

programming by “inhibiting economic efficiencies” that come with a larger number of owned and operated stations. As evidence, the networks refer to a study concluding that, by inhibiting the potential economic efficiencies available to group owners, the rule artificially raises the cost of operating television stations and limits the return that group owners can realize on their programming investments. The study argues that the rule drives group owners to direct more of their resources away from free television and toward alternative means of distributing programming content, such as subscription-based cable channels.

382. *Discussion.* The current national ownership cap appears to encourage innovation in broadcast television by preserving a number of separately-owned station groups, including non-network owned station groups. The current number of station group owners has led to innovation in ways that benefit the public. Those developments include the creation of local all-news channels in partnership with local cable companies, the implementation of program formats such as local newsmagazines, and, importantly, experimentation with the spectrum allocated to local broadcasters for digital television. The transition to digital television represents a critical evolutionary step in broadcast television. The Commission is committed to ensuring the rapid completion of that transition in a way that delivers the greatest possible benefits to the viewing public. It believes that the broadcast industry is more likely to rapidly address the technical and marketplace issues associated with digital television if there are a variety of group owners exploring ways to use the spectrum. The record shows that non-network owners of television stations are actively exploring different ways of using digital spectrum. It is also important to have group owners with potentially different economic incentives in this area examining transition mechanisms to digital television. Because of networks’ ongoing investment in programming, it is possible that networks may have incentives to use digital spectrum differently from affiliates. The Fox television network, for instance, has indicated its interest in using the spectrum of its owned stations as well as its affiliates for future services. Therefore, the Commission concludes that a national television cap is necessary to preserve a number of separately-owned television station groups, including non-network groups,

that will increase the types of digital transition experiments and ultimately facilitate a rapid and efficient transition to digital broadcast television.

383. *Diversity.* The 1984 *Multiple Ownership Report and Order* concluded that the local community is the relevant market for evaluating viewpoint diversity and that, therefore, the national TV ownership rule is not needed to promote viewpoint diversity. The 1984 *Multiple Ownership Report and Order* also stated that the national market is not relevant for evaluating viewpoint diversity, but even if it were, the proliferation of media outlets renders the national ownership restrictions unnecessary. In the 1998 *Biennial Review Report*, the Commission did not analyze the rule’s effects on viewpoint diversity and merely stated, without evidentiary support, that the rule promotes diversity of programming. In remanding the national TV ownership rule, the court in *Fox Television* found that the Commission had failed to support its 1998 conclusion that the rule is necessary to strengthen affiliates’ bargaining power and had neglected to address its 1984 determination that the national market is not the relevant geographic area to consider when evaluating diversity. The Commission addresses the issue of affiliates’ bargaining power elsewhere in this summary and addresses diversity here.

384. In the NPRM, the Commission observed that the national TV ownership rule does not appear to be relevant to the goal of promoting viewpoint diversity because people gather news and information from sources available in their local market and that the relevant geographic market for viewpoint sources is local, not national. It also noted that the viewpoints aired by television stations in one city do not seem to have a meaningful impact on the viewpoints available in other cities. Commenters do not provide evidence that persuades the Commission to alter those views, and it affirms the 1984 conclusion that the national TV ownership rule is not necessary to promote diversity.

385. *Discussion.* The Commission concludes that the national television cap is not necessary to promote viewpoint diversity. Americans use media outlets available in their local communities as sources of information. The national television cap, by contrast, ensures a larger total number of station owners nationwide, but it has no meaningful impact on viewpoint diversity within local markets. It is possible, of course, that the replacement of one station owner by another could

in fact reduce the number of independently-owned television stations in that market. If the acquiring firm already owned one station in that market and the seller was selling its only station in that market, there would be one less independently-owned station in that market. The impact of such a transaction on viewpoint diversity would be accounted for under the diversity component of the Commission’s local rules. Therefore, the Commission affirms its 1984 decision that the national television ownership limit is not necessary to promote viewpoint diversity. It also affirms its decision that the market for viewpoint diversity is local, not national. And it reiterates its 1984 statement that even if the national market were the relevant area to consider, the proliferation of media outlets nationwide renders the current rule unnecessary.

386. Although proponents of the current rule assert that the increased uniformity imposed by the networks’ national distribution agenda limits the number of viewpoints available to the public, the Commission does not find convincing evidence in the record indicating that raising the current national TV ownership limit would harm viewpoint diversity. Affiliates assert that maintaining a diversity of ownership across local markets is beneficial because viewers may become aware of investigative news stories presented by stations in other markets, particularly those of strong stations. They argue that “this type of cross-fertilization is less likely to occur in the absence of the national TV ownership rule.” For this cross-fertilization to be a plausible scenario, the following minimum conditions must occur: (1) The national cap prevents a station from being acquired by a broadcast network; (2) the non-acquired station produces content that by some measure is meaningfully different (and significant from a viewpoint perspective) from what the network-owned station would have aired; and (3) the airing of that different content becomes known to consumers in other localities. The national cap cannot be justified by reference to such a hypothetical scenario as this.

387. Commenters discussing types of diversity other than viewpoint diversity do not provide an evidentiary basis for retaining the current cap. The 1998 *Biennial Review Report* stated that “[i]ndependent ownership of stations also increases the diversity of programming by providing an outlet for non-network programming.” In this R&O, however, the Commission has concluded that it can and should rely on