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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
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1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	))))	MM Docket No. 98-35

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

The National Association of Broadcasters ("NAB") reasserts that the Commission should not make any rule changes to the radio ownership or television national ownership limits at this time. Additionally, the Commission should keep the ban on cable/local television cross-ownership, but repeal the local newspaper/broadcast cross-ownership restriction.

The number of television and radio stations has increased, cable passes almost 100% of all homes, DBS is challenging cable as an MVPD (Multi-Video Program Distribution) and the Internet has been born with great success. The average citizen has more choices than ever thought possible. With the tremendous growth of media outlets in the last two decades, the fear of market domination by any one entity has all but disappeared.

The radio industry is stronger then ever before and diversity has not been harmed by consolidation. NAB supports those group owners who commented on the beneficial effects of consolidation, particularly in smaller markets where the industry has been revitalized. Therefore, the Commission should not take any action to change the current radio ownership rules.

NAB's position that there is no rational basis to retain restrictions against newspapers as broadcast licensees is supported by real-world examples in comments filed by grandfathered owners of newspapers and broadcast stations. Additionally, such ownership combinations could help accomplish the Commission's goal of increased diversity; the efficiencies recognized could help marginal newspapers survive.

With the change in the national ownership cap for television in effect for less than three years, NAB feels it would be unwise for the FCC to change the cap at this time. In addition, until the regulatory issues associated with digital television are finalized, and their effects on ownership known, NAB believes it would be inadvisable to make ownership rule changes to the national ownership cap or the UHF discount.

NAB supports continuation of the cable/television cross-ownership ban, at least until the "must carry" issue for digital television has been decided, with "must carry" rights for all television stations. Such a regulatory change now would provide an even greater opportunity for cable operators to abuse their gatekeeper role.

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REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits the following reply comments in connection with the above-captioned *Notice of Inquiry*[2] for biennial broadcast ownership review. After a review of the initial comments, NAB reiterates that the Commission should retain the current rules on radio ownership, cable/television cross-ownership, national television ownership limits and the UHF discount. The Commission should repeal its newspaper/broadcast cross-ownership ban, as it is no longer in the public interest.

I. INTRODUCTION

Since the 1970s, when most of the ownership restrictions being commented on in this *Notice* were created, the media marketplace has undergone tremendous change and growth, as

[1] NAB is a non-profit, incorporated association of radio and television stations and broadcast networks which serves and represents the American broadcasting industry.

[2] *Notice of Inquiry*, MM Docket No. 98-35 ("*Notice*"). ___ FCC Rcd ___ (1998).

discussed and documented in NAB's initial comments.[3] The average viewer has over twelve television stations from which to choose, 84 commercial radio stations, 65 cable channels, 18 newspapers, DBS and the Internet.[4]

With the emergence of so many media outlets, Congress relaxed many of the ownership restrictions for broadcasters via the Telecommunications Act of 1996[5]. The duopoly rules for radio were significantly reduced and the national ownership cap for television was raised to 35% from 25%. As stated in NAB's initial comments, there have been beneficial effects of the easing of these restrictions. The radio industry is the healthiest and strongest it has been since the creation of television. The FCC, in the Mass Media Bureau's *Review of the Radio Industry, 1997*, reported that there have been no trends toward a decline in the number or variety of program formats.[6] With the industry stronger and diversity unharmed, the Commission should not take any action to change the current radio ownership rules.

NAB also submitted comments supporting the repeal of the newspaper/broadcast cross-ownership ban, imposed in 1975. With the increase in media outlets, the justification for the ban -- protection of diversity of viewpoints -- has been eliminated. There is no rational basis to retain restrictions against newspapers as licensees while lifting restrictions for other media owners. Additionally, combinations of newspapers and broadcast stations could provide efficiencies

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[3] Comments of NAB in MM Docket No. 98-35 ("*NAB Comments*") at 4-5, filed July 21, 1998.

[4] *Id.* at 5.

[5] Telecommunications Act of 1996, Pub. L. No 104-104, 110 Stat. 56 (1996) ("*Telecom Act*").

[6] Review of the Radio Industry, 1997, FCC Mass Media Bureau, March 13, 1997 ("*Mass Media Bureau Report*") at 8. This report was submitted into the record of the instant inquiry proceeding.

which could increase the former's cash flow and ultimately help marginal newspapers become profitable and remain in circulation.[7]

The change in the national ownership cap for television has been in effect since February 1996 -- less than three years. NAB feels it would be unwise for the FCC to change the cap at this time without giving the industry some time to adjust to the new limit. In addition, the dawn of digital television is now upon us, bringing with the prospect of yet-to-be-determined competition and regulation. The DTV era will see tremendous new competition and dynamics that would be affected by changes in the ownership regulatory landscape. As such, NAB feels it would be inadvisable to make national ownership rule changes at this time.

