

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

**COMMENTS OF
COMMUNICATIONS WORKERS OF AMERICA
THE NEWSPAPER GUILD-CWA
NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS-CWA**

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SUMMARY

The Communications Workers of America, The Newspaper Guild-CWA and the National Association of Broadcast Employees and Technicians-CWA (collectively referred to as “CWA”) submit these comments on behalf of its more than 700,000 members, including journalists, technicians and on-air and off-air broadcasters.

CWA urges the Commission to recognize that its obligations under the public interest standard of the Communications Act require it to ensure that the broadcast media are structured to foster localism, ownership and diversity (including ownership and viewpoint diversity), and to prevent undue concentration of economic power. The Commission’s time-honored, content-neutral structural rules are the best mechanism to achieve those goals. Accordingly, CWA calls upon the Commission to find that the local television ownership rule, the local radio ownership rule, the newspaper/broadcast cross-ownership rule and the dual network rule are each necessary in the public interest.

The Commission should immediately direct broadcasters to disclose all radio and television sharing agreements, by whatever name. CWA endorses the broad definition of shared services agreements (SSAs) proposed in the FNPRM, because it appears to cover all significant collaborations. The Commission properly looks at the cumulative effect of the contractual relationships, regardless of the nomenclature used by the parties, such as SSAs, LMAs, JSAs and so on. The Commission readily concedes that it does not even know exactly how many SSAs are in existence. Disclosure is long overdue, and does not require further consideration.

While the Commission must take action to obtain complete information about the number and details of SSAs currently in force, the comments and data already in the record for the 2010

Quadrennial Review and other widely reported information is more than enough for the Commission to conclude that radio and television SSAs should be attributed. Indeed, it would be arbitrary and capricious for the Commission to fail to do so.

Even without comprehensive data, it is clear that SSAs are pervasive. Using a conservative definition, Free Press estimated that as of March, 2014, there were 129 television stations with SSAs. These mechanisms are used to evade the Commission's local television ownership rules and its newspaper/broadcast cross-ownership rules. The same analysis the Commission has used in attributing Joint Sales Agreements compel a similar determination with respect to SSAs.

SSAs undermine the public's interest in having access to a robust and diverse marketplace of ideas while destroying the jobs of professionals dedicated to informing the public. The primary cost-saving in the SSA model is the reduction of employees through elimination of locally-originated programming on one or two of the affected stations by duplicating (or triplicating) the same programming. This was dramatically evident when Belo and Raycom established a "virtual triopoly" in Tucson. KSMB anchor Lou Raguse told his viewers that

Beginning February 2, Raycom will produce this newscast on Fox 11 as well as a two-hour morning newscast. For right now, it means that all the news, sports, engineering and production people here at Fox 11 are out of a job by that date.

Raguse's experience is hardly unique. In city after city, the widespread use of SSAs has led to a dramatic reduction in the quality and quantity of locally originated news and public affairs programming at the expense of quality journalism. This loss of diversity in programming is perhaps the most dangerous aspect of SSAs. In many instances, SSAs involve the complete

shutdown of news on one station. In other cases, the same staff produces two highly similar newscasts. Even where there are separate newscasts, commonly operated stations tend to air the same stories, with little or no differentiation in their content.

SSAs undermine localism by removing a local voice and allowing group owners to substitute nationally-oriented programming. As the Department of Justice has told the Commission, SSAs are anti-competitive and are analytically identical to mergers which would be proscribed under the Commission's local ownership rules.

SSAs have an extremely adverse impact on diversity of ownership. They allow deep-pocketed group owners to effectively acquire stations that would otherwise be available to smaller broadcasters and new entrants. The additional capital these companies can bring into the transactions artificially bids up the price of stations, making them even less available to other potential purchasers. Loss of viewpoint diversity in programming is perhaps the most dangerous aspect of SSAs.

The Commission's obligation under the public interest standard is to promote the public's First Amendment right to have access to diverse sources of information. Its ownership rules are structured to achieve that goal, and should be retained. The Commission must move decisively to stop the damage which SSAs have already inflicted on scores of communities by requiring that SSAs be fully disclosed and deemed attributable. This will ensure that many other communities will not suffer similar loss of public service.

