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. 87-7

To: The Commission

COMMENTS OF SAGA COMMUNICATIONS, INC. ON SECOND FURTHER NOTICE OF PROPOSED RULE MAKING

Saga Communications, Inc. ("Saga")[1], by its attorneys, hereby respectfully submits its comments in the above-captioned rule making proceeding. In regard thereto it is stated as follows:

I. THE ISSUES RAISED MUST BE PLACED IN HISTORIC PROSPECTIVE

(A) The Effects on National and Local Diversity of Television Programming Created by the 1996 Act[2]

The *1996 Act* in a single stroke created an environment which on its face decreased diversification[3] on the national level, but also created an environment to increase diversity

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1 Saga is the parent corporation of the licensee of KOAM-TV, Pittsburg, Kansas. Saga, either directly, or through subsidiaries, is the licensee of 26 radio stations and brokers time on six more radio stations.

2 *Telecommunications Act of 1996* Pub. L. No. 104-104, 110 Sta. 56. (*The 1996 Act*).

3 In reality since the bulk of the source of national television programming are the ABC, CBS, NBC and Fox networks, the increased concentration of

to meet local needs and interests. This is only true if the FCC leaves the duopoly aspect of the existing multiple ownership rules untouched.

There is a total of 1,190 commercial VHF and UHF commercial television stations in the United States[4]. Prior to the *1996 Act*, a single licensee could control no more than twelve television stations[5] (See former 47 C.F.R. § 73.3555). Pursuant to the mandate of the *1996 Act*, Section 73.3555 was substantially revised. Section 73.3555(e)(i) currently permits a single licensee to own any number of television stations so long as those stations *in toto* do not "have an aggregate national audience reach exceeding thirty-five (35%) percent."

Since there is, and will undoubtably remain, a cap of approximately 1,200 commercial stations available, the ability of a television licensee to own far more stations nationwide than before resulted in new owners in many markets. Initially, there were acquisitions that created mega multiple television stations operators (MSTO) in the major markets. Now, these MSTO licensees, having vast financial resources, are expanding their acquisitions of television stations to smaller markets.

(B) <u>The Effect of 1996 Act on Promoting Television Programming to Meet Local Needs</u>

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ownership has little real effect on diversification of programming.

4 *Broadcast Station Totals as of December 31, 1996*, Report No. 71 § 31, released January 21, 1997.

5 Up to fourteen if the licensee were minority controlled.

At one point in FCC history, television and radio stations were required to originate programming from a main studio. See former 47 C.F.R. § 73.1130. In 1984 the requirement to originate specific local programming was abolished because the Commission concluded:

> "Market incentives will ensure the presentation of programming that responds to community needs and provides sufficient incentives for licensees to become and remain aware of the needs and problems of their communities."[6]

An operator of two television stations in the same market automatically achieves so much market power thereby, that it has no "market incentive" to present programming to meet community needs. Such programming is expensive to produce and except for local news is not profitable. In an interview in *Broadcasting & Cable Magazine* p.5, February 3, 1997 the licensee of WBBH-TV and LMA operator of WZVN-TV, both in Fort Myers, Florida stated: "our only product is local news."

Thus, if the FCC, as a result of the instant rule making, allows a single licensee to directly control two television stations in the same market, or indirectly by means of an LMA, that licensee has no "market incentive" to produce anything other than a little local news.

On the other hand, if one of the MSTO's acquire a television station in that market and cannot acquire another either directly or by an LMA, it has every "market incentive" and the financial power, in order to be the number one rated station in the market, to

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[6] *Revision of Programming and Commercialization Policies*, 98 FCC 2d 1076 (1984).

produce local programming since this is the only route it has to achieve market dominance.

For this reason, the duopoly provisions of 47 C.F.R. § 73.3555 should remain unchanged.

(C) The Effect of New Technologies

At p.5, ¶ 6 of the instant NPRM the FCC notes: "The introduction of digital broadcast television ("DTV") technology may transform the broadcast television market in ways that the current ownership rules may not contemplate." Saga applauds this approach because historically the FCC's conducting a lengthy rule making proceeding, without simultaneously considering changes in technology has achieved little, while a great deal of time and effort has been expended.

For example, the FCC spent almost forty years considering whether to open the AM clear channels for new applicants. By the time the FCC adopted 47 C.F.R. §§ 73.21 and 73.25 providing for multiple use of these AM clear channel frequencies the existing proliferation of established FM stations made use of the new clear channel AM frequencies in most cases an economically unviable competitive alternative.

After years of rule making proceedings, the FCC adopted Sections 73.642-644 of its rules providing for subscription TV services. However, by the time these rules were adopted, cable television (CATV) operators using satellites were able to offer to subscribers a multitude of pay cable channels such as HBO and Showtime to the markets where STV operators could only compete with a single channel.

In 1983 the state of the art of fiber transmission capacity allowed a single fiber pair to transmit 6 DS-3's[7] or 3240 voice/data channels per fiber pair. This required that an amplifier be used for every mile of the fiber path. By 1995 a single fiber pair had the capacity to carry 750,000 voice/data channels with an amplifier required every ninety miles.

While one UHF or VHF television channel presently can carry one analog channel, the trade press widely reports that the same TV channel can carry six digital channels.

Thus, Saga submits that any dilution of the prohibition against television duopoly at this time is both premature and contrary to the public interest for the following reasons:

(1) As MSTO licensees expand to achieve the 35% cap, they will have a choice of either acquiring one station in a market under the present rule or two if allowed as a result of this rule making. If they can acquire only one, then then they have a "market incentive" to become number one in the market by producing and presenting local programming. If the MSTO can acquire two stations, then it thereby automatically achieves such market power. In the latter case, it is in the MSTO's interest to maximize profits by reducing production expenses. Thus, only by maintaining the present competitive environment does an MSTO licensee have a "market incentive" to produce local programming.

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[7] A DS-3 is the amount of spectrum required to transmit 540 voice/data channels. Three DS-3's are sufficient spectrum width to carry one video channel.

(2) New digital technologies will soon provide sub-channels within existing analog channels and eliminate the differences between UHF and VHF propagation.

These changes must be allowed to work. To relax the television multiple ownership rule based on outdated facts and to ignore that the facts have changed can only come about at the expense of weakening the existing local competitive environment with the concomitant sacrifice of local programming availability. Such a result is contrary to the public interest.

The existing television multiple ownership rule prohibiting the control of more than one television station in a market should be retained.

Respectfully submitted,

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