Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the Commissions' 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

To: The Commission

PETITION FOR RECONSIDERATION OF
LIN TELEVISION CORPORATION AND RAYCOM MEDIA, INC.

September 4, 2003

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SUMMARY

In the *2002 Biennial Review*, the Commission correctly recognized uncontroverted evidence showing that its local television ownership rule was badly out of step with the public interest in its application to small and mid-sized markets. In these markets, where stations face slimmer profit margins and relatively higher fixed costs than large-market stations, the rule undermined values of localism by preventing efficient sharing of resources that enable stations to serve local audiences more effectively, to make the digital transition, and to remain economically viable enough to serve their communities for the long term. Although the Commission accepted the overwhelming evidence that regulatory relief was needed in small and mid-size markets, the modified local ownership rule adopted by the Commission paradoxically denies the flexibility needed in those markets. Indeed, the Commission's decision to retain the top four-ranked standard unjustifiably rules out duopolies in 91 of the nation's 210 DMAs, even though the threat to local programming options is most grave in these smaller markets. The Commission should modify its local television ownership rule to except small and mid-sized markets from the top four-ranked standard. Granting top four-standard waivers on a case-by-case basis, as proposed by the Commission, is not a workable solution because it discourages investment and is needlessly inefficient.

The Commission also should reconsider the transferability restrictions it imposed on television station combinations. Restraints on combinations acquired in conformance with the new local ownership limits or under a waiver standard are inconsistent with Commission precedent and discourage licensees from bringing about the public interest benefits that their combinations were designed — and sanctioned by the Commission — to promote: enhanced local service to the community. As the Commission has held in a very similar context, a rule requiring a combination to be unwound upon a sale because a weaker station has become successful "would in essence punish stations . . . for excellence in serving the local community." Severing successfully integrated station combinations will endanger the public benefits of combined ownership that the Commission recognized. Allowing transfers of existing combinations, on the other hand, will do no harm to competition or diversity interests in the local market because no new combinations will be formed as a result of the transfers.

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To: The Commission

PETITION FOR RECONSIDERATION OF
LIN TELEVISION CORPORATION AND RAYCOM MEDIA, INC.,

LIN Television Corporation and Raycom Media, Inc. hereby petition for reconsideration of two aspects of the modified local television ownership rule adopted in the Commission's *2002 Biennial Review Order*[1]: (1) the top four-ranked standard, insofar as it applies to welfare-enhancing combinations of broadcast television stations in small and mid-sized markets and (2) the restraints on transferability of local television

[1] Report and Order, *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, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, and Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area*, MB Dockets 02-277 & 03-130, MM Dockets 01-235, 01-317, & 00-244, FCC 03-127 (rel. July 2, 2003), 68 Fed. Reg. 46286 (Aug. 5, 2003) [herein "*2002 Biennial Review Order*"].

station combinations found to be in the public interest. LIN and Raycom, which own or provide programming, advertising, and other services to some 65 television stations in 25 states and Puerto Rico, believe that the Commission's decision to provide no effective relief in small to mid-size markets will undermine, rather than enhance, localism in broadcasting.[2]

As explained below, the Commission should reconsider its decision to subject proposed duopolies in small and mid-sized markets to the top four-ranked standard. There was indisputable and overwhelming evidence in this proceeding outlining the special difficulties faced by stations in smaller markets, where there are fewer stations, smaller profits, and a bleaker financial outlook that threatens local programming options and, in many cases, some stations' continued viability. While the top four-ranked standard may be a sensible test for restricting station combinations in the largest markets, it does not serve the public interest when applied to small and mid-sized markets. This result, moreover, is simply not supported by the record. Approving duopolies in small and mid-sized markets on a case-by-case basis under the Commission's proposed top-four waiver standard is no substitute for a clear and positive rule permitting appropriate combinations. Reliance on a waiver policy injects uncertainty into business dealings and will discourage investment.

The Commission also should reconsider the transferability restrictions it adopted in the *2002 Biennial Review Order,* which prohibit future transfers and assignments of certain local television station combinations, including those

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[2] A full list of the television holdings of LIN and Raycom is set out at pages 2-3 of their comments. *See* Coalition Broadcasters' Comments (January 3, 2003).

combinations acquired in compliance with the modified local television ownership rule or found in the public interest under a waiver standard. Equitable principles support free transferability of all permissible station combinations. Moreover, the Commission's decision to restrict the alienability of station combinations acquired under the modified local television ownership rule or pursuant to a waiver is inconsistent with its own precedent and disserves the public interest by deterring joint owners from pursuing the very end that justified the combination in the first instance — enhancement of their stations' service to the community.