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The Communications Workers of America, The Newspaper Guild-CWA and the National Association of Broadcast Employees and Technicians-CWA (collectively referred to as “CWA”) respectfully submit these comments in response to the Commission’s *Further Notice of Proposed Rulemaking* (“FNPRM”) as part of its Quadrennial Review of broadcast ownership rules.¹

The Communications Workers of America represents 700,000 workers in

¹2014 *Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act*, 29 FCC Rcd 4371 (2014).

communications, media, airlines, manufacturing and public service. Its members depend upon the Fourth Estate—a free and vibrant press—for the information, investigation, and analysis they need to participate as informed citizens in public affairs. And they depend upon a diverse media to learn about the beliefs and experiences of different people in their local communities, across the country, and outside our borders in order to develop the understanding necessary to participate intelligently and empathetically in our increasingly interdependent world. CWA has been a frequent party in FCC proceedings relating to diversity of ownership of the media.²

The National Association of Broadcast Employees and Technicians—Communications Workers of America (NABET-CWA) represents approximately 10,000 workers in television and radio broadcasting and related industries.

The Newspaper Guild-CWA represents media workers in the U.S., Canada and Puerto Rico, primarily journalists.

CWA members who work in the various media industries as journalists, technicians, printers, and customer service and sales representatives know first-hand what is happening in this industry. They witness a decline in news quality, diversity, and competition that is a direct result of the economic pressures from the enormous consolidation and concentration of media ownership that has taken place. They find it harder to practice their craft in an environment of reduced staffing and fewer resources. They concur with the consensus emerging among those who study the media that there is a serious erosion in the quality of journalism. CWA members

²See, e.g., *Ex Parte* Notice, Docket 09-182 (March 12, 2014); Reply Comments, Docket 09-182 (April 17, 2012); Comments, Docket 09-192 (March 5, 2012); Reply Comments, Docket 09-182 (July 27, 2010); Comments, Docket 09-182 (July 12, 2010); Comments, Docket 10-25 (May 7, 2010); Comments, Docket 06-121 (December 11, 2007); Comments, Docket 06-121 (October 23, 2006); Comments, Docket 02-277 (January 2, 2003).

who work in the media industries know from daily experience that ownership matters to quality and viewpoint diversity. They know that who owns the media outlet is the final arbiter as to what gets printed, broadcast, or posted on an Internet news site. They are convinced that relaxation of media ownership rules that would permit further consolidation and concentration of ownership into fewer hands will reduce their professional ability to provide high-quality news from diverse and antagonistic sources.

CWA's concern about consolidation of media was recently summarized by Bernard Lunzer, President of The Newspaper Guild-CWA in testimony before the House Committee on Energy and Commerce Committee on June 11, 2014:

As a labor union that cares deeply about democracy we also believe that the societal implications of further concentration will mean less credible news and information to citizens as major debates take place over the future of America. Citizens should expect their rights to be paramount over broadcasters, as has been established in law. We need real innovation and investment as we continue forward in the 21st century. Consolidating existing organizations with fewer employees does not get us there.³

INTRODUCTION

These comments are primarily directed at the need for the Commission to take immediate action to require that all sharing agreements among broadcast stations be disclosed and that the Commission should rule that television shared services agreements (SSAs) be treated as creating attributable ownership interests. However, a few preliminary, more general, observations are in order.

CWA urges the Commission to recognize that its obligations under the public interest standard of the Communications Act require it to ensure that the broadcast media are structured

³Hearing on "Media Ownership in the 21st Century," Subcommittee on Communications and Technology, House Committee on Energy and Commerce June 11, 2014 at p. 2.

to foster localism, ownership and diversity (including ownership and viewpoint diversity), and to prevent undue concentration of economic power. The Commission's time-honored, content-neutral structural rules are the best mechanism to achieve those goals.⁴ Accordingly, CWA calls upon the Commission to find that the local television ownership rule, the local radio ownership rule, the newspaper/broadcast cross-ownership rule and the dual network rule are each necessary in the public interest.

The welcome advent of the Internet and cable television has not fundamentally changed the reality that over-the-air broadcasting and daily newspapers remain, by far, the most important sources of news, information and cultural expression. Indeed, as the FNRPM correctly observes, broadcast and television journalism provide the bulk of local reportage.⁵ Moreover, as the Commission's own report on information needs found, the "dominant online players in local news are the new media manifestations of old media companies, most notably the websites of local newspapers and TV newscasts."⁶

While most of the elements that the Commission must examine in reviewing the continuing need for its broadcast ownership rules are well-established, there is one new and important consideration which provides strong additional reason the Commission should conclude that existing television ownership rules are necessary in the public interest. Under the Middle Class Tax Relief and Job Creation Act of 2012, the Commission will soon conduct an incentive auction which will reduce the number of operating television stations. While the

⁴*See FCC v. NCCB*, 436 U.S. 775 (1978).

