An original and four copies of all comments and reply comments filed by paper must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW—A325, Washington, D.C. 20554. In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 1231 20th Street, N.W., Washington, D.C. 20036, and one copy with the Chief, Competitive Pricing Division, 445 12th Street, S.W., TW—A225, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17666 Filed 7–12–00; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 98–35; FCC 00–191]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document is the Commission's Report in its 1998 biennial review of its broadcast ownership rules. Such biennial reviews are required by the Telecommunications Act of 1996. The intended effect of these reviews is to assure that the Commission's broadcast ownership rules are no more extensive than necessary in the public interest as the result of competition.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division, (202) 418–2134 or Dan Bring, Mass Media Bureau, Policy and Rules Division, (202) 418–2170.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report* in MM Docket No. 98–35, FCC 00–191, adopted May 26, 2000, and released June 20, 2000. The complete text of this *Report* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 445 12th Street, SW, Room CY–B402, Washington, DC. The *NPRM* is also available on the Internet at the Commission's website: *http://www.fcc.gov*.

Synopsis of Report

I. Introduction

1. This *Report* reviews our broadcast ownership rules as required by section 202(h) of the Telecommunications Act of 1996 (Public Law 104–104, 110 Stat. 56 (1996)) (''Telecom Act''). That section provides:

> The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

Section 11(a) of the Communications Act of 1934, as amended, similarly provides that under the statutorily required review, the Commission ''shall determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition'' and requires that the Commission ''shall repeal or modify any regulation it determines to be no longer necessary in the public interest.'' More recently, Congress has prescribed a period of 180 days from November 29, 1999, in which the Commission is to complete the 1998 biennial review of its broadcast ownership rules. (Section 5003, Pub. L. 106–113, 113 Stat. 1501 (1999).) The Conference Report for this 1999 Act states that within the subject period the Commission shall issue a report and if it concludes that it should retain any of the rules unchanged, it ''shall issue a report that includes a full justification of the basis for so finding.''

2. Six rules are reviewed in this *Report*: (1) the national TV ownership rule (including the ''UHF discount''); (2) the local radio ownership rules; (3) the dual network rule; (4) the daily newspaper/broadcast cross-ownership rule; (5) the cable/television cross-ownership rule; and (6) an experimental broadcast station ownership rule. The *Report* provides a regulatory history of each rule, followed by a discussion of the competitive and diversity issues that justify our decision as to whether the rule remains in the public interest.

3. On March 12, 1998, we adopted a *Notice of Inquiry* (''*NOI*'') in this proceeding seeking comment on the six rules included in this biennial ownership report. The NOI did not seek comment on the local television ownership rule or one-to-a-market ownership rule because these rules were already the subject of pending proceedings and we reasoned that their examination in those proceedings complied with Congress' mandate that we review all of our ownership rules biennially beginning in 1998. On August 5, 1999, we adopted a *Report and Order* (*Report and Order* in MM Docket Nos. 91–221 & 87–8), relaxing our local television ownership rule and one-to-a-market ownership rule. Those decisions provided broadcasters with expanded opportunities to realize the efficiencies of television duopolies and local radio/television combinations in markets where an essential level of competition and diversity would be preserved. More specifically, we narrowed the geographic scope of the television duopoly rule from the Grade B contour approach to a ''DMA'' test. This new approach allows the common ownership of two television stations without regard to contour overlap if the stations are in separate Nielsen Designated Market Areas (''DMAs''). Additionally, it allows the common ownership of two television stations in the same DMA if their Grade B contours do not overlap or if eight independently owned, full-power and operational television stations will remain post merger, and one of the stations is not among the top four ranked stations in the market based on audience share. Furthermore, we adopted waiver criteria presuming, under certain circumstances, that a waiver to allow common local television station ownership is in the public interest where one of the stations is a ''failed station,'' is a ''failing station,'' or where the applicants can show that the combination will result in the construction and operation of an authorized but as yet ''unbuilt'' station. We also substantially relaxed the radio/television cross-ownership (''one-to-a-market'') rule to permit more such combinations, including allowing a party to own as many as one TV station and seven radio stations under certain circumstances. These actions were taken in fulfillment of our obligations under section 202(h) of the Telecom Act and satisfy its requirements as to the subject rules.

4. In the instant phase of our biennial review of broadcast ownership rules, we conclude that the local radio ownership rules, the national television ownership rule (including the UHF discount), and cable/TV cross-ownership rule continue to serve the public interest and so retain these rules. As noted, we have just recently substantially relaxed our local

television ownership and one-to-a-market rules. It is currently too soon to tell what effect this will have on consolidation, competition and diversity. Until we have further information in this regard we believe that these rules remain necessary in the public interest in their current form. However, we will issue—*Notices of Proposed Rule Makings* (*NPRMs*) proposing modification of the dual network rule (64 FR 41393) and newspaper/broadcast cross-ownership rules. Additionally, in the case of the local radio ownership rule, we will issue an *NPRM* (65 FR 41401) seeking comment on alternative methods of correcting certain anomalies in the way we currently define radio markets and the way we count the number of stations in a radio market and the number of radio stations that an entity owns in a market. Finally, we conclude that the experimental broadcast station multiple ownership rule may no longer be in the public interest and will issue an *NPRM* proposing its elimination.

II. Background

5. For more than a half century, the Commission's regulation of broadcast service has been guided by the goals of promoting competition and diversity. These goals are separate and distinct, yet also related. Indeed, as recently as 1997, the Supreme Court noted that ''[f]ederal policy * * * has long favored preserving a multiplicity of broadcast outlets regardless of whether the conduct that threatens it is motivated by anticompetitive animus or rises to the level of an antitrust violation.'' (*Turner Broadcasting System, Inc.* v. *FCC*, 520 U.S. 180, 117 S. Ct. 1174 (1997) (''Turner II''). (Citations omitted.)) The Supreme Court has also held that both of these goals are important and substantial public policies for First Amendment purposes. (*Turner Broadcasting System* v. *FCC*, 512 U.S. 622, 662 (1997) (''Turner I'').) Competition is an important part of the Commission's public interest mandate, because it promotes consumer welfare and the efficient use of resources and is a necessary component of diversity. Diversity of ownership fosters diversity of viewpoints, and thus advances core First Amendment principles. As the Supreme Court has said, the First Amendment ''rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public * * * .'' (*Associated Press* v. *United States*, 326 U.S. 1, 20 (1945); *accord Federal Communications Commission* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775 (1978).) Promoting diversity in the number of separately owned outlets has contributed to our goal of viewpoint diversity by assuring that the programming and views available to the public are disseminated by a wide variety of speakers.

6. This Report uses the framework for reviewing competition and diversity outlined in the *NOI* to evaluate, as required by the Telecom Act, whether the six rules included in this biennial review continue to be in the public interest. Thus, we assess current levels of competition in the market for delivered video programming, the advertising market, and the program production market to determine whether such competition has eliminated the need for the six rules. Our diversity analysis focuses upon the degree to which broadcast and non-broadcast media, operating within the framework of our ownership rules, advance the three types of diversity (*i.e.*, viewpoint, outlet and source) that our broadcast ownership rules have attempted to foster. Viewpoint diversity refers to the range of diverse and antagonistic opinions and interpretations presented by the media. Outlet diversity refers to a variety of delivery services (*e.g.*, broadcast stations, cable and DBS) that select and present programming directly to the public. Source diversity refers to the variety of program or information producers and owners.

III. Status of Media Marketplace

7. Our decision here concerning the broadcast ownership rules takes account of the ongoing changes in the structure of the broadcast industry. The UHF television discount, the daily newspaper/broadcast cross-ownership rule, the cable/television cross-ownership rule, and the experimental broadcast station ownership rule have not been examined for many years. In reviewing these rules, we recognize that there has been substantial growth in the number and variety of media outlets in local markets. In contrast, the national television ownership rule, the local radio ownership rules, and the dual network rule were modified in 1996 in accordance with section 202 of the Telecom Act. While there has been growth in the number and variety of media outlets since the Telecom Act, there have also been significant changes in the ownership structure of the broadcast industry during that period, chiefly consisting of extensive consolidation in the radio and television industries.

8. Section 202(h) of the Telecom Act requires us to determine whether any of our broadcast ownership rules ''are necessary in the public interest as the result of competition.'' We note that some commenters express the belief that this limits our review only to competitive matters and that our analysis must be devoid of diversity considerations. Because the statutory language requires reference to the public interest standard, and because diversity and competition have both been critical components of that standard, (*See, e.g., United States* v. *Storer Broadcasting Company*, 351 U.S. 192, 203 (1956); *FCC* v. *National Citizens Committee For Broadcasting*, 346 U.S. 775, 780–81, 794 (1978)). our review must consider diversity issues as well. Indeed, the United States Supreme court has identified as a ''governmental purpose of the highest order'' ensuring the public's access to ''a multiplicity of information sources.'' (*Turner II, supra* at 90.) Also, there is support for our consideration of diversity in this context in the legislative history of the Telecom Act itself. As discussed in our recent local television ownership decision, Congress expressed diversity concerns with regard to at least two of our rules and, with respect to our review of the radio/television cross-ownership rule, expressly instructed the Commission to take into account not only the increased competition facing broadcasters but also ''the need for diversity in today's radio marketplace.'' Finally in this regard, the statutory language appears to focus on whether the public interest basis for the rule has changed as a result of competition, and does not appear to be intended to limit the factors we should consider. Therefore, our public interest determination for each rule is based on an examination of both competition and diversity issues in light of competitive market conditions. The material below provides a brief overview of the number of outlets, ownership structure, and other information relevant to the current status of competition in the video, audio, and newspaper industries. The numbers alone, of course, are not sufficient to determine whether particular media compete with one another in relevant markets or whether different media are adequate substitutes for one another from a diversity perspective.

IV. Rules

A. National TV Ownership Rule and UHF Discount

1. Regulatory History

9. Section 73.3555(e)(1) sets forth the current national TV ownership rule. That section states:

> No license for a commercial TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common control) if the grant, transfer, or assignment of such license would result in such party or any of its stockholders, partners, members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in TV stations which have an aggregate national audience reach exceeding thirty-five (35) percent.

10. Section 73.3555(e)(2) sets forth the ''UHF discount.'' That section explains that ''national audience reach'' is based on the number of TV households in Nielsen Designated Market Areas (DMA), and that UHF TV stations are attributed with only 50% of the TV households in the DMA.

11. The Commission first adopted a national ownership limit for television broadcast stations in the 1940s by imposing numerical caps on the number of stations that could be commonly owned, and originally limited common ownership to no more than three stations nationwide. Several years later this was expanded to allow ownership of no more than five stations. In retaining the five station rule in 1953, the Commission explained:

> The purpose of the multiple ownership rules is to promote diversification of ownership in order to maximize diversification of program and service viewpoint as well as to prevent any undue concentration of economic power contrary to the public interest and thus to carry out the underlying purpose of the Communications Act to effectuate the policy against monopolization of broadcast facilities and the preservation of the broadcasting system on a free competitive basis.

