

interests of their communities by presenting local news and public affairs programming and by selecting other programming based on the particular needs and interests of the station's community. Thus, the Commission acknowledges that other kinds of programming are important in serving local needs. However, the Commission must rely on the data in the record, which focuses on two aspects of localism—program selection decisions by affiliates (preemption/collective negotiation) and the quality and quantity of local news and public affairs programming. From the data, it concludes that network-owned stations provide local news and public affairs programming that is at least equal, and may be superior, to that of affiliates.

425. *Discussion.* The Commission concludes that the national cap is not necessary to encourage local stations to air local news and public affairs programming. The record actually suggests that the national cap diminishes localism by restraining the most effective purveyors of local news from using their resources in additional markets. The studies in the record show that network-owned stations air, on average, more local news and public affairs programming than affiliates overall. MOWG Study No. 7 found that network-owned stations aired 4.3 hours more local news per week than did affiliates. The Baumann study concluded that the differential was 6.4 hours per week. The principal objection to the findings of these two studies was the affiliates' criticism that exclusion of the Fox stations from those two studies would nullify the differential between the two groups of stations. The Commission agrees with the networks that no valid reason exists for excluding the Fox stations.

426. The record also shows that local news on network-owned stations appears to be of higher quality than news on affiliate stations. MOWG Study No. 7 found that network-owned stations received local news excellence awards at a significantly higher rate than did affiliates. For the DuPont awards, networks received 337% of the national average compared with 77% for affiliates. For the RTNDA awards, networks received 126% to affiliates' 96%. (A score of 100% for a station group would indicate that the stations in that group won precisely the number of awards that would be expected given the number of stations in that group relative to the total number of stations in the U.S.). The Commission disagrees with commenters that smaller group owners tend to produce higher quality local news. It agrees with the networks

that the study's findings are statistically insignificant. In other words, according to widely-accepted scientific standards, there is an unacceptably large risk that the findings are attributable to random noise in the data. The study reports the differences in percentages of newscasts that received a particular grade, but fails to provide any statistical testing on these results. The networks conducted these statistical tests and determined that the differences in news quality were not large enough to conclude that the probability of a newscast getting a particular grade was dependent on the ownership group that aired the newscast. In sum, the record shows that the national cap is not necessary to promote high quality, or relatively larger amounts of, local news programming. The record suggests the opposite—that the current cap prevents networks from acquiring more stations and providing enhanced local news operations.

427. *Modification of the National Television Ownership Rule.* The Commission has concluded that an audience reach cap of 35% is not necessary to promote diversity or competition in any relevant market. It is persuaded, however, that a national cap at some level is needed to promote localism by preserving the balance of power between networks and affiliates. The Commission found that affiliates' incentives are more attuned to their local communities than are those of networks, which seek to assure that the largest audiences possible are watching their programming at the same time. It concludes from the record that preserving a balance of power between a network and its affiliates promotes localism, and accordingly, it will continue to restrict the national audience reach of station owners.

428. Given the benefits to innovation that derive from having a number of separately-owned station groups, the Commission believes the national ownership cap should continue to apply to all station owners, including those that are not networks. The record shows that there have been a number of instances where having a variety of owners has led to innovative programming formats and technical advances, and the Commission believes that applying the national ownership cap to all station owners will continue to spur innovation, which the Commission believes will be particularly valuable in transitioning to digital television. In addition, applying the cap to all station owners adheres to our longstanding policy of refusing to differentiate among different categories of station owners for purposes of the national TV ownership rule.

429. The next task is to determine what the ownership limit should be. As the court in *Sinclair* recognized, the Commission has wide discretion when drawing administrative lines. Having found that 35% is too low and 100% (or no limit) is too high, after considering the evidence in the record, the Commission applies its discretion and raises the national ownership cap to 45%. This modification, fundamentally, is a line-drawing exercise in which it attempts to balance the benefits of a television ownership cap against the factors favoring an incremental increase. Finding a point between 35% and 100% is a matter of judgment falling within the particular expertise of the Commission.

430. The Commission has decided to modify the national cap by raising it 10 percentage points for three primary reasons. First, while affiliates argue that it is necessary to preserve a balance of power between networks and affiliates so that affiliates can maintain adequate preemption rights, it is evident that networks can exceed a nationwide audience reach of 35% without harming affiliates' abilities to preempt network programming. Affiliates of networks with a national reach of greater than 35% seem to have no less bargaining power than affiliates of networks with less than 35% national reach. In accordance with section 202(h), therefore, the cap must be modified upward. The record does not, unfortunately, help to identify with any precision the point at which a network audience reach would be so large that affiliate bargaining power would be substantially undermined. Given that the Commission is interested in finding a point at which the balance of power between networks and affiliates is roughly equal, however, it believes that a national audience reach cap of approximately half of all homes would be appropriate.

431. Second, the Commission is mindful of the predictive nature of this line-drawing exercise, and has some concern about allowing significant new aggregation of network power absent more compelling evidence regarding the possible effects of that aggregation above current limits. Accordingly, and in light of the fact that Congress raised the ownership cap by ten percentage points in 1996, from 25% to 35%, the Commission is inclined to take a similarly incremental approach and increase the cap by an additional 10 percentage points. Although a cap of 45% does not equate to a precisely equal degree of national reach for networks and their affiliates, a 45% limit ensures that networks will not