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

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| In the Matter of | ) | |
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| 2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 | ) | MB Docket No. 18-349 |

# COMMENTS OF RIDE TELEVISION NETWORK, MAVTV MOTORSPORTS NETWORK, CINEMOI AND BEIN SPORTS

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## I. INTRODUCTION

RIDE Television Network, MAVTV Motorsports Network, Cinemoi, and beIN SPORTS, representing independent programmers from across the political spectrum, (together the "Independent Programmers") respectfully submit these comments in response to the Notice of Proposed Rulemaking[1] issued in the above-captioned docket. The Commission should retain the Local Television Ownership Rule ("Local TV Ownership Rule") – particularly the Top-Four Prohibition – and the Dual Network Rule. These rules remain necessary to serve the public interest in the current television marketplace by fostering competition and promoting localism and viewpoint diversity. In contrast, eliminating the rules would result in substantial public interest harms. Such a change would lead to greater industry consolidation, diminishing competition, raising costs to consumers and other stakeholders in the video marketplace, and undercutting program diversity and localism.

[1] *2018 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*, Notice of Proposed Rulemaking, FCC 18-179 (rel. Dec. 13, 2018) ("*NPRM*").

## II. THE COMMISSION SHOULD RETAIN THE LOCAL TELEVISION OWNERSHIP RULE, INCLUDING THE TOP-FOUR PROHIBITION.

### A. The Broadcast Industry Is Thriving Under the Existing Regulatory Framework.

Broadcasters have historically argued that the Local TV Ownership Rule should be eliminated so that they can compete more effectively in the changed video marketplace.[2] The Commission has rejected these arguments in the past,[3] and should do so again here. The simple fact is that the broadcast industry is thriving under the existing regulatory regime. The Commission characterizes industry revenues as "stable,"[4] but broadcasters' latest earnings releases show that they are earning more revenue and achieving greater financial performance than ever before. For example:

- Nexstar announced that its net revenue in the fourth quarter of 2018 rose "22.1% to a record $798.0 million . . . mark[ing] Nexstar's seventh consecutive year of record

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2 *See, e.g.,* Comments of Nexstar Broadcasting, Inc., MB Docket Nos. 14-50 et al., 11-19 (Aug. 6, 2014); Petition of the National Association of Broadcasters for Reconsideration of the 2010/2014 Quadrennial Review Second Report and Order, MB Docket Nos. 14-50 et al. (filed Dec. 1, 2016), at 1-10; Petition of Nexstar Broadcasting, Inc. for Reconsideration of the 2010/2014 Quadrennial Review Second Report and Order, MB Docket Nos. 14-50 et al., 4-15 (filed Dec. 1, 2016); Letter from Rick Kaplan, General Counsel and EVP – Legal and Regulatory, NAB, to Marlene H. Dortch, Secretary, FCC, at 3-6 (Dec. 7, 2018); Letter from Akin S. Harrison, SVP, General Counsel and Secretary, TEGNA Inc. to Marlene H. Dortch, Secretary, FCC, at 1-2 (Apr. 10, 2019).

3 *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 et al.*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd. 9802, ¶ 78 (2017) ("*2017 Recon Order*") ("In contrast to the Eight-Voices Test, we find that the Commission's decision in the *Second Report and Order* to treat combinations of two top-four stations differently from other combinations is supported in the record. We therefore deny the NAB Petition and the Nexstar Petition to the extent each requested complete elimination of the Top-Four Prohibition"); Brief of Respondents, FCC and DOJ, *Prometheus Radio Project v. FCC*, Nos. 18-3335 et al., at 18-20 4th Cir. Mar. 22, 2019) (defending the FCC's retention of the Top-Four Prohibition on reconsideration); *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 et al.*, Second Report and Order, 31 FCC Rcd. 9864, ¶ 43 (2016) ("*2010/2014 Quadrennial Review Report and Order*") ("We conclude that the top-four prohibition remains necessary to promote competition in the local television marketplace; accordingly, we retain the top-four prohibition in the Local Television Ownership Rule.").

