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 GRANITE BROADCASTING CORPORATION

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EXECUTIVE SUMMARY

Granite Broadcasting Corporation submits that the Commission should maintain its longstanding policy of not attributing same-market television JSAs. As demonstrated herein, non-attribution of same-market television JSAs is reasonable because of the significant differences between local television and local radio services. Further, same-market television JSAs advance substantial public interest benefits. At a minimum, the Commission should defer from attributing same-market television JSAs until such time as it concludes several related proceedings.

Under the current broadcast ownership rules, radio broadcasters enjoy opportunities to consolidate operations and thus achieve financial stability and competitive advantages in a way that television broadcasters do not. Same-market television JSAs level the playing field by enabling local television broadcasters to achieve similar benefits. Furthermore, same-market television JSAs do not result in competition concerns because local advertising prices are not likely to increase merely because television stations in the same market share some sales functions. Same-market television JSAs, in fact, generally encourage licensees to maintain a more competitive market position by awarding licensees with an increased share of advertising revenues as sales improve. In addition, same-market JSAs enable television licensees to better compete for a declining audience—a problem not faced by radio broadcasters—by providing revenues to purchase or develop programming attractive to viewers. Additionally, the revenues provided by same-market television JSAs enable local television broadcasters to fund substantial operational costs, as well as transition to digital television. Because radio station operations entail significantly lower costs, local radio broadcasters do not face these same financial burdens. In sum, the differences between local television and local radio justify differing attribution rules.

The Commission also should conclude that non-attribution of same-market television JSAs furthers localism, competition, and diversity. First, same-market television JSAs result in more local programming, such as local news. In the absence of such agreements, local television broadcasters, especially those in small to mid-size markets, may be forced to decrease or eliminate local news due to significant production costs. Second, same-market television JSAs further competition by enabling local television broadcasters to better compete with virtual monopolists, such as cable providers. Third, same-market television JSAs provide local television broadcasters with the financial stability necessary to stay on the air and to purchase or develop compelling programming, thus promoting the Commission's diversity objective.

The Commission must continue its long-standing policy of non-attribution of same-market television JSAs. At a minimum, however, the Commission should defer from reaching a decision in this proceeding until it has fully concluded several related proceedings, such as the media ownership and digital television proceedings. Either of these proceedings might alter the Commission's attribution considerations such that it is premature for the Commission to decide whether to attribute same-market television JSAs at this time.

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I. Introduction

Granite Broadcasting Corporation ("Granite"), 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. Granite, the country's largest minority-owned television broadcast group, is a publicly traded company that has owned and operated small to mid-sized market broadcast television stations since the late 1980s.[1] Granite's comments address the Commission's proposal to attribute same-market television joint sales agreements ("JSA") in the same manner as it currently attributes same-market radio JSAs.[2] As

[1] Granite owns and operates eight (8) network-affiliated television stations and one satellite station in geographically diverse markets reaching over 6% of the nation's television households. The company's station portfolio consists of three NBC affiliates, two ABC affiliates, one CBS affiliate and two major market WB affiliates. Granite's stations are located in the following markets (market size rank in parentheses): Duluth, Minnesota – Superior, Wisconsin (136); Peoria – Bloomington, Illinois (117); Ft. Wayne, Indiana (105); Syracuse, New York (79); Fresno – Visalia, California (57); Buffalo, New York (44); Detroit, Michigan (10); and San Francisco – Oakland – San Jose, California (5).

[2] *See In the Matter of Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets,* MB Docket No. 04-256, Notice of Proposed Rulemaking, FCC 04-173 (rel. Aug. 2, 2004) ("*Television JSA NPRM*").

further demonstrated below, the Commission cannot justify its proposal to attribute same-market television JSAs for two fundamental reasons, detailed further herein:

- Several significant differences between local television and local radio competitive environments justify differing attribution rules; and

- Attribution of same-market television JSAs would threaten the Commission's public interest objectives of localism, competition, and diversity.

At the very least, the Commission should defer any decision on attribution of same-market television JSAs until it has concluded several related proceedings.