12. In 1954, the Commission adopted the ''Seven Station Rule'' by raising the multiple ownership limit from five stations to seven, with no more than five being VHF stations. The Commission believed that the more rapid and effective development of the UHF band warranted permitting the ownership of additional UHF stations. The Commission noted that it was aware of the serious problems confronting the development of the UHF service, especially in markets with VHF-only set saturation, and that it was in these areas particularly where the prestige, capital, and know-how of the networks and other multiple owners would be most effective in aiding UHF.

13. In 1984, the Commission eliminated the Seven Station Rule and established a six-year transitional period during which common ownership of twelve television broadcast stations would be permitted. The Commission determined that repeal of the Seven Station Rule would not adversely affect the Commission's traditional policy objectives of promoting viewpoint diversity and preventing economic concentration. The Commission explained that: (1) Changes in the broadcasting and communications markets, (2) new evidence of the positive effects of group ownership on the quality and quantity of public affairs and other programming responsive to community needs, and (3) the lack of relevance of a national ownership rule to the availability of diverse and independently owned radio and TV voices to individual consumers in their respective local markets led to the conclusion that the rule was unnecessary to ensure diversity of viewpoints. The Commission determined that the better focus for addressing viewpoint diversity and economic competition concerns was the number and variety of information and advertising outlets in local markets. Nevertheless, the Commission recognized the concerns of some commenters that, if the rule were repealed immediately and in its entirety, a significant restructuring of the broadcast industry might occur before all ramifications of such a change became apparent. Therefore, the Commission established a transitional limit of twelve television broadcast stations. The transitional limit would automatically sunset in six years unless experience showed that continued Commission involvement was warranted.

14. On reconsideration, the Commission, modified its decision. Specifically, the Commission (1) established an audience reach cap of 25 percent (defined as 25 percent of the national audience, calculated as a percentage of all Arbitron ADI television households), in addition to the twelve station limit, to better account for the effect that relaxation of the rule would have on population penetration; (2) attributed owners of UHF stations with only 50 percent of their ADI audience reach to take cognizance of the limitations inherent in UHF broadcasting; (3) permitted common ownership of an additional two television stations, provided that they were minority controlled; and (4) eliminated the automatic sunset provision. The stated objective was to permit reasonable expansion so as to capture the benefits of group ownership while avoiding the possibility of potential disruptive restructuring of the national broadcast industry. The Commission explained that a numerical cap would prevent the acquisition of a tremendous number of stations in the smaller markets, thus reducing the possibility of disruptive restructuring in small markets, while an audience reach cap would temper dramatic changes in the ownership structure by the largest group owners in the largest markets. The Commission noted that its decision to use both a numerical cap and an audience reach cap was also predicated on concerns regarding the potential impact on industry structure. The Commission further explained that attributing UHF stations with 50 percent of an ADI market's audience reach was intended to address the fundamental disadvantage of UHF television in reaching viewers. The UHF Comparability Task Force found that: ''Due to the physical nature of the UHF and VHF bands, delivery of television signals is inherently more difficult at UHF. It should be recognized that actual equality between these two services cannot be expected because the laws of physics dictate that UHF signal strength will decrease more rapidly with distance than does VHF signal strength.'' The Commission found it inadvisable to terminate the multiple ownership rules for television broadcast stations automatically at the end of six years. The Commission explained that (1) it was appropriate to proceed cautiously in relaxing the rules and (2) an automatic sunset of the ownership rules was unnecessary to achieve the Commission's policy objectives.

15. On March 7, 1996, the Commission amended the national television station multiple ownership rules to conform to the provisions in section 202(c)(1) of the Telecom Act. Specifically, the Commission eliminated the numerical limit on the number of broadcast television stations a person or entity could own nationwide and increased the audience reach cap on such ownership from 25 percent to 35 percent of television households.

16. In our *Notice of Inquiry* in this proceeding we sought comment on this rule. Particularly, we asked about its effect on competition in the national advertising market and the program production market at the national level. We also sought comment on the rule's effect on existing television networks and the formation of new networks and sought information on the economies of

scale that may have been realized as a result of the consolidation permitted by the Telecom Act. Finally, we asked whether the UHF discount should be retained, modified or eliminated in view of the decreasing disparity between VHF and UHF television and, in the event of a decision to modify the rule, whether and, if so, how group owners that exceed any new limits should be grandfathered.

2. Comments on National TV Ownership Rule

17. All of the major networks (ABC, CBS, Fox, and NBC) support total repeal of the national television ownership rule. These networks argue that abolition of the rule would have no effect on the level of diversity and competition in local markets, and retention of the rule hinders broadcasters from achieving economic efficiencies. These networks maintain that group owned stations provide more news and public affairs programming than non-group owned stations. They also argue that removal of the audience reach cap would promote the development of new broadcast television networks. Finally, they argue that the only two markets that may be affected by elimination of the rule, the national advertising market and the market for national exhibition rights to video programming, would remain unconcentrated.

3. Discussion of National TV Ownership Rule

18. We believe that the audience reach cap should be retained at its current level for the present. As an initial matter, Congress prescribed an increase in the cap from 25% to 35% in the Telecom Act. Several considerations motivate our decision not to change the national TV ownership rule. First, we believe that the effects of our recent change to the local television ownership rule should be observed and assessed before we make any alteration to the national limit. Second, the existing reach cap has already resulted in many group owners acquiring large numbers of stations nationwide since the cap was increased to 35 percent in 1996. We also believe that this trend needs further observation prior to any change in the cap. (We note, however, that on November 18, 1999, Fox Television Stations, Inc., filed an ‘‘Emergency Petition for Relief and Supplemental Comments’’ in this proceeding seeking, among other things, repeal of the national broadcast ownership rule. Also, on November 19, 1999, Viacom Inc. filed ‘‘Comments’’ in this proceeding seeking repeal of the same rule and, additionally, the dual network rule. The original deadline for filing comments in this proceeding was May 22, 1998, with June 22, 1998, being the reply comment deadline. These deadlines were later extended, pursuant to the request of the National Association of Broadcasters, to July 21, 1998, and August 21, 1998, for comments and reply comments, respectively. *Order in MM Docket No. 98–35, DA 98–854* (released May 7, 1998). The Fox and Viacom filings, having been submitted nearly 18 months subsequent to these deadlines will not be considered in this proceeding. Simply, to do so would provide a precedent for subjecting our biennial review proceedings to unceasing comment cycles, and would deprive other parties of an ability to respond to these new matters absent establishment of new pleading cycles. Accordingly, they will not be considered herein but will be included in the record of our 2000 biennial review of broadcast ownership issues.)

19. One factor in our decision is the recent relaxation of our local television ownership rules. As noted above, those decisions provided increased flexibility for the creation of television duopolies and television/radio combinations in local markets while safeguarding an essential level of competition and diversity. We conclude that prudence dictates that we should monitor the impact of our recent decisions regarding local television ownership and any impact they may have on diversity and competition prior to relaxing the national reach cap. Commenters supporting relaxation or elimination of the cap make credible arguments in favor of their position. These arguments include the contention that elimination of, or increase in, the cap would allow additional economic efficiencies and more news and public affairs, increase minority ownership by removing the cap as an impediment to broadcasters obtaining attributable equity interests in minority-owned television stations, and promote the development of new broadcast television networks. We believe, however, that the competitive concerns of opponents of relaxation or elimination of the cap (*i.e.*, are that eliminating or expanding the reach cap would increase the bargaining power of networks over their affiliates, reduce the number of viewpoints expressed nationally, increase concentration in the national advertising market, and enlarge the potential for monopsony power in the program production market) are more convincing under current circumstances. Until we gain experience under the new local television ownership rules we are disinclined to correspondingly relax them on the national level. While we will reexamine this decision in our future biennial reviews of broadcast ownership rules, we intend to proceed cautiously in this area at the present time.

20. Also, elimination of the 12 station numerical cap has already permitted group owners to acquire a large number of stations. The current rule permits a group owner to acquire a VHF station in every market below DMA 47 (i.e., DMA 48 through DMA 210, a total of 163 stations) and still remain below the 35 percent audience reach cap. By holding UHF stations only, a group owner could acquire a station in every market below DMA 10 (*i.e.*, DMA 11 through DMA 210, a total of 200 stations) and still remain below the 35 percent audience reach cap. Data show that many group owners have acquired additional stations and increased their audience reach since the Telecom Act's passage.

21. Moreover, consolidation is a feature of other video media. In cable, the seven largest operators now serve almost 90 percent of all U.S. cable subscribers, which is up from 63 percent being served by the top 10 multiple system operators (‘‘MSO’’) in 1990. Thirty-seven percent of satellite-delivered national programming networks are now vertically integrated with a cable MSO. In 1999, for example, one or more of the top six cable MSOs held an ownership interest in each of 101 vertically integrated national programming services. In addition, a significant percentage of the top national programming services are controlled by approximately eleven companies, including cable MSOs, broadcasters and other media entities. Of the top 50 programming services in terms of subscribership, 46 are owned by one or more of these 11 companies.

22. The evidence suggests that the television broadcast industry is still adapting to the recent relaxation of the national and local ownership rules and we wish to avoid actions with the potential for disruptive restructuring. For example, applications for duopolies under our new local television ownership rule were only filed this past November and we believe that we should monitor developments under this new rule prior to making any changes to the national television ownership reach cap.

23. We also intend to proceed cautiously because the Commission has previously recognized that a change in the audience reach cap may well influence the bargaining positions between broadcast television networks and their affiliates. We noted that in

some situations, relaxation of the national ownership limits could increase the bargaining power of networks by expanding their option to own rather than affiliate with broadcast television stations. In other situations, however, relaxation of the national ownership limits could increase the bargaining position of group-owned affiliates by creating larger, more powerful groups. In its comments, NASA (Network Affiliated Stations Alliance) asserts that the national ownership rule is the essential mechanism for maintaining the balance between networks and their affiliates to ensure that affiliates can program their stations in the interests of the communities they are licensed to serve. NASA argues that an increase in the audience reach cap will increase the bargaining power of networks. We believe that in considering relaxation of the national ownership rule we should act cautiously in light of the potential impact of this rule on the bargaining positions of networks and affiliates, particularly given the restructuring that may be taking place concurrently on the local level. We do not believe that consolidation of ownership of all or most of the television stations in the country in the hands of a few national networks would serve the public interest. The national networks have a strong economic interest in clearing all network programming, and we believe that independently owned affiliates play a valuable counterbalancing role because they have the right to decide whether to clear network programming or to air instead programming from other sources that they believe better serves the needs and interests of the local communities to which they are licensed. Independent ownership of stations also increases the diversity of programming by providing an outlet for non-network programming. We do not believe that the role played by independently owned affiliates is any less important today than it was four years ago when Congress determined that the public interest was served by maintaining a national ownership limit, albeit it at a slightly relaxed (35% rather than 25%) level.

4. Comments on the UHF Discount

24. A number of commenters advocate elimination or substantial modification of the UHF discount. These groups argue that the original basis for the discount appears to have fallen away. Specifically, the deficiencies in UHF reception that existed in the early years of television have largely been ameliorated by improved television receiver design and the fact that more than two-thirds of all television homes now receive local signals via cable.

25. A number of commenters, however, support retention of the UHF discount. These commenters argue that the original basis for the discount remains. Specifically, these commenters maintain that cable carriage, must-carry rules, and improved receiver design have not created a level playing field between UHF and VHF stations. They argue that economic and technical disparities between UHF and VHF stations continue to disadvantage UHF stations.

