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
	)	

To: The Commission

REPLY OF THE
NATIONAL ASSOCIATION OF BROADCASTERS TO
OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

The National Association of Broadcasters ("NAB")[1] submits this reply to certain oppositions to petitions requesting reconsideration of the Commission's order revising its broadcast ownership rules.[2] Pursuant to Section 202(h) of the 1996 Telecommunications Act, which requires a comprehensive review of the ownership rules every two years, the Commission on June 2, 2003 adopted a revised set of broadcast ownership regulations. In its opposition to various reconsideration petitions, NAB urged the Commission to reject those petitions calling for

---

[1] NAB is a nonprofit incorporated association of radio and television stations, which serves and represents the American broadcasting industry.

[2] *Report and Order* in MB Docket No. 02-277, MM Docket Nos. 01-235, 01-317 and 00-244, FCC 03-127 (rel. July 2, 2003) ("*Biennial Review Order*").

a retreat from the modest loosening of the local ownership restrictions approved in the *Biennial Review Order*, and supported those petitions urging the Commission to take further action to ensure the survival of local television broadcasters in smaller markets. NAB now replies to several particular points raised by one party in opposition.

I. Retention of a Restrictive Duopoly Rule Actually Harms Competition, Diversity and Localism.

In its opposition to the petitions of several television broadcasters, the Office of Communication, Inc. of the United Church of Christ, *et al*. ("UCC") urged the Commission to retain its prohibition on combinations among the top-four rated television stations in all markets. UCC contended that this top-four restriction is "necessary to protect competition, diversity, and localism." Opposition of UCC at 2. In fact, unrefuted evidence in this proceeding demonstrates that restrictions on station combinations harm competition, diversity and localism, especially in medium and small television markets.

UCC first contended that mergers among the top-four rated stations in a market would be anticompetitive because of the large viewing shares received by local television stations. *See* Opposition of UCC at 3 (citing local commercial shares of network affiliates in Johnstown-Altoona, PA). However, UCC again (as it did in previous submissions to the FCC) relied on television stations' "local commercial share," which excludes from consideration the viewing of out-of-market television stations, all noncommercial stations, and, most significantly, all cable/satellite channels and networks. UCC's claims that allowing combinations involving two of the top-four ranked stations in a market would produce "dramatic" "anticompetitive results" are therefore unsupported.[3] Contrary to UCC's assertions, the further reform of an overly

[3] NAB has previously explained in detail how reliance on "local commercial share" data seriously undercounts the number of television "voices" available in local markets and

restrictive duopoly rule would not lead to local broadcasters possessing an undue share of viewing in local television markets, but would in fact enhance competition in local media markets by allowing broadcasters to compete more effectively with cable and satellite operators for viewers.[4] Indeed, NAB is aware of only one empirical study in this proceeding that directly examined the question of whether existing duopolies actually cause competitive harm in local markets, and this study, by Robert Crandall, Senior Fellow in Economic Studies at the Brookings Institution, found no evidence that a "multi-station arrangement" (*i.e.*, a duopoly or local marketing agreement) "within a single DMA allows the provider to increase its advertising rates."[5]

---

overestimates the level of viewership concentration. Obviously, if cable/satellite and noncommercial broadcast station viewing is completely disregarded, then the top commercial broadcast television stations will receive a significantly higher share of the remaining television viewing that is counted. *See* Reply Comments of NAB in MM Docket No. 01-235 at 29-30 (filed Feb. 15, 2002); Reply Comments of NAB in MB Docket No. 02-277 at 25-26 (filed Feb. 3, 2003).

[4] The record in this proceeding is replete with uncontradicted evidence as to the ever growing competitive pressure on local broadcasters from multichannel video programming distributors. *See, e.g*., J. Levy, M. Ford-Livene, and A. Levine, OPP Working Paper #37, *Broadcast Television: Survivor in a Sea of Competition* at ii (Sept. 2002) ("*OPP Video Study*") (broadcasters face "continuing audience fragmentation" and "pressure" on "advertising revenues," as "DBS and the extension in cable availability and channel capacity have created an increasingly competitive environment for television broadcasting"); Testimony of Victor Miller IV of Bear, Stearns & Co., Inc., Transcript of FCC En Banc Hearing on Local Broadcast Ownership at 31-32 (Feb. 12, 1999) (testifying that the "local, free, over-the-air broadcast TV business is becoming progressively more difficult" as "video competition" fragments viewership and "single-channel" local broadcasters "compete for advertising, programming, viewers, and talent against . . . multichannel operators"); *Ninth Annual Report*, MB Docket No. 02-145, FCC 02-338 at ¶¶ 5, 13, 79, 80 (rel. Dec. 31, 2002) (in report assessing competition in the market for delivered programming, FCC found that advertising and audience levels for television broadcasters continue to decline and that advertising and audience levels for cable programming networks continue to rise).