⁵FNPRM, 29 FCC Rcd at 4429, ¶128. *See also*, Pew Research Center, "72% of Americans Follow Local News Closely" (April 12, 2012).

⁶*The Information Needs of Communities* (July 2011) at p. 346.

location and ownership of stations that will participate in the spectrum auction are as yet unknown, it is inevitable that in some, and perhaps many, markets, concentration of ownership among the remaining stations will increase. Thus, even if the Commission were to think that the current ownership numbers justify relaxing its rules with respect to television, it is necessary in the public interest to await the outcome of the forthcoming spectrum auction.

I. THE COMMISSION SHOULD MOVE IMMEDIATELY TO REQUIRE FULL DISCLOSURE OF ALL SHARING AGREEMENTS.

The Commission's discussion of SSAs in its FNPRM is mainly addressed to a question which answers itself: whether the Commission should require disclosure of sharing agreements by requiring that they be part of the stations' public file.⁷

The Commission should immediately direct broadcasters to disclose all sharing agreements, by whatever name. CWA endorses the broad definition of SSA proposed in the FNPRM,⁸ because it appears to cover all significant collaborations. The Commission properly looks at the cumulative effect of the contractual relationships, regardless of the nomenclature used by the parties, such as SSAs, LMAs, JSAs and so on. The Commission should make clear that denominating an agreement as a "news sharing" or other agreement should not serve to

⁷FNPRM, 29 FCC Rcd at pp. 4519-27.

⁸"[W]e tentatively define an SSA as any agreement or series of agreements, whether written or oral, in which (1) a station, or any individual or entity with an attributable interest in the station, provides any station-related services, including, but not limited to, administrative, technical, sales, and/or programming support, to a station that is not under common ownership (as defined by the Commission's attribution rules); or (2) stations that are not under common ownership (as defined by the Commission's attribution rules), or any individuals or entities with an attributable interest in those stations, collaborate to provide or enable the provision of station-related services, including, but not limited to, administrative, technical, sales, and/or programming support, to one or more of the collaborating stations." FNPRM, 29 FCC Rcd at p. 4524, ¶¶330.

exclude such arrangements from the definition proposed by the Commission.

The Commission proposes to limit disclosure to commercial television stations. CWA sees no reason not to include non-commercial stations or radio stations. Inasmuch as the Commission candidly concedes that it does not know how many television SSAs are in existence, much less their terms,⁹ it stands to reason that SSAs may be a problem in stations not covered by the Commission's current proposal. Disclosure is not burdensome; the stations already have public files, so adding SSAs to them involves *de minimis* effort.

With respect to the Commission's proposal that licensees be able to redact "confidential or proprietary information," CWA notes that the Commission has frequently been over-generous in allowing licensees to withhold important details from disclosure when disclosure would not in fact have any commercial significance. Disclosure of information about contingent financial interests such as loan guarantees and options is especially important. The Commission should make clear that it will scrutinize claimed redactions closely if disputes arise, and that information which is not financial in nature will be presumptively non-confidential or proprietary.¹⁰

Because of the importance of information about SSAs to the ongoing policymaking process, including the Commission's evaluation of the local TV ownership rule, the Commission should sever its proposal for disclosure of SSAs from the rest of the Quadrennial Review proceeding and make this disclosure requirement effective as soon as possible.

Currently, the Commission does not know exactly how many SSAs are in existence. It

⁹FNPRM, 29 FCC Rcd at p. 4522, ¶327.

¹⁰The Commission should make clear that it is prepared to move swiftly on claims of confidentiality where they are implicated in contested matters, and that it will promptly issue protective orders when necessary.

learns of them only indirectly, mainly when they are disclosed incidental to an application for transfer or assignment. The Commission need go no further than its own FNPRM to conclude that immediate action is needed. It states that

Because the Commission does not currently require the filing or disclosure of all such [shared services] agreements, the Commission and the public lack information about the content or breadth of the agreements or the frequency of their use, inhibiting a thorough analysis of the impact of these arrangements on our rules and policy goals.¹¹

Plainly, if the Commission wishes to conduct “a thorough analysis,” it must obtain the information necessary to do so. This action is long overdue, and does not require further consideration. In 2011, the Commission tentatively concluded that it should require disclosure of sharing agreements, and accepted comments on the question.¹² Then, literally inexplicably, in 2012, it declined to do so, stating instead that it would revisit the question at a later date.¹³

The delay in collecting complete information on sharing agreements is as illogical as it is bewildering. The Commission should immediately correct this egregious error.

