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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In The Matter of Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221

Comments of the Staff of
the Bureau of Economics of
the Federal Trade Commission*

September 24, 1992

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* These comments represent the views of the staff of the Bureau of Economics of the Federal Trade Commission. They are not necessarily the views of the Commission itself or any individual Commissioner. Inquiries regarding these comments should be directed to Michael Vita, Bureau of Economics (202-326-3493).

Executive Summary

The staff of the Bureau of Economics of the Federal Trade Commission presents comments, from the perspective of economic efficiency, competition, and antitrust enforcement, on the Federal Communications Commission's proposal to relax certain of its rules regulating ownership of television stations. This reply comment does not address other issues, such as the relationship between diversity of ownership and diversity of editorial viewpoint, that may be important to the FCC. The comment finds that the proposals under consideration may promote market efficiency without posing a threat to competition.

The "duopoly rule" that now bans ownership of nearby television stations could be appropriate if the net effect of such combinations is likely to be anticompetitive, and the costs of case-by-case evaluation are likely to exceed the benefits from allowing those combinations having positive net effects. But our analysis suggests that there could be combinations that might be viewed as competitively unobjectionable, when judged by the standards of the 1992 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, and that could lead to efficiencies. In addition, economic theory provides no basis for concluding that permitting some such combinations would reduce program variety. Relaxing the blanket rule prohibiting "duopoly" ownership may thus be appropriate.

The FCC may wish to consider, as an alternative to the proposals to relax the rule regulating ownership practices, using case-by-case analysis of market conditions when considering license assignment or transfer applications. The elements of this analysis could be similar to those that the FCC already applies to requests for waiver of the radio-television cross-ownership rule, which in turn are similar to elements of the Horizontal Merger Guidelines analysis. The FCC might also wish to consider a rule that, like the Horizontal Merger Guidelines, adopted a "safe-harbor" approach, defining conditions in which combination is unlikely to be challenged. In antitrust enforcement of the merger laws, the combination of safe-harbor standards and case-by-case review is workable because most merger transactions do not warrant challenge. We do not know the relative costs to the FCC of case-by-case review compared to rule-based regulation of combinations, and thus we express no opinion on which would be best here.

Relaxing the national ownership rules for television would also not appear to pose a threat to competition. Because television stations compete almost entirely in local markets, the competitive effects of multiple station ownership are best understood by analyzing the impact of such ownership in individual markets. Imposing national ownership limits is not

likely to increase the variety of programming available to viewers, or to protect competition in advertising markets. But such limits may prevent firms from realizing certain efficiencies from group ownership.

The rules regulating television-radio cross-ownership may also be relaxed without posing a threat to competition. In particular, the FCC might consider waivers of its rules, using its present waiver standards or the analytical framework of the Horizontal Merger Guidelines, even in areas other than the top television markets.

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I. Introduction

The staff of the Federal Trade Commission's Bureau of Economics is pleased to respond to this notice of proposed rulemaking ("NPRM") through which the Federal Communications Commission (FCC) seeks comments on proposals to relax certain limitations on television station ownership.[2] The FCC is considering increasing the number of stations nationwide that may

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[2] This reply comment addresses issues relating to economic efficiency, competition, and the enforcement of the antitrust laws. It does not address other issues, such as the relationship between diversity of ownership and diversity of editorial viewpoint, that may be important to the FCC.

be held in common ownership,[3] relaxing the prohibition against owning more than one television station serving a single area, and relaxing the prohibition against owning a television-radio combination in a single area.[4] This comment provides general observations about possible economic benefits from relaxing the multiple ownership limitations and presents data to help assess the consequences of permitting common ownership of more than one local station.

Section III of this comment summarizes the current FCC ownership limitations and the proposed changes. Section IV discusses the types of efficiencies that might be associated with joint ownership of broadcast facilities. Section V addresses issues at the local scale, such as the creation of market power in advertising markets and the effect of market structure on programming variety. Section VI discusses the ownership limits at the national scale. Section VII addresses radio-television cross-ownership. Section VIII presents our conclusions.

II. Expertise of the Staff of the Federal Trade Commission

The FTC is an independent regulatory agency responsible for preventing unfair methods of competition and unfair or deceptive acts or practices.[5] In response to requests by federal, state, and local government bodies, the staff of the FTC often analyzes

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[3] NPRM, ¶ 11.

[4] NPRM, ¶¶ 18-20.

[5] 15 U.S.C. §§ 41-49.

regulatory or legislative proposals that may affect competition or the efficiency of the economy. In the course of this work, as well as in antitrust and consumer protection research, nonpublic investigations, and litigation, the staff applies established principles and recent developments in economics to competition and consumer protection matters.[6]

The staff of the FTC has commented on a number of issues involving the FCC and its responsibilities, beginning with a 1924 report to the House of Representatives about competition issues in radio.[7] More recently the staff has submitted comments to the FCC on radio ownership rules and policies;[8] competition, rate deregulation, and cable television service;[9] common ownership of cable systems and national television networks;[10] the "must carry" rules applied to cable television systems;[11] the rules requiring licenses to be held for three years before being transferred;[12] network ownership of financial interests

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[6] See, e.g., Mathios and Rogers, The Impact of State Price and Entry Regulation on Intrastate Long Distance Telephone Rates, Bureau of Economics Staff Report to the Federal Trade Commission, November 1988.

[7] Federal Trade Commission, Report on the Radio Industry, GPO, 1924.

[8] Reply Comments of the Staff of the Bureau of Economics of the Federal Trade Commission, In re Revision of Radio Rules and Policies, MM No. 91-140, September 5, 1991.

[9] MM No. 89-600.

[10] CT No. 82-434.

[11] MM No. 90-4.

[12] BC No. 81-897.

and syndication rights;[13] spectrum allocation and standards for digital audio broadcasting,[14] and the regulation of "900" telephone number services.[15]

III. The FCC's Current and Proposed Ownership Rules

The FCC's national multiple ownership rule limits the number and total audience "reach" of television stations in which an individual (or a single entity) may hold an attributable interest.[16] The current limits, set in 1985, are a maximum of 12 television stations and maximum total reach of 25 percent of national television households. The related "duopoly" rule,[17] dating from 1964, prohibits holding attributable interests in two or more commercial television stations with overlapping Grade B

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[13] MM Nos. 82-345 and 90-162.

[14] GEN No. 90-357.

[15] CC No. 91-65.

[16] The group ownership rule defines "national audience reach" as "the total number of television households in the Arbitron area-of-dominant-influence (ADI) markets in which the relevant stations are located, divided by the total national television households as measured by the ADI data." 47 C.F.R. § 73.3555 (d)(3)(i).

