Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	MB Docket No. 09-182
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	)	
	)	
Promoting Diversification of Ownership In the Broadcasting Services	)	MB Docket No. 07-294

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

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I. Introduction

Writers Guild of America, West, Inc. (WGAW) is pleased to submit the following comments in response to the Federal Communication Commission's (FCC) Notice of Proposed Rulemaking (NPRM) released on December 22, 2011, MB Docket No. 09-182 and 07-294.

WGAW is a labor organization representing more than 8,000 professional writers working in film, television and new media, including news and documentaries. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in film are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA").

The WGAW is an ardent supporter of the FCC's public interest goals of competition, diversity and localism. The members of our organization are a critical input within the media marketplace. Their experiences provide a unique perspective on the importance of the FCC's media ownership rules and the current status of the Commission's public interest goals. In numerous proceedings before this Commission, the WGAW has stated its concerns regarding the lack of competition and diversity across the media industry. Currently, a small number of vertically integrated media companies produce virtually all of the original content viewed by Americans on the major broadcast and cable networks. These are the same companies that own the broadcast networks and the most widely distributed and watched cable channels. The result of FCC policy over the past two decades is a media marketplace in which independent content has little chance of reaching the public and the content that is offered to consumers comes from a dwindling number of sources. For writers, both vertical integration and horizontal consolidation have eliminated a competitive market for their creative works.

In light of these developments, the existing media ownership rules remain necessary to protect both consumers and content creators from further harm. The Internet, while representing a new outlet for expression, does not alleviate the need for a competitive television marketplace. Television remains the dominant news source for most Americans.[1] The average American watches more than 34 hours of television per week.[2] Television is the dominant advertising medium, generating over $70 billion in annual ad revenue.[3] The rise of the Internet as an alternative for some news and entertainment programming has not diminished the importance of the television market. Nor has it lessened the need for strong rules protecting the public interest standard. In this filing, we address two media ownership rules: the Local Television Ownership Rules and the Dual Network Rule.

II. Local Television Ownership Rules

The WGAW supports efforts to maintain strong media ownership rules that protect competition, diversity and localism. Local television markets continue to play an important role in realizing these public interest goals. We urge the FCC to continue to view local television markets as the appropriate area in which to analyze competition. In this proceeding, television stations and broadcast networks have insisted that the Internet, because it represents an alternative distribution outlet, must be accounted for in any market analysis. Proponents of such an analysis argue that because the Internet, like television, is supported by advertising and used by consumers, it represents new competition. This reasoning is flawed because the existence of alternatives does not automatically enlarge the number of competitors in a market. Rather, the

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[1] "Internet Gains on Television as Public's Main News Source," Pew Research Center Publications, January 4, 2011, http://pewresearch.org/pubs/1844/poll-main-source-national-international-news-internet-television-newspapers, accessed March 2, 2011.
[2] "The Cross-Platform Report: Quarter 3, 2011 – US," Nielsen, February 9, 2011, http://www.nielsen.com/content/corporate/us/en/insights/reports-downloads/2012/cross-platform-report-q3-2011.html, accessed March 2, 2011, p.4.
[3] "Advertising Forecasts," SNL Kagan, December 2011, p.2.

degree to which the alternatives can be used as a substitute must be considered. We are encouraged that the FCC has correctly recognized that the Internet remains an imperfect substitute for local television stations. This is confirmed by the FCC's own media ownership study, which revealed that there is little local news online that does not originate from a broadcast station or newspaper.[4] In the study, only 17 of 1074 websites under review were unaffiliated with traditional print or broadcast media.[5] Accordingly, we strongly endorse the Commission's tentative conclusion to remain focused on the television station market.

Although the media ownership rules were relaxed in 1999 to allow duopolies, or common ownership of two stations in a local market, we urge the Commission to refrain from weakening the rules any further. The effect on local markets resulting from duopolies provides important evidence to support the existing rules. The WGAW represents newswriters who write and produce the local news at two Los Angeles stations, KCBS and KCAL. These two stations have operated as a duopoly since 2002, having merged the once separate newsrooms in that same year. In the decade following this merger, the experiences of the KCBS/KCAL newswriters highlights how relaxing media ownership rules undermines the FCC's public interest obligation.

