AN ANALYSIS OF THE FEDERAL COMMUNICATIONS COMMISSION'S GROUP OWNERSHIP RULES

Stanley M. Besen, Leland L. Johnson

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PREFACE

Under a grant from the John and Mary R. Markle Foundation, The Rand Corporation is conducting a study, Concentration of Ownership and Control in the Electronic Mass Media, to be completed by mid-1984. The purpose of the study is to assess current knowledge about the effects of media concentration and to analyze its implications for future public policy toward media ownership.

The study focuses on several rules now imposed by the Federal Communications Commission (FCC) to limit the degree of media concentration. These rules include prohibitions against (a) a single entity owning more than seven television stations (only five of which may be VHF), seven AM radio stations, and seven FM radio stations in the entire country—the 7-7-7 or Group Ownership Rules; (b) a single entity owning two or more stations in the same service (AM, FM, or TV) in the same market—the Duopoly Rules; (c) a television broadcasting station owning a cable television system in the same market; and (d) a telephone company owning a cable television system in the same market.

Because the Commission has now issued a Notice of Proposed Rulemaking considering the possibility of modifying or eliminating the Group Ownership Rules, the Rand team has established as its first priority the assessment of knowledge about the effects of television group ownership and the implications of national media concentration for public policy. The purpose of this Note is to present preliminary findings about group ownership in a timely manner so that they may be helpful to the Commission in its deliberations. The results may also be of use to other government agencies, interested private parties, the academic community, and the public at large. An expanded and revised version of this Note will be included in a final report, which will also examine the other FCC media concentration rules described above.
SUMMARY

The Federal Communications Commission is presently reconsidering its Group Ownership Rules that prohibit anyone from owning more than seven television, seven AM radio, and seven FM radio stations in the United States. Among the options being considered by the Commission are total repeal of the Rules or increasing their numerical limits. This study assesses the current state of knowledge about the effect of television station group ownership in order to assist the Commission in its deliberations.

The Group Ownership Rules are designed to expand the diversity of sources of information available to the American public as well as to prevent the monopolization of the broadcasting industry. To the extent that group ownership creates operating efficiencies not available to singly owned stations, however, the Commission must trade off these objectives against potentially improved station operation. Thus, reviewing the evidence about group ownership, we focus both on the efficiencies that may be derived from the existence of groups as well as on possible evidence of anti-competitive behavior.

The study reaches four basic conclusions. First, there is little evidence that group-owned stations operate more efficiently than do singly owned stations and whatever efficiencies arise appear to be small. Apparently singly owned stations are able to obtain through the market many of the services that groups provide to their members.

Second, there is no evidence to support the proposition that group-owned stations are able to bargain more effectively in their dealings with networks, advertisers, and program suppliers. Thus, the fear seems unfounded that these stations might "leverage" their position in one market to affect their dealings in others to the disadvantage of their singly owned rivals.

Third, although the evidence is quite weak, little indication exists that group ownership facilitates collusion among stations. Our examination of station behavior in advertising markets suggests that the presence of group owners has no influence on advertising rates.
However, mixed evidence exists on the question of whether the presence of network-owned stations leads to higher rates.

Fourth, the severely limited evidence suggests that no connection exists between group ownership and the diversity of fare available to the viewing public.

In light of the limitations of the available empirical evidence on the effects of group ownership, the study turns to an analysis of the likelihood that group ownership will permit stations, operating either individually or collectively, to exercise market power. We conclude that it is highly unlikely that leverage will be exerted by group-owned stations to the disadvantage of their singly owned rivals. Thus, for example, if a program is more valuable to a singly owned station than to a group owner in a particular market, an arrangement can be fashioned that would make the supplier, the group owner, and the singly owned station all better off than if the singly owned station were denied the program.

We also conclude that group ownership may increase the opportunities for collusion among stations, but that the conditions under which this will occur are extremely limited. In particular, a combination of stations into a group will increase the likelihood that market power will be exercised if (a) the stations are in the same relevant market, i.e., advertisers regard purchases on the two stations as substitutes, (b) the relevant market is concentrated, and (c) the combination substantially increases concentration. A combination of stations in adjacent cities each of which contains a relatively small number of stations is, thus, more likely to create market power than a combination of two stations in widely separated cities or in cities that contain many other stations.

On the basis of these considerations, we recommend against simply raising the numerical limit on the number of stations that can be owned by a single entity on the grounds that such a change might prevent some combinations that would be benign while permitting others that might be harmful. Instead, we recommend that the Commission rely upon either the present or an improved regional concentration rule in place of the existing Group Ownership Rule, or employ a case-by-case approach to station combinations that follows the approach of the Department of
Justice's merger guidelines. Either approach would undoubtedly permit many combinations that are not allowed under the present Group Ownership Rules, while maintaining a mechanism to prevent combinations that might create market power.
ACKNOWLEDGMENTS

We wish to thank the John and Mary R. Markle Foundation for financial support, Mary Milton of the Foundation for her encouragement, and Rand colleague James N. Dertouzos for many useful comments on a draft of this Note.
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I. INTRODUCTION

Only a few years after it came into being, the Federal Communications Commission began to regulate broadcast station ownership by limiting any entity to owning three AM radio stations anywhere in the country. Subsequently, proceeding by a combination of ad hoc rulings and formal administrative proceedings, the FCC gradually erected a system of regulations that today (a) prohibits anyone from owning more than seven commercial AM radio stations, seven FM radio stations, and seven TV stations, no more than five of which can be VHF stations, in the United States, (b) limits the ownership of stations in the same region, (c) limits anyone to owning a single station in each service (AM, FM, and TV) in each market, and (d) prevents anyone from acquiring more than one station of any type in each market. These rules have remained largely unchanged for three decades, except for an abortive attempt to limit television station ownership to three stations in the top 50 markets and the recently enacted regulation limiting the ownership of stations that, while not in the same local market, are in geographic proximity to one another.

In enacting the Group Ownership Rules that limit national ownership of broadcasting stations, the goals of the Commission were "to maximize diversification of program and service viewpoints as well as to prevent any undue economic concentration contrary to the public interest."1 Now, however, the FCC has issued a Notice of Proposed Rulemaking that may lead to the repeal or modification of these rules. The Commission is reconsidering its Group Ownership Rules because their arbitrary nature has long been criticized, and because the radio and television broadcast industry has changed greatly since the Rules were adopted in their present form in 1954.2 The Commission's reconsideration, of course, raises many issues about the effects of the current rules and alternatives to them. Our purpose in Sec. I is to describe briefly the

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2 Id.
most salient of these issues and to describe how we intend to treat them in this study.

THE DIVERSITY OF SERVICES AND THE ECONOMICS OF GROUP OWNERSHIP

Current restrictions on group ownership primarily reflect the desire to promote diversity of information sources to the American public. As it explains in its Notice, "The Commission's principal concern in implementation of its policy of diversification of ownership has not been the enhancement of economic competition but, rather, the advancement of diversity in sources of information in order to further First Amendment values."\(^3\) Implicit in this statement is the fear that group owners tend to impose on their stations common points of view and sources of programming that reduce diversity below the level afforded by singly owned stations. Concerns are also expressed that group ownership tends to increase the selling prices of stations, making it more difficult for them to be acquired by minority groups and others who would add to the diversity of viewpoints.

Thus, for example, Coffey\(^4\) argues that

The goal of diversity rests on the theory that separate coverage of social and political events will lead to more varied presentations, thereby facilitating greater accuracy, fairness, thoroughness and balance of the media. It is based on noneconomic considerations. It is a deeply ingrained legal belief that ownership diversity tends to enhance this country's democratic ideals by limiting the importance which any set of sources plays in shaping opinions and attitudes.

A factor both conflicting with and complementing the goal of diversity, however, is the effect of group ownership on the economic efficiency with which stations operate. Economies may well result when broadcast stations are joined together into groups. For this reason, the Commission has argued that: "The multiple ownership of broadcast stations does play an important role in our nationwide broadcast system."\(^5\) Groups may be able to provide services to their stations,

\(^3\) Id. at 41.
\(^5\) 43 F.C.C. 2797 at 2801 (1954).
including the production and acquisition of programs and the selling of advertising, at a lower cost than the combined costs of each of the stations operated independently. To the extent that current limitations on group size prevent these economies from being fully realized, i.e., to the extent that groups must operate below minimum efficient scale, station operating costs are higher than necessary. As a result, a conflict may exist between the maximization of diversity and the goal of maximizing the efficiency of the broadcasting system. If the Commission relaxes its rules and the economies of group ownership are important, singly owned stations will be placed at an additional competitive disadvantage creating incentives for them to sell out to station groups.

At the same time, a complementary relationship may also exist between the two goals. The economies afforded by group ownership may permit better or different programs that also contribute to diversity. As the Commission recognizes: "There may be greater diversity of views in the programming made available by strong group owners than in the repetitive fare which may otherwise be available." Moreover, the number of economically viable stations may be reduced if efficiencies in station operation achieved through group ownership are not fully exploited.

A major issue, then, is the extent to which group ownership does, in fact, generate operating economies. On the one hand, if no economic advantages are conferred, it may be possible to increase the diversity of views without economic loss simply by restricting any entity to owning a single station. On the other, if the economic advantages of group ownership are large, the Commission must consider carefully the

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6 Whether singly owned stations have higher costs depends importantly on whether their ability to purchase services from networks, program syndicators, and spot advertising representatives is an effective substitute for the services provided by groups to their members.

7 As we will see below, it is also argued that groups may be able to disadvantage their singly owned rivals even if groups are not more efficient.

8 Notice of Proposed Rulemaking, at 46-47.
gains that might be achieved by liberalizing or eliminating its ownership restrictions and the effect of these gains on program diversity.

Finally, the FCC has been concerned with the issue of market power in the hands of groups. As it stated when the Group Ownership Rules were amended in 1953:

One of the basic underlying considerations in the enactment of the Communications Act was the desire to effectuate the policy against the monopolization of broadcast facilities and the preservation of our broadcasting system on a free competitive basis.... This Commission has consistently adhered to the principle of "diversification" in order to implement the Congressional policy against monopoly and in order to preserve competition.\textsuperscript{9}

Addressing this concern raises questions about whether groups, either acting individually or in concert, engage in anti-competitive behavior.

Some fear that group owners compete unfairly with singly owned stations by using their greater economic power in bargaining with advertisers, syndicated program suppliers, and networks. For example, the Barrow Report asserted that

Multiple station owners, by bargaining with networks, national spot representatives, and independent program suppliers for their group of stations as a whole, have been able to obtain more favorable terms which give them a competitive advantage over single station owners.... In bargaining with networks, the multiple station owner is in a position to seek network affiliation for all his stations, to have stations placed on the "must buy" list, and to establish the rates for his stations and the division of compensation between the network and the stations on a more favorable basis than the standard network arrangements.\textsuperscript{10}

Thus, it is contended, group owners may "leverage" their control of stations in some markets into obtaining more favorable terms in others.

