

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

In the matter of)	
)	
2002 Biennial Regulatory Review –)	
Review of the Commission’s Broadcast)	MB Docket No. 02-277
Ownership Rules and Other Rules)	
Adopted Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
Cross-Ownership of Broadcast Stations)	MM Docket No. 01-235
and Newspapers)	
)	
Rules and Policies Concerning)	MM Docket No. 01-317
Multiple Ownership of Radio Broadcast)	
Stations in Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244

COMMENTS

On September 12, 2002, the Commission adopted a Notice of Proposed Rulemaking (“Notice”)¹, which began its 2002 biennial review of the broadcast ownership rules. Communications Science and Technologies, Inc. (“CST”)² hereby submits its comments in response to the Commission’s Notice.

1. Introduction

The instant proceeding comes at a time when the television, cable and telephone

¹ *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, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets (“2002 Biennial Regulatory Review”), 17 FCC Rcd 18503 (2002) (“Notice”).*

² Communications Science and Technologies, Inc. (“CST”) is a New York corporation formed by, among others, Television News Syndication Corporation (“TNS”) and the Litigation Recovery Trust (“LRT”), also of New York City. LRT is a long time participant in proceedings before the Commission and the author of several key industry structuring proposals, including the establishment of the Digital Conversion Fund referenced below. CST has been formed to develop and market various new technologies to be applied in the mass electronic communications industries.

industries in the United States are in the process of undergoing a major transformation. Within the next two to three years, consumers throughout the country will enter the world of digital communications, which will largely digitize all over the air television, cable television, data communications (including voice and video telephone) delivered via wireline and satellite carriers. All of these services will be transmitted via a digital medium allowing, among other things, the wide scale utilization of a new generation of high definition video receivers.

Unfortunately, the transformation of our country's basic broadcasting system to the new digital standard is proving to be a difficult undertaking. Hundreds of television stations lack the ready access to financing required to adapt to digital transmission.³ Likewise, a large percentage of cable systems are not able to fund the conversion of their existing analogue plants to accommodate both the bandwidth required by local digital TV stations, as well as the literally hundreds of local, regional and national cable TV programming services,⁴ which are entering the market. Furthermore, hundreds of local telephone companies serving small and mid-sized markets, that should be upgrading their facilities to the digital standard, do not have the financial resources necessary to undertake this needed transformation. Finally, we come to the low power TV stations, a large majority of which have been largely disregarded as policies have been developed to facilitate the changeover to the digital standard.

Thus, as the country should be moving forward with all deliberate speed converting to the digital standard, in point of fact, a large part of the television, cable and telephone industries stand at the starting gate, lacking the price of admission.

Meanwhile, digital conversion is underway in the country's major markets and, of course, in the sky, where the two leading direct to home broadcasters are fully digitized. This positive movement is bringing about marked changes on the programming supply side of the industry. More and more channels offered via cable and direct to home are causing a

³ These stations have been forced to seek extensions of the Commission's construction deadlines for completing the upgrade to digital transmission. In fact, the Commission notes that about 870 TV stations, representing 70% of the country's 1.250 TV outlets, have revenues of \$12 million or less. See *Notice*, p.57.

⁴ The Commission reports that 1180 of the total 1311 cable and related multichannel delivery systems in the US gross less than \$10 million annually. According to the Commission's ninth report on video competition, cable is recorded as having 68.8 million customers as of June 2002. The report also states that cable operators have seen significant subscriber losses and 2002 may be the first year in which the industry sees a net loss of customers. Direct satellite TV subscribers numbered 18 million, representing 20.3 percent of all multichannel subs. FCC Ninth Report on Video Competition, December 31, 2002.

fundamental reordering in the program production industry, as cable and satellite companies compete with each other, offering increased program channels – local, regional, national and international. This increased competition on the programming side has resulted in ever increasing segmentation of the available audience, resulting in viewers leaving behind established habits and customs, as they choose to watch channels targeted at unique tastes.

We are clearly moving quickly away from broadcast network domination, programming to the lowest common denominator, to a system served by literally hundreds of networks, serving all conceivable interests. As the industry shifts from the network oligopoly to a supply of plenty, the fundamental economics must also change. Network offerings of blockbuster sports and entertainment programming will remain. However, what will be added to the mix will be literally thousands of new programs, produced at economic and efficient cost, which will appeal to small and discrete audiences.

