to exercise market power. If the national ownership rule were eliminated, no station group that might emerge would have monopsony power. In any event, enforcement based on the standard in Section 7 of the Clayton Act would prevent an increase in concentration before there was a threat to competition. Thus, the issue of monopsony power in the purchase of national rights to video programs does not provide a rationale for the national ownership rule.

H. Effects of the rule on diversity

Section V of this report provides an analysis of diversity issues. The Commission's principal diversity concern is with viewpoint (content) diversity in local news and public affairs programming. The national ownership rule for the most part does not intersect with this concern. Common ownership of stations in two or more local markets has no effect on the number of outlets and hence no effect on outlet diversity in any local market. Any effect on viewpoint diversity would have to arise, not from effects on outlet diversity, but from effects on the behavior of particular outlets attributable to their group ownership. In this respect, group ownership might increase viewpoint diversity with respect to news and public affairs if group owners have lower costs or face lesser risks in providing such programming. For example, a group owner may have less need to be deferential to any particular local political or other establishment than would a single-station owner.

Relaxation of the national ownership rule should have no significant adverse effect on diversity at the national level because, for the reasons discussed in Section V.G above, antitrust concerns would stop increases in concentration long before they threatened diversity values. Further, measurement of diversity in viewpoints and outlets on the national level cannot reasonably be restricted to broadcast stations.

I. Distinctions between multiple television station and cable system ownership

The Commission recently issued a rule that, when implemented, will prohibit any cable MSO from having an attributable interest in cable systems serving more than 30 percent of cable subscribers nationwide. The rationales offered for that rule, whatever their merits in the cable context, have no relevance for ownership of broadcast television stations, even if broadcast stations compete in narrow product markets.

With minor exceptions, each television household is passed by one cable system. Some have expressed concern that a large MSO that has an equity interest in cable programming services might attempt to foreclose the entry of competing programming services by denying them carriage. Some have also expressed concern about so-called "horizontal" concentration in ownership of cable systems nationwide. In the 1992 Cable Act, Congress required the Commission to deal with these issues and the Commission's cable rules are intended to address them. Even assuming the validity of these concerns in the case of cable, there is no basis for such concerns in the case of broadcast stations because the broadcast industry is structured differently than the cable industry.

Cable television systems are multichannel video service providers; in many cases they are the only local multichannel video service providers. Rightly or wrongly, Congress and the Commission have chosen to categorize them at this time as monopolists in the "market" for multichannel video services. It is on this basis that official concern for possible monopsony power or foreclosure in the market for cable programming rests. In contrast, in no significant local market is any broadcaster a monopsonist in the purchase of video programming, simply because there is almost always more than one local broadcaster. Therefore the basis for concern over vertical integration, foreclosure and monopsony in the cable industry does not exist in broadcasting.

To illustrate broadcast stations' or groups' lack of power to foreclose competition in the supply of programs, consider the fact that the average television household is located in a DMA with 8.66 full-power commercial television stations. Thus, even a vertically-integrated owner of stations covering 100 percent of television households would have *no ability* whatsoever to foreclose entry by programming services during non-network dayparts. Suppose one thought that a new programming service would have to obtain affiliations with stations covering 80 percent of television households. There are enough television stations so that 8 separate owners could have 80 percent coverage (Table 9). Thus, there is no basis for concern that station groups could foreclose entry either unilaterally or cooperatively.

Also, even if there were some reason, unrelated to vertical foreclosure of competing programming services, to be concerned about "horizontal" concentration of ownership of cable systems, there would be no basis for such concern in the case of ownership of broadcast stations in different markets. If the national ownership rule were eliminated, the HHI based on DMA household coverage could not exceed 831 (see Section VI.A). Clearly, even if an HHI for stations nationwide measured something of competitive significance, an HHI this low would raise no competitive concerns.

J. Conclusion

The analyses in Sections II through VI of this report lead to the conclusion that neither the preservation of competition nor concern for diversity provides any basis for restricting the number or reach of broadcast stations in different local markets owned by a single entity. However, there is evidence that such restrictions reduce the efficiency of resource allocation by preventing stations from being owned by the entities that are in a position to put them to their most valuable uses. Thus, any rule that restricts national station ownership is likely to make stations, programming services, viewers and advertisers worse off. The existing rule should be eliminated.

