

affiliated with top four networks, the Commission concludes that audience share rank is a more accurate measure of market power than network affiliation. Therefore, the Commission does not adopt the proposal to prohibit common ownership of more than one station affiliated with a top four network.

134. Another commenter asserts that while the Commission has ample justification for retaining the current rule, if it chooses to revise the rule, it should apply an "HHI-adjusted voice count" to local TV ownership. Under this proposal, the Commission would calculate the market shares of television broadcast stations in the relevant geographic market, which would be either the DMA or a "weighted average DMA," calculated to account for the fact that certain stations do not have cable carriage throughout the market. This commenter proposes that the Commission define highly concentrated markets as those with fewer than six equal-sized voices or a four-firm concentration ratio above 60%. Moderately concentrated markets would be those with between six and ten equal-sized voices or a four-firm concentration ratio of 40–60%. They further urge the Commission to prohibit any combination that would result in a highly concentrated market. Where a combination would result in moderate concentration, the commenter proposes that the Commission permit the combination only if it finds that the merger will serve the public interest and if the owner of the merging stations agrees to retain separate news and editorial departments in different subsidiaries of the merged entity.

135. The Commission's modified local TV ownership rule will ensure that there are at least six firms in significant number of markets (*i.e.*, all markets with 12 or more television stations), much like the commenter's proposal. The proposal does not, however, adequately address record evidence of differences in the economics of broadcast stations in smaller markets. Much like the strict application of the DOJ/FTC Merger Guidelines, the proposed test would prohibit certain mergers that will result in welfare enhancing efficiencies. Accordingly, the Commission declines to adopt this proposal. With regard to the commenter's waiver proposal, the Commission does not agree that conditioning assignments/transfers on retention of separate news departments within separate subsidiaries of a merged entity is necessary to advance our diversity, competition or localism goals. Requiring compliance with our rules, rather than conducting case-by-case

evaluations or imposing merger conditions, is a more effective way to achieve these goals.

136. Entravision does not take a position on whether the rule should be relaxed, but proposes that if the rule is relaxed, the Commission should require periodic certification by owners of same-market combinations that they are not engaged in certain types of anticompetitive conduct that would adversely affect smaller broadcasters in their markets. The Commission does not agree with Entravision that modifying the local TV ownership rule will increase the likelihood of anticompetitive conduct by broadcasters that own more than one station in a market, or that a certification requirement is necessary to protect against such conduct. Certainly, if broadcasters engage in anticompetitive conduct that is illegal under antitrust statutes, remedies are available pursuant to those statutes. In addition, an antitrust law violation by a licensee would be considered as part of our character qualifications review in connection with any renewal, assignment, or transfer of a license.

137. *Proposals to Eliminate or Substantially Modify the Rule.* Several commenters propose that the Commission eliminate the current rule or substantially modify the rule in order to permit more same-market combinations. Among these are a proposal to allow common ownership of two television stations in all markets with four or more stations, a proposal to eliminate the top four-ranked standard, a proposal to eliminate the voice test provision of the rule but to retain the top four-ranked restriction, NAB's proposed "10/10" standard, and Hearst-Argyle's AMI proposal.

138. The Commission does not agree with commenters who propose that it eliminate all local television ownership restrictions. The Commission believes that 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. Monopolists, on the other hand, profit only by attracting new audiences; they do not profit by attracting existing audiences away from their other programs. The additional incentives facing competitive rivals are more likely to improve program quality and create programming preferred by viewers. Most commenters proposing elimination of the rule believe that antitrust authorities will protect against any public interest harms that may result from combined ownership of multiple

television stations in a market. The Commission does not agree with commenters who urge us to eliminate our rules and defer all competition concerns to the antitrust authorities.

139. The Commission concludes that, as compared to the modified rule, the rule modification proposals advanced by commenters are more likely to result in anomalies and inconsistencies, or will otherwise fail to serve our policy goals. For example, by proposing that the Commission permit common ownership of two television stations in all markets with four or more stations, Nexstar attempts to account for the differing economics of stations in small markets. However, unlike our modified rule, the Nexstar proposal does not protect against combinations of the market participants with the largest audience shares, combinations that are more likely to cause competitive harms. It also permits extremely high concentration levels in the very smallest markets—there could be as few as two competitors in markets with four television stations. The Commission finds that the levels of concentration permitted by the Nexstar proposal are likely to result in harm to competition in local DVP markets.

140. Similar competitive harms would result if the Commission were to adopt proposals to eliminate or modify the top four-ranked standard. Several commenters claim that the top four-ranked standard cannot be justified on diversity or competition grounds. The Commission is not relying on the top four-ranked provision of our modified local TV ownership rule to promote diversity, although the Commission recognizes that because the marketplace for ideas is broader than the DVP market, rules intended to promote competition also will promote diversity. The Commission disagrees with commenters' claims that the top four-ranked standard is not justified on competition grounds. At the time of our last review of the local TV ownership rule, the Commission lacked sufficient record data concerning competitors to local television stations. In the instant proceeding, the Commission faces no such shortage of evidence concerning which media compete with local TV. Having determined that television competes with all providers of DVP, the Commission has crafted a rule that appropriately takes account of competition from other sources of DVP, and will ensure competition in local DVP markets. The Commission does not agree that elimination of our top four-ranked standard, use of a top three-ranked standard, or use of a tiered system that would ban mergers among