Administration data, Figure 26 provides recent trends on minority ownership of television stations.

The figure illustrates two points. First, as discussed earlier, the number of minority owned stations is small. Hence, by this measure of minority ownership, the national ownership cap has had little success despite the fact that it has been in place for almost half a century. Second, there is no evidence that relaxation of the cap in 1996 has had any effect on the number of minority owned television stations. While the number of minority owned stations dropped in 1997-98 from its 1995 peak, the number of minority owned stations remains higher than it was in 1993, when the tighter cap was in force.

The theory that group ownership harms minority ownership is also undermined by the fact that, the pervasiveness of group ownership notwithstanding, there are many individually owned stations. As shown in Figure 18 above, it is not the case that the groups have bought up all of the stations and crowded out potential minority owners. In 1997 there were still 251 separately owned stations.

Other ownership data also are relevant. As discussed earlier, most stations are owned by groups that are significantly below the national cap. Thus, the national cap is not driving overall concentration and competition in broadcasting. Relaxing the national ownership reach cap would be unlikely to lead to large changes in most station groups.

Network station groups are the ones most likely to expand because they benefit from coordination economies, as well as economies of scale and scope. In any expansion, networks would certainly take into account the advantages of purchasing their own affiliates because of the cost and ratings implications of affiliate switches and the

FIGURE 26
MINORITY OWNERSHIP IN THE 1990s

Year	1993	1994	1995	1996-97	1997-98
Number of Stations	29	32	38	38	32

Source: http://www.ntia.doc.gov.opadhome/minown98/appendix-b.htm, May 26, 1999.

existence of long-term contractual obligations. But, as discussed below, individually-owned, affiliated stations account for only a small percentage of the networks' national coverage.[80] Thus, even if the networks were to purchase additional stations, it is likely they would buy group-owned stations and unlikely that they would be replacing significant numbers of individually owned stations. And, as with the argument about diversity, if a lack of stations available for purchase were a valid public policy concern, then a ceiling on the total number of stations owned would be more appropriate than a limit on national audience reach.

The failure of the national ownership cap to promote minority ownership should not be surprising in the light of the fact that the national ownership cap fails to address the underlying problem. The Commission has repeatedly identified the lack of access to capital as an entry barrier.[81] In 1995, the Commission explicitly stated that "it is not the price per se that is the problem, but minorities' ability to finance the purchase of a higher priced station."[82] More recently, some have questioned whether minority media ownership is hindered by advertiser discrimination against minority owned stations. Whether or not minority ownership is harmed in this way, the national multiple ownership cap does nothing to address the problem.

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80 See Figure 27 below.

81 For a brief discussion of the evidence that lack of capital is a barrier to media ownership by women and minorities, see *In the Matter of Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Notice of Proposed Rulemaking, MM Docket No.s 94-149 and 91-140, released January 12, 1995, ¶¶11-13.

82 *In the Matter of Broadcast Television National Ownership Rules, Review of the Commission's Regulations Governing Television Broadcasting, and Television Satellite Stations Review of Policy and Rules*, Further Notice of Proposed Rule Making, MM Docket No.s 91-221 and 87-8, released January 17, 1995, ¶94.

It is also important to recognize that there are minority investments taking place in other electronic media, particularly cable and the Internet. Such investments should not be surprising for at least two reasons. First, these areas have been exhibiting much more rapid growth than has broadcast television. Second, to the extent that ownership is driven by a desire to serve minority communities, other media are better suited to targeting.[83] One example of such targeting is the Black Entertainment Television network on cable television. Similarly, Lifetime is targeted at women today, and Oxygen is a planned cable channel that will also be aimed expressly at women. Other cable channels (*e.g.*, Galavision) target Hispanic viewers. There are also web sites aimed at serving the needs and interests of women and minorities. Examples include Black Voices.com, ivillage.com, LatinoLink, NetNoir, Oxygen.com, and Women.com.[84]

Black Entertainment Television's parent, BET Holdings, Inc., is launching a web site aimed at African Americans. BET Holdings is a good example generally of the fact that minority media investments may be targeted toward cable, the web, and other media that can be more focused.[85] In addition to Black Entertainment Television, BET runs cable channels BET on Jazz and Heart & Soul Magazine.[86]

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83 Of course, there are broadcasters who target minorities, including Univision and Telemundo, both of whom gear their programming toward Hispanic audiences.

84 See, for example, Diana See, "Minority sites build community and business on the Web," CNN Interactive, http://cnn.com/TECH/computing/9809/30/minority.idg/index.html (posted September 30, 1998). See also Saul Hansell, "Big Companies Back a New Web Site Aimed at Blacks," *The New York Times*, 12 August 1999 at C5.

