

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

In the matter of:

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 GRAY TELEVISION, INC.**

Robert. J. Folliard, III  
Vice President – Government  
Relations & Distribution  
Gray Television, Inc.

4370 Peachtree Rd., NE  
Atlanta, GA 30319

April 29, 2019

## TABLE OF CONTENTS

<b>INTRODUCTION AND SUMMARY .....</b>	<b>2</b>
<b>I. The Fate of the #1 Rated Newscast in Casper, Wyoming Demonstrates Why the Commission Must Eliminate the Top-4 Restriction.....</b>	<b>4</b>
<b>II. The Commission Cannot Rationally Apply the Top-4 Restriction in Small Markets .....</b>	<b>7</b>
<b>III. With Today’s Hyper-Competitive and Rapidly Evolving Video Marketplace, the Commission Must Eliminate the Top-4 Restriction and Allow Broadcasters to Form Duopolies in All Markets – Especially Small Markets.....</b>	<b>9</b>
A. The Commission Must Allow Duopolies in All Markets – No Matter the Market Size or Number of Stations in the Market.....	10
B. The Economics of Operating a Television Station in a Small Market Are Different and Far More Challenging than Operating in Larger Markets .....	11
<b>IV. Gray’s Experience Owning Multiple Big 4 Affiliates in Small Markets Proves that Permitting Duopolies in All Small Markets Serves the Public Interest.....</b>	<b>13</b>
<b>CONCLUSION .....</b>	<b>18</b>
Exhibit A – Nonexistent “Ratings Cushion” in Small Markets (DMAs 75-210)	
Exhibit B – Number of Stations in Small Markets and Small Markets without all Big 4 Affiliates on the Primary Signal of a Full Power Station	

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

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

**COMMENTS OF GRAY TELEVISION, INC.**

Gray Television, Inc. (“Gray”) submits these Comments urging the Commission to make good on its obligation under Section 202(h) of the Telecommunications Act of 1996 to eliminate rules that are no longer in the public interest as a result of competition by abolishing the prohibition on a single entity owning two television stations each ranked among the top four stations in a local market (the “Top-4 Restriction”). Eliminating the Top-4 Restriction is long overdue, but given the dizzying pace of change in the video marketplace in just the last few years, prompt action on this outdated rule is critical. The Commission waited too long before finally eliminating the newspaper/broadcast cross-ownership rule. It must not make the same mistake with the local television ownership rules by clinging to old beliefs of what the media market place looked like decades ago or assuming every television market operates just like the very largest markets. Stations in DMAs ranked 76 and smaller (“Small Markets”) are different from the largest markets. The advertising base in Small Markets is significantly smaller than that of larger markets. Therefore, the need for ownership relief is more acute.

Gray owns or is acquiring television stations in 93 markets. The majority of Gray's markets are Small Markets. Gray operates stations with strong local brands and a reputation for service to their local communities. In 2019, the RTDNA honored Gray's local television stations with 57 regional Edward R. Murrow Awards for excellence in journalism, and the Society of Professional Journalists awarded Gray three Sigma Delta Chi Awards for exceptional journalism relating to three separate investigative pieces done by Gray's New Orleans station WVUE-TV. In 2018, the National Association of Broadcasters awarded Gray's stations WJRT-TV in Flint, Michigan and WCTV in Tallahassee, Florida the prestigious Service to Community Awards for medium and small markets, respectively. Even more telling, seven of the ten finalists for those awards were Gray stations. For 2019, six of the finalists for the Service to Community Awards were Gray stations, including WCTV, which won the award for small markets for the second year in a row. Put simply, local news and service to local communities is the backbone of Gray's stations, and Gray believes its commitment to localism is good business. In 87 of Gray's 93 markets, Gray owns the number-one or number-two rated television station.

## **INTRODUCTION AND SUMMARY**

In Small Markets, the Top-4 Restriction causes far more harm than good. Local newsrooms have been shuttered and jobs have been lost because the Top-4 Restriction prohibits combinations that would have strengthened and stabilized a station that was teetering on the edge of unprofitability. Unless the Commission acts now, the loss of local news will accelerate. The competition for eyeballs and advertising dollars has never been fiercer, and stations in Small Markets will continue to be squeezed. Without the efficiencies from common ownership of a second television station, many stations in Small Markets will be forced to eliminate local news.

The next local government scandal will go unexposed, and the next tornado will rip through a small town without a meteorologist calmly explaining to viewers how to stay safe.

If, however, the Top-4 Restriction is eliminated, local news will not only survive in Small Markets, but, with common ownership of two stations, it will expand and can thrive. When Big 4 affiliates combine, it becomes possible to add local news during more hours and more dayparts. Viewers will be better off. Local advertisers and the local economy will be better off as well. As a basic rule of economics, when the supply of a product increases, the price of that product decreases. Here, as the number of hours of local news increases, the supply of advertising units available for sale to local advertisers will also necessarily increase, which will drive down the price of local ad units for local advertisers.<sup>1</sup> Local businesses and the local economy will benefit.

