

remain competitive, the Commission expects program diversity to be achieved through media companies' responses to consumer preferences. Nothing in the record seriously calls that conclusion into question.

113. The Commission shares the concern of Children Now that the diversity of children's educational and informational programming could be reduced if commonly owned stations in the same market air the same children's programming. The Commission therefore clarifies that where two or more stations in a market are commonly owned and air the same children's educational and informational program, only one of the stations may count the program toward the three-hour processing guideline set forth in 47 CFR 73.761.

114. *Modification of the Local Television Ownership Rule.* Based on the Commission's section 202(h) determination that the current local TV rule is no longer necessary in the public interest to promote competition and diversity, as well as our finding that the current rule may hinder achievement of our localism policy goal, the Commission must either eliminate or modify our local TV ownership restrictions. The Commission concludes that elimination of the rule would result in harm to competition in local DVP markets, thereby harming the public interest. Elimination of the rule also would adversely affect competition in the advertising and program production markets. Accordingly, the Commission modifies the rule.

115. The Commission's modified local TV ownership rule will allow ownership combinations that satisfy a two-part test: a numerical outlet cap and a top four-ranked standard. Our outlet cap will allow common ownership of no more than two television stations in markets with 17 or fewer television stations; and up to three stations in markets with 18 or more television stations. In counting television stations for purposes of this outlet cap, the Commission will include full-power commercial and noncommercial television broadcast stations assigned by Nielsen to a given DMA. For purposes of counting the television broadcast stations in the market, the Commission will include only full power authorizations (*i.e.*, it will not include Class A TV, LPTV stations or TV translators). The Commission also will exclude from our count any non-operational or dark stations. Newly constructed television stations that have commenced broadcast operations pursuant to program test authority will be included in the DMA count.

Television satellite stations will be excluded from our count of full power television stations in the DMA where the satellite and parent stations are both assigned by Nielsen to the same DMA. A satellite station assigned to a DMA different from that of its parent, however, will be included in the TV station count for that DMA. DTV stations will be included in our count only if they are operating and are not paired with an analog station in the market. For purposes of our local TV ownership rule, a station will be considered to be "within" a given DMA if it is assigned to that DMA by Nielsen, even if that station's community of license is physically located outside the DMA. For purposes of our local TV ownership rule, geographic areas that are not assigned a DMA by Nielsen (*i.e.*, Puerto Rico, Guam, and the U.S. Virgin Islands) each will be considered a single market. Our current local TV multiple ownership rule does not restrict the number of noncommercial television stations that can be owned by one entity. Consistent with past practice, our modified rule also will not affect ownership of noncommercial television stations. The Commission's top four-ranked standard will prohibit combinations which would result in a single entity owning more than one station that is ranked among the top four stations in the market based on audience share. Hence, same-market combinations will not be permitted in markets with fewer than five television stations. For purposes of applying the top four-ranked standard, a station's rank will be determined using the station's most recent all-day audience share, as measured by Nielsen or by any comparable professional and accepted rating service, at the time an application for transfer or assignment of license is filed, the same method as under our current rule.

116. The contour overlap provision of the rule will be eliminated, and the modified rule will be applied without regard to Grade B contour overlap among stations. Thus, if two stations in a market do not have overlapping contours, they still cannot be combined unless there are five or more stations in the market and at least one station in the combination is not among the top four. The Commission has determined that, because of mandatory carriage requirements, the DMA—not the area within a particular station's Grade B contour—is the geographic market in which DVP providers compete. Therefore, permitting station combinations solely on grounds that they do not have overlapping contours

would be inconsistent with our market definition. The majority of viewers—including those who reside in geographically large DMAs—have access to television broadcast stations that they could not view over-the-air because they can view the stations via cable. Increasingly, local stations also are available via DBS. To avoid imposing an unfair hardship on parties that currently own combinations that do not comply with the modified rule, the Commission will grandfather existing combinations. In addition, because the Commission's assumption regarding DMA-wide carriage is not universally true, and in recognition of the signal propagation limitations of UHF signals, the Commission adopts a waiver standard that will permit common ownership of stations where a waiver applicant can show that the stations have no Grade B overlap and that the stations are not carried by any MVPD to the same geographic area.

117. The public is best served when numerous rivals compete for viewing audiences. In the DVP market, rivals profit by attracting new audiences and by attracting existing audiences away from competitors' programs. The additional incentives facing competitive rivals are more likely to improve program quality and create programming preferred by existing viewers. The R&O discusses how the Commission's analysis of competition in local DVP markets supports the modified rule.

118. *Evaluating Potential Competitive Harms Within Local DVP Markets.* Consistent with the Commission's competition policy goal, our local television ownership rule seeks to preserve a healthy level of competition in the market for DVP. The state of competition in this market affects the quality and diversity of programming content and therefore the overall welfare of DVP viewers. In formulating our local TV multiple ownership rule, the Commission must assess the nature of this competition and weigh the potential benefits and anticompetitive harms that may arise from the increase in market concentration that results from a single firm owning multiple broadcast stations in a market.

119. There are two potential competitive harms that may be caused by a single firm owning multiple television stations in a market. First, ownership of multiple stations may result in "unilateral effects," *i.e.*, the firm acquiring multiple licenses may find it profitable to alter its competitive behavior unilaterally to the detriment of viewers. An example of such an effect would be the decision to cancel local