Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
2014 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 14-50
	)	
2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 09-182
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294
	)	
Rules and Policies Concerning Attribution of Joint Sales Agreements In Local Television Markets	)	MB Docket No. 04-256

COMMENTS OF THE WRITERS GUILD OF AMERICA, WEST, INC.

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Summary

The Federal Communications Commission ("Commission") must maintain existing media ownership rules to protect local market competition and prevent further media concentration. Ownership rules have renewed importance because of the consolidation occurring in the video distribution value chain. In 2013, broadcast station deals totaled $12.4 billion, the highest volume of deals since 2006. Local station ownership continues to be attractive and the recent round of consolidation is driven by retransmission revenue growth, which reached $3.3 billion in 2013.[1] Comcast's pending acquisition of Time Warner Cable and AT&T's pending acquisition of DirecTV will reduce the number of national video distributors and give the two merged entities control of more than half of all cable television subscribers. These distributors are merging in an effort to diminish competition, increase power over programmers—including broadcast stations—and increase control over distribution. These developments have already triggered consolidation among content providers, with 21st Century Fox attempting to acquire Time Warner.

Broadcast television's unique role within the media industry merits rules to protect the public interest. Broadcast television offerings, which include local news, live event coverage, sports and the most-watched scripted programming, are unmatched by the basic cable market or Internet video. The Commission must, therefore, continue to protect competition in this market by retaining its existing television ownership limits. Rules that limit duopolies, prohibit mergers of the top four local broadcast stations, restrict newspaper/broadcast cross-ownership and prevent any of the top 4 broadcast networks from merging are necessary to maintain both local market and national competition. As stations have found ways to circumvent ownership limits, through

[1] SNL Kagan, Media Sector Forecast, "Multichannel Programming Fees as a Percent of Programming Fees, 2006-2017."

shared service and joint sales agreements, we commend the Commission for taking steps to close loopholes and limit the competitive harm represented by such agreements. Enhanced transparency of shared service agreements among stations and attribution requirements for joint sales agreements will ensure that stations continue to serve their public interest obligations of providing diverse, local programming reflective of local community interests.

I. Introduction

Writers Guild of America, West, Inc. (WGAW) is pleased to submit the following comments in response to the Commission's *Further Notice of Proposed Rulemaking and Report and Order* regarding its 2010 and 2014 Quadrennial Review of Broadcast Ownership Rules.[2] WGAW is a labor organization that represents more than 8,000 professional writers of film, television and Internet-delivered video. WGAW members write feature films, dramas and comedies for broadcast, cable and pay TV networks, local news, documentary programs and online video programs. Our members are the creators of broadcast network primetime programming and also write local news for television and radio stations in Los Angeles. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in theaters are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA").

The Commission's review of broadcast ownership rules is timely because the video programming market has changed significantly since the 2010 review. Of particular concern is the massive consolidation underway among both broadcast stations and multichannel video programming distributors (MVPDs). This consolidation is occurring in a market that already features too little competition, a fact well-documented by the WGAW in numerous proceedings before this Commission.[3] The pending Comcast-TWC and AT&T-DirecTV transactions,

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[2] Further Notice of Proposed Rulemaking, *2014 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket 14-50, Released April 15, 2014. Hereinafter *FNPRM*.

[3] *See* Comments of WGAW *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28, July 15, 2014, and Comments of the Writers Guild of America, West, Inc., *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, March 21, 2014, and Comments of the Writers Guild of America, West, Inc., *In the Matter of Annual Assessment of Competition in the Market*

although outside the scope of this review, are inextricably intertwined with broadcast station consolidation. Station groups are consolidating to leverage scale in retransmission negotiations with large and powerful MVPDs, while MVPDs are consolidating to increase their power over content providers. If these proposed mergers are consummated, we can expect further consolidation among broadcast stations because MVPDs are an essential part of the distribution chain for broadcast stations, controlling access to 90% of television households.[4] These transactions have prompted M&A activity among content providers, with 21st Century Fox pursuing Time Warner.

While basic cable networks and the Internet have given rise to new platforms for original video programming, broadcast continues to be an essential and unique segment of the television market. Broadcast networks offer the most original programming, deliver the highest-rated content, produce local news, cover events of national interest such as the Presidential debates and the Academy Awards, and air must-have sports programming. Broadcast stations offer such content over airwaves provided to them by the government, in exchange for an obligation to serve the public interest. The rules governing ownership of television stations, therefore, continue to merit special consideration. To protect the public interest values of competition, diversity and localism, we urge the Commission to retain current media ownership limits for an additional four years. Rules that place limits on television station ownership, newspaper-television station cross ownership and ownership of national broadcast networks continue to serve the public interest and represent some of the most important limitations on the industry's

for Delivery of Video Programming, MB Docket No. 12-203, September 10, 2012, and Comments of the Writers Guild of America, West, Inc., *In the Matter of Annual Assessment of Competition in the Market for Delivery of Video Programming*, MB Docket No. 07-269, June 8, 2011.

