would be permitted to overlap so long as they were located in separate DMAs. Where an entity can currently only own one station between two adjacent markets with overlapping Grade B contours, it could, under the proposed rules, own one station in each DMA for a total of two stations. Thus, changes in the rules would permit networks to increase their control over adjacent markets, as well as consolidate their ownership on a national level.

The proposed DTV rules would provide existing broadcasters with an additional 6 MHz of free spectrum for every channel they own today. Existing broadcasters will be able to operate up to six streams of digital programming on each 6 MHz DTV allotment.[20] Therefore, the two additional "give-away" DTV channels an incumbent TV broadcaster obtains in the Baltimore and Philadelphia DMAs (WBFF-TV, Fox ch. 45 and WTFX-TV, Fox ch. 29) as the result of the relaxation of the duopoly rule could translate into an additional 12 DTV digital programming streams. Also, the proposed DTV rules would enable broadcasters to hold onto each of their two analog channels in the Baltimore and Washington DMAs (WBFF-TV, Fox ch. 45 and WTFX-TV, Fox ch. 29) during a transition period of up to 15 years. Thus, one entity could ultimately own and control a total of two analog channels and two DTV channels (12 digital programming streams) in the Baltimore and Washington DMAs.

[20] See generally Comments and Reply Comments of BET, Advanced Television Systems and Their Impact Upon The Existing Television Broadcast Service, MM Docket No. 87-268 (November 22, 1996 and January 24, 1997). The proposed rules for DTV allocate an additional 6 MHz to each existing broadcaster. DTV channels may be packed tighter than analog NTSC channels because they are more robust and have greater resistance to interference than analog channels. See Comments of Ericsson, MM Docket No. 87-268 at 4-5. DTV channels may only need 2 MHz of spectrum to broadcast a DTV signal, rather than the 6 MHz currently required to broadcast analog NTSC signals. See Comments of Media Access Project, MM Docket No. 87-268 at 5-10. Accordingly, broadcasters may accommodate up to three DTV channels in the amount of spectrum currently allotted for a single analog channel. Using digital technology, broadcasters may pack a low-quality NTSC picture into as little as 1 MHz, permitting broadcasters to pack up to six channels into the 6 MHz allotment for current analog channels and future DTV channels. Charles Platt, "The Great HDTV Swindle," Wired at 60 (Feb. 1997).

Waivers under the cross-ownership rule would also increase consolidation and decrease competition and diversity in local markets. Entities obtaining waivers could own numerous radio stations and a single television station in each DMA, up to the top 50 markets. The Telecommunications Act of 1996 (the "Act") relaxed restrictions on radio station ownership so that entities may own up to 8 radio stations in markets of 45 or more stations, up to 7 stations in markets of 30-44 stations, up to 6 radio stations in markets of 15-29 stations, or up to 5 stations in markets of 14 or fewer stations.[21] Thus, an entity could own up to 7 radio stations in the Baltimore DMA and 8 radio stations in the Philadelphia DMA, for a total of 15 radio stations. Therefore, in addition to two analog channels (WBFF-TV, Fox ch. 45 and WTFX-TV, Fox ch. 29) and, 2 DTV channels (12 digital programming streams) in these two markets, a single entity also could own 15 radio stations between the two markets.

Finally, LMAs increase the control individual owners may already exert over local markets. LMAs are not subject to local or national ownership limits. The Commission currently proposes to grandfather these arrangements. Grandfathering LMAs that would violate the proposed ownership rules could potentially permit an entity owning one station in a market to control the programming and advertising of additional stations. Thus, in addition to owning two analog television channels (WBFF-TV, Fox ch. 45 and WTFX-TV, Fox ch. 29), 2 DTV channels (12 digital programming streams), and 15 radio stations, an entity could also control the programming and advertising for an additional number of remaining television stations in the Baltimore and Philadelphia DMAs. Permitting a single entity to own a substantial number of

[21] Telecommunications Act of 1996 § 202(b)(1), 47 U.S.C. § 151 et. seq.

broadcast outlets between two markets located close to one another would increase consolidation and hinder competition and diversity.

