cated, the issue is how many outlets are available to the representative consumer.

F. Measurement of concentration

There is no natural metric of content diversity. Measurement requires the assumption that outlet diversity implies content diversity. Further, for purposes of measuring diversity there seems to be no basis for weighting the outlets available to any given consumer differently.

The weight given to a medium in measuring diversity should not depend on the number of consumers who actually *use* it. One should count all outlets and viewpoints that are reasonably *available* to consumers—not just the outlets expressing currently popular viewpoints. Thus, there is no justification for the Commission's dismissal of newspapers as a source of diversity relating to news.[69] This issue has already been discussed above, in terms of avoiding a confusion of market share with market definition.

A related point that bears emphasis is that current market share is not necessarily an adequate measure of the competitive significance of a medium. Typically, media can readily expand their coverage of local news and public affairs. Further, media generally are available to all consumers—for example, cable passes 97 percent of all television households, and DBS obviously is available to nearly everyone. The same is true of most newspapers and magazines. Thus, the market share of a given medium can respond dramatically to inadequate performance by others. In light of this, it seems most reasonable to give all independent media equal weight for purposes of measuring the diversity of outlets.

G. Effects of the ownership rules on diversity

Antitrust analysis of any proposed increase in broadcast station concentration would typically focus on various advertising markets. The question would be whether there exists a significant category of advertiser that would be disadvantaged.

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69 *Id.*, ¶74.

Because antitrust analysis of the economic market effects of a given transaction probably would not treat all media as having equal weight, local markets typically will be more concentrated for economic purposes than for diversity purposes. See, for example, Table 7, where the equal shares column illustrates the effects of the approach to diversity suggested here. In addition, antitrust markets typically would be narrower than diversity markets. For example, antitrust analysis probably would focus on local advertising markets and thus exclude, say, retail videocassettes. If the transaction involved TV stations, some would argue that third-class mail advertising or billboards should be excluded, and so on. Hence, the application of antitrust standards to the problem of local media concentration will indirectly imply a higher standard for diversity purposes because the antitrust laws will operate to stop concentrations for economic reasons long before they pose significant diversity risks. In sum, it appears there is little reason to be concerned with diversity if local ownership is governed by the incipiency standard in Section 7 of the Clayton Act.

VI. National Ownership Rule

A. Introduction

The Commission's national ownership rule permits a single entity directly or indirectly to own, operate or have a significant interest in up to 12 VHF and UHF television stations, provided that those stations operate in DMAs containing cumulatively no more than 25 percent of the television households in the country. For the latter purpose, ownership of a UHF station results in the attribution of 50 percent of the television households in the relevant DMA. The 12 station and 25 percent caps are replaced by 14 station and 30 percent caps in the case of minority control.

As the Commission has requested in its Further Notice, Section VI of this report applies the analysis and conclusions of Sections II through V to determine whether the preservation of competition in delivered video programming, advertising or video program acquisition or concerns over diversity provide a justification for the national ownership rule.

For the reasons examined below, there is in fact no such justification for a rule limiting the number or household coverage of television stations in different local markets that can be owned by one group. Stations in different local markets do not compete with each other for viewers, for advertisers, for programs or for network affiliations. At most they compete with each other for such things as station managers and used equipment, but the markets for those are national and generally not limited to commercial television stations.

Suppose, however, for the sake of argument that all stations did compete with each other. In light of the fact that there are 1,033 full-power commercial television stations located in 211 DMAs, the "market" would be extremely unconcentrated. Clearly there would be no reason to limit ownership to 12 or any similar number of stations.

Similarly, there would be no reason to limit the DMA coverage of television households of a group's stations to 25 percent or any other number below 100 percent. The average television household lives in a DMA with 8.66 full-power commercial television stations. Thus, if one adds up the DMA household coverage of each station, there is a total coverage of 866 percent of television households (8.66 times 100 percent; see Table 8). If the national ownership rule were eliminated, and if for some reason one wanted to compute an HHI based on DMA household coverage, that HHI could not exceed 831.[70] There are so many television stations that each of eight hypothetical station groups could own stations covering over 80 percent of all television households (see Table 9), and yet there would be enough stations left over for 9 other owners each to have 24 percent coverage. With that configuration, the HHI based on DMA household coverage would be only 768. The current rule, which limits VHF coverage to 25 percent (or 30 percent for minorities), limits each owner of VHF stations to a 2.9 (or 3.5) percent share of all stations based on DMA television household coverage.

Moreover, since stations in different local markets have different viewers, common ownership of stations in different local markets cannot adversely affect diversity. While there is some signal overlap between stations in the case of certain adjacent DMAs, this does not provide diversity-based grounds for concern about common ownership, for two reasons. First, there is no reason to believe that common ownership would reduce incentives to broadcast local programs in each area. Second, there is unlikely to be any reason for the Commission to prevent common ownership on diversity grounds where such ownership would

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70 This assumes that any given station group owns no more than one station in a given DMA. Suppose one owner bought one station in every DMA, giving it 100 percent coverage, a second owner bought one station in every market with two or more stations, giving it 99.5 percent coverage, a third owner bought one station in every market with three or more stations, giving it 97.1 percent coverage, and so on up to the seventeenth owner, which would have 5.2 percent coverage. This is the configuration that would give the highest possible HHI based on DMA household coverage for group ownership of broadcast stations in different DMAs. The DMA household coverage of a station might be regarded as a measure of capacity. An HHI based on station revenue shares could be higher.

be permitted based on an analysis of competition consistent with Section 7 of the Clayton Act (see Section V.G of this report).

