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Broadcast Ownership Relief is Crucial to the Survival of Free Television

"[As] far as we can determine, no member of the viewing public has suffered from having two local TV stations programmed by Sinclair. Indeed, it can be argued that many viewers have benefited from the high-quality programming that Sinclair has been able to bring to [LMA] stations because of its size and negotiation prowess. Thus, we think Sinclair makes a good case for relaxing the so-called duopoly rule." (*Broadcasting & Cable*, March 2, 1998)

Free Television Fractionalized by Multi-channel Outlets

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The entertainment landscape has changed a lot in the last few years, let alone the last 50 years. A half a century ago, radio was the center of the living room entertainment, newspaper ruled the land and broadcast television was in its infancy. Since then, the entertainment choices available to consumers have increased markedly. In terms of the number of television channels, the increase is more than a hundred-fold. In addition to radio, print and TV, the consumer may also select from cable, satellite, MMDS, LMDS, IVDS, telephone company-delivered multi-channel video programming, and on-line services. Without a doubt, there are more choices today then ever before. And as new technologies emerge, the number of choices will continue to rise drastically. Oddly enough, despite the drastic increase in choices, one issue remains unchanged: the Federal Communications Commission's outdated multiple ownership restrictions for local broadcast television – the free, over-the-air television service. While nearly every entertainment provider has grown (without commensurate matching contributions to the local community), restrictions on the growth of the local broadcaster have restrained the *localism* that broadcast television delivers. The FCC prohibits television duopoly, the ownership of two television stations in the same market.

Broadcast television provides a unique service. Broadcast is the only ubiquitous service that is free to the consumer. Regardless of economic status, education level, race, sex, age, ethnicity or national origin, anyone with access to a TV set can receive a broadcast television signal without charge. There are no bills at the end of the month. Local broadcasting is the last remaining truly free service that is available to everyone. Unfortunately, free, over-the-air television is in peril as it is faced with a falling audience share, decreased advertising revenues[1] and increased competition.

Local Broadcaster Survival Threatened by Cable Monopolies

The biggest threat to free, over-the-air television comes from cable-delivered television and similar subscription services. Cable passes nearly 97% of the nation's households. Two out of three households have at least one television connected to cable. However, this comes at a tremendous cost to the consumer. In 1995, consumers paid $25.3 billion in total revenue[2] to the nation's cable companies, which have enjoyed record earnings in the last few years. And this

[1] *Cable & Broadcasting*, September 28, 1998, page 36.
[2] *Cable Television Developments*, National Cable Television Association, Spring 1997.

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total revenue figure continues to rise dramatically as cable rates rise at four times the rate of inflation.

Originally, consumers purchased cable television in order to gain more choices in programming and to receive improved reception over that provided by broadcast TV. Today, there is a third element that is considered when deciding to subscribe to cable. It is now offering choices that were previously the domain of local television: top quality programming and local sports.

Cable has flourished as a result of a series of competitive advantages, some of which are unavailable to broadcast television, and others which resulted from government efforts to stimulate cable during its infancy. Multiple system operators (MSO) are those companies that own more than one cable system. Generally, MSOs are *vertically integrated*, meaning they own many of the cable networks they televise. Take for example Time-Warner, the nation's second largest MSO which controls 18.6% of the nation's cable homes. Time-Warner owns/co-owns more than 20 cable channels including the six CNN news channels, ten HBO/Cinemax-branded channels, WTBS, TNT, Turner Classic Movies, Court TV and Cartoon Network. Time-Warner also owns several film and television studios such as Warner Brothers and Castle Rock and it owns program syndication and distribution operations such as New Line Cinema and Tuner Home Video. Time-Warner also has equity stake in The WB Network. Moreover, its huge music production and distribution organization provides a large supply of music to various television content developers and video channels. All told, Time-Warner can deliver as many as a dozen cable channels that it owns or programs. Add to this line-up the number of channels that carry programming developed and/or distributed by its numerous subsidiaries and one can see that it boasts a formidable line-up of owned, operated and/or programmed channels. All of this on a cable system that it owns. Figure 1 provides an example of a typical cable television market (TCI's cable franchise in Baltimore, Maryland). In this example there are 96 possibilities to own/co-own or provide majority program content (e.g. Disney providing ABC network programming to the local ABC affiliate) to cable-carried channels. In the Baltimore television market, five cable programming giants, Time-Warner, TCI, Disney, United Video (Pay Per View) and Viacom, control one-half (47 channels) of the channel choices. As a group, local broadcasters have a 6% slice of the cable pie. Still, the FCC prohibits the local broadcaster from owning two stations in the same market.