II. THE COMMISSION SHOULD TREAT SSAs AS CREATING ATTRIBUTABLE INTERESTS.

While the Commission must take action to obtain complete information about the number and details of SSAs currently in force, the comments and data already in the record for the 2010 Quadrennial Review and other widely reported information is more than enough for the

¹¹FNPRM, 29 FCC Rcd at p. 4519, ¶320.

¹²*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MB Docket No. 00-168, Order on Reconsideration and Further Notice of Proposed Rulemaking, 26 FCC Rcd 15788, 15805-06, ¶ 35 (2011).

¹³*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4575, ¶84 (2012)

Commission to conclude that SSAs should be attributed.¹⁴ Indeed, it would be arbitrary and capricious for the Commission to fail to do so.

A. SSAs Have Continued to Proliferate.

Because the Commission has been derelict in its duty to obtain complete information about the industry it is supposed to oversee, it has been left to public interest groups to use public sources to attempt to ascertain the prevalence of television SSAs. Most recently, in March, 2014, Free Press prepared an updated version of its 2013 report entitled “Cease to Resist: How the FCC’s Failure to Enforce Its Rules Created a New Wave of Media Consolidation.”¹⁵ CWA understands that Free Press will submit this March, 2014 update to the Commission as part of its comments in this proceeding.

Based on SEC filings, FCC CDBS listings and other research, Free Press attempted to identify “operating agreements”¹⁶ in which “one company controls the operations of another station such that the control confers *de facto* ownership” involving the 20 largest TV group owners. It used a very conservative definition, which did not include many instances in which

¹⁴CWA has joined in comments of a coalition of organizations filed by the Institute for Public Representation. Those comments set forth a framework for identifying when a sharing arrangement should be attributed. CWA strongly supports those comments.

¹⁵Free Press submitted the original version of this report in Docket 09-182 on December 3, 2013. It can be viewed at <http://apps.fcc.gov/ecfs/document/view?id=7520960125>

¹⁶Free Press uses the generic terms “operating agreements” and “outsourcing agreements” to describe what would generally be considered to be SSAs. As the Commission notes, cite, there is no precise nomenclature to describe various sharing arrangements. FNPRM, 29 FCC Rcd at p. 4523, ¶¶329. Indeed, certain so-called LMAs are indistinguishable from what others denominate as SSAs.

one station provides news programming for another.¹⁷ Even so, it found that as of March, 2014, there were 129 stations operated by these companies in addition to the 477 stations they directly own.¹⁸ Free Press calculated that there were 74 markets where these arrangement were used to evade both the 8-voices test and the top-4 station rule, 21 markets where they were used to evade the 8-voices test, 4 markets where they were used to evade the top-4 rule, 2 markets where they were used to evade the newspaper/broadcast cross-ownership rule, 1 market where they were used to evade both the 8-voices test and the newspaper/broadcast cross-ownership rule, and one market where they were used to evade the 8-voices test, the top-4 rule as well as the newspaper/broadcast cross-ownership rule.

B. SSAs Confer Effective Ownership.

Review of the provisions in known SSAs make it clear that the dominant stations have effective control of the slave stations. Typical SSAs may involve, among other things, one or more of the following characteristics:

- The operating company owns all the “non-license assets” of a station; in such instances, the supposed licensee may not even have a physical presence.
- The operating company receives most of the operated station’s profits, and the supposed licensee receives a modest management fee.
- The operating company guarantees the nominal licensee’s loans.
- The operating company holds an option or right of first refusal to purchase the

¹⁷Cease to Resist” at p. 15 n. 22. Free Press did not include “news-sharing arrangements where one station programs a portion of another station’s news schedule, or where there is a pooling of news resources....”

¹⁸The calculation was as of March 10, 2014, and included stations in then-pending transactions.

station, often at a below-market price.

- In view of the lack of management responsibility, the supposed licensee has only a handful of employees at the station.