[4] FCC, *In the Matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB No. Docket 12-203, ¶177 (2013). Hereinafter *15th Video Competition Report.*

tendency toward monopoly. Because of the special role broadcast stations continue to play in local communities and the importance of a diversity of voices, we support the Commission's proposal to regulate joint sales agreements (JSAs) and shared service agreements (SSAs).

II. Broadcast Television Remains the Relevant Market for Commission Analysis

In the 2010 Ownership Review, broadcasters proposed expanding the market definition to include online video.[5] While the Internet has created an important and open platform for video programming, it is not yet a viable substitute for the mix of scripted programming, live sports and local news offered by local broadcast stations. Subscription online video distributors (OVDs) such as Netflix and Amazon are investing in original, television-quality programming, but no OVD can match the level of original content, on a local and national level, currently offered by broadcasters. Broadcast stations may prefer an expansive market definition that bolsters their arguments in favor of further deregulation, but in reality online video is not yet a reasonable substitute and still only accounts for a fraction of the viewing that occurs in traditional media outlets. Pew's State of the Media Report finds that broadcast television continues to be the primary news source for the majority of consumers.[6] Nielsen reports that Americans spend 152 hours a month watching traditional television, compared to 6 hours and 20 minutes hours watching video online or five and a half hours watching video on a mobile phone.[7] Television also remains the dominant platform for advertisers, representing $72 billion in revenue in 2013.[8] In contrast, the Interactive Advertising Bureau and PricewaterhouseCoopers report that

[5] FNPRM ¶21
[6] Pew Research Center, "In Changing News Landscape, Even Television is Vulnerable: Trends in News Consumption: 1991-2012," September 27, 2012, http://www.peoplepress.org/ 2012/09/27/ in-changing-news-landscape-even-television-is-vulnerable/.
[7] Nielsen, "A Look Across Media: The Cross-Platform Report," December 2013, p 6.
[8] SNL Kagan, Combined Broadcast and Basic Cable Network Advertising Revenue.

advertisers spent approximately $3 billion on online video advertising.[9] Online news is still a nascent industry and most news sites aggregate content from traditional media sources rather than offering original reporting.[10] These facts support continued competitive analysis using broadcast as the relevant market.[11]

III. The Commission Must Maintain Local Station Ownership Limits

The Commission's station ownership limits, including the *Top-Four Prohibition* and the *Eight-Voices Test*, remain vital to promoting competition and localism.[12] Limits on station ownership have become increasingly relevant because of ongoing consolidation in the broadcast station market. In 2013, mergers and acquisitions in the local broadcast station market totaled $12.4 billion, a magnitude not seen since 2006. In comparison, the combined deal volume of the last five years totaled $13.2 billion.[13] These transactions have concentrated ownership among the largest broadcast group owners, such as Sinclair, Gray and Nexstar. The Commission's limits on the number of households a station owner can reach nationally and the general limit of one license in a market are perhaps the only measures preventing further concentration.

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[9] PricewaterhouseCoopers, "IAB Internet Advertising Revenue Report: 2013 Full Year Results," April 2014, http://www.iab.net/media/file/IAB_Internet_Advertising _Revenue_ Report_ FY _2013.pdf and Marina Lopes, "Videos may make up 84 percent of internet traffic by 2018: Cisco," *Reuters*, June 10, 2014, http://www.reuters.com/article/2014/06/10/us-internet-consumers -cisco-systems-idUSKBN0EL15E20140610.

[10] FNPRM ¶131

[11] Comments of the Writers Guild of America, West, Inc., *2010 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182 and *Promoting Diversification of Ownership in the Broadcasting Services*, MB Docket No. 07-294, March 5, 2012, p 1. Hereinafter referred to as "WGAW Comments."

[12] FNPRM ¶35-36

[13] Volker Moerbitz, "Radio/TV station deal volume in 2013 shoots up to $12.4B," SNL Kagan, January 23, 2014, http://www.snl.com/interactivex/article.aspx?id=26564447&KPLT=6.

