] Additionally, computer networks and services, such as Internet,[89] Compuserve, America-on-Line, and Prodigy, increasingly provide access to information that, while not technically video programming, is still video-displayed and contributes to the total number of sources and outlets of information available to the public. Additionally, some consumers may view radio or newspapers as substitutes for television for some purposes.

65. Our next task is to determine which of the above media to include and how to weigh them, by identifying the relevant product. In the past, the relevant product has been relatively easy to discern: video service delivered to the home by over-the-air television. In terms of diversity analysis, this was the primary product that had to be considered.[90] Now, however, there are a myriad of other video media, and it is our duty, with the assistance of the record compiled in this proceeding, to determine which of these we should consider in determining the level of diversity our television ownership rules should achieve and the extent to which each medium should be considered. Section III, above, requested comment on the

---

[86] See, e.g., ¶¶ 26 and 27, supra.

[87] Broadcasting and Cable, August 15, 1994, at 56; Cable Competition Report, supra at ¶ 101.

[88] Cable Competition Report at ¶ 135.

[89] As an example of the increased accessibility of Internet to consumers, the State of Maryland will soon provide free Internet access to all its citizens. Powledge, Information Highway Without Tollbooths: Maryland is the First State to Offer Free Access to the Internet, The Washington Post, June 23, 1994, p. A-1. This puts a vast universe of information and opinions on local, national, and world issues at the user's fingertips, and it is accessible within the home. Commenters may wish to comment on whether the services such as this one should be included in our diversity analysis. On one hand, it in some ways resembles television teletext. On the other, it is available only to those with computer access. In this regard, commenters should address whether it provides a service similar to that of broadcast stations and whether it competes against the other mentioned video outlets for the consumer's time and money.

[90] But see, e.g., §§ 73.3555(d) and 76.501(a) of the Commission's Rules.

degree to which these alternative video media should be considered as economic competitors to, or substitutes for, broadcast television. In the current section, we are soliciting comment on whether, and to what extent, these media should be considered as substitutes for over-the-air television from a diversity standpoint.

1. Arguments For and Against Including Specified Non-Broadcast Television Services in Our Diversity Analysis

66. Cable television clearly substitutes for broadcast television in many ways. Like broadcast television, it delivers video programming directly to the home. Certainly, cable provides similar entertainment programming and national and international news. However, unlike broadcasting, one must subscribe to cable.[91] And only approximately two-thirds of those having cable available subscribe. Also, and perhaps more importantly, cable television operators have fewer public interest obligations.[92] An over-the-air broadcast television station is required to provide programming responsive to issues facing its local community, afford equal opportunities to political candidates, and to provide reasonable access to candidates for federal elective office. These are bedrock public interest obligations retained by broadcast stations and involve interests central to the Commission's concern with diversity.[93] Cable's obligations in these regards are rather more limited.[94] Nevertheless, some cable systems do have origination cable channels that provide coverage of local issues. Similarly, pursuant to Section 611 of the Communications Act (47 U.S.C. § 531), many cable systems have public, educational and governmental ("PEG") access channels that provide programs of information, instruction and opinion to cable subscribers. While a cable operator is not required by the

---

[91] Viewers may be said to pay for over-the-air television through their purchase of advertised products, a portion of the price of which reflects the cost of advertising -- including television advertising. Also, the consumer must first purchase a television set in order to receive over-the-air programming and allocate viewing time, at least part of which is likely spent viewing commercials. Thus, viewers pay several indirect costs in return for "free" television. However, they are not the sort of direct payment that must be made for subscription services.

[92] Cable television systems do have equal opportunity obligations pursuant to Section 315 of the Communications Act of 1934, as amended. See 47 U.S.C. §§ 315(c)(1). They do not, however, have any issue-oriented programming obligations comparable in magnitude to those of broadcast stations.

[93] When we talk about diversity, we generally are referring to diversity in the presentation of news and public affairs programming. While diversity of entertainment formats and programming is desirable, we have traditionally left it to marketplace forces to determine their appropriate availability and mix. See, e.g., Federal Communications Commission v. WNCN Listeners Guild, 450 U.S. 582 (1981).

[94] See fn. 92, supra.

Act to dedicate such channels, the Act does permit a franchising authority to establish requirements in a franchise with respect to the designation of PEG access channels.[95] Finally, Section 612 of the Act (47 U.S.C. § 532) provides for commercial leased access channels, which the cable operator must make available for lease by parties unaffiliated with it.[96]

67. Similarly, a plethora of other emerging video media exist that we may wish to take into account in considering whether a programming market is sufficiently diverse. As previously indicated, the Commission's recent Cable Competition Report detailed many video delivery systems either currently available or just on the horizon.[97] MMDS, DBS, SMATV, and VDT are all systems that are, or soon will be, providing video programming to the home.[98] Like cable, and, for that matter, broadcast television, these systems carry primarily entertainment programming. Some will offer national and international news but, with the exception of DBS, none have public interest obligations.[99] Furthermore, these are all

---

[95] Additionally, the section contains provisions regulating the relationship between the franchising authority and the cable operator.

[96] Unlike PEG access channels, which the Act states may be provided for in a cable franchise agreement, leased access channels must be dedicated in varying numbers depending upon the number of activated channels in the cable system.

[97] See ¶ 64, supra.

[98] We are not including VCRs in our diversity analysis. While many available video tapes are informational and instructional, most are entertainment and few, if any, involve issues of immediate local concern, the type of issues that lay at the heart of our diversity interests. For this reason, we do not propose to consider VCRs as substitutable for diversity purposes. Commenters believing that VCRs should be considered may wish to provide information concerning the value of VCRs in addressing our traditional diversity concerns.

[99] Pursuant to the requirements of Section 25 of the 1992 Cable Act, 47 U.S.C. Section 335, the Commission has undertaken a proceeding (MM Docket No. 93-25) with the objective of imposing certain public interest obligations on providers of DBS video service. Specifically, Section 25 requires the Commission to apply political broadcasting rules to providers of DBS video service and to consider whether DBS service provides opportunities for furthering the goals of localism. Section 25 also requires that a "provider of DBS service" reserve 4 to 7 percent of its total channel capacity for noncommercial educational or informational programming and make it available to national educational programming suppliers upon reasonable prices, terms, and conditions as determined by the Commission. See Notice of Proposed Rule Making (MM Docket No. 93-25), 8 FCC Rcd 1589 (1993). After the Notice of Proposed Rule Making was released, a U.S. District Court held that the noncommercial carriage obligations of Section 25 of the 1992 Cable Act violate the First Amendment, but the court's decision has been stayed pending appeal. See Daniels Cablevision, Inc. v. United States, 835 F.Supp. 1 (D.D.C. 1993), appeal docketed No. 93-

subscription services. As is the case with cable television, this is a factor we must consider in weighing whether they can be considered for diversity purposes as substitutable for broadcast television.