[17] The term "duopoly" means different things in communications law and in antitrust law and economics. Communications law uses the term to describe holding an ownership interest in two facilities in the same area. In antitrust usage, a "duopoly" would be a market in which there were only two suppliers. The antitrust term implies both that there are no additional suppliers (here, stations), and that the service and the area comprise antitrust markets. See p. 15 below for discussion of defining antitrust markets.

contours.[18] Finally, combinations of radio and television stations in the same market generally are prohibited;[19] however, FCC rules provide for waiving this prohibition under certain circumstances.[20]

The NPRM describes the recent, substantial growth in the variety of communications sources available to consumers. These include not only broadcast and cable television, but also wireless cable, low-power television, home satellite receivers, video and audio recordings, and, soon, direct satellite audio and video services with digital audio.[21] The NPRM notes that this multiplicity of sources poses a substantial competitive challenge to television broadcasters in seeking viewers.[22] The NPRM further notes that profitability of television broadcasters is

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[18] According to the Television & Cable Factbook (1988 ed., p. A-14), with "Grade B" service, "the quality of picture is expected to be satisfactory to the median observer at least 90 percent of the time for at least 50 percent of the receiving locations within the contour, in the absence of interfering and co-channel and adjacent channel signals." With "Grade A" service, "satisfactory service is expected at least 90 percent of the time for at least 70 percent of the receiving locations." Thus, the Grade A contour is smaller and contained within the Grade B contour.

[19] The term "market" has a technical meaning in antitrust law and economics, which may differ from its usage in communications practice. What communications practitioners may consider a "market" might, or might not, be considered an antitrust "market." See p. 15 below for explanation of the antitrust analytical approach to market definition.

[20] NPRM, ¶ 22.

[21] NPRM, ¶¶ 3-7.

[22] NPRM, ¶¶ 5-7. Some of these sources do not compete with local broadcasters in the sale of advertising time in particular local areas. The issue of advertising competition is addressed in greater detail in § V, below.

poor and expresses the FCC's concern that the ownership dispersion required by its existing rules might undermine some stations' competitive viability.[23] Thus, the FCC is considering whether relaxing its ownership limitations could, by promoting efficiency, enable broadcasters to compete more effectively, to the benefit of television audiences.[24]

Concerning specifically the "duopoly" rule's limits on *local* multiple ownership, the FCC has asked whether overlap should be based on the Grade A contour, rather than the Grade B contour. The FCC also seeks comment on permitting combinations of stations with overlapping Grade A contours where at least one is a UHF station and at least six independently-owned television stations would remain in the market. The FCC also has asked whether only UHF-UHF combinations should be permitted.[25]

With respect to the *national* multiple ownership limitations, the FCC is considering several options.[26] It has proposed raising both the number of stations and national reach limits, offering two specific proposals: (1) increasing the number of stations limit from 12 to 20 or 24, and the audience reach limit from 25 to 35 percent; or (2) increasing the number of stations

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[23] NPRM, ¶ 7.

[24] NPRM, ¶ 7. The NPRM notes (¶ 11) that the FCC wishes to ensure that regulation does not "impede the competitive ability of broadcast television stations or preclude them from taking advantage of certain economic efficiencies."

[25] NPRM, ¶¶ 18-20.

[26] NPRM, ¶¶ 11-13.

limit to 18, and the audience reach limit to 30 percent. It has also asked for comment on increasing only the number of stations limit, while retaining the 25 percent audience reach limit.

Lastly, the FCC has requested comment on eliminating the restrictions on local "cross-ownership" of television and radio stations and instead basing its restrictions on ownership rules for each broadcast service considered separately. As alternatives, the FCC is seeking comment on permitting holding interests in one AM, one FM, and one television station in a market, and on allowing cross-ownership of television and AM stations.

IV. Economic Efficiencies from Common Ownership

The competitive process generally rewards efficiency in ways that ultimately benefit consumers. In competitive markets, the profit incentive tends to displace inefficient ownership patterns with ones that are more efficient and more profitable. One aspect of greater efficiency is more cost effective use of labor, capital, and other inputs. Another is improvement or innovation in the array of goods or services provided. Differences in ownership patterns can be related to differences in operating cost effectiveness or in product quality. If common ownership of two productive facilities, such as two broadcast stations, is more efficient than separate ownership, then the facilities will tend to be commonly owned, absent legal or regulatory restrictions on common ownership.

If multiple ownership leads to cost savings, the result could be significant benefits to consumers. For example, savings may be invested in producing higher quality programming.[27] In addition, the prospect of savings from multiple ownership, if significant, might encourage construction of new broadcast facilities that could enhance program variety, as well as prevent the exit of stations that are (or would become) unprofitable if compelled to continue operating on a stand-alone basis.

Efficiencies that can result from combining local broadcast station operations, which have been studied as they apply to combinations of radio stations, may include cost savings in administration and overhead, promotion, equipment, and programming. These were described in our Reply Comments on the FCC's 1991 NPRM on radio station ownership.[28] For example, the engineering staff required for two commonly-owned stations may be smaller than the sum of the staffs required by separate stations. In our radio rules Reply Comments, we cited empirical research which suggested that joint operation of local radio stations

[27] For evidence that competition among broadcast outlets results in greater expenditures on programming, see Fournier, Nonprice Competition and the Dissipation of Rents From Television Regulation, 51 S. Econ. J. 754-65 (1985).

[28] Supra, note 8. In previous proceedings, Provision of Improvements and Benefits to the AM Radio Broadcast Service, MM No. 87-7 the National Association of Broadcasters and other commenters also described the kinds of cost savings that may flow from common ownership of same-market radio stations. See Appendix A to Comments of the National Association of Broadcasters; Comments of the National Association of Broadcasters at Appendix C; Comments of CBS, Inc,. at 9-12; Comments of Capital Cities/ABC, Inc., at Appendix C.

could generate savings of up to 35 percent on salary expenses and up to 18 percent on technical equipment costs.[29] An additional empirical analysis, contained in the Appendix to that Reply Comment, implied that joint ownership of an AM and an FM station in the same local market can create substantial efficiencies.[30] Also, the fact that nearly 60 percent of all radio stations are in AM-FM combinations strongly suggests that common ownership results in efficiencies.

Of course, these empirical results apply directly only to the combination of an AM and an FM station in a local market, and not to combinations of television stations. Since same-market television combinations have been prohibited, direct empirical

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[29] See Comments of the National Association of Broadcasters, MM No. 91-140, August 5, 1991, p. 20. These estimates are based on comparisons of the reported costs of commonly-owned AM-FM radio stations and the sum of the reported costs of independent AM and FM stations.

[30] The Reply Comments Appendix contained a study conducted by FTC economists Keith Anderson and John Woodbury. This study compared the price that would be paid for an AM-FM combination in the same market with the sum of the prices that would be paid for the same stations if they were independently owned and operated. If efficiencies result from combined operation, the stations' value ought to be greater when sold as a combination than when sold (and when expected to remain operated) as stand-alones. Anderson and Woodbury found that the average price paid for an existing AM-FM combination would exceed by about 20 percent the price that would be paid for the same stations if those stations were operated (and were expected to continue to operate) on a stand-alone basis. This difference was statistically significant at the one percent level. To ensure that the price differences were not attributable to factors other than combination versus stand-alone ownership, regression analysis was used to control for other possible differences, including differences in the level of competition in local radio markets. The study used market concentration as a proxy measure (albeit, an imperfect one) of the level of competition.

identification of efficiencies that might be associated with such combinations is impossible.[31] The efficiencies from such combinations may turn out to be different from those estimated for AM-FM radio combinations.[32] Local television combinations may yield similar efficiencies, if they could enjoy the same benefits from joint operation, such as lower equipment and personnel costs.

