

obtain a greater national audience reach than their affiliates collectively will have.

432. Finally, the Commission believes that the cap should accommodate all existing broadcast combinations and permit some additional room for growth. A 45% cap will allow some, but not unconstrained, growth for each of the top four network owners. Under the current rule, ABC owns ten stations reaching 23.6% of the national audience; CBS owns 39 stations reaching 39% of the national audience (these stations include the CBS as well as the UPN owned and operated stations, including 3 satellite stations); Fox owns 37 stations reaching 37.8% of the national audience (includes two satellite stations); and NBC owns 29 stations reaching 33.6% of the national television audience (these stations include the NBC as well as the Telemundo owned and operated stations, as well as a station located in Puerto Rico). There are currently 1,340 commercial television stations licensed by the Commission. The percentage of these television stations owned by each of these networks is as follows: ABC owns less than 1%; CBS owns approximately 3%; Fox owns approximately 3%; and NBC owns approximately 2%.

433. Broadcast networks have lost market share in recent years to cable and DBS, and allowing them to achieve better economies of scale and scope may help them remain competitive in the marketplace. Further, given the rise in programming costs and increasing competition from non-broadcast national media, the economies of scale and scope made possible by network expansion of station ownership will contribute to the preservation of over-the-air television by deterring the migration of expensive programming, such as sports programming, to cable networks. Accordingly, the Commission modifies the national audience reach rule to impose a 45% cap.

434. Although the Commission affirms the finding in the *1984 Multiple Ownership Report and Order* that increased network ownership of stations will not harm either competition or diversity, the Commission's decision to retain a national ownership cap is a departure from its conclusion in 1984 that the national TV ownership rule should be repealed. In 1984, the Commission gave very limited consideration to the potential effects of the cap on localism. That attention was devoted to the quality and quantity of news and public affairs programming on group-owned versus individually-owned stations. In this R&O, by

contrast, the Commission expanded its "localism" measures to include the important consideration of program selection by local stations. The 1984 decision did not address the balance of power between networks and affiliates and how that affects program selection. It is this factor that is the central factor in our decision to retain a national cap.

435. *UHF Discount*. In the NPRM, the Commission invited comment on the relevance and continued efficacy of the 50% UHF discount, which is intended to recognize the deficiencies in over-the-air UHF reception in comparison to VHF reception. The NPRM explained that the discount was enacted because UHF stations were competitively disadvantaged by weaker signals and smaller household reach than VHF stations. In light of greater carriage of UHF stations on MVPDs since enactment of the UHF discount in 1985, the Commission sought comment on the continued need for the UHF discount.

436. The Commission concludes that the UHF discount continues to be necessary to promote entry and competition among broadcast networks. VHF signals typically reach between 72 and 76 miles, while UHF signals reach approximately 44 miles. This signal disparity results in a significantly smaller household reach of UHF signals compared with VHF signals. Fox, NBC and Viacom submitted data showing that, in markets where they own both a UHF and a VHF station, the UHF station reaches between 56% and 61% of the service area of their VHF stations. Similarly, Paxson Communications states that in eight cities where it owns UHF stations, its stations reach between 35.7% and 78.2% of the homes reached by VHF stations in those markets.

437. This diminished UHF signal area coverage affects UHF stations' ability to compete with VHF stations in two ways. First, although cable and DBS operators serve 86% of U.S. households, the Commission recently determined that roughly 30% of television sets are not connected to MVPD service and receive exclusively over-the-air broadcast stations. UHF stations reach far fewer of these broadcast-only viewers as VHF stations. Second, weaker UHF signals make it more difficult for a UHF station to qualify for cable and DBS carriage. Commission regulations require a local television station to place a Grade B signal over the cable or DBS headend in order to qualify for carriage. Alternatively, if a station does not place a Grade B signal over the headend, it may pay for an alternative method of delivering its signal to the headend, such as a fiber optic connection. Non-carriage on a cable system will, as a

practical matter, make the UHF station unavailable to homes in the MVPD's service area.

438. In addition to diminished signal coverage, UHF stations require between 1.5 and 3 times greater electricity costs to operate than VHF stations. UHF stations also require more expensive transmitters than VHF stations. These factors, along with the signal coverage disparity, appear to diminish the ability of UHF stations to compete in the delivered video programming market. According to a 1997 study provided by Paxson Communications, VHF affiliates of the top four broadcast networks had approximately 50% higher ratings than UHF affiliates of the top four networks. Paxson then replicated this study with 2002 ratings information and determined that the ratings disparity between UHF and VHF stations had actually *increased* between 1997 and 2002. Paxson's filing shows that, in November of 2002, network-affiliated VHF stations received approximately 57% higher ratings than network-affiliated UHF stations, compared with 50% in 1997. Thus, even after controlling for factors such as programming and market size, UHF stations continue to experience a competitive handicap compared with VHF stations. This disparity translates into reduced advertising revenues for UHF stations. Thus, the Commission does not believe that the UHF handicap has largely been eliminated by greater cable and DBS carriage of UHF signals.

439. In addition to strengthening competition between UHF and VHF stations, the UHF discount promotes entry by new broadcast networks. Paxson asserts that UHF discount enhanced its ability to launch a new broadcast network because it could own more UHF stations than VHF stations. Paxson states that the additional ownership of stations permitted by the UHF discount provides a significant financial incentive for new networks to enter and compete with established networks. This is because ownership of stations, as opposed to affiliation with separately-owned stations, enables a network such as Paxson's to earn both national and local advertising revenues. Univision Communications also states that the UHF discount has enabled it to enter the market with programming tailored to Hispanic audiences. Univision explains that its entry as a broadcast network is particularly beneficial to Hispanic audiences because they rely disproportionately on over-the-air broadcast channels.

440. Finally, the Commission observes that the established broadcast networks generally have not sought to