Based on Gray's experience, Gray is confident that eliminating the Top-4 Restriction will pay tremendous dividends in Small Markets. Because the Top-Four Restriction only applies to the primary stream of full-power television stations, Gray has been able to combine two or more Big 4 affiliates in many of its markets using multicast channels, Class A stations, or LPTV. In those instances, Gray has increased the hours of local news available to the public and made critical investments and upgrades in equipment to improve service to the public. Often, the Big 4 station Gray acquired did not offer any local news whatsoever, or if news was provided, the station was on the verge of unprofitability and about to substantially scale back its news

---

<sup>1</sup> When a station increases the hours of local news, those increases are typically at the expense of paid programming and syndicated programming. A station controls 100% of the ad units in its local newscasts. Those ad units then are made available for sale to local advertisers. Meanwhile, for syndicated programming, the syndicator typically retains several ad units in each program for its own sale to national advertisers. As a result, when local news replaces syndicated or paid programming the supply of local ad units for sale to local businesses increases.

department. In some cases, despite being affiliated with a Big 4 network, the station did not have HD capability. Regardless, each time Gray was able to combine its legacy, top-rated Big 4 affiliate with a weaker Big 4 affiliate, viewers were made better off, and local advertisers benefited from more advertising opportunities in more high-quality local newscasts.

Viewers and advertisers in other Small Markets, however, have not been as lucky. In most Small Markets, the Top-4 Restriction prohibits the exact same combinations that Gray has successfully accomplished in other markets. In these markets, if the weaker Big 4 station does not offer local news or has limited HD capabilities, there is little hope that it ever will. The Top-4 Restriction ensures that these struggling Big 4 stations will remain a permanent underclass. The bigger danger, however, applies to the stations that do not appear from the outside to be struggling. They have a long heritage as the top-rated local station in the market and provide the most-watched local newscasts. Yet, in many Small Markets, owners of these stations are seeing ominous trends: expenses for local news are increasing but the core advertising business, which funds local news, is shrinking. Without the benefits of economies of scale from consolidating with another station, these trends are unsustainable. Stations in some Small Markets have eliminated local news already. Others are wrestling with that possibility now. Eliminating the Top-4 Restriction will be a lifeline for these stations and will save local news in many Small Markets.

**I. The Fate of the #1 Rated Newscast in Casper, Wyoming Demonstrates Why the Commission Must Eliminate the Top-4 Restriction.**

If the Commission wants a case study of the consequences for federal regulators refusing to modernize their view of the broadcast marketplace, the Commission should consider Casper, Wyoming. In Casper, Gray owns NBC affiliate KCWY(TV). Gray does not have the benefit of a second Big 4 affiliation on a multicast channel or on a low power station. Moreover, Gray has

not entered into any sharing agreements with other broadcasters in the Casper market to help defray costs and operate more efficiently.<sup>2</sup> Nevertheless, in 2018, KCWY(TV) was the market's top-rated and top-grossing station. According to BIA, it consistently earned more than 40% of the market's advertising revenue, and in some years, it topped 50%. Between 2014 and 2018, Gray invested almost \$1 million upgrading equipment and further improving the on-air product, including installing a new news set and state-of-the art weather and newsroom systems. KCWY(TV) produced the market's highest-rated newscasts and won dozens of prestigious awards for news quality and service to its local community. In short, KCWY(TV) earned more revenue and produced higher-quality content than any other station in the market. Yet, KCWY(TV) was not profitable.

The advertising base in the Casper-Riverton DMA is too small to support a single, standalone station producing its own local newscast. The Casper-Riverton DMA is the 198th ranked market in the country. It has only 48,240 television households, which is the same size as Stafford County, Virginia. According to BIA, in 2018 the total over-the-air advertising revenue in the Casper-Riverton market across all broadcast stations was only \$4.4 million. By comparison, in 2016, it took WRC-TV, NBC, Washington, DC, a little over two weeks to earn \$4.4 million in advertising revenue.<sup>3</sup>

Often, consolidating with another Big 4 affiliate is the only way a station in a Small Market can produce a profitable local newscast. Local news is expensive. The average ABC, CBS, and NBC affiliate in DMAs ranked 101 and smaller spends more than \$1.4 million per year

---

<sup>2</sup> The other three Big 4 affiliates in Casper have entered into various sharing arrangements among themselves. Thus, a sharing agreement was not a possibility for KCWY(TV).

<sup>3</sup> According to BIA's Media Access Pro database, WRC-TV earned \$112 million in revenue in 2016, which averages to \$2.15 million per week.

to produce local news.<sup>4</sup> In Small Markets – more often than not – it is only possible to justify these large expenses by spreading the costs across two or more local stations. The revenue from a second Big 4 station can transform an unprofitable newsroom into an economically sustainable operation.

Indeed, this is what doomed Gray’s number-one-rated news operation in Casper. In January 2019, Gray announced it would eliminate its local news in Casper. As a standalone NBC affiliate without access to another Big 4 station in the market, Gray was forced to shutter its highly rated, but unprofitable, local news.

Today, KCWY(TV) imports its local news from three hours away in Cheyenne, Wyoming. The Cheyenne DMA has only 3,000 more television households than the Casper-Riverton DMA, but Gray’s local news in Cheyenne is profitable. Not coincidentally, Gray controls two Big 4 affiliations in Cheyenne: KGWN-TV has CBS on its primary channel and NBC on a multicast channel.