These changes are reflected almost daily in the Nielsen rating reports. In 2002, for the first time in the history of broadcasting, the total homes viewing basic cable networks surpassed the homes watching the broadcast networks.⁵ According to the long accepted industry theorems, the share of audience viewing the broadcast networks was never supposed to total less than 50%. This barrier has now been shattered, as more and more viewers are regularly attracted to an ever-growing number of national and regional cable networks. This sea change will continue as the number of cable/DBS networks keeps increasing to fill the expanding bandwidth offered via digital transmission systems.

Day be day, new cable/DBS networks are announced and begin organizing to be able to take advantage of the increased cable and direct satellite channel capacity. The Golf Channel will now be joined by the Tennis and Soccer Channels, not to mention the Extreme Sports Channel. Can the Bridge and Chess Channels be far behind? The Discovery Channel alone has spawned multiple expansion channels, as has Turner Broadcasting, ESPN and others.

In light of this unparalleled change and expansion, it is important that new

⁵ “For the first time, ad-supported basic cable grabbed the dominant audience share over the seven broadcasters, 48% of prime time share compared to 45% for broadcast for 2002, according to Nielsen Media Research.” *Broadcasting and Cable Magazine*, Dec. 30, 2002, http://www.broadcastingcable.com/index.asp?layout=story_stocks&articleId=CA267879&pubdate=12/30/2002&stt=001&display=searchResults

communications policies being considered by the Commission take these new realities into account. For example, in over 85% of American home, access to news programming, as it has since the 1950's, includes the ABC, NBC and CBS evening new summaries. But, these viewers also can access round-the-clock news reports via CNN, CNN Headline News, FOX News, MSNBC, CNBC, CNNfn, plus regional news networks and local TV stations and cable news channels. In this area alone, national policy must presuppose an ever-expanding universe of program supply, as opposed to the former standard of assumed broadcast network dominance.

The same presupposition of programming abundance should also be applied to sports, entertainment and informational programs as well. The reality is that the former restraints imposed by the scarcity of over-the-air TV signals and then later by the 12, 24 and 36 channel cable systems have been supplanted by ever-increasing bandwidth.

As a result, federal policy in 2003 should have as its main objective the encouragement of digital conversion and expansion of transmission plants. Industry structuring rules through artificial restraints on station and system ownership must be regarded as outmoded and irrelevant. With the arrival of digital technology, the multiplicity of voices seen and heard on a daily basis in the homes of America no longer needs to be shaped and fashioned by federal policy. It will be the demands and the rewards of the marketplace that should and will lead to new program services, creating a true window on the world that was first envisioned by RCA president, General David Sarnoff, when he introduced the promise of commercial television at the 1939 World's Fair.

The proper focus of federal policy in 2003 should be on removing all outmoded artificial restraints on broadcast station and cable system ownership, while establishing methods and means, including financial grants and aid, for assisting the digital conversion of the television, cable and telephone industries. On the latter subject, CST has developed some unique approaches which are outlined in Section 5 below and are offered for consideration by the Commission and industry members.

2. Diversity Issues.

The Commission seeks comment on several aspects of diversity, including how the specific terms should be defined.

Specifically, the Commission is seeking views on whether non- traditional news programming should be considered as contributing to viewpoint diversity. CST believes that this question must certainly be answered in the affirmative.

Without question, when it comes to originality, creativity, variety and uniqueness, the American television industry has established an outstanding reputation known throughout the world. Program formats, old, new, refashioned, repurposed, whatever, have and will continue to be used to express viewpoints of all types and kinds. This must be a given, and policies should not be adopted that would in any manner stifle this creative engine, which truly drives the U.S. programming industry.

Here too, with the ever increasing number of channels – literally numbered in the hundreds- it must be presumed that viewpoint diversity will be a welcome dividend to be enjoyed by viewers throughout the nation. Stated differently, federal structural rules fostering diversity will no longer be useful or necessary.

In the future, all can rest assured that viewpoints of all types will find outlets as producers strive to deliver programs that will attract audiences on the local, regional and national levels.

Also, it will no longer be necessary for the Commission to continue to use source and outlet diversity as proxies to protect and advance viewpoint diversity.

