

take advantage of the UHF discount to gain greater national reach through local stations. The four most established broadcast networks collectively own 67 stations, 12 of which are UHF stations. Instead of replacing their VHF stations with UHF stations and owning up to 70% national coverage, they have retained their VHF stations and sought elimination of the national ownership cap. By contrast, Paxson, a recent entrant into the broadcast network business, owns 61 stations, all of which are UHF. Absent the UHF discount, Paxson's audience reach would be 61.8% of the nation's television households. This data indicates that the UHF discount plays a meaningful role in encouraging entry of new broadcast networks into the market. For these reasons, the Commission retains the UHF discount.

441. The Commission has previously said it will issue a notice of proposed rulemaking proposing a phased-in elimination of the discount when DTV transition is near completion. At this point, however, it is clear that the digital transition will largely eliminate the technical basis for the UHF discount because UHF and VHF signals will be substantially equalized. Therefore, the Commission will sunset the application of the UHF discount for the stations owned by the top four broadcast networks (*i.e.*, CBS, NBC, ABC and Fox) as the digital transition is completed on a market by market basis. This sunset will apply unless, prior to that time, the Commission makes an affirmative determination that the public interest would be served by continuation of the discount beyond the digital transition. For all other networks and station group owners, it will continue to examine the extent of competitive disparity between UHF and VHF stations as well as the impact on the entry and viability of new broadcast networks. In a subsequent biennial review, the Commission will determine whether to include stations owned by these other networks and station group owners in the sunset provision it has established for stations owned by the top four broadcast networks.

B. Dual Network Rule

442. The dual network rule provides: "A television broadcast station may affiliate with a person or entity that maintains two or more networks of television broadcast stations unless such dual or multiple networks are composed of two or more persons or entities that, on February 8, 1996, were 'networks' as defined in § 73.3613(a)(1) of the Commission's regulations (that is, ABC, CBS, Fox, and NBC)." 47 CFR 73.658(g).

Thus, the rule permits common ownership of multiple broadcast networks, but prohibits a merger between or among the "top-four" networks, *i.e.*, ABC, CBS, Fox, and NBC. In the R&O, the Commission concludes that the dual network rule is necessary in the public interest to promote competition and localism.

443. The original dual network rule, which prohibited any entity from maintaining more than a single radio network, was adopted over sixty years ago. The rule was later extended to television networks. The Commission believed that an entity that operated more than one network might preclude new networks from developing and affiliating with desirable stations because those stations might already be affiliated with the more powerful network entity. In addition, the Commission expressed concern that ownership of more than one network could give the owner too much market power. The rule, therefore, was intended to serve the Commission's competition and diversity goals.

444. In the 1996 Act, Congress directed the Commission to amend the rule, which it did, to permit common ownership of two or more broadcast networks, but not a merger among ABC, CBS, Fox, or NBC, or between one of these top-four networks and UPN or WB. In 2001, the Commission further modified the rule to permit a top-four network to merge with or acquire UPN or WB. The Commission found that: (1) Competition in the national advertising market would not be harmed; (2) greater vertical integration was potentially an efficient, pro-competitive response to increasing competition in the video market; and (3) program diversity would not be harmed because the two combined networks would have economic incentives to diversify their program offerings.

445. The restrictions in the current rule apply only to combinations of the top-four networks. All existing network organizations, and all new network organizations, may create and maintain multiple broadcast networks. Thus, the current rule permits common ownership of multiple broadcast networks created through internal growth and new entry.

446. Under section 202(h), the Commission considers whether the dual network rule continues to be "necessary in the public interest as the result of competition." In determining whether the rule meets this standard, the R&O addresses whether the rule promotes competition, localism, and diversity.

447. *Competition.* The R&O summarizes the complex roles played by broadcast networks. Broadcast

networks acquire a collection of programs from program producers. The programs are selected based on their ability to attract audiences that can be sold to advertisers. These programs—with advertisements embedded—are then made available to television audiences through the broadcast network's owned and operated broadcast television stations ("O&Os"), and also through contractual arrangements with affiliated broadcast television stations. Thus, a broadcast network serves many roles. It is an intermediary between local broadcast stations and advertisers and program producers. Because the top-four broadcast networks are participants in the program acquisition market and the national advertising market, mergers among them can affect competition in each of these markets.

448. Given the level of vertical integration of each of the top-four networks, as well as their continued operation as a "strategic group" in the national advertising market, a top-four network merger would give rise to competitive concerns that the merged firm would be able to reduce its program purchases and/or the price it pays for programming. As a result, the Commission concludes that the dual network rule remains necessary in the public interest to foster competition.

449. *Program Acquisition Market.* The top-four networks are the broadcasting components of vertically-integrated firms, which compete against each other to acquire programming that will attract the largest national audiences. Competition in the program acquisition market is important because networks compete with each other to acquire new, diverse, and innovative programming. A top-four network merger would give rise to competitive concerns that the merged firm would restrict the consumption of programming by using its market power to limit competitors' access to sources of programming. In addition, the merged network could use its market power to control the price it pays for programming or to raise competitors' costs of acquiring programming. In concentrated markets, viewers have access to fewer programming choices if the number of national, independent purchasers of programming decreases due to limited access to programming and higher programming costs.

450. NASA argues that a merger of two or more of the top-four networks would result in a less competitive program acquisition market, evidenced by lower output, fewer choices, and less technological progress. CCC argues that the top-four networks represent a distinct and important resource for