

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Amendment of Section 73.3555(e) of the) MB Docket No. 17-318
Commission's Rules, National Television)
Multiple Ownership Rule)

**COMMENTS OF THE
ABC TELEVISION AFFILIATES ASSOCIATION,
CBS TELEVISION NETWORK AFFILIATES ASSOCIATION,
FBC TELEVISION AFFILIATES ASSOCIATION, AND
NBC TELEVISION AFFILIATES**

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Summary

The ABC, CBS, FOX, and NBC Affiliates Associations (collectively, the “Affiliates”) urge the Commission to modify the national audience reach cap as it applies to non-Big-Four-network-owned stations while retaining the current 39 percent cap as it applies to the networks. Such a tiered cap is necessary to ensure that the Commission’s ownership rules continue to serve their intended purpose: to protect and promote localism by maintaining an appropriate balance of power between national networks and local, non-network-owned stations. The ownership rules guarantee that the economies of scale and scope enjoyed by the networks in the centralized production of programming of national or regional significance are appropriately counterbalanced by local stations’ ability to create, select, and distribute programming of particular interest and value to audiences in local television markets, including the high-quality local news, sports, weather, public affairs, entertainment, and other programming that form the core of local stations’ public service obligation. The Commission must jealously guard that balance to ensure that the core economic impulse of networking does not override localism interests.

The video programming and distribution marketplace has undergone dramatic and significant change since Congress last directed the Commission to modify the national cap in 2004. Multichannel video programming distributor subscriptions continue to decline as subscriptions to so-called “over the top,” Internet-based services grow steadily. From multichannel video programming distributors (“MVPDs”) to virtual MVPDs, direct broadcast satellite providers to telcos, subscription video-on-demand (“SVOD”) services to online video distributors (“OVDs”)—the list of new and competing technologies and types of video providers continues to grow. Audiences continue to fragment. The quantity, quality, and variety of

programming available to viewers have exploded. Local television stations face unprecedented and growing competition for the attention of local viewers and for the advertising revenues that follow—revenues that remain essential to the production of high-quality local programming. And with every passing day, the balance of power continues to shift further in favor of the networks, who capitalize on economies of scale and scope in the production and distribution of their programming and who assert ever-increasing control over their affiliates in terms of access to network programming and channels of distribution.

Despite those mounting pressures, local stations compete with vigor and remain committed to airing programming of particular interest and value to their local communities. Local stations regularly preempt network programming to air local news, weather, sports, community events, and other non-network programs. Local stations likewise lead the way in the production of award-winning local news and investigative journalism. Although the networks once held the lead in awards recognizing the production of high-quality news, the tide has turned, and data since 2002 confirm that local, non-network-owned stations produce the highest-quality local news and win the most awards for the quality of their local news programming by a significant margin. Local stations also play an essential role in bringing diverse multicast programming to their local communities. In fact, local stations' commitment to maximizing multicasting opportunities following the digital transition has significantly enhanced both the quality and the diversity of programming, including locally-oriented programming, available to viewers in local television markets. Such improvements in local service matter, particularly to the growing number of over-the-air-only viewers. By contrast, network-owned stations take a more formulaic approach, airing a more limited menu of multicasts that tilt toward programming in which the networks have an ownership interest.

Local stations also are at the forefront of innovation and experimentation with ATSC 3.0, the so-called “Next Generation Television” standard. Since the Commission’s November 2017 Order authorizing stations to begin broadcasting in 3.0 on a voluntary basis, non-network-owned stations have taken the lead in “test driving” the new broadcast standard in a number of local markets. Local affiliate stations have been key players in the important effort to prepare for broad-scale implementation of the Next Gen TV standard and the many benefits it promises for broadcasters and their viewers alike.

Still, as the pace of change in the marketplace accelerates, the imbalance between networks and local stations tilts increasingly in favor of the networks. A tiered ownership cap will restore some equilibrium to the steadily-eroding network-affiliate dynamic and ensure that local stations have the opportunity to participate fully. With the Commission’s recent liberalization of the local ownership rules, local stations now have the opportunity to begin to achieve, through consolidation, some of the same economies of scale and scope in local markets long enjoyed by the networks nationwide. Liberalizing the audience reach cap for non-network-owned stations ultimately will benefit competition, diversity, localism—and local viewers.

At the same time, the Commission should retain the current audience reach cap as it applies to the networks. Any other result would invite the networks to further capitalize on the economies of scale and scope they already enjoy by acquiring more stations—and thereby obtaining more power—in more local markets, in some cases by stripping current affiliations from local stations. And any further increase in the networks’ relative power would very likely bring changes in the long-standing, fundamental structural and economic relationship between networks and their local affiliates—including changes in the license fee payments required by the networks, which would, at the margins, siphon revenues away from local stations, to the

potential detriment of local programming production.

That the Commission has not yet acted to classify OVDs as MVPDs exacerbates the problem, as networks insist on negotiating directly with OVDs for all of the terms of carriage of network-owned stations, the networks' owned cable networks, *and* their affiliates' programming. Under the retransmission consent regime, local stations at least retain the ability to negotiate for themselves with MVPDs to establish the terms and conditions on which MVPDs can retransmit local stations' signals, including valuable local programming. In the fast-growing "over-the-top" ("OTT") marketplace, however, things are markedly different: Networks present their affiliates with "opt-in agreements," which leave local stations little choice to opt out and little if any control over the value ascribed to affiliates' programming in their local markets or the quality of their local news. The costs of that paradigm, in which networks already hold all the cards, are visited on local viewers.

Finally, one component of the Commission's national audience reach rules—the UHF discount—should be retained for non-network-owned stations but modified to apply to both UHF and VHF stations. Although the technical foundation for the discount no longer exists following the digital transition, the Affiliates Associations urge the Commission to leave the discount in place for local, non-network-owned stations and, going forward, to calculate their coverage compliance by accounting for both UHF and VHF stations at fifty percent of their theoretical reach in the market, in light of local stations' significant reliance interests and expectations. When the Commission implemented the discount more than 30 years ago, local broadcasters began to build their businesses, authorize investments, and make ownership and operational decisions with the UHF discount in mind. Today, those business decisions and strategies are well entrenched, and the continued existence of those businesses may well depend on

maintaining the discount. If the Commission's intent is to preserve—or, better yet, restore—the network-affiliate balance of power, it should not upset those settled expectations.

In short, the Commission should retain the national audience reach cap in its present form (but not the UHF discount) as applied to the Big Four networks but should relax the cap as applied to non-network-owned stations and expand the fifty percent (50%) audience discount to apply to all stations (UHF and VHF), in order to ensure that the network-affiliate balance of power does not skew so heavily in favor of the networks that local stations' ability to create and distribute high-quality, locally-focused programming is compromised.

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The ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, the “Affiliates Associations”)¹ submit these comments in response to the *Notice of Proposed Rulemaking* (“*Notice*”) in the above-referenced docket, in which the Commission seeks comment on the national television audience reach cap, including the UHF discount.²

Introduction

The *Notice* seeks comment on whether the Commission ought to modify or rescind its national audience reach cap, including the so-called “UHF discount,” in light of the significant developments in the video programming and distribution marketplace since the cap was last

¹ Each of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates is a non-profit trade association whose members consist of local television broadcast stations throughout the country that are each affiliated with its respective broadcast television network.

² See *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, MB Docket No. 17-318, Notice of Proposed Rulemaking, 32 FCC Rcd 10785 (released Dec. 18, 2017) (“*Notice*”).

revised by Congress in 2004.³ From its inception, the audience reach rule was intended to protect and promote localism by preserving an appropriate balance between the Big Four national networks (“networks”) and local non-network-owned stations.⁴ Today, localism is being pressured by market forces to a greater extent than at any time in the past. Fragmentation of television audiences grows, and competition for advertising revenues is more intense than ever. Multichannel video programming distributors (“MVPDs”), virtual MVPDs, DBS, telcos, subscription video-on-demand (“SVOD”) services, online video distributors (“OVDs”), and over-the-air, local television stations are all vying for the attention of consumers. In order for the rules to continue to serve their essential purpose in today’s fast-changing environment, the Affiliates Associations urge the Commission to maintain the existing audience reach cap for the networks, but to relax the cap for non-network-owned stations.

The *Notice* acknowledges that the television marketplace is undergoing rapid and significant change.⁵ Recent years have seen exponential growth in the quantity, quality, and variety of video programming available to viewers, and local stations face accelerating competition for those viewers’ attention—and for the advertising revenues that remain essential

³ See *Notice*, ¶ 4 (citing Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (“CAA”)).

⁴ See *Notice*, ¶ 12 (observing that “a national audience reach cap set at some level is necessary in the public interest to promote localism,” because “a percentage cap maintains the appropriate balance of power between broadcast networks and their local affiliate groups, in part by preventing the excessive accumulation of audience reach by network-owned groups, which are more likely to hold stations in multiple geographic markets with large populations”) (citing *2002 Biennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, FCC 03-127, 18 FCC Rcd 13620 (released July 2, 2003) (“*2002 Biennial Review Order*”), ¶¶ 578-81).

⁵ See *Notice*, ¶ 11.

to local stations' ability to produce high-quality local news, sports, weather, public interest, entertainment, and other programming. At the same time, the elimination of the syndication and financial interest rules and the prime time access rules and the combinations of studios and networks have rendered independently-produced, first-run syndicated programming an endangered, if not nearly-extinct, species.⁶

Despite those mounting pressures, local stations remain at the forefront of the production of diverse local news and community-focused programming. Affiliates are leading the charge in innovation with respect to multicast content and ATSC 3.0 technology. They continue to preempt network programming to air local news, weather, sports, and other local programs of greater interest and importance to their local communities, and they are at the forefront of award-winning local news and investigative journalism.

The Affiliates Associations assume the Commission has the authority to modify the national audience reach cap.⁷ In so doing, the Commission can address the growing imbalance in the network-affiliate relationship by implementing a tiered national television ownership rule

⁶ The number of first-run syndicated shows offered by distributors at the annual National Association of Television Production Executives ("NATPE") market and conference in recent years is at an all-time low.

⁷ The *Notice* acknowledges the uncertainty surrounding the Commission's authority to revise the cap in light of the CAA. *See Notice*, ¶¶ 7-9. That uncertainty has prompted several interested parties to reconsider their views on the question of the Commission's authority, and it makes litigation to resolve the Commission's rulemaking authority likely if not certain. Given that any litigation directed to the question of authority will take years to resolve—and that the pace of change in the video programming distribution marketplace promises that the world will look significantly different at the conclusion of that litigation—some have suggested that the Commission hold this proceeding in abeyance while interested parties litigate the Commission's assertion of authority. The Affiliates Associations' comments assume that the Commission has the necessary regulatory authority to modify the national audience reach cap and the UHF discount and intends to consider revision of the cap in this proceeding.

that (i) relaxes the cap for local, non-network-owned stations, and (ii) maintains the current cap for network-owned stations. The Commission thus can help assure that affiliates' commitment to localism will benefit from greater economies of scale and scope without creating further imbalance in the network-affiliate relationship.

I. A Two-Tiered National Ownership Cap Is Necessary to Maintain a Healthy Balance of Power Between Networks and Affiliates.

The *raison d'être* for the national audience reach cap from its inception has been a desire to “maintain[] the appropriate balance of power between broadcast networks and their local affiliate groups,” in order to protect local stations' leverage “to influence network programming decisions and to exercise their rights to preempt the airing of network programming in favor of programming the affiliates feel is better suited to local community needs.”⁸ This policy remains essential to the current marketplace.

The network-affiliate relationship has long served our Nation's decentralized local broadcast system. Networks play a valuable and important role in this relationship. As far back as 1941, the Commission recognized, in its *Report on Chain Broadcasting*, that

Network broadcasting has been an important factor in the development of the broadcasting industry. . . . Chain broadcasting makes possible a wider reception for expensive entertainment and cultural programs and also for programs of national or regional significance which would otherwise have coverage only in the locality of origin. Furthermore, the access to greatly enlarged audiences made possible by chain broadcasting has been a strong incentive to advertisers to finance the production of expensive programs.⁹

⁸ Notice, ¶ 12 (citing 2002 Biennial Review Order, ¶¶ 538-84).

⁹ See *In the Matter of the Investigation of Chain Broadcasting*, Commission Order in Docket No. 5060 (May 2, 1941) (“*Chain Broadcasting Regulations*”), reprinted in *Report on Chain Broadcasting*, Commission Order No. 37, Docket No. 5060 (May 2, 1941) (“*Chain* (continued . . .)

Today, television networks continue to produce or acquire popular, high-quality programming for their affiliates that is supported by national advertising sales. The very nature of this economic model requires that networks have an economic interest in clearing network programs to “assure that the largest audiences possible are watching their programming at the same time.”¹⁰ To further these economic interests, it is entirely rational that networks would pursue opportunities to increase station ownership in local markets across the country.

Affiliates have a countervailing and independent duty, as broadcast licensees, to serve the public interest. They fulfill this duty by making independent programming decisions to serve their individual local communities—by producing their own local news, sports, weather, and public affairs programming and by making ultimate decisions about which programs, including network programs, best serve their local audiences. Congress has recognized the importance of balancing and reconciling the efficiencies of the networks’ centralization of programming and advertising sales with the affiliates’ decentralized approach to tailoring their stations’ programming to address the specific needs and interests of their local communities.¹¹ But that balance—and the resulting dynamic tension—must be jealously guarded by the Commission and regularly reviewed to assure that it does not tilt too far in favor of centralization at the expense of localism. The fundamental core economic impulse of networking, ultimately, runs contrary to

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Broadcasting Report”), at 4, modified, *Supplemental Report on Chain Broadcasting* (Oct. 1941), appeal dismissed *sub nom. NBC v. United States*, 47 F. Supp. 940 (S.D.N.Y. 1942), *aff’d*, 319 U.S. 190 (1943).

¹⁰ 2002 *Biennial Report*, ¶ 578.

¹¹ H.R. REPT. NO. 100-887, pt. 2 at 20 (1988).

localism interests. The Commission, therefore, has a duty to ensure that localism is not sacrificed for the sake of national network economic efficiency interests.¹²

To that end, the Commission has long regulated the network-affiliate relationship.¹³ Stations have a non-delegable statutory duty under Section 310(d) of the Communications Act to maintain control over all aspects of their operations, including programming, at all times. As detailed in Exhibit 1, the Commission has enforced this statutory obligation through a history of rules and decisions curtailing the network's ability to impose contractual provisions that would prevent stations from exercising their duty to serve the specific needs of their local community as opposed to the national economic interests of the networks.¹⁴ The policies underlying those rules and decisions were reinforced by the Commission in its 2008 declaratory ruling in favor of the Network Affiliated Stations Alliance (NASA) regarding certain network practices and contractual provisions.¹⁵

The current video marketplace bears little resemblance to the broadcast ecosystem that existed in 2004 when Congress directed the Commission to set the national cap at its current 39 percent.¹⁶ MVPD subscriptions continue to decline as subscriptions to so-called “over-the-

¹² See 47 U.S.C. §§ 307(b), 310(d); *see generally Chain Broadcasting Report*.