Without question, in the digital world, the marketplace will protect and advance diversity without regulatory requirements. The Commission itself has observed that “ the current media marketplace appears robust in terms of the aggregate number of media outlets.” (Notice ¶ 42). As noted above, the media marketplace is continuing to expand at an ever-increasing pace, which will mean that viewers will generally have access to news, public affairs, and entertainment programming from a variety of media outlets – broadcast, cable, satellite, newspapers and the Internet.

This unparalleled proliferation of new media outlets will purely and simply render on the Commission’s diversity goals superfluous.

Furthermore, in response to the Commission's specific inquiry, broadcasting does not possess unique attributes that should lead to defining and measuring diversity without reference to other media. Programming is the common denominator, whether delivered via over the air signals or cable. For example, sponsors (and their advertising agencies) consider the programs and their target audiences when making decisions. These judgments are not affected by the fact that the program ultimately stems from a broadcast or cable source. Beyond this, the viewer usually has no understanding or appreciation of the transmission source. Indeed, over the last six months, surveys have shown that with the growing complexity of program transmissions, it is clear that the typical consumer has little or no knowledge (or interest) in differentiating among broadcast delivery, cable and satellite. Given this fact, federal policy should also not seek to establish artificial lines of demarcation among the media.

In the final analysis, it should be well established that the market alone will satisfy the Commission's goal of protecting and advancing viewpoint diversity. In this regard, CST is of the opinion that a policy premised on the theory that a larger number of owners will help provide greater viewpoint diversity is not only irrelevant in the digital world, it is also incorrect.

Commission policy has presumed that multiple owners are more likely to provide "divergent viewpoints on controversial issues," which the Commission has stated is "essential to democracy."⁶ In a media marketplace, divergent viewpoints necessary appeal to different audience segments. This is the essence of interesting and thought provoking programming.

In the digital world of hundreds of channels, the greater the number of target audiences that can be attracted by programs, the greater the likelihood that the programming will attract commercial support. In this marketplace, literally no sizeable body of opinion will go unheeded, as any effort to appeal to a particular viewpoint will deliver viewers, and hence commercial support. In this type of market, it is not the number of owners that governs the issues presented, but rather the number of programs and producers. Again, as the number of networks and programs continue to proliferate, so too will the number, diversity and variety of viewpoints addressed via these programs.

⁶ 117 Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, 16 FCC Rcd 19861, 19877 (2001) ¶ 37, quoting Amendment of Sections 73. 34, 73. 240 and 73. 636 of the Commission's Rules (continued....)

In the past, the Commission “has felt that without a diversity of outlets, there would be no real viewpoint diversity -- if all programming passed through the same filter, the material and views presented to the public would not be diverse. “ (Notice, ¶43) Similarly, the Commission has felt that” without diversity of sources, the variety of views would necessarily be circumscribed.” Id. These approaches must be regarded as outmoded and irrelevant in the digital world. Again, programs are being and will in the future be produced to address every significant viewpoint for the simple reason that this will attract audience—and commercial support. In the world of hundreds of channels, artificial ownership structuring rules are no longer necessary or, more importantly, desired.

In fact, the impracticality of using policy to shape the programming marketplace has always been with us. The Prime Time Access Rule was a good example of the adoption of a well intentioned but impractical policy to use an artificial structural approach to increase diversity. The original goal sought by Westinghouse Broadcasting in conceiving, proposing and fostering the Prime Time Access Rule as federal policy was to limit network programming to three hours per night, while opening a new market non-network product. What actually happened produced significant financial benefits for the networks and few if any advantages for the viewers.

With respect to the networks, the rule removed 30 minutes from the nightly network inventory, producing an unexpected financial boon to the networks, which found it possible to charge more for the reduced number of advertising minutes, while saving programming costs. Meanwhile, what replaced the former network programming was far from unique, bold programming. Stations chose to program low-cost game shows, many actually bargain priced versions of former network programs. At the end of the day, while a number of program syndicators reaped substantial rewards as a result of the Prime Time Access Rule, the viewers gained very little when measured in terms of expanded program fare.

After some 25 years on the books, the Prime Time Access Rule was rescinded, having accomplished none of its intended goals.

CST firmly believes that given the momentous changes which are underway in changing to the digital standard, ownership limits are not in fact necessary to promote diversity in the

media. Clearly, in a digital world served by channels measured in the hundreds, market forces will foster diversity.

