

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF PUBLIC INTEREST COMMENTERS

Office of Communication, Inc. of the United Church of Christ, Common Cause, National Hispanic Media Coalition, and Public Knowledge (“Public Interest Commenters”)¹ oppose the relaxation or repeal of the national audience reach cap for television stations. The FCC lacks authority to raise or eliminate the national television audience reach cap of 39%, but it can, and should, eliminate the obsolete UHF discount. Even if the Commission had the authority to raise or eliminate the cap, it would not serve the public interest to do so.

I. The Commission has no statutory authority to modify the 39% cap, but it can and should eliminate the obsolete UHF discount

As many commenters have pointed out in prior filings, Congress explicitly established the national television audience reach cap at 39% and did not leave the Commission with discretion to modify or eliminate the cap when it passed the Consolidated Appropriations Act of

¹ Each of these organizations has or represents members of the listening and viewing public who participate in broadcast license renewals and transfers, among other things. They would be adversely affected by the increased concentration in ownership and the consequent reduction in localism, diversity, and competition that would result from the increase or elimination of the national television audience reach cap.

2004.² Congress passed this act to reduce the cap after the Commission raised it from 35% to 45%.³ At the same time, Congress removed the cap from the Commission’s periodic review of its ownership rules.⁴ By setting the cap at 39% and insulating it from the Commission’s periodic reviews, Congress left no room for the Commission to assert discretionary authority to modify or eliminate the 39% cap.

While the national cap establishes the audience reach limit for broadcasters, the UHF discount is simply used to calculate that reach.⁵ As commenters have repeatedly made clear, the Commission may consider the need for the UHF discount independently from the cap.⁶ The Commission has authority to repeal the UHF discount, and it should repeal this concededly obsolete rule. The UHF discount was established at a time when UHF stations reached fewer households than VHF stations in the same market. This technical disparity was eliminated by the digital television transition in 2009. Indeed, the Commission repeatedly warned broadcasters that it intended to remove the discount,⁷ and it followed through on that promise in 2016.⁸

² Petition for Stay Pending Judicial Review at 14-16, Free Press et al., MB Dkt. 13-236 (filed May, 10, 2017) (“Petition for Stay”).

³ Consolidated Appropriations Act, 2004, Pub. L. 108-199, §629(1); Petition for Stay at 11.

⁴ *Id.* at §629(3). Congress also changed the frequency of those reviews from biennial to quadrennial. *Id.*

⁵ Petition for Stay at 5.

⁶ *See, e.g., Id.* at 16-17. If Congress had intended to lock the UHF discount with the cap, it would have done so explicitly. *See, AFL-CIO v. Brock*, 835 F.2d 912, 916 (D.C. Cir. 1987) (stating that “[t]o freeze an agency interpretation, Congress must give a strong affirmative indication that it wishes the present interpretation to stay in place.”).

⁷ Reply Brief for Petitioner at 17-18 (filed Dec. 5, 2017), Free Press et al. v. FCC (D.C. Cir. 2017) (No. 17-1129).

⁸ *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Report and Order, 31 FCC Rcd. 10213 (2016).

Because the distinction between VHF and UHF is irrelevant for any purpose except for circumventing compliance with the national cap,⁹ the Commission should once again repeal this obsolete rule.

II. Even if the Commission had authority to raise or eliminate the cap, doing so would not be in the public interest

A core public interest responsibility of television stations is to cover issues of concern to the residents of their service areas in their programming. Many television stations fulfill this responsibility by providing local news. Raising or repealing the national cap would reduce competition in the production of local news, limit the diversity of viewpoints, and result in poor coverage of important local issues and events.

A. Local television stations are the predominant providers of local news

It takes resources including reporters, camera crews, and editors, along with studios and equipment, to produce local news. This means that in most markets, generally only the top-4 stations, which are usually affiliates of the major networks, produce local news programs.¹⁰ On average, network affiliates air six hours of local news per day.¹¹

Americans still rely on television as a source for news more than any other news sources and local broadcast news remains the top source of television news. In 2017, local news viewership was 18% higher than national broadcast news for adults aged 18 and older and more

⁹ Prometheus Radio Project and Media Mobilizing Project Ex Parte at 4, MB Docket 13-236 (filed Apr. 13, 2017).