85 Of course, not all of the companies investing in cable channels and web sites targeted to women and minorities are majority owned by women and minorities.

86 Shannon Henry, "BET Plans Site for African Americans," available at http://search.washingonpost.com/wp-srv/Wplate/1999-08/12/1861-081299-idx.html, August 12, 1999.

The Rule Does Not Promote Localism. A final claim put forth in support of the national multiple ownership rule is that is promotes localism. However, once again an examination of the facts does not support the claim that the national cap promotes its purported public interest objective.

First, there is no evidence that non-local owners fail to serve local needs. Indeed, the available data show that network owned and operated stations are active providers of local news and public affairs programming.[87] Moreover, the Commission noted in 1995 evidence that: (a) group-owned stations are more likely to editorialize, and (b) editorial and reporting decisions are often made autonomously at the local level within station groups.[88] Second, the vast majority of stations already are operated by group owners. Even small groups often own stations that are widely dispersed geographically. All station groups are "local" in only one market, regardless of their total reach.

Even if one were concerned that group owners did not serve local interests, it does not follow that relaxing the national cap would significantly reduce the total number of single-station affiliate owners. The reason is that most affiliates already are run by group owners. Figure 27 summarizes the data for ABC, CBS, and Fox affiliates. The figure presents the networks' coverage of U.S. households by type of station ownership. As the numbers in the final column show, only a small percentage of U.S. households are served

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87 *In the Matter of Amendment of Section 73.3555 [formerly Sections 73.35, 73.240, and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, Report and Order, released August 3, 1984, ¶¶ 44-51.

88 *In the Matter of Review of the Commission Regulations Governing Television Broadcasting and Television Satellite Stations Review of Policy and Rules*, Further Notice of Proposed Rule Making, MM Dockets Nos. 91-221 and 87-8, released January 17, 1995, ¶96.

FIGURE 27
NETWORK NATIONAL COVERAGE BY TYPE OF STATION OWNERSHIP[1]

	Owned and Operated [2]	Group Owner Affiliates	Individually Owned Stations
ABC	24%	65%	10%
CBS	34%	64%	2%
Fox	41%	46%	9%
NBC	28%	54%	17%

Notes:

[1]The UHF discount has not been applied in calculating the household coverage reported in this figure.

[2]The Hicks, Muse, Tate and Furst group holds a non-attributable ownership interest in the stations comprising 2.92 percent coverage of US households. According to NBC, the stations are reported to the FCC as owned by NBC.

Source: Networks.

by individually owned network affiliates. In fact, these numbers overstate the extent to which affiliated stations are individually owned. With the exception of CBS, the available data reported here indicate only whether a given entity owns one or multiple stations affiliated with a given network. For example, a corporation that owned two stations, one an ABC affiliate and the other an NBC affiliate, would be reported by each network as owning an individual station. The percentage of stations owned by true single-station owners is likely to be close to the percentage reported by CBS. The upshot of this analysis is the same point made in the analysis of diversity above: if the networks were to purchase their affiliates, the most likely scenario is that the stations would simply be passing from one group owner to another.

Lastly, to the extent that localism is important to viewers, there are market incentives for broadcasters to serve local needs. Moreover, one would expect those group owners who are particularly good at meeting the needs of the various viewer communities they serve to be more successful and thus to expand. Hence, larger station groups may benefit local interests.

The Rule Cannot be Justified as a Quid Pro Quo for Free Spectrum. A final attempt at justifying the rule is to assert that group owners must accept the national reach cap as a cost of being given licenses to the broadcast spectrum for free. There are three fatal flaws with this line of reasoning. First, as shown above, the national multiple ownership rule generates social costs, but creates no social benefits. Thus, whether or not broadcasters got their licenses for free, the national multiple ownership cap harms the public interest.

Second, even if there were some way in which obtaining spectrum for free justified the national multiple ownership rule, the fact is that the vast majority of current owners paid for their spectrum licenses. The largest group owners purchased virtually all of their stations, and the license values were capitalized into station purchase prices.[89] Moreover, in some cases, these sales triggered substantial tax payments.

Third, it is illogical to assert that somehow only the largest group owners should bear the costs of the rule given that they are no different from other owners in terms of how they obtained their spectrum licenses. But that is just what the national multiple ownership cap does.

D. Summary Analysis of National Multiple Ownership Rule

As the above discussion makes clear, there is no evidence that the national multiple ownership cap serves any useful purpose. The available data and economic analyses support the conclusions that:

- Relaxation of the reach limit does not threaten competition and indeed can be expected to strengthen broadcast television networks as competitors.
- Diversity is relevant at the local level and is unaffected by the national cap.
- The cap is an expensive and ineffective means of promoting minority ownership.
- There is no evidence that a group owner whose stations collectively have broad national coverage is less committed to localism than is a group or individual station owner whose stations have more limited coverage.