68. Finally, we turn to radio and newspapers which, like television, are mass media sources of information, opinion and advertising. Radio has many of the attributes of television and, to that extent, may be substitutable for diversity concerns. Like television, radio is "free." Additionally, it has public interest obligations similar to television's. Radio also acts as an important source of information. Many radio stations have regular newscasts and a large number feature all news or partial news formats. Additionally, talk radio often provides an important source of information and opinion on local, national and international issues. Currently, there are 636 radio stations in the United States with an all news format, 820 with a news/talk format and 461 radio stations that have an all talk format.[100] Although some radio stations may have a news format, the visual dimension provided by a television broadcast can be so compelling as to overshadow even an in-depth treatment of the same issue by a radio station. This may account for people turning to television as their primary news source.[101]

69. Also, it may be appropriate to count newspapers, to some extent and in some contexts, as being a substitute for television stations for diversity purposes. The Commission has previously documented the important role played by newspapers in the country's marketplace of opinions in an earlier examination of the national ownership limitations. Additionally, our newspaper-broadcast cross-ownership rule (47 C.F.R. § 73.3555(d)) must be viewed as accepting that newspapers are in some measure substitutable for broadcast media for diversity purposes. "Prohibition of...newspaper and television, and radio and television cross ownership in the same market would make little sense unless these different media were important substitutes for each other."[102] However, newspapers have no public interest

---

5290 (D.C. Cir.).

[100] Broadcasting and Cable Yearbook, 1994, supra at B542.

[101] More than 60% of American adults surveyed indicated that they use television as their primary source of news. The Roper Organization, "America's Watching: Public Attitudes Toward Television, 1991," (New York, 1992).

[102] Report and Order in Gen. Docket No. 83-1009, (National Multiple Ownership Limits), 100 FCC 2d 17, 25-26 (1984), recon. granted in part and denied in part, 100 FCC 2d 74 (1985). While we believe that these media may be substitutes as informational sources, we do not find them substitutable for every purpose. For instance, we would not find that they are substitutes in the delivered video programming market. See Section III(C), supra.

obligations similar to those governing broadcast stations.[103] Additionally, newspapers are less immediate than either of the broadcast media. If a person hears of a breaking news story, he or she can obtain additional information almost immediately through the broadcast media; but, unless it is available through the electronic media (e.g., Internet), he or she cannot simply "order up" a newspaper. Instead, he or she will have to await the next day's edition.

2. Tentative Conclusions on the Non-Broadcast Television Services to be Included in Our Diversity Analysis

70. It is our tentative belief that cable is a mature technology that is well-established and well-entrenched in the media marketplace. Moreover, because cable systems are franchised locally and because many have PEG access channels (and some have locally oriented origination news channels) we believe that the presence of a local cable system can play a role in any assessment of the local diversity market, at least under some circumstances. In no case, however, does it appear that we should count, for diversity purposes, each channel on a cable system as a substitute for a broadcast television station. By definition, all cable origination channels are subject to the exclusive control of the cable operator.[104] Being subject to control by the same person or entity, each such channel does not contribute to outlet diversity, or, under traditional analysis, to viewpoint diversity. Nevertheless, it may make sense to recognize a cable system as contributing more than a single television station because on a given system there may be a number of channels that, for diversity purposes, would each be a bona fide substitute for a broadcast television station. These substitutes would include PEG access and commercial leased access channels, which are not subject to the editorial control of the cable operator and, therefore, are net additions to diversity.

71. In sum, we believe that cable ought to be included as a substitute for television stations for diversity purposes. Although not subject to public interest obligations to the same extent as are broadcast stations, many cable systems, through PEG and leased access channels, and even locally originated cable news channels, provide service that contributes to outlet and source diversity and, accordingly, to viewpoint diversity. However, in order to determine the extent to which cable should be counted, commenters should address the weight we should give it. For instance, should we condition our counting of a system upon its having PEG or local news channels? Should each such channel count as a separate voice, or merely enable the cable system as a whole to be considered? If the former, are there other types of channels that should also be counted as contributing to diversity to the same extent as a PEG channel? Should we require a sufficiently high degree of cable penetration by a system before we count it for diversity purposes and, if so, what should that degree of penetration be?[105] Comment is

---

[103] See, e.g., Miami Herald v. Tornillo, 418 U.S. 241 (1974).

[104] See 47 C.F.R. § 76.5(p).

[105] Additionally, should we consider as "penetration" the level of cable availability in a community or the level of subscribership?

invited in these regards.

72. We tentatively see no reason to include in our diversity analysis the other named electronic video media, such as MMDS, VCRs and VDT, as substitutable for a broadcast television station. None of these has nearly the ubiquity of cable and most do not have the capability for local origination that cable has. All provide similar entertainment programming; however, our core concern with respect to diversity is news and public affairs programming especially with regard to local issues and events. This core concern does not seem to be addressed by any of these media.[106] It currently appears to us that the presence of these media in a market has little more relevance to our diversity concerns than would the presence of motion picture theaters in that market. Of course, commenters may wish to supply us with evidence to the contrary. But, based on the present state of our knowledge, none of these currently appear to have the availability or subscribership or programming that would enable us to conclude that for diversity purposes they are substitutable for broadcast television.

