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A Critique of the Fowler FCC's 1984-85 Multiple Ownership Rule

by HERBERT H. HOWARD*

Since the Federal Communications Commission under Chairman Mark S. Fowler liberalized rules governing multiple ownership of broadcast stations in 1984-85, television station ownership in the United States has undergone rapid change. Two of the three television networks have been acquired by new owners and the third is under new controlling management.¹ Numerous station groups and individual stations also have changed ownership through mergers, friendly acquisitions, hostile takeovers, and leveraged buyouts.² In total, such acquisitions have far exceeded the usual annual number since the relaxation of the multiple-ownership rules went into effect in 1985.³ As a result, the television broadcasting industry now is less stable than it has been for decades. The new multiple ownership rules, which became effective on September 10, 1984, raised the number of TV stations a single entity may hold from seven to twelve.⁴ A subsequent amendment to the rules, effective April 2, 1985, retained the twelve station limit, but provided that the group's total audience reach could not exceed twenty-five percent of the nation's TV households.⁵ Stated another way, the FCC now allows a multiple station owner to serve up to twenty-five percent of the nation's TV households

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⁵ Multiple Ownership of AM, FM and Television Broadcasting Stations, Memorandum Opinion and Order, 100 F.C.C.2d 74, para. 3 (1985).
as long as it does not require more than twelve stations to attain that level of audience reach.

In addition to relaxing the multiple ownership limits for television, the FCC's 1984 order also raised the number of AM and FM stations allowed under common ownership from seven to twelve each.6

In another significant policy change, the Commission rescinded its twenty-year-old "anti-trafficking rule"7 in 1982. That rule required an automatic hearing when a licensee who had owned a station for less than three years sought to transfer the license.8 The three-year holding rule had been adopted to encourage licensee stability by preventing frequent changes of station ownership, a common practice in the radio industry during the early 1960s.

This article will examine the rationale underlying the Fowler FCC's relaxation of the multiple ownership rules in 1984-85 and will assess the initial impact of the changes in these rules.

I

Reexamination of the Multiple Ownership Rules

When it considered possible changes in the multiple ownership rules in 1983,9 the FCC reexamined an earlier Commission's rationale for limiting station ownership.10 The FCC noted that the fundamental purpose of these limits, as stated in the 1953 order which instituted station ownership limits, was "to promote diversification of ownership in order to maximize diversification of program and service viewpoints as well as to prevent any undue concentration of economic power contrary

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6. See supra note 4. Two other ownership rules not affected by the 1984 order were those which forbid duopolies, common ownership of more than one station of any type in a given market area, and cross-media ownerships that involve combinations of TV stations, newspapers and radio stations that serve the same community. Most existing cross-media ownerships at the time of the adoption of that rule in 1975 have been unaffected until the date of a subsequent sale.

7. Procedures on Transfer and Assignment Applications, Report and Order, 32 F.C.C.2d 689, paras. 5-6 (1962).

8. Id. at paras. 6-7.


to the public interest."\textsuperscript{11}

The 1983 rulemaking proposal also noted the FCC's historical efforts in promoting the diversification of station ownership "to implement the Congressional policy against monopoly" and "to preserve competition."\textsuperscript{12} It reemphasized that the vitality of our broadcasting system depends on a diversified body of licensees who are "prepared and qualified to serve the varied and divergent needs of the public for radio service."\textsuperscript{13} The Commission also concluded that appropriate diversification requires a limit on the number of stations "which may be licensed to any person or persons under common control."\textsuperscript{14}

In summary, the underlying concerns of the national multiple ownership issue (as distinguished from local cross-media ownership rules) were clearly related to antitrust and first amendment issues: first, that a healthy diversity of information sources should exist; and, second, that unhealthy economic concentration of media outlets should be avoided.