The standards embodied in the antitrust laws provide an adequate remedy for any competitive problems that might be alleged based on a different analysis of the industry. There are no special competitive considerations that might require tougher antitrust standards for television stations than for other industries. The rationales that have been offered for limitations on the ownership of cable systems by a single MSO do not apply to broadcast stations.

Diversity concerns do not alter these conclusions because the relevant players from the perspective of diversity are far more numerous than those included in markets used for analysis of competitive problems.

VII. Local Ownership Rule

A. The present policy is overly restrictive

Preservation of adequate competition in local markets is a highly desirable goal. However, the walls erected to protect competition should not be so high that they prevent competitively-neutral mergers, much less those mergers that could yield competitive benefits through greater efficiencies. The Commission prohibits joint ownership of stations that have overlapping Grade B contours. The discussions of local markets for viewers (Section II), for advertising (Section III) and for the purchase of video programming (Section IV) amply demonstrate that competitive conditions vary widely across markets. The preservation of competition in a local market must take account of local conditions, following established antitrust principles. Competitive analysis would show that the existing rule preventing overlapping Grade B contours is unnecessarily restrictive in most or all cases. In some markets, even the Commission's proposed rule based on Grade A contours would prevent mergers that have no adverse effect on competition.

1. Effects on local markets for delivered video programming

The Commission has tentatively concluded that broadcast television stations compete to attract an audience against cable, DBS, wireless cable, SMATV and, in the future, VDT. As explained in Section II, the relevant product market is at least this broad, and probably should include the viewing of video cassettes as well, not to mention non-video forms of entertainment.

The viewer share of broadcast stations is likely to decline over time as alternative video delivery systems increase in popularity. Even with current viewer shares as measured in Section II, there appear to be many instances in which common ownership of stations in adjacent DMAs or even stations within a DMA could occur without raising significant competitive concerns. As described in Section II, the station with the largest Grade B contour in each of 5 illustrative cities was paired for analysis with the station in a nearby city having the largest Grade B overlap without a Grade A overlap. This analysis found one overlap as small as 4 percent of the households covered by the first station and no overlap as large as one third. This suggests that stations with no Grade A overlap are unlikely to have enough potential viewers in common to be considered significant competitors. Joint ownership of such stations would have little or no impact on the competition for viewers.

Such a relaxed standard, while an improvement, would still be too restrictive in many cases. In DMAs where there is now vigorous competition among many televisions stations, cable operators and other providers, joint ownership of stations could occur without reaching levels of concentration that would raise competitive concerns. In New York and Cleveland, for example, even the station with the largest viewership share could acquire another station in the same DMA without exceeding the safe harbor concentration levels of the DOJ/FTC *Merger Guidelines*. Many mergers of smaller stations in these and other DMAs would likewise be within the safe harbor.

Joint ownership of stations within a DMA is even less likely to present a competitive problem if there prove to be individual cases where the geographic market for viewers is larger than the DMA. Given the large number of stations and the relatively small size of ownership groups, a market that was found to be broader than a DMA would very likely involve station owners not found in the DMA and have a lower concentration than a market limited to the DMA.

2. Effects on local markets for advertising

Evidence was presented in Section III that television stations do not significantly compete in the sale of advertising with television stations located outside the DMA. This evidence included the practice of advertisers and television stations to rely on audience data based on DMAs. If the local advertising market in which television stations compete is no larger than their DMA, then the Commission's current rule prohibiting joint ownership of stations with overlapping Grade B contours is excessively restrictive with respect to competition in the sale of advertising. There is no significant competitive effect from a merger of stations in separate markets, and no competitive rationale for prohibiting such mergers.

Considerable evidence was also presented in Section III indicating that the advertising market in which broadcast stations compete includes cable television and other media such as radio, newspaper, direct mail, yellow pages and outdoor advertising. Even in smaller markets, concentration measured using either local advertising sales or total advertising sales is low. Within many markets, joint ownership of broadcast stations would not increase concentration in the sale of advertising to levels that warrant competitive concern.

3. Effects on local markets for purchasing video programming

The effect of the local ownership rule on competition to acquire programming is heavily influenced by other Commission rules. These rules place specific limits on the geographic area in which a broadcast station can enforce exclusive exhibition rights for non-network programming. For practical purposes, a broadcast station does not compete in acquiring non-network programming against stations located outside the area in which it can exercise exclusive rights. Except in the case of hyphenated markets, this area extends 35 miles from the station's home community.