The UHF discount should likewise be retained. While the *Notice* recognizes technological changes in receiver design and the increase in cable pass rates, NAB reiterates that these changes have not eliminated the disparity between VHF and UHF, either in ratings or economic success. As such the UHF discount should not be eliminated.

NAB also supports continuation of the cable/television cross-ownership ban. While there are a multiplicity of voices in the marketplace, the issue here is not one of diversity of viewpoint. Rather, because cable is the gateway for television stations into the majority of viewers' homes, it is an access and competition issue. Importantly, until the "must carry" issue for digital television has been decided, with "must carry" rights afforded all television stations, it would be ill-advised for the Commission to allow cross-ownership of these two media. Such a regulatory change now would provide an even greater opportunity for cable operators to abuse their gatekeeper role.

[7] *See NAB Comments* at Attachment A, 10-11.

II. DIVERSITY AND THE MULTIPLICITY OF VOICES IN THE LOCAL MARKETPLACE

NAB agrees with the comments of ABC, CBS, NBC and Fox that the Commission should judge diversity on the local level, not the national level.[8] As pointed out by Fox, the Commission has previously stated there is no nexus between national ownership and local diversity.[9] This is because the viewers' choices are on the local level, not the national level.

Additionally, the viewer chooses not between options on one medium, but rather among all media when deciding where to get local news and information. Therefore, the Commission, when looking at diversity of viewpoints, should not look at each medium separately. Instead, it should look at all media, including television, radio, cable, DBS, Internet and newspapers, along with smaller services such as MMDS and SMATV, because that is what the average person has available. NAB submitted in its initial comments a study titled *Media Outlets by Market - Update* that illustrated the changes in the media marketplace since 1987.[10] Some of the highlights include: a 19.7% increase in the number of television stations in the average market; a 16.7% increase in the number of commercial radio stations in the average market; a 30% increase in cable penetration; and a 72.9% increase in VCR penetration along with the creation of the Internet and the expansion of DBS to over nine million subscribers.

NAB disagrees with the comments of the Center for Media Education ("CME") which

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[8] *See* Comments of CBS in MM Docket No. 98-35 at 8, 11 ("*CBS Comments*"), filed July 21, 1998; Comments of NBC at 10, filed July 21, 1998; Comments of ABC at 14, filed July 21, 1998; Joint Comments of Fox Television Stations, Inc. and USA Broadcasting ("*Fox/USA Comments*") at 12, filed July 21, 1998.

[9] *Fox/USA Comments* at 12.

[10] *NAB Comments* at Appendix A.

argues that the Internet cannot be considered when looking at diversity because it does not have the penetration that radio and television have.[11] While no one medium other than broadcasting has such universal penetration, the Internet is one of the fastest growing media ever, and it is expected to be accessible to over 35 million people by the year 2000.[12] With millions of websites containing valuable information, this growth is not expected to slow down. More and more people are also getting their news from the Internet. In 1995, less than five percent of all US adults obtained news via the Internet. This year, more than 20% will go to the Internet for headlines at least once a week.[13] Additionally, while many Americans do not have Internet access in their homes, many businesses, local libraries and schools provide free access.

CME further argues that the Internet does not provide much local news coverage and therefore cannot be considered part of the local marketplace of ideas.[14] Reality points to the contrary. National websites for MSNBC, ABC, CBS and CNN, among many others, contain links to the local affiliates or can be customized by the user to provide local news. Thousands of newspapers, radio stations and television stations maintain their own websites, even in the smallest markets.

While CME argues that "the Internet also contributes little to the diversity of local news

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[11] Comments of Center for Media Education in MM Docket No. 98-35 at 8-10 ("*CME Comments*"), filed July 21, 1998.

[12] *NAB Comments* at Appendix A. Advertisers are also being drawn to the Internet, with 40% of local advertisers using some kind of Internet advertising in the next year (website, banner ad and business listing). This number is expected to jump to 80% by 2000. Microsoft Sidewalk.com Survey, May, 1998.

[13] Source: "Internet News Takes Off," The Pew Research Center for the People and the Press, June 8, 1998.

[14] *CME Comments* at 8-10.

outlets because many of the websites which provide news are owned by parent newspapers or television networks, and thus do not add an additional source of news and information to the market."[15] Chronicle demonstrates otherwise. It describes the vast amount of information it provides to its local community about local events.[16] Chronicle goes on to say that the websites of many of newspapers and television stations often hold more information that space or time constraints prevented publishing in newspapers or airing on television. Websites have also invited discussion of local news and events through public forums and chat rooms,[17] allowing citizens to voice their opinions and become "publishers" themselves.

In sum, due to technological advances, there exists today more avenues for the average citizen to receive information then there ever were before. The Commission needs to re-examine its ownership policies in this new light and decide whether ownership, let alone program content, regulation remains in the public interest.

