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FEDERAL COMMUNICATIONS COMMISSION
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July 10, 1995

BY HAND DELIVERY
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MM Docket Nos. 94-150, 92-51, 87-154
Attribution of Broadcast Interests

Dear Mr. Caton:

Transmitted herewith on behalf of the Local Station Ownership Coalition are an original and four (4) copies of its Reply Comments in the above-referenced consolidated proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH

Vincent J. Curtis, Jr.
Counsel for the Local Station Ownership Coalition

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

Directed to: The Commission

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REPLY COMMENTS

The Local Station Ownership Coalition ("LSOC"), by its attorneys, hereby respectfully submits its Reply Comments in reply to comments that were filed in response to the Notice of Proposed Rule Making ("NPRM"), FCC 94-324 (released January 12, 1995), in the above-captioned consolidated proceeding:

LSOC is a broad-based coalition of 17 broadcast groups[1] that include the licensees of more than 50 television stations, independents and network affiliates, in markets of varying sizes across the United States. These broadcast groups have joined together in a coalition because they are united in a common goal - reform of the commission's local ownership rule. On May 17, 1995 LSOC filed comments in this proceeding as well as in MM Docket 91-221.

LSOC has on this date filed Reply Comments in MM Docket 91-221, in response to Comments filed on or before May 17, 1995, in connection with the Further Notice of Proposed Rule Making ("FNPRM"), FCC 94-322 (released January 17, 1995). In those Reply Comments, LSOC specifically replies to Comments filed in MM Docket No. 91-221 that address television local marketing agreements and time brokerage agreements (collectively referred to as "LMAs").

In its NPRM, slip op. at 8, ¶ 11, the Commission referred to the television ownership proceeding, MM Docket 91-221, and specifically indicated that it would review the comments filed in that proceeding in conjunction with the comments received

---

[1] LSOC includes the following broadcast groups: ABRY Communications headquartered in Boston, Massachusetts; Act III Broadcasting, Inc., headquartered in New York, New York; Argyle Television Holdings, Inc., headquartered in San Antonio, Texas; Blade Communications, Inc., headquartered in Toledo, Ohio; Clear Channel Television Licenses, Inc., headquartered in Franklin, Tennessee; Ellis Communications headquartered in Atlanta, Georgia; Fant Broadcasting Companies headquartered in Birmingham, Alabama; Granite Broadcasting Corporation, headquartered in New York, New York; Kelly Broadcasting Co. headquartered in Sacramento, California; LIN Television Corporation headquartered in Providence, Rhode Island; Malrite Communications Group, Inc., headquartered in Cleveland, Ohio; Outlet Communications, Inc., headquartered in Cranston, Rhode Island; Pappas Telecasting Companies headquartered in Visalia, California; Providence Journal Broadcasting Corporation headquartered in Providence, Rhode Island; River City License Partnership, headquartered in St. Louis, Missouri; Sinclair Broadcast Group, Inc., headquartered in Baltimore, Maryland; and Waterman Broadcasting Corp. headquartered in Fort Myers, Florida.

in the instant proceeding to assure a coordinated approach to the three proceedings. Attached hereto is a copy of LSOC's Reply Comments filed simultaneously herewith in MM Docket 91-221. LSOC incorporates those Reply Comments herein by reference and requests that they be considered in this proceeding as well, particularly as they relate to time brokerage, local marketing, and other joint venture agreements.

Respectfully submitted,

THE LOCAL STATION OWNERSHIP COALITION

By: ____________________________
Richard Hildreth
Vincent J. Curtis, Jr.
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Its Attorneys

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July 10, 1995

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

Directed to: The Commission

REPLY COMMENTS

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THE LOCAL STATION
OWNERSHIP COALITION

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Its Attorneys

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

Directed to: The Commission

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REPLY COMMENTS

SUMMARY

The Local Station Ownership Coalition ("LSOC") herein replies to various Comments filed in response to the Further Notice of Proposed Rule Making ("FNPRM"), FCC 94-322 (released January 17, 1995), in the above-captioned consolidated proceeding.

LSOC, which filed Comments in this proceeding and in MM Docket 94-150, a companion proceeding to examine the Commission's attribution rules and policies, is a broad-based coalition of 17 broadcast groups that include the licensees of more than 50 television stations, independents and network affiliates, in markets of varying sizes across the United States. These broadcast groups joined together in a coalition because they are united in a common goal -- reform of the Commission's local ownership rule.

