Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPLY COMMENTS OF TEGNA INC.

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May 29, 2019

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Executive Summary

Today's media landscape bears little resemblance to the environment broadcasters faced when the Commission launched its first periodic media ownership review 20 years ago, or even the environment that existed when the Commission launched its last Quadrennial Review just five years ago. The evidence is clear that local television stations today must compete against all video platforms for audience attention and advertising dollars. In the highly competitive modern video marketplace, the Commission's current restrictions on local television ownership — especially the prohibition on acquiring two top-four-ranked stations in a DMA — are no longer justified. The idea that in-market limits on local television ownership are necessary to motivate broadcasters to invest in local content has been outdated for years. Instead, the Commission should recognize that intermodal competition for viewership and advertising now is the key factor promoting broadcast television stations' production of local content, which allows broadcasters to differentiate themselves from national content sources such as cable networks and online platforms. Giving local television broadcasters flexibility to achieve greater scale would allow them to better focus their resources on the production of local content, as TEGNA's experiences in markets where it currently owns multiple stations – or, in one small market, where a single station is affiliated with two Big Four networks through multicasting – demonstrate. The Commission also must reject proposals, made primarily by pay-TV interests, to hobble broadcasters' competitiveness with new restrictions on multicast affiliations or the ownership of low power stations.

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The Commission recognized, in its Notice of Proposed Rulemaking launching this proceeding, that in order to fulfill its statutory obligation to determine whether the Commission's media ownership rules "remain 'necessary in the public interest as the result of competition,'" the Commission must "take a fresh look at our rules in light of the media landscape of 2018 and beyond."[1] As the Commission acknowledges,[2] and other commenters confirm,[3] today's media landscape bears little resemblance to the environment broadcasters faced when the Commission launched its first periodic media ownership review 20 years ago, or even the environment that existed when the Commission launched its last Quadrennial Review just five years ago. With the explosive growth of digital media and resulting fragmentation of audiences, the media landscape now is "marked not by scarcity but by unprecedented abundance of content," forcing outlets

[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, 33 FCC Rcd 12111, 12111, 12114 (2018) ("*2018 Quadrennial Review NPRM*").
[2] *See id*. at 12112.
[3] *See*, *e.g.*, Comments of the National Association of Broadcasters, MB Docket Nos. 18-349 & 17-289, at 1-5 (filed April 29, 2019) ("NAB Comments"); Comments of Nexstar Broadcasting, Inc., MB Docket No. 18-349, at 3-5 (filed April 29, 2019) ("Nexstar Comments"); Comments of Gray Television, Inc., MB Docket No. 18-349, at 9-10 (filed April 29, 2019) ("Gray Comments").

across all platforms to "fight for consumers' limited time and attention"[4] and, consequently, for advertisers' dollars.

In light of these fundamental changes, TEGNA Inc. ("TEGNA")[5] agrees with NAB and other commenters who recognize that maintaining the Commission's current restrictions on local television ownership[6] — especially the prohibition on acquiring two top-four-ranked stations in a DMA —no longer can be justified.[7] The idea that limits on local television ownership are necessary to motivate broadcasters to invest in local content has been outdated for years. Instead, the Commission should recognize that intermodal competition for viewership and advertising now is the key factor promoting the production of local content by broadcast television stations, which allows broadcasters to differentiate themselves from national content sources such as cable networks and online platforms.[8] But producing local content is expensive, in some cases prohibitively so for a standalone station.[9] Giving television broadcasters flexibility to achieve greater scale would allow broadcasters to better focus their resources on the production of local content.[10] TEGNA's experiences in markets where it currently owns multiple stations – or, in one small market, where a single station is affiliated with two Big Four networks through multicasting – demonstrate the public benefits generated through such arrangements. These arrangements have enabled the stations to expand their collective

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[4] NAB Comments at 4.

[5] TEGNA owns or operates 49 full power television stations and two radio stations in 41 markets. It is the largest owner of Big Four affiliates in the top 25 markets, reaching approximately one-third of all television households nationwide.