Wall Street's Volatile Year Helps Cable But Hurts Broadcasters

The July-September 1998 period on Wall Street was witness to an across-the-board decline in broadcast company stocks. The value of many publicly-held broadcast stocks fell by one-half or more while at the same time, cable company stocks rose at a steady 15% pace. While some broadcast stocks have rebounded, none are at the price levels of mid-1998. Such a loss in broadcast capital will only hurt the prospects of broadcast companies to compete with cable – dollar for dollar – in purchasing quality entertainment programming and sports. Cable's market monopolies and dual revenue streams have allowed the industry to grow dramatically, raise subscription fees at a rate that outstrips the rate of inflation and to deliver record-setting profits year after year.

Cable Ownership/Programming Operations
in TCI's Baltimore Market

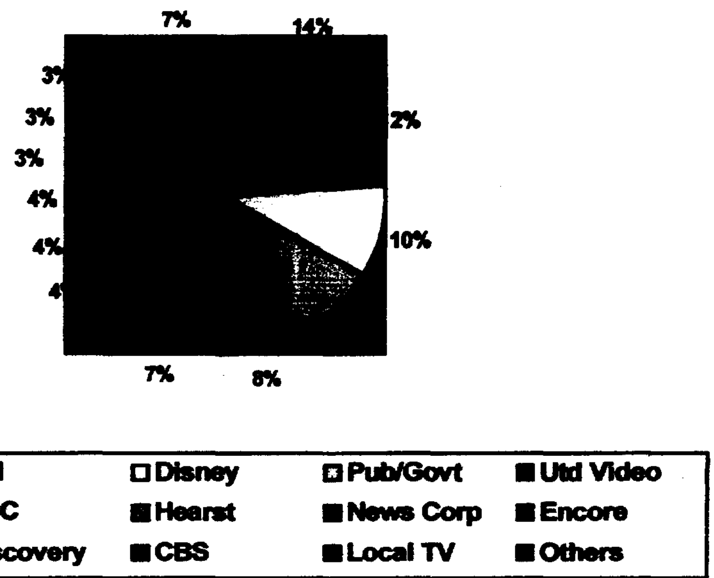

Figure 1.

<u>*Record Profits Enable Cable to Outbid Local Broadcast Stations*</u>

Cable companies are *horizontally integrated.* The top three MSOs control one-half of America's cable-connected homes. They number 32 million of the nation's 97 million total households as subscribers. And in recent years, they have achieved regional dominance through geographic consolidation. MSOs have been trading cable franchises at a fast and furious pace in order to cluster their cable systems in the same geographic regions. Unlike broadcasters in a local television market who must compete with one another, an MSO can, and frequently does, monopolize the entire cable subscriber base in any given market. Unfortunately, the number of *over-built* cable markets where cable competition exists is statistically negligible.

There is a new dimension that has resulted from cable's inherent market monopolies and dual revenue streams. Because of their *vertical* and *horizontal integration,* dominance of cable advertising dollars, competition for broadcast advertising income, and multiple revenue streams, cable has been able to capture programming which had previously been available to the consumer at no cost on local broadcast TV. There has been a considerable migration to cable of local sports, off-network shows and first-run syndicated programming. What was once the domain of free TV, are now the spoils of cable. In recent months, the best of off-network programs including Fox's hit show *X-Files,* number 1 rated *ER* and *NYPD Blue* have been snatched-up by cable networks which have easily outbid local television. The $300,000 per week price tag for the second syndication run of *Seinfeld* suggests it may not be seen in many of the nation's smaller television markets.

New contracts for the NFL have placed a large number of games on cable. The price of NFL television rights were elevated to phenomenal levels in 1998 by bidding wars precipitated, in part, by Time-Warner's TNT and Disney's ESPN cable channels. Broadcast networks with NFL rights have been demanding from local broadcasters a mix of cash payments and local advertising concessions in order to pay the networks' sports bill. These high demands are placing a heavy financial burden on local broadcasters, which will only worsen the plight of local television.

And for the first time in television history, more baseball games will be televised on cable than on local television stations. In 1999, cable networks will broadcast 2,059 games, which is nearly 25% more than local television's scheduled 1,656 games. While the Fox network was fortunate to broadcast Mark McGwire's historic record-breaking homerun, there was a greater likelihood that it could have been broadcast on cable superstation WGN or on Disney's ESPN cable channel, depriving one-third of viewers from ever witnessing the feat.

The preceding examples illustrate the large challenge faced by local broadcast television from cable. This does not even address the growing threat from home satellite subscription services. What was once a fledgling industry just a few years ago now includes a customer base of over 8 million. And satellite providers keep adding 3,000 new subscribers every week. In addition, key Congressional lawmakers have announced plans to introduce legislation that will further marginalize local broadcasters in order to aid home satellite companies. To add insult to injury, Primestar, the second largest home satellite company, is co-owned by the top two cable giants, TCI and Time-Warner.