III. NAB'S REVIEW OF THE OWNERSHIP ISSUES RAISED IN THE NOTICE

A. The Relaxation Of Radio Ownership Rules Have Had Beneficial Effects

As stated above, the Telecom Act's effect on radio ownership has been a good one, allowing the industry to become healthier and more competitive in today's marketplace. NAB believes it fosters competition and invites broadcasters to produce programming that the public demands.

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[15] *CME Comments* at 10.

[16] Comments of Chronicle Publishing Company in MM Docket No. 98-35 at 21-23 ("*Chronicle Comments*"), filed July 21, 1998.

[17] *Chronicle Comments* at 23. *See also Chronicle Comments*, *intra* note 30, at Exhibit A-4.

For example, Cumulus Media provides in its comments two case studies of small markets, Abilene, TX and Green Bay, WI. In those two markets, as well as others in which it has acquired stations, Cumulus has been able to realize cost efficiencies that allowed them to "make possible the necessary investments in programming and customer support to restore the stations to a position of competitive viability."[18] In Abilene, "the competitive climate has improved substantially – from two viable FM stations to eight, with higher quality programming, more choice for listeners, and more choice for advertisers."[19] Similar improvements were seen in Green Bay.[20]

Cumulus adds that stations in smaller and mid-sized markets, if they are struggling financially, eliminate essential positions such as station management, programming, engineering, sales and support staffs; the station's quality ultimately suffers.[21] These are the stations that group ownership has helped the most. Local consolidation of ownership has been shown to increase the diversity of outlets,[22] precisely as it did in Abilene. While not all of the commenters agree with that position, the record and rational analysis do not support new restrictions on radio ownership.

1. Viewpoint Diversity and The Public Interest

Americans for Radio Diversity ("ARD") argues that diversity has been hurt by the

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[18] Comments of Cumulus Media, Inc. in MM Docket No. 98-35 at 18 ("*Cumulus Comments*"), filed July 21, 1998.

[19] *Id.* at 22.

[20] *Id.* at 23.

[21] *Id.* at 16-17.

[22] *Mass Media Bureau Report*, *supra* note 6, at 7 and 11.

relaxation of radio ownership restrictions because group owners are "imposing their views" on the media outlets that they own.[23] ARD is also wary about stations masquerading news stories as "shameless promotions" for their parent company.

In support of its theory, ARD cites an example in Minneapolis where an ABC affiliated station led its local newscast with a lengthy story on the stage production of "The Lion King." ARD questions whether "that represent[ed] an independent news judgement that *that* was the most important story of the day or was it simply advertising for their parent company,"[24] alluding to the fact that Disney owns ABC. However, the fatal problem with this specific example is that the owner of the ABC station in Minneapolis is Hubbard Television Group, not the Disney Corporation. Hubbard receives no added revenues if the play does well and no financial penalty if it does poorly.

There is a tremendous amount of local competition in providing the news. In determining the lead news story, stations respond to local news interest in the area. NAB agrees with the joint comments of Fox Television Stations and USA Broadcasting which states that in order to be competitive in the local market, one must listen to what the local citizens want and give it to them.[25] Each market is different; the citizens of New York City have different concerns and interests than the people in Lincoln, Nebraska. As such, the local broadcaster is in the best position to know and respond to what its audience wants.

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[23] Comments of Americans for Radio Diversity at in MM Docket No. 98-35 at 2 ("*ARD Comments*"), filed July 21, 1998.

[24] *ARD Comments* at 2.

[25] *Fox/USA Comments* at 11-12.

2. Anti-Competitive Issues

One of the most common arguments in the comments against allowing multiple station ownership in one market is that it causes anti-competitive behavior. ARD states that prices are so high that local businesses can no longer afford to advertise on the radio.[26] However, CBS remarks that intra-media competition is vigorous and actually keeps prices down.[27] Common ownership resulting in a higher quality service which produces higher ratings, supporting higher advertising prices, is not anti-competitive, but rather a healthy outcome for both those stations and the radio market as a whole. Other stations in the market can respond by offering prices local merchants can afford. In this way, the single-owned stations and smaller combinations in the market benefit, gaining additional advertising revenue.

B. The Marketplace Is Ready For Newspaper/Broadcast Cross-Ownership.

In its initial comments NAB documented the potential efficiencies of newspaper/ broadcast cross-ownership in existing properties. Commenters with first-hand experience, such as Gannett and Chronicle, discussed and documented how these efficiencies help create and foster emerging businesses, specifically strong local cable news channels and extremely popular Internet sites, thereby broadening the number of information and entertainment outlets available to the public.[28] Chronicle goes so far as to say that these enterprises would not be possible without cross-ownership:

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[26] *ARD Comments* at 3-4.