¹³ A brief summary of the network-affiliate relationship is included as Exhibit 1, “A History of the Statutory and Regulatory Framework for Regulation of the Television Network-Affiliate Relationship.”

¹⁴ See Exhibit 1.

¹⁵ *Network Affiliated Stations Alliance (NASA) Petition for Inquiry into Network Practices and Motion for Declaratory Ruling*, Declaratory Ruling, FCC 08-192, 23 FCC Rcd 13610 (released Sept. 3, 2008).

¹⁶ CAA, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (amending Telecommunications Act of 1996, Pub. L. No. 104-04, § 202(c)(1)(B)).

top” (“OTT”) services (unheard of in 2004) grow. MVPDs, virtual MVPDs, DBS, telcos, SVOD, OVDs: the list of competing technologies and types of video competitors continues to expand. Audiences continue to fragment. The market has metamorphosed from the days of “the three network funnel” to suggestions by some that we live in an age of “too much” TV.¹⁷ Local broadcasters now compete for viewers and advertisers with increasing numbers of new outlets for video programming, further straining the resources available to local stations for the production and distribution of high-quality local programming, including local news. The balance of power between the networks and affiliates continues to shift in favor of the networks, which enjoy marked economies of scale and scope and assert ever-increasing control in access to programming and agreements with programming distributors. Local stations are relatively disadvantaged from the outset. And as the pace of change in the marketplace accelerates, that imbalance grows, skewing further in favor of national networks as new OTT entrants provide more and more opportunities for networks to control the avenues for distribution of affiliates’ local programming—and the resulting revenues.

It is not enough, then, to leave the current audience reach cap in place for both networks and local, independent, non-network stations, because the imbalance of power in the networks’ favor is increasing, not holding steady. The Commission recently acted to liberalize the local ownership rule through elimination of the eight voices test,¹⁸ so local, non-network-owned

¹⁷ Andrew Wallerstein, *Too Many Shows? Peak TV Overwhelms Viewers, Survey Finds*, VARIETY (Nov. 6, 2017).

¹⁸ See 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*; 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*; *Promoting Diversification of Ownership in the Broadcasting Services; Rules and* (continued . . .)

stations now have the opportunity to achieve some of the economies of scale and scope essential to their ability to compete in local markets. Scale and scope matter, as the National Association of Broadcasters has demonstrated¹⁹—and as the Commission well understood in acting to liberalize its local ownership rules. This is even more true today given that unregulated Silicon Valley social media operators, such as Facebook and Google, have become dominant competitors in local advertising markets.²⁰

But the doors to achieving such scale and scope have only just begun to open for local stations. The elimination of the eight voices test and the newspaper-broadcast cross ownership rule have only just taken effect. The Commission still is considering possible modifications to

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Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets; Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services, MB Docket Nos. 14-50, 09-182, 07-294, 04-256, 17-289, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, ¶¶ 66-85 (2017) (“*Local Ownership Order*”). The *Local Ownership Order* revised the local television ownership rules to eliminate the so-called “eight voices test” and to modify the prohibition on ownership of two top-four stations in a single market “to better reflect the competitive conditions in local markets.” *Local Ownership Order*, ¶¶ 2, 69.

¹⁹ See, e.g., *Ex Parte* Submission of the National Association of Broadcasters, 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; Promoting Diversification of Ownership in the Broadcasting Services; Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets*, MB Docket Nos. 09-182, 07-294, 04-256 (Mar. 18, 2014) at 1-2 (citing the “substantial economies of scale and scope” that “arise from the need for large capital investments in broadcasting equipment, production facilities, and spectrum licenses, and from the ‘first copy’ property generally associated with intellectual property” and “from the use of assets to create multiple products”) (citing J.A. Eisenach and K.W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting* (2011) at 2 (“Economies of Scale Report”), Attachment A to Reply Decl. of J.A. Eisenach and K.W. Caves (June 27, 2011), incorporated in MB Docket No. 09-182 by reference in NAB’s Comments in that docket (filed Mar. 12, 2012)).

²⁰ In many local advertising markets today, Facebook and Google take between 14 and 16 percent of local advertising dollars as compared to 13.7 percent for television stations. See ADVantage, BIA/Kelsey (2018).

the top-four-rated station rule in the upcoming quadrennial review, and litigation over all of the ownership modifications continues. Local stations need a fair chance to bring the benefits of the efficiencies made possible by the relaxed ownership rules into their local markets before the cap is modified, if at all, as to the *networks*. Failure to hold the networks in check could prevent local stations from achieving the programmatic benefits the Commission desired to achieve through liberalizing the local ownership rules.

The notion of an ownership cap tiered differently for networks and for non-network-affiliated stations is not new. The Commission previously has concluded that differential adjustments to the audience reach rules for networks and local affiliates would be appropriate. In its *2002 Biennial Review Order*, the Commission elected to phase out the UHF discount as it applied to Big Four Network-owned stations while leaving the discount in place for affiliates:

The Commission has previously said it will issue a notice of proposed rulemaking proposing a phased-in elimination of the discount when [the] DTV transition is near completion. At this point, however, it is clear that the digital transition will largely eliminate the technical basis for the UHF discount because UHF and VHF signals will be substantially equalized. Therefore, *we will sunset the application of the UHF discount for the stations owned by the top four broadcast networks (i.e., CBS, NBC, ABC and Fox) as the digital transition is completed on a market by market basis*. This sunset will apply unless, prior to that time, the Commission makes an affirmative determination that the public interest would be served by continuation of the discount beyond the digital transition. *For all other networks and station group owners, we will continue to examine the extent of competitive disparity between UHF and VHF stations as well as the impact on the entry and viability of new broadcast networks*. In a subsequent biennial review, we will determine whether to include stations owned by these other networks and station group owners in the sunset provision we have established for stations owned by the top four broadcast networks.²¹

²¹ *2002 Biennial Review Order*, ¶ 591 (emphasis added).

The *Notice* itself invites comment on the need for and propriety of differential ownership rules, or, at least, on the different impacts of the ownership rules on “certain types of station group owners.”²² Plainly, the Commission has contemplated that a unitary ownership rule for networks and affiliates might not always be the best policy. It certainly is not in today’s marketplace, because a different rule is necessary for local stations to develop the same sorts of economies of scale and scope at the local level that the networks have long enjoyed nationwide. Maintaining the cap for networks while relaxing it for non-network-owned stations will afford local stations the opportunity to catch up. Such a differential rule will help ensure that local affiliates continue to drive innovation, experiment with new technology, and remain viable sources of diverse, high-quality, locally-focused programming in an increasingly competitive marketplace in which the networks and Silicon Valley players wield growing power.

In short, the networks are rational economic actors. They will press their economic interests where they are permitted to do so. But those interests must always be carefully counterbalanced by the public interest in localism. Because a unitary cap is no longer sufficient “to protect localism by preserving a balance of power between networks and affiliates,”²³ the current cap should continue to govern the networks, while a relaxation of the cap for non-network stations should be put in place to reverse at least some of the growing imbalance.

II. The National Cap Should Be Loosened for Non-Network Stations in Order to Protect Localism Interests.

Just as local affiliate stations can now apply the efficiencies and innovation promoted by

²² *Notice*, ¶¶ 17, 22.

²³ *2002 Biennial Review Order*, ¶ 539; *see also* Exhibit 1.

the liberalization of the local ownership rules to expand their commitment to localism, a relaxed national ownership cap—applied to independent, non-network stations—would further incent stations to maximize the efficiencies of scale and scope to expand their commitment to localism. Localism is critical to the communities in which broadcast stations are licensed. That localism matters is the very reason that the Commission is charged by statute with protecting localism and fostering local television.²⁴

Affiliates have demonstrated their continued commitment to tailoring their programming and technologies to serve the specific needs of their local communities—even when those interests may not mirror those of the networks. For example:

- Affiliates have continued to preempt network programming in favor of content tailored to address particular local issues and interests;
- Affiliates have increased the investment in, and quality and depth of, their local news coverage and investigative reporting, filling an important public interest gap created by the declining newspaper industry;
- Affiliates have been at the forefront of expanding new and diverse content through multicast programming streams; and
- Affiliates have taken the lead in developing and deploying innovative new technologies in Next Generation television.

As detailed below, loosening the national ownership cap for affiliates (but not networks) will preserve and promote the core principle of localism upon which national communications policy has rested virtually since its inception eight decades ago.

A. Local Affiliates Are at the Forefront of Airing Programming That Is of Particular Interest to Their Local Communities.

The Commission has recognized that the national cap is important to preserving local

²⁴ See, e.g., 47 U.S.C. §§ 307(b), 310(d); see generally *Chain Broadcasting Report*.

affiliates' ability to exercise their independent judgment to select programming that is tailored to local community interests—be it local news, weather, charity events, sports, or other programming of particular local relevance:

[A] national cap at some level is needed to promote localism by preserving the balance of power between networks and affiliates. We found that affiliates' incentives are more attuned to their local communities than are those of networks, which seek to assure that the largest audiences possible are watching their programming at the same time.²⁵

Multiple examples illustrate local stations' continuing commitment to localism and their willingness, when necessary, to preempt network programming to serve local interests. To provide just a few:

After the mass shooting at Marjory Stoneman Douglas High School, ABC affiliate WPLG(TV) in Miami went on the air at 2:45 PM on February 13th, stayed on the air through midnight, and began coverage again the next day from 4:00 AM through 1:00 PM. And when Hurricane Irma hit earlier in 2017, that station aired continuous, wall-to-wall news and weather coverage from 4:00 AM on September 7th through 6:30 PM on September 11th.²⁶

Coverage of local weather emergencies continues to be a critical function of local affiliate stations, even in the face of viewer complaints over the preemption of popular network programming. After KSFY-TV, the Sioux Falls, South Dakota, ABC affiliate, received a flood of complaints from viewers when the station preempted ABC programming for tornado coverage

²⁵ 2002 Biennial Review Order, ¶ 578.

²⁶ See Jon Lafayette, *WPLG Sets Up Care Force to Coordinate Irma Relief*, BROADCASTING & CABLE, (Sept. 17, 2017), available at <http://www.broadcastingcable.com/news/currency/wplg-sets-care-force-coordinate-irma-relief/168703>.

in May 2014, morning anchor Nancy Naeve told viewers that saving lives was more important than a TV show.²⁷ In May 2003, NBC affiliate WXII in Winston-Salem, North Carolina preempted coverage of the Kentucky Derby in order to provide live coverage of a tornado threatening local residents in part of the station's market.²⁸ Despite criticism from viewers who were not in harm's way, the station publicly reiterated its commitment to alert viewers to emergency weather events.²⁹ In 2017, ABC affiliate WRTV(TV) in Indianapolis preempted *The Bachelorette* to cover tornado warnings.³⁰

Local news and community events also merit extensive local coverage from local stations. Each year, Detroit NBC affiliate WDIV-TV preempts the Macy's Thanksgiving Day Parade in order to air America's Thanksgiving Parade in Detroit.³¹ In 2014, Boston ABC affiliate WCVB-TV preempted all daytime network programming to host a telethon and special

²⁷ See Jason Samenow, *Anchor Lashes Out at Viewers Complaining About TV Shows Interrupted for Tornado Coverage*, WASH. POST (May 13, 2014), available at https://www.washingtonpost.com/news/capital-weather-gang/wp/2014/05/13/anchor-lashes-out-at-viewers-complaining-about-tv-shows-interrupted-for-tornado-coverage/?utm_term=.28eefc0f5ada.

²⁸ See *Forget About the Weather, We Want the Derby?*, TV TECHNOLOGY (May 9, 2003), available at <https://www.tvtechnology.com/news/forget-about-the-weather-we-want-the-derby>.

²⁹ See *id.* (quoting station general manager: "We do wish the race had run, but we will always interrupt programming when peoples' lives are at risk. We are not ambivalent about that. Our first responsibility is not to the advertisers or peoples' programs. It is to the safety of our viewers.").

³⁰ See Andrew Clark, *Why RTV6 Had to Preempt 'The Bachelorette' for Weather*, INDYSTAR (July 11, 2017), available at <https://www.indystar.com/story/news/local/2017/07/11/why-rtv-6-had-preempt-the-bachelorette-weather/468993001/>.

³¹ See *Your Complete Guide to the 2017 America's Thanksgiving Parade in Detroit*, CLICK ON DETROIT (Nov. 20, 2017), available at <https://www.clickondetroit.com/parade/your-complete-guide-to-the-2017-america-s-thanksgiving-parade-in-detroit>.

programming on the one-year anniversary of the Boston Marathon bombing.³² WTHR(TV) in Indianapolis preempts network programming every May to air local programming surrounding the Indy 500 race, including a two-hour parade and a seven-hour Indy 500 Morning show.³³ KXLY-TV in Spokane preempted network programming to air a mediathon “Give 4 Kids” benefitting Sacred Heart Children’s Hospital and to cover a local, three-on-three basketball tournament consisting of over 6,000 teams, 3,000 volunteers, 225,000 fans, and 450 courts spanning 45 city blocks downtown.³⁴ And when the Reverend Billy Graham died, local stations in his home state of North Carolina aired extensive coverage of his death and coverage of the funeral.³⁵

Finally, local stations regularly prioritize local sports programming over national network entertainment programming. The four Wisconsin ABC affiliates owned by Quincy Media, Inc. (WKOW(TV), WXOW(TV), WQOW(TV) and WAOW(TV)) have produced and broadcast the Wisconsin Interscholastic Athletic Association Boys and Girls State Basketball and Hockey Championships for nearly sixty years. These live broadcasts are a Wisconsin tradition, reaching

³² See *WCVB-TV hosts telethon to benefit One Fund Boston*, WCVB.COM (Apr. 15, 2014), available at <http://www.wcvb.com/article/wcvb-tv-hosts-telethon-to-benefit-one-fund-boston/8199452>.

³³ See, e.g., *Programming Changes on WTHR for 2015 Indy 500 Weekend and Memorial Day*, WTHR.COM (May 21, 2015), available at <https://www.wthr.com/article/programming-changes-on-wthr-for-2015-indy-500-weekend-and-memorial-day>.

³⁴ See *Give 4 Kids*, KXLY.COM (last visited Mar. 15, 2018), <https://www.kxly.com/lifestyle/give-4-kids>; *KXLY Official Hoopfest Broadcast Schedule* KXLY.COM (June 16, 2017), available at <https://www.kxly.com/news/kxly4-official-hoopfest-broadcast-schedule/545635396>.