Structural rules are no longer necessary, including the independent voice test, which has been used as a measure for ensuring the appropriate level of diversity. In the new digital world, all media outlets or programming services should be viewed as independent voices. This includes cable and DBS. Further, commonly- owned media outlets should be considered a multiple media “voices.” And cable television should count as multiple voices. The fact that the cable operator exercises “editorial control” over the content that is distributed over its platform is no more relevant than a newspaper stand distributing perhaps hundreds of periodicals being regarded a single “editorial” voice in a neighborhood. The Commission must look to the number of independent programming entities as separate and distinct voices.

In measuring quantitative or qualitative diversity, audience demographics must be regarded as an appropriate measure. As noted above, without question in a media market consisting of hundreds of channels, competitive forces will result in all substantial demographic groups of any appreciable size being provided access to programming of direct and immediate appeal. Certainly, competition is an appropriate proxy for diversity, such that the presence of a competitive local market will assuage all concerns about diversity as reflected in ratings figures and other marketing measures of consumer usage.

In essence, with the conversion to digital delivery, most, if not all, barriers to entry will be removed, producing hundreds of channels competing for attention and producing a true marketplace of ideas. The promise and goals of the First Amendment can therefore be achieved without the aid of any governmental policy. Indeed, with the average American viewer being able to access literally hundreds of channels simultaneously, it should be possible to develop a presumption that all diverse viewpoints can be served without resorting to any Commission rules or policies.

Likewise, in a world of hundreds of channels, there should be no need to differentiate among local, regional and national markets. Again, the marketplace must be presumed to produce the desired result. In the digital world, programmers, whether they be local, regional or national, will be incented to develop product to attract audiences. This competition will produce programming of interest to all viewpoints- without the intervention of government policy. In short,

the appropriate geographic area for measuring diversity should be the same as the relevant geographic market for competition purposes.

While it is true that the level of diversity that the public enjoys necessarily varies among different demographic or income groups, this factor should not be used to establish government policies, which burden all media outlets. The key concern here should be the dissemination of ideas, free of governmental policies.

Government policy quite properly is not used to assure that all persons have the ability to receive publications sold at a magazine stand. The marketplace of ideas in the print world is – save for the services provided by public libraries- determined by one's ability to purchase a particular publication. When it comes to the electronic media , an individual must purchase a receiver and, where desired, cable or satellite service. (Note: Paralleling the print model above, there are also certain services offered to the public via libraries, which provide free access to electronic media, including the Internet.)

Following the same principles as in print, government policy should not be used to govern the operations of the electronic media which will now be available through hundreds of channels as diverse as publications. Any disparity in diversity skewed by economic considerations should not impact the entire marketplace. Economic factors impacting the viewers can and should be addressed through other policies (aids and grants) directed to benefit the individuals affected, and not the entire industry.

Furthermore, given the foregoing considerations, there is no rational basis that should be found to support the introduction of alternatives to structural regulation, such as behavioral requirements. It is recognized that the Commission has historically used the ownership rules to foster ownership by diverse groups, such as minorities, women and small businesses. However, in light of the fundamental change brought by digital conversion, the Commission should not promulgate behavioral regulations.

Henceforth, the marketplace and the marketplace alone should be relied upon to determine diversification in the ownership of outlets and programming sources. Here, too, there are (and can be) other economic programs of aid, grants and similar incentives which can be brought into play to assist individuals in becoming owners of electronic media outlets. These

policies and programs should be sufficient, and should not be augmented with rules which artificially shape and/or alter the ownership of TV and cable outlets by certain individuals or groups.

Diversification of viewpoints will be properly and adequately achieved without resorting to artificial structures imposed by rules. Furthermore, again given the wholesale expansion of the marketplace and diversity as the result of digital conversion, the government must be found to lack any proper or rational basis to impose structural rules and policies favoring particular groups as a means of theoretically promoting diversity.

3. Competition

The Commission has relied on the principle that competitive markets best serve the public because such markets generally result in lower prices, higher output, more choices for buyers, and more technological progress, than markets that are less competitive.⁷ CST believes this to be a correct principle

However, in general, the Commission has held that “intensity of competition in a given market is directly related to the number of independent firms that compete for the patronage of consumers.” (Notice ¶ 52) CST does not believe this to be a proper policy guideline.

Competition should be deemed to be a factor of operating entities, as opposed to ownership entities. Operating entities owned by the same parent naturally can compete for audience, advertising revenues, programming, news sources, and any number of additional elements. This is a fact of the contemporary media marketplace. It is true that common ownership can lead to efficiencies of scale where certain operations are shared, but the fact remains that competition will continue to occur, as each unit strives independently to achieve its own business plans and goals.

