COMMENTS IN SUPPORT OF PETITION FOR RECONSIDERATION

Cox Media Group, LLC (“Cox”), by its attorneys and pursuant to Section 1.429 of the FCC’s rules, hereby offers these comments in support of the Petition for Reconsideration of the National Association of Broadcasters (“NAB”) seeking repeal of the newspaper/broadcast cross-ownership rule (the “NBCO Rule”).

I. Introduction

The NBCO Rule must be repealed. When Congress mandated the FCC’s periodic review of media ownership rules in 1996, it did not expect the endless cycle of delay, court appeals, and regulatory inertia that have characterized the past two decades of biennial and then quadrennial reviews. Rather, Congress envisioned an objective process based on empirical evidence in which old and useless regulations would be stripped away as competitive developments warranted. Yet twenty years later, the media ownership rules remain largely unchanged despite massive changes in the television, radio, and newspaper markets and the place of those businesses in the overall media landscape. The FCC’s media ownership rules made little sense in 1996; today they persist as a veritable museum of the way things used to be. But this inertia has its cost, and the current rules are harming the ability of traditional media outlets to produce and disseminate quality news and information to American consumers.

While all of the FCC’s media ownership rules are in dire need of a fresh look, the most egregious example of the failure of the FCC’s 2010 and 2014 quadrennial reviews is the decision to retain the forty-year ban on newspaper/broadcast cross-ownership. This rule made little sense when adopted and has been rendered entirely obsolete by declines in local newspaper circulation and the rise of multitudes of alternative news sources. Yet in this proceeding, the FCC failed to adopt even the most modest and obviously justified reform to the rule – elimination of the newspaper/radio ban – despite an overwhelming supporting record and the support of the majority of sitting commissioners. If the FCC’s decision stands, opportunities for increased innovation and investment will be derailed by the prospect of still more years of court appeals, remands, and future periodic review proceedings.

These costly and unnecessary legal proceedings are a very dangerous distraction while newspapers continue to decline in communities across America. The time for allowing that
industry to compete more effectively and saving the hundreds of thousands of jobs it supports is not infinite. Indeed, the FCC’s decision to retain the rule well after it became clear that newspapers no longer enjoy the influence they once had has seriously damaged a source of newsgathering and reporting that has been a foundation of our democratic institutions. Nonetheless, it is not too late for the FCC to reverse years of misguided and misplaced policies and do what Congress directed. Repeal of the NBCO Rule is fully supported by the facts, the law, and the undeniable interest of the public in receiving the highest quality, most accurate news and information that companies like Cox can provide. The FCC should reconsider the 2016 Order and eliminate the NBCO Rule.

II. Repealing the NBCO Rule Would Permit Investment that Would Improve the Quality and Quantity of Local News Output.

Cox began as a local newspaper company in 1898 and today, in its third century of operation, remains committed to delivering the strongest, fastest, and deepest news coverage in all of its television and newspaper markets. With its longstanding newspaper and broadcast holdings in Atlanta and Dayton, Cox has first-hand experience with the efficiencies in newsgathering resources that can be achieved through cross-ownership that is prohibited in most markets.

Cox has detailed in depth the ways in which cross-platform cooperation has allowed it to operate more efficiently and improve service to readers, viewers, and listeners.\(^2\) And the record in the 2014 quadrennial includes numerous examples of how cross-platform cooperation has led to improved service to the public in the markets where it is permitted.\(^3\) These examples include


\(^3\) See, e.g., Comments of the Newspaper Association of America, MB Docket No. 14-50, filed Aug. 6, 2014, at 2-11.
the collaborative work of Cox’s WHIO-TV and *The Dayton Daily News* in breaking what became a national story about the failures of the veteran administration to serve the medical needs of U.S. armed services vets.⁴ The kind of top-notch investigative reporting that Cox provides in its markets is extremely expensive, but cross-ownership offers efficiencies of scale that help make it more affordable.

Those efficiencies are becoming more and more essential to the survival of the newspaper industry. The FCC is fully aware of the statistics regarding the massive contraction of the newspaper industry over the past 20 years and the failure of daily papers in some of the nation’s largest markets.⁵ Cross-ownership does not immunize local newspapers against these industrial headwinds – circulation of Cox’s cross-owned *Atlanta Journal-Constitution* has declined 35% since 2006 to its lowest level in nearly 100 years – but it does allow for efficiencies, collaboration, and investment, each of which helps support preservation of top-quality service that would be impossible absent common ownership.

Eliminating the NBCO Rule also would create the possibility of new investment in the local newspaper business. When business leaders like Warren Buffett talk down the newspaper industry, investors listen.⁶ And most media companies that previously held newspaper/broadcast combinations have since separated their newspaper from their broadcast holdings. Nonetheless, as long as the NBCO Rule exists, the FCC will be foreclosing any opportunity for a plausible business strategy that could lead to substantial improvements in both the quantity and quality of

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⁴ See id. at 5-6.
⁶ See id. at 10047 (citing Jake Sherman and Anna Palmer with Daniel Lippman, “EXCLUSIVE PLAYBOOK INTERVIEW: Warren Buffet!”, Politico, http://politi.co/2aMjqC1 (Aug. 11, 2016) (“[L]ocal newspapers continue to decline at a very significant rate. And even with the economy improving, circulation goes down, advertising goes down, and it goes down in prosperous cities, it goes down in areas that are having urban troubles, it goes down in small towns— that’s what amazes me.”)).
local news production.\textsuperscript{7} Indeed the record in this and previous quadrennial reviews demonstrates that local news production increases in markets with newspaper/broadcast cross-ownership.\textsuperscript{8} The FCC’s judgement that preserving the NBCO Rule is worth sacrificing the newspaper industry and depriving local markets of increased and improved local news is as obvious a case of arbitrary and capricious decision making we are ever likely to see.