The multiple ownership rules of 1953-54 frequently have been criticized as being arbitrary since, by limiting each owner to seven outlets, all stations were regarded as equal.\textsuperscript{15} Other than the requirement that at least two of a full complement of seven TV stations must be UHF, the rules failed to take into account such factors as class of stations, geographical locations, and populations served. Although the FCC acknowledged that its approach was arbitrary when it adopted the rules in 1953, it decided that any plan other than a straight numerical system was "either unsatisfactory or unworkable."\textsuperscript{16}

With only minor changes, the "7-7-7 rule" prevailed for more than three decades.\textsuperscript{17} Its legal effect had been to establish the

\textsuperscript{11.} Multiple Ownership of AM, FM and Television Broadcast Stations, 48 Fed. Reg. 49,438 at para. 10.
\textsuperscript{12.} Id.
\textsuperscript{13.} Id.
\textsuperscript{14.} Id.
\textsuperscript{15.} The 1953 amendment of the multiple ownership rules limited each owner to no more than five TV, seven AM, and seven FM stations. Amendment of Section 3.35 etc., 18 F.C.C. 288, at paras. 16-18. This rule was amended in 1954 to permit the common ownership of seven TV stations provided that no more than five were VHF facilities. Multiple Ownership of Television Broadcast Stations, Report and Order in Docket No. 10822, F.C.C. 54-1185, 19 Fed. Reg. 6099, 11 RAD. REG. (P & F) 1519, para. 3 (adopted Sept. 17, 1954).
\textsuperscript{16.} Multiple Ownership of AM, FM and Television Broadcast Stations, 48 Fed. Reg. 49,438 at para. 10.
\textsuperscript{17.} The seven-station rule for AM and FM radio stations was adopted in 1953. Amendment of Section 3.35, etc., 18 F.C.C. at 288. The allowable number of television
point beyond which, in the Commission's opinion, the public interest would be adversely affected through "concentration of control" of the media. Its practical result was to sanction the ownership of the maximum number of stations and to promote the development of broadcast groups under the limits of the rule. Thus, the multiple ownership rules of 1953-54 became largely responsible for molding the ownership structure of the television industry.

Over three decades, scores of group owners were established. Most owners, motivated by an expansionary economic philosophy, came to regard the limits of seven TV stations, or five VHF outlets, as the quota as well as the limit. On January 1, 1985, seventeen groups held the maximum of seven stations, while ten owned the maximum of five VHF outlets. Historically, broadcast companies frequently sold stations in smaller markets when they could "trade up" to others in larger markets while staying within the numerical limits. In 1956, three years after the FCC established the "7-7-7 rule," more than half of the VHF stations in the top 100 markets were group-owned. Today, nearly nine of every ten VHF outlets and eight out of ten of all TV stations in the 100 largest markets are licensed to multiple-station owners.

II
Rationale for Changing the Rules

When it reopened the multiple-ownership issue in 1983, the Fowler Commission called attention to "a fundamental change in the nature of the media marketplace." It concluded that a reexamination of its approach to national ownership limi-
tions was required because of the substantial growth in the number of broadcast stations, cable TV services, and other non-traditional "broadcast-like" sources. The latter include such video operations as multi-point distribution service (MDS), subscription television (STV), satellite master antenna television (SMATV), and video cassette recorders (VCRs). This proliferation of media choices, the FCC noted, has greatly reduced the potential for national ownership concentration that might monopolize the media or threaten the diversity of media voices.

The Commission also noted the historic problems with its inflexible limits which treated all stations alike regardless of audience or economic potential. It suggested that limiting group owners to seven stations in the present media environment might even preclude the establishment of new broadcast networks and other new program services, thus actually working against the diversification of program and service viewpoints that the limit was intended to advance. To the contrary, the Commission posited that:

Ownership of a sufficient number of stations to generate a base for quality program production might well facilitate development of a new over-the-air television network in the future. It is likely in any case to lead to expanded production of programming, including non-entertainment programming, for national, regional, and group presentation to the viewing and listening publics. The access to a larger potential audience which a group owner enjoys reduces the level of difficulty involved in getting initial distribution of an unproven show or series, cuts marketing expenses, and assists in generating revenues that could be used to finance even more attractive, higher quality programming.