II. The Commission Should Maintain Its Longstanding Policy of Not Attributing Same-Market Television JSAs Because Significant Differences Between Local Television and Local Radio Justify Differing Attribution Rules

The Commission's proposal to attribute same-market television JSAs for purposes of its media ownership rules in the same manner as it currently attributes same-market radio JSAs is unreasonable because of the substantial and immutable differences between television and radio competitive environments. Specifically:

- Television broadcasters face more stringent ownership restrictions than radio broadcasters;

- Same-market television JSAs do not threaten local market competition like same-market radio JSAs may;

- Same-market television JSAs, unlike same-market radio JSAs, provide the brokered station with ongoing financial incentives;

- Unlike in the radio context, attribution of same-market television JSAs would restrict the ability of local television broadcasters to compete for audience share; and

- Same-market television JSAs alleviate significant financial burdens not faced by local radio broadcasters.

Each of these points is discussed in further detail below.

A. Television Broadcasters Face More Stringent Ownership Restrictions Than Radio Broadcasters

Attribution of same-market television JSAs is not reasonable because television broadcasters face more stringent ownership restrictions than radio broadcasters. Specifically, under current broadcast ownership rules, local radio broadcasters enjoy significant opportunities for local ownership consolidation.[3] For example, even in the smallest of markets, one entity may hold an attributable interest in half of the stations in the market.[4] This level of permitted local radio ownership consolidation has enabled radio broadcasters to better compete in their local markets. In this context, the Commission may attribute same-market radio JSAs without threatening the viability of radio because existing Commission rules enable local radio broadcasters to strengthen their competitive positions in a strong industry through ownership consolidation. As a result, even if a same-market radio JSA is deemed an attributable ownership interest, the ability of a radio broadcast station holding such an interest to compete in the local advertising market is not likely to be affected in a significant manner.

[3] *See* 47 C.F.R. § 73.3555(a)(i) – (iv). Specifically, an entity may hold an attributable interest in up to eight commercial radio stations in the largest radio markets (i.e. markets with 45 or more commercial stations). In markets with 30 – 44 commercial radio stations, one entity may own up to seven commercial radio stations (not more than four of which are in the same service) and, in markets with 15 to 29 commercial radio stations, a single entity may own up to six commercial stations (not more than four of which are in the same service). In markets with 14 or fewer commercial stations, an entity may hold an attributable interest in up to five commercial radio stations (not more than three of which are in the same service) provided that one entity may own an attributable interest in no more than half of the stations in a market. *See also* PROJECT FOR EXCELLENCE IN JOURNALISM, THE STATE OF THE NEWS MEDIA 2004: AN ANNUAL REPORT ON AMERICAN JOURNALISM, Radio 12 (2004), *available at* http://www.stateofthenewsmedia.org, visited October 25, 2004 ("STATE OF THE NEWS MEDIA") ("[T]he level of consolidation in radio exceeds that of most media.").

[4] 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 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."). This provision permits one entity to own up to half of all commercial stations in markets with ten or fewer commercial stations.

Local television broadcasters, on the other hand, do not enjoy similar options due to the Commission's existing restrictions on common ownership of local television stations.[5] Rather, unlike local radio broadcasters, local television broadcasters in small to mid-size markets effectively are prohibited from consolidating to compete against already-consolidated and more dominant media.[6] 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.[7]

Same-market television JSAs at most level the playing field by enabling local television broadcasters to compete in the advertising market through combining sales efforts with another television station in the same market. Moreover, as the Commission itself has acknowledged, allowing consolidation among local radio broadcasters has resulted in a financially stronger industry.[8] Not attributing same-market television JSAs would enable local television

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[5] The FCC local television ownership rule—commonly referred to as the "duopoly rule"—prohibits any entity from holding an attributable interest in two television stations in the same market unless the Grade B contours of the two stations do not overlap or at least eight independently owned and operated television stations exist in the market and at least one of the stations is not ranked among the top four stations in the Designated Market Area ("DMA"). 47 C.F.R. § 73.3555(b).

[6] *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).

[7] For example, in the Bloomington, Illinois radio market, two entities hold attributable interests in eight commercial radio stations in the market. These same two entities also hold attributable interests in eleven of the nineteen commercial radio stations in the Peoria, Illinois radio market. In this same television market (i.e. the Peoria-Bloomington, Illinois DMA), the duopoly rule prohibits any consolidation between television stations. *See* BIA Media Access Pro Database.