The vastly different outcomes in the otherwise similar markets of Casper and Cheyenne, demonstrate how irrational and arbitrary the Top-4 Restriction is when applied to Small Markets. The Casper-Riverton DMA has four full-power television stations (not including satellites), and each full power station is affiliated with one of the Big 4 networks. As a result, each station is ranked in the top four, the Top-4 Restriction prohibits any consolidation, and Gray is unable to provide local news. Meanwhile, the Cheyenne-Scottsbluff DMA has only two full power television stations (not including satellites), and Gray was able to add NBC as a multicast

---

<sup>4</sup> National Ass’n of Broad., *Television Financial Report: 2016 Industry Business Report, Station Revenue, Expenses and Profit*, Tables 54, 60 & 71 (2016) (“NAB TV Financial Report”)



channel for KGWN-TV in 2014. Thus, in Cheyenne, Gray legally owns both the CBS and the NBC affiliates, and Gray provides local news on both program streams.

## **II. The Commission Cannot Rationally Apply the Top-4 Restriction in Small Markets.**

The fatal flaw of the Top-4 Restriction is that it assumes every market is like Washington, DC with four strong Big 4 affiliates, each with independent news operations, plus strong CW, MyNetworkTV, Telemundo, and Univision affiliates. But like Newtonian physics, which break down once an object approaches the speed of light, the Top-4 Restriction makes no sense once one leaves the 75 largest DMAs. The assumptions justifying the Top-4 Restriction – (1) the top-four ranked stations in a market typically coincide with the Big 4 networks<sup>5</sup> and (2) a ratings cushion exists between the fourth and fifth ranked stations in most markets<sup>6</sup> – are demonstrably false or wholly inapplicable in Small Markets.

The Top-4 Restriction should not be applied to stations in Small Markets because the rule's underlying assumptions do not translate to DMAs 76 and smaller. Of the 135 Small Markets, 84 markets have four or fewer full power television stations. In other words, in 62% of Small Markets, instead of narrowly targeting only those transactions that are potentially harmful, the Top-4 Restriction prohibits all transactions. The Top-4 Restriction assumes that every station in a Small Market is strong and capable of meaningfully contributing to its local market. Thus, every transaction is presumed harmful to competition. The reality is just the opposite. In a

---

<sup>5</sup> 2006 Quadrennial Regulatory Review, Report & Order & Order on Reconsideration, 23 FCC Rcd 2010, ¶102, (2007) (“2006 Quadrennial Review”); 2002 Biennial Regulatory Review, Report & Order & Notice of Proposed Rulemaking, 18FCC Rcd 13620, ¶196 (2003).

<sup>6</sup> 2014 Quadrennial Regulatory Review, Order on Reconsideration & Notice of Proposed Rulemaking, 32 FCC Rcd 9802, ¶79 (2017); 2006 Quadrennial Review, ¶102; 2002 Biennial Review, ¶195.

Small Market, simply holding a Big 4 affiliation is not a sign of financial success,<sup>7</sup> and most stations cannot afford to offer their own stand-alone local news operation.

In addition, the much-relied-upon “ratings cushion” between the fourth and fifth ranked stations does not exist in Small Markets. As an initial matter, 62% of Small Markets have 4 or fewer full power television stations. Thus, by definition, in the majority of Small Markets, there is no fifth-ranked station. But, even in markets with a fifth-ranked station, ratings data show no pattern or a clear and consistent break between the fourth and fifth ranked stations. Gray owns stations in 67 of the 135 Small Market DMAs, and Gray reviewed the Comscore All-Day (5am-5am) ratings for March 2019 for each commercial, full-power primary stream in its 67 Small Markets.<sup>8</sup> In only 33.3% of Gray’s Small Markets with at least five full power stations is the largest ratings gap between the fourth and fifth ranked stations. In two-thirds of Gray’s Small Markets with at least five full power stations (16 out 24 markets), the largest ratings cushion actually occurs after the first, second, or third ranked station. In fact, to the extent there is any discernable pattern, the ratings cushion is more likely to occur after the third ranked station than the fourth ranked station. In short, when it comes to Small Markets, the so-called “ratings cushion,” which has served as the primary justification for the Top-4 Restriction for more than a decade, is a myth. The Commission cannot continue to justify the Top-4 Restriction on a theory that is demonstrably false.

---

<sup>7</sup> See *Withers Broadcasting Company*, 32 FCC Rcd 3179 (2017) (granting a failing station waiver for Gray to acquire FOX affiliate WVFX(TV) in the Clarksburg-Weston DMA (DMA #170)); *Pappas Arizona License, LLC*, 28 FCC Rcd 17048 (2013) (granting a filing station waiver to Blackhawk Broadcasting, LLC to acquire CBS affiliate KSWT(TV) in the Yuma-El Centro DMA (DMA Rank #166)); FCC File No. BALCDT-20180212ABS (explaining that FOX affiliate KFNB(TV), Casper, Wyoming (DMA Rank #198) was ranked fifth in its market behind LPTV KWYF-LD, which is affiliated with MeTV).

<sup>8</sup> See Exhibit A.

The Commission also cannot justify the Top-4 Restriction on the theory that it will ensure separate ownership of two or more Big 4 affiliates. If that is the goal, the rule has already failed. In 83 Small Markets, which is 61% of all Small Markets, at least one Big 4 affiliation can be found on a multicast channel, LPTV, or Class A station. Thus, in a clear majority of Small Markets, a combination of two Big 4 affiliates is possible, yet in the remaining Small Markets, like Casper, Wyoming or Sioux Falls, South Dakota, the exact same combination requires a waiver of the Top-4 Restriction. That is irrational. The Commission cannot meaningfully distinguish between Casper and Sioux Falls on the one hand and the 83 other Small Markets.