\textsuperscript{9} Amendment of Multiple Ownership Rules, 9 R.R. 1563 at 1568 (1953).
Moreover, in addition to the possibility that the behavior of individual groups is anti-competitive, as suggested in the Barrow Report, there is the danger that groups will collude to further enhance their market power. Whether the threat of collusion would intensify if the Group Ownership Rules were liberalized or eliminated is thus clearly relevant to the current debate.

PURPOSES OF THIS STUDY

In Sec. II we assess the empirical evidence from past studies about the effects of group ownership on operating costs and on competitive behavior. This task involves examining reported differences between group-owned and singly owned stations with respect to advertising rates, profit margins, sale prices, program ratings, syndicated program prices, network compensation, and network affiliation. We conclude that no evidence exists to support the view that groups have engaged in anti-competitive activity. However, only a limited amount of evidence is available and, in some cases, it is in a form that does not permit the effects of economies of group ownership to be disentangled from those of anti-competitive behavior. Moreover, the evidence suggests that the economies resulting from group ownership are not large.

In light of the limited value of this evidence, in Sec. III we analyze the conditions under which groups, acting either individually or in collusion with others, would likely behave anti-competitively. We conclude that such behavior by individual groups is quite unlikely. A less remote possibility is collusion among groups, which might arise if certain patterns of group ownership were to emerge.

In Sec. IV, we discuss options available to the Commission, and show that either simply raising the limit on the number of stations that may be owned, or substituting an ownership limitation based on the size of the audience served, would fail to cope with the possible dangers of collusive behavior. Then we treat an alternative to simply raising the quantitative limit on station ownership—the modification of the present regional concentration rule as a substitute for the Group Ownership Rules. Finally, we discuss a better option—lifting the blanket
quantitative restrictions and evaluating proposed station acquisitions or applications for new licenses on a case-by-case basis under well-defined criteria.
II. WHAT IS THE EVIDENCE ABOUT THE EFFECTS OF GROUP OWNERSHIP?

This section reviews studies that deal with the effects of group ownership on the behavior and performance of television stations. We are concerned with empirical evidence relating to (a) economic efficiency—whether group ownership confers operating economies in program production, marketing of advertising, and other activities, (b) anti-competitive behavior—whether individual groups bargain unfairly with advertisers and others, or collude with one another, and (c) diversity—whether group ownership increases or decreases the range of viewpoints in the programming available to the American public.

It is fair to say that the available evidence generally is thin; and the findings of each study are far from definitive. Nevertheless, the pattern of the findings is quite interesting. For it suggests that (a) the economies of group ownership are not large, (b) groups do not engage in anti-competitive activity, and (c) group ownership may have little effect on diversity of viewpoints.

It is important to note that this evidence, by itself, is too weak to provide a sufficient basis for policy decisions. However, when it is combined with a priori analysis—some of which we present in Secs. III and IV—a tolerably firm foundation may emerge for policymaking.

We review past studies in each of the following areas: (1) advertising rates, (2) program prices, (3) network compensation, (4) network affiliation, (5) station profit margins, (6) program ratings, (7) station sales prices, (8) growth of group ownership, and (9) station programming practices. We then discuss conclusions from the pattern of the evidence in these nine areas and, finally, draw policy implications for regulating group ownership.

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1 None of the major studies of which we are aware deals with group ownership in radio.
ADVERTISING RATES

How would economies of group ownership and anti-competitive behavior be expected to be manifested in advertising rates? To answer this question we must consider five cases: (1) group-owned stations operate more efficiently than do singly owned stations, but do not engage in anti-competitive activities; (2) group-owned stations are more efficient, and engage in collusion; (3) group-owned stations are no more efficient, and engage in collusion; (4) group-owned stations are more efficient, and exert leverage in their dealings with others; and (5) group-owned stations are no more efficient, and exert such leverage.

Case 1: Greater Efficiency Without Anti-Competitive Behavior

In case 1, we would expect markets containing only group-owned stations to have lower advertising rates (everything else held constant) than markets with only singly owned stations or markets with a mixture of the two types of stations. In a mixed market, for example, advertising rates presumably would be determined by the higher costs of the singly owned stations. Advertisers, concerned with cost per viewer reached, would be indifferent as to which stations they use. Hence, rates for all stations would tend to be identical. These rates would be just high enough to cover the costs of the singly owned stations (which are the "marginal" stations) while group owners would enjoy higher profit margins because of their lower costs. Hence, the rates in mixed markets would be above those in group-only markets where the marginal stations have lower costs. Rates in mixed markets would, however, be the same as those in markets with only singly owned stations since singly owned stations are the marginal stations in both types of markets. Comparisons of rates between group-only and either mixed markets or markets containing only singly owned stations would be an appropriate way to detect economies in advertising that accrue to group owners. However, comparisons confined to mixed markets would show no differences in rates even if group-owned stations were more efficient.

\[2\] However, if advertisers are willing to pay higher rates per viewer to stations with larger audiences, group-owned stations will have higher rates if their greater efficiency produces larger audiences.
Case 2: Greater Efficiency and Collusion

Rates would rise in markets in which groups collude. The extent to which colluding group-owned stations are able to raise advertising rates depends on the competition they face from singly owned stations. Thus, the greater is the combined market share of group-owned stations, the greater we expect advertising rates to be.

Unfortunately, comparisons between advertising rates in group-only and either mixed markets or markets with only singly owned stations will fail to distinguish between the effects of efficiency and those of collusion. The greater efficiency of groups would drive down rates in group-only markets relative to those in other markets. However, collusion would push these rates in the opposite direction. Conceivably, rates could be similar across markets with the downward pressure from group efficiencies being offset by the upward pressures of collusion among groups.

However, comparisons confined to mixed markets would be an appropriate way to disentangle the effects of collusion from those of efficiency. In case 1, we saw that rates in mixed markets would not be affected by greater efficiencies of group ownership, because rates would be determined by the higher costs of singly owned stations. But the effects of collusion would still be manifested, since advertising rates would vary with the audience share of group-owned stations in each mixed market.

Case 3: No Greater Efficiency and Collusion

Without the offsetting effects of group efficiencies, group ownership would raise advertising rates in group-only and mixed markets if groups collude more effectively than singly owned stations. Thus, one can identify and measure the efficiencies produced by group ownership only if no collusion exists among groups. If we are uncertain about the presence of collusion, we cannot be confident that differences in advertising rates among markets reflect only differences in efficiency. At the same time, whether or not efficiencies of group

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3 The conditions under which group-owned stations are more likely to collude than singly owned stations are discussed below.
ownership exist, one may be able to detect collusion by comparing rates among mixed markets with different market shares held by group-owned stations.

**Case 4: Greater Efficiency and Leverage**

In cases 1-3, advertising rates of group-owned stations were the same as those of other stations in a mixed market, with any differences in costs being reflected in higher profit margins of group-owned stations. However, if groups are able to use leverage across the markets in which they operate in bargaining with advertisers, we would expect the advertising rates of their stations to be higher than those of other stations in the same markets. To examine this possibility, one would compare the rates of group-owned and singly owned stations within markets—in contrast to the previous cases where one would be concerned with comparisons among markets.⁴

**Case 5: No Greater Efficiency and Leverage**

Again leverage would be manifested in higher advertising rates for group-owned stations, but their profits would be lower than those in case 4 because there is no efficiency gain from group ownership.

**What Does the Evidence Show?**

We have identified five studies of advertising rates bearing on our concerns. The earliest, relevant to cases 4 and 5 above, was carried out by United Research, Inc., on behalf of the Council for Television Development. This ad hoc industry group, comprising 42 firms that together owned over 100 television stations, was established to participate in an FCC proceeding dealing with possible strengthening of the FCC's ownership rules.⁵ Seeking to determine whether group-owned

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⁴ If, however, group-owned stations generate larger audiences than singly owned stations and advertisers are willing to pay more per viewer for larger audiences, group-owned stations can have higher rates even if they do not exert leverage.

stations have an unfair competitive advantage, Cherington et al. compare advertising rates between group-owned and single-owner stations. They conclude that "there was no difference in the overall averages [of prime 20-second spot rates] for the group-owned stations vs. the single-owner stations ($3.27 and $3.28, respectively, in 1965).... For market group 101-150, group-owned station averages were slightly, but not significantly, higher, while for the market group with the smallest audiences the single-owner stations showed higher cost-per-thousand figures."6

The authors also examine rates based on network gross class A hourly time charges for the years 1960 to 1965. For all markets taken together, group-owned stations charge less than do singly owned stations. When the results are disaggregated by market size and analyzed separately for 1964 and 1965, singly owned stations have lower rates with the exceptions of markets 51-100 and markets of 101-150 for 1965.7

In another report based on the same study, Levin8 notes that "the URI analysis of prime 20-second spot rates for 464 TV stations in 1964 and 1965 reveals no significant difference in CPM's (cost per thousand viewers) as between group and non-group stations in the top 100 markets. In the third fifty markets, group owners do command slightly higher rates, but in the smallest markets (151 and over) the single owners do so even more."9

Although this evidence suggests that groups do not exert leverage in their dealings with advertisers, the URI study has a number of weaknesses. First, it reports averages of rates for group-owned and singly owned stations within particular ranges of market size (like markets 51-100) rather than differences within specific markets. Conceivably in some markets large differences could exist without much

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6 Id. at 54.
7 Id. at 54.
9 Id. at 798.
affecting the average for the category. Second, the study fails to
assess the statistical significance of the observed differences in
rates, nor does it control for other variables, such as the age of
stations, family incomes, differences in market competition, and other
characteristics that could affect the results. Finally, the study's
results are not relevant either to measuring the efficiency of group
ownership or to detecting collusive behavior, since they do not involve
comparisons among markets. The study's findings are equally consistent
with the hypothesis that group-owned stations collude to raise prices
and create an "umbrella" over singly owned stations as they are with the
authors' conclusion that group ownership has little or no effect on
advertising rates.

