**FROM:** Ryan Sweeney

**RE:** Proceeding 13-236, National Television Multiple Ownership Cap

The Commission has four choices regarding the cap. It can raise the cap, eliminate the cap, lower the cap, or do nothing. The first two options are the most plausible and seem to be the direction the Commission wants to head. The third option, lowering the cap, is the most implausible. The fourth option, doing nothing, will be the inevitable outcome if the Commission concludes it does not have the authority to alter the cap.

The ownership restrictions were first put in place to prevent a concentration in market power. Later, preserving localism and a diversity of viewpoints were also added as justifications. The U.S. Court of Appeals remanded the Commission in 1998, finding the Commission had failed to demonstrate the cap advanced localism, diversity, or competition. The Commission’s 2002 Biennial Review Order found the cap was no longer needed to preserve diversity and competition, but was still needed to protect localism. The Commission stated in the Order it wanted to prevent the Big Four Networks (ABC, CBS, Fox, and NBC) from reaching a larger national audience than their affiliates collectively.[[1]](#footnote-1)

This author agrees with the U.S. Court of Appeals. Of all the three stated justifications, concentration of market power is certainly the one regulators should be most on guard for. Television stations provide viewers with information and entertainment. Both information and entertainment are subject to the forces of supply and demand like any other good or commodity. The Commission’s stated fear is that without the cap, networks will be able to unfairly manipulate both the price and quality of the supply. This makes little sense. The cap is arbitrary. No other industry is subject to such an ownership cap. None of the other major American industries, such as energy, technology, banking, pharmaceuticals, or automobiles are subject to a national ownership cap, even though by some measures these industries are more concentrated and have higher barriers to entry. It is also important to keep in mind reaching 39% of the national audience is not the same as controlling 39% of the market.

The market trends of the 21st Century show the sector is moving towards becoming more competitive as a result of the rise of the internet, with new sources of information coming from internet television and online news. The Commission’s 2017 Annual Assessment of the Status of Competition in the Market reports cable companies are losing subscribers as the market shifts towards new sources of information and entertainment. While there may still be relatively high barriers to entry in the broadcast television market, the reality is broadcast television is only one part of the larger market for information and entertainment, and in that larger market, the barriers to entry are rapidly decreasing.[[2]](#footnote-2)

Preserving diversity of views is a laughable justification. The last election cycle demonstrates how easy it is now in the age of the internet to promulgate one’s views. Many news outlets such as *TheBlaze, Breitbart, NowThis, AJ+,* and many others have emerged recently in the past few years and promote their content almost exclusively via the internet.

Preserving localism is an even more curious justification. The Commission believes it is their job to ensure consumers have access to local news. This assumes that somehow the demand for local news is disconnected from the supply. There is little evidence for this. The Commission’s own 2011 report on Local Media Ownership and Media Quality found “scant evidence that local media ownership changes media competition or localism.”[[3]](#footnote-3)

I will follow up this comment with a more detailed reply comment. While there is little direct analysis available, there is an abundance of data and research on this issue supplied by the Commission itself. In 2010, the Commission commissioned ten different studies relating to media ownership.[[4]](#footnote-4) These along with other studies such as the 2011 report mentioned in the above paragraph will inform my analysis of the proposed rulemaking. The case documents from the Court of Appeals’ 1998 decision remanding the Commission would also be helpful if they can be obtained. Some of the effects of the change can also be gleaned from recent business developments. Notably, Sinclair Broadcasting Group Inc.’s proposed takeover of Tribune Media Co. would require fewer or no selloffs if the Commission raises or eliminates the cap.[[5]](#footnote-5)

My comment will not touch on the Commission’s questions regarding its authority. As mentioned above, the 2004 Consolidated Appropriations Act set the cap at 39 percent and excluded its consideration from Quadrennial Review Order. This has led many analysts, and members of the Commission to doubt the Commission still has the authority to alter the cap. This question however is a complicated legal one and is beyond my expertise.

1. Federal Communications Commission, *Noticed of Proposed Rulemaking, Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule,* 18 December 2017 <https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-169A1.pdf> [↑](#footnote-ref-1)
2. Federal Communications Commission, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* 17 January 2017 <https://apps.fcc.gov/edocs_public/attachmatch/DA-17-71A1.pdf> [↑](#footnote-ref-2)
3. FCC, NPRM, 18 December 2017 [↑](#footnote-ref-3)
4. <https://www.fcc.gov/general/2010-media-ownership-studies> [↑](#footnote-ref-4)
5. Brent Kendall and John D. McKinnon, “Sinclair’s Purchase of Tribune Likely to Win Approval of Justice Department,” *The Wall Street Journal*, 14 December 2017 <https://www.wsj.com/articles/sinclairs-purchase-of-tribune-likely-to-win-approval-of-justice-department-1513252800> [↑](#footnote-ref-5)