**III. With Today’s Hyper-Competitive and Rapidly Evolving Video Marketplace, the Commission Must Eliminate the Top-4 Restriction and Allow Broadcasters to Form Duopolies in All Markets – Especially Small Markets.**

For local television stations to survive in Small Markets, the Commission must eliminate the Top-4 Restriction from every market – regardless of size and regardless of the number of full power stations in the market – and allow broadcasters the latitude to form duopolies. Permitting duopolies in all markets, but especially Small Markets, will promote competition, localism, and diversity because it will enable stations to offer more local news and higher quality local programming.

Without full duopoly relief in every market, however, local news will slowly disappear in Small Markets. As the National Association of Broadcasters fully and accurately documents in its Comments, broadcasters face more competition than ever before, including cable and satellite operators, hundreds of online video services, social media platforms, and a rapidly growing array of OTT and vMVPD providers.<sup>9</sup> This explosion of competitive options has caused tremendous

---

<sup>9</sup> *Comments of the National Association of Broadcasters*, MB Docket No. 18-349 (Apr. 29, 2019) at Section VII.

audience fragmentation, which directly affects the ratings and advertising revenue earned by local broadcast stations. Stations in Small Markets already operate on thin margins and have less ability to absorb the slow bleed of viewers and advertising revenue. But, given the dizzying pace of change, further erosion is inevitable. Therefore, the time to act is now. If the Commission waits until the 2022 Quadrennial Review, it will be too late.

Prompt regulatory relief is a matter of public safety. Broadcast stations that provide local news are often the only source of critical information during a local emergency. When a tornado is bearing down on a small town, a meteorologist on a local television station can be the difference between life and death. Gray knows this firsthand. On March 3, 2019, a powerful tornado tore through southeast Alabama killing 23 people. The live coverage by Gray's station WSFA-TV and its chief meteorologist Josh Johnson is credited by many for why the death toll was not higher.<sup>10</sup> Of course, if WSFA-TV did not have a fully staffed newsroom and if WSFA-TV had not made the investment in state-of-the-art weather technology, that life-saving message never would have reached the viewers who needed it. Therefore, it is imperative that the Commission bring much needed ownership relief before the next station in a Small Market finds that, as a result of increased competition, local news is no longer profitable.

A. The Commission Must Allow Duopolies in All Markets – No Matter the Market Size or Number of Stations in the Market.

The Commission must eliminate the Top-4 Restriction and allow duopolies in all markets, including markets with only two full power television stations. Duopoly relief is

---

<sup>10</sup> Matthew Cappucci, “‘Your life IS in danger’: Calm-yet-serious forecasters credited with saving lives during deadly Alabama tornado, WASH. POST (March 7, 2019), *available at* [https://www.washingtonpost.com/weather/2019/03/07/your-life-is-danger-calm-yet-serious-forecasters-credited-with-saving-lives-during-deadly-alabama-tornado/?utm\\_term=.a70974af189e](https://www.washingtonpost.com/weather/2019/03/07/your-life-is-danger-calm-yet-serious-forecasters-credited-with-saving-lives-during-deadly-alabama-tornado/?utm_term=.a70974af189e)

especially important in these very small markets because these markets have the smallest advertising base. Indeed, in most of these two-station markets, the local advertising base can only support one local news operation anyway. The other full power station either does not provide any local news or it imports “local” news produced in another market. Thus, the loss of diversity from combining these two stations will be minimal. The benefits, however, will be tremendous. The combined operation will be able to spread its costs across two television stations and likely will be able to justify expanding local news operations. More hours of local news will mean more local advertising spots available for sale to local advertisers, which will place downward pressure on advertising rates. Both stations will be stronger and in a better position to serve their local communities. The efficiencies from joint operation and the sharing of costs across two stations will ensure that local news remains profitable in these small markets.

B. The Economics of Operating a Television Station in a Small Market Are Different and Far More Challenging than Operating in Larger Markets.

The ownership rules applying to Small Markets must reflect reality in Small Markets. For too long, the Commission has based its ownership rules on data and assumptions from the ten largest markets.<sup>11</sup> The economics in Small Markets, however, are completely different. As just one example, the average Big 4 affiliate in the Top 10 DMAs spent on average \$15.7 million in 2015 to produce local news.<sup>12</sup> That is more than what BIA projects every commercial television station combined in the Albany, Georgia market (DMA #152) will earn from advertising sales in 2019. Small Markets have a significantly smaller population and advertising base than larger markets. For example, the average number of television households in DMAs

---

<sup>11</sup> See *Prometheus Radio Project v. FCC*, 373 F.3d 372, 418 (3<sup>rd</sup> Cir. 2004) (upholding the Top-4 Restriction based on data from “the ten largest markets”).

<sup>12</sup> *NAB TV Financial Report*, Table 19

ranked 76 through 100 are roughly equivalent to the number of television households in Montgomery County, Maryland. Moreover, advertisers in smaller markets spend disproportionately less on advertising per retail sales and per capita.<sup>13</sup> In the top 75 DMAs, Kagan predicts that advertising revenue will grow by 1.6% per year from 2019 to 2023.<sup>14</sup> For Small Markets, Kagan predicts 0.7% annual growth during the same period. All in all, stations in Small Markets cannot afford to invest in local programming to the same extent as larger markets. To make local programming affordable, Small Market stations must share resources across multiple stations both within their own market and from adjacent markets.

