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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

AUG 21 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**REPLY COMMENTS OF THE**  
**NATIONAL CABLE TELEVISION ASSOCIATION**

The National Cable Television Association, Inc. hereby submits its reply to the comments filed in the Notice of Inquiry in the above-captioned proceeding.

**INTRODUCTION**

In its initial comments, NCTA demonstrated that the broadcast station/cable cross-ownership prohibition has long out-lived its original purpose and that there are no new rationales that justify retaining the rule. In particular, NCTA showed that there is no basis to presume that the market for delivered programming, advertising, program production, or diversity would be adversely affected by lifting the wholesale ban on broadcast station/cable cross-ownership. A continuation of the ban could, however, deny the public the benefits that flow from pro-competitive combinations, such as increased diverse local programming and economies of scale that reduce costs.

The commenting parties that favor retention of the broadcast/cable cross-ownership ban either oppose the loosening of any of the Commission’s ownership restrictions or seek to carve out this prohibition from their general premise that mergers and combinations are good in every

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other context. None of these parties provide any evidence of harm other than conjecture that such combinations are uniquely situated to impede competition and diversity in the video marketplace.

The Commission must base its decision whether or not to retain any ownership restrictions on more than mere speculation of harm to the public interest. The evidence is inescapable that there have been dramatic technological and competitive changes in the communications landscape over the last 30 years. We believe that in light of these changes, the broad restriction on local broadcast station/cable cross-ownership is no longer necessary. And there is certainly no reason why pro-competitive mergers in this area should be outlawed but permitted for other broadcast combinations. There are regulatory safeguards in place and antitrust tools at hand to deal with any anti-competitive behavior arising from consolidation and common ownership in this area.

## DISCUSSION

### **I. There Is No Evidence In the Record that the New Concerns Raised By the Commission in the Notice Justify Retaining the Broadcast Station/Cable Cross-Ownership Restriction**

The new rationales posited by the Commission for retaining the broadcast/cable cross-ownership prohibition -- potential adverse impact on the market for delivered programming, advertising, and program production -- are not supported by the record. Many commenters demonstrated the abundance of national and local programming outlets and a highly and increasingly more competitive market for delivery of programming.<sup>1</sup> There is no evidence that

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<sup>1</sup> See e.g., Comments of NCTA at 5-7; Comments of ABC at 4-5; Comments of NAB at 4 ("Not only are there more terrestrial television and radio stations competing against one another, there is still the locally-dominating (in terms of advertising revenues) local newspaper industry; there is a stronger cable industry; there is a new and fast growing DBS industry; and finally, there is an Internet service growing dramatically and opening up an infinite number of outlets for entertainment and information").

lifting the broadcast station/cable cross-ownership restriction could uniquely affect the strong market for program delivery.<sup>2</sup>

Moreover, as NCTA demonstrated, these video distribution media compete for advertising among themselves and with newspapers and radio stations, although cable television garners only a small percentage of the total advertising or only a fraction of the revenue enjoyed by local broadcast stations.<sup>3</sup> NBC also noted that competition for local and national advertising dollars has greatly increased since the Commission last examined the ownership rules.<sup>4</sup> Given this competitive advertising environment, a commonly-owned cable system and broadcast station would lack the market power to artificially raise advertising rates.

There also is nothing in the record to support the view that today's vibrant and highly competitive program production market would be diminished by local broadcast/cable combinations, particularly where local cable systems and broadcast stations generally do not vie for the same programming rights at the local level and where program providers may turn to a variety of broadcast and multi-channel video alternatives to sell their product.

With regard to the last concern raised by the Commission, the threat to diversity, the Center for Media Education and its joint commenters argue that ownership restrictions, including broadcast station/cable cross-ownership, are necessary to ensure that the public has access to diverse information.<sup>5</sup> But they present no evidence that the broadcast station/cable cross-ownership ban has had an impact on the level of diversity or that eliminating the ban would

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<sup>2</sup> See Comments of Time Warner at 19. As NCTA and Time Warner pointed out, the Commission found over six years ago that "the rationale for an absolute prohibition on broadcast-cable cross-ownership is no longer valid in light of the ongoing changes in the video marketplace." Network/Cable Cross-Ownership Order, 70 RR 2d 1531, 1536 (1992).

<sup>3</sup> See Comments of NCTA at 7-8; Notice of Inquiry, MM Docket No. 98-35 at ¶48 (citing small local cable advertising revenues of 2.9% of total local advertising compared to 30.3% for broadcast stations.)