⁷ 124 See F. M. Scherer and David Ross, INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE, (3d ed.) at 19- 28 (Houghton Mifflin Co., Boston MA, 1990).

The Commission should rely on the diversity component of its analysis such that a certain level of diversity would alleviate its competition concerns. As noted above, all operators will engage in various types of competition (i. e., competition for viewers/ listeners, advertisers, programming, etc.). This a fact of life for all operators. It is not necessary to establish federal policies to analyze these basic operations of electronic media outlets.

CST contends that the market can be relied upon to protect and advance competition without regulatory requirements. The Commission has observed that “the current media market appears robust in terms of the aggregate number of outlets.” (Notice ¶153) including TV stations, broadcast networks, cable systems, DBS, MMDS and other multichannel providers. This expansion will continue as digital conversion takes hold and the number of individual programming sources will reach into the area of several hundred, delivered via cable and satellite.

The obvious effect of this proliferation of new media outlets on the Commission’s competition goals will be to produce the long sought after marketplace of ideas- ideas of literally every type and shade of opinion. This goal can be and should in CST’s view be achieved without any government rules or policies. The marketplace itself will be sufficient to promote competition.

As the media marketplace expands, removing the need and the advisability of maintaining artificial structuring rules, it also should be determined that it is time to delegate all policing authority to the courts and federal and state authorities, under existing antitrust and related business law statutes. Stated simply, it should not be a matter for the Commission to determine whether “the market alone does not satisfy the Commission’s goal of protecting and advancing competition...” (Notice, ¶155) The appropriate regulatory framework for achieving this goal is the antitrust law.

In the past, the Commission has shared its authority with the Federal Trade Commission and the Department of Justice on the federal level in determining violations of an anti-competitive nature. The Commission also traditionally relied on structural ownership rules, which focused on the number of independent owners, on the theory that a larger number of owners would enhance competition. The Commission has noted, “While our local ownership rules were based largely on preserving viewpoint diversity, [we] also found that these rules

would serve the public interest by preventing broadcasters from “dominat[ing] television and radio markets and wielding power to the detriment of small owners, advertisers, and the public interest.” ID.

Given the fundamental changes being brought about by digital conversion, it should be concluded that structural ownership limits are not the best means to promote competition in the media. Proper competition and trade practices should be determined to be a matter for state and federal law enforcement. Where a particular owner is believed to be engaging in behavior in restraint of trade, this should properly be referred to the law enforcement authorities for review and possible legal action. Indeed, given the growing complexity of multimedia operations of companies, it will likely be beyond the capability of the Commission to properly and adequately investigate, review and prosecute possible offenders. Clearly, these are matters best left to federal and state law enforcement agencies.

Furthermore, by relying on marketplace forces to govern media expansion, the Commission will not be required to delve into theoretical issues in an effort to divine the competitive impact. It will no longer be necessary for the Commission to attempt to define the relevant product and geographic markets in which broadcast TV and radio stations compete, as well as the market share of the participants within the relevant market, and then weigh the benefits of consolidation against the harms to consumers. The marketplace alone should be the governing factor.

The Commission has noted that, “As the steward of the Communications Act, the Commission is charged with evaluating the potential benefits and harms to the viewing and listening public, not to advertisers.” (Notice ¶59) It is CST’s view that the Commission’s authority under the Communications Act fully justifies it basing broadcast ownership regulation on the level of competition in the advertising market. This is an appropriate and meaningful gauge to determine relative performance. Having said this however, it is CST’s considered view, as a policy matter, the Commission should not be concerned with advertising rates. Clearly, competition concerns in advertising markets are more appropriately governed by the antitrust agencies.

It has never been, is not currently and should not be a future concern of the Commission to analyze advertising rates in terms of potential “harms” to viewers and listeners stemming from

the rise of advertising prices as a result of more concentrated media markets. Likewise, the fact the vast majority of American households now pay for information and programming by subscribing to cable television or satellite services should not be a matter for determining ownership policies. (See Notice ¶60) Broadcasters and cable operators ability to compete in the marketplace should not be a matter of federal policy.

