Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-7

In the Matter of

Amendment of Section 73.3555
of the Commission's Rules, the
Broadcast Multiple Ownership Rules

FIRST REPORT AND ORDER

Adopted: October 27, 1988; Released: February 22, 1989

By the Commission:

I. INTRODUCTION

1. By this action, the Commission modifies one of its local multiple ownership rules -- the radio "duopoly" rule prohibiting common ownership of two or more commercial radio stations in the same broadcast service whose 1 mV/m contours overlap.[1] We are relaxing this rule to a "principal city" contour standard (the 5 mV/m contour for AM stations and the 3.16 mV/m contour for FM stations).[2] This refinement of the contour overlap standard represents a relatively minor adjustment to the rule, under which ownership of two AM or FM stations located in the same principal city will still be prohibited. Nonetheless, this action will enable broadcasters to own two or more commercial radio stations in the same service in closer proximity than is currently allowed, enabling them to realize some of the efficiencies of common ownership.

2. Our decision to relax the radio duopoly rule is based on our experience in implementing the local ownership rules, our recognition of the geographic area in which most listenership occurs, the undue discrimination against AM broadcasters caused by the present rule, the substantial growth in the number of media outlets in markets of all sizes since the rule was adopted, and the data submitted by commenters concerning the benefits of ownership of more than one station in the same geographic area. We conclude that the public interest would be best served by redefining the signal contours applicable to the radio duopoly rule so as to prohibit overlap of the principal city contours, the areas where the majority of a station's listeners are located. We believe that this approach best serves the public interest by fostering our continuing goals of promoting economic competition and diversification of programming and viewpoints while not unnecessarily restricting broadcasters' discretion and by enabling broadcasters and the public to take greater advantage of the benefits of common ownership of broadcast stations in the same geographic area.

3. On February 20, 1987, we released a *Notice of Proposed Rule Making* in this proceeding (*Notice*), [3] which set forth several rather narrow proposals for relaxing two local ownership rules. First, the *Notice* proposed to liberalize the radio duopoly rule to allow a greater degree of overlap between station contours. Second, the *Notice* proposed relaxing the "one-to-a-market" or radio-television cross-ownership rule to allow the common ownership of certain radio-television combinations.

4. In response to the *Notice*, over fifty parties filed comments and reply comments in this proceeding. These submissions, which are summarized, to the extent they relate to the radio duopoly rule, in Part III below, provide strong support for modification of our radio duopoly rule.[4] In fact, a few commenters supported complete elimination of this rule, despite the fact that such an approach is beyond the scope of the options set forth in the *Notice*. After carefully reviewing these comments, we find that the record supports our initial conclusion that the current radio duopoly rule should be relaxed to a principal city contour standard as proposed in the *Notice*. We will address the radio-television cross-ownership rule in a subsequent decision.

II. BACKGROUND

5. The radio duopoly rule is the oldest of the Commission's multiple ownership rules and originated in the Commission's chain broadcast rulings. Initially, the rule prohibited the licensing of two AM stations in the same area to a single network.[5] Subsequently, the Commission adopted generic duopoly rules which contained general language prohibiting the common ownership of two or more stations in the same broadcast service which serve substantially the same area.[6] These early versions of the duopoly rule were intended to promote the dual goals of economic competition and diversity of program and service viewpoints by encouraging diversity in the ownership of stations. The form of these rules resulted in a case-by-case approach to duopoly questions under which a variety of factors were considered, such as the classes of the stations involved, the extent of overlap between the service contours of the stations, the area and populations within the overlap, interference limitations on the signals of the stations, and the extent of competition with other broadcast stations.

6. This general language in the duopoly rule was subsequently eliminated in 1964 and the present fixed 1 mV/m contour overlap standard was substituted.[7] As we stated in the *Notice*, this fixed rule was adopted because the Commission believed that the case-by-case method had proven cumbersome and did not always justify the effort expended.[8] Many commenters in this proceeding argued that the current fixed 1 mV/m contour standard is overly restrictive, however, and does not accurately reflect the area where most radio listening occurs. In addition, we acknowledged in our *Notice* that this standard discriminates against AM broadcasters because "the 1 mV/m signal of an AM station is not equivalent to the 1 mV/m signal of an FM station."[9] Consequently, we have adopted a principal city contour standard to remedy these defects of the current rule, as will be discussed in Part IV below.

7. *Diversity and Competition Goals*. As we stated in the *Notice*, the ultimate objectives of the duopoly rule, like our other multiple ownership rules, have been to promote economic competition and diversity of programming and viewpoints in order to further the public interest. With respect to our diversity goal, we have stated in the past that "the rules are based upon a view of the First Amendment to the Constitution similar to that of the Supreme Court in the *Associated Press* case -- *i.e.*, a

notion that the First Amendment 'rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'"[10] Although one of the structural purposes underlying our multiple ownership rules is to encourage diversity in the ownership of broadcast stations, we have encouraged ownership diversity as a *means* of promoting diversity of program sources and viewpoints, not as an end in itself.

8. Besides promoting diversity of programming and viewpoints, the local ownership rules also seek "to prevent undue concentration of economic power contrary to the public interest."[11] Our economic concerns have been aimed at precluding broadcasters from "dominat[ing] television and radio markets and wield[ing] power to the detriment of small owners, advertisers, and the public interest."[12] Our concerns in this area have not been based upon any evidence that group ownership would necessarily lead to anticompetitive practices in local markets, however, but upon the *potential* for such practices to occur.[13] Indeed, we have found that "[o]n an overall basis, there has been no showing that single stations cannot compete effectively with combination owners."[14] Nevertheless, we concluded that it was not necessary to find specific evidence of anticompetitive abuses in order to adopt local ownership restrictions and that, on balance, at that time, the public interest would be served by adopting the duopoly rule.

III. SUMMARY OF THE RECORD

9. As stated above, the numerous commenters in this proceeding provided nearly unanimous support for the Commission's tentative view that the present rule is overly restrictive and that the benefits of allowing common ownership in closer proximity outweigh the need for the present rule because of the substantial changes that have occurred in the marketplace. Specifically, more than half of the commenters supported the Commission's proposal to relax the rule to prohibit the common ownership of two or more AM stations whose 5 mV/m groundwave (or principal city) contours overlap or two or more FM stations whose 3.16 mV/m (or principal city) contours overlap. Several parties supported the Commission's proposal insofar as it applies to AM stations, but did not support revising the duopoly rule as it applies to FM stations. Commenters opposed to relaxation of the rules generally asserted that these "structural" regulations are still needed to promote diversity of viewpoint, and that efficiency considerations do not support easing the restrictions.