<sup>4</sup> Comments of NBC at 2-3.

<sup>5</sup> Comments of Center for Media Education, et.al at 1

adversely effect it. They point out that cable operators have created alternative local cable news channels. But they argue that if a cable system and broadcast station are commonly-owned, the cable operator would be unlikely to carry local cable news channels because it would not want to compete with its own television station.<sup>6</sup> The fact that these channels provide 24-hour local and regional news to cable customers is what makes them attractive. There is no reason to believe this would change if the operator had some affiliation with a station that also carried news and public affairs.

As NCTA pointed out, forays into alternative news and public affairs programming could be strengthened if a cable system and a local broadcast station could link up to share news and production facilities. Indeed, the public could gain considerable benefits from new local programming that would be available through a commonly-owned television station to viewers in a broadcast market that do not subscribe to cable or to the cable viewing audience.

Cable television systems offer an increasing number of programming outlets and must set aside leased and public, educational and government access (PEG) channels for independent voices under both federal and local regulations.<sup>7</sup> And given the well-documented panoply of alternative sources of information via broadcast, cable, satellite, microwave or computer, it is hard to see how the opportunity for diverse viewpoints to be heard will be hampered by the co-ownership of a cable system and a local broadcast station.

In sum, the fears expressed by the Commission from lifting the broadcast station/cable cross-ownership ban are not borne out by the record in this proceeding. With little more than intuition to go on, the parties that favor retaining the rule believe that this restriction is still

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<sup>6</sup> Id. at 29.

<sup>7</sup> 47 U.S.C. §532 (requiring operator to designate channel capacity for commercial use by unaffiliated entities); 47 U.S.C. §531 (authorizing franchising authority to require channel capacity to be designated for PEG channels).

necessary to promote competition and diversity in the video marketplace. As discussed below, many of the broadcast commenters rely on generalized assertions that broadcast station/cable combinations are somehow uniquely more risky to a competitive marketplace than other types of broadcast combinations. We submit that there is no basis for this assumption.

## **II. Where Media Combinations Are Allowed in Other Contexts, There is No Reason to Carve Out An Exception for Broadcast Station/Cable Cross-Ownership**

NAB and other broadcast organizations argue that in light of the dramatic growth and strength of the competitive video marketplace, there is no need for most restrictions on broadcast media ownership.<sup>8</sup> NAB advocates the abolition of newspaper/broadcast cross-ownership restrictions and the deregulation of local duopoly and one-to-a market rules because the “vast array of [media] outlets suggests that the foundation for many of these ownership rules no longer exists.”<sup>9</sup> It asserts that “competition for the eyes and ears of the American public has never been greater and the prospects for further competition have never been more promising.”<sup>10</sup>

ABC argues that the national ownership rule, the dual network rule, the newspaper/broadcast rule and the radio ownership rule should be repealed because there is ample evidence that the pro-competitive benefits that would flow from deregulation soundly outweigh any hypothetical injury that might ensue from their repeal or modification.<sup>11</sup>

Despite assertions that broadcast ownership restrictions should be discarded, the broadcasters single out the broadcast/cable cross-ownership restriction for retention on the ground that it presents different risks “in kind and degree from these other business

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<sup>8</sup> Comments of NAB, NBC, and ABC. NAB and the Network Affiliated Stations Alliance (NASA) do not support changes in the national ownership cap. Fox, ABC and NBC support elimination of the rule.

<sup>9</sup> Comments of NAB at i.

<sup>10</sup> Id. at 4-5.

combinations.”<sup>12</sup> They argue that cable operators may disadvantage certain stations in favor of commonly-owned broadcast stations and have the potential to hamper the public’s ability to access another competitor.<sup>13</sup> Citing concerns about cable concentration, the network affiliates’ alliance wants to maintain the “competitive balance” in today’s video marketplace and to prevent the broadcast networks from by-passing them to migrate network programming to cable.<sup>14</sup>

All that these arguments show is that broadcasters want the freedom to enter into strategic alliances and to consolidate to achieve greater efficiencies but, at the same time, want to be insulated from competition that such freedom might mean for others in a vastly changing video marketplace. In other words, they bid the Commission to keep an outmoded rule in place solely to protect them from competition. Lifting the broadcast/cable cross-ownership ban will not impede broadcasters’ ability to respond to competition from cable and other media. But retaining the rule will protect them by precluding cable systems from entering into certain strategic business combinations that may enable them to compete more effectively.