73. Next we turn to the issue of whether radio and daily newspapers should be included in the mix for diversity purposes. A case can be made for considering both radio and newspapers to be substitutes, to some extent and for some purposes, for broadcast television stations in terms of diversity. Both newspapers and radio provide their own unique contributions to the coverage of news and public affairs, especially with regard to the more in depth coverage they often can offer with respect to some issues. And, although newspapers are not as immediate as the broadcast media, they do have the capacity for more detail. Also, though not required to do so, newspapers seem to provide access to information and opinion at least as extensive as television stations. Typically, local dailies cover local issues, endorse local candidates and provide a platform for the presentation of local opinion. While radio, of course, does not provide the visual impact of television, it can, especially through all news or news/talk formatted stations, provide more extensive coverage of news and opinion than is often the case with broadcast television stations. Also, local radio stations provide access to information and opinion on issues of local concern that can be the equivalent of that presented by a television station. Most markets appear to have news, news/talk or talk formatted stations to which consumers may tune for information and opinion. For these reasons, both radio and newspapers could be considered to some extent as substitutes for television, at least for diversity purposes.

74. Although neither radio nor newspapers should be disregarded as competing media for television we, nevertheless, cannot consider <u>each</u> radio station, or <u>each</u> newspaper, as being the equivalent of a broadcast television station for diversity purposes. Television is:

---

[106] Although DBS will have certain public interest obligations mandated, they doubtless will not be able to include local coverage. Nor would they yet have subscribership anywhere near that of cable television. Should future events warrant, we would be willing to revisit our views with respect to DBS.

1) more immediate than newspapers; 2) has public interest obligations not shared by newspapers; 3) has more visual impact than either newspapers or radio; and, 4) is used by more people as their primary news source than are either radio or newspapers.[107] And while there may be a number of news and news/talk format radio stations, counting only such stations as being fungible with television stations would not square with our traditional approach to format regulation.[108] Additionally, it would create the paradox of counting for diversity purposes only radio stations that present a particularly high volume of news while any television station would count as a "voice" notwithstanding what may be its minimal efforts to meet its public interest obligations. Also, while each television station and, for that matter, radio station has a legal obligation to address issues facing its local community local daily newspapers do not. While neither radio stations nor newspapers appear to be fungible for television stations for diversity purposes on a one-for-one basis, commenters may wish to provide their views as to the extent to which we should count these media in our diversity analysis.

D. The Relevant Geographic Markets for Assessing Diversity

75. It does not appear that there is a single geographically relevant market for diversity purposes. Instead, the relevant geographic market depends upon the nature and intent of the particular ownership rule under scrutiny. For example, for purposes of the national ownership limits, the relevant geographic market to be examined would be the nation as a whole. That is, the question to be asked is whether there is sufficient diversity of outlets in the nation as a whole that the twelve station limit is too restrictive, or not restrictive enough.

76. For the duopoly rule, the relevant geographic market is more restricted. The examination of diversity would be limited to, for instance, the area reached by a station's Grade B signal contour or whatever area we determine is appropriate and capable of being applied in an administratively convenient fashion. In no case, however, would the relevant geographic market for local diversity concerns be the same as that used for examination of the national ownership limits.

77. Diversity on the national level has been part and parcel of government concern since the inception of broadcast regulation. In adopting the Radio Act of 1927, the predecessor to the Communications Act of 1934, under which we operate today, Congress was, in part, motivated by the existence of the "Radio Trust," a comprehensive, vertically

---

[107] See fn. 101, supra.

[108] While diversity of entertainment formats and programming is desirable, we have traditionally left it to marketplace forces to determine the appropriate availability and mix of such programs. See Federal Communications Commission v. WNCN Listeners' Guild, 450 U.S. 582 (1981).

integrated combination of electronic media related companies. Congress feared that, absent regulation, these companies would completely monopolize radio broadcasting. It feared that the "Radio Trust" was "hooking up stations in every community on their various wave lengths with high-powered stations and sending one program out, and they are forcing the little stations off the board so that the people cannot hear anything but one program."[109] This came at a time when there were only 536 broadcast stations nationwide so that most consumers had a severely circumscribed choice of programming available. Limiting ownership on a national basis would assure that there would be strict limits on the ability of the "Radio Trust" to propagate a single point of view to the American public as a whole. In spite of a sea change in the media marketplace over the last 60 years, we remain committed to diversity on the national level.

78. While we are no longer concerned that a "Radio Trust" will dominate broadcast communications, we still believe it essential to consider national ownership diversity, in large measure because of the resulting impact it has on diversity at the local level. The reasons for seeking diversity on the local level are readily apparent. Monopolization on the means of mass communication in a locality assure the monopolist control of information received by the public and based upon which it makes elective, economic and other choices. Measures to prevent such control have taken the form of our duopoly and one-to-a-market rules and our newspaper/broadcast cross ownership rule, all of which limit the ability of a single person or entity to control local organs of mass communication in a geographic locale.

79. Accordingly, as in our competition analysis, there is a geographic component to our diversity analysis. Not only must we determine which media generically are substitutable for broadcast television for diversity purposes but, also, where media outlets must be located in order to be considered. For instance, if we determine that from a diversity standpoint cable systems are to a greater or lesser extent substitutable for broadcast television stations, which cable systems should a particular television broadcaster be able to count? Should our standard be that the cable system has to be franchised to the broadcast station's community of license or be located in some part within the broadcaster's Grade A or Grade B signal contour?

80. Certainly, if we were to determine that cable television is substitutable for broadcast television for diversity purposes, it would not do to consider a cable system serving a far away market as being the equivalent of a local broadcast station. Similarly, a newspaper would have to have some nexus with the television broadcaster's market before we could allow it to count as a substitute for the local television for diversity purposes. We seek comment on what sort of standards we should adopt with respect to our local ownership regulations.

---

[109] 68 Cong. Rec. 3031. (Statement of Sen. Dill, the Senate sponsor of what became the Radio Act of 1927.) <u>See also</u>, <u>FCC v. Pottsville Broadcasting Co.</u>, 309 U.S. 134, 137 (1940); <u>National Broadcasting Co. v. U.S.</u>, 319 U.S. 190, 219 (1943).

V. NATIONAL OWNERSHIP RULE

81. As described earlier, at present a company is limited to owning 12 broadcast TV stations nationally in different local markets and to a maximum aggregate 25% national audience reach.[110] The reach limit was added to the rule when the station limit was increased from seven to 12 stations. It was added in an attempt to resolve the problem that a rule based solely on station counts ignores the market size served by a station. The reach limit presently prevents a group owner from owning television stations in each of the 12 largest markets. The national networks and some other group owners have concentrated their station purchases on stations located in markets with the largest audiences. As a result of this strategy, some group owners have reached the 25% audience reach limit before they have acquired 12 stations.[111] Thus, it appears that for many of the existing national TV group owners, the 25% national audience reach limit is the more binding regulatory constraint on group acquisition of additional stations nationally.