10. *Negative Effects of the Current Rule.* A large group of commenters, many of whom cited the findings of the *AM Status Report*, asserted that the present restrictions are overbroad in effect because they ignore, *inter alia*, variations in service areas, the extent of competition by other media in the area of overlapping contours, the classes of stations involved, the nature of terrain at issue, the population and economic conditions of the overlap areas, and the audience ratings of the relevant stations with overlapping contours. In particular, commenters asserted that AM and FM signals that reach beyond the principal city contour have little competitive impact in neighboring markets. For example, NBC noted that an analysis of its AM and FM listening audiences shows that at least 72.4 percent of its audience in any market is located within the AM station's principal city contour and at least 63.8 percent of the audience is located within the FM station's principal city contour.

11. Group W and other commenters also concurred in the Commission's observation that use of the present 1 mV/m contour discriminates against AM stations because the 1 mV/m signal of an AM station is not equivalent in quality to the 1 mV/m signal of an FM station. Commenters agreed that use of the city-grade signal level (*i.e.*, principal city contours) would be more equitable, because it represents the minimum signal strength that AM and FM stations are required to place over their respective communities of license.

12. *Marketplace Developments.* Commenters generally agreed with the Commission's tentative view that changes in the marketplace have lessened the need for the present restrictions. In this regard, commenters cited the substantial increase in the number of broadcast stations, the emergence and growth of new services and technologies, and the abundance of competition in local markets. Many commenters provided statistics on the number of media outlets available in selected television and radio markets,[15] while others compiled data on the number of media outlets in more broad-based categories of markets such as the top twenty, fifty, and seventy-five television markets.[16]

13. The most extensive of these studies, conducted by NAB in early 1987, examined the number of media outlets in all 209 television markets, using A.C. Nielsen's Designated Market Areas (DMA's) as the relevant markets.[17] The study revealed that the average market encompasses 10 over-the-air television signals, 20.4 commercial AM stations, 19.5 commercial FM stations, 36 programmed cable channels in use with a 48.8% penetration rate, 15.9 newspapers, 11.8 significantly read magazines, and a VCR penetration rate of 48.7.[18] In addition, the study showed that even the smallest markets have have about nine or ten radio and television outlets[19] and have access, on the average, to over 20 cable channels.

14. NAB contended that this "[g]rowth in the number of media outlets in local markets has lessened the need to be concerned about undue media concentration from the common ownership of two AM stations in the same market." To support its contention, NAB examined the level of concentration in radio markets under the Department of Justice's *Merger Guidelines*.[20] Of the 259 markets studied, 47.9% were "unconcentrated," 38.6% were "moderately concentrated" and only 13.5% were "highly concentrated." Furthermore, NAB found that in a number of the "moderately concentrated" markets, the combination of any two AM stations would not increase concentration enough to warrant antitrust action. NAB also noted that, "as a practical matter, an increase in concentration resulting from the co-ownership of two AM stations in the same area would be tempered by the existence of other broadcast, and non-broadcast, media outlets which were not considered in this concentration study." The FTC staff agreed that the NAB's concentration calculations "are likely to overstate the potential for antitrust problems" because the calculations presume that radio services alone constitute a relevant economic market (without taking into account other media substitutes for radio services) and they fail to account for new station entry that could be authorized by the Commission.

15. Similarly, the Washington Legal Foundation and other commenters asserted that because of this tremendous growth and multitude of "voices," the ownership

restrictions are no longer needed to ensure diversity of viewpoint and economic competition, and that elimination of the restrictions may actually enhance those dual goals by allowing cost savings in the joint operation of stations, which could lead to better programming service to the public and enhanced viability of stations. Those commenters supporting the adoption of the Commission's proposed rule generally believed that the principal city contour standard reflects a reasonable "rebalancing" of the factors underlying the present restrictions. In further support of substantially relaxing or eliminating the rule, commenters also cited the "safety net" provided by the antitrust laws.

16. *Benefits of Common Ownership.* Commenters also agreed with the Commission that significant cost savings can be realized through the economies of scale made possible by common ownership. The FTC staff asserted that its statistical study of the efficiencies associated with joint ownership of AM-FM combinations suggests that there also may be efficiencies associated with the joint ownership of multiple AM or multiple FM stations in the same area. Commenters asserted that these cost savings may translate into new or expanded broadcast service. NAB and other commenters also noted that cost savings would benefit the public interest significantly by aiding the development of more diverse program service.

17. To corroborate this theory, CBS submitted an analysis of the extent to which program duplication occurs between commonly owned AM and FM stations in the top 20 markets.[21] Specifically, CBS determined that there are 149 co-owned AM and FM radio stations in these markets, and that 131 of these combinations air entirely separate programming. Of the remaining 18 combinations, ten duplicate programming 100% of the time, and the remaining eight combinations duplicate programming for periods of time ranging from 25% to 75% of the time. CBS found that, overall, commonly owned AM and FM stations in the top twenty markets air separate programming 91% of the time.

18. *Proposals.* Commenters supporting the modification of the duopoly rule advanced several different proposals, ranging from adopting the principal city overlap standard only for AM stations but retaining the present 1 mV/m overlap standard for FM stations to eliminating the rule as it applies to both AM and FM stations. In between, many commenters supported the Commission's proposal to adopt the principal city contour overlap standard for both AM and FM stations, and other parties argued that the Commission should adopt the principal city overlap standard for FM stations and adopt an overlap standard for AM stations which provides even greater relief for these stations from the ownership restrictions.[22]

19. Several commenters advocated stronger relief for AM stations vis-a-vis FM stations. NAB, echoing the concerns of these commenters, contended that the present overlap standard "has helped to handicap the competitive ability of AM broadcasters." NAB asked the Commission to adopt the 5 mV/m overlap standard for AM, but to retain the 1 mV/m standard for FM. NAB "recognizes that there may come a time when relaxation of the duopoly rule similarly may benefit FM radio," but it believes the present standard "does not adversely impact on FM service" at this time. Clear Channel Communications, Inc. argued that, "[g]iven the current economic condition of AM radio, AM licensees should be given increased flexibility to respond more effectively to economic forces and conditions within the radio industry." Other commenters contended that relaxation of the duopoly restrictions should be confined only to AM stations in order to enhance the competitive status of the AM radio service. Shamrock Broadcasting, Inc. argued that relaxing the duopoly rule as it applies to FM stations "may adversely impact upon whatever curative effects are realized by such relaxation for AM." These positions were sharply criticized by several FM station licensees in reply comments.

