

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

Reply Comments of the National Association of Broadcasters

**NATIONAL ASSOCIATION OF
BROADCASTERS**

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I. Introduction and Summary

The National Association of Broadcasters¹ (“NAB”) submits the following reply comments into the Federal Communication Commission’s (“FCC” or “Commission”) ongoing proceeding reviewing the present and future necessity of the broadcast ownership rules.² All available substantive evidence in the combined record of the 2010

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

² *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*, 29 FCC Rcd 4371, 4374-75 (2014) (“Notice”).

and 2014 ownership reviews confirms the obvious – there have been significant and irreversible changes in the media marketplace. The digital and IP revolutions have fundamentally altered the way Americans access and consume information and entertainment. Consumers have more opportunity to learn about their communities, more ability to engage in public debate, and more options for entertainment and diversion, than ever before. The record likewise confirms that there have been major shifts in the advertising market that substantially undermine the historical justifications for maintaining restrictions on broadcast ownership alone. The Commission can no longer ignore these clear shifts in the market and must, in accordance with its Section 202(h) mandate, eliminate or significantly relax its local ownership limits.

Contrary to the claims of groups opposed to modernizing the broadcast ownership restrictions, evidence in the record demonstrates that reasonable combinations of broadcast outlets will not harm consumers, and are more likely to result in an overall increase in the amount and quality of local programming, including news. In our initial comments, NAB attached a study that clearly contradicted the untenable position, held by both the Department of Justice and the FCC, that local TV broadcasters operate in a standalone market unaffected by video competitors like pay TV and online outlets. That study, conducted by Drs. Hal Singer and Kevin Caves of Economists Incorporated, showed instead that advertising rates did not increase in markets with common ownership of TV stations or with joint arrangements among TV

stations, and suggested that markets with joint arrangements had lower advertising prices.³

The results of this empirical study can be surprising only to those who have ignored the remarkable expansion of the media marketplace over the past two decades. To put it plainly, broadcasters do not have a dominant hold on the attention of audiences that warrants the kind of regulation certain groups advocate. As consumers have migrated to new platforms, so have advertisers. The fact that the Internet has already passed local TV in advertising revenue, and mobile advertising is expected to follow suit within five years, should be reason enough to reform the rules.⁴

The prevailing orthodoxy among those opposed to updating the rules – that economically starving an industry will produce public good – flies in the face of all sound economic theory and common sense. As we show more fully below, these groups rely on the myth of the media mogul boogeyman that only wants to change the rules so that it can destroy local news. The truth is that good news is good business. It is unsurprising that the best performing stations in any given market are also the market leaders for news. NAB is not asking the Commission to reform the broadcast ownership rules so that out-of-town tycoons can buy up “good” stations and fire all their reporters. We are asking the Commission to recognize that for many local stations, especially those serving smaller communities or those not among the top earning and rated in their markets, the economics of local broadcasting have changed dramatically, as competition for audiences and advertisers has steadily and significantly increased. In

³ See Comments of the National Association of Broadcasters in MB Docket No. 14-50, Attachment A, (filed Aug. 6, 2014) (“NAB Comments”).

⁴ See NAB Comments at 47-49.

these circumstances, allowing stations to combine with another station or with a newspaper will allow them to take advantage of economies of scale and scope, enabling resources to be used more efficiently to produce more competitive programming that better serves local consumers.

Finally, the Commission should ignore suggestions to require all agreements between stations be publically disclosed, no matter how minor. This would be an unwarranted intrusion into broadcast business practices and serves no rational regulatory purpose. The Commission must also resist any call to immediately attribute sharing agreements, given its own admission that it does not know how these agreements affect competition, localism and diversity.

II. The Record is Clear: All Aspects of the Media Market, including Consumer Habits, Advertising, Accessibility and Diversity of Voices, Have Been Fundamentally Altered by the IP and Digital Revolutions

Multiple commenters, including NAB, have provided the Commission with hard evidence – not mere rhetoric or anecdotes – proving that the Internet and other digital technologies are transforming how Americans consume information and entertainment and, thus, have permanently altered the media marketplace.⁵ Commenters that urge the Commission to maintain the status quo offer no substantive evidence contradicting these basic facts. Instead they rely on conclusory and dated arguments that require the Commission to ignore the positive effects of both the Internet and mobile devices on competition and diversity.