4 *NPRM* ¶ 3.

financial performance,"[5] and CEO Perry Sook stated that the company "remain[s] extremely well positioned to post another year of record results in 2019."[6]

- TEGNA reported record fourth quarter and full year 2018 revenues, featuring 31 and 16 percent year-over-year increases, respectively, due in large part to "record political revenue . . . [and] record subscription [retransmission consent] revenue."[7]

- Sinclair reported double-digit year-over-year increases in revenues and record political ad spending ("with 2020's political advertising [expected] to be yet another record year for us"), to couple with "significant strides on the implementation of ATSC 3.0."[8]

- Tribune touted substantial profit increases, explaining that their "[c]onsolidated operating profit was $166.0 million for the fourth quarter of 2018, compared to $123.4 million for the fourth quarter of 2017, and $488.4 million for the full year 2018 compared to $85.7 million for the full year 2017."[9]

- Gray similarly recorded "record operating results," including an "all-time best" quarterly revenue and cash flow in the fourth quarter of 2018 and a 23 percent increase in annual revenue over the prior year.[10]

- Meredith reported 30 percent revenue increases in fiscal year 2018, with stations earning an operating profit that "was a record for a non-political year."[11]

Indeed, SNL Kagan projects that political advertising revenues, which were massive in the 2018 election cycle, will continue to shatter records during the 2020 cycle.[12]

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[5] Press Release, Nexstar Media Group Fourth Quarter Net Revenue Rises 22.1% to a Record $798.0 Million (Feb. 26, 2019), https://www.businesswire.com/news/home/20190226005251/en/.

[6] Press Release, Nexstar Media Group Increases Quarterly Cash Dividend by 20 Percent (Jan. 25, 2019), https://www.businesswire.com/news/home/20190125005016/en/.

[7] Press Release, TEGNA Inc. Reports Record 2018 Fourth Quarter and Strong Full Year Results (Mar. 1, 2019), https://www.businesswire.com/news/home/20190301005234/en/.

[8] Press Release, Sinclair Reports Fourth Quarter 2018 Financial Results (Feb. 27, 2019), https://www.prnewswire.com/news-releases/sinclair-reports-fourth-quarter-2018-financial-results-300802868.html.

[9] Press Release, Tribune Media Company Reports Fourth Quarter and Full-Year 2018 Results (Mar. 1, 2019), https://www.prnewswire.com/news-releases/tribune-media-company-reports-fourth-quarter-and-full-year-2018-results-300804626.html.

[10] Press Release, Gray Reports Record Operating Results (Feb. 28, 2019), https://www.globenewswire.com/news-release/2019/02/28/1744131/0/en/Gray-Reports-Record-Operating-Results.html.

[11] Press Release, Meredith Reports Fiscal 2018 Full Year And Fourth Quarter Results (Aug. 10, 2019), https://ir.meredith.com/news-releases/press-release-details/2018/Meredith-Reports-Fiscal-2018-Full-Year-And-Fourth-Quarter-Results/ ("Meredith 2018 Earnings Release").

[12] *See* Peter Leitzinger, *TV Saw a Big Lift from Political in 2018; Early Spending Lined Up for 2020*, SNL Kagan (Apr. 11, 2019),

Furthermore, the growth of online video distribution has been a boon, not a handicap, to broadcasters. As the Commission reported in its most recent Video Competition Report, the percentage of TV households that get their video from over-the-air broadcast has been on the rise, while subscriptions to traditional pay TV services have been declining with cord-cutting and rising consumer interest in online video services.[13] Moreover, the local broadcast market has adapted well to the evolving online video ecosystem. As the Commission noted in the NPRM, the Knight Foundation found evidence that broadcasters produce a significant portion of the video news content published on internet and social media platforms, and that consumers rely heavily on local broadcasters (or their related websites) for local news.[14] Broadcasters also continue to explore various broadband-related services for their ATSC 3.0 signals, creating