20. *Comments Opposed to Relaxation.* The commenters opposed to relaxation of the local ownership rules argued that the FCC has neither justification nor authority to adopt its proposed action because: (1) the Commission recently relied on the local ownership rules in eliminating the regional concentration rules and relaxing the national ownership restrictions; (2) Congress supports the FCC's diversification policy, as reflected in the cross-ownership and diversity provisions, respectively, of the 1984 Cable Act and the lottery statute; and (3) the claimed benefits of relaxation do not outweigh the diversity concerns addressed by the rules. These commenters also asserted that the Commission's proposals are not supported by the efficiency considerations because: (1) cost savings either are insignificant or speculative; (2) the Commission originally adopted the local ownership rules despite similar arguments regarding the benefits of common ownership; and (3) there is no basis for stating that cost savings will lead to improved or more diverse programming.[23] In addition, commenters argued that relaxation of the rules would increase demand, and correspondingly the price, for stations, and thereby impede the goal of minority ownership.

IV. DISCUSSION

21. As we stated in the *Notice*, twenty-four years have elapsed since the fixed duopoly rule was adopted. Based on the record in this proceeding and the overwhelming support of the comments received, we conclude that the public interest is best served at this time by relaxing the rule as proposed in the *Notice*. The principal city contour standard that we are adopting more accurately reflects the geographic area where most of a station's audience is located and relieves the overly restrictive effects of the current rule, including the unwarranted discrimination against AM broadcasters. Under this relatively minor adjustment to the rule, we will still prohibit the common ownership of stations in the same service located in substantially the same listening area. In light of this fact, as well as the substantial growth and availability of media outlets in local markets, we find that this modification will not adversely affect our traditional competition and diversity goals, and will result in other, often related, public interest goals.

A. REASONS FOR MODIFYING THE RULE

22. Our decision to relax the fixed 1 mV/m contour standard of the radio duopoly rule is based on several key findings. This section discusses these findings in greater detail, including the negative effects of the current rule, the changed circumstances affecting our traditional diversity and competition concerns, and the potential benefits of permitting commonly owned radio stations to be located in closer proximity. The next section, Part B, de-

scribes the principal city contour standard that we are adopting and explains our rationale for choosing this standard instead of the other options considered.

1. Negative Effects of the Current Rule

23. *Contour Overlap*. One of the main concerns expressed by the commenters was the need to lessen the overly restrictive effects of the present rule. In this regard, most commenters agreed that, by prohibiting the common ownership of two AM or FM stations whose 1 mV/m contours overlap, the present rule prohibits overlap well beyond the area in which most radio listening occurs. Specifically, commenters asserted that the present restrictions are overbroad in effect because they ignore: (1) interference limitations on the 1 mV/m signals of AM stations; (2) differences in stations' ability to serve the entire area encompassed by the 1 mV/m contour; (3) the extent of competition from other media within the overlapping contours; (4) the classes of stations involved; (5) the nature of terrain at issue; (6) the population and economic conditions of the overlap areas; and (7) the audience ratings of the relevant stations with overlapping contours.

24. Under the AM and FM principal city rules, broadcasters are required to place a minimum signal strength over their communities of license or the "principal city" that the station serves, and the coverage area or range of this signal is defined by this contour.[24] Because a station can be best received in the region within its principal city contour, most of a station's listeners are expected to be located in this area. For example, NBC demonstrated in its comments that the percentage of the total audience for its AM stations located within their 5 mV/m or principal city contours ranges from 66.7% to 83.7%.[25] Similarly, with respect to NBC's FM stations, the percentage of the total audience located within the 3.16 mV/m or principal city contour ranges from 58.9% to 91.9%.[26] For this reason, we believe that it is appropriate to relax our contour overlap standard to a principal city contour standard.

25. *AM Stations*. As pointed out in the *Notice* and agreed to by most of the commenters, the 1 mV/m signals for AM and FM stations do not yield equal reception quality, with the 1 mV/m AM signal being far less receivable due to noise and interference levels on the AM band than the 1 mV/m FM signal.[27] In addition, geographic factors distort AM coverage in ways that do not affect FM coverage. For example, predicted AM coverage extends much further over water than land, and much further over certain types of soil than others.[28] As a result, the present overlap standard results in an effectively stricter rule for AM than for FM.

26. The Commission recognized this disparity when it adopted the 1 mV/m standard for both AM and FM stations, but nevertheless determined that "a 1 mV/m AM signal does provide acceptable service in less populated areas where overlap between co-owned stations is more likely to occur."[29] Given the dramatic growth in FM stations since 1964 and the declining economic health of many AM stations,[30] however, the present marketplace no longer warrants a duopoly standard that unduly handicaps AM stations as compared to FM stations.[31]

2. Changed Circumstances Affecting Diversity and Competition

27. Although the benefits flowing from the promotion of the degree of station ownership diversity established in the radio duopoly rule may have outweighed the detriments caused thereby when the current version of the rule was adopted in 1964, the balance has since shifted because of the substantial increase in the number and variety of media outlets that has occurred during the intervening years. This growth has been documented in great detail by the commenters in this proceeding. The commenters have also provided record evidence that allowing common ownership of stations in closer proximity would produce cost savings and efficiencies that may benefit the public interest.

28. *Market Growth*. As the *Notice* and commenters in this proceeding have pointed out, significant growth in the communications marketplace has occurred since the current radio duopoly rule was adopted.[32] In the traditional over-the-air broadcast services, this growth has been dramatic. For example, since 1964, the number of authorized stations -- *i.e.*, those that are licensed, on-air, or under construction -- has increased by 88.7%.[33] These increases have, most notably, been due to growth in the FM and television services. From 1964 to the present, for example, the number of FM stations grew by 237% as FM broadcasting became competitive with the AM service and, recently, surpassed it in terms of total revenues and audience share.[34] Similarly, during this same time period, the number of TV stations grew by 131%, as the UHF television service matured and became profitable.[35] Additional growth in these traditional broadcast services can also be expected due to several recent Commission actions.[36]

29. Moreover, in 1964 the Commission was not able to include in its calculus the future roles of new video technologies, particularly cable television and VCR's. Indeed, cable was in an early stage of development during those years, with a relatively small number of systems and subscribers,[37] and VCR's were virtually nonexistent. Today, however, both cable and VCR penetration exceed 50% of the nation's television households. As we found in our recent Syndicated Exclusivity rule making, cable has become a competitor rather than a mere supplement to broadcast television for programming, audiences, and advertising revenues.[38] More importantly, these new technologies are playing a significant role in enhancing diversity, especially in small markets where the cable penetration is actually greater than the national average.

