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FCC SETS LIMITS ON MEDIA CONCENTRATION

Unprecedented Public Record Results in Enforceable and Balanced Broadcast Ownership Rules

Washington, D.C. – The Federal Communications Commission (FCC) today adopted new broadcast ownership rules that are enforceable, based on empirical evidence and reflective of the current media marketplace. Today's action represents the most comprehensive review of media ownership regulation in the agency's history, spanning 20 months and encompassing a public record of more than 520,000 comments.

The FCC stated that its new limits on broadcast ownership are carefully balanced to protect diversity, localism, and competition in the American media system. The FCC concluded that these new broadcast ownership limits will foster a vibrant marketplace of ideas, promote vigorous competition, and ensure that broadcasters continue to serve the needs and interests of their local communities.

FCC Responds to Congressional and Court Directives

In the 1996 Telecommunications Act, Congress mandated that the FCC review its broadcast ownership rules every two years to determine "whether any of such rules are necessary in the public interest as a *result of competition*." The Act requires the FCC to repeal or modify any regulation it determines to be no longer in the public interest. The FCC's decision today found that all of the broadcast ownership rules continue to serve the public interest either in their current form or in a modified form.

Recent court decisions reversing FCC ownership rules emphasized that any limits must be based on a solid factual record and must reflect changes in the media marketplace. In the Fox v. FCC decision, for example, the court said the FCC had "provided no analysis of the state of competition in the television industry" or even an explanation as to why the rule in question was necessary to either safeguard competition or enhance competition.

The *Report and Order* adopted today is based on a thorough assessment of the impact of ownership rules on promoting competition, diversity, and localism. This careful calibration of each rule reflects the FCC's determination to establish limits on broadcast ownership that will withstand future judicial scrutiny.

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New Limits Protect Viewpoint Diversity

The FCC strongly affirmed its core value of limiting broadcast ownership to promote viewpoint diversity. The FCC stated that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." The FCC said multiple independent media owners are needed to ensure a robust exchange of news, information, and ideas among Americans.

The FCC developed a "Diversity Index" in order to permit a more sophisticated analysis of viewpoint diversity in this proceeding. The index is "consumer-centric" in that it is built on data about how Americans use different media to obtain news. Importantly, this data also enabled the FCC to establish local broadcast ownership rules that recognize significant differences in media availability in small versus large markets. The objective is to ensure that citizens in all areas of the country have a diverse array of media outlets available to them.

New Rules Promote Competition and Choice for Americans

The FCC affirmed its longstanding commitment to promoting competition by ensuring pro-competitive market structures. The FCC said it is clear that competition is a policy that is intimately tied to its public interest responsibilities and one that the FCC has a statutory obligation to pursue. The FCC said consumers receive greater choice and more innovative services in competitive markets than they do in markets where one or more firms exercise market power.

Although the primary concern of antitrust analysis is in ensuring economic efficiency through the operation of a competitive market structure, the FCC's public interest standard brings a closer focus to the American public. Thus, the FCC has a public interest responsibility to ensure that broadcasting markets remain competitive so that the benefits of competition, including lower prices, innovation and improved service are made available to Americans.

The FCC acknowledged that cable and satellite TV service compete with traditional over-the-air broadcasting. Today Americans enjoy a significant amount of choice for seeking news and information and thus the new rules limiting local and national TV ownership are designed to better reflect this additional competition. The FCC found that pro-competitive ownership limits must account for the fact that broadcast TV revenue relies exclusively on advertising; whereas cable and satellite TV service have both advertising and subscription revenue streams.

The FCC also explained that because viewpoint diversity is fostered when there are multiple independently owned media outlets, the FCC's competition-based limits on local radio and local TV ownership also advance the goal of promoting the widest dissemination of viewpoints.

