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

In the Matter of	)	
	)	
2002 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	)	MB Docket No. 02-277
	)	MM Docket No. 01-235
Cross-Ownership of Broadcast Stations and Newspapers	)	
	)	MM Docket No. 01-317
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	
	)	MM Docket No. 00-244
Definition of Radio Markets		

To: The Commission

COMMENTS OF ENTRAVISION HOLDINGS, LLC

Entravision Holdings, LLC ("Entravision"), the licensee of both radio and television stations, files its comments in the above-captioned and now consolidated FCC proceeding[1] addressing a range of possible changes to the rules applying to media ownership. Although Entravision, as discussed in greater detail as follows, generally has been a supporter of the ownership deregulation mandated by Congress and/or adopted by the Commission, it is the view of Entravision that if the Commission were to weaken or eliminate the existing restriction on

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[1] *See Notice of Proposed Rule Making ("Notice")* in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317 and 00-244 (FCC 02-249), released September 23, 2002.

crossownership between broadcast stations and daily newspapers in the same market, and/or allow expanded TV duopoly in a market, the FCC should adopt well-tailored regulations that would assure that other stations and the local, viewing public are not the victims of anticompetitive behavior by any such new – or existing – local television combinations and local newspaper/broadcast combinations.

Entravision is the licensee of 16 full-service and 30 low-power television stations. These stations are generally programmed in the Spanish language and serve communities having significant Hispanic audiences. Entravision is the principal affiliate of the Univision and Telefutura networks and carries these networks' programs on most of its stations. Together with such network programming, Entravision offers the Spanish-speaking viewer local news, public affairs and public service programming.

The Commission now is immersed in a consolidated, omnibus review of all the rules applying to the multiple ownership of stations in a market, cross ownership among media and the national ownership of TV stations. This new proceeding follows a series of deregulatory steps – applying to the ownership and transfer/assignment of stations – taken over the past several decades. These include the elimination of the "three-year anti-trafficking rule,"[2] the evolution of the "seven-station" rule[3] into the "12-station and television 25% audience reach" rule[4] and then the "35% audience reach" rule[5], and the further loosening of the radio duopoly rules in the

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[2] *Elimination of Three Year Rule and Underlying Anti-Trafficking Policy*, 52 RR 2d 1081 (1982), reconsidered in part, 99 FCC 2d 971 (1985).
[3] *Amendment of Section 3.25, 3.240 and 3.636 of the Rules and Regulations Relating to Multiple Ownership of AM, FM and Television Broadcasting Stations,* 18 FCC 288 (1953).
[4] *Amendment of Multiple Ownership Rules,* 100 F.C.C.2d 74 (1984).
[5] *Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations)*, 61 Fed. Reg. 10,691 (Mar. 15, 1996).

1990s – first through smaller steps by the Commission itself[6] and then more dramatically in implementing[7] part of the Telecommunications Act of 1996, which also eliminated all radio national ownership limits. More recently the FCC further has liberalized the TV duopoly and one-to-a-market rules,[8] based on record evidence of the economic need for such consolidation and the expectation of service benefits inuring from local economies of scale.

Now pending are the modification or elimination of the newspaper/broadcast crossownership rule and the possible radical changes – or elimination – of the aforementioned and other rules applying to electronic media ownership. Furthermore, the Commission indicates that the records developed in separate and already-initiated proceedings examining the newspaper/broadcast crossownership rule[9] and both the radio duopoly rule and the "definition" of a radio market,[10] will be considered by the agency in this new, omnibus proceeding and that additional comment is solicited on these matters as they relate to the issues being addressed initially in the instant, omnibus media ownership proceeding.

Entravision observes, as can every other mass media business and consumer, which the rule modifications adopted by the Commission over the past two decades have effected great change in the broadcast and communications landscape. Through consolidation of stations and combinations of once competing media, the face of broadcasting – particularly local broadcasting – has been altered beyond what once was anyone's imagination.

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[6] *See Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992).
[7] *In the Matter of Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996 (Broadcast Radio Ownership)*, 11 FCC Rcd 12368 (1996).
[8] *See Report and Order* in MM Docket Nos. 91-221 and 87-8, 14 FCC Rcd 12903 (1999).
[9] *See Order and Notice of Proposed Rule Making* in MM Docket Nos. 01-235 and 96-197, 16 FCC Rcd 17283 (2001).
[10] *See Notice of Proposed Rule Making and Further Notice of Proposed Rule Making* in MM Docket Nos. 01-3217 and 00-244, 16 FCC Rcd 19861 (2001).