Single Station Revenue Source and High Costs Hamper Localism Efforts

There are high fixed costs associated with television. Besides the bricks and mortar associated with building costs, and the salaries of the employees, there are equipment expenditures. A studio camera is every bit as expensive in the 211th largest television market as it is in a top ten market. And with a much smaller audience, the 211th market has a significantly smaller revenue stream to offset its costs. By allowing a common-sense approach to television multiple ownership, the FCC could allow stations – particularly those in the medium and smaller markets – to achieve scales of efficiencies that will make broadcast television a more viable competitor to cable and other subscription services.

A hallmark of local television is local news, sports, weather, traffic and public affairs programming. Many people rely solely on their local TV stations for news in their community. In a recent survey,[3] 88% of viewers reported they watched local television newscasts at least once a week compared to 48% who said they watched network news at least weekly. Unfortunately, producing a local news operation is an extremely costly venture particularly in medium and smaller markets. Local broadcasters who own more than one station can spread the costs of a news operation and make news start-up more of a reality. Owning more than one station in the same market could also mean collocated facilities that would reduce capital

[3] *Broadcasting & Cable*, September 21, 1998, page 50.

expenditures. Currently, local stations in medium and smaller markets do not have the financial strength to launch news operations that offer diverse views to the entrenched news operations dominated by decades-old ABC, NBC and CBS affiliates.

LMAs Make Great News

Sinclair launched WBFF-TV "News at 10" in 1991 in the Baltimore market at a cost of nearly $5,000,000. In 1997, Sinclair launched an early newscast ("News at 6:30") on LMA station WNUV-TV for less than $650,000 of which $200,000 was the one time start-up cost. The "News at 10" budgets $3,000,000 annually for news operations whereas "News at 6:30" is budgeting $500,000 in annual operating costs. With this launch, WNUV-TV became the nation's first UPN affiliate station to launch an early evening newscast. In 1998, the combined WBFF/WNUV news operations won 9 of 11 regional Emmys awarded for news reporting. WBFF has been awarded Baltimore's Best News Operation six times in the last seven years.

Figure 2

Sinclair has demonstrated a commitment to introducing increased local television news operations to markets that have had only three (or even fewer) news stations for decades. Sinclair operates competitive and diverse voices in local news in markets where it owns one station and operates a second station under a time brokerage agreement. The television markets of Pittsburgh, Baltimore, San Antonio, Columbus, Pensacola, and Asheville, NC-Greenville, SC, have all seen additional local news broadcasts that had not occurred prior to these brokerage agreements. These kinds of success stories provide immeasurable public service in local television markets. Moreover, four news bureaus operating five news broadcasts (or five operating six) is highly preferable to the status quo of three news bureaus operating three newscasts. Figure 2 provides one example of positive contributions to the community by the launch of a newscast on a second station operated in the same television market.

The commitment to local news is assuming additional significance as the three major networks are slashing budgets and personnel from their national news operations.[4] Recent press reports suggest all three are investigating various options to reducing or eliminating news gathering and original reporting and may strike deals with single-source news agencies. All three are rumored to have been discussing deals with Time-Warner's CNN to provide the bulk of news gathering. The numbers of news sources at the national level is in a state of decline. In addition, the News Corporation has opted to develop national news (Fox News Channel) for cable and satellite subscription customers rather than provide a free national news service to broadcast viewers. It is imperative the ability to compete and provide free local news to American viewers be strengthened rather than restricted.

Free, over-the-air television is still the most popular choice for viewers including those who subscribe to cable, satellite and other pay services, but audience shares continue to migrate to cable channels at an alarming rate. In 1997, the average household had 43.8 television channels available, but only watched 10.8 channels on a weekly basis. *Localism* – the delivery of local news, sports, weather, traffic, advertising, public service announcements and other local-related public access programming – has set free, over-the-air television apart from its well-heeled

[4] Broadcasting & Cable, September 21, 1998, page 6.

competitors who offer little-to-none of the foregoing. Viewers still want to be informed of activities of their local communities. Government regulations which impede the ability of local broadcasters to compete in the face of powerful (and growing) competition and restrain the growth of *localism* fail to serve the public.

Local Marketing Agreements Provide Partial Solution

A partial solution to the outdated duopoly prohibition has been the use of local marketing agreements. An LMA is an arrangement in which one broadcaster brokers the time on a second television station. Today, there are approximately 70 LMAs among the nations' 1600 television stations. Most LMAs have involved under-performing stations. In many cases the LMA operator and the brokered station are the two market stations with the lowest audience shares. More often than not, the combined audience share of the two stations fails to equal the audience share of the worst of the big three network stations in a market. Clearly this is not market dominance as some broadcast opponents suggest.