30. More significantly for this proceeding, the foregoing growth in media outlets nationwide has occurred at the local level in media markets of all sizes -- large, medium, and small. The *Notice* solicited and we received a great deal of data on this matter, including the NAB study cited earlier. While NAB's study focuses on the availability of media outlets in DMA's, which are essentially television markets, we have further examined the availability of commercial radio stations in the smaller Metropolitan Statistical Areas (MSA's), as defined by the U.S. Department of Commerce, because these measures are widely used for many statistical purposes.[39] In particular, we have counted the number of commercial radio stations operating within each of the top 175 MSA's in 1987. We found that, although the number of radio stations per MSA market is less than that found in the NAB study of DMA's, there are still a significant number of commercial

radio outlets in these local markets. For example, the average number of radio stations ranges from 35.28 stations per market in the top 25 markets to 10.48 stations per market in markets 150-175.[40]

31. *Viewpoint and Programming Diversity.* Given this increased availability of media outlets throughout local markets of various sizes, as outlined above, we find that relaxing the radio duopoly rule would not adversely affect the viewpoint and programming diversity goals at the local level. We recognize that there are still fewer channels available than there are parties interested in becoming licensees, as noted by CFA in its comments.[41] But virtually all valuable resources fit this characterization, and we do not believe that scarcity is a reliable indicator of the degree of viewpoint or programming diversity. For example, that logic suggests that there would be no diversity problems in a small market with one or two media outlets and a frequency lying fallow, whereas there would be an absence of diversity in New York City because there are no unused frequencies but many media outlets. Although liberalizing the radio duopoly rule might affect diversity of ownership to some modest degree, the rule will still be in place to prohibit ownership of two AM or FM stations located in the same principal city. Furthermore, our refinement of the contour overlap standard will not adversely affect the public interest because of the substantial increase that has taken place in the number of media outlets in markets of all sizes and the benefits of allowing common ownership of radio stations in closer proximity.

32. *Economic Competition.* We also considered the effect that increased media outlet availability has had on the radio duopoly rule's complementary goal of promoting economic competition among media outlets in order to encourage efficient pricing and provision of service, specifically focusing on whether relaxing the rule would pose any risk of harm to competition within local markets of varying sizes. After reviewing the various studies and data on economic concentration throughout radio markets of different sizes described in Part III, we conclude that the increased availability of media outlets has virtually eliminated the risk of any reduction in competition that may occur as a result of relaxing the radio duopoly rule.

33. For example, NAB's market concentration study, described in paragraph 14 *supra*, showed that local radio markets have HHI's well below the levels which trigger antitrust concerns under DOJ's *Merger Guidelines*. Moreover, it must be borne in mind that NAB's study used a very narrow "product" or advertising market definition,[42] measuring only the listening audiences of commercial radio stations. As a result, the study does not measure competition from television stations, newspapers, and cable television systems. But the record in this proceeding indicates that these other media do provide competition for advertising with radio. For example, several commenters pointed out that, recently, commercial radio stations have begun to face significant competition from local cable television systems which sell advertising on an "interconnected" basis under which the same ad would appear on numerous local cable systems.[43] To the extent that these other media do compete with commercial radio stations, then NAB's HHI estimates actually *overstate* the potential market power which commercial radio stations might have in local markets.

34. In view of the above, we conclude that the potential risks of undue concentration are far less from a competition standpoint than they may have been in 1964 when the current version of the radio duopoly rule was adopted, regardless of market size. Accordingly, these findings also support relaxation of the rule.

3. Public Interest Benefits of Common Ownership

35. We also received a great number of comments and supporting data which suggest that the common ownership of broadcast stations in the same area or in closer proximity would result in many public interest or consumer welfare benefits.[44] Because these studies are directed towards joint ownership of stations that are co-located and share common facilities, however, the findings may not be wholly relevant to the present modification of the radio duopoly rule, whereby common ownership of radio stations in the same service within the same principal city will continue to be prohibited. Nevertheless, adoption of the principal city standard would make possible the common ownership of more than one AM or more than one FM station in the same geographic area. This would be especially true of radio stations with small service areas -- such as Class A FM stations or AM stations with higher frequencies and/or lower power and located in an area of low conductivity. Under such circumstances, it would be possible to own two or more radio stations in the same service that are licensed to communities in the same geographic region.

36. Although these commonly owned stations would not be able to locate their entire studio and transmitter facilities in the same buildings under our rules, they, nevertheless, would be able to take advantage of other significant efficiencies from joint operation. Specifically, allowing the joint ownership of two radio stations in the same market could enable broadcasters to realize cost savings by consolidating general and administrative functions such as accounting, billing, and payroll. Similarly, there could be cost savings in advertising and promotion through the use of a common sales force, and some studio facilities may be shared (although a station's main studio must be located within its principal community contour).[45]

37. Furthermore, the cost savings and aggregated resources of combined radio-radio operations may also contribute to programming benefits to the public, especially with regard to the type of programming that the multiple ownership rules were intended to encourage -- news, public affairs, and non-entertainment programming.[46] Finally, permitting combined radio-radio operations in the same area may provide other service benefits to the public, such as enabling struggling radio stations, especially AM stations, to continue to provide service to the public.[47] This could occur because the superior resources of one station or the cost savings resulting from combined operations may contribute to the economic viability of a struggling station in the same or a different broadcast service, enabling the latter to stay on the air.[48] As previously discussed, some of these efficiencies may not be achieved to the maximum extent possible because our proposal to relax the radio duopoly rule does not contemplate permitting the common ownership of two AM or two FM stations in the same community (although such joint ownership would be possible within the same television market). However, these efficiencies and the

public interest benefits resulting therefrom will be addressed in conjunction with our proceeding relaxing our one-to-a-market policy.[49]

B. THE NEW PRINCIPAL - CITY CONTOUR STANDARD

38. As stated previously, in view of the record in this proceeding, we have concluded that the public interest would be best served by refining the radio duopoly rule to prohibit common ownership of stations in the same service where the principal city contours overlap. This is the approach proposed by the *Notice* and supported by most of the commenters[50] -- to prohibit the common ownership of two or more commercial radio stations in the same broadcast service if their principal city contours overlap (*i.e.*, the 5 mV/m contour for AM stations and the 3.16 mV/m contour for FM stations).[51]

39. This new standard more accurately reflects stations' listenership than the former 1 mV/m standard and recognizes the differences in signal propagation between AM and FM stations. Indeed, as noted above. these principal city service contours -- the 5 mV/m contour for AM stations and the 3.16 mV/m contour for FM stations -- are the minimum signal strengths that AM and FM stations are required to place over their communities of license. Therefore, it is expected that most of a station's listeners will be located within this area. Similarly, the use of a principal city contour standard will eliminate the inequity between the current treatment of AM and FM stations because it more accurately reflects the relative differences in signal reception quality of AM and FM signals than does applying the 1 mV/m standard to both AM and FM stations.