Also, the Commission observes that in 2000, “broadcast TV share declined to 70% of national TV ad revenue and about 80% of local TV ad revenue, and cable increased to 30% and 20%, respectively. “ (Notice¶60) These developments are factors impacting marketplace developments, but should not be the concern of government policy makers.

In addition, the Commission should not include the programming purchasing market within its competitive analysis. Broadcasters, broadcast networks, cable networks, cable operators, DBS networks, and DBS operators create, purchase, or barter for programming. This is a continuously expanding marketplace. Simply stated, there is no possible way that the relaxation or elimination of the broadcast ownership rules would enable broadcasters – in any number- to exercise monopsony power in the purchase of programming. Today, there are literally thousands of buyers of programs attempting to serve a fragmented market. The relaxation of the ownership rules can have only a minor impact on the programming market.

As is clear from earlier comments included herein, it is CST’s view that innovation competition characterizes rivalry in contemporary delivered programming, broadcast advertising, and program production markets. Innovation competition is truly pervasive in media markets today, however, this is only a factor which drives the affected industries forward. The marketplace will be impacted by innovation along with other factors and federal policy in the form of the ownership rules should not be modified to encourage rivalry focused on innovation.

At the same time, CST notes that Congress has directed the Commission to make the introduction of new technologies and services a priority. In light of this policy, CST is submitting a proposal in Section 5 below to provide a means for the Commission to encourage the introduction of digital conversion, the most fundamental new technological development introduced in the television and cable industries in decades.

4. Localism

The Commission has historically pursued policies aimed at encouraging localism. (Notice ¶ 69) Indeed, from the earliest days of broadcasting, federal regulation has sought to foster the provision of programming that meets local communities' needs and interests. To date, the Commission has adopted policies, which have sought to encourage local ownership as a means for increasing diversity.

In the area of localism, the digital revolution has also removed the need for a pervasive federal policy designed to artificially impact the marketplace. Local owners can now participate through establishing, purchasing and operating local radio, tv stations and cable systems, local Internet Service Providers, local cable program production companies, local advertising and marketing companies. The goal of all of these companies will be to develop a service, which will attract a local audience. The operations will be supported by subscription, advertising revenues and/or donations, which will reflect the level of interest and acceptance among the citizen base in the community.

Local media do and will continue to flourish without the need to adopt policies, which artificially structure the marketplace. Multiple channels are available on the local level, and it should be the only concern of government to allow the media marketplace to function freely and openly, without artificial rules and regulations.

This competition will take place in all forms and formats – news, sports, entertainment and information, as the operators seek to serve the local audience with a particular product which is different and distinct from those of competitors. The Commission should not find any need to directly intervene to alter this basic process.

Indeed, it can be found that local ownership limits do not tend to ensure an adequate supply of local information intended to meet local needs and interests. First, news, public affairs, and other informational programming is likely to be available in the current marketplace without ownership limits because it serves a need and attracts an audience. Wherever an audience can be attracted to a service, commercial support will follow- without the need for structuring rules.

And, this same result will occur regardless of the identity of the media owners. A look at any major market television schedule will immediately reveal that the group (usually non-local) owners provide far more local news and informational programming than their local competitors. This stems from such factors as capital support for the station operation and counter programming objectives. It is not uncommon for an independent local station to program off-network sitcoms against one, two and even three hour news blocks offered by group owned TV stations. Thus, any assumption that the local “independent” TV station will offer more news and information than its group owned counterpart is simply erroneous. This is not a new development. Rather, it has been a competitive fact of life in TV markets for some 40 years.

Competitive motivations have always and will properly continue to shape the schedules of local TV stations—not government policy objectives.

These same considerations are carried forward to local cable companies. Where a need is found to exist for a round-the-clock local cable news service, it will be provided by the cable operator or some other source. Again, this decision is solely driven by economics (demand for the service by local audience and advertisers) and not by structuring rules and policies. And such programming will not be reduced or eliminated by consolidation and efficiency innovations. Economic considerations driven by potential ad revenues and subscription fees will determine this decision.

5. Encouragement of Innovation : **Digital Conversion Fund Proposal**

At paragraph 68, the Commission requests comments on whether it should actively seek to promote innovation through its ownership rules, or merely avoid interfering with firms’ ability to innovate. It goes on to request , what changes to the ownership rules, if any, would promote innovation. (Notice, ¶¶68) CST has developed a unique proposal to address this inquiry.