³⁵ See *Watch Billy Graham Funeral Live Friday at Noon*, WRAL.COM (Mar. 1, 2018), available at <http://www.wral.com/watch-billy-graham-funeral-live-friday-at-noon/17383988/>.

more than 2,200,000 TV Households on a network of stations covering the entire state of Wisconsin. Network and syndicated preemption time during those broadcasts totals more than 70 hours during the first three weeks of March, with 35+ hours of that time being ABC daytime and primetime programming. Earlier this year, ABC affiliate WTAE-TV in Pittsburgh relocated an NBA game between the Oklahoma City Thunder and the Cleveland Cavaliers from its main channel to a multicast channel in order to air the Pittsburgh-Duke college basketball game on its main channel. NBC affiliate WRAL-TV in Raleigh, North Carolina, often preempts network programming in order to air ACC basketball games.³⁶

Producing local programming is, of course, expensive and labor-intensive. Relaxation of the national audience reach cap for non-network-owned stations, like the liberalization of the local ownership rules, will enable stations to maximize the substantial resources required to continue to innovate and expand such local programming.

B. Local Affiliates Are at the Forefront of Producing High-Quality Local News Programming.

Local news is a critical component of a station's commitment to localism, and the evidence indicates that local, non-network-owned stations produce the highest-quality local news and now win the most awards for the quality of their local news programming—by a substantial margin.

The evidence before the Commission in 2002, based primarily on awards for local news

³⁶ See, e.g., *'This Is Us' to Air Later on Tuesday After ACC Basketball Game*, WRAL.COM (Jan. 8, 2018), available at <http://www.wral.com/-this-is-us-to-air-later-on-tuesday-after-acc-basketball-game/17242124/>.

from the Radio and Television News Directors Association³⁷ and the local television recipients of the Silver Baton of the A.I. duPont Awards, showed that network-owned stations received local news excellence awards at a significantly higher rate than affiliates did.³⁸ The Commission used this evidence to support its conclusion that the then-national cap of 35% was not necessary to promote high quality local news, and, in fact, prevented the networks from acquiring more stations that could provide enhanced local news operations.³⁹

Since the awards studies the Commission relied upon in 2002 and with the subsequent financial challenges impacting the newspaper industry during that timeframe, there has been a sea-change in the number of awards won by non-network-owned commercial television stations as compared to network owned-and-operated (“O&O”) stations. The news departments of local affiliates are stepping up to meet the informational lacuna created by the financial damage to the newspaper industry. Attached hereto as Exhibit 2 are complete summaries of the RTDNA-Edward R. Murrow Awards, the Alfred I. duPont-Columbia University Awards, and the Peabody Awards, with an aggregated summary set forth in the table below:

³⁷ Now known as the Radio Television Digital News Association.

³⁸ See *2002 Biennial Review Order*, ¶ 576.

³⁹ See *2002 Biennial Review Order*, ¶ 577.

Summary of Awards for Local News Excellence

Award Name	Total Winners	Non-Network Stations Number / Percentage	Network O&Os Number / Percentage
Edward R. Murrow/ RTDNA 2003-2017*	176	141 / 80.1%	35 / 19.9%
duPont-Columbia 2003-2018	61	55 / 90.2%	6 / 9.8%
Peabody 2003-2016	51	42 / 82.4%	9 / 17.6%

* Large markets (DMAs 1-50) only; non-network-owned stations won an additional 180 awards in small markets (DMAs 51-210) over this time period, while network O&Os in small markets won just two awards.

Data since 2002 show that the vast majority of awards for local news excellence have gone to local stations not owned by the networks, representing an impressive change in the overall quality of non-network-owned station news during a time of increased production in the quantity of such news. To be clear, the networks and their O&O stations do a fine job as well. Still, the data demonstrate that affiliates' significant investments in local news and investigative reporting are making a significant impact. As with the affiliates' demonstrated commitment to local programming and preemptions discussed above, loosening the cap for non-network-owned stations will help stations leverage the benefit of scale and scope to further expand their commitment to award-winning local news programming.

C. Local Affiliates Are at the Forefront of Serving Their Local Communities Via Diverse Multicast Program Streams.

Since the *2002 Biennial Review Order*, the industry has transitioned to digital broadcasting, which has allowed local stations to provide more programming choices through multicasting. The growth of affiliates' multicasting efforts has led to opportunities for program

diversity, competition in the programming market, and the opportunity to produce more unique, locally-oriented programming.

Affiliates, in markets of all sizes, also innovate, program, and produce (at significant expense) their own multicast programming. Examples include ABC affiliate KTBS-TV, Shreveport, Louisiana, which broadcasts KTBS-24 (.3), a 24-hour local news channel; ABC affiliate WDAY-TV, Fargo, North Dakota, which broadcasts WDAY'Z Xtra (.3), a local weather, news, sports, and radio multicast; ABC affiliate KIFI-TV, Idaho Falls, Idaho, which broadcasts Local News 8 NOW (.4); FOX affiliate KNPN-LD, St. Joseph, Missouri, which broadcasts News-Press NOW (.3); CBS affiliate WTVF(TV), Nashville, Tennessee, which broadcasts Newschannel 5+ (.2); and ABC affiliate KRGV-TV, Weslaco, Texas, which broadcasts Somos el Valle (.2), an Hispanic-focused news, information, and entertainment multicast; and scores of affiliates that multicast local weather channels.

The variety of content available in practically every television market on a free, over-the-air (“OTA”) basis from local affiliates truly makes this a golden age for viewers of broadcast television. This type of improved local service makes a difference for the increasing number of viewers in the OTA audience. As the Commission knows well, the percentage of “broadcast-only” households (that is, those that receive programming solely over-the-air or via a combination of OTA and Internet delivery) and “broadcast-any” households (that is, those that have at least one television that receives OTA signals) have climbed to 18 percent and 25.1 percent respectively.⁴⁰ Most, if not all, of those OTA-only households are consumers who

⁴⁰ See GfK, *Home Technology Monitor 2017 Ownership and Trend Report* (June 2017); see also, e.g., *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighteenth Report, DA 17-71 (released Jan. 17, 2017) (“*Eighteenth Video Competition Report*”), ¶¶ 7, 116.

cannot afford, or choose not to subscribe, to pay TV services.

According to the Commission's most recent video competition report, there were 1,387 commercial television stations as of December 31, 2015, and there were 5,905 multicast channels as of February 2016.⁴¹ As that report states: "Many commercial stations also use multicast streams to offer consumers additional programming choices. For instance, multicast streams often carry newer networks such as MeTV (with 151 digital multicast affiliates), This TV (with 81 digital multicast affiliates), and Grit (with 114 digital multicasting affiliates)."⁴² In addition to MeTV (from Weigel Broadcasting), This TV (from Tribune and MGM), and Grit (from Scripps/Katz), local affiliates carry a host of other diverse multicasts, including the following national diginets:

- Action (Luken Communications)
- Antenna TV (Tribune/MGM)
- Bounce (Scripps/Katz)
- BUZZR (FreeMantle)
- Charge! (Sinclair)
- Comet (Sinclair)
- COZI-TV (NBCU)
- Decades (Weigel/CBS)
- Escape (Scripps/Katz)
- fam (The Family Channel) (Luken)
- getTV (Sony)
- Heartland (Luken)
- Heroes & Icons (Weigel)
- Justice Network (Cooper Media/Tegna)

⁴¹ See *Eighteenth Video Competition Report*, ¶ 77.

⁴² *Eighteenth Video Competition Report*, ¶ 108.

Laff (Scripps/Katz)
Light TV (MGM)
Movies! (Weigel/FOX)
Quest (TEGNA/Cooper Media)
retro^{TV} (Luken)
Rev'n (Luken)
Stadium (Sinclair)
TBD-TV (Sinclair)

In contrast to this wide variety of multicast channels offered by affiliates, the network-owned stations hew closely to a formula: ABC O&Os broadcast the co-owned Live Well Network as a multicast.⁴³ CBS O&Os (excluding satellite stations) broadcast Decades, which CBS co-owns as a joint venture with Weigel Broadcasting.⁴⁴ FOX O&Os (excluding satellite stations) broadcast Movies!, which Fox Television Stations co-owns as a joint venture with Weigel Broadcasting.⁴⁵ Stations owned by NBCUniversal Owned Television Stations broadcast co-owned COZI-TV, Telemundo, and/or TeleXitos as multicasts.⁴⁶ This somewhat less diverse approach to multicasting tends, at the margin, to restrict the variety of programming choices available to viewers. If the Commission were to allow the networks to expand their ownership of local stations, the result could be to decrease the diversity of programming choices since the networks, in general, broadcast less varied products than do affiliates, substantially favor multicasts in which they have an ownership interest, and tend not to broadcast local news or

⁴³ See Exhibit 3.

⁴⁴ See Exhibit 3.

⁴⁵ See Exhibit 3.

⁴⁶ See Exhibit 3.

weather channels as multicast products.

By relaxing the national ownership cap as to independent local television stations, the Commission will ensure that non-network-owned stations have the resources necessary to continue to invest and innovate in multicast programming that promotes program diversity and localism.

D. Local Affiliates Are at the Forefront of Innovation Through Next-Generation Television.

In its *2002 Biennial Review Order*, the Commission considered the importance of a national cap to innovation:

The transition to digital television represents a critical evolutionary step in broadcast television. We are committed to ensuring the rapid completion of that transition in a way that delivers the greatest possible benefits to the viewing public. We believe that the broadcast industry is more likely to rapidly address the technical and marketplace issues associated with digital television if there are a variety of group owners exploring ways to use the spectrum. The record shows that non-network owners of television stations are actively exploring different ways of using digital spectrum. It is also important to have group owners with potentially different economic incentives in this area examining transition mechanisms to digital television. Because of networks' ongoing investment in programming, it is possible that networks may have incentives to use digital spectrum differently from affiliates. The Fox television network, for instance, has indicated its interest in using the spectrum of its owned stations as well as its affiliates for future services. Therefore, we conclude that a national television cap is necessary to preserve a number of separately-owned television station groups, including non-network groups, that will increase the types of digital transition experiments and ultimately facilitate a rapid and efficient transition to digital broadcast television.⁴⁷

As the Commission predicted, non-network-owned stations have been at the forefront of

⁴⁷ *2002 Biennial Review Order*, ¶ 532.

much of the post-transition innovation in use of the digital spectrum, particularly as it relates to broadcasters' approach to the Next Generation broadcast television transmission standard known as "ATSC 3.0," the first Internet Protocol-based broadcast transmission platform. Local stations are bringing competitive energy to the task of developing, innovating, and driving adoption of Next Gen TV, to the benefit of consumers and of America's international technological leadership.

Both before and after the Commission's November 2017 Order⁴⁸ authorizing stations to begin broadcasting in 3.0 on a voluntary, market-driven basis, it has been the non-network-owned local stations that have embraced the opportunity to "test drive" the new broadcast standard, which promises significant benefits to consumers, among them "a more immersive and enjoyable television viewing experience on both home and mobile screens," while allowing broadcasters "to innovate, improve service, and use their spectrum more efficiently."⁴⁹

In June 2016, Capitol Broadcasting's WRAL-TV, the NBC affiliate in the Raleigh-Durham market, launched the Nation's first live simulcast in ATSC 3.0 on a separate channel experimentally licensed by the Commission.⁵⁰ The experimental launch has allowed the station to explore the potential of the Next Gen TV standard to improve over-the-air reception by antenna and on mobile devices and to deliver richer, more interactive content, sharper pictures,

⁴⁸ See *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930 (released Nov. 20, 2017) ("*Next Gen TV Order*").

⁴⁹ *Next Gen TV Order*, ¶ 1.

⁵⁰ See Phil Kurz, *WRAL Launches ATSC 3.0 Service*, TVNEWSCHECK (June 29, 2016), available at, <http://www.tvnewscheck.com/article/95854/wral-launches-atsc-30-service>; *WRAL Begins Broadcasting in Next-Gen TV Technology*, WRAL.COM (June 29, 2016), available at <http://www.wral.com/wral-to-begin-broadcasting-in-next-gen-tv-technology/15815109/>.

and better sound. It also enabled the station to gather data and test equipment that will facilitate the eventual large-scale transition to the new broadcast standard. News coverage of the launch touted the local station's commitment to embracing new technology in order to "become better providers of news and information for [the station's] viewers."⁵¹

Other local broadcasters have followed suit. Among them, Sinclair in Baltimore⁵² and Tribune Broadcasting's WJW(TV), the FOX affiliate in Cleveland, have begun broadcasting experimental 3.0 signals.⁵³ WJW(TV), no stranger to 3.0 experimentation, was the first to transmit a major professional sporting event—Game 2 of the 2016 World Series—in the Next Gen TV standard.⁵⁴ Dallas is next, as local stations in that market continue to show the

⁵¹ See *WRAL Begins Broadcasting in Next-Gen TV Technology*, WRAL.COM (June 29, 2016), available at <http://www.wral.com/wral-to-begin-broadcasting-in-next-gen-tv-technology/15815109/>.

⁵² See Phil Kurz, *Sinclair Readies Retooled ATSC 3.0 Lab*, TVNEWSCHECK (July 7, 2016), available at <http://www.tvnewscheck.com/article/96023/sinclair-readies-retooled-atsc-30-lab> (observing that the lab "will make it possible for Sinclair to invite technology vendors and others into the facility so the broadcast group can evaluate technologies and begin integrating an entire next-generation TV broadcast system").

⁵³ See Ben Munson, *NAB, CTA Launching ATSC 3.0 Test Station in Cleveland*, FIERCECABLE (Nov. 17, 2017) (noting that the "living laboratory" was launched "using the transmitter and broadcast facilities of local Tribune Media-owned Fox affiliate WJW"), available at <https://www.fiercecable.com/broadcasting/nab-cta-launching-atsc-3-0-test-station-cleveland>.

⁵⁴ See *Next Gen TV Station in Cleveland Broadcasts World Series*, BUSINESSWIRE (Oct. 26, 2016) (describing the Tribute station's experimental broadcast as "a defining moment for the future of television"), available at <https://www.businesswire.com/news/home/20161026006837/en/Gen-TV-Station-Cleveland-Broadcasts-World-Series>; *Next Gen TV Station in Cleveland to Support ATSC 3.0 Implementation*, ATSC.ORG, available at <https://www.atsc.org/newsletter/next-gen-tv-station-cleveland-support-atsc-3-0-implementation/>.

commitment of local broadcasters to 3.0 experimentation by designing and deploying a single-frequency network capable of broadcasting several Next Gen TV signals.⁵⁵

On a larger scale, in November 2017, seven broadcasters across 10 stations, including FOX's network-owned station and NBC's owned Telemundo station, launched a "model 3.0 market" in Phoenix, Arizona to demonstrate the viability of an ATSC 3.0 broadcasting ecosystem.⁵⁶ The group also includes a number of local broadcasters committed to experimentation and innovation, including ABC, CBS, NBC, and CW affiliates. The Pearl TV consortium,⁵⁷ which oversees the effort, described the goal of the experimental market "to serve as a testbed for the business models and the consumer testing needed to prepare go-to-market strategies for next-generation television."⁵⁸ Local affiliate stations are key drivers in that important effort to prepare for broad-scale implementation of the Next Gen TV standard and the many, significant benefits it promises for broadcasters and their viewers alike.⁵⁹

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⁵⁵ See Mark Miller, *ATSC 3.0 SFN to Be Deployed in Dallas*, TVNEWSCHECK (Jan. 18, 2018), available at <http://www.tvnewscheck.com/article/110471/atsc-30-sfn-to-be-deployed-in-dallas>.

