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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 Television Broadcasting	)	**MM Docket No. 91-221**
	)	
Television Satellite Stations Review of Policy and Rules	)	**MM Docket No. 87-8**
	)	
Broadcast Television National Ownership Rules	)	**MM Docket No. 96-222**
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS 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**

To: The Commission

COMMENTS
OF
AK MEDIA GROUP, INC.

AK MEDIA GROUP, INC.

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February 14, 1997

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SUMMARY

AK Media Group, Inc. ("AK Media") submits its Comments in this proceeding in support of substantial relaxation of the Commission's television duopoly rule. AK Media is the licensee of six television stations and programs a seventh station pursuant to a television LMA. This experience has allowed AK Media to learn firsthand the constraints which prevent many television stations from being competitive and the competitive benefits which can come from joint programming of two stations in the same market.

AK Media is the licensee of television station KCBA(TV), Channel 35, in Salinas, California. Pursuant to an LMA Agreement with Harron Television of Monterey, licensee of KCCN-TV, Channel 46, Monterey, California (the "Monterey LMA"), AK Media programs KCCN-TV. AK Media's experience in the Monterey LMA demonstrates clearly that, in a market where one station essentially dominates the market, the economies which can be achieved by an LMA may be the only way which new competition can be injected into a market.

In its Monterey LMA, the economies of scale have allowed AK Media to improve the signal of the station it is programming in the LMA, arrange to increase news programming on the LMA station, provide closed captioning on the LMA station, and increase children's programming on its licensed station. All of these changes have benefitted the communities served by the stations and have enhanced the ability of the combined stations to compete with the station which currently dominates the market.

Moreover, evidence from other licensees demonstrates that the Monterey situation is far from unique. Rather, the record evidence shows that competition in most markets will be improved if the duopoly rule is relaxed. Therefore, AK Media joins the Local Station Operators Coalition ("LSOC") in recommending the following revisions to the Commission's television duopoly rule and related

policies:

- Amend the duopoly rule to consider two stations in the same DMA, but with no Grade A contour overlap, as serving separate markets.
- Amend the duopoly rule to permit common ownership of two television stations in the same market, provided that at least one of the stations is a UHF station.
- Grandfather all LMAs permanently.
- Permit renewal and transfer of all grandfathered LMAs.
- Continue to permit LMAs, regardless of changes in the Commission's attribution or ownership rules.

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To: The Commission

COMMENTS OF AK MEDIA GROUP, INC.

AK Media Group, Inc. ("AK Media"), licensee of KCBA(TV), Channel 35, Salinas, California, submits its Comments in these proceedings[1] in support of the relaxation of the Commission's duopoly rule and to support an amendment to that rule that would permit common ownership of television stations in the same market. AK Media also submits its Comments in support of a Commission policy permitting LMAs to the same extent that it permits duopolies.

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[1] AK Media presumes that the Commission's reference to Docket No. 87-7 in the caption of the Second Further Notice of Proposed Rulemaking in FCC 96-438 was in error and that the Commission intended to refer instead to Docket No. 87-8.

I. INTRODUCTION

AK Media has been the Commission licensee of television stations since 1982. AK Media currently is the licensee of six television stations: WIXT(TV) in Syracuse, New York, KKTV(TV) in Colorado Springs, Colorado, KGET(TV) in Bakersfield, California, KVOS(TV) in Bellingham, Washington, KFTY(TV) in Santa Rosa, California and KCBA(TV) in Salinas, California.

AK Media, as licensee of KCBA(TV), has a local marketing agreement ("LMA" or "Monterey LMA") with Harron Television of Monterey ("Harron"), licensee of KCCN-TV, Channel 46, Monterey-Salinas, California for the Monterey-Salinas Designated Market Area ("DMA"). As a participant in an LMA in a smaller market, AK Media is in a position to provide the Commission with first hand practical knowledge of the competitive pressures faced by television stations in many markets and how duopolies and LMAs can serve the public interest. AK Media's experience with an LMA in the Monterey-Salinas DMA also provides the Commission with information which supports AK Media's conclusion that, rather than hurting competition, a duopoly or an LMA actually can increase competition. AK Media's experience also indicates that a Commission decision relaxing the duopoly rule to permit duopolies and permitting LMAs to the same extent it permits duopolies are in the public interest and can increase competition. As shall be explained below, the Monterey LMA has resulted in more and better news programming and expanded service to the communities served by the stations licensed to AK Media and Harron. The evidence from other licensees demonstrates that the Monterey situation is far from unique and that competition in most markets will be improved if the duopoly rule is relaxed.