82. To examine whether the national ownership limits should be relaxed, we first conduct a competitive analysis and then a diversity analysis. In conducting the competitive analysis, we seek to examine the effects of relaxing these rules on the potential competitiveness of the markets for delivered video programming, advertising, and video program production. The primary focus in each of these discussions is on the effect of changing the rules on the concentration of the market. In conducting the diversity analysis, we seek to examine the effects of relaxing these rules on the diversity of viewpoints available to the public, paying particular attention to the diversity of outlets.

A. Effects on the Market for Delivered Video Programming

83. Relaxing the national ownership limits will not by itself increase or decrease the number of separately owned broadcast TV stations in the video program delivery market. This is because, as discussed earlier, the video program delivery market is a local market. So, as long as a company is allowed to own only one broadcast television station in a local market, relaxing the national ownership limits will have no affect on the concentration of these local markets. Similarly, if we measure concentration in this market by the number of

---

[110] These limits are increased to 14 stations and 30% if two or more of the stations are controlled by minorities.

[111] For example, in 1993, none of the top 25 television group owners had reached the number of stations limit, but several were clearly restricted by the national audience reach limit. For example, Capital Cities/ABC owns 8 stations with a 23.63% national audience reach. While able to add 4 more stations, they would clearly have difficulty adding one more station without violating the audience reach limit. Broadcasting and Cable (March 21, 1994) at 52.

available outlets or channels of delivered video programming, then relaxing the national broadcast television ownership rules should have no effect. Consequently, by these measures, relaxing the national ownership limits for broadcast television stations should not change the existing concentration of these local markets.

84. On the other hand, if we measure concentration in local markets by the audience share of each of the available channels of video programming, then relaxing national group ownership rules might have an effect on concentration of the different local markets for delivered video programming. This could occur because a group owned stations develop efficiencies in the acquisition or production of video programming which allows such stations to become more profitable and win larger viewing audiences. Such a consequence seems a desirable, rather than an undesirable, outcome of the competitive process, and therefore should not be a basis for maintaining current national ownership limits. We would like comment and evidence on the popularity of programming provided to consumers served by a group owner versus the popularity of programming provided to consumers served by an individual station owner, accounting for network affiliation (i.e., compare group versus individual for affiliated stations, group versus individual for non-affiliated stations).

85. Based upon the above considerations, we do not expect relaxation of the national ownership limits to have any effect on competition in the local market for delivered video programming. However, if commenters disagree with this expectation, we request that they provide evidence on how such a relaxation would increase concentration in these markets. For example, we would like commenters to justify their measure of concentration, provide a measure of it for existing markets, and detail the links between changes in the national ownership limits and concentration in these markets.

B. Effects on the Market for Advertising

86. One of the motivations for owning a group of TV stations nationally may be to increase a company's audience reach. This may give a company a chance to increase its bargaining power in the sale of video advertising time to advertisers in the national advertising market. However, as pointed out earlier, commercial broadcast networks, commercial cable networks and syndicators are the primary alternative providers of national advertising. Consequently, it is not clear why increasing national ownership limits should have any harmful effects on this market when these providers already reach a national audience.

87. On the other hand, there may be a potential for harm from increasing national ownership limits on the local advertising markets. A group owner might use any market power it might have in one local advertising market to subsidize anti-competitive efforts in another advertising market. However, given existing substitutes (e.g., other broadcast television stations, cable operators, radio operators, newspapers), it is not clear that any given broadcast television station possesses such market power, nor is it clear that such a strategy would even be profitable. Consequently, we do not expect relaxing national ownership limits

to have a deleterious effect on the different local advertising markets.

88. These expectations comport with prior analyses of video advertising, which find no evidence that group ownership had a significant effect on advertising rates.[112] While dated, we know of no recent analyses which demonstrate that a company owning a group of TV stations across the nation has and uses significant market power to charge higher advertising rates to national or local advertisers. However, we solicit any evidence on this issue, especially that which also takes into account other relevant factors in the pricing of video advertising. Further, we solicit comment on how relaxing the national ownership limits might affect the concentration of local advertising markets. These comments should provide measurement of existing concentration, as measured by advertising revenues, as a background for discussion.

C. Effects on the Video Program Production Market

89. Broadcast television stations purchase programming in a national market. Assume, for the sake of argument, that broadcast television stations face no other competitors than themselves. Nationally, there are 1,157 commercial broadcast television stations to which this rule applies. The current rule allows that, under certain circumstances, one person may hold an attributable interest in up to 14 commercial television stations nationally.[113] If all television station owners consolidated so that each controlled 14 stations, the Herfindahl-Hirshman Index (HHI), a common measure of market concentration, would be 121. This number is very low by antitrust standards.[114] Thus, even assuming that broadcast television faces no other competition in the purchase of programs, it would appear that the current national limits could be relaxed substantially before a competitive concern would arise.

90. With the relaxation, and likely future expiration, of the financial interest and syndication rules for broadcast television networks and the possible relaxation of prime time access rules, some will argue that there is the renewed potential for broadcast networks to exercise market power in the purchase of video programming. This view mixes concerns with broadcast networks's market power with television group owners's market power. However, two facts may mitigate the concerns evoked by this view. First, the ever growing list of

---

[112] For examples, neither Cherington, et. al., (1971) nor Levin (1980) finds any evidence that the advertising rates between comparable group owned and individually owned broadcast TV stations are significantly different. P. Cherington, L. Hirsch, and R. Brandwein, Television Station Ownership: A Case Study of Federal Agency Regulation, Hastings House (New York, 1971). H. J. Levin, Fact and Fancy in Television Regulation, Russell Sage Foundation (New York, 1980).

[113] For purposes of this analysis we ignore the restrictions imposed by the reach limit, and we assume that groups have two stations which are minority controlled.

[114] Fourteen out of 1,157 constitutes 1.21 percent. $(1.21)^2$ $(1157/14)$ = 120.94 (HHI).

alternative buyers of video programs suggests real limits on the exercise of any such power. Second, we have no evidence that broadcast television stations have monopoly power in their local markets for delivered video programming. Lacking such power, there is little way these stations could exercise market power in the purchase of video programs.[115] Consequently, we do not foresee that relaxing the national ownership limits for broadcast television stations will cause any significant economic harm to these markets.

