

- NBC affiliates initially objected to NBC's decision to require live broadcasting of the XFL games. On the west coast, games substantially preempted both the affiliates' early evening local news and the national network news. In other parts of the country, overruns of the game preempted the late night local news. When affiliates raised similar concerns about Arena Football, claiming that overruns would preempt the 6 p.m. local newscasts on the east coast, the network agreed to work with the sports league to ensure the games do not run over.

- KYTV in Springfield, Missouri, preempted a January 6, 2003 episode of NBC's *Fear Factor*, which airs at 7 p.m. Central Time, that involved contestants eating horse rectums because it found the material inappropriate for its community.

394. Separate from this "collective negotiation" type of localism, parties also submitted evidence regarding the frequency of station-by-station preemptions for affiliates versus network-owned stations. Preemptions are instances in which local stations, whether they are owned and operated by networks or independently owned but affiliated with these networks, choose to air a program other than the program the network distributes to the station. Affiliates described numerous examples of individual station preemptions of network programming. WRAZ-TV in Raleigh, North Carolina, chose to stop airing *Temptation Island* after Fox revealed that one of the participating couples had a child because "WRAZ will not support a program that could potentially break up the parents of a young child." WFAA-TV in Dallas did not carry the entire first season of *NYPD Blue* because it found the material and language inappropriate for programming scheduled to air at 9 p.m. in that community. KNDX in Bismarck, N.D., refused to clear the Fox network's broadcast of the movie *Scream*, which is targeted to young viewers, because of its graphic and disturbing portrayal of teenage murders. WFAA-TV, an ABC affiliate in Dallas, was denied permission to preempt *Monday Night Football's* half-time show on November 12, 2001 to cover an American Airlines plane crash. American Airlines is based in Dallas. According to the affiliates, ABC permitted two O&Os to preempt the same half-time show to air news covering the same crash. (In this R&O, the Commission uses the terms "network-owned" stations and "O&O" (i.e. owned and operated) stations interchangeably.) CBS did not permit

WTSP-TV in Tampa Bay to air a debate between Jeb Bush and Bill McBride during the Florida gubernatorial debate because the affiliate would have preempted the season premiere of *48 Hours*. WTSP-TV was a co-sponsor of the debate. A Raleigh North Carolina Fox affiliate refused to air *Who Wants to Marry a Multimillionaire?* because it "felt it was demeaning to women and made a mockery of the institution of marriage." WANE-TV, the Fort Wayne, Indiana CBS affiliate, sought to preempt network programming to air a half-hour, early morning local news program geared toward the agricultural community. Although this was initially denied, CBS ultimately relented and granted permission.

395. The networks submitted data comparing prime time preemption rates of network-owned stations versus affiliates for 2001. That data showed that affiliates preempted an average of 9.5 hours of prime time programming per year compared with 6.8 hours per year for network-owned stations. The networks claim that this difference is inconsequential and does not justify retention of a national ownership cap. Affiliates assert that even this hand-picked data by networks confirms that affiliates preempt more than network-owned stations and that a national cap is needed to protect localism.

396. Affiliates seek to explain low preemption rates by arguing that networks have increasingly restricted preemption through their network-affiliate contracts. Affiliates complain that they are subject to preemption caps involving financial penalties or loss of affiliation if they exceed the number of network-authorized preemptions, while affiliates' local programs are often "preempted" by network overruns (e.g., network sports overrunning local news). According to the affiliates, Fox allows only two preemptions per year, and NBC allows only five hours of prime-time preemptions per year. Affiliates that exceed their allowable preemption "basket" may be subject to financial penalties or even loss of affiliation. Thus, while a majority of affiliates did not exceed their permitted preemptions, affiliates argue that there are good reasons for that result. In addition, affiliates note that they often maintain a "cushion" of unused preemption time in case it is needed, requiring them to exercise discretion in "spending" their preemption time during the year to avoid contractual financial penalties associated with excessive preemption.

397. *Discussion.* The Commission finds that a national television ownership cap is necessary to promote localism. The evidence demonstrates

both that network affiliates have economic incentives more oriented towards localism than do network-owned stations, and that affiliates act on those incentives in ways that result in networks delivering programming more responsive to their local communities (in the judgment of the affiliate) than they otherwise would. In order for affiliates to continue to serve local community tastes and needs in this way, a national cap is needed to preserve a body of independently-owned affiliates. The two ways in which affiliates can promote localism are by collective negotiation to influence the programming that the networks provide and by preemption by an individual station owner to provide programming better suited to its community.

398. The record shows that network-owned stations and affiliates have different economic incentives regarding the programming aired by local stations. The Commission agrees with the affiliates that they have an economic incentive to target their local audience by offering programs suited to local tastes. In so doing, affiliates have an incentive to tailor their programming schedule to meet local preferences. Localism is fostered by the affiliates' efforts to promote their own economic interest of maximizing the value of their stations by offering programming that local viewers will prefer to watch, even if the programming replaces the network's nationally scheduled programming.

399. The 2001 preemption data comparing network and affiliate preemption rates also supports retention of a national cap. The record shows that in 2001, affiliates preempted 9.5 hours per year of prime time programming versus 6.8 hours per year for network-owned stations. This data bolsters the Commission's conclusion that affiliates act on their economic incentives to preempt network programming with measurably greater frequency than do network-owned stations. Although the Commission agrees with the networks that the total number of hours preempted by both types of station owners in this comparison is relatively small, these data are for the prime time viewing period, when the vast majority of television viewing occurs. In the Commission's view, the practical effect of prime time preemption is far greater than that of preemption during other dayparts.

400. The Commission does not believe that network-owned stations provide the same localism value that independently-owned affiliates do. The networks argue that they listen to the management of network-owned stations