[5] Dr. Crandall consequently concluded that "the goal of these arrangements is to improve operating efficiency through cost reduction, rather than to increase" advertising prices. Robert W. Crandall, *The Economic Impact of Providing Service to Multiple Local Broadcast Stations*

UCC additionally unconvincingly contended that the top four restriction is needed to ensure sufficient diversity in local news programming (*see* Opposition of UCC at 4-5), but in fact this restriction harms both diversity and localism in programming, including news. As NAB explained in detail in this proceeding,[6] a number of factors – including increasing competition from cable and other sources, the costs of the digital transition, and the decline of network compensation – have combined to squeeze the profits of local television broadcasters in medium and small markets as never before. An uncontradicted study prepared by NAB clearly demonstrated the declining financial position of smaller market television stations in recent years, particularly for those stations not among the ratings leaders in their markets.[7] Certainly the financial pressures on these low-rated stations are sufficiently severe to call into question their continued viability as independent operations. And given the considerable and growing expense of maintaining local news operations, as documented by two NAB studies, some television stations have already and greater numbers in the future will be forced by financial

---

within a Single Geographic Market at 4, Exhibit 1 to Comments of Sinclair Broadcast Group, Inc., in MB Docket No. 02-277.

[6] *See* Comments of NAB in MB Docket No. 02-277 at 70-84 (filed Jan. 2, 2003); Reply Comments of NAB in MB Docket No. 02-277 at 46-57 (filed Feb. 3, 2003).

[7] *See* Attachment C to NAB Comments in MB Docket No. 02-277, *The Declining Financial Position of Television Stations in Medium and Small Markets* (Dec. 2002) ("*TV Financial Report*") (showing that the average low-rated network affiliate in Designated Market Areas 51-175 experienced significant declines in profitability from 1993 to 2001 and, as of 2001, suffered actual losses, and that even the average high-rated network affiliate in many medium and small markets experienced declining profits from 1993 to 2001). Many press reports have confirmed the financial difficulties of smaller market television stations. *See, e.g.*, Steve McClellan, *Small Towns, Big Problems*, Broadcasting & Cable at 20 (Aug. 6, 2001) (describing the difficult economic circumstances faced by television stations in markets ranked 75th and below); David Lieberman, *Small TV Stations Reel Under Order to go Digital*, USA Today at 1B (July 17, 2002) (industry analysts agree that small market stations have serious problems with financing digital transition, as small station owners are "lucky" to make "$300,000 a year in free cash flow," and "[i]t can cost $3 million to convert to digital"); Steve McClellan and Dan Trigoboff, *Benedek Couldn't Hang On*, Broadcasting & Cable at 6 (April 1, 2002) (reporting bankruptcy filing of Benedek, the owner of 23 medium and small market affiliates).

considerations to forego providing local news in medium and small markets.[8] Further reform of the duopoly rule to allow smaller market television stations to combine would therefore enhance, rather than harm, both diversity and localism by ensuring the continued viability of struggling local broadcasters and their news operations.

Assumptions that duopolies automatically cause diversity to suffer (*see* Opposition of UCC at 5) are furthermore refuted by additional studies and considerable anecdotal evidence in this proceeding. Indeed, the available evidence demonstrates that same market combinations often lead to improved programming services to the public, including local news programming. Recall, for example, the testimony of Edward Munson of LIN Television at the Commission's hearing in Richmond last February. Mr. Munson described in detail how combining with another station in the same market enabled a technically deficient home shopping station in Norfolk, Virginia to be transformed into a major network affiliate with a local news operation that is transmitting in digital.[9] Additional studies submitted in this proceeding demonstrated that

---

[8] *See TV Financial Report* at 5-9 (showing that from 1993 to 2001, the average news costs of affiliated stations in DMAs 51-176 increased 71%, 104%, 58%, 56% and 82%, respectively, in market groupings 51-75, 76-100, 101-125, 126-150 and 151-176); Attachment D to NAB Comments in MB Docket No. 02-277, Smith Geiger, *Newsroom Budgets in Midsize (51-100) and Small Markets (101-210)* at 2, 13-15 (Dec. 2002) (because acquiring alternative programming, such as syndicated programming, "represents a much lower cost than news production," one can only expect more local stations to "forego" their increasingly costly local news for the "cheaper, less financially risky, and often more profitable option of acquired programming"). Commenters in this proceeding also documented the considerable number of cut backs in local television news operations that have already occurred. *See* Comments of Media General, Inc. in MB Docket No. 02-277 at Appendix Three, Attachment B (filed Jan. 2, 2003).