Although there is no direct evidence of efficiencies from common ownership of television stations with overlapping signals, there has been some research on the effects of common ownership of non-overlapping stations. Certain types of efficiencies, such as savings from shared technical facilities, would not be available to non-proximate stations, but television stations that are in common ownership groups could receive other benefits, such as efficiencies in program selection, acquisition, and production. If so, group-owned stations might be expected to receive higher audience ratings than non-group stations. This hypothesis was tested by Parkman, who examined the impact of group ownership on the ratings of local news broadcasts.[33]

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[31] For the same reason, we have no direct evidence on any possible anticompetitive effects from allowing common ownership of television stations with overlapping signals.

[32] The anticompetitive effects from combining local television stations also could differ from those associated with AM-FM radio station combinations.

[33] See Parkman, The Effect of Television Station Ownership on Local News Ratings, 64 Rev. Econ. & Stat. 289-95 (1982).

Controlling for other factors,[34] he found a positive and statistically significant relationship between group ownership and local news ratings. Parkman interpreted this finding as consistent with the proposition that "group owners were able to adapt to changes in the production techniques of local TV news programming better than other owners."[35]

V. Local Ownership Limits

1. Market Power in Advertising Markets

Broadcast television stations are in the business of selling air time to advertisers. In deciding whether to relax the rule against owning stations with overlapping signal contours, an important competitive concern is whether common ownership of same-market broadcast facilities would tend to create or enhance market power in local advertising markets.

When assessing whether a proposed merger or acquisition should be challenged, the FTC and Department of Justice ("DOJ") conduct an analysis in five stages.[36] This analysis is

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[34] These other factors included each station's other characteristics (e.g., VHF or UHF, network affiliate or independent): the number and type of other stations in the local market; whether that station or its rivals owned a local newspaper or radio station; the age of the station; and the time zone in which the station operated.

[35] Parkman, supra note 33, at 294.

[36] The principal federal antitrust law concerning mergers is the Clayton Act. Section 7 of the Clayton Act exempts from its coverage broadcast license transfers and assignments that receive FCC approval. In principle, the Federal Trade Commission Act and the Sherman Act can also apply to mergers and acquisitions, and (continued...)

described in the 1992 Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines").[37] The first stage is to assess whether the proposed transaction would significantly increase concentration, and result in a high level of concentration, in a properly defined and measured antitrust market. Second, the agencies assess whether the transaction would raise concern about potential anticompetitive effects, given what is known about market concentration and other market-specific factors affecting competitive behavior. Third, the agencies assess whether entry into the relevant market would be timely, likely, and sufficient either to deter or counteract the competitive effects of concern. Fourth, the agencies ask whether there are efficiencies associated with the transaction that could not be achieved through other means that pose less of a threat to competition. Last, the agencies ask whether, but for the transaction, either of the parties to it would fail, causing their productive assets to exit the market. If the problem were determining whether any particular combination of nearby television stations would raise competitive concerns under the antitrust laws, it would be addressed by applying this five-step analysis.

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[36](...continued)
neither contains an exemption from its coverage for combinations involving broadcast licenses. However, because the FCC has exercised its regulatory authority over broadcaster combinations, there has been no occasion to test the application of the Sherman Act or the FTC Act to these transactions.

[37] See Merger Guidelines, 57 Fed. Reg. 41,552 (Sept. 10, 1992), ¶ 0.2.

A similar analysis could be applied to the problem before the FCC, which is addressing general rules to govern combinations. The problem, in terms of competition policy, could be restated as determining how many possible combinations there might be that would be unobjectionable under Merger Guidelines criteria. If there were few -- that is, if for most potential transactions, significant concentration increases in relevant antitrust markets and other factors imply that the effect may be substantially to lessen competition, and there was little probability of achieving otherwise unattainable efficiencies -- then there would be little competition-policy rationale for relaxing the local ownership rules.[38] But if a large proportion of potential transactions would not violate antitrust standards, it could be efficient to relax the absolute prohibition. Which particular method to choose, whether a relaxed version of the present rule, a safe-harbor approach, or case-by-case review using procedures and principles like those applied in other antitrust markets, would depend on the balance of costs, including administrative costs, and benefits.

To assess some of the potential benefits and costs of relaxing the contour overlap rule, it will be useful to follow the steps in the Merger Guidelines' analysis. The first step is to delineate properly the product and geographic markets in which television stations compete, and then measure concentration in

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[38] In this situation, the rules could be efficient, since they would avoid the costs of case-by-case adjudication.

these markets.[39] Under the Merger Guidelines, defining the product market starts with asking whether a hypothetical monopolist seller of some product (or service) would find it profitable to impose a "small but significant and nontransitory" price increase.[40] Here, the question might be whether a monopolist seller of broadcast television advertising time would find it profitable to impose such a price increase on advertisers. If the answer is "no," because advertisers would switch to other advertising media in response to this attempted price increase, then the product market would be expanded to include the next-best substitute for broadcast television advertising, and the price increase question would be posed again. This process is repeated until a set of services is found for which such a price increase by a hypothetical monopolist would be profitable.

The boundaries of the relevant geographic market are delineated similarly. To illustrate, suppose that "broadcast

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[39] We note that concentration figures in the FCC staff report entered into the record for this docket ("Overview of the Television Industry," Federal Communications Commission, Policy and Rules Division, Mass Media Bureau, March 1992) ("Television Overview") understate concentration in local broadcast television advertising. The FCC computes a Herfindahl-Hirschman Index (HHI) of 187 using data on delivered audiences. Because this index is computed on a nationwide basis, it does not reflect the local nature of broadcast competition.

[40] The "small but significant" increase is generally taken to be five percent. The following discussion assumes that the hypothetical monopolist cannot price discriminate among different buyers of the product. If such discrimination is possible, the market definition procedure must be modified. See Merger Guidelines, ¶ 1.12.

television advertising" constituted the relevant product market for analyzing a merger between two stations in area A. One would then ask whether a monopolist of television broadcast advertising in area A could profitably raise prices by a small but significant and nontransitory amount (again, usually five percent), or whether its attempt would be defeated by advertisers switching to television stations in nearby area B. If the price increase would be profitable, then area A would constitute the relevant geographic market. If not, the geographic market would be expanded to include television advertising in area B, and the question repeated. This procedure would continue until an area was found in which a monopolist could profitably raise broadcast television advertising prices. That area would be the relevant geographic market.

Ideally, the first step in appraising the likely consequences of relaxing the FCC ownership rules would be defining all of the relevant product and geographic markets in which broadcast television stations compete, then measuring concentration in them. To do so rigorously would exceed our time and resource constraints. However, available data on broadcast television viewing behavior do allow us to make several general observations relevant to market definition and concentration. We examine Arbitron data on broadcast television ratings for the most recent year for which we could obtain data, 1988. Arbitron computes, for each station, the share of "total households using

television" in the station's ADI tuned to that station.[41] These percentages can then be aggregated across all of the stations in an ADI.