The merger of KCBS and KCAL led to the reduction of independent and diverse viewpoints in the Los Angeles market. This is because the merged stations employ one newsroom to write the news for both stations. While KCAL features more hours of news programming, newswriters report that KCBS often selects KCAL news stories to run on its news programs. News writers also report frequent re-cueing of programs across both stations. The broadcast stations simply repurpose the same news across the two stations. Newswriters also report that the same story may simply be edited and updated and then reused by the other station.

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[4] Hindman, Matthew, "Less of the Same: The Lack of Local News on the Internet," April 6, 2011, p.10.
[5] Hindman, *Ibid.*

Since the merger, KCBS and KCAL have also laid off newswriters. News programs that once had four writers and an editor are now written by a single writer. With a smaller, consolidated newsroom, the reporting from KCBS and KCAL is essentially indistinguishable. Newswriters also report that the stations will only send out one crew to cover most stories. As a result of this consolidation, the main difference between the two stations is the on-air talent. Prior to the duopoly, KCAL provided independent coverage of news. This duopoly has not furthered the FCC's goal of diversity or competition in the local television market.

Given these experiences, it is essential that the local television ownership rules not be further relaxed. The most likely outcome of such action would be increased efficiencies for the merging companies at the expense of diverse programming and viewpoints. The prohibition against mergers among the top four rated stations is an important rule that limits the potential harm a duopoly could cause in a local market. Allowing two of the top four stations in a market to merge could provide one company with significant market power. The Commission should not take on faith the arguments of broadcasters that mergers among top four stations would lead to more local news. While there may be more than four local television stations in the market, the Commission notes that the top four stations generally provide a substantial portion of local news. It also notes that there is generally a drop-off in the amount of local news broadcast between the fourth and fifth rated local station. As such, the likely effect of a merger between two of the top four stations would not be more local news programming. Rather, to realize efficiencies across networks, the merged company would merely repurpose news across platforms. This has been the experience of WGAW newswriters at KCAL and KCBS.

A prohibition of mergers among top four stations is, moreover, consistent with the dual network rule. In most instances, the top four stations in a local market are owned by or affiliated

with ABC, CBS, FOX and NBC. Allowing a merger between stations that are affiliated with two of these four networks would create a loophole in the dual network rule. The top four stations in a local market are the advantaged competitors of that market. Their size generates advertising revenue, which can then be used to fund programming to attract more viewers. The top stations in a given market need not be further advantaged.

The WGAW also supports maintaining the "Eight-Voices" test, which prohibits a merger between two in-market stations unless there are at least eight independently owned commercial and noncommercial television stations in the market pre-merger. This is an important second test that complements the rule prohibiting the merger of any of the top four stations. This standard not only promotes competition by mandating a minimum number of competitors but also encourages diversity. To compete in a market with eight competitors, stations must differentiate in their program offerings and viewpoints.

Finally, the WGAW supports maintaining the numerical limits of the local television ownership rules. Given the experiences of WGAW members at KCBS and KCAL, the WGAW does not believe the FCC's public interest standard would be advanced by further consolidation in local markets.

The continued importance of the local television market to realizing the FCC's public interest goals of competition, diversity and localism require strong media ownership rules. Given potential harm to these goals threatened by further consolidation, the WGAW urges the Commission to maintain its existing rules prohibiting a merger of any of the top four stations, requiring the eight-voices test and prohibiting common ownership to extend beyond two stations.

III. Dual Network Rule

In prior proceedings before this Commission, the WGAW has commented at length on the nature of competition in the broadcast television market.[6] Our members have watched as a vibrant, competitive market for independent programming has been all but eliminated since the repeal for the Financial Interest and Syndication (Fin-Syn) Rules. We have also documented how the rise of basic cable networks has not resulted in the competition that the broadcast networks argued would kill their business if the Fin-Syn Rules remained in effect.[7] Rather, using the leverage created by retransmission consent, the broadcast networks achieved carriage of new cable networks, allowing them to block new entrants and gain control of the basic cable market. For writers, this consolidation has eliminated the competitive market for their works, as the vertical integration between exhibition and production has blocked entry into the television market by independent producers.