[8] *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

broadcasters to consolidate some operations and enjoy these same financially stabilizing benefits. Accordingly, the Commission should treat same-market television JSAs differently than same-market radio JSAs and maintain its decision to not attribute same-market television JSAs.

B. Same-Market Television JSAs Do Not Threaten Competition in the Local Market Like Radio JSAs May

In the *Television JSA NPRM,* the Commission expressed concern that "the unattributable nature of JSAs could lead to the exercise of market power by brokering stations and raise related competition concerns."[9] This concern stemmed from its prior finding that same-market radio JSAs "put pricing and output decisions in the hands of one firm" and thus virtually eliminate competition in the market.[10] This concern may be valid in the context of same-market radio JSAs where a station's entry into one or more same-market radio JSAs, in combination with a station's ability to strengthen its market position through consolidation, could enable the brokering station to acquire an interest in a disproportionate number of stations in that market.[11]

In the context of television, however, the Commission's concern that non-attribution of same-market JSAs will harm competition is misplaced. First, it would be highly unusual for any television entity to enter into more than one JSA within a market. Granite is not aware of any

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consolidation, the radio industry today is on a stronger financial footing than it was a decade ago.").

[9] *Television JSA NPRM*, at ¶ 15.

[10] *Id.*, at ¶ 15.

[11] For example, in the Syracuse, New York radio market, there are forty radio stations, nine of which are non-commercial educational stations. One entity holds an attributable interest in nine of the remaining thirty-one stations. In circumstances such as these, it is logical for the Commission to attribute same-market radio JSAs because entry into a same-market radio JSA by this entity, which already holds an interest in nearly one-third of the Syracuse market, would enable it to obtain interests in a disproportionate number of stations in a market where other station owners hold significantly fewer attributable interests. *See* BIA Media Access Pro Database.

such situation. Additionally, as discussed above, unlike the situation in the radio industry, local television broadcasters lack the ability to jointly own two or more television stations in small to mid-size markets. Even if a television station owner enters into a same-market JSA, it is unlikely that the brokering station will hold an interest in any other television station in the market. Thus, given that multiple independently-owned television stations will remain in the market even in the presence of same-market television JSAs, it is unlikely that a single entity could dominate the advertising market. Furthermore, as the Commission has acknowledged, local broadcast advertising prices are not higher merely because stations in the same market are under common operation.[12] Accordingly, the Commission should conclude that same-market television JSAs do not harm competition in the local advertising market.

C. Same-Market Television JSAs, Unlike Same-Market Radio JSAs, Provide the Brokered Station With Ongoing Financial Incentives

In its decision to attribute same-market radio JSAs, the Commission found that "licensees subject to JSAs have less incentive to maintain or attain significant competitive standing in the market."[13] Many same-market television JSAs, however, contain both short- and long-term incentives to ensure that the licensee remains an active market competitor. In many same-market television JSAs, a licensee who is a party to a same-market television JSA receives a percentage of revenues generated from the sale of advertising in the programming it broadcasts (either in addition to or in lieu of a flat monthly fee). Thus, the licensee has a direct, short-term financial incentive to maintain a competitive market position, such as through the acquisition of

[12] *See Media Ownership Order*, 18 FCC Rcd at 13677, ¶ 153 ("Our experience suggests, however, that common ownership of two local broadcast television stations has produced efficiencies without facilitating the exercise of market power in the broadcast television advertising market.").

[13] *Id.*, at 13745, ¶ 320.

programming with particular appeal for its local audience. In addition, same-market television JSAs frequently are accompanied by option agreements in which the purchase price payable to the licensee upon exercise is based on a multiple of the station's cash flow at the time of exercise, thus providing the licensee with a long-term incentive to maintain or improve its market position. In sum, same-market television JSAs, unlike same-market radio JSAs, do provide a brokered station with significant incentives to maintain a competitive market position.

D. Unlike in the Radio Context, Attribution of Same-Market Television JSAs Would Restrict the Ability of Local Television Broadcasters to Compete for Audience Share

As the Commission has acknowledged, in recent years, local television broadcasters in small to mid-size markets face increasing competition for audience from other video programming outlets (*e.g.* cable systems and satellite providers).[14] For example, over the past ten years, the audience share held by broadcast stations fell by 25, from a combined average 74 share of primetime viewing during the 1993 – 1994 season to a combined average 49 share during the 2002 – 2003 season.[15] Local radio broadcasters have not experienced similar declines in audience.[16] Furthermore, radio programming often is aimed at targeted, niche audiences[17]

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[14] *See id.*, at 13666, ¶ 125 ("television broadcasters face intense competitive pressure from alternative video programming").

