

**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
)	
Cross-Ownership of Broadcast Stations and Newspapers)	MM Docket No. 01-235
)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets)	MM Docket No. 01-317
)	
Definition of Radio Markets)	MM Docket No. 00-244

**REPLY COMMENTS OF
GRANITE BROADCASTING CORPORATION**

Granite Broadcasting Corporation (“Granite”), by its attorneys, pursuant to Section 1.415 of the rules of the Federal Communications Commission (“Commission”), respectfully submits the following reply comments in the above-captioned proceeding. Granite, the country’s largest minority-owned television broadcast group, is a publicly traded company that has owned and operated small to mid-sized market broadcast televisions stations since the late 1980s.¹ Granite’s

¹ Granite owns and operates eight (8) network-affiliated television stations in geographically diverse markets. The company's station portfolio consists of three NBC affiliates, two ABC affiliates, one CBS affiliate and two major market WB affiliates. Granite’s stations are located in the following markets (market size rank in parentheses): Duluth, Minnesota – Superior, Wisconsin (135); Peoria – Bloomington, Illinois (116); Ft. Wayne, Indiana (104); Syracuse, New York (81); Fresno, California (55); Buffalo, New York (47); Detroit, Michigan (10); and San Francisco – Oakland – San Jose, California (5).

reply comments focus solely on retention of the UHF discount for the purpose of calculating an entity's compliance with the national television ownership rule.² The Commission sought comment on “the relevance and continued efficacy” of the UHF discount in light of the current media marketplace.³ Contrary to comments submitted in this proceeding in support of repealing the UHF discount,⁴ Granite submits that in considering whether to repeal the UHF discount, (i) the “necessary in the public interest” standard does not apply to the UHF discount because the UHF discount is not a rule restricting ownership; (ii) to the extent the Commission determines that the “necessary in the public interest” standard does apply to the UHF discount, the burden is on the Commission to demonstrate that repeal of the UHF discount is “necessary in the public interest;” and (ii) regardless of what standard of review applies, there is no basis to eliminate the UHF discount because the reasons cited in support of retaining the UHF discount in the last biennial review remain both valid and compelling.⁵

² The national television ownership rule states that no entity may own television stations whose collective national audience reach exceeds 35% of U.S. television households. 47 C.F.R. § 73.3555(e). Generally, national audience reach is defined as the number of television households in the designated market area (“DMA”) to which each of the entity’s stations is assigned. While VHF stations are attributed with 100% of the TV households contained in a single DMA, UHF stations are attributed with 50% of the households in each DMA. This 50% calculation for UHF stations is commonly referred to as “the UHF discount.”

³ 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, 17 FCC Rcd 18503, ¶¶ 130-31 (2002) (“2002 Biennial Review NPRM”).

⁴ Office of Communication, Inc. of the United Church of Christ Comments at 56-58; Children Now Comments at 3.

⁵ 1998 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, 15 FCC Rcd 11058, 11099-109 (2000) (“2000 Biennial Report”).

I. THE “NECESSARY IN THE PUBLIC INTEREST” STANDARD DOES NOT APPLY TO THE UHF DISCOUNT BECAUSE THE UHF DISCOUNT IS NOT A RULE RESTRICTING OWNERSHIP.

Commenters who urge repeal of the UHF discount do so based on the standard set forth in Section 202(h) of the Telecommunications Act of 1996 Act (the “1996 Act”). Section 202(h) of the 1996 Act provides that the Commission is required to determine whether its rules restricting the scope of media ownership are “necessary in the public interest” and shall repeal or modify any such regulation it determines to be no longer “in the public interest as a result of competition.”⁶ Granite submits that the “necessary in the public interest” standard of Section 202(h) does not apply to the Commission’s review of the UHF discount in light of the non-restrictive nature of the UHF discount. The Section 202(h) standard applies only to the Commission’s rules that prohibit or restrict ownership interests in an entity.⁷ The UHF discount, like the Commission’s attribution rules, does not itself “prohibit or restrict ownership of interests in any entity,” but rather determines what interests are cognizable under those ownership rules.⁸ In this respect, the UHF discount merely is one part of the Commission’s formula for determining how many viewers should be “attributed” to an entity for purposes of calculating its compliance with the national television ownership rule. Because the UHF discount does not, in and of itself, restrict or prohibit ownership, the “necessary in the public interest” standard of Section 202(h) does not apply to the Commission’s review of the UHF discount. Instead, the UHF discount need only be supported by the general public interest. As demonstrated further in

⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (“1996 Act”).

