

## THE UHF DISCOUNT

- The Joint Commenters have emphasized repeatedly that the evidence in the record of this proceeding compels that the Commission repeal the national television ownership cap (the "Cap") in its entirety.<sup>1</sup>
- In the event that the Commission retains the Cap despite the overwhelming evidence demonstrating how it harms, rather than helps, the public interest, then the Commission should also retain the UHF discount.<sup>2</sup> UHF television stations continue to struggle against a variety of **technological and financial obstacles** to their ability to compete on equal footing with VHF stations.
- In the *Notice* in this proceeding, the Commission asked for comment on the relevance and continued efficacy of the UHF discount.<sup>3</sup> *Given the indisputable evidence demonstrating that UHF stations continue to face onerous technological and competitive impediments to service, the FCC should retain the discount if it retains the Cap.*

### The Technological Gap Remains

- UHF stations have always faced technological hurdles not experienced by VHF stations. As the Commission recognized in the 1998 media biennial ownership review, UHF stations have long been known to have **weaker signals and inferior propagation characteristics**, relative to VHF stations.<sup>4</sup> In large part as a result of these obstacles, the Commission wisely chose to retain the discount in 1998.<sup>5</sup>

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<sup>1</sup> The Joint Commenters are Fox Entertainment Group, Inc. and Fox Television Stations, Inc., National Broadcasting Company, Inc. and Telemundo Communications Group, Inc., and Viacom.

<sup>2</sup> The national audience reach is measured, for purposes of the Cap, based on the number of television households in each Nielsen Designated Market Area ("DMA"). UHF stations are currently attributed with 50 percent of the TV households in a DMA. See 47 C.F.R. § 73.3555(e)(2).

<sup>3</sup> See *In Re 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, Notice of Proposed Rulemaking (released September 23, 2003) (the "*Notice*"), at ¶ 130.

<sup>4</sup> See *In Re 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*, MM Docket No. 98-35, Biennial Review Report, 15 FCC Rcd 11058, 11077 (the "*1998 Biennial Review Report*").

<sup>5</sup> See *id.* at 11078.

- The Commission recognized in 1998 that weaker signals made it difficult for UHF stations to reach viewers either over-the-air or via cable. For example, the FCC noted the evidence demonstrating that VHF stations typically have a signal reach of 72 to 76 miles, whereas UHF station signals typically extend only 44 miles. Moreover, the Commission noted that UHF stations generally achieved only 55 to 75 percent of the Grade B signal area coverage achieved by VHF stations.<sup>6</sup>
- In addition, the FCC acknowledged that cable television did not adequately ameliorate UHF stations' technological infirmities. Despite the fact that the majority of U.S. television households subscribe to cable, the Commission said that many UHF stations are not able to obtain cable carriage. Indeed, FCC rules require television stations to provide a Grade B quality signal to a cable company's headend in order to demand carriage. Yet, because UHF stations' Grade B signals do not extend as far as VHF stations' Grade B signals, many UHF stations cannot obtain cable carriage or are forced to pay for costly means – such as fiber optics – to ensure that a quality signal is delivered to cable headends.<sup>7</sup>
- The Commission's 1998 conclusions remain equally relevant today. Nothing has changed with regard to UHF stations' technological disadvantages. To the contrary, because these disadvantages are based on engineering facts, they will not be ameliorated until the over-the-air broadcasting system itself undergoes some kind of transformation.<sup>8</sup> And even though subscribership to MVPDs may have increased since 1998, this does not alter the fact that UHF stations' signals continue to fail to reach cable headends.<sup>9</sup>

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<sup>6</sup> See *id.* at 11076.

<sup>7</sup> See *id.* at 11078.

<sup>8</sup> Thus, the Commission determined in 1998 to review the UHF discount only after the completion of the transition to digital television, by which time new engineering realities may well eradicate any difference between VHF and UHF signal coverage. See *id.* at 11079-80.

<sup>9</sup> Similarly, the growth of direct broadcast satellite ("DBS") television has not eliminated the UHF disadvantages. DBS does not yet provide local-into-local service in most U.S. markets, particularly smaller markets where UHF stations face the most intense competitive obstacles.

- The attached exhibits demonstrate that the CBS, FOX and NBC/Telemundo owned and operated ("O&O") UHF stations suffer today from the very same technological deficiencies that the Commission found in 1998.<sup>10</sup> Specifically:
  - The average NBC/Telemundo-owned UHF station provides a Grade B signal reaching only 56 percent of the service area of the average same-market NBC/Telemundo-owned VHF station.
  - The average CBS-owned UHF station provides a Grade B signal reaching only 57 percent of the service area of the average same-market CBS-owned VHF station.
  - The average FOX-owned UHF station provides a Grade B signal reaching only 61 percent of the service area of the average same-market FOX-owned VHF station.

### Economic Hurdles

- The *1998 Biennial Review* also determined that UHF stations have higher operating costs, particularly due to their higher power requirements. Therefore, even when UHF stations can reach a comparable number of viewers, they incur greater expenses than their VHF competitors. The Commission also noted that UHF stations suffer from lower ratings and lower profits than VHF stations.<sup>11</sup>
- These economic disadvantages also remain prevalent today. UHF stations, perhaps as a result of their struggle to reach a comparably large audience, remain less attractive to advertisers, compared to VHF stations. In fact, UHF stations' higher operating costs, coupled with their lower share of the advertising dollars, results in a double financial obstacle.
  - NBC's UHF O&O in the Raleigh/Durham, North Carolina market, for example, continues to struggle financially against its VHF competitors. Despite airing extensive local news programming and participating in community events, advertisers in the Raleigh/Durham market still favor VHF stations.<sup>12</sup>
  - Advertisers either shun the NBC station altogether, or argue that its diminished signal coverage warrants price discounts. Meanwhile, the

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<sup>10</sup> See Attachments A, B and C hereto.

<sup>11</sup> See *1998 Biennial Review Report*, at 11078.

<sup>12</sup> See Declaration of Michael Ward, general manager of WNCN(TV), Goldsboro, North Carolina, attached as Exhibit 1 hereto.

station uses roughly twice the power of its VHF competitors and still reaches far fewer viewers.<sup>13</sup>

*The UHF Discount Has Promoted the Development of Struggling UHF Stations*

- The Joint Commenters have emphasized that the Telecommunications Act of 1996 compels the Commission to eliminate of any of its media ownership rules that cannot be affirmatively justified as necessary in the modern media marketplace.
- The UHF discount, however, already is deregulatory in nature. In other words, the discount merely softens the otherwise harsh impact of the overly restrictive Cap. Accordingly, insofar as it considers the UHF discount as part of a decision to retain the Cap, the Commission need not subject the discount to the same strict standard of review.
- In any event, given that technological and economic obstacles continue unabated in their impact on UHF stations' ability to compete, the record certainly contains sufficient evidence to justify retention of the UHF discount. Indeed, the deregulatory effect of the UHF discount has been vital to the development of new broadcast networks. The PAX and Univision networks, for instance, would never have come into existence without the relief afforded by the UHF discount. The same holds true for UPN and WB, the overwhelming majority of whose affiliates are UHF stations.
- Moreover, the discount has enabled the Joint Commenters to acquire UHF stations as part of emerging networks and to inaugurate newscasts on these stations.<sup>14</sup>

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<sup>13</sup> *See id.*

<sup>14</sup> *See* Opening Comments of the Joint Commenters, filed January 2, 2003, at News Programming Exhibits 1-3.