In its Comments in this proceeding, LSOC urged the Commission to amend its local ownership rule, demonstrating that such action is critical to the future of free, over-the-air

television broadcasting, particularly to the continued survival of UHF television licensees. In its Comments and in a supporting economic study prepared by National Economic Research Associates, Inc. ("NERA Study"), LSOC demonstrated that the time has come for the Commission to amend its local ownership rule to permit the common ownership of two television stations in a market and to recognize, as it has with respect to radio local marketing and time brokerage agreements (collectively referred to herein as "LMAs"), that LMAs involving television stations serve the public interest and should be permitted to continue.

In its FNPRM in this proceeding, the Commission proposed a new analytical framework within which to evaluate its ownership rules applied to television stations. The new analytical framework was to provide "a more structured approach to a comprehensive economic and diversity analysis of the rules." The Commission stated that the issuance of the FNPRM and further comments submitted according to the new analytical framework were "necessary" to permit the Commission "to make a fully informed decision in this important area."

The Commission has now received a substantial number of comments in response to its FNPRM. It is readily apparent that the overwhelming majority of commenters favor some relaxation of the television ownership rules, particularly the local ownership rule, and favor the continued use of LMAs in television, even if the local ownership rule is not significantly relaxed. More importantly, **all of the economic studies and analyses submitted** in response to the FNPRM **support the substantial relaxation of the Commission's local television ownership rule**, including the specific proposals of LSOC.

All of the arguments raised in opposition to relaxation of the local television ownership rule were unsupported by any analysis, notwithstanding that such an analysis was specifically requested by the Commission.

Herein LSOC responds to certain specific points and issues raised in the comments related to the proposals LSOC advanced in its Comments.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

Directed to: The Commission

REPLY COMMENTS

Local Station Ownership Coalition ("LSOC"), by its attorneys, hereby respectfully submits its Reply Comments in reply to various Comments filed in response to the Further Notice of Proposed Rule Making ("FNPRM"), FCC 94-322 (released January 17, 1995), in the above-captioned consolidated proceeding:

I. INTRODUCTION

LSOC, which filed Comments in this proceeding and in MM Docket 94-150, a companion proceeding to examine the Commission's attribution rules and policies, is a broad-based coalition of 17 broadcast groups[1] that include the licensees of more

---

[1] LSOC includes the following broadcast groups: ABRY Communications headquartered in Boston, Massachusetts; Act III Broadcasting, Inc., headquartered in New York, New York; Argyle Television Holdings, Inc., headquartered in San Antonio, Texas; Blade Communications, Inc., headquartered in Toledo, Ohio; Clear Channel Television Licenses, Inc., headquartered in Franklin, Tennessee; Ellis Communications headquartered in Atlanta, Georgia; Fant Broadcasting Companies, headquartered in Birmingham, Alabama; Granite Broadcasting Corporation, headquartered in New York, New York; Kelly Broadcasting Co., headquartered in Sacramento, California; LIN Television Corporation, headquartered in Providence, Rhode Island; Malrite Communications Group, Inc., headquartered in Cleveland, Ohio; Outlet Communications, Inc., headquartered in Cranston, Rhode Island; Pappas Telecasting Companies, headquartered in Visalia,

than 50 television stations, independents and network affiliates, in markets of varying sizes across the United States. These broadcast groups joined together in a coalition because they are united in a common goal -- reform of the Commission's local ownership rule.

In its Comments in this proceeding, LSOC urged the Commission to amend its local ownership rule, demonstrating that such action is critical to the future of free, over-the-air television broadcasting, particularly to the continued survival of UHF television licensees. In its Comments and in a supporting economic study prepared by National Economic Research Associates, Inc. ("NERA Study"), LSOC demonstrated that the time has come for the Commission to amend its local ownership rule to permit the common ownership of two television stations in a market and to recognize, as it has with respect to radio local marketing and time brokerage agreements (collectively referred to herein as "LMAs"), that LMAs involving television stations serve the public interest and should be permitted to continue.