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https://www.snl.com/web/client?auth=inherit#news/article?id=50935036&KeyProductLinkType=24; Tom Butts, *Political Ad Spending Hits Historic Highs In 2018 Campaign* (Nov. 8, 2018), https://www.tvtechnology.com/news/political-ad-spending-hits-historic-highs-in-2018-campaign ("Politicians running in the 2018 elections spent a record amount of money on advertising for mid-term campaigns, with more than $4 billion between local broadcast, cable and online. The vast bulk of the dollars went to local television, at just over $3 billion"). Moreover, broadcasters are becoming leaders in digital advertising. *See, e.g.,* Allison Schiff, *Which TV Players Could Be In The Market To Acquire Ad Tech?*, Ad Exchanger, Apr. 22, 2019, https://adexchanger.com/digital-tv/which-tv-players-could-be-in-the-market-to-acquire-ad-tech/ ("Beyond the 47 TV stations it operates across 39 markets, TEGNA owns digital assets, such as G/O Digital and Cars.com, and runs Premion, an over-the-top ad buying platform that has more than 125 direct partnerships with publishers and streaming services, from CNN, NBC Universal and ESPN to Sling, Pluto and Crackle. Taken altogether, TEGNA already 'has the assets to deliver a large marketing value proposition,' said Lance Neuhauser, CEO of 4C Insights").

13 *Status of Competition in the Market for the Delivery of Video Programming et al.*, Report, MB Docket No. 17-214, FCC 18-181, ¶ 125 (Dec. 26, 2018) (showing that, from 2016 to 2017, the percent of occupied households with traditional MVPD service dropped from 76.1 percent to 72.5 percent; over-the-air broadcast grew from 11.6 percent to 13.0 percent; and vMVPD and online VOD-only grew from a combined 10.9 percent to 13.6 percent).

14 *See, e.g.*, *NPRM* ¶ 3; Knight Foundation, Local TV News and the New Media Landscape: Part 3: The Future of Local News Video at 3 (Apr. 5, 2018) ("Traditional broadcasters are responsible for a significant portion of the news video published on social media, especially on Facebook") ("*Knight Report Part 3*"); Knight Foundation, Local TV News and the New Media Landscape: Part 1: The State of the Industry at 27 (Apr. 5, 2018) (finding that nearly half of daily visitors to local news websites visited the websites of commercial television outlets) ("*Knight Report Part 1*"); *see also* Meredith 2018 Earnings Release (noting that "[r]evenues from the [broadcast television] Local Media Group's digital activities more than doubled in fiscal 2018").

another potential revenue stream.[15] In short, there is no existential threat to local broadcasters that justifies weakening or eliminating the Local TV Ownership Rule.

### B. Elimination of the Local Television Ownership Rule Would Result In Substantial Public Interest Harms.

As independent programmers have noted in other broadcast-related proceedings, broadcasters already wield significant marketplace power.[16] Their programming continues to be highly valued by video consumers, and they use their bargaining leverage to impose ever-higher retransmission consent costs on MVPDs, directly affecting consumers in the form of higher bills. In recent years, broadcasters have used the threat of blackouts, or actual blackouts, as leverage in negotiations to extract increasing retransmission consent fees.[17] Predictably, retransmission fees have increased dramatically over the last decade and show no sign of slowing down.[18]

Broadcasters also use their increased leverage to force MVPDs to carry multicast broadcast signals and affiliated stations and programming. Increased licensing fees and use of

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[15] *See, e.g.,* Sinclair Broadcast Group, Inc., Annual Report (Form 10-K) at 13-14 (Mar. 1, 2019) (discussing the development of ATSC 3.0 applications including for broadband connectivity, 5G delivery, and connected cars); Peter Leitzinger, *ATSC 3.0 at Forefront for Broadcasters at NAB*, SNL Kagan (Apr. 16, 2019), https://www.snl.com/web/client?auth=inherit#news/article?id=51204608&KeyProductLinkType=6; Peter Leitzinger, *ATSC 3.0 Making Progress as Competition from OTT, 5G Advances*, SNL Kagan (Feb. 6, 2019), https://www.snl.com/web/client?auth=inherit#news/article?id=49708956&KeyProductLinkType=6.