Table 8 DMA coverage of TV households by full-power commercial stations[71]

Number of stations in DMA	DMA coverage of television households (percent)
1 or more	100.0
2 or more	99.5
3 or more	97.1
4 or more	92.4
5 or more	81.0
6 or more	68.7
7 or more	59.8
8 or more	49.0
9 or more	44.9
10 or more	41.2
11 or more	36.1
12 or more	32.1
13 or more	27.6
14 or more	16.5
15 or more	7.5
16 or more	7.5
17 or more	5.2
Total	866.1

71 NIELSEN MEDIA RESEARCH, NIELSEN STATION INDEX, DIRECTORY 1993–94, at 19–31. VHF and UHF stations are treated as equivalent in Tables VI–1 and VI–2.

Table 9 **Potential DMA coverage by equal-size station groups**[72]

Number of equal-size station groups	Potential DMA coverage of television households by each group* (percent)
1	100.0
2	99.7
3	98.9
4	97.2
5	94.0
6	89.8
7	85.5
8	80.9
9	76.9
10	73.4
11	70.0
12	66.8
13	63.8
14	60.4
15	56.9
16	53.8
17	50.9

*Assumes it is possible to allocate stations so that groups have equal DMA coverage.

The present section of this report addresses the following questions: What are the benefits of group ownership for competition and diversity? What is the evidence that the current rule limits the ability of station group owners to achieve efficiencies? Does the national ownership rule have positive or negative effects on delivered video programming, advertising, video program production and diversity? Can television broadcasting be distinguished from cable television distribution, where the Commission recently issued a rule that will prohibit one owner from having an

72 *Id.*

attributable interest in cable systems serving more than 30 percent of cable subscribers nationwide?

B. Benefits of group ownership for competition

While there is no reason to believe that the national ownership rule has benefits for competition or consumers, the rule is likely to have deleterious effects on competition and consumers by preventing efficient ownership and management of broadcast stations. The rule is likely to hobble broadcast television in competing with other media. There are a number of reasons that common ownership of broadcast television stations may lead to lower costs and hence increased quality and output for viewers and advertisers.

At the outset, it is clear that a variety of different types of companies realize benefits from owning groups of stations. Group owners include:

- Television programming services, including ABC, CBS, Fox, Home Shopping Network (Silver King Communications station group),[73] Infomall TV Network (Paxson Communications), NBC, Telemundo, Trinity Broadcasting Network, United Paramount Network (Chris-Craft Industries/BHC Communications/United Television and Viacom), Univision (Perenchio TV) and ValueVision.

- Companies that own a variety of combinations of television stations, radio stations, newspapers, magazines, cable systems, cable networks and/or DBS systems, including Clear Channel Television, Cox Enterprises, Gannett, Hubbard Broadcasting, Meredith, Pulitzer Publishing, Tribune Broadcasting, The Washington Post and Westinghouse Group W.

- Companies that own not only a variety of other media businesses but also have television program syndication businesses, including Tribune Broadcasting and Westinghouse Group W.

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73 At the end of 1992 Home Shopping Network distributed to its shareholders the stock of its former subsidiary Silver King Communications. Home Shopping Network, *1993 Annual Report*, at 21.

- Hollywood studios that are also syndicators, including Fox, New World and Paramount/Viacom.

- Television station group owners without other major media interests, including Renaissance Communications and LIN Broadcasting (McCaw Cellular/AT&T).

- Investment companies, including ABRY Broadcasting and Argyle Television, which buy and resell stations.[74]

It is also clear that there are benefits from common ownership of a wide variety of types of stations, including:

- Strong independent stations including superstations in larger DMAs, in the case of Tribune Broadcasting, six of whose stations (including superstation WGN) are now WB affiliates.

- Fox affiliates, in the case of New World, which has twelve, and Renaissance, which owns five in ADIs ranking between 16 and 44.

- ABC, CBS and NBC affiliates, in the case of Gannett, Westinghouse Group W, LIN Broadcasting, Pulitzer Publishing, The Washington Post and Young Broadcasting.

- Stations in medium-size markets, in the case of Pulitzer Publishing, which owns stations in ADIs ranking from 23 to 73.

- Stations in leading Spanish-language markets, in the case of Telemundo and Univision.

- Primarily VHFs in major markets, in the case of ABC, CBS, NBC and Fox.