These changes have provided the Commission with empirical evidence of what happens to broadcast program service, local ownership and overall media responsiveness to local needs, interest and format preferences. This evidence also has predictive value, which can help guide policymakers with the tasks ahead and also help govern the steps taken by media group owners who may benefit from further deregulation.

For Entravision, the most important consideration involved in these ongoing Commission deliberations on ownership is whether smaller operators, serving minority or special interest audiences, will be able to survive and flourish in the competitive marketplace, or whether these stations and their audiences will be imperiled by the effects of further media consolidation and the clear potential for abuse by those who will hold new and/or greater market power. It is with this concern that Entravision files its comments today.

Entravision has concluded, as have most observers of the Commission's proceedings in these media ownership areas, that there now is tremendous pressure on the Commission to further deregulate its media ownership rules. As such, Entravision, which has not previously participated extensively in previous FCC ownership proceedings, believes it now must express its strongly-held view on certain aspects of the Commission's proposals.

It is the position of Entravision that the Commission must consider what will happen to the broadcast programming service offered to minority and specialty audiences, to the stations that currently provide such service to those audiences, and to these and other smaller broadcasters that will strive to remain in business after the next round of consolidation, likely to be ignited by the dramatic ownership regulation changes contemplated in the *Notice*. And these same questions must be faced by those media players who may soon have the potential to even further dominate local markets.

One first can look at studies produced by the government, academia and by industry, and which now are being reviewed as part of the Commission's omnibus proceeding on media ownership. The majority of these studies suggests that further loosening or elimination of these rules will strengthen those "further consolidating" broadcasters – as well as daily newspapers if they were to combine ownership with local broadcast stations, – and that these new consolidations will promote diversity and innovative media services. Some studies conclude that, in the case of radio, common ownership of many radio stations at the local and national levels has resulted in greater not lesser program diversity. And the presumption is that the same phenomenon will occur in television, if there were to be further local and national ownership deregulation.

Indeed, local duopolies have found that they can be more profitable if, instead of duplicating the formats of other commonly-owned stations in a market, they reprogram some of their stations to serve audiences not adequately served by other stations in the market. In some cases these audiences are minority and specialty audiences now served by one or a handful of local stations. Also, one may predict that group owners – particularly those that would combine with daily newspapers in their markets – will provide at least some minority, specialty and niche programming over their stations and print facilities, along with predominate service to mainstream, majority audiences. Moreover, some of these group owners may choose to reprogram certain of their stations so that they constitute a potent competitor to stations that heretofore have not faced significant competition for a particular minority or specialty audience.

But, this ability of – and economic incentive for – consolidated operations to expand their service and attention to minority and like audiences has the clear potential to drive out other entrepreneurs already offering or considering offering similar services. Entravision's position is

that such a phenomenon would be gravely injurious to minority and specialty audiences and to the overall public interest.

Outside of the role of government to regulate and to hold such consolidated media companies accountable for any anticompetitive behavior, it is to be hoped that expanding group owners in a market will recognize their obligation to be "good media citizens" who will not abuse their increased market power and their ability to dominate not only mainstream formats and program services but also those upon which minority and other specialty, non-mainstream audiences now depend. Acknowledging that these expanded group owners might choose to program for the audiences served by Entravision and by other broadcasters serving minority and specialty audiences, Entravision believes it is essential that minority and other specialty audiences be given diverse viewing and listening choices in any new post-consolidation era, not simply a substitution of one set of voices over those that might be lost due to competitive abuse by media consolidators in a market.

More specifically, Entravision's view is that owners who may control print, video and other media outlets in one market should not be allowed to employ their new-found strength to stifle the remaining competition. For example, these media conglomerates should not use such tactics as: (1) having their print media affiliates list their owned-and-operated stations in print station guides but refuse to list – or list less favorably (in terms of typeface, page location and programming detail, etc.) – some or all competing radio and television stations; (2) providing preferential rates or treatment to advertisers who buy time on their stations exclusively and/or with co-owned print media; and (3) arranging with syndicators to restrict the sale of syndicated programs to other stations in a market. Newspaper/broadcast crossownership and significant other consolidation already exists and Entravision has witnessed the treatment given to new

broadcasters, especially ones whose programming is geared to the minority and specialty audience. This experience also has contributed to Entravision's decision to file its comments today.