[15] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172, Tenth Annual Report, FCC 04-5, ¶ 94 (2004) ("Tenth Annual Report").

[16] Although the number of available media outlets has increased in recent years, radio has consistently reached more than 94% of the American population each week. *See* ARBITRON, RADIO TODAY: HOW AMERICANS LISTEN TO RADIO (2004) ("ARBITRON REPORT"), *available at* http://www.arbitron.com/downloads/radiotoday04.pdf, visited October 25, 2004.

[17] Radio is available in forty-seven different formats, each reaching specific demographics. STATE OF THE NEWS MEDIA, at Radio 4. For example, the "rock" format has a higher audience among adults ages 25 – 44 than any other format and is of particular appeal to men. *See* ARBITRON REPORT. The Commission also has observed that radio programming

such that multiple stations, regardless of size, can survive in a given market.[18] Meanwhile, local television broadcasters offer generalized programming with mass-market appeal and thus compete directly against one another in any given market.

Same-market television JSAs enable local television stations to shift their focus from making ends meet to developing programming attractive to the community. This, in turn, helps local television stations compete with their already-consolidated cable competitor. If the Commission attributes same-market television JSAs, stations may not be able to afford local programming and thus may lose their ability to compete with cable for audience share. Radio stations face no similar conundrum. Thus, the Commission should not attribute same-market television JSAs.

E. Same-Market Television JSAs Alleviate Significant Financial Burdens Not Faced By Local Radio Broadcasters

Local television broadcasters face considerable financial burdens not present in the local radio market. Specifically, operation of a television station entails much higher costs than operation of a radio station, such as the cost to provide power and develop or purchase quality programming. For example, even in small markets, operating budgets for television stations can reach into the millions of dollars versus only tens of thousands of dollars for a radio station. Additionally, the Communications Act of 1934, as amended, mandates that local television

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evolved from a generalized "variety" format in its early days to primarily targeted programming. *See Media Ownership Order*, at 13650, ¶ 93.

[18] Targeted radio programming has resulted in stability in the competition for audience. *See* STATE OF THE NEWS MEDIA, at Radio 4. For example, in the relatively small radio market of the Duluth, Minnesota – Superior, Wisconsin (204), there are twenty-nine radio stations representing a wide variety of formats. *See* BIA Media Access Pro Database.

broadcasters transition to digital television while radio stations face no such burden.[19] The transition to digital television is an extremely expensive undertaking and, as the Commission strives to hasten this transition, it is likely that local television broadcasters will need to absorb these costs at a quicker pace than originally anticipated and, in any event, at a time prior to the date when many of their viewers will receive such digital signals over the air.[20]

Same-market television JSAs alleviate some of these financial burdens on local television broadcasters by providing steady revenue streams to otherwise financially-constrained licensees. Specifically, local television broadcasters rely on revenues generated by same-market television JSAs to maintain ongoing operations as well as to satisfy Commission goals, such as the

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[19] *See* 47 U.S.C. § 309(j)(14) (requiring broadcasters to return analog spectrum on December 31, 2006 unless certain market-specific requirements to extend the deadline have been satisfied). The Commission has been working to hasten the transition to digital television in recent months. For example, in September 2004, the Commission established several critical deadlines by which broadcast licensees must accomplish certain DTV objectives. *See Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Public Interest Obligations of TV Broadcast Licensees; Children's Television Obligations of Digital Television Broadcasters; Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MB Docket No. 03-15, Report and Order, FCC 04-192 (rel. Sept. 7, 2004). Additionally, Congress and the Commission have been exploring how to transition to digital in an expedited fashion given that certain households may find themselves without a television signal when the transition takes effect. *See, e.g.,* Public Notice, Media Bureau Seeks Comment on Over-the-Air Broadcast Television Viewers, MB Docket No. 04-210, DA 04-1997 (May 27, 2004).