I. THE COMMISSION SHOULD ADOPT A LOCAL STATION OWNERSHIP RULE THAT ALLOWS COMBINATIONS OF TV STATIONS IN THE SMALL AND MID-SIZED MARKETS MOST IN NEED OF REGULATORY RELIEF.

In the *2002 Biennial Review*, commenters adduced extensive — and uncontroverted — evidence showing that increased competition by cable networks, rising costs of local news, declines in network compensation, and costs of the digital transition have placed extraordinary financial pressures on small and medium market stations, threatening their ability to provide local programming options and local news service, and in some cases, the stations' very viability. The record showed that:

- Small and mid-sized market stations have slimmer profit margins than large market stations and compete for disproportionately smaller revenues than stations in large markets.[3]
- Many station in smaller markets, especially the lower rated stations, showed *declining* profitability from 1993 to 2001.[4]

[3] Ex Parte Filing of the National Association of Broadcaster in MB Docket No. 02-277 (April 30, 2003) [herein "NAB Ex Parte (April 30, 2003)"].

- As of 2001, the average low-rated station in market groupings 51-75, 76-100, 101-150, and 151-175 showed *negative* profitability.[5] (The same is likely true for the low-rated stations in markets 176-210; however, there was insufficient data from markets 176-210 to draw a definitive conclusion.)

- As of 2001, even the *highest-rated* stations in many medium and small markets were experiencing flat or declining profits.[6]

- Network compensation, which has sometimes made the difference between profitability and loss, is expected to be further reduced, eliminated, or even reversed in the future.[7]

As to the rising costs of local news and the waning ability of small and medium-market stations to provide it, the record contained unrefuted evidence showing that:

- Local news production is one of the largest expense items of commercial broadcast stations.[8]

- From 1993 to 2001, the average news costs of affiliated stations in DMAs 51-176 increased 71 percent, 104 percent, 58 percent, 56 percent, and 82 percent, respectively, in market groupings 51-75, 76-100, 101-125, 126-150, and 151-175.[9] (Again, markets 176-210 likely experienced a similar trend.)

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[4] Comments of the National Association of Broadcasters in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244, Attachment C, at 5-9 (Jan. 2, 2003) [herein "NAB Comments"].

[5] *Id.*

[6] *Id.*

[7] NAB Comments, at 74; Comments of Coalition Coalition Broadcasters in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244, at 6 (Jan. 2, 2003) [herein "Coalition Comments"]; Comments of Alaska Broadcasting Company, Inc., Quincy Newspapers, Inc. and Grant Communications, Inc. in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244, at 5 (Jan. 2, 2003); Comments of Granite Broadcasting Corp. in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244, at 12 (Jan. 2, 2003) [herein "Granite Comments"].

[8] Levy et al., *Broadcast Television: Survivor in a Sea of Competition*, MOWG at 37 (listing news as the second largest expense item of commercial broadcast stations).

[9] NAB Comments, Attachment C, at 5-9.

- There were at least 40 press accounts of cutbacks in local television newscasts between 1998 and 2002.[10]

- Four smaller market stations shut down or significantly scaled back news operations due to financial concerns in one commenter's markets of license alone.[11]

- Broadcasters are beginning to replace local newscasts with regional and national feeds in light of financial concerns.[12]

That stations in smaller markets bear a disproportionately higher burden in effecting the digital transition is well known by the Commission.[13] In this proceeding, the record demonstrated that:

- The estimated average DTV transition cost per station ranges between $2 and $3 million.

- The full conversion of a station in the Los Angeles market may cost only 0.5 percent of that market's annual advertising revenue. But in a small market such as Billings, Montana (market 170), full conversion can cost as much as 25 percent of the market's annual advertising revenue.[14]

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[10] Comments of Media General, Inc. in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244, Appendix 3, Attachment B (Jan. 2, 2003). NAB noted the reduction of local news in at least two more stations. Reply Comments of the National Association of Broadcasters in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244, at 49 n. 90 (Feb. 3, 2003).