AK Media takes seriously its obligations as a Commission licensee to serve the public interest. AK Media has put this commitment to serve the public interest into practice at each of its television stations. AK Media has invested both effort and money into providing better service to the communities served by its television stations. AK Media's stations have received numerous

awards for their public service and programming. AK Media has also received a large number of letters from television viewers in the Monterey-Salinas DMA which comment favorably on KCCN-TV's performance since the inception of the Monterey LMA. Examples of these letters are attached hereto as Attachment A.

II. THE HARRON-AK MEDIA LMA

In April, 1996, AK Media entered into the Monterey LMA with Harron. Two related agreements govern the relationship between Harron and AK Media: a Local Marketing Agreement and an Option Agreement.[2] A copy of the LMA Agreement between AK Media and Harron was filed with the Commission, although neither the Communications Act nor the Commission's Rules required the filing of that agreement.

Pursuant to the LMA agreement, AK Media is providing programming and sales services to Harron for KCCN-TV. KCCN-TV is a CBS affiliate and KCBA(TV) is a Fox affiliate. Neither affiliation has changed as a result of the LMA. Because Harron maintains its affiliation agreement with CBS, and that agreement has not been transferred to AK Media, Harron still directly provides the CBS programming on KCCN-TV. AK Media only provides the non-CBS programming broadcast by KCCN-TV. The LMA has a maximum term of three years, with no provision for renewal. Harron and AK Media also entered into an Option Agreement, which provides AK Media with an option to purchase KCCN-TV, exercisable at such time as the Commission's rules may permit such a purchase. The Option Agreement also expires in three years; i.e., both the LMA and the Option Agreement expire on April 24, 1999. In addition, Harron has obtained a bank loan to repay an outstanding loan obligation and AK Media has guaranteed repayment of that loan.

Throughout the term of the LMA, Harron will have control over KCCN-TV and will employ

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[2] The LMA and Option Agreement between AK Media and Harron will be referred to collectively as the "Agreements."

two persons to work at KCCN-TV, one of whom will be a manager and both of whom will be full-time employees of Harron. The LMA clearly establishes that Harron, as the licensee of KCCN-TV, will maintain control of KCCN-TV and will set the basic policies concerning operation of the station. In the LMA, Harron acknowledged that it had reviewed and approved AK Media's general programming plans as being consistent with Harron's policies for KCCN-TV. The LMA sets forth programming standards and gives Harron the right to suspend or cancel any programming provided by AK Media under the LMA if Harron determines that such programming fails to comply with those standards. The LMA gives Harron the right to preempt, delay or delete the broadcast of any programming on KCCN-TV. In substitution for such preempted, delayed or deleted programming, Harron has the right to air other programming which, in its judgment, is of greater local or national importance. Under the LMA, Harron reserves the right to retain up to one hour per broadcast week, between 6:00 am and 9:00 am each Sunday morning, for Harron's public interest programming and announcements.

While AK Media has the right to remove equipment from KCCN-TV's premises to other premises controlled by AK Media, the LMA requires that AK Media label such equipment as Harron's in conformance with the Uniform Commercial Code. The LMA also gives AK Media the right to install and maintain equipment at KCCN-TV necessary for the proper transmission of AK Media's programming on KCCN-TV. AK Media is required, however, to give Harron access to this equipment to permit Harron to operate and control KCCN-TV and to broadcast the programming.

The LMA states that Harron shall have full authority, control and power over the operation of KCCN-TV during the term of the LMA. The LMA gives Harron control over the policies, programming, finances, personnel and operations of KCCN-TV, including without limitation the right to accept or reject programming or advertisements. Under the LMA, Harron remains responsible for compliance with all Commission requirements with respect to ascertainment of the

problems, needs and interests of the community, public service programming, political broadcasting, main studio staffing, maintenance of public inspection files and preparation of quarterly issues/program lists.

Under the LMA, Harron will be responsible for paying the costs of those employees, including, without limitation, salaries, payroll taxes and health insurance. Under the LMA, all of AK Media's employees involved in the production of programming broadcast on KCCN-TV will be subject to the supervision and direction of Harron's designated personnel. Pursuant to the LMA, Harron must approve in writing any maintenance of KCCN-TV facilities. While AK Media is permitted under the LMA to replace any of Harron's equipment for KCCN-TV, AK Media is required to maintain Harron's equipment in the condition such equipment existed on the date the LMA commenced.