The sum of the audience shares of the stations in each ADI is, on average, far less than 100 percent. The average is 66 percent,[42] with values ranging from a low of 15 percent to a high of 93 percent. This means that many households using television are not watching the broadcast stations in their ADI. This shortfall results from some combination of (1) "out-of-market" viewing (such as Washington-area households watching Baltimore stations), and (2) cable programming viewing. Thus, there are two implications relevant to market definition. First, to the extent that cable-only viewing is substantial, the market-definition process might have to consider advertising sold by cable networks and cable systems in addition to advertising sold by broadcast television stations.[43] Second, to the extent that "out-of-market" viewing is substantial, the relevant geographic market in which the typical television station competes might be larger than the station's ADI.

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[41] For example, if a station has a 10 percent share in a given time slot, this means that 10 percent of the households viewing television in that station's ADI, during that time period, were tuned to that station.

[42] The standard deviation is 17 percent.

[43] Note that an apparent premise of the proposed re-institution of cable "must-carry" rules, as well as of the radio-television cross-ownership ban, is the existence of competition between broadcast television and these other media.

Other evidence suggests how much viewers are turning to cable-only viewing. The Arbitron data show that, on average, broadcast stations experienced viewership declines among households in their ADIs between 1984 and 1988.[44] Data in a recent FCC staff report suggest that the growth of cable viewing probably accounts for much of the decline in local broadcasters' audience share. Of the over 90 percent of all households that are passed by cable, over 60 percent subscribe.[45] In 1989-90, almost 40 percent of cable households' total television viewing time was spent watching cable network programming, up from 24 percent in 1984-85.[46] Measured as a percentage of <u>all</u> television viewing (i.e., cable households plus noncable households), the share of cable networks in total viewing increased from 14 percent in 1984-85 to 26 percent in 1989-90.[47]

The regression analysis in the Appendix also suggests that cable television growth has been an important determinant of the declines in broadcast shares. We estimate that every one percentage point increase in the total number of households passed by cable in an ADI was associated with a one-half

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[44] On average, "in-market" stations lost about three percent of total households using television in their ADI between 1984 and 1988. The loss was largest in the top 20 ADIs, where the decline averaged over five percent.

[45] <u>See</u> FCC staff "Television Overview," <u>supra</u> note 39.

[46] <u>See</u> Setzer and Levy, "Broadcast Television in a Multichannel Marketplace," <u>FCC Office of Plans and Policy Working Paper No. 26</u>, June 1991, Table 6.

[47] <u>Id.</u>

percentage point reduction in the viewer shares of the local stations.[48]

This information on changing viewing patterns does not, by itself, demonstrate that broadcast television advertising is not a relevant antitrust product market under the Merger Guidelines analysis. Viewership shares do not translate directly into advertising market shares. Despite the increase in cable viewing, cable television still accounts for only a small share of total video advertising; in 1990, cable networks accounted for about 5 percent of total television advertising, and non-network cable advertising, about 1.5 percent.[49] Thus, determining the proper product market definition may well require examining other kinds of evidence, such as the extent to which advertisers would move from one medium to another in response to a change in relative advertising rates. But the general data on viewing patterns do suggest that television stations may compete in antitrust markets that are broader than their ADI, and that perhaps include services other than those produced by broadcast television stations.

Measuring more precisely the boundaries and levels of concentration of properly defined markets is beyond the scope of this comment. To illustrate the scope of the issues, we set out a stylized concentration analysis based on general information

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[48] We can reject at the one percent significance level the hypothesis that cable growth was unrelated to broadcast share reductions.

[49] See Setzer and Levy, supra note 46.

about the number and size distribution (by audience share) of commercial broadcast stations in the 212 Arbitron ADIs, and discuss the relationship these data might bear on more relevant concentration measures of antitrust markets. This discussion, based as it is on very general data, does not necessarily describe the "average" antitrust product and geographic market, nor does it provide all of the information necessary for determining the particular concentration levels in relevant product and geographic markets.

According to the 1992 Television & Cable Factbook, the average number of commercial television stations in an ADI is about five; in the largest 100 ADIs, the average is seven, but the numbers range widely, from a low of two to a high of 17. If it were assumed that a seven-station ADI was a relevant geographic market and that "broadcast television advertising" is a relevant product market, and also that each station is of equal competitive significance, then the change in Herfindahl-Hirschman concentration indices (HHIs) due to a combination of stations in such a "market" could exceed the Merger Guidelines' threshold concentration levels.[50] But there are many reasons why this

[50] The Herfindahl-Hirschman Index would be computed as 10000/N, where N is the number of stations. Thus a merger of two stations in a seven station market would increase the HHI from about 1410 to about 1835. Markets with post-merger HHIs in the 1000 to 1800 range are considered "moderately concentrated," and those over 1800 "highly concentrated," by the Merger Guidelines. Cases such as this hypothetical that are near the thresholds are considered to present comparable issues. Mergers producing an increase in the HHI of more than 100 points to a level between 1000 and 1800 "potentially raise significant competitive concerns depending on (continued...)

stylized result might provide a misleading indication of the competitive implications.

First, the Arbitron ADIs from which these numbers are drawn may not correspond to geographic antitrust markets, to the extent that "out-of-market" viewing is substantial.[51] If it is, concentration statistics computed from ADI data might incorrectly suggest that certain combinations are competitively objectionable. As a hypothetical demonstration, consider two identical, geographically contiguous ADIs, each with six equal-sized stations, that together constitute a relevant geographic market. Within each ADI, the HHI would be 1,667, in the Merger Guidelines' "moderately concentrated" range. If each ADI was (wrongly) regarded as a separate relevant geographic market, a merger between two stations in the same ADI would be thought to raise significant competitive concerns. But the pre-merger HHI corresponding to the correct, broader relevant geographic market that included both ADIs would be only 883, and the post-merger

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[50](...continued)
the factors set forth in Sections 2-5 of the Guidelines." Merger Guidelines, ¶ 1.51. For mergers producing a similar 100 point increase to a post-acquisition level over 1800, a likely increase in market power is presumed, but the presumption can be overcome by these other factors. Sections 2-5 of the Merger Guidelines deal with competitive effects, entry, efficiencies, and failing firms.

[51] On average, only 66 percent of households using television are viewing the signals of broadcast stations located in the viewers' ADI. And even though the average number of stations even in the large ADIs is seven, more than half of all households now receive ten or more over-the-air signals, compared to six signals in 1975. NPRM (¶ 3). In 1964, when the contour overlap rule was first adopted, only four percent of all households had access to ten or more over-the-air signals (NPRM, ¶ 17).

HHI only 972.[52] That would be in the Guidelines' "unconcentrated" range, where an antitrust challenge is highly unlikely.