⁵⁶ See Phil Kurz, *Phoenix to Serve as 'Model Market' for ATSC 3.0*, TVTECHNOLOGY (Nov. 15, 2017), available at <http://www.tvtechnology.com/atsc3/0031/phoenix-to-serve-as-model-market-for-atsc-30/282269>.

⁵⁷ The Pearl TV Consortium is a joint undertaking of several independent television groups, including Cox Media Group, the E.W. Scripps Company, Graham Media Group, Hearst Television Inc., Meredith Local Media Group, Nexstar Media Group, Raycom Media, and TEGNA, Inc. See *About Pearl*, PEARL TV, <http://www.pearl.tv.com>.

⁵⁸ *Id.*

⁵⁹ Through their control of copyrights to a large swath of programming, the networks conceivably could try to replicate their OTT experience in the ATSC 3.0 world. Affiliate control and balance is therefore extremely important.

A loosening of the national audience reach cap as it applies to non-network-owned stations would allow for the restoration of some equilibrium to the network-affiliate dynamic. By correcting some of the growing imbalance, the Commission can ensure that the national ownership rules continue to serve their intended purpose by safeguarding local stations' ability to tailor their programming to the needs and interests of their local communities, to invest in the production and distribution of high-quality local news and public affairs programming, to offer a broad and diverse menu of programming via multicast streams, and to lead the charge in experimenting with and implementing new broadcast technologies, all to the ultimate benefit of localism—and local viewers.

III. The Commission Should Retain the Existing National Ownership Cap for the Big Four Networks.

The current national ownership cap serves as a bulwark against an excessive accumulation of power in the relationship between the networks and their affiliates. But, as noted, there have been tremendous changes in the broadcast industry since the Commission last reviewed the national cap as part of the 2002 Biennial Review, and many of those changes have tilted the balance of power between the networks and affiliates further in favor of the networks.

If the Commission's national ownership rule is to continue to serve the purpose for which it is intended—protecting localism by maintaining an appropriate balance of power between networks and their local affiliates—a tiered ownership rule is not only appropriate but essential. A different rule is necessary for local stations to develop the same sorts of economies of scale and scope at the local level that the networks have long enjoyed nationwide. Maintaining the cap for networks while relaxing it for non-network stations will afford local stations the opportunity to increase the amount of local assets devoted to local news and program production and increase

their bargaining leverage with the networks.

In its *2002 Biennial Review Order*, the Commission found that “[t]he evidence demonstrates that a national TV ownership limit is necessary to promote localism by preserving the bargaining power of affiliates and ensuring their ability to select programming responsive to tastes and needs of their local communities.”⁶⁰ Revising the cap for non-network-owned stations while maintaining the current cap for the networks as proposed herein will maintain that balance of power by protecting the ability of affiliates to continue their innovation and investment in multicasting, Next Generation television, locally-oriented programming, and award-winning local news programming.

A. If the National Ownership Cap Were Loosened for the Big Four Networks, the Networks Would Be Incentivized to Replace Local Affiliates with Network-Owned Stations.

The Commission must recognize that, were it to allow the networks to participate in any loosening of the national cap by purchasing more stations, some networks would not hesitate to acquire more stations—and hence to obtain more economic power in local markets. A few examples make the point. FOX, with an option to buy a station in the Raleigh-Durham DMA where family-owned Capitol Broadcasting owns the FOX affiliate WRAZ(TV), instead renewed that affiliation and acquired from Capitol its two stations in the Charlotte DMA, WJZY(TV) (a CW affiliate) and WMYT-TV (a MyNetwork affiliate). FOX then stripped the 27-year Charlotte FOX affiliation from family-owned Bahakel Communications’ WCCB(TV) and moved the affiliation to its now-owned station WJZY. FOX’s stated goal was to acquire another O&O in an

⁶⁰ *2002 Biennial Review Order*, ¶ 507.

NFC football market in order to monetize the costs of the NFL rights it had obtained.⁶¹ This is, of course, rational economic behavior. But national networking economics can have local market implications and impacts that harm localism.

More recently, NBC attempted to buy Boston full-power NBC affiliate WHDH(TV) from Sunbeam Television at a price significantly below its estimated market value as a Big Four affiliate. When Sunbeam refused to sell, NBC did not renew the station's affiliation.⁶² (Boston is in Nielsen market number nine, a top-ten market.) Instead, NBC acquired low-power station WTMU-LP (rechristened WBTS-LD), moved the NBC affiliation to the low power station effective January 1, 2017, and married it with the newsroom assets of its owned regional cable news network, New England Cable News.⁶³

The current national ownership cap effectively limits the number of affiliations the

⁶¹ See Doug Halonen, *Charlotte Move Puts FOX Affiliates on Edge*, TVNEWSCHECK (Jan. 29, 2013), available at <http://www.tvnewscheck.com/article/65130/charlotte-move-puts-fox-affiliates-on-edge>.

⁶² See Derrick Santos, *Beantown Breakup – Ansin Confirms NBC is Pulling Affiliation – UPDATED*, NEW ENGLAND ONE (Mar. 2, 2016), available at <http://www.newenglandone.com/news/local/boston/beantown-breakup-nbc-actually-leaving-whdh.html>. The NBC/Sunbeam battle in Boston is reminiscent of NBC's fight with Young Broadcasting for KRON-TV in San Francisco in 1999. NBC threatened to strip KRON of its NBC affiliation if Young outbid NBC for the station when it was being sold by Chronicle Publishing. Young did outbid NBC, and NBC did strip KRON of the affiliation at the end of 2001, ultimately leading to Young filing for bankruptcy in 2008.

⁶³ See Shirley Leung, *To Channel 7 Owner, NBC's Offer Is \$300m Too Little*, BOSTON GLOBE (Dec. 23, 2015), available at <https://www.bostonglobe.com/business/2015/12/22/ansin-owner-whdh-accuses-nbc-playing-hardball-with-channel-negotiations/o9giEDI4eYIoPeuzRbw8DN/story.html>; Shirley Leung, *NBCUniversal Buys Local Station That Could Play Role in NBC Boston*, BOSTON GLOBE (Sept. 20, 2016), available at <https://www.bostonglobe.com/business/2016/09/19/nbcuniversal-buys-local-station-that-could-play-role-nbc-boston/czuFvRBxmKnoWcmJrPO8CK/story.html>; Cynthia Littleton, *NBCUniversal Gambles in Beantown With NBC Boston Launch*, VARIETY (Dec. 30, 2016), available at <https://variety.com/2016/tv/news/nbc-boston-affiliate-switch-1201950263/>.

networks could strip from their existing affiliates. But if the Commission were to loosen the cap, then many more markets would be in play. Some stripping of affiliations would not occur immediately and would at least require a current affiliation agreement to expire, as it did in the case of WHDH, but others could occur almost immediately. Several networks require provisions in their affiliation agreements that give the network the right to terminate the agreement early in the event the network acquires a station in that affiliate's market.⁶⁴ For example, FOX includes the following provision in many of its affiliation agreements:

If Fox or any of Fox's parent, affiliated, subsidiary or related companies or other entities enters into any agreement to acquire any significant ownership and/or controlling interest in any television broadcast station licensed to any community within Station's DMA, then Fox shall have the right at any time after that agreement is made, to terminate this Agreement upon not less than 60 days' notice to Licensee. Said termination shall be effective as of such date as Fox shall designate in said notice.

It was just such a provision that FOX relied upon in stripping WCCB of its FOX affiliation in Charlotte. Some CBS affiliation agreements contain a nearly identical provision:

In the event CBS or any direct or indirect subsidiary of CBS enters into any agreement to acquire any significant ownership and/or controlling interest in any television broadcast station licensed to any community within Affiliated Station's DMA, including acquiring a television broadcast station's FCC license, then CBS shall have the right, at any time after that agreement is made, to terminate this Affiliation Agreement upon not less than sixty (60) days' notice to Broadcaster, with such termination to be effective as of the date designated by CBS in such notice.

And, though ABC has not been growing its station group of late, some ABC affiliation agreements have a provision that ABC could interpret to require the same result in the event an entity under common control with ABC acquires the license of a television station in a

⁶⁴ The language discussed in text is drawn from network affiliation agreements currently on file with the Commission.

previously non-O&O market:

ABC may assign this affiliation per this Agreement to any party acquiring all or any material portion of its network television business or to any entity controlling, controlled by, or under common control with ABC.

Moreover, nothing is preventing the networks from requiring stripping rights, like the FOX and CBS provisions, in all of their affiliation agreements going forward, a prospect that would be made more certain by any sign that the Commission intends to raise the national ownership cap for the Big Four networks.

B. Other Changes in the Broadcast Television Marketplace Have Tilted the Playing Field Further in Favor of the Big Four Networks.

Networks have increased leverage in the terms of affiliation agreements that control, among other things, the costs to local stations of obtaining network programming. ABC, CBS, and NBC typically supply between one-third and one-half of an affiliate station's programming; FOX supplies somewhat less. License fee payments that the networks require from their affiliates for the right to distribute that programming increasingly leave an ever-declining portion of a station's revenues available for producing local news and public affairs programming and acquiring the remaining programming that is necessary for a station to present a full schedule of news, public affairs, entertainment, and sports programming attuned to the needs and desires of its local audience. Such fee payments, while legitimate, have risen substantially in recent years. It is only fair to say that the current network-affiliate license fee structure is, at the margin, siphoning revenues away from local stations—to the potential detriment of local programming production.

To be clear, the Affiliates Associations are not seeking Commission intervention in the

financial arrangements between the networks and their affiliates. Rather, the Affiliates Associations are urging the Commission not to alter the ownership cap as applied to the networks—an existing, fundamental structural component of the industry—in a fashion that would allow networks to accumulate even more bargaining power vis-à-vis their affiliates. It is fair for local stations to pay for network programming. But the current imbalance of power tilts the negotiations too far toward the networks’ interests.

The Commission’s failure to act on its *Notice of Proposed Rulemaking* to classify OVDs as MVPDs⁶⁵ has exacerbated the imbalance of power in favor of the networks. As imperfect as the network-affiliate contractual relationship may be at present, it nevertheless maintains the ability of stations to negotiate for themselves with multichannel video programming providers to establish the terms and conditions on which MVPDs can retransmit local stations’ signals, including their valuable local programming. Stations thus are able to prioritize carriage issues, including carriage of non-network-owned multicasts, channel position and tiering, signal quality and signal delivery/acquisition, as well as retransmission consent fees.

By contrast, the over-the-top marketplace is dysfunctional. With respect to the rapidly-expanding number of OVDs, such as DIRECTV Now, YouTube TV, Hulu TV, Sony PlayStation Vue, and fuboTV, the Commission’s failure to classify OVDs as MVPDs has left virtually all control in the networks’ hands. The networks have refused to allow their affiliated local stations to negotiate directly with OVDs for retransmission of the stations’ local signals (as is required by law with respect to MVPDs, direct broadcast satellite providers, and telco distributors). Rather,

⁶⁵ See *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261, Notice of Proposed Rulemaking, FCC 14-210 (released Dec. 19, 2014).

the networks retain control by refusing to grant distribution rights for network content to local stations.⁶⁶

Because each of the Big Four networks, or their parents, own multiple other cable networks, the networks bundle their cable networks, their O&Os, and their affiliates into a single package with the OVDs, which they prioritize as they see fit. The deals negotiated by the networks establish affiliates' shares of OVD license fees, but that share is unlikely to have any relationship to the value of what the affiliate actually brings to the OVD's service, and it certainly will not value the strength of the station in its local market or the quality of its local newscasts (elements that do play a substantial role in retransmission consent negotiations with MVPDs). And networks' deals with OVDs do not require carriage of the station's local news or weather multicast, or any other multicast for that matter.

The networks insistence on negotiating directly with OVDs on all terms—carriage, signal delivery, advertising insertions, technical specifications, license fees, and the carriage of the program streams of O&Os, owned cable networks, and local affiliates—has significant policy implications for the ecosystem. The aggregate price the network parent (Disney, Comcast/NBCU, CBS, FOX) receives is allocated among its various cable program networks, O&O stations, and local affiliates. In making the allocation of value received from the OVD provider, the value allocated to affiliate stations is significantly less than market value (i.e., less than would be achieved if the local affiliate negotiated directly with the OVD). The difference (or “delta”) between the market price and the allocated offer is a current market imperfection that

⁶⁶ A local network-affiliated station's signal generally contains a bundle of three sets of rights: (1) station-owned rights to its local news and other locally-produced content; (2) network program rights; and (3) syndicated program rights.

is harming localism. Here's why: the delta is revenue that would otherwise flow to local stations and aid in the production of local programming. In the allocation made by the network parent, value is shifted from the higher-rated local stations to a less-highly-rated cable network owned by the network parent. (At the same time, it bears noting that MVPDs are attempting to shift their subscribers to their owned OVD platforms to make an "end run" around the retransmission consent required by law as to MVPDs.) In short, a network presents its affiliates with what amounts to a take-it-or-leave-it offer, termed an "opt-in agreement." But the right to "opt out" is essentially illusory.

Yet another concern for localism is that, in some cases, the network will allow an OVD to distribute a network "white feed" (i.e., a national network feed without any local affiliate content, including local news) in the absence of the local station's signal, and the OVD, in such circumstances, will not negotiate with the station (and has no statutory obligation to negotiate in good faith since it is not classified as an MVPD). For example, DISH Network's Sling TV product contains network O&O stations but not affiliates. To repeat, the networks and their corporate parents are acting rationally from an economic standpoint, but if the cap were lifted as to the networks, the fulcrum in this key and growing new distribution platform would tip further in the direction of the networks, to the detriment of local stations and localism.

What will occur with network control over these new distribution methods, if the Commission allows it, will be the gradual nationalization of the video programming marketplace. Indeed, absent enlightened policymaking, the networks ultimately would convert the current retransmission consent regime into this same model. But even without that conversion, as MVPD subscribership declines and OVD subscribership grows, the power between the networks and their affiliates in these relationships is shifting toward the networks, who insist on handling

negotiations with OVDs. This is not optimum for localism. Where is localism when a local station cannot control the relationship with its distributors, and that relationship is instead dictated by the networks from New York and Los Angeles in favor of their national interests? The Affiliates Associations believe it is imperative for the Commission to act in the open OVD proceeding to classify OVDs as MVPDs, for the reasons set forth in their comments therein.⁶⁷

It is unwise, as a matter of public policy, to allow the vertically-integrated communications enterprises that control studios (entertainment content); cable/satellite companies; television networks; OVD services (Hulu); and large, top-ten-market television stations to also control negotiations with the independently-owned, third-party over-the-top OVD providers. Local television stations perform a critical role in their position as stewards of local viewers' interests, and those local stations are best positioned to ensure that local interests end up fairly represented in the OTT marketplace. To date, the networks are seeking to control (or at least work their will in) this developing marketplace. The next avenue for this control will be through direct-to-consumer platforms, such as CBS All-Access and Disney's forthcoming DTC service.⁶⁸ While today CBS All-Access does include local affiliates, the platform is not designed

⁶⁷ See Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates, MB Docket No. 14-261 (Mar. 3, 2015) at 3 ("Evenhanded regulation of online distributors of broadcast television signals will enhance consumer welfare through fair competition in the delivery of video programming and protect local broadcasters' ability to create and distribute the local news, sports, weather, emergency, and public interest programming that lies at the heart of the Commission's localism mandate."); Reply Comments of the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates, MB Docket No. 14-261 (Apr. 1, 2015).

