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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: MB Docket No. 02-277, MM Docket No. 01-235, MM Docket No. 01-317, MM Docket No. 00-244

Dear Ms. Dortch:

Enclosed for inclusion in the record of the above-captioned proceedings, please find copies of the statements made by Ellen Agress, Dennis Swanson, Martin Franks and David Poltrack on January 16,2003 at the Forum on Media Ownership Rules held at Columbia University in New York, NY.

Ms. Agress is an executive with Fox Television Stations, Inc. and Fox Entertainment Group, Inc. (together "Fox"), which between them own and operate 35 full-power television stations and the FOX broadcast network. Messrs. Swanson, Franks and Poltrack are all executives with Viacom, which owns the CBS and UPN broadcast networks and the owned and operated television stations of the Viacom Television Stations Group. Fox and Viacom filed comments in these proceedings on January 2, 2003, together with National Broadcasting Company, Inc. and Telemundo Communications Group, Inc.

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If you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

John C. Quale

Enclosures

Forum on Media Ownership Rules
Kernochan Center for Law, Media and the Arts
Columbia University School of Law
January 16,2003
The Media Ownership Rules: Overview and Legal Issues

Statement of
Ellen S. Agress
Senior Vice President, Fox Entertainment Group, Inc. and Fox Television Stations, Inc

Good morning. My name is Ellen Agress and I am Senior Vice President of **Fox** Entertainment Group and Fox Television Stations. I appreciate this chance to speak to you in connection with the FCC's momentous opportunity to align its oversight of media ownership with the realities of the modem world, and in doing so provide broadcasters with the opportunity to compete effectively in today's ferociously competitive marketplace.

The FCC has embarked on a comprehensive review of all its broadcast ownership regulations, some of which were adopted over 60 years ago. In its *Notice* cf *Proposed Rulemaking,* the Commission correctly formulates the central issue in the rulemaking proceeding: can it justify retention of the ownership regulations given the dramatic increases in competition evident in today's media marketplace? The answer to this query clearly is "no."

The Commission's *Notice of Rulemaking* also correctly recognizes two factors that must guide and shape its deliberations on this central issue: a radically changed media marketplace and a mandate from both Congress and the courts for a change in the way the FCC regulates that marketplace. Section 202(h) of the 1996 Telecom Act has been interpreted by the D.C. Circuit to carry "a presumption in favor of repealing or modifying the ownership rules." Moreover, the Court has made it clear that FCC ownership regulations can no longer be based on supposition, unsupported assumptions, or visceral and emotional reaction to a change in long-standing regulations. Instead, the FCC must, based on real facts about the media marketplace and clear-headed analysis of those facts, determine whether the marketplace provides enough competition to protect and advance its policy goals – namely competition, diversity and localism. Fox believes that when today's marketplace is empirically examined and rationally analyzed it will compel the conclusion that no regulation of media ownership is required beyond the proper application of this country's antitrust laws.

Together with NBC/Telemundo and Viacom, Fox filed extensive comments in the FCC's rulemaking that support this call for deregulation with hard data and thorough economic analyses. Obviously, I don't have time to recap the contents of that filing this morning, but I would like to make at least **a** few of the comments' most salient points:

- The overwhelming weight of the evidence demonstrates that today's vast and diverse media marketplace provides more than enough competition to ensure that the Commission's policy goals will be met. To illustrate the explosion of media choices that has occurred over the last 40 years in both large and small communities, our comments examine two media markets: Washington, D.C. (DMA #8) and Burlington VT/Plattsburgh, *NY* (DMA #91). Since 1960, the number of television and radio outlets in Washington has nearly tripled. The number of neighborhood/suburban newspapers has quadrupled and the number of local magazines has gone from zero to 25. In addition, D.C. residents now have access to 150+ cable channels (including a 24 hour local cable news channel) and 300+ DBS channels, choices that didn't exist in 1960. The explosion of media options has been no less dramatic in small cities like Burlington/Plattsburgh, where today residents can turn to any of 45 TV and radio outlets (as compared to

17 in 1960), the same number of cable, DBS and national magazine offerings as Washington, D.C. residents enjoy, 2 metropolitan daily newspapers, four times as many neighborhood/suburban newspapers as in 1960, and 18 local monthly magazines. In addition, the impact of the Internet on the marketplace of ideas in both of these communities cannot be overstated. The Internet has created a readily accessible platform for the dissemination of ideas, both popular and unpopular. It allows continually updated information to flow freely to the consumer and, perhaps more important, empowers the consumer to select the content he or she wants at any time. And the Internet is available to virtually all Americans. Sixty percent of the population has Internet access at home, sixty-six percent has Internet access at work and there is free access at schools and libraries. The price of an Internet-ready computer is comparable to the cost of a television set and Internet access is widely available for less than $10/month.