Localism Affirmed as Important Policy Goal

The FCC strongly reaffirmed its goal of promoting localism through limits on ownership of broadcast outlets. Localism remains a bedrock principle that continues to benefit Americans in important ways. The FCC has sought to promote localism to the greatest extent possible through its broadcast ownership limits that are aligned with stations' incentives to serve the needs and interests of their local communities.

To analyze localism in broadcasting markets, the FCC relied on two measures: local stations' selection of programming that is responsive to local needs and interests, and local news quantity and quality. Program selection is an important function of broadcast television licensees and the record contains data on how different types of station owners perform. A second measure of localism is the quantity and quality of local news and public affairs programming by different types of television station owners. This data helped the FCC assess which ownership structures will ensure the strongest local focus by station owners to the needs of their communities.

FCC Reiterates Importance of Promoting Minority and Female Ownership

The FCC strongly reaffirmed its longstanding objective of encouraging greater ownership of broadcast stations by minorities and women. The FCC said this will benefit radio and television audiences by promoting greater diversity, innovation, and competition. The FCC furthered its objective of creating greater opportunities for new entrants in the broadcasting industry by carving out special transactional opportunities for small businesses, many of which are owned by minorities and women.

Limits on Concentration Serve the Public Interest

In sum, the modified ownership rules adopted today provide a new, comprehensive national and local regulatory framework that will serve the public interest by promoting competition, diversity and localism. Today's *Report and Order* adopts a set of cross-media limits to replace the newspaper/broadcast and radio/television cross-ownership rules; modifies the local television multiple ownership rule; strengthens the local radio ownership rule by modifying the local radio market definition; incrementally modifies the national television ownership rule; and retains the dual network rule. A summary of the broadcast ownership rules adopted today is attached.

The FCC also adopted a *Notice of Proposed Rulemaking* on defining non-Arbitron radio markets. Details are included in the attached summary.

Action by the Commission, June 2, 2003, by Report and Order (FCC 03-127) and Notice of Proposed Rulemaking . Chairman Powell, Commissioners Abernathy, and Martin with Commissioners Copps and Adelstein dissenting. Separate statements issued by Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein.

-FCC-

MB Dockets 02-277, 01-235, 01-317, 00-244
MB Docket (NPRM)
Comments due: 30 days after publication in the Federal Register
Replies due: 45 days after publication in the Federal Register

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News and information about the Federal Communications Commission and its media ownership limits can also be found on the FCC's web site www.fcc.gov/ownership.

FCC SETS LIMITS ON MEDIA CONCENTRATION

Summary of the Broadcast Ownership Rules adopted on June 2, 2003

DUAL NETWORK OWNERSHIP PROHIBITION: (*originally adopted 1946*)
The FCC retained its ban on mergers among any of the top four national broadcast networks.

Prohibition Promotes Competition and Localism
The FCC determined that its existing dual network prohibition continues to be necessary to promote competition in the national television advertising and program acquisition markets. The rule also promotes localism by preserving the balance of negotiating power between networks and affiliates. If the rule was eliminated and two of the top four networks were to merge, affiliates of those two networks would have fewer networks to turn to for affiliation.

LOCAL TV MULTIPLE OWNERSHIP LIMIT: (*originally adopted in 1964*)
The new rule states:

- In markets with five or more TV stations, a company may own two stations, but only one of these stations can be among the top four in ratings.
- In markets with 18 or more TV stations, a company can own three TV stations, but only one of these stations can be among the top four in ratings.
- In deciding how many stations are in the market, both commercial and non-commercial TV stations are counted.
- The FCC adopted a waiver process for markets with 11 or fewer TV stations in which two top-four stations seek to merge. The FCC will evaluate on a case-by-case basis whether such stations would better serve their local communities together rather than separately.

TV Limit Enhances Competition and Preserves Viewpoint Diversity
The FCC determined that its prior local TV ownership rule could not be justified on diversity or competition grounds. The FCC found that Americans rely on a variety of media outlets, not just broadcast television, for news and information. In addition, the prior rule could not be justified as necessary to promote competition because it failed to reflect the significant competition now faced by local broadcasters from cable and satellite TV services. This is the first local TV ownership rule to acknowledge that competition.

