May 15, 2003

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

Re: Television Duopoly Rule; MB Docket No. 02-277

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

We write in support of the NAB letter of May 13, 2003, urging greater relaxation of the television duopoly rule than apparently has been recommended by the staff.

First, the NAB letter compellingly spells out the financial/economic realities that cry out for duopoly relief in small and medium markets -- the disproportionate burdens of DTV transition costs on smaller stations and increased competition from other sources, and elimination of network compensation or reverse compensation. Those facts are uncontroverted and uncontrovertible. Failure to relax the rules in smaller markets will, as a matter of certainty, result in fewer stations surviving and less local news, less local service generally, and less diversity. Relaxation of the duopoly standard is badly needed to prevent the growing number of stations, including fourth and third ranked ones, from being forced to curtail or eliminate local news. The record amply demonstrates these facts and is devoid of evidence to the contrary. A requirement that no two of the top-four rated stations in a market can combine automatically rules out relief in many, many mid-sized and smaller markets where the relief is particularly needed and the public would be greatly benefited.

Second, the deficiencies of the present eight-voice, top-four, test have become glaringly apparent over the past five years, and, yet, unfortunately, many of those same defects would be carried forward in the staff's proposed rule. Prohibiting combinations among the top-four stations would automatically prevent combinations in smaller markets, many of which only have four or fewer stations. It would also permit in mid-sized markets the top-rated station, perhaps the only VHF station in the market, to acquire the fifth-rated station but would not allow the third- and fourth-rated stations to combine, even though the impact of the second transaction might be far less than the first. (Apparently, the Commission recognizes the continuing disadvantage of UHF facilities and intends to retain the 50% UHF discount for the national ownership cap, but its local ownership rules would ignore this disadvantage.) In our view, both acquisitions should be evaluated under an appropriate viewing share test (discussed below) that would take such factors into account. In most cases, both should be permitted.

Since the Commission's principal concerns in this area should be diversity and localism, any rule should accommodate the need to sustain stations in medium and smaller markets where the financial strains documented by NAB threaten their vitality and even their survival. No problem in the broadcast ownership area is more pressing or more in need of remedy than relief to mid-sized and smaller stations. No problem more seriously threatens the number and robustness of the voices serving a community. The staff's reported approach would, arbitrarily and contrary to the public interest, stymie that relief and disserve the goals that the rule is trying to protect.

Third, a test based on share of all viewing, as proposed by NAB (the 10-10 test) and by the first prong of the Hearst-Argyle proposal (the 30% test) , is more finely attuned to viewing and market realities than the wooden and blunt top-four test. For other purposes, the Antitrust Division uses shares and not rankings. (It uses total share of in-market revenues because it focuses on competition, not diversity and localism). Because the duopoly rule is focused on diversity and localism, it should focus on share of all video viewing in the market. Moreover, by using a test based on share of all viewing, including viewing of cable, DBS and out-of-market stations, the FCC would be more responsive to the <u>Sinclair</u> Court which directed the FCC to take into account other media. The staff's rumored proposal fails to heed that directive.

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Mr. Chairman, you have expressed concern about the future viability of over-the-air, local television which provides the only video service to 30-40% of the nation's television sets. Failure to provide adequate relief under the duopoly rule will cause more stations to cut back local service or to fail than any marketplace or regulatory development before the Commission. More than any other step available to the Commission, sensible, market-based relaxation of the duopoly rule will help sustain the over-the-air service that you have said you value.

Respectfully submitted,

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