[11] Comments of Gray Television, Inc. in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244, at 17-19 (Jan. 2, 2003).

[12] Granite Comments, at 7, citing Lee Hall, *Stories to Call Their Own — NewsProNet Supplies Television Stations with Highly Researched and Produced Special Reports*, BROADCASTING & CABLE (Aug. 26, 2002).

[13] *See, e.g., 2002 Biennial Review Order*, at ¶ 148 & n. 292 (noting that "the Commission has recognized the particular financial challenges faced by stations in smaller markets").

[14] Comments of Nexstar Broadcasting Group, LLC and Quorum Broadcasting Holdings, LLC in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244, at 21 (Jan. 2, 2003) [herein "Nexstar/Quorum Comments"].

The Commission credited all of the above-mentioned evidence cited in the *2002 Biennial Review Order*.[15] It also found persuasive the equally extensive evidence showing that liberalization of the local television ownership rule could alleviate conditions in smaller markets and permit stations to provide enhanced local service to their communities of license.

Evidence before the Commission regarding improvements in the financial condition of stations under joint operation included evidence showing that:

- Jointly operated stations in seven DMAs increased their audience share on average by 3.2 points after entering into an LMA or joint ownership.[16]
- Jointly operated stations in seven DMAs increased their revenue by 250.7 percent, on average, from the year immediately preceding the LMA to 2001.[17]
- Joint operation enabled many weaker stations to modernize their facilities and equipment.[18]
- Joint operation led to several weaker stations acquiring network affiliation.[19]
- Several stations jointly operated by two commenters outperformed other similarly situated stations with the same affiliation in the five markets above and below the markets of the stations in question as a result of the joint operation.[20]

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[15] Record evidence that was not discussed in the text of the Commission's order provides additional support for growing financial hardships in local markets. For example, Media General provided a list of news stories regarding stations cutting back local news operations in light of financial pressures.

[16] Coalition Comments, Attachment A, at 4.

[17] *Id.* at 5-6.

[18] Coalition Comments, at 16-32; Nexstar/Quorum Comments, at Appendix A.

[19] *See, e.g.,* Coalition Comments, at 16-32.

[20] *Id.*

Perhaps the most compelling evidence before the Commission illustrated the often remarkable increases in local news service that can result from joint operation. This included evidence showing that:

- Stations that are part of a commonly owned local station group or same-market LMA are significantly more likely to carry local news than other stations, even after controlling for other factors.[21]

- Joint operation enabled economically disadvantaged stations in the Honolulu, Cleveland, Hartford-New Haven, Norfok-Portsmouth-Newport News, Austin, and Providence-New Bedford DMAs to make impressive improvements in their local news/public affairs programming, including more than tripling one weaker station's news output.[22]

- Joint operation efficiencies led to increases in newsgathering capabilities, including investments in satellite news vans, Doppler Weather Radar, and other advanced systems for stations that would not have acquired them but for the advantages of joint operation.[23]

- Joint operation of stations in Billings, Montana and Erie, Pennsylvania allowed stations to launch additional weekday and weekend newscasts, to improve existing newscasts including weather reporting, and to air local high school sporting events.[24]

- Acquisition of a second station in the Seattle, Washington by a local group owner allowed it to air an extra hour of news programming and devote greater resources for public affairs programming.[25]

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[21] Comments of Fox Entertainment Group et al. in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244, EI Study B, *Effect of Common Ownership or Operation on Television News Carriage, Quantity and Quality*, at 2 (Jan. 2, 2003). The study also found that stations which are part of a commonly owned local station group or same-market LMA do not adversely affect the amount or quality of local news carried by stations that compete with the same-market combination.

[22] Coalition Comments, at 15-33.

[23] Coalition Comments, at 6.

[24] Nexstar/Quorum Comments, Appendix A, at 2-3.

[25] Comments of Belo Corp. in MB Docket No. 02-277 and MM Docket Nos. 01-235, 01-317, and 00-244, at 22-23 (Jan. 2, 2003).