- Primarily weaker independent UHF stations in, or on the fringes of, major markets in the case of television retailers. Typically these

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74 *Donaldson Lufkin to See Huge Return on Sale of Stake in Television Stations*, WALL STREET JOURNAL, May 26, 1994, at A-3; and Martin Peers and Joe Flint, *Run on Nation's Stations*, VARIETY, Feb. 20–26, 1995, at 193.

stations had limited broadcast audiences prior to being purchased by television retailers. HSN's twelve stations are in ADIs ranking from 1 to 22.[75] ValueVision's five stations reach New York from Bridgeport, Cleveland from Akron, Houston from Baytown, Hartford from New London and Washington, D.C., from Manassas.[76] Paxson owns or has announced plans to acquire seven stations, and it has time brokerage agreements for stations in three additional local markets. All carry the Infomall Network. With one exception, the relevant ADIs rank from 4 to 25.[77]

There is evidence of numerous types of benefits from group ownership. For expositional purposes, it is useful to divide these benefits into efficiencies for stations and efficiencies for program producers, syndicators and programming services. However, all benefits are likely to be shared among these parties as well as with viewers and advertisers. For example, a reduction in costs or risks for programming services will lead to an expansion of higher quality programming, which benefits not only the programming services but also stations, program producers, viewers and advertisers. A reduction in the costs of selling national spot advertising would increase competition in advertising and benefit advertisers.

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75 Home Shopping Network, *1993 SEC Form 10–K*, at 7.

76 ValueVision International, *1994 SEC Form 10–KSB*, at 5, states that "the Company does not consider conventional measures of a station's performance, such as over the air coverage, advertising revenues, audience share, programming or demographics, to select stations for acquisition. Rather, the Company focuses on the Areas of Dominant Influence ("ADI") of the market in which the station is located and the number of cable households within such ADI."

77 Paxson Communications, *Press releases*, Jan. 18, 1995, and Feb. 10, 1995.

1. Efficiencies for station groups[78]

- Sharing of corporate overhead expenses ranging from research departments, to personnel with special expertise, to personnel and equipment used to cover news events.

- Economies in purchasing capital equipment, products and services, ranging from studio equipment, to research services, to syndicated programming. Because of lower costs in selling to groups, suppliers charge lower prices on group purchases relating to a number of markets.[79] CBS/Broadcast Group reports that it obtained discounts of 18 percent to 28 percent on a range of equipment because it purchased for a group of stations. CBS/Broadcast Group also obtains quantity discounts on such things as video tapes and repair parts.

- Greater ability to attract and retain talented employees.[80]

- Efficiencies from operating an internal market for used equipment, which is transferred among stations.

- Ability of successful owners to share their superior management and their experience and expertise with stations in additional local markets.

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78 In addition to the efficiencies discussed below, see OLIVER E. WILLIAMSON, ANTITRUST ECONOMICS 107–19 (1987) for an argument that conglomerates, of which station groups are one example, may mitigate capital market imperfections, as a result of which corporate management might otherwise be inadequately policed and resources might otherwise not be allocated to the projects with the highest returns.

79 For example, it is more efficient for research suppliers to negotiate with and bill a station group than to deal with each station individually. As a result, research suppliers offer discounts to station groups for deals covering a number of stations. The same is true for security services.

80 For example, a station group may be able to attract superior personnel because the group may offer greater opportunity for advancement within the organization. Also, a station group is in a position to obtain reliable information on a larger groups of people who are being considered for advancement.

- Lower costs of negotiating affiliations with programming services. This occurs not only for O&Os but also for station groups such as New World and Group W.

- Lower costs and lesser problems faced by stations in contracting for sale of national spot advertising, purchase of rights to syndicated programs and development of original programs, as explained further below:

  Sale of national spot advertising. In a number of cases, larger station groups act as their own national advertising sales representatives. For example, after it acquired additional stations, in 1994 New World replaced the outside advertising representation firms it had used for a number of years with an in-house operation selling national advertising on its stations and its syndicated programs. According to New World, the in-house operation "will enable the Company to structure advertising packages that are more closely customized to individual advertisers' needs."[81] Similarly, Tribune Broadcasting formed an "unwired" network known as Tribune Plus to sell national advertising by linking its two superstations and four other major market independent stations with Turner's TBS superstation. Group W offers national advertisers time on its five stations,[82] CBS sells national advertisers time on its group of O&Os, and Group W and CBS have entered into a joint venture agreement that contemplates that a single entity will sell national spot advertising on stations owned or controlled by Group W and CBS.[83]

  Purchase of rights to syndicated programs. Cost savings may arise from avoiding the difficulty of negotiating and enforcing contracts with

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81 New World Communications Group, *1993 SEC Form 10–K*, at 3.