The national multiple ownership rule does, however, have costs:

- The cap limits the realization of economies of scale and scope.

[89] For example, when Disney purchased Capital Cities/ABC, Westinghouse purchased CBS, and Fox purchased New World, the prices the new owners paid reflected the value of the licenses (as well as other assets) held by the old owners.

- The cap blocks expansion of particularly well-run station groups.
- The cap limits the abilities of networks to coordinate with stations, and thus it reduces the incentives and abilities of networks to compete for programming and promote it.

By creating these artificial costs, the national ownership cap distorts investment incentives. Specifically, it reduces the incentives to invest in non-subscription broadcast television in general as well as relative to investments in other means of distribution.

The implication is clear: The national ownership cap is not appropriate in today's economic environment. The public interest would best be served by the immediate elimination of the national multiple ownership cap.

V. CONCLUSION

The regulatory regime governing broadcast television was put in place in a very different economic environment and this regime is no longer appropriate. Terrestrial broadcasters face far more competition for advertising dollars, programming, and viewers than they did when the rules were adopted. For years, policy makers have talked about reform of the national ownership and network-affiliate rules, but little has happened. It is time to update the record, conduct the analysis, and—at long last—fully reform the rules.

Two members of the Commission staff summed up the issue well in their 1991 working paper:

> Existing broadcast regulations may prevent broadcasters from adopting more efficient forms of organization and offering services the public would value. Relaxing or eliminating such rules would allow broadcasters

to compete more effectively, and would facilitate the continued provision of valued over-the-air services.[90]

It is clear that today some of the rules still in force no longer serve the public interest. As shown by the analyses presented in this white paper, the national multiple ownership rule no longer serves to protect the public interest. Indeed, continued enforcement of this rule is harmful to the public interest. This is only one of the rules that govern the economic structure of broadcast television today. It may well be that none of the rules predicated on the lack of competition is in the public interest. Policy makers should take a serious look at all of the rules and take appropriate action.

This is not the first time that there has been concern that an inefficient regulatory regime for broadcast television is harming the public interest. Yet, terrestrial broadcasting has survived. So why is there any need to act now? The answer is twofold. First, non-subscription broadcast television faces greater competition than ever before, and the effects of that competition on the nature of programming are being felt by broadcasters and viewers today. There are several developments, including:

- Networks are being outbid by cable networks for first-run broadcast rights to movies.[91]
- According to Fox, cable competition so eroded the audience for their weekday morning programming for children, that the network abandoned that daypart for children's television.

90 Florence Setzer and Jonathan Levy, *Broadcast Television in a Multichannel Marketplace*, Federal Communications Commission Office of Plans and Policy Working Paper No. 26 (June 1991) at x.

91 See John Dempsey, "USA Network to share movie rights with CBS, Fox," *Yahoo! News* (June 15, 1999). Similarly, "The TNT cable network has been building a reputation for acquiring rights to first-run movies and giving them their commercial television premieres." (Lawrie Mifflin, 'Tis Nobler to Synopsize," *The New York Times*, September 1, 1999 at B8.)

These developments are of regulatory relevance because inefficient public policies limit broadcast television networks and stations' abilities and incentives to compete for programming and to provide it on a non-subscription basis. These effects are being felt by viewers and advertisers today.

The second reason there is a public interest need to act now is that current policies are creating long-term costs. These costs are being created by distortions in investment incentives. Network owners have greater opportunities to redirect their investment efforts (both financial and creative) than ever before. As the following examples illustrate, network owners are taking advantage of these opportunities:

- ABC is launching a new soap opera channel. But instead of taking advantage of newly allocated digital broadcast spectrum to distribute the channel as a non-subscription over-the-air service, ABC is putting this new channel on cable. The economics of cable's dual revenue stream were too attractive in comparison with the opportunities available in the current economic and regulatory environment of broadcast television.
- Similarly, when Fox decided to go into the national news business, it launched a cable network, FOX News Channel, rather than develop a national news programming service for its broadcast network.

The fact that the networks are branching into other services is *not* in itself a problem. Indeed, it is privately and socially valuable for the networks to make use of their skills and assets in these other services. Rather, the problem arises when regulation *distorts* these investment decisions. By inefficiently reducing economic returns in broadcasting, regulation drives the networks to direct more of their financial and creative resources toward cable properties and other distribution platforms than is socially desirable. It is also important to recognize that, once broadcasters start investing in a particular direction, it may be hard to reverse the effects of regulatory distortions. Consequently, the time to reform broadcast television regulation is now.

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