2. <u>Grade B Contour Overlap By Stations In Different DMAs: The Case of Washington, DC and Baltimore, MD.</u>

Critics of the duopoly rule often allege that there should be no Grade A overlap prohibition. They maintain that simply prohibiting an entity from owning two stations in a single DMA will protect competition and diversity in the local broadcast market. Thus, they oppose the Commission's Grade A overlap proposal. Rather, they support an approach that would enable a television station owner to acquire another TV station so long as the stations are located in different DMAs. Under a pure DMA standard without engineering considerations imposing Grade A or Grade B contour overlap restrictions , an entity could own a single station in any and all individual DMAs. Thus, an entity could own a station in Washington, D.C. and another station in Baltimore, MD, even though the stations' Grade A and Grade B contours would overlap. An examination of the Washington, D.C. and Baltimore, MD DMAs reveals why such an approach would produce devastating results.

The analysis of the Baltimore, MD and Philadelphia, PA markets applies with equal force to the analysis of the Washington, D.C. and Baltimore, MD markets. A single owner could own both WTTG, Fox channel 5, in Washington, D.C. and WBAL, CBS channel 11, in Baltimore, even though their Grade A contours overlap. The proposed DTV rules would provide the owner with an additional 6 MHz of free DTV spectrum for WTTG (Fox ch. 5) and 6 MHz for WBAL (CBS ch. 11), for a total of 12 MHz. The owner could operate up to 12 digital programming streams from these DTV allotments. The owner would retain WTTG and WBAL for a transition period of 15 years, during which time it may operate the two analog stations and the 12 digital programming streams. Similarly, waivers to the cross-ownership rule coupled with the relaxation of local radio ownership in the Act would enable an owner to own up to 15 radio stations in the Washington, D.C. and Baltimore markets, in addition to two analog channels (WTTG and WBAL) and 12 digital programming streams. If the Commission grandfathers LMAs, a single television station owner could potentially control the advertising and programming for additional television stations in each of the Washington, DC and Baltimore, MD DMAs.

Once again, allowing a single entity to control large portions of two markets will produce consolidation and decrease competition and diversity. This is true to an even greater extent in the Washington / Baltimore analysis than the Baltimore / Philadelphia analysis, since the former pair of markets are closer to one another and share a large portion of their audiences with each other.

Conclusion

The proposed changes in the local ownership rules would increase the substantial amount of consolidation already occurring in the broadcast industry. These changes would enable a single television owner to acquire another station in an adjacent DMA. The proposed DTV rules would provide the owner with 6 MHz of free DTV spectrum for each of the two NTSC stations it owns in the two adjacent DMAs and these combined DTV allotments could accommodate up to 12 digital programming streams. The owner could retain the two analog NTSC stations for a period of 15 years, in addition to operating the 12 digital programming streams. Waivers to the cross-ownership rule and relaxation of the local radio ownership rules in the Act enable the owner to own up to 16 radio stations between the two local markets. Through LMAs, the owner could control the programming and advertising of additional television stations in the two DMAs. The net effect would be to provide a single entity with significant control over a local broadcast TV market.

As the television station owner acquired additional television and radio stations, advertisers would be forced to buy time from the owner, since it would control an increasing share of the market. The owner could raise his prices without worry and advertisers would be forced to buy time from the entity because it would control the greatest number of stations in the local market. The increase in revenues would further the owner's control over the local market. No other entity could enter the market to compete because the owner could control advertising and programming at other stations through LMAs. Diversity would suffer because the single owner would have less of an incentive to offer diverse programming to capture local market niches. The owner could simply provide mainstream programming, with slight variations, through multiple outlets to obtain substantial advertising revenues.

Opponents of the duopoly and cross-ownership rules constantly point to other forms of video distribution media to claim that competition and diversity thrive in local broadcast markets. However, the bleak scenario outlined in the market analyses does not even consider the additional control an owner could exert through ownership of other forms of video distribution services such as DBS, MMDS, and on-line services. This analysis excludes these forms of media because the proper measure of market definition for purposes of evaluating the effects of the local ownership rules is the local broadcast TV advertising revenues.[22]

243611 v.2

[22] See Reply Comments of BET, MM Docket No. 91-221, at 6.