- Joint ownership allowed second stations acquired Spokane, Washington and Tucson, Arizona to carry local news.[26]

Finally, with respect to the digital transition, an empirical study showed that:

- In small and mid-sized markets, stations that are commonly owned or involved in joint operating arrangements are further along in the DTV transition than similarly stations that are not commonly owned or involved in joint operating arrangements.[27]

Again, the Commission credited all of the above-mentioned evidence cited in the *2002 Biennial Review Order* and specifically noted that commenters opposing modification of the local ownership rule had not provided any evidence showing that joint ownership harmed localism. The Commission thus "conclude[d] that [its] current local TV ownership rule poses a potential threat to local programming, and that modification of the rule is likely to result in efficiencies that will better enable local television stations to acquire content desired by their local audiences."[28]

Paradoxically, however, the Commission chose to modify the local ownership rule so that it sanctions more combinations in many of the larger markets where the need for them is less pressing than in the smaller markets where the need is well-documented and acute. The new outlet caps now *allow* triopolies in nine of the largest markets[29] yet presumptively *prohibit* duopolies in 91 of the smaller markets. (See

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[26] *Id.* at 23.

[27] Coalition Comments, Attachment B, *Study of DTV Rollout by Smaller Stations in Markets 51-100.*

[28] *2002 Biennial Review Order*, at ¶ 156.

[29] The nine DMAs where triopolies are allowed under the new rules are: New York (1), Los Angeles (2), Philadelphia (4), San Francisco (5), Boston (6), Dallas-Ft. Worth (7), Washington, D.C. (8), Phoenix (16), and Salt Lake City (36).

Attachment A for a listing of all DMAs in which duopolies still are not allowed under the Commission's modified rule.) Each of these DMAs have four or fewer television stations and thus application of the Commission's top four-ranked standard prohibits any two stations from being owned jointly.

While the top four-ranked standard may be a sensible test for restricting station combinations in the largest markets, many of its key underlying assumptions simply do not hold up when the standard is applied to small and mid-sized market realities. For example, the Commission reasoned that combinations involving top-four ranked stations are less likely to yield new or expanded local news programming because "[top four-ranked] stations generally are already originating local news."[30] But the Fox Top Four Study on which the Commission relied for this generalization shows that in only two of every five DMAs between markets 101-150 do all four of the top four-ranked television stations carry local news.[31] Because four of these markets — Springfield, Massachusetts (106), Tyler (109), Amarillo (129), and Wheeling (150) — have only three television stations, this figure must be adjusted. If one excludes data from the Springfield, Tyler, Amarillo, and Wheeling markets, however, the Fox Study still shows that at least one top four-ranked station *does not* carry local news in more than half (56.5%) of all markets between 101-150 that have at least four stations. Similarly, the Fox Study shows that only eight markets between 151-210 have four top four-ranked stations that carry local news. Since there are a total of 18 markets between 150 and 210

[30] *2002 Biennial Review Order*, at ¶ 198.

[31] Joint Network Comments, EI Study A, *News and Public Programming Offered by the Four Top-Ranked Versus Lower Ranked Television Stations*, at 15.

that have at least 4 stations, the Fox Study data show that at least one top four-ranked station *does not* carry local news in more than half (55.6%) of all markets between 150 and 210 that have at least 4 stations. Even in markets 51-100, where all markets have four or more television stations, the Fox Study reveals that at least one top four-ranked station *does not* carry local news in fully 38% of the markets. It should be noted, moreover, that the actual carriage figures may be even lower, because the Fox News Study tables from which the data are drawn did not distinguish between stations carrying "original" and "rebroadcast" local news.

Another justification given by the Commission for retaining the top four-ranked standard is that combinations involving more than one top four-ranked station are less likely to provide public interest benefits in the form of new DTV service because top-four-ranked stations are better off financially than lower rated stations.[32] For this statement, the Commission cited data which compared the average cash flow and pre-tax profits of affiliates of the Big Four Networks to those of stations not affiliated with the Big Four Networks *in markets 1-50.*[33] The data clearly revealed that the former were far more profitable than the latter in those markets. But one cannot reasonably make policy judgments about the financial strength of top four-ranked stations in smaller markets based on these figures. Markets ranked between 1 and 50 average between 8.1 and 6.1 television stations apiece and have substantially higher average gross revenues than stations in smaller markets, where the average number of television stations per market is

[32] *2002 Biennial Review Order*, at ¶ 199.