¹⁰ In many markets, there is a fifth Spanish-language newscast on a Univision or Telemundo station, and in some larger markets there is local news on a non-network affiliate.

¹¹ Katerina Eva Matsa, *Local TV News Fact Sheet* Pew Research Center's Journalism Project, Pew Research Center (July 13, 2017), <http://www.journalism.org/fact-sheet/local-tv-news/>.

than double that of cable news.¹² Even where multiple sources of local news are offered in a single market, the majority of people still get their local news from local television stations.¹³ And smaller cities that have fewer news sources greatly rely on local TV news as their primary source of information.¹⁴

In recent years, local television stations have become an even more important source of local news because most local television stations make their local news programming available online, in addition to airing on broadcast and cable television. Thus, when people go online to find local news, they often go to the website of a local television station or newspaper.¹⁵ Very few communities have independent online sources of local news.¹⁶

Another reason that local broadcast news is especially important is that many areas of the U.S. do not have broadband, and even where it is available, many cannot afford it.¹⁷ In addition, financial problems within the newspaper industry have led to reduced quality and output of local

¹² *It's All About Local News*, Nielson (Sep. 14, 2017), <http://www.nielson.com/us/en/insights/news/2017/its-all-about-local-news.html>.

¹³ Ryan Walker, *The Importance of Broadcast TV in Local News Consumption*, Sorenson Media (Mar 17, 2014), <https://www.sorensonmedia.com/blog/importance-broadcast-tv-local-news-consumption>.

¹⁴ *Id.*

¹⁵ Danilo Yanich, *Local TV News & Service Agreements: A Critical Look*, Center for Community Research & Service, p.108 (2014).

¹⁶ See Adam Lynn, S. Derek Turner, & Mark Cooper, *New Media and Localism: Are Local Cable Channels and Locally Focused Websites Significant New and Diverse Sources of Local News and Information? An Empirical Analysis*, p.2 (2007).

¹⁷ Monica Anderson et al., *11% Of Americans Don't Use the Internet. Who Are They?*, Pew Research Center (5 Mar. 2018), www.pewresearch.org/fact-tank/2018/03/05/some-americans-dont-use-the-internet-who-are-they.

news.¹⁸ In some cases, newspapers have completely exited their markets. Now that the FCC has repealed the newspaper-broadcast cross-ownership rule,¹⁹ mergers between local television stations and newspapers will further reduce the diversity of local news sources. Thus, it is more important than ever to have diverse sources of local news on television.

B. Raising or eliminating the national cap will increase consolidation in local broadcast markets

The Commission has already decided to allow greater consolidation in local markets by relaxing the local television rule, thereby reducing the number of independent editorial voices. Specifically, under the revised rule, a single owner can control two stations so long as both are not top-four stations in a single market.²⁰ However, the Commission has indicated that it will allow common control of more than one top-four station on a case-by-case basis.²¹

The Commission also repealed the Eight-Voices Test, which requires at least eight independently-owned TV stations to remain in a market after any single entity acquires more than one station in that market,²² and the JSA attribution rule.²³ Repeal of JSA attribution rule means that one station can have contracts with one or more other stations in the same market to provide services, *including local news*, without exceeding the local television limit.²⁴

¹⁸ Mark Doctor, *Newsonomics: Single-copy newspaper sales are collapsing, and it's largely a self-inflicted wound*, Nieman Lab (Mar 13, 2015), <http://www.niemanlab.org/2015/03/newsonomics-the-collapse-of-single-copy-sales>.

¹⁹ *2014 Quadrennial Regulatory Review*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9806 (Nov. 20, 2017).

²⁰ *Id.* at 9831.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 9846.