In ruling that television JSAs should be attributable to the dominant licensee, the Commission set forth its well-established criteria for defining attributable interests:

Our attribution rules seek to identify those interests in licensees that confer on their holders a degree of “influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.”¹⁰⁴⁹ Influence and control are important criteria in applying the attribution rules because these rules define which interests are significant enough to be counted for purposes of the Commission’s multiple ownership rules. An interest that confers influence is an interest that is less than controlling, but through which the holder may obtain the ability to induce a licensee to take actions to protect the interests of the holder, and/or where a realistic potential exists to affect a station’s programming and other core operational decisions.¹⁰⁵⁰ The attribution rules determine what interests are cognizable under the Commission’s broadcast ownership rules; they are not ownership limits in themselves.

¹⁰⁴⁹*1999 Attribution Order*, 14 FCC Rcd at 12560, ¶ 1; *see also 2002 Biennial Review Order*, 18 FCC Rcd at 13743, ¶ 318 (“In considering revisions to our attribution rules, we have always sought to identify and include those positional and ownership interests that convey a degree of influence or control to their holder sufficient to warrant limitation under our ownership rules.”). For purposes of the multiple ownership rules, the concept of “control is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.” *Review of the Commission’s Regulations Governing Attribution of Broadcast Interests*, MM Docket No. 94-150, Notice of Proposed Rulemaking, 10 FCC Rcd 3606, 3609, ¶ 4 (1995) (“*Attribution Notice*”).

¹⁰⁵⁰*2002 Biennial Review Order*, 18 FCC Rcd at 13743-44, ¶ 318; *Attribution Notice*, 10 FCC Rcd at 3609-10, ¶ 4.¹⁹

Viewing the characteristics associated with SSAs, it is clear that they typically “convey a degree of influence or control to their holder” far greater control than what comes with the sale of airtime pursuant to a JSA, which the Commission has already determined to be attributable.

¹⁹FNPRM, 29 FCC Rcd at p. 4530 ¶343.

Cite. Indeed, since the key element of most SSAs is that the dominant station provides substantially all of the second station's local programming, the dominant station quite obviously has "a realistic potential to affect the programming decisions of licensees..." So, too, does the dominant station typically exercise "other core operating functions."

The nature of control vested through SSAs has been clearly articulated by Philip Verveer, Senior Counselor to the Chairman, and one of the most respected members of the communications bar. Discussing JSAs and SSAs, he explained that they both

undermine the values of competition (whether measured in terms of advertising prices, independence of programming, or rivalry for viewers) and diversity (because the two stations operate as one entity rather than two, thus raising barriers to entry to broadcast ownership for independent and, potentially, underrepresented groups).²⁰

It is completely illogical to maintain the Commission's local TV ownership rule, as the Commission proposes to do, while still allowing widespread and continuing use of mechanisms which allow easy evasion of that rule. Indeed, the Department of Justice recently called upon the Commission to look broadly at sharing arrangements rather than limit itself to attributing JSAs.

It said that

[F]ailure to treat JSAs and similar arrangements as attributable interests "could provide opportunities for parties to circumvent any competitive purposes of the multiple ownership limits."

To avoid such circumvention, the Commission's analysis should seek to identify the full range of collaborations between broadcast stations that may harm competition, even when such agreements do not run afoul of the bright-line attribution rules. Indeed, combinations of SSAs, LNS agreements, purchase options, substantial loan guarantees, or other entanglements can confer similar

²⁰Verveer, "How The Sidecar Business Model Works"
<http://www.fcc.gov/blog/how-sidecar-business-model-works>

degrees of control as JSAs,...²¹

C. SSAs Destroy Jobs While Diminishing Public Service.

The widespread use of SSAs has led to a dramatic reduction in the quality and quantity of locally originated news and public affairs programming. The primary cost-saving in the SSA model is the reduction of employees through elimination of locally-originated programming on one or two of the affected stations by duplicating (or triplicating) the same programming. As Professor Danilo Yanich concluded, “[T]hese arrangements have invariably resulted in a loss of jobs in at least one of the stations involved in the agreement.”²²

This was dramatically evident when Belo and Raycom established a “virtual triopoly” in Tucson. KSMB anchor Lou Raguse told his viewers that

Beginning February 2, Raycom will produce this newscast on Fox 11 as well as a two-hour morning newscast. For right now, it means that all the news, sports, engineering and production people here at Fox 11 are out of a job by that date.²³

Raguse’s experience is hardly unique. For example, in Syracuse, NY, Barrington Broadcasting (now Nexstar) took over operations of Granite Broadcasting’s WTVH, creating a triopoly.²⁴ As a result of the new SSA, 40 workers at WTVH lost their jobs, including the entire news staff of on-air reporters, anchors, newswriters, producers, news photographers, editors and

²¹*Ex Parte Submission of the United States Department of Justice*, Dockets 09-182, 07-294 and 04-256 (February 2014), p.16

²²Danilo Yanich, “Local TV News and Service Agreements: A Critical Look,” *ex parte* presentation submitted in Docket 09-182 at p. 102 (October 24, 2011)(“Yanich”).