In large markets, viewers take for granted that local news is readily available at different times when they want to watch it. The larger revenue base in larger markets means that stations in these markets can afford larger news staffs and produce more hours per week of local news. In the top-25 DMAs, the average station broadcasts almost 40 hours of local news per week and employs more than 75 full time employees for news production.<sup>15</sup> As a result, viewers in these markets are super served. They can watch local news on their local FOX or CW affiliate (or both) at 10pm or in the mornings from 7am-9am, when the other Big 3 networks run national network programming.

---

<sup>13</sup> BIA Advisory Services, *Investing in Television 2018 Market Report* (2018 2<sup>nd</sup> Ed.), at 23-24.

<sup>14</sup> Kagan, a media research group within S&P Global Market Intelligence, *TV Markets 5-Year Demographic Growth and Estimated Ad Revenue per TV Household '19-'23*.

<sup>15</sup> 2018 RTDNA/Hofstra University Newsroom Survey: Local News by the Numbers, at 6 (2018) available at <https://rtdna.org/uploads/files/2018%20Local%20News%20Research.pdf>; 2018 RTDNA/Hofstra University Newsroom Survey: Local News Staffing, at 3 (2018) available at <https://rtdna.org/uploads/files/2018%20RTDNA%20Newsroom%20Staffing%20Research.pdf>.

In Small Markets, these additional newscasts are luxuries. Across all 210 DMAs, only 77 FOX affiliates originate their own local news.<sup>16</sup> If a FOX affiliate broadcasts local news in a Small Market, almost certainly that news is produced in conjunction with another station in the market or from an adjacent market. Stations in Small Markets air fewer hours of local news per week and employ fewer people on their news staffs than stations in larger markets:

<b>DMA Rank</b>	<b>Average Hours of Local News (Weekdays)</b>	<b>Average Hours of Local News (Weekends)</b>	<b>Average Hours of Local News (Total)</b>	<b>Average Number of Full-Time News Employees</b>
1-25	33.0	6.5	39.5	75.3
26-50	34.0	7.4	41.4	66.7
51-100	29.5	4.9	34.4	42.8
101-150	27.5	3.3	30.8	28.5
151-210	19.5	1.8	21.3	17.6

Once one leaves the top 50 DMAs, the drop off is dramatic. Put simply, the revenue base is too small to justify the investments in newsgathering seen in larger markets. But, with the efficiencies and economies of scale from operating multiple Big 4 affiliates in a market and with the promotional power from multiple stations to drive viewers to local newscasts, stations in Small Markets can close the gap with larger markets and provide a similar level of service.

#### **IV. Gray's Experience Owning Multiple Big 4 Affiliates in Small Markets Proves that Permitting Duopolies in All Small Markets Serves the Public Interest.**

Owning two or more Big 4 affiliates in a market allows broadcasters to better serve their local communities. Gray's experience adding a second or third Big 4 affiliate in several of its Small Markets proves that the Top-4 Restriction does not serve the public interest and demonstrates that allowing broadcasters to own duopolies in Small Markets will benefit local

---

<sup>16</sup> 2018 RTDNA/Hofstra University Newsroom Survey: Local News by the Numbers, at 2 (2018) available at <https://rtdna.org/uploads/files/2018%20Local%20News%20Research.pdf>.

viewers and local advertisers. Over the last five years, Gray has used multicast channels, Class A stations, and LPTV to create Big 4 duopolies that otherwise would have been prohibited under the Top-4 Restriction. In each instance, the public has been the true beneficiary:

- ***Lincoln & Hastings-Kearney, NE (DMA #111)***: Gray owns the market's CBS affiliate KOLN-TV. In 2014, Gray acquired the NBC affiliation and moved it to Gray's station KSNB-TV. Before the transaction, the market's local NBC affiliate was not available over the air or on cable in Lincoln, which is the market's largest city and economic engine. It only offered 16 hours of local news per week. After the transaction, Gray secured carriage of its NBC station on cable throughout the entire DMA and used a multicast channel for KOLN-TV to ensure that over-the-air viewers in Lincoln could watch their local NBC affiliate. Gray expanded the local morning news on KSNB-TV and added local news on the weekends. Today, KSNB-TV broadcasts 22 hours of local news per week – nearly a 40% increase – and focuses on the Hastings-Kearney side of the DMA, which is 90 miles from Lincoln and traditionally has been underserved compared to the more populous Lincoln side of the market. By focusing KSNB-TV on Hastings and Kearney, Gray can use KOLN-TV's newscasts to better serve viewers in Lincoln. As a result, viewers on both sides of the market receive top quality coverage and news more relevant to their local communities.
- ***Wausau-Rhineland, WI (DMA #134)***: Gray owns CBS affiliate WSAW-TV. In 2015, Gray obtained the FOX affiliation and moved it to LPTV WZAW-LD. Prior to the transaction, the former FOX affiliate could not afford to produce its own local newscasts and entered into a news production agreement with the ABC



affiliate in the market. Since 2015, Gray has added on WZAW-LD local news at 4pm weekdays and regular local sports specials, including, for example, various Green Bay Packers programs and live coverage of local college sporting events.