5. Discussion of the UHF Discount

26. We believe that, for the present time, the UHF discount remains necessary in the public interest. As commenters note, there remains a UHF handicap that has not yet been overcome. Although roughly two-thirds of American viewers obtain their local television stations over a cable television system, still roughly one third do not. They rely on over-the-air reception. UHF stations have greater difficulty in reaching these viewers and cable headends—thereby hindering their ability to obtain cable carriage—because of their weaker signal. While the Commission has observed in other contexts that this UHF signal disparity has been ameliorated over the years it has not yet been eliminated. Additionally, because of the higher operating costs of UHF stations, particularly due to their higher power requirements, even when they can reach these viewers they still incur greater expenses than VHF stations in doing so and, thus, remain under a competitive handicap warranting a 50 percent discount.

27. As Univision points out in its comments, if there were no competitive disparity between VHF and UHF television, we would expect group owners to take advantage of the UHF discount by selling their VHFs and buying UHFs. The fact that few, if any, group owners have used this strategy suggests that the market recognizes a continuing competitive disparity between the two services. Accordingly, we cannot say the discount is no longer in the public interest as a result of competition.

28. While the technical and engineering evidence submitted by commenters continues to support the UHF discount, we believe that it will likely not continue to do so in the future. The information received in the proceeding suggests that the reach disparity between VHF and UHF stations differs from market-to-market and station-to-station. In addition, we agree with commenters arguing that advances in technology now provide us with the tools to more accurately measure the household reach for each UHF station.

29. In this regard, we note that the existing UHF discount will likely not work well for DTV. Our efforts to replicate existing signal coverage provide DTV stations the ability to reach approximately the same number of television households they currently reach with NTSC stations. Thus, it is not clear that a VHF NTSC station assigned a UHF DTV channel should be permitted a UHF discount if the station reaches the same number of households as did its NTSC counterpart. Nor is it clear that a UHF NTSC station assigned a VHF DTV channel should lose the discount if the DTV station does not reach more households. In this regard, however, we note that, pursuant to section 5009(c) of Public Law 106–113, 113 Stat. 1501, Appendix I (1999), the Commission, on December 7, 1999, issued a Public Notice giving DTV licensees until December 31, 1999, in which to file notice that they intend to seek maximization of their DTV service area. One thousand three hundred and sixteen letters of notification manifesting the intent to file to maximize DTV stations' service areas were filed by that deadline. Accordingly, DTV licensees, including those operating on UHF channels, have been given the opportunity to maximize their DTV coverage areas, and not merely replicate their analog coverage. This should ameliorate at least some of the disparities between UHF and VHF stations' access to viewership in the digital context. Additionally, unlike analog signal reception, where picture quality gets progressively worse as distance from the antenna increases, digital reception is characterized by the so-called ''cliff effect.'' That effect is characterized by DTV television receivers obtaining the same quality of reception at a distance from the transmitting antenna as is obtained close to it until such a point as the data stream is no longer useable by the receiver. At that point reception ''falls off a cliff'' and no picture or sound is produced. In other words, the reception quality remains high when an adequate signal is available. Effectively, as the average DTV signal strength gets weaker at the edge of a station's service area, the picture and sound will be produced for smaller percentages of time, until reception is considered unacceptable. Generally, DTV UHF viewers should have better quality reception at greater distances from the station than is

currently the case with respect to analog UHF reception. This, too, should allow DTV UHF stations to obtain better access to off-the-air viewers and should rectify the VHF/UHF disparity to an extent. We believe that under these circumstances, the eventual modification or elimination of the discount for DTV will be appropriate. Accordingly, at such time near the completion of the transition to digital television we will issue a Notice of Proposed Rulemaking proposing a phased-in elimination of the discount. We previously stated that until the UHF discount was addressed in the proceedings where it was under review, any entity that acquired stations during the interim period between the revision of the national reach cap pursuant to the Telecom Act, and a Commission decision on the UHF discount, and which complied with the 35 percent reach cap only by virtue of the UHF discount, would be subject to our eventual decision on the discount. This has remained the case during the pendancy of the instant proceeding and we will continue to follow this policy until such time as the UHF discount is modified or eliminated.

B. Local Radio Ownership Rules

1. Regulatory History

30. In 1996, the Commission amended the local radio ownership rules to conform to provisions in section 202(b) of the Telecommunications Act of 1996. Section 73.3555(a)(1) of the Commission's rules (47 CFR 73.3555(a)(1)) sets forth the current local radio ownership rules. These rules currently allow: (1) Combinations of up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM), in markets with 45 or more commercial radio stations; (2) combinations of up to 7 commercial radio stations, not more than 4 of which are in the same service, in markets with between 30 and 44 commercial radio stations; (3) combinations of up to 6 commercial radio stations, not more than 4 of which are in the same service, in markets with between 15 and 29 commercial radio stations; (4) combinations of up to 5 commercial radio stations, not more than 3 of which are in the same service, if no party controls more than 50 per cent of the stations in the radio market, in radio markets with 14 or fewer commercial radio stations.

31. In 1938, the Commission adopted a strong presumption against granting radio licenses that would create duopolies (*i.e.,* common ownership of more than one station in the same service in a particular community) based largely on the principle of ''diversification of service.'' In the early 1940s this presumption against duopoly ownership became an absolute prohibition when the Commission (1) adopted rules governing commercial FM service and (2) prohibited the licensing of two AM stations in the same area to a single network. The AM rule barred overlap of AM stations where a ''substantial portion of the applicant's existing station's primary service area'' would receive service from the station in question, except upon a showing that the public interest would be served through such multiple ownership; and the FM rule prohibited the licensing of a new station which would serve ''substantially the same area'' as another station owned or operated by the same licensee. The Commission explained that the radio duopoly rules sought to promote economic competition and diversity of programming viewpoints through station-ownership diversity.

32. In 1964, the Commission abandoned its case-by-case adjudication approach and barred common ownership of radio stations when the predicted 1 mV/m contours of the stations overlapped. In adopting the rule, the Commission stated: ''When two stations in the same broadcast service are close enough together so that a substantial number of people can receive both, it is highly desirable to have the stations owned by different people.'' The Commission explained that this objective flowed logically from two basic principles underlying the multiple ownership rules.

First, in a system of broadcasting based upon free competition, it is more reasonable to assume that stations owned by different people will compete with each other, for the same audience and advertisers, than stations under the control of a single person or group. Second, the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level.

The Commission concluded that the rules were based upon the view of the First Amendment to the Constitution articulated by the Supreme Court in the Associated Press case—*i.e.,* a notion that the Amendment ''rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.''

33. In 1988, the Commission replaced the 1 mV/m contour-overlap duopoly standard, which prohibited the common ownership of stations with overlapping 1 mV/m signal contours, with a more relaxed ''principal city'' contour-overlap standard that prohibited common ownership of AM stations when the predicted 5 mV/m contours overlapped and common ownership of FM stations when the predicted 3.16 mV/m contours overlapped. As such, the rule prohibited combinations of 2 AM or 2 FM stations in the same ''principal city'' but permitted AM/FM combinations within the same community. The Commission explained that efficiencies of common ownership might be realized by allowing radio broadcasters to own two or more radio stations in the same geographic area, although not in the same principal city. The Commission also explained that the goals of the duopoly rule remained the same: to promote economic competition and diversity of programming and viewpoints through local ownership diversity. The Commission noted a changed marketplace, with an increased number of broadcast stations, the introduction of new services and technologies, and the abundance of competition in local markets, as the compelling reasons to relax the local ownership regulation.

34. In 1992, the Commission again cited changed economic conditions in radio markets as a basis for further relaxing the local radio ownership rules. Specifically, the Commission permitted combinations of up to (i) 3 AM and 3 FM in markets with 40 or more stations, (ii) 3 AM and 2 FM in markets with 30 to 39 stations, (iii) 2 AM and 2 FM in markets with 15 to 29 stations and (iv) 3 stations (with no more than 2 in the same service) in markets with 14 or fewer stations. The Commission based the count of radio stations on the number of commercial radio stations meeting minimum audience survey reporting standards within an Arbitron designated radio metro market, or on overlapping principal community contours outside designated radio markets. Under cases (i)-(iii), combinations were permitted if the combined audience share did not exceed 25 percent. In case (iv), the combination was permitted if it would not result in a single party controlling 50 percent or more of the stations in the market. The Commission noted growth in the number of radio stations and increased competition from non-radio outlets such as cable and MTV. The Commission noted that stations faced declining growth in radio revenues and concluded that economic circumstances threatened radio's ability to serve the

public interest. The Commission explained that consolidation within the industry would allow radio broadcasters to realize economies of scale that would then generate greater programming investment and increase radio stations' competitiveness. In response to petitions for reconsideration, the Commission moderated the relaxation of its rules permitting combinations of up to (i) 2 AM/2 FM in markets with 15 or more stations, if the combined audience share did not exceed 25 percent; and (ii) 3 stations in markets of 14 or fewer stations, with no more than 2 in the same service, if the combination would not control 50 percent or more of the stations in the market. The Commission decided to count radio stations with reference to a contour overlap standard in all situations, not just those outside of Arbitron designated radio markets. Thus, the Commission defined the radio market ''as that area encompassed by the principal community contours * * * of the mutually overlapping stations proposing to have common ownership. The number of stations in the market will be determined based on the principal community contours of all commercial stations whose principal community contours overlap or intersect the principal community contours of the commonly-owned and mutually overlapping stations.'' The Commission concluded ''that adopting more moderate increases * * * in the permissible level of station ownership in certain local markets at this time will provide necessary relief while enabling us to monitor marketplace developments as they unfold.''

35. Pursuant to the Telecommunications Act of 1996, the Commission further relaxed its local radio ownership rules in March 1996, as set forth. The Commission did not change from its 1992 reconsideration decision, however, how it defined the relevant radio market or which stations it counted.

36. In our biennial review *NOI*, we asked for comment on how the relaxation of local radio ownership rules under the Telecom Act has impacted competition, diversity and economic efficiencies within local radio markets. We noted that since the passage of the Telecom Act, the radio industry has experienced an ongoing trend towards increasing ownership concentration, both in terms of local and national radio markets; although the number of radio stations has increased, the number of owners has decreased. The *NOI* asked for comment on whether this trend has had a significant impact on local market competition among radio stations, and with other local media outlets, in terms of the program delivery and local advertising markets. The *NOI* also asked for comment on whether radio ownership concentration has had a significant influence over the expression of viewpoint diversity and the level of news coverage within local radio markets. We noted in the *NOI* that the NTIA's 1997 annual report on minorities and broadcasting showed that there has been a drop in the number of minority-owned broadcast stations, and sought comment on the relationship between our ownership limits and the opportunities for minority and female broadcast station ownership. In addition, the *NOI* sought comment on whether our current counting method for purposes of applying the local radio ownership rules should be modified to more realistically account for the number of stations in a radio market.

2. Comments

37. Commenters were divided on whether the current local radio ownership rules, mandated by the Telecommunications Act, have produced positive or negative results. Commenters concerned about the effects of the rules on the marketplace ask the Commission to maintain or strengthen, the current rules.

38. Other commenters, however, rejoin that consolidation was the intent behind deregulation of local radio ownership restrictions, and that any resulting problems that may arise with market power should be left to antitrust authorities.