A second study, by Peterman,\(^1\) designed to assess whether group
owners collude, involves a series of regressions in which the dependent
variable is the discounted 20-second national spot rate for prime time.
He finds that the number of homes reached and family income in a
station's broadcast area are significant explanatory variables.
Peterman then attempts to determine whether group ownership affects
advertising rates by constructing a sample of 97 TV markets containing
those with three stations plus all other markets in which three stations
obtained more than 90 percent of the audience, i.e., very small and very
large markets were excluded. For each of the 97 markets, he derives the
average number of homes reached per dollar expenditure per 20-second
advertisement. After controlling for homes reached and market income,
and estimating separate regressions for the 54 small markets and the 43
large markets in the sample, he finds that neither the percentage nor
the number of group-owned stations in the market was significant in
explaining advertising rates. On the basis of these results, Peterman
concludes that "the present distribution of station ownership does not
affect the prices of time to national advertisers."\(^1\)

\(^{10}\) J. L. Peterman, "Concentration of Control and the Price of
Television Time," 61 American Economic Review 74 (Papers and

\(^{11}\) Id. at 80.
Peterman's analysis is more useful than the Cherington study. Especially important are his comparisons among mixed markets, consistent with the discussion of cases 2 and 3 above. Thus, aside from the question of whether operating economies are achieved by group ownership, his findings suggest that groups do not collude. Moreover, he focuses on market prices and attempts to control for differences in market structures by eliminating markets that are either very small or very large. And he controls for other factors that the Cherington study fails to take into account.

However, his study is subject to three criticisms. First, he distinguishes markets only the by percentage or number, of group-owned stations in each. Although this approximates the tests discussed in cases 2 and 3, differentiating markets by the relative market shares of group-owned and singly owned stations would better measure their competitive positions.

Second, Peterman leaves untested the question of the proper definition of the relevant market, implicitly assuming that the market is local.\textsuperscript{12} He argues that "if collusion is not profitable in a more narrowly defined market, it is unlikely to be profitable in one which is more broadly defined." \textsuperscript{13} However, Peterman's tests may fail to detect collusion that exists if the relevant markets for advertising are larger than the city or metropolitan markets in his sample.

The Peterman study, like all studies of the effect of group ownership on advertising rates of which we are aware, implicitly defines the relevant geographic market as a single city or metropolitan area. However, if markets are larger than a single city, the study will be free of difficulty only if the same collections of groups are present in all of the cities that make up a market. If the latter condition is not met, and it is unlikely that it will be, a variable that simply indicates whether group-owned stations are present in a city will fail

\textsuperscript{12} This assumption can be inferred since his elimination of very large and very small markets, and his measures of the extent of group ownership, are based on the number of stations and group-owned stations in a particular city or metropolitan area.
\textsuperscript{13} Id. at 75.
to distinguish between cases in which the groups own other stations in the relevant geographic market and those in which the other group members are not in the market.

To demonstrate, suppose we have four cities, each containing group owners drawn from the sets A, B, C, D, E, F, G, H, I. These owners are distributed among the four cities as follows:

<table>
<thead>
<tr>
<th>City</th>
<th>Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A,B,C</td>
</tr>
<tr>
<td>2</td>
<td>A,B,C</td>
</tr>
<tr>
<td>3</td>
<td>D,E,F</td>
</tr>
<tr>
<td>4</td>
<td>G,H,I</td>
</tr>
</tbody>
</table>

Suppose that cities 1 and 2 form one market for selling advertising while cities 3 and 4 form another advertising market. Looking at each of the cities separately, one would conclude that groups are equally represented with three stations in each city. However, the market consisting of 1 and 2 contains only three separate owners while the market containing 3 and 4 contains six. Thus, the advertising market containing 1 and 2 is more concentrated.

In this example, even if these differences in ownership produce higher rates in the advertising market containing 1 and 2, there will be no measured correlation between group ownership and advertising rates, since all of the stations are group owned. Thus, Peterman's tests will not be able to explain why rates are higher in cities 1 and 2 because of the manner in which he has defined markets.¹⁴

Third, although Peterman's analysis is useful in suggesting the absence of collusive behavior, if one accepts his market definition, it leaves open the question of whether group-owned stations have lower costs than do singly owned stations. As shown in case 1 where stations do not collude, only price comparisons between group-only markets and mixed markets, or between group-only markets and those with only singly owned stations, can shed light on whether group ownership lowers station costs. Since all or most of the markets in Peterman's sample are probably mixed, we would expect to find no differences in advertising rates, even if group-owned stations enjoy lower costs.

¹⁴ We are not arguing that advertising markets are necessarily larger than those Peterman uses. But we emphasize that if advertising markets are larger than his local markets, collusion could exist that Peterman would fail to detect.
A third, more recent, study by Fournier and Martin focuses on the determinants of spot advertising rates. Their analysis is notable because it is based on data from actual advertising contracts rather than on rate cards or on synthetic prices constructed from advertising revenue data that Cherington and Peterman rely on. Fournier and Martin relate advertising prices to the audience exposed to the advertisement, sometimes disaggregated into demographic categories, as well as to various measures of the degree of concentration among stations in the locality served by the station in question.

Fournier and Martin test for whether the presence of a network-owned station in the market affects advertising rates and conclude that it does not. This finding is notable because the major networks with their owned stations face each other in several major metropolitan markets such as New York, Chicago, and Los Angeles. If these cities together constitute a sufficiently distinct advertising market to permit broadcasters there to collectively exercise market power against advertisers, the networks would be in a particularly good position to exploit this opportunity. If they do so, rates in markets with network-owned stations would be higher (again with everything else held constant) than the rates in other markets. The finding by Fournier and Martin of no significant difference in advertising rates suggests that the networks do not collude in setting local advertising rates.

Fournier and Martin also conclude that advertising rates "appear to be unrelated to measures associated with market power". Thus, for

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16 As Levin observes, "The average group-owned station in the one hundred leading markets confronts as many separate competitors as there are stations in its market, mainly because no group normally faces the same group rival in more than one market," op. cit., at 795.

17 Notice that this comparison is analogous to those in cases 2 and 3 discussed earlier. "Mixed" markets convert here to markets with network-owned stations, and markets with "only singly owned" stations convert to markets without network-owned stations.

example, they find no statistically significant differences in rates
between markets with few stations and those with many. However, they do
not replicate Peterman's approach of distinguishing among markets by the
number and percentage of group-owned stations. Thus, their failure to
find a significant relationship between market concentration and
advertising rates does not indicate whether collusion is facilitated by
group ownership.

Fournier and Martin, like Peterman, implicitly define advertising
markets as encompassing a city or metropolitan area. Thus, if
advertising markets are larger than conventionally defined television
markets, their tests may fail to detect evidence of collusion, even if
it exists.

In another study, Levin estimates a number of regressions that
explain a station's 20-second spot rate.\textsuperscript{19} The large number of
equations reported and the wide variety of specifications employed makes
it difficult to briefly summarize Levin's findings. Among the variables
he includes in his regressions are (a) either the number of households
in the market or the number of households that view the station, (b)
household median income, (c) whether the station operates in the VHF
band, (d) whether the station is a network affiliate, (e) whether the
station is owned by a network, (f) whether the station is a member of a
group, (g) whether the station is owned by a newspaper, and (h) whether
there are four or more stations in the market. In one set of results,\textsuperscript{20}
group ownership has no significant effect on advertising rates, in
another\textsuperscript{21} the effects are mixed, and in others\textsuperscript{22} group ownership
significantly raises advertising rates. In all of the equations,
ownership by a network significantly raises a station's rates.

\textsuperscript{19} H. J. Levin, \textit{Fact and Fancy in Television Regulation}, New York:
Russell Sage Foundation, 1980 at 147, 153, 175, and 183.
\textsuperscript{20} Id. at 147.
\textsuperscript{21} Id. at 153.
\textsuperscript{22} Id. at 175, 183.
Clearly, Levin is not testing whether rates are higher in markets with group- or network-owned stations but whether these stations have higher rates than others in the same market. Thus, Levin does not ask whether other stations in markets with network-owned stations have higher rates as a result.

Moreover, it is difficult to identify why the effect of group ownership varies from equation to equation since Levin's equations are complex and he does not conduct explicit sensitivity tests. And some of his results, especially that rates are higher if there are four or more stations in a market even after controlling for the audience obtained by a station, seem puzzling. One possible explanation is that both this variable and network-ownership are picking up the effect of a misspecified audience variable. If advertising revenues are related to audiences in a nonlinear fashion, so that advertising rates are higher in large markets than in small ones, a linear equation will impart a spurious positive coefficient to variables that are present in the larger markets but not in the smaller ones. Nonetheless, the contrast between these results and those of Fournier and Martin is an intriguing one.

One final study that deserves attention is Wildman's examination of the effect of station ownership by the three national networks on spot advertising rates.\(^{23}\) Wildman notes that

It is sometimes suggested that control over the national spot sales of the O-and-O's increases the market power of the networks in the market for national television advertising, a market in which the networks are already dominant.... That O-and-O spot sales may account for as much as 17 percent of the network controlled national advertising suggests that the contribution of O-and-O spot sales to network domination of the market for national television advertising deserves additional study.\(^{24}\)

According to Wildman,

\(^{24}\) Id. at 332.
If non-network programs and marginal network programs are close substitutes financially from the station's point of view, a network owned station will always clear the network programs since this increases the value of network commercial time sold on those programs. For this reason one would expect network owned stations to clear more network programs than unowned affiliates.²⁵

Note that the FCC's Network Inquiry Special Staff reached, and verified, the same conclusion regarding the respective clearance rates of network-owned and affiliated stations. But it did so through a different route.²⁶

To test his hypothesis, Wildman estimated an equation explaining 30-second spot rates. In addition to variables indicating (a) whether the station operates in the UHF band, (b) the network with which the station is affiliated, (c) the number of competing stations, including whether these stations are VHF or UHF stations, (d) the number of households in the station's ADI, and (e) total consumer spendable income in the station's ADI, Wildman includes variables indicating whether the station is network-owned or competes with a network-owned station. His hypothesis is that O&Os and stations that compete with them will have higher advertising rates than other stations. This follows from his argument that O&O clearance rates are higher than those of affiliates and that, therefore, fewer spot advertisements are sold where an O&O is present in a market. The results generally support Wildman's hypothesis, with network-owned stations exhibiting significantly higher advertising rates than other stations.

²⁵ Id. at 335.
²⁶ Federal Communications Commission, Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership, and Regulation, Vol. II, October, 1980, at 247-53, 260-268, and 273-86. One of the present study's authors, Stanley Besen, was Co-Director of the Staff. The Staff argued that transactions costs will be higher when the station is an affiliate because both the station and the network will engage in strategic behavior in order to increase their respective shares of the joint profits. Moreover, this type of behavior is facilitated by such FCC rules as the one that prevents a network from obtaining options on station time. Wildman's hypothesis implicitly assumes that network and national spot advertising are substitutes and that affiliates compete with the networks while O&Os do not.
Wildman's results suggest that network-owned stations charge higher rates than other stations, not that rates are higher in markets with network-owned stations. Although he finds that stations that compete with O&Os do charge higher rates than other stations, the difference is not statistically significant. In addition, the Wildman study, like all of the others we have examined, implicitly assumes that markets consist of cities or metropolitan areas and does not examine alternative definitions of the relevant advertising market.