⁵ See, e.g., Comments of Nexstar Broadcasting, Inc., in MB Docket No. 14-50 (filed Aug. 6, 2014) (“Nexstar Comments”); Comments of the Coalition of Smaller Market Television Stations in MB Docket No. 14-50 (filed Aug. 6, 2014).

In our initial comments, we provided clear and convincing data that shows how consumer interaction with media has shifted in the last two decades from a “lean back” experience with starkly limited options to a “lean forward” experience that features a vast smorgasbord of information, entertainment and distribution options.⁶ Commenters, like Free Press, which steadfastly refuse to acknowledge the need to modernize the rules despite obvious marketplace changes, try to downplay the significance of the Internet by suggesting that the seed of local news on the Web comes almost exclusively from traditional sources like TV broadcasters and newspapers.⁷ As we explore more fully below, this argument requires a remarkably narrow and outdated definition of “news.” It is also completely contradicted by statements these same public interest groups make in other proceedings about the significance of the Internet. Consider, for example, Free Press’ statements about the importance of the Internet to civic engagement in the FCC’s Open Internet proceeding:

The Internet’s openness brings with it the potential to eradicate the barriers to entry present in traditional communications markets. Content producers no longer need to negotiate with powerful cable providers, newspaper publishers or broadcasters to get their work out to the masses; the Internet has an unlimited number of “channels.” A citizen wishing to express an opinion about a pressing issue no longer needs to write a letter to the editor; they can reach far more readers online. And politicians no longer need to rely on the short-attention-span of mainstream media to get out their message; they can use the Internet to speak directly to voters.⁸

⁶ NAB Comments, Section III.

⁷ See Comments of Free Press in MB Docket No. 14-50 at 9 (filed Aug. 6, 2014) (“Free Press Comments”).

⁸ Comments of Free Press in GN Docket No. 09-191 at 9 (filed January 14, 2010).

This passage, written nearly five years ago, is even more true today and closely echoes what NAB said in our initial comments about the disintermediation effects of the Internet.⁹

Similarly, Common Cause, which, along with a consortium of other “public interest” groups argued that the broadcast ownership limitations should be tightened,¹⁰ has called the Internet “the 21st century public square” that is a “laboratory for social innovation and political discourse.”¹¹ They note that with the “decline of newspaper reading and local TV news viewing,” voters “use the Internet not only to discuss and share their views, but to seek out information ... regarding our government and its many players.”¹² While traditional outlets are “ever more constrained,” according to Common Cause, online news sources “are both filling in gaps in local and diverse niche topics, and are ‘cultivating new forms of storytelling’ via video, crowdsourcing, and new visualizations, styles, and means to connect with viewers.”¹³

Unsurprisingly, this effusive description of the transformative effects of the Internet is nowhere to be seen in comments in this proceeding by those opposing modernizing the 20th century restrictions on broadcasters. And, despite the Section 202(h) mandate requiring the Commission to determine whether its rules remain

⁹ NAB Comments at 23-28.

¹⁰ Comments of Office of Communications, Inc. of United Church of Christ, *et al.*, in MB Docket No. 14-50 (filed Aug. 6, 2014)(“UCC Comments”).

¹¹ Comments of Common Cause in GN Docket No. 14-28 at 3 (filed July 15, 2014).

¹² *Id.* at 5.

¹³ *Id.* (citing Mark Jurkowitz, The Growth in Digital Reporting, Pew Research Journalism Project (March 26, 2014)).

necessary in light of competition, none of these commenters provides any kind of empirical competitive analysis of the new media marketplace.

Broadcasters, fully aware of the competitive impact of the Internet, mobile and pay TV providers on their bottom line, have filled the record in both the 2014 and 2010 reviews with copious examples of how the digital and IP revolutions are exponentially increasing the availability of diverse voices, fracturing the advertising marketplace and undermining the economic basis for broadcast-only ownership restrictions.¹⁴ The core message of all these comments is effectively the same – to the extent that the Commission considers localism a primary public policy objective of any broadcast regulation, it cannot ignore the clear shift in the economic foundation that supports quality local programming. Hamstringing broadcasters – and only broadcasters – with ownership limitations designed for a wholly different media market is not only unfair, it will diminish broadcasters’ ability to compete against a growing array of rivals and supply communities with the best local products.