39. Commenters also differed on the Commission's methodology for counting stations in determining compliance with the ownership rules. Commenters such as Air Virginia, Americans for Radio Diversity (ARD), Greater Media, Inc., Press Communications, LLC, and Gross Communications Corporation argue that too many stations are counted under the Commission's current methodology. These commenters proposed to use an Arbitron or other rating service market definition, taking into account listener audience and station power, and to include only those stations that place a 1mV/m (FM) or 2 mV/m (AM) primary service contour over the furthest city limit of the market's principal city, or using Department of Commerce MSA definitions in place of Arbitron.

40. In contrast, some commenting parties urged the Commission to retain, or even expand, its current radio market definition and station count method.

3. Discussion

41. *Overview.* We conclude that our current local radio ownership rules, as mandated by the Telecommunications Act of 1996, generally continue to serve the public interest. The longstanding goal of the Commission's local radio ownership restrictions has been to promote competition and viewpoint diversity within local radio markets. While some commenters argued that consolidation has had a positive impact on the economic viability of the radio industry, in terms of improved station profitability and increased value of radio ownership, and has also yielded potential benefits for both the listening public and advertisers, others raised significant concerns about the impact of radio ownership consolidation on both our competition and diversity goals.

42. We recognize that the industry has undergone significant consolidation since 1996. Moreover, we expect further consolidation as a result of our recent ownership decisions relaxing the television duopoly and one-to-a-market rules. We intend to monitor the consolidation and gather information regarding the overall impact on competition and diversity. As discussed more fully below, although we will maintain our current local radio ownership rules for the time being, we are persuaded that further proceedings are warranted to address certain definitional and methodological issues affecting our local radio ownership rules. Specifically, we will commence a proceeding to seek comment on alternative means of defining radio markets and alternative methods of calculating the total number of stations ''in a market'' and the number owned by a particular party in a market to correct anomalies in our current methodology. We believe that proceeding will lead to rules and procedures that will be easier to apply, provide more certainty for entities contemplating acquisitions, and result in a more rational and consistent application of our multiple ownership limits.

43. *Competition.* Relaxation of the ownership limits under the Telecom Act has produced financial benefits for the broadcast radio industry. Financial data indicate that the industry has made significant gains since passage of the Telecom Act. For the industry as a whole, station profitability has increased and station values have reached new heights. However, it is not clear whether these gains are the result of greater efficiencies, enhanced market power, or both.

44. We are concerned that increasing consolidation may be having adverse effects on competition, especially in the local radio advertising market. Current data show that in 85 out of a total of 270 Arbitron radio markets, two entities already control more than 80% of

advertising revenue; in 143 markets two entities control more than 70 percent of such. We recognize that many advertisers consider alternative media to be good substitutes for radio advertising. However, the Department of Justice (DOJ) has concluded that there are a significant number of advertisers that do not. In distinguishing radio advertising as a distinct market from that of television and newspaper advertising, the DOJ explains that (1) radio advertising is unique in reaching a mobile broadcast audience; (2) radio has a greater ability to target particular audience segments; and (3) radio can be more cost effective and more flexible in responding to changes in local advertising conditions. Additionally, as we noted in our recent *TV Ownership Order,* ''[a] recent econometric study finds that other advertising media are not good substitutes for radio advertising and that radio advertising probably constitutes a separate antitrust market.'' Thus, for certain advertisers, newspapers, cable, and broadcast television stations do not constitute an effective substitute for radio stations. For these advertisers, the consolidation of local radio markets may raise significant competitive concerns.

45. *Diversity.* Consolidation of radio stations under group ownership might allow owners to increase investment in news coverage, through the acquisition of more sophisticated news coverage equipment and by maintaining larger, more efficient news staffs. Some commenters thus suggest that ownership concentration has fostered viewpoint diversity. For example, Fuller-Jeffrey Broadcasting Companies, Inc. believes that viewpoint diversity is ''alive and well,'' and that pre-Telecom Act ownership limits had placed a severe economic strain on small to medium-sized companies. It also believes that the present level of consolidation should allow the radio industry to enjoy unprecedented success and stability, which will allow it to better contribute to the public interest. One impact of consolidation, it argues, has been to reduce unnecessary format duplication and to minimize audience overlap. Commenters such as NAB assert that the Commission should look at all media, including television, radio, cable, DBS, Internet and newspapers, along with smaller services such as MMDS and SMATV, when judging program diversity. NAB also finds that group owners do not impose their views on audiences.

46. The scale and scope efficiencies discussed above might in part arise from the consolidation of news coverage at commonly-owned stations, leading to a lessening of viewpoint diversity and to a smaller local market for news talent. If this were the case, this would conflict with the longstanding intent of the radio multiple ownership rules to promote viewpoint diversity through independently owned local stations. Viewpoint diversity has traditionally been viewed in terms of the number of independent viewpoints expressed in local markets, in which case ownership consolidation could have a negative impact on both viewpoint and source diversity. A related concern is that even without the loss of news staffs, viewpoint expression might become homogenized within a commonly owned group of radio stations as a result of the sharing of common news facilities and a common corporate culture.

47. Several commenters lend support to these notions. Air Virginia notes a trend by large group-owned stations towards less news and public affairs and more revenue-generating entertainment programming, particularly with local marketing agreements (''LMAs''). Americans for Radio Diversity (ARD) believes that independent broadcasters are more likely to provide diverse and unbiased programming, and that group owners tend to ignore public service to demographic groups deemed to be small or unprofitable, which often impacts minorities and those of lower economic status. CME believes that consolidation has led to reduced public-affairs and local-news programming, since group owners increasingly use syndicated programming and out-sourcing to produce news and public affairs programs, often with the same production company as is used by competitors. It reports that, for example, Metro Networks Inc., a Houston-based company, provides all of the news programming to 10 Washington, D.C., radio stations. Metro, it states, is one of the fastest growing companies in the United States and its growth, according to one of its executives, has been due to the ''out-sourcing'' his company has found at many radio stations. Similarly, CME reports that Capstar Broadcasting uses ten announcers based in Austin, Texas, to record all between-song breaks and weather and traffic breaks for 37 of its stations in Texas, Arkansas and Louisiana.

48. In view of the large-scale consolidation in the radio industry, we believe that the existing local radio ownership limitations remain necessary to prevent further diminution of competition and diversity in the radio industry. It appears that while there may have been a number of salutary effects flowing from the consolidation that has taken place since 1996, largely in financial strength and enhanced efficiencies, it cannot be said that consolidation has enhanced competition or diversity, and, indeed, may be having the opposite effect. There currently are hundreds of fewer licensees than there were four years ago and, in many communities, far fewer radio licensees compete against each other.

49. Our competition and diversity concerns outlined above lead us to conclude that the local radio ownership rules should not be further relaxed at this time. The industry is still adapting to the substantial relaxation of local ownership rules that followed enactment of the 1996 Act, and we expect consolidation to continue under our current ownership limits. While some commenters argue that we should tighten the ownership limits, we do not believe this appropriate given that Congress directed the Commission to adopt these limits in 1996.

50. *Market Definition and Counting Methodology.* Although we have decided to retain our ownership rule, our experience in administering the rule since its implementation in 1996 suggests several concerns that should be addressed, including our method of defining markets, counting the number of stations within them and counting the number of stations owned by a party in a radio market. These definitions and methodologies may be undermining Congress' intent in adopting the 1996 Act.

51. Our definition of a radio market and our method for counting the number of stations in a market were adopted in 1992. These were not altered when we amended our rules to implement section 202 of the 1996 Act. To evaluate whether a proposed transaction complies with our ownership rules, we first determine the boundaries of each market created by the transaction. A transaction may create more than one radio market. Our rules define a radio market as the ''area encompassed by the principal community contours (i.e., predicted or measured 5 mV/m for AM stations and predicted 3.16 mV/m contour for FM stations) of the mutually overlapping stations proposed to have common ownership.'' Thus, we look to all stations that will be commonly owned after the proposed transaction is consummated and group these stations into ''markets'' based on which stations have mutually overlapping signal contours. A market is defined as the area within the combined contours of the stations to be commonly owned that have a common overlap. For example, suppose an applicant proposes to own stations A, B, C and D. The contours of

stations A, B and C each overlap the contours of the other two stations—that is, there is some area which the contours of all three stations have in common. Station D, on the other hand, overlaps the principal community contour of station A, but not those of stations B or C. Under our current definitions, the area encompassed by the combined contours of stations A, B and C form one ''market'' and the area within the combined contours of stations A and D form another market. This example assumes that stations A and D are same-service stations, and that at least one other station, B or C, is also in the same service as station A.

52. To determine the total number of stations ''in the market,'' as defined above, we count all stations whose principal community contours overlap the principal community contour of any one or more of the stations whose contours define the market. Thus, in the market formed by the contours of stations A, B and C, any station whose contour overlapped the contour of A, B or C would be counted as ''in the market.'' We use a different methodology, however, to determine the number of stations that any single entity is deemed to own in a given market. For this purpose, we only count those stations whose principal community contours overlap the common overlap area of *all* of the stations whose contours define the market. Thus, a station owned by the applicant that is counted as being ''in the market'' because its contour overlaps the contour of at least one of the stations that create the market will not be counted as a station owned by the applicant in the market unless its contour overlaps the area which the contours of *all* of the stations that define the market have in common. Referring to our example of the market formed by the contours of stations A, B and C, station D would be counted as ''in the market'' because its contour overlaps the contour of station A. But, station D would not be counted as a station owned by the applicant in the ABC market because station D's contour does not also overlap the contours of stations B and C. In short, the applicant's ownership of station D would not be counted against it in determining compliance with the ownership cap in the ABC market.

53. These definitions and methodologies may be producing unintended results that are contrary to Congress' intent. In the 1996 Act, Congress directed us to adopt radio ownership limits that increase as the size of the market increases. Implicit in Congress' statutory directive is: (1) a rational definition of radio ''market'' that reflects the number of stations to which listeners in a particular community actually have access; and (2) a consistent definition of radio market when counting the number of stations in a market and when counting the number of stations an entity owns within that market.

54. The Commission's current policies raise concerns on both counts. First, the Commission's use of overlapping signal contours to assess the number of stations in the market can produce unrealistic results. For example, in a recent case in Wichita, Kansas, a 24-station market according to the commercial Arbitron rating service, the contour overlap approach counted 52 radio stations in the market, including several Oklahoma stations whose signals did not even reach Kansas. In other contexts, such as our television duopoly and one-to-a-market rules, we recently opted for market definitions based on commercial reality—as measured by ratings services like Arbitron and Nielsen—rather than contour overlaps. In changing our duopoly rule from a contour-based restriction to a DMA-based restriction, we stated that the DMAs ''are a better measure of actual television viewing patterns, and thus serve as a good measure of the economic marketplace in which broadcasters, program suppliers and advertisers buy and sell their services and products.'' We believe that the same reasoning could apply to radio markets. Arbitron markets reflect the number of stations that actually target listeners in a particular community because they are the listeners that advertisers pay to reach. We will issue an *NPRM* seeking comment on whether Arbitron markets (or a proxy in non-Arbitron areas) would be a more accurate measure of marketplace reality than our current approach.

