

**Before the  
Federal Communications Commission  
Washington, D.C. 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
	)	

**OPPOSITION OF THE NATIONAL ASSOCIATION OF BROADCASTERS  
TO MOTION FOR EXTENSION OF TIME**

The National Association of Broadcasters (NAB)<sup>1</sup> strongly opposes the FCC granting any extension of time for the filing of oppositions to its Petition for Reconsideration (the “Petition”) in the above-captioned proceedings, and urges the FCC to deny the extension request filed by Prometheus Radio Project and the Media Mobilizing Project.<sup>2</sup> Any further delay in Commission action to update its broadcast ownership rules is harmful to the public interest, and the Movants have offered no basis for grant of an extension of any length. Having presented no meaningful rationale for seeking additional time, the extension request

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<sup>1</sup> NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

<sup>2</sup> Motion for Extension of Time of Prometheus Radio Project and the Media Mobilizing Project (collectively “the Movants”), MB Docket Nos. 14-50, 09-182, 07-294, 04-256 (Jan. 4, 2017) (Motion).

seems to be motivated only by Movants' interest in delaying FCC reconsideration of this matter in the hopes that courts will move quickly on Movants' appeal of the FCC's Order.<sup>3</sup>

NAB's Petition seeks reconsideration of an Order adopted nearly five months ago in August 2016. The Order concluded a "quadrennial" review of broadcast ownership rules that had been pending for seven years, and represents the Commission's first completion of a quadrennial review since 2007. Despite a Congressional directive to review the rules every four years to determine whether they are "necessary in the public interest as a result of competition" and to repeal or modify any rule that is no longer in the public interest,<sup>4</sup> all of the current rules are in the same form as they were over seventeen years ago, and some ownership prohibitions are *over four decades* old. The Third Circuit Court of Appeals has faulted the Commission for failing to take timely action on ownership reviews,<sup>5</sup> stressing that the "very purpose of § 202(h) – to function as an 'ongoing mechanism to ensure that the Commission's regulatory framework would keep pace with the competitive changes in the marketplace'—reinforces the need for timeliness."<sup>6</sup> The Court highlighted the newspaper/broadcast cross-ownership rule in particular as a "telling example of why the delay is so problematic."<sup>7</sup> Among other things, the Court observed that the newspaper/broadcast cross-ownership rule is completely unchanged since its adoption in 1975, even though the

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<sup>3</sup> 2014 *Quadrennial Regulatory Review*, Second Report and Order, 31 FCC Rcd 9864 (2016) (Order).

<sup>4</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56.

<sup>5</sup> *Prometheus Radio Project v. FCC*, Nos. 15-3863, 15-3864, 15-3865 & 15-3866, at 35 (3d Cir. May 25, 2016) (*Prometheus III*) (quoting Section 202(h) and noting its "repeated use" of the word "shall," which "creates an obligation impervious to . . . discretion") (citations omitted).

<sup>6</sup> *Id.* at 36 (omitting internal citation and quoting *Prometheus Radio Project v. FCC*, 373 F.3d 372, 391 (3d Cir. 2004)).

<sup>7</sup> *Id.* at 37.

Commission determined as part of its 2002 ownership review that the rule no longer served the public interest.<sup>8</sup> Given the underlying purpose of the mandatory periodic reviews, the lengthy delays in completing the 2010 quadrennial review, and the Commission's failure to update the rules to reflect its own longstanding conclusions, further delay is contrary to Section 202(h), the Court's holding in *Prometheus III*, and the public interest.

Setting aside the need for the Commission to act expeditiously, Movants have provided no meaningful rationale for grant of an extension. Movants assert that an extension is needed because the deadlines "overlap with the holiday season."<sup>9</sup> NAB's Petition was filed on December 1, and was publicly available in ECFS by December 2. The deadline for filing oppositions falls on Tuesday, January 17, providing filers with nearly seven weeks to review the Petition and develop their oppositions. Even with intervening holidays, this is a generous period of time to review the Petition and draft an opposition. The issues raised by the Petition are hardly surprising; and, given that these issues have been the subject of extensive advocacy by at least one of the Movants and their counsel at the Commission and in the courts for many years, developing a responsive filing should not be particularly time consuming or burdensome. The Petition does not present new data or information that the FCC has not already considered,<sup>10</sup> and, as required by the rules, is not lengthy.<sup>11</sup> Since the Petition does not present novel issues or data and is relatively short, the Movants have ample time to respond.

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<sup>8</sup> *Id.*

<sup>9</sup> Motion at 2.

<sup>10</sup> 47 C.F.R. § 1.429(b) (petitions for reconsideration cannot rely on facts or arguments which have not been previously presented to the Commission except in limited circumstances).

<sup>11</sup> 47 C.F.R. § 1.429(d), (f) (establishing a limit of 25 pages for petitions for reconsideration and oppositions thereto).

Movants also assert that the deadlines “overlap with . . . the quadrennial Inauguration holiday period.” Unless their positions have changed dramatically since the Order was adopted, however, the Movants would only be opposing NAB’s Petition, not replying to oppositions such as their own.<sup>12</sup> Therefore, the so-called “Inauguration holiday period” – more commonly known as Inauguration Day – does not impact Movants’ opportunity to consider or respond to any issues in the above-captioned proceedings.

Movants contend that “the Commission and staff will be in a period of reorganization that will likely preclude decisionmaking on controversial matters for several weeks.”<sup>13</sup> Even in the unprecedented circumstance that every FCC staff person who has previously worked on broadcast ownership reviews accepts an assignment to a different Bureau, Division, or subject matter area as part of any “reorganization” at the FCC, there is absolutely no reason that FCC staff newly responsible for broadcast ownership would not benefit from a fully-briefed docket that can be analyzed and acted upon when FCC leadership sees fit. Unless Movants have inside information from a yet-to-be-announced future FCC Chairman, their baseless presumption that “a one month delay will not interfere with the administration of this proceeding” should be disregarded. It provides no basis under the rules for granting their Motion.

Finally, Movants cite the FCC’s approval of requests for extensions of time in other proceedings.<sup>14</sup> If anything, this provides a further rationale for denying Movants’ request.

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<sup>12</sup> NAB anticipates that, unless the Movants now oppose attribution of television joint sales agreements, they also will not need to file replies to oppositions to the Petition for Reconsideration filed Nexstar Broadcasting, Inc.

<sup>13</sup> Motion at 2.

<sup>14</sup> *Id.*

Given that the Commission already has approved extensions of time in other proceedings in which Movants or their counsel are actively involved,<sup>15</sup> these extensions afford them additional time to develop their opposition to NAB's Petition.

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For the foregoing reasons, NAB urges the Commission to deny Movants' request. NAB also urges the Commission to clarify that the deadline for filing replies to oppositions will be Friday, January 27. Although the Federal Register notice states that the deadline for filing replies to oppositions is January 24, the Commission normally requires replies to oppositions to be filed 10 days after the opposition deadline, consistent with its rules.<sup>16</sup>

Respectfully submitted,

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<sup>15</sup> See, e.g., Motion for Extension of Time filed by Andrew Jay Schwartzman, counsel to Free Press, Common Cause, Media Alliance and United Church of Christ, Office of Communication, Inc., in MB Docket No. 13-326 (Dec. 15, 2016). This Motion was granted for the full amount of time requested. See *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, DA No. 16-1420 (Dec. 20, 2016). Mr. Schwartzman also serves as counsel to the Movants.

<sup>16</sup> 47 C.F.R. § 1.429(g).