LSOC's Comments and accompanying economic analysis provide ample support for the Commission to conclude that its current local ownership rule for television no longer serves the purpose for which it was adopted, i.e., to foster competition and enhance diversity, and now actually frustrates those objectives, while at the same time diverse alternative media enjoy explosive growth and development unfettered by ownership restrictions or regulation. The changes proposed by LSOC, on the other

California; Providence Journal Broadcasting Corporation, headquartered in Providence, Rhode Island; River City License Partnership, headquartered in St. Louis, Missouri; Sinclair Broadcast Group, Inc., headquartered in Baltimore, Maryland; and Waterman Broadcasting Corp., headquartered in Fort Myers, Florida.

hand, will enhance, not endanger, competition and diversity, enabling television licensees to strengthen their competitive positions through combined resources and diversified program offerings.

In its FNPRM in this proceeding, the Commission proposed a new analytical framework within which to evaluate its ownership rules applied to television stations. The new analytical framework was to provide "a more structured approach to a comprehensive economic and diversity analysis of the rules." FNPRM at 3 ¶ 1. The Commission characterized the Comments and Reply Comments filed previously in response to the Notice of Inquiry, 6 FCC Rcd 4961 (1991) ("Notice"), and Notice of Proposed Rule Making, 7 FCC Rcd 4111 (1992) ("NPRM"), in this proceeding as "useful" but stated that the issuance of the FNPRM and further comments submitted according to the new analytical framework were "necessary" to permit the Commission "to make a fully informed decision in this important area."

The Commission has now received a substantial number of comments in response to its FNPRM. There is near unanimity of concern in the comments about the future of free over-the-air television broadcasting. There is also a clear commitment to the critical importance of service to the local community expressed by most of the broadcast licensees that filed comments. Also, it is readily apparent that the overwhelming majority of commenters favor some relaxation of the television ownership rules, particularly the local ownership rule, and favor the continued use of LMAs in television, even if the local ownership rule is not significantly relaxed. More importantly, **all of the economic studies and analyses submitted** in response to the FNPRM **support the substantial relaxation of the Commission's local television ownership**

rule, including the specific proposals of LSOC. All of the arguments raised in opposition to relaxation of the local television ownership rule were unsupported by any analysis, notwithstanding that such an analysis was specifically requested by the Commission.

Herein LSOC responds to certain specific points and issues raised in the comments related to the proposals LSOC advanced in its Comments.

II. THE LOCAL OWNERSHIP RULE

In its Comments, LSOC proposed that the Commission amend its rules (1) to permit common ownership, operation, and control of two UHF television stations or one UHF and one VHF station within the same television market, unless the Commission determines that permitting such ownership, operation, or control will harm competition or will harm the preservation of a diversity of voices in the local television market; and (2) to permit common ownership, operation, or control of two VHF television stations within the same television market if the Commission determines that permitting such ownership, operation, or control will not harm competition and will not harm the preservation of a diversity of voices in the local television market. Also, LSOC contended that, in any instance where one of the stations is a "distressed" or "failed" station, or where a new station can be placed on the air, the Commission should permit ownership of both stations without regard to whether the station is a UHF or VHF station.

The overwhelming majority of commenters favored some relaxation of the television local ownership or "duopoly" rule. Most commenters urged the Commission to permit one owner to, under certain circumstances, own at least two stations in a market. The commenters offered varying proposals as to the circumstances under which one owner should be able to own two stations. Most commenters appear to favor ownership of two stations if at least one is a UHF station. A few commenters would require the Commission to examine requests and permit common ownership only on a case-by-case basis or where one of the stations is in financial distress. Other commenters also propose tests for how many separately owned stations or voices must remain or would allow mergers only in a small number of large markets. Most of these proposals are not supported by any economic data or analyses. LSOC's proposals, on the other hand, are supported by all of the economic analyses and data submitted to the Commission. Indeed, it is apparent from the economic studies that LSOC's proposals are actually very conservative.