In short, the Fowler Commission believed the 1953-54 multiple ownership rules were outmoded for the 1980s because: (1) they were arbitrary; (2) they were overly restrictive for an era of media abundance; and (3) they could possibly stifle potential new program production sources which require greater economy of scale than that permitted by seven stations.

25. Id. at para. 30.
26. Id. at paras. 28-30.
27. Id. at para. 38.
28. Id.
29. See id. at 49,438, para. 25; Amendment of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcasting Stations, 100 F.C.C.2d at 17, para. 82, and Multiple Ownership of AM, FM and Television Broadcasting Stations, 100 F.C.C.2d at 74.
The Multiple Ownership Rule of 1984-85

The final order, which raised the limits of common ownership of broadcast stations, was approved in two stages. On July 26, 1984, the Commission set the numerical limits at twelve AM, twelve FM and twelve TV stations. In January 1985, after receiving numerous petitions for reconsideration, the FCC modified the 1984 order by adding an ownership ceiling for television groups based on audience reach. This new limit allows ownerships to acquire “cognizable interests” in TV stations reaching a maximum of twenty-five percent of the nation’s television households. Under the plan adopted in 1984-85, a TV group’s household coverage is based on the Arbitron Company’s estimate of TV households in the combined Areas of Dominant Influence (ADI), where the group’s stations operate. The new rules also dropped the provision that a full complement of television stations must include a specified number of UHF outlets. Instead, the Commission counts only one-half of a market’s household percentage toward the twenty-five percent ceiling for UHF stations.

IV Resulting Changes in TV Ownership Structure

For a variety of economic reasons, the television industry began to undergo significant structural change almost immediately after the new “12 and 25% rule” went into effect. Before 1985 ended, one group (Taft) reached the new limit of twelve TV stations by acquiring another group owner (Gulf Broadcasting). Several other groups quickly increased their holdings to

31. Multiple Ownership of AM, FM and Television Broadcasting Stations, 100 F.C.C.2d 74 at para. 36.
32. Id. at para. 39.
33. For example, the 1987 ADI television household percentages for the three largest markets were as follows: New York (7.78), Los Angeles (5.17), and Chicago (3.50). A group with a VHF station in each of these three markets would have a combined reach of 16.45% which is well within the legal ceiling of 25%. Arbitron Ratings/Television (1986) (1986-87 Universe Estimates Summary).
34. Multiple Ownership of AM, FM and Television Broadcasting Stations, 100 F.C.C.2d 74 at para. 44.
35. Id.
36. In 1987, Taft Broadcasting (now Great American Communications) sold five
more than seven stations. At the beginning of 1987, seventeen owners held licenses for more than the former limit of seven stations, and three owned the new maximum number of twelve. Further changes in the ownership of the TV industry during the first two years of the new rule are revealed in the following data for January 1, 1985, and January 1, 1987.

1. During this two year period, the number of group-owned stations in the top 100 markets rose from 421 to 485. However, because the total number of stations in those markets also grew (from 559 to 617), the percentage of group-owned stations increased only slightly — from 75.3% to 78.6%.

2. Recently, group ownership of UHF stations has increased dramatically and now stands at nearly seven of every ten stations in the 100 largest markets. For comparison, groups held licenses for nine of every ten VHF stations in these markets at the start of 1987.

3. In markets of all sizes, the total number of group-owned stations increased from 653 to 765. This net gain of 112 group-owned stations represents a seventeen percent increase in two years.

4. The average number of TV stations per group has increased noticeably since the "12 station 25% rule" went into effect. At the beginning of 1985, the average was 3.7 stations per group. By 1987, the figure had risen to 4.1 stations per group.