\section*{III. Retaining the NBCO Rule Will Not Preserve or Increase Viewpoint Diversity.}

The FCC’s decision to retain the NBCO Rule based on promoting viewpoint diversity was clearly in error.\textsuperscript{9} This error is clearest in the case of the FCC’s surprising reversal of its tentative conclusion to eliminate the newspaper/radio cross-ownership prohibition. Since 1975, the FCC had correctly concluded – based on a mountain of evidence – that radio stations have a minimal impact on viewpoint diversity in local markets.\textsuperscript{10} In order to justify retaining the newspaper/radio ban, however, the FCC disregarded its own tentative conclusion and discarded that record in favor of anecdotal evidence that in some communities, some radio stations make a meaningful contribution to viewpoint diversity.\textsuperscript{11} These anecdotes do not come close to justifying exclusion of localism-enhancing newspaper/broadcast combinations in every market in the country.

Cox does not doubt that some radio stations do make meaningful viewpoint contributions to their communities, and Cox strives to make sure that each of its radio stations does just that.

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\item \textsuperscript{7} \textit{See 2016 Order,} 31 FCC Rcd at 9928, 10047-48.
\item \textsuperscript{8} \textit{See id.}
\item \textsuperscript{9} \textit{See id.} at 9926.
\item \textsuperscript{11} \textit{See 2016 Order,} 31 FCC Rcd at 9924-26.
\end{itemize}
For example, in Atlanta, CMG operates WALR-FM, which provides substantial amounts of news and public affairs programming directed at serving Atlanta’s African-American population. Cox’s common ownership of WALR-FM and the *Atlanta Journal-Constitution* hasn’t changed that. In fact, the efficiencies realized through cross-ownership have helped strengthen and sharpen the local services that all of Cox’s Atlanta media properties are able to provide. The FCC’s conclusion that common ownership would discourage owners like Cox from serving the specific needs of local communities fundamentally misunderstands the local media business. Instead, allowing cross-ownership would make it more likely that radio stations generally would play a greater role in local news and information distribution than all evidence shows they do today.

The fact is that the NBCO Rule does not control whether local media markets are served by outlets offering a diversity of individual viewpoints. Diversity is demanded by audiences that crave it. If the combination of a radio or television station with a local newspaper eliminates a viewpoint from the market, and there is a demand for that viewpoint, another outlet will pick it up and serve that audience. The irrational and unsupported fear that a media owner would buy up multiple media outlets in a market in order to disseminate a single viewpoint should not be driving policy in an open democracy. The record shows just the opposite – that commonly owned properties speak with distinct – and often conflicting – viewpoints.12 As NAB demonstrates, common ownership simply does not result in uniform viewpoints expressed by different outlets in local communities.13 Cox and other media companies succeed only if they

12 See Reply Comments of Cox Enterprises, Inc., MB Docket No. 09-182, filed July 26, 2010, at 22-25; see also NAB Petition at 15 & n.35; CMG 2014 Comments at 10-11.
13 NAB Petition at 14-15.
give the public the news, information, and entertainment that they want, regardless of the tastes or preferences of Cox’s ownership.

Moreover, even if the red herring of media companies consolidating traditional media outlets into a mouthpiece for a common viewpoint existed – and it doesn’t – that strategy would not work today because traditional media controls a shrinking share of available outlets for reaching the public. If traditional media doesn’t deliver the viewpoints local consumers want, they will turn to cable news, the Internet, social media, or any of a plethora of new opportunities content providers have for reaching readers, viewers, and listeners. The NBCO Rule perpetually exists in a world without the Internet, cable or satellite television, and mobile video delivery. In that zero-sum-game world, the FCC’s reasoning may have made sense, but that world doesn’t exist. In today’s real media marketplace, consumers drive content and the role of companies like Cox is to do the best, most responsible job possible of responding to the demands of readers, listeners, and viewers. There is simply no chance that eliminating the NBCO Rule will have a significant impact on the availability of diverse viewpoints unless viewers stop demanding them, which is not a foreseeable event on which the FCC could base supportable policy.

Nonetheless, the FCC concluded that in some cases, common ownership of newspaper and broadcast properties might harm diversity in some markets.14 Even assuming, contrary to the evidence and common sense, this conclusion is correct, the remote chance that viewpoint diversity might be negatively affected does not justify the continuation of the NBCO Rule in its current form with minor modifications to the applicable waiver standard. The NBCO Rule prohibits any broadcast station from combining with any newspaper. That remedy is so disproportionate to the risk the FCC has identified that retention of the NBCO Rule fails the test

14 See id. at 9926.
of reasoned decision-making required by the Administrative Procedure Act. The record before the FCC demonstrates with remarkable clarity that the NBCO Rule is antiquated, unnecessary, and in many cases harmful to the production of high-quality local news. The only appropriate course for the FCC is to reconsider its retention of the NBCO Rule.

IV. Conclusion

For the foregoing reasons, Cox requests that the FCC grant the NAB Petition and reconsider its decision to retain the NBCO Rule.

Respectfully submitted,

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