May 16, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20554

Re: *Ex Parte* Filing in MB Docket No. 17-318

Dear Ms. Dortch:

The following Local Broadcasters write to submit *ex parte* comments concerning the issue of the appropriate scope of the National Television Ownership Rule (or National Ownership Cap) in the above-captioned docket. The Local Broadcasters include Hearst Television, Inc.; Scripps Media, Inc.; Raycom Media, Inc.; Gray Television, Inc.; Graham Media, Inc.; Quincy Media, Inc.; Dispatch Broadcast Group and Morgan Murphy Media, Inc. A description of each of the entities is set forth in Appendix 1.

Collectively, the Local Broadcasters possess more than 487 years of broadcast experience and today operate 306 local television stations, providing some 790 program streams[1] throughout the United States in markets large and small.[2] The Local Broadcasters are proud stewards of their public interest obligations and operate high-quality local television stations. The Local Broadcasters also operate independent, fully-local stations that provide local news and information. Together, the Local Broadcasters produce and broadcast some 6,354 hours of local

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1 Includes full power, low power, satellite, and TV translator stations.

[2] Markets served by Local Broadcasters range in size from Dallas, Texas (5th ranked Nielsen DMA) to North Platte, Nebraska (209th ranked Nielsen DMA).

news in their markets each week. Among the 306 stations are 84 ABC Affiliates, 59 CBS Affiliates, 32 Fox Affiliates, 79 NBC Affiliates, along with numerous CW, MyNetwork, and other program services.[3]

The Local Broadcasters are thoroughly conversant with the economic aspects of network-affiliate relationships.[4] Along with their counsel, they have reviewed the comments and reply comments filed in this Docket.

The Local Broadcasters submit these ex parte comments to advocate that the Commission (1) set the National Ownership Cap at 50% of the national television audience, (2) eliminate the UHF Discount, and (3) "grandfather" pre-existing ownership combinations in excess of the 50% cap.

We believe this policy determination to be merited by the intense competitive climate in the local video marketplace and the need to permit groups like the Local Broadcasters to achieve the scale and scope essential to their ability to effectively provide the local news, weather, and information required for local broadcasting to continue to play its critical role as part of a healthy local video ecosystem in communities throughout the country. As the Commission is mandated by the Communications Act to ensure that America's local system of broadcasting thrives,[5] the Local Broadcasters believe this solution to be the optimal outcome for this proceeding.

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[3] Includes network program services delivered via multicast streams, TV satellites, and TV translator stations.

[4] *See generally* Joint Comments of ABC, CBS, Fox, and NBC Affiliates, MB Docket No. 19-318 (March 19, 2018) ("Affiliates' Joint Comments").

[5] *See* 47 U.S.C. Section 307(b). *See also A History of the Statutory and Regulatory Framework for Regulation of the Television Network-Affiliate Relationship* contained in Affiliates' Joint Comments, Exhibit 1, at p. 49.

I.

The Local Video Marketplace Is Intensely Competitive and Needs Additional High Quality Journalism

The Commission is well aware, and the comments and reply comments in this proceeding make plain, that the local video marketplace is, in fact, intensely competitive.[6] At no time in the history of television have there been so many providers of video programming vying for the attention of the American public.[7] Free over-the-air television stations compete with: (1) cable operators, telcos, and satellite providers offering hundreds of video channels; (2) online video distributors (OVDs) such as Netflix and Amazon offering extensive video on demand (VOD) program offerings; (3) over the top providers (OTTs) such as DIRECTV Now, DISH Sling, Hulu, FuboTV, and Sony PlayStation Vue, among others, offering a mix of linear streams of video programming and VOD; and (4) Internet-based platforms and services such as Google and Facebook, which take prodigious quantities of advertising dollars out of local markets.[8] Among all these competitors in local video markets, only local television stations have any legal obligation to serve the interests of local communities. As noted, the Communications Act itself compels the Commission to evaluate and ensure that "localism" remains a vibrant part of the nation's video ecosystem.