The underlying thesis of these Comments is that with the conversion of the country’s fundamental electronic communications outlets to the digital standard, a unparalleled change

will occur. It will at long last be possible for the nation's viewers to access what will be a practically unlimited supply of programming, meeting all basic needs and interests.

This transformation will be possible with limited and highly restricted government regulation. Gone will be a system providing limited numbers of over the-air broadcast signals and analogue cable systems with as few as 12, 24 or 36 channels. Rather, in their place, will be a new system providing viewers with literally hundreds of networks and local and regional program sources, all seeking to deliver their programming to attract target audiences.

To achieve this electronic nirvana, it will be necessary to complete the digital conversion of the country's TV stations and cable systems. Furthermore, this conversion should also be completed by all local telephone systems to allow them to provide their customers immediate and full access to the Internet and other video services.

This wholesale digital conversion can only be undertaken where sufficient capital exists to fund the technical upgrade. And here is a problem. As outlined at the outset of these Comments, local TV stations, cable systems and telephone companies, especially in the small and mid-sized markets, lack the capital necessary to complete the conversion to digital. There is a need for innovative governmental policies to assist with this critical conversion of facilities.

One proposal has been placed before the Commission by LRT in the context of several proceedings involving Comsat Corporation,⁸ the government sponsored corporation founded in 1962 to lead the nation's of the world into the satellite age. At present, Comsat is being liquidated. LRT has proposed that all proceeds realized from the sale of Comsat assets be turned over to a Digital Conversion Fund.

Under the LRT proposal, these funds would be used to fund through loans or grants the digital conversion of small market, minority owned and public television stations and cable systems. LRT argues that the Comsat assets were purchased through revenues generated by a monopoly established by Congress and should therefore be regarded as property of the US Government. It also has noted that Comsat should be sanctioned for certain of its past actions, including serious legal violations.

⁸ See Intelsat-Comsat World Systems Proceeding, IB Docket 02-87.

In response to the Commission's request in this proceeding for policy proposals addressing innovation, CST has chosen to expand the LRT Digital Conversion Fund proposal as follows:

CST proposes that all licensees and cable systems which expand their operations as a direct result of the relaxation of the Commission's ownership rules be required, as a condition of their new license or permit grant, to loan a small percentage (2-4%, based on a graduated scale) of the dollar value of all expanded broadcast and/or cable facilities (resulting from purchase or construction) to the Digital Conversion Fund. The monies provided by the broadcast and cable organizations would be loaned by the Fund to qualifying small market, minority owned and public television broadcasters, cable systems and telephone systems. The loans would be for a term of 3 to 6 years, would carry interest at an accepted prevailing commercial loan rate and would be guaranteed by the US Government.

Under the CST proposal, those licensees and cable operators, which will benefit from the proper relaxation of the ownership rules, will assist – through business loans- that segment of the industry that is not at present able to complete the digital conversion of their transmission facilities.

CST believes this is an appropriate and useful proposal designed to bring about the completion of the digital conversion of our nation's primary telecommunications infrastructure at the earliest possible date. Without such a funding source, the only likely results of the present situation will be appeals for Congressional funding in the form of grants (already advocated by PBS stations), an inordinate delay in completing the conversion of facilities or the termination of operations by licensees and systems lacking ready access to capital. None of these alternatives should be viewed as acceptable.

6. Conclusion

CST believes that the fundamental changes in the nation's television and cable industries being brought about by conversion to the digital standard should result in the

wholesale elimination of the existing broadcast and cable ownership limits. In a world of hundreds of channels of information, each seeking to reach discrete segments of the audience, it is no longer necessary or advisable to maintain a system of rules designed to impose artificial structures upon the ownership of transmission facilities.

Since the founding of our republic, the First Amendment has guaranteed free speech to all citizens. Unfortunately, since the early days of broadcasting, the precious free speech gift of the founding fathers has been circumscribed due to the technical limitations of the radio and television, and later cable, transmission technologies. In a land of limitless voices and ideas, the citizens have for the last 75 years been served by electronic communications technologies which were by their very nature limited.

The entry of the digital transmission age holds the immediate prospect of removing these regulatory imitations. As a result, it should become a matter of highest priority to speed the introduction of digital facilities throughout America, and remove all governmental artificial restraints on the transmission of electronic content.

The policies which CST advocates herein, and the expanded Digital Conversion Fund proposal which it has put forth, will achieve this result.

Respectfully submitted,

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