**PROGRAM PRICES**

The effects of group efficiencies, leverage, and collusion on program prices are the opposite of their effects on advertising rates. Lower operating costs conferred by group ownership would tend to increase the demand for programs, forcing program prices upward; while collusion among groups or leverage exerted by individual groups would tend to force program prices downward. Thus, cases 1 through 5 discussed earlier are applicable, but with the directions of effects reversed.

We know of only a single study in this area—one that tests the hypothesis that group-owned stations are able to obtain more favorable terms than singly owned stations from program suppliers. Analyzing determinants of the prices paid by station per viewer minute for syndicated off-network programs, the FCC's Network Inquiry Special Staff estimated regressions relating these prices to (a) the number of runs acquired, (b) various measures of the number of stations competing for the programs, (c) whether a network-owned station is present in the market, and (d) whether the purchasing station is a member of one of the ten largest groups or was owned by one of the networks.\(^\text{27}\) A consistent finding is that, controlling for the amount of competition for programs, the price per viewer minute is significantly higher, when the purchaser was owned by a large group or by a network. These results fail to support the hypothesis that group owners are able to take advantage of

their position to acquire programs at lower prices than those of their singly owned rivals.

The finding that groups pay more for programs is, however, a puzzle. In speculating about the basis for this finding, the Staff states that "One possible explanation is that it results from the linear relationship we have imposed on the relationship between the price per viewer and the number of viewers. If this relationship is non-linear and if group owned stations tend to be in larger markets and thus command larger audiences than the average station, a linear equation will underestimate the price per viewer for these stations and a variable representing group ownership will show a positive effect on price per viewer."\(^2\)\(^8\) If this conjecture is correct, the result that group owners pay higher prices than their rivals is simply a statistical artifact.

**NETWORK COMPENSATION**

Still another possible way in which the effect of group ownership might be manifested is in the compensation paid to network affiliates. The *Barrow Report* contended, for example, that members of major broadcast groups are able to obtain larger payments from the networks than their singly owned rivals.

The Network Inquiry Special Staff also examined the hypothesis that network affiliates owned by groups are able, as a result, to obtain greater compensation when they clear a network program.\(^2\)\(^9\) The data were derived from the affiliation agreements for virtually all network affiliates in markets with at least three stations, almost 400 stations in all. After controlling for (a) the audience delivered by the affiliate, (b) the strength of the network with which it is affiliated, and (c) the presence and strength of independent stations that might compete for the affiliation, the Special Staff finds no significant difference between the compensation received by stations that are members of the ten largest stations groups and all other stations. This result, like that for syndicated program prices, further weakens the

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\(^2\)\(^8\) Id., footnote 29 at 647, 650.  
case for the proposition that group-owned stations exercise leverage to the disadvantage of their singly owned rivals.

NETWORK AFFILIATION

The exercise of bargaining power by station groups might also be expected to be manifested in their ability to obtain better network affiliations than their singly owned rivals. Indeed, the Barrow Report asserts that this is the case. However, the results of the Cherington study challenge this claim. Presumably, if groups were able to exert such influence, they would tend to be affiliated with the stronger networks—NBC and CBS at that time rather than ABC. Yet, in the top 50 markets ABC "had the same proportion (33%) of stations affiliated with it for both group and single owners."\(^{10}\) Moreover, for both the top 50 markets used and for all markets, the percentage of network affiliated group stations is only slightly greater than the percentage for non-group stations—79 percent vs. 73 percent in the top 50, and 93 percent vs. 86 percent in all markets. Further, the Cherington study found that "of the 17 non-network groups having three or more stations in the top 50 markets, only Corinthian has all of its stations affiliated with the same network."\(^{11}\)

PROFIT MARGINS

One would expect differences in costs between group-owned and singly owned stations, or the exercise of market power by groups, to be manifested in differences in profit margins. One study on this subject—by Cherington et al.—concludes, however, that, except for the smallest markets, no substantial differences arise in profit margins between group-owned and singly owned stations.\(^{12}\) Drawing from station financial data collected by the FCC for 1964, the study finds consistently higher profit margins for group-owned stations for all size markets. However, the differences are small except for markets below 150 where group-owned stations showed a profit ratio of 15.1 percent as against a loss

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\(^{10}\) Cherington et al., op. cit., at 46.

\(^{11}\) Id. at 46.

\(^{12}\) Id. at 60-65.
of 1.7 percent for singly owned stations. Among network affiliated stations classified by net weekly circulation, singly owned stations outperform group-owned stations in markets with more than 500,000 net weekly circulation while group-owned stations show an advantage in the smaller markets. For example, where net weekly circulations exceed 1,000,000, singly owned stations show a profit ratio of 53.8 percent compared with only 41.6 percent for group-owned stations. In contrast, for net weekly circulations between 26,000 and 50,000, singly owned stations show a loss of 4.4 percent as against a positive profit ratio of 10.7 percent for group-owned stations.

The study also examines profit margins for groups containing different numbers of stations. Only groups that include four or more stations exhibit profit ratios that exceeded the ratios for singly owned stations.

As in its inquiry into advertising rates, the Cherington study failed to assess the statistical significance of the differences in profit margins reported, or to control for other factors that may affect the results. Moreover, the quality of the underlying data is subject to substantial question.13

In light of these weaknesses, the evidence suggests that whatever combinations of group efficiencies, leverage, and collusion exist, they increase profit margins for only large groups or for groups only in small markets. This pattern is intuitively plausible. If groups bargain unfairly or collude, they would likely do so in smaller, less competitive markets. And large groups may be in a particularly good position to exploit economies of group operation.

In a later study, Levin14 attempts to determine whether the presence of group-owned stations in a market significantly increases station profitability. He uses published FCC data on market income to estimate profit per station and then relates profit per station to, among other things, the proportion of group-owned station in the market.

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14 Fact and Fancy in Television Regulation, op. cit.
His results are generally negative. He reports, for example, that "group ownership [has] only weakly significant effects...on the market averages of income..."*35 And, in another estimate in which the effect of public television is taken into account,*36 he finds that the effect of group ownership on average station income is not significant at all. However, Levin's results are consistent either with the hypothesis that group-owned stations do not have higher profits than singly owned ones or with the hypothesis that group ownership redistributes profits among the stations in a market without affecting the amount to be divided among them.

**PROGRAM RATINGS**

If group-owned stations enjoy lower costs than do singly owned stations, or if they exercise leverage in dealings with or collude against program suppliers, we would expect them to broadcast programs with higher audience shares or ratings than do their rivals. An empirical study on this subject, by Parkman, suggests that local news programs produced by group-owned stations do tend to attract larger audiences.*37

Parkman uses a multiple regression analysis in which the dependent variable is audience rating and the independent variables include (among others) joint ownership with (a) other television stations, (b) a local daily newspaper, and (c) a local AM station. The data, for the years 1965 and 1975, are drawn from both early evening (5-7 p.m.) and late evening (9:30-11:30 p.m.) local television news programs in the top 100 markets. Parkman finds that, for 1965, group ownership has a positive but statistically insignificant effect on local television news ratings. However, by 1975 the positive effect is larger and statistically significant. Indeed, the coefficient of the group ownership variable is the largest of the three ownership variables and is the only one that is statistically significant. The group ownership coefficients are also of

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*35 Id. at 150, based on results reported at 144.
*36 Id. at 253.
substantial size in 1975. They show that group ownership increases ratings by 2.65 and 1.99 for the early and late news programs, respectively, compared with average market ratings of 12.02 and 9.97. It is unfortunate that this study covers only local news which is produced by the station, rather than including also syndicated programming where any effects of leverage or collusion would more likely show up, if these practices exist. But the study is useful in suggesting that groups do enjoy cost advantages, at least for local news production. As Parkman says, his "results would tend to support the contention that group owners were able to adapt to changes in the production techniques of local TV news programming better than other owners with a resulting higher audience."38

STATION SELLING PRICES

If groups enjoy cost advantages, or engage in anti-competitive activity, one would expect them frequently to outbid others when singly owned stations are up for sale, since these stations would generally be more valuable to groups than to single-station owners. For this reason, some have suggested that selling prices will be higher when a station is purchased by a group than by a non-group. In other words, selling prices would be related to type of buyer.39

As a matter of theory, there should be no correlation between type of buyer and the station sale price. Since sales will presumably be to the highest bidder, an entity wishing to acquire its first station will have to outbid group owners to do so. Even if stations are usually more valuable to groups, this would mean only that groups would usually be the successful bidder, not that they would pay consistently higher prices. Nonetheless, the proposition that group ownership may be related to sale prices has been tested frequently, and we report the results of these tests here.

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38 Id. at 294. In the welter of empirical tests carried out by Levin, Fact and Fancy in Television Regulation, op. cit., he also examines the relationship between audience and group ownership. The general tenor of his results appears to be that there is no significant relationship. See, e.g., tables at 175 and 183.

39 The quality of sales price data is questionable, however, because transactions differ in both form and timing of payment. The published sales price data on which the various studies rely generally do not permit these differences to be taken into account.
A study of selling prices—again by Cherington et al.—involves a sample of 198 stations sales during the period 1949-65. The central question addressed was, "do the prices at which TV stations were sold during the years 1949-1965 vary significantly as between group and non-group stations when full account is taken of differences in the station's market size, network tie, age, or channel type?"40 The study concludes that "in all sales by single-station owners, the type of buyer was least relevant in explaining sales prices, with the number of TV homes most significant."41 This conclusion stems from the fact that type of buyer (as well as type of seller) had a lower "standardized regression coefficient" than did the number of TV homes in the market, age of station, or network affiliation.42 While useful in showing relative importance, the standardized regression coefficient does not indicate whether the coefficient of the ownership variable itself is statistically significant. Thus, a variable said to be more important than group ownership could have a statistically insignificant effect on selling prices while group ownership could have a significant effect.