Using ADI data to assess market concentration could, of course, also lead to mistaken inferences of the opposite sort. For example, Arbitron defines separate ADIs for Baltimore and Washington, D.C., even though the Grade B (and often the Grade A contours) of the stations in the two cities overlap. It may be that, by applying the market definition methods of the Merger Guidelines to television stations in the Baltimore-D.C. area, the Baltimore and Washington areas would be found to constitute a single antitrust market. That is, advertisers might perceive Baltimore stations as good substitutes for Washington stations (and vice versa) for conveying advertising messages to a particular audience.[53] If the two metropolitan areas comprised a single relevant market, then to assume, wrongly, that the Arbitron ADIs always constituted separate relevant geographic markets might lead to the incorrect conclusion that a merger between a Baltimore station and a Washington station would likely be of no competitive consequence.[54]

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[52] This is computed as $\{(2/12)^2 + 10*(1/12)^2\}*10,000$.

[53] We emphasize that this is a hypothetical example; we have not actually conducted this analysis for the Baltimore-Washington area.

[54] On the other hand, it might be that Washington and Baltimore stations are poor substitutes for each other, notwithstanding their contour overlaps. If so, a merger between stations in the separate (continued...)

Another, and perhaps more important, reason why the stylized calculation is misleading is that, contrary to its assumption that each station is of equal competitive importance, in reality viewer shares vary widely across stations.[55] It might be appropriate, therefore, to compute HHIs on the basis of stations' viewer market shares, rather than on the basis of the number of stations. The merger of two stations, each with a share of one percent, would likely be viewed as far less objectionable than the merger of two stations each with a share of 20 percent.[56] Although there are likely to be possible transactions that would increase viewer-share concentration significantly, others would change it very little.[57]

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[54](...continued)
markets would be blocked under the current FCC rules, even though antitrust analysis might find the combination competitively unobjectionable.

[55] In our data set, values range from less than 1 percent to 51 percent.

[56] The change in the HHI that results from the merger of two firms with respective market shares of s_1 and s_2 is $2*s_1*s_2$.

[57] In 1988, 86 stations had viewer shares below one percent, and another 293 stations had shares between one and seven percent; these 379 stations comprised almost 37 percent of the commercial over-the-air stations. Assuming these were shares of antitrust markets, a combination of two stations, each with a 7 percent share, would increase the HHI by just under 100 points; in a "moderately concentrated" market (with post-merger HHI below 1800), the combination would be considered "unlikely to have adverse competitive consequences and ordinarily require[s] no further analysis." Merger Guidelines, ¶ 1.51. There were 228 stations with shares below five percent. A combination of two stations, each with a five percent share, would increase the HHI by 50 points; even in markets that are considered "highly concentrated" (with post-merger HHI above 1800), mergers producing an increase in
(continued...)

Finally, the significance of the figures would change substantially if "broadcast television advertising" did not by itself constitute a properly defined antitrust product market. It may be that, after consideration of more detailed evidence, the antitrust market would be found to include other services. Other services whose competitive importance might be considered would include advertising sold by cable networks and cable systems, radio stations, or even print media. To the extent that the market is found to be broader than broadcast television, concentration figures based solely on ADI viewer shares will be inaccurate.

Defining markets and measuring concentration are the first steps in the Merger Guidelines analysis. If properly measured concentration in properly defined markets exceeds the threshold levels, the Merger Guidelines call next for analysis of other market factors that pertain to competitive effects, that is, that might contribute to a lessening of competition through coordinated interaction.[58] Little can be said from direct

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[57](...continued) the HHI of less than 50 points are considered unlikely to raise significant competitive concerns. Id. Of course, the HHI increase could be substantially greater for the combination of a small station and a larger one. We do not know in how many markets there might be two or more very small stations whose combination would be unlikely to increase concentration significantly.

[58] Merger Guidelines, § 2. Antitrust analysis is also concerned about possible anticompetitive unilateral conduct. This discussion focuses on coordination, rather than unilateral conduct, because available information suggests that broadcasting is unlikely to be differentiated enough to implicate the Merger Guidelines analysis of conditions that give rise to concerns about unilateral conduct.

experience about how television station mergers might be related to the likelihood of anticompetitive coordinated interaction, because the contour overlap rule has prohibited such transactions. One study attempted to examine the relationship between television industry concentration (based on ADI data) and advertising prices,[59] and found no correlation between advertising prices and ADI concentration. These findings are consistent with the possibility described above, that television broadcasting in an ADI is not a well-defined antitrust market in the first place. But if a study based on well-defined product and geographic markets produced results like these, it would confirm why, under the Merger Guidelines approach, measuring concentration levels is only the first step in the analysis. The Merger Guidelines contemplate further examination of the characteristics of the market to identify and assess other factors affecting competition.

The next step in the Merger Guidelines analysis, if concentration increases and other characteristics of defined

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[59] See Fournier and Martin, Does Government-Restricted Entry Produce Market Power?: New Evidence From the Market for Television Advertising, 14 Bell J. Econ. 44-56 (1983). Fournier and Martin examined the relationship between measures of market concentration and actual transaction prices for spot television advertising. According to estimates obtained by one statistical method, ordinary least squares, advertising prices were not related to some measures of concentration (e.g., the HHI), and were negatively related to others (e.g., the two-firm concentration ratio). According to estimates obtained using a preferred statistical method (two-stage least squares, to control for the possible endogeneity of market concentration), none of the measures of concentration exhibited a statistically significant relationship to price. Fournier and Martin defined each "market" as an Arbitron ADI.

antitrust markets imply that a combination is likely to reduce competition, is determining the likelihood of entry. The number of commercial television stations has increased by over 28 percent since 1985, nearly 55 percent since 1980 (from 734 in 1980 to 1,136 in 1992), and by over 100 percent since the rule was first adopted in 1964.[60] Whether there are enough unassigned broadcast frequencies to permit further entry by new stations, and if so, whether entry would be "timely, likely, and sufficient" to counteract potential competitive problems, cannot be determined. The answers to these questions would differ across geographic markets.[61] To the extent that entry would be "timely, likely, and sufficient," the competitive concerns surrounding a television station merger would be substantially diminished, even in a market where post-merger concentration would be high.

Next, the Merger Guidelines analysis assesses merger-specific efficiencies. (In the case-by-case Merger Guidelines analysis, the parties must demonstrate these efficiencies, and show that they cannot reasonably be achieved except through the merger.) Here again, there is no direct evidence about efficiencies from the merger of nearby television stations,

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[60] See FCC Staff "Television Overview," supra note 39, attachment 1.

[61] It may be that the regulatory process governing broadcast licenses, as currently applied, would delay all entry beyond the point that antitrust analysis would consider sufficiently "timely." If so, a response suggested by a competition policy perspective would be to modify the regulatory process so as to speed the rate at which new licenses can be issued.

because the rules have prohibited such transactions. As we described in § IV, supra, however, research has suggested that there are efficiencies associated with common ownership of local radio stations. There may be similar efficiencies that could be realized through joint ownership of local television stations.

The final step is assessing the possibility that the merger will prevent the imminent failure of one of the merging parties. That will of course depend on the details of particular parties' situations.