82 Chuck Reece, *The Gutting and Rewiring of Television Sales*, CHANNELS, Apr. 1989, at 28–29.

83 CBS, *1994 SEC Form 10–K*, at 3.

suppliers for products that are risky or where content may be difficult to specify with precision.[84]

Development of original programs. There are numerous cases in which a station group has undertaken to produce, or has contracted for the production of, a television program, in some cases with the intention of seeking national syndication if the program is a success. The Chris-Craft station group aired *Premier Story* on five major market stations before giving the program a production commitment and seeking national distribution.[85] Various combinations of CBS-owned stations have joined in producing programs such as *Studio 22* and *Cristina,* which were produced by the CBS Television Stations division, and *Dr. Fad,* which was produced at WCBS-TV. According to a press report, dealing in part with A.H. Belo Corp., which owns stations in Dallas, Houston, Tulsa and New Orleans:

> Belo and other major station group owners are using their outlets as a springboard for more ambitious program and production ventures that can be offered to other stations, and for such new opportunities as second cable channels in the same markets for niche programming, feeding regional cable channels and supporting regional production centers.[86]

- Construction of new UHF stations. A rule limiting station ownership may deter groups from constructing new stations that expand viewing and advertising options even when there are unused channel assignments. For example, Home Shopping Network constructed its UHF station in Tampa,[87] and it provided financing for

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84 Franklin M. Fisher, *The Financial Interest and Syndication Rules in Network Television: Regulatory Fantasy and Reality*, in ANTITRUST AND REGULATION: ESSAYS IN MEMORY OF JOHN J. MCGOWAN (F. M. Fisher, ed., 1985).

85 Thomas Tyrer, *Three Strips Report Good Test Results*, ELECTRONIC MEDIA, Aug. 29, 1994, at 2.

86 Diane Mermigas, *The Race is on in Hot TV Station Market,* ELECTRONIC MEDIA, Apr. 11, 1994, at 1.

87 Home Shopping Network, *1987 SEC Form 10–K*, at 5–6.

the construction of a minority-owned UHF station to carry its programming in Washington, D.C.[88]

The Commission's national ownership rule forces companies to choose between two different types of efficiencies that can be realized by group ownership. First, some of the efficiencies from group ownership may be greatest in the case of television stations that are in the *same* region of the country. Second, group ownership of stations in *different* regions of the country may be the most efficient way for owners to mitigate certain risks. According to Pulitzer Publishing:

> Pulitzer's media operations are geographically diverse, placing the company in the Midwest, Southwest, Southeast and Northeast regions of the United States. Due to the close relationship between economic activity and advertising volume, the Company believes that geographic diversity provides the Company with valuable protection against regional economic variances.[89]

The Commission's national ownership caps limit the ability of a group owner to realize both the efficiencies from ownership of a group of stations in a given region of the country and the efficiencies from ownership of a group of stations in different regions of the country. To realize the cost savings from owning a group of stations in one region, a group owner must forgo the benefits of regional diversification. To achieve the benefits of regional diversification, a group owner must forgo the cost-savings from owning a regional group. Either way, the national ownership rule is likely to increase the costs of broadcast television to the detriment of viewers, advertisers, stations and programmers.

2. Efficiencies for program producers, syndicators and programming services

- Reducing transactions costs associated with obtaining, retaining and replacing affiliates. By owning a station, a programming service can avoid the costs of periodically negotiating affiliation

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88 Home Shopping Network, *1990 SEC Form 10–K*, at 8.

89 Pulitzer Publishing, *1993 SEC Form 10–K*, at 5.

agreements. It can also avoid uncertainty and costs involved in finding a new affiliate when an existing affiliate decides to change its affiliation. In 1994, more than 60 stations changed their affiliations.[90]

- Reducing transactions costs of obtaining clearances, including clearances during a uniform time period.[91] The NTIA pointed out in 1992 that "it has long been recognized that such vertical integration [between programming services and stations] may create efficiencies by reducing transactions costs, and is critical to operation of a viable broadcast network."[92] For example, according to a press report, Univision "is said to have made the deal to buy WGBO [in Chicago] because it was unable to get all the network's programming cleared without delays at WCIU," its previous Chicago affiliate.[93]

- Reducing risks associated with the production of programs and the provision of programming services, including the development of new programs and programming services. The decision to move from a pilot to production of a syndicated series is often made when station groups agree to carry the program. The incentive to form station groups and consortia of station groups to produce or contract for the production of syndicated programs has recently been described as follows:

  > Program suppliers are devising new ways to enter the risky first-run syndication business. Deep pocketed players such as Warner Bros. Domestic Television Distribution...will continue with big national

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90 Christopher Stern, *Small Investments Yield Big Benefits*, BROADCASTING & CABLE, Oct. 17, 1994, at 26.

91 'FCC, NETWORK INQUIRY SPECIAL STAFF, AN ANALYSIS OF THE NETWORK-AFFILIATE RELATIONSHIP IN TELEVISION 242-44, 247-53, 257-68 (1980) addresses barriers to maximization of joint profits by networks and non-owned affiliates.

92 *Comments of the National Telecommunications and Information Administration,* in the Matter of Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221, FCC, Aug. 24, 1992, at 10–11, citing FCC, NETWORK INQUIRY SPECIAL STAFF, NEW TELEVISION NETWORKS: ENTRY, JURISDICTION, OWNERSHIP AND REGULATION 399 (1980).