[6] 47 C.F.R. § 75.3555(b).

[7] *See* NAB Comments at 43; Nexstar Comments at 1-2; Gray Comments at 1.

[8] *See* NAB Comments at 59-60.

[9] *See* NAB Comments at 60-61.

[10] *Id*.

newscasts, generate unique local content and offer viewers more programming choices than would otherwise be feasible.

The Commission also must reject proposals to subject broadcasters to new restrictions, such as by expanding the local television ownership rule to restrict multicast affiliations or the ownership of low power stations. Such proposals are driven by outdated views of the video marketplace and by the desire of pay-TV interests to hobble their broadcast competitors. Imposing new restrictions on broadcasters, at a time when they face unprecedented competition and rising programming costs, would not only defy the evidence and common sense but also would severely hinder the ability of local broadcasters to produce the very local content the Commission wishes to promote.

I. COMPETITION IN THE BROADER VIDEO MARKET – NOT ARTIFICIAL BROADCAST-FOCUSED RESTRAINTS – DRIVES INVESTMENT IN LOCAL SERVICE

In past reviews the Commission held that the local television ownership rule was necessary "to promote competition among broadcast stations" because "such competition leads stations to invest in better and more locally tailored programming and to compete for advertising revenue and retransmission consent fees."[11] This view was outdated in 2014 and is even more so today. In fact, the increase in non-broadcast competition – much of which is nationally focused – now provides one of most powerful incentives for local television stations to invest in the locally tailored programming that differentiates them from their non-broadcast competitors.

[11] *2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12129.

A. Competition for Advertising is Intense and Growing.

As Nexstar explains, "the question is not with whom do local television stations compete against in providing local news content, but rather with whom do local television stations compete in selling advertising – the very advertising that underlies the revenues that support the production of local news in their communities."[12] The evidence is clear that local television stations must compete against all platforms for advertising dollars. Broadcast television ads are expected to account for only 11.8 percent of the nearly $146 billion expected to be spent on locally targeted advertising in the United States in 2019.[13] This is less than the share that will be spent for online advertising (14 percent) or mobile advertising (12.3 percent), and comparable to the share expected to be spent on broadcast radio (8.9 percent).[14] Digital video ad spending is the "fastest growing form of digital advertising" in the United States, with such spending expected to grow from 5.5 percent of total media ad spending in 2016 to 8.8 percent of such spending in 2021.[15] In contrast, television advertising's share (including broadcast and cable) is expected to drop from 36.6 percent in 2016 to 29.4 percent in 2021.[16]

Meanwhile, audiences have fragmented – and broadcast television's viewership share has substantially declined – as "[t]he number of outlets has exploded, and OTA broadcasters, cable and satellite TV operators, hundreds of online video (and audio) services and social media platforms all compete fiercely for audiences' scarce time and attention."[17] In short, as TEGNA CEO Dave Lougee explained in testimony presented at the U.S. Department of Justice's recent

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[12] Nexstar Comments at 6-7.
[13] BIA Advisory Services, "U.S. Local Advertising Forecast," at 3 (May 2-3, 2019), *available at* https://www.justice.gov/atr/page/file/1160671/download#Rick%20Ducey ("BIA DOJ Presentation").
[14] *Id*. Notably, the "online/interactive" category *excludes* online advertising sold by television stations (0.9 percent), radio stations (1.1 percent), newspapers (6.5 percent) and magazines (0.9 percent).
[15] Sinclair Broadcast Group, "The Future of Advertising," at 12 (May 3, 2019), *available at* https://www.justice.gov/atr/page/file/1160701/download#Chris%20Ripley.
[16] *Id*.
[17] NAB Comments at 44.