[20] Although virtually all television broadcasters have constructed initial DTV facilities, many of these companies still must spend hundreds of thousands or millions of dollars to complete build out of their full-power facilities because they presently are operating with minimum facilities that neither replicate their existing analog coverage or maximize their DTV coverage. The costs to convert to full-power facilities often can run from $600,000 to $1 million or more. *See* Nexstar Broadcasting Group, L.L.C., Petition for Reconsideration, MB Docket No. 02-277 (filed Sept. 4, 2003). These costs are particularly difficult for stations in small to mid-size markets. For example, in a small market such as Billings, Montana, full conversion to digital would require 25% of the entire market's advertising revenues. *See* Comments of Nexstar Broadcasting Group, L.L.C. and Quorum Broadcast Holdings, L.L.C., MB Docket No. 02-277 (filed Jan. 2, 2003). The costs to transition to digital have led at least one small television station to go dark. *See* Susan Port, *ABC Affiliate WPBF-TV Announces Cost-Cutting Plans*, THE PALM BEACH POST, Jul. 22, 2003.

transition to digital television. Thus, attribution of same-market television JSAs would have a detrimental impact on the ability of local television broadcasters to maintain sufficient revenue to support operations, let alone transition to digital television. Attribution of radio JSAs has had and will have no similar effects. Therefore, the Commission should maintain its policy of not attributing same-market television JSAs.

III. Attribution of Same-Market Television JSAs Would Threaten the Commission's Public Interest Objectives of Localism, Competition, and Diversity

The Commission is authorized to enact regulations that promote its public interest goals of localism, competition, and diversity. As demonstrated below, attribution of same-market television JSAs would harm rather than further these interests. Accordingly, the Commission should refrain from taking action to attribute same-market television JSAs.

A. Same-Market Television JSAs Result in More Local Programming

Same-market television JSAs further the Commission's ongoing objective to promote localism in broadcast outlets by providing local television broadcasters with sufficient resources to maintain and improve their local programming, including local news. Even as Americans have access to an increasing number of media options, local broadcast television remains a primary source for news and information.[21] Local news, however, is a significant expense for any television station.[22] Many local television broadcast stations rely on steady revenue streams

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[21] *See* Television Bureau of Advertising, Media Comparisons Study 2003, *available at* http://www.tvb.org/nav/build_frameset.asp?url=/rcentral/index.asp (indicating that 43.6% of adults cite broadcast television as their primary news source).

[22] A study commissioned by the National Association of Broadcasters in connection with the Commission's media ownership proceeding estimates that news budgets for stations in small to midsize markets can range from $2.7 million to $5 million and can take years to recoup profits. *See Newsroom Budgets in Midsize (51 – 100) and Small (101 – 210) Markets*, in Comments of the National Association of Broadcasters, MB Docket No. 02-277 (filed Jan. 2,

from JSAs to produce local news and programming. Should the Commission attribute same-market television JSAs, these stations, especially those in small to mid-size markets, may be unable to afford to cover local events that are important to their communities or may be forced to close their news operations completely.

Moreover, because of the Commission's overly-restrictive local television ownership rules, many local television broadcasters have been forced to implement cost-cutting measures and, as a result, have switched from local news coverage to regional news coverage.[23] Same-market television JSAs are a mechanism by which local television broadcasters can avoid succumbing to this trend and, at the same time, further the Commission's long-standing goal of localism. The Commission must recognize that, unless same-market television JSAs remain non-attributable, local television stations will be forced to implement cost-cutting measures that will lead to less local content rather than more.[24]

2003). In recent years, more than 50 stations in small markets have been forced to stop news production because of costs. *See* Doug Halonen, *FCC Still Wants Some Limits*, TELEVISION WEEK (May 5, 2003) (statement of Lou Anne Nabhan, Media General). In its Petition for Reconsideration of the *Media Ownership Order*, Nexstar described to the FCC the losses its stations had encountered due to the expense of local news production. *See* Nexstar Petition for Reconsideration, at 9 (stating that one station had lost nearly $500,000 on local news production and that another had lost approximately $883,000).