- Accompanying the Fox/NBC/Viacom comments is the statement of renowned economist, Dr. Bruce Owen. This statement demonstrates that regulation of the broadcast industry's ownership structure is unnecessary because proper application of the antitrust laws, which prevent undue concentration in *economic* markets, will prohibit a combination of media outlets long before there is any threat to competition or diversity in the far broader "marketplace of ideas." Dr. Owen's statement and our comments make several additional and important points:
    - First, the Commission's ownership regulations traditionally have been based on the notion that promotion of outlet diversity (that is, control

of media outlets by a variety of independent owners) advances viewpoint diversity. But empirical evidence and sound economic theory fail to support this link. Multiple owners have incentives to diversify both programming and viewpoints, and do not speak with a single, monolithic voice.

- Second, affiliated stations that are owned by one of the four broadcast networks provide substantially more local news programming than affiliates that are independently owned. And network-owned stations preempt network programming to the same extent independently-owned stations do, and actually preempt more often for local news programming. The record before the Commission thus demonstrates that its ownership rules not only fail to foster the goals ofdiversity, competition and localism but are often counterproductive.

- Third, the Commission's historical focus on news and public affairs programming as the sole measure of viewpoint diversity fails to account for the contribution of entertainment programming to the public debate on important issues and moreover is constitutionally suspect. Entertainment programs on the broadcast networks such as *Will and Grace, Boston Public, All in the Family, Murphy Brown* and even the late night talk shows like *Leno* and *Letterman* often focus attention on important issues and have even changed public attitudes. Talk programming like *The O'Reilly Factor* and *Donahue* on cable represent yet another source of tremendous viewpoint diversity –

often within the same program. News magazines like *60 **Minutes*** and *20/20* clearly contribute to public discourse and viewpoint diversity. The Commission must therefore include not only all sources but all types of content in its assessment of the media marketplace.

- Fourth, the Commission should stop ranking media outlets according to their popularity with consumers or based on surveys that report on which media consumers "principally rely." In the marketplace of ideas, what matters is the number of alternative information outlets available to the public, not the current popularity of each outlet, much less the transmission technology by which the ideas are communicated. The "broadcast-centric" focus of the Commission's historical media regulation makes no sense in a world where cable is achieving higher ratings than broadcasters and where the Internet played a crucial role in the downfall of a Senate majority leader and in breaking the story that led to a President's impeachment.

In *summary*, continued regulation of the broadcast media, only one sector in a vast media universe, unfairly and unnecessarily constrains very able and effective competitors and stifles innovation. The dictates of the 1996 Act mandate repeal of all the Commission's ownership rules. The Commission can safely rely on the antitrust laws to ensure that its policy goals are well-served. If the Commission harbors any residual doubt as to the efficacy of competition laws, it should only consider regulation that would serve as a "safety net" for outlet diversity. Any such rule should be technology-neutral, and should take into account *all* modem media, including the Internet, cable/DBS, weekly newspapers and regional magazines, each of which would be given equal weight as a source of diversity.

That concludes my prepared remarks. Thank you again for giving me the opportunity to participate in this panel.

Forum on Media Ownership Rules
Columbia University School of Law
January 16,2003
Statement of Dennis Swanson,
Executive Vice President and COO, Viacom Television Station Group

Hello, my name is Dennis Swanson, and I am the Executive Vice President and Chief Operating Officer of the Viacom Television Stations Group. In my 40+ years in this business I have worked for Tribune Broadcasting in Chicago, NBC News when the company was owned by RCA, ABC when it was owned by ABC, when it was owned by CapCities ABC and when it was owned by Disney, NBC now owned by GE and most recently, my present position with Viacom. I appreciate the opportunity to share with you some insights into the way network owned-and-operated station groups in general, and Viacom's stations in particular, have made great contributions to the Commission's goals of competition, localism and diversity in numerous television markets across the United States.