Fortunately, a later paper by Levin, who was the principal contributor to the above analysis of station selling prices, does report the statistical significance of the coefficients.43 The number of TV homes is significant in all cases, the ownership variable is never significant, and the age of station and network affiliation are sometimes significant. This evidence suggests that the effect of group ownership is not strong enough to generate a significant relationship between type of buyer and selling price.44

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40 Cherington et al., op. cit., at 66.
41 Id. at 66.
42 A standardized regression coefficient is defined as the product of a regression coefficient and the ratio of the standard deviation of the particular independent variable to the standard deviation of the dependent variable. This is sometimes referred to as the "Beta coefficient."
44 For reasons not discussed here, it is less clear, however, that the type of seller (whether group or single) would have an effect on sales prices in the presence of group economic advantages or anti-competitive behavior. Nevertheless, the Cherington study includes type of seller as a variable and shows that it, along with type of buyer, is not significantly related to selling prices.
Although this study does control for other variables that could affect selling prices, it has other weaknesses: (1) network affiliation was defined as major network (primary tie with CBS or NBC) = 4; major/minor (primary tie with a major network and ABC or Dumont) = 3; minor (primary tie with ABC or Dumont) = 2; independent = 1, when a binary variable approach would have been appropriate; (2) the analysis was conducted only for VHF stations; and (3) the number of stations in the market was not included as an explanatory variable even though "one might have liked" to do so.\textsuperscript{45}  

In a more recent analysis of the determinants of station sale prices, Levin examined 310 transactions that occurred over the period 1949-70.\textsuperscript{46} He reports that "[i]n every case studied, stations with any two (or all three) designated attributes (newspaper, group, or network), are seen to enjoy significantly larger price increases for additional homes than stations without such attributes."\textsuperscript{47} This conclusion results from estimating equations that have as explanatory variables (a) the number of homes in the market, (b) whether the buyer or seller is a member of a group or is owned by a newspaper, (c) whether the station is a network affiliate, (d) whether the station operates on VHF, (e) whether the market has three or more VHF stations, and (f) the ages of the station. However, Levin reports\textsuperscript{48} that of the 140 group-owned stations sold, 130 are network affiliates and all but 13 of these are VHF stations. This correlation confounds the separate effects of each factor. Since the result that group-owned sellers obtain higher prices is based on equations that exclude at least one of the other influences, the group-ownership variable may be a surrogate for another factor.\textsuperscript{49}

\textsuperscript{45} Cherington et al., op. cit., at 66.  
\textsuperscript{46} Fact and Fancy in Television Regulation, op. cit. These transactions include the 198 sales examined in the URI study.  
\textsuperscript{47} Id. at 130.  
\textsuperscript{48} Id. at 468.  
\textsuperscript{49} Although network affiliation and VHF operation appear along with group ownership in Levin's equations, they do not both appear multiplied by the number of homes in the market.
GROWTH OF GROUP OWNERSHIP

If large economies flowed from group ownership and/or if groups engage in anti-competitive activity, we would expect rapid growth in group ownership. Surely, if there were large economies of group operation, or opportunities to exert leverage or engage in collusive behavior, significant incentives would exist for groups to purchase singly owned stations. If so, we probably would have seen rapid growth of groups after the FCC's 1954 decision increasing the ownership limit to seven stations, with many or most groups up to the limit. Yet, by the end of 1982, only nine of the 174 television station groups owned seven stations. Only two had the full complement of seven television, seven AM radio and seven FM radio stations. A total of 23 groups held the limit of five VHF stations, at the same time that 20 percent of the nation's 518 VHF stations remained singly owned.

The growth of group-owned stations has proceeded at a steady but not strikingly rapid pace. During the 26-year period from 1956 to 1982, the percentage of group-owned television stations grew from 45 percent to 72 percent, with a substantial number of stations--219 out of 790--remaining in the hands of individual owners.

An anomaly in the pattern of empirical evidence, however, is the higher concentration of group ownership in the larger markets despite the fact that profit margins of groups are higher than for singly owned stations in the smaller markets. Howard reports that as of January 1, 1983, 94.7 percent of the VHF stations in the top 25 markets were group owned, compared with 68.3 percent in markets 75-100. For VHF and UHF combined, the respective numbers are 81.6 percent and 69.6 percent. The Cherington study discloses that (in 1964) the profit margins of group and singly owned stations were nearly the same in the top 50

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51 Notice of Proposed Rulemaking at 25.
52 Id. at 25.
53 Howard, op. cit., at 5
markets (39.1 percent vs. 37.4 percent) but that the difference was
greater in markets 50-100 (24.3 percent vs. 18.1 percent).

One might argue that groups are attracted to the larger, more
lucrative markets where the dollar profits are higher—all the more so
if groups are limited as to the number of stations they may own. But
this explanation is flawed. In the first place, the FCC constraint is
not binding on most groups. Owning fewer than the permitted number of
stations, they are free to expand into the smaller markets. Second, if
the markets with smaller dollar profits are less attractive to group
owners, why are they not also less attractive to single-station owners?
Third, whatever economic advantages would accrue from centralizing
management, spreading program costs over larger audiences, reducing (per
viewer) costs of marketing, and such, would likely be more important for
small rather than for large stations. If so, however, we would expect
greater, rather than less, group ownership in smaller markets than in
larger ones.

STATION PROGRAMMING PRACTICES

The final category of evidence about the effects of group ownership
concerns program diversity. Again, the Cherington study is one of the
few that, to our knowledge, sheds light on this issue. The analysis
involved (a) sending questionnaires to every one of the 532 commercial
stations in the country, from which 81 (or 15.2 percent) were returned,
and (b) conducting 35 interviews "with a representative cross-section of
station managements, a majority of which had not answered the
questionnaire."

The general conclusion the authors draw from this work is that
group ownership has little effect on opinion molding or on
editorializing. Response to the questionnaire from both group-owned and
singly owned stations disclosed that the station manager and news
director have "moderate" to "great" influence on editorial positions.
For group-owned stations "headquarters" and the "owner" played "very
little" role while, for single-owner stations, in contrast, the "owner"
played a "moderate role." For both types of stations, the national

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64 Cherington et al., op. cit., at 82.
65 Id. at 93.
wire services, network news organizations, and station reporting staff were of "moderate or great importance"; while group news organizations for the group-owned stations was of "very little" importance.\textsuperscript{56} The interviews also disclosed a high degree of autonomy by station managers in the selection of programming.

An implication of this evidence--not drawn by the authors--relates to the efficiencies of group operation. One would expect that whatever group efficiencies exist would arise in part from the economies of centralized management, news collection, and presentation. However, if station managers operate as autonomously as is described in the Cherington study, and if they rely so little on headquarters for news content, the economies of group ownership are lower than one would otherwise anticipate.\textsuperscript{57}

The Cherington study is subject to the obvious criticism that the low response rate of 15.2 percent to the questionnaire could have introduced a self-selection bias. And the evidence is based on self-reporting by station respondents rather than on data about how stations actually behave. A content analysis of programs carried by group- and singly owned stations, while tedious and costly to perform, would provide a far better measure of differences in programming.

More recently, Levin reports "that a reduction in group ownership would have no impact on diversity, however measured, so long as network affiliations remained unchanged. Nor, with two limited exceptions, was there any impact on the other program variables studies. Loss of a group tie would have deprived viewers of no more than 3.5 minutes of news daily, and of 5.5 minutes of nonnetwork shows, whereas public affairs, fine arts, and local programming would each have remained unaffected...."\textsuperscript{58} And in another study reported in the same book he concludes that "the loss of group ties...has no significant programming effect, nor any even approaching significance."\textsuperscript{59}

\textsuperscript{56} Id. at 87.
\textsuperscript{57} It is possible, of course, that station managers claim more autonomy than they actually have.
\textsuperscript{58} \textit{Fact and Fancy in Television Regulation}, op. cit., at 170-71.
\textsuperscript{59} Id. at 205. Program minutes is not the only possible measure of diversity, of course.
In view of the great importance that the FCC has, for decades, placed on maintaining and expanding diversity, we are surprised about the paucity of empirical analysis directed to the question of whether its group ownership rules, in fact, contribute to or compromise attainment of this fundamental goal. 60

CONCLUSIONS

The above evidence provide the basis for four conclusions. First, the efficiencies of group ownership may be small. Nothing in the evidence or profit margins or station selling prices supports the notion that they are large, except perhaps in the smallest markets. The growth of group ownership, with a large number of stations still singly owned and with most groups not having reached the FCC-imposed maximum provides further support for this conclusion. Moreover, the apparent high degree of autonomy by local station managers about programming decisions reduces whatever group cost advantages would otherwise exist.

Second, none of the evidence supports the notion that groups bargain unfairly with advertisers, networks, and syndicated program suppliers. The Network Inquiry Special Staff analysis of network compensation and syndicated program prices, the pattern of network affiliations shown in the Cherington study, as well as the data on station selling prices and profit margins, disclose no reason to suppose that leverage is practiced.

60 One opportunity to assess the effects of group ownership on programming was, however, missed. In Broadcasting in America, The Performance of Network Affiliates in the Top 50 Markets, 42 F.C.C. 2d 1 (1973), a group under the direction of FCC Commissioner Nicholas Johnson surveyed the programming practices of a large number of television stations. The authors "had hoped to be able to compare the performance of the 'media barons' - the corporate owners possessed of conglomerate interests both within and without the various media - with that of independent local owners who would have no such outside interests. That comparison has proved impossible, because it is apparent . . . that virtually none but a small handful of those network affiliates would qualify as even reportedly resembling 'local' owners." (at 71) Unfortunately, having failed to distinguish among station groups, newspaper ownership, and ownership by corporations engaged in non-media activities, the authors did not examine separately the performance of group-owned stations nor compare the performance of the largest groups with those of other stations.
Third, the lone study that addresses the question of collusion among groups, Peterman's study of advertising rates, indicates that there is no evidence of collusion if we accept his definition of the relevant advertising market. Nor do profit margins, station selling prices, and trends in past group ownership provide any such support. The studies by Levin and Wildman indicate that advertising rates are higher on network-owned than on other stations, but neither finds that rates are higher in markets with network-owned stations. At the same time, Fournier and Martin find that rates are no higher in markets where the networks own stations. The evidence on the effect of station ownership on the networks can fairly be described as mixed.

Fourth, the severely limited evidence available suggests that group ownership may have little effect on diversity of viewpoints available to the American public. Parkman's is the only study that provides any evidence to the contrary. His finding that group-owned stations provide more popular local news programs than do single-station owners suggests that group efficiencies exist in this function. However, he does not address the popularity of syndicated programming, where one would expect symptoms of anti-competitive behavior to appear, if it exists at all.

POLICY IMPLICATIONS

The past growth of group ownership, and the lack of evidence about strong group economies and anti-competitive practices, suggest that, were the FCC to relax its rules, no dramatic increase in group ownership would likely occur.61 With changes resulting from the relaxation of the rules moving slowly, the Commission could monitor the evolution of the industry and take further action if developments in the industry warrant.

But this assessment cuts both ways. Why, one might argue, if the economic advantages of group ownership are modest, should one take the

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61 Dortouzos and Thorpe argue that the estate- and income-tax laws create important incentives for shifts from single to group ownership. For an analysis of these incentives in the case of newspaper groups, see J. N. Dortouzos and K. E. Thorpe, Newspaper Groups: Economies of Scale, Tax Laws, and Merger Incentives, The Rand Corporation, R-2876-SBA, June 1982 at 55-82.
risk that increased concentration might reduce diversity or create
greater market power?