Overall, our analysis suggests that there may be potential transactions now barred by the contour-overlap rule that might be viewed as competitively unobjectionable when judged by the standards of the Merger Guidelines. Unless potential efficiencies from such transactions are small, or the cost of a different regulatory approach is too high, it appears consistent with a competition policy analysis of the issue to relax the television "duopoly" rule.

One way to relax the rule is to change the standards of the existing rules to permit some common ownership of nearby television stations. The proposals[62] include changing the signal contour used for determining prohibited overlaps from the Grade B to the Grade A; allowing combinations involving only UHF stations; and allowing combinations where a certain minimum number of independent stations would remain after the combination. Each of these approaches offers the advantage of

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[62] NPRM (¶¶ 17-20).

low enforcement costs, but they entail two risks: first, that potentially efficient combinations could still be thwarted, and second, that potentially troublesome combinations could be permitted.

As an alternative,[63] the might FCC consider adopting a case-by-case approach, combined with a "safe harbor" for transactions that satisfy certain market structure criteria. This approach would be similar to that embodied in the Merger Guidelines, and to what the FCC is proposing here for certain transactions subject to the radio-television cross-ownership rule.[64] In considering requests for waiver of the radio-television cross-ownership rule, the FCC takes into account the potential benefits of the combination, the types of stations involved, the number of stations already owned by the applicant, the financial difficulties of the station(s), and the competitive nature of the market.[65] Generally speaking, these are similar to the elements of the Merger Guidelines' analysis. The FCC may wish to consider whether it would be appropriate to apply these (or similar) criteria to television licensure issues.

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[63] This alternative was not proposed in the NPRM.

[64] See § VII, infra.

[65] NPRM, ¶ 22.

2. Programming Variety

As in the Radio Rules and Policies rulemaking,[66] an important issue in this proceeding is the impact of common ownership on program (or format) variety.[67] Because television stations earn profits by selling time to advertisers, rather than by selling programming directly to viewers, the relationship among market structure, programming variety, and economic welfare is not simple. Unlike ordinary goods and services, which are sold to consumers at prices that reflect consumers' valuation of these goods, broadcasters provide programs to viewers free of charge. Broadcasters' costs are covered by selling air time to advertisers, who care principally about audience size.[68] Consequently, broadcasters' profit-maximizing programming choices will be determined by the ability to "sell" a large audience to an advertiser, rather than by the ability to sell a highly-valued program to an audience. Hence, the mix of programs that emerges under advertiser support may differ from that which would emerge

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[66] Supra, note 8.

[67] As noted earlier (see note 2, supra), we address here the relationship between market structure and the degree of differentiation in types of programming offered, not issues relating to diversity in the range of editorial viewpoints offered.

[68] This is an oversimplification, since advertisers also care about audience demographics (See Setzer and Levy, "Broadcast Television in a Multichannel Marketplace," FCC Office of Plans and Policy Working Paper No. 26, June 1991, p. 117). To simplify the discussion, however, we will ignore this complication.

under a system of direct viewer payments.[69] The divergence would depend on, among other things, the structure of consumer preferences, whether or not channel capacity is limited, and the costs of producing different types of programming.

The advertiser-supported feature of the system makes it difficult to predict the relationship between market structure and program variety. It is possible, for example, to describe circumstances under which a monopolist provides a different variety of programs, and will provide more programs for viewers with specialized tastes, than would be provided in a competitively-structured market.[70] Competing stations might try

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[69] See Spence and Bruce Owen, Television Programming, Monopolistic Competition, and Welfare, 91 Q. J. Econ. 103-26 (1977).

[70] See Steiner, Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting, 66 Q. J. Econ. 194-223 (1954), for examples. For monopoly to provide greater program variety than a competitive market, channel capacity must be limited. This result also requires specific assumptions about the distribution of consumer preferences and specific assumptions about whether viewers switch to a less preferred station when their first choice is unavailable, or, instead, choose to forgo viewing. Under this condition, monopoly variety could exceed the competitive variety because the monopolist would not have an incentive to provide duplicative programming on different stations, since this would simply shift viewers from one of its stations to another. Rather, the monopolist would offer different programs directed to different audiences (as long as each program offered positive profits). With competing stations, any given station might find that it can garner its largest audience by offering a program similar to that of its rival, rather than by offering a program that is attractive to another (but smaller) group. With limited frequency capacity, this could result in less program variety under competition than under monopoly, and the displacement of programming that caters to the tastes of smaller groups.

As noted earlier, there has been substantial growth in the number of broadcast television channels over time. Also, cable channel capacity has also increased substantially. Nevertheless, (continued...)

to reach the same core audience, leaving others unserved, while a single owner might try to program different stations to appeal to different audience segments in order to maximize its total audience size. This result, of monopoly producing more variety, is more likely, the greater the constraints on channel capacity. If there is excess capacity, then some program duplication is likely, because an entrant might still find it profit-maximizing to "steal" part of an incumbent's audience; however, complete displacement of specialized programming is unlikely, because specialized programming would be offered as long as some broadcaster could profit from it.

The possibility that monopoly could provide more variety than competition is only an illustration; theory does not establish which market structure would provide the greatest programming variety. It does demonstrate, however, that there is no theoretical presumption that maximizing the dispersion of station ownership will maximize program variety. Moreover, the illustration compares a monopoly market structure and a competitive structure. The NPRM does not propose, nor do we advocate, that the FCC encourage monopolization of local

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[70](...continued)
it appears that total (cable plus broadcast) available channel capacity in the typical market will be exceeded by the number of available programming services, especially when cable programming services are taken into account. For example, according to the 1990 FCC Cable Report, in 1989 the number of domestic existing and proposed pay TV and satellite cable services was reportedly 181. In 1989, the average cable system had about 40 channels. Report in the Matter of Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, MM Docket No. 89-600, July 31, 1990, ¶ 43 and Table 6.

television markets. Rather, under consideration is a modest relaxation of the regulations that now mandate ownership fragmentation. Economic theory provides no basis for concluding that consolidations that might follow this relaxation would reduce program variety.

Lastly, and perhaps most importantly, the models that underlie the discussion above ignore costs. In these models, the only constraint on adding formats (that is, stations) is frequency availability. In reality, of course, costs are a very important determinant of whether a service can be offered profitably. Costs may be much more important than frequency scarcity in determining program variety. If relaxation of the common ownership rules permits the attainment of greater efficiencies, and if the prospect of these efficiencies, in turn, encourages the construction of additional stations (or prevents the exit of otherwise unprofitable stations), it is likely that program variety will increase (or that the rate of decline will be reduced).

VI. National Ownership Limits

As an alternative to the current 12 station-25 percent reach limitation on the number of television stations that may be commonly owned, the NPRM suggests raising both the numerical limit and the national reach limit.[71]

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[71] NPRM, ¶ 12. The FCC offers two specific proposals: (1) increasing the numerical cap to 20 or 24 stations while increasing (continued...)