Viacom owns and operates ***39*** television stations; 20 CBS; 18 UPN and 1 independent station. They are in markets both large and small – from the nation's biggest designated market area: New York, to the 69th-ranked DMA: Green Bay, Wisconsin. All of these stations --except for one in Los Angeles, which is independent-. are affiliated with either the CBS or UPN networks. We also operate duopolies in eight markets. Throughout our markets, Viacom has a proven record of commitment to local news and information programming. We are extremely proud of the leading role our stations have taken in providing their communities with content targeted toward the needs and interests of local citizens.

Nowhere has this effort been more obvious than in our commitment to local newscasts. In fact, Viacom's two stations in Los Angeles together produce 61.5 hours of regularly scheduled local news each week – the most of any duopoly in the country. In Philadelphia, Viacom added 15 hours of local news per week since creating a duopoly. We've also increased the total amount of local news in Pittsburgh by 8.5 hours a week since forming a duopoly. In both markets, Viacom's stations air more than 37 hours of regularly scheduled local news each week. Viacom has launched a new 10 p.m. newscast on one of the stations in our Miami duopoly, while in both Boston and San Francisco, we've expanded our news output by 3.5 hours per week since the formation of duopolies. The numbers tell a similar story in many of our non-duopoly markets, such as Minneapolis, Baltimore and Austin, where Viacom has increased the total amount of local news in recent years. We did reduce our local news in Detroit recently mainly because of the affiliation switch a decade ago, we have never been able to overcome our circumstances. However, CBS News remains on WWJ-TV seven days a week, and we've added local news in WKBD-TV. Its produced by Scripps Howard.

We are also extremely proud of the quality of Viacom's news programming, and of our broadcast journalists, producers and news directors who have achieved such a high measure of success in recent years. As part of the comments Viacom submitted in the Biennial Review Proceeding, we included a detailed chart listing page after page of the numerous awards our stations have won in the last two years alone.

The most fundamental element of Viacom's commitment to its communities is that its local programming is truly *local*. In view of the substantial efficiencies generated by group ownership, the vast majority of television stations in the United States – both network-owned and affiliates – are licensed to group owners who are headquartered in, at most, only one of the markets in which they own a television station. As a result, group owners must put in place and rely upon local managers who are attuned to the needs and interests of local viewers. Viacom takes this relationship very seriously. **As** Mel Karmazin, Viacom's President and Chief Operating Officer, has told Congress; it is vital that "TV stations determine locally how much news to air, what stories are run, and when they are aired. Our stations' news directors have complete freedom locally. This is a fundamental CBS policy. And it is good business." I've always been puzzled when people argue that my group of network-owned stations is somehow "less attuned" to local tastes and needs just because we are headquartered in New York. There is no reason to believe that network-owned station groups are less capable of sensitivity to local needs than are affiliate station groups based in, say, Atlanta.

Indeed, Viacom knows that it is critically important for local managers, who have the closest links to their local communities, to be given the discretion to ensure that their stations are meeting the needs of viewers in their communities. We recognize that our bedrock commitment to local viewers starts with truly local content. At Viacom, we feel strongly that each of our local communities needs to be treated individually. That is why we hire capable local managers, and trust them to ensure that their stations provide the types of programming best suited to their viewers' needs and tastes.

It has been suggested to the FCC that network-owned stations have less inclination and willingness to preempt the network programming feed than independently-owned affiliates. The facts, however, simply do not bear this out. To the contrary, the presence of attentive local managers with local discretion has resulted in network-owned stations developing a record of preempting the network programming feed that is substantially similar to the preemption record of independently-owned affiliates. To the degree that there is any difference at all between network-owned and affiliate station preemptions, it's largely due to the higher preemption rate by affiliates for paid programming and telethons. By contrast, network-owned stations – including Viacom's – preempt more often than affiliates for both news and sports programming. Just this past weekend in Pittsburgh we added our own pre-game Steelers-Titans show preempting a CBS sports program and we added an elongated post-game show that necessitated preempting CBS-TV in Primetime. Rather than focus on preemptions that are simply designed to benefit the bottom line, Viacom gives its managers the ability and responsibility to preempt the network feed for local programming that is actually of greater interest and importance to local viewers. In any event, it's worth pointing out that both network-owned stations and affiliates preempt less than 1 percent of prime-time programming each year.