5. The number and percentage of newspaper-affiliated television stations held relatively steady during this two-year period. At the start of 1987, 177 TV stations in the top 100 markets, or 28.7%, were newspaper-related, compared with 168 and 30.1% in 1985. Most are VHF stations, and all but twenty-seven are located in markets where the ownership does not publish a co-located daily newspaper.

6. The percentage of local cross-media ownerships involving daily newspapers and TV stations continued a steady decline which began in 1975, when the FCC adopted its cross-media ownership rule. At that time, there were sixty local newspaper-TV combinations in the top 100 markets, compared with

of its TV stations to TVX Corporation, reducing its number again to seven television properties.

37. H. Howard, supra note 19, at 10.

38. Id. at 6-14.

thirty-one in 1985 and only twenty-seven in 1987. In percentages, these cross-media combinations declined from 16.1% in 1975 to only 5.2% in 1987.

V

Analysis of the “12 and 25% Rule”

The question remains whether the provisions of the “12 station 25% rule” are consistent with the basic purposes of the original multiple ownership rules adopted in 1953-54.

A. Preventing Undue Concentration of Broadcast Station Ownership that Could Result in Monopoly Practices

When the FCC adopted the limit of seven stations in 1953-54, fewer than 400 TV stations were in operation in the entire country. However, when the Fowler Commission adopted the “12 station 25% rule” in 1985, the number of commercial television stations had increased to more than 900. On a percentage of total stations basis, the more recent rule is actually more restrictive.40 By raising the allowable number of stations under common ownership, the FCC merely redefined the acceptable level of ownership concentration in terms of today’s complex media marketplace in which a far greater number of TV stations compete with each other and with cable and various other new forms of video transmission. Furthermore, a maximum potential audience reach of one-fourth of the nation’s TV households seems quite reasonable in comparison with the vast national reach of both the broadcast and cable networks.41 At present, only two groups have more than twenty percent reach of the nation’s ADI households.42 Furthermore, only the ten largest groups reach as much as ten percent of the nation’s

40. When the Seven Station Rule was adopted in 1954, seven stations represented approximately two percent of all (354) commercial TV stations. When the twelve station limit was adopted in 1984, twelve stations represented about 1.3% of all (904) commercial stations.

41. Each of the three major television networks (ABC, CBS, and NBC) has about 200 affiliated stations through which more than ninety-five percent of the U.S. television households may be reached. In August 1987, thirteen different cable networks were carried by systems having at least 30,000,000 subscribing households, or approximately seventy percent of the nation’s cable households and thirty-five percent of all TV households. See Services Subscriber Counts, MULTIC高速HANNEL NEWS, Aug. 17, 1987, at 66.

42. H. HOWARD, supra note 19, at 13. Groups with more than twenty percent coverage of the nation’s ADI TV households on January 1, 1987 were Capital Cities/ABC (24.43) and NBC/GE (24.01). Id.
households, based on the FCC's ADI TV household formula.\textsuperscript{43} Reach and station data for the twenty-five largest groups are shown in Table 1.

Thus, the "12 and 25\% rule" is consistent with the original ownership rules.

B. Encouraging a Diversity of Media Voices

This issue relates to both the national and the local level and is most critical at the latter, where the FCC has strong cross-media ownership rules in force. At the local level, every television station, whether group-owned or not, will probably face competition from five or more broadcast TV stations as well as from cable services and other video delivery systems.\textsuperscript{44} As indicated, the duopoly and cross-media ownership rules effectively limit the ability of any owner to monopolize the local media in any market area. The change from a seven station limit to the twelve station and twenty-five percent limit affects only the national structure of the industry. In adopting its more lenient national multiple ownership rule, the Commission concluded that the "7-7-7 rule" tended to inhibit the development of new networks and national program sources that could result from the expected larger number of strong group owners. In effect, through the expansion of the ownership limit from seven to twelve stations, one likely result may be a greater number of large television groups and a decreased number of small groups. Such a development, in turn, could enhance the diversity of programming at the national level, made possible through greater economy of scale among the more powerful group operators.\textsuperscript{45} But what about diversity among station groups themselves? With numerous mergers and buyouts during the past two years, hasn't the number of ownerships already declined? Surprisingly, the answer is "no." Despite all of the trading activity in TV station properties, the total number of television multiple station owners actually grew