The current local ownership rule clearly prohibits some mergers of firms that do not compete in acquiring non-network programming. The Commission has stated that Grade B contours are generally 50 to 70 miles in radius.[122] Two stations located approximately 100 to approximately 140 miles apart could therefore have a Grade B overlap, and would be prevented from merging. These distances greatly exceed the 35-mile radius in which most stations can exercise exclusive non-network

122 See FNPRM, supra note 1, ¶116 n.144.

program distribution rights. Grade A contours usually have a radius of about 30 to 45 miles.[123] A rule prohibiting joint ownership of stations with overlapping Grade A contours could also be overly restrictive, since it could prevent the merger of stations located approximately 60 to 90 miles apart which would not compete to acquire non-network programming.

The present rule is also ill-suited to protect competition among stations to affiliate with broadcast networks. Because networks seek to obtain affiliates in all DMAs, stations located in one DMA do not compete for network affiliation against stations located in another DMA. Joint ownership of stations in separate DMAs would not affect the competition for affiliations, but would be prohibited in many cases because of overlapping Grade B contours.

A case-by-case analysis of competition in the purchasing of programming is preferable to a rule. Such an analysis would examine whether the stations in a proposed merger actually compete to acquire programming. If the stations are located in the same DMA, it would also examine whether the stations are likely to compete for network affiliation. If the two stations are found to compete in acquiring programming, the analysis would then determine whether the concentration in the purchasing of programming would be significantly increased by the proposed merger, and if so, whether that portends a reduction in competition.

B. Replacing the current policy with an antitrust approach would permit efficiencies of joint ownership

Hard evidence of the efficiencies that would be realized through joint ownership of stations with overlapping Grade B contours obviously is not available, since joint ownership under these circumstances has not been permitted. Merging stations in adjacent DMAs would realize efficiencies of the type discussed in Section VI.B, as well as efficiencies related to regional news coverage, other regional programming and regional adver-

123 *Id.*

tising sales. Through combining certain operation, they would also likely achieve savings in supervisory and administrative personnel. Joint ownership of stations within a single DMA, which could occur in some markets without raising competitive concerns, would likely result in even greater cost savings than would be realized from the joint ownership of more distant stations.

The potential for efficiencies from joint ownership of television stations is supported by research on joint ownership of AM and FM radio stations in the same market. Anderson and Woodbury compared the prices paid for AM-FM combinations to the estimated prices these stations would have received had they been purchased and operated separately.[124] They found that combinations sold for a price that was 24 percent higher than if the stations had been sold separately. This statistically significant difference was attributed to the efficiencies arising from joint ownership.

C. Antitrust standards will ensure adequate diversity

The Commission has identified its core diversity concern as local news and public affairs programming.[125] Evaluating the effect of the local ownership rule on diversity requires an understanding of what it means to be "local," a term the Commission has not defined in this context and which perhaps cannot be defined in any strict sense. As noted in Section VII.A.3, stations with overlapping Grade B contours can be up to 100-140 miles from each other. It is questionable whether the news considered local by one group of viewers would also be considered local by viewers separated from the first group by such distances. There may be viewers located midway between the stations that would consider the news from each station to be local in some sense. Even for these viewers, however, it is doubtful that the local news carried by the two stations would be considered substitutes, because they would largely be concerned about

---

124 Keith B. Anderson and John R. Woodbury, *Efficiencies from Common Ownership of Local Broadcast Media: The Case of AM and FM Radio Stations*, Appendix to *Reply Comments of the Staff of the Bureau of Economics of the Federal Trade Commission* in MM Docket No 91–140, Sept. 5, 1991

125 *See* FNPRM, *supra* note 1, ¶72.

different sets of "local" events and issues. It is difficult to argue that joint ownership of stations with a Grade B overlap could reduce the diversity of a news product if they do not even supply the same news product.

Whatever the properly-defined "local" area is, it is clear that the diversity of news is not limited to what is offered on broadcast television. Local news is provided not only by broadcast television but also by radio and newspapers. In some communities, cable television and magazines are additional sources of local news. Any policy for preserving local diversity, if needed at all, should consider all sources of diversity in the relevant local setting.