[33] *Id.* at ¶ 199, n. 417 (citing NAB Ex Parte (April 30, 2003)).

four or less.[34] For example, the 2002 average gross revenues of stations in markets 101-125 were only 4% of the average gross revenues of stations in the top 10 markets. In smaller markets, the gap widened dramatically — in markets 126-150, station revenues were 2.6% of those in the top 10 markets. In markets 151-176, station revenues were only 1.9% of those in the top 10 markets. And in the smallest communities, markets 176-210, revenues were only 0.85% of revenues of top-10-market stations.[35]

Even more to the point, there was unrefuted evidence showing that, on average, at least one top four-ranked station in markets 101-210 (and likely in markets 76-100 as well) experienced *negative* pre-tax profits in 2001. As discussed above, a report on the declining financial position of television stations in medium and small markets revealed that the average low-rated station in market groupings 76-100, 101-150, and 151-175 respectively showed an average loss of $770,915, $254,234, $1,432,339, and $92,917.[36] Because markets 101 through 210 have, on average, no more than four stations each, the average low-rated station in those markets by definition is a top four-ranked station. Clearly, "top four" stations experiencing financial difficulties such as these would be better able to transition to digital under a joint ownership arrangement.

The Commission's remaining two justifications for the top four-ranked standard are similarly unsupported. The concern that allowing combinations of top four stations who are among each others' "strongest rivals" would diminish incentives to improve programming that appeals to mass audiences obviously is less critical in markets

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[34] *See* NAB Ex Parte (April 30, 2003).

[35] *Id.*

[36] *See* NAB Comments, Attachment C, at 6-9.

where average station profitability is minimal or nonexistent, making ends difficult to meet without the benefit of efficiencies made possible by joint operation.[37] Finally, the risk that mergers of top-four stations would often result in a single firm with significantly larger market share than others is attenuated in small and mid-sized markets, where the top four stations do not form a strategic group, as they often do in the largest markets.[38]

During the comment stage of this proceeding, LIN and Raycom offered recommendations for revising the local television ownership rule to accommodate small and medium markets realities.[39] We supported either of two basic models: (1) the No Local Monopoly Rule and (2) the Weaker Station Rule. The former would presume that co-ownership of two television stations in a single DMA serves the public interest so long as it did not create a local monopoly; the latter would presume that co-ownership of two television stations in the same DMA serves the public interest if the transaction would enable a weaker station to combine with a stronger station, or with another weaker station, to enhance competition and service to the public.

We submit that a revised local ownership rule formulated along the lines of either of these two models for use in small and mid-sized markets better serves the public interest than the wooden top-four test, which is more suited to larger market realities. Although the Commission's top-four waiver standard provides small and mid-sized markets with the possibility of regulatory relief, it does not provide the high degree of certainty that markets need to achieve rational and efficient common ownership. The

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[37] *2002 Biennial Review Order*, at ¶ 200.

[38] *2002 Biennial Review Order*, at ¶ 195.

[39] Coalition Comments, at 11-12.

declining financial positions of small and mid-sized market stations, coupled with the rising costs of local news service and burdens associated with the digital transition and a bleak market outlook, combine to make straightforward and easy-to-apply rules practical necessities. Without them, broadcasters, lenders and investors will lack the confidence needed to ensure that the public will benefit from common ownership in the viewing areas most deserving of immediate relief. Furthermore, a clear rule will expedite review and reduce needless administrative burdens on the Commission.

II. THE COMMISSION SHOULD PERMIT FUTURE TRANSFERS OF PERMISSIBLE TELEVISION STATION COMBINATIONS.

When the Commission conducted its most recent biennial review, it confronted and resolved several issues concerning the alienability of same-market combinations of television stations that, if not jointly owned already, could not be acquired by their owners under the modified local television ownership rule. Such combinations include: (1) combinations formed under the modified local ownership rule in which a joint owner's investment allows it to deliver superior service to the community, as measured by audience share gains that put both stations into the top four rankings of the local DMA, (2) combinations found in the public interest under a waiver standard, and (3) combinations permitted under a grandfathering provision.