The new rule permits local television combinations that are proven to enhance competition in local markets and to facilitate the transition to digital television through economic efficiencies. Finally, the new rule's continued ban on mergers among the top-four stations will have the effect of preserving viewpoint diversity in local markets. The record showed that the top four stations each typically produce an independent local newscast.

Because viewpoint diversity is fostered when there are multiple independently owned media outlets, the FCC's competition-based limits on local TV ownership also advance the goal of promoting the widest dissemination of viewpoints.

<u>NATIONAL TV OWNERSHIP LIMIT:</u> (*originally adopted in 1941*)
The FCC incrementally increased the 35% limit to a 45% limit on national ownership.

- A company can own TV stations reaching no more than a 45% share of U.S. TV households.
- The share of U.S. TV households is calculated by adding the number of TV households in each market that the company owns a station. Regardless of the station's ratings, it is counted for all of the potential viewers in the market. Therefore, a 45% share of U.S. TV households <u>is not equal</u> to a 45% share of TV stations in the U.S.
- On March 31, 2003, there were 1,340 commercial TV stations in the U.S. Of these 1,340 stations, Viacom owns 39 TV stations (2.9%), Fox owns 37 (2.8%), NBC owns 29 (2.2%) and ABC owns 10 (0.8%).

National Cap Protects Localism and Preserves Free Television
The FCC determined that a national TV ownership limit is needed to protect localism by allowing a body of network affiliates to negotiate collectively with the broadcast networks on network programming decisions.

The FCC also found that the current 35% level did not strike the right balance of promoting localism and preserving free over-the-air television for several reasons.

1. The record showed that the 35% cap did not have any meaningful effect on the negotiating power between individual networks and their affiliates with respect to program-by-program preemption levels.
2. The record showed the broadcast network owned-and-operated stations ("O&Os") served their local communities better with respect to local news production. Network-owned stations aired more local news programming than did affiliates.
3. The record showed that the public interest is served by regulations that encourage the networks to keep expensive programming, such as sports, on free, over-the-air television.

Record Supports Maintaining UHF Discount

- The FCC decided to maintain the "UHF Discount" when calculating a company's national reach because it currently serves the public interest. The FCC said that more than 40 million Americans still have access only to free, over-the-air television.
- Evidence in the record demonstrates that UHF stations have smaller signal coverage areas than VHF stations, which has a very real impact on UHF stations' ability to compete.
- The UHF discount has promoted the entry of new broadcast networks into the market. These new networks have improved consumer choice and program diversity for all Americans, including those with and without cable and satellite TV service.
- For these reasons, the FCC maintained a 50% discount for calculating the national reach of UHF stations. However, the FCC determined that when the transition to digital television is complete, the UHF discount would be eliminated for the stations owned by the four largest broadcast networks. The FCC will determine, in a future biennial review, whether to include any other networks and station group owners in the UHF discount sunset. The FCC drew this distinction to ensure that its resolution of the UHF discount issue will properly account for its goal of encouraging the formation of new, over-the-air broadcast networks.

LOCAL RADIO OWNERSHIP LIMIT: (*originally adopted in 1941*):
The FCC found that the current limits on local radio ownership continue to be necessary in the public interest, but that the previous methodology for defining a radio market did not serve the public interest. The radio caps remain at the following levels:

- In markets with 45 or more radio stations, a company may own 8 stations, only 5 of which may be in one class, AM or FM.
- In markets with 30-44 radio stations, a company may own 7 stations, only 4 of which may be in one class, AM or FM.
- In markets with 15-29 radio stations, a company may own 6 stations, only 4 of which may be in one class, AM or FM.
- In markets with 14 or fewer radio stations, a company may own 5 stations, only 3 of which may be in one class, AM or FM.