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[6] *See* Comments of the National Association of Broadcasters, MB Docket No. 17-318 (March 19, 2018) ("NAB Comments") at pp. 11-22; Affiliates' Joint Comments. *See also Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd 568 (2017).

[7] *See generally Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Eighteenth Report, 32 FCC Rcd 568 (2017).

[8] Facebook and Google currently take more advertising dollars out of local markets than do all local television stations combined. *See* NAB Comments at p. 16 (citing BIA 2018 ad market estimate noting mobile/online advertising at 24.3% of local markets compared to 13.7% for local television); Affiliates' Joint Comments at p. 8.

The Local Broadcasters take their public interest obligation seriously. They are the providers of top-rated local newscasts in their markets. In order to continue to compete effectively, the Local Broadcasters need the ability to achieve economic efficiencies of scale and scope both in their local markets and nationally.[9] The production of high-quality local news and information is a costly undertaking. Duopoly rule relief and modest National Ownership Cap relief are needed to allow the Local Broadcasters (and other operators of local television stations) the opportunity to grow, innovate, and invest profits in their local newsrooms and in delivering investigative and consumer reporting that the marketplace needs.

In order to facilitate the production of high-quality local journalism, the Local Broadcasters must be free to combine television, radio, print, and digital online assets in whatever fashion makes business sense to serve discrete local markets. As the Commission itself has noted, a local broadcaster's "ability to function in the 'public interest, convenience, and necessity' is fundamentally premised on its economic viability."[10] This salient observation remains true today. The elimination of the broadcast/newspaper cross-ownership prohibition was long overdue. Duopoly rule relief is only partially complete and needs further liberalization. The Local Broadcasters urge the Commission to increase the National Ownership Cap to 50% and eliminate the UHF Discount. Taking this action will bring the Cap up to date with the current marketplace and strike a reasonable balance among the competing interests in play.[11]

[9] NAB Comments at p. 13, n.29 (citing authority); Reply Comments of the National Association of Broadcasters, MB Docket No. 19-318 (April 18, 2018) ("NAB Reply Comments") at pp. 20-23 (explaining necessity of scale and scope for local television generally and particularly for competition with Google and Facebook).

[10] *In re Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2760 (1992).

[11] *See generally* Affiliates' Joint Comments.

The Local Broadcasters believe that a 50% National Ownership Cap would allow for measured growth for local station groups, permitting them to achieve economies of scale and scope that would generate profits to re-invest into their newsrooms and local programming development.

Local Broadcasters recognize that administrative line-drawing such as required here can always be subject to dispute. But the Commission was created for the very purpose of applying its expertise and making such judgments.[12] The Local Broadcasters have consulted with an

[12] The Local Broadcasters believe that a rule setting the National Ownership Cap at 50% ought to receive deference from a reviewing court. The Commission should rest its decision on the need to allow for increased economies of scale and scope and the need to safeguard localism in the local video marketplace. Courts are generally "unwilling to review line-drawing performed by the Commission unless a petitioner can demonstrate that lines drawn . . . are patently unreasonable, having no relationship to the underlying regulatory problem." *Covad Communs. Co. v. FCC*, 450 F.3d 528, 541 (D.C. Cir. 2006); *Cassell v. FCC*, 154 F.3d 478, 485 (D.C. Cir. 1998). Also, where an "agency's line-drawing does not appear irrational" and the party challenging the agency's action "has not shown that the consequences of the line-drawing are in any respect dire," the courts "will leave that line-drawing to the agency's discretion." *Leather Indus. of Am. v. EPA*, 40 F.3d 392, 409 (D.C. Cir. 1994); *see also J&G Sales, Ltd. v. Truscott*, 473 F.3d 1043, 1052 (9th Cir. 2007) (stating that an "agency need not craft the perfect threshold in order to survive review, but merely demonstrate that its threshold stems from reasoned decisionmaking"); *Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 214-15 (D.C. Cir. 2013).