D. Conclusion

The Commission's rule banning joint ownership of television stations whose Grade B contours overlap but whose Grade A contours do not overlap appears to lack support, either in competition policy or in terms of protecting diversity. The relaxed rule proposed by the Commission, which would permit joint ownership of stations unless there is an overlap of Grade A contours, would permit many mergers that would have no adverse effect on diversity or competition. In some situations, even mergers between television stations with overlapping Grade A contours would not raise competition or diversity concerns, and should be allowed.

VIII. Radio-Television Cross-Ownership Rule

A. The Commission's one-to-a-market rule and waiver policy

This section applies the economic analysis considered in sections II through V above to the issue of the Commission's one-to-a-market rule. The analysis suggests that the present rule is over-broad, in that it prevents combinations that pose no threat to competition or to diversity. Consequently, the rule should be replaced by enforcement based on antitrust standards.

The Commission's one-to-a-market rule generally prohibits common ownership of a television station and a radio station in the same local market. The Commission "looks favorably" on requests for waivers of this rule to allow radio-television combinations involving not more than one AM station and one FM station in the top 25 television markets where there would be at least 30 separately owned, operated and controlled broadcast licensees after the proposed combination. Entities that do not own a television station are permitted to own two AM stations and two FM stations in most major markets.

The Commission now proposes to eliminate the one-to-a-market rule if it is able to conclude that television and radio stations do not compete and that they do not participate in the same diversity "markets." The standard proposed by the Commission—that television stations and radio stations *do not compete* in any market—is inappropriate. In evaluating a merger, the issue should not be simply whether the merging firms compete. The issue should be whether the merger would be likely significantly to reduce competition. Unless a merger of competitors would result in an unduly concentrated market, and other conditions are met as well, the loss of a competitor is not normally expected to reduce competition significantly or to increase the likelihood that market power will be exercised.[126] Thus, radio-television station mergers should be evaluated by applying the merger standard of Section 7 of the Clayton Act rather than being flatly prohibited. The present section of this report provides illustrations of how to analyze the effects of hypothetical radio-television station mergers on relevant markets, on diversity and on economic efficiency.

In fact, the Commission has already reached the tentative conclusion that television and radio compete in local advertising markets. Furthermore, there are clearly national television advertisers for whom national radio is the closest substitute, as well as national radio advertisers for whom national television is the closest substitute. Similarly, there are no doubt television viewers for whom listening to the radio is the closest substitute, and radio listeners for whom watching television is the next best way to acquire information or entertainment. In spite of this, many television-radio combinations would raise no *prima facie* competitive concerns based on HHIs, for two reasons. First, many markets have a large number of television stations, other video alternatives and radio stations. Second, there are many *other* advertisers and viewers for whom the closest substitutes for television are *not* radio stations but rather newspapers and other forms of advertising or entertainment. Similarly, there are many other advertisers and listeners for whom the closest substitutes for radio are not television stations and other video media but rather newspapers and other forms of advertising or entertainment. Such customers protect those whose choices are limited to radio and television.[127] As a result, any reasonable relevant market that includes both television and radio would also include a number of other types of advertising or leisure activities as well. Such markets typically are not highly concentrated.

---

126 See note 4, *supra*.

127 There appears to be no practical method by which broadcasters could readily distinguish and treat differently most of those viewers, listeners or advertisers whose best alternative is a non-broadcast medium from those who regard radio and television as their closest substitutes. Hence, price discrimination cannot serve as a basis for market definition.

In addition, one cannot reach a conclusion that the exercise of market power is likely merely because an HHI falls in the "highly" concentrated range. Sections III.E and III.F explain two important reasons one cannot rely on HHIs alone: in any narrow "market" there would be many substitutes just outside the "market," and collusion would be difficult. Also, in many markets entry would be easy.

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

The Commission has suggested that station ownership issues should be evaluated in a relevant market in which stations compete to "sell" programming to audiences, or in which they compete to attract audiences. The Commission has tentatively concluded that this relevant product market includes only video programming delivered to the home. Section II of this report provides a competitive analysis of delivered video programming. One implication of a delivered video programming market is that, in the event of a small but significant reduction in the quality of video programming offered by a hypothetical monopolist, not enough viewers would switch to other activities, including listening to radio stations, to make the reduction in quality unprofitable.[128]

If the Commission's proposed delivered video programming market is the relevant market, cross-ownership of television and radio stations will not affect the quality of video programming. Thus, no radio-television cross-ownership rule could have a competitive justification relating to television programming quality.