\begin{itemize}
\item[\textsuperscript{43}] \textit{Id.} at 10.
\item[\textsuperscript{44}] \textit{See Amendment of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations,} 100 F.C.C.2d 17 at paras. 24-86 (discussing the issue of the mass media and viewpoint and economic diversity).
\item[\textsuperscript{45}] Despite the fact that a fourth network has been launched by the Fox-Murdoch organization, it is too early to tell how effective the 1984-85 change will be in facilitating new programming voices. \textit{See Multiple Ownership of AM, FM and Television Stations,} 48 Fed. Reg. 49,438 at para. 58.
\end{itemize}
### Table 1
Percentages of the Nation's TV Households
Reached by the 25 Largest Groups
(FCC Formula)
January 1, 1987

<table>
<thead>
<tr>
<th>Rank</th>
<th>Group Owner</th>
<th>Number of Stations</th>
<th>% of U.S. TV HH</th>
<th>% TVHH with Proposed Purchases/Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Capital Cities/ABC</td>
<td>8</td>
<td>24.43</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>NBC/GE</td>
<td>6</td>
<td>21.01</td>
<td>22.38</td>
</tr>
<tr>
<td>3.</td>
<td>CBS</td>
<td>4</td>
<td>19.46</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Fox</td>
<td>7</td>
<td>19.39</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Tribune</td>
<td>6</td>
<td>18.69</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Home Shopping Network</td>
<td>9</td>
<td>11.54</td>
<td>15.15</td>
</tr>
<tr>
<td>7.</td>
<td>Taft</td>
<td>12</td>
<td>10.84</td>
<td>5.33</td>
</tr>
<tr>
<td>8.</td>
<td>United/Chris Craft</td>
<td>7</td>
<td>10.41</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Trinity</td>
<td>10</td>
<td>10.31</td>
<td>11.69</td>
</tr>
<tr>
<td>10.</td>
<td>Westinghouse</td>
<td>5</td>
<td>10.11</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Kohlberg, Kravis, Roberts</td>
<td>9</td>
<td>9.88</td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Spanish International</td>
<td>7</td>
<td>9.39</td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>Cox</td>
<td>8</td>
<td>8.91</td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>Gannett</td>
<td>8</td>
<td>8.80</td>
<td></td>
</tr>
<tr>
<td>15.</td>
<td>Scripps-Howard</td>
<td>9</td>
<td>7.59</td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>Gaylord</td>
<td>7</td>
<td>7.21</td>
<td>6.47</td>
</tr>
<tr>
<td>17.</td>
<td>Blair</td>
<td>4</td>
<td>7.16</td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td>Hearst</td>
<td>6</td>
<td>6.92</td>
<td></td>
</tr>
<tr>
<td>19.</td>
<td>RKO General</td>
<td>2</td>
<td>5.84</td>
<td>0.00</td>
</tr>
<tr>
<td>20.</td>
<td>A. H. Belo</td>
<td>5</td>
<td>5.68</td>
<td></td>
</tr>
<tr>
<td>21.</td>
<td>Post-Newsweek</td>
<td>4</td>
<td>4.72</td>
<td></td>
</tr>
<tr>
<td>22.</td>
<td>H&amp;C Communications</td>
<td>6</td>
<td>4.68</td>
<td></td>
</tr>
<tr>
<td>23.</td>
<td>Lin</td>
<td>7</td>
<td>4.66</td>
<td></td>
</tr>
<tr>
<td>24.</td>
<td>Knight-Ridder</td>
<td>9</td>
<td>4.61</td>
<td></td>
</tr>
<tr>
<td>25.</td>
<td>Gillette</td>
<td>12</td>
<td>4.44</td>
<td></td>
</tr>
<tr>
<td>26.</td>
<td>Grant</td>
<td>3</td>
<td>4.44</td>
<td></td>
</tr>
</tbody>
</table>