55. Second, our current methodology for counting the number of stations a party owns in a market may result, as in the example discussed above, in a station being counted in the market for purposes of establishing the number of stations in the market but not being counted against a licensee's cap on the number of stations it may own in that market. In one case, this would have led to a party being permitted, in effect, to own three stations in a four-station market because our method of counting the stations it owned in the market excluded one of its stations. *See In re Application of Pine Bluff Radio, Inc.*, 14 FCC Rcd 6594 (1999). In *Pine Bluff*, a station that was logically in a market in terms of listenership and advertiser support, and, in fact, was counted for purposes of determining the total number of stations in that market was not counted against a party's ownership cap in that market because its principal city contour did not overlap the principal community contours of all stations that defined the market. In the 1996 Act, Congress provided that in markets with 14 or fewer commercial radio stations a party may own up to five commercial radio stations, but ''may not own, operate, or control more than 50 percent of the stations in such market.'' (Section 202(b)(1)(D) of the Telecommunications Act of 1996.) Yet, in *Pine Bluff*, application of our established policies led to one party owning three stations in what could reasonably be considered a four-station market. In *Pine Bluff* we recognized that this may appear to be an anomalous result but pointed out that it was produced by a methodology that had been consistently utilized since 1992 and that subsequent events in the market had rendered harmless the impact of this anomaly in that case.

56. This shifting market definition appears illogical and contrary to Congress' intent. For instance, in the 1996 Act, Congress provided that:

> [I]n *a radio market* with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in *such market*.

Thus, the plain language of the statute seems to require us to look at the same market—*i.e.,* to use the same definition of ''market''—when determining the number of radio stations in the market and when counting the number of stations that an entity owns, operates, or controls within that market. As a logical matter, if a station has sufficient presence that it should be counted as contributing to the number of stations ''in the market,'' it seems appropriate to count it as being ''in the market'' for purposes of calculating the ownership cap.

57. We tentatively conclude that our definitions and methodologies in this area may be having effects inconsistent with what Congress intended. In addition, they may be undermining the legitimate expectations of broadcasters, advertisers and the public as to the size of their market, the number of stations in their market, and the number of stations that can be owned by an individual party in that market. To consider appropriate changes to our rules, we will issue an *NPRM* soliciting comment on proposed modifications of our rules in this area.

C. Dual Network Rule

1. Regulatory History

58. Section 73.658(g) (47 CFR 73.658(g)) sets forth the Commission's current dual network rule. It directly reflects the provisions of section 202(e) of the Telecom Act, which permits a television broadcast station to affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such networks are composed of: (1) Two or more persons or entities that were ''networks'' on the date the Telecom Act was enacted; or (2) any such network and an English-language program distribution service that on the date of the Telecom Act's enactment provided 4 or more hours of programming per week on a national basis pursuant to network affiliation arrangements with local television broadcast stations in markets reaching more than 75 percent of television households. The Conference Report identified with precision the networks to which these definitions were to apply. It stated that the Commission was being directed to revise its dual network rule,

> to permit a television station to affiliate with a person or entity that maintains two or more networks unless such dual or multiple networks are composed of (1) two or more of the four existing networks (ABC, CBS, NBC, Fox) or, (2) any of the four existing networks and one of the two emerging networks (WBTN, UPN). The conferees do not intend these limitations to apply if such networks are not operated simultaneously, or if there is no substantial overlap in the territory served by the group of stations comprising each such networks.

59. The Commission first adopted a dual network rule for broadcast radio networks in 1941 following an investigation to determine whether the public interest required ''special regulations'' for radio stations engaged in chain or other broadcasting. The rule provided that no license would be issued to a broadcast station affiliated with a network organization that maintained more than one broadcast network. The Commission extended the dual network rule to television networks in 1946. The Commission believed that permitting an entity to operate more than one network might preclude new networks from developing and affiliating with desirable stations because those stations might already be tied up by the more powerful network entity. In addition, the Commission expressed concern that dual networking could give a network too much market power. The dual network prohibition, therefore, was intended to remove barriers that would inhibit the development of new networks, as well to serve the Commission's more general diversity and competition goals. The dual network rule for broadcast television remained unchanged until 1996, when the Commission amended the rule, as noted above, to conform with the provisions in Section 202(e) of the Telecom Act.

2. Comments

60. Four parties (ABC, CBS, Paxson and WB) submitted comments regarding the dual network rule; all favored repeal. These four broadcast networks argue that the rule constrains their ability to restructure and achieve efficiencies of common ownership. They also argue that antitrust enforcement would be sufficient to address any anticompetitive concerns that might arise in the absence of the dual network rule.

3. Discussion

61. The current dual network rule differs markedly from the dual network rule that remained unchanged from 1946 to 1996. The latter prohibited a broadcast station from affiliating with a network organization that maintained more than one broadcast network. In contrast, the current rule effectively permits a broadcast station to affiliate with a network organization that maintains more than one broadcast network, unless such networks are created by a merger between ABC, CBS, Fox, or NBC, or a merger between one of these four established networks and UPN or WB. Thus, the current rule supports common ownership of multiple broadcast networks created through internal growth and new entry, and discourages common ownership of multiple broadcast networks created by mergers between specific network organizations.

62. Under the current dual network rule, all existing network organizations, and all new network organizations, may create and maintain multiple broadcast networks. There are no limits on the number of broadcast networks that may be maintained by a network organization, or the number of television stations that may affiliate with a network organization. As such, it is theoretically possible for a network organization with sufficient programming to enter into affiliation agreements with every broadcast television station, in every market, and supply all of their programming. The opportunity to create and maintain multiple broadcast networks places broadcast networks on more equal footing with cable, satellite and other multichannel video programming distributors.

63. While the dual network rule gives all network organizations the opportunity to pursue any economic efficiencies that may arise from the maintenance of multiple broadcast networks, it restricts the manner in which specific network organizations become multiple broadcast networks. Specifically, the rule permits ABC, CBS, Fox and NBC to develop multiple broadcast networks by (1) creating new broadcast networks, (2) acquiring new broadcast networks created after passage of the Telecom Act, and (3) acquiring video networks from nonbroadcast media (*e.g.*, cable or satellite) and moving them to broadcast, assuming they could find additional local stations with which to affiliate. However, the rule prohibits ABC, CBS, Fox, and NBC from developing multiple broadcast networks by merging with one another or UPN or WB.

64. We believe that the rule as it applies to UPN and WB may no longer be necessary in the public interest. Accordingly, we will adopt an *NPRM* seeking comment on modifying the dual-network rule. We recognize that program production and broadcast networking are complementary inputs with economic characteristics (*e.g.*, large sunk costs and large transaction costs) that make vertical integration desirable. Since UPN and WB are nascent subsidiaries of large, well-established program producers, a merger of ABC or CBS or Fox or NBC with UPN or WB may be characterized as a merger of an established broadcast network with an established program producer. We believe that allowing such mergers may permit realization of substantial economic efficiencies without undue harm to our diversity and competition goals. However, because we are concerned about the effect of such a merger on our diversity goals, that *NPRM* seeks comment on what, if any, safeguards should be imposed to assure a minimal reduction in diversity assuming we alter the rule in some fashion.

65. We do not, however, believe that, at the present time, the dual network rule should be eliminated in its entirety. While there may be some economic efficiencies associated with mergers between established broadcast networks, we believe such mergers would raise significant competition and diversity concerns. As such, our forthcoming *NPRM* concerning the dual network rule will not propose elimination of that portion of the rule that prevents mergers between ABC, CBS, Fox, and NBC.

D. Daily Newspaper/Broadcast Cross-Ownership Rule

1. Regulatory History

66. Section 73.3555(d) of the Commission's rules sets forth the newspaper/broadcast cross-ownership rule. That section states:

No license for an AM, FM or TV broadcast station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper and the grant of such license will result in: (1) The predicted or measured 2 mV/m contour of an AM station, computed in accordance with § 73.183 or § 73.186, encompassing the entire community in which such newspaper is published; or (2) The predicted 1 mV/m contour for an FM station, computed in accordance with § 73.313, encompassing the entire community in which such newspaper is published; or (3) The Grade A contour of a TV station, computed in accordance with § 73.684, encompassing the entire community in which such newspaper is published.

67. The Commission adopted the newspaper/broadcast cross-ownership rule in 1975. Like all of the Commission's cross-ownership and multiple ownership rules in the broadcast context, the newspaper/broadcast cross-ownership rule rests on ''the twin goals of promoting diversity of viewpoints and economic competition.'' In adopting the rule, the Commission made clear that its diversity goal is paramount; sometimes competition must ''yield . . . to the even higher goals of diversity and the delivery of quality broadcasting service to the American people.'' The Commission explained that diversification of ownership promoted diversification of viewpoint in that ''it is unrealistic to expect true diversity from a commonly owned station-newspaper combination. The divergence of their viewpoints cannot be expected to be the same as if they were antagonistically run.'' Thus, the Commission determined that, as a general rule, granting a broadcast license to an entity in the same community in which the entity also publishes a newspaper would harm local diversity, and should be prohibited. The Commission did not foreclose, however, waiver requests under certain circumstances, although it has only granted three waiver requests on a permanent basis. (The circumstances are: (1) where there is an inability to dispose of an interest in order to conform to the rules; (2) where the only sale possible is at an artificially depressed price; (3) where separate ownership and operation of the newspaper and the station cannot be supported in the locality; and (4) where, for whatever reason, the purposes of the rule would be disserved by divestiture.)

68. In 1978, the Supreme Court, in *FCC* v. *National Citizens Committee for Broadcasting*, upheld the Commission's rules and waiver policies in their entirety. The Supreme Court found the Commission's diversity goal an important public policy that furthered the First Amendment values of public access to diverse and antagonistic sources of information. Although the Supreme Court noted the arguments of opponents of the rule to the contrary, it stated that ''notwithstanding the inconclusiveness of the rulemaking record, the Commission acted rationally in finding that diversification of ownership would enhance the possibility of achieving greater diversity of viewpoints.'' The Supreme Court approvingly cited the lower court's observation that ''[d]iversity and its effects are . . . elusive concepts, not easily defined let alone measured without making qualitative judgments objectionable on both policy and First Amendment grounds.'' It also confirmed the Commission's opinion in the *Second Report and Order in Docket 18110* that ''it is unrealistic to expect true diversity from a commonly-owned station-newspaper combination. The divergency of their viewpoint cannot be expected to be the same as if they were antagonistically run.'' The Supreme Court noted the availability of waivers to underscore the reasonableness of the rule.

69. For several years in the 1980s and early 1990s, Congress precluded the Commission from spending authorized funds ''to repeal, retroactively apply changes in, or to begin or continue a reexamination of the rules and the policies established to administer'' the newspaper/broadcast cross-ownership rule. In the Commission's 1994 appropriation, however, Congress provided that the Commission could amend policies with respect to waivers of the newspaper/broadcast cross-ownership rule as it applied to radio. Subsequently, Congress dropped all restrictive language concerning the rule from the Commission's appropriations, and thus removed the statutory ban on the Commission's review of the rule itself.