In light of all of this, there can be little doubt that network-owned stations have taken a leading role in committing to local news and information programming in local communities. But you don't have to take our word for it. Empirical studies conducted both by the FCC's Media Ownership Working Group and by the renowned economist, Dr. Bruce Owen, clearly confirm statistically everything that I have told you informally. In particular, the FCC's Study #7, *The Measurement of Local Television News and Public Affairs Programs*, concluded that network-owned stations outperform affiliates when it comes to local news programming. A study conducted for Fox, NBC and Viacom by Dr. Owen and his team at Economists Incorporated similarly found that network-owned stations carry *significantly* more minutes of local news and public affairs programming than affiliates.

To summarize, I'd just like to reiterate how seriously Viacom takes its obligation to provide vital local programming to all of the communities in which we own television stations. Viacom's dedication to local programming has produced tangible results. We are proud that our stations are adding local news in so many communities, and that our professionals are being recognized for their journalistic excellence. Viacom, together with the other major networks, recognizes the crucial role that local stations play in every community across the country, and we remain steadfastly committed to responsible corporate citizenship in all of our markets. I do not find it at all surprising that the empirical data shows that network-owned stations provide more local news and information programming than affiliates. That's why we have urged the elimination of outmoded regulations like the national television ownership cap, which prevents Viacom from bringing the benefits of its superior commitment to local news into additional markets.

Opening Statement for
David F. Poltrack
Executive Vice President, Research and Planning, CBS Television
At the
FORUM ON MEDIA OWNERSHIP RULES
Columbia University Law School
January 16,2003

Good afternoon. I am David Poltrack, Executive Vice President, Research and Planning for CBS Television. Thank you for the opportunity to share with you my perspective on the television programming issues related to the deregulation of the FCC's broadcast ownership rules.

Several of those addressing you today are not only opposing the deregulation of the FCC's broadcast ownership rules, they are proposing the reversal of the 1993 elimination of the Financial Interest and Syndication Rules. While I disagree with their position, I welcome the opportunity to discuss the impact, to-date, of the elimination of these rules on the television programming activities of the broadcast networks. I believe that this discussion will not only demonstrate the positive results of the elimination of the fin-syn rules; but also serve to demonstrate the potential benefits from further deregulation.

The best way to frame this discussion is to look back at the period just prior to the elimination of the rules and analyze what has changed in the network television programming market since that time. Before you today are representatives from the creative community, from the advertising industry and from the broadcast industry. These individuals are speaking on behalf of their sector and are focusing on how that sector will either be harmed by or benefit from the proposed deregulation. However, in your deliberations, the key constituency is the viewing public. How will the public be served by this deregulation?

I would like to devote the remainder of my allotted time to a demonstration how the public has been served by the elimination of the Financial Interest and Syndication Rules.

First of all, the number of hours that the average individual spends watching television has increased fourteen percent, from 4.02 hours during the 1994-1995 broadcast year to 4.58 hours during the 2000-2001 broadcast year, the most recent year for which Nielsen Media Research has reported this statistic. I would argue that this increased level of viewing demonstrates that the public is responding favorably to the enhanced quantity and diversity of programming offered today.

One reason that the viewer is watching more today is the increased amount of program options from which to choose. In 1995 the average viewing home received forty channels of television programming. Shortly, Nielsen will release the number for 2002 and that number will have passed the 100 level, 102 to be exact. The four major broadcast networks represent just four percent of the average viewer's programming choices. Even if you combine all of the cable television networks owned by the parent companies of these broadcast networks' with these companies' broadcast holdings yon only account for approximately one quarter of the average viewer's choices.

Second, the number of different programs aired by the television networks in a season has not changed significantly. The four networks aired 129 different regularly scheduled programs during the 1994-1995 television season. These four networks aired 134 different regularly scheduled programs during the 2001-2002 season and have already aired 101 different programs in the first half of this season. And, in response to the growing competition from cable television, the networks are increasing the number of original programs each summer.

So the networks, freed from the constraints of the Rules, are offering viewers more, not less, choice today.

Back in the early 1990s, the proponents of the fin-syn rules argued that, without these rules, the networks would favor those programs in which they had a financial interest. The networks allegedly would keep these programs on the air, even if they were attracting only a marginal number of viewers, in order to recoup their investments. Those favoring the Rules claimed that this would prevent more deserving programs from reaching the viewers.