It is also apparent from the other comments filed recently that permitting the common ownership of two television stations in a market is necessary to enable local broadcasters to compete with their non-broadcast multichannel competitors and to compete with large broadcast multiple owners present in their market.[2] See, e.g., Comments of Media America Corporation at 8; Comments of Cedar Rapids Television Company; and Comments to Further Notice of Proposed Rulemaking by the Association of Independent Television Stations, Inc. For example, Cedar Rapids Television Company ("CRTV"), the licensee of KCRG-TV and KCRG(AM), Cedar Rapids, Iowa, noted that it was in television market 84, that it "is the only locally owned and operated television station in the Cedar Rapids - Waterloo-Dubuque DMA," and that "[a]ll other

[2]This perhaps explains why group owners like Post-Newsweek Stations, Inc., **the licensee of six network-affiliated VHF stations,** oppose relaxation of the rule.

stations in the market are owned by group operators with headquarters in other states." CRTV Comments at 2. In its market, CRTV competes with Cox Cable[3] and TCI, which according to CRTV together control 68.7% of all cable television households in the 23-county DMA. Id. at 7. Nothing restricts or prohibits Cox and TCI from entering into combinations designed to achieve economies of scale. CRTV also notes that it will soon face competition from U.S. West, which also plans to offer multichannel television service in CRTV's market. Based on its experience, CRTV observes:

> "To continue to be economically viable and to compete with increasingly concentrated alternative program providers, local broadcasters will need the flexibility permitted by ownership of more than one station in a market. Not only would the stations' viability be more promising as a result of shared costs, but program diversity likely would be increased."

Id. at 8.[4]

Similarly, Media America Corporation (MAC) is a local family-owned broadcaster whose stations are all in the Phoenix, Arizona market. MAC supports changes in the broadcast ownership rules that will "(a) enable local broadcasters to continue providing locally-oriented service and (b) provide incentives for local citizens to invest in the television stations licensed to serve their communities." MAC Comments at 2. Thus, MAC supports permitting the common ownership of two full-power television stations

---

[3] Cox Cable also "operates ... channel 8 on its system just like an independent television station." CRTV Comments at 5. This "station," and the Fox Net cable channels on systems within CRTV's DMA, carry syndicated, local, and network programming and compete with CRTV for viewers and programming.

[4] CRTV also noted that joint ownership would allow owners to achieve economies of scale to permit operation of stations that would not otherwise be viable and pointed to the "large number of construction permits" in its market that, although granted, have not been built. Id. at 6-7.

with overlapping city-grade contours. MAC notes that:

> "For radio broadcasters, duopoly has been a salvation. In a shrinking universe, duopoly has enabled dying radio stations to survive and prosper and provide new services to their communities. The same principle applies to television."

MAC Comments at 4-5. MAC persuasively contends that, to protect the locally owned stations' continued service to their local communities as they face increased competition from large group owners, the Commission must adopt rules that allow television "duopolies" and local time brokerage agreements. As MAC recognizes, if there is sound reason to liberalize the national ownership rules, "there is even more reason to liberalize the local ownership rules for locally owned stations." Id. at 6. Indeed, MAC observes: "Without the opportunity to realize . . . efficiencies and cost savings, locally-owned independent stations cannot hope to compete with expanding national or regional chains." Id. at 9.

Most comments also supported at least a change of the relevant contour for determining prohibited overlap from Grade B to Grade A. Most commenters stated that a Grade B prohibited overlap standard was too restrictive, but no commenters demonstrated why a contour overlap standard was necessary or appropriate at all.

In its Comments, LSOC, however, made a compelling showing that the Commission's contour overlap standard is overly restrictive and unrealistic. LSOC's NERA Study demonstrated that, rather than applying a technical standard or measurement that has nothing to do with economic reality to determine whether or not an acquisition should be permitted, the Commission ought to employ established antitrust principles, looking at local conditions in local markets. The economic analysis offered by Economists Incorporated on behalf of Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc. and Westinghouse Group (hereinafter "Owen Study") reached conclusions consistent with those of NERA:

> "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 discussion of local markets for viewers ... for advertising ... and for the purchase of video programming ... 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."

Owen Study at 87. The NERA Study, too, demonstrated that both a Grade B overlap standard and a Grade A overlap standard would require rejection of proposed acquisitions that raise no antitrust or anticompetitive concerns.

In the absence of any justification for defining markets by reference to television signal strength contours,[5] the Commission should, as the NERA Study demonstrates, examine actual markets, i.e., the local markets for advertising. LSOC demonstrated in its Comments that the local market will generally be the Designated Market Area ("DMA"), as defined by A. C. Nielsen.