[16] *See, e.g.*, Comments of Cinemoi, RIDE Television Network, AWE – A Wealth of Entertainment, MAVTV, Motor Sports Network, One America News Network, TheBlaze, and Eleven Sports Network, MB Docket No. 17-179, at 7 (Aug. 7, 2017) ("Independent Programmer Sinclair-Tribune Comments").

[17] In 2017 alone, broadcasters blacked out the Super Bowl, NFL and College Football post-season Games, the Grammys, and network TV premiers. *Broadcasters Go Nuclear on Blackouts*, American Television Alliance, Apr. 3, 2017, http://www.americantelevisionalliance.org/broadcasters-go-nuclear-on-blackouts.

[18] Petition to Deny of Dish Network Corporation, MB Docket No. 19-30 (Mar. 18, 2019) ("[R]ecent projections estimate that, by 2023, retransmission fees will increase to $12.82 billion, or 5,880% of 2006 revenues"); Mike Farrell, *ACA Members Believe Retrans Fees Will Rise 88% by 2020*, Multichannel News (Feb. 16, 2018), https://www.multichannel.com/news/aca-members-believe-retrans-fees-will-rise-88-2020-418199 ("Retransmission consent fees are expected to rise an average of 88% by 2020 for small cable operators"). Evidence of this trend appears throughout the Commission's record. For example, over the span of four years, total retransmission consent revenues in the Indianapolis DMA increased by nearly 113 percent (from $37.7 million in 2014 to $80.2 million in 2017). *See* Letter from Miles S. Mason, Pillsbury Winthrop Shaw Pittman LLP, Counsel for Sinclair Broadcast Group, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-179, at 4, 11 (May 29, 2018) ("May 29 Information Request Response"). Over the same period, retrans revenues increased 73 percent in the St. Louis DMA (from $48 million in 2014 to $83 million in 2017). *Id*. at 11, 25.

channel capacity siphons off MVPD resources that could otherwise be used for independent programming.[19]

Eliminating the Local TV Ownership Rule, particularly the Top-Four Prohibition, would compound these harms. The Commission asks if it should "maintain the Top-Four Prohibition for purposes of preventing any potential competitive harms caused by joint negotiation of retransmission consent fees by two commonly owned top-four stations in a DMA." [20] The answer to this question is, emphatically, yes – for the very same reasons given to justify the Commission's decision to ban joint retransmission consent negotiations by non-commonly-owned top-four stations in the same market.[21] As the Commission explained:

> [Joint top-four negotiation] eliminates price rivalry between and among stations that otherwise would compete directly for carriage on MVPD systems and the associated retransmission consent revenues . . . giv[ing] such stations both the incentive and the ability to impose on MVPDs higher [retransmission consent fees] than they otherwise could impose if the stations conducted negotiations for carriage of their signals independently. Because same market, Top Four stations are considered by an MVPD seeking carriage rights to be at least partial substitutes for one another . . . joint negotiation prevents an MVPD from taking advantage of the competition or substitution between or among the stations to hold retransmission consent payments down. The record also demonstrates that joint negotiation enables Top Four stations to obtain higher retransmission consent fees because the threat of simultaneously losing the programming of the stations negotiating jointly gives those stations undue bargaining leverage in negotiations with MVPDs.[22]

Like the Commission and Congress, DOJ has recognized that consolidation of broadcast stations under a single owner in a market eliminates competition and, by empowering the owner

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19 Independent Programmer Sinclair-Tribune Comments at 9.

20 *NPRM* ¶ 62.

21 *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 3351, ¶ 13 (2014) ("*2014 Retrans Order*"). Congress subsequently enacted legislation in 2014 expanding the prohibition to cover joint retransmission consent negotiations by any non-commonly-owned stations in the same market. *See* Pub. L. No. 112-200, 128 Stat. 2059 § 103(a) (2014), codified at 47 U.S.C. § 325(b)(3)(C)(iv.).