The Commission severely restricted the transferability of these combinations. With little discussion, the Commission concluded that all assignments or transfers to new owners of stations acquired under the modified local television rule or pursuant to a waiver should be prohibited unless the local ownership cap or waiver standards are satisfied at the time of the proposed transaction.[40]

The Commission's new transferability regime is contrary to its precedent and badly misguided. As the NAB brought to the Commission's attention,[41] the 1992 *Radio Reconsideration Order*[42] involved circumstances closely analogous to those at issue in the *2002 Biennial Review Order*. During the radio review proceedings, the Commission examined whether changes taking place in the radio marketplace, such as declining profitability of small stations, increased competition from other outlets, and flattened revenue growth, warranted further relaxation of local ownership restrictions.[43] Consistent with its later holdings in the *2002 Biennial Review Order*, the Commission concluded that these changes necessitated liberalizing the local radio ownership cap.[44] Unlike the case in the *2002 Biennial Review Order*, however, the Commission did "not require a multiple owner which acquired its stations in compliance with the [local radio ownership rule] to break up its station group upon transfer or assignment" if the group subsequently exceeded applicable limits.[45] Requiring the dissolution of the combination, the Commission reasoned, would be counterproductive, because such a requirement

[40] *2002 Biennial Review Order*, at ¶¶ 232, 234. With respect to grandfathered combinations, it determined that all assignments and transfers should be prohibited unless the assignee or transferee qualified as an "eligible entity," i.e., a small business under SBA standards for its industry groupings. *Id.* at ¶ 489.

[41] NAB Comments, at 84.

[42] *In re Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (March 12, 1992). [herein "*Radio Reconsideration Order*"].

[43] *Id.* at ¶¶ 4-9.

[44] *Id.* at ¶ 40.

[45] *Id.* at ¶ 56.

"would in essence punish stations . . . for excellence in serving the local community, as reflected in listenership gains."[46]

Precisely the same reasoning applies to same-market television combinations acquired under the modified local television ownership rule and to those acquired pursuant to a waiver. In both cases, the Commission has sanctioned the combination as being in the public interest because it is likely to enhance localism interests. The chief reason behind raising the local television ownership limits was to allow same-market stations to share resources efficiently so that the cost savings afforded by joint ownership could be put toward improving service capabilities. Duopoly waiver standards are similarly grounded in localism interests. Each of the factors considered under the Commission's newly adopted standard for top four-ranked waivers are designed to assess whether the combination is likely to lead to better service in the community, such as whether the proposed merger will significantly increase news and local programming at one or both stations.[47] The same holds true for the failed, failing, and unbuilt station exceptions.[48]

If the Commission adheres to its decision to prohibit future sales of combinations acquired under the modified ownership rule or pursuant to a waiver, it will discourage group owners from bringing to full fruition the localism benefits which are possible through, and the very reason behind, the liberalized ownership limits and waiver standards. The real-world economic penalties associated with a prohibition against

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[46] *Id.*

[47] *2002 Biennial Review Order,* ¶ 230.

[48] *Id.* at ¶ 225.

transferring local television station combinations can be staggeringly high — in fact, this penalty can approximate half the sales value of one station. The sales price of a television station is typically a multiple of cash flow. Combinations of two local television stations can reduce operating costs by more than 40 percent, which can translate into approximately a 40 percent increase in cash flow. Thus, the value of a station being offered for sale in combination is much higher than the value of the same station being offered for sale on its own. As the Commission has recognized in another context, moreover, the "significant ramifications" of having a station combination that can be sold without having to obtain a duopoly waiver, as opposed to one that cannot, deters licensees from providing making the significant investments required to provide increased levels of local service to their communities.[49] Finally, if a joint owner nonetheless invests in its local station combination despite these economic incentives and brings about superior service to the area, the increased service capabilities of the jointly owned stations are likely to be lost if the combination is severed. Particularly in smaller markets, where profit margins are slim to nonexistent, many stations simply cannot provide strong local service without the cost savings associated with common ownership.

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[49] *See In re Matter of Television Satellite Stations Review of Policy and Rules*, 6 FCC Rcd. 4212 ¶¶23-24 (Rel. July 8, 1991) (noting that the policy of limiting the amount of local programming that TV satellite stations may originate to qualify for a satellite waiver "actually discouraged satellite licensees from producing more locally originated programming because licensees could increase the investment value of their station if they made no local improvements above 5% (i.e., the parent-satellite combination could be sold without having to obtain a duopoly waiver)").