40. In addition to relieving some negative effects of the current radio duopoly rule, adopting a principal city contour overlap standard would permit commonly owned stations to be located closer together than under the present 1 mV/m standard, enabling station owners to take greater advantage of at least some of the economies of scale and related cost savings inherent in the joint ownership of stations in the same market, as described above. The precise distance between commonly owned stations will vary from one situation to another because of the numerous variables involved, such as the class of station, its operating facilities, and its geographic location. Moreover, even more variables are involved with respect to AM stations because an AM station's propagation is significantly affected by the station's frequency and power and the ground conductivity of the soil in that particular region of the country.

41. Finally, we find that this modification is unlikely to adversely affect our traditional competition and diversity goals. Adopting the principal city standard merely alters the focus of these concerns to core areas where most competition for radio listenership and radio advertising occurs. Indeed, not only will the radio duopoly rule continue to be in effect to address these concerns, but also the federal and state antitrust laws will be available as remedies to deal with any instances where mergers of radio stations would pose an anticompetitive threat to other stations in the market or to the public. In any event, the NAB competition study comparing the HHI's or concentration levels of different radio markets. discussed at paragraph 14 *supra*, indicated that relaxing the rule will not adversely affect economic competition.

42. We note that three commenters, CFA, UCC, and NBMC, have questioned our legal authority to change the local ownership rules on the grounds that such a change would be inconsistent with recent precedent and policy statements concerning our diversity goal. Specifically, these commenters observe that we relied heavily on the existence of the local ownership restrictions in eliminating the regional concentration rule and relaxing the national multiple ownership restrictions.[52] The limited action that we are taking in this proceeding, however, retains the substance of the radio duopoly rule. In particular, the principal city contour standards that we are adopting are better measures of actual station coverage and listenership than the existing 1 mV/m standard.[53]

43. *Other Options Considered.* In the course of deciding to adopt this principal city contour standard, we gave serious consideration to several other ways of modifying the radio duopoly rule, as suggested by the commenters in this proceeding. These options included (1) leaving the rule in its present form; (2) relaxing the rule only for AM stations; (3) adopting a case-by-case waiver approach; and (4) completely eliminating the rule. The first alternative, retaining the present rule, was rejected as unnecessarily stifling to the growth of competition and detrimental to AM broadcasters because of the discriminatory effects of the rule. In addition, this option fails to allow station owners to take advantage of the significant efficiencies, cost savings, and other benefits of common ownership.

44. Second, recognizing the problems of generally declining revenues and audience ratings faced by AM broadcasters, several commenters proposed relaxing only the AM duopoly rule.[54] Specifically, they suggested using the 5 mV/m overlap standard instead of the current 1 mV/m benchmark or, alternatively, using a non-technical standard such as allowing the co-ownership of two AM stations in the same television market or geographic area provided that they are not licensed to the same community or radio market. This approach would preserve the existing level of diversity and competition among FM stations within individual communities but would still enable AM broadcasters to take advantage of the efficiencies and related cost savings inherent in joint operations and thereby to compete more effectively in the marketplace.[55] However, this option would ignore the advantages that could result from relaxing the duopoly rule for *both* AM and FM services. Furthermore, as stated earlier, such a course would retain an overly restrictive and discriminatory rule for FM stations for no apparent reason. Thus, we have rejected it because, given the benefits to both AM and FM stations and their listeners through the modification we are adopting here, we believe it would be undesirable to make changes that only benefit AM stations.

45. A third alternative considered was to amend the radio duopoly rule so that consideration would be given on a case-by-case basis to the relevant circumstances in each market.[56] Such factors could include the same factors that the Commission formerly utilized when it had a case-by-case approach to radio duopoly questions.[57] The weakness of this approach, however, is that it would not specifically address the overly restrictive and discriminatory effects of the present rule. In addition, such a cautious approach could produce substantial administrative burdens which would not seem justified in light of the strength of the record in this proceeding.

46. It should also be noted that a few commenters[58] supported elimination of both the AM and FM duopoly rules. In essence, these commenters believe that the growth in the availability of media outlets in individual markets has been so great that there is no need for these rules to promote viewpoint diversity or competition. Indeed, the parties favoring this solution believe that owning two AM or two FM stations in the same community is no different in effect from owning an AM-FM combination, which is currently permitted under our rules. Furthermore, in the event that there were any substantial concentration of control problems arising from eliminating the rule, these commenters believe that the antitrust laws are always available to deal with such matters on a case-by-case basis when radio mergers are proposed. However, we did not seriously consider this option because it was not within the scope of the proposals set forth in the *Notice* in this proceeding. In addition, we believe that the modest change we have made in our rule is appropriately a more cautious and careful approach.

47. For the reasons set forth above, we decided that the public interest would best be served by revising the radio duopoly rule to proscribe the common ownership, operation or control of radio stations in the same service where the principal city contours overlap. We find that the principal city standard will provide the most benefits with the least detriment to our diversity and competition concerns. Specifically, this modest approach best reflects stations' true coverage areas or listenership, and best furthers our traditional policy goals while enabling broadcasters and the public to take greater advantage of the benefits of greater common ownership.

SUMMARY

48. In sum, we find that the record supports our initial evaluation in the *Notice* that the radio duopoly rule should be liberalized to permit commonly owned commercial radio stations to be located in closer proximity to one another. Therefore, we are relaxing the rule to a principal city contour standard, which will remedy the overly restrictive and discriminatory effects of the current standard while preserving the substance of the rule. Under this new standard, the common ownership of commercial radio stations in the same service will still be prohibited within the stations' principal city contours, where most of the stations' listeners are located. Although this new approach will lead to more radio combinations within the same ADI market or geographic area, we do not believe that this will adversely affect our traditional diversity or competition concerns because of the substantial growth in media outlets in all size markets. In addition, permitting common ownership of radio stations in closer proximity may enable the public and broadcasters to take advantage of some of the efficiencies and cost savings attributable to common station ownership. We find that the refinements to the rule that we adopt today best balance these benefits against the concerns of some parties that altering the rule would substantially affect diversity and economic competition.

FINAL REGULATORY FLEXIBILITY ANALYSIS

I. Need for and Purpose of this Action:

The action is taken to relax the radio duopoly rule, thus recognizing the substantial public interest benefits of common station ownership while fostering maximum competition in broadcasting and diversification of programming and viewpoints. Although the local ownership rules were originally intended to ensure diversification of viewpoints and programming, that purpose is now adequately served by the tremendous growth in the number and the variety of media outlets in recent years. In addition, comments submitted in this proceeding indicate that the radio duopoly rule may actually be inhibiting the goals of promoting programming diversity and economic competition, especially in markets where there are already a great number of media outlets. Thus, we believe a relaxation of the rule is appropriate.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:

No comments were received relating to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected:

Four alternatives were considered before adopting the instant action. The first option was to leave the radio duopoly rule in its present form. This course of action was rejected as unnecessarily stifling to the growth of competition and detrimental to AM broadcasters in particular. In addition, this option fails to allow station owners to take advantage of the significant efficiencies and cost savings inherent in common ownership.