22 *Id.*; *see also* Declaration of Bryan Keating and Jon Orszag ("Keating/Orszag Declaration") ¶ 14, attached to Comments of NCTA, MB Docket No. 17-179 (June 30, 2018) (detailing the economics of retransmission consent negotiations and the resulting harms to competition resulting from top-four combinations).

to negotiate retransmission consent for both stations, puts upward pricing pressure on retransmission consent rates and increases the risks of blackouts.[23] The NPRM asks "whether and how DOJ's analytical framework should inform our own" and whether the Local TV Ownership Rule is "is either consistent or inconsistent with antitrust principles."[24] If the Commission seeks to engage in rigorous economic and public interest analysis, it must apply the DOJ's approach, which unambiguously demonstrates that the Top-Four Prohibition remains necessary to prevent anti-competitive concentration in the broadcast marketplace.[25]

The threat of joint top-four retransmission consent harms have only heightened as broadcaster fees continue to reach record heights. Double-digit annual increases in retransmission consent fees have become commonplace, and fees will experience *additional* double-digit increases if the Commission allows top-four duopolies. The Commission's extensive record in the *2014 Retransmission Consent Order* proceeding included empirical evidence that top-four duopolies lead to "supra-competitive" retransmission consent fee increases – reaching anywhere from *19* to *43* percent above prior levels.[26] Yet, during this same

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[23] *See* Competitive Impact Statement at 4-7, *United States v. Gray Television, Inc.*, No. 18-cv-2951 (D.D.C. Dec. 14, 2018), https://www.justice.gov/atr/case-document/file/1120521/download ("Gray-Raycom Competitive Impact Statement") ("Because viewers do not regard non-Big-4 broadcast stations, or cable networks, as close substitutes for the programming they receive from Big 4 stations, these other sources of programming are not sufficient to discipline an increase in the fees charged for Big 4 television retransmission consent. Accordingly, a small but significant increase in the retransmission consent fees of Big 4 affiliates would not cause enough MVPDs to forego carrying the content of the Big 4 affiliates to make such an increase unprofitable for the Big 4 affiliates"); *see also* Competitive Impact Statement at 6-7, *United States v. Nexstar Broad. Group, Inc. and Media General, Inc.* No. 15-cv-01772-JDB (D.D.C. Sep. 2, 2016), https://www.justice.gov/atr/case-document/file/910661/download.

[24] *NPRM* ¶ 54.

[25] Consistent with its horizontal merger guidelines, the DOJ uses the Herfindahl-Hirschman Index ("HHI") to analyze the anticompetitive effects of retransmission consent market share within a DMA. *See* Gray-Raycom Competitive Impact Statement at 6-7; DOJ & FTC, Horizontal Merger Guidelines § 5.3 (Aug. 2010), https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf ("Horizontal Merger Guidelines"). The results consistently show that top-four combinations lead to HHI levels above (and often well-above) 2500 – the threshold indicating a "Highly Concentrated Market" – and thus "raise significant competitive concerns," requiring a presumption that the combination will "be likely to enhance market power."[25] *See, e.g.*, Comments of NCTA – The Internet & Television Association, MB Docket No. 19-30.

[26] *2014 Retransmission Consent Order* ¶ 16 & n.66.

period of ballooning retransmission consent costs, the Commission has found that the price elasticity of demand for traditional MVPD service is higher than ever, in large part because of new competition from virtual MVPD and streaming video-on-demand services.[27] A portion of the increased retransmission fees must be passed on directly to consumers; but because of this high elasticity of demand, preventing subscriber loss means that MVPDs have to offset these increases with cuts to other programming.

Independent programmers will bear the brunt of the more limited programming budgets that remain after higher payments for retransmission consent. Based on the average monthly retransmission consent fee of $1.78 to $2.27 reported by SNL Kagan,[28] a 19 percent fee increase would result in additional programming costs of $0.34 to $0.43, or approximately five to six times the average monthly payment received by an independent programmer.[29] A 43 percent increase in retransmission consent fees represents $0.77 to $0.98, or 11 to 12 times the average carriage payment received by an independent programmer.