III. REASONS FOR THE HARRON-AK MEDIA LMA

There are five stations in the Monterey-Salinas DMA: 1) KSBW(TV), Channel 8, Salinas, an NBC affiliate; 2) KCCN-TV, Channel 46, Monterey, a CBS affiliate; 3) KCBA(TV), Channel 35, Salinas, a Fox affiliate; 4) KNTV(TV), Channel 11, San Jose,[3] an ABC affiliate; and 5) KSMS-TV, Channel 67, Salinas, a Univision affiliate.[4] The Monterey-Salinas DMA is ranked 122 and has 203,350 Nielsen households.[5]

The simple fact is that, while there are five stations listed in the Monterey-Salinas DMA, one station, KSBW(TV), an NBC affiliate, has dominated news programming in the Monterey-Salinas

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[3] The City of San Jose is actually a part of the San Francisco-Oakland-San Jose DMA. Despite this fact, in the Nielsen reports KNTV-TV is listed as a station serving the Monterey-Salinas DMA. Therefore, KNTV-TV will be treated in these Comments as serving the Monterey-Salinas DMA. If KNTV were excluded from the competitive analysis, the market dominance of KSBW(TV) would be even more pronounced than it is under AK Media's analysis presented in these Comments.

[4] Television & Cable Fact Book No. 65 at A-102, A-157-160, A-180 (1997).

[5] Television & Cable Fact Book No. 65 at A-102 (1997).

DMA since at least 1987. Indeed, in the five years from 1991 through 1996, KSBW(TV)'s percentage of total Monday through Friday news viewers (local and national) has never dropped below 50%.[6] In 1996, KSBW(TV)'s market share of Monday through Friday total news programming (local and network) viewers was 64.4%, while the next highest rated station in the Monterey-Salinas DMA KSMS-TV, (a Univision affiliate), had a 12.9% market share of Monday through Friday total news programming viewers. The market dominance of KSBW(TV) in 1996 actually was more pronounced than it was a year earlier in 1995, when KSBW(TV) had a market share of Monday through Friday total news programming viewers of 55.9%, with the next highest rated station, KNTV(TV), had a 15.2% market share of total news programming viewers. The continued dominance of KSBW(TV) of total Monday through Friday news programming in the Monterey-Salinas DMA is readily apparent from the graph summarizing the Nielsen ratings data for Monday through Friday total news programming, which appears at page 1 of Attachment B.

The dominance of KSBW(TV) also is evident when local news programming is considered. In 1991, KSBW(TV)'s market share of Monday through Friday local news programming viewers was 68.7%, while the next highest rated station in the Monterey-Salinas DMA, KNTV(TV), (the San Jose ABC affiliate), had a 13.4% market share of Monday through Friday local news programming viewers. In 1996, KSBW(TV)'s market share of Monday through Friday local news programming viewers was 67.8%, while the next highest rated stations in the Monterey-Salinas DMA, KNTV(TV) and KCCN-TV, both had 8.9% market shares of Monday through Friday local news programming viewers. Thus, between 1991 and 1996, KSBW(TV)'s ratings lead in local news over its nearest competitor had actually increased. This continued dominance of KSBW(TV) in local news

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[6] See Attachment B, which summarizes news programming and ratings performance from 1991 through 1996 and provides additional ratings information from 1987 through 1990. The ratings shown are the Nielsen November ratings for each year. All the ratings information described in these Comments is presented in Attachment B.

programming in the Monterey-Salinas DMA also is readily apparent from the graph summarizing the Nielsen ratings data for Monday through Friday local news programming, which appears at page 2 of Attachment B.

News programming is a major factor in advertising revenue at a television station. By dominating television news in the Monterey-Salinas DMA, KSBW(TV) has the ability to make substantially more money than its competitors in the DMA. KCCN-TV[7] and KCBA(TV), under former and current owners, and with and without the benefit of an LMA, have tried numerous changes in news programming in an effort to break KSBW(TV)'s dominance in news viewership in the Monterey-Salinas DMA, without significant success.

In 1991, both KCCN-TV and KCBA(TV) had 4.5% of Monday through Friday local news viewers, compared to KSBW(TV)'s 68.7% of Monday through Friday local news viewers. After many attempts to improve their ratings, in 1995, KCCN-TV's share of Monday through Friday local news viewers was only up to 8.9%, while KCBA(TV)'s share of news viewers had risen to 11.4%. In 1995, KSBW(TV)'s market share of local news viewers was still a dominant 63.3%. In 1996, after the LMA took effect, KSBW(TV)'s share of Monday through Friday local news viewership went up to 67.8%, while KCBA(TV)'s share of Monday through Friday local news viewership dropped to 7.8% and KCCN-TV's share of Monday through Friday local news viewership stayed even at 8.9%. KCBA(TV) has had the additional burden as a Fox affiliate of trying to compete in local news when its network, Fox, has no network news programming. The continued unsuccessful struggle of KCCN-TV and KCBA(TV) to overcome KSBW(TV)'s local news dominance is readily apparent in the graph summarizing the Nielsen ratings data for Monday through Friday local news programming, which appears at page 2 of Attachment B.