A second alternative considered was to eliminate the rule. Some commenters argued that the growth in the number of media outlets in individual markets has been strong enough to eliminate the need for the duopoly rule. In addition, they pointed out that the ownership of two AM or two FM stations in the same market, restricted by the duopoly rule, would be similar to owning an AM-FM combination, which is now permitted under Commission rules. These commenters also stated that any concentration of control problems which might arise from elimination of the radio duopoly rule could be settled on a case-by-case basis by antitrust laws. This alternative was not seriously considered, however, because it exceeds the scope of the *Notice*, and it has been rejected at this time in favor of the more cautious, incremental action adopted.

The third alternative considered involved relaxing only the AM duopoly rule. Specifically, in recognition of the generally declining revenues and audience rating problems facing AM broadcasters, several commenters suggested using the 5 mV/m overlap standard instead of the current 1 mV/m standard, or alternatively, using a non-technical standard such as allowing the co-ownership of two AM stations in the same market provided that they are not licensed to the same community. This option would preserve the existing level of diversity and competition among FM stations within individual communities, but would still allow AM broadcasters to take advantage of the efficiencies and related cost savings inherent in joint operations. However, these benefits would be denied to FM stations.

The final option considered and rejected was amendment of the radio duopoly rule to allow consideration on a case-by-case basis of the relevant circumstances (such as interference limitations, classes of stations involved, and the public interest benefits of common ownership) in each market. This alternative was dismissed because it would produce substantial administrative burdens without providing the benefits inherent in specifically relaxing the rule.

The modifications which we enact in this decision, permitting the common ownership of two or more commercial radio stations in the same broadcast service in the same market if their principal city contours do not overlap, strike the right balance between our concern for programming and viewpoint diversity and the benefits inherent in the common ownership of stations.

The Secretary shall send a copy of this First Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.*, (1981)).

PAPERWORK REDUCTION ACT STATEMENT

The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

49. Authority for the rule changes adopted herein is contained in Sections 4(i) and (j), and 301, 303, 308 and 309 of the Communications Act of 1934, as amended.

50. Accordingly, it is ORDERED, that the amendments to the Commission's Rules and Regulations, as set forth in the Appendix below, ARE ADOPTED.

51. It is FURTHER ORDERED, pursuant to the Administrative Procedure Act, 5 U.S.C. Section 553(d)(1), that these amendments, which relieve a restriction, SHALL BE EFFECTIVE immediately upon adoption of this First Report and Order.

52. In addition, it is FURTHER ORDERED, that all pending waiver requests involving radio station combinations that would be permissible under the amendments to the radio duopoly rule adopted herein will be DISMISSED as moot by the staff, pursuant to delegated authority.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

47 CFR, Part 73 of the Commission's Rules is amended to read as follows:

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: Secs. 1, 5, 4 and 303.

2. Section 73.3555 (a)(1) is amended by replacing "1 mV/m" with "5 mV/m" and (a)(2) is amended by replacing "1 mV/m" with "3.16 mV/m", as set forth below:

73.3555 Multiple ownership.

(a) * * *

(1) Any overlap of the predicted or measured 5 mV/m groundwave contours of the existing and proposed AM stations, computed in accordance with § 73.183 or § 73.186; or

(2) Any overlap of the predicted 3.16 mV/m contours of the existing and proposed FM stations, computed in accordance with § 73.313; or

* * * * *

FOOTNOTES

[1] 47 C.F.R. Section 73.3555(a)(1) and (2) (1986).

[2] *See* 47 C.F.R. Section 73.24(j) (1986) (defining AM "principal community" or principal city contours); 47 C.F.R. Section 73.315(a) (1986) (defining FM "principal community" or principal city contours).

[3] 2 FCC Rcd 1138 (1987), *summarized,* 52 Fed. Reg. 8086 (March 16, 1987). In response to a motion, the deadline for filing comments in this proceeding was extended for 60 days to June 15, 1987, and the date for filing replies was modified to July 15, 1987. *See Order* 52 Fed. Reg. 12945 (April 20, 1987).

[4] Only four commenters -- the Consumer Federation of America (CFA), the National Black Media Coalition (NBMC), the United Church of Christ (UCC), and El Mundo Broadcasting Corporation -- opposed the Commission's proposed modification of the radio duopoly rule. Although a few of these commenters presented independent evidence in support of their positions, as discussed *infra,* they did not submit statistical studies or analyses specifically refuting the data discussed in this report. CFA did reference two earlier studies, conducted by the Radio and Television News Directors Association, regarding broadcasters' use of cost savings achieved through deregulation; these studies will be discussed in our subsequent report on the radio-television cross-ownership rule.

[5] Regulation 3.106, adopted in the *Report on Chain Broadcasting,* Commission Order No. 37, Docket No. 5060, May, 1941.

[6] *See Order No. 84-A.* 8 Fed. Reg. 16065 (November 23, 1943) (AM "Duopoly Rule").

[7] *See* 47 C.F.R. Section 73.3555(a) (1986).

[8] *Report and Order* in Docket No. 14711, 45 FCC 1476, 1480 (1964), *recon. granted in part and denied in part,* 3 R.R. 2d 1554 (1964).

[9] *Notice*, 2 FCC Rcd at 1141. *See* paras. 26-27 *infra*.

[10] *Id., quoting Associated Press v. United States*, 326 U.S. 1, 20 (1945).

[11] *Report and Order* in Docket No. 14711, 45 FCC at 1477 (1964).

[12] *See Report and Order* in Gen. Docket No. 83-1009, 100 FCC 2d 17, 38 (1984), *recon. granted in part*, 100 FCC 2d 74 (1985), *appeal pending sub nom. National Ass'n of Black Owned Broadcasters v. FCC*, No. 85-1139 (D.C. Cir. March 19, 1985) (*"12-12-12 Order"*).

[13] *First Report and Order* in Docket No. 18110, 22 FCC 2d at 314.

[14] *Id.* at 314.

[15] *See, e.g.*, Comments of Bonneville International at 6-10 (Salt Lake City, Anchorage, and Fairbanks, Alaska); Comments of Capital Cities/ABC at 14-21 (New York, Portland, and Memphis); and Comments of Fisher Broadcasting at 5-6 (Seattle-Tacoma and Portland). All market ranks referred to in this note are based upon A.C. Nielsen's ranking of Designated Market Areas.