"Public Workshop on Competition in Television and Digital Advertising" ("DOJ Workshop"), "advertisers over digital platforms now show ads that look exactly like traditional TV ads, over platforms that are growing viewership rapidly and enjoy extremely broad reach, along with the ability to focus on particular locations or other characteristics. These ads are powerfully competitive with over-the-air broadcast ads in the local ad market. And this competition will only grow."[18]

The effects of audience and advertiser fragmentation are no mere projections; broadcasters are feeling these effects today. In one illustrative example presented at the DOJ Workshop, Gray Television noted that one typical client (an agency placing advertising for a local auto dealership) spent only a third as much on Gray's station (the top-ranked station in the market) in 2018 as it did in 2012, even while the client *increased* its total local ad spending by more than 20 percent.[19] For its part, TEGNA has responded to these trends with the launch of its Premion division, which allows local advertisers to place video ads in high quality long-form video programming distributed via virtual MVPDs (such as Sling and YouTube TV) and other digital platforms.[20] As Mr. Lougee has explained, Premion is TEGNA's "fastest growing business for a reason, because that's where consumers are going, and the local ad dollars follow the consumer."[21]

[18] NAB, "Testimony of Dave Lougee at DOJ Advertising Competition Workshop" (May 3, 2019), *available at* https://www.nab.org/documents/newsRoom/pressRelease.asp?id=5008 ("Lougee Testimony").
[19] Gray Television, "Department of Justice Local Advertising Workshop," at 4, 11 (May 2, 2019), *available at* https://www.justice.gov/atr/page/file/1160676/download#Pat%20LaPlatney. *See also* Comments of Meredith Corporation's Local Media Group, MB Docket No. 18-349, at 2 (filed April 29, 2019) (describing examples of migration of local advertising spending from television to digital platforms) ("Meredith Comments").
[20] Lougee Testimony.
[21] *Id*.

B. Intermodal Competition Drives Broadcaster Investment in Local Content.

The intense competition local television stations face – not only from each other but also from other platforms for local information and advertising – provides a strong "incentive[] to produce and improve local programming."[22]

Local broadcast television stations enjoy no monopoly as sources of local news and information. TEGNA's stations face robust competition from a variety of outlets. For instance, in Denver – where TEGNA owns NBC affiliate KUSA and MyNetwork affiliate KTVD – Pew Research Center "identified nearly 150 news sources across the metro area, from print and digital publications to television and radio broadcast operations."[23] Beyond the seven broadcast television stations and four local radio stations that Pew identified as news sources, major local news sources include The Denver Post daily newspaper, 28 community newspapers, 17 ethnic news outlets and "25 active stand-alone news websites," including seven general-interest sites and specialty outlets focusing on "narrower subjects such as politics, arts and entertainment, or real estate and development."[24] Similarly, major local news competitors in Seattle – where TEGNA owns NBC affiliate KING and independent television station KONG – include daily newspaper The Seattle Times, alternative weekly The Stranger, online-only news site seattlepi.com (successor to the Seattle Post-Intelligencer newspaper, which closed in 2009),[25]

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[22] *See 2018 Quadrennial Review NPRM*, 33 FCC Rcd at 12130.
[23] Pew Research Center, "Local News in a Digital Age," at 13 (March 2015), *available at* https://www.pewresearch.org/wp-content/uploads/sites/8/2015/03/PJ_MediaEcology_completereport.pdf ("Pew 2015 Report").
[24] *Id*. at 14-19.
[25] "seattlepi.com history," https://www.seattlepi.com/aboutus/article/seattlepi-com-history-2274626.php (last visited May 23, 2019).

nonprofit online news site Crosscut (which operates in conjunction with local public television station KCTS),[26] and neighborhood outlets such as West Seattle Blog.[27]

The number and variety of news outlets varies market to market. But a recent Pew Research Center survey shows that intermodal competition among local news sources is a national phenomenon. Pew, in its survey of nearly 35,000 U.S. adults, found that approximately 38 percent of Americans often get news from local television stations, compared with 20 percent who often get news from radio stations, 17 percent who often get news from daily newspapers, and 28 percent who often get news from "less traditional types of providers" such as online forums; newsletters or listservs; online-only news sources; local governments or other organizations; or non-daily community newspapers.[28] The Commission no longer can rationally maintain its presumption that local commercial television broadcast stations compete only amongst themselves to provide local content.

