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

In the Matter of	)	
	)	
Rules and Policies Concerning	)	MB Docket No. 04-256
Attribution of Joint Sales Agreements	)	
In Local Television Markets	)	

COMMENTS OF HOAK MEDIA LLC

Hoak Media LLC ("Hoak"), by its attorneys, pursuant to Section 1.415 of the rules of the Federal Communications Commission ("Commission"), respectfully submits the following comments in the above-captioned proceeding. In the instant comments, Hoak:

(i) details its local news-focused strategy in small and medium-sized markets;

(ii) explains that same-market television JSAs are critically important to the maintenance and improvement of local news in small and medium-sized markets;

(iii) demonstrates that radio and television services and markets are fundamentally distinct;

(iv) encourages the Commission to defer consideration of same-market television JSA attribution until it concludes other related proceedings; and

(v) urges the Commission to address grandfathered local marketing agreements ("LMAs") no earlier than 2006.

I. Introduction

Hoak is a Dallas-based broadcasting company focused on the acquisition, development and operation of television and radio stations in small and medium-sized markets in the United States. Formed in August 2003, Hoak acquired its first stations in November of that same year. Since that time, Hoak has pursued other acquisitions that serve its strategic goals. Hoak indirectly owns full power television stations KAUZ-TV, the CBS affiliate in Wichita Falls, Texas (market # 141) and KREX-TV, the CBS affiliate in Grand Junction, Colorado (market # 190). In addition, a Hoak affiliate is the brokering entity in a grandfathered local marketing agreement ("LMA") with full power television station KFQX(TV), the FOX affiliate in the Grand Junction market. Hoak also is seeking to acquire other television stations in small to medium-sized markets.

Hoak is committed to developing stations in small to medium-sized markets through a deep commitment to local programming. The critical element of this strategy is to earn audience share through increasing the amount and quality of acquired stations' local news programming. However, as the Commission is well aware, local news production can be an extremely expensive enterprise. Thus, where possible, Hoak plans to reduce operating expenses through consolidation of certain station operations, including advertising sales, so that it may invest the resulting cost savings in local news and other local programming. Hoak believes that this local news foundation will improve its stations' performance because local news: (i) offers ideal demographic profiles for advertisers; (ii) serves as a strong lead-in for other programming; and (iii) fosters a high profile and strong local station brand in the community. Hoak views its local news strategy as a win-win situation: Hoak improves its stations' performance while viewers in small to medium-sized markets enjoy a high quality product they would not have in the absence of some type of market consolidation.

II. Same-Market Television JSAs are Critically Important to the Maintenance and Improvement of Local News in Small and Medium-Sized Markets

In developing its business strategy, Hoak has learned that same-market television JSAs are critically important to the maintenance and improvement of local news in small and medium-sized markets. Specifically, the financial situation these stations face entails significant disincentives to developing local news. For example, stations in small and medium-sized markets have less total revenue in their markets yet they often must spend approximately the same amount of money on local news as their larger market counterparts. This is because many of the expenses that are required to produce local news programming, such as satellite trucks and weather prediction tools, are fixed costs. At the same time, small to medium-sized market stations must try to cover events occurring over a larger geographic area, which requires more equipment and more employees, both off-air and on-air. In the face of these seemingly insurmountable obstacles, it is understandable that many stations in small and medium-sized markets simply cannot afford to produce local news.

Hoak's experience as a station operator supports this premise. Specifically, Hoak is facing challenges in developing and maintaining a local news presence in Wichita Falls, where it holds an interest in only one station. However, in Grand Junction, a market even smaller than that of Wichita Falls, Hoak has succeeded in stabilizing and improving the local news presence of its owned station, KREX, and the station it programs pursuant to a grandfathered LMA, KFQX, primarily because of the cost savings derived from consolidation. This significant public interest benefit would disappear in the absence of some level of permitted cooperation between same-market television stations.