[23] Some companies, led by Sinclair Broadcast Group ("Sinclair"), have moved to "centralcasting", i.e. producing news for several stations from one facility. For example, Bahakel Communications now produces news for its Charlotte, North Carolina station from a facility located ninety miles away in South Carolina. *See* STATE OF THE NEWS MEDIA, at Local Television 21. A.H. Belo Co. has created a twenty-four hour Texas news channel to provide news coverage to its stations in the four largest Texas markets. *Id.* Although such efforts reduce costs, they have been criticized as "fak[ing] the localism by presenting the hometown station feel but without any of the presence and journalism that local communities deserve." *See* Leon Lazaroff, *Congress, Media Groups Question Sinclair Broadcasting's Practices*, CHICAGO TRIBUNE (Oct. 16, 2004).

[24] Unfortunately, the impact of such a decision will fall primarily upon those consumers who rely on over-the-air broadcast signals. These consumers, who tend to be financially disadvantaged and also include a higher proportion of racial and ethnic minorities, will be forced to accept an inferior product simply because they cannot afford pay-only services. *See, e.g.*

B. Non-Attribution of Same-Market Television JSAs Will Promote, Not Harm, Competition in the Local Advertising Market

Non-attribution of same-market television JSAs will promote, not harm, competition in the local advertising market because same-market television JSAs enable local television broadcasters to better compete in the local advertising market with virtual monopolists. In recent years, local television broadcasters have faced increasing competitive pressures from already-consolidated media outlets within the marketplace. Specifically, cable systems and daily newspapers, two major local competitors of television broadcasters, are free to consolidate ownership with few restrictions and, as a result, enjoy high shares of the local market.[25] Current Commission rules, however, significantly restrict the ability of local television broadcasters to consolidate.[26] Thus, local television broadcasters are left to compete with each other *and* with

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Tania Pancyck-Collins and Paul Gluckman, *Industry Weighs In On What to Do About DTV's 15% Problem*, COMMUNICATIONS DAILY (Aug. 13, 2004) (stating that studies submitted by commenters indicated that most consumers relying on over-the-air broadcast signals were minorities with incomes below $50,000).

[25] Local newspapers continue to take the lion's share of local advertising dollars. *See* Robert Coen, Insider's Report: Robert Coen Presentation on Advertising Expenditures, Universal McCann 6 (Jun. 2004), *available at* http://www.universalmccann.com/Coen_Insiders_Report_0604_Color.pdf, visited Oct. 25, 2004 (projecting total advertising for local newspapers in 2004 at $39.2 billion, nearly 40% of the $98.2 billion total local advertising projection for 2004) ("Coen Advertising Report"). Moreover, even in the face of declining circulations, "the lone newspaper in town [is] the most wide-reaching single buy for advertising." *See* STATE OF THE NEWS MEDIA, at Newspapers 10.

Although cable's market share has decreased in recent years due to competition from alternative multichannel video programming distributors, cable continues to enjoy a high market share. *See* Tenth Annual Report, at ¶ 4 (stating that cable's share is 75% of all MVPD subscribers). Additionally, in markets where 98% of Americans live, a single cable operator has a market share of more than 80%. *See* Communications Workers of America, Getting a Fair Shake From the Cable Industry, 20 (2004), *available at* http://www.cwa-union.org/issues/PolicyIssues/MediaOwnership, visited October 25, 2004 (citing reports by the GAO, Consumers Union and Consumer Federation of America, and the U.S. Public Interest Research Group). Furthermore, cable advertising revenues have increased as cable networks cut into broadcast audiences. *See* Coen Advertising Report, at 5.

[26] *See supra* note 5 (describing duopoly rule).

other services while these consolidated and dominant market participants face virtually no intra-service competition.[27] Television JSAs help local television broadcasters compete with these already consolidated competitors.[28] In this respect, same-market television JSAs further competition rather than reduce it. In addition, as discussed above, same-market television JSAs provide revenue streams which allow local television broadcasters to develop programming to attract audiences during an era in which broadcast audience shares are declining. Thus, same-market television JSAs promote, rather than harm, competition in the local advertising marketplace.

C. Same-Market Television JSAs Help Maintain Diversity in Local Markets

Same-market television JSAs help maintain diversity in local markets primarily by providing financial stability to stations so that they may stay on the air and continue to provide local news and other local programming. The Commission itself has acknowledged that same-market JSAs promote diversity by "enabling smaller stations to stay on the air."[29] In addition,

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[27] For example, the one daily newspaper in the Syracuse market, the SYRACUSE POST-STANDARD, can virtually monopolize the local newspaper market. Similarly, as the only cable system to serve the Syracuse market, Time Warner Cable of New York faces no competition from other cable providers. In contrast, even the highest rated local commercial television broadcast station in the Syracuse market had only a 13 total day share in July 2004. *See* BIA Media Access Pro Database (defining total day share as share from 9:00 AM to Midnight).