(from 180 to 187) from 1985 to 1987. A principal reason for this increase was the formation of several new groups, usually consisting of smaller stations, each year. Furthermore, more than 100 different groups continue to hold TV licenses in the top 100 markets. These figures attest to the diversity of sources still intact in markets across the country. Ultimately, however, the number of group owners is likely to decline some-

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what in future years. Given the "worst case scenario" that all TV stations in the top 100 markets, 617 at present, become group-owned by twelve-station groups, the result would be a minimum of fifty-one different groups competing against each other in individual markets. Thus, the twelve station and twenty-five percent limit, coupled with continued enforcement of the duopoly and cross-media ownership rules, should be sufficient to maintain a diverse body of licensees, both nationally and in each separate market.

C. Creating a Workable, Albeit Arbitrary, Scheme for Ownership

The FCC adopted the "7-7-7 rule" in order to create a satisfactory and workable system, and it decided that while its approach was arbitrary, it was the best option.\textsuperscript{48} While "12 and 25%" is arguably as arbitrary as "7-7-7," the new rule provides a more principled scheme for media ownership. The rule now recognizes that stations are not equal, mainly because of varying potentials for audience reach. It is acceptable under the new rule for a group of commonly-owned stations to reach up to twenty-five percent of the nation's TV households whether it is attained by two stations or twelve. Furthermore, UHF stations, which continue to be less competitive than VHF, are given special consideration through the fifty percent ADI reach factor, although they count toward the limit of twelve just as VHF stations do.

VI

TV Ownership Instability

The most disturbing development in the two years since the adoption of the "12 station 25% rule" has been the heavy ownership turnover of major station groups, two of the three networks, and numerous individual stations. These ownership changes have taken a number of forms, such as outright purchases, friendly mergers, leveraged buyouts by managements, and hostile takeovers by corporate raiders.\textsuperscript{49} A frequent result has been a burdensome debt load that taxes the earnings

\textsuperscript{48} See Multiple Ownership of AM, FM and Television Stations, 48 Fed. Reg. 49,438 at para. 10.

\textsuperscript{49} Among the major acquisitions were those of ABC by Capital Cities Communications, of RCA/NBC by General Electric, and Metromedia, Inc. by Rupert Murdoch's 20th Century Fox organization. Takeover battles raged at CBS, and many of the "blue-ribbon" group owners faced takeover attempts, mergers, and defensive lever-
power of the stations involved and has led to drastic curtailment of staff and operating funds. Certainly, without the "12 station 25% rule," some large mergers and buyouts could not have occurred. For example, Taft could not have added the five Gulf Broadcasting stations to its seven had it not been for the rules change. The seven-station Capital Cities group could not have acquired ABC with its five TV outlets, ending up with eight TV outlets to comply with the twenty-five percent ceiling on household reach. Kohlberg, Kravis & Roberts could not have acquired both the Wometco and the Storer stations, for a total of twelve stations, under the old rules. Even though the "12 station 25% rule" made large-scale station acquisitions possible, this rule alone cannot be blamed for the current instability of the television industry, since many groups involved in acquisition activities have owned fewer than seven stations. For example, NBC only had five TV stations when General Electric acquired RCA, NBC's parent organization, in one of the largest mergers in U.S. corporate history. Viacom only had five stations when its acquisition occurred, and the acquisition of Clay Communications by the Price group involved only four stations. Although the "12 station 25% rule" has been a factor in some major TV acquisitions, three other items, in this writer's opinion, better explain the recent instability in television station ownership. These are economic speculation, rising station values, and the elimination of a minimum holding period for broadcast stations.