The answer is that in particular situations, substantial gains in
economic efficiency might result if groups were permitted to expand
beyond current limits. The fact that past studies do not disclose large
and consistent differences between profit margins of group and singly
owned stations, for example, does not necessarily mean that in all cases
group ownership confers few economic benefits. Today's pattern of
ownership reflects decades of marketplace "selection" of stations into
group and singly owned categories. Simply put, group-owned stations are
likely to be those that most benefit from group ownership. Hence, were
they singly owned, their profit margins would be lower. Similarly,
stations that operate well as single entities are likely to show
relatively high profit margins. Consequently, it is not surprising that
singly owned (network affiliated) stations with large new weekly
circulations have higher profit margins than do group-owned stations, as
reported in the Cherington study. If they did not have such profit
margins, they too would likely have been acquired by a group.

A possible benefit of relaxing the Commission's Group Ownership
Rules is, therefore, that the process by which stations decide whether
or not to become part of a group would be less constrained. As the
industry continues to evolve, with the status of particular stations
changing as a consequence of competition, changes in management, and
other circumstances, the advantages of being a member of a large group
will also vary. Perhaps singly owned stations whose profit margins are
healthy today will see their margins decline in the future. If so, the
economic attractions of joining a group may increase. Relaxation of the
FCC's rules would give these stations and group owners greater freedom
of choice in making matches that contribute to the economic health of
the broadcasting industry.

Still, one might argue that larger groups, which might emerge with
relaxation or abolition of the Commission's rules, would raise a greater
threat of anti-competitive behavior than we have seen in the past.
Responding to this concern, we address the likelihood of anti-
competitive behavior in Sec. III.
III. THE LIKELIHOOD OF ANTI-COMPETITIVE PRACTICES:
AN ECONOMIC ANALYSIS

Because the behavior of groups might change with relaxation or abolition of the Commission's ownership rules in ways that would not be disclosed by past empirical studies, we turn here to the use of economic analysis to assess the likelihood of the two forms of anti-competitive activities discussed earlier: (a) the use of leverage by individual groups, and (b) collusion among groups.

GROUP EFFICIENCIES AND LEVERAGE

As we have previously discussed, one of the arguments advanced against allowing group ownership is based on the "leverage" hypothesis—that group owners, threatening to deny access by advertisers or program suppliers to some of their stations, obtain more favorable terms than those obtained by their singly owned rivals. However, more favorable terms that group owners may obtain in negotiating with advertisers and others is not necessarily evidence of such behavior. In fact, the very economic efficiencies that group owners may enjoy can appear in the form of more favorable prices than those obtained by single-station owners.

Thus, one must be careful in interpreting examples of advantageous bargaining, such as the following from the Barrow Report: "A prime example of a multiple owner's advantage in such bargaining is reflected by the rate of commission paid by a station to its national representative for national spot business. This rate is frequently based on a sliding scale which decreases with the volume of business placed on the station.... In a number of cases it is possible for a multiple owner to combine his several stations in determining the volume on which the commission paid to his representative is based".1

This assertion raises two questions: First, how can one distinguish between business practices that reflect differences in economic efficiency and those that arise from unfair or predatory behavior toward competitors? Second, how likely is a group owner to use his bargaining power unfairly?

1 Op. cit. at 567.
With respect to the first question, rates based on volume may merely reflect differences in (unit) transaction costs and other efficiencies. The existence of such sliding scales is not evidence per se of unfair competitive practices against other broadcasters. Thus, one must determine whether group owners are able to charge higher advertising rates or pay lower program prices than their singly owned competitors, where such differentials are not justified by differences in costs. To answer the second question, the use of economic analysis is vital—a task to which we now turn.

THE LIKELIHOOD OF UNFAIR BARGAINING

The argument that group owners can use leverage is asserted most clearly by Coffey:

Independent stations compete with each other to purchase "off-network" syndicated programs.... Those independents which are part of a group have a distinct competitive advantage over single-owned independent stations in the same market by virtue of their buying power. The leverage may be illustrated by the hypothetical top fifty group owner with independent stations in markets one, two and eight. Such an owner is in a position to tie his purchase of a syndicator's programs in markets one and two to the supplier's promise to sell the same program to him in the less lucrative market eight. A single station owned independent station in market eight is thereby at a competitive disadvantage.²

On theoretical grounds, however, the leverage hypothesis, has little merit. Consider, the hypothetical group owner described above. Suppose that the program in question is worth 100 to him in market 1, 50 in market 2, and 20 in market 8 in that he is willing to pay up to these amounts rather than carry his best alternative. Rival stations in each of these markets value the program at 90, 40, and 30, respectively. Without leveraging, the group owner will carry the program in markets 1 and 2 and another station will carry it in market 3. If each purchaser pays the minimum price necessary to acquire the program in a market producer revenues will be just over 150(=90+40+20), the group owner's

² Coffey, op. cit., at 322-23.
surplus will be just under 20, and the surplus of the non-group owner is
market 3 will be just under 10, for a total of 180. If the prices paid
exceed these minima, the surpluses of station owners decrease and the
profit of the producer increases but the total remains unchanged at 180.

Now consider a situation in which the group owner, using his
leverage, attempts to acquire the program in all three markets. If he
succeeds, the amount available to be divided between the group owner and
the program producer is 170(=100+50+20). If we call the combined price
paid by the group owner P, the producer's revenues are, of course, P and
the group owner's surplus is 170-P, for a total of 170. But the
producer can offer an alternative deal in which the group owner acquires
rights only in markets 1 and 2 for a combined price that is smaller than
P by (20+e1). The supplier then sells the rights to the non-group owner
in market 3 for 20+e2 where e2>e1. In this scenario, everyone is better
off than if all of the rights are sold to the group owner. The group
owner's surplus rises by e1, the non-group owner's surplus rises by
10-e2, and the producer's revenues rise by e2-e1. The total surplus is
now 180 rather than 170 in the case where the group owner acquires the
rights to the program in all three markets.

The above argument considers only a single time period. But what
about a situation extending over several periods? Might not the group
owner find it in his long-term interest to accept a short-term loss in
order to deny programming to the non-group owner in market 3 and,
possibly, drive him out of business? Conceivably, the group owner could
refuse the deal postulated above and forgo the associated rise in his
profits. If, as a result, the singly owned station leaves market 3, the
group owner may more than recoup his earlier losses by capturing some of
the audience that the other station previously served. Moreover, with
fewer stations against which to compete, he may be able to pay less for
programming in the future.

However, such behavior by the group owner seems implausible because
of the stringent conditions that must be met for the short-term losses
to be more than offset by the increase in long-term profits. First,
since all other stations in the market would share in the audience

3 P must, of course, be at least 160, the combined amount available
from other stations in the three markets.
inherited from the singly owned station, the benefits against which 
short-run costs must be compared are commensurately reduced. Unless 
these stations can somehow collude against the single-station owner 
(cooperative action that becomes increasingly difficult as the number of 
stations in the market increases), a group owner may gain little by 
trying to use his leverage against a single station. Thus, the first 
condition for successful predation is that the market either contains 
few or no other stations, or that these stations are able to collude in 
order to share the costs of exclusionary behavior.

The behavior postulated above would seem to pose the greatest 
danger—if there is a danger—in the smallest markets with only two or 
three stations where cooperative behavior to eliminate other stations 
would be most easily accomplished. But here we face the second problem 
for the would-be predator. Stations in such small markets are network 
affiliates, giving them assured access to much of their required 
programming regardless of the group owner’s behavior. Moreover, the 
amount of syndicated programming available per station is larger in 
small markets than in large ones. Attempts by a group owner to deny 
programming to his competitor would likely be frustrated by a high 
elasticity of program supply resulting from the existence of many 
Sources from which the singly owned station in a small market can buy. 
Thus, a second condition that must be met for predation to succeed is 
that the elasticity of program supply be low.

The third problem for the group owner is that once he seeks to 
recoup his losses by drawing from a larger audience and driving down the 
price of programming in market 3, he must be assured that no one else 
will enter. Unless it is costly to reestablish the station, others may 
try to enter the market in order to capture some of these profits. 
Thus, a third condition for use of bargaining leverage to succeed is

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4 Indeed, under Section 73.658(1) of the FCC’s rules, in markets 
where two stations are affiliated with networks and a station with 
"reasonably comparable facilities" is not, the affiliates are prohibited 
from taking prime time and weekend sports programs from their secondary 
networks unless the unaffiliated station has been offered the program.

5 On the contestability of markets, see W. J. Baumol, J. C. Panzar, 
and R. D. Willing, Contestable Markets and the Theory of Industry 
that the barriers to reentering the market be large enough to permit the predator to more than cover his earlier losses.

Fourth, in addition to the single-station owner, the program supplier would, in the long run, also be disadvantaged by the exercise of leverage by the group owner to exclude his rival since the demise of the singly owned station leads to a reduction in the price of programs. If suppliers anticipate this outcome however, they can enter into long-term contracts with the singly owned station to protect it against predation. If such long-term contracts are possible, the problem reverts to the formulation described above. The group owner will find it more profitable not to purchase the program in market 8 since the supplier can offer him a better deal when he does not do so. A fourth condition for the success of a leverage strategy, then, is that program suppliers fail to anticipate the effects of predatory behavior and do not enter into long-term contracts with the threatened stations.

In conclusion, the leverage argument, voiced in the Barrow report and elsewhere, is not persuasive. In the static case, all three parties can be made better off if the group owner does not exercise leverage. In the dynamic case, all four conditions described above must be fulfilled if the group owner is to succeed in using his ownership of stations in some markets to disadvantage singly owned rivals in others.

COLLUSION AND GROUP OWNERSHIP

Here we seek to spell out the conditions necessary for collusion among groups to either raise advertising rates or to lower program prices. We then inquire into the likelihood that these conditions are satisfied.

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7 Note that nothing in the predation argument requires that the predator be a group owner. Conceivably, even the owner of a single station could bid more for a program than it is "worth" to him in order to deny it to his rivals in the hope that they will be driven out of business.
Advertising Markets

Consider two simple cases in which collusion among groups would be no more likely than among singly owned stations. In the first, no firm regards placing an advertisement in one local geographic area as substitutable for advertising in another. Thus, for example, if all advertisers were local automobile dealers they would value advertisements only on stations that serve their marketing areas. It would make no difference, say, to a dealer in Washington, D.C., that advertising rates were higher there than in Baltimore, if his customers were drawn solely from the Washington area. Here, even if the same set of owners held stations in both Washington and Baltimore, they would have no greater ability to collude than would singly owned stations. 8

The second case is one in which (a) firms regard advertising in two geographic areas as substitutes, so that if the prices in the two markets diverge, they will make all of their purchases in the lower-price market, and (b) group owners face one another in different combinations in the two geographical areas. Suppose, for example, that all advertisers in Washington and Baltimore are indifferent as to where their advertisements appear. 9 Suppose, moreover, that the stations in the two cities are all group owned but that no one owns a station in both cities. Under these assumptions, the number of station owners that would have to collude to raise advertising rates is unaffected by the existence of group owners in the two markets. In order to raise rates to the Baltimore-Washington customers, all of the stations in both cities would have to agree on prices--and this number is not reduced by the presence of group owners in both. In other words, the number of owners is no smaller than the number of stations, despite the fact that some stations are members of groups.

