fewer television channels available than in the aural services."[67]

In the 1992 Notice the Commission proposed amending the television duopoly rule to bar joint ownership only of stations with Grade A overlap. In doing so, the Commission recognized the tremendous increase in the level of competition in local television markets and concluded both that a station's Grade A contour "more accurately reflects a station's core market" and that a Grade-A-based rule would facilitate increased operating efficiencies between co-owned stations in neighboring communities.[68] The Commission now proposes again in this proceeding to change the duopoly rule standard from the Grade B to the Grade A contour.[69]

Capital Cities/ABC supports the renewed proposal and believes that, at the least, the Commission should decrease the prohibited overlap from Grade B to Grade A.[70] The current rule cannot be justified as a necessary protection for either competition or diversity.

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[67] Id., par. 19(c). In 1964 there were approximately 649 television stations in operation and a few cable services primarily making retransmission of broadcast signals. Notice, par. 14.

[68] Notice, pars. 17-18. See also Further Notice, par. 117.

[69] Further Notice, par. 116.

[70] In 1989 the Commission revised the radio duopoly rule by reducing the size of the forbidden overlap for reasons analogous to those we propose here in favor of a Grade A television-duopoly rule: the original contour did not accurately reflect the core market of a radio station, the historical increase in the media voices reduced the need for a more stringent duopoly rule, and allowing joint ownership of stations in closer geographic proximity fosters operating efficiencies that work to the public's benefit. Radio Contour Order, pars. 22-37.

As the Analysis shows, television stations with Grade B, but not Grade A, overlaps do not generally compete for viewers, advertisers or programming.[71] They do not compete for viewers because stations with only Grade B overlap are unlikely to have enough potential viewers in common to be considered significant competitors. This is borne out by the overlap analysis of five illustrative markets examined in the Analysis. The Analysis demonstrates that only a relatively small percentage of the total audience of either station in the markets examined lies within the Grade B overlap area.[72]

Stations with only Grade B overlap do not compete for advertisers because competition for advertising is based on DMA ratings and the Grade A contour is a far more accurate proxy for the area encompassed by a station's DMA. Nielsen assigns each station to one DMA generally based on the location of its city of license.[73] The Grade A contour typically surrounds the city of license while the Grade B picks up where the Grade A leaves off and covers the outer areas of the DMA and beyond. In negotiating advertising sales, stations, sales reps, advertisers and advertising agencies all typically rely on Nielsen ratings data which are reported in DMA terms.[74]

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[71] See Analysis at 13-17, 87-88, Appendix B (audience); 29-37, 88-89, Appendix D (advertisers); 44-47, 89-90 (programming).

[72] Analysis at 14-15, Appendix B, Table B-1.

[73] Nielsen - NSI.

[74] Analysis at 29.

Stations with only Grade B overlap do not compete for programming because Commission rules place specific limits on the geographic area in which a broadcast station can enforce exclusive exhibition rights for non-network programming.[75] Except in the case of hyphenated markets, this area extends 35 miles from the station's home community.[76] Grade B contours are generally 50 to 70 miles in radius, which means the two stations are 100 to 140 miles apart. This greatly exceeds the radius in which most stations can exercise exclusive non-network program distribution rights. For practical purposes, stations do not compete in acquiring programming against stations located outside the area in which they can exercise exclusive rights. The same conclusion can be reached with respect to competition for network programming. Stations with only Grade B overlap generally fall in different DMA's. Stations in different DMA's do not compete for network programming because networks generally seek to obtain affiliates in all DMA's.[77]

Diversity would not be diminished by using a Grade A overlap standard because stations with only Grade B overlaps are, as noted above, far apart and, consequently, service different communities.[78] In order to meet the demand for local news, a common owner of two

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[75] 47 C.F.R. 73.658(m).

[76] In the case of hyphenated markets, the individual communities are in the same DMA.

[77] Analysis at 89-90.

[78] See Analysis at 91-92.

such stations, acting in its own self interest, would program different local news for each of the separate communities. As noted above this is borne out by the overlap analyses of five illustrative markets examined in the Analysis. In addition, as the Commission has recognized, the proposed revision would allow co-owned stations in neighboring communities to enjoy operating efficiencies that likely would increase broadcasters' ability to provide program diversity, variety and quality.[79]

B. The Commission Should Proceed On A Case-By-Case Basis In Determining Whether To Permit Combined Ownership Of Two Stations With Grade A Overlap.