Conceptually, it does not appear that the proposed limits on national station ownership would address any well-defined concerns about the possible exercise of market power by broadcast television stations. Competition among television broadcasters, whether as competition for viewers or as competition in advertising markets, occurs principally on a local, rather than national, level. The local scope of competition suggests that an economic assessment of same-service combinations should examine their effects in local antitrust markets. A combination of stations that individually have modest shares of their respective local advertising markets could, because those markets are populous, exceed the national viewer "reach" threshold. It is unclear why formation of such a group would threaten competition in local television markets.

Moreover, as we observed in our Reply Comments to the Radio Rules and Policies NPRM, audience "reach" is conceptually different from audience share.[72] The proposed threshold of 35 percent might raise antitrust concerns if it applied to shares of an antitrust market. A market of approximately three equal-sized

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[71](...continued)
the audience reach limit to 35 percent, or (2) increasing the numerical cap to 18 stations and the audience reach limit to 30 percent. It has also asked for comment on whether the numerical cap alone should be increased while retaining the 25 percent audience limit.

[72] The national multiple ownership rule defines "national audience reach" as "the total number of television households in the Arbitron area-of-dominant-influence (ADI) markets in which the relevant stations are located, divided by the total national television households as measured by the ADI data." 47 C.F.R. § 73.3555 (d)(3)(i).

firms would exceed the "highly concentrated" concentration level, and an acquisition creating such a market structure would receive close scrutiny.[73] But audience reach and audience share are quite different concepts, so an audience reach of 35 percent would not necessarily correspond to an audience share of 35 percent. Depending on details of population distribution and spectrum allocation, it is conceivable that many more than four different ownership groups, perhaps even dozens of them, could be assembled that would each reach 35 percent of the national audience, even though concentration in separate local markets would remain low. What would happen in fact is unknown, but the audience reach proposal as drafted does not describe a situation that is readily understandable as raising a concern about competition or efficiency.

The local scope of competition among television stations also attenuates competitive concerns about creation of monopsony power in program acquisition if group ownership rules are relaxed. A program supplier looking for broadcast distribution in the New York and Los Angeles areas will care about the degree of competition to buy programs among stations within each of these two markets, not between New York buyers and Los Angeles buyers.[74] A unilateral attempt by a New York station to reduce

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[73] Department of Justice and Federal Trade Commission Merger Guidelines, ¶ 1.51(c).

[74] We are thus assuming that geographic markets for sales of programming to individual stations are local. Even if this is incorrect, the level of concentration in a national market is far (continued...)

the price below the competitive level will be defeated if there are other competing bidders for the New York area rights to the program. Competition among New York area stations would be unaffected if the owner of one of them also owned a Los Angeles station. Further, any attempt by an owner of stations in each area to pay less than the competitive price for the rights in both areas combined would be defeated if competing sources of distribution services existed in each area.[75] Even if competing sources of distribution were lacking--for example, if the Los Angeles station did not face effective local competition--the degree of market power possessed would be unaffected by the fact of joint ownership with a station in another area.[76]

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[74](...continued)
too low to warrant the continued existence of the national multiple ownership rules in their current form. As noted earlier, the national HHI for the television industry ranges from 187 to 229, depending upon which measure of station output is employed. See "Television Overview," supra note 39, at p. 4.

[75] There is little empirical support for the proposition that group stations pay less than nongroup stations for programming. The FCC's Network Inquiry Special Staff Report analyzed the prices paid for programming by group and nongroup station owners. Controlling for other factors (including the degree of competition for programs), the staff found that the price paid per viewer-minute was higher, not lower, when the purchaser was owned by a large group. See Besen and Johnson, "Regulation of Media Ownership by the Federal Communications Commission," RAND Corporation Report No. R-3206-MF, December 1984, pp. 15-16.

[76] Besen and Johnson, supra note 75, at 18-19, provide a useful example to illustrate the theoretical principles that lead to these results. Consider a group owner, with stations in three separate television markets, bidding for a program to be shown in each market. Suppose this group owner is willing to pay up to $100 in market 1, $50 in market 2, and $20 in market 3, while some rival station in each market would pay $90, $40, and $30, respectively. If the program can be sold to the highest valued user in each
(continued...)

Concern about local television stations' exercise of either monopoly power in advertising or monopsony power over programs is likely only in connection with joint ownership of *local* stations, the issues discussed in Section V, supra. Relaxing the national ownership limits would not appear to pose a threat to competition.

VII. The Television-Radio Cross-ownership Rule

The FCC's rules prohibit holding attributable ownership interests in both a radio station and a television station in the same market.[77] Since 1989, however, the FCC has entertained waivers of this rule for combinations in a top 25 television

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[76](...continued)
market, the group owner would acquire the exhibition rights in markets 1 and 2 (paying slightly more than $90 + $40 = $130), while a rival would acquire the rights for market 3 (paying slightly more than $20). The program producer's revenues will be slightly more than $150, the group owner's surplus will be just under $20, and the rival station's surplus will be just under $10. Total surplus will thus be just under $180.

Suppose, instead, that the group owner tried to acquire the exhibition rights for all three markets, without outbidding its rivals in market 3. If the effort succeeded, the total surplus, to be divided between the producer and the group owner, would be $170 (= $100 + $50 + 20). The group owner's surplus would be $170 - P, where $P is the amount the group owner would pay. But the producer could now offer a deal that would increase total surplus and make everyone individually better off, including the group owner. The producer could buy back the rights to market 3 for ($20 + d) and sell them to a another station there for ($20 + e), where e > d. The group owner's surplus would increase by d, the rival station's surplus would increase by $10 - e (= $30 - [$20 + e]), the producer's surplus would increase by e - d, total surplus would increase by $10, and allocative efficiency would be restored. The program would be allocated to its highest valued user in each market.

[77] Section 47 C.F.R. § 73.3555(b).

market, if 30 separately owned, operated, and controlled broadcast licensees would remain after the combination.[78] The FCC also considers requests for waivers if the request involves a "failed" station. Other requests for waivers are considered according to criteria such as potential benefits of the combination, the types of stations involved, and the competitive nature of the market.[79]

From the perspective of competition policy, "cross-ownership" could cause problems if television and radio stations compete in the same antitrust market. But concentration in a market defined so broadly will often be far too low for combinations to raise substantial antitrust concerns. Even in small markets, audiences can receive many over-the-air television and radio signals. In our Reply Comments to the Radio Rules and Policies NPRM we observed that local radio ownership is typically not highly concentrated.[80] Only about 14 percent of radio

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[78] According to the NPRM (¶ 22), it is official FCC policy to "look favorably" upon waiver requests when these conditions are satisfied.

[79] See NPRM, ¶ 22.