⁶⁸ See, e.g., Brooks Barnes, *How Disney Wants to Take on Netflix with Its Own Streaming Services*, N.Y. TIMES (Aug. 8, 2017), available at <https://www.nytimes.com/2017/08/08/business/media/disney-streaming-service.html>; Samit Sarkar, *What Disney's Streaming Service Means for Netflix Subscribers*, POLYGON (Feb. 7, (continued . . .))

to highlight the value of local stations but is, instead, focused primarily on the network. It is too soon to say whether Disney's platform will prove any better or worse for ABC affiliates, but modifying the national audience reach cap to enable the networks to become even more powerful vis-à-vis their affiliates is a sure way to tilt the scale on the side of making it worse for affiliates, and, consequently, for local viewers served by local television stations.

The networks' approach to affiliation preemptions raises similar concerns. In the *2002 Biennial Review Order*, the Commission found that evidence of preemption of network programming by affiliates provided strong support for localism, which, in turn, bolstered the need for a national audience reach cap. During that review, affiliates noted the financial penalties (or loss of affiliation) if stations preempted more than a relatively *de minimis* amount of network programming, even while network sports programming often overran affiliates' local news.⁶⁹ Little has changed in the past 15 years. Preemption baskets in network affiliation agreements, where they exist, remain increasingly crabbed and financial penalties for unauthorized preemptions high, and loss of affiliation remains the ultimate penalty.⁷⁰

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2018), available at <https://www.polygon.com/2018/2/7/16982030/disney-leaving-netflix-marvel-lucasfilm-pixar-streaming-rights>; Alex Weprin, *Disney Ramps Up Plans for Streaming Service*, DIGITALNEWS DAILY (Jan. 23, 2018), available at <https://www.mediapost.com/publications/article/313374/disney-ramps-up-plans-for-streaming-service.html>.

⁶⁹ See *2002 Biennial Review Order*, ¶ 545 (also noting that affiliates must maintain a “cushion” of unused preemption time in case it is needed).

⁷⁰ Typical current network preemption provisions are attached hereto in Exhibit 4. NBC, for example, starts from the premise that an affiliate foresees no reason to preempt network programming except for live coverage of breaking local news events. NBC further pays lip service to the Commission's right to reject rule by citing the standard but then prohibiting preemptions for “commercial motivation,” i.e., an affiliate cannot determine, in its discretion, that programming is “unsatisfactory, unsuitable or contrary to the public interest based on performance, ratings, or the availability of alternative programming which Station believes to be

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Even in the face of these restrictions and possibly severe penalties, affiliates do still preempt network programming, although not as much as they might otherwise if the network grip were not so tight. The examples described in Section II confirm this fact. Whether or not the networks treat certain of these preemptions as “authorized,” the preemptions evidence the affiliates’ continuing duty and commitment to select programming of particular importance to their local communities. As the Commission stated in the *2002 Biennial Review Order*:

We find that a national television ownership cap is necessary to promote localism. The evidence before us demonstrates both that network affiliates have economic incentives more oriented towards localism than do network-owned stations, and that affiliates act on those incentives in ways that result in networks delivering programming more responsive to their local communities (in the judgment of the affiliate) than they otherwise would. In order for affiliates to continue to serve local community tastes and needs in this way, a national cap is needed to preserve a body of independently-owned affiliates. The two ways in which affiliates can promote localism are by collective negotiation to influence the programming that the networks provide and by preemption by an individual station owner to provide programming better suited to its community.

. . . Localism is fostered by the affiliates’ efforts to promote their own economic interest of maximizing the value of their stations by offering programming that local viewers will prefer to watch, even if the programming replaces the network’s nationally

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more profitable or more attractive.” CBS similarly notes the right to reject rule and says that an affiliate’s “legitimate exercise” of such rights shall not be a breach, but that merely shifts the question to whether an affiliate’s exercise of the right to reject rule is “legitimate” in the first place. CBS further requires an affiliate to acknowledge that a preemption for paid religion is “made strictly for financial reasons” and therefore requires affiliates not to preempt for paid religion, which obviously removes control from the licensee. Notwithstanding the right to reject rule, FOX requires that any preemption of FOX sports programming be an unauthorized preemption, counting against a rolling 12-month preemption basket. And FOX further requires that a Station not preempt any network programming during any of the November, February, or May sweeps periods, or “on premiere, finale, Sunday, live voting night or any other special event nights or programming.”

scheduled programming.⁷¹

It remains a fact, fifteen years later, that the independent judgment of affiliates to program their stations not only to reflect but to inform their communities requires structural limitations on network power, and the current national ownership cap performs at least part of that function. It should be maintained for the networks.

IV. Although the Technical Foundation for the UHF Discount No Longer Exists, the Commission Should Preserve the Effect of the Discount Going Forward in Light of Significant Reliance Interests and Expectations.

It is true that the technological rationale that supported the UHF discount at its inception no longer applies following the digital transition.⁷² UHF stations were at a disadvantage in the analog world, so the discount was essential to “leveling the playing field.”⁷³ Post-digital transition, the tables are turned, and UHF stations now actually enjoy an overall technical advantage.

Nevertheless, the Affiliates Associations suggest that the Commission leave the practical

⁷¹ 2002 Biennial Review Order, ¶¶ 546-47.

⁷² See 2002 Biennial Review Order, ¶ 591 (“[I]t is clear that the digital transition will largely eliminate the technical basis for the UHF discount because UHF and VHF signals will be substantially equalized.”); *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Order on Reconsideration, 32 FCC Rcd 3390, ¶¶ 8-9 (2017) (“*UHF Discount Order on Reconsideration*”); *Notice*, ¶ 2 n.8 (“[T]he Commission’s experience since completion of the transition confirms that UHF channels are technically equal, if not superior, to VHF channels for the transmission of digital television signals.”).

⁷³ *Notice*, ¶ 2 (citing *Amendment of Section 73.3555 [formerly Sections 73.35, 73.240, and 73.636] of the Commission’s Rules Relating to Multiple Ownership of AM, FM, and Television Broadcast Stations*, GN Docket No. 83-1009, Memorandum Opinion and Order, 100 FCC 2d 74, ¶¶ 33-34 (1985)).

benefits of the UHF discount in place and, going forward, for local stations not owned by the Big Four networks, calculate their compliance with the cap by accounting for all stations (whether VHF or UHF) at fifty percent (50%) of their theoretical reach in the market.⁷⁴ When the Commission put the UHF discount in place more than 30 years ago, local broadcasters began to build their businesses and to make ownership and operational decisions against the backdrop of the discount. Today, those decisions are well entrenched, and local stations and groups have made significant investments on the understanding that their compliance with the Commission's national ownership rules would be calculated based on the UHF discount. Given that VHF stations now are more technologically challenged for digital mobile distribution, the most practical way to address the matter is to count all stations at fifty percent (50%) of their theoretical market reach.

The Commission's April 2017 decision to reinstate the UHF discount acknowledged that local television stations and groups have relied on the discount "to develop long-term business strategies."⁷⁵ Those significant reliance interests ought to be given substantial weight in this proceeding.⁷⁶

⁷⁴ The Affiliates Associations take the position that stations acquired by the networks going forward should be measured at 100 percent of their audience reach, regardless of their status as UHF or VHF stations. The Affiliates Associations recognize, of course, that elimination of the UHF discount as to the networks would have the practical effect of tightening the audience reach cap. Affiliates do not object to "grandfathering" any network with its current complement of stations.

⁷⁵ *UHF Discount Order on Reconsideration*, ¶ 15.

⁷⁶ See, e.g., *Mingo Logan Coal Co. v. EPA*, 829 F.3d 710, 736 (D.C. Cir. 2018) ("[A]n agency change that undermines serious reliance interests disrupts settled expectations, thereby imposing a significant cost on regulated parties and contravening basic notions of due process and fundamental fairness. Here, as elsewhere, the law seeks to protect those kinds of settled expectations.") (citing cases); *CS-360, LLC v. United States SBA*, 20 F. Supp. 3d 104, 112 (continued . . .)

After all, the station groups that have invested in building businesses and networks in reliance on the UHF discount are among those at the forefront of the efforts to bring top-quality local news and other locally-oriented programming to their communities of license, to experiment and innovate with new technologies as they become available, and to bring a wealth of diverse content to local audiences by exploiting the multicasting opportunities afforded by the digital transition. Those existing businesses were built with the expectation that the UHF discount would be used to calculate their compliance with the Commission's ownership regulations, and their continued existence may well depend on maintaining the discount.⁷⁷

A decision to eliminate the benefits of the discount would have the practical effect of tightening the ownership cap, as the Commission has acknowledged.⁷⁸ Because the cap and the discount "go hand in hand,"⁷⁹ elimination of the discount would place some station groups that

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(D.D.C. 2013) (presumption against retroactive application of new legal rules is intended "to avoid unnecessary *post hoc* changes to legal rules on which parties relied in shaping their primary conduct." (quoting *Austria v. Altmann*, 541 U.S. 677, 696 (2004)); *see generally Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994) ("Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.")).

⁷⁷ *See, e.g.*, Petition for Reconsideration of Ion Media Networks and Trinity Christian Center of Santa Ana, Inc., *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236 (Nov. 23, 2016) ("*UHF Reconsideration Petition*") at 5 (noting that "the UHF Discount has been an engine driving growth and expanded diversity in TV programming, markedly improving the important free public services that over-the-air broadcasters provide").

⁷⁸ *See UHF Discount Order on Reconsideration*, ¶¶ 1, 9; *UHF Reconsideration Petition* at 3.

⁷⁹ The Commission's August 2016 decision to eliminate the UHF discount, *see Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Report and Order, 31 FCC Rcd 10213, ¶¶ 28-40 (2016) ("*UHF Discount Elimination Order*"), followed closely by its April 2017 decision to reinstate it, *see UHF Discount Order on Reconsideration*, ¶¶ 1, 13, recognized that the UHF
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stare currently in compliance with the Commission's ownership rules immediately over the limit. That effective tightening of the ownership rules for local affiliates would bring about precisely the wrong result if the Commission's intent is to preserve (or, better still, restore) the network-affiliate balance of power: It would add yet another thumb on the scale in favor of the networks and further constrain non-network stations' ability to compete.

Conclusion

For the foregoing reasons, the Affiliates Associations respectfully urge the Commission to relax the national audience reach cap as it applies to non-network stations in order to restore the increasingly-skewed balance of power between networks and affiliates and allow for economies of scale and scope to be brought to bear in local markets by non-network-owned station groups now that the Commission has loosened the local market ownership rules. The Affiliates Associations further urge the Commission to retain benefits of the UHF discount going forward by calculating local, non-network-owned stations' compliance with the cap by accounting for all stations, whether VHF or UHF, at fifty percent (50%) of their theoretical reach in the market.

For the same reasons, the Commission should maintain the current 39 percent national audience reach cap for the television stations owned by the Big Four national networks (and remove the UHF discount, so that, going forward, stations acquired by the networks are

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discount is intrinsically related to the cap, so that one cannot be eliminated without adjusting the other. As then-Commissioner Pai observed, "eliminating the UHF discount [would have] the effect of expanding the scope of the national cap rule," so that broadcasters "that are currently in compliance with the national cap ownership rule will be above the cap once the UHF discount is terminated." *UHF Discount Elimination Order*, 31 FCC Rcd at 10248 (dissenting statement of then-Commissioner Pai).

EXHIBIT 1

**A History of the Statutory and Regulatory Framework for
Regulation of the Television Network-Affiliate Relationship**

A History of the Statutory and Regulatory Framework for Regulation of the Television Network-Affiliate Relationship

The FCC's explicit regulation of the network-affiliate relationship dates to 1941, seven years after the establishment of the FCC itself, when it issued the *Chain Broadcasting Regulations*.¹ The FCC decided that "[i]t is important to scrutinize these contracts [between networks and affiliates] and to determine whether station licensees have entered into arrangements which adversely affect the public interest."² The FCC, accordingly, considered the impact that duration of affiliation contracts, exclusivity, options, programs, sustaining programs, station compensation, and network control over station rates had on competition in broadcasting.

The FCC observed that its authority to regulate the network-affiliate relationship was based on Section 303(i) of the Communications Act of 1934, which confers on the FCC the authority "to make special regulations applicable to radio stations engaged in chain broadcasting."³ The FCC concluded that it had this authority pursuant both to its licensing power and to its power to make special regulations respecting chain broadcasting.⁴ The FCC then used this authority to issue regulations that were precursors of the current right to reject rule (47 C.F.R. § 73.658(e)), exclusive affiliation rule (47 C.F.R. § 73.658(a)), territorial exclusivity rule (47 C.F.R. § 73.658(b)), and option time rule (47 C.F.R. § 73.658(d)).⁵

In addition, Section 310(d) of the Communications Act imposes upon licensees a *nondelegable* duty to maintain control at all times of all aspects—including programming—of their stations. Section 310(d) is an independent statutory basis for all of the FCC's third party program regulations, including not only the network-affiliate rules but also the FCC's time brokerage and LMA rules.

Subsequent to the *Chain Broadcasting Report*, the FCC had several occasions to consider the meaning of a licensee's nondelegable duty to retain and exercise its discretion to make

¹ See *In the Matter of the Investigation of Chain Broadcasting*, Commission Order in Docket No. 5060 (May 2, 1941) ("*Chain Broadcasting Regulations*"), reprinted in *Report on Chain Broadcasting*, Commission Order No. 37, Docket No. 5060 (May 2, 1941) ("*Chain Broadcasting Report*") at 91-92, modified, *Supplemental Report on Chain Broadcasting* (Oct. 1941), appeal dismissed sub nom. *NBC v. United States*, 47 F. Supp. 940 (1942), aff'd, 319 U.S. 190 (1943). A more detailed history of the FCC's adoption of the *Chain Broadcasting Regulations* and a summary of the rules it contained can be found in *NBC v. United States*, 319 U.S. 190, 193-209 (1943).

² *Chain Broadcasting Report* at 34.

³ *Id.* at 80 (quoting Communications Act of 1934 § 303(I)).

⁴ See *id.* at 80-85.