Moreover, as set forth in Section I.A above and by other commenters, focusing myopically on sources of local news misses the point.[29] Broadcast television stations do not have the luxury of competing only against each other or only against local news providers; rather, their economic viability depends on their ability to compete for viewers and advertisers against all other sources of video content and all other platforms through which advertisers may reach their desired audience. It is that broader competitive environment that drives TEGNA and

[26] "About Crosscut," https://crosscut.com/about (last visited May 23, 2019).
[27] https://westseattleblog.com/ (last visited May 23, 2019).
[28] Pew Research Center, "For Local News, Americans Embrace Digital but Still Want Strong Community Connection," at 14-15, 87 (March 2019), *available at* https://www.journalism.org/wp-content/uploads/sites/8/2019/03/PJ_2019.03.26_Local-News_FINAL.pdf ("Pew 2019 Survey").
[29] *See* Nexstar Comments at 6-7; NAB Comments at 55.

other broadcasters to invest in local content as a way to differentiate themselves from nationally focused platforms like Facebook, Google and Amazon.[30]

TEGNA's commitment to local service is reflected in the numerous awards it has received for its stations' coverage. In 2019 alone, TEGNA has won four Walter Cronkite Awards for Excellence in Television Political Journalism[31]; five Gracie Awards from the Alliance for Women in Media Foundation[32]; a Peabody Award for "Back of the Class," a year-long investigation of school districts' discrimination against students with disabilities[33]; and 91 Regional Edward R. Murrow Awards, "the most in the company's history and more than any other media company this year."[34] Beyond purely local content, TEGNA also has expanded viewers' choices by investing in producing original syndicated programs "Daily Blast LIVE" (a half-hour news and entertainment show produced live in nearly all time zones across 50 markets out of KUSA in Denver) and "Sister Circle" (a live daily talk show produced at WATL in Atlanta targeting the underserved audience of African-American women),[35] and TEGNA recently announced it will acquire national multicast networks Justice and Quest, in which TEGNA currently is a minority investor.[36]

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[30] *See* Nexstar Comments at 13; Meredith Comments at 3.
[31] TEGNA Inc., "TEGNA Stations Win Four Walter Cronkite Awards for Excellence in Television Political Journalism," http://investors.tegna.com/phoenix.zhtml?c=84662&p=irol-newsArticle&ID=2391762 (March 19, 2019).
[32] TEGNA Inc., "TEGNA Receives Five Alliance for Women in Media Foundation Gracie Awards," http://investors.tegna.com/phoenix.zhtml?c=84662&p=irol-newsArticle&ID=2394666 (April 16, 2019).
[33] TEGNA Inc., "KING 5 Wins Prestigious 2018 Peabody Award," https://www.tegna.com/king-5-wins-prestigious-2018-peabody-award/ (April 23, 2019).
[34] TEGNA Inc., "TEGNA Wins 91 Regional Edward R. Murrow Awards, More Than Any Other Media Company," http://investors.tegna.com/phoenix.zhtml?c=84662&p=irol-newsArticle&ID=2395381 (April 23, 2019).
[35] TEGNA Inc. 2018 Form 10-K, at 4 (March 1, 2019), *available at* http://s23.q4cdn.com/845810164/files/doc_downloads/TEGNA_2018AnnualReport.pdf ("TEGNA 2018 10-K").
[36] TEGNA Inc., "TEGNA to Acquire Leading Multicast Networks Justice and Quest," http://investors.tegna.com/phoenix.zhtml?c=84662&p=irol-newsArticle&ID=2397205 (May 6, 2019).