A. Diversity Concerns

In its Comments, LSOC demonstrated that the FCC's local ownership rule for

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[5]Many of the commenters supporting a Grade A contour standard contended that the Grade A standard more closely reflected a station's market. LSOC suggests that the Commission use the actual markets instead of trying to select a signal strength contour that approximates the market.

television is no longer necessary to ensure diversity in programming services. LSOC included in its Comments, at Section III, a lengthy study of the changes in technology and development of new services that have brought abundant new sources of programming and information to the consumer. Other comments have offered similar statistics and studies to show the variety of information and programming available. The overwhelming weight of the information submitted reflects that the Commission's diversity objectives will not be harmed by adoption of LSOC's proposals.

LSOC also demonstrated in its Comments how diversity would be enhanced by modification of the local ownership rules. Economies of scale and operations would permit an owner of two stations to devote more resources to local programming, and owners would be able to diversify to attract a greater number of viewers in the same market, whereas two separate owners of one station each might compete for and target the same mass audience. Other comments filed by broadcast licensees offered numerous examples of how economies of operation have led to expanded news gathering and programming, more public affairs programming, and more locally produced programming. While most of the examples reflected the experiences of national group owners or owners of television and radio station combinations in the same market, these experiences are all relevant to LSOC's proposal for revision of the local ownership rule. Where the Commission permits or does not prohibit ownership and/or operation of two or more broadcast stations, and where stations share at least some operations, facilities, and personnel, the economies of scale have resulted in the availability of more local news and information programming for the consumer.

Notwithstanding the record that has been developed, which shows that diversity will be enhanced and not harmed by relaxation of the local ownership rule and thus the FCC's goal of furthering diversity will be served, LSOC agrees with the discussion of diversity in the Comments of CBS Inc. at 8-25. As CBS Inc. has stated, "where an intellectual market would be genuinely diverse without government intervention, it is inappropriate for the government to impose ownership rules or other structural limitations in the name of achieving some still-higher, 'optimal' level of diversity." CBS Comments at 23. LSOC also generally agrees with the analysis of diversity in the Owen Study, at 48-59.

A few commenters that oppose any change to the Commission's television ownership rules do so solely in the name of diversity. In fact, the comments of the National Association of Black Owned Broadcasters (NABOB) and the comments of the 12 public interest organizations ("PIOs") filed by the Citizens Communications Center Project, Institute for Public Representation and the Media Access Project do not include any economic analysis or even a discussion of the competitive effects of any proposed changes to the rules. Instead, NABOB and the PIOs oppose changes to the rules solely on the assumption that greater concentration of ownership *ipso facto* leads to decreased diversity. To the extent that the PIOs offer any data to support their assumptions, the data they offer is old and outdated (from 1974-89) and ignores the dramatic changes that have occurred in the broadcast industry over the last six years, particularly the impact of the Commission's revision to the radio ownership rules in 1992.

While the Commission's revised ownership rules for radio have only been in effect since September, 1992, the Commission's Mass Media Bureau recently studied "the trends that are beginning to emerge" in an analysis of radio national and local ownership, local marketing agreements, minority ownership, and the effect of its revised radio ownership rules on diversity. See Mass Media Bureau's Radio Station Ownership Report ("MMB Radio Report"), released November 8, 1994. The MMB Radio Report found that, since the 1992 revisions, which increased the number of radio stations one owner could hold nationally and locally, broadcasters were taking advantage of the opportunities for increased radio station ownership permitted under the new rules. With respect to minority ownership, **the data reflected a net gain of 18 stations by minority owners from 1993 to 1994!** MMB Radio Report at 1. The MMB Radio Report also quoted a statement from Ragan Henry, Chairman of U.S. Radio "and one of the most prominent black broadcasters," who "has said his company benefitted from duopoly." Id. at 34 & n. 49.

In its discussion of the effect of the revised rules on diversity, the Bureau noted that it was not able at this point to assess the overall impact of changes. On the basis of the anecdotal evidence it had reviewed, however, the Bureau found:

> "no consistent approach by duopoly owners that would indicate how the acquisition of additional stations affects the diversity of voices available to the public. There are some duopoly owners who have retained the essential character of the acquired stations. Other owners use their newly acquired stations to serve distinct niches of the local community. In addition, there are situations where acquired stations are changed to be more like the stations the entity already owns in the local market. Thus, we can make no generalizations."