One might hope that at least some media companies taking advantage of the current regulatory conditions as well as the conditions likely to exist in the future landscape of further ownership deregulation, will take the "longer view" and recognize how anticompetitive abuse of increased market power will impair the reputation of the stations and the industries involved, and will, in the long run, inspire consumer ire and government re-regulation. A simple look at the regulatory history of cable television well documents the harmful effects that have occurred to that industry's reputation – in terms of public perception of their responsiveness to consumers and the opinion of those in the regulatory world – and to the relationship between cable television and broadcast television, where cable television operators have been criticized for perceived abuses of their market power, to the detriment of viewers and broadcasters.

Another salient example of alleged industry abuse leading to a regulatory response is found in the newly-initiated Department of Transportation ("DOT") proceeding[11] to determine if the DOT should continue or modify its existing rules governing airline computer reservation systems ("CRS") used by travel agencies and whether it should adopt any rules expanding such CRS rules to the distribution of airline services through the Internet. The scope of this proceeding was affected by government and consumer criticism of the asserted anti-competitive efforts of several major airlines through the activities of their co-owned Internet reservation systems. The proposed rules are aimed at ensuring that "owner airlines" are not given exclusive

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[11] *See Notice of Proposed Rulemaking* in Docket Nos. OST-97-2881, OST-97-3014, OST-98-4775 and OST-99-5888, adopted November 12, 2002.

or preferential listings on these reservation systems, to the competitive detriment of other airline competitors.

Thus, although avoiding such conduct in the broadcasting arena largely is in the long-term self-interest of consolidated broadcast and newspaper entrepreneurs, past experience suggests that some form of government-compelled accountability is required here, particularly as the FCC addresses the weakening or rescission of the daily newspaper/broadcast crossownership rule and greater local combinations of TV stations. Entravision urges the Commission to acknowledge the concerns expressed in these comments and to take action in areas where the behavior of media conglomerates might cross the line and fall into what traditionally has been considered to be abusive behavior if not unlawful predatory practice. Specifically, the Commission should adopt rules that would bar the kinds of "TV listing," "preferential ad rate" and "syndicated programming restraint" activities described above. However, these topics by no means are the only ones where abuse may take place, or be repeated, absent FCC regulatory action.

In taking these steps, the government should not have any role in dictating the format or audiences that any station or group of stations – regardless of whether there is combined ownership with a local, daily newspaper – might choose to program and serve. However Entravision believes that, as part of the Commission's review of stations' performance in the public interest, particularly as these stations submit applications for license renewal and station transfer/assignment, the agency should require affirmative certifications as to these licensees' or their parent, consolidated companies' behavior in the public interest.

Entravision urges the Commission to adopt a revised regulatory system whereby all television stations with ownership interests in local, daily newspapers – both current and future

interests – periodically be required to make affirmative declarations as to their adopting or eschewing anticompetitive practices, including those described above. One approach would be for the FCC, as part of the Commission's review of television stations at license renewal time, at license mid-term (when TV stations' FCC equal employment opportunity rule compliance[12] is reviewed), when TV/newspaper combinations are proposed to be transferred or assigned and when new TV/newspaper combination are proposed to be created or transferred, to require applicants/licensees to certify that they have not been engaged and will not be engaged (the latter in the case of new station and transfer/assignment applications) in anticompetitive behavior, including those practices described above.

Based on Entravision's own experience, the first questions to be asked by the Commission during such periodic reviews would involve the "newspaper TV listings," "preferential rates," and "syndicated programming embargo" matters addressed above. Other similar indicia of anticompetitive abuse by market conglomerates also could be posed by the Commission and addressed in these periodic reviews.

In this fashion the Commission and those with an interest in participating in the license renewal and enforcement processes of the FCC will be given new and important tools to help maintain fair competition among local market media and to assure optimized service to the broadcast audience. This kind of periodic review will result in direct and continuing benefits to television viewers and to local television markets generally, with even greater benefits flowing to non-consolidated stations serving minority and special interest audiences and to the citizenry comprising those audiences.

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[12] *See Second Report and Order and Third Notice of Proposed Rule Making* in MM Docket No. 98-204 (FCC 02-303), released November 20, 2002.

Under this regulatory approach, additional consolidation surely would be allowed in local markets. But, existing and new media conglomerates would be required to disclose to the Commission, to potential petitioners-to-deny, and to complainants, whether they have engaged in, or may engage in, activities that place in question these stations' operation in the public interest.

Respectfully submitted,

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