Needless to say, producing high-quality content is expensive, and local television stations are among the few remaining outlets investing significant resources to produce such content in a way that responds to community needs and interests. Indeed, as Nexstar notes, producing news and other local programming typically is one of a station's largest operational costs.[37] Since 2016, TEGNA has spent an average of more than $245 million a year on the production of news and other local content (including related digital operations). That includes not only the TEGNA stations' day-to-day coverage but also millions of dollars invested in TEGNA's ongoing content innovation efforts. These innovation initiatives focus on developing content to build audience trust (through projects like the Verify fact-checking series of segments, which are driven by viewer questions[38]), produce deep-dive investigative and other impactful content (such as the "Charlie Foxtrot" documentary on service member suicides, produced by TEGNA's Atticus digital investigative unit based at WXIA in Atlanta[39]), and bring viewers highly localized information through neighborhood-level projects being piloted at WXIA in Atlanta and WLTX in Columbia, South Carolina. Local television stations make these investments because local service is a core broadcaster value and because offering high-quality local content is the most effective way for a television station to distinguish itself from rivals across all platforms in the competition for viewers' attention and advertisers' spending.

C. Common Ownership Enables Stations to Offer More Local Content

The public interest is best served by policies that promote the health of local television broadcasting, not by rigid in-market ownership limits that focus on the raw number of separately

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[37] Nexstar Comments at 13.

[38] *See* Sarah Farrell, "Would you believe this?" Knight-Cronkite News LAB, https://cronkitenewslab.com/broadcast/2018/11/28/tegna-verify-fact-checks-daily-news-promote-transparency/ (Nov. 28, 2018).

[39] *See* TEGNA Inc., "TEGNA and WXIA Honored with NAB's President's Special Award for 'Charlie Foxtrot'," https://www.tegna.com/tegna-wxia-honored-nabs-presidents-special-award-charlie-foxtrot/ (April 13, 2017).

owned stations. The ability to spread content-production and other operational costs among multiple stations in a market – including top-four ranked stations – can be critical in supporting stations' ability to maintain or increase the amount and variety of programming available to viewers.[40] For example, when TEGNA (then under the Gannett name) acquired KTVD in Denver, the station offered no local news. As a sister station to KUSA, KTVD now airs three unique hours of news per weekday. Similarly, MyNetwork affiliate WATL in Atlanta aired no local news when Gannett acquired the station in August 2006, but soon added a one-hour local newscast at 10 p.m., and in 2017 added a 30-minute newscast at 7 p.m., Atlanta's only 7 p.m. local news. And TEGNA's common ownership of Seattle independent station KONG with NBC-affiliated KING makes it possible for KONG to offer several hours a day of unique local newscasts, including on weekdays from 7-9 a.m. (opposite "The Today Show" on KING) and from 9-11 p.m. (opposite NBC prime time programming). It is rarely economically feasible for standalone independent or non-Big Four-affiliated stations to produce local news. Indeed, as Gray explains, in some cases (particularly in small markets) it is economically impossible even for a standalone Big Four affiliate to maintain local news production.[41]

Common ownership of two television stations in a market can expand viewers' programming choices in other ways, as well. For example, in markets where TEGNA owns two stations, when there is breaking national news (such as recent coverage of the Mueller Report hearings) often one station will switch to special news coverage while the other maintains regularly scheduled local news or other programming, with each station alerting viewers to the alternative programming airing on the other. This gives viewers more choices than would likely

[40] Nexstar Comments at 13-14.
[41] Gray Comments at 4-7.

be the case if the stations were owned independently and each preempting regular programming to cover the same national news event. Similarly, combining the programming hours of two stations has allowed TEGNA to air special local programming that might not otherwise fit in a standalone station's schedule. For instance:

- In Jacksonville, TEGNA's ABC-affiliated WJXX is able to devote airtime to covering the annual 26.2 DONNA breast cancer marathon while maintaining regular news coverage on NBC-affiliated WTLV. The stations also produce an annual hurricane special, which is scheduled to run at high-viewership times on each station in order to maximize the reach of this important preparedness information.

- In Denver, in the lead-up to the 2018 elections KTVD aired a total of four one-hour specials on the Colorado gubernatorial race in April and June 2018, in addition to airing October debates in the gubernatorial race and the U.S. House race in Colorado's Sixth Congressional District. KTVD also airs expanded coverage of the Denver Broncos and has begun airing Major League Rugby games featuring the local Glendale Raptors.