Broadcasters are not the only ones commenting about the shift in the advertising market that supports local broadcasting. A very recent article published on the online-only TV and film trade publication Deadline.com suggested that the “debate [about whether advertising is shifting] is over,” according to Wall St. analysts, “[a]dvertisers are

¹⁴ See, e.g., Nexstar Comments at 7-9; Comments of the Fox Entertainment Group, Inc., and Fox Television Holdings, Inc., in MB Docket No. 14-50 at 7-18 (filed Aug. 6, 2014) (Fox re-submitted their comments from the 2010 quadrennial ownership review, noting that “[i]f the record evidence was adequate to eliminate all of these rules in 2010, that evidence is certainly sufficient to put these rules to rest today – at a time when the media landscape would be unrecognizable to the original authors of structural ownership regulations”) (“Fox Comments”).

shifting spending to online video at the expense of traditional TV programming.”¹⁵ One respected media analyst was described as “shocked” that online advertising accounted for a whopping 98 percent of the growth in total advertising spending in the second quarter of 2014 compared to last year.¹⁶

The conclusion is clear. All available evidence supports the argument that the competitive landscape has fundamentally changed for local broadcasters and local newspapers and that the Commission must consider modifications to its broadcast ownership limitations to account for this shift. The Commission’s continuing failure to do so violates Section 202(h).

III. The Commission Cannot Maintain Existing Rules Merely Because Broadcasters and Newspapers Supply Traditional Local News

“Public Interest” groups rely on the argument that because broadcasters and newspapers are primary suppliers of local news they should not be allowed to avail themselves of efficient combinations.¹⁷ They suggest that even the profound effect of the Internet – which, as we show above, these groups agree is a transformative medium – does not alter this argument because most news on the Internet originates in “traditional media.”¹⁸

This argument is flawed for at least four reasons:

¹⁵ David Lieberman, “It’s No Blip, Online Video Is Taking Ad Dollars From Traditional TV: Analyst,” *Deadline.com* (Sept. 2, 2014), *available at*: <http://deadline.com/2014/09/tv-advertising-online-taking-dollars-827634/>.

¹⁶ *Id.*

¹⁷ See, e.g., Free Press Comments at 7; UCC, *et al.* Comments at 1-2.

¹⁸ See, Free Press Comments at 9.

First, as we showed in our initial comments, the Internet and mobile devices provide consumers access to very extensive and growing amounts of useful local information that was not available 20 years ago, and is not supplied by traditional “mass” media.¹⁹ Even though by traditional standards this information might not be classified as “news,” it includes valued and eminently useful local information like restaurant and cultural reviews, traffic updates, schedules of local events, and much more. It also includes information that public interest groups – apparently the arbiters of what the public should be reading and viewing – consider essential to the functioning of a democracy, such as information about and direct access to elected officials, political candidates and campaigns, and greatly increased access to local government meetings through streaming. Likewise, online communities, enabled by immensely popular tools like Facebook and Twitter and older but still useful tools like LISTSERVs, engender active discussion of local and even hyper-local public issues including schools, crime and politics – discussions that might not happen before the advent of the Internet. Not only do Americans now have easy access to truly massive amounts of data and information, they also now have the ability to engage and shape the public conversation in ways previous generations of citizens never could. This information revolution has in turn rendered the broadcast ownership restrictions -- at least as they exist as tools to limit the “gatekeeping” power of media -- increasingly irrelevant.

Second, the broadcast ownership rules are not designed, and have never been explicitly maintained, solely as a means to sustain separate traditional news

¹⁹ See, NAB Comments, Section III.

sources. While many local broadcasters provide news as their means of serving the public interest, there is nothing in the ownership rules, nor any other Commission regulation, that requires stations to produce local news, as traditionally defined. Nonetheless, because good news is good business, broadcasters in every local market will continue to produce news, emergency alerts, and other programming that makes a station a strong (and profitable) presence in its community, regardless of the lack of Commission rules requiring local news production. Indeed, if the ownership rules were designed to force stations to produce and air news – a proposition that would raise serious First Amendment concerns – it would be an extraordinarily inefficient regulatory mechanism. Being limited to only one outlet in a market is not an incentive to develop quality newsrooms. Nor is it axiomatic, as public interest groups would have the Commission believe, that allowing broadcasters to be part of a local combination with another station or a newspaper provides less incentive to create quality news (or other programming that attracts viewers).²⁰ As Cox Media Group points out in its comments, the Commission can look to grandfathered combinations as examples of the industry's long-term commitment to quality journalism, and as examples of how combinations allow both stations and newspapers to better serve their communities, even in a fractured advertising market in which many stand-alone newspapers and stations struggle.²¹

Third, groups like Free Press appear to rest their argument against updating the rules on an argument that broadcast-like entities that provide local news have not arisen

²⁰ NAB has already explained the logical folly of this claim. See NAB Comments at 54-55.