[27] *CBS Comments* at 32-35. Note that the Commission has concluded that radio advertising is not a separate market. *See Notice* at 16-17.

[28] *See* Comments of Gannett in MM Docket No. 98-35 at 27-30 ("*Gannett Comments*"), filed July 21, 1998; *see also Chronicle Comments* at 14.

> ... there are new media that would benefit from (and indeed might require) the participation of *both* local newspapers and television stations if they are to fulfill their potential. Comprehensive local websites as sources of original news and information, as well as 24-hour local cable news channels, are examples of new media with enormous potential. In our judgment, however, neither will be built from scratch in any community. The editorial and financial resources needed, the inherent economic and technological risk each presents, and the competitive challenges each faces create extremely high barriers to entry, growth and success.[29]

In support, Chronicle provides affidavits of many of the individuals involved in all of their operations in the San Francisco area. All cite examples of how they have been able to take advantage of efficiency opportunities and provide the Bay area with more and better news services.[30] To buttress their position, Chronicle also attaches an economic study that discusses the peculiar nature of the economics of information and why it is extremely efficient for newspapers and television stations to jointly develop these new media outlets.[31] Importantly, Besen and O'Brien also explain why these efficiencies are more likely to occur with common ownership rather than some negotiated joint venture [32]

[29] *Chronicle Comments* at 14.

[30] *Chronicle Comments* at Exhibits A-1 to A-5. For example, the Declaration of John Coate, Manager of The Gate (a web-based online service), states that "[b]etween 1995 and 1997, we began to write more of our own material in addition to what we got from the Chronicle. We commissioned community bulletin board software. We also set up feedback channels so that the community could write to the reporters as well as the editors." *Chronicle Comments*, Exhibit A-4 at 2.

[31] *Chronicle Comments* at Exhibit B (citing Stanley Besen and Daniel O'Brien, "An Economic Analysis of the Efficiency Benefits From Newspaper-Broadcast Station Cross-Ownership," ["*Besen and O'Brien Study*"], Charles River Associates, Inc., July 20, 1998.

[32] *Besen and O'Brien Study* at 20-21. "Our point is that joint ventures face difficult incentive issues that can hinder efficient joint production." To document the benefits of joint ownership, Besen and O'Brien discuss how the Chronicle news operations are integrated so as to provide more in-depth coverage of news items among its newspaper, television, local cable news channel and Internet site. *Id.*

Gannett also provides compelling arguments for repeal of the ban based on its own experiences. It argues that the ban is harmful to competition and the public interest, stating that the restriction "places substantial restriction on [its] ability to provide competitive and diverse broadcast voices in many markets."[33] The Newspaper Association of America, speaking for the newspaper industry, echoes Gannett's opinion that the ban disproportionately burdens newspapers.[34] The Commission has greatly eased ownership restrictions in broadcasting; the majority of commenters in the proceeding find no rationale for keeping the restriction on newspapers.[35]

Gannett argues that the rule is a disservice to the public interest because operators such as itself possess the knowledge, skill and resources to provide communities with "vigorous competition in the broadcasting arena."[36] Ironically, the Commission agreed with this viewpoint when the rule was adopted in 1975, finding that the newspaper owners made responsible licensees who provided more local news and public interest programming than most stations.[37]

Gannett goes on by analogy to say that cross-ownership is beneficial to the public interest by citing the Commission in 1995 when it said:

> Where… [individual media owners] are [the] competing parties, each of their strategies would be to go after the median view with the 'greatest common denominator' programming, leaving minority interests unmet. But where one party owned all the

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[33] *Gannett Comments* at 5.

[34] *See* Comments of Newspaper Association of America in MM Docket No. 98-35 at 65-67 ("*NAA Comments*"), filed July 21, 1998.

[35] *Gannett Comments* at 27; *NAA Comments* at 67.

[36] *Gannett Comments* at 5.

[37] *Gannett Comments* at 10.

[radio] stations in a market, its strategy would likely be to put on a sufficiently varied programming menu in each time slot to appeal to all substantial interests."[38]

In sum, the time has come for the Commission to repeal the ban and to allow newspapers to gain the competitive edge other media have as owners of broadcast licenses. Media competition is at an all time high; it is in the public interest to allow local newspaper/broadcast cross-ownership.

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[38] *Gannett Comments* at 22 (citing *Review of the Commission's Regulations Governing Television Broadcasting*, 10 FCC Rcd 3524, 3551 (1995) (*Further Notice of Proposed Rulemaking*)).

CONCLUSION

For the reasons stated above, and in NAB's initial comments, we urge the Commission to take responsible steps to relieve unnecessary and counter-productive ownership restrictions. However, we recommend, as also explained herein, retention of those regulatory provisions which appear to be needed to maintain market competitiveness.

Respectfully submitted,

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