

which to evaluate competition among media companies, in this R&O the Commission will rely more heavily on other metrics. In the past, television stations generally faced economic competition from other television stations, and radio stations from other radio stations. The television and radio markets relied principally on advertising revenues to fund their businesses. Today, a large portion of the revenue in the television business consists of direct payment by consumers. Eighty-five percent of American households subscribe to television programming supplied by cable or direct broadcast satellite. Therefore, in analyzing markets comprised of both free over-the-air broadcasters as well as subscription delivery systems, the Commission will look to audience share as one metric for assessing the state of competition. The Commission will not discard advertising market analysis where appropriate, but it limits its reliance to discrete markets where it believes the foregoing analysis is inapplicable.

38. The Commission's public interest focus must be first and foremost on the interest, the convenience, and the necessity of the public, and not on the interest, convenience, or necessity of the individual broadcaster, or the advertiser. Thus, in evaluating the Commission's interest in preserving competitive broadcast markets, it will consider the ultimate effect that a diminution in competition would have on the consuming public. The Commission has a public interest responsibility to ensure that broadcasting markets remain competitive so that all the benefits of competition—including more innovation and improved service—are made available to the public. In setting its local television and local radio ownership caps, the Commission will rely, where possible, on measures other than shares of advertising markets in order to reflect the decreasing relevance of advertising market shares as a barometer of competition.

39. *Innovation.* The Commission concludes that it should seek to promote innovation through its broadcast ownership limits. Where a market such as broadcasting is characterized by a significant degree of non-price competition, it may be particularly important for the Commission to focus on how its ownership rules affect innovation incentives. Innovation, over longer periods of time, may represent a critical driver of consumer welfare.

40. The transition from analog to digital services by broadcasters represents a potentially significant

enhancement to consumer welfare. Digital transmission of video and audio programming by television and radio stations may facilitate new services for consumers by permitting more efficient bandwidth utilization. With respect to local television stations, this additional bandwidth could be used to transmit high-definition programming; to transmit one or more additional program streams; or to deliver entirely new services. NAB/NASA has argued that local television ownership structures are very likely to affect stations' ability to proceed with the ongoing digital transition. NAB contends that the fixed costs associated with digital television equipment upgrades fall disproportionately on stations in smaller markets and that station combinations will speed the transition. In addition, the introduction of digital transmission by radio stations may permit greater competition and innovation in radio markets by facilitating improved signal quality and by permitting stations to deliver data along with audio to users' receivers.

41. In sum, the Commission concludes that it should seek to promote innovation through its broadcast ownership limits. Consumer welfare is likely to be enhanced when, all else being equal, the Commission permits broadcast market structures that encourage innovation. The Commission agrees with IPI, however, that multiple factors influence the pace of innovation, only one of which is market structure. The Commission will therefore make ownership decisions that promote innovation in media markets based principally on evidence that particular market structures or firm characteristics tend to encourage innovation.

### C. Localism

42. The Commission agrees that localism continues to be an important policy objective. Localism is rooted in Congressional directives to this Commission and has been affirmed as a valid regulatory objective many times by the courts. The Commission hereby reaffirms its commitment to promoting localism in the broadcast media. Today, the Commission seeks to promote localism to the greatest extent possible through market structure that take advantage of media companies' incentive to serve local communities.

43. Federal regulation of broadcasting has historically placed significant emphasis on ensuring that local television and radio stations are responsive to the needs and interests of their local communities. In the Communications Act of 1934, Congress directed the Commission to "make such

distribution of licenses, frequencies, hours of operation, and power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." In the legislative history of the 1996 Act, Congress strongly reaffirmed the importance of localism.

44. The courts too have long viewed localism as an important public interest objective of broadcast regulation. In *NBC v. United States*, the Supreme Court wrote: "Local program service is a vital part of community life. A station should be ready, able, and willing to serve the needs of the local community." Last year the DC Circuit affirmed the legitimacy of Commission regulation to preserve localism, stating: "[T]he public interest has historically embraced diversity (as well as localism) \* \* \* and nothing in section 202(h) signals a departure from that historic scope."

45. *Measurement of Localism.* The Commission remains firmly committed to the policy of promoting localism among broadcast outlets. Today the Commission seeks to promote localism to the greatest extent possible through market structures that take advantage of media companies' incentives to serve local communities. In addition, the Commission seeks to identify characteristics of those broadcasters that have demonstrated effective service to individual local communities and to encourage their entry into markets currently prohibited by our existing rules. To measure localism in broadcasting markets, the Commission will rely on two measures: the selection of programming responsive to local needs and interests, and local news and public affairs programming quantity and quality. The Commission decided long ago that local station licensees have a responsibility to air programming that is suited to the tastes and needs of their community and that the station licensee, not a network or any other party, must decide what programming will best serve those needs. Program selection, then, is a means by which local stations respond to local community interests, and the Commission will use it as one measure of localism. Its second measure of localism can serve as a useful measure of a station's effectiveness in serving the needs of its community. As discussed below, this measure of service to local markets is relevant to the Commission's consideration of both the national television cap and its local broadcast rules.