A. Economic Speculation

Until recent times, broadcast stations were generally regarded as public trusts and long-term investments by their owners. However, for the past few years, stations and entire groups have been regarded by speculative investors as mere ve-

51. Kleinfeld, supra note 1.
53. RCA + GE: Marriage Made in Takeover Heaven, supra note 1.
vehicles for quick capital gains. Some television stations have been owned by as many as three different licensees within a year's time. Major Wall Street speculators also got into the act, thinking that a group's stations collectively might be worth more than the aggregate value of the company's publicly-traded stock. That belief set off several bidding wars by speculators who planned to acquire groups of stations which they expected to sell later at still higher prices.

B. Rising Station Values

Integral to economic speculation in broadcast properties has been the long-term escalation of the real and the perceived economic values of stations as business enterprises. Good stations are highly valuable, and, until very recently, most TV stations have commanded higher and higher prices when they have been sold to a series of owners. Speculation in stations as trading properties has been based on the concept of perpetually rising station values, supported in part by the possibility of quick increases in profits through cost-cutting management techniques.

C. Abandonment of "Anti-Trafficking" Rule

Although economic speculation and rising station values are the forces that have caused television's current disarray, a third ingredient essential for the speculative market in TV properties was the elimination of the three-year holding rule adopted by the FCC in 1962. This deregulatory action, taken by the Fowler FCC in 1982, effectively reversed the Commission's long-held policy of favoring licensees who would operate their stations on a long-term basis over short-term operators who were interested primarily in making quick capital gains. With the elimination of this rule, the result has been a marked increase in station trading and a decline in ownership stability within the television industry.

Conclusions

In summary, the "12 station 25% rule" appears to be an improvement over the former multiple-ownership rule in the context of present-day broadcasting. Although the new rule permits ownership of a larger number of stations, it limits owners for the first time to a specific percentage of the nation's market of television households. A household reach of twenty-five percent certainly does not constitute a monopoly, especially when every station must compete with other broadcast channels, cable, and other video technologies.

Second, even though the Fowler Commission's multiple-ownership rule allows for the development of larger groups than before, it inherently provides for a high minimum level of ownership diversity. It is true that the resulting diversity level (i.e., the number of group owners) may someday be less than before the rule; however, the Commission has opted to foster the development of fewer but stronger groups in the interest of achieving a greater number of active program-producing broadcast organizations. Thus, the goal of ownership diversity is reasonably well maintained, while the second goal of furthering programming diversity is given a better chance through economy of scale in group operation.

Third, the new rule has lessened the rigidity and unevenness of regulation that was always a problem in the "7-7-7 rule" through the adoption of a flexible dual limit of twelve stations or a potential audience reach of twenty-five percent of the nation's TV households. If left in place for a period of several years, the Fowler FCC's "12 and 25%" multiple-station ownership rule will, like its predecessor, encourage the development of a substantial body of broadcast chains that will approach the maximum number of stations and/or audience reach. Time alone will tell whether or not that collection of groups will become prolific program producers for the nation, as the Commission hopes.

Finally, the "12 station 25% rule" is only one of a number of factors that has contributed to the problem of trafficking in station licenses during the past few years. Much of this problem is due to economics and speculation. A considerable amount of blame also must go to the Fowler FCC for abandoning the three-year holding rule,60 the removal of which has allowed

60. Transfer of Broadcast Facilities, 52 RAD. REG. (P&F) 1081 at para. 29.
speculators to turn broadcast licenses into trading commodities. Now, it is the Patrick Commission's responsibility to deal with that issue. Reinstitution of the three-year rule is not necessarily the answer, but some type of rule to promote licensee stability is needed. This matter deserves careful study by the Patrick Commission since the rapid turnover of station licenses resulting from economic speculation is contrary to the public interest.