

systems. Of the 102 channels received by the average viewing home, the four largest broadcast networks have an ownership interest in approximately 25% of those channels.

75. Since its inception, non-broadcast programming has gained significantly in popularity as compared with broadcast programming. In 2002, for the first time, cable television collectively had more primetime viewers on average over the course of the year than broadcast programming. In June 2002, cable networks for the very first time collectively exceeded a 50% share for the month, while the broadcast networks collectively registered a 38% primetime share.

76. Broadcasters are currently experimenting with, and beginning to commercially deploy, digital and high-definition television ("DTV" and "HDTV"). Digital television offers improved picture quality, the ability to provide such additional enhancements as HTDV, multicasting, and interactivity. Cable operators and DBS service providers are also beginning to provide DTV and HDTV options.

77. Today's media marketplace also provides choices to the public on an entirely new, personal level. In addition to the Web, for example, video-on-demand ("VOD") is the newest technology being developed and deployed by cable and DBS operators. VOD services provide advertising-free material on a program-by-program basis. In addition, satellite radio became available in 2001, providing subscribers over 100 channels of commercial-free, digital audio.

78. In short, there are far more types of media available today, far more outlets per-type of media today, and far more news and public interest programming options available to the public today than ever before. Although many of these new outlets are subscription-based the competitive pressure placed upon free, over-the-air media has led to better quality and in some cases, an increase in the quantity of some types of content. In the next five to ten years, it expects more free, over-the-air content to become available as new technologies are applied to these traditional media.

IV. Local and National Framework

79. The Commission, in the R&O, adopts limits both for local radio and local television ownership. Both of these rules are premised on well-established competition theory and are intended to preserve a healthy and robust competition among broadcasters in each service. As explained in the R&O, however, because markets defined

for competition purposes are generally more narrow than markets defined for diversity purposes, the Commission's limits on radio and television ownership also serve our diversity goal. By ensuring that several competitors remain within each of the radio and television services, the Commission also ensures that a number of independent outlets for viewpoint will remain in every local market, thereby ensuring that our diversity goal will be promoted. Further, though, because local television and radio ownership limits cannot protect against losses in diversity that might result from combinations of different types of media within a local market, the Commission adopts a set of specific cross-media limits.

80. Similarly, by virtue of the staff's extensive information gathering efforts and the voluminous record assembled in this rulemaking docket, the Commission has, for the first time substantial evidence regarding the localism effects of our national broadcast ownership rules. The Commission can, therefore, with more confidence than ever, establish a reasonable limit on the national station ownership reach of broadcast networks. The Commission continues to prohibit a combination between two of the largest four networks primarily on competition grounds, but the beneficial effects of this restriction also protect our interest in preserving localism. In combination, the Commission's new national broadcast ownership reaches cap and our "dual network" prohibition will ensure that local television stations remain responsive to their local communities. In sum, the modified broadcast ownership structure the Commission adopts in the R&O will serve our traditional goals of promoting competition, diversity, and localism in broadcast services. The new rules are not blind to the world around them, but reflective of it; they are, to borrow from our governing statute, necessary in the public interest.

V. Local Ownership Rules

A. Local TV Multiple Ownership Rule

81. The current local TV ownership rule allows an entity to own two television stations in the same DMA, provided: (1) The Grade B contours of the stations do not overlap; or (2)(a) at least one of the stations is not ranked among the four highest-ranked stations in the DMA, and (b) at least eight independently owned and operating commercial or non-commercial full-power broadcast television stations would remain in the DMA after the proposed combination ("top four-

ranked/eight voices test"). Only those stations whose Grade B signal contours overlap with the Grade B contour of at least one of the stations in the proposed combination are counted as voices under the rule.

82. Having examined the competitive impact of other video programming outlets on television broadcast stations, the Commission concludes, in light of the myriad sources of competition to local television broadcast stations, that our current local TV ownership rule is not necessary in the public interest to promote competition. The Commission also concludes that media other than television broadcast stations contribute to viewpoint diversity in local markets. Because our current local TV ownership rule is premised on the notion that only local TV stations contribute to viewpoint diversity and does not account for the contributions of other media, the Commission concludes the current rule is not the best means to promote our diversity goal. Moreover, the Commission concludes that retaining our current rule does not promote, and may even hinder, program diversity and localism. However, the Commission finds that some limitations on local television ownership are necessary to promote competition. Accordingly, the Commission modifies our local TV ownership rule.

83. The Commission's modified local TV ownership rule will permit an entity to have an attributable interest in two television broadcast stations in markets with 17 or fewer television stations; and up to three stations in markets with 18 or more television stations. To further ensure that no single entity possesses excessive market power, however, the Commission will prohibit combinations which would result in a single entity acquiring more than one station that is ranked among the top four stations in the market based on audience share. As a result, no combinations will be permitted in markets with fewer than five television stations. Because the Commission has determined that Nielsen DMAs are the relevant geographic market, common ownership of stations in the same market will be subject to this standard without regard to whether the affected stations have overlapping contours, and the Commission eliminated the provision of its local TV ownership rule that permits same-market combinations where there is no Grade B contour overlap. The Commission also modifies our existing standard for waiver of the local TV ownership rule.

84. *The Current Rule Cannot Be Justified Under Section 202(h).* Under Section 202(h), the Commission