This has certainly not been the case. In the years leading up to 1993 the networks returned approximately one-third of the programs introduced each season for a second season. For the last three seasons that retention has remained at the one-third level.

It is generally considered necessary for a program to complete three seasons on a network primetime schedule to be a candidate for syndication. Those opposing the elimination of the Rules in 1995 claimed that the networks would keep programs in which they had a financial interest on the air long enough to achieve syndication potential, even if those programs were marginal performers. In the years immediately preceding the sunsetting of the Rules in 1993, eight to ten of the series introduced each year stayed on the schedule for three seasons. For the 1997 through 2000 seasons the average was just seven programs. There is no evidence that the networks are keeping more marginal series on their schedules now that they have financial interest in more of these series.

The network television program market is an intensely competitive market. Only the strongest programs survive. There is too much at stake for the networks to favor marginal programs just because they have a financial interest in them.

So far, our survey of the network program market has not revealed any substantial changes in the composition of that market from the viewers' perspective. However, there has been one significant change in the composition of the network primetime lineups.

Of the 129 different programs on the four networks' schedules for the 1994-1995 season, almost one-half, forty-six percent, were situation comedies. This season, only thirty percent of the programs introduced to-date have been situation comedies. Movies have also lost some ground, declining from six percent of the 1994-1995 lineups, to five percent this season. Newsmagazines remain fairly stable increasing slightly from eight percent to nine percent of the total.

On the plus side, dramas have grown from thirty-five percent of the primetime lineups in 1995 to forty-one percent this season. However, the programming type that has made the biggest jump is reality programming. This form of unscripted programming has grown from five percent of the network primetime schedules in 1995 to fifteen percent this season.

There is a chorus of commenters in the FCC's ownership proceeding---most of whom are in the business of producing sitcoms and movies of the week, the two genres being partially displaced by reality programming — that are regularly decrying this change in the composition of the television programming landscape.

It may, therefore, come as a surprise to you that I am going to cite this programming trend as an example of how the public is today benefiting from the elimination of the Financial Interest and Syndication Rules. Let me explain.

The reason that there are more reality programs on the network schedules is because the public wants more of this type of program. From 1995 until this season, in the face of an extraordinary increase in competition, the average network program rating has declined **33%.** During that same period, a period during which the number of reality programs more than doubled, programs in this genre only declined nine percent in average rating. This season there are currently three reality programs in the Top 10 for Total Viewers. Viewers like reality programs.

So why did we not have more reality programs on the network schedules before 1995? The answer is because of the Financial Interest and Syndication Rules. Under these rules the networks could not develop these programs on their own. They had to find outside programmers willing to supply them. However, the networks' primary program suppliers were the major studios. These studios were not interested in developing programs in this genre because there was no aftermarket for them. Once the Rules were eliminated, the networks, looking for relatively inexpensive programming for the summer, experimented with reality programs. They soon discovered a substantial appetite for these programs.

The fact is that, in many cases, the networks take financial interests in programs only after failing to find outside parties willing to take on the burden of the early year deficits given the increasingly unlikely prospect of a program having a successful network, and syndication run.

Many of the proponents of retaining the fin-syn rules back in the 1990's claimed that the elimination of these rules would result in a financial windfall for the networks. It is estimated that only two of the four major networks and neither of the two new broadcast networks made a profit on their primetime schedules in the just completed 2001-2002 broadcast year. What these proponents of the rules characterized as a windfall has turned out to be merely self-preservation.

Each of the networks now has a new development unit looking for “alternative” program options. Having tapped into an unmet demand for the reality program genre, the networks are experimenting with a greater diversity of program forms.

It should be noted that, along with this diversity in program forms, there also continues to be a diversity of creative voices represented on the network primetime schedules. The 1995-1996 CBS primetime schedule involved thirty-eight distinctive production entities. The 2002=2003 schedule involves forty-three production entities.

Also, this increased diversity has not come at the expense of quality. Most critics acknowledge that programs such as CSI, THE WEST WING, ALIAS, 24, EVERYBODY LOVES RAYMOND, WILL & GRACE and MALCOLM IN THE MIDDLE are comparable to the best programs of television’s past.