⁵ See *Chain Broadcasting Regulations*. The *Chain Broadcasting Regulations* also included a provision limiting contracts between networks and affiliates to a term of one year.

program choices at the local level. Thus, in *Allen T. Simmons* (1947), the FCC disallowed a station to act as a mere conduit for network programming:

[S]quarely [raised is] the issue of whether the public interest, convenience, and necessity would be served by a station which during by far the largest and most important part of the broadcast day, “plugs” into the network line and, thereafter, acts as a mere relay station of program material piped in from outside the community. We are of the opinion that such a program policy which makes no effort whatsoever to tailor the programs offered by the national network organization to the particular needs of the community served by the [licensee] does not meet the public service responsibilities of a . . . licensee. . . . [A]pplicant’s proposed program policy is not only tantamount to a voluntary abdication to the network of the duty and responsibility of a broadcast station licensee to determine for itself the nature and character of a program service which will best meet the needs of listeners in its area, but is *an abdication to an organization which makes no pretense to scheduling its programs with the particular needs and desires of any one service area in mind.*⁶

Shortly thereafter, in *Don Lee Broadcasting* (1950), the FCC stressed that because it could not reach networks directly, the network-affiliate rules served as a kind of proxy to monitor the relationship between networks and affiliates and thereby prevent a licensee from abdicating programming control:

[The network-affiliate regulations] were promulgated to insure that the licensee[s] . . . who become affiliated with the various networks did not, formally or informally, surrender control of the day-to-day operation of their stations to the networks. . . . Unless the licensee retains complete control of his station, the Commission has no one whom it can hold responsible for the operation of the station and the Commission’s statutory duty to insure that broadcast licensees operate their stations in the public interest would be effectively frustrated.

The network regulations are designed to insure that control of the individual stations is not forfeited to a network organization with which such stations are affiliated.⁷

⁶ Allen T. Simmons, *Decision*, 11 F.C.C. 1160, 1173 (1947) (emphasis added), *aff’d sub nom. Simmons v. FCC*, 169 F.2d 670 (D.C. Cir.), *cert. denied*, 335 U.S. 846 (1948).

⁷ Don Lee Broadcasting Sys., *Order*, 14 F.C.C. 993 & 1019 (1950) at 1010.

The FCC rejected any notion that the public interest should be subordinated to the financial concerns of networks or other third party program providers:

Nor is it a significant defense that Don Lee's threats to cancel a station's network affiliation never materialized. For the record indicates that these and other threats generally secured the results desired by the network, though inconsistent with the Commission's regulations, and that the network, because of the success of its pressures, was not required to carry out its most extreme threats.

. . . *The chain broadcasting regulations were promulgated to serve the public interest by insuring that licensees retained the responsibility and control of their stations and not to enable the various networks to operate at an optimum financial level.* The Commission necessarily and rightly concluded in adopting these regulations, that such public interest considerations cannot be subordinated to considerations related to the advancement of the economic interests of the networks. The intent of the regulations to insure that licensees remain in control of and responsible for the operation of their stations was effectively frustrated by the conduct of the Don Lee network. [Network general manager] Weiss refused to allow the judgment of the individual licensees, as to what would best serve the public interest in their communities, to supersede his own views as to the best manner for arranging the stations' program schedules.⁸

Later, in 1958, the House Committee on Interstate and Foreign Commerce released its *Network Broadcasting Report* (known as the "*Barrow Report*"), "a study of the administration and enforcement by the Federal Communications Commission of the provisions of the Communications Act of 1934 with respect to network broadcasting."⁹ Its purpose was "to determine whether the present operation of television and radio networks and their relationships with stations and other components of the industry tend to foster or impede the development of a nationwide, competitive broadcasting system."¹⁰ Acknowledging the economic leverage networks have over their affiliates and the FCC's duty to regulate that relationship, the *Barrow Report* recognized

that network affiliation is of vital concern to the successful operation of a television station. It recognize[d], further, the power of the networks . . . in the affiliation process. Competition in the

⁸ *Id.* at 1012 (emphasis added).

⁹ *Network Broadcasting*, H.R. Rep. No. 85-1297, at III (1958) ("*Barrow Report*"). The document is known as the *Barrow Report* because it was based on a study conducted under the direction of Dean Roscoe L. Barrow of the University of Cincinnati Law School.

¹⁰ *Barrow Report* at 1.

market in which stations meet networks is not fully effective, because the alternatives open to the stations are generally more limited than those open to the two principal networks. Thus, the Commission must intervene to some extent to insure that the public interest is properly served.¹¹

While the *Barrow Report* cautioned that the FCC “should not undertake to establish the affiliation criteria to be employed by the networks,” it concluded that a reasonable balance would be struck by “requiring each network to file with the Commission a full and detailed statement of the criteria governing affiliation decisions.”¹² Although the FCC held hearings on the *Barrow Report* in 1959, it took no affirmative action regarding its recommendations.

Nevertheless, the FCC soon found itself investigating the practices of the CBS network. In a series of decisions in the early 1960s, the FCC examined CBS’s network affiliation agreements for compliance with the exclusive affiliation and right to reject rules. In its affiliation agreements, CBS had sought to tie the average hourly rate of compensation to the number of hours of programming taken. The FCC was concerned with the “extreme economic pressures put on an affiliate to take the full line of afternoon and evening CBS commercial program[ming].”¹³ The FCC also noted the importance of “the fact that those affiliates which do reject an occasional CBS program may still be carrying more CBS programs than they otherwise would, were it not for the financial pressure exerted by the new plan.”¹⁴ Finding CBS’s contract terms to be in violation of the exclusive affiliation rule, the FCC ordered the reformation of the affiliation agreements.¹⁵

But even after CBS modified its contracts, the FCC found that the revised agreements still interfered in the programming discretion of licensees. The coercive nature of the agreement remained: “[A]ny plan that provides for payment wherein the average hourly rate of compensation varies greatly or is heavily influenced by the number of hours taken, has a coercive effect and tends toward full-line forcing.”¹⁶ CBS’s revised plan complied with the exclusive affiliation rule but failed to comply with the right to reject rule. The Commission stated that under the right to reject rule,

¹¹ *Id.* at 250-51.

¹² *Id.* at 251.

¹³ Application of Section 3.658(a) of the Commission’s Rules, *Memorandum Opinion and Order*, 45 F.C.C. 21, 23 (1962).

¹⁴ *Id.* at 25.

¹⁵ *See id.* at 30.

¹⁶ Application of Section 3.658(a) and (e) of the Commission’s Rules, *Memorandum Opinion and Order*, 45 F.C.C. 334, 335 (1962).

[r]ejection or substitution of a program is to turn upon the licensee's judgment. We believe, however, that the effect of the CBS plan is to emphasize a financial factor affecting the affiliate's decision, and to hinder the affiliate in freely exercising the right to reject programs for which Section 3.658(e) provides.¹⁷

Importantly, the Commission elucidated the public interest touchstone as follows:

[T]he critical consideration under the public interest is the freedom, both practically and theoretically, to make substitutions whenever the affiliate believes that the result would better serve the needs of his service area.¹⁸

CBS's affiliation agreement failed this test.

Then, upon further review of its decision, the FCC set forth three fundamental principles that remain the bedrock of FCC regulation of the network-affiliate relationship. First, the FCC recognized that it must enforce the rules currently on its books, even if the FCC itself was considering revising the rule in question. In the *CBS* case, the right to reject rule was being examined in a rulemaking proceeding and so, when first confronted with CBS's compensation plan, the FCC only considered it with respect to the exclusive affiliation rule. But once the CBS plan was reformed to comply with the exclusive affiliation rule, the FCC remained troubled by the coercive pressures of the plan and decided to apply the right to reject rule to the plan after all:

Although we had previously declined to rule on the applicability of § 3.658(e), upon reflection, we determined that the fact that the rule was undergoing revision should not deter us from considering a possible violation of § 3.658(e) as presently written.¹⁹

The second fundamental principle the FCC recognized and applied is that the right to reject rule sets forth a *timeless* principle of unfettered licensee discretion in the public interest. The rule is not meant to proscribe only those practices originally described in the *Chain Broadcasting Report* but must be able to reach to new network practices that attempt to evade the spirit of the rule: "[T]he broad language of the rule negates any suggestion that only the same type of practices [in effect in 1941 are] to be included within the scope of the rule"²⁰ The FCC expatiated on this principle more fully upon reconsideration:

¹⁷ *Id.* at 338-39.

¹⁸ *Id.* at 340.

¹⁹ Application of Section 3.658(a) and (e) of the Commission's Rules, *Memorandum Opinion and Order*, 24 Rad. Reg. (P & F) 520a (1963) at ¶ 10.

²⁰ *Id.* at ¶ 13.

[T]he broad language of the rule and its past application clearly demonstrated that the rule was intended to cover not only those practices in effect at the time it was promulgated, but *all arrangements, no matter what their label*, which reached the proscribed results of the rule.²¹

This principle is critically important because it demonstrates that the network-affiliate rules, and the right to reject rule in particular, are not so ancient and inscrutable that they require a Rosetta stone to decipher some pictographic scribbles whose meaning cannot be clearly ascertained. The rules are unambiguous and written in plain English; they have been sufficiently explicated by the FCC over the years to give them firm and definite meaning.

The third principle the FCC applied in the *CBS* case is, at base, the fundamental principle of *unfettered* licensee discretion. It is a broad principle, designed to augment a network affiliate's rights vis-à-vis the network, and it reaches into the private, voluntary relationship established by third party program agreements:

[U]nder § 3.658(e) an affiliate must remain free to choose program sources *without undue pressure from a network affiliation agreement*. [T]he history of § 3.658(e) emphasizes the Commission's efforts to *broaden* an affiliate's rights.²²

Licensee programming decisions cannot be coerced, however subtly, either at the planning and contracting stage²³ or even when the time for airing an already-contracted program comes.²⁴ In *CBS*, the FCC rejected even the reformed CBS plan because it compromised and weakened the affiliate's "freedom of choice and place[d] financial pressure upon the affiliate to clear almost all

²¹ Application of Section 3.658(a) and (e) of the Commission's Rules, *Memorandum Opinion and Order*, 1 Rad. Reg. 2d (P & F) 696 (1963) at ¶ 3 (emphasis added).

²² Application of Section 3.658(a) and (e) of the Commission's Rules, *Memorandum Opinion and Order*, 24 Rad. Reg. (P & F) 520a (1963) at ¶ 15 (emphases added).

²³ *See id.* at ¶ 16 (stating that the rule "includes the opportunity for the affiliate to remain free from undue financial pressure from the network at that stage in its planning when the affiliate is first deciding from whom it shall take its programs").

²⁴ *See* Amendment of Section 3.658(d) and (e) of the Commission's Rules and Regulations to Modify Option Time and the Station's Right to Reject Network Programs, *Report and Order*, 44 F.C.C. 2158 (1960) at ¶ 55 ("[I]t may not be possible for an affiliate to determine at the time it contracts to accept a program series offered by the network whether the individual programs in that series will be satisfactory or suitable for viewing in the community served by the station. In order to fully discharge its responsibilities, a station should have the right to reject any individual network program it reasonably considers to be unsatisfactory or unsuitable even where it has already accepted [it].").

programs for CBS.”²⁵ The FCC ordered still further reformation of the affiliation agreements to come into compliance with the right to reject rule.²⁶

Since the FCC’s actions in the early 1960s, the principal network-affiliate rules²⁷ have remained unchanged. Twice the FCC instituted proceedings to reexamine the regulations, in 1977²⁸ and in 1995,²⁹ but no action was taken. In March 2001, the Network Affiliated Stations Alliance asked the FCC to examine certain current network practices in light of the rules as they currently exist and had existed for decades.³⁰ After eight years, the Commission ruled in the NASA case that the network rules and their core principles remain inviolable. The 2001 NASA Petition story is instructive. The Big Four Networks had made efforts to: (1) extort consideration of one kind or another to approve the assignments of network affiliation contracts in connection with station sales; (2) narrow the scope of the right to reject rule to cover only licensee decisions to pre-empt for breaking news and public affairs; and (3) control a licensee’s digital spectrum usage rights. All these tactics were rejected by the FCC.³¹ The Networks conceded the assignment question unilaterally and settled on issues (2) and (3).³² The

²⁵ Application of Section 3.658(a) and (e) of the Commission’s Rules, *Memorandum Opinion and Order*, 24 Rad. Reg. (P & F) 520a (1963) at ¶ 18.

²⁶ *See id.*, following ¶ 33.

²⁷ These rules, again, are the right to reject rule (47 C.F.R. § 73.658(e)), exclusive affiliation rule (47 C.F.R. § 73.658(a)), territorial exclusivity rule (47 C.F.R. § 73.658(b)), and option time rule (47 C.F.R. § 73.658(d)).

²⁸ *See In the Matter of Commercial Television Network Practices and the Ability of Station Licensees to Serve the Public Interest*, 62 F.C.C.2d 548 (1977) (“*Commercial Television Network Practices Inquiry*”). The FCC stated that its intent was to “focus most specifically on the relationship between the[] networks and their affiliated stations. In this regard, the Commission has consistently emphasized that it is the individual licensee who has the right and the responsibility to program his station. . . . It is clear, furthermore, that this responsibility for the independent exercise of programming judgment cannot be delegated to a network.” *Commercial Television Network Practices Inquiry* at 548. In addition, the FCC “propose[d] to carefully examine whether particular network practices may improperly compromise or restrict the programming discretion of the broadcast station licensee” and noted that its “inquiry will encompass the question of whether the networks have maintained anticompetitive policies which unduly restrict the development of other programming sources.” *Commercial Television Network Practices Inquiry* at 549.

²⁹ *See Review of the Commission’s Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates*, 10 FCC Rcd 11951 (1995).

³⁰ *See Petition for Inquiry into Network Practices*, filed by Network Affiliated Stations Alliance (Mar. 8, 2001), whose proceedings are being conducted under DA 01-1264.

³¹ NASA Petition for Inquiry Into Network Practices and Motion for Declaratory Ruling, 73 Fed. Reg. 56999 (Oct. 1, 2008).

³² *Id.* at 57000-01.

Declaratory Ruling issued by the Commission was a significant win for Affiliated Stations, coming, as it did, at the hands of a deregulatory, Republican led agency.

In addition to the FCC's network-affiliate regulations, Section 310(d) of the Communications Act imposes upon licensees a nondelegable duty to maintain control of all programming on their stations.³³ Section 310(d) applies to all third party program providers, not just networks, and it is the statutory basis for the FCC's time brokerage and LMA rules and policies. As Herbert Hoover stated long ago, "Whatever other motive exist for broadcasting, the pleasing of the listener is always the primary purpose."³⁴ Making that frontline determination of what is "pleasing of the listener" is the responsibility of the station licensee, not that of a third party, for it is the bedrock of the broadcasting regime that "the licensee is, in effect, a 'trustee' in the sense that his license to operate his station imposes upon him a *nondelegable* duty to serve the public interest in the community he had chosen to represent as broadcaster."³⁵

Indeed, the FCC will scrutinize closely contracts and the relationships between parties, seeking to determine whether coercion or pressure has been applied to a licensee, all to the end of determining whether there has been an improper transfer of control of the operation of the station in violation of Section 310(d) of the Communications Act. Thus, in the *Roy M. Speer* case in 1996, the Commission reordered the contractual relationships of private parties, not

³³ See 47 U.S.C. § 310(d).