[28] Although such a competitive position is challenging in any market, it is especially difficult in small to mid-size markets where local television broadcasters are struggling to survive and where they often must rely on same-market television JSAs to generate sufficient advertising revenues to sustain their local news operations and implement digital television service.

[29] *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry*, MM Docket No. 94-150, Report and Order, FCC 99-207, 14 FCC Rcd 12559, 12612 ¶ 122 (1999). Maintaining diversity through financial stability is even more important today than it was when the Commission made the above statement in 1999 given the increased market pressures faced by local television broadcasters today. As discussed above, local television broadcasters, especially those in small and mid-size markets, often are financially

same-market television JSAs make it more likely that stations can produce the kind of stable revenue they need to support high cost programming, such as local news. In both respects, same-market television JSAs promote diversity. As a result, one of the presumably unintended consequences of attributing same-market television JSAs could be the failure of local television stations in small and mid-size markets or at least a reduction in high quality, high cost programming such as local news. Therefore, the Commission should recognize that attribution of same-market television JSAs will frustrate, rather than promote, its diversity objective.

IV. The Commission Should Defer Any Decision on Attribution of Same-Market Television JSAs Until It Has Reached Conclusions in Several Related Proceedings

The Commission should address attribution of same-market television JSAs only after it has concluded several significant proceedings that will define the television broadcasting industry over the next several decades. The outcome of any one of these proceedings may have a significant effect on any decision the Commission makes with regard to attribution today. For example, 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. [30] The Commission established its attribution rules to determine whether an entity holds a sufficient interest in a licensee such that the interest should be counted for purposes of the media ownership rules. To date, however, the Commission has not adopted judicially-acceptable media ownership rules. Because the attribution rules implicate the same policies as the ownership rules, the Commission should not decide attribution issues without a complete understanding of how the media ownership rules ultimately will develop.

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constrained and often cannot successfully compete in the marketplace without some sort of cooperative agreement with another station in that same market.

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

The Commission also is considering certain issues related to the digital television transition, including how broadcasters might use the additional capacity digital spectrum provides. The transition to digital television may open up new revenue opportunities for broadcasters because digital spectrum enables a station to broadcast multiple programming streams and to employ spectrum for other uses. The Commission, however, has not finalized its determinations concerning such matters. Same-market television JSAs, however, enable local television broadcasters to generate revenues today. The Commission should not decide to attribute same-market JSAs, thus cutting off a much-needed revenue stream, until such time as it determines whether and how broadcasters might use additional digital spectrum to generate revenues to replace those lost by attribution of same-market television JSAs.

In addition to the aforementioned proceedings, the Commission also is considering the public interest obligations of television broadcasters in the digital era and evaluating how to best meet its localism objective.[31] To the extent these proceedings implicate the interests of those local broadcasters in small and mid-size 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. Thus, the Commission should defer from determining whether same-market television JSAs should be subject to attribution rules until such time as it concludes these major related proceedings.

[31] *See Broadcast Localism*, MB Docket No. 04-233, Notice of Inquiry, FCC 04-129 (rel. Jul. 1, 2004) (initiating proceeding to receive information on how broadcasters are meeting community needs and whether new rules and policies on localism should be adopted).

V. Conclusion

As demonstrated above, it is not reasonable to impose comparable attribution rules on radio and television station owners given the significant differences between radio and television competitive environments. Same-market television JSAs do not harm competition in the local market but instead enable local television broadcasters to better compete in the local market for advertising and audience. Furthermore, same-market television JSAs provide substantial public interest benefits by providing local television broadcasters with the revenues necessary to produce compelling local programming and comply with Commission objectives, such as the transition to digital television. In order to ensure that local television broadcasters can continue to stay on the air, as well as complete the transition to digital television, the Commission must not attribute same-market television JSAs and instead should continue to permit local television broadcasters to cooperate in advertising sale efforts.

Respectfully submitted,

GRANITE BROADCASTING CORPORATION

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