91. The notion that group owned television stations lack market power in the purchase of programming is supported by available evidence. For example, the FCC's Network Inquiry Special Staff found no evidence that group owned stations were able to obtain programming from suppliers at more favorable terms than an individually owned station.[116] Consequently, we are unaware of evidence which suggests that any existing group owned broadcast TV stations exercise market power in the video program production market.

D. Other Economic Effects

92. Networks and group owners have indicated in their comments that there may be substantial economies of scale or cost savings from owning additional stations. However, they have not provided clear evidence that there are significant economies in the delivery of video programming which might accrue to the owner of a group of broadcast TV stations spread out across the country. When we increased the national limits from 7 to 12 stations, we stated that group ownership could have three beneficial effects. First, group ownership might foster news gathering, editorializing and public affairs programming, and the development of independent programming by regional or national ad hoc networks. Such improvements generate both programming preferred by consumers and more efficient use of the broadcast spectrum. Second, some buyers of stations may have superior skills. Those with superior managerial abilities may be able to do a better job of matching programming to local tastes. Third, some group owners may have cost advantages derived from the ability to spread the services of management, bookkeeping, secretarial, sales, and programming personnel over a number of stations, and the potential for group advertising sales and program purchases.[117] The empirical evidence about the magnitude of this effect was weak at the time we adopted the 12 station rule, and continues to be so today. Accordingly, we seek evidence and data concerning economies in the distribution of video programming which may accrue to group owners of television stations. We particularly seek evidence on this issue from those group owners who increased their ownership holdings in response to our prior relaxation of the national ownership limits. In providing this evidence, it would be particularly helpful if

---

[115] See Sections III, A and IV, C for earlier discussion of this point.

[116] Federal Communications Commission, Network Inquiry Special Staff, *An Analysis of Television Program Production, Acquisition and Distribution*, in New Television Networks: Entry, Jurisdictions, Ownership and Regulation, Vol. II, October 1980, at 641-650.

[117] Report and Order in General Docket 83-1009, 100 FCC 2d 10 (1984) at ¶82.

commenters would distinguish between the effects of owning a group of stations and the effects of affiliating with a network.

93. Another economic effect of relaxing national group ownership limits might be on the rate of incorporation of technological innovation into television broadcasting. Larger group owners might have the financial capital and geographic diversification necessary to bear the costs and take the risks associated with introducing advanced television broadcasting technologies into existing television broadcasting stations. On the other hand, if the technological innovation is expected to be profitable, and financial markets will fund any profitable investment, then it is not clear why larger group ownership will increase the rate of introduction of new technologies in television broadcasting above what it would have been with the current rules. We would like comment on these views which help to evaluate their comparative validity.

94. Finally, another economic effect of relaxing national group ownership limits might be on the prices of broadcast television stations.[118] Such a relaxation could increase somewhat the number of potential bidders and hence the bid price for any non-group owned stations. The increased prices of broadcast TV stations may pose a concern with respect to the ability of minorities and other new entrants to acquire TV stations. However, it should be recognized that it is not the price per se that is the problem, but minorities' ability to finance the purchase of a higher priced station. We are concerned about this possible consequence and are addressing issues relating to the difficulties of minorities and women in obtaining access to capital in MM Docket No. 92-51[119] and in the minority and female ownership rule making we adopt today.[120] We are also concerned about the possibility that changes in the national ownership limits may adversely affect the pool of independent television stations available for acquisition and affiliation by nascent broadcast networks. We ask for comment and analysis of this concern.

E. Effects on Diversity

95. As we previously indicated, we will first identify which diversity goals the national ownership rule seeks to foster. One of the assumptions behind national television ownership limitations has been that placing limitations on the number of stations in which a

---

[118] See G. Fournier and E. Campbell, *Shifts in broadcast policy and the value of television licenses*, 5 Information Economics and Policy 87 (1993). It is important to note that these authors claim to detect tremendous efficiency gains from group ownership. Unfortunately, however, they do not document their sources.

[119] In the Matter of Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, 7 FCC Rcd 2654 (1992).

[120] Notice of Proposed Rule Making in MM Docket No. 94-150, FCC 94-324, __ FCC Rcd ___ (released January 12, 1995).

party can have a cognizable interest promotes diversity of outlets and viewpoints. This assumption, which dates from the inception of broadcast regulation, had as its genesis a fear that a small number of owners would dominate viewpoint diversity, keeping off the airwaves any views with which they did not agree. Limiting the number of outlets that an entity could own on a national level, the Commission has believed, increases the number of entities engaged in the ownership of broadcast facilities. This, in turn, limits degree of control over viewpoints expressed nationally that any entity could have and, as a consequence, furthers the First Amendment values in pluralistic national political discourse.[121]

96. While the national ownership rules may foster these goals, and especially outlet diversity, the rules may not be essential to achieving such diversity. It is axiomatic that if we limit the number of television stations nationally in which an entity can have an attributable interest, there will be more outlet diversity (i.e., more separate owners of television stations) than would be the case if, for instance, we allowed an entity to own an unlimited number of outlets nationally. But this does not necessarily translate into viewpoint diversity. Television and competing outlets are viewed locally, and we question whether an increase in concentration nationally affects diversity on the local level. In this regard, also, many stations are affiliated with a network. As a result, these stations, even though not commonly owned, air the identical programming for a large portion of the broadcast day irrespective of our national ownership limits. Moreover, the multiple sources and outlets of video programming currently -- and increasingly -- available now call into question the basic assumption that there are no close substitutes for over-the-air television. And, as seen above, there is evidence that group owned television stations are more likely than others to editorialize[122] and their local managers tend to make editorial and reporting decisions autonomously. This, at the least, suggests a reduced relationship between ownership diversity at the national level and viewpoint diversity especially at the local level. This lessens our diversity concerns with respect to liberalizing the national ownership cap and suggests that current limits on the number of television stations in which a single party may have a cognizable ownership interest nationally may no longer be appropriate.[123]

---

[121] See, e.g., Notice of Proposed Rule Making, Multiple Ownership Rules (Gen. Docket No. 83-1009), 48 FR 49438 and sources cited therein.