³⁴ Report and Statement of Policy Res: Commission en banc Programming Inquiry, 44 F.C.C. 2303, 2312 (1960) (quoting former President Hoover, then Secretary of Commerce, in the Radio Conference of 1922-25).

³⁵ *Id.* at 2311-12 (emphasis added). See also Inquiry into Subscription Agreements Between Radio Broadcast Stations and Musical Format Service Companies, *Report and Policy Statement*, 56 FCC 2d 805 (1975) at ¶ 9 ("We wish to emphasize that the responsibility for the selection of program material is that of the individual licensee. *That responsibility can neither be delegated by the licensee to any network or other person or group, or be unduly fettered by contractual arrangements restricting the licensee in his free exercise of his independent judgments.*" (internal quotation marks and citation omitted) (emphasis added)); Agreements Between Broadcast Licensees and the Public, *Report and Order*, 57 FCC 2d 42 (1975), at ¶ 37 ("The obligation to determine how to serve the public interest is personal to each licensee and may not be delegated, even if the licensee wishes to. Therefore, agreements must not take responsibility for making public interest decisions out of the hands of a licensee. Nor may they prevent it from changing the way the station serves the public interest as the licensee's perceptions change."); *Barrow Report* at 246 ("A network expects its affiliates to cooperate in clearing time for network commercial programs. This is well understood by stations entering into the affiliation arrangement. It is also true, however, that each station has the responsibility to program in the public interest; *it cannot delegate this responsibility to a network or any other organization.*" (emphasis added)); *Chain Broadcasting Report* at 66 ("It is the station, not the network, which is licensed to serve the public interest. The licensee has the duty of determining what programs shall be broadcast over his station's facilities, and cannot lawfully delegate this duty or transfer control of his station directly . . . or indirectly . . .").

because of “any facial defect in the particular contractual provisions we seek to reform, but by the effect these provisions when taken together with other exacerbating considerations present in this case.”³⁶ In fact, any Section 310(d) inquiry must be broad, for the statute “contemplates every form of control, actual or legal, direct or indirect, negative or affirmative, over basic operating policies.”³⁷ It is insufficient under the Communications Act if the “control” that is left to the licensee is a “paper right only.”³⁸ Moreover, just because actions appear to be consistent with a contract does not mean that they nevertheless are not “inconsistent with the licensee’s primary obligations with respect to an essential aspect of station operation” by prohibiting the licensee’s ability to reject or preempt programming.³⁹ A contract must give more than just a nominal “contractual right to reject network programs”; it is “essential” that individual stations be afforded the “practical opportunity” to do so as well.⁴⁰

In short, even if the FCC were to repeal its network-affiliate rules, the mandate of Section 310(d) of the Communications Act would require that licensees retain their nondelegable duty to make all programming decisions in their own discretion for the good of their local viewers.

³⁶ Roy M. Speer, *Memorandum Opinion and Order and Notice of Apparent Liability*, 11 FCC Rcd 18393 (1996) (subsequent history omitted) at ¶ 96; *see also Barrow Report* at 656 (“[T]he station licensee must ultimately bear the responsibility for programming in the public interest the facilities licensed to him by the Commission as a public trust. This responsibility cannot be delegated to another party, nor should it be restrained by contractual or other relationships which interfere with its free exercise by the station licensee.”).

³⁷ *Southwest Texas Public Broadcasting Council*, 85 FCC 2d 713 (1981); *see id.* (“Traditionally, we have looked beyond legal title in determining whether a transfer of control has occurred; instead, we have defined control as embracing any act vesting in a new entity or individual the right to determine the basic policies concerning the operation of the station.” (citations omitted)).

³⁸ *Salem Broadcasting, Inc., Letter*, 6 FCC Rcd 4172 (MMB 1992) (“The Commission has stated that a licensee (or permittee) that relegates its role to that of a lessor, retaining merely the right to choose a general format and a lessee to run the station, violates Section 310(d). . . . [Y]our retention of ‘control’ in the agreement appears to be a paper right only, which is contradicted by the totality of the circumstances”); *see also Carol Music, Inc., Decision*, 37 F.C.C. 379, 380, 400 (1964) (holding that Carol Music had violated Section 310(d) where, under its contractual arrangement with a time broker, the licensee had “relinquished effective control over substantial portions of the program material broadcast” and “thus dispos[ed] of rights granted to it under the station’s license without prior knowledge or approval of the Commission”). *Cf. Barrow Report* at 343 (“[A] contractual obligation that restricts the choices of the station and results in more network programs than might otherwise be carried may [] be considered to be contrary to the public interest.”)

³⁹ *Citicasters Co., Notice of Apparent Liability for Forfeiture*, 16 FCC Rcd 3415 (EB 2001), *aff’d, Memorandum Opinion and Order*, FCC 01-206 (released July 20, 2001).

⁴⁰ *Barrow Report* at 136 (internal quotation marks and citation omitted).

EXHIBIT 2

Local News Awards

**Radio Television Digital News Association
Edward R. Murrow National Awards
2003-2017**

Source: *Edward R. Murrow Awards*, RADIO TELEVISION DIGITAL NEWS ASSOCIATION, available at https://rtdna.org/content/edward_r_murrow_awards

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2003	23	Large	KIRO-TV WFAA KUSA KOMO-TV WOOD-TV KOMO-TV WFAA WTHR WFLA-TV	WTTG (FOX) WMAQ-TV (NBC)
		Small	KTUU-TV WCAX-TV KYTV KWCH-DT KVBC-LP KXLY-TV KFOX-TV WDAY-TV WGBA-TV KCCI KTNV-TV WQAD-TV	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2004	20	Large	WTAE-TV KUSA WFAA KARE KARE WTVF KOMO-TV	KDFW (FOX) KNBC (NBC) KCNC-TV (CBS)
		Small	KWCH-DT WTVR-TV KBCI KARK-TV WSAV-TV KCCI WTVC KELO-TV KARK-TV WVIR-TV	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2005	22	Large	KOMO-TV KIRO-TV WTHR WTHR KTVU WTAE-TV KPHO-TV KARE	WABC-TV (ABC) WJW (FOX) WTTG (FOX) WCAU (NBC)
		Small	KLAS-TV WHO-DT WATE-TV KATV WTLV WNEP-TV KATV WTVC KTVB WHO-DT	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2006	21	Large	WWL-TV KHOU WYFF KHOU KING-TV KARE KARE	WBZ-TV (CBS) WFOR-TV (CBS)
		Small	WLOX WTVQ-DT WBAY-TV WBBH-TV KBAK-TV WHO-DT KATV WTVC WTLV KVUE KUAM-TV KOKI-TV	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2007	23	Large	KOMO-TV WTVF WBNS-TV WCNC-TV WCVB-TV KING-TV KOMO-TV	KYW-TV (CBS) KPIX-TV (CBS) KNBC (NBC) KNTV (NBC)
		Small	KVUE WKYT-TV KRGV-TV KCCI WZVN-TV KELO-TV WSLs-TV KTVB WTVQ-DT WBIR-TV WAFF	KEYE-TV (CBS)

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2008	23	Large	KOMO-TV KGW WTHR WBAL-TV WBAL-TV WHDH WCNC-TV KARE KUSA WFAA KOMO-TV	KYW-TV (CBS) KNBC (NBC)
		Small	WJAR WKRG-TV WTLX WLOX KTHV WHAM-TV KCCI WSLs-TV KVUE WSYR-TV	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2009	24	Large	KIRO-TV KWTW-DT KHOU KARE WMUR-TV KSDK WBNS-TV WRAL-TV KOMO-TV	KCBS-TV/KCAL-TV (CBS) KPIX-TV (CBS)
		Small	KCCI WATE-TV KTVB WGRZ KOMU-TV KOAA-TV KWWL KTUU-TV KCCI WALA-TV KTVB WJAR WICS	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2010	24	Large	KHOU WJLA-TV WXIA-TV/WATL KARE WITI KMGH-TV KHOU WCVB-TV KARE WTHR KOMO-TV	KXAS-TV (NBC)
		Small	KTVB WIVB-TV WMTV WHIO-TV WIVB-TV KTUL KTVB WGRZ WHO-DT WSYR-TV KTUU-TV	WJRT-TV (ABC)

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2011	26	Large	WTHR KCRA-TV KMGH-TV KGW WFAA WFAA KMOV WTHR WISN-TV KUSA KING-TV KING-TV KARE	
		Small	WGRZ WJAR WGRZ WHO-DT WGRZ WVUE-DT WRDW-TV KYTV WMTW KKTW WTVR-TV KTVB WISC	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2012	25	Large	WCVB-TV WTHR KING-TV KUSA KARE WBAL-TV KING-TV KMOV KTVU WTHR KMGH-TV KARE	
		Small	KCCI WSHM-LD WVUE-DT WHO-DT KRGV-TV WBBH-TV KITV WVUE-DT KHNL/KGMB WWL-TV WATE-TV KTVB KCCI	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2013	25	Large	KUSA KARE WFAA KMOV KUSA KMOV WTSP KARE KLAS-TV	KYW-TV (CBS) WNBC (NBC) KXAS-TV (NBC) WNBC (NBC)
		Small	WVUE-DT KSPR WHEC-TV KXRM-TV KHQ-TV WVUE-DT KRNV-DT WRGB WEHT KTUL KTUL KGUN-TV	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2014	23	Large	WCVB-TV WFAA WJLA-TV KARE WCPO-TV WFAA KARE KING-TV WXIA-TV/WATL WJXT	
		Small	WBIR-TV KOKI-TV WMBD-TV WVUE-DT WTVR-TV WVIR-TV KETV WVUE-DT WGRZ WTVR-TV WTVR-TV WSBT-TV KJRH-TV	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2015	26	Large	KING-TV WCVB-TV KCRA-TV KARE WFAA WITI WTHR KING-TV KARE WTMJ-TV	KXAS-TV (NBC) KXAS-TV (NBC) KXAS-TV (NBC)
		Small	KETV WVUE-DT KWCH-DT WPTZ WBND-LD WVUE-DT WKBT-DT WVUE-DT WSLs-TV WBIR-TV WTVR-TV KCCI KREM	

Year	# of Commercial Station Awards	Large/Small Market	Non-Network Station Winners	Network O&O Winners
2016	23	Large	KMBC-TV WJLA-TV WXIA-TV/WATL WXIA-TV/WATL KFOR-TV WFAA WZZM KUSA WXIA-TV/WATL	WNBC (NBC) WCAU (NBC)
		Small	WISC-TV WISC-TV WGEM-TV WSAV-TV WISC-TV WDAY-TV WVUE-DT WBBH-TV KREM WVUE-DT KTUU-TV WGRZ	

Year	# of Commercial Station Awards	Large/Small Market		Non-Network Station Winners	Network O&O Winners
2017	30	Large		KING-TV KHOU KARE KARE WTLV KCTS-TV WVUE-DT WFAA KOMO-TV	KXAS-TV (NBC) KXAS-TV (NBC) WCAU (NBC) KXAS-TV (NBC) KXAS-TV (NBC) WRC-TV (NBC)
		Small		WWBT WBIR-TV KCCI WISC-TV KOMU-TV WDAY-TV WBND-LD KCCI KCEN-TV KCCI KWCH-DT KWTX-TV KTVB KTUL KOMU-TV	
Total	358	Large	176	141	35
		Small	182	180	2

**Alfred I. duPont-Columbia University Awards
2003-2018**

Source: *Alfred I. duPont-Columbia University Awards*, COLUMBIA JOURNALISM SCHOOL, available at https://journalism.columbia.edu/dupont#duPont_Winners_Archive

Year	# of Commercial Station Awards	Non-Network Station Winners	Network O&O Winners
2003	2	WCVB-TV WFAA	
2004	5	KBCI-TV KHOU KMGH-TV WESH WTVF	
2005	2	WCNC-TV WFAA	
2006	3	WFTS-TV WPML-TV	WJW (FOX)
2007	4	WBAL-TV WLOX WRAL-TV WWL-TV	
2008	5	KHOU KMOV KNOE-TV WFAA	WBBM-TV (CBS)

Year	# of Commercial Station Awards	Non-Network Station Winners	Network O&O Winners
2009	3	WJLA-TV WFAA	WTVT (FOX)
2010	6	KHOU KMGH-TV WCAX-TV WSVN WTVF WWL-TV	
2011	4	KUSA KING-TV WKOW WTHR	
2012	3	WFAA WSB-TV WTVF	
2013	3	KLAS-TV WVUE-DT WXYZ-TV	
2014	5	KMGH-TV KSHB-TV WFAA WVUE-DT	WBZ-TV (CBS)
2015	4	KPNX WFTS-TV WLTX WTSP	

Year	# of Commercial Station Awards	Non-Network Station Winners	Network O&O Winners
2016	3	KMOV WBAL-TV WRAL-TV	
2017	4	KXAN-TV WTHR WXIA-TV	WVIT (NBC)
2018	5	KNXV-TV KARE KHOU WITI	KNTV (NBC)
Total	61	55	6

**Peabody Awards
2003-2016**

Source: PEABODY AWARDS, *available at*
<http://www.peabodyawards.com/awards>

Year	# of Commercial Station Awards	Non-Network Station Winners	Network O&O Winners
2003	5	WESH KHOU KMGH-TV WCNC-TV KRON-TV	
2004	4	WBAL-TV WTVF WFAA	WITI (FOX)
2005	5	WLOX WWL-TV	KMEX-DT (Univision) KNBC (NBC) KCNC-TV (CBS)
2006	4	WISH-TV WTNH KMOV WTHR	
2007	4	WFAA WTAE-TV KNXV-TV WSLS-TV	
2008	3	KLAS-TV KMGH-TV WWL-TV	
2009	4	KTVU WYFF KHOU	WFLD (FOX)

Year	# of Commercial Station Awards	Non-Network Station Winners	Network O&O Winners
2010	3	WFAA WTHR KSTP-TV	
2011	4	KLAS-TV WEWS-TV KING-TV KPHO-TV	
2012	4	KNXV-TV KMGH-TV WTHR	WVIT (NBC)
2013	4	KING-TV WVUE-DT WTVF	WBZ-TV (CBS)
2014	1	KVUE	
2015	3	WXIA-TV WTAE-TV	WMAQ-TV (NBC)
2016	3	WTHR WTHR	KNTV (NBC)
Total	51	42	9

EXHIBIT 3

Network Owned-and-Operated Stations

ABC O&O Stations

Market	Station	Digital Channels
New York, NY	WABC-TV	.1: ABC .2: Live Well Network .3: Laff
Los Angeles, CA	KABC-TV	.1: ABC .2: Live Well Network .3: Laff
Chicago, IL	WLS-TV	.1: ABC .2: Live Well Network
Philadelphia, PA	WPVI-TV	.1: ABC .2: Live Well Network .3: Laff
Houston, TX	KTRK-TV	.1: ABC .2: Live Well Network .3: Laff
San Francisco, CA	KGO-TV	.1: ABC .2: Live Well Network .3: Laff
Raleigh-Durham, NC	WTVD	.1: ABC .2: Live Well Network .3: Laff
Fresno, CA	KFSN-TV	.1: ABC .2: Live Well Network .3: Laff