In *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001), the court said that the "FCC must provide a rational basis when setting a number for a standard, but it is not held to a standard of perfection." *Id*. at 461. Neither is the FCC "required to identify the optimal threshold with pinpoint precision. It is only required to identify the standard and explain its relationship to the underlying regulatory concerns." *Id*. at 461-62. The "relevant question is whether the agency's numbers are within a zone of reasonableness, not whether its numbers are precisely right." *Id*. at 462 (citation and internal quotation marks omitted). *WorldCom* quoted an earlier decision involving the FCC as follows: "It is true that an agency may not pluck a number out of thin air when it promulgates rules in which percentage terms play a critical role. When a line has to be drawn, however, the Commission is authorized to make a rational legislative-type judgment. If the figure selected by the agency reflects its informed discretion, and is neither patently unreasonable nor a dictate of unbridled whim, then the agency's decision adequately satisfies the standard of review." *Id*. (quoting *WJG Tel. Co. v. FCC*, 675 F.2d 386, 388-89 (D.C. Cir. 1982)). *See also AT&T Corp. v. FCC*, 220 F.3d 607, 627 (D.C. Cir. 2000) (stating that the FCC has "wide discretion to determine where to draw administrative lines" and finding nothing to suggest that it "abused its discretion in drawing the line at ninety as opposed to ninety-five percent [on-time performance rate]"); *Health & Medicine Pol'y Research Group v. FCC*, 807 F.2d 1038, 1043, 1045 n.10 (D.C. Cir. 1986) (stating that "scope of review is particularly limited when the FCC engages in the process of drawing lines, of making judgmental decisions"; in addition, when determining whether a 6, 12, or 24 month period for an ownership rule waiver was appropriate, the FCC was "engaging in classic line-drawing, making judgments to which this court must generally defer").

Finally, it is worth noting that the D.C. Circuit has said that it is particularly loath to second-guess an agency's analysis when it makes "predictive judgments about the likely economic effects of a rule." *Newspaper Ass'n of Am. v. Postal Regulatory Comm'n*, 734 F.3d 1208, 1216 (D.C. Cir. 2013); *see also Nat'l Tel. Coop. Ass'n v. FCC*, 563 F.3d 536, 541 (D.C. Cir. 2009); *Cablevision Systems Corp. v. FCC*, 649 F.3d 695, 716-17 (D.C. Cir. 2011) (in largely upholding rules restricting vertically-integrated cable companies' ability to deny rival MVPDs' access to economic expert and have commissioned an economic analysis that will explain why the adoption of a 50% National Ownership Cap would be an appropriate and reasoned exercise of the Commission's discretion. That study will be provided to the Commission in the near future.

The Local Broadcasters also observe that the UHF Discount simply can no longer be justified. It is an anachronism. Accordingly, it ought to be eliminated.

Finally, because of the reliance interests of those who have built businesses based on the discount's mathematical import, the Local Broadcasters believe the Commission should "grandfather" existing ownership interests in excess of the new 50% National Ownership Cap. While the Commission may have the power to order divestitures, such an action would be inequitable in these circumstances.

II.

Conclusion

The Local Broadcasters appreciate the opportunity to provide the Commission with our views on the scope of the National Ownership Cap. We believe that the adoption of a 50% Cap and the elimination of the UHF Discount will best serve the public interest. The existence of the statutorily-required Quadrennial Review process will ensure that this Rule continues to be the subject of periodic review and adjustment, if warranted, going forward.

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terrestrially delivered programming, court cited the "substantial deference" owed to the FCC's predictive judgments and the general deference given to an agency's decision to proceed on the basis of "imperfect scientific information, rather than to invest the resources to conduct the perfect study"; court also observed that judges "do not sit as a panel of referees on a professional economics journal, but as a panel of generalist judges obliged to defer to a reasonable judgment by an agency acting pursuant to congressionally delegated authority"). *Accord U.S. Telecom Ass'n v. FCC*, 825 F.3d 674, 697 (D.C. Cir. 2016); *Allied Local & Reg'l Mfrs. Caucus v. EPA*, 215 F.3d 61, 71-74 (D.C. Cir. 2000).

Respectfully submitted, this the 16th day of May, 2018.

HEARST TELEVISION INC.