[122] See para. 62, supra. Stations that editorialize, we believe, are contributing to the mix of ideas and, thus, are making a contribution to viewpoint diversity.

[123] The traditional basis for such ownership regulation has been the scarcity of electromagnetic spectrum space which limits the number of frequencies available to broadcasters. Given these limits, various regulations have been permitted in connection with the electronic media that would not be permissible in print media where spectrum scarcity is not an issue. See Turner Broadcasting System Inc. v. FCC, ___U.S. ___, 114 S.Ct. 2445 (1994); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969). Although there is still limited television spectrum space available, it must be acknowledged that, irrespective of technological scarcity, the number of commercial and noncommercial television stations has

97. It appears that such factors as increased video media competition, network affiliation and diversity on the local level all favor alteration of the national ownership limitations. While our analysis suggests that, from a diversity standpoint, changes in the current national ownership limitations may be warranted, commenters should nevertheless address what effect, if any, group ownership and consolidation of ownership nationally would have on viewpoint diversity in news and public affairs programming, especially locally. For instance, do group owners tend to reduce the amount of news and public affairs programming by consolidating budgets and staffs, or does group ownership encourage more and better quality news and public affairs programming by providing access to more resources and allowing economies of scale?[124] Additionally, for national news, network affiliated stations primarily use their network affiliation to provide national news programming, and broadcast networks must compete with each other and with cable news networks in providing national news. Consequently, we ask whether changing national group ownership rules would have any impact on the delivery of national news and, if so, what that impact would be.[125] Finally, given that the pursuit of large audiences may drive all licensees -- whether group owners or not -- towards the exclusion of controversial, non-mainstream subjects from their programming, does ownership diversity, indeed, have a major effect on viewpoint diversity with respect to television?

F. Tentative Proposals

98. Based upon our review of the available evidence and literature, it appears to us that liberalization of the national ownership limits would not have an adverse impact upon competitiveness of the markets for delivered video programming, the market for advertising, or the video program production market. As already discussed, relaxing the national ownership limits will not increase the concentration of broadcast TV ownership within a local market. Further, the current national levels of industry concentration are low by antitrust

---

continued to increase in the past decade from 1,180 in 1984, to 1,520 in 1994. Cable Competition Report, supra at ¶99. Contrast this with the comparatively stagnant level of daily newspapers which grew from 1,701 in 1985, to 1,735 in 1993. Bureau of the Census, Statistical Abstract of the United States 1993, Table 915, p. 567. It should also be noted that more than half of all households receive 10 or more over-the-air television signals (NPRM in MM Docket No. 91-221, supra at 4112), whereas few communities have competing daily newspapers; in a number of cases, maintenance of even this low level of newspaper competition has required Congressional exemption from antitrust laws.

[124] Information currently available to us suggests that affiliates spend almost four times the amount spent on news by independents. NAB, 1993 Television Financial Report.

[125] Intuitively, we believe that any impact would be positive. Ownership of more stations would, we believe, enhance the resources that a network or group owner could devote to its news operations.

standards. Therefore, extensive consolidations could take place before any competitive concerns would arise.

99. Nor do we believe that raising the national ownership limits would have serious adverse effects on diversity. As we have previously stated:

> Within the United States, the most important idea markets are local. For an individual member of the audience, the richness of ideas to which he is exposed turns on how many diverse views are available within his local broadcast market. For that individual, whether or not some of those views are also disseminated in other local broadcast markets does not affect the diversity to which he is exposed. Accordingly, national broadcast ownership limits, as opposed to local ownership limits, ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public.[126]

100. Based upon these considerations, we propose raising national ownership limits and seek comment about the manner in which they should be expressed (e.g., number of stations or outlets, number of stations or outlets with a reach cap, reach cap without any limit on the number of stations or outlets, or audience share cap) and the extent to which they should be raised. We observe that in our 1984 Report and Order, using competition and diversity analyses similar to those discussed supra, we concluded that national ownership limits could be phased out without harming competition or diversity at the national level. Accordingly, we adopted a 12 station limit in that Order, with an automatic sunset provision whereby these limits would expire in six years. On reconsideration, we reaffirmed the numerical station limit, adopted the 25 percent reach limit, and eliminated the automatic sunset, recognizing that a complete and abrupt elimination of our national multiple ownership rules might engender a precipitous and potentially disruptive restructuring of the broadcast industry. We continue to believe that changes in the national multiple ownership rules should be incremental in order to avoid significant dislocation in the television industry. The NPRM in this proceeding proposed several adjustments to the multiple ownership rules, which we ask commenters to consider in the context of the analysis herein. We proposed amending the national numerical limit to permit common ownership of 18, 20 or 24 television stations and altering the national reach restriction to permit a group owner to reach 30 or 35 percent. Alternatively, we sought comment on whether we should modify only the numerical limit, retaining the 25 percent reach limit. We stated that this moderate approach would allow some growth in the size of group owners and provide us an opportunity to assess over time the benefits and any costs of increased station ownership. Commenters were mixed in their responses to each of these proposals and provided little structured analysis by which we could compare contrasting positions. Consequently, we ask for comments on these proposals which

---

[126] Amendment of Multiple Ownership Rules (Report and Order), 100 FCC 2d at 37.

are structured in a manner consistent with the analytical framework proposed herein.

101. We also seek comment on the following new proposal. We could eliminate the numerical station limit entirely, and allow the reach limit to increase by some fixed percentage, such as 5% every 3 years, until the reach limit rises to 50%, the final limit. During this period, the Commission would monitor the relevant markets and determine whether or not problems have arisen which call for a halt in the relaxation of the national ownership limit.[127] This proposal would allow the Commission to take a measured approach to relaxing national television station ownership limits and would be framed in a manner consistent with our earlier analyses. Specifically, we think that formulating national limits only in terms of reach, rather than in conjunction with a number of stations limit, may be preferred because it captures the relevant dimension of interest (i.e., the total audience potentially available) and it allows companies flexibility to own either a few stations serving large population markets or a larger number of stations serving small population markets. This would mean that all licensees would be given the same opportunity to reach an equal share of the national audience. In addition to these advantages, we believe it would be desirable to allow the reach limit to rise gradually rather than immediately to 50%, in order to monitor industry changes. Parties are encouraged to comment on all the above proposals and any others they wish to suggest. We ask parties to analyze their benefits and costs in the context of relevant product and geographic markets and their impacts on both competition and diversity.