These concerns are not hypothetical but are based on today's marketplace. One example from LIN's experience is particularly telling.[50] Approximately 18 months ago, LIN acquired Station WVBT(TV), a struggling station in the Norfolk-Portsmouth-Newport News, Virginia television market, to operate in conjunction with its long-held Station WAVY(TV) in the same market. LIN had partnered with the owner of Station WVBT(TV) through a local marketing agreement since 1995. At the beginning of this partnership, Station WVBT(TV) was a home-shopping affiliate whose minimal signal only reached some 65 percent of the market. Today, it is a successful Fox affiliate reaching every home in the market with both analog and digital signals, with a new and highly rated 10:00 p.m. local news broadcast, a weekly public affairs broadcast, and first-class syndicated programming. This dramatic increase in local service would not have been possible without LIN's significant investment in the success of WVBT(TV). But the operation of the Commission's new position on transferability could threaten support for the further investment LIN intends to make to bring WVBT(TV) into position as one of the top four stations in the market.

The alienability restrictions for station combinations acquired in compliance with the Commission's modified ownership rules and pursuant to a waiver clearly threaten interests in localism and diverse programming. But there are no countervailing harms to diversity or competition interests if transfers and assignments of those combinations are permitted. The same is true for grandfathered combinations,

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[50] *See* Testimony of Edward Munson, Vice President and General Manager, WAVY(TV)/WVBT(TV), Portsmouth/Virginia Beach, Virginia, Feb. 27, 2003 (FCC Field Hearing on Media Ownership, Richmond, Virginia).

where the economic penalty of having to sell the stations separately is just as high. As long as the transferee has no other ownership interests in the same market area, moreover, the transfer will have no impact of the level of competition or diversity in the market because no new combinations will be created as a result of the sale. Clearly, in all three cases it is inequitable to require the owner of the group asset to absorb as much as a 50 percent loss of its investment upon sale when no countervailing harms would ensue if the station combination were sold intact.

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For these reasons, LIN Television Corporation and Raycom Media, Inc. urge the Commission to reconsider the application of the top four-ranked standard to welfare-enhancing combinations of broadcast television stations in small and mid-sized markets and to eliminate the unjustified restraints it has placed on the transferability of local television station combinations found to be in the public interest.

Respectfully submitted,

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ATTACHMENT A

THE 91 DMAs WHERE DUOPOLIES ARE STILL NOT ALLOWED UNDER THE MODIFIED LOCAL TELEVISION OWNERSHIP RULE[1]

Rank	Market
77	Rochester, NY
87	South Bend
89	Jackson, MS
91	Burlington
92	Davenport
93	Waco
94	Colorado Springs
95	Baton Rouge
105	Charleston, SC
106	Springfield, MA
107	Tallahassee
108	Ft. Smith
109	Tyler
110	Florence
113	Traverse City
115	Augusta
118	Fargo
120	Monterey
123	La Crosse
125	Lafayette, LA
127	Yakima
128	Corpus, Christi
130	Bakersfield
131	Columbus, MS
132	Chico
135	Rockford
136	Duluth
137	Beaumont
138	Topeka
139	Columbia, MO
140	Sioux City
142	Wichita Falls
143	Erie
144	Wilmington, NC
145	Joplin
146	Terre Haute
147	Lubbock
148	Albany, GA
149	Bluefield
150	Wheeling

[1] Source: Broadcasting & Cable Yearkbook 2002-2003

151	**Salisbury**
152	**Rochester, MN**
153	**Bangor**
154	**Binghamton**
155	**Minot**
157	**Biloxi**
160	**Sherman**
161	**Palm Springs**
162	**Gainesville**
164	**Quincy**
166	**Clarksburg, WV**
167	**Utica**
168	**Hattiesburg**
169	**Missoula**
171	**Dothan**
173	**Elmira**
174	**Lake Charles**
176	**Watertown**
178	**Harrisonburg, VA**
179	**Alexandria, LA**
180	**Bowling Green**
181	**Jonesboro**
182	**Greenwood**
183	**Jackson, TN**
184	**Grand Junction**
185	**Meridian**
186	**Charlottesville**
187	**Great Falls, MT**
188	**Parkersburg, WV**
189	**Lafayette, IN**
190	**Eureka**
191	**Twin Falls**
192	**Laredo**
193	**St. Joseph**
194	**Lima**
195	**Butte**
196	**San Angelo**
197	**Cheyenne**
198	**Ottumwa**
199	**Mankato**
200	**Casper**
201	**Bend**
202	**Zanesville**
203	**Fairbanks**
204	**Victoria, TX**

205	**Presque Isle, ME**
206	**Juneau**
207	**Helena**
208	**Alpena**
209	**North Platte**
210	**Glendive**