²³“KMSB Anchor Tells Viewers He’s Losing His Job,” TV Spy, November 17, 2011 http://www.mediabistro.com/tvspy/kmsb-anchor-tells-viewers-hes-losing-his-job_b29511

²⁴“Triopoly,” actually a misnomer, is the term used to refer to a single operator controlling three stations.

broadcast technicians.²⁵ WTVH's former studios were put up for sale. In Peoria, Granite took control of Barrington's WHOI, creating a triopoly in that city and leaving two companies controlling five full-power stations in Peoria.²⁶ Granite laid off 30 employees. The viewing public in both cities lost the product of these workers' efforts, *i.e.*, original newscasts and other programming.²⁷

In city after city, SSAs have been used to eliminate employees, and just as importantly, reduce service to the public. Here are but a few examples:

In Honolulu, Raycom Media, which already owned and operated two stations, has swapped call-signs and network affiliations in its takeover of a third station, KFVE. (Raycom's alter ego, American Spirit, has applied to purchase KFVE outright.) Raycom now produces substantially identical newscasts for all three stations. Nearly 70 employees between the three stations have lost their jobs as a result.

In Youngstown, OH, New Vision Television (NVT) and its "sidecar" affiliate, the aptly named Parkin Broadcasting, acquired WKBN and WYTV and closed down all of WYTV's independent operations. Parkin had little actual presence of its own, and its office was located in New Vision's Los Angeles headquarters. In December 2007, the news departments of WYTV and WKBN physically merged. As a result, over forty personnel at WYTV and six at WKBN were fired. WYTV's newscasts are now broadcast from a secondary set at the WKBN studios. WYTV's previously announced plans for an additional satellite streetside studio in downtown

²⁵"Syracuse's Channel 5 Shuts Down Its Newsroom,"
http://www.syracuse.com/news/index.ssf/2009/03/the_staff_of_wtvh_laid.html

²⁶Nexstar controls two stations in Peoria.

²⁷Yanich, at pp. 73-74.

Youngstown were scrapped.²⁸ Underscoring the slave status of WYTV, when WKBN was sold to LIN Broadcasting, WYTV was sold to LIN's "sidecar" company, Vaughn Media. More recently, LIN announced that it was selling its two stations, and its rights to the SSA, to Media General.²⁹

In Erie, PA, Lilly Broadcasting, which owns WSEE, took over operations of WICU, nominally licensed to SJL Broadcasting. In 2009, it merged all WSEE operations into WICU, eliminating all 35 off-air WSEE employees. Because the combined facilities lacked the capacity to simulcast, for at least four years, news programming on WSEE was prerecorded. This loss of immediacy created serious losses for viewers; for example, the 6am newscast was pre-taped at 4 am, meaning that viewers could not hear current weather conditions.

In Wilkes Barre/Scranton, PA, Nexstar and its alter ego, Mission Broadcasting, have long had a shared services agreement for joint operation of WBRW and WYOU. In 2009, Mission simply shut down its news operations, laying off some 15 employees. For a while, Mission simulcast WBRE news, but in 2013, it ceased doing so. Justifying the abandonment of all newscasts, Mission's Chief Operating Officer said that

The viewers have spoken, letting us know that WYOU is the station they rely on for entertainment and we are confident the station's already solid line up will be bolstered with the addition of entertainment and news magazine programming including Judge Joe Brown, Access Hollywood and Entertainment Tonight which will replace the station's news programming.³⁰

²⁸<http://shelf3d.com/i/WYTV>

²⁹As of this date, Media General has not filed any transfer or assignment application with the FCC, but it is expected that all of Vaughn's stations will be operated pursuant to SSAs with Media General.