- ***Minot-Bismarck-Dickinson-Williston, ND (DMA #146):*** In 2014 in two separate transactions, Gray acquired the market's NBC affiliate and FOX affiliate. Before the transactions, the FOX affiliate was not providing any local news, and in Williston, North Dakota the station's signal was still broadcast by an analog LPTV. Since then, Gray has upgraded the FOX affiliate's facilities to broadcast a high definition signal throughout the market and added a new local news program on the FOX affiliate at 9pm.
- ***Biloxi-Gulfport, MS (DMA #156):*** Gray owns ABC affiliate WLOX-TV in Biloxi. In 2012, Gray added a CBS affiliation to WLOX-TV's multicast channel. Prior to then, CBS programming was not available over the air to many viewers in the DMA, and cable and satellite operators imported a CBS from a distant market. In addition to providing a local CBS option to viewers in this Small Market, Gray increased its total local news programming available in the market by using both of WLOX-TV's programming streams. Gray was able to add local news to the CBS program stream at times when WLOX-TV's ABC stream was airing nationally syndicated programming. Thus, for the first time, viewers would have the option to watch either local news on the CBS multicast or syndicated programming on the ABC primary stream.
- ***Rapid City, SD (DMA #171):*** In 2016, Gray acquired ABC affiliate KOTA-TV. Gray already owned the FOX affiliate. In the last three years, Gray has launched

weekend evening newscasts on KOTA-TV on Saturdays and Sundays at 5:30p, and this summer Gray will be adding a morning news on its FOX affiliate KEVN-LD from 7:00a-9:00a. If Gray had not acquired KOTA-TV in 2016, KEVN-LD's local news likely would be teetering on the edge of profitability today, and Gray might have been forced to cut back news in Rapid City. Instead, the combined stations are thriving, and viewers are better served than ever before.

- ***Laredo, TX (DMA #184):*** Gray owns KGNS-TV, which broadcasts NBC on its primary stream and ABC on a multicast stream. In 2015, Gray obtained the CBS affiliation and added it to LPTV KYLX-LD. Before the transaction, the local CBS affiliate did not offer any local news and did not have the capability to run any severe weather alerts or other emergency programming. The station also could not originate programming in high definition. It passed through high definition programming from the CBS network, but all local commercials and other local programming were in standard definition. Gray immediately upgraded the station to ensure that viewers would receive emergency programming and to make it fully HD capable. In addition, Gray added an evening news at 6:30pm on KYLX-LD. Gray also began providing local morning updates on its ABC and CBS stations during the local cut-ins in CBS Morning News and Good Morning America. As a result of Gray's combined ownership, Laredo advertisers have more and better opportunities to reach their customers. Moreover viewers are equipped with more local news and are immeasurably safer with access to severe weather and other emergency alerts whether they are watching NBC, ABC, or CBS.

- ***Grand Junction-Montrose (DMA #187):*** Gray owns the top rated and highest grossing station in the DMA, NBC affiliate KKCO(TV). Local news on KKCO(TV), however, was no longer profitable. In 2014, Gray acquired ABC affiliate KJCT-LD, which is the third ranked station in the market. It also was not profitable. If Gray had not combined these stations, it is likely that neither would be providing any local news today. Instead, today, both stations are thriving and provide a total of 40 hours of local news per week. Plainly, viewers in Grand Junction are better off.

Viewers in each of these markets benefitted because the Top-4 Restriction did not apply. Viewers in other Small Markets, however, are not as lucky, and the Top-4 Restriction continues to place an artificial damper on the output of local news. For example, in Sioux Falls, South Dakota (DMA #115) all four Big 4 affiliates are separately owned by full-power stations without any sharing agreements. Not coincidentally, only one station provides weekend morning news, and the FOX affiliate provides no local news whatsoever. There are no local news options at 9pm CT or from 7a-9a on weekday mornings. The top-rated station in the market earns an overwhelming share of news viewers. Any combination involving the second, third, or fourth rated stations in Sioux Falls undoubtedly would increase the output of local news in the market, which would benefit viewers and advertisers, but the Top-4 Restriction prohibits it.

The Commission must eliminate a rule that is actively harmful to the public interest. If the Top-4 Restriction is eliminated, broadcasters in Small Markets will finally be able to form duopolies and benefit from economies of scale. Struggling stations will be rescued to better promote competition, and local news will be expanded to better promote localism.

## **CONCLUSION**

KCWY(TV) in Casper, Wyoming should be the canary in the coal mine. When a strong station like KCWY(TV) cannot be profitable, something is wrong. To prevent more stations like KCWY(TV) from cutting back on local news and local service, the Commission must eliminate the Top-4 Restriction and allow broadcasters in Small Markets to create duopolies to strengthen their local operations to better serve their communities.