As the Analysis demonstrates, competitive conditions vary widely across markets. There may be some instances where permitting combined ownership of stations with Grade A overlap would raise legitimate competition or diversity concerns. That possibility should not, however, lead to the promulgation of a per se rule prohibiting all such combinations. Such a rule would have the effect of foreclosing Grade A overlaps 1) where two stations do not compete in the same market, and 2) in markets where there is now vigorous competition among many television stations, cable operators and other providers and common ownership of two stations would be either competitively neutral or beneficial. In order to properly evaluate proposed Grade A overlap combinations, the Commission should proceed case-by-case, and should be prepared to permit such combinations where the adverse effects are slight and

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[79] Further Notice, par. 117. See Analysis at 90-91.

there is a demonstrated showing of efficiencies and public interest benefits to be gained.

We expect such a showing might successfully be made, for example, with respect to stations located in Washington, D.C. and Baltimore, or in Boston and Providence. Stations in these adjoining markets may have overlapping Grade A contours but they are located in different DMA's, thus presumptively competing for different viewers and advertisers.[80] In addition, if the commonly-owned stations are more than 35 miles apart, beyond the permitted zone of exclusivity for non-network programs, they are not likely to be in competition for video programming.[81] Under such circumstances, we believe the Commission should be receptive to allowing jointly-owned stations which will be able to exploit the operating efficiencies that the Commission recognizes would flow from combinations in neighboring markets.[82]

We recognize that a case-by-case approach imposes burdens and uncertainty in an area where predictability is generally desirable. But, given that jointly-owned stations with Grade A overlap can be in the public interest, the imposition of a per se prohibition would be too sweeping a rule to impose in the name of achieving predictable results.

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[80] See Analysis at 13-17, 29-37, 87-89, Appendix D.

[81] Analysis at 44-47, 89-90.

[82] See Further Notice, par. 117.

IV. Radio-Television Cross-Ownership Rule

The radio-television cross-ownership rule should be eliminated. The Commission has in place both a set of radio ownership rules that impose limits on radio concentration and duopoly rules for television.[83] In light of the existence of separate rules for radio and television, the question becomes whether any useful purpose is served by keeping in place an additional supervening rule that would apply to radio-television combinations. We submit that, based on the economic evidence, the answer to this question is "no."

The Analysis demonstrates that radio-television cross-ownership would not raise competitive concerns in any of the three markets defined by the Commission -- delivered video programming, advertising and video program acquisition. The relevant product market for delivered video programming, as defined by the Commission, includes only video programming.[84] In such a market, cross-ownership of radio and television stations cannot affect the quality of video programming. Even if, as we believe may be appropriate, the product market is more broadly defined to include radio, newspapers and leisure activities such as listening to CD's, there is no reason to believe that radio alone plays a unique role in constraining video program quality. Thus, elimination of the

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[83] 47 C.F.R. 73.3555(a)(1) (radio contour overlap rule), 73.3555(b) (television contour overlap rule).

[84] Further Notice, par. 29.

rule should have no adverse effects.[85]

With respect to the market for local advertising, the Analysis demonstrates that there is only a narrow range of circumstances in which radio-television combinations would lead to antitrust issues. A per se rule is not necessary to reach those narrow circumstances. Traditional antitrust enforcement is the appropriate mechanism. Furthermore, dispensing with the cross-ownership rule to allow an existing television owner who also owns one AM and one FM station the latitude to acquire a second radio station in each service will only have a minimal effect on concentration. "HHI's" would go up by only a very small amount as a result of such combinations.[86]

With respect to national advertising, the Analysis demonstrates that the elimination of the rule would not make possible a higher level of concentration than is already possible. Here, too, the increase in the "HHI's" is modest.[87]

Finally, radio-television combinations would have no effect on the video program acquisition market since radio stations do not participate in that market.

V. Local Marketing Agreements

We agree with the Commission's tentative proposal to treat LMA's involving television stations in the same basic manner as it

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[85] Analysis at 94-95.

[86] Analysis at 96-99, Table 11.

[87] Id. at 99-101, Table 12.

does for LMA's of radio stations.[88] In our view, an owner of one station in a market that controls programming and advertising on a second station in the same market -- notwithstanding good faith supervision by the licensee of the second station -- should have the second station count against its ownership limits. An owner-broker occupies the same position as an outright owner of both stations in terms of the effect of such combination on competition and diversity in the relevant viewing, advertising and program acquisition markets.

Respectfully submitted,

By: _____

Alan N. Braverman
Vice President & General Counsel

Sam Antar
Vice President, Law & Regulation

Roger C. Goodspeed
General Attorney, Law & Regulation

Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023

Counsel for Capital Cities/ABC, Inc.

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[88] Further Notice, par. 138. See 47 C.F.R. 73.3555(a)(2).