102. In applying the above to full power stations, we note that UHF stations are now attributed with only 50 percent of their theoretical reach within the ADI. In other words, acquisition of a UHF television station only adds half as much to a multiple owner's reach limit as the acquisition of a VHF television station located in the same television market. The Commission incorporated this adjustment in the 1984 rules to account for the physical limitations of the UHF signal. We seek comment on whether this adjustment should be retained. On one hand, improvements in UHF signal propagation and extensive cable carriage of UHF signals may have reduced the signal-quality disparity with VHF signals. On the other hand, approximately 5 percent of potential viewers are not reached by cable and 37.5% of television households do not subscribe to cable. These viewers must rely on over-the-air reception of UHF/VHF signals. Accordingly, we seek comment on whether and, if so, to what extent, there remains a disparity between VHF and UHF signal propagation and how this should affect the UHF discount, if at all. Should we determine that, based on the record, the UHF adjustment should be modified or eliminated, we would still be concerned that existing group ownership not be disrupted and we specifically would not intend to force divestiture by any such change. Therefore, we also seek comment on whether, should the UHF discount be

---

[127] For example, the Commission might prepare a status report on the broadcast television industry prior to each change in the national ownership limit. We ask for comment on this idea and suggestions of alternative approaches to monitoring the effect of relaxing national ownership limits on the broadcast television industry.

modified, existing group owners should have the reach discount for any currently owned UHF stations "grandfathered," or whether this should be done only where divestiture would otherwise result from a new UHF reach rule that no longer reduced the theoretical reach by 50%.

103. As noted above, our current rule allows a single entity to hold interests in up to 14, rather than 12, televisions stations reaching 30, rather than 25, percent of total television households if the additional stations are minority controlled. In a separate and concurrent proceeding, MM Docket No.94-150, we are more fully considering a variety of issues related to minority ownership and participation in broadcasting, and parties may wish to comment in that docket. However, we welcome related comments which are particularly pertinent to issues raised in this FNPRM.

104. Finally, we note that a television station that qualifies as a satellite is exempt from the national ownership restrictions. This means that the satellite station does not count against the owner's national station limits.[128] TV satellite stations are full power terrestrial broadcast stations authorized under Part 73 of the Commission's Rules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned. The Commission has an outstanding Second Further Notice of Proposed Rule Making, that seeks comment on the issue of whether this exemption should be continued, as well as on related issues such as whether some national ownership benchmark other than the number of stations would be preferable to apply to TV satellite stations.[129] Since we are now considering modifying all aspects of the national and local ownership rules in this proceeding, we believe it is appropriate to incorporate the outstanding proceeding on satellite television stations and resolve all ownership matters in this proceeding. In light of the new competition and diversity analysis presented in this FNPRM, we invite additional comment on whether satellite television stations should continue to be exempted from the national multiple ownership rules.

VI. LOCAL OWNERSHIP RULE

105. The local ownership rule prohibits common ownership of two television stations whose grade B contours overlap. The rule is intended to preclude ownership of more than one television station in a local community in order to promote competition and diversity. As we discussed earlier, television stations compete for viewership and sell advertising in local markets. Thus, it is important that the Commission's rules ensure workable competition in local markets. Ownership of several broadcast stations can increase the likelihood of

---

[128] Coverage of satellite stations under our local ownership restrictions are assessed on a case-by-case basis.

[129] Second Further Notice of Proposed Rulemaking, in MM Docket No. 87-8, 6 FCC Rcd 5010 (1991).

anticompetitive behavior if (a) the stations serve the same market, (b) the market is concentrated, i.e., has few competitors, and (c) allowing ownership of several broadcast stations substantially increases concentration in the market.[130] In the following discussion, we will address the effect of relaxing the local television station ownership rule on our competitive and diversity concerns. We set out one specific proposal and request comment on other possible rule changes. For the above reasons, we view changes to the local ownership rule as giving rise to more serious concerns than changes to the national ownership rule. We intend to carefully evaluate the economic factors that affect the local marketplace, including changes that occurred after the NPRM was adopted in 1992. We will also look at how the proposal herein to modify the contour overlap rule from Grade B to Grade A is affected by other proposals in this FNPRM and how it and these other proposals influence the effects of allowing common ownership of broadcast television stations with contour overlap in local markets .

A. Effects on the Market for Delivered Video Programming

106. As we discussed earlier, we believe that, at present, commercial broadcast television station operators effectively compete with each other, with public broadcast television stations, with cable system operators, with wireless cable operators, and possibly with DBS operators serving their "local" market. Consequently, some existing large markets for delivered video programming appear to be unconcentrated when we use either the number of independent operators measure or the number of channels of programming measure for market share calculations.

107. Allowing one entity to own more than one broadcast TV station within a "local" market may permit the company to realize economies of scale, reducing the costs of operating the two stations. As we have stated in our proceedings relaxing other local ownership rules (i.e., radio ownership and the "one-to-a-market" waiver standard), joint ownership of stations in the same market permits cost-sharing in administrative and overhead expenses, sharing of personnel, joint advertising sales, and the pooling of resources for local program production (such as news and public affairs programming). We believe the cost savings from these economies could then be used to provide better programming to the public. We seek hard evidence from commenters of the existence and magnitude of such economies. We particularly seek information regarding the experience of those group owners who have consolidated pursuant to our relaxed local radio ownership rule and the one-to-a-market waiver standard. We also ask whether experiences with respect to the radio market can be used to predict the benefits of relaxing ownership rules in local television markets.

B. Effects on the Market for Advertising

---

[130] S.M. Besen and L.J. Johnson, Regulation of Media Ownership by the Federal Communications Commission: An Assessment, Rand Publication #R-3206-MF (December, 1984).

108. Allowing a company to own more than one broadcast TV station in a local market might give the company the economic power to raise video advertising rates within the local service area, if, by virtue of the combination, the local market became concentrated. Evidence on whether significant market power in the local advertising market already exists is mixed. One study found that the relationship between advertising rates and broadcast concentration, for different measures of concentration, is either insignificant or negative.[131] This suggests that there is little evidence of market power being exercised by commercial broadcast television stations on local advertising rates. On the other hand, another study found evidence of a positive relationship between market concentration and CBS affiliate advertising pricing.[132] Consequently, prior evidence is mixed on whether commercial broadcast television stations possess any market power in the sale of advertising.