³⁰"WYOU Ceasing News Broadcasts," Wilkes-Barre Times-Leader (February 11, 2013) http://www.timesleader.com/news/WYOU_ceasing_news_broadcasts.html

In Toledo, OH, Raycom's alter ego American Spirit purchased WUPW in 2012, and established an SSA with Raycom's WTOL. Layoff notices for 63 employees were promptly issued,³¹ and in April, 2012, WUPW's entire news operation was shut down.³²

The News-Press & Gazette Company, owner of WIFI in Idaho Falls, ID, took over operations of KIDK. Independently produced programming ceased, and Fisher Communications, the then-licensee of KIFI, laid off 27 employees.³³

Fisher Communications (subsequently sold to Sinclair) established a virtual triopoly in Eugene Oregon in 2013. Its shutdown of the news operation at KMTR led to the loss of 31 jobs.³⁴

The Nexstar/Mission empire acquired stations and consolidated operations of four stations in Little Rock, AK. Nexstar and Mission each holds two licenses, but all four are operated by Nexstar. In February, 2013, all four stations were brought under the same roof, and at least 28 employees were fired at KARK and KLRT.³⁵

³¹"FCC Approves Channel 36 Sale; 63 Layoffs Loom," Toledo Blade (March 27, 2012) <http://www.toledoblade.com/TV-Radio/2012/03/27/Channel-36-s-sale-finalized-63-layoffs-loom.html>

³²"TV News Merger Moving Forward," Toledo Blade (April 20, 2012) <http://www.toledoblade.com/TV-Radio/2012/04/20/Merger-between-WTOL-WUPW-moving-forward.html>

³³"KIDK-KIFI: How Does This Marriage Work?," Idaho Press Club, <http://www.idahopressclub.org/kidk-kifi-how-does-this-marriage-work/>

³⁴"Joseph Calbreath Speaks Out On KMTR 'blood bath'," Eugene Weekly (June 7, 2013) <http://www.eugeneweekly.com/blog/joseph-calbreath-speaks-out-kmtr-blood-bath>

³⁵"Almost 30 Lose Jobs At KARK, KLRT As TV Owners Consolidate," Arkansas Business (January 29, 2013) <http://www.arkansasbusiness.com/article/90480/at-least-25-lose-jobs-at-kark-klrt-as-tv-owners-consolidate>

D. SSAs Are Contrary to the Public Interest.

SSAs are antithetical to the Commission's goals of promoting localism, competition and diversity in the media.

1. Localism

Based on available information, it is clear that the SSA artifice is primarily used by a relatively small number of large group owners. These companies' business model typically attempts to achieve savings through cookie-cutter programming practices that are applied throughout the company, and frequently involve recycling the same non-local programming on many or all of their stations. Sinclair's Executive Vice President and General Counsel recently defended this practice, stating that

our stations routinely share news stories that we believe are of national interest. This is the sort of efficiency in operations which allow us to present news and other great programming for free to anyone who cares to use an antenna to receive our stations.³⁶

The Commission's tolerance of SSAs has created incentives, and financial advantages, for large group owners to acquire smaller local and regionally oriented broadcasters, replacing their highly localized focus with programming models that are divorced from the local needs and interests. They have artificially bid up the price of local TV stations, making them less available to local and regional owners.

2. Competition

Sharing agreements, by whatever name, are profoundly anti-competitive.

The Department of Justice's (DOJ) February 20, 2014 submission in the 2010

³⁶“ATVA Slams Sinclair Retrans Story,” Multichannel News (July 25, 2014), <http://www.multichannel.com/news/carriage-deals/atva-slams-sinclair-retrans-story/382763>

Quadrennial Review docket comprehensively discussed the anti-competitive impact of JSAs and SSAs.³⁷ In reviewing the DOJ's views, it is important to bear in mind that DOJ's limited focus on competition does not even take into account adverse impact on localism and diversity. Even so, the DOJ called for attribution of sharing agreements.

The DOJ explained that TV and radio broadcasters compete "on several dimensions," including spot advertising; it said that

vigorously rivalry between multiple independently controlled broadcast stations in each local radio and television market ensures that businesses, charities, and advocacy groups can reach their desired audiences at competitive rates.³⁸

The DOJ explained how broadcasters

compete to produce and provide programming that will attract a larger audience,...[p]erhaps most prominently, many television stations produce local news broadcasts...[C]ompetition between the stations to attract the largest audience...drives each station to invest in newsgathering and to produce quality news programming.³⁹

Based on its decades of examination of the broadcasting industry, the DOJ concluded "cooperative agreements between broadcast stations can harm competition," and that they "have economic effects similar to a merger of those stations."⁴⁰ Pointing out that "the extent of cooperation and integration with 'sidecars' is so extensive that some television station ownership groups even consolidate the financials of affiliated 'sidecars' in their securities filings,"⁴¹ the

³⁷*Ex Parte* Submission of the United States Department of Justice (Docket 09-182) (February 20, 2014) "DOJ *Ex Parte*"

³⁸DOJ *Ex Parte* at p. 9.

