

D. Regulatory Certainty

46. The Commission considered both a case-by-case analysis and bright line rules to determine the particular regulatory framework that would best achieve our policy goals. Based on the record and our own experience administering structural ownership rules, the Commission concludes that the adoption of bright line rules, on balance, continue to play a valuable role in implementing the Commission's goals. The Commission has also decided to retain our existing framework of targeted, outlet-specific, multiple ownership rules, that cover the various media and perceived areas of potential competition and diversity concerns rather than adopting a single rule to cover all media.

47. The Commission is required to examine any proposed transfer of a broadcast license and must affirmatively find that the transfer is in the public interest. In the context of broadcast transactions, the Commission's analysis is simplified by the extensive body of structural rules it adopts herein. Thus, the extensive rulemaking proceeding used to develop these broadcast ownership rules takes full account of the Commission's public policy goals of diversity, competition, and localism. These rules squarely embody the Commission's public interest goals of limiting the effect of market power and promoting localism and viewpoint diversity.

48. The bright line rules the Commission establishes in this Order will protect diversity, competition, and localism while providing greater regulatory certainty for the affected companies than would a case-by-case review. Any benefit to precision of a case-by-case review is outweighed, in the Commission's view, by the harm caused by a lack of regulatory certainty to the affected firms and to the capital markets that fund the growth and innovation in the media industry. Companies seeking to enter or exit the media market or seeking to grow larger or smaller will all benefit from clear rules in making business plans and investment decisions. Clear structural rules permit planning of financial transactions, ease application processing, and minimize regulatory costs.

49. The Commission recognizes that bright line rules preclude a certain amount of flexibility. A case-by-case analysis would allow the Commission to reach decisions by taking into account particular circumstances of every case. For instance, bright line rules may be over-inclusive, by preventing

transactions that would result in increased efficiencies, or under-inclusive, by allowing transactions that would raise concerns, if the circumstances of the case were reviewed. However, the Commission's experience with the current case-by-case analysis used for radio transactions leads it to believe that this approach in the area of media ownership is fraught with administrative problems. Currently, any radio transaction that proposes a radio station combination that would provide one station group with a 50% share of the advertising revenue in the local radio market, or the two station groups with a 70% advertising revenue, undergoes additional public interest analysis. For each of these transactions, the staff conducts an individual competitive analysis and may request additional information from the parties if it is necessary in order to reach a decision on a particular transaction. The administrative time and resources required for such an undertaking are considerable. Moreover, such an approach hinders business planning and industry investment for all radio firms falling within the ambit of our case-by-case review. The Commission is not persuaded that this approach is necessary in order to administer its ownership rules effectively.

50. The bright line rules adopted today have been developed based upon the Commission's review of the media marketplace and our assessment of what ownership limits are necessary in order to promote our goals in applying ownership rules. The Commission is confident that the modified rules will reduce the chances of precluding transactions that are in the public interest or, alternatively, permitting transactions that are not in the public interest. In addition, the Commission has discretion to review particular cases, and the Commission is obligated to give a hard look both to waiver requests, where a bright line ownership limit would proscribe a particular transaction, as well as petitions to deny.

III. Modern Media Marketplace

A. Introduction—The Evolution of Media

51. Today's media marketplace is characterized by abundance. Traditional modes of media have greatly evolved since the Commission first adopted media ownership rules in 1941, and new modes of media have transformed the landscape, providing more choice, greater flexibility, and more control than at any other time in history. In short, the number of outlets for national and local

news, information, and entertainment is large and growing.⁵

52. Section 202 (h) requires the Commission to consider whether any of its broadcast ownership rules are "necessary in the public interest as a result of competition." This R&O confronts that challenge by determining the appropriate regulatory framework for broadcast ownership in a world characterized not by information scarcity, but by media abundance. This section tracks the history of the modern media marketplace to illustrate the rapid evolution of media outlets over the past sixty years.

B. History of the Modern Media Marketplace

53. *The Age of Radio.* At the time commercial broadcast radio was introduced during the early 1920s, newspapers were the primary source of news and information, with circulation reaching nearly 28 million readers. By 1926, just six years after the first official commercial broadcasts, there were 528 stations and 5.7 million radio sets, generating a weekly radio audience of 23 million listeners. Unlike today's targeted, niche programming, however, a typical radio station's programming in the early 1930's was largely "variety" format, including a small amount of many different types of programming. Notable and newsworthy events were, of course, the exception to the variety format. During World War II, radio proved a vital asset in the dissemination of news and public-service messages, and it boosted the morale of those remaining on the home-front.

54. *The Introduction of Television.* Although General Electric began regular television broadcasting in 1928, it was not until 1941 that the first commercial television station was introduced. In addition to a proliferation of new programming, many radio stars began to move their acts to television in the late 1940's. With World War II over, and the Depression behind them, Americans began to accept television as a cogent means of receiving information and entertainment. In 1951, just ten years after television's introduction to the public, there were more than 108 stations on the air and more than 15 million households with television sets.

55. *The Multimedia Landscape I—1960's.* By 1960, a multi-media landscape began to form, though media at that time was still dominated by broadcast radio and television. Forty

⁵ Today, there are more than 308 non-broadcast networks available for carriage by cable systems, whereas ten years ago in 1993, there were only 106 non-broadcast programming services available for carriage.