93 Univision Television Group, MEDIAWEEK, June 13, 1994, at 8, brackets added.

rollouts....Other studios are reducing their risk...through alliances with station groups. Stations are also linking for limited tests of programming they have a financial interest in. "The most important element of a station alliance is that it gives you momentum, and when it comes to selling and launching shows, it's all about percentage of the U.S., the quality of the time periods and the quality of the lineup," said Greg Meidel, president of Twentieth Domestic Television. "Syndication is no different than building a network. You put the distribution in place and the programming will come," he added....Station owners are entering into consortiums to fund and test their own series, like the...Partner Stations Network.[94]

The Partner Stations Network, formed in 1993, is an example of a consortium too large to be owned by a single entity under the Commission's national ownership rule. It was announced that:

Five groups that own a total of 26 commercial TV stations have formed Partner Stations Network L.P. (PSN) to produce first-run TV programs for themselves and syndication. Goal is to reduce costs, said Michael Lambert, pres. of general partner Lambert TV Management. He said PSN also will provide a cost-effective proving ground for new shows, since members can conduct short trials on their stations before committing to full seasons.[95]

- Facilitating entry of new networks. Both ownership of O&Os and the ability to obtain carriage commitments from station groups owned by others have facilitated the entry of new networks, including the Fox network, the United Paramount Network and the Warner Brothers WB Network. The WB Network launched in January 1995 with 80 percent national coverage, thanks in part to affiliations with six Tribune stations, including superstation WGN, which provides coverage of 18 percent of television households in the form of unduplicated cable carriage in areas without WB affiliates.[96] Separately, Warner Brothers Domestic Television

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94 Thomas Tyrer, *Cutting Risk Name of Game in First-Run*, ELECTRONIC MEDIA, Sept. 5, 1994, at 1.

95 *Partner Stations Network Formed*, PUBLIC BROADCASTING REPORT, Sept. 10, 1993.

96 *New WB Network (WB) Launches*, COMMUNICATIONS DAILY, Jan. 11, 1995; Richard Katz, *WB Net Aims for Broadcast as Well as Cable Carriage*, MULTICHANNEL NEWS, Jan. 16, 1995, at 10. Tribune has an equity interest in the

Distribution launched its syndicated Prime Time Entertainment Network (PTEN) in 1993 with the support of station groups including Chris-Craft and Renaissance. PTEN was founded as an *ad hoc* network to distribute prime-time syndicated programming, such as *Kung Fu: The Legend Continues*. In 1993 PTEN had 146 stations with 92 percent coverage of U.S. television households.[97]

These efficiencies for program producers, syndicators and programming services are explained by New World:

> The Company's overall business strategy is to become a vertically integrated television company capable of developing, producing and distributing television programming....The Company's current goal is to...[increase] the number of stations held by the Company to twelve in total, the maximum currently permitted by law....As an integrated enterprise, the company will attempt...to lessen the financial risk associated with the operation of television development, production and broadcasting businesses as stand-alone enterprises....[I]f the Company is able to make the contemplated acquisitions, its owned stations will by themselves provide approximately one-fourth of the reach, or "clearance," needed to syndicate programming on a national basis. With these owned stations as a base, the Company believes that New World will have a greater ability to develop and produce programming which has been precleared for broadcast not only by the Company's owned stations but also by other stations on a national basis through syndication arrangements....The Stations should also experience benefits from these relationships since New World is expected to increase its efforts to develop relatively low-cost programming, such as game shows, soap operas, reality programming and talk shows, which meets the needs of these stations and is suitable for syndication.[98]

WB Network. Thomas Tyrer, *WB Putting Weight Behind Kids Shows*, ELECTRONIC MEDIA, Apr. 24, 1995, at 21.

97 Thomas Tyrer, *Deal Change Spurs PTEN Expansion*, ELECTRONIC MEDIA, May 31, 1993, at 1; Diane Mermigas, *Chris-Craft Creates New Post*, ELECTRONIC MEDIA, Feb. 22, 1993, at 30.

98 New World Communications Group, *1993 SEC Form 10-K*, at 2–3. When Ron Perelman announced that New World's production companies and film libraries would be combined with the seven-station SCI Television group, "media industry specialists argued that the upcoming deal will help improve the value of Perelman's entire media stable. 'There are economies of scale and efficiencies that go along with having more stations, so a deal like that makes sense,' argued Bear Stearns analyst Ned Zacher." *Perelman to Buy TV Properties*, MERGERS & ACQUISITION REPORT, Jan. 24, 1994.

In 1994, New World made a deal with Fox in which Fox paid $500 million for a 20 percent interest in New World and 10-year affiliation agreements with its stations, and New World received guarantees that it would supply programming to Fox O&O's and the Fox network.[99]

Evidence of efficiencies from station group ownership as well as economies of scope between programming services and stations that carry that programming is provided by the number of broadcast programming services that are station group owners.[100]

Additional confirmation of the efficiencies of common ownership of broadcast programming services and stations is provided by evidence of efficiencies from the common ownership of cable television programming services and cable systems. Cable MSOs have at least partial equity interests in many programming services. Ownership of cable networks benefits cable operators by increasing the supply of programming available for use in attracting and retaining subscribers, viewers and advertisers. Common ownership with cable systems benefits cable networks by providing greater assurance that their programming will be carried, and thus reducing risks.[101]

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99 *A Lot for a Little*, BROADCASTING & CABLE, Oct. 17, 1994, at 28.

