

to not serve their local communities. The Commission therefore concludes that the dual network rule remains necessary to foster localism.

463. *Diversity.* In the NPRM, the Commission sought comment on the dual network rule's effect on program diversity and viewpoint diversity. As noted in the national TV ownership rule section, the Commission concludes that the market for diversity is local, not national. As also noted, the Commission concludes that viewpoint diversity is the most pertinent aspect of diversity for purposes of our ownership rules. Nevertheless, since several commenters argue that elimination of the dual network rule would result in a diminution of program diversity, the R&O addresses their arguments.

464. Several commenters argue that elimination of the dual network rule would result in less diverse programming and that national viewpoints in news reporting would be diminished. AFL-CIO and AFTRA argue that recent mergers and consolidation in the industry have resulted in instances of reduced viewpoint diversity and program diversity in local markets. AFTRA also argues that elimination of the rule will quell new voices and diverse viewpoints, "as emerging networks are quashed in favor of more 'cost-effective' means of delivering content." CCC argues that because CBS is "repurposing" its original programming on UPN, diversity between the two networks is reduced. CCC also argues that WB, UPN, and the cable networks do not have the audience reach or the resources to fill the diversity void created if the national networks were reduced by elimination of the rule. Fox disagrees, arguing that the vast array of other media outlets will provide the public with sufficiently diverse information and views.

465. UCC argues that despite recent gains in the popularity of other forms of media, national broadcast television continues to be the public's most important source for national and international news. UCC argues that the average weekday reach of the evening newscasts of ABC, CBS and NBC is about 10 times the combined reach at 6:30 p.m. for Fox, CNN, CNN Headline News, MSNBC, and CNBC. Because network news on broadcast television is expensive to produce, UCC argues, a top-four network merger would result in the consolidation of news departments in order to achieve economic efficiency.

466. In the *Dual Network Order*, the Commission found that program diversity at the national level would not likely be harmed by the combination of an emerging network (*i.e.*, UPN or WB)

with one of the top-four networks. The Commission found it likely that a common owner would have strong incentives to produce a diverse schedule of programming for each set of local TV outlets in the same market. In this proceeding, the Commission addresses possible combinations among only the top-four networks, which are distinct from combinations between a top-four network and an emerging network. Also, the Commission finds in this proceeding that the market for diversity is local, not national. Further, as noted in the Policy Goals section above, the Commission finds that program diversity is best achieved by reliance on competition among delivery systems rather than by government regulation.

467. The Commission is unable to conclude that the dual network rule can be justified on program diversity or viewpoint diversity grounds. Although the Commission received conjectural statements regarding the repurposing of some programming, and stories of news operations being shared in a few markets, these reports do not evidence a systematic reduction in diversity as a result of media mergers. The record provides no evidence that, because some stations share news operations, viewpoint diversity is diminished. Further, even if a merger among ABC, CBS, or NBC would result in the loss of one weekday evening newscast, a substantial number of outlets that report national/international news would remain to provide diverse viewpoints throughout the day to the public. Finally, to the extent that the Commission considers programming diversity an issue, the record provides no evidence that the repurposing of programming on different networks results in a diminution of program diversity. In fact, the Commission found in the *Dual Network Order* that the repurposing of programming between two merged networks was likely to produce net benefits to viewers of network television.

468. 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. These competitive harms would, in turn, harm viewers through reductions in program output, program choices, program quality, and innovation. The Commission further concludes that a top-four network merger would harm

localism by providing the networks with undue economic leverage over their affiliates, reducing the ability of affiliates to bargain with their network for favorable terms of affiliation, giving the networks greater power in program selection, and diminishing alternative choices of programming for affiliates. As a result, the Commission concludes that the dual network rule remains necessary in the public interest to foster competition and localism.

## VII. Miscellaneous Requests

469. Numerous parties submitted comments on issues not specifically raised in the NPRM. The Commission dismisses most of these requests on procedural grounds because they fall outside the scope of this proceeding. The Commission does not review the merits of these requests. To the extent appropriate, parties are free to re-file these requests as petitions for rulemakings. The Commission denies others for the reasons discussed in this summary.

470. *Proposed Behavioral Rules.* Several parties ask that the Commission impose behavioral rules to achieve a number of alleged public interest goals. The Commission invited comment in the NPRM as to whether behavioral rules might render structural rules unnecessary to achieve our public interest goals of diversity, competition, and localism. The following proposals, however, relate to policy goals that are unrelated to those served by our structural rules and are therefore outside the scope of the NPRM.

471. *TV Viewing.* TV Turnoff Network requests that the Commission require all broadcast stations to run announcements reminding the viewing public that: (1) Excessive television viewing has negative health, academic, and other consequences for children; and (2) parents and guardians retain and should exercise their First Amendment right and ability to turn off their television sets and limit their children's viewing time. The Commission dismisses this request because it is outside the scope of this proceeding, which reviews our structural broadcast ownership rules pursuant to section 202(h). Indeed, the goals sought to be advanced by the proposal bear no relation to diversity, competition, or localism.

472. *PEG.* Alliance requests that the Commission promulgate behavioral regulations that guarantee public, educational, and governmental ("PEG") access on cable and direct broadcast satellite ("DBS") to ensure diversity of voices. Alliance argues that such federal regulations are necessary because PEG