Radio Limit Promotes Competition and Viewpoint Diversity
Although Americans rely on a wide variety of outlets in addition to radio for news, the FCC found that the current radio ownership limits continue to be needed to promote competition among local radio stations. Competitive radio markets ensure that local stations are responsive to local listener needs and tastes. By guaranteeing a substantial number of independent radio voices, this rule will also promote viewpoint diversity among local radio owners.

Geographic Arbitron Markets Implemented
The FCC replaced its signal contour method of defining local radio markets with a geographic market approach assigned by Arbitron. The FCC said that its signal contour method created anomalies in ownership of local radio stations that Congress could not have intended when it established the local radio ownership limits in 1996. The FCC closed that loophole by applying a more rational market definition than radio signal contours. The FCC said applying Arbitron's geographic markets method will better reflect the true markets in which radio stations compete.

- All radio stations licensed to communities in an Arbitron market are counted in the market as well as stations licensed to other markets but considered "home" to the market.
- Both commercial and noncommercial stations are counted in the market. The FCC determined that the current rule improperly ignores the impact that noncommercial stations can have on competition for listeners in radio markets.
- For non-Arbitron markets, the FCC will conduct a short-term rulemaking to define markets comparable to Arbitron markets. These new markets will be specifically designed to prevent any unreasonable aggregation of station ownership by any one company.
- As an interim procedure for non-Arbitron markets, the FCC will apply a modified contour method for counting the number of stations in the market. This modified contour approach minimizes the potential for additional anomalies to occur during this transition period, while providing the public a clear rule for determining the relevant radio markets.
- In using the contour-overlap market definition on an interim basis, the FCC made certain adjustments to minimize the more notorious anomalies of that system. Specifically, the FCC will exclude from the market any radio station whose transmitter site is more than 92 kilometers (58 miles) from the perimeter of the mutual overlap area. This will alleviate some of the gross distortions in market size that can occur when a large signal contour that is part of a proposed combination overlaps the contours of distant radio stations and thereby brings them into the market.

CROSS-MEDIA LIMITS:

This rule replaces the broadcast-newspaper and the radio-television cross-ownership rules. The new rule states:

- In markets with three or fewer TV stations, no cross-ownership is permitted among TV, radio and newspapers. A company may obtain a waiver of that ban if it can show that the television station does not serve the area served by the cross-owned property (*i.e.* the radio station or the newspaper).
- In markets with between 4 and 8 TV stations, combinations are limited to one of the following:

  (A) A daily newspaper; one TV station; and up to half of the radio station limit for that market (*i.e.* if the radio limit in the market is 6, the company can only own 3) **OR**
  (B) A daily newspaper; and up to the radio station limit for that market; (*i.e.* no TV stations) **OR**
  (C) Two TV stations (if permissible under local TV ownership rule); up to the radio station limit for that market (*i.e.* no daily newspapers).

In markets with nine or more TV stations, the FCC eliminated the newspaper-broadcast cross-ownership ban and the television-radio cross-ownership ban.

Promotes Diversity and Localism

The FCC concluded that neither the newspaper-broadcast prohibition nor the TV-radio cross-ownership prohibition could be justified for larger markets in light of the abundance of sources that citizens rely on for news. Nor were those rules found to promote competition because radio, TV and newspapers generally compete in different economic markets. Moreover, the FCC found that greater participation by newspaper publishers in the television and radio business would improve the quality and quantity of news available to the public.

Therefore, the FCC replaced those rules with a set of Cross-Media Limits (CML). These limits are designed to protect viewpoint diversity by ensuring that no company, or group of companies, can control an inordinate share of media outlets in a local market.

The FCC developed a Diversity Index to measure the availability of key media outlets in markets of various sizes. The FCC concluded that there were three tiers of markets in terms of "viewpoint diversity" concentration, each warranting different regulatory treatment.