Respectfully submitted,

**GRAY TELEVISION, INC.**



---

Robert J. Folliard, III  
Vice President, Government Relations & Distribution

Gray Television, Inc.  
4370 Peachtree Rd., NE  
Atlanta, GA 30319  
202-750-1585

April 29, 2019

## EXHIBIT A

### Nonexistent “Ratings Cushion” In Small Markets (DMAs 76-210)

DMA Rank	Market	Gap Between #3 and #4	Gap between #4 and #5
76	Wichita-Hutchison	145%	28%
79	Huntsville-Decatur	163%	122%
86	Madison	181%	2,463%
87	Cedar Rapids-Waterloo-Iowa City & Dubuque	419%	69%
89	Waco-Temple-Bryan	365%	335%
90	Shreveport	166%	25%
91	Colorado Springs-Pueblo	95%	1,569%
92	Jackson	286%	171%
95	Myrtle Beach-Florence	110%	14%
96	Burlington-Plattsburgh*	50%	145%
98	Davenport-Rock Island-Moline	209%	166%
100	Boise	84%	109%
107	Greenville-New Bern-Washington	325%	43%
109	Reno	172%	320%
111	Lincoln & Hastings-Kearney	61%	246%
114	Tyler-Longview*	85%	85%
116	Montgomery-Selma*	8%	164%
127	Columbus, GA*	7%	176%
131	Amarillo	169%	269%
137	Monroe-El Dorado	27%	2,099%
142	Odessa-Midland	180%	3%
143	Lubbock	81%	290%
146	Minot-Bismarck-Dickinson*	129%	73%
147	Anchorage*	29%	24%
	<b>Total:</b>	<b>10</b>	<b>8</b>

\* In these markets the largest gap was between the #1 and #2 or #2 and #3 stations:

- Burlington-Plattsburgh: The largest gap is between #2 and #3 (263%).
- Tyler-Longview: The largest gap is between #1 and #2 (264%).
- Montgomery: The largest gap is between #2 and #3 (205%).
- Columbus, GA: The largest gap is between #2 and #3 (192%).
- Minot-Bismarck-Dickinson: The largest gap is between #2 and #3 (169%).
- Anchorage: The largest gap is between #1 and #2 (194%).

Gray reviewed the Comscore 5am-5am ratings for all adults 18 years and older for March 2019 for each market that Gray owns a station in DMAs ranked 76 through 210. All told, Gray owns stations in 67 of these markets. Thus, ratings in each of these 67 markets were reviewed. In 24 of these markets, Comscore reported ratings for at least five full-power commercial television stations. In its review, Gray excluded noncommercial stations, multicast channels, LPTV, and Class A stations because these stations are not subject to the Commission’s local television ownership rules. If Comscore reported separate ratings for satellite stations, Gray aggregated the ratings for the satellite and its parent.

**EXHIBIT B — Number of Stations In Small Markets and Small Markets without all Big 4 Affiliates on the  
Primary Signal of a Full Power Station**

<b>SMALL TV MARKETS (DMAs 76-210)</b> <b>2018-2019</b>				
<b>Market Rank</b>	<b>Market Name</b>	<b>TV Households</b>	<b>Full Power Commercial Stations (excluding satellites)</b>	<b>Big 4 Not on Full Power Primary</b>
76	Wichita-Hutchinson Plus	382,780	7	
77	Spokane	382,690	7	
78	Harlingen-Wslco-Brnsvl-McA	375,600	5	FOX
79	Huntsville-Decatur (Flor)	372,770	5	
80	Rochester, NY	352,070	4	
81	Syracuse	350,730	7	
82	Champaign&Sprngfld-Decatur	344,500	6	
83	Chattanooga	341,190	6	FOX
84	Portland-Auburn	339,980	6	
85	El Paso (Las Cruces)	338,770	5	
86	Madison	338,240	5	
87	Cedar Rapids-Wtrlo-IWC&Dub	330,340	7	
88	Paducah-Cape Girard-Harsbg	324,020	7	
89	Waco-Temple-Bryan	322,820	6	
90	Shreveport	322,610	6	
91	Colorado Springs-Pueblo	319,930	5	
92	Jackson, MS	306,770	7	
93	Savannah	303,390	5	
94	Charleston, SC	302,330	5	ABC
95	Myrtle Beach-Florence	302,040	5	
96	Burlington-Plattsburgh	294,260	5	
97	Baton Rouge	287,430	4	
98	Davenport-R.Island-Moline	280,420	6	
99	South Bend-Elkhart	274,380	4	ABC, FOX
100	Boise	273,500	6	
101	Ft. Smith-Fay-Sprngdl-Rgrs	272,240	6	
102	Tri-Cities, TN-VA	266,110	5	ABC
103	Evansville	265,790	4	FOX
104	Ft. Wayne	265,420	6	NBC
105	Augusta-Aiken	264,350	3	NBC
106	Johnstown-Altoona-St Colge	262,840	5	
107	Greenville-N.Bern-Washngtn	261,830	5	
108	Springfield-Holyoke	251,660	2	CBS, FOX
109	Reno	246,190	6	
110	Lansing	241,940	4	
111	Lincoln & Hastings-Krny	240,660	5	
112	Tallahassee-Thomasville	237,940	6	FOX
113	Peoria-Bloomington	234,050	5	ABC
114	Tyler-Longview(Lfkn&Ncgd)	232,180	5	
115	Sioux Falls(Mitchell)	231,540	5	
116	Montgomery-Selma	229,330	8	
117	Fargo-Valley City	228,740	5	CBS
118	Macon	224,180	5	ABC

**EXHIBIT B — Number of Stations In Small Markets and Small Markets without all Big 4 Affiliates on the Primary Signal of a Full Power Station**