70. Although the Telecommunications Act of 1996 addresses various broadcast cross-ownership issues, it does not address newspaper/broadcast cross-ownership issues; indeed, the legislative history of that Act reveals that the House of Representatives explicitly considered and rejected changes to the newspaper/broadcast cross-ownership rule. Thus, while the Commission now has the authority and obligation to reevaluate the newspaper/broadcast cross-ownership rule, and its policy regarding waivers thereof, there is no explicit Congressional guidance on how that authority should be exercised. However, we believe that there may be certain circumstances in which the rule may not be necessary to achieve the rule's public interest benefits. We, therefore, will initiate a rulemaking proceeding to consider tailoring the rule accordingly.

71. As a result of issues raised in the merger of The Walt Disney Company and Capital Cities/ABC, Inc., in September 1996 we issued an *NOI* soliciting comment on the possible revision of our waiver policy as to newspaper/radio combinations. In that *NOI* we asked whether we should revise our waiver policy in ways that might make it less stringent and/or more objective, such as by adopting a voice count test. Subsequently, in the instant proceeding, we solicited comment on whether the overall newspaper/broadcast cross-ownership rule should be retained, modified or eliminated. (During the pendency of the newspaper/radio waiver policy proceeding, the Newspaper Association of America filed a petition for rulemaking to eliminate the newspaper/broadcast cross-ownership rule. In our *NOI* in the instant proceeding, we stated that we would incorporate NAA's petition in this proceeding, and invited comment on it. Additionally, on August 23, 1999, NAA filed an Emergency Petition for Relief. This petition, like NAA's prior Petition for Rulemaking, argues in favor of repeal of the newspaper/broadcast cross-ownership rule, although in this pleading NAA's arguments are based in part on the Commission's action in the *TV Ownership Order*. As with the pleadings filed by Fox and Viacom, this pleading will be treated as a late-filed comment and not considered in this proceeding. Rather, we will include these comments in the record of the 2000 biennial review.) In the biennial review *NOI* we expressed the view that permitting the owner of a broadcast TV or radio station to own a newspaper, or visa versa, could give a common owner the market power to unilaterally raise local radio, television, and/or newspaper advertising rates. However, we also expressed the belief that the broadcast media and newspapers were not likely to compete in the markets for delivered programming or program production and, accordingly, elimination of the rule would likely not have adverse competitive impact in these markets. We asked for comment

on alternatives to elimination of the rule and other possible economic effects from such elimination (*e.g.*, benefits to the public from efficiencies to be realized from joint operations). Finally, we solicited comment on the effects elimination of the rule might have on our diversity concerns and specifically solicited comment on the arguments made in a Petition for Rulemaking filed by the Newspaper Association of America seeking repeal of the rule.

2. Comments

72. Opponents of the rule claim that the Commission has never empirically demonstrated that the rule furthers its competition and diversity objectives. In any event, they assert, media markets are dramatically more competitive and diverse now than when the Commission adopted the rule, such that the rule is no longer in the public interest, and perhaps is even unconstitutional on First Amendment or other grounds.

73. Proponents of the rule counter that many of the new media outlets, such as the Internet, OVS and DBS, do not add to viewpoint diversity on the local level. They also point out that new programs by the same broadcasters do not add to viewpoint diversity. Rule proponents also state that the rule does not prohibit all combinations, but rather only those in the same market; moreover, existing waiver policies allow combinations where a broadcaster or newspaper publisher is failing and cannot survive but for the combination.

3. Discussion

74. We believe the newspaper/broadcast cross-ownership rule continues to serve the public interest because it furthers our important and substantial policy of viewpoint diversity. We therefore conclude that, as a general matter, the rule should be retained. However, we believe that there may be circumstances in which the rule may not be necessary to achieve its intended public interest benefits. We, therefore, will initiate a rulemaking proceeding to consider tailoring the rule accordingly.

75. *Effects on Diversity.* While the media marketplace has changed since we adopted the rule, we find that the changes are insufficient to justify repeal and we will need to gather a more complete record to determine what modifications may be appropriate. First, many of the new media outlets do not yet appear to be substitutes for broadcast stations and newspapers on the local level for diversity purposes. As we have stated in the biennial review *NOI* and elsewhere, we are most concerned with viewpoint diversity at the local level. This is because ''[m]onopolization on the means of mass communication in a locality assures the monopolist control of information received by the public and based upon which it makes elective, economic, and other choices.'' New outlets such as DBS and MMDS, however, typically do not provide locally originated programming. In addition, even though cable systems may originate local programming, they are required to dedicate PEG channels only if their franchise authorities require them to do so, and to provide leased access channels only as a function of their activated channels. There is no requirement that the material offered on cable access channels be locally originated or oriented. By contrast, as part of their public interest obligations, broadcasters are required to air programming that is responsive to issues facing their communities of license, and, although they are not required to do so, local daily newspapers typically cover local issues, endorse local candidates, and provide a platform for the presentation of local opinion. Thus, the fact remains that broadcast services, in particular broadcast television, and newspapers have been and continue to be the dominant sources of local news and public affairs information in any given market. The Commission has distinguished broadcast television from radio as having more visual impact and serving more people as a primary source of news. Almost 70% of American adults surveyed indicated that they use television as their primary source of news. Importantly, while the number of broadcast stations has increased in the past several years, the number of daily newspapers has decreased. On one hand, some commenters argue that this warrants the Commission allowing newspapers to combine with local broadcast stations in order to realize the economies of joint operation, helping them to preserve their newspaper. On the other hand, to the extent that this suggests that the survival of some newspapers may depend on their joint operation with local broadcast stations, we have a waiver standard that can accommodate such instances.

76. Second, we note that not all of the new media in a given market are available to all consumers in the market to the same extent as broadcast services and newspapers. Broadcast radio and TV are available free of charge to anyone who makes an investment in receiving equipment, and much of the public have such equipment; for example, 98.2% of Americans own a TV set. Similarly, newspapers are available to anyone for a nominal charge. DBS, MMDS, and the Internet, however, are available only to those who both purchase or rent equipment *and,* except in the case of the Internet where some Internet Service Providers offer Internet connections free of direct charge, subscribe to a service, the monthly fees for which services are typically several times the cost of a newspaper subscription. In addition, in the case of the Internet, the sunk cost of a computer and the software necessary to browse the Internet is typically several times that of a radio or TV.

77. Third, although some grandfathered combinations report that efficiencies they have derived therefrom have enabled them to air more news and public affairs programming than their competitors such additional programming does not necessarily enhance our policy goal of viewpoint diversity if the additional programs all come from the same source. The Commission has previously explained that its cross-ownership and multiple ownership rules encourage ''outlet'' and ''source'' diversity as an indirect means to achieve viewpoint diversity:

> The Commission has felt that without a diversity of outlets, there would be no real viewpoint diversity—if all programming passed through the same filter, the material and views presented to the public would not be diverse. Similarly, the Commission has felt that without diversity of sources, the variety of views would necessarily be circumscribed.

78. Thus, as the Commission stated when it adopted the newspaper/broadcast cross-ownership rule: ''it is unrealistic to expect true diversity from a commonly-owned newspaper combination. The divergence of their viewpoints cannot be expected to be the same as if they were antagonistically run.''

79. We also emphasize that media markets are undergoing significant changes, occasioned by the Telecommunications Act of 1996 and our decision to relax other cross-ownership and multiple ownership rules and waiver policies. The Telecommunications Act directed the Commission to modify its radio ownership rules. Between the enactment of the Telecom Act and March 2000, the number of radio station owners declined by 22 percent from approximately 5,100 owners in March 1996, to about 4,000 in March 2000. In addition, we have recently amended our ''TV duopoly'' and ''one-to-a-market'' rules and waiver policies and we propose other changes to still other broadcast ownership rules or policies as a result of this biennial review. The response of the market to these rule

changes will provide us concrete, empirical information about their impact on our public policy goals for use in our future biennial reviews. Therefore, the dominance of broadcast services and newspapers in providing local news and public affairs information, may suggest that a measured approach to modifying the newspaper/broadcast cross-ownership rule is appropriate at this time.

80. *Effects on Competition.* With respect to competition, we also emphasize that the record was not clear on several points. First, it was not clear that grandfathered combinations derived efficiencies only from co-located combinations. For example, Chronicle provided information that its combination aired more news and public affairs programming than its competitors in a given market, but the combination that produced these benefits included both co-located and non-co-located broadcast stations and newspapers. The newspaper/broadcast cross-ownership rule only prohibits combinations in the same market. Second, it was not clear that the efficiencies grandfathered combinations derived could not be realized from non-attributable joint ventures. Managers of existing newspaper/broadcast combinations, as well as other commenters, report that the broadcast station and the newspaper keep separate news staffs in combination situations because the combination does not derive efficiencies from consolidation of such staff. Accordingly, it does not appear that mergers of newspapers and broadcast stations would produce such efficiencies. Third, it was not clear that the efficiencies of newspaper/broadcast combinations produced any meaningful benefits for advertisers, and therefore for viewers as consumers of the advertisers' goods. As indicated above, some commenters explain that grandfathered combinations have provided more news and public affairs programming, and one could extrapolate that this translates into more advertising and viewing options. There was no evidence, however, that any of these additional options translated into benefits for advertisers in the form of reduced rates, or corresponding benefit for viewers in the form of reduced prices for advertised products and services. Accordingly, we conclude that the newspaper/broadcast cross-ownership rule continues to provide important public interest benefits and that its elimination would not necessarily provide any offsetting benefits to competition.

81. Notwithstanding our general conclusion that the rule should be retained, we recognize that there may be situations in which the rule may not be necessary to protect the public interest in diversity and competition. We wish to examine in greater detail such situations. There may be instances, for example, in which, given the size of the market and the size and type of the newspaper and broadcast outlet involved, sufficient diversity and competition would remain if a newspaper/broadcast combination were allowed. While the record contains several proposals for tailoring the rule to address this issue, we believe that a more complete record can and should be developed regarding the circumstances in which the rule may not be necessary to achieve its intended public interest benefits. We will examine whether the rule needs to be tailored to address contemporary market conditions. We will issue a notice of proposed rulemaking seeking comment on these and other potential modifications of our rule. While we generally believe that the newspaper/broadcast cross-ownership rule should be retained, this rulemaking will ensure that the rule is tailored to cover only those circumstances in which it is necessary to protect the public interest.

82. *Additional Matter.* In 1996, the Tribune Company, which publishes a newspaper in Fort Lauderdale, Florida, agreed to merge with Renaissance Communications Corporation, which owned six television stations including one in Miami, Florida. Although Tribune sought a permanent waiver of the newspaper/broadcast cross-ownership rule to permit this combination, the Commission granted the license transfer subject to the condition that Tribune divest itself of either the Ft. Lauderdale newspaper or the Miami television station within one year, expiring March 22, 1998. On March 6, 1998, Commission staff granted an extension of Tribune's temporary waiver subject to the review of the newspaper/broadcast cross-ownership in the instant proceeding and required that it come into compliance within six months of the completion of the 1998 biennial review (unless, of course, Tribune's combination was in compliance with any new cross-ownership rule adopted as a consequence of that review). We explained that an extension was appropriate because it would be unduly harsh for Tribune not to receive further interim relief given the confusion that may have resulted from the Commission's initial waiver decision with respect to its policy on interim waivers pending rulemaking. We also stated that an extension would not so compromise our diversity and competition interests as to outweigh the substantial equitable considerations favoring the grant. Given our decision here to issue an *NPRM* seeking comment on possible modifications of the newspaper/broadcast cross-ownership rule, and the unusual circumstances that led to the prior extension of Tribune's waiver, including the withdrawal of the waiver opponent's opposition to the joint operation as long as Tribune continues to operate the newspaper and television station separately and the fact that we have found the joint operation does not so compromise our diversity and competition interests as to outweigh the substantial equitable considerations favoring the grant of an interim waiver, we will extend that temporary waiver, under the same terms and conditions now applicable, until the completion of the rulemaking.