³⁹*Id.*

⁴⁰*Id.*, p. 10.

⁴¹*Id.*, p. 10 (footnote omitted),

Department explained that such agreements should be scrutinized as if they were a merger. By way of example, it cited its treatment of Gannett’s effort to purchase two stations in St. Louis, saying that the existence of “an assignable purchase option, a financing guarantee and a comprehensive shared services agreement” required it to “[r]ecognize[] that the potential for sharing agreements to replicate the harm that the [DOJ’s mandated] divestiture was meant to avoid...”⁴²

Reviewing its past dealings with radio station sharing agreements, DOJ concluded that, in light of its

recent experience in broadcast television investigations [which]confirm[] that attribution of television stations is also appropriate,...Moreover, any agreement that confers similar control over pricing and sale, even if not titled a ‘JSA’ by the participants, should also be considered attributable.⁴³

The DOJ stressed the latter point, saying that “combinations of SSAs, LNS agreements, purchase options, substantial loan guarantees, or other entanglements can confer similar degrees of control as JSAs...”⁴⁴

3. Diversity

SSAs have an extremely adverse impact on diversity of ownership. They allow deep-pocketed group owners to effectively acquire stations that would otherwise be available to smaller broadcasters and new entrants. The additional capital these companies can bring into the transactions artificially bids up the price of stations, making them even less available to other potential purchasers. This has greatly decreased the diversity of ownership in broadcasting, and,

⁴²*Id.*, pp.12-13.

⁴³*Id.*, p. 16.

⁴⁴*Id.*

unless SSAs are deemed attributable, will continue to do so indefinitely.

Loss of diversity in programming is perhaps the most dangerous aspect of SSAs. In many instances, SSAs involve the complete shutdown of news on one station. In other cases, the same staff produces two highly similar newscasts. Professor Danilo Yanich's comprehensive study of television news operations in eight cities led him to conclude that

the implementation of shared services (SSA) and local management/marketing (LMA) agreements had a profound effect on the local news broadcasts.... Specifically, the effect was evident in the distribution of stories across the stations and in the use of shared resources, such as the anchor, the reporter, the script and video/graphics for the story.⁴⁵

Even where the SSA/LMA stations had separate newscasts, Yanich's review of the stories showed how much program diversity suffered. The stations tended to cover the same stories and when they did, there was little differentiation between the stations:

- In Denver, CO, an LMA combination's newscasts shared the same script and the same video/graphics about two-thirds of the time;
- In Dayton, OH, two stations in an LMA shared both script and video/graphics 97% of the time;
- In Peoria, IL, two LMA stations and two SSA stations used the same script, and the same video/graphics for more than 90% of their stories;
- In Columbus, OH, when the same stories were covered on two SSA stations, they used the same script 90% of the time and the same video/graphics 86% of the time;
- In Wichita Falls, KS, the overlap of script and video/graphics for two SSA

⁴⁵Yanich, at p. 98.

stations was 80% and 89%, respectively;

- In Burlington, VT, about three-fourths of the stories used the same script and about four-fifths of the stories used the same video/graphics.⁴⁶

In looking at the diminution of programming diversity caused by SSAs, the Commission would do well to take into account the Supreme Court's emphasis on the importance of preserving vibrant debate from a multitude of sources:

It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee. *Associated Press v. United States*, 326 U.S. 1, 20 (1945); *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). '(S)peech concerning public affairs is more than self-expression; it is the essence of self-government.' *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964). See Brennan, *The Supreme Court and the Meiklejohn Interpretation of the First Amendment*, 79 *Harv.L.Rev.* 1 (1965). It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969).

CONCLUSION

Aggressive FCC action to address SSAs and similar arrangements is long overdue. For too long, the Commission has quietly acquiesced to flagrant evasion of its ownership rules through these transparently abusive mechanisms. It should immediately require full disclosure of all sharing agreements and move quickly to require that SSAs be treated as creating attributable ownership interest.

⁴⁶Yanich, pp. 99-100.

Respectfully submitted,

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