The Commission's proposed delivered video programming market may be too narrow. However, any broader relevant market would probably include not only video programming and radio programming, but also many other types of leisure activities such as listening to audio tapes and CDs, reading the newspaper, and playing computer games. Collectively these alternatives to watching video programming may well make a small but significant reduction in the quality of video programming by a hypo-

128 As indicated in note 6, *supra*, throughout this report, programming "quality" is equated with programming expenditures.

thetical monopolist unprofitable. Nonetheless, there is no apparent reason to believe that any one of them—such as radio alone or newspapers alone—plays a unique role in constraining video programming quality. Thus, even in a broader market, cross-ownership of television and radio would not be likely to raise concerns relating to the quality of television programming.

Some might express a concern about the effect of radio-television cross-ownership on the quality of radio programming, but the same reasoning presented above for quality of television programming would seem to apply to this issue. Indeed, regardless of how the relevant product market is defined, radio-television cross-ownership does not appear to raise competitive concerns relating to the quality of programming. Thus, concerns about programming quality cannot justify the radio-television cross-ownership rule.

C. Effects of the rule on markets for advertising

Section III of this report provides a competitive analysis of local and national advertising markets. That analysis is used in this section to evaluate the potential effects of radio-television station combinations.

1. Local advertising markets

The appropriate way for the Commission to deal with the effect of proposed radio-television combinations on advertising markets is to rely on antitrust analysis of the type demonstrated in Section III above, applying the incipiency standard of Section 7 of the Clayton Act. To do otherwise is to ban many combinations that would have no significant effect on competition but which presumptively enhance economic efficiency. Effects of proposed station mergers on concentration in advertising markets can be computed without difficulty. Examples for the five illustrative DMAs used in this report are provided here. The following hypothetical cases are analyzed:

- The advertising revenues of the median AM station and the median FM station are attributed to the median television station in the

DMA—in other words, the effect of a combination of an "average" TV station with two "average" radio stations is assessed.[129]

- Beginning with the assumption that the median TV, AM and FM stations are under common ownership, the revenues of the next largest AM station and the next largest FM station are attributed to this combination—in other words, the effect of a combination of two "average" radio stations with an "average" TV station that already owns two "average" radio stations is assessed.

The results of this analysis for three alternative advertising product "markets" are presented in Table 11. The three product "markets" are the same ones used in Table 5 to analyze concentration in local advertising. In the broadest market, the combinations have little effect on the HHIs, which remain under 700.

In the middle product "market," the HHIs for New York and Cleveland increase by only 2–12 points as a result of the various combinations considered. The HHIs for Portland increase by only 20–44. The HHIs for all the DMAs remain in the "moderate" or "low" ranges after the combinations.

In the narrowest product "market," the HHIs for New York and Cleveland increase by only 4–20 points as a result of the various combinations.

---

129 Stations were ranked by total 1994 advertising revenue (1993 in the case of New York). Only stations with positive advertising revenues were included. In computing the pre-merger *level* of the HHI, advertising vehicles with common ownership were combined. However, in computing the *increase* in the HHI resulting from the hypothetical merger, it was assumed that the acquired radio stations were not previously owned by entities that owned other advertising vehicles in the market. Thus, the increase in the HHI for the first hypothetical merger shows the effect of combining the median TV station, a previously independent AM station with a share equal to that of the median AM station, and a previously independent FM station with a share equal to that of the median station.

Table 11 HHIs for hypothetical radio-television combinations in alternative DMA advertising product "markets," 1994[130]

Product "market"	DMA	Capacity		
		Pre-merger	TV-AM/FM merger	TV-2 AM/ 2 FM merger
Video, radio, & newspaper	New York*	703	707	710
	Cleveland	1,250	1,261	1,270
	Portland	1,839	1,871	1,909
	Richmond	1,924	2,037	2,081
	Amarillo	2,505	2,585	2,625
Video, radio, newspaper, outdoor, & yellow pages	**New York***	**758**	**760**	**762**
	Cleveland	**1,106**	**1,112**	**1,118**
	Portland	**1,485**	**1,505**	**1,529**
	Richmond	**1,519**	**1,589**	**1,617**
	Amarillo	**1,722**	**1,771**	**1,795**
Video, radio, newspaper, outdoor, yellow pages, direct mail, & miscellaneous	New York*	284	285	286
	Cleveland	418	421	423
	Portland	564	572	581
	Richmond	583	610	621
	Amarillo	632	650	660