E. Cable/Television Cross-Ownership Rule

1. Regulatory History

83. Section 76.501(a) of the Commission's rules sets forth the "cable/TV cross-ownership rule." That section states:

> No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in a TV broadcast station whose predicted Grade B contour . . . overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers).

The Commission adopted the cable/TV cross-ownership rule in 1970. In doing so, the Commission noted its concerns about concentration in the broadcast industry, and stated that the rule would further the Commission's policy favoring diversity of control over local mass communications media, and thereby lead to diverse sources of programming. The Commission noted that it wished to avoid over-concentration of media control. On reconsideration, the Commission reiterated that its "adoption of these provisions—designed to foster diversification of control of the channels of mass communication—was guided by two principal goals, both of which have long been established as basic legislative policies. One of these goals is increased competition in the economic marketplace; the other is increased competition in the marketplace of ideas."

84. Congress codified and then repealed a statutory prohibition on

cable/TV cross-ownership. On October 30, 1984, the Cable Communications Policy Act of 1984 became law. Section 613(a)(1) of the Cable Act of 1984 codified the cable/TV cross-ownership rule. Section 202(i) of the Telecommunications Act of 1996, however, eliminated section 613(a)(1) of the Cable Act of 1984, thereby ending the statutory bar to cable/TV cross-ownership. In eliminating the bar, however, Congress stated: ''The conferees do not intend that this repeal of the statutory prohibition should prejudge the outcome of any review by the Commission of its rules.'' The instant proceeding is the first one in which the Commission has reviewed the rule since its adoption.

85. In the Biennial Review *NOI* we solicited comment on the cable/TV cross-ownership rule. Specifically we asked for comment on the possible effects that repeal or relaxation of the rule might have on various markets, including the market for delivered programming, on the appropriate scope of the product and geographic advertising markets in which cable and broadcast television compete, and on whether cable/broadcast television combinations could exercise monopoly power in the program production markets. We defined this power in this context as the ability of the cable/television combination to artificially restrict the price paid for programming. Additionally, we sought comment on the impact on diversity of both the increased number of video outlets and allowing cable/television cross-ownership.

2. Comments

86. Twelve parties commented on the cable/TV cross-ownership rule; seven supported retention of the rule, and five supported repeal or modification. Opponents of the rule note that relevant markets are more competitive and diverse than when the Commission adopted the rule, and state that the rule no longer serves the public interest, and perhaps is even unconstitutional.

87. Proponents of the rule claim that the rule continues to serve the public interest because cable is the dominant competitor in the multichannel video programming distribution market, and thus serves as a ''gatekeeper'' to the delivered programming market. Proponents also contend that a cable/TV combination could harm competition in the advertising market by discriminating in favor of its television station and cable programming services, manipulating carriage and channel positioning and offering joint advertising rates, realizing economies of scale, driving competitors out of the market and frustrating new entrants.

3. Discussion

88. As explained more fully below, we agree with proponents of the rule that it continues to serve the public interest because it furthers our important public policies of fostering competition and viewpoint diversity. The cable/TV cross-ownership rule promotes competition and diversity and prevents unfair discrimination against competitors, including in forms not covered by existing law. We therefore retain the rule.

89. *Effects on Competition.* We conclude that the rule continues to serve the public interest because it furthers our goal of competition in the delivered video programming market. This market includes an array of participants, such as operators or providers of broadcast television, cable systems, DBS, MMDS, OVS, SMATV, and possibly even the Internet and videocassettes for VCRs. Sixty-seven percent of American television households, however, subscribe to cable. In the context of discussing the status of competition in the market for the delivery of multichannel video programming, the Commission stated in its most recent *Cable Competition Report* that ''[t]he market for the delivery of video programming to households continues to be highly concentrated and characterized by substantial barriers to entry.'' Under these circumstances, we agree with proponents of the rule that cable, in many instances, functions as the ''gatekeeper'' to local markets for delivered video programming. As commenters point out, this status gives cable system operators both the incentive and the means to discriminate against their competitors with respect to such core issues as carriage and channel positioning as well as in areas not covered by statute or Commission rule such as joint advertising rates and promotions. As commenters also point out, a cable/TV combination would have even greater incentive and means to discriminate against others and in favor of its own broadcast affiliate in this fashion, and both the broadcast station and the cable system would stand to unfairly benefit.

90. The record indicates that current carriage and channel position rules prevent some of the discrimination problems, but not all of them. For example, opponents of relaxing the rule note that current law would not prevent discrimination through joint advertising sales and rates practices and joint promotions unavailable to competitors. Additionally, although section 614(b)(6) of the Communications Act entitles a local commercial television station to be carried by a cable system on the same channel as it broadcasts over the air, Univision describes protracted disputes with a cable system in securing its ''on air'' channel, with one cable system shuffling Univision's channel position four times in four years. Univision also claims that a cable system abruptly changed the channel position of one of Univision's stations in order to provide that position to the cable system's own local news channel. Univision further claims that cable system operators sometimes otherwise delay carriage by denying that they receive an adequate signal from a station, which forces the broadcast station to divert resources away from obtaining quality programming and toward obtaining carriage and channel position. Other commenters also emphasize that cable systems can delete broadcasters from carriage through waiver, and that cable/TV combinations will be unlikely to offer retransmission consent agreements. Univision emphasizes that all of this anti-competitive behavior occurred in spite of the cable/TV cross-ownership rule, and claims that such behavior will only be exacerbated by cable/TV combinations that seek to favor their own broadcast affiliate over others.

91. Although, as we noted in the *NOI*, DTV holds the potential to enable broadcasters to compete better with cable in the multichannel video programming distribution market, the reality is that DTV is now nascent. In addition, because of the advent of DTV, our DTV must-carry rules are the subject of a pending proceeding. Modification of the cable/TV cross-ownership rule at this time could frustrate and undermine the potential that DTV holds for broadcasters if, as suggested by ALTV, a cable/TV combination, in order to give its own broadcast station a competitive advantage, denied carriage to a competitor and inhibited its DTV roll-out. We believe that it is particularly important to ensure stability and a level playing field as the technology of DTV reaches the marketplace and competitive forces determine its fate in the marketplace. Cable/DTV competition may ultimately provide a basis for some modification of the cable/TV cross-ownership rule, but we believe that time has not yet arrived.

92. *Effects on Diversity.* We also conclude that the cable/TV cross-ownership rule is necessary to further our goal of diversity at the local level. As we noted above, current media markets include a variety of

participants; as we also noted above in our discussion of the newspaper/broadcast cross-ownership rule, however, many new media do not contribute to diversity at the local level. Broadcasters contribute to local diversity through the fulfillment of their public interest obligations to air programming responsive to the issues facing their communities of license; cable contributes through PEG and leased access channels and to some degree through origination of local cable news channels. In the *TV Further Ownership Notice*, the Commission thus tentatively concluded that broadcast television and cable are to a certain extent substitutes for diversity purposes, but also stated:

> [w]e tentatively see no reason to include in our diversity analysis the other electronic video media [beyond cable], such as MMDS, VCRs, and VDT, as substitutable for a broadcast television station. None of these has nearly the ubiquity of cable and most do not have the capability for local origination that cable has. All provide similar entertainment programming; however, our core concern with respect to diversity is news and public affairs programming especially with regard to local issues and events.

93. More recently, we reaffirmed this view in the *TV Ownership Order* where we stated that many of these alternative video delivery systems ''are still establishing themselves in the marketplace and generally do not provide an independent source of local news and informational programming.'' While newspapers and radio contribute to local diversity, broadcast television and cable television are the only participants in the market for delivered news and public affairs *video* programming at the local level. The Commission has distinguished the influence of television from that of newspapers as being more immediate, and from that of both newspapers and radio as having more visual impact and serving more people as a primary source of news. The Commission has also noted that the public receives more news from television than from any other source; while broadcast television is the more dominant source of local news and public affairs programming, cable functions as the ''gatekeeper'' to broadcast television, as we have noted above. (In the *TV Ownership Order* we concluded that cable would not count as an independent local voice for the duopoly rule because there was an absence of factual data in the record indicating that cable is a substitute for broadcast television.) Cable/TV combinations thus would represent the consolidation of the only participants in the video market for local news and public affairs programming, and would therefore compromise diversity.

94. Opponents of rule retention argue that cable does not control the content of its PEG channels and, therefore, contend that cable/TV combinations do not threaten diversity at the local level. However, PEG programming typically is not the cable programming that provides the closest substitute for broadcast local news and public affairs programming. The cable programming that is the closest substitute for such broadcast programming is originated by local cable systems. NCTA suggests that it is the efficiencies and synergies that could be derived from combining just this type of programming that makes the combinations desirable, and, in fact, contends that these efficiencies and synergies would enable combinations to produce more local news and public affairs programming, perhaps targeted at niche markets. Such cable/TV combinations, however, would erode the number of *independent* local news and public affairs voices in the market. As CME explains, ''[e]ven if the common owner created a local cable news station, it would not be providing a diverse source of local news programming because of the common ownership.''

95. The television industry has just begun adapting to the recent relaxation of our local television ownership rule. Further consolidation of local television broadcast stations will reduce the number of independent voices providing local news and public affairs programming. Prudence dictates that we monitor and ascertain the impact of these changes on diversity and competition before relaxing the cable/TV cross-ownership rule.

F. Experimental Broadcast Stations

1. Regulatory History

96. The multiple ownership rule for experimental broadcast stations was initially adopted in 1946. It generally limited ownership to one station. An exception is allowed when a showing is made that the program of research requires the licensing of two or more separate stations. In 1963 this rule was redesignated as 47 CFR 74.134. The rule currently reads:

> § 74.134 Multiple ownership. No persons (including all persons under common control) shall control, directly or indirectly, two or more experimental broadcast stations unless a showing is made that the program of research requires a licensing of two or more separate stations.

2. Comments

97. Only one comment was filed. NAB recommends repeal of this rule stating that broadcast auxiliary facilities are facing regulatory change and dislocation and, accordingly, there is now ever greater need for responsible use of experimental stations to develop solutions to these problems. While supporting elimination of what it characterizes as ''this arbitrary restriction,'' it urges the Commission to ensure that such stations not endanger the interference-free service provided by other broadcasters.

3. Discussion

98. The rules authorizing experimental broadcast facilities seek to encourage experimentation and innovation in the provision of broadcast service to the public. A license for an experimental broadcast station will be issued for the purposes of carrying on research and experimentation for the development and advancement of new broadcast technology, equipment, systems or services which are more extensive or require other modes of transmission than can be accomplished by using a licensed broadcast station under an experimental authorization (47 CFR 74.102) Uses of experimental broadcast stations.). Most of the related rules are intended to prevent interference to existing services.