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8 This condition is actually too strong. All that is necessary is that at the margin no advertiser is willing to substitute between the two areas.

9 Again, this condition is too strong. All that is required here is that enough advertisers are indifferent at the margin between the two areas that they are willing to shift advertising expenditures between them when price divergences appear. Thus, not all advertisers need regard advertising in the two cities as substitutes nor need any particular advertiser do so for his entire advertising budget.
This analysis suggests two conditions that must both be met in order for group ownership, through collusion, to be an effective way to raise advertising rates. First, the geographic areas in question must be a single market in which prices are related. Second, the number of station owners in the relevant market must be smaller than the number of stations in the market. Thus, if a collection of cities represents a relevant market, the presence of group owners in these cities will not affect prices if no group owns more than a single station in the market.

This second condition, however, is only a necessary and not a sufficient condition for collusion to occur. If the relevant geographic market is large, the fact that some entities own more than a single station in the market would be of little consequence because of the many other competitive stations in the market. Thus, if the relevant market were defined as the entire United States, where the number of stations is clearly greater than the number of station owners, effective collusion is rendered unlikely by the large number of different station owners.

If the number of owners is below the number of stations, we must consider an additional factor: The presence of overlapping group owners must reduce the number of owners sufficiently below the number of stations to render collusion a feasible option. Moreover, a simple count of the number of non-group owners will generally be inadequate to assess the effect of overlapping group ownership on the opportunity for collusion. Group owners who possess a relatively small market share are less a threat than those with large shares. Therefore, a combination of independent UHF stations in, say, Washington and Baltimore will be of less concern than a combination of network affiliated VHF stations.

Where, then, would we expect group station ownership to affect advertising rates through collusion? A likely candidate would be a collection of cities in relatively close geographic proximity to one another, where several owners are represented in more than one city and where the total number of stations is small. Geographic proximity is important because it makes more likely the substitution of advertising in one city for advertising in another. The limiting case is, of course, where the stations are in the same city.\footnote{Advertisers of national brands may, however, regard advertising}
several owners are represented in more than one of the cities is important because it reduces the number of owners substantially below the number of stations.\footnote{11} Finally, a small number of stations is important because there the presence of several groups owning stations in more than one city can more easily lead to sufficient concentration to make collusion feasible.

Program Markets

When we turn to the question of the determinants of program prices the argument that group ownership creates market power is weaker than in the case of advertising, because the relevant market for programming is likely to be geographically smaller than that for advertising. The reason is that geographically separated markets do not represent alternative ways in which a program supplier can market its products. A sale of a program to a station in Washington does not affect the ability of the supplier to sell the same program to a station in New York. Consequently, so long as the signals of two stations do not substantially overlap, they are not in the same market from the point of view of program suppliers.\footnote{12} Since television stations located in geographically separated markets do not compete with one another, a program syndicator wishing to sell a program to stations in two separate cities will regard each of those cities as distinct markets and establish the prices of its programs separately in each.

\footnotetext{11}{Again, if no entity owns a station in more than one of the cities that make up the relevant market, group ownership creates no additional market power.}

\footnotetext{12}{An exception might appear to be so-called "superstations" whose signals are carried into many cities for distribution by cable systems. Under some circumstances, the sale of a program to a superstation might preclude sales to stations in the markets served by these cable systems. However, this situation is more appropriately analyzed as a sale to a network, where network distribution probably precludes, for a period of time, the sale of the same program to individual stations.}
CONCLUSIONS

With respect to leveraging, our analysis highlights two points. First, one must be careful to distinguish the effects of group economies from leveraging when evaluating assertions that groups have advantages in dealing with advertisers and others. Second, the conditions under which leveraging would be a viable option are so stringent that such behavior is most unlikely.

Collusion is a less remote possibility, if group ownership reduces the number of owners relative to the number of stations to such an extent that concentration is high in the relevant markets. The upshot is that a primary goal of the Commission should be to prevent undue economic concentration in such markets. The options available to the Commission and how well they are likely to meet this goal are the subjects of Sec. IV.
IV. OPTIONS FOR MODIFYING THE GROUP OWNERSHIP RULE

We conclude our study by examining four options available to the Commission in reconsidering its Group Ownership Rule. The first would simply increase the permissible number of stations beyond the current limit of seven. The second would limit the total audience that may be reached by a group with audience measured, for example, by net weekly circulation. The third would abandon altogether the approach of limiting group ownership on a nationwide basis and rely instead on regional concentration rules. The fourth would have the Commission consider combinations of stations on a case-by-case basis in a manner similar to that employed by the Department of Justice under its merger guidelines.

OPTION 1: RAISE THE NUMERICAL LIMIT

Drawing from a range of possible rationales, the Commission could raise the numerical ceiling on group ownership. In its Notice, the Commission describes N. O. Wirth's recommendation that the standard for radio should be modified "to allow one entity to own the same percentage of commercial stations nationally at present 'as they were allowed to do in 1953,' which would permit ownership of 72 radio stations without regard to type."¹ Transferring this proposal to television, the Commission notes that "a single entity would be permitted to own 14 television stations of any class, based on the number of commercial stations broadcasting when the seven station television limit was established in 1954 compared to the number licensed in 1983."²

Adoption of such a proposal would be unfortunate. As is well recognized, the rule of seven was arbitrary to begin with. Indeed, it is the arbitrary nature of the rule that has helped trigger the Commission's present inquiry. Any formula that would set a new limit related to the rule of seven would be no less arbitrary. "A rule of

¹ Notice of Proposed Rulemaking at 49.
² Id. at 50.
fourteen," (or any other number) like "the rule of seven," would fail to take into account the proximity of the stations in a group to one another, nor would it reflect the importance of the stations in a group in the various markets in which they operate. In other words, a higher ceiling would not deal with the fundamental flaw of the present rule—that simple numerical limits have little merit.

**OPTION 2: IMPOSE CEILINGS BASED ON AUDIENCE SIZE**

As is well recognized, the present Group Ownership Rule fails to distinguish between groups of stations in the seven largest television markets and those in the seven smallest. Both such groups would be forbidden from acquiring an eighth station although one would reach over a quarter and the other fewer than one quarter of 1 percent of all households with television sets. Thus, some argue that a rule based on the audience served by a group would be superior to a ceiling on its number of stations.

The problem with this option is that, like the "rule of seven," it does not take into account the locations of the stations that are part of a group. Common ownership of two stations in two adjacent small cities might have a far more anti-competitive effect than the ownership of seven stations in large markets that are far apart. It is not simply the number of stations that are owned by a group or the size of the audiences that they serve that determines whether group ownership is anti-competitive. Rather, it is the likelihood that the operations of the stations in the group can be combined to create market power. As we have argued above, this requires that the stations be in the same market, and two stations are more likely to be in the same market the closer they are located to one another. "Weighting" station ownership by the size of the audiences served would not overcome this limitation of the present rule.

**OPTION 3: FOCUS ON LIMITING REGIONAL CONCENTRATION**

Baldly stated, limiting group ownership on a nationwide basis makes no sense because the national market is extremely unconcentrated. And it is most difficult to imagine how any likely growth of groups above the current ceiling would significantly increase national concentration.
As emphasized throughout our study, the problem of anti-competitive behavior would most likely arise (if it arises at all) in regional or local markets for advertising and programming.

Moreover, considerations of regional and local concentration bear directly on the Commission’s goal of maintaining and expanding diversity of expression. In criticizing the use of the Arbitron Area of Dominant Influence to determine a "region," the Commission stated that: "The Arbitron ADI concept may be valid as a marketing tool, but as such takes into account only commercial and not political factors, which are of prime importance in the regional concentration concept."³ Stations in geographical proximity to one another may be important influences on, say, state political affairs so that it may be important to have stations in different hands even if they are not competitors in the sale of advertising or the purchase of programs. To be sure, the Commission explicitly declined to adopt a rule limiting the number of stations that could be owned within a given state when it promulgated its regional concentration of control rule in 1977. But its long-standing one-to-a-market rule clearly reflects the importance that the Commission places on keeping stations in separate hands to further the goals both of diversity and the prevention of undue economic concentration in local markets.

Because any rule that ignores the geographical location of group-owned stations is fundamentally misguided, a better option than either 1 or 2 would have the Commission abolish all limitations on nationwide group ownership and rely exclusively on a regional concentration rule (combined with its current one-to-a-market rule).⁴ This regional rule could be the same as, or a modified version of, its current limitations on regional ownership. Today, the Commission prohibits the ownership of "three broadcast stations in one or several services, where any two are within 100 miles of the third...if there is primary service contour overlap of any of the stations."⁵

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⁴ However, efficiencies that arise from group ownership may be more significant in the case of regional than national groups unless there are syndicators offering programs that are of regional interest. If regional syndicators do not exist, a ban on regional concentration may involve the loss of important efficiencies.
⁵ 47 C.F.R. 73.636 (a)(2).
Although a number of possible regional concentration rules would satisfy the Commission’s basic goals, we will confine our discussion here to two alternatives, as examples of how the Commission might best proceed. One would forbid common ownership where the service areas of two stations overlap. This approach would allow for differences in signal strength between VHF and UHF stations but would consider two stations to be in the same market if there is any substantial number of viewers who can be reached by both.

Another possibility would be to limit common ownership of any two stations within a given distance of one another, thus recognizing the importance of geographical proximity in determining whether two stations are competitors. But it would not distinguish differences in signal coverage, particularly between VHF and UHF stations.

Both alternatives would not recognize the role played by other competing stations whose presence might mitigate the effect of common ownership. Moreover, they would fail to recognize that the size of relevant markets might vary around the country. But, for the reasons already emphasized, Option 3, embracing these and other alternatives, would be far superior to Options 1 and 2.

**OPTION 4: USE MERGER GUIDELINES IN CASE-BY-CASE APPROACH**

The option involves two basic steps:

1. Determine whether the station being acquired is in the same market as a station owned by the acquiror. If it is not, grant the application. If it is, proceed to the second step.

2. Determine the present degree of concentration in the market and the increase in concentration that the acquisition will produce. If either (a) the market is unconcentrated or (b) the increase in concentration produced by the acquisition is small, grant the application. If the market is concentrated and the acquisition will substantially increase the extent of concentration, deny the application.\(^6\)

\(^6\) This approach is identical to the one employed in the new Department of Justice Merger Guidelines; U.S. Department of Justice
Use of this approach can lead to the denial of applications that would be granted under present rules as well as to the granting of applications that would presently be denied. Thus, the owner of a single station who proposes to acquire a second station, both of which are in the same market, although not in the same city or ADI, may be denied the right to do so if the market is already concentrated and the two stations have substantial market shares.