Id. What is clear is that absolute statements such "as increased concentration will result in decreased diversity" and increased concentration of control "works against minority ownership" (NABOB Comments at 13) are simply baseless. No such generalizations can be made. Broadcasters will program to the needs, interests, tastes, and preferences of their communities. Each local market will vary in television as it does in radio. Broadcasters will sell and buy television stations based upon economic considerations, as they buy and sell radio stations.

Minority and other special interest organizations have repeatedly advised the Commission that their biggest obstacle to acquiring stations is lack of access to capital. Their problem is not the number of stations available for sale but the lack of funds to acquire operating stations that are for sale.[6] Thus, increasing ownership limits does not mean that stations will be taken away from minorities and women or that minority and female ownership will not be able to increase. The gains minorities made in radio ownership after radio duopolies were permitted refute any argument that minorities will suffer if the television rules are revised as LSOC proposes. The Commission should not refuse to amend its rules solely on the unsupported assertion that minorities or viewpoint diversity will suffer if the rules are relaxed. As one commenter notes:

> "[B]y barring *all* combinations that exceed the cap in order to protect the public from the possibility that *bad* things might occur, across-the-board rules also prevent *good* things from happening (e.g., more local programming, expanded

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[6]The obvious hope is that by artificially eliminating (declaring ineligible) some potential purchasers (those most likely to have an interest in and reason for purchasing the stations), the purchase prices for the stations will be kept low or "affordable" for women and minorities. While this rationale might seem superficially attractive, it is a recipe for bankruptcy. The licensee is unable to achieve economies and efficiencies available to all its non-broadcast competitors, its revenues are suppressed for reasons unrelated to its business operations, it is unable to offer its station for sale to the "best" buyers, and the price at which it can offer its station for sale is artificially low. Ultimately such a policy benefits no one.

editorial content and additional competition for cable)."[7]

One other aspect of the PIO's Comments must be addressed. The PIOs contend in their discussion of diversity that there is no substitute for broadcast television with respect to local news and issue-responsive, public affairs programming. The Owen Study and the NERA Study effectively refute the undocumented and unsupported generalizations in the PIO Comments, particularly in the analysis that NERA and Owen undertake in their discussions of diversity and the market for delivered video services.

Moreover, the PIOs' own Comments undermine their unsupported assertions. For example, the PIOs state that "One recent study found that more than 70% of the public say they depend upon broadcast television for most of their local news." PIO Comments at 17-18.[8] Yet, the article relied upon by the PIOs for their 70% statistic belies the very point the PIOs are trying to support. In that article, the author examines the future of news. Contrasting today's consumer, who relies primarily (70%) on television, with **tomorrow's consumer**, the author states:

> "News consumers in the next century ... will not have to respect the traditional boundaries that now define audio, video, and text. Tomorrow's

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[7] Haring and Shooshan, "A Numerator in Search of a Denominator," at 19 (May 17, 1995), submitted as attachment to Comments of Fox Television Stations Inc. (emphasis in original).

[8]That statement by itself indicates that there are substitute sources of local news. Almost **30%** of the public apparently **did not rely** on broadcast television for **most** of their local news, and apparently no one relied exclusively on television for all of his/her local news. Thus, clearly there are substitute sources of news and information available to the consumer. Another study relied upon by the PIOs "revealed that 50% of Americans prefer television news for coverage of local issues." PIO Comments at 18-19. **Obviously that means that 50% of Americans do not prefer television news** for coverage of local issues. If so, there clearly are substitutes for television news in the coverage of local issues and 50% of Americans prefer those substitutes.

> news consumers will not have any patience with newspapers they have to retrieve from under the bushes or radio stations that make them wait five minutes for a traffic report. They will expect to receive their news when they want it, and in the format they find most convenient."