The message is clear. The diversity of television programming, prior to 1995, was constrained by the economic structure imposed by the Financial Interest and Syndication Rules. The elimination of these rules has freed the networks to invest in the development of new program forms. Whether or not you personally enjoy these programs, a substantial number of viewers do. Therefore, I would argue that the public has benefited from the elimination of the rules and would certainly not be served by the re-introduction of these Rules. And, bottom line, it’s the public that really counts.

In conclusion, when we analyze the primetime network television program market, before and after the elimination of the Financial Interest and Syndication Rules, the only substantial change that we find is a greater diversity in the types of primetime programs offered to viewers. While the growth of reality or “alternative” programming has adversely affected many elements of the creative community designed to serve the old network programming model, it has also allowed new players to enter the market. The success of these new players has added diversity to the market. It has also stimulated the networks to invest in the search for new and different program forms.

A free market system, with a significant number of competitors and consumer options, will best serve those consumers. The television market of today is certainly one of many competitors and myriad consumer options. The viewers’ choices have more than doubled since 1995. The time has come to remove the outmoded and unnecessary regulations that prevent it from being a truly free market.

Thank you

Statement of Martin D. Franks, Executive Vice President, CBS, and Senior Vice President, Viacom at the Columbia University Law School Forum on the FCC's Media Ownership Rules
January 16,2003

Good afternoon. I am Martin Franks, Executive Vice President of CBS, and Senior Vice President of Viacom. Thank you for inviting me to be here today to share my views on the FCC's media ownership rules from the perspective of 16 years in the broadcast network television business, all with CBS and now Viacom.

I am especially pleased to he part of this panel --the last one of the day-- so that I can provide a bit of perspective on what we've heard today, as well as on other arguments raised by those who oppose deregulation of the FCC's broadcast ownership rules.

Before I do, let me just say that it's no secret that Viacom and CBS would like to see elimination or deep deregulation of the Commission's broadcast restrictions. It is utterly unsupportable and antiquated that in the dawn of the 21st century, when Americans are bombarded with media choices via technologies never even dreamed of even a decade ago, let alone 60 years ago when some of the rules were first adopted, that broadcasters –an ever diminishing sliver of the booming media marketplace-- should be handcuffed in their attempts to compete for consumers. So, we very much appreciate the Commission's comprehensive review of these restrictive and, let me stress, anti-competitive rules.

I think FCC Media Bureau Chief Ken Ferree characterized this ownership proceeding best when he described it as Copernican in scope, one that challenges the generations-old axiom that broadcasting is the center of the media universe. You will recall from your junior high science class that before Copernicus, the Western world believed in the Ptolemaic theory that the universe was a closed space bounded by a spherical envelope beyond which there was nothing, and that the earth was at the center of this universe. Like followers of the parochial and dead-wrong theories of Ptolemy, those commenters in the FCC ownership proceeding opposing broadcast deregulation cling tenaciously to an outmoded and unrealistic view of the media marketplace as a small universe comprised of a finite set of traditional media outlets –made up of broadcast radio and TV, newspapers and, maybe, cable TV. No DBS, no satellite radio, no magazines, no weekly newspapers, no hooks, no movies, no live theater. As if there is no Internet. And certainly no emerging media platforms, like third generation wireless and ones we don't even yet know about. This unrealistic view prevails in the face of clear evidence to the contrary.

In the '96 Act, Congress mandated that those wishing to preserve the broadcast ownership rules are required to prove that the rules are still necessary in light of competition. Viacom has joined with FOX and NBC in submitting substantial and compelling economic and factual evidence which cannot he ignored ***or*** *refuted* by the proponents of continued regulation.

As I will point out, those who favor maintaining the regulations have failed to carry their burden, and the Commission, therefore, must repeal or modify the broadcast ownership rules.

To begin, let's look at the national television station cap. This rule, which limits ownership to TV stations serving *35%* of the nation, is supported most ardently by network affiliates, known collectively as NASA, the Network Affiliated Station Alliance, and their trade association, the National Association of Broadcasters, or NAB. They proffer three primary arguments –I call them myths– against deregulating this rule, all of which are either speculative or refuted with empirical evidence we have provided in our comments. First, NASA/NAB argues that affiliates, as opposed to stations owned by the networks, are "local" and, therefore, are more "in tune" with local viewers. Simply not true.