Duopolies, shared service agreements and the UHF discount, in addition, have allowed station owners to bypass national ownership limits and expand control over local markets. The tendency toward local market consolidation is evident in the presence of at least one duopoly in 72 designated market areas (DMAs) as of July 2012. Larger markets are even more concentrated; New York, Los Angeles, Dallas-Ft. Worth, San Francisco-Oakland, and Seattle-Tacoma each have four duopolies. The Commission has also found that the largest station group owners use local marketing agreements (LMAs) to expand control in local markets. For instance, station owners Sinclair and LIN both operate 12 LMAs, Newport has 4 LMAs and Belo operates 2 LMAs.[14] While the Commission requires the disclosure of LMAs and JSAs the Commission currently does not currently require stations to disclose other types of sharing agreements, such as Local News Sharing (LNS). As a result, the information collected by the Commission on local market ownership concentration through duopolies, JSAs, and LMAs does not capture the pervasive control of the largest station owners.

To highlight the effects of concentrated station ownership in a local market, WGAW revisits our comments in the 2010 proceeding on the experience of CBS news writers in Los Angeles.[15] Following the Commission's relaxation of duopoly restrictions in 1999, CBS acquired Los Angeles television station KCAL. CBS then combined the in-market newsrooms of KCBS and KCAL in 2002. Broadcasters, in advocating for further relaxation of ownership rules, have claimed that duopolies create operating efficiencies which allow stations to invest more in news programming. However, writers at KCAL and KCBS describe a race to the bottom where news staffs were cut to balance station budgets, news hours increased to fill out the schedule, and content repurposed between the two stations. Positions that have been eliminated since the

[14] *15th Video Comp report* ¶159-160
[15] WGAW Comments, p 3.

newsrooms were merged include KCAL's Education and City Hall reporters, both of which provided dedicated coverage of local issues. News writers also report that news is frequently re-cued and repurposed between the two stations. Staff reductions and a combined newsroom have made the reporting on KCBS and KCAL almost indistinguishable, and the Los Angeles market has fewer unique, local news sources as a result.

Large station owners do not appear to be using operating efficiencies generated by duopolies or SSAs to invest more resources into local content. Station groups seem, rather, to be using free cash flow to acquire more stations. While we recognize that Commission action to strengthen ownership regulations is unlikely, we believe serious consideration should be given to the proposal of Free Press and United Church of Christ to return to a single license rule. The Commission should not allow further local market consolidation, which is envisioned by the proposal of CBS and Entravision to allow triopolies.[16] Such a proposal is merely an attempt to reduce local market competition and is unnecessary because the ability to multicast allows station owners to program and distribute multiple channels without having to control multiple licenses.[17] Returning to a single license rule, rather, would allow for more diversity in local television markets. If, as we expect, the Commission continues to allow local station duopolies, it must maintain existing ownership limits that protect local markets by ensuring a minimum number of competitors. The Commission must retain the prohibition against mergers between the top 4 stations in a market, the requirement of affiliation swaps or sales to comply with the top-four rule, and the eight-voices test, which ensures a minimum number of market competitors.[18]

Station consolidation contradicts the public interest mandate of broadcast stations, which requires licensees of publicly-owned spectrum to serve local communities by providing diverse

[16] FNPRM ¶18, ¶36, ¶38
[17] FNPRM ¶61
[18] FNPRM ¶41, ¶44, ¶49

viewpoints. Diversity is a cornerstone of US communications policy. The Supreme Court held in the *Associated Press* that the, "widest dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[19] Consolidation has reduced the number of broadcast station owners, which diminishes the diversity of viewpoints offered, making local broadcasting less vibrant and less competitive.

IV. Newspaper/Broadcast Cross-Ownership Rule

WGAW strongly supports retention of the newspaper/television cross-ownership ban. The Commission's tentative proposal to relax the ban by allowing a favorable presumption for waiver requests in the top 20 DMAs does not support diversity or localism, especially in the context of consolidation currently underway in the video distribution market.[20] The Commission's own research on duopolies found that four of the five largest markets have duopolies. In addition, the four national networks typically have owned-and-operated stations in the largest DMAs. Based on this evidence, we can reasonably predict what will transpire if the Commission chooses to relax the ban; Newspaper and television station mergers will occur and the number of unique news and information sources serving a local market will decline. Tribune, for example, owns broadcast television station KTLA in Los Angeles and the *Los Angeles Times*. While KTLA media may be offered as a compliment to the *Times* it does indicate a level of editorial coordination between the two outlets. This rule remains incredibly important to preserving existing levels of local market competition and consumer choice for news.