[16] *See, e.g.*, Comments of CBS, Inc. (top twenty TV markets and TV markets 51-55); Comments of NAB (all 209 DMA TV markets); Comments of NBC (top 75 radio markets and top 75 television markets); and Jet Broadcasting (top 150 radio markets).

[17] Comments of NAB, Appendix B, "An Analysis of Media Outlets by Market" (June 1987) (NAB Media Outlet Study). Specifically, the study counted the following media outlets: (1) the total number of television stations within each DMA; (2) the number of commercial radio stations (AM, FM, and combinations) which have a reportable audience share and are located within each DMA's recognized "metro" areas; (3) the number of newspapers published within each DMA; (4) the number of significant newspapers and periodicals within each DMA -- *i.e.*, those whose circulation figures equal at least 5% of the households; (5) cable penetration (the percentage of television households within each DMA that subscribe to cable television) and the average number of cable channels in use in each market; and (6) the VCR penetration within each DMA (the percentage of television households with VCR's).

[18] NAB Media Outlet Study at 1.

[19] The following table sets forth the average number of broadcast outlets in different market categories:

Market	TV	AM	FM	Total
1-25	13.4	29.8	29.2	72.4
26-50	7.6	15.8	13.4	36.8
51-75	7.5	14.1	12.1	33.7
76-100	6.7	10.5	9.0	26.2
101-125	5.6	7.6	8.1	21.3
126-150	5.7	9.2	9.0	23.9
151-175	3.9	4.8	5.0	13.7
176-200	2.8	3.6	3.8	10.2
201-209	3.1	2.5	3.3	8.9

NAB Media Outlet Study, Figure 1. Although there appear to be slight mathematical errors in a few of these calculations, we do not believe that those errors affect the general findings of the study in any way.

[20] Specifically, NAB calculated the Herfindahl-Hirschmann Index (HHI) (used by DOJ to assess the effect on competition of the merger of two or more firms in the same industry by considering the relative market shares of all the firms) for each radio market. Markets with an HHI below 1,000 are classified as "unconcentrated," markets with HHI's between 1,000 and 1,800 are "moderately concentrated," and those with HHI's over 1,800 are considered to be "highly concentrated." Department of Justice, *Revised Merger Guidelines*, 49 Fed. Reg. 26823 (June 29, 1984).

[21] *See* Wilkofsky Gruen Associates Inc., *Market Concentration Analysis* (April 14, 1987) (CBS Concentration Study), attached as Appendix D to Comments of CBS, at Table IV.

[22] Several other proposals were advanced as well. NBC suggested a market-by-market approach. Under this approach, the Commission would consider the extent of competition within the market and examine several factors, including: (1) interference limitations; (2) extent of competition by other mass media outlets in the overlap areas; (3) classes of stations involved; (4) areas, populations and economic conditions within the overlap area; (5) audience ratings of the relevant stations within the overlap area; and (6) public interest benefits of common ownership. Other parties advocated the adoption of a case-by-case approach, specific relief for small AM stations, or permitting the common ownership of all AM stations except those licensed to the same community.

[23] As noted *infra* at paragraph 35, the evidence submitted in this proceeding regarding the efficiencies and cost savings of joint station ownership may not be wholly relevant to the present modification of the radio duopoly rule, because common ownership of radio stations in the same service will still be prohibited in the same principal city or main listening area. Accordingly, we have made only general reference to potential efficiency benefits in this proceeding and plan to address the arguments on both sides of this issue more thoroughly in a future decision regarding our one-to-a-market rule (which currently prohibits joint ownership of radio and TV stations in the same market).

[24] *See* 47 C.F.R. Sections 73.24(j), 73.315(a) (1986).

[25] *See* Comments of NBC at Exhibit 27.

[26] *Id.* at Exhibit 28.

[27] *See Notice*, 2 FCC Rcd at 1141.

[28] *See* Comments of Jimmy L. Ray at 3.

[29] *Report and Order* in Docket No. 14711, 45 FCC at 1483-84. The Commission added that "[i]n this sense. . .[the AM and FM contour standards] are roughly comparable. . . .we have chosen a signal level which provides an adequate signal for reception in areas where overlap is most likely to occur and, in each case, the chosen signal level contour encompasses an area relatively free from co-channel and adjacent channel interference." *Id.* at 1484.

[30] *See Report on the Status of the AM Broadcast Rules (AM Report)*, prepared by Mass Media Bureau, Gen. Docket No. 87-26, released April 3, 1986, Appendix 1, at 82-88.

[31] Comments of Shamrock Broadcasting, Inc. at 5-6. On the other hand, our acknowledgement of the existence of this inequitable treatment of AM stations under the present rule does not mean we should relax the duopoly rule only for AM stations. For the reasons stated in paragraph 44, *infra*, such an approach would ignore the advantages to the public of relaxing the rule for both AM and FM stations.

[32] *See Notice*, 2 FCC Rcd at 1140.

[33] These percentages, as well as others discussed *infra*, are based upon station totals contained in the following chart, illustrating growth in various categories of stations for 1964 and 1988.

Year	AM	FM	TV	Total
1964	4,061	1,628	775	6,469
1988	4,923	5,493	1,791	12,207

The figures for 1964 are derived from *FCC Annual Report - FY 1964*, at 78. The 1988 station totals are based upon Commission records as of October 31, 1988.

[34] *Id. See also AM Report* at Appendix 1, at 82-88.

[35] In addition to the growth in the traditional broadcast services, there has been a rapid expansion in the new low power television service. Established in 1982, there are currently 399 on-air stations and 1,329 outstanding construction permits for new stations in this service. *Broadcasting*, November 7, 1988 at 14.

[36] For example, in BC Docket 80-90 and in other related proceedings, we established 689 new commercial FM allotments, most of which are in medium and small radio markets, and created three new classes of FM channels to encourage the development of even more FM stations beyond those already allocated.[15] *See Report and Order* in BC Docket No. 80-90, 94 FCC 2d 152 (1983), *recon. denied*, 49 Fed. Reg. 10260 (March 20, 1984); *see also Implementation of BC Docket No. 80-90*, 100 FCC 2d 1332, 1340-1378 (1985). Furthermore, a significant number of new AM stations are likely in the future when the band from 1605 kHz to 1705 kHz becomes available for AM broadcasting as a result of international agreements. *See Fourth Notice of Inquiry* in Gen. Docket No. 84-467, FCC No. 88-72 (released June 3, 1988).

[37] In 1964, there were only approximately 1,200 operating cable systems and 1,085,000 subscribers, as compared to 8,000 cable systems and 43,279,980 subscribers in 1987. *Television and Cable Factbook*, Cable and Services Volume, 1987 Edition, Number 55, at A-40.