<b>Market Rank</b>	<b>Market Name</b>	<b>TV Households</b>	<b>Full Power Commercial Stations (excluding satellites)</b>	<b>Big 4 Not on Full Power Primary</b>
119	Yakima-Pasco-RchInd-Knnwck	223,450	4	
120	Traverse City-Cadillac	218,520	4	
121	Lafayette, LA	216,420	4	NBC
122	Bakersfield	215,360	4	FOX
123	Eugene	215,070	5	
124	SantaBarbra-SanMar-SanLuOb	213,510	5	FOX
125	Youngstown	213,380	3	FOX
126	Monterey-Salinas	206,300	4	ABC
127	Columbus, GA (Opelika, AL)	198,740	5	
128	Corpus Christi	193,070	5	
129	Wilmington	190,390	3	CBS
130	La Crosse-Eau Claire	186,870	4	
131	Amarillo	175,880	7	
132	Chico-Redding	171,220	4	
133	Columbus-Tupelo-W Pnt-Hstn	168,210	4	ABC
134	Wausau-Rhineland	157,180	4	FOX
135	Medford-Klamath Falls	156,520	5	
136	Columbia-Jefferson City	156,430	4	FOX
137	Monroe-El Dorado	156,410	5	ABC
138	Salisbury	152,980	2	NBC, FOX
139	Rockford	152,800	3	CBS
140	Beaumont-Port Arthur	152,710	3	NBC
141	Topeka	151,860	4	FOX
142	Odessa-Midland	150,430	7	
143	Lubbock	150,270	6	
144	Duluth-Superior	148,870	5	CBS
145	Palm Springs	147,170	2	CBS, FOX
146	Minot-Bsmrck-Dcknsn(Wlstn)	145,200	4	FOX
147	Anchorage	142,000	6	
148	Wichita Falls & Lawton	139,590	4	
149	Sioux City	135,660	4	
150	Panama City	135,550	5	CBS
151	Erie	133,260	4	
152	Albany, GA	130,950	4	ABC
153	Joplin-Pittsburg	129,600	4	
154	Rochestr-Mason City-Austin	128,700	4	
155	Bangor	124,190	3	FOX
156	Biloxi-Gulfport	122,100	2	CBS, NBC
157	Gainesville	120,580	4	
158	Terre Haute	120,350	3	FOX
159	Sherman-Ada	118,390	2	ABC, FOX
160	Binghamton	115,960	3	NBC
161	Idaho Fals-Pocatllo(Jcksn)	115,750	5	FOX
162	Wheeling-Steubenville	113,690	2	ABC, FOX
163	Bluefield-Beckley-Oak Hill	109,900	4	FOX
164	Missoula	109,440	4	FOX

**EXHIBIT B — Number of Stations In Small Markets and Small Markets without all Big 4 Affiliates on the Primary Signal of a Full Power Station**

<b>Market Rank</b>	<b>Market Name</b>	<b>TV Households</b>	<b>Full Power Commercial Stations (excluding satellites)</b>	<b>Big 4 Not on Full Power Primary</b>
165	Abilene-Sweetwater	104,440	5	
166	Yuma-El Centro	101,040	5	ABC
167	Billings	100,330	4	
168	Hattiesburg-Laurel	99,680	2	ABC, FOX
169	Utica	91,520	3	CBS
170	Clarksburg-Weston	90,960	3	ABC
171	Rapid City	90,940	4	FOX
172	Lake Charles	90,570	2	CBS, ABC
173	Dothan	90,420	3	NBC
174	Quincy-Hannibal-Keokuk	88,510	3	ABC, FOX
175	Harrisonburg	84,950	1	NBC, CBS, FOX
176	Elmira (Corning)	83,190	3	CBS
177	Jackson, TN	83,010	2	CBS, NBC
178	Watertown	79,690	2	NBC, FOX
179	Alexandria, LA	79,250	4	CBS
180	Jonesboro	75,220	2	NBC, CBS, FOX
181	Bowling Green	74,500	2	CBS, FOX
182	Marquette	74,070	4	FOX
183	Charlottesville	71,370	2	ABC, FOX
184	Laredo	70,220	2	ABC, CBS, FOX
185	Butte-Bozeman	67,190	3	FOX
186	Bend, OR	65,900	2	CBS, FOX
187	Grand Junction-Montrose	64,160	4	ABC
188	Lafayette, IN	63,660	1	NBC, ABC, FOX
189	Twin Falls	59,990	2	NBC, ABC, FOX
190	Lima	59,440	2	ABC, CBS, FOX
191	Meridian	59,030	3	NBC
192	Great Falls	56,270	2	NBC, FOX
193	Greenwood-Greenville	55,640	2	NBC, CBS, FOX
194	Parkersburg	53,750	1	ABC, CBS, FOX
195	Eureka	53,630	4	
196	San Angelo	52,790	3	ABC
197	Cheyenne-Scottsbluff	51,200	2	NBC, ABC
198	Casper-Riverton	48,240	4	
199	Mankato	47,370	1	NBC, ABC, FOX
200	Ottumwa-Kirksville	40,840	2	CBS, NBC
201	St. Joseph	40,200	2	NBC, CBS, FOX
202	Fairbanks	32,880	4	CBS
203	Victoria	30,540	2	CBS, NBC
204	Zanesville	29,180	1	ABC, CBS, FOX
205	Helena	26,440	1	ABC, CBS, FOX
206	Presque Isle	24,740	1	NBC, ABC, FOX
207	Juneau	22,940	2	NBC, FOX
208	Alpena	14,430	1	NBC, ABC, FOX
209	North Platte	12,830	1	ABC, CBS, FOX
210	Glendive	3,590	1	NBC, ABC, FOX