*1993 revenue

The only circumstance in which the radio-television combinations in question would lead to antitrust investigations under current merger standards is likely to be where (1) there was reason to believe that the relevant product market includes only video, radio and newspaper advertising, *and* (2) the DMA was significantly smaller than Cleveland. In order for such an antitrust investigation to lead to action to prevent the combination, the investigation would need to lead to the conclusion that the relevant product market is limited to video, radio and newspaper advertising, that collusion is not particularly difficult in the case of an

130 Source: Appendix Tables F-1 to F-16.

advertising market where the HHI is in the relevant range (for example, between 1,800 and 2,625), and that entry is difficult.

While the primary purpose of these illustrative calculations is to demonstrate the relative ease of carrying out case-by-case analyses of the effects of station mergers on concentration in local advertising markets, these illustrative cases also suggest that in many situations mergers of the types analyzed would not raise competitive concerns in properly-defined local advertising product markets.

2. National advertising market

The Commission has tentatively concluded that radio does not compete with video media in selling national advertising. If that were correct, radio-television cross-ownership would have no effect on concentration in any national advertising market of relevance to the television station ownership rules.

Television stations and radio stations sell spot advertising to national advertisers. Thus, in any national advertising product market that includes both television spot and radio spot, television and radio compete much as they do in local advertising markets. Nonetheless, it is entirely possible that an increase in radio-television cross-ownership in a substantial number of DMAs would not have any effect on concentration in national advertising markets.

The HHIs for national advertising presented in Table 4 are based on an assumption that television and radio spot revenues are attributable for this purpose to station representatives. Suppose that the radio-television cross-ownership rule was replaced by enforcement based on competition policy standards. Suppose, however, that the television national ownership rule was retained in its present form. In that case, it would still be impossible for one entity to own enough television stations to be an independent participant in the relevant national advertising market by virtue of supplying national spot television advertising. (Under the assumptions underlying Table 4, by definition an "independent participant," such as a national representative firm or a network, must be able to sell access to audiences in areas accounting for at least 75 percent of television households.) Thus, cross-ownership of television stations and radio stations would not affect concentration in national advertising.

Suppose again that the radio-television cross-ownership rule was replaced by enforcement based on competition policy standards. However, now suppose that the television national ownership rule was also replaced by antitrust enforcement. Suppose further that one entity acquired ownership of a set of TV stations, a set of AM stations and a set of FM stations, each of which covered at least 75 percent of the households in the country. This common ownership of TV, AM and FM stations could increase concentration compared to the levels in Table 4. However, the same level of concentration could be achieved without common ownership of television and radio stations, and thus without elimination of the one-to-a-market rule and the national ownership rule. This is because the station representatives to which national spot advertising revenues are attributed for purposes of the analysis summarized in Table 4 are permitted to represent both television stations and radio stations in selling advertising. In other words, elimination of the radio-television and national ownership rule would not make possible a higher level of concentration than is possible already.[131]

Suppose that as a result of either common ownership of television and radio stations or common representation of television and radio stations in the sale of advertising, it was appropriate to attribute to one entity the revenues of Broadcast Television Representative 1 and Radio Representative 1 in the analyses underlying Table 4. The increase in the HHI that would result from this combination in a national video and radio advertising "market" is presented in Table 12. The increase in the HHI is modest.

---

131 However, barriers to entry might be higher with common ownership than with common representation.

Table 12 HHIs for hypothetical radio-television combinations in a national video and radio advertising "market"[132]

	National sales	Capacity
Pre-merger	753	508
A broadcast television representative buys a radio representative	762	543
A broadcast television representative buys a second radio representative	772	597

Based on this analysis it can be concluded that potential effects in the market for national advertising do not justify the radio-television cross-ownership rule.

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

Section IV of this report provides a competitive analysis of video program acquisition. Cross-ownership of television and radio stations has no effect on the market for video program rights, since radio stations do not participate in that market. Further, in the broader market for purchasing broadcast program inputs such as talent, concentration in a market defined to include both radio and video (and therefore other media as well) is even lower than concentration in purchases of video rights.