Given the benefits of permitting ownership of more than one broadcast television station in a market, and in light of the data presented by NAB and Gray Television in this proceeding,[42] there is no longer a rational basis for arbitrarily prohibiting broadcasters (absent a special showing) from entering into these types of combinations merely because more than one of the stations is ranked among the top four stations by viewership. As NAB and Gray demonstrate,

[42] NAB Comments at 71; Gray Comments at 7.

the presumption underlying the top-four prohibition – that the top four ranked stations in a market have viewership levels most comparable to each other and comfortably above the levels achieved by stations ranked fifth or below – is empirically incorrect.[43] The Commission accordingly is obligated to bring its ownership rules in line with the evidence by ending the top-four prohibition.

II. CALLS TO MAINTAIN OR INCREASE BROADCAST TV OWNERSHIP RESTRICTIONS RELY ON DISTORTED VIEWS OF MARKET DYNAMICS

Comments asking the Commission to maintain or increase restrictions on broadcasters – particularly those by pay-TV interests – rely largely on the assertion that growth in retransmission consent fees is *per se* harmful, and that the Commission accordingly should inhibit broadcasters' growth in order to repress their negotiating leverage.[44] These arguments are misguided.

As NAB explained in the Commission's ongoing review of the national television audience reach cap, although pay-TV interests assert that the retransmission consent fees reached through good-faith, market-based negotiations are somehow anticompetitive or otherwise excessive, the data show that "[i]f anything, broadcast stations' signals appear undervalued in the retransmission consent marketplace."[45] In particular, "[a]ccording to Kagan, total broadcast retransmission consent fees were only 14.9 percent of total MVPD programming fees (counting

[43] NAB Comments at 73 ("[I]n a large clear majority of markets, the largest ratings gaps are among top four stations, not between the fourth and fifth ranked stations."); Gray Comments at 8 ("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.").
[44] *See* Comments of NCTA – The Internet & Television Association, MB Docket No. 18-349, at 1-2 (filed April 29, 2019) ("NCTA Comments"); Comments of The American Television Alliance, MB Docket No. 18-349, at 8-9, 14-18 (filed April 29, 2019) ("ATVA Comments"); Comments of Ride Television Network, MAVTV Motorsports Network, Cinemoi and beIN SPORTS, MB Docket No. 18-349, at 5-8 (filed April 29, 2019) ("Independent Programmer Comments).
[45] Reply Comments of the National Association of Broadcasters, MB Docket No. 17-318, at 30 (filed April 18, 2018).

broadcast stations and basic cable, premium cable and regional sports networks) in 2017, even though broadcast stations accounted for nearly one third of prime time viewing in 2017 (live + same day, counting broadcast, cable and DBS)."[46] And notwithstanding some commenters' overheated rhetoric,[47] the Commission's most recent *Communications Marketplace Report* noted that "growth in retransmission consent fees has slowed."[48]

Fundamentally, retransmission consent fees represent the result of negotiations between stations and MVPDs over how much of the revenue MVPDs earn from reselling access to stations' signals will be shared with the station, versus how much will be retained as profit by the MVPD. The fact is that it has never been more important to protect the ability of broadcasters to negotiate fair compensation from large, nationally consolidated pay-TV providers who profit from retransmitting broadcasters' valuable content. Facing the audience and advertising fragmentation described in Section I above, TEGNA, like most major broadcasters, relies on a mix of cyclical ad revenue and more stable subscription revenue to support its operations. TEGNA's subscription revenue accounted for about 47 percent of total company revenue in the first quarter of 2019, compared with about 51 percent of the company's revenue derived from advertising (excluding political) and digital revenue.[49] TEGNA also faces increasing costs, particularly with respect to the cost of network and syndicated programming. Indeed, TEGNA's analysis of its total operational revenues and expenses directly attributable to station operations (*i.e.*, excluding corporate overhead and similar items) shows that with subscription revenue

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[46] *Id*.
[47] *See* Independent Programmer Comments at 5 ("[R]etransmission fees have increased dramatically over the last decade and show no sign of slowing down.").
[48] *Communications Marketplace Report*, GN Docket 18-231 *et al.*, FCC 18-181, at ¶ 75 n.191 (rel. Dec. 26, 2018) ("*Communications Marketplace Report 2018*").
[49] TEGNA Inc. Investor Presentation, at 8 (May 2019), *available at* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NzA2ODE2fENoaWxkSUQ9NDE5NTUyfFR5cGU9MQ==&t=1.