99. Experimental broadcast licenses are also subject to a broad variety of operating and reporting requirements, as well as a requirement that prohibits their commercial use. The licensee of an experimental broadcast station may make no charges nor ask for any payment, directly or indirectly, for the production or transmission of any programming or information used for experimental broadcast purposes (47 CFR 74.182(b)). Nor may it transmit program material unless it is necessary to the experiments being conducted, and no regular program service may be broadcast unless specifically authorized (47 CFR 74.182(a)). These commercial restrictions prevent entities from exploiting an experimental broadcast station for commercial purposes while functioning under the guise of an experimental authorization. The supplementary statement to be filed with an application for a construction permit (47 CFR 74.112), supplementary reports filed with an application for renewal of license (47 CFR 74.113), and the requirement to make a satisfactory showing of compliance with the general requirements of the Communications Act of 1934, as amended, to satisfy the licensing requirement (47 CFR 74.131),

allow for the oversight necessary to protect the goals of competition and diversity.

100. We find that elimination of the rule will have no adverse impact on our diversity and competition goals. Repeal of this multiple ownership rule would not affect the Commission's ability to ensure that experimental stations are used solely for their avowed purposes, which is separately covered under 47 CFR 74.102. Neither would it imply that any petitioner will necessarily be able to control multiple frequencies, since a license of an experimental broadcast station will not authorize the exclusive use of any frequency, under 47 CFR 74.131. The multiple ownership rule for experimental broadcast stations appears to have been originally adopted to limit the opportunities for the commercial use of experimental stations. The early history of the Federal Radio Commission and, later, the Federal Communications Commission with regard to commercial use of experimental stations demonstrates an ambivalence with regard to such use of these stations. The FRC initially permitted commercial use but, in 1933, prohibited any further commercial use of such stations. The FCC also initially prohibited their commercial use, then, in 1935, permitted some commercial use, and, still later (1936) again prohibited their commercial use. Rules for experimental stations adopted in the late 1930s, were intended to prevent commercial operations from predominating and interfering with experimentation. Our current rules prohibit the licensee of an experimental broadcast station from making charges or asking for payment, directly or indirectly, for the production or transmission of any programming or information used for experimental broadcast purposes.

101. We believe that the current requirement that such stations operate for research purposes and the proscriptions on the broadcast of a regular program service and the imposition of charges for the transmission of programming or information on experimental broadcast stations are sufficient to assure that, even absent the multiple ownership rule, licensees do not, under the guise of experimentation, obtain sufficient experimental stations to create, *sub rosa*, commercial broadcast services. These stations operate for research purposes and, thus, do not compete in the marketplace for programming or advertising and existing rules will provides safeguards against abuse in the absence of the experimental station multiple ownership rule. There existing no competitive bar to the elimination of the multiple ownership rule applicable to them, we believe that the multiple ownership rule governing experimental broadcast stations may no longer be in the public interest. We will issue an *NPRM* proposing elimination of the rule.

V. Constitutional Issues

102. Commenters raised Constitutional arguments with respect to two of our rules. The newspaper/broadcast cross-ownership rule is objected to by several commenters on the grounds that it violates the First Amendment. Additionally, both that rule and the dual network rule are said to discriminate. In the case of the newspaper/broadcast cross-ownership rule, the discrimination is alleged to be between newspaper owners and other media owners. The dual network rule is claimed to discriminate against broadcast networks as opposed to cable networks as it allows mergers between broadcast and cable networks but not between broadcast networks themselves.

As an initial matter, our newspaper/broadcast cross-ownership rule has already been sustained by the Supreme Court. *FCC* v. *National Citizens Committee for Broadcasting,* 436 U.S. 775 (1978). Beyond that, it is well-established that a content-neutral regulation, such as the subject rule, will be sustained against claims that it violates the First Amendment if: (1) It advances important governmental interests unrelated to the suppression of free speech; and (2) does not burden substantially more speech than necessary to further those interests (the ''O'Brien test''). *Turner II,* 520 U.S. at 189, *citing U.S.* v. *O'Brien,* 391 U.S. 367, 377 (1968).

As we noted previously, the Supreme Court has determined that the preservation of media diversity is a government interest that is not only important, but is of the highest order (*Turner I,* 512 U.S. at 663; *Turner II,* 520 U.S. at 190), and is unrelated to the suppression of free speech. Therefore, the rule meets the first prong of the *O'Brien* test. Even were one to conclude that it confines free speech of newspaper owners by limiting their ownership of co-located broadcast stations, that burden is the minimum necessary to accomplish the diversity goal. It does not prevent newspaper publishers from owning broadcast outlets. It does not prevent them from entering into joint venture agreements with broadcasters in their community. Rather, it simply precludes them from owning—and therefore having ultimate editorial control over—broadcast and newspaper outlets in the same community due to the impact of such common ownership on, especially, local viewpoint diversity. Accordingly, we believe that the newspaper/broadcast cross-ownership rule, to the extent it burdens free speech at all, does so to the minimum extent necessary. It therefore passes the constitutional test for such rules.

As to commenters' claims of discrimination, the Supreme Court has repeatedly held that ''a classification neither involving fundamental rights nor proceeding along suspect lines * * * cannot run afoul of the Equal Protection Clause if there is a rational relationship between disparity of treatment and some legitimate governmental purpose.'' *Central State University* v. *American Association of University Professors, Central State University, (per curiam),* 526 U.S. 124. 119 S.Ct. 1162, 1163 (1999), *citing Heller* v. *Doe,* 509 U.S. 312, 319–321, (1993), *FCC* v. *Beach Communications, Inc.,* 508 U.S. 307, 313–314 (1993), *Nordlinger* v. *Hahn,* 505 U.S. 1, 11 (1992). We do not concede that a fundamental right is involved in the instant matter. It is well established that there is no unabridgeable First Amendment right to a broadcast license. *See, e.g., FCC* v. *National Citizens Committee for Broadcasting,* 436 U.S. 775, 798–802 (1978); *Columbia Broadcasting System* v. *Democratic National Committee,* 412 U.S. 94, 101 (1973); *United States* v. *Weiner,* 701 F.Supp. 14 (U.S.D.C. Mass., 1988). As we noted above, protecting media diversity has been determined by the Supreme Court to be a governmental interest of the ''highest order.'' We believe that the classifications inherent in both the newspaper/broadcast and cable/television cross-ownership restrictions are, under current conditions, necessary to promote that governmental interest and, therefore, do not violate the rights of any party to equal protection of the law.

VI. Conclusion

103. In this, the first of our biennial reviews of our broadcast ownership rules, we conclude that some regulations are no longer in the public interest in their current forms as a result of competition. These are: The dual network rule and the limitation on the multiple ownership of experimental broadcast stations. We will also adopt an *NPRM* to explore the manner in which we define radio markets and determine both the number of stations in a radio market and the number of radio stations owned by a party in such a market. We are, therefore, proposing to

modify or eliminate these rules in *NPRMs* we will issue. We also conclude, however, that, for now, the other ownership rules considered in this proceeding warrant retention. We will, of course, revisit our ownership rules biennially, as directed by the 1996 Act. Our future biennial reviews will be informed by the impact of the substantial changes we made to our television ''duopoly'' and ''one-to-a-market'' rules this past August.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17670 Filed 7–12–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No 95–5; FCC 00–76]

Streamlining the Commission's Antenna Structure Clearance Procedure

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission responds to filings in WT Docket 95–5. We dismiss as moot a petition for partial reconsideration filed by the Wireless Cable Association International, Inc., deny a petition for partial reconsideration filed by Comp Comm, Inc., and grant in part and deny in part a petition for declaratory ruling filed by Teletech, Inc. In doing so, we conclude that the antenna structure registration procedures adopted in 1996 effectively allow us to meet our statutory responsibilities. In response to the petition for declaratory ruling, we provide clarification with respect to situations in which two or more parties locate facilities on the same tower. The effect is to retain in their entirety the rules adopted in a previous final rule.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, (202) 418–0680.

SUPPLEMENTARY INFORMATION: The Memorandum Opinion and Order and Order on Reconsideration was adopted March 1 and released March 8, 2000. The document is available, in its entirety, for inspection and copying during normal business hours in the FCC Reference Center, (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. In addition, it is available on the Commission's website at http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00076.pdf.

Summary of the Memorandum Opinion and Order and Order on Reconsideration

1. Section 303(q) of the Communications Act of 1934, as amended, vests in the Federal Communications Commission (FCC) authority to require painting and/or lighting of antenna structures that might constitute a hazard to air navigation. Part 17 of the Commission's Rules contains the procedures the FCC uses to identify structures which might pose an air safety hazard and by which owners register their antenna structures with the FCC.

2. The Memorandum Opinion and Order and Order on Reconsideration addresses several filings the FCC received in response to the original Report and Order issued in WT Docket 95–5; a petition for declaratory ruling and a separate petition for partial reconsideration both requesting that the Commission establish a specific accuracy standard for obtaining antenna structure data to be filed with the FCC; a petition for partial reconsideration requesting that the Commission adopt relaxed procedures for Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) licensees whose licensing data differ from data submitted by antenna structure owners on whose structures the MDS and ITFS licensees are located; and a petition requesting clarification of the FCC's registration requirements in circumstances involving multiple antenna structures on building rooftops and concerning cases of two or more parties located on the same antenna tower.

3. We conclude that a specific accuracy standard is unnecessary because the requirement that antenna structure owners first obtain a study from the Federal Aviation Administration ensures reliability of the antenna structure site data and promotes air safety. Additionally, we find that the request that the FCC adopt relaxed license correction procedures for MDS and ITFS licensees whose licensing data differ from data submitted by antenna structure owners on whose structures the MDS and ITFS licensees are located is moot, and therefore we do not modify these procedures. Any discrepancies between licensing data and antenna structure registration data would have occurred when owners of existing antenna structures (including those structures on which MDS and ITFS licensees were sited) registered with the FCC. The time period for registering these existing structures ended on June 30, 1998.

4. We uphold the procedures adopted in 1995 that require all antenna structures meeting the registration criteria—including multiple structures atop the same rooftop—to be individually registered. Because the Commission's rules require a single registration for each antenna tower, we clarify that in those situations in which an owner of a supporting tower structure permits a third party to add a surmounting antenna, we will consider the owner of the supporting tower remains the ''owner'' for purposes of the FCC's antenna structure registration purposes. Thus, we grant the petition that requested this clarification.

5. Accordingly, it is ordered that, pursuant to sections 4(i) and 303(q) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(q), and sections 1.2, 1.3 and 1.429 of the Commission's Rules, 47 CFR 1.2, 1.3 and 1.429, that the petitions filed in WT Docket 95–5 are granted in part and dismissed in part.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17668 Filed 7–12–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–36–B (Auction No. 36); DA 00–1388]

Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Service Frequencies in the Lower 80 Channels

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses for the 800 MHz Specialized Mobile Radio Service Lower 80 Channels (''Auction No. 36''). It also announces that the beginning date of Auction No. 36 will be rescheduled to November 1, 2000. It was initially scheduled for September 13, 2000.

DATES: Auction No. 36 will begin November 1, 2000.

FOR FURTHER INFORMATION CONTACT: *Auctions and Industry Analysis Division:* M. Nicole Oden, Legal Branch