April 23, 2003

The Honorable Michael K. Powell, Chairman
The Honorable Kathleen Q. Abernathy, Commissioner
The Honorable Kevin Martin, Commissioner
The Honorable Michael J. Copps, Commissioner
The Honorable Jonathan S. Adelstein, Commissioner
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: 35% National Ownership Cap

Dear Chairman Powell and Commissioners Abernathy, Martin, Copps and Adelstein:

In its April 22 letter, NASA and NAB noted that discussions with Commissioners and staff identified certain issues relating to the 35% national television ownership cap that called for further clarification. In that letter, NASA and NAB showed that the evidence of record compellingly supports retention of the 35% cap. Today, we address three other issues as to which questions have been raised. These are summary responses, with more detail available in the NASA/NAB pleadings.

The differences for consumers in television service provided by independently owned affiliates and network O&Os. The facts on record show important differences for the American public between independently-owned affiliates and network O&Os in terms of preemptions, influence on the suitability of network program decisions, quality of news as measured by awards, and innovativeness. These differences are also supported by the economic analyses submitted by NASA and NAB on January 2, 2003, and February 3, 2003. The economic analyses point out that managers of network O&Os must serve the needs of their communities *and* the national business objectives of their large conglomerate parent companies that have nothing to do with and can fail adequately to take into account the needs of local communities. Managers of independently-owned affiliates are dedicated only to the former objective. While the networks are located only in New York and Hollywood, the headquarters of group owners are dispersed across the United States -- Chicago, McLean, Dallas, Atlanta, San Antonio, Fresno, Cincinnati, Montgomery, Des Moines, Detroit, and Richmond, for example (see Attachment B). As Congress realized in 1996 when it adopted the 35% cap, a critical mass of independently-owned affiliates is essential to preserving localism in the American system of broadcasting. There is ample evidence in the record that the 35% cap serves localism, and a stark lack of evidence that increased network ownership of stations would serve either localism or the public interest. The effects of independent affiliate ownership are far more pervasive and valued by the American public than is generally realized.

Should the cap be raised to boost network profitability? There is nothing in the record to support this rationale for raising the cap; yet we continue to hear that relaxation of the 35% cap is necessary for the continued health of the broadcast networks. (NASA and NAB agree that the networks provide important contributions to local television service, and independently-owned stations want the networks to be healthy and vibrant). However, by definition the profitability of the networks, as networks, would be unaffected by their owning more stations (except conceivably to the minimal extent that they would reduce preemptions below their very low existing levels -- a result that would be inconsistent with localism and the public interest). The networks have consistently refused to disclose the profits of their O&Os and their network operations combined, and because of the spin-off benefits of network programming to other businesses owned by the networks' parent companies, even those statistics would understate the value of the network product to the bottom line of these other business interests. Incidentally, strong local affiliates contribute mightily to the value of the network brand -- a fact that is often overlooked. The issue of network profitability and the extent of network ownership of stations are almost completely unrelated.

NASA makes the additional point that if increased network profits were a legitimate goal of the Commission, then the following additional questions would arise: What is the "correct" level of network profits? What record evidence exists to suggest what the "correct" level should be? Will the Commission and other parties be afforded, as they plainly should be, an opportunity to examine network financials to determine if the profitability claims of the networks can be sustained? How many more stations will it be necessary for the networks to own in order to achieve the "correct" level of profits? And if owning more stations will increase network profits and the Commission believes that to be a legitimate policy objective, then on what basis can the Commission deny a single network the right to own television stations in all of the nation's markets?

<u>Whether marketplace changes since 1996 justify relaxing or retaining the cap</u>. The networks' economist in this proceeding made much of the increase in media voices since 1996. But the growth in other media voices has little or no bearing on the localism policy that is the principal justification for the national ownership cap. The growth of the Internet, for example, does not affect affiliates' preemption of network programming or their ability to influence network programming to make it more sensitive to local community needs. Internet growth may affect diversity, but it does not meaningfully bear on competition and is not relevant to the principle of localism that underlies the cap. (This was the fatal flaw in the 1984 Network Report, as well.) Therefore, under the language of the 1996 Act, the growth of the Internet, or other media, provides no significant basis for eliminating or modifying the 35% cap.

The record, however, does contain evidence of developments since 1996 that relates to the issue of localism, and that evidence shows that the 35% cap is more necessary today than when Congress adopted it in 1996. The first set of developments has affected the structure of the industry and related industries. The networks now own 108 stations, compared to 49 in 1996. Additionally, the affiliates have described in factual detail the networks' rapid march toward vertical integration (especially program production) and conglomerate reach (cable programming, Internet services and other media ventures, like Fox's proposal to acquire control of DirecTV). The second set of changes, also documented in the record, is behavioral: the decline in affiliate preemptions, more restrictive affiliation agreement provisions (cited by only NASA), and a dangerously reduced ability of affiliates to influence network programming to make it more compatible with local community standards. Thus, the post-1996 developments that are chronicled in the record demonstrate a current need for the 35% cap that is greater than when Congress adopted it.

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NASA and NAB urge you to take into consideration these three points, all supported in the record, as you deliberate on the question of retaining, modifying or eliminating the 35% national ownership cap.

Respectfully submitted,

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Enclosure

cc: MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317 and 00-244
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ATTACHMENT B

Top 25 TV Groups

	TV Group	Headquarters
1	Viacom	New York
2	Fox Television Stations	Los Angeles
3	Paxson	West Palm Beach, FL
4	NBC	New York
5	Tribune	Chicago
6	ABC	New York
7	Univision	Los Angeles
8	Gannett	McLean, VA
9	Hearst-Argyle	New York
10	Trinity Broadcasting	Tustin, CA
11	Sinclair	Hunt Valley, MD
12	Belo	Dallas
13	Cox	Atlanta
14	Clear Channel	San Antonio, TX
15	Pappas Telecasting	Fresno, CA
16	E.W. Scripps	Cincinnati
17	Raycom	Montgomery, AL
18	Meredith	Des Moines, IA
19	Post-Newsweek	Detroit
20	Media General	Richmond, VA
21	Shop at Home	Nashville
22	LIN TV	Providence
23	Young Broadcasting	New York
24	Emmis	Indianapolis
25	Entravision	Santa Monica, CA