The Commission also proposes retiring the newspaper/radio cross-ownership prohibition. Although the Commission has found that radio does not typically compete with newspapers in

[19] *Associated Press v. United States*, 326 U.S. 1, 20 (1945)
[20] FNPRM ¶169

the local news market the cross-ownership restriction may support the Commission's interest in ownership diversity. The FCC has noted that radio remains one of the affordable entry points to the communications industry for women and people of color. Retiring the newspaper/radio restriction may make radio stations an acquisition target for large corporations such as Tribune and does not support the public interest.

V. Dual Network Rule[21]

The Dual Network Rule, which prohibits mergers between any two of the top four broadcast networks, remains one of the most important Commission rules preventing further media consolidation. As we have reported to the Commission in numerous proceedings, media consolidation has all but eliminated independent production from our nation's airwaves. Tables 1 and 2 document the decline of independent production since the repeal of Financial Interest and Syndication rules in 1992 and the rise of in-house productions for each of the broadcast networks.

Table 1. Broadcast Fall Primetime Lineup, 1989-2013

Fall Primetime Lineup	1989	1999	2008	2009	2010	2011	2012	2013
Independently Produced[22]	76%	28%	21%	13%	12%	11%	11%	10%
Media Conglomerate Produced Series	24%	72%	79%	87%	88%	89%	89%	90%

Audience fragmentation and the growth of secondary markets for broadcast content, including OVDs such as Netflix and Amazon Prime, have made owning content attractive,

[21] Comments of Fox Entertainment Group and Fox Television Holdings, Inc., MB Docket No. 09-182 and MB Docket No. 07-294, pp 3, 19; Comments of CBS, MB Docket 09-182 and MB Docket No. 07-294, p 16.

[22] WGAW defines independent producers as studios or production companies that are not owned or affiliated with a major broadcast or cable network or an MVPD provider. Such a definition is essential because it exposes the true amount of programming that reaches the air without the market power or guaranteed distribution provided by vertical integration.

driving broadcast networks to increasingly air content produced by an affiliated studio. For example, CBS sold the international rights and in-season SVOD rights to *Under the Dome*, making the series profitable before a single episode aired.[23] Amazon reportedly paid $700,000 per episode for the rights to *Under the Dome.*[24] The table below reveals that ABC was the *only* broadcast network not to own 50% or more of the series airing on the network in the 2012-2013 season. In this consolidated and vertically-integrated market, a handful of companies already decide what content is on our nation's airwaves. If the Commission were to repeal the Dual Network rule, consolidation would undoubtedly occur, harming programming competition and limiting consumer choice.

Table 2. In-House Productions by Network: Full Season

Network	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
ABC	42%	38%	40%	43%	45%
CBS	47%	58%	50%	52%	50%
CW	56%	60%	69%	69%	75%
Fox	47%	54%	53%	59%	57%
NBC	53%	68%	50%	50%	59%
Total	**48%**	**53%**	**50%**	**52%**	**55%**

Maintaining the Dual Network Rule has renewed importance in the context of the most recent round of consolidation. With proposed mergers giving two MVPDs control of more than half of all cable TV subscribers, we expect further consolidation among networks and studios. Indeed, 21st Century Fox is attempting to do just that with its acquisition of Time Warner. The

[23] Nellie Andreeva, "CBS Renews 'Under The Dome' Streaming Deal with Amazon for Season," *Deadline Hollywood*, September 12, 2013, http://www.deadline.com/2013/09/cbs-renews-under-the-dome-streaming-deal-with-amazon-for-season-2/.
[24] Joan E. Solsman, "CBS CEO hints Amazon spent $9.1M for 'Under the Dome'," *CNet*, December 10, 2013, http://news.cnet.com/8301-1023_3-57615159-93/cbs-ceo-hints-amazon-spent-$9.1m-for-under-the-dome/.

Dual Network Rule may be the only regulation preventing consolidation among the largest content providers.

VI. Joint Sales Agreements & Shared Service Agreements

Joint sales agreements are business arrangements that have allowed stations to bypass local market ownership restrictions. These arrangements occur when one station owner generates more than 15% of a "competing" station's advertising revenue. This relationship allows one station to exert a high level of managerial control, which may have editorial implications, over a subordinate station. Chairman Wheeler has described JSAs as, "…the tool to increase corporate control of local media." In recognition of how these agreements undermine local market competition, the Commission has appropriately ruled that JSAs should be disclosed and attributable for purposes of calculating station ownership. The attribution rule balances the potential benefits of a joint service agreement by establishing a waiver for JSAs that support a compelling public interest obligation by, for example, supporting the operations of a nonprofit station.