[38] *Report and Order*, Docket No. 87-24, 3 FCC Rcd 5299 (1988).

[39] For the purposes of computing the number of stations in a particular local market, it is more appropriate to utilize a widely used statistical market measure, such as the MSA, than to attempt to measure the principal city contours of all the stations in the area. Although we have argued that most listening occurs within a station's principal city contour, other stations located within the same local area but outside that contour may nevertheless provide competition for and be receivable by some portion of the station's audience. In addition, because every station in a local market may have a different area of signal and audience coverage from every other station, using a principal city standard in this context would seem unduly burdensome.

[40] The following table lists the average number of commercial radio stations in various market categories:

Market	Average Number of Commercial Radio Stations in 1987
1-25	35.28
26-50	22.68
51-75	19.24
75-100	16.68
100-125	13.48
125-150	12.48
150-175	10.48

Station totals are derived from data contained in *Spot Radio Rates and Data*, September 1, 1987 at MD-22. Furthermore, the market rankings that we used are based upon the total population within each MSA. As a result, the rankings may differ in some respects to those done by Arbitron, which ranks markets according to total numbers of listeners that are 12 years of age or older.

[41] Comments of CFA at 5-6.

[42] The "products" involved in competition analysis of broadcast media are the listening or viewing audiences, which are in effect sold by radio and television stations to advertisers. *See, e.g.*, B. Owen, *Television Economics* at 4-6 (1974). The relevant product market is thus measured by the substitutability of different media (*i.e.*, radio, television, cable, and newspapers) for the purposes of purchasing advertising.

[43] *See, e.g.*, Comments of Hudson Group Limited Partnership of Pennsylvania and Wisconsin and articles appended thereto.

[44] For example, commenters provided evidence that suggests that there would be meaningful efficiencies inherent in owning and operating AM-AM or FM-FM combinations in the same market that would produce cost savings. In essence, these studies found that radio-radio combinations can take advantage of economies of scale in the critical areas of staffing, advertising, and capital expenditures for equipment and physical facilities. *See, e.g.*, Comments of Clear Channel Communications, Inc. at 6-8; Broadcast Investment Analysts, "Analysis of the Efficiencies of Joint AM Operations," attached as Appendix A to Comments of NAB in response to the *AM Report*; Reply Comments of FTC at 6-8.

[45] 47 C.F.R. Section 73.1125.

[46] In particular, the evidence shows that, at least with respect to television programming in general and radio programming of radio-TV combinations, group-owners may provide more informational, local, and other non-entertainment programming than non-group-owners. *See, e.g.*, Comments of NBC at 24 (comparing informational programming aired by NBC-owned stations and other stations in the top 25 markets in 1979); and Comments of NAB, Appendix D (comparing 1985 news and programming budgets of stand-alone radio stations with those of radio stations jointly owned with a television station).

[47] Other service benefits resulting from the cost savings of common ownership could be the possible activation of unused FM radio allocations, providing new broadcast service to the public, and improvement in the technical facilities of existing stations, such as increasing a station's power.

[48] Indeed, we have utilized this rationale in permitting, on a case-by-case basis, the common ownership of certain radio and UHF television stations in the same market. *See, e.g., American Public Life Broadcasting Co.*, 36 R.R. 2d 1181 (1976); and *Central Broadcasting Co., Inc.*, 21 R.R. 2d 482 (1971).

[49] Although some commenters asserted that these efficiency benefits are speculative, we find that the record in this proceeding more than dispels any doubts concerning the existence of benefits of common ownership. The opposition comments failed to refute any of the specific findings in the record, and offered no contradictory evidence of their own on these points. Therefore, we remain unconvinced by their arguments.

[50] *See, e.g.*, Comments of CBS, Taft Broadcasting, Group W, Tribune Broadcasting Company, Knight Quality Stations, Thomas Communications, Saga Communications, Midwest Family, Maryland-District of Columbia-Delaware Broadcasters Association, and Jet Broadcasting.

[51] We also note that several petitions for waiver of the radio duopoly rule are currently pending before us. To the extent that the proposed combinations are permissible under the amendments to the rule as adopted herein, we feel that the combinations should be allowed without consideration of the waiver petitions. To review the merits of these petitions would, in our

ew, serve no public interest benefit. Accordingly, as we ad-sed in our *Public Notice*, 53 Fed. Reg. 51780 (released Decem-:r 9, 1988), all pending requests for waiver of the radio ıopoly rule which would result in permissible combinations ıder the modified rule have been rendered moot and the ıderlying applications in those cases may be granted if it is :herwise permissible to do so.

[52] UCC and CFA have also maintained that the language of ıe 1984 Cable Act, 47 U.S.C. § 553(a), and the 1982 lottery nendments to the Communications Act, 47 U.S.C. §)9(i)(3)(A), suggests Congressional intent to codify existing lo-ıl ownership rules. However, with respect to the lottery law, ıe preference for diversity contained in section 309(i) does not nply a legal barrier to modifying our multiple ownership rules; ıdeed, the lottery law itself does not preclude grants to ondiverse owners. In addition, the broadcast ownership pro-ibitions in the Cable Act apply only to cable-broadcast com-ıon ownership, and we are not addressing that area in this roceeding.

[53] Finally, CFA and NBMC argue that changing the local wnership rules would raise the prices of broadcast stations and ıus impede new entrants into the broadcast industry, particu-.rly minorities and women. We would not expect the rule ıanges adopted here to have a substantial impact on station rices. In addition, we believe that controlling broadcast station rices is not an appropriate Commission goal. To the extent that ıis rule modification may affect minorities and women, we elieve that these concerns can be addressed by our other poli-:ies, such as distress sales, tax certificates, and comparative references, which are not affected by this decision.

[54] *See, e.g.*, Comments of National Telecommunications and ıformation Administration (NTIA), NAB, Shamrock Broad-ısting, Cosmopolitan Enterprises of Victoria, Inc., and Johnson roadcasting.

[55] A related alternative would be to relax both the AM and M duopoly rules but provide a greater degree of relief for the .M service. For example, we could use the 3.16 mV/m overlap :andard for FM but no such technical standard for AM, ermitting instead the common ownership of two AM's even in ıe same community. *See, e.g.*, Comments of Clear Channel :ommunications, Inc. *See also* Comments of Booth American :ompany and Romar Communications, Inc.

[56] *See, e.g.*, Comments of NBC.

[57] *See Notice*, 2 FCC Rcd at 1138.

[58] *See, e.g.*, Comments of Washington Legal Foundation and lelson Enterprises, Inc. *See also* Comments of Celia Commu-.ications, advocating elimination of the AM duopoly rule.