[80] The National Association of Broadcasters noted in its comments in the 1987 Radio Rules and Policies proceeding that in 47.9 percent of local broadcasting markets, Herfindahl-Hirschman indexes (HHIs) were below 1,000, based on a market definition that includes only AM and FM radio stations. Under the Department of Justice and Federal Trade Commission Merger Guidelines, such markets are considered "unconcentrated." In most other local markets (38.6 percent), the HHIs were between 1,000 and 1,800, a range of values that the Merger Guidelines consider "moderately concentrated". (See "An Updated Examination of Market Concentration in Radio Markets," filed as Appendix E to the 1987 Comments of the NAB.) The NAB also noted that a variety of other
(continued...)

markets appear to be in the "highly concentrated" range (about 35 out of 259 markets). We have not estimated concentration statistics for combined "radio and television" markets, but we believe that concentration in combined markets may well be lower. Unless audiences are much larger and concentration much greater for television than for radio, concentration in combined markets would likely be lower than concentration calculated for "radio only" markets.[81]

One of the FCC's proposals is to codify the present top-25 market waiver criteria and extend their application to all markets where 30 independent voices would remain after the combination.[82] In essence, the FCC would be creating a "safe harbor" for certain types of transactions. A "safe harbor" approach would resemble in principle the Merger Guidelines' approach. Under the government's merger enforcement standards, mergers in "unconcentrated" markets (where the post-merger HHI is below 1,000) are considered unlikely to have adverse competitive consequences and ordinarily do not require further analysis. This threshold applies to any antitrust market, regardless of absolute size.

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[80](...continued) media serve local markets, and that in many cases the number of such outlets is considerable. (See "An Analysis of Media Outlets by Market", filed as Appendix B to the Comments of the National Association of Broadcasters, MM No. 91-140, August 5, 1991.)

[81] In addition, new station entry, where technically feasible and authorized, would also tend to constrain any attempted exercise of market power.

[82] NPRM, ¶ 28.

As the FCC suggests, delineating appropriate "safe harbors" can produce social benefits. Enforcement resources can be concentrated where anticompetitive activities are most likely. Costs of compliance are reduced too, when regulated firms have clearer guidance on enforcement standards and procedures. Consequently, there is likely considerable merit in the FCC's proposal.

Recommending a regulatory "safe harbor" does not necessarily imply that all transactions failing the "safe harbor" criteria would be objectionable. For example, when enforcing the antitrust laws, the FTC and DOJ may decline to challenge mergers occurring in "moderately concentrated" markets (where the post-merger HHI is between 1,000 and 1,800) because further analysis reveals that the transaction would be unlikely to reduce competition. The same may be true for transactions involving television and radio stations. Accordingly, we suggest that the FCC continue to consider waiver applications even when the "safe harbor" conditions are not met. To the extent that the FCC is concerned about competitive problems from such combinations, we believe that the analytical framework outlined in the Merger Guidelines provides a useful method for identifying potentially troublesome transactions.

VIII. Conclusion

FCC rules ban holding attributable ownership interests in television stations whose signals overlap, limit the number and audience reach of commonly-owned non-overlapping television stations, and limit owning geographically proximate television and radio stations. From the perspective of competition policy, the blanket ban on local television multiple ownership and the restrictive policy towards radio-television cross-ownership could be appropriate if the net effect of such combinations was likely to be anticompetitive, and if the costs of case-by-case evaluation are likely to exceed the benefits from allowing those combinations having positive net effects. But applying the kind of analysis used in antitrust enforcement to the competition issues in local television and radio markets suggests there may be little basis for such a strong presumption that combinations in proximate locations would reduce programming variety or create market power in advertising markets. Moreover, it may be that combination could lead to substantial efficiencies, similar to those demonstrated in other broadcast situations. Thus, it may be appropriate, and consistent with the concerns of competition policy, to relax the current blanket prohibitions. The FCC might consider, in addition to the ways it has proposed to relax the existing rules, using more case-by-case analysis.

For similar reasons, competition policy would not bar relaxing the rules applying to television station ownership

nationwide.[83] Because television stations compete in local markets, the competitive effects of multiple station ownership are best understood by analyzing the impact of such ownership in individual markets. National ownership limits are unlikely to increase the variety of programming available to local viewers or to protect competition in advertising markets. But the limits may prevent firms from realizing certain efficiencies that derive from owning more than one station.

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[83] We reiterate that this reply comment has addressed issues relating to economic efficiency, competition, and the enforcement of the antitrust laws. It has not addressed other issues, such as the relationship between diversity of ownership and diversity of editorial viewpoint, that may be important to the FCC.

Appendix

To examine the impact of cable television on broadcast stations' audience shares, we constructed a data set consisting of the following variables:

1. $SHARE_i$ = sum of audience shares of broadcast stations in ADI i in the 9:00 a.m to midnight time slot. The audience share of each station is the percentage of households using television tuned to that station.

2. $CABLE_i$ = percentage of homes passed by cable in ADI i.

3. HUT_i = percentage of television households using television in ADI i during 9:00 a.m - midnight time slot.

4. $NUMSTA_i$ = number of broadcast television stations in ADI i.

5. $RPCINC_i$ = real per capita income in ADI i.

6. $RLPCSL_i$ = real per capita retail sales in ADI i.

7. POP_HH_i = average number of persons per household in ADI i.

Each of these variables was created for 1988 and 1984 for each of the 212 Arbitron ADIs. We then pooled the data[84] for both years (thus creating a data set of 424 observations on 7 variables), and regressed SHARE on the remaining variables. To control the possibility of heteroskedastic disturbances, we employed weighted least squares (using the number of households

[84] We conducted a Chow test to assess whether the parameter restrictions implied by this pooling were valid. The results of this test led us to accept the null hypothesis that the restrictions held.

in each ADI as the weight).[85] We obtained the following results:

Source	SS	df	MS
Model	44600.8195	6	7433.46992
Residual	23467.2177	417	56.2763014
Total	68068.0372	423	160.917346

Number of obs	= 424
F(6, 417)	= 132.09
Prob > F	= 0.0000
R-square	= 0.6552
Adj R-square	= 0.6503
Root MSE	= 7.5018

share	Coef.	Std. Err.	t	P>|t|	[95% Conf.	Interval]
cable	-.501528	.0354684	-14.140	0.000	-.5712473	-.4318088
hut	.3342305	.1061153	3.150	0.002	.1256427	.5428183
numsta	1.77509	.2082829	8.522	0.000	1.365674	2.184506
rpcinc	.7589181	.3347069	2.267	0.024	.1009945	1.416842
rlpcsl	-2.550595	.8090818	-3.152	0.002	-4.140984	-.9602065
pop_hh	-7.496724	3.372552	-2.223	0.027	-14.12605	-.867395
_cons	104.2831	11.10654	9.389	0.000	82.45127	126.1149

The results of this regression suggest that, holding other factors constant, each one percentage point increase in the number of homes passed by cable in an ADI is associated with a half-percentage point decrease in the aggregate audience share of the broadcast stations located in that ADI.[86] We can reject the

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[85] The ordinary least squares parameter estimates were quite similar to those obtained using weighted least squares.

[86] The sample correlation coefficient between CABLE and SHARE is -0.64.

hypothesis of no relationship between the two variables at the one percent level of statistical significance.[87]

[87] If SHARE is also a determinant of CABLE, then this ordinary least squares coefficient might fail to estimate consistently the true relationship between CABLE and SHARE. To obtain a statistically consistent parameter estimate under such a circumstance would require one to find some statistically predetermined factor that influences CABLE, but not SHARE. It seems likely, however, that any factor that influences CABLE will also influence SHARE.