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27 *See, e.g.*, *Applications of AT&T Inc. and DirecTV*, 30 FCC Rcd. 9131, ¶ 122 (2015) (finding that "figures suggest that demand for cable MVPD service has become more elastic in recent years. This trend is certainly plausible given a number of factors, including the entry of fiber-based competitors (especially Telcos since 2006), the launch of a new satellite by DISH in 2006, which expanded DISH's channel capacity significantly, and, probably to a lesser extent, the recent advent of online video distributors . . . and the resulting increase in so-called 'cord-cutting' . . . The first and third factors listed above also may account for an increase (which the above figures suggest) in the elasticity of demand for satellite-based MVPD service").

28 Fourth quarter retrans rates grew to an estimated $1.78 per subscriber on a station/network basis and $2.27 per subscriber on a market-level basis, per SNL Kagan's analysis of 12 publicly traded U.S. T.V. Station groups. Justin Nielson, *TV Stations Retrans Per-Sub Growth Ticks Up Despite Disruptions, Sub Losses* (Apr. 9, 2019), https://www.snl.com/web/client?auth=inherit#news/article?id=50996253.

29 Based on an average of approximately $0.07-0.08 affiliate revenue per subscriber per month. *See* SNL Kagan TV Network Summary, Affiliate Revenue per Avg Sub/Month.

### C. Elimination of the Top-Four Prohibition Would Harm Localism and Viewpoint Diversity.

The NPRM also asks "whether the Local Television Ownership Rule is necessary to promote localism or viewpoint diversity,"[30] and "whether a competition-based Local Television Ownership Rule promotes the production or provision of local programming."[31] Beyond the harmful effects to viewpoint diversity discussed above, the Commission previously found in the *2010/2014 Quadrennial Review Report and Order* that "[t]op-four combinations reduce incentives for local stations to improve their programming by giving once strong rivals incentives to coordinate their programming in order to minimize competition between the commonly owned stations."[32] The Commission concluded:

> [T]he Local Television Ownership Rule remains necessary to promote competition and that this competition-based rule will continue to promote viewpoint diversity by helping to ensure the presence of independently owned broadcast television stations in local markets and is consistent with our localism goal as competition also incentivizes television stations to select programming responsive to the interests and needs of the local community.[33]

This conclusion remains valid today. In a recent report, the Knight Foundation found that if the Local Television Ownership Rule "is eliminated, it's anticipated that some of the wealthiest station groups . . . would seek to purchase their chief competitors within the markets they serve. That would mean fewer separate editorial voices in any number of TV markets."[34] Given that the same report found that online-only local news sources have not posed a significant

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30 *NPRM* ¶ 45.

31 *Id.* ¶ 46.

32 *2010/2014 Quadrennial Review Report and Order* ¶ 44.

33 *Id.* ¶ 17.

34 *Knight Report Part 1* at 10.

competitive threat to local broadcasters,[35] eliminating the Local TV Ownership Rule would create a race-to-the-bottom for the few broadcasters left in a market. Rather, retaining safeguards for local competition maintains incentives to report and produce news that meets local demand and enables the dissemination of diverse viewpoints.

## III. THE COMMISSION SHOULD RETAIN THE DUAL NETWORK RULE

The Commission has previously rejected proposals to eliminate the Dual Network Rule, and should follow the same approach here.[36] The Commission concluded in its prior quadrennial reviews that "the Dual Network Rule is necessary to retain the balance of bargaining power between the Big Four networks and their affiliates, so that affiliates can ensure that the needs and interests of local viewers, or localism, is served."[37] Independent Programmers are concerned that elimination of the rule will undermine this careful balance, resulting in more broadcaster consolidation and amplifying the harms to competition, localism, and viewpoint diversity highlighted above.

## IV. CONCLUSION

For all of the above reasons, the Local TV Ownership Rule, particularly the Top-Four Prohibition, and the Dual Network Rule remain necessary in the public interest as a result of competition in today's marketplace and should be retained by the Commission.

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[35] *Id.* at 27 (finding that approximately 40.6 percent of daily visitors to local news websites visited the websites of commercial television outlets).

[36] *2010/2014 Quadrennial Review Report and Order* ¶ 216.

[37] *NPRM* ¶ 85.