By: /s/ Jordan Wertlieb
Jordan Wertlieb
President

SCRIPPS MEDIA, INC.

By: /s/ Brian Lawlor
Brian Lawlor
President, Local Media

RAYCOM MEDIA, INC.

By: /s/ D. Patrick LaPlatney
D. Patrick LaPlatney
President and CEO

GRAY TELEVISION, INC.

By: /s/ Hilton H. Howell, Jr.
Hilton H. Howell, Jr.
Chairman, President, and CEO

GRAHAM MEDIA, INC.

By: /s/ Emily L. Barr
Emily L. Barr
President and CEO

QUINCY MEDIA, INC.

By: /s/ Ralph M. Oakley
Ralph M. Oakley
President and CEO

DISPATCH BROADCAST GROUP,
a Division of Dispatch Printing Company

By: /s/ Michael J. Fiorile
Michael J. Fiorile
Chairman and CEO

EVENING TELEGRAPH COMPANY d/b/a
MORGAN MURPHY MEDIA, INC.

By: /s/ Brian Burns
Brian Burns
Executive Vice President and COO

APPENDIX 1

- Hearst Television, Inc. owns and operates television and radio stations serving 26 media markets across 39 states reaching over 21 million U.S. television households. Through its partnership with most of the major networks, Hearst Television distributes national content over nearly 70 video channels including programming from ABC, NBC, CBS, CW, MY Net, MeTV, Estrella and more. Each week the television group provides over 1000 hours of regularly scheduled local news and information programming. Hearst Television is recognized as one of the industry's premier companies and has been honored with numerous awards for industry innovation, community service, and distinguished journalism, including nine consecutive Walter Cronkite Awards for Excellence in TV Political Journalism. Hearst Television is a wholly-owned subsidiary of privately-held Hearst Corporation.

- Scripps Media, Inc. has operated broadcast television stations since 1947, when it launched Ohio's first television station, WEWS, in Cleveland. Today, Scripps' television station group reaches approximately 18% of the nation's television households and includes 15 ABC affiliates, five NBC affiliates, two FOX affiliates, two CBS affiliates, and four non-big-four affiliated stations. Scripps also owns five Azteca America Spanish-language affiliates. Scripps stations produce high-quality news, information, and entertainment content that informs and engages local and national communities. Scripps distributes content on four platforms: broadcast, Internet, smartphones, and tablets. It is Scripps' objective to develop content and applications designed to enhance the user experience on each of those platforms. Scripps' ability to cover its communities across multiple digital platforms allows the stations to expand their audiences beyond traditional broadcast television boundaries. Scripps Media is a wholly-owned subsidiary of E.W. Scripps Co. (NYSE: SSP).

- Raycom Media, Inc., an employee-owned company headquartered in Montgomery, Alabama, is one of the nation's largest privately-owned local media companies and owns and/or provides services for 65 television stations in 44 markets located in 20 states. Founded in 1997, Raycom Media owns or provides services for stations covering 16% of U.S. television households and employs over 8,300 individuals in full and part-time positions. In addition to television stations, Raycom Media is the parent company of CNHI (community newspapers and information products; over 100 titles located in 23 states), PureCars (digital ad platform for the automotive industry), Raycom Sports (a marketing, production, and events management and distribution company), Tupelo Raycom (sports and entertainment production company), RTM Productions (automotive programming production and marketing solutions company) and Broadview Media (a post-production/digital signage company). Raycom Media television stations have been the recipients of national Murrow and IRE awards each of the last 3 years and are nominated for a Peabody Award in 2018. In addition, the stations have eared numerous regional Murrow, AP, and other journalistic honors.

- Gray Television, Inc. owns and/or operates over 100 television stations across 57 television markets that cover approximately 10.4 percent of total United States television households. These stations collectively broadcast over 200 program streams including over 100 channels affiliated with the CBS Network, the NBC Network, the ABC Network and the FOX Network. Gray's portfolio includes the number-one and/or number-two ranked television station operations in each of its markets, as well as the top-ranked station for local news in 40 markets. Gray's professionals are routinely recognized for their journalistic achievements and community leadership. Most recently, the NAB Educational Foundation named Gray stations as the winners of its 2018 Service to Community Award for Television for both the Medium Market category and the Small Market category.

