

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Applications for the Transfer of Control and)	MB Docket No. 18-230
Assignment of Broadcast Television Licenses)	
from Raycom Media, Inc. to Gray Television,)	
Inc., Including Top-Four Showings in Two)	
Markets)	

**REPLY OF
NCTA-THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”) hereby replies to the Joint Response to Comments submitted by Gray Television, Inc. and Raycom Media, Inc. (“Gray/Raycom”) in the above-captioned proceeding.

Gray and Raycom bear the burden of showing that the circumstances surrounding their common ownership of the second- and third-ranked stations in the Honolulu television market warrant an exception to the rule generally prohibiting common ownership of two Top-Four stations. As NCTA noted in its initial comments, the Commission, in retaining the rule, acknowledged that the common ownership of Top-Four stations typically posed a threat to competition in the local television marketplace. Moreover, both the Commission and Congress had previously recognized that the joint negotiation of retransmission consent agreements by two separately owned Top-Four stations in a market was so likely to have an adverse effect on consumers as to warrant a flat ban.

While the Commission chose to allow broadcasters to show, on a case-by-case basis, that the proposed ownership of two Top-Four stations would produce benefits that outweighed the harms that generally accompanied such ownership, the mere showing that joint ownership would result in cost savings and economies of scale could not be sufficient. If it were, there would have

been no reason to retain the rule, since joint ownership virtually *always* has such a result. Therefore, to outweigh the harms that accompany common ownership, an applicant must have to show *exceptional* circumstances that produce greater benefits than the normal anticipated efficiencies. Gray and Raycom, we maintained, had not met this burden.

In their Joint Response, Gray/Raycom fail even to engage, much less refute, NCTA's argument. Instead, they claim that "[t]he retransmission consent issues raised by the Commenters have been rejected by the Commission in previous cases as inappropriately raised with respect to an individual transaction."¹ That, of course, is false – at least with respect to transactions such as this one involving Top-Four duopolies. There have been *no* Commission determinations regarding a case-by-case showing involving joint ownership of Top-Four stations since the prohibition on such ownership was amended to allow such showings. And, in amending the rule, the Commission specifically stated that "the case-by-case review process will allow parties to advance any relevant concerns – *including concerns related to retransmission consent issues* – in the context of a specific proposed transaction if such issues are relevant to the particular market, stations, or transaction."²

Gray/Raycom do not address the extent of the burden in the case-by-case review process – in particular, the need to show that the circumstances of combined Top-Four ownership are exceptional. Instead, they simply rehash their argument that common ownership saves costs and gives them more money to theoretically spend on programming – a common benefit of joint ownership that does not outweigh the common accompanying anticompetitive harms. The

¹ Joint Response at 2.

² *In re 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*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9838 n.239 (2017) (emphasis added).

ability to jointly negotiate higher retransmission consent fees and higher advertising rates might also give them more money to spend on programming, but those anticompetitive results are reasons for prohibiting common ownership, not allowing it.

Gray/Raycom notes, in particular, that the Gray acquisition of the existing Raycom duopoly will enhance the stations' news programming because "the Honolulu Stations (and the communities they serve) would gain access to Gray's Washington, D.C. news bureau."³ But Gray/Raycom does not explain why it is beneficial to Honolulu viewers to have *two* local stations reporting news from the *same* news bureaus instead of having two separate news sources.

The Commission should make clear in this and other applications seeking an exemption from the Top-Four Prohibition, that the case-by-case showings that it authorized when it voted to retain the general prohibition on common ownership of Top-Four stations require applicants to demonstrate that the harms the Commission has recognized that are associated with common ownership are outweighed by unusual benefits or that there are other exceptional circumstances with regard to such common ownership. Gray/Raycom has not made such a showing regarding their Honolulu stations.

³ Joint Response at 12.

In contrast, as we noted in our initial comments, they have pointed out that in Amarillo, one of the two stations – a Telemundo affiliate – has historically been fifth-ranked in the market but was most recently measured as fourth-ranked because of its World Cup coverage. That is the sort of anomaly that may warrant permitting a Top-Four duopoly.

Respectfully submitted,

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