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[7] Prior to 1993, the station's call letters were KMST(TV). For ease of understanding, the station will be referred to throughout as KCCN-TV.

By 1996, KCCN-TV had become a failing station. Indeed, by the time Harron and AK Media entered into the LMA in April, 1996, KCCN-TV was in dire financial straits. Harron had been trying to sell KCCN-TV for two years without success. In 1994, Harron operated KCCN-TV at a net loss of $4,307,969. In 1995, KCCN-TV had a net operating loss of $3,145,575. In the first three months of 1996, KCCN-TV lost an additional $924,362.

Upon entering into the LMA, Harron authorized AK Media to make several technical improvements at KCCN-TV. These changes have provided measurable benefits to the viewing public in KCCN-TV's service area. First, Harron allowed AK Media to enhance KCCN-TV's over-the-air signal, which, prior to the commencement date of the LMA, was woefully inadequate. With Harron's approval, AK Media spent approximately $6,000 to improve KCCN-TV's video levels by purchasing and installing new distribution amplifiers and replacing the old coaxial cable portion of KCCN-TV's studio transmitter link with new double-shielded video cable. These expenditures: (a) raised the station's video levels, which had been down to 10-20 IRE in amplitude, (b) provided a 6-8 dB improvement in the signal-to-noise ratio, and (c) improved line time distortion to 1 IRE, up from the 15 IRE line time distortion the video levels had experienced prior to the LMA. Harron has also allowed AK Media to improve the audio levels of the station by purchasing and installing a new Optimod at a cost of $12,500. This has allowed KCCN-TV to now broadcast full stereo sound and has improved audio levels by 5-6 dB. In addition to these capital improvements, Harron has approved AK Media's provision of closed captioning capability to KCCN-TV, so that the station is now providing closed captioning to its viewers.

On January 7, 1997, AK Media reported to the Commission that on or about March 10, 1997, AK Media, with the concurrence of Harron, plans to increase the amount of news broadcast on KCCN-TV by two and one-half hours each day.

These revisions in news programming at KCCN-TV mean that KCCN-TV will be

broadcasting over four and one-half hours of local news each weekday, in addition to the CBS network news it already carries. The net result of these programming changes on KCCN-TV will be to create a major newsgathering operation at KCCN-TV, which will be able to build upon the strong CBS network news currently carried on KCCN-TV. AK Media believes that this concentration of news gathering resources at KCCN-TV will make KCCN-TV's news programming more competitive with KSBW(TV).

KCBA(TV) also is increasing its daily programming designed to serve the educational and informational needs of children. The additional children's programming will consist of four daily program inserts of one- and-one-half minutes in length, during which time the station will provide educational and informational programming designed for children. The programs will air during the hours of 3:00 p.m. and 5:00 p.m., when KCBA(TV) currently airs its children's afternoon entertainment programming. Although the programs are currently scheduled to be aired at 3:28 p.m., 3:58 p.m., 4:28 p.m. and 4:58 p.m. each weekday, KCBA(TV) anticipates increasing the number of programs aired each day beyond the four currently planned.

By providing this educational and informational programming during the period when KCBA(TV) airs its entertainment programming directed at children, the station expects to reach the largest possible audience of children. The programming is planned to cover issues of importance in shaping the intellectual/cognitive and social/emotional needs of children, such as programming designed to educate children about drug abuse and school drop-outs, as well as programming designed to highlight the educational achievements and accomplishments of schools, groups of children and individual children. KCBA(TV) has been successfully operating its Kids' Club on the station for many years. In 1995, KCBA(TV) received from the National Association of Broadcasters a "Service to Children Television Award" for its Kid's Club programming and community activities. The proposed educational and informational programming will fit well into the current programming

being provided by KCBA(TV) as part of the Kid's Club.

This increase in the total news programming and coverage provided by KCCN-TV and the increase in programming designed to serve the informational and educational needs of children on KCBA(TV) provides further evidence that the LMA entered into by AK Media and Harron is clearly in the public interest, as it has allowed for a substantial increase in local news coverage offered to Monterey-Salinas and the surrounding service area and for an increase in programming for children. Thus, the LMA actually has increased the quality and diversity of programming available to the service area of the two stations.