excluded (along with associated fees paid to networks from such revenue), the two-year average net income before taxes of its local broadcast stations for 2018-2019 would be down not insignificantly compared with 2016-2017.[50] Subscription revenue is critical to the financial health of TEGNA's stations, and thus their ability to continue offering the locally responsive programming the Commission aims to protect.

Although pay-TV companies understandably wish to negotiate with broadcasters whose bargaining leverage is constrained by strict restrictions on achieving local or national scale, the public interest in the health of local broadcasting would not be served by the Commission's granting that wish. If anything, the Commission should bolster the retransmission consent system by revisiting the question of whether virtual MVPDs such as Sling and YouTube TV should be subject to the same retransmission consent rules as traditional MVPDs.[51] As the Commission has noted, "consumers may increasingly view MVPDs and virtual MVPDs as substitutes, especially for small and medium channel packages,"[52] and virtual MVPDs have gained subscribers at least in part at the expense of traditional MVPDs.[53] Yet because virtual MVPDs are outside the retransmission consent system, the major networks have taken the opportunity to assert control over negotiating the terms for virtual MVPDs' carriage not only of network owned-and-operated stations but also of the networks' affiliates.[54] Treating virtual

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[50] TEGNA typically uses two-year averages in its internal analyses in order to control for the cyclical impacts of even-year political and Olympics-related revenues. Note that this adjusted analysis uses a different methodology from TEGNA's public financial statements in order to highlight station-specific revenues and expenses. The analysis also uses estimated 2019 figures and, as such, may constitute a forward-looking statement subject to the risks, uncertainties and other factors discussed in TEGNA's SEC filings.

[51] *See Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, 29 FCC Rcd 15995, 16018-19 (2014).

[52] *Communications Marketplace Report 2018* at ¶ 116.

[53] *Id*. ¶ 124.

[54] Diana Marszalek, "What Will It Take to Put Local Stations Over the Top?" Broadcasting & Cable, https://www.broadcastingcable.com/news/what-will-it-take-put-local-stations-over-top-161105 (March 16, 2018) ("Because OTT distributors are not considered MVPDs (the FCC has yet to legally categorize them as such), ABC, CBS, Fox and NBC see the emergence of OTT as their chance to control what they can't in the MVPD world.").

MVPDs like their traditional counterparts, at least for retransmission consent purposes, would restore balance between networks and independent affiliates and create space for individualized negotiations between station owners and distributors.

Additionally, the Commission must reject calls from pay-TV interests to expand the local television ownership restrictions to multicast streams and LPTV stations.[55]

With respect to multicast streams, restricting the content a single station, operating under a single license, may broadcast on its programming streams would be a far more radical regulatory expansion than the Commission's extension of the top-four prohibition to apply to "affiliation swaps."[56] The Commission held that it had statutory authority to extend the top-four prohibition to affiliation swaps because "parties can achieve through an affiliation swap *the same result* as a transfer of control or assignment of license,"[57] thus "achiev[ing] a result otherwise prohibited by the Local Television Ownership Rule,"[58] *i.e.*, the acquisition of ownership or control of "two television stations licensed in the same Designated Market Area" that at the time of the acquisition both are ranked among the top four stations in the DMA.[59] The Commission repeatedly emphasized that the expanded prohibition would apply only to transactions that serve as the "functional equivalent" of a transfer of control or license assignment of an in-market station.[60] A station's acquisition of a second network affiliation, regardless of the program stream's ratings, in no way accomplishes "the same result" as a license assignment or transfer of control because such an acquisition does not give the acquirer ownership or control of "two