- In the tier of smallest markets (3 or fewer TV stations), the FCC found that key outlets were sufficiently limited such that any cross-ownership among the three leading outlets for local news – broadcast TV, radio, and newspapers – would harm viewpoint diversity.
- In the medium-sized tier (4-8 TV stations), markets were found to be less concentrated today than in the smallest markets and that certain media outlet combinations could safely occur without harming viewpoint diversity. Certain other combinations would threaten viewpoint diversity and are thus prohibited.
- In the largest tier of markets (9 or more TV stations), the FCC concluded that the large number of media outlets, in combination with ownership limits for local TV and radio, were more than sufficient to protect viewpoint diversity.

<u>RADIO AND TV TRANSFERABILITY LIMITED TO SMALL BUSINESSES</u>

The FCC's new TV and radio ownership rules may result in a number of situations where current ownership arrangements exceed ownership limits. The FCC grand-fathered owners of those clusters, but generally prohibited the sale of such above-cap clusters. The FCC made a limited exception to permit sales of grand-fathered combinations to small businesses as defined in the *Order*.

In taking this action, the FCC sought to respect the reasonable expectations of parties that lawfully purchased groups of local radio stations that today, through redefined markets, now exceed the applicable caps. The FCC also attempted to promote competition by permitting station owners to retain any above-cap local radio clusters but not transfer them intact unless there is a compelling public policy justification to do so. The FCC found two such justifications: (1) avoiding undue hardships to cluster owners that are small businesses; and (2) promoting the entry into the broadcasting business by small businesses, many of which are minority- or female-owned.

DIVERSITY INDEX - SUMMARY

The FCC's Diversity Index (DI) reflects the degree of concentration in viewpoint diversity in local markets. Consistent with First Amendment concerns, the DI does not assess diversity by looking to the specific views expressed over a media outlet. Instead it measures the availability of outlets of various types and assigns a weight to each class of outlet (radio, newspaper, television, etc.) based on their relative value to consumers. The Diversity Index is modeled on the Herfindahl-Hirschmann Index (HHI), which is used in antitrust analysis to measure the degree concentration in an economic market. Both the HHI and the DI are derived by adding together the sum of squared market shares of competitors in each local market. The end result of the DI is an assessment of the degree of media diversity concentration taking into account all of the media outlets in the market.

How to read the table on the next page:

Columns A and B: Column A assigns weights to different types of media based on Nielsen's nationwide survey of 3,136 people who were asked what sources they use for local news and current affairs (FCC MOWG Study No. 8). As a source of local news, broadcast television stations were listed by 33.8% of respondents; radio was listed by 24.9% of respondents; newspapers by 28.8%; and the Internet was listed by 12.5% of respondents. Column B breaks out the categories within each medium (80.3% of "newspaper" respondents specified daily newspapers; 29.3% said weekly newspapers). Because this was a national survey, these percentage "weights" remain constant across all local markets in applying the Diversity Index.

Column C: The company names of the owners of each type of outlet in a local market.

Column D: Lists the number of outlets owned by each company in a local market.

Column E: Each type of media (TV, newspaper, radio, etc.) has a universe of 100% market share. Specifically, the entries in column E for each broadcast TV station show each outlet's share of the broadcast universe only. They add up to 100% so that we can assign a share to each owner of that type of outlet in the market. In this example, there are 8 TV stations, so each one has a 12.5% share of the broadcast TV universe. "**TV owner A"** owns 2 TV stations in the market, so they are credited with a 25% share (12.5% x 2).

Column F: This column translates each outlet into a share of the total viewpoint market in that particular locality. For example, in our sample city, Column F converts Radio Owner B's 23.1% share of the radio universe into a 5.7% share of the total media market. (23.1% x 24.9%)

Column G: Captures the effect of a company owning more than one type of outlet in a market. In this sample city, **"TV-Radio owner A"** (Voice 1) has 2 TV stations and 3 radio stations. To accurately assess **"TV-Radio Owner A's"** role in the city's viewpoint market, column G simply identifies common ownership among different media outlets. The shares of commonly-owned outlets must be added together before squaring them. The increase in the Diversity Index from cross-owned outlets is shown at the bottom of the page. In the sample city, the "Voice 1, Total Shares" row near the bottom of the page shows that the combined effect of "TV-Radio owner A's" ownership of TV stations and radio stations in this city is an additional 130 points.