For a number of years, the pattern of television station ownership in this country has been ownership of multi-station groups by large corporations headquartered in a distant city. Those station groups not owned by network companies own stations all over the country, frequently affiliated with more than one network in order to hedge their bets on the relative success or failure of any one network in any given year. Just like Viacom, they are corporate station owners headquartered in a city far from most if not all of those stations. Thus, they are no more "local" in those cities where they own TV stations than is Viacom. For example, one commenter in the FCC's ownership proceeding opposed to raising the cap is an extremely well run corporation, Cox Enterprises, the owner of 15 TV stations, a number of which are CBS affiliates, 79 radio stations, cable systems in 22 states, and 17 daily and 26 weekly newspapers. It is headquartered in Atlanta. It owns a station in Atlanta, but also ones in markets as far flung as Dayton and Seattle. Yet, like Viacom, it works hard to know what viewers want in each market where it has a media outlet. We all have to do so. It is a business necessity. Localism is good business.

Also with regard to the station cap, if the Commission does not permit expanded station ownership by network companies, the result could be further erosion of free over the air television's ability to keep high value news, sports and entertainment content on free TV. Networks invest billions of dollars in that programming, but most of the return on that investment is realized at the station level. For my entire network career, the prevailing economic model has been that only two of the four networks are profitable in any year, whereas margins at almost all stations affiliated with the four major networks remain robust. If networks are precluded from realizing more of that station revenue, inevitably, networks' ability to continue their multi-billion dollar programming investments will diminish, and more and more programming will exit the free over the air sector for various pay windows.

Let's look at NASA/NAB's second argument, or, in my terms, myth #2. NASA/NAB argues that affiliates provide more local news than do network-owned and – operated stations. That is just false. In fact, in a study commissioned by Viacom, FOX and NBC and submitted to the Commission, Economists lnc. found that TV stations owned by networks provide approximately *30% **more*** news and public affairs minutes per week than do affiliates. That's a statistic that is consistent with the FCC's own study.

Argument, or myth, **#3.** N A S M A B contends that affiliates preempt network programming more often than do O&Os in order to substitute programming more closely attuned to the interests of local viewers. False again! In another study commissioned by Viacom, FOX and NBC, Economists Inc. found that affiliates do preempt network programming ever so slightly more than do O&Os. But the difference in preemption time cannot be attributed to affiliates caring more about their local viewers than their own bottom lines. Rather, as the study found, any difference between the pre-emption levels of O&Os and affiliates is largely due to higher preemptions by affiliates for paid programming and telethons, not local public affairs programs and high school football games some of their more far fetched claims would have you believe.

Argument, or myth, #4. N A S M A B says that raising the cap will leave affiliates in need of protection in their network relationship. Please. Will you explain to me how wealthy and powerful companies like the New York Times, the Washington Post, Belo, and Hearst-Argyle need protection from their networks? Broadcast networks rely almost exclusively on advertising revenues for their survival, and a prominent feature of the pricing that broadcast networks can still charge despite declining audience levels is that they provide advertisers access to all U.S. households in 212 television markets virtually simultaneously. If a network cannot maintain affiliations in all 212 of those markets, we lose our unique address in the advertising sales marketplace. Despite the inevitable tensions in the network-affiliate relationship, no network can afford to risk losing affiliations in even one market, much less 10 or 20 or 50.

In 1994, when FOX outbid CBS for the National Football League broadcast contract, 15 major market affiliates defected to Fox, almost unthinkable at the time given Fox's much less full service network status than it is today. Replacing those lost affiliations took CBS several years, and in some markets, we have not recovered fully from the resulting upheaval. No network is going to risk a repeat of the chaos that CBS brought upon itself in that period by not maintaining productive business relationships with its affiliates.

As to the last of the arguments, or myths, NASA/NAB argues that retaining the cap furthers competition in the program production market because affiliates are more likely to balk at networks' choosing their own programs over "higher-quality" programs developed by independent producers. The truth is that the interests of affiliates and networks as station owners are closely aligned in this regard. When it comes to network programs, both sides are happy with whatever network programming –regardless of critical acclaim-. garners high ratings so that there is a solid audience leading into the local news programs of both where they get to keep *all* of the monies brought in by *all* of the ads airing in their local news. Besides, we have seen through the Disney/ABC experience last season that the marketplace is the best check on a network incestuously filling its schedule with only its own programming. In the end, a network must seek out the programming that it believes will best attract viewers regardless of who owns or produces it.