²¹ See Comments of the Cox Media Group in MB Docket No. 14-50 at 8-11 (filed Aug. 6, 2014).

on the Internet.²² Their thinking represents a fundamental misunderstanding of the Internet and how businesses (or voices of any kind) have organically emerged on the Internet. There are almost no barriers to entry (or to growth) on the Internet. To separate from the chorus of other voices on the Internet, new entrants distinguish themselves as any new business might in a crowded field -- by providing something new and unique. Unlike mass media of the 20th century, there is little need to be all things to all people on the Internet. Many online outlets do not need a mass audience to survive or even thrive. But to be clear, there is absolutely nothing preventing any entity from creating a local news organization like that provided by broadcasters or newspapers. Google could, with all its resources, start local news organizations in every major market in the country. Facebook could do the same, as could Comcast or AT&T. They might even be successful, and they would undoubtedly be able to reach large enough audiences in local markets to compete with newspapers and local TV stations. But they don't because the market does not demand it.

Free Press also argues that outdated ownership rules should be maintained because viewers "trust" local news.²³ They have somehow twisted a good thing -- trust in local media -- into something seemingly nefarious. People trust and value local broadcast news because it's a good product that provides useful information -- not because it's broadcast. Indeed, the consolidation that Free Press claims has diminished newsrooms has not eroded that trust. They are correct that some newsrooms have been reduced, and in some cases, shuttered (although they neglect to

²² Free Press Comments at 9.

²³ Free Press Comments at 9.

mention that others have been expanded and strengthened).²⁴ But they want the Commission to believe that any newsroom reductions are solely the result of greedy "[a]sente owners" squeezing out quality journalism to benefit Wall Street,²⁵ rather than the result of what almost all empirical evidence suggests is the cause -- a significant shift in the economics of advertising and content delivery.²⁶

Finally, as NAB explained in our initial comments, those opposing reform due to broadcasters' and newspapers' role in providing traditional local news have the argument precisely backward. Given the economic challenges of local TV news production (especially in smaller markets) and the near collapse of traditional newspaper advertising revenue, the continued maintenance of restrictions that prevent broadcast outlets from taking advantage of scale and scope economies will only further hinder the production of local news – an outcome clearly contrary to the public interest.²⁷

IV. The Commission Should Resist Calls to Require Disclosure of All Sharing Agreements and to Immediately Attribute SSAs

In our initial comments, we explained how the proposal to require stations to disclose all and any types of shared service agreement (SSA) was overbroad and

²⁴ According to the most recent report from the Radio and Television Digital News Association (RTDNA), a record total of 1,026 TV stations ran local news in 2013. Predictably, stations in larger markets with larger news staff ran more news than smaller market stations. Bob Papper, Professor Emeritus – Hofstra University, "More Stations Producing Local News," RTDNA Research Report (June 16, 2014).

²⁵ Free Press Comments at 9.

²⁶ NAB has discussed at length the economics of local news production, especially in small markets, in previous submissions. See *Ex Parte* Submission of NAB in MB Docket No. 09-182 at 6-10 (March 21, 2014); NAB Comments in MB Docket No. 09-182 at 53-55 and Attachment B (July 10, 2010).

²⁷ See NAB Comments at 31-38; 56-58; 70-79. As also discussed in our comments, numerous studies have demonstrated the increased amounts and improved quality of local programming, especially news, resulting from combinations allowing stations and newspapers to achieve reasonable scale and scope economies.

covered both clearly inconsequential agreements – like those that deal with administrative or other resource sharing – and those that the Commission has and/or can already regulate through other rules.²⁸ As we noted, the proposed disclosure requirement is a regulation of general applicability that must be justified by sufficient evidence and measured against the asserted regulatory purpose of safeguarding competition, localism, and diversity.²⁹

No commenters identified any clear regulatory purpose to support the *Notice's* overbroad definition for agreements between stations that should be publically disclosed. Instead, most groups in favor of the SSA disclosure proposal supported the broad definition on the very grounds that NAB suggested it should be narrowed – because its casts the widest net possible for a regulatory fishing expedition.³⁰ These groups apparently believe that every single contract between two stations, regardless of its scope or lack of connection to core programming functions, should be the subject of government concern and regulation. Such an unwarranted intrusion into broadcaster business operations likely will chill stations' willingness to enter into a variety of legitimate and efficient agreements, especially considering the Commission has yet to articulate any particular harm it hopes to alleviate via disclosure or identify future regulatory action it might take against any (or all) station agreements.