⁷ *2002 Biennial Review NPRM* at note 13 (noting that attribution rules are not subject to the biennial review process because they “do not themselves prohibit or restrict ownership of interests in any entity, but rather determine what interests are cognizable under those ownership rules”).

⁸ *Id.*

Part III, *infra*, there is no public interest basis for eliminating the UHF discount because the reasons cited in support of retaining the UHF discount in the last biennial review remain both valid and compelling.

II. IF THE “NECESSARY IN THE PUBLIC INTEREST” STANDARD APPLIES TO THE UHF DISCOUNT, THE BURDEN IS ON THE COMMISSION TO DEMONSTRATE THAT REPEAL OF THE UHF DISCOUNT IS “NECESSARY IN THE PUBLIC INTEREST.”

In the event the Commission determines that the standard of review under Section 202(h) applies to the UHF discount, the Commission should recognize that for rules that relax rather than restrict media ownership, the burden is on the Commission to demonstrate that tightening those rules is “necessary in the public interest.” Congress’s objective in the 1996 Act was to relax many of the Commission’s media ownership rules and to insist upon better justification of those media ownership rules Congress did not specifically repeal or modify.⁹ For those rules which Congress deferred to the Commission’s biennial reviews, Congress stipulated that retention of the rules was justified only if such retention was “necessary in the public interest.”¹⁰ Given this deregulatory directive, it would be incredulous to insist that Congress also expected the Commission to demonstrate that its rules *relaxing* media ownership limits were “necessary in the public interest.” Rather, as the United States Court of Appeals for the District of Columbia

⁹ *Fox v. FCC*, 280 F.3d 1027, 1027 (D.C. Cir. 2002) (“In the Telecommunications Act of 1996 the Congress set in motion a process to deregulate the structure of the broadcast and cable television industries.”). Congress’s deregulatory emphasis is evident in its repeal of the prohibition on common ownership of cable and telephone systems, its override of remaining limits on cable/ network cross-ownership, its elimination of national radio ownership limits, its relaxation of local radio ownership restrictions, its relaxation of the television dual network rule, and its directive to the Commission to eliminate the national television cap and increase the national audience reach cap.

¹⁰ 1996 Act, § 202(h).

Circuit has stated, relaxation or lifting of media ownership restrictions is presumed to be in the public interest.¹¹

To illustrate how the presumption in favor of relaxation of the media ownership rules is intended to operate, were the Commission to relax or eliminate the 35 percent national audience reach limit, it would not have to demonstrate that its decision was “necessary in the public interest.” Rather, it is the decision to retain the 35 percent limit that must withstand the scrutiny of the “necessary in the public interest” standard – relaxation or elimination of the cap is presumed to be in the public interest. Similarly, because the UHF discount operates as a relaxation of media ownership limits, it, too, is presumed to be in the public interest. Specifically, the UHF discount permits a single entity to hold an attributable interest in more television stations than it could hold without the UHF discount. Repeal of the UHF discount would operate as a further restriction on media ownership because the general effect of repeal would be to lower the number of stations any one entity could own before that entity would violate the national television ownership rule. Thus, the burden is on the Commission to demonstrate that repeal of the UHF discount – a move that would further restrict ownership – is “necessary in the public interest.” In sum, the Commission cannot repeal the UHF discount unless it is “necessary in the public interest” to make the national television ownership rule more restrictive than it already is. As demonstrated further in Part III, *infra*, the Commission cannot satisfy this burdensome standard because the reasons cited in support of retaining the UHF discount in the last biennial review remain both valid and compelling.

¹¹ Section 202(h) “carries with it a presumption in favor of repeal or modification” of the ownership rules. *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1042, 1048 (D.C. Cir. 2002); *Sinclair Broadcast Group, Inc., v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002).