100 Additional evidence of efficiencies from joint ownership of programming services and stations carrying that programming is provided by recent changes in station ownership by Viacom, which—along with Chris-Craft Industries—owns the United Paramount Network. After acquiring Paramount's station group, Viacom sold Paramount's three Fox affiliates and purchased independent stations, including superstation WSBK, that would carry the new UPN programming. Viacom *Unit Set to Buy Two Independent TV Stations*, MEDIA DAILY, Oct. 17, 1994; *Viacom to Purchase Superstation WSBK*, MULTICHANNEL NEWS, Dec. 5, 1994, at 98.

101 Cable systems are now prohibited from having an attributable interest in more than 40 percent of the first 75 cable programming services they carry. This restriction was imposed because of concerns about discrimination by cable systems against nonaffiliated programming services. Even if such concerns were justified in the case of cable, there would be no basis for such concerns in the case of broadcast television, for the reasons discussed in Section VI.I.

C. The national ownership rule constrains growth of a number of groups

The national multiple station ownership rule currently constrains a number of companies (see Table 10). In some cases, including Capital Cities/ABC and Tribune, the cap on reach of 25 percent limits further growth. In other cases, the cap of 12 on number of stations limits growth. Silver King Communications has 12 stations; Providence Journal Broadcasting, Trinity Broadcast Network, Perenchio TV, Lee Enterprises and New World, 11 each; Young Broadcasting, Viacom, Gannett Broadcasting, Clear Channel Television and Pulitzer Publishing, 10 each. A spokesman for Univision said "the group is looking to acquire a 12th station to bring it up to the FCC-mandated ownership limit."[102] Blackstar, a minority-owned station group, is planning to increase its number of stations from 3 to 14.[103] In talking about the national ownership rule, the owner of New Vision Television, which owns 8 stations, stated, "those of us in broadcasting, including myself, would like to own 20 stations."[104]

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102 Univision Television Group, MEDIAWEEK, June 13, 1994, at 8.

103 *A Lot for a Little*, *supra* note 99, at 28.

104 Stern, *supra* note 90, at 26.

Table 10 Number and coverage of group-owned stations[105]

Group Owner	Number of stations	Percent coverage
A. Richard Benedek	9	
AT&T/LIN Broadcasting	9	8.1
Better Communications Inc.	9	
Capital Cities/ABC	8	23.6
CBS Inc.	7**	21.5
Chris-Craft/United/BHC	8	19.5
Clear Channel	10	5.5
E.W. Scripps	9	9.8
Gannett Co.	10	10.0
General Electric/NBC	7	20.7
Hubbard Broadcasting Inc.	9	
Le Sea Broadcasting Co.	9	
Lee Enterprises Inc.	11†	
New World	11	13.7
NewsCorp./Fox	8	23.3
Park Communications Inc.	9	
Perenchio TV Inc.	11†	
Providence Journal	11	5.8
Pulitzer Publishing Co.	10**	
Silver King Communications Inc.	12	
Stauffer Communications Inc.	9	
Tribune	8	24
Trinity Broadcasting Network Inc.	11	
Viacom	10	17.1*
Westinghouse/Group W	5	9.6
Young Broadcasting Inc.	10	

Table includes groups with 9 or more stations or coverage of over 9 percent of television households. *Includes Paramount's coverage. **Excludes satellite stations.
† TELEVISION & CABLE FACTBOOK, STATIONS, 1995

An indication of economies of scale that may be fully realized only by owning significantly more than 12 stations is provided by the Partner Stations Network, which is discussed in Section VI.B.2 above. There are indications that single ownership of the group, which would not be

105 Number of stations is from A.C. Nielsen (March 1995), except where noted; percent coverage is from Telerep (Jan. 5, 1995). Percentages do not reflect UHF discount. As of late 1994, Marty Pompadus ran nine television stations owned by Television Station Partners, ML Media Partners and ML Media Opportunity Partners. With the sale of four stations to Smith Broadcasting, the latter now has nine stations. *TSP TVs Go For 12 Times Cash Flow*, BROADCASTING & CABLE, Apr. 24, 1995, at 42.

permitted by the Commission because of its 12 station limit, would increase efficiency. PSN is having trouble,[106] and some station groups do not believe the consortium approach can work:

> Some of the station groups that recently formed their own production and distribution arms aren't interested in the consortium idea. For instance, Scripps Howard Productions argues that consortia lead to too much creative interference in a national show's development, and scare away the series' actual producers. Scripps Howard President David Percelay and head of entertainment Michele Brustin say that's what led to their decision to have *Rockford Files* executive producer Roy Huggings bring his new first-run action hour *Diamond Head* to Scripps Howard. "Each [independently owned] local station has a very different agenda and set of needs, and any attempt to try to overlay a common programming strategy onto the needs of those individual markets will inevitably hurt somebody or a number of stations," he said. "When you try to create, develop, produce and run a show, there can only be one voice."[107]

There is empirical confirmation that the 1984 relaxation in the national ownership rule permitted a more efficient allocation of resources. According to Fournier and Campbell, relaxation of the rule was accompanied by an increase in television station prices, suggesting "the larger pool of potential bidders included some with higher marginal valuations than before."[108] Since there is no basis for a belief that increased station ownership increased anyone's ability to exercise market power, it follows that the 1984 relaxation of the national ownership rule permitted a reallocation of stations to group owners who were able to use the stations in more productive ways and were therefore willing to pay more for them.