Local news simply cannot survive, let alone thrive, in small and medium-sized markets without some level of permitted consolidation between same-market stations. Same-market television JSAs offer at least a partial solution to this problem. If the Commission attributes same-market television JSAs, the result likely will be a reduction or outright elimination of local news in many small to medium-sized markets. Therefore, if the Commission truly wants to preserve or improve local news, it should maintain its policy of not attributing same-market television JSAs.

III. Radio and Television Services and Markets are Fundamentally Distinct

As set forth above, continued non-attribution of television JSAs will result in public interest benefits such as additional local news programming. The Commission may continue non-attribution of television JSAs even though it attributes same-market radio JSAs because radio and television services and markets are fundamentally distinct. Although these distinctions are numerous, the two most critical distinctions in small to medium-sized markets are:

(i) radio stations enjoy significantly less restrictive local ownership limits than television stations; and

(ii) radio stations face fewer high-cost, low-reward burdens than television stations.

Each of these points is addressed in turn below.

A. Radio Stations Enjoy Significantly Less Restrictive Local Ownership Limits Than Television Stations

The Commission's local radio ownership rules permit significant levels of radio consolidation even in small and medium-sized markets.[1] For example, one entity may hold an attributable interest in half of the stations in even the smallest of markets, i.e., those with ten or fewer stations.[2] Television stations in markets of similar size are prohibited from consolidating

[1] *See* 47 C.F.R. § 73.3555(a)(i) – (iv).

[2] 47 C.F.R. § 73.3555(a)(iv) ("In a radio market with 14 or fewer commercial stations, a party may own, operate, or control up to 5 commercial radio stations, not more than 3 of which

to compete against already-consolidated and more dominant media, such as radio.[3] Thus, in a market where a radio station may hold an attributable interest in several other radio stations, a television station in that very same market is effectively forbidden from joint ownership of a single other television station. For example, in the Grand Junction market, only two entities hold attributable interests in eleven of the fifteen radio stations in the market. In this same television market, the duopoly rule prohibits two television stations from consolidating with each other.[4]

Same-market television JSAs enable local television broadcasters to better compete with already-consolidated entities like radio for local advertising dollars. As the Commission has previously stated, consolidation such as continued non-attribution of same-market radio JSAs resulted in a financially stronger radio industry.[5] The Commission should continue its non-attribution of same-market television JSAs so that television stations can enjoy this type of financial stability.

B. Same-Market Television JSAs Enable Television Broadcasters to Address Significant Financial Burdens Not Faced By Local Radio Broadcasters

Continued non-attribution of same-market television JSAs would recognize the different financial burdens faced by local television stations versus their radio competitors. Specifically,

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are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.").

[3] *See* Prometheus Radio Project v. FCC, 373 F.3d 372, 387 (3d Cir. 2004) (explaining that the local television duopoly rule precludes duopolies in most markets because only the largest 70 markets could comply with the "eight voices" test).

[4] *See* BIA Media Access Pro Database.

[5] *2002 Biennial Regulatory 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. 02-277, Report and Order and Notice of Proposed Rulemaking, FCC 03-127, 18 FCC Rcd 13620, 13712 ¶ 236 (2004) ("*Media Ownership Order*") ("As a result of this consolidation, the radio industry today is on a stronger financial footing than it was a decade ago.").

operation of a television station entails much higher costs than operation of a radio station, including, among other items:

- the cost of providing electricity to high-power television transmitters versus much lower power costs for radio stations;
- the cost of obtaining video programming from syndicators or elsewhere versus the low cost of obtaining audio programming, especially music; and
- expenses incurred to transition to digital operation versus no similar obligation on radio broadcasters.

Television broadcasters also must compete directly against each other while radio stations, whose programming often is aimed at targeted, niche audiences, can more easily survive by differentiating their programming.