LMAs involve emerging broadcast networks such UPN and The WB or independent local stations. An LMA permits the affiliates of these struggling networks to utilize scales of efficiencies and reduce overhead in an effort to build a successful station whereby facilitating the success of additional programming choices in the form of new networks and alternative viewing. The FCC conducted a survey of LMAs in 1997. Fifty of the 70 same-market LMAs (71%) were affiliates of UPN, The WB, independent or had ceased broadcasting. Eighty percent (55 stations) were outside of the top 30 markets and more than half were in the smallest television markets (smaller than the 50th market). As an illustration of the positive impact LMAs have had in launching new networks, the FCC survey revealed that 1 of every 7 UPN (21 of 141) and The WB (14 of 97) stations at the time of the survey were LMAs. It is unlikely either network would have had such large initial audience reach without the aid of the LMA arrangement. As such, each network received a boost that may eventually lead to the success of one or both of the new networks.

LMA Arrangements Help Stations That Trail the Pack

Opponents of LMAs have alleged that a television market's two-station combination poses unfair advantages in the race for advertising dollars. The only financial industry analytical report published to date[5] refutes these allegations. A comprehensive review of LMAs in the top 100 markets revealed significant facts regarding the financial positions and market shares of LMA television stations. Total revenue in 1996 accounted for less than 0.6% of all television advertising dollars and 1.1% of all local television station advertising spending. Nearly three-quarters (72%) of the LMAs earned less than 5% of the local market's revenue share and 84% had audience shares of less than 4%. Moreover, combined revenue shares of 4 out of 5 television station-LMA ventures was less than 30%, far below the Justice Department's

[5] *Will Choices Drown Out the Voices? Local Broadcast Television Ownership Update* by Victor B. Miller, IV, *Bear Stearns & Co.*, July 2, 1997.

threshold (35%-40%) of radio revenue shares. These figures dispel any notion of LMA ventures monopolizing local markets.

Only Proven Formula for Increasing Minority Presence in Broadcasting

There has also been another benefit, albeit unintended, of LMAs. In an era when single station and small group station owners, including minorities, have scored big cash pay-days by selling to multi-station owners, LMAs have helped create the nation's largest African-American broadcast company. Despite rhetoric to the contrary, there is not a single documented case of a minority or female TV station owner selling to a buyer resulting in an LMA. In fact, LMAs and the prospect of duopoly relief have led to increased minority ownership in TV. The positive benefits of LMA arrangements have resulted in more lasting minority ownership of broadcast television than all government programs combined.

Permitting two-to-a-market ownership relief would allow Granite Broadcasting (headed by an African-American) to own second station KOFY-TV in the San Francisco-San Jose area (5th largest television market) in which it currently owns KNTV-TV. With 17 local stations,[6] San Francisco is one of the most competitive television markets in the country. The continued existence of WB affiliate KOFY-TV may depend on the scales of efficiencies achieved through a partnership with sister station KNTV-TV. Granite is currently operating both stations under a FCC duopoly waiver due to expire in early 1999.

Shattering the Myths

Opponents of sensible television ownership rules have made emotional claims unsubstantiated by the facts. Many of these opponents have their own political and business agendas for opposing rules that support free television and the consumer.

Myth #1 – Multi-station operators eliminate diversity of views.
Fact - Network affiliated stations have much of their 168-hour week programmed for them by the networks. This is particularly true for ABC, NBC and CBS affiliate stations. Newer networks (WB, UPN, PaxNet) and independents have more of their programming decisions made at the local level. Diversity of views is a natural byproduct of program copyrights, which ensure the programming content of each station will be different from that of a competitor in the same market. Moreover, multi-station operations allow group owners to buy better programming than single station owners ensuring better choices for the viewer. Single station operations cannot survive and compete by televising *Opie*, *Batman* and *Lucy* reruns.

Myth #2 – Multi-station operators are not as responsive to the local market as is the small, single station owner.
Fact - It is ludicrous to suggest that multi-station operators who achieve scales of economies are more susceptible to market pressures than single station owners with lower overhead. All

[6] *Television & Cable Factbook*, Vol. 65, Warren Publishing.

commercial broadcasters are seeking to turn a profit and, with fewer resources, there is greater likelihood that single station owners are less responsive to the local viewers.

Myth #3 – Multi-station owners are less concerned about local programming content.
Fact – Better programming attracts more viewers – the simple formula for success in broadcast television. Multi-station operators have been able to deliver newer, higher quality programming to a market – especially medium and smaller markets – than single station owners because of abilities to buy in bulk.

Myth #4 – Multi-station operators are building new stations at the expense of small, local entrepreneurs.
Fact - In many markets, the opportunity to build new stations has existed for quite some time. The small, local entrepreneur has not done so because the prospect to succeed is not there. However, by capitalizing on scales of economies, multi-station operators can build new facilities, giving local communities new stations that might not otherwise exist.

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