- Graham Media, Inc., a subsidiary of Graham Holdings Company (NYSE: GHC), owns seven local televisions, each in a top-70 market and all recognized as news leaders: KPRC–Houston, WDIV–Detroit and WSLS–Roanoke (NBC); KSAT–San Antonio (ABC); WKMG–Orlando (CBS); WJXT–Jacksonville (fully local), and WCWJ–Jacksonville (CW), as well as Social News Desk, a leading provider of social media management tools designed to connect newsrooms with their users. The stations also broadcast digital channels focusing on classic television and lifestyle programming, in addition to operating market-leading websites, mobile sites, and mobile apps delivering breaking news, weather, and community news, reaching millions of users across each platform. All are deeply involved in local initiatives and public service projects designed to serve, inform, and improve their respective communities. Graham Media Group was named 2016 Station Group of the Year by Broadcasting & Cable Magazine and is the recipient of multiple regional Edward R Murrow Awards, the 2017 National Association of Broadcasters Digital Leadership Award, and multiple regional Emmy and Associated Press Awards for its local news and investigative coverage.

- Quincy Media, Inc. has been in the local television business since 1953. The company operates local television stations in 14 markets with 42 different program streams. Its affiliations include NBC, ABC, CBS, FOX, My Network TV, CW, ME TV, Heroes and Icons, and Decades. QMI is a family-owned, private media company with sixth generation family members active in the business. The company was formed in 1926. In addition to owning and operating local television stations, the company also operates two radio stations and two newspapers. QMI has a long tradition of deep involvement in the communities in which it operates through local news, public service, and community involvement.

- Family-owned since 1929, Dispatch Printing Company's division known as Dispatch Broadcast Group is a highly-respected, award-winning group of television and radio stations in the Midwest. Dispatch operates WBNS-TV, the CBS affiliate in Columbus, Ohio, and WTHR-TV, the NBC affiliate in Indianapolis, Indiana. The company also operates Radio Stations WBNS-AM and WBNS-FM in Columbus, as well as the Ohio News Network. WBNS-TV began operations in 1949.

- Morgan Murphy Media, Inc. is a multimedia company with a long heritage of community service and industry leadership through three generations of family ownership dating back to 1890. Founded in the newspaper business, the company has always been forward-looking and today aggressively serves audiences and advertisers through a variety of electronic and digital offerings. It operates television stations in six markets covering 10 states in the Midwest, Northwest, and Texas and 12 radio stations focused in Washington and Wisconsin. The company also provides a 24/7 weather channel in Texas, runs Madison Magazine, a monthly lifestyle publication, and a digital marketing agency, Phase 3 Digital. Its news organizations are consistently honored with the most prestigious journalism awards in the industry. Since 2015, MMM stations have earned five national Edward R. Murrow awards from the RTDNA, including the top prize for overall excellence.

cc:
Ajit Pai, Chairman
Ajit.Pai@fcc.gov

Michael O'Rielly, Commissioner
Mike.O'Rielly@fcc.gov

Brendan Carr, Commissioner
Brendan.Carr@fcc.gov

Jessica Rosenworcel, Commissioner
Jessica.Rosenworcel@fcc.gov

Alison Nemeth, Legal Advisor to Chairman Pai
Alison.Nemeth@fcc.gov

Brooke Ericson, Chief of Staff, & Legal Advisor to Commissioner O'Rielly
Brooke.Ericson@fcc.gov

Evan Swarztrauber, Policy Advisor to Commissioner Carr
Evan.Swarztrauber@fcc.gov

Kate Black, Policy Advisor to Commissioner Rosenworcel
Kate.Black@fcc.gov

Matthew Berry, Chief of Staff to Chairman Pai
Matthew.Berry@fcc.gov

Michelle Carey, Chief, Media Bureau
Michelle.Carey@fcc.gov