²⁸ See NAB Comments, Section IX

²⁹ *Id.* at 103. See, e.g., *ALLTEL Corp. v. FCC*, 838 F.2d 551, 559 (D.C. Cir. 1988) (court found FCC rule to be arbitrary and capricious because FCC's decision "has 'no relationship to the underlying regulatory problem'") (internal citations omitted); *Bechtel v. FCC*, 10 F.3d 875, 880-881 (D.C. Cir. 1993) (court found FCC policy to be arbitrary and capricious because the FCC had no evidence that it accomplished the agency's purposes).

³⁰ See, e.g., Free Press Comments at 22-23; UCC *et al.* Comments at 6-7; Comments of Communications Workers of America, *et al.* in MB Docket No. 14-50 at 5 (filed Aug. 5, 2014) ("CWA *et al.* Comments").

Even more egregiously, several groups are asking the Commission to skip right past the disclosure requirement and make SSAs and similar agreements immediately attributable.³¹ The Commission has absolutely no basis to heed this request. In the *Notice*, the Commission acknowledged that SSAs could have “public interest benefits,”³² and that it does not yet fully understand the purpose and effect of these arrangements to make any kind of regulatory determination. Indeed, the Government Accountability Office (“GAO”) recently reported in a study on broadcast ownership that the “FCC has stated that it is unable to determine the extent to which broadcaster agreements,” including shared service agreements, “affect its media ownership rules and policy goals of competition, localism, and diversity.”³³ It would clearly be the height of arbitrary and capricious rulemaking for the Commission to plead ignorance in the *Notice* and to GAO, and then immediately take steps to attribute SSAs. Any such action would not constitute reasoned decision making.³⁴

For these reasons, NAB strongly urges the Commission to take a measured and thoughtfully considered approach to SSAs. Whatever hyperbolic suggestions about sharing arrangements some commenters made, there is no evidence that these

³¹ CWA *et al.* Comments at 8; Free Press Comments at 25-27; UCC *et al.* Comments at 10-11.

³² *Notice* at ¶ 154.

³³ GAO, Media Ownership: FCC Should Review the Effects of Broadcaster Agreements on its Media Policy Goals, GAO-14-558, at 27 (June 2014).

³⁴ See, e.g., *Kristin Brooks Hope Center v. FCC*, 626 F.3d 586, 589-90 (D.C. Cir. 2010) (FCC decision found arbitrary and capricious because it relied on unsupported assertions and failed to provide an adequate explanation); *Cincinnati Bell Telephone Co. v. FCC*, 69 F.3d 752, 763-64 (6th Cir. 1995) (rules restricting cellular providers were found arbitrary because Commission offered no economic rationale or other factual support for them); *ACT v. FCC*, 821 F.2d 741, 746 (D.C. Cir. 1987) (FCC failed to establish “the requisite reasoned basis for altering its long-established policy” on certain television commercial limits).

agreements are causing a clear public harm that requires a hasty, over-reaching reaction.

V. Conclusion

NAB, and multiple broadcasters and broadcast groups, have submitted clear and convincing evidence showing that the media market has fundamentally changed. The long-standing restrictions on multiple ownership of broadcast stations, or on combinations of stations and newspapers, were adopted in a completely different era, pre-dating the digital and Internet revolutions. That era is over. NAB urges the Commission, in accordance with its statutory mandate, to make appropriate modifications to its broadcast ownership restrictions to account for the clear changes in the competitive landscape that local stations face now, and which will undoubtedly grow even more competitive in the next few years. The Commission's continuing failure to "determine" whether its broadcast ownership rules remain necessary in light of competition violates Section 202(h) and places local broadcast stations at a significant competitive disadvantage in the 21st century marketplace.

Respectfully submitted,

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