III. REPEAL OF THE UHF DISCOUNT IS NOT SUPPORTABLE REGARDLESS OF WHAT STANDARD OF REVIEW APPLIES BECAUSE ALL OF THE REASONS CITED IN SUPPORT OF RETAINING THE UHF DISCOUNT IN THE LAST BIENNIAL REVIEW REMAIN BOTH VALID AND COMPELLING.

If the Commission is to modify or repeal the UHF discount in the instant proceeding, it must point to changed circumstances or provide a well-reasoned analysis in order to support a departure from its earlier rulings.¹² In its last biennial review, the Commission retained the UHF discount based on several sound rationales, each of which remains both valid and significant today:

THEN	NOW	RESULT
Approximately one-third of American viewers rely on over-the-air reception to obtain access to local television. ¹³	Approximately thirty percent of American viewers still rely on over-the-air reception to obtain access to local television. ¹⁴	No change – the UHF discount remains valid.
UHF stations face a greater difficulty in reaching over-the-air viewers and cable headends – thereby hindering their ability to obtain cable carriage – because of their weaker signal. ¹⁵	Due to inherent technical differences, the Grade B signal of a UHF station still does not reach as many viewers as a comparable VHF signal.	No change – the UHF discount remains valid.

¹² *Telecomm. Research and Action Ctr. v. FCC*, 801 F.2d 501, 518 (D.C. Cir. 1986) (“An agency’s view of what is in the public interest may change...[b]ut an agency changing its course must supply a reasoned analysis.”)

¹³ *2000 Biennial Report* at ¶ 35.

¹⁴ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighth Annual Report, 17 FCC Rcd 1244, ¶ 79 (2002).

¹⁵ *2000 Biennial Report* at ¶ 35.

THEN	NOW	RESULT
Because of the higher operating costs of UHF stations, particularly due to their higher power requirements, UHF stations remain under a competitive handicap warranting a 50 percent discount. ¹⁶	UHF stations still have higher power requirements and thus higher operating costs than their VHF counterparts.	No change – the UHF discount remains valid.
The fact that few, if any, group owners have replaced their VHF stations with UHF stations in order to take advantage of the UHF discount demonstrates that UHF and VHF stations are inherently different. ¹⁷	There is little to no evidence that group owners have engaged in VHF to UHF station swaps in order to take advantage of the UHF discount.	No change – the UHF discount remains valid.

Given this lack of changed circumstances, the Commission must find some other basis upon which to justify repeal or modification of the UHF discount. However, commenters who urge repeal of the UHF discount have provided no evidence to refute the foundational reasons for retention of the UHF discount in the last biennial review. Nor have they offered any convincing new reasons to support repeal of the UHF discount. The updated facts to which they point as justification for repeal of the UHF discount – carriage of UHF stations by multichannel video programming providers (“MVPDs”) – were known at the time of the last biennial review and have not changed significantly since that time.¹⁸ As a result, the Commission does not have a

¹⁶ 2000 Biennial Report at ¶ 35.

¹⁷ 2000 Biennial Report at ¶ 36.

¹⁸ In its last biennial review, the Commission stated that the UHF discount should be reevaluated in light of the transition to DTV in a separate proceeding “at such time near the completion of the transition to digital television.” 2000 Biennial Report at ¶ 38. There is no indication that review of the UHF discount in a separate proceeding at a time closer to the completion of the digital television transition is no longer appropriate.

factual record upon which it may base a decision to repeal the UHF discount, regardless of what standard of review applies, and the Commission therefore must retain the UHF discount.

IV. CONCLUSION

The Commission need not demonstrate that retention of the UHF discount is “necessary in the public interest” because the UHF discount is not a rule restricting ownership. Even if the “necessary in the public interest” standard does apply, retention of the UHF discount, like other relaxations of the media ownership rules, is presumed to be in the public interest. Finally, regardless of what standard of review applies, the UHF discount should be retained because each of the public interest reasons previously cited by the Commission continues to support retention of the discount. For all of the reasons stated herein, Granite respectfully submits that the Commission should retain the UHF discount.

Respectfully submitted,

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Dated: February 3, 2003

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