In this regard, we agree with a criticism of the Commission's Multiple Ownership Rules expressed many years ago by Commissioner Hennock: "...an interest in less than the permitted maximum number of stations, concentrated in one state or a given geographical region, may often have a more deleterious effect on competition and constitute a more stifling concentration, than the ownership in excess of the permitted maximum scattered throughout the United States." At the same time, Option 4 would permit the owner of seven stations to acquire others so long as either (a) the acquisitions are not in the same markets as any of his other holdings, or (b) the market is unconcentrated and the acquisition does not substantially increase concentration.

**Defining the Relevant Market**

Although stating this procedure is straightforward, applying it in practice will be more difficult.\(^8\) The Commission will be forced to deal with claims that the station to be acquired is not in the same market as other stations held by the same owner or, if it is conceded that the

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\(^7\) Separate views of Commissioner Hennock Concurring in Part and Dissenting in Part, 9 R.R. 1573 at 1575 (1953). However, the Commission's present limits on geographic concentration may be too restrictive in some cases and too liberal in others.

\(^8\) In some respects, the application will be easier here than in the case of the DOJ Merger Guidelines since the FCC can focus its attention on a single industry, with analysis developed for one case being transferable to others. The DOJ, on the other hand, is required to deal with mergers in industries that are highly disparate so that often its analysis must be conducted de novo.
proposed acquisition is in the relevant market, that the market is unconcentrated, or that, in any event, the acquisition will not substantially increase concentration.

Although it is difficult to establish "bright line" tests for defining relevant markets, certain characteristics of the relationship between the cities in which the station to be acquired and other holdings of the owner are obviously relevant to such a determination. If the two stations are in the same city they are certainly in the same market. If two stations are widely separated geographically, they are almost certainly not. If they are in adjacent cities or in cities that are relatively close together the determination of whether they are in the same market will be difficult. As in the application of the DOJ merger guidelines, such factors as (a) evidence that buyers do or do not perceive advertising purchases in the different cities as substitutes, (b) correlations of movements of advertising prices in the cities, and (c) evidence that sellers perceive advertising spots in different cities to be substitutes will be important in determining the appropriate market delineation.9 Unfortunately, current knowledge about the relationship between group ownership and such variables as advertising rates is based almost entirely on studies that assume, without verification, that the relevant markets are ones defined by the national program rating services, Arbitron and A. C. Nielsen. The Commission will, therefore, be required to conduct analyses that permit it to identify relevant markets for its ownership policies.

If, after conducting its analyses, the Commission were to conclude that existing market definitions are appropriate, its conclusion would indicate that the present Group Ownership Rule does not limit the collective exercise of market power. Even if two groups face one another in several markets, their pricing policies would have to be coordinated separately in each of the markets. Therefore, collusion would appear no easier in these situations than if ownership were limited to a single station.10 The Commission's rules that prohibit the

9 DOJ Merger Guidelines, op. cit., at 637-638.
10 The results of the Peterman study, discussed in Sec. II, indicating that the presence of group-owned stations does not raise advertising rates under standard market definitions would be relevant here.
ownership of two stations in the same service (AM, FM, or TV) in the same market might still be appropriate, although if a local market were unconcentrated and a particular proposed combination had little effect on concentration, the combination might be permitted.

On the other hand, if the Commission were to conclude that markets were wider than currently defined it would face the task of establishing whether proposed combinations involving stations in different cities are anti-competitive. It would probably not be wise for the Commission to attempt to produce a list of relevant markets within which combinations are likely to be rejected. Compiling such a list would be an expensive undertaking and might easily become outdated. Moreover, the appropriate definition to employ may depend on the particular combination proposed. Advertising in cities A and C might each be close substitutes for advertising in city B but be weak substitutes for advertising in each other. In some sense A, B, and C form a market but combinations involving stations in A and B or B and C should receive greater scrutiny than ones involving stations in A and C.

The determination of the relevant market, although it is a challenging task, may, in some cases, turn out to be unnecessary to conduct with great precision. In some circumstances, a finding that two stations are in the same market may produce a market that is so large that it is not concentrated. If, for example, the Commission concludes that Washington and New York are in the same market that market is likely to also include stations in Baltimore, Harrisburg, and Philadelphia. Thus, instead of the market containing only the 19 stations in New York and Washington, there would be 37 stations in the relevant market. Here a combination of stations in the two cities might pose little risk of increased concentration.

Still another situation in which the precise market definition would be relatively unimportant occurs where, even under the narrowest possible definition, the combined market shares of the station being acquired and the owner's other holdings is very small. Thus, even if Washington and Baltimore are treated as a market, a combination of an independent UHF station in Baltimore and an independent UHF station in Manassas, Virginia, south of Washington, which is in the Washington
market as defined by Arbitron, may be of little concern. The Commission might, as the Department of Justice has, publish numerical standards that divide combinations into those that are likely to be found acceptable and those that are not. Thus, the Commission could indicate that it will measure market concentration by the Herfindahl index—the sum of the squares of the market shares of each firm in the market. It could then indicate how large an increase in concentration it would accept as a result of a combination—which would depend, in turn, on the existing level of concentration in the market.¹¹

The relevant market for a given station may differ depending on whether its sale of advertising time or its acquisition of programs is involved. Although it is possible that advertising markets are larger than metropolitan areas, program markets are certainly local since stations that serve discrete groups of viewers can purchase the same program without affecting the audience of the other. Thus, a combination of two stations in the same area that might be permitted because the area is part of a larger advertising market and does not substantially increase concentration in that market may, nevertheless, be rejected if the two stations are in the same program market.

This fourth option is far different from the path the Commission has taken virtually from the beginning of its history. Although the Commission has always indicated that any application might be denied if it led to excessive concentration of ownership, as a practical matter this policy has been enforced through precise quantitative limitations on station ownership. Indeed, when the Notice of Proposed Rule Making that led to the regional concentration of control rules was adopted in 1975, the Commission stated that the new rules were intended to replace a policy under which

¹¹ One problem that is likely to become increasingly difficult to deal with over time in measuring market concentration is how to take into account alternative methods for distributing television programs, cable, multipoint distribution services, direct broadcast satellites, and others. As these grow in importance, they are likely to constrain the exercise of market power by broadcast stations so that markets that appear concentrated when only broadcasters are taken into account will appear less so when alternative media are considered. Thus, if concentration in the advertising market is of concern, the market shares of existing advertiser-supported cable or direct satellite broadcast services should also be considered in measuring concentration and assessing the effect of a combination in increasing concentration.
an applicant seeking to acquire a broadcast station near to, or in the midst of, several of its commonly-owned broadcast stations, is asked to submit a compelling showing disproving the possibility that a grant of its application might result in a regional concentration of control. This process requires an evaluation of a plethora of factors, such as the number of competing media, other signals available, population, areas to be served, population, areas to be served and distances between stations, which factors have no exact measurable significance, and which tend to give only an apparent precision to our decisions. Dealing with this issue on a case-by-case basis has tended to submerge the Commission's policy in this area.\(^{12}\)

The Commission indicated that it wished to "move away from its current policy in the area of regional concentration, which requires extensive showings and determinations, toward a policy employing hard-and-fast rules, as is now the case in the other multiple ownership rules."\(^{13}\)

In short, the Commission expressed its unwillingness to conduct a complete analysis of every case in which the regional concentration of control issue might arise. Although the "plethora of factors" the Commission lists seem significant, the agency was apparently willing to dispense completely with most of them in order to obtain a rule that could easily be applied. Indeed, one of the reasons given by the Commission for the adoption of a rule was that the previous process imposed large burdens on would-be acquirors.\(^{14}\) Thus, it appears that one of the Commission's purposes in adopting the rule was to make it easier for station combinations to be formed since many combinations would be permitted under the rule which might be challenged, if not prevented, under the previous policy. Moreover, the Commission's solicitousness toward applicants seems itself a bit misplaced since the

\(^{12}\) 54 F.C.C. 2d 331 at 332 (1975).
\(^{13}\) Id. at 333.
\(^{14}\) 63 F.C.C. 2d 824 at 826 indicates that the Commission "found that applicants with limited resources were being required to conduct expensive media surveys and submit extensive showings to disprove this regional concentration policy. Our experience has shown that the bulk of these applications raising a regional concentration issue have been granted because our examination of these applications has shown that a regional concentration would not result."
rule presumes that those combinations that violate the rule will not be permitted. In such cases, the cost of the showing is not avoided if a waiver is sought, and if the policy prevents a combination the would-be applicant is clearly worse off.

We do not have in mind a policy like the one the Commission employed prior to adopting its regional concentration rule. At that time, challenges to combinations were made by outside parties, and the applicant was forced to defend the combination before the Commission. The Commission indicated in its Order that most of these challenges were rejected so that for those combinations that were permissible under the rule the costs of defending against a challenge would be avoided. The Commission apparently did not play a major role unless such challenges were mounted.

The approach we are suggesting here would be quite different. When station acquisitions are contemplated, the applicant would, of course, notify the Commission. The Commission staff would be required, within a limited period of time, to determine whether or not to challenge the acquisition. If it did not do so this would be prima facie evidence that the transaction was acceptable so that outside challengers would face a heavy burden. On the other hand, rejection by the staff would either produce a hearing, if the applicant chose to proceed, or to the withdrawal of the application. Over time, as the outlines of the Commission's policy became clear, applicants would be able to determine the likelihood that a particular application would be approved. At the same time, no one would be foreclosed from defending a combination before the staff or the Commission if it felt that the particular circumstances warranted.

Moreover, the approach would not be without standards. Indeed, if the Commission wished, it could issue guidelines for combinations. But these guidelines should be based on analyses that take into account information about concentration in broadcasting and competing media, and should be periodically revised as new knowledge becomes available. At the same time, parties should be permitted to attempt to convince the Commission staff or the Commission through the administrative process, that a particular combination should be permitted.
CONCLUSIONS

The Federal Communication Commission's Group Ownership Rules have correctly been criticized for their arbitrary nature. It would be unfortunate, therefore, if the present reconsideration of these Rules produced merely an increase in the ceiling on station ownership. At the same time, elimination of all restrictions on combinations of broadcast stations would be unwise. It would be far better if the outcome were an improved understanding of the goals the Rules are intended to serve so that rules better suited to achieving these goals might be fashioned.

We believe that either reliance on a regional concentration rule, or case-by-case consideration of all station combinations, would substantially improve upon the present situation. It would not trouble us, therefore, if the Commission were to repeal its regional concentration rule, as it has indicated it might, and simultaneously adopt a case-by-case approach. It would concern us, however, if the Commission were to eliminate both the Group Ownership and regional concentration rules and leave nothing in their place. Although we believe that many presently forbidden combinations could occur without adversely affecting achievement of the Commission's goals, some combinations could be anti-competitive and a mechanism should exist at the Commission to prevent them.