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106 Michael Freeman, *Stations' Syndication Stumble*, MEDIAWEEK, Jan. 9, 1995, at 6, and David Tobenkin, *PSN Adds Weeklies to its Plate*, BROADCASTING & CABLE, Mar. 6, 1995, at 26.

107 Thomas Tyrer, *Cutting Risk Name of Game in First-Run*, ELECTRONIC MEDIA, Sept. 5, 1994, at 1.

108 Gary M. Fournier and Ellen S. Campbell, *Shifts in Broadcast Policy and the Value of Television Licenses*, 5 INFORMATION ECONOMICS AND POLICY 100 (1993).

D. Benefits of group ownership for diversity

The Commission states that its principal diversity concern relating to ownership of broadcast television stations involves local news and public affairs programming.[109] As a result, the present report addresses evidence on how group-owned stations compare to non-group stations in terms of quantity and quality of local programming—particularly local news.

It appears that group owners typically give local stations autonomy in local news programming and devote substantial resources to local news, which accounts for a major share of station advertising revenues.[110] For example, group owner Pulitzer Publishing reports:

> The local management of each of the Company's broadcasting properties are partially compensated based on the cash flow performance of their respective stations. Senior management believes that the success of a local television station is driven by strong local news programming....The Company believes that its stations are particularly strong in local news programming, an important revenue source for network-affiliated stations. Local news programs generate approximately a quarter of each station's revenues....Strong local news programming is an important factor for the competitive position of the Company's television stations.[111]

According to group owner Scripps Howard:

> In addition to network programs, the Company's ABC-, CBS-, and NBC-affiliated stations broadcast local news programs, other locally produced programs, syndicated programs, sports events, movies, and public service programs. Local news is the focus of each of these station's locally produced programming and is an integral factor in developing the station's ties to its community and viewer

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109 *See* FNPRM, *supra* note 1, ¶72.

110 *See Report and Order,* 100 FCC 2d 34 (1984), which also observed at 31 that group-owned stations are more likely than independent stations to editorialize. *See* also *Comments of CBS, Inc.,* In the Matter of Review of the Policy Implications of the Changing Video Marketplace, MM Docket No. 91–221, FCC, Aug. 21, 1992, at 10–11, which reports that each CBS-owned station has an independent local newsroom and news operation, and *Comments of National Broadcasting Company, Inc.,* In the Matter of Amendment of Sections 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Gen. Docket No. 83–1009, FCC, 1984, at 9, 131.

111 Pulitzer Publishing, *1993 SEC Form 10–K,* at 14, 17, 19.

loyalty. Advertising revenues relating to local news and information programs generally represent approximately 30% of these station's revenues.[112]

Group owner New World states:

> NW Television has focused on research to determine viewer preferences regarding local news and information programming in its markets and opportunities to develop programming and the promotional image of the Stations to match those preferences....In addition, NW Television has placed emphasis on expense management, resulting in reduced expenses in many areas of Station operations. NW Television has reallocated certain of these savings to the expansion of...news and local programming....Since the 1987 Acquisition, these efforts have generally resulted in improved audience viewing shares and revenues in locally programmed time periods for the Original Stations.[113]

In the 1984 proceeding on the national ownership rule, the National Association of Broadcasters presented a study of programming during 1982 on 107 commercial television stations in 29 markets. The NAB study found that for group-owned stations, the percentages of time between 6 a.m. and midnight on an average broadcast day devoted to various types of programming were: news, public affairs and other informational programming, 18 percent; local programming, 10 percent; and total non-entertainment (including talk, religious and educational) programming, 32 percent. The corresponding figures for non-group stations were lower: 13 percent, 7 percent and 25 percent, respectively.[114]

Also in the 1984 proceeding, NBC presented data on the amount of time devoted by NBC's five O&Os and all top-25 market stations to local news and public affairs programming in 1979. NBC-owned stations devoted 12

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112 Scripps Howard Broadcasting, *1992 SEC Form 10–K*, at 5.

113 New World Communications, *1993 SEC Form 10–K*, at 3, 9.

114 National Association of Broadcasters, *Public Service Programming by Group-Owned and Non Group-Owned Television Stations*, attached to *Comments of the National Association of Broadcasters*, In the Matter of Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Gen. Docket No. 83-1009, FCC, Jan. 19, 1984. The findings did not hold for a comparison of 17 group and 3 non-group stations in markets ranked 101+.

percent of their time between 6 a.m. and midnight to local news and public affairs programming, compared to 9 percent for all stations in the top 25 markets. Between 6 p.m. and 11 p.m., the figures were 13 percent for NBC-owned stations and 9 percent for all stations in the top 25 markets.[115]

E. Effects of the rule on markets for delivered video programming

Section II of this report provides a competitive analysis of delivered video programming. As the Further Notice recognizes, group ownership of stations in different local markets has no adverse effect on the number of television stations in a local market, on competition for viewers, or on the quality of television programming delivered to viewers.[116] Thus, there is no competitive justification for the national ownership rule that relates to the markets in which stations compete to attract viewers. On the contrary, to the extent that the national ownership rule increases costs or risks for stations or programmers, the rule causes a reduction in the quality of television programming.