Speaking of programming, there are some commenters in this ownership proceeding who would like to take advantage of the moving vehicle the Commission's proceeding presents by seeking quotas on broadcast network schedules for non-network-owned programming. The reason? They say there is a lack of diverse programming in the prime-time television marketplace! Facts -- even a brief look at TV listings will show that consumers today have more choice than ever before –dramas, sitcoms, reality programs, how-tos, documentaries, movies, news, game shows, children's, music and on and on. Far more than during the so-called "Golden Years" of television. Consumers and the public interest are being served. The complaint by these commenters is really about money. These "independent" commenters include huge money-making operations such as the international media corporation Sony Pictures Television, the syndicator/distributor Carsey-Werner, and one of the handful of now heavily consolidated advertising agencies left in this country MediaCom. Shifting money to their side of the ledger, which is really their goal, does not equal service to the public interest.

If this antediluvian desire to return to the dark ages of the Financial Interest and Syndication Rules, which were substantially vacated by the federal courts a decade ago, gains any traction, perhaps we should also mandate a retreat from the 500 channel universe to the three network model. It would make as much sense and have the same less than salutary public interest impact.

As for the local TV ownership rule, commenters opposing common ownership of more than one television station in a market allege that the public has experienced a loss of diversity and of local television news as a result of the previous relaxation of the rule. Except that bears no relation to the facts. Economic theory and experience show that the common owner of more than one television station has a greater incentive to diversify its programming offerings than do single owners. Economists Inc. studied existing duopolies and LMA relationships and found that stations that are part of a commonly owned local station group are significantly more likely to carry local news programming.

Why would you pay the expense of operating two outlets and not program them to different audiences so to maximixe audience and revenue?

Economists Inc. also studied the number of stations carrying local news and found that there are numerous television stations not ranked among the top four in a market that carry local news programming, and that the average household in the United States lives in a market with 6.1 sources of local broadcast television news. Thus, the FCC's current rule limiting combinations among top-four-ranked stations in a market, premised on the assumption that only the top four-rated stations are likely to carry news, is not valid. In fact, in large markets, where diversity is not in question, one owner should be permitted to own three TV stations. The Los Angeles market has at least 20 TV stations licensed there. The Boston market at least 17. And the Miami market has 14. This does not even include the plethora of radio, cable, DBS, and newspapers in those markets, which, at a minimum, should be included in any rule's voice count. In a world where rules *today* permit the only cable system in a market –carrying well over 75 channels-. to own up to two television stations in that market, it is arbitrary to restrict a broadcaster from owning only two TV stations there.

Finally, let me quickly touch on radio ownership. Lately, radio consolidation has become the poster child against deregulation, the so-called "canary" signaling trouble in the mines of ownership rules relaxation. It's time for a reality check. In 1996, Congress eliminated the national cap on radio ownership and also opened up ownership at the local level. Despite this deregulation, the radio sector is the *least* consolidated media sector today. Based on the revenue share of the various media sectors, radio ranks dead last. And if you look at Viacom's Infinity Broadcasting, the second largest radio owner (in terms of revenue) with 185 radio stations, you will see that its holdings constitute a mere 1.67% of the nearly 11,000 commercial radio stations in the country.

Nor has consolidation adversely affected diversity. As the FCC's own studies show, song diversity has remained stable between 1996 and 2001 as has the variety of radio formats available to consumers. And a study conducted for us and other radio owners by Professor Jerry Hausman of M.I.T. found that consolidation of radio ownership following the 1995 Act did not lead to higher advertising rates. Please, please listen to the canary and you'll find he's healthy and singing a happy tune.

In summary, it is important to avoid the myths and focus on the realities. If broadcasting was the center of the media universe when I joined CBS 16 years ago, and I am not sure it was even then, certainly it is not anywhere near that level today. The challenge to maintain free over the air network television is enormous, and there is no guarantee that it can survive long term. To continue to handcuff it in the competition to compete for consumers is risks hastening the day in which television viewers pay for all they watch. Instead, allow all broadcasters to compete vigorously to permit free television to flourish for a long time to come. What could be more in line with the viewing public's true interests?

Thank you.