D. Bartlett, "The Soul of a News Machine: Electronic Journalism in the Twenty-First Century," 47 Fed. Com, L.J. I, 17 (Oct. 1994).[9] The author is even more explicit elsewhere in his article:

> "In barely a century, news technology has progressed from telegraph wires and crystal sets to color television and geosynchronous satellites. **Soon, even more powerful technologies will transport journalism far beyond the familiar boundaries of radio, television**, databases, telephones, and the printed page. In coming years, news programming and distribution will be creatures of what are being called the 'new media.' .... **Values and assumptions that evolved in response to scarcity will have to be revised** in order to cope with abundance.
>
> .... Entirely new forms of news presentations are being developed to take advantage of more powerful distribution technologies."

Id. at 3 (footnotes omitted, emphasis added). The "new media" to which the author refers include but are not limited to: DBS, HDTV, and digital cable systems. Id. n.1.

The author also describes the "explosion of television news programming that has taken place in just a few years."[10] Id. at 9. In predicting what news will be like in the 21st century (just a few years away), the author continues:

> "Thanks to an abundance of bandwidth, the model for electronic journalism in the digital domain will be the on-line database, rather than the daily newspaper or

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[9] This observation would apply equally to traditional television news programming. Presumably the consumer will not want to wait until 11:00 p.m. for a television newscast when he/she can get news immediately from alternative sources.

[10] This suggests, of course, that the 1974-89 statistics offered earlier in this proceeding and again in the Comments recently filed by the PIOs (to support their contention that deregulation and increased concentration of ownership lead to decreased diversity of viewpoints expressed through news and public affairs) are outdated, irrelevant, and no longer accurate.

regularly scheduled television news program."

Id. at 9. This article underscores the importance of examining the changes that are happening now in the industry and fashioning rules for the future -- not rules based on outdated data and unsupported assumptions.

Numerous other assumptions and assertions in the PIO Comments are unsupported and/or easily controverted. Relying throughout on very old (for this industry) data, the PIOs present a picture of the industry that is no longer accurate. The PIOs also make judgmental assumptions that simply ignore the facts. For example, in discussing News Channel 8, a regional cable news channel available on cable systems in the Washington metropolitan area, the PIOs state that "even where local cable channels exist, they do not necessarily increase viewpoint diversity in local programming." PIO Comments at 23. While News Channel 8 and WJLA-TV share common ownership, they provide very diverse programming and have in fact increased viewpoint diversity in local programming. WJLA-TV does not provide all news programming or even all local or regional programming. With News Channel 8, Washington, D.C. metro area residents have **immediate access to local and regional news that is not being provided by any other source**. Moreover, far more news programming is available on News Channel 8 each day than is available on any local television broadcast station in the Washington metropolitan area. Clearly, local cable channels should not be ignored or discounted even where they share common ownership with local broadcast stations. Where they exist each such channel should instead be considered as one more voice in the market.

B. Competition Concerns

The economic analyses of competition in the relevant markets submitted by commenters also support LSOC's proposals. While LSOC's NERA Study focused primarily on the local advertising market, the economic analyses of the delivered video services market and video program production market submitted by other commenters also support LSOC's proposals and are consistent with the NERA Study. As the economic analyses and data submitted in this proceeding demonstrate, the Commission's current ownership rules restrict and prevent combinations and acquisitions that pose little or no anticompetitive concerns. Modification of the rules as proposed by LSOC will promote, not restrict, competition.

More importantly, adequate safeguards exist under the antitrust laws and policies to assuage the Commission's concerns about the effects of relaxation of its rules on competition. As noted by John Haring and Harry M. Shooshan III in their report, "A Numerator in Search of a Denominator" ("Haring Report"), prepared for and submitted by Fox Television Stations Inc. ("Fox"):

> "Repeal of restrictions on multiple ownership does not constitute repeal of the antitrust laws. Mergers and acquisitions of broadcast properties, whether national or local, would remain subject to the full panoply of antitrust enforcement tools. It is striking to observe the extent to which the FCC, in analyzing its ownership restrictions, is essentially *duplicating* the analysis the antitrust agencies would, in any event, conduct were an actual merger or acquisition proposed. Whether any particular consolidation will pass competitive muster will necessarily depend on prevailing market conditions in particular market circumstances. To the extent that the FCC is evaluating issues the antitrust agencies could and, presumptively, would be evaluating anyway, its evaluation is redundant and unnecessary for reasons other than its own imperatives."

Haring Report at 19 (emphasis in original). These statements apply equally to the Commission's analysis of proposed modifications of the national ownership rule and