F. Effects of the rule on markets for advertising

Section III of this report provides a competitive analysis of advertising. Group ownership of stations in different local markets does not reduce competition for advertising at either the national or local level. A broad-

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115 *Comments of National Broadcasting Company, Inc., supra* note 110, at 132–33. In its *Report and Order*, 100 FCC 2d 17 (1984), in that proceeding, the Commission also noted a study showing that group-owned stations had significantly higher ratings on their local news programming than did non-group stations. The study is Allen M. Parkman, *The Effects of Television Station Ownership on Local News Ratings*, REVIEW OF ECONOMICS AND STATISTICS 289-95 (1982). The Commission also noted an NAB study that compared group-owned and individually-owned television stations in six markets and that concluded: "Commonly-owned media have larger news staffs, do more news programming, and are less dependent on the wire services and networks for news than singly-owned media....Commonly-owned media are perceived by business and community leaders as providing greater validity and depth of news coverage, better quality programs, more public service." The study is George H. Litwin and William H. Wroth, *The Effects of Common Ownership on Media Content and Influence: A Research Evaluation of Media Ownership and the Public Interest* (1969). It is described in *Comments of the National Association of Broadcasters, supra* note 114.

116 *See* FNPRM, *supra* note 1, at ¶¶83-85.

cast station sells access to households in one local area. Stations in different local areas do not sell access to the same households, and hence they do not compete in selling advertising. Stations in Richmond do not constrain the price charged for advertising by stations in Cleveland. As a result there should be no concern about the effect of common ownership of stations in different markets on the price of either national or local advertising. The national advertising HHIs presented in Table 4 assume that the spot advertising supplied by stations should be attributed to firms that were assumed to represent stations in selling national advertising. Consequently, common ownership of all stations represented by a given representative firm would have no effect on concentration.[117] This conclusion holds no matter how broadly or narrowly one defines the relevant product market in which national spot advertising competes. While group ownership has no adverse effect on competition in advertising, it has procompetitive effects to the extent there are efficiencies from group ownership.

The Commission offers and apparently rejects a suggestion that ownership of a group of stations with greater household coverage may give a company increased "bargaining power" in the sale of national spot advertising.[118] The Commission is right to reject the suggestion that this could represent a competitive problem. Even if ownership of additional stations gave a company a larger share in a relevant national advertising market, in light of the number of suppliers of national spot advertising and the many substitutes for national spot advertising, there is no danger that a station group owner would have market power in the sale of national advertising.

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117 For concentration in national advertising to be affected by common ownership of stations in different DMAs, there would have to be common ownership between these stations and other media supplying national advertising.

118 FNPRM, *supra* note 1, ¶86. Presumably the Commission is referring to market power. Bargaining power, which affects only the distribution of profits, is distinct from market power, which affects resource allocation. There is no economic basis for policy concern with bargaining power that does not reduce output. *See* also the discussion of bargaining power and monopsony power in Section IV.C.2, *supra*.

The Commission also suggests that "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."[119] As the Commission recognizes, individual broadcast stations do not have market power in local markets. Consequently, the proposed theory could not provide a basis for concern about group ownership. In the 1960s the federal antitrust authorities sometimes challenged "conglomerate" mergers—mergers between companies operating in separate markets that are not vertically related—in some cases based on concerns about alleged increases in the likelihood of predatory pricing. However, there is no empirical support for this theory, and more than two decades ago the federal antitrust authorities ceased investigating and challenging conglomerate mergers.[120]

There are 211 DMAs, many station groups of different sizes, and many stations that are not owned by groups. Consequently, if group size had an adverse effect on advertising rates at the company or DMA level, it should be possible to produce statistical evidence of this effect. Any party supporting national ownership limits based on a concern about advertising rates should therefore bear the burden of showing such an effect. The Commission notes, however, that studies have found no empirical evidence that group ownership has an adverse effect on advertising rates.[121]

G. Effects of the rule on the market for video programs

Section IV of this report provides a comparative analysis of video program acquisition. There is likely to be a national market for video programming that includes at least broadcast television, cable television, DBS and other satellite services, and video cassettes. Concentration among firms buying national rights to this programming is very low; the HHI is under 800 (see Appendix Table G-7). No firm has a sufficiently large share of purchases

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119 FNPRM, *supra* note 1, ¶87.

120 So-called conglomerate mergers with alleged effects on potential competition are really horizontal mergers. Conglomerate merger policy is discussed in ROBERT H. BORK, THE ANTITRUST PARADOX 246–62 (1978).

121 *See* FNPRM, *supra* note 1, ¶88.