109. Allowing one company to own two broadcast television stations in a "local" market should have no effect on the concentration of the national advertising market because of differences in the geographic dimensions of these markets. However, allowing a company to own more than one broadcast television station within a "local" advertising market can increase that market's concentration. Local cable advertising revenues are small when compared to local commercial broadcast television station advertising revenues, but they are expected to increase in size and importance. Prior studies have found mixed evidence on the effect of cable on broadcast TV station advertising revenues.[133] Thus, at this time, it is not clear whether cable system operators offer effective competition to broadcast station operators in providing local advertising. Further, as was discussed earlier, it is not clear how substitutable radio and newspaper local advertising is for broadcast television local advertising. If they are effective substitutes, then many "local" markets would appear to be competive with respect to advertising. We request interested parties to provide whatever data

---

[131] G.M. Fournier and D.L. Martin, *Does Government-Restricted Entry Produce Market Power?: Evidence from the Market for Television Advertising*, 14 Bell Journal of Economics (1983).

[132] M.O. Wirth and H. Bloch, *The Broadcasters: The Future Role of Local Stations and the Three Networks*, in Video Media Competition: Regulation, Economics, and Technology, Eli M. Noam (editor), Columbia University Press (NY, 1985).

[133] For contrasting examples, see (1) M.O. Wirth and H. Bloch, *The Broadcasters: The Future Role of Local Stations and the Three Networks*, in Video Media Competition: Regulation, Economics, and Technology, Eli M. Noam (editor), Columbia University Press (NY, 1985), and (2) M.O. Wirth and B.T. Allen, *Crossmedia Ownership, Regulatory Scrutiny, and Pricing Behavior*, 33 Journal of Economics and Business 28 (1980). Unfortunately, these studies are dated and fail to control for the popularity of program offerings. For example, adding one more cable channel to a 100-channel system might have a minor or major impact on the advertising revenue of an existing broadcast television station depending upon the popularity of its programming.

and analysis they can on the substitutability of these media in the local advertising market at present and in the future. Assuming that they are not effective substitutes, then we also request comment on how many independent providers of local video advertising are necessary to insure effective competition in this market. Statistical evidence supporting fact-based analyses from commenters will especially be welcome.

C. Effects on the Video Program Production Market

110. Television stations purchase or barter for video programming in a national market in the sense that producers of video programming typically create product which is marketed to be broadcast in more than one local market. However, the program market could be affected if Commission relaxation of the local ownership rules permitted one or a few broadcast station owners to exercise significant market power in the purchase of video programming. The result might be that suppliers of video programming would be forced to sell their product at below competitive market prices in order to gain access to the local market controlled by one or a few local group owners. Prior evidence suggests the potential for the exercise of such market power depends critically on the absence of a sufficient number of competitors. For example, the Network Inquiry Special Staff report examined the effect of an independent station on the prices paid for off-network syndicated programming.[134] It found that the price paid for programming per viewer is significantly higher where there is even one technically comparable independent station in the market in addition to the network affiliates.[135] The ever increasing number of alternative providers of delivered video programming in just about every major market, described earlier, may mitigate the potential for distorting the prices of video programming through control of broadcast access to local television sets by providing program producers with additional outlets for their product. We solicit comment on this point and evidence on the potential market power in the purchase of video programming in different markets if we were to relax the local ownership rule.

D. Other Economic Effects

111. As with relaxing the national ownership limits, relaxing local ownership limits could increase the price of broadcast television stations. The potential for increased prices of broadcast TV stations concerns us when we consider the ability of minorities and women to purchase TV stations. As we previously noted, the problem is the ability of such individuals to finance the purchase of a higher priced station. We are concerned about this possibility and are addressing issues relating to the difficulties of minorities and women in obtaining access to capital in the minority and female ownership rule making we are adopting today.[136]

---

[134] See FCC, Vol II., op. cit., 643-50.

[135] FCC, Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership, and Regulation, Vol. II, op. cit. at 643-50.

[136] Notice of Proposed Rule Making in MM Docket No. 94-150, supra.

We ask for comment and analysis of these issues.

112. We are also concerned about the possibility that changes in the local ownership limits may adversely affect the pool of independent television stations available for acquisition by and/or affiliation with nascent broadcast networks. Subsequent to the publication of the NPRM, the fourth network has flourished and the fifth and sixth networks are being introduced. Consequently, we solicit comment on the effects of allowing station ownership consolidation at the local level on the future development of these nascent broadcast networks. A separate, but related concern, is with allowing the owner of a station affiliated with or owned by an established broadcast network to own another broadcast television station serving the same market. This possibility may confer on such an owner more market power than would arise from an independent station operator acquiring a second station in the market. We solicit comment on the importance of this concern.

E. Effects on Diversity

113. As indicated previously, our concern with diversity is most acute with respect to local ownership issues. Both television and competing video outlets are viewed at the local level. The Commission has consistently believed that a reduction in local outlet diversity would translate into a reduction of viewpoint diversity.[137] While the existing duopoly rule may foster diversity by assuring that only one television outlet in a given market can be owned by a single entity or individual (assuring that each local television outlet is owned by a different person or entity), we believe it is appropriate to solict comments on whether the rule remains essential in its current form to ensure diversity.

114. In recent years the totality of information outlets on the local level has increased. Not only has the number of television outlets increased since our last review of the television multiple ownership rules[138] but, additionally, nearly all viewers now have access to cable television (whether or not they subscribe), and other video services. In our recent radio ownership proceeding, we found that the abundance of radio and other media outlets now available "make clear that the local marketplace is far more competitive and diverse -- indeed, has been virtually transformed -- since the local ownership rules were first promulgated."[139] On this basis, the Commission liberalized the duopoly rule with respect to radio.[140]

115. With respect to television, however, we must be cautious in our analysis of

---

[137] See, e.g., First Report and Order in Docket No. 18110, supra at 311.

[138] *See* ¶25, supra.

[139] 7 FCC Rcd at 2774.

[140] Additionally, as noted above, there is an argument that consolidation in broadcasting can promote rather than retard program diversity.