Same-market television JSAs alleviate some of these financial stresses on local television broadcasters by providing steady revenue streams to previously struggling licensees. With a same-market JSA in place, stations in small to medium-sized markets are in a better position to pay the costs associated with the transition to digital television. On the other hand, without the revenues generated by same-market JSAs, many stations in small television markets simply cannot survive, let alone meet the Commission's digital objectives.[6] With the certainty of revenue that same-market television JSAs provide, television stations also are in a better position to take beneficial risks such as investing additional funds in local news production. Given these and other differences between television and radio, the Commission should continue its policy of not attributing same-market television JSAs.

[6] For example, it is likely that, in the absence of its agreement with Hoak, Station KFQX in Grand Junction, Colorado would suffer severe financial distress such that continued operation of the station would no longer be viable.

IV. The Commission Should Not Consider Attributing Same-Market Television JSAs Until It Concludes Related Proceedings, Including its Media Ownership Proceeding

The Commission should address attribution of same-market television JSAs only after it has completed related proceedings, including its media ownership proceeding, the outcome of which could alter the Commission's attribution considerations.[7] For example, in the media ownership context, the Commission currently is modifying many of its media ownership rules in response to a remand by the U.S. Court of Appeals for the Third Circuit.[8] The Commission also has not ruled on several petitions for reconsideration of the order remanded by the Third Circuit. The Commission's attribution rules involve many of same policies and interest balancing as the media ownership rules. Therefore, the Commission should not decide any attribution issues without first developing the media ownership rules to which such attribution standards will apply. In the alternative, the Commission should include its consideration of same-market television JSAs at the same time it considers its media ownership rules on remand. This simultaneous consideration would be consistent with the Commission's companion attribution and ownership decisions issued in 1999.

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[7] The Commission also is considering certain issues related to the digital television transition, including how broadcasters might use the additional capacity digital spectrum provides. In addition, the Commission is considering the public interest obligations of television broadcasters in the digital era and evaluating how such stations serve the Commission's localism objectives. To the extent these proceedings implicate the interests of those local broadcasters in small and medium-sized markets who benefit substantially from same-market JSAs, these decisions are likely to have a significant effect on any decision the Commission makes today regarding attribution. Therefore, the Commission should defer from determining whether same-market television JSAs should be subject to attribution rules until it concludes these major related proceedings.

[8] *See Prometheus Radio Project*, 373 F.3d at 382 (remanding certain aspects of the *Media Ownership Order*).

V. The Commission Should Not Address Grandfathered LMAs Until At Least 2006

Similarly, the Commission should not address its future treatment of grandfathered LMAs until its next regular ownership review, likely to occur in 2006. In its 1999 attribution decision, which was the result of the Commission's 1998 biennial review, the Commission grandfathered certain LMAs on a temporary basis, deferring final treatment of these situations until its 2004 biennial review. Given that the 1998 biennial review was not completed until 2000, parties to grandfathered LMAs concluded that the 2004 biennial review would not be complete until at least 2006. This understanding was further cemented when the Commission did not even commence its 2002 biennial review until well into 2003. Thus, parties to grandfathered LMAs have reasonably relied on the Commission's clear statement in 1999 and later actions to conclude that grandfathered LMAs would not be revisited until 2006.

Parties to grandfathered LMAs accordingly have conducted their station operations and established financial positions based on this understanding. To alter this reasonable expectation would unfairly penalize these parties and would inject further regulatory uncertainty into the broadcasting industry. Therefore, the Commission should not address permanent treatment of grandfathered LMAs until at least 2006.

VI. Conclusion

Same-market television JSAs are critical to the survival and development of small to medium-sized market television stations. Continued non-attribution of same-market television JSAs would result in more local news and would recognize the inherent differences between radio and television. At a minimum, the Commission should defer consideration of same-market television JSA attribution until it concludes its media ownership review. Finally, the

Commission should honor the commitment it made in 1999 to not revisit grandfathered LMAs until the 2004 biennial review, which was not likely to occur until at least 2006.

Respectfully submitted,

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