The NPRM notes that the dual network rule, which allows common ownership of multiple broadcast networks but prohibits a merger between or among the top four networks (ABC, CBS, FOX, NBC), has historically been necessary to promote competition and localism. Despite changes in the marketplace, the FCC tentatively finds that the top four broadcast networks continue to serve a unique role in media, due in part to the large audience these networks are able to attract and the advertising premiums they charge. As such, the FCC finds that the rule should remain in effect. We wholeheartedly concur with this finding. The WGAW believes the industry

[6] See 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, and Comments of the Writers Guild of America, West, In the Matter of Applications of Comcast Corporation, General Electric and NBC Universal, Inc., for Consent to Assign Licenses or Transfer Control of Licenses, MB Docket No. 10-56, June 21, 2010, and Reply Comments of the Writers Guild of America, West, In the Matter of Preserving the Open Internet Broadband Industry Practices, GN Docket No. 09-191, WC Docket No. 07-52, April 26, 2010.

[7] See 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.

at present is already too consolidated and eliminating this essential rule would be detrimental to competition.

Because the Commission has found that primetime entertainment programming supplied by the top four broadcast networks is a distinct product, we ask the FCC to look for ways to institute competition in this product market. The current ownership restriction is necessary but insufficient to protect the public's interest in such programming content. The top four networks not only control these public airwaves, but also dominate the primetime programming aired on these networks. The table below outlines the percent of the fall primetime lineup that is produced by the top four broadcast networks. As the table makes clear, there has been a dramatic reversal in program ownership over the last two decades. Largely as a result of the repeal of Fin-Syn, the networks now own more than 70% of the programming they air in primetime. This level of control among the top four firms has created an oligopoly in the primetime entertainment programming market.

Broadcast Network Fall Lineup: Primetime Programming Produced by the Top Four Network-Affiliated Producers

Network	1989	1999	2009	2010	2011
ABC	19%	61%	55%	60%	62%
CBS	17%	68%	74%	70%	75%
Fox	50%	63%	73%	83%	78%
NBC	8%	44%	81%	63%	71%
Total	**20%**	**58%**	**70%**	**69%**	**71%**

Source: WGAW Analysis

In fact, these statistics *understate* how concentrated the primetime entertainment programming market truly is. While 29% of programs on the top four broadcast networks came from sources other than in-house studios, almost half (11 of 23) of those series were produced by Warner Bros. Warner Bros., while not owning a top four broadcast network, is a media

conglomerate and the co-owner, with CBS, of the fifth largest broadcast network, the CW. It also owns numerous basic cable networks and two Pay TV networks, HBO and Cinemax. Only 15% of primetime programming comes from producers independent of the top four networks and Warner Bros.

In its NPRM, the Commission marshals convincing evidence as to the distinctiveness of the market comprised of the top four broadcast networks. The Commission notes that the audience reach of the broadcast networks remains unmatched. Ratings for individual series on the top four broadcast networks are larger than almost all other broadcast and basic cable programs. Finally, the disparity in advertising rates between the top four broadcast networks and cable networks confirms the status of the networks as a distinct market. Given these findings, we urge the Commission not only to hold the line against further consolidation but to consider measures to alleviate the extant lack of competition in the primetime entertainment programming market.

The top four broadcast networks have used their control of the public airwaves to create an oligopoly in primetime entertainment programming. Despite competition from cable and the Internet, these top four broadcast networks maintain the largest audience reach. This reach provides greater exposure for programs aired on these networks than anywhere else, including other broadcast and basic cable networks. Exhibition on the broadcast networks creates larger secondary markets for successful primetime series, which are licensed internationally, to basic cable networks and online services. The FCC's rules have effectively granted this market to these four companies and make no effort to create space for real competition.

In prior proceedings, the WGAW and other organizations have called for rules to require minimum amounts of genuinely independent programming on the broadcast networks. We

continue to believe that limits on the market share of the top four networks remain necessary to improve competition in the market for primetime entertainment programming. To create adequate space for new competitors beyond the top four and Warner Bros., we propose that the top four be limited to ownership of 50 percent of the primetime entertainment programming aired on their networks. Such a standard would still provide each network-affiliated studio with a significant portion of the primetime programming market, but would also provide adequate space in the market for competitors. Such rules are necessary to re-institute competition in this important market and would further the FCC's public interest goals.

IV. Conclusion

Television remains the dominant platform for news and entertainment. Given its central role in society, it is vitally important that the FCC make every effort to enhance competition and diversity within the market. We urge the Commission to maintain its existing media ownership rules and to devise new strategies to remedy the detrimental effects of media consolidation over the past two decades.