E. Effects of the rule on diversity

As indicated in Section V above, the effects on diversity of a combination of two outlets in the same market are likely to be less problematic than the economic effects. Diversity "markets" are likely to be broader and less concentrated than relevant antitrust markets. It follows that if the economic effects of such a combination do not offend merger standards, then the combination also should not be regarded as a significant threat to diversity. In short, a radio-television combination that passes muster

132 Source: Appendix Table E-3.

under the Clayton Act should also pass muster under any reasonable diversity standard.

F. Efficiencies from radio-television combinations

A variety of potential cost savings may result from common ownership of television and radio stations in a local market. Such cost savings can be expected to lead to a larger number of radio stations, higher quality programming for viewers and listeners, and lower prices for advertisers. For example:

> Group W has recently combined its radio and television operations in Boston (WBZ-AM and WBZ-TV) under one general manager. The stations now share news and programming resources. Joint operation has resulted in a substantial increase in the amount of radio news and public issues programming. The combined resources of the WBZ radio and television news departments have allowed the radio station to more than double the number of news minutes available on the radio station each day. Sharing of programming resources has resulted in an increase in issue-oriented talk programs rather than music and lighter talk.[133]

The existence of efficiencies from joint ownership of television and radio stations is suggested by evidence of efficiencies arising from joint ownership of AM and FM radio stations in the same market. Anderson and Woodbury compared the prices paid for AM-FM station combinations to the estimated prices these stations would have received had they been purchased and operated separately.[134] They found that combinations sold for a price that was 24 percent higher than the sum of the estimated prices had the stations been sold separately. This difference was attributed to the efficiencies arising from joint ownership.

G. Conclusion

Neither concerns regarding competition nor concerns regarding diversity, which are analyzed in Sections II through V of this report, justify a radio-

---

133 *Group W Comments Supporting Petition for Reconsideration of Capital Cities/ABC*, In the Matter of Revision of Radio Rules and Policies, MM Docket No. 91-140, FCC, June 25, 1992, at 5-6.

134 Anderson and Woodbury, *supra* note 124.

television cross-ownership rule rather than enforcement based on the standard in Section 7 of the Clayton Act. A rule that applies a flat prohibition causes harm to viewers and advertisers by preventing efficiencies of joint ownership in cases where there is no basis for competitive or diversity concerns. Such a rule cannot be justified on the ground that it saves costs of case-by-case enforcement, because no case can be made that all or most combinations would be anticompetitive. The only possible adverse competitive effects of radio-television station mergers would be in local advertising markets. As Table 11 demonstrates, it is relatively simple to compute concentration in those markets based on publicly available data.

IX. Conclusion

This economic report has shown that the FCC's broadcast station ownership rules can usefully be addressed from the perspective of competition policy. When this is done, it becomes clear that the present rules are not necessary to protect viewers, advertisers or program suppliers from undue concentration of control. However, the present rules forbid many transactions that would not be anticompetitive. These forbidden transactions are presumptively beneficial to the economy as a whole, because they lower costs or enhance service quality. Finally, the application of antitrust merger standards to the analysis of station ownership changes is more than sufficient to protect the Commission's interest in diversity.

On the national level, analysis of competition and concentration in the two markets that have a national dimension, the sale of advertising and the demand for programming, supplies no justification for the present limitations on group ownership of stations. The relevant markets are relatively unconcentrated and would remain so after significant increases in the shares of many firms. The present rule banning common ownership of TV stations with overlapping Grade B contours is unnecessary to protect local markets from undue reductions in competition. A mere Grade B overlap is not sufficient to support an inference that two stations are competitors. In some cases even common ownership of stations with Grade A overlaps would not reduce competition. Finally, the application of merger analysis to the various types of transactions covered by the rule banning radio-TV cross-ownership in the same market suggests that in many larger markets there would be no threat to competition from the acquisition of two or four radio stations by a TV station.

A

APPENDIX A

PRODUCT MARKET DEFINITION IN THE COMMISSION'S DELIVERED VIDEO SERVICES MARKET

Appendix A Product market definition in the Commission's delivered video services market

1. Cable television

Virtually every household in the United States now has the opportunity to obtain video programming via cable. According to recent estimates, 96.5 percent of households are passed by cable. See Appendix Table A-1. Nearly two-thirds of these households, 59 million, currently subscribe to basic cable service. In addition, cable subscribers purchase 44 million pay units.[135]

---

[135] Paul Kagan Associates, KAGAN MEDIA INDEX, Feb. 24, 1995, at 14.