[9] *See also* Comments of Coalition Broadcasters, Belo Corp., and Nexstar Broadcasting Group and Quorom Broadcast Holdings in MB Docket No. 02-277 (existing duopolies and LMAs shown to lead to improvement in local news operations, the commencement of news operations at stations without any locally produced news, and improvements to other programming services, including local sports, weather, specials, public affairs, and programming focusing on minority communities and younger viewers).

stations in duopolies and LMAs have outpaced standalone stations in the transition to digital broadcasting and have outperformed standalone stations in attracting both viewers and advertising revenue.[10] This increase in audience share is particularly significant, as it shows that the duopoly or LMA allowed the stations to improve their programming services to the public, thereby attracting more viewers. UCC's assertions that the top-four restriction is needed to ensure diversity and localism is, in fact, exactly backwards, as the evidence shows that duopolies actually permit stations to commence or improve their local news operations and their other programming services offered to the public.

In sum, contrary to UCC's claims, the record in this proceeding provides ample support for the Commission to further reform the duopoly rule to allow duopolies in medium and small markets. Just as the Commission acted in 1992 to liberalize the local radio ownership rules when the radio industry (and particularly smaller stations) were suffering financially, the Commission should similarly act here to ensure the "economic viability" of local television broadcasters and therefore their "ability to function in the 'public interest, convenience and necessity.'" *Report and Order* in MM Docket No. 91-140, 7 FCC Rcd 2755, 2760 (1992). The current duopoly rule with the top-four restriction "prevent[s] valuable efficiencies from being realized," and relaxing the rule will not only enable local television stations "to improve their competitive standing" in today's multichannel marketplace, but the resulting efficiencies "may also play a significant part

[10] *See* Attachment B, Comments of Coalition Broadcasters in MB Docket No. 02-277 (filed Jan. 2, 2003) (a comparison of UPN and WB affiliates in markets 51-100 found that only 30% of standalone UPN/WB stations are currently broadcasting in digital, while 55.6% of the UPN/WB stations in duopolies or LMAs are broadcasting in digital); BIA Financial Network, *Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity?* (Jan. 2003), Attachment A to Comments of Coalition Broadcasters (finding that stations in local combinations significantly increased both their audience share and advertising revenue and that they outperformed similarly situated standalone stations in comparably-sized markets).

in improving the diversity of programming available to the public." *Id.* at 2760-61. NAB moreover emphasizes that the "trends" that already threaten the profitability and viability of medium and small market television broadcasters "are unlikely to be reversed," *id.* at 2760, and, in fact, NAB has previously explained that the financial situation of smaller market television stations will only continue to worsen.[11] If the Commission wishes to protect consumer access to free, over-the-air television, including such costly programming as local news – a goal NAB strongly supports – then the Commission must further reform the television duopoly rule to ensure the continued economic viability of local broadcasters providing free, over-the-air service in medium and small markets.

[11] *See* Comments of NAB in MB Docket No. 02-277 at 74-75 (filed Jan. 2, 2003) (network compensation payments are expected to be further reduced or eliminated entirely in the future, and stations in smaller markets, which have generally not fully completed the digital transition, must still bear the costs of this transition). And certainly competition from cable/satellite operators will not lessen in the future, but will only intensify as more nonbroadcast networks are offered on cable and satellite systems growing in capacity and cable gains additional amounts of local advertising. *See OPP Video Study* at 134-35 (noting that cable operators are becoming serious competitors in local advertising markets).

II. Conclusion.

For all the reasons set forth above and in our opposition, NAB requests that the Commission deny reconsideration petitions calling for the reinstatement or retention of outdated and unnecessary local broadcast ownership policies, and to grant petitions that would aid in ensuring the future viability of free, over-the-air broadcasters, particularly local television stations in medium and small markets.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

Jerianne Timmerman

Henry L. Baumann
Jack N. Goodman
Jerianne Timmerman

October 16, 2003

CERTIFICATE OF SERVICE

I, Patricia Jones, Legal Secretary for the National Association of Broadcasters, hereby certify that a true and correct copy of the foregoing Reply of the National Association of Broadcasters was sent this 16th day of October, 2003, by first class mail, postage prepaid, to the following:

Angela J. Campbell
INSTITUTE FOR PUBLIC
REPRESENTATION
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001

s/ Patricia Jones
Patricia Jones