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[55] *See* ATVA Comments at 17; NCTA Comments at 8.
[56] *See 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Second Report and Order, 31 FCC Rcd 9864, 9885 (2016) ("*2014 QR Second R&O*").
[57] *Id*. at 9882 n.122 (emphasis added).
[58] *Id*.
[59] 47 C.F.R. § 73.3555(b)(1).
[60] *2014 QR Second R&O*, 31 FCC Rcd at 9883 & n.128, 9884.

television stations." Moreover, commenters arguing for multicast restrictions appear to intend to prohibit a station from acquiring a multicast affiliation with a major network even through direct negotiations with the network (rather than in a transaction with the existing local affiliate), which the Commission explicitly declined to include in its restriction on affiliation swaps.[61] Indeed, barring a single station from acquiring a second major-network affiliation would fly in the face of the Commission's longstanding rule *prohibiting* stations from entering into exclusive affiliation agreements.[62]

Nor would restricting multicast affiliations serve the public interest, particularly for viewers in small markets. For instance, TEGNA's station in Beaumont, Texas, KBMT, is an ABC affiliate on its primary channel. KBMT acquired an NBC affiliation on a multicast channel in 2009, after the existing NBC affiliate in the market dropped NBC to become a Fox affiliate.[63] The only other potential replacement affiliate in the market (currently ranked 140) was a low power station. KBMT's acquisition of the NBC affiliation not only preserved full-power service but also resulted in NBC programming becoming available in high definition for the first time in the market.[64] KBMT also has added three unique weekday newscasts on the NBC-affiliated stream (at noon, 4 p.m. and 6:30 p.m.), which would not be financially feasible if the NBC stream operated on a standalone basis.

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[61] *Id*. at 9883 n.128, 9884 n.138.

[62] 47 C.F.R. § 73.658(a) ("No license shall be granted to a television broadcast station having any contract, arrangement, or understanding, express or implied, with a network organization under which the station is prevented or hindered from, or penalized for, broadcasting the programs of *any other* network organization.") (emphasis added).

[63] Colin Guy, "KBMT will add NBC shows to its ABC lineup," Beaumont Enterprise, https://www.beaumontenterprise.com/business/article/KBMT-will-add-NBC-shows-to-its-ABC-lineup-763380.php (Nov. 25, 2008).

[64] *Id*.

Finally, the Commission should reject calls to expand its television ownership restrictions to low power stations. As NAB notes, LPTV stations "are not the equivalent of full service stations," as they lack mandatory carriage rights, "have limited coverage areas and restricted power," and (except for the limited set of stations with Class A status) operate on a secondary basis and thus are potentially subject to displacement at any time.[65] Moreover, proponents of restricting LPTV ownership actually seem to propose subjecting LPTV stations to *greater* restrictions than full-service stations. NCTA, for instance, appears to ask the Commission to prohibit a party from owning "a full-power station with a top-four affiliation in a market as well as an LPTV station with another top-four affiliation in the same market"[66] – yet under the Commission's rules a party is permitted to own two *full power* stations in the same market, even if both are ranked among the top four in the market, so long as the stations' digital noise limited service contours do not overlap.[67] There is no justification for reversing the Commission's longstanding conclusion that LPTV stations should not be subject to the local television ownership rule, let alone for imposing a harsher version of the rule on LPTV stations than that applied to full power stations.

Conclusion

Local broadcast television stations play an important, but no longer insulated, role in the modern video marketplace. The Commission must finally acknowledge that television stations are competing against all media platforms for viewers' attention and advertisers' spending, and they must have the flexibility to compete on a more level playing field if they are to preserve their ability to offer the locally focused service that sets broadcasters apart. The Commission

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[65] *See* NAB Comments at 80.
[66] NCTA Comments a 9.
[67] 47 C.F.R. § 73.3555(b)(1)(i). LPTV stations' smaller contours presumably would be less likely to overlap with the contour of a co-owned full power station in the DMA, depending on where the stations' transmitters are located.

should start by eliminating the top-four prohibition, which no longer is empirically supported, and by rejecting appeals to hobble broadcasters' competitive opportunities for the benefit of pay-TV interests.

Respectfully submitted,

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/s/ Akin S. Harrison

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May 29, 2019