²⁴ These “sidecar” agreements outsource management by providing a brokering station with a significant amount of influence and control over the brokered station. In turn, one station owner

Should the Commission relax or repeal the 39% cap, it would provide an incentive for even greater consolidation in local television markets. The 39% cap has, as intended, operated as an upper limit on the national reach of any group station owner. Raising or repealing the cap will allow large station owners to expand their national reach because once a company owns one television station in a market, it can acquire a second station, and even operate multiple stations, without increasing its national reach. With the local rules gone, it is likely that large station owners will swap stations with one another to maximize both their national reach and their local influence.

For example, suppose a station owner is currently at the 39% cap and does not own a station in St. Louis. If the Commission raises or repeals the cap, that station owner could purchase a station in St. Louis, reducing competition at the national level. Then that station owner could reduce competition at the local level by purchasing a second station in that market and enter into a JSA with a third station controlling most of its operations. The result would be a reduction in competition and diversity in local markets, as well as at the national level.

C. Increased consolidation will hurt the public by reducing competition, diversity, and localism

The FCC has consistently found that the public interest is served by promoting competition in the production of local news. This view is well-supported by research.²⁵ Because

maintains the power to oversee and influence operating functions, decisions, and core programming of another station in the same market, thus eliminating another local editorial voice. Danilo Yanich, *Local TV News, Content, and the Bottom Line*, Journal of Urban Affairs, pp.339-40 (2013).

²⁵ See Danilo Yanich, *Does Ownership Matter? Localism, Content, and the Federal Communications Commission*, 23 Journal of Media Economics 51, 63-65 (2010); Steven Waldman, *The Information Needs of Communities*, Federal Communications Commission, p.345 (2011).

relaxing or repealing the national cap will foster greater consolidation both nationally and locally, it is contrary to the public interest.

Concentration of media ownership harms competition because it reduces the number of stations available to new entrants and reduces the number of broadcast competitors both locally and nationally. Were the Commission to raise or repeal the national cap, a handful of companies could own or control all the stations in every market across the country. That level of consolidation raises barriers to entry into both the local and national markets because those station owners have the resources to acquire higher-quality programming, which allows them to attract higher-dollar advertisers that in-turn increase their revenues. In short, new entrants never have an opportunity to get a foothold in any given local market.

Concentration also harms diversity and localism because large station owners have an incentive to homogenize their programming within a given market and even across markets.²⁶ When large station owners own multiple stations in a single market, they are able to cut local news staff, get rid of duplicative equipment, reduce the number of studios, and run the same locally-produced news content on more than one channel.²⁷ This reduces the diversity of the content and editorial perspective in that particular market.²⁸ When these station owners control stations across multiple markets, they are able to harm the localism of the content by producing

²⁶ Lewis Friedland *et al.*, *Review of the Literature Regarding Critical Information Needs of the American Public*, p.49 (2012), citing Yanich, *Local TV News & Service Agreements*.

²⁷ See Yanich, *Local TV News, Content, and the Bottom Line* at pp.339-40.

²⁸ See Yanich, *Does Ownership Matter?* at 61, 62-63.

content that must be aired as local news segments at all the stations they own nationwide or require local news stations to cover particular stories in a particular way.²⁹

Conclusion

The Commission does not have the authority to raise the national audience reach cap beyond the 39% limit set by Congress, but it does have the authority to repeal the UHF discount, and it should repeal this obsolete rule because it undermines the purpose of the cap. Even if the Commission had the authority to raise the cap, doing so would be contrary to the public interest. Raising the cap would result in increased consolidation in local markets. That increased consolidation would decrease competition and reduce diversity and localism of local news in local markets. Since local television is still a vital source of local news for the American public, the Commission should not exceed its statutory authority to raise the national audience reach cap and it should repeal the UHF discount.

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²⁹ See Brian Stelter, *Sinclair's new media-bashing promos rankle local anchors*, CNN (Mar 7, 2018), <https://amp.cnn.com/money/2018/03/07/media/sinclair-broadcasting-promos-media-bashing/index.html>.

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