CBS O&O Stations

Market	Station	Digital Channels
New York, NY	WCBS-TV	.1: CBS .2: Decades
	WLNY-TV	.1: Independent
Los Angeles, CA	KCBS-TV	.1: CBS .2: Decades
	KCAL-TV	.1: Independent
Chicago, IL	WBBM-TV	.1: CBS .2: Decades
Philadelphia, PA	KYW-TV	.1: CBS .2: Decades
	WPSG	.1: The CW
Dallas-Fort Worth, TX	KTVT	.1: CBS .2: Decades
	KTXA	.1: Independent .2: MeTV
San Francisco, CA	KPIX-TV	.1: CBS .2: Decades
	KBCW	.1: The CW
Atlanta, GA	WUPA	.1: The CW .2: Decades

Market	Station	Digital Channels
Boston, MA	WBZ-TV	.1: CBS .2: Decades
	WSBK-TV	.1: MyNetwork TV .2: Heroes & Icons
Seattle, WA	KSTW	.1: The CW .2: Decades .3: Grit
Tampa-St. Petersburg, FL	WTOG	.1: The CW .2: Decades
Detroit, MI	WWJ-TV	.1: CBS .2: Decades
	WKBD-TV	.1: The CW
Minneapolis-St. Paul, MN	WCCO-TV	.1: CBS .2: Decades
	KCCO-TV (satellite of WCCO-TV)	.1: CBS .2: Decades
	KCCW-TV (satellite of WCCO-TV)	.1: CBS .2: Decades
Miami, FL	WFOR-TV	.1: CBS .2: Decades
	WBFS-TV	.1: MyNetwork TV .2: Heroes & Icons
Denver, CO	KCNC-TV	.1: CBS .2: Decades

Market	Station	Digital Channels
Sacramento, CA	KOVR	.1: CBS .2: Decades
	KMAX-TV	.1: The CW .2: Laff
Pittsburgh, PA	KDKA-TV	.1: CBS .2: Decades
	WPCW	.1: The CW .2: Heroes & Icons .3: Grit
Baltimore, MD	WJZ-TV	.1: CBS .2: Decades

FOX O&O Stations

Market	Station	Digital Channels
New York, NY	WNYW	.1: FOX .2: Movies! .4: Light TV
	WWOR-TV	.1: MyNetwork TV .3: BUZZR .4: Heroes & Icons
Los Angeles, CA	KTTV	.1: FOX .3: Light TV
	KCOP-TV	.1: MyNetwork TV .2: BUZZR .3: Movies! .4: Heroes & Icons
Chicago, IL	WFLD	.1: FOX
	WPWR-TV	.1: The CW .2: Movies! .3: Light TV .4: BUZZR
Philadelphia, PA	WTXF-TV	.1: FOX .2: Movies! .3: Light TV .4: BUZZR

Market	Station	Digital Channels
Dallas-Fort Worth, TX	KDFW	.1: FOX
	KDFI	.1: MyNetwork TV .2: Movies! .3: BUZZR .4: Heroes & Icons .5: Light TV
Washington, DC	WTTG	.1: FOX .2: BUZZR .3: MeTV
	WDCA	.1: MyNetwork TV .2: Movies! .3: Heroes & Icons .4: Light TV
Houston, TX	KRIV	.1: FOX .2: Light TV
	KTXH	.1: MyNetwork TV .2: Movies! .3: Decades .4: BUZZR
San Francisco, CA	KTVU	.1: FOX .2: LATV .3: Movies! .4: BUZZR
	KICU-TV	.1: Independent .2: KEMS/KBS World (Korean) .3: CCTV News (China Central) .4: Heroes & Icons .5: Light TV
Atlanta, GA	WAGA-TV	.1: FOX .2: Movies! .3: BUZZR .4: Light TV

Market	Station	Digital Channels
Phoenix, AZ	KSAZ-TV	.1: FOX .3: Heroes & Icons .4: Light TV
	KUTP	.1: MyNetwork TV .2: Movies! .3: BUZZR
Tampa-St. Pete, FL	WTVT	.1: FOX .2: Movies! .3: BUZZR .4: Heroes & Icons
Detroit, MI	WJBK	.1: FOX .2: Movies! .3: BUZZR .4: Heroes & Icons
Minneapolis-St. Paul, MN	KMSP-TV	.4: BUZZR .5: Light TV .9: FOX
	WFTC	.1: FOX (KMSP simulcast) .2: MyNetwork TV .3: Movies!
	KFTC (satellite of WFTC)	.1: FOX (KMSP simulcast) .2: MyNetwork TV .3: Movies!
Orlando, FL	WOFL	.1: FOX .2: Light TV
	WRBW	.1: MyNetwork TV .2: Movies! .3: Heroes & Icons .4: BUZZR

Market	Station	Digital Channels
Charlotte, NC	WJZY	.1: FOX .2: Movies! .3: Heroes & Icons .4: ION Television
	WMYT-TV	.1: MyNetwork TV .2: BUZZR .3: SonLife .4: Light TV
Austin, TX	KTBC	.1: FOX .2: Movies! .3: BUZZR .4: MeTV
Gainesville, FL	WOGX	.1: FOX .2: Movies! .3: ION Television

NBC O&O Stations

Market	Station	Digital Channels
New York, NY	WNBC	.1: NBC .2: COZI TV
	WNJU	.1: Telemundo .2: TeleXitos
Los Angeles, CA	KNBC	.1: NBC .2: COZI TV
	KVEA	.1: Telemundo .2: TeleXitos
Chicago, IL	WMAQ-TV	.1: NBC .2: COZI TV
	WSNS-TV	.1: Telemundo .2: TeleXitos
Philadelphia, PA	WCAU	.1: NBC .2: COZI TV
	WWSI	.1: Telemundo .2: TeleXitos

Market	Station	Digital Channels
Dallas-Fort Worth, TX	KXAS-TV	.1: NBC .2: COZI TV
	KXTX-TV	.1: Telemundo .2: TeleXitos
Washington, DC	WRC-TV	.1: NBC .2: COZI TV
Houston, TX	KTMD	.1: Telemundo .2: TeleXitos .3: COZI TV
San Francisco, CA	KNTV	.1: NBC .2: COZI TV
	KSTS	.1: Telemundo .2: TeleXitos .3: NBC (KNTV simulcast)
Boston, MA	WNEU	.1: Telemundo .2: NBC (WBTS-LD simulcast) .3: TeleXitos .4: COZI TV (WBTS-LD .3 simulcast)
Phoenix, AZ	KTAZ	.1: Telemundo .2: TeleXitos .3: COZI TV
Miami, FL	WTVJ	.1: NBC .2: COZI TV

Market	Station	Digital Channels
	WSCV	.1: Telemundo .2: TeleXitos
Denver, CO	KDEN-TV	.1: Telemundo .2: TeleXitos .3: COZI TV
San Diego, CA	KNSD	.1: NBC .2: COZI TV .20: Telemundo .21: TeleXitos
San Antonio, TX	KVDA	.1: Telemundo .2: TeleXitos .3: COZI TV
Hartford & New Haven, CT	WVIT	.1: NBC .2: COZI TV .3: TeleXitos .4: Telemundo
Las Vegas, NV	KBLR	.1: Telemundo .2: TeleXitos .3: ION Television .4: COZI TV
Fresno, CA	KNSO	.1: Telemundo .2: TeleXitos .3: COZI TV
Tucson, AZ	KHRR	.1: Telemundo .2: TeleXitos .3: ION Television
Harlingen-Weslaco-Brownsville-McAllen, TX	KTLM	.1: Telemundo .2: TeleXitos

Market	Station	Digital Channels
El Paso, TX	KTDO	.1: Telemundo .4: TeleXitos
San Juan, PR	WKAQ-TV	.1: Telemundo .2: Punto 2 (Spanish independent) .3: NBC (WNBC simulcast)

EXHIBIT 4

Various Network Preemption Provisions

Various Network Preemption Provisions

CBS

Subject to the FCC's Right to Reject Rule, Broadcaster agrees that it will not unreasonably preempt Network Program (e.g., preempt Network Program for paid programming, or during Nielsen (or successors thereto) ratings periods) and that Broadcaster shall not preempt any first-run, non-repeat Network Program, including any Network Program scheduled for a series premiere and/or season premiere, nor shall Broadcaster preempt any programming during the same time period for the immediately preceding week.

Broadcaster agrees to limit Prime Time preemptions on Affiliated Station to not more than five (5) hours per calendar year (the "Prime Time Preemption Cap"). In the event Broadcaster exceeds the Prime Time Preemption Cap, Broadcaster agrees to pay CBS \$X per hour for the first five (5) hours of Prime Time preemptions each year in excess of the Prime Preemption Cap (such payment a "Prime Time Preemption Fee"). The Prime Time Preemption Fee shall also be payable by Broadcaster for any Prime Time preemption beyond fifteen (15) hours, but with respect to such excess preemption, CBS may at its election decline to accept Broadcaster's proffered payment of the Prime Time Preemption Fee, and instead deem Broadcaster to be in material breach of the Affiliation Agreement.

Similarly, Broadcaster agrees to limit preemptions of Weekend Sports Programming on Affiliated Station to not more than five (5) hours per calendar year (the "Weekend Sports Cap"). In the event Broadcaster exceeds the Weekend Sports Cap, Broadcaster agrees to pay CBS \$Y per hour for the first five (5) hours of Weekend Sports preemptions each year in excess of the Weekend Sports Cap (such payment a "Weekend Sports Preemption Fee"). The Weekend Sports Preemption Fee shall also be payable by Broadcaster for any weekend sports preemption beyond fifteen (15) hours, but with respect to such excess preemption, CBS may at its election decline to accept Broadcaster's proffered payment of the Weekend Sports Preemption Fee, and instead deem Broadcaster to be in material breach of the Affiliation Agreement.

The above preemption limits shall be allocated proportionately in partial years. Broadcaster will promptly notify CBS of any preemption and payment of any preemption fee will be made within sixty (60) days of the written notification from CBS of the amount due.

It is understood that Broadcaster's obligations pursuant to the above provisions shall be subject to those rights under Section 73.658 (e) of the FCC's rules, and that Broadcaster's legitimate exercise of such rights shall in no event be deemed a breach of the obligations set forth in this subparagraph, and shall not count against the Prime Time Preemption Cap or the Weekend Sports Cap as set forth above; provided, however, that nothing in the foregoing will be construed to permit Broadcaster to preempt a program on Affiliated Station, regardless of the reason for the preemption, in its live or agreed time period, and then broadcast such program in a different time period, without the express written consent of CBS; and further provided, that Broadcaster acknowledges that any preemptions of Network Programs for paid religion are made strictly for financial reasons and in consideration of the terms hereof agrees not to preempt Network Programming for paid religion during the Term.

FOX

Licensee shall cause Station to broadcast all Programming in the Programmed Time Periods as specified by Fox; provided, however, that Licensee shall be entitled to preempt Fox Programming in the following limited circumstances (each, an “Authorized Preemption”): (i) due to a “force majeure” event in accordance with Paragraph 7 below; (ii) as permitted by Paragraph 11 below; and (iii) in the event of a permitted Programming conflict pursuant to, and within the specific limits of, a commitment expressly set forth on Exhibit A (for non-sports programming) or Exhibit B (for sports programming) to this Agreement (but not including any extension or renewal of such commitment by option extension or otherwise), to the extent that the program preempted pursuant to the commitment set forth on Exhibit A or Exhibit B, as applicable, is “made good” in the time period specified therein.

Any other preemption or failure to broadcast any Fox Programming is an “Unauthorized Preemption” and without limiting any other rights of Fox under this Agreement or otherwise, if within any 12-month period during the Term of this Agreement, Station makes three or more Unauthorized Preemptions, Fox may, upon 30 days’ prior written notice to Licensee, elect to either: (1) terminate Station’s right to broadcast any one or more series or other Fox programs, and thereafter license the broadcast rights to the applicable series or other Fox programs to any other television station or stations located in Station’s Community, at Fox’s election and to the extent and for the period(s) that Fox elects, or (2) terminate this Agreement.

Preemptions that conflict with FOX Sports programming will not be authorized.

Station will not preempt network programming during The Nielsen Company designated sweep periods November, February or May, or on premiere, finale, Sunday, live voting night or any other special event nights of programming.

NBC

Station acknowledges that NBC will make a substantial investment in network programming during the term of this Agreement in order to provide Station with network-quality news, public affairs, entertainment, sports, children’s and other programming. In view of such investment, and after considering the amount of broadcast time available to Station outside of the Programmed Time Periods, Station further acknowledges and confirms that it does not presently foresee any need to substitute programming of any kind for NBC Programming, except under those circumstances requiring live coverage of breaking local news events.

Except as set forth in the immediately following sentence, in the event Station preempts or otherwise fails to broadcast any NBC Programming (including, without limitation, NBC Sports Programming) on the dates and at the times such Programming is scheduled by NBC, then without limiting any other rights or remedies of NBC under this Agreement or otherwise, Station shall pay to NBC an amount equivalent to NBC’s loss of gross advertising revenues attributable to Station’s failure to broadcast such program in Station’s market in excess of the preemption Pre-Season NFL Basket, Prime Basket and Sports Basket. Station shall have no obligation to

reimburse NBC for lost advertising revenues if (x) such failure to broadcast NBC Programming is a direct result of (i) Station's live coverage of breaking local or national news events (excluding the addition of scheduled local news programs as a part of Station's continuing program schedule) or (ii) an event of force majeure as provided in Section 9 of this agreement; or (y) if Station reasonably believes that such programming is unsatisfactory, unsuitable, or otherwise contrary to the public interest. Notwithstanding the foregoing, Station may preempt, without reimbursement to NBC, up to ten (10) hours of NBC Prime Time Programming (the "Prime Basket") and up to ten (10) hours of NBC Sports Programming (the "Sports Basket") per Calendar Year.

Station's determination under clause (y) of subsection (b) above shall be based upon a substantial difference between the relevant program's style and content and the style and content of other NBC Programs previously broadcast by Station. In addition, Station shall not preempt or otherwise fail to broadcast any NBC Programming under clause (y) of subsection (b) above as a result of commercial motivation; that is, programming shall not be deemed to be unsatisfactory, unsuitable or contrary to the public interest based on performance, ratings, or the availability of alternative programming which Station believes to be more profitable or more attractive.

In the event Station fails to pay NBC any amounts required pursuant to this Section 3, and such failure remains uncured after 30 days' written notice from NBC, then in addition to all other remedies available to it, NBC shall have the option, exercisable in its sole discretion upon 30 days' notice to the Station, to (i) terminate Station's right to broadcast any one or more series or other NBC Programs, and to the extent and for the periods that NBC so elects, license the broadcast rights to such series or other NBC Program(s) to any other distribution outlet for distribution in Station's community of license or (ii) terminate this Agreement.