Column H: Represents the square of each outlet's share of the viewpoint market (which is shown in Column F).

The last row on the table shows the level of viewpoint diversity concentration for this sample market.
As with the HHI, a DI below 1000 = unconcentrated for viewpoint diversity; DI between 1000-1800 = moderately concentrated for viewpoint diversity; DI of 1800 or above = highly concentrated for viewpoint diversity.

Diversity Index Example – "Anytown, USA"

Media Market		Ownership Shares within Medium			Percent Share of Media Market		
% of Media	% of Medium	Parent Company	# of Stations	% Share	% Share (AxBxE)	Cross Ownership	Column F Squared
A	**B**	**C**	**D**	**E**	**F**	**G**	**H**
Broadcast Television Stations (8 total) 33.8%	100.0%	**TV owner A** (Voice 1)	2	25.0	8.5	Voice 1	---
		TV owner B (Voice 2)	1	12.5	4.2		17.9
		TV owner C (Voice 3)	1	12.5	4.2		17.9
		TV owner D (Voice 4)	1	12.5	4.2		17.9
		TV owner E (Voice 5)	1	12.5	4.2		17.9
		TV owner F (Voice 6)	1	12.5	4.2		17.9
		TV owner G (Voice 7)	1	12.5	4.2		17.9
Radio Stations (26 total) 24.9%	100.0%	**Radio owner A** (Voice 1)	3	11.5	2.9	Voice 1	---
		Radio owner B (Voice 8)	6	23.1	5.7		33.0
		Radio owner C (Voice 9)	2	7.7	1.9		3.7
		Radio owner D (Voice 10)	1	3.8	1.0		0.9
		Radio owner E (Voice 11)	1	3.8	1.0		0.9
		Radio owner F (Voice 12)	1	3.8	1.0		0.9
		Radio owner G (Voice 13)	1	3.8	1.0		0.9
		Radio owner H (Voice 14)	1	3.8	1.0		0.9
		Radio owner I (Voice 15)	1	3.8	1.0		0.9
		Radio owner J (Voice 16)	1	3.8	1.0		0.9
		Radio owner K (Voice 17)	1	3.8	1.0		0.9
		Radio owner L (Voice 18)	1	3.8	1.0		0.9
		Radio owner M (Voice 19)	1	3.8	1.0		0.9
		Radio owner N (Voice 20)	1	3.8	1.0		0.9
		Radio owner O (Voice 21)	1	3.8	1.0		0.9
		Radio owner P (Voice 22)	1	3.8	1.0		0.9
		Radio owner Q (Voice 23)	1	3.8	1.0		0.9
		Radio owner R (Voice 24)	1	3.8	1.0		0.9
Newspapers (28.8%)	Daily (80.3%)	Daily owner A (Voice 25)	1	50.0	11.6		133.7
		Daily owner B (Voice 26)	1	50.0	11.6		133.7
	Weekly (29.7%)	Weekly owner A (Voice 27)	1	100.0	8.6		73.2
Internet (12.5%)	18.3%	Cable Internet owner A (Voice 28)	1	100.0	2.3		5.2
	81.7%	Dial-up/other owner A (Voice 29)	1	100.0	10.2		104.3
Voice 1, Total Share		**TV-Radio owner A**	(add 2.9 + 8.5)		11.4		130.0
Diversity Index of "Anytown, USA" (Sum of Column H)							**738**

In this market, there are a total of 39 different media outlets (8 TV, 26 radio, 2 daily newspapers, 1 weekly newspaper, and two different Internet providers). Due to multiple ownership by several companies, and cross-ownership by one company ("TV-Radio owner A"), this market has 29 voices. This is intuitively consistent with a DI rating of 738 for this market.