NAB and ALTS make the specious argument that the broadcast/cable cross-ownership prohibition is needed at least until digital must carry rules are adopted. But the carriage of new digital broadcast services has nothing to do with this proceeding. As NBC concedes, local broadcast stations already have guaranteed carriage of their analog station under existing must

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<sup>11</sup> Comments of ABC at 4. NBC favors repeal of the broadcast station/cable cross-ownership ban because the existing must carry rules eliminate concerns about whether a broadcast station will be carried and because of the efficiencies to be gained from such combinations.

<sup>12</sup> Comments of ABC at 30.

<sup>13</sup> Comments of NAB at 15. See also Comments of Office of Communication, Inc., United Church of Christ and Black Citizens for Fair Media.

<sup>14</sup> Comments of NASA at 15-21.

carry regulation (whether or not any digital broadcast services are carried on a cable system).<sup>15</sup> There is no way under these rules that a cable system can deny the public's ability to "access" broadcast television stations, as claimed by NAB. Nor would they if their customers want these channels.

Indeed, powerful local network affiliates and other stations have retransmission consent and must carry rights for analog signals at their disposal and now have 6 Mhz of additional free spectrum for digital channels to program as they wish to compete with cable and other media. To suggest that they are at a competitive disadvantage vis-à-vis cable without the local cross-ownership bar is completely without merit.<sup>16</sup> Their leverage in dealing with local cable systems is undeniable.

Moreover, as we pointed out in our initial comments, cable systems are obligated to provide access to unaffiliated entities under Commission rules which (1) restrict the number of channels of programming on a cable system in which an operator has an ownership interest; (2) require operators to provide channel capacity for lease by other unaffiliated entities; and (3) allow franchise authorities to require operators to set aside channels for locally-based public, educational and governmental access channels.<sup>17</sup>

In a communications world light years away from where it was in 1970 when the rule was adopted, the Commission must ask whether the theoretical benefits of a blanket prohibition outweigh the efficiencies gained from such media combinations? As the Commission recognized, common ownership leads to cost-sharing in administrative and overhead expenses,

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<sup>15</sup> Comments of NBC at 17.

<sup>16</sup> Indeed, the Commission recognizes that the 6 Mhz of additional free digital spectrum granted to every local broadcast station may enable broadcasters to compete even more effectively with cable companies in the multi-channel video programming distribution market. Notice at ¶46.

<sup>17</sup> See 47 U.S.C. §533(f)(1)(B); 47 U.S.C. §532; 47 U.S.C. §531, respectively. The Commission also regulates program carriage agreements. 47 U.S.C. §536; 47 C.F.R. 76.1301.

sharing of personnel, joint advertising sales, and the pooling of resources for local program production. These efficiencies could promote better programming and other services, better coverage of local issues, and lower costs to consumers. Indeed, NAB lauds “the efficiencies and possible increases in diversity that would occur were the newspaper/broadcast rule to be abandoned”.<sup>18</sup> The same kinds of efficiencies and pro-competitive public interest benefits that may ensue from these media combinations are equally applicable to common ownership of broadcast stations and cable.

ABC urges the Commission to retain broadcast ownership regulation “(a) only if such a regulation could be justified today as necessary to address real threats to competition and diversity under current market conditions; and (b) only if after a rigorous cost-benefit analysis the Commission determines that the benefit of the regulation clearly outweighs the cost.”<sup>19</sup>

Applying this analysis to the broadcast/cable cross-ownership restriction, there is no evidence that the tangible economic effects of repeal are outweighed by the potential risks to competition.

In the end, the Commission’s task, as instructed by Congress in eliminating or relaxing numerous ownership restrictions in the 1996 Telecommunications Act, is to repeal or modify its rules if they do not serve the public interest. The burden is now on the proponents of continued regulatory restrictions on broadcast/cable cross-ownership to show that it is still necessary to protect the public interest. They have not met that burden. The Commission should reject attempts to carve out the broadcast station/cable cross-ownership rule from the repeal or modification of its media ownership restrictions.

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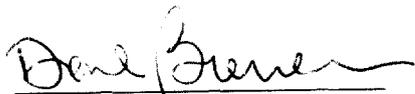
<sup>18</sup> Comments of NAB at i.

<sup>19</sup> Comments of ABC at 4.

**CONCLUSION**

For the foregoing reasons, we urge the Commission to repeal the prohibition against all broadcast station/cable cross-ownership.

Respectfully submitted,



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