Shared service agreements present many of the same concerns raised in the JSA proceeding, but the Commission lacks data on the pervasiveness of these agreements. The Commission's proposed definition of SSAs as the collaboration between two stations for the provision of station related services is broad enough to capture many different kinds of coordination. Parties to an SSA are stations that are either a) not commonly owned or b) are individuals or entities with an ownership interest in the collaborating stations.[25] All stations participating in SSAs should disclose whether they are providing a service or receiving a service; whether the service is

[25] FNPRM ¶330-331

technical, administrative or editorial; and if editorial, the station should specify how resources are shared. Examples of resource sharing might include equipment, video, and reporting. This information should be disclosed in the local public inspection file and in the station's online public file.[26] We encourage the Commission to track SSAs and provide some qualitative analysis of the impact of SSAs on news coverage and station ownership limits.

VII. Policies to Promote Race and Gender Diversity in Media Ownership

Policies to promote media ownership among women and people of color are necessary to serve the public interest goal of diversity, yet Commission deliberations on such policies are marked by inertia. Despite significant evidence of the under-representation of women and people of color as station owners, confirmed by numerous independent and commissioned studies on the issue, the Commission seems unable to establish a licensing policy that acknowledges diversity. Commission policy should promote diverse ownership of local media because diversity is an important part of our national identify. But more importantly, Commission policy cannot ignore the historical realities that have disadvantaged these groups. A licensing policy which is race and gender neutral is not appropriate because neutrality has not facilitated broadcast ownership among women and people of color. Female ownership of full power commercial television stations is 6.3%, Hispanic/Latino owners represent 3% of full power stations, and owners of color (excluding Hispanic/Latino owners) represent 3% of full power stations.[27] Further analysis of this information reveals that black Americans only owned 9 full power television stations, or

[26] FNPRM ¶337
[27] FCC, *Report on Ownership of Commercial Broadcast Stations,* Released June 27, 2014, pp 1-2.

0.6% of all full power TV stations, in 2013; American Indian or Alaskan Natives owned 11 stations, or 0.8% of the total; and Asian Americans owned 19 stations, or 1.4% of total.[28]

WGAW supports the development of policies or programs that promote ownership among women and people of color, but we also believe that maintaining strong ownership limits, eliminating the UHF discount and closing JSA loopholes will limit ownership concentration, thereby creating more opportunities for diverse ownership. Commission support for reviving the Minority Tax Certificate policy, which allowed companies to defer capital gains taxes on the sale of media properties to owners of color, may also increase ownership diversity. We urge the Commission to do the necessary work to develop a sound legal theory for policies that expressly recognize the importance race and gender in broadcast licensing.

VIII. Improvements in Commission Data Would Increase Transparency

To increase media ownership transparency, the Commission should update the Consolidated Database System (CDBS) to include all information collected in the station file and in the license application and make such data available in exportable file formats. The current layout of the CDBS station record is challenging to navigate, requiring the user to pass through several screens to get detailed information for a single station. The CDBS database should be updated to allow users to build a query using every station data point that the Commission collects, such as broadcast area, political ad revenue, ownership group, owner demographics, political ads, and shared service agreements as contemplated by the *FNPRM*. Information on SSAs and JSAs should be included in the CDBS and summarized in the Commission's annual video competition report.[29] Making query results exportable into spreadsheet format would allow

[28] *Ibid*, pp 5-6.
[29] FNPRM ¶366

for analysis of trends of by region and ownership. It would also allow for analysis of sharing agreements characteristics, including station owner's race and gender, or market size—variables that the Commission would like to consider in allowing JSA waivers. Such access would be valuable to commenters and researchers whose original analyses could enhance the Commission's understanding of ownership issues.

IX. Conclusion

As we witness consolidation throughout the video distribution value chain, it is clear that the biggest threat to freedom of speech in the United States is control of media by a handful of companies. The diverse and antagonistic media, praised by the Supreme Court as essential to our democracy, is threatened by mergers and acquisitions that limit the number of diverse viewpoints. John Stuart Mill captured the benefit of divergent viewpoints in his 1859 essay *On Liberty*:

> But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error…We can never be sure that the opinion we are endeavoring to stifle is a false opinion; and if we were sure, stifling it would be an evil still.

The Commission has special obligation to promote a diverse and competitive broadcast market. To do so, we urge the Commission to retain the ownership rules currently in place and support efforts to close ownership loopholes such as the UHF discount and sharing agreements, and enact policies to promote diverse media ownership.