

of rule relaxations be required to loan a percentage of their expansion revenues to a Digital Conversion Fund. The Commission declines to adopt CST's proposal because there is no basis for the Commission to directly fund industry's transition to digital television. When Congress established the framework for the digital television transition in the Telecommunications Act of 1996, it gave no indication that the Commission should directly fund industry transition costs for digital television. Even if CST's proposal fell within Congress's directives, the establishment of such a fund raises extraordinarily complex and controversial issues such as the measurement by the Commission of 'merger efficiencies' and how the fund would be administered. CST provides us with no meaningful basis to assess the viability or effectiveness of such a program. Finally, the Commission already has considered the relationship between local television consolidation and the transition to digital television. The Commission determined that the efficiencies from relaxing the local television ownership limit would likely promote the transition to digital television.

483. Some parties ask the Commission to undertake additional studies or delay taking action until after some future events. MMTC filed a motion requesting that the Commission postpone its vote on this R&O. MMTC argues that because our Electronic Comment Filing System ("ECFS") was overloaded with filings immediately prior to our June 2, 2003 vote, the record does not accurately reflect all comments received in this proceeding and, therefore, parties are unable to respond to the complete record. MMTC Motion for a Brief Postponement of the Vote (May 31, 2003). The Commission denies the motion. The reply comment period closed Feb. 3, 2003, more than four months ago. Nonetheless, in the interests of assembling a full record, the Commission has continued to accept comments, and more than 500,000 comments were filed in this proceeding, many of which were filed at the last minute. Given the large volume of last minute filings, it is inevitable that a small percentage would not be placed on our ECFS system or be available in the public reference room in sufficient time for replies. Nonetheless, the record is complete, and MMTC's failure to file its comments or requests in a timely fashion is no excuse to delay the proceeding. Nickolas Leggett asks us to engage in detailed political science analysis of the impact of removal of

ownership caps on the legitimacy of government and business. The Commission denies this request because it is unclear and declines to delay action in this proceeding. The Commission's statutory obligation is to review the rules biennially; it has no discretion to willfully deviate from that schedule.

484. *IBOC-DAB*. VCPP requests that there be no relaxation on ownership restrictions until several years after 100% rollout of In Band On Channel Digital Audio Broadcasting ("IBOC-DAB"), arguing that this technology will destroy competition. The Commission denies VCPP's request. The courts require the Commission to base our ownership decisions on today's marketplace and the facts presently before it. It is not free to adopt a "wait and see" approach. The impact of IBOC-DAB on diversity, competition, and localism in local media markets will be accounted for in future biennial reviews.

485. SBA asks the Commission to issue a Further Notice of Proposed Rulemaking in this proceeding, claiming the NPRM is not specific enough to comply with the Administrative Procedure Act or the Regulatory Flexibility Act. The Commission disagrees with SBA and denies its request. Contrary to the implication of SBA, the actual rules at issue in this proceeding are specifically identified in the NPRM and well known to all interested parties—they are our current broadcast ownership rules. Congress has directed us to review those rules every two years to determine whether those exact rules remain necessary in the public interest. That the Commission has done in this proceeding in accordance with the NPRM. Further, Congress directed the Commission to eliminate or modify any of its broadcast ownership rules that no longer are necessary. Again, it was explicit in the NPRM that we might eliminate any rule that could not be justified in light of the current media marketplace. To the extent that the Commission has eliminated rules in this R&O, therefore, there has been no failure of notice. With respect to those rules that, having been found unnecessary, have been modified herein, the question is the familiar one—were the modifications a "logical outgrowth" of the issues identified in the NPRM. The Commission concludes that this R&O and its accompanying rules are a logical outgrowth of the questions posed in the NPRM. The modifications made herein are consistent with the issues and questions posed in the NPRM, and take account of the full record in this proceeding. Finally, we take seriously the mandate

of Section 202(h) to review our broadcast ownership rules every two years. It would be impractical to complete such a Herculean task, in this case, to review six different rules, and to complete that review in time to start another review, if we issued a separate notice detailing modifications to rules and initiated another comment period.

486. *Children Now* asks that the Commission reserve our decision-making on media ownership until its research on the effects of media consolidation on children is complete and can be incorporated into our record. Laura Smith requests that we expand the scope of our public hearings on media ownership and that we conduct additional research before concluding this proceeding. The Commission declines to further delay this proceeding. The public, industry, and government agencies alike have an interest in finality, economy, and the avoidance of unnecessary delay. The public is not served by bureaucratic inaction; industries suffer when rules that restrain behavior without cause continue in force; and agencies fail in their responsibility when they commit public resources to meaningless exercises of no decisional significance. As a corollary, agencies should not refrain from acting on an issue once a robust record has been developed. It is the agency's responsibility, in the first instance, to determine when that point has been reached. *United States v. FCC*, 652 F.2d 72, 90–91 (D.C. Cir. 1980) (en banc).

487. In this case, the Commission sees no overriding need to augment the record, nor do we believe that the expenditure of additional time and resources in an effort to do so will provide us with a significantly more accurate or current assessment of the media markets. To the contrary, the record in the current proceeding is one of the most factually complete and thorough ever assembled in a Commission rulemaking. In addition, the court in *Fox Television* made it quite clear that regulatory delay in the biennial ownership review process is causing hardship to the parties and should not be tolerated. Accordingly, the Commission denies the requests of *Children Now* and Laura Smith.

488. *Independent Production Rules*. The Coalition for Program Diversity ("CPD") asks the Commission to take "content neutral action" by "adopting a 25% Independent Producer Rule that will insure [sic] that the prime time programming aired by the four networks is as diverse as possible." In a similar vein, the Writers' Guild of America ("WGA") proposes a requirement that