IV. IN TODAY'S VIDEO MARKETPLACE STRICT PROHIBITIONS ON COMMON OWNERSHIP OF TWO TELEVISION STATIONS IN THE SAME MARKET IS ARBITRARY

As explained above, AK Media has been operating television stations since 1982, and in 1996 AK Media entered into an LMA agreement to program a second station in a market where it currently owns a station. That experience, as well as the experiences of other broadcasters discussed below, leads AK Media to submit the following recommendations concerning revision of the Commission's local market television ownership rule and policies:

- Amend the duopoly rule to consider two stations in the same DMA, but with no Grade A contour overlap, as serving separate markets.
- Amend the duopoly rule to permit common ownership of two television stations in the same market, provided that at least one of the stations is a UHF station.
- Grandfather all LMAs permanently.
- Permit renewal and transfer of all grandfathered LMAs.
- Continue to permit LMAs, regardless of changes in the Commission's attribution or ownership rules.

In support of its recommendations, AK Media submits the following:

In 1938, the Commission adopted the rules which assured that the three local affiliates of the

then existing three major television networks, which defined the viewing options in most markets, remained not only competitors, but also distinct media voices.[8] Each station had to be under separate ownership and control. No station could be owned by a local daily newspaper. No station could own a local cable system or radio station. It also maintained rules designed to insulate local stations, particularly emerging independent stations, from anticompetitive practices by the three networks. Networks also were prohibited from owning cable television systems, or even acquiring a financial interest in or syndicating a program shown on the network. Networks could provide only three hours of programming to their affiliates in the top 50 markets in the four hours of prime time each evening. Realizing that the only source of competition and diversity in the video marketplace was local television stations (in their own rights and as conduits for their networks), the Commission sought to create and preserve as much competition and diversity as possible among the broadcast stations in each local market.

That was then. This is now. Local television stations today compete voraciously for viewers, advertising, and programming with video media which barely existed in 1972.[9] The broadcast television marketplace has evolved into a multi-media video marketplace. Competition exists today where it never did before. Diversity has grown by leaps and bounds. In this new marketplace context, the combination of the two local stations no longer poses any material threat to competition

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[8] Genesee Radio Corp., 5 FCC 183 (1938).

[9] According to the Commission, local television stations "operate in three economic markets relevant to the rules under consideration: the market for delivered video programming, the advertising market, and the video program production market." Further Notice of Proposed Rulemaking, MM Docket Nos. 91-221 & 87-8, 10 FCC Rcd. 3524, para. 22 (1995) (hereinafter "TV Ownership Further Notice").

and diversity.[10] Furthermore, this new and expanding competition has affected adversely local television stations' ability to "contribute to a diverse and competitive video programming marketplace."[11]

V. DIVERSITY IN ALL ITS ITERATIONS IS SUBSTANTIAL AND WOULD NOT BE ADVERSELY AFFECTED BY COMMON OWNERSHIP OF TWO STATIONS IN LOCAL MARKETS

In meeting its statutory obligations, the Commission is concerned about viewpoint, source, and outlet diversity.[12] In this proceeding, which involves ownership limits, the focal point of analysis is outlet diversity (i.e., the number of separately-owned media).[13] Outlet diversity has been

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[10] As pointed out by the Commission staff as this decade began:

> Many of the FCC's broadcasting rules were adopted when there were far fewer channels per market and the three networks dominated the supply of programming. Much of the FCC's broadcast regulation was motivated by a desire to limit economic power and concentration of control over program content on the part of broadcast stations and networks. These concerns appear misplaced, or at best, of greatly diminished importance, in a world where broadcast stations and networks face dozens of cable channels and program networks.

F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd. 3996 (1991) (hereinafter "OPP report").

[11] TV Ownership Further Notice, 10 FCC Rcd at para. 6, citing OPP report.

[12] TV Ownership Further Notice, 10 FCC Rcd at para. 55.

[13] Id. at para. 61.; Addanki, Beutel, and Kitt, Regulating Television Station Acquisitions: An Economic Assessment of the Duopoly Rule, National Economic Research Associates (May 17, 1995) at 3. Outlet diversity in the sense of separately-owned or controlled outlets is synonymous with "voice" diversity. The critical form of diversity in a democracy is voice diversity, which assures that issues of concern are addressed from a multiplicity of prospective. If outlet diversity were defined to look only to the number of outlets, irrespective of ownership, then it would not be synonymous with voice diversity. It still would be a factor worthy of consideration. For example, increasing the number of outlets provides additional program choices for consumers, regardless of whether it increases voice diversity.

viewed as one means of promoting viewpoint diversity.[14] Whereas no one would discount the benefits of diversity -- and, especially, viewpoint diversity in this nation's democracy -- the merger of two local television stations no longer raises rational concerns that diversity in any of its forms would decline in any material way. First, such a diverse array of media outlets is available that the merger of two local stations involves only a marginal decrease in raw outlet diversity. Second, maximizing outlet diversity via the current duopoly rule is more likely to stifle than to promote viewpoint diversity.

Maintaining the current absolute prohibition on common ownership is likely to impose considerable costs, including diversity costs. As Economists, Inc. concluded, "[T]he impact of the rules is chiefly to impose an inefficiently small form of organization on the broadcasting industry" and "prevent the broadcasting industry from operating at minimum cost."[15]

By raising the cost of doing business above efficient levels, the rules have functioned to reduce both the number of operating stations and the quality of service provided by some existing stations. Thus, consumers have fewer program outlets. Furthermore, they likely have less diverse programming. Economists, Inc. states:

> For example, a firm in control of two channels may program the two channels so as to reach different audiences, whereas two single-channel competitors may each seek to reach the larger audience, and thus duplicate programming.[16]

Thus, the current focus on maximizing the number of separately-owned outlets has involved costs in the number of outlets and diversity of programming. In sum, the common ownership of two

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[14] TV Ownership Further Notice, 10 FCC Rcd at para. 61.

[15] An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules, Economists, Inc. (May 17, 1995) at 50. (hereinafter "Economists, Inc.")

[16] Economists, Inc. at 50. See also TV Ownership Further Notice, 10 FCC Rcd at para. 63.

stations in the same market would involve, at worst, a nominal reduction in voice diversity and very likely would enhance source and viewpoint diversity in the market. As observed by Haring and Shooshan:

> In our view, just as increased group ownership would likely foster more effective exploitation of operating efficiencies, relaxation on consolidation of ownership of stations in local markets would similarly allow more efficient operations. The theoretical/common sense arguments are that there would be significantly beneficial consequences in terms of operating efficiencies if greater resource sharing in terms of administration, marketing and technical facilities could be achieved. Relaxation of these rules could also promote greater diversity of local programming. To the extent that the Commission has been concerned about promoting maximum diversity of viewpoints (i.e., editorial diversity), any reduction that might result from elimination of the duopoly rule will be more than offset by the additional local "voices" provided by cable, wireless cable and ultimately telephone company video services. Moreover in a world where a single cable operator can control up to 500 channels in a local market, the duopoly rules (and restrictions on LMAs or other arms-length deals among local broadcasters) unfairly restrict broadcasters from competing and have the effect of regulating over-the-air broadcasting and its viewers and listeners to second class status.[17]

In sum, the Commission's traditional concern about diversity has vanished in a blaze of emergent and now established media such as cable television.

VI. COMMON OWNERSHIP OF TWO STATIONS IN THE SAME MARKET WILL STRENGTHEN WEAKER STATIONS, WHICH THEN WILL ENHANCE COMPETITION IN EACH OF THE RELEVANT MARKETS

When the Commission first issued a notice of proposed rulemaking in these proceedings, it believed that its ownership rules "needed to be amended in order to strengthen the potential of over-the-air television to compete in the current video marketplace and enhance its ability to bring increased choice to consumers."[18] The veracity of this statement is readily apparent in the case of the local ownership rules. Local broadcast stations compete in an ever more competitive market. They not only compete against each other, they also compete against a now entrenched and mature

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[17] Haring, John, and Shooshan, Harry M., A Numerator in Search of a Denominator, Strategic Policy Research (May 17, 1995) at 17.

[18] TV Ownership Further Notice, 10 FCC Rcd at para. 7.

cable industry and a host of other multichannel video providers.[19] Furthermore, they compete with one channel against the multiplicity of channels provided by their video competitors. They derive revenue from a single source -- advertising -- while their competitors enjoy multiple revenue sources.[20] Their competitors remain largely unfettered and free to pursue the efficiencies of horizontal and vertical integration. Meanwhile, broadcast licensees remain barred by the duopoly rule from achieving the efficiencies of combined operations. Relaxation of the duopoly rule, therefore, would accomplish what the Commission seeks: the strengthening of local broadcasting and the improvement of its service to the public.

A. GROWING COMPETITION FROM MULTICHANNEL MEDIA HAS CAUSED A DECLINE IN THE ECONOMIC STRENGTH OF BROADCAST TELEVISION

The economic decline of broadcast television already is well-documented in the record of this proceeding, a study by the Commission staff, for example, found broadcast financial performance suffering the effects of competition from new multichannel media. The now well known "OPP Report" found that many stations on the financial fringe (e.g., small market stations, weak independents in large markets and UHF independents in general) will find it increasingly difficult to compete as the year 2000 nears.[21] The OPP Report further predicted that broadcast stations generally would suffer declining revenue, that the viability of small market stations would be imperiled and that, even in large markets, stations would cut back on local news and public affairs programming.[22]

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19 See generally, Third Annual Report, CS Docket No. 96-133, FCC 96-133, FCC 96-496 (released January 2, 1997) at para. 12.

20 Comments of LSOC, MM Docket No. 91-221 (filed May 17, 1995), at 8-9.

21 OPP Report, 6 FCC Rcd 3996.

22 Id. at 4001.

Comments of individual broadcast firms are consistent with the staff's findings. In the words of Frederick J. McCune of WYDO-TV, Greenville, NC, "high costs and tremendous competition have forced broadcast television to cut back on expensive local programming."[23] Mr. McCune then observes in very practical terms the difficulty local stations face in competing against cable television:

> All the best intentions in the world on the part of the broadcaster and the FCC do not overcome this basic fact: given a choice between the local Chamber of Commerce TV show and "CNN", today's television audience will pick the latter. Given a choice between a pathetic clown with a horn and bad makeup, or the slick programming of Nickelodeon, even a child knows how to push the remote button for Nick. Local broadcast stations simply cannot afford to produce quality local programs when they have but one outlet for their material.[24]

In no way, therefore, has broadcast television been immune from the effects of more competition. Particularly outside the core powerful, established, major market VHF affiliates, the industry has shown an increasing vulnerability to the financial impact of multichannel competition.

Furthermore, no turnaround in the competitive plight of local broadcast stations can be expected. As Economists Incorporated states: "The viewer share of broadcast stations is likely to decline over time as alternative video delivery systems increase in popularity."[25]

B. COMMON OWNERSHIP PRODUCES ECONOMIES AND EFFICIENCIES OF SCALE WHICH ENHANCE STATIONS' PUBLIC SERVICE

The benefits of common ownership are well known and well established in the record. NBC articulates the substantial benefits which would flow from a merger involving a UHF station:

If the UHF station(s) involved in the proposed transaction is weak, it would benefit

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[23] Comments in the Federal Communications Commission's Further Notice of Proposed Rulemaking Regarding Broadcast Television Ownership Rules, MM Docket No. 91-221 (filed May 17, 1995 by Frederick J. McCune) at 2 (hereinafter cited as "McCune").

[24] McCune at 4.

[25] Economists, Inc. at 87.

from the cost savings, economies of scale and efficiencies of shared resources and personnel. These benefits would translate into a stronger, more competitive UHF outlet.

> Even if those cases where a UHF station is on a solid financial ground, common ownership with a co-located VHF or UHF might enable the station to provide better provide more diverse program service to the community. For example, the second UHF outlet might be used to more fully utilize newsgathering and local programming resources, resulting in an increase in the locally-produced news and public affairs programming in the community. Other business arrangements between the co-located stations might lead to innovative news programming or public service campaigns. These more innovative approaches to programming and community service, coupled with the cost efficiencies that can be achieved through common ownership, would make both stations more competitive over the long term.[26]

Mr. McCune, a spokesperson for a small media outlet, echoes NBC's assessment:

> Local stations can and will produce more quality programming if they have additional channels serving different audiences over which they can rerun, repackage and time-shift those local programs. Such an efficient use of local programming lowers the effective cost of each airing to the local station, improving the economics of producing quality local shows that serve the needs and interests of the local public.[27]

The underlying economies of combined operations are very real. As Dispatch Broadcast Group, an experienced local broadcaster states:

> [L]ocal television duopolies will create significant economies of scale for television operators. Dispatch estimates that these savings 99 in eliminating many duplicative functions like engineering, traffic, and accounting, as will as duplicative costs like rent, taxes, and insurance -- will equal 15-25 percent of the combined operating budgets of two stand-alone stations. Duopolies will also make investment in local programming easier to justify because both the risks and initial costs of starting or expanding a local news operation, for example, can be spread over two stations rather than one.[28]

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[26] Comments of National Broadcast Company, Inc., MM Docket No. 91-221 (filed May 17, 1995), at 29-30 (hereinafter cited as "NBC").

[27] McCune at 4.

[28] Comments of Dispatch Broadcast Group, MM Docket No. 91-221 (filed May 17, 1995) at 8 (hereinafter cited as "Dispatch").

Thus, as NBC concludes:

> As competition from new video outlets increases (many of which are under common ownership), local television broadcasting will become a more economically fragile business. Allowing common ownership of more than one station in a DMA will give local broadcasters a way to maintain their competitive strength in the face of new competition, without diminishing competition or diversity in the local marketplace.[29]

In short, the record establishes that duopolies are likely to facilitate significant improvements in local television service.

Furthermore, by improving the financial vitality of marginal local television stations, common ownership would promote the extension and ultimate success of new broadcast networks.[30] Finally, all stations are confronting the enormous costs of converting to digital transmission. Stations on the fringe face the real prospect of being left behind simply because they cannot afford to build new digital facilities. The ability to take advantage of the efficiencies of common ownership would contribute materially to the ability of these marginal stations to remain competitive as digital broadcasters.

VII. EXTENSIVE EXPERIENCE WITH LOCAL MARKETING AGREEMENTS HAS DEMONSTRATED THE PUBLIC INTEREST BENEFITS OF COMMON OWNERSHIP

The Commission can draw on the experience of licensees like AK Media and Harron which are involved in LMAs of stations in the same market to gain solid evidence of the economies and, more significantly, the improvements in service which invariably have incurred. As set forth above in these Comments, AK Media and Harron have experienced first hand the improved service to the public which can be achieved through an LMA operation.

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[29] NBC at 30.

[30] See, Comments to Further Notice of Proposed Rulemaking by the Association of Independent Television Stations, Inc., MM Docket No. 91-221 (Filed May 17, 1995) at 17-19 (hereinafter "Independent TV Stations").

Numerous other licensees have submitted similar detailed accounts of their experiences with LMAs. They show that the ability to enter into LMAs, share resources, and combine operations to various degrees have:

- saved failing stations and enabled unbuilt stations to go on the air (or at least go no more quickly with better service);[31]
- enabled stations to begin new or restore discontinued local newscasts;[32]
- enabled stations to provide new programming for children and/or minorities;[33] and
- provided affiliates for emerging networks.[34]

The Commission, therefore, has an evidentiary record that is not limited to theoretical discussions and suppositions about what might be the efficiencies and benefits of combined operations. To the contrary, the experiences of AK Media, Harron and other broadcasters with LMAs provides hard evidence that combined operations lead to more competition, and better broadcast service to the public and that such combined operations are in the public interest.

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[31] See, e.g., McCune at 8; LSOC at 28-32; Independent TV Stations at 29-31; Reply Comments of Pappas Stations Partnership, MM Docket No. 910221 (filed July 10, 1995 (hereinafter cited as "Pappas") at 2-4; Comments of Sinclair Broadcast Group, Inc., MM Docket No. 91-221 (filed May 17, 1995) (hereinafter cited as "Sinclair") at 5-11.

[32] See, e.g., LSOC at 28-32; Independent TV Stations at 29-31; Pappas at 2-4; Sinclair at 5-11; EIC at 7; Reply Comments of Smith Broadcasting Group, MM Docket No. 910221 (filed July 10, 1995) (hereinafter cited as "Smith") at 6-7.

[33] See, e.g., LSOC at 28-32; Independent TV Stations at 29-31; Pappas at 2-4; Sinclair at 5-11; EIC at 7; Smith at 6-7; Comments of Media America Corporation, MM Docket No. 91-221 (filed May 17, 1995).

[34] See, e.g., LSOC at 28-32; Independent TV Stations at 29-31; Pappas at 2-4, Sinclair at 5-11.

VIII. CONCLUSION

As an experienced broadcast television station licensee, AK Media supports the goal of the Commission's television ownership rules, which is to provide improved service to the public. However, the television marketplace has changed significantly in recent years. AK Media submits that time has come for a significant relaxation of the Commission's television duopoly rule. AK Media's experience operating a small market LMA has shown that in some markets the programming of two television stations by one entity may be the only means for injecting competition into a market where virtually no competition exists. In such circumstances, the creation of a television LMA, and if allowed, the creation of a television duopoly, will increase competition in local markets, not decrease it.

Accordingly, AK Media requests that the Commission adopt the recommendations of the Local Station Operators Coalition as follows:

- Amend the duopoly rule to consider two stations in the same DMA, but with no Grade A contour overlap, as serving separate markets.
- Amend the duopoly rule to permit common ownership of two television stations in the same market, provided that at least one of the stations is a UHF station.
- Grandfather all LMAs permanently.
- Permit renewal and transfer of all grandfathered LMAs.
- Continue